

## **AGREEMENT**

THIS AGREEMENT (the "Agreement") is made as of the date of the last signature affixed hereto, by and among Verizon Business Global LLC, for itself, its Affiliates and subsidiaries ("Verizon Business"), CWC New Cayman Limited, for itself, its Affiliates and subsidiaries ("CWC New Cayman"), Columbus Networks USA, Inc., for itself, its Affiliates and subsidiaries ("CNUSA", and together with CWC New Cayman referred to as "C&W"), and Liberty Global plc, for itself, its Affiliates and subsidiaries ("Liberty Global") on the one hand (referred to collectively as the "Gemini Parties"), and the U.S. Department of Homeland Security ("DHS"), on the other hand (with each entity referred to individually as a "Party" and collectively as the "Parties").

## **RECITALS**

**WHEREAS**, U.S. communications systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

**WHEREAS**, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

**WHEREAS**, it is critical to the well-being of the Nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see *e.g.*, Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Presidential Policy Directive/PPD-21, Critical Infrastructure Security and Resilience);

**WHEREAS**, CWC New Cayman owns a portion of, and operates, a cable system linking Bermuda and the United States (the "Gemini Bermuda Cable System") that is authorized pursuant to Federal Communications Commission ("FCC") File No. SCL-LIC-20070925-00017, subject to commitments contained in a National Security Agreement between Verizon Business and DHS dated March 3, 2008, as amended on February 11, 2009 ("2008 NSA"), for which cable system Verizon Business provides certain infrastructure (such as dark fiber) and services (such as landing station services);

**WHEREAS**, Verizon Business, C&W and Liberty Global each have the authority to negotiate and execute this Agreement for the U.S. portions of the Gemini Bermuda Cable System; to enter into contractual arrangements with third parties to operate and manage certain U.S. facilities associated with the Gemini Bermuda Cable System, including the landing and terminal power feed equipment (Verizon Business, in particular), terrestrial transmission facilities associated with the landing (Verizon Business, in particular), and the operations of the U.S. network operations center ("NOC") (C&W, in particular); and to direct the activities of certain vendors, suppliers, or providers of services related to the U.S. portions of the Gemini Bermuda Cable System;

**WHEREAS**, on November 30, 2015, Cable and Wireless Network Services Limited (as predecessor in interest to CWC New Cayman), Cable & Wireless Communications plc and Liberty Global applied to the FCC for transfer of control of a submarine cable landing license under the Cable Landing License Act of 1921 and Executive Order No 10530, FCC File No. SCL-T/C-20151130-00033 (the “Application”);

**WHEREAS**, DHS will request that the FCC’s grant of the pending Application be made subject to resolution of issues relating to national security, law enforcement, and public safety as set forth herein, and whereas Verizon Business, C&W and Liberty Global have agreed to enter into this Agreement with DHS to resolve issues raised by DHS, terminate the 2008 NSA between Verizon Business and DHS, as amended, and jointly petition the FCC to condition the requested authorization on compliance with this Agreement;

**NOW THEREFORE**, the Parties are entering into this Agreement to address national security, law enforcement, and public safety concerns.

## **ARTICLE 1: DEFINITION OF TERMS**

As used in this Agreement:

- 1.1 “**Access**” or “**Accessible**” means the ability to physically or logically undertake any of the following actions: (a) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (b) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (c) alter the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).
- 1.2 “**Affiliate**” means any entity that Verizon Communications Inc., Cable & Wireless Communications plc, Liberty Global owns or controls.
- 1.3 “**Business day**” means any day Monday through Friday, excluding Federally-designated U.S. holidays.
- 1.4 “**Control**” and “**Controls**” mean the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:
  - (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
  - (b) the dissolution of the entity;
  - (c) the closing and/or relocation of the facilities of the entity;
  - (d) the termination or non-fulfillment of contracts of the entity;

- (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.3(a) through (d) above; or
  - (f) obligations of any of the Gemini Parties under this Agreement.
- 1.5 “*De facto*” and “*de jure*” control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.6 “**Domestic Communications**” means (a) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location to another U.S. location, and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates in the United States.
- 1.7 “**Domestic Communications Infrastructure**” or “**DCI**” means any portion of the Gemini Bermuda Cable System that is physically located in the United States up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial off-the-shelf (“COTS”) software used for common business functions; e.g., MS Office) used by or on behalf of any of the Gemini Parties for the Gemini Bermuda Cable System to provide, process, direct, control, supervise, or manage Domestic Communications, and NOC facilities that may be used to control the Gemini Bermuda Cable System.
- 1.8 “**Effective Date**” means the date this Agreement becomes effective, which is the date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party’s signature).
- 1.9 “**Electronic Communication**” has the meaning given it in 18 U.S.C. § 2510(12).
- 1.10 “**Foreign**” where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.11 “**Government,**” “**Government Authority**” or “**Governmental Authorities**” means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision, and any court, tribunal, judicial, or arbitral body.
- 1.12 “**Management**” means, with respect to each of the Gemini Parties, the respective officers, managers (in the case of a limited-liability company), and members of the boards of directors of that Gemini Party.
- 1.13 “**Manasquan Equipment**” means Verizon Business’ power feed, routing, switching, bridging and similar equipment (including software and upgrades) deployed in the Verizon Business landing station in Sea Girt, New Jersey, by or on behalf of Verizon Business for use as part of the Gemini Bermuda Cable System.

- 1.14 “**Network Management Information**” means: the network management operations plans, processes, and procedures; descriptions of the placement of NOC(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs, and other critical infrastructures (e.g., domestic telecommunications and content providers); descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; network performance information; and network access ability and procedures.
- 1.15 “**Network Operations Center**” or “**NOC**” means the locations and facilities designated as such by any of the Gemini Parties for purposes of performing network management, monitoring, maintenance, or other operational functions for the Gemini Bermuda Cable System.
- 1.16 “**Notice**” shall have the meaning set forth in Section 4.12 of this Agreement.
- 1.17 “**Principal Equipment**” means the primary electronic components of the Gemini Bermuda Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes the cable itself, network element servers, routers, switches, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), signal modulators and amplifiers, power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), branching units (BU), and synchronous optical network (SONET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM), or optical carrier network (OCx) equipment, as applicable, and any non-embedded software necessary for the proper monitoring, administration, and provisioning of the Gemini Bermuda Cable System (with the exception of COTS software used for common business functions; e.g. MS Office).
- 1.18 “**Pro forma assignments**” or “**pro forma transfers of control**” are transfers that do not involve a substantial change in ownership or control as provided by Section 1.767(g)(7) and 63.24 of the FCC’s Rules (47 C.F.R. §§ 1.767(g)(7) and 63.24).
- 1.19 “**United States**” or “**U.S.**” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.
- 1.20 “**Verizon Domestic Communications Infrastructure**” or “**VDCI**” means (a) the beach manhole, conduit, and other outside-plant facilities supporting the Gemini Bermuda Cable System at the Verizon Business cable landing station in Sea Girt, New Jersey; (b) Manasquan Equipment; and (c) equipment in the Verizon Business facility in Manasquan, New Jersey, used by Verizon Business to operate, control, monitor, or otherwise manage the Gemini Bermuda Cable System.

- 1.21 **“Wet Infrastructure”** means hardware components installed and residing on the undersea portion of the Gemini Bermuda Cable System, and includes fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the Gemini Bermuda Cable System.
- 1.22 **“Wire Communication”** has the meaning given it in 18 U.S.C. § 2510(1).
- 1.23 **Other Definitional Provisions.** Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## **ARTICLE 2: OPERATIONS, FACILITIES, INFORMATION STORAGE AND ACCESS**

- 2.1 **Operational Requirements.** With respect to the operation of the Gemini Bermuda Cable System C&W agrees as follows:
- (a) A NOC for the Gemini Bermuda Cable System shall be established or maintained within the United States (the “U.S. NOC”), to be operated by, or on behalf of, one or more of the Gemini Parties;
  - (b) Each of the Gemini Parties shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the Gemini Bermuda Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States; and
  - (c) C&W shall ensure that the U.S. NOC will be able to view the status of the Gemini Bermuda Cable System. Verizon Business will provide to C&W access to, and commercially-reasonable assistance with, the VDCI to the extent necessary for such viewing.

If one or more of the Gemini Parties interrupts traffic to or from the United States as the result of lawful U.S. process from a Government Authority, any Gemini Party shall be permitted to disclose publicly that action was required to interrupt service in response to lawful U.S. process, without disclosing any of the content of such request.

- 2.2 **Cable System Infrastructure.** Within ninety (90) business days after the Effective Date, C&W shall provide DHS with:
- (a) a complete and current list of Principal Equipment, including each item’s manufacturer and the model and/or version number of any hardware or software; any vendors, contractors, or subcontractors involved in installing, operating, managing, or maintaining the Principal Equipment; and a description of each Principal Equipment item and the functions supported;

- (b) a complete and current list of all contracts held by the Gemini Parties or their designee(s) for the maintenance and security of the Gemini Bermuda Cable System;
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the Gemini Bermuda Cable System;
- (d) a logical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the Gemini Bermuda Cable System, which plan shall include measures to ensure that security patches for systems and applications are kept up to date;
- (e) a physical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the Gemini Bermuda Cable System; and
- (f) a network map that includes a physical and logical topology; Network Management Information, network and telecommunications architecture descriptions and associated descriptions of interconnection points; controlled gateways to the DCI and the Wet Infrastructure; network operational plans, processes, and procedures; locations and functions of any NOCs; and descriptions of disaster recovery and administrative functions.

The Gemini Parties, whether individually or collectively, shall provide at least ten (10) business days' advance Notice prior to performing any maintenance, repair, or replacement that would result in any material modification to the Principal Equipment for the Gemini Cable System. The Gemini Parties need not comply with the advance Notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and is necessary to ensure the continued operability of the Gemini Cable System; however, in such circumstances the appropriate Gemini Party shall provide advance Notice of the material modification if practicable, and if impracticable, within ten (10) business days after the material modification of the Principal Equipment. The appropriate Gemini Party shall provide at least five (5) business days' advance Notice prior to making any material modifications to its contracts for Gemini Cable System maintenance and security.

Verizon Business shall provide to C&W no later than seventy (70) business days after the Effective Date any information or assistance reasonably required to enable C&W to comply with the requirements of this Section. The Gemini Parties agree to meet and confer with DHS and consider any concerns DHS may raise about materials submitted pursuant to this provision.

- 2.3 **Compliance with Applicable Law.** Nothing in this Agreement shall excuse any Party from any obligation it may have to comply with applicable legal requirements for the retention, preservation, or production of information, records, or data.

### **ARTICLE 3: SECURITY**

- 3.1 **Measures to Prevent Improper Use or Access.** Each of the Gemini Parties shall take all reasonable measures to prevent the use of or Access to those portion(s) of the

Domestic Communications Infrastructure over which such Gemini Party may exercise control or to which such Gemini Party has access, to Access, obtain, or disclose Domestic Communications, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. Such measures shall include contractual safeguards as well as screening procedures for certain personnel in accordance with Section 3.4. Each of the Gemini Parties shall submit such policies and procedures to DHS within ninety (90) business days of the Effective Date for review, and the Gemini Parties agree to meet and confer with DHS and consider any concerns DHS may raise about such policies and procedures.

Furthermore, each of the Gemini Parties agrees to report to DHS if any Gemini Party learns of information that reasonably indicates unauthorized third-party disruption of the Gemini Bermuda Cable System or any Domestic Communications being carried on the Gemini Bermuda Cable System. Any such reports should be provided in writing to DHS within ten (10) business days of discovery of the relevant information. The Gemini Parties further agree to confer with, and reasonably consider any recommendations by, DHS with respect to how to remediate such events. The relevant Gemini Party or Parties shall provide Notice within ten (10) business days of the receipt of any such recommendation whether the Gemini Parties have adopted the recommendation. The Notice will include an explanation of why the Gemini Party or Parties have not adopted any recommendation and a description of the actions taken to implement any recommendation that a Gemini Party does adopt.

3.2 **Points of Contact.** Within sixty (60) days after the Effective Date, each of the Gemini Parties shall designate its respective points of contact within the United States for purposes of this agreement (“**Points of Contact**”) as follows. Specifically, at least one Point of Contact shall be designated by Verizon Business, with sufficient authority to facilitate resolution of any national security, law enforcement, or public safety concerns that may be raised by DHS with respect to the VDCI. In addition, at least one Point of Contact shall be designated by C&W with sufficient authority to facilitate resolution of any national security, law enforcement, or public safety concerns that may be raised by DHS with respect to the portions of the DCI under C&W control. Each Point of Contact shall reside within the United States and shall be available twenty-four (24) hours per day, seven (7) days per week. Promptly after designating such Points of Contact, each Gemini Party shall provide Notice of its respective Point of Contact, and thereafter each of the Gemini Parties shall notify DHS of any change in its designated Points of Contact within ten (10) business days. The Gemini Parties shall cooperate with any Notice by DHS that a further background check, security clearance process, or both be completed for a designated Point of Contact.

3.3 **Instruction of Obligations.** Each of the Gemini Parties shall instruct its respective appropriate officials, employees, contractors, and agents as to the obligations under this Agreement, including the individuals’ duty to report any violation of this Agreement, and shall issue periodic reminders to them of such obligations. The Gemini Parties shall issue these instructions in writing within forty-five (45) business days of the Effective Date, and shall submit a copy thereof to DHS at the same time.

3.4 **Screening of Personnel.** Each of the Gemini Parties shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired personnel or any personnel performing under an agreement with such Party in at least the following circumstances:

- (a) any person whose position reasonably requires unescorted or unmoderated Access to the Domestic Communications Infrastructure; and
- (b) any person with day-to-day responsibility for operation or security of the Domestic Communications Infrastructure.

Screening procedures include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the screening process requirements set forth in this Agreement, such persons shall be considered "Screened Personnel." In addition, each of the Gemini Parties will cooperate with any reasonable request by DHS to provide additional identifying information regarding Screened Personnel.

#### **ARTICLE 4: REPORTING AND NOTICE**

4.1 **Filings Concerning *De Facto* or *De Jure* Control of the Gemini Parties.** Each of the Gemini Parties shall promptly provide Notice and a copy of any filing with the FCC or any other Government Authority by that Party relating to the *de facto* or *de jure* control of one or more of the Gemini Parties or the Gemini Bermuda Cable System, except for filings with the FCC for assignments or transfers of control that are *pro forma*.

4.2 **Change in Control.** If any of the Gemini Parties learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC Application(s), has or will likely obtain an ownership interest (direct or indirect) in one or more of the Gemini Parties or the Gemini Bermuda Cable System above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09(b), or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely will otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of one or more of the Gemini Parties (in both cases (i) and (ii), other than control over Verizon Business by the other Gemini Parties inherent in the commercial relationship by which Verizon Business is providing services in support of the Gemini Bermuda Cable System), then that Gemini Party or Parties shall provide Notice within ten (10) business days. Notice under this Section by a Gemini Party shall, with respect to that Party, at a minimum:

- (a) identify the entity or individual(s) acquiring Control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) identify the beneficial owners of the increased or prospective increased interest in one or more of the Gemini Parties or the Gemini Bermuda Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and



- (c) quantify the amount of ownership interest that the entity or individual(s) has or likely will obtain in one or more of the Gemini Parties or the Gemini Bermuda Cable System and, if applicable, the basis for their prospective Control of one or more of the Gemini Parties or the Gemini Bermuda Cable System.

4.3 **Change in Cable Infrastructure, Contracts, and Network Management.** In addition to the obligation contained in Section 4.10, C&W shall provide upon request from DHS an updated list of Principal Equipment, physical security plan, logical security plan, or restoration plan. Verizon Business will provide to C&W any information and documents reasonably required to enable C&W to comply with the requirements of this Section. The Gemini Parties shall provide at least thirty (30) business days' advance Notice prior to making any modifications to the list of contracts submitted pursuant to Section 2.2(b) above. Each of the Gemini Parties agrees to make Network Management Information in its possession and/or under its control available to DHS upon request. The Gemini Parties agree to negotiate in good faith with DHS to resolve any national security, law enforcement, or public safety concerns that DHS may raise with respect to the Gemini Bermuda Cable System's Principal Equipment, physical security plan, logical security plan, restoration plan, contracts, and Network Management Information.

4.4 **Reporting Policy.** Within forty-five (45) business days of the Effective Date, each of the Gemini Parties shall adopt or update, and distribute, a written policy for the reporting by its Management of any noncompliance with this Agreement. This written policy shall also provide for the reporting by employees, agents, and contractors to the Management of the relevant Party of information that requires Notice under Sections 4.2, 4.3, and 4.6 of this Agreement. Each of the Gemini Parties shall make its policy available to DHS upon request. Any violation by a Gemini Party of any material term of its policy shall constitute a breach of this Agreement by such Party.

By a written statement, each of the Gemini Parties shall notify all relevant employees, contractors, and agents of that Party that the general categories of information identified in Sections 4.2, 4.3, and 4.6 of this Agreement should be disclosed to the Management of that Gemini Party and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing employees, contractors, and agents of the need to report this information also shall state that the Gemini Party shall not discriminate against, or otherwise take adverse action against, anyone who reports such information to the Management of that Gemini Party or DHS. Each of the Gemini Parties shall make such statement available to DHS upon request.

4.5 **Non-Retaliation.** Within forty-five (45) business days of the Effective Date, each of the Gemini Parties shall adopt or maintain a policy that strictly prohibits discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a Notice or report under this Article, or has notified or attempted to notify the Management of that Gemini Party to report information that he or she believes in good faith requires Notice under either this Article or under a Gemini Party's written instruction to employees on the

reporting of any such information. Any violation by a Gemini Party of any material term of its policy shall constitute a breach of this Agreement by such Party. Each of the Gemini Parties shall make available its respective policy to DHS upon request.

4.6 **Reporting of Incidents.** Each of the Gemini Parties shall provide Notice if it learns of any information that reasonably indicates:

- (a) a material breach of this Agreement;
- (b) Access to or disclosure of Domestic Communications from the Domestic Communications Infrastructure in violation of federal, state, or local law or regulation; or
- (c) Access to or disclosure of Network Management Information in violation of federal, state, or local law or regulation;

Notice shall be promptly made by an appropriate representative of a Gemini Party no later than ten (10) business days after that Gemini Party learns of any information that reasonably indicates a matter described in this Section. The Gemini Parties shall lawfully cooperate in investigating the matters described in this Section. The Gemini Parties need not give Notice where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States.

4.7 **Onsite review of Information and Facilities.** DHS may visit, at any time upon reasonable Notice, any part of the Domestic Communications Infrastructure to conduct onsite reviews concerning the implementation of the terms of this Agreement and may at any time require copies or review of information concerning technical, physical, management, or other security measures reasonably required by DHS to verify compliance with the terms of this Agreement.

4.8 **Interviews of Personnel.** Upon reasonable Notice from DHS, each of the Gemini Parties shall make available for interview any and all knowledgeable personnel who are in a position to provide information to verify compliance with the terms of this Agreement.

4.9 **Right to Third Party Audits.** DHS may require the Gemini Parties to obtain a third party audit of their compliance with the terms of this Agreement and to provide DHS with the resultant audit report.

- (a) If this right to third party audits is availed by DHS, the Gemini Parties will, within fifteen (15) business days of receiving such request, propose the third party auditor, as well as the terms and scope for the audit.
- (b) Once the Gemini Parties have submitted the proposed auditor and the terms and scope of the audit, DHS will have thirty (30) business days to respond to the proposed terms and scope of the audit. If DHS does not respond to the proposed auditor and terms and scope within thirty (30) business days, the proposed auditor and terms and scope will be deemed to have been accepted.

- (c) The Gemini Parties shall reasonably address any concerns raised by DHS and shall commence the audit within ninety (90) business days of reaching agreement on the scope and terms of the audit.
- (d) The audit required by this Section shall be undertaken solely at C&W's expense, and DHS shall not be required to make any showing of cause to invoke this right to third party audit. However, if DHS invokes its right to a third party audit, the Gemini Parties shall not be requested to conduct another third party audit until twelve (12) months have passed from the conclusion of the previous audit.

4.10 **Annual Report.** On or before January 31 of each calendar year, C&W shall submit to DHS a report assessing the Gemini Parties' compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

- (a) an updated list of Principal Equipment, including but not limited to any material changes or upgrades to the system components or applications since the list was most recently provided to DHS;
- (b) a copy of the then current plans, policies, and procedures adopted to comply with this Agreement, including those set forth in Section 2.2 above, and a summary of the changes and reasons therefore;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, not otherwise reported under Section 4.6, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future;
- (d) a summary of any other events occurring during the reporting period that, to the knowledge of C&W, will or reasonably could affect the effectiveness of or compliance with this Agreement; and
- (e) a detailed description and map reporting any changes to the Gemini Bermuda Cable System's physical and logical topology during the reporting period, including the addition of new NOCs or cable landing stations.

Verizon Business shall provide C&W with any information or assistance reasonably required to enable C&W to comply with the requirements of this Section, including without limitation information and documents regarding the Principal Equipment included in the VDCI, a network map of the VDCI reporting any changes in topology, and the plans, policies, and procedures adopted by Verizon Business, any acts of non-compliance, and summary of any other events known to Verizon Business responsive to Items 4.10(b)-(d).

4.11 **Notice of Establishment of Additional NOCs.** In the event that one or more of the Gemini Parties propose to establish a new NOC for the Gemini Bermuda Cable System, such Party shall provide advance Notice of such establishment to DHS at least thirty (30) business days prior to the commencement of such NOC operations. The Gemini Parties agree to negotiate in good faith regarding any concerns DHS may raise about a proposal under this Section.

4.12 **Notices.** Following the Effective Date, all notices and other communications required under this Agreement (“**Notice**”) shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email address is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally; (b) sent by facsimile; (c) sent by documented overnight courier service; or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties’ designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Assistant Secretary for Policy  
Foreign Investment Risk Management  
Office of Policy  
U.S. Department of Homeland Security  
[ip-fcc@hq.dhs.gov](mailto:ip-fcc@hq.dhs.gov)

Verizon Business Global LLC  
General Counsel  
One Verizon Way  
Basking Ridge, New Jersey 07920  
Attn: Craig Silliman  
[Craig.silliman@one.verizon.com](mailto:Craig.silliman@one.verizon.com)

With Copy To:

Verizon Business  
Office of General Counsel  
9<sup>th</sup> Floor  
Arlington, VA 22201  
Attn: Micki Chen  
Tel: 703-351-3021  
[Micki.chen@one.verizon.com](mailto:Micki.chen@one.verizon.com)  
[Timothy.vogel@one.verizon.com](mailto:Timothy.vogel@one.verizon.com)

CWC New Cayman Limited  
15950 West Dixie Highway  
North Miami Beach, FL 33162  
Attn: Paul Scott  
Tel: 786-274-8904  
Fax: (786) 274-7402  
[paul.scott@cw.com](mailto:paul.scott@cw.com)

Columbus Networks USA, Inc.  
15950 West Dixie Highway  
North Miami Beach, FL 33162  
Attn: Paul Scott  
Tel: 786-274-8904  
Fax: (786) 274-7402  
paul.scott@cw.com

Liberty Global plc  
1550 Wewatta Street  
Denver, CO 80202  
Attn: Bryan H. Hall, Esquire  
Executive Vice President, General Counsel and Secretary  
Tel: (303) 220-6638  
Fax: (303) 220-6691  
bhall@libertyglobal.com

Notices shall be deemed received as of the date of personal delivery; the date of confirmed delivery printed on a facsimile confirmation; or the day following transmission by overnight courier or registered, certified mail. A Party may change its addresses for Notice under this Section by providing Notice of such change to each other Party in accordance with this Section.

#### ARTICLE 5: FCC CONDITION

- 5.1 **FCC Approval.** Upon the execution of this Agreement by all the Parties, DHS shall, on its own motion, at an appropriate time or at the request of the relevant Gemini Parties, notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto, DHS has no objection to the FCC's grant of the pending Application. This Section is effective upon the Effective Date, provided however that in the case of a material modification or withdrawal of the Application after the execution of this Agreement the effectiveness of this Section may be suspended by DHS, and any such FCC filing is subject to the right to object reserved in Section 5.2.
- 5.2 **Right to Object to Future FCC Filings.** Each of the Gemini Parties agrees that in any application or petition to the FCC by that Party for licensing or other authority filed with or granted by the FCC in connection with the Gemini Bermuda Cable System after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, the relevant Gemini Party or Parties shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 8.9, DHS reserves the right to object, formally or informally, to the grant of any other FCC application or petition of the Gemini Parties for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the

laws, preserve the national security, and protect the public safety raised by the services and transactions underlying any such application or petition.

## ARTICLE 6: DISPUTES

- 6.1 **Informal Resolution:** The Parties shall use their best reasonable efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. The Parties shall meet in person or by phone within five (5) business days of identification of a dispute, or at such other time as they shall mutually agree. Any disagreement that has not been resolved at the staff level within ten (10) business days of such meeting may be submitted by any Party to DHS's Assistant Secretary for Policy and the designated counsel for the Gemini Parties (acknowledging that a Gemini Party may have separate counsel), unless DHS believes that important national interests can be protected, or one or more of the Gemini Parties believe that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2. The Parties shall meet in person or by phone within ten (10) business days, or at such later date as they may mutually agree, after notification of the dispute and inability to resolve it at the staff level. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 6.2. A Party resorting to measures set forth in Section 6.2 shall give advance Notice of its intent to do so to each other Party.
- 6.2 **Enforcement of Agreement.** Obligations of this Agreement imposed on the Gemini Parties or a Gemini Party are imposed on each Gemini Party individually and not collectively. The Gemini Parties' obligations under this agreement are several and not joint. The Gemini Parties are independent contractors with each other and nothing in this Agreement shall be construed to create or imply any partnership, joint venture, employment, or agency relationship between or among any of the Gemini Parties. No Gemini Party shall be subject to any default notice, enforcement, sanction, investigation, or other adverse action under this Agreement as a result of or in connection with any act or omission of another Gemini Party.

Subject to Section 6.1 of this Agreement, if any of the Parties believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:

- (a) request that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving Notice of such breach;
- (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC for the Gemini Cable System, request that the FCC take other action, or request that the

FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty;

- (c) seek civil sanctions against a Gemini Party for any violation by that Gemini Party of any U.S. law or regulation or term of this Agreement;
- (d) pursue criminal sanctions against a Gemini Party, or any officer, director, employee, contractor, or agent of a Gemini Party, or against any other person or entity, for violations of the criminal laws of the United States by such Gemini Party and/or person or entity; or
- (e) seek suspension or debarment of a Gemini Party from eligibility for contracting with the U.S. Government in accordance with applicable law and regulation based upon any of the foregoing by that Gemini Party.

6.3 **Irreparable Injury.** The Gemini Parties agree that the United States would suffer irreparable injury if for any reason the Gemini Parties failed to perform any obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, the Gemini Parties agree that, in seeking to enforce this Agreement, DHS shall be entitled, in addition to any other remedy available at law or equity, to seek specific performance and injunctive or other equitable relief against each Gemini Party whose failure gives rise to the need for such action.

6.4 **Waiver.** The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

6.5 **Waiver of Immunity.** Each of the Gemini Parties agrees that, to the extent that each Gemini Party or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of a "Foreign State" (as defined in 28 U.S.C. § 1603) from any legal action, suit, or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably, and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a federal, state, or local U.S. Government Authority. Each of the Gemini Parties agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity on the ground of

sovereignty or otherwise based upon a status as an agency or instrumentality of a Foreign State at any time any action is initiated by a federal, state, or local U.S. Government Authority against each of the Gemini Parties with respect to compliance with this Agreement.

- 6.6 **Forum Selection.** It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

## **ARTICLE 7: FREEDOM OF INFORMATION ACT**

- 7.1 **Protection from Disclosure.** DHS shall take all reasonable measures to protect from public disclosure all information submitted by the Gemini Parties (or other entities in accordance with the terms of this Agreement) to DHS in connection with this Agreement and clearly marked with the legend “Business Proprietary, Exempt from Public Disclosure Under the Freedom of Information Act, 5 U.S.C. § 552(b)” or similar designation. Such markings shall signify that it is the relevant Gemini Parties’ position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted and is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) under Exemption (b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, DHS shall notify each of the Gemini Parties of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If any one or more of the Gemini Parties object to the notifying Party with respect to the intended disclosure and the Gemini Parties’ objections are not satisfactorily resolved, DHS shall notify the Gemini Parties of their intention to release (as provided by Section 5 of Executive Order 12600) not later than ten (10) business days prior to disclosure of the challenged information.

- 7.2 **Use of Information for U.S. Government Purposes.** Subject to Section 7.1, nothing in this Agreement shall prevent DHS from lawfully disseminating information as appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other federal, state, or local Government Authorities to protect public safety, law enforcement, or national security interests; provided further that DHS shall take all reasonable measures to protect from public disclosure the information marked as described in Section 7.1. Further, subject to its obligations under Section 7.1, nothing in this Agreement shall limit the ability of DHS to disclose this Agreement or any information related to this Agreement to enforce or comply with any federal law or regulation.



## ARTICLE 8: OTHER

- 8.1 **Right to Make and Perform Agreement.** Each Party hereby represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of such Party enforceable in accordance with its terms.
- 8.2 **Headings.** The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.
- 8.3 **Other Laws.** Nothing in this Agreement is intended to limit or constitute a waiver of: (a) any obligation imposed by any U.S. federal, state, or local laws on any Party; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess over the activities or facilities of the Gemini Parties located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable law.
- 8.4 **Statutory References.** All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 8.5 **Non-Parties.** Nothing in this Agreement is intended to confer or does confer any rights or obligations on any person other than the Parties.
- 8.6 **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by all of the Parties. DHS agrees to consider promptly and in good faith possible modifications to this Agreement if one or more of the Gemini Parties believe that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) business days after approval in writing by the Parties.
- 8.7 **Severability.** The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.
- 8.8 **Changes in Circumstances for the Gemini Parties.** DHS agrees to negotiate in good faith and promptly with respect to any request by one or more of the Gemini Parties for relief from application of specific provisions of this Agreement if there is a change in

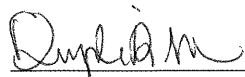
circumstances such that those provisions become unduly burdensome or have a demonstrably adverse effect on such Party's competitive position.

- 8.9 **Changes in Circumstances for DHS.** If after the date that all the Parties have executed this Agreement, DHS finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then the Gemini Parties shall negotiate in good faith to modify this Agreement to address those concerns.
- 8.10 **Termination of Agreement.** This Agreement may be terminated at any time by a written agreement signed by the Parties. The Parties agree that they will reasonably consider any termination request submitted pursuant to this Agreement.
- 8.11 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.
- 8.12 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.
- 8.13 **Termination of 2008 NSA.** The 2008 NSA is hereby terminated effective as of the Effective Date, without the need for any further notice, consent, or other action on the part of any party thereto. This Section 8.13 shall be deemed to constitute a termination by mutual consent of the 2008 NSA and any and all obligations thereunder, by all parties thereto effective as of the Effective Date.
- 8.14 **Effectiveness of Agreement.** Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: 2/17, 2017

By: 

Dimple Shah  
Acting Assistant Secretary for International  
Affairs, Office of Policy

Verizon Business Global LLC

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Name:

Title:

Columbus Networks USA, Inc.

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Brendan Paddick  
Chief Executive Officer

CWC New Cayman Limited

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Alan Buhl  
General Manager

Liberty Global plc

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Bryan H. Hall  
Executive Vice President, General Counsel and  
Secretary

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Dimple Shah  
Acting Assistant Secretary for International  
Affairs, Office of Policy

Verizon Business Global LLC

Date: March 2, 2017

By: 

Name: Joseph J. Russo  
Title: Vice President

Columbus Networks USA, Inc.

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Brendan Paddick  
Chief Executive Officer

CWC New Cayman Limited

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Alan Buhl  
General Manager

Liberty Global plc

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Bryan H. Hall  
Executive Vice President, General Counsel and  
Secretary

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Dimple Shah  
Acting Assistant Secretary for International  
Affairs, Office of Policy

Verizon Business Global LLC

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Name:

Title:

Columbus Networks USA, Inc.

Date: \_\_\_\_\_, 2017

By:  \_\_\_\_\_

Brendan Paddick  
Chief Executive Officer

CWC New Cayman Limited

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Alan Buhl  
General Manager

Liberty Global plc

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Bryan H. Hall  
Executive Vice President, General Counsel and  
Secretary

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Dimple Shah  
Acting Assistant Secretary for International  
Affairs, Office of Policy

Verizon Business Global LLC

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Name:

Title:

Columbus Networks USA, Inc.

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Brendan Paddick

Chief Executive Officer

CWC New Cayman Limited

Date: \_\_\_\_\_, 2017

By:  \_\_\_\_\_

Alan Buhl

General Manager

Liberty Global plc

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Bryan H. Hall

Executive Vice President, General Counsel and  
Secretary

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Dimple Shah  
Acting Assistant Secretary for International  
Affairs, Office of Policy

Verizon Business Global LLC

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Name:

Title:

Columbus Networks USA, Inc.

Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Brendan Paddick  
Chief Executive Officer

CWC New Cayman Limited

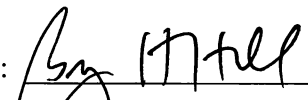
Date: \_\_\_\_\_, 2017

By: \_\_\_\_\_

Alan Buhl  
General Manager

Liberty Global plc

Date: \_\_\_\_\_, 2017

By:  \_\_\_\_\_

Bryan H. Hall  
Executive Vice President, General Counsel and  
Secretary

**EXHIBIT A:  
CONDITION TO FCC AUTHORIZATION**

IT IS FURTHER ORDERED, that this authorization and any licenses granted thereunder are subject to compliance with the provisions of the agreement (the “Agreement”) between Verizon Business Global LLC, for itself, its Affiliates and subsidiaries (“Verizon Business”), CWC New Cayman Limited, for itself, its Affiliates and subsidiaries (“CWC New Cayman”), Columbus Networks USA, Inc., for itself, its Affiliates and subsidiaries (“CNUSA”, and together with CWC New Cayman referred to as “C&W”), and Liberty Global plc, for itself, its Affiliates and subsidiaries (“Liberty Global”), on the one hand, and the U.S. Department of Homeland Security (“DHS”), on the other, dated \_\_\_\_\_, which Agreement is designed to address national security, law enforcement and public safety concerns regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligations imposed by federal law or regulation.