

IN THE HIGH COURT OF JUSTICE

No 5977 of 2005

CHANCERY DIVISION

COMPANIES COURT

BEFORE: Mr. JUSTICE PATTEN

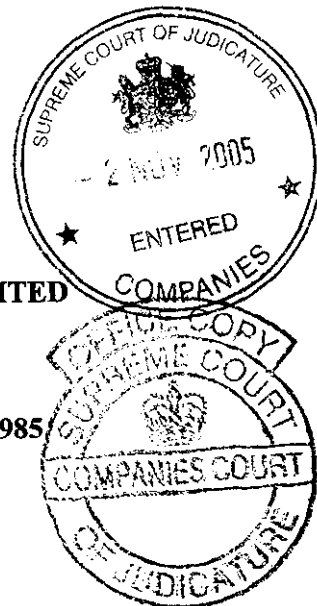
THE 2nd DAY OF NOVEMBER 2005

IN THE MATTER OF ENERGIS HOLDINGS LIMITED

- and -

IN THE MATTER OF THE COMPANIES ACT 1985

ORDER



UPON THE PETITION of the above named Energis Holdings Limited ("the Company") whose registered office is situated at 185 Park Street, London SE1 9DY

AND UPON HEARING Counsel for the Company and for Cable and Wireless plc and for The Royal Bank of Scotland plc

AND UPON READING the Petition and the written evidence filed herein

AND UPON READING the Scheme of Arrangement attached as Schedule 1 to the Petition (the "Scheme")

AND UPON the Company seeking a minor modification to the terms of Schedule 1 to the Scheme as described in the third witness statement of William David dated 1 November 2005 and the Court having approved the same and Cable and Wireless plc having consented thereto

AND UPON Cable and Wireless plc undertaking in the terms of Schedule 2 hereto

AND UPON The Royal Bank of Scotland plc undertaking in the terms of Schedule 3 hereto



THIS COURT HEREBY SANCTIONS the modified Scheme as set forth in Schedule 1 to this Order

Dated: 2 November 2005

**SCHEDULE 1
to the Order**

The Scheme

IN THE HIGH COURT OF JUSTICE

No 5977 of 2005

CHANCERY DIVISION

COMPANIES COURT

IN THE MATTER OF ENERGIS HOLDINGS LIMITED

and

IN THE MATTER OF THE COMPANIES ACT 1985

**SCHEME OF ARRANGEMENT
(Pursuant to Section 425 of the Companies Act 1985)**

between

ENERGIS HOLDINGS LIMITED
(incorporated and registered in England and Wales with number 3649524)

and its

SCHEME CREDITORS
(as defined in the Scheme)

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PART 1

1 PRELIMINARY

1.1 The Company

1.1.1 The Company was incorporated in England and Wales on 14 October 1998 with registration number 3649524 under the name Thistledeu Limited.

1.1.2 It changed its name to Energis Holdings Limited on 8 December 1998.

1.1.3 The Company's authorised share capital is £180,000,000 comprised of 180,000,000 ordinary shares of £1 each, of which 177,466,227 ordinary shares of £1 each are in issue fully paid.

1.2 C&W Undertaking

C&W has undertaken to appear by Counsel at the hearing of the petition to sanction the Scheme and to submit to be bound by and to undertake to the Court to be bound by the Scheme and to execute and do, and to procure to be executed and done all such documents, acts and things as may be necessary or desirable to be executed and done by it for the purpose of giving effect to the Scheme, if the Scheme becomes effective in accordance with its terms, including to pay the Cash Consideration and to execute and deliver the Contingent Consideration Deed in accordance with Part 3.

1.3 Agent Undertaking

The Agent has undertaken to appear by Counsel at the hearing of the petition to sanction the Scheme and to undertake, if the Scheme becomes effective in accordance with its terms, to perform its obligations in accordance with the Scheme.

PART 2

2 THE SCHEME

2.1 Application of the Scheme

2.1.1 The Scheme shall apply to all Scheme Liabilities.

2.1.2 No other liabilities of the Company shall be affected by the provisions of the Scheme.

2.2 Purpose of the Scheme

The purpose of the Scheme is to constitute a compromise and arrangement between the Company and the Scheme Creditors.

2.3 Terms of the Scheme

2.3.1 The terms of the compromise and arrangement effected by the Scheme are that, with effect from the Effective Time:

(a) the Company shall be deemed to have been released and discharged absolutely and to the fullest extent permitted by law by each Scheme Creditor from all Scheme Liabilities; and

(b) each Scheme Creditor shall be entitled to be paid its share of the Scheme Consideration, to be determined and paid in accordance with Part 3; and

(c) the Company shall become indebted to C&W in an amount equal to the amount of any Scheme Liability released and discharged pursuant to paragraph (a) of this Clause 2.3.1, on the same terms as those on which such Scheme Liability was, immediately prior to such release and discharge, owed to the relevant Scheme Creditor (as if C&W were a party to the Facilities Agreement and any agreement supplemental thereto in the place of such Scheme Creditor, to the extent that the same relates to such Scheme Liability).

2.3.2 Upon and with effect from the Effective Time, no Scheme Creditor shall be entitled to take, commence or continue any Proceedings in any jurisdiction whatsoever in respect of, arising from or relating to any Scheme Liability.

2.3.3 Nothing in this Clause 2.3 shall prejudice the enforcement by a Scheme Creditor of its rights under the Scheme or preclude a Scheme Creditor or the Company from applying to the Court to determine any matter arising under or in relation to the Scheme.

2.4 Release of Security

On the Scheme becoming effective in accordance with Clause 4.1, the Scheme Creditors authorise the Agent in its capacity as security trustee to execute such deeds of release or discharge of securities for the Scheme Liabilities as may be required to release any security outstanding under the terms, or in respect, of the Facilities Agreement.

PART 3

3 ALLOCATION AND PAYMENT OF SCHEME CONSIDERATION

3.1 Scheme Consideration

3.1.1 The Scheme Consideration consists of the Cash Consideration and the Contingent Consideration.

3.1.2 Subject as provided in Clause 3.3, the Scheme Consideration to which each Scheme Creditor is entitled under the Scheme shall be that proportion of the Cash Consideration and of the Contingent Consideration which the sum owed immediately before the Effective Time by the Company to that Scheme Creditor in respect of its Scheme Claim bears to the aggregate amount of all Scheme Claims immediately before the Effective Time.

3.2 Allocation of Consideration

Not later than the third Business Day after the Effective Time, the Agent shall serve on each Scheme Creditor a statement setting out the following:

- (a) the aggregate amount of all Scheme Claims immediately before the Effective Time;
- (b) the amount owed to each Scheme Creditor in respect of Scheme Claims;
- (c) the amount of Cash Consideration provisionally payable to each Scheme Creditor (in accordance with Clause 3.1); and
- (d) the proportion of the Contingent Consideration provisionally payable to each Scheme Creditor (in accordance with Clause 3.1)

together with an Election Notice.

3.3 Election for Cash or Contingent Consideration

3.3.1 If any Scheme Creditor wishes to elect to receive Cash Consideration and Contingent Consideration in proportions different from the Default Proportions, it shall serve a duly completed Election Notice on the Agent no later than the sixth Business Day after the Effective Time.

3.3.2 Elections for Cash Consideration and Contingent Consideration by Scheme Creditors in different proportions from their Default Entitlement will be satisfied as follows. First, Contingent Consideration provisionally allocated as part of the consideration payable for the issued share capital of Chelys pursuant to the Share Purchase Agreement shall be reallocated to Surplus Contingent Consideration Applicants (if any). Second, Contingent Consideration provisionally allocated to other Scheme Creditors who have served an Election Notice seeking a proportion of Contingent Consideration lower than their Default Entitlement (if any) shall be reallocated to Surplus Contingent Consideration Applicants. Such reallocations shall be made to Surplus Contingent Consideration Applicants in proportion to the value of the Scheme Liabilities owed to them (but not so that any Surplus Contingent Consideration Applicant shall be allocated a proportion of Contingent Consideration in excess of the proportion specified in his Election Notice). The Cash Consideration shall be reallocated on a similar basis (except that Cash Consideration provisionally

allocated to as part of the consideration payable for the issued share capital of Chelys will not be re-allocated to Scheme Creditors). Accordingly, a Scheme Creditor allocated a greater proportion of Contingent Consideration than his Default Entitlement shall be allocated a correspondingly lesser proportion of Cash Consideration (and vice versa), and where Contingent Consideration provisionally allocated as consideration under the Share Purchase Agreement is reallocated to Scheme Creditors, a corresponding proportion of Cash Consideration shall be payable as consideration under that agreement.

3.3.3 If an Election Notice is incomplete, incorrectly completed, invalidly executed, served after the date specified in Clause 3.3.1 or is otherwise invalid it shall be void and the Scheme Creditor purporting to make such election shall be entitled to Cash Consideration and Contingent Consideration in the Default Proportions.

3.3.4 Not later than the eighth Business Day after the Effective Time, the Agent shall (if valid Election Notices have been served) issue a statement setting out the revised allocations of Cash Consideration and Contingent Consideration in respect of each Scheme Creditor, or (if no valid Election Notices have been served) a statement to that effect together with a further copy of the original statement issued under Clause 3.2.

3.4 **Cash Consideration**

3.4.1 The amount of the Cash Consideration payable to each Scheme Creditor shall be as set out in the Definitive Statement.

3.4.2 The amount of the Cash Consideration shall be paid by C&W to the Agent by electronic funds transfer for value on or before the second Business Day after the date of issue of the Definitive Statement. The Agent shall pay the amount of the Cash Consideration payable to each Scheme Creditor on the same payment settlement basis as payments would have been made to such Scheme Creditor pursuant to the Facilities Agreement.

3.4.3 Completion by C&W of the payment to the Agent of the Cash Consideration in accordance with Clause 3.4.2 shall be a good discharge of C&W's obligations and undertakings with respect to the Cash Consideration and C&W shall not be concerned with the application of those funds by the Agent.

3.5 **Contingent Consideration**

3.5.1 No later than the date for the transfer of funds in accordance with Clause 3.4.2, C&W will execute the Contingent Consideration Deed and deliver it to the Agent.

3.5.2 The share of Contingent Consideration applicable to each Scheme Creditor will be inserted in Schedule 1 to the Contingent Consideration Deed and will be as set out in the Definitive Statement.

PART 4

4 GENERAL

4.1 Effective Time

4.1.1 The Scheme shall become effective as soon as an office copy of the Order has been delivered for registration to the Registrar of Companies as required by Section 425(3) of the Act (the **Effective Time**).

4.1.2 If the Scheme has not become effective on or before the Long Stop Date, or such later date as the Company and C&W may agree and (if required) the Court may allow, it shall never become effective.

4.2 Modifications to the Scheme

The Company may, at any hearing by the Court to sanction the Scheme, consent on behalf of all those concerned to any modification of the Scheme or addition to the Scheme or any terms or conditions which the Court may think fit to approve or impose and which would not directly or indirectly have an adverse effect on the interests of any Scheme Creditor under the Scheme (otherwise than of a de minimis nature). No such modification shall be consented to unless C&W consents to the modification.

4.3 Costs

4.3.1 The Company shall pay all costs, charges, expenses and disbursements incurred by it in connection with the negotiation, preparation and implementation of the Scheme as and when they arise, including the costs of holding the Creditors' Meeting and the costs of obtaining the sanction of the Court.

4.3.2 Subject as provided in the Scheme, the Company shall pay in full, as and when they arise, the following:

(a) all costs, charges, expenses and disbursements incurred by the Company in the course of carrying out the Scheme and of complying with the provisions of the Act;

(b) the costs, charges, expenses and disbursements incurred by the Agent in connection with the Scheme; and

(c) any other sum which the Company is obliged to pay by reason of the obligations imposed on it by the Scheme.

4.4 Notice

4.4.1 Any notice or other written communication to be given under or in relation to this Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand or courier at:

(a) in the case of the Company, its registered office from time to time, marked "For the urgent attention of the Company Secretary";

(b) in the case of a Scheme Creditor, its address specified in the Facilities Agreement or as otherwise certified by the Agent.

4.4.2 Any notice or other written communication to be given under the Scheme shall be deemed to have been served, if delivery takes place during business hours, then at the time of delivery and, if outside business hours, then at the time when business hours recommence after delivery. For these purposes, business hours means between 9.00 am and 5.00 pm on a Business Day.

4.4.3 In proving service, it shall be sufficient to prove that the notice was delivered in accordance with the terms of this Clause.

4.5 **Governing Law and Jurisdiction**

The Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales and the Scheme Creditors hereby agree that the Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration of the Scheme and, for such purposes, the Scheme Creditors irrevocably submit to the jurisdiction of the Court.

PART 5

5 INTERPRETATION

5.1 In the Scheme, unless the context otherwise requires or is otherwise expressly provided for, the following expressions shall bear the meanings set opposite them:

Act	the Companies Act 1985 (as amended);
Agent	The Royal Bank of Scotland plc;
Business Day	any day other than a Saturday or a Sunday or any other day, on which the banks in the City of London are not open for business;
C&W	Cable and Wireless plc (a company incorporated in England and Wales with registered number 238525);
Cash Consideration	between £280,857,897 and £282,126,821 (depending on the elections which may be made under Election Notices) less (or plus) the Cost Difference;
Chairman	the chairman of the Creditors' Meeting;
Chelys	Chelys Limited (a company incorporated in England and Wales with registered number 4434524);
Contingent Consideration	the contingent consideration payable by C&W to Scheme Creditors in accordance with the terms of the Contingent Consideration Deed;
Contingent Consideration Deed	the deed in the form of Schedule 2 to be executed by C&W in accordance with Clause 3.5.1;
Cost Difference	the amount (if any) by which the costs incurred by Chelys and its subsidiaries (as certified by Chelys at Completion) in connection with completion of the Share Purchase Agreement (including the costs incurred in connection with the Schemes, and including any irrecoverable VAT) exceed £6,161,984 (expressed as a negative number where such costs are less than £6,161,984);
Court	the High Court of Justice of England and Wales;
Creditors' Meeting	the meeting of Scheme Creditors convened at the direction of the Court to consider the Scheme (or any adjournment thereof);

Default Entitlement	in respect of each Scheme Creditor, its entitlement to Cash Consideration and Contingent Consideration determined in accordance with Clause 3.1.2 prior to service of any Election Notice;
Default Proportions	the proportions of Cash Consideration and Contingent Consideration determined in accordance with Clause 3.1.2 prior to service of any Election Notice;
Definitive Statement	the statement to be issued by the Agent pursuant to Clause 3.3.4;
Effective Time	as defined in Clause 4.1;
Election Notice	a notice in the form of Schedule 1;
Explanatory Statement	the statement dated 9 September 2005 explaining the effect of the Scheme to Scheme Creditors in compliance with the Act;
Facilities Agreement	the revolving loan and guarantee facility agreement dated 16 December 1998 between, among others, Chelys, Energis Communications Limited, the Company and the Agent (as amended and restated on 20 December 2001 and further amended and restated on 16 July 2002);
Facility C	the loan facility so defined in the Facilities Agreement;
Liability	any debt, obligation or liability of a person, and whether it is past, present, future, prospective, actual or contingent, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money and whether it arises at common law, in equity or by statute, in England or in any other jurisdiction, or in any other manner whatsoever;
Long Stop Date	16 December 2005;
Order	the order of the Court sanctioning the Scheme for the purposes of Section 425 of the Act;
Proceedings	any judicial, quasi judicial, administrative or regulatory process, action, step, or other legal proceeding (including without limitation any demand, arbitration, alternative dispute resolution, judicial review, adjudication, execution, seizure, distraint, forfeiture, re-entry, lien, enforcement of judgment, or

	enforcement of any security);
Registrar of Companies	the Registrar of Companies in England and Wales;
Scheme	the scheme of arrangement on the terms set out in this document (with such modifications or additions, if any, which may be approved or imposed by the Court and consented to by the Company and C&W in accordance with its terms);
Scheme Claim	the claim of a Scheme Creditor against the Company in respect of Scheme Liabilities;
Scheme Consideration	the Cash Consideration and the Contingent Consideration, and in relation to any Scheme Creditor means its share of such consideration in accordance with the terms of the Scheme;
Scheme Creditor	a creditor of the Company in respect of a Scheme Claim;
Scheme Liability	all and any Liability of the Company under the Facilities Agreement, or any agreement supplemental thereto including any deed of adherence or accession, in respect of Facility C;
Share Purchase Agreement	the agreement dated 16 August 2005 between certain shareholders of Chelys, Chelys and C&W for the purchase of shares in Chelys;
Surplus Contingent Consideration Applicants	Scheme Creditors who apply for Contingent Consideration in excess of their Default Entitlement in accordance with Clause 3.3.1.

- 5.2 In the Scheme, unless the context otherwise requires:
- 5.2.1 references to Parts and Clauses are references to the Parts and Clauses respectively of the Scheme;
- 5.2.2 references to a **person** include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- 5.2.3 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 5.2.4 the singular includes the plural and vice versa and words importing one gender shall include all genders; and
- 5.2.5 headings to Clauses, Parts or Schedules are for ease of reference only and shall not affect the interpretation of the Scheme.

**SCHEDULE 1
to the Scheme**

ELECTION NOTICE

To:
Royal Bank of Scotland plc
10th Floor
Bishopsgate
London
EC2M 4RB

For the attention of: John Gray

**To be effective, this notice, duly completed, must be delivered to the above address on or before
[] 2005.**

Note: This Notice should only be completed by Scheme Creditors if they wish to receive Cash Consideration and Contingent Consideration in proportions which are different from those set out below (being the Default Proportions which will apply if no such election is made):

Cash (assuming no Cost Difference) :	91.4340%
Contingent Consideration:	8.5660%
Total:	<u>100%</u>

If you wish to receive Cash Consideration and Contingent Consideration in different proportions to that set out above, please complete the following election, indicating the alternative proportions which you would prefer:

We hereby elect to receive Cash Consideration and Contingent Consideration pursuant to the Scheme of Arrangement adopted by Energis Holdings Limited and the creditors defined in the Scheme as Scheme Creditors as follows:

Cash (assuming no Cost Difference):	<u> </u> %
Contingent Consideration:	<u> </u> %
Total:	<u>100%</u>

Name of Scheme Creditor:

Signature:

Position with Scheme Creditor:

SCHEDULE 2 to the Scheme

Contingent Consideration Deed

BY THIS DEED dated 2005
CABLE AND WIRELESS PLC (a company incorporated in England and Wales with registered number 238525) whose registered office is at Lakeside House, Cain Road, Bracknell, Berkshire RG12 1XL (**C&W**) undertakes in favour of the persons listed on Schedule 1 (and their assignees in accordance with the terms of this Deed) (the **Lenders**) as follows:

6 Definitions

In this Deed the following definitions shall apply:

acting in concert: the meaning ascribed to that term in the City Code on Takeovers and Mergers;

Business Day: a day which is not a Saturday, a Sunday or a bank or public holiday in England;

Change of Control: any person (either alone or taken together with persons acting in concert with that person) acquiring Control of C&W, but excluding a Change of Control arising in consequence of a Topco Scheme;

C&W: Cable and Wireless plc provided that if a Topco Scheme is effected, references to C&W shall be construed as references to Topco;

C&W Shares: Ordinary Shares of 25 pence each in the capital of C&W provided that:

- (a) if such shares are at any time subdivided or consolidated into C&W Shares of a different nominal value, references to C&W Shares shall be construed as references to shares of such different nominal value; and
- (b) if a Topco Scheme is effected, references to C&W Shares shall be construed as references to ordinary shares of the relevant nominal value in the capital of Topco;

Chelys: Chelys Limited (incorporated in England and Wales with registered number 4434524);

Contingent Consideration: the contingent consideration which may become payable pursuant to this Deed;

Contingent Consideration Letter: the letter between the Paying Agent and C&W to be entered into at Completion in relation to the Paying Agent's obligations to the Lenders with respect to the Contingent Consideration;

Control: as defined in Section 840 of the Income and Corporation Taxes Act 1988;

dealing day: any day on which the London Stock Exchange is open for trading;

this Deed: this Deed, including the Schedules to it;

Encumbrance: any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption or preference granted to any third party, or any other encumbrance or security interest of any kind (or an agreement or commitment to create any of the same);

Facilities Agreement: the revolving loan and guarantee facility agreement dated 16 December 1998 between, among others, Chelys, Energis Holdings Limited and the Royal Bank of Scotland plc (as amended and restated on 20 December 2001 and further amended and restated on 16 July 2002);

Facility C: Facility C as defined in the Facilities Agreement;

Facility C Contingent Consideration Percentage: *[To be inserted prior to execution, being 100% minus {the percentage of the Contingent Consideration allocated to the shares under the Share Purchase Agreement as reduced by virtue of elections (if any) made under Election Notices}.];*

Group Company: in respect of any Lender, a Wholly-owned Subsidiary of that Lender, a Holding Company of that Lender, or a Wholly-owned Subsidiary of a Holding Company of that Lender;

Holding Company: the meaning ascribed to that term in Section 736 Companies Act 1985;

Independent Financial Adviser: an investment bank or bank of international repute, acting as an expert and not as an arbitrator, which bank shall be nominated by C&W and whose appointment shall be approved by the Paying Agent (acting reasonably and after consultation with the Lenders), provided that if either (a) C&W and the Paying Agent cannot agree on the appointment of an Independent Financial Adviser or (b) C&W fails to nominate an Independent Financial Adviser within five dealing days of such an appointment being required for the purposes of this Deed, the Independent Financial Adviser shall be such person as is nominated (on the application of either C&W or the Paying Agent) by the Director General for the time being of the London Investment Banking Association;

Information Source: Bloomberg page "CW/ LN Equity HP" (or, if such source ceases to be available, such other source as shall be determined to be appropriate by an Independent Financial Adviser);

Initial Reference Price: 135 pence;

London Stock Exchange: the London Stock Exchange plc, together with any successors thereto;

Month: a calendar month;

Month N: a particular month falling after the SPA Completion Date, where Month 0 is the month in which the SPA Completion Date falls, Month 1 is the month immediately following Month 0, Month 2 is the month immediately following Month 1, and so on;

Official List: the official list of the UKLA;

Paying Agent: Royal Bank of Scotland plc;

Payment: a payment of Contingent Consideration, whether in cash or C&W Shares, made under paragraph 2 below;

Payment Date: the fourth dealing day of each month, beginning with Month 28 and ending with Month 37 or, where a payment is to be made under paragraph 2.4 below, the date on which such payment is required to be made under the terms of that paragraph;

Payment Price: in respect of each Payment Date, the three month VWAP as at last dealing day of the Month immediately prior to the Month in which the Payment Date falls, expressed in pence (rounded down to the nearest whole penny or half penny);

Reference Price: the Initial Reference Price expressed in pence, subject only to adjustment in accordance with paragraph 3 below;

Share Completion: Completion as defined in the Share Purchase Agreement;

Share Purchase Agreement: the agreement entered into between certain shareholders of Chelys and C&W on 16 August 2005 pursuant to which C&W will acquire the entire issued share capital of Chelys;

SPA Completion Date: the date on which Completion occurs under the terms of the Share Purchase Agreement;

Specified Maximum: £80,000,000 multiplied by the Facility C Contingent Consideration Percentage (the Facility C Contingent Consideration Percentage being expressed for these purposes as a fraction the denominator of which is 100);

Subsidiary: the meaning ascribed to that term in section 736 Companies Act 1985;

three month VWAP: as at the last dealing day of a given Month, the mean of the daily average price weighted by volume of a C&W Share listed on the London Stock Exchange on each dealing day in that Month and the two preceding Months in each case appearing on or derived from the Information Source (it being the intention that if, during that period of three months, an event occurs which gives rise to an adjustment to the Reference Price under paragraph 3, the three month VWAP should if necessary be adjusted so that it is comparable to the Reference Price as adjusted);

Topco Scheme: means a scheme of arrangement which effects the interposition of a limited liability company (**Topco**) between the Shareholders of C&W immediately prior to the scheme of arrangement (the **Existing Shareholders**) and C&W, provided that immediately after completion of the scheme of arrangement the Existing Shareholders are the only shareholders of Topco (save for any such shareholders ceasing to be shareholders under or pursuant to the scheme of arrangement) and that all Subsidiaries of C&W immediately prior to the scheme of arrangement (other than Topco if Topco is then a Subsidiary of C&W) are Subsidiaries of C&W (or of Topco) immediately after the scheme of arrangement;

UKLA: the Financial Services Authority in its capacity as the competent authority under the Financial Services and Markets Act 2000;

VWAP: in respect of a C&W Share on any dealing day, the average price weighted by volume of a C&W Share appearing on or derived from the Information Source on such dealing day, provided that:

- (i) if, on any such dealing day, such price is not available or cannot otherwise be determined as provided above, the VWAP of a C&W Share in respect of such dealing day shall be the VWAP, determined as provided above, on the immediately preceding dealing day on which the same can be so determined; and
- (ii) if:
 - (a) any dividend or other entitlement in respect of the C&W Shares is announced on or prior to the relevant Payment Date in circumstances where the record date or other due date for establishment of entitlement in respect of such dividend or entitlement shall be on or after the relevant Payment Date; and
 - (b) on the dealing day on which the average price weighted by volume is determined as provided above, the price per C&W share is based on a price ex-dividend or ex-any other entitlement,

then such price shall be increased by an amount equal to the amount of any such dividend or other cash entitlement or, as the case may be, the Fair Market Value of any entitlement or dividend (where that is other than cash) as at the date of announcement of such entitlement or dividend per C&W Share (excluding, in the case of a dividend in cash, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom); and

Wholly-owned Subsidiary: the meaning ascribed to that term in section 736 Companies Act 1985.

7 Payment of Contingent Consideration

7.1 C&W shall, on each Payment Date, pay to or for the benefit of the Lenders an aggregate amount of Contingent Consideration calculated in accordance with the following formula:

$$CC = £1,250,000 \times CP \times \left[(PP - RP) \times \frac{IRP}{RP} \right] - ACC$$

where:

- CC = the Contingent Consideration (if any) to be paid on that Payment Date;
- IRP = the Initial Reference Price;
- RP = the Reference Price, as in force at the relevant Payment Date;
- PP = the Payment Price in respect of the relevant Payment Date;

ACC = the aggregate amount of the Contingent Consideration paid under this Deed on all previous Payment Dates;

CP = the Facility C Contingent Consideration Percentage expressed as a fraction, the denominator of which is 100;

provided that:

7.1.1 no Payment shall be made if the product of the formula is nil or negative; and

7.1.2 the aggregate amount of Contingent Consideration paid (under this paragraph and under paragraph 2.4) shall not exceed the Specified Maximum.

7.2 C&W shall satisfy any obligation to make a Payment in cash or, if C&W so elects irrevocably by written notice to the Paying Agent not later than 10 dealing days prior to the Payment Date, and subject to the provisions of paragraph 2.3, wholly or partly by the issue of C&W Shares, credited as fully paid. If such Payment is to be satisfied partly in cash and partly in C&W Shares, such notice shall specify the respective proportions to be satisfied in each manner.

7.3 If C&W elects to satisfy a Payment in whole or in part by the issue of C&W Shares:

7.3.1 the number of C&W Shares to be issued shall be determined by dividing the amount of the Payment which is to be satisfied in C&W Shares by the VWAP on the dealing day falling four dealing days before the Payment Date, rounded to the nearest whole share;

7.3.2 if:

2.3.2.1 following the dealing day on which VWAP is determined under paragraph 2.3.1 above and on or before the relevant Payment Date any event occurs which falls within any of paragraphs 3.1.1 to 3.1.10 below (and so that, for the purposes of this paragraph, any such event shall be deemed to occur on the date on which any adjustment in respect of that event would become effective under the relevant sub-paragraph of paragraph 3.1 or, if earlier, the record date for any such issue, distribution, grant or offer as is referred to in paragraphs 3.1.2 to 3.1.7 and paragraph 3.1.9); and

2.3.2.2 in consequence the C&W Shares to be issued on the Payment Date will not participate in, or have the benefit of, such event, issue, distribution, grant or offer,

the VWAP to be applied for the purposes of this paragraph 2.3 on that Payment Date shall be adjusted in such manner as may be necessary and reasonable (having regard in particular to the adjustment formulae set out in paragraphs 3.1.1 to 3.1.10) in order to ensure that the Lenders are not prejudiced as a result; any dispute concerning the operation of this paragraph 2.3.2 shall be referred to an Independent Financial Adviser;

7.3.3 such C&W Shares shall rank *pari passu* in all respects with the C&W Shares in issue on the relevant Payment Date, including the entitlement to dividends in respect of which the record date falls after the relevant Payment Date provided that if on the dealing day on which (in respect of any particular Payment) VWAP was determined for the purposes of paragraph 2.3.1 above the price for a C&W Share was based on a price cum-dividend or cum-any other entitlement, but the C&W Shares issued on the

Payment Date do not carry the right to participate in such dividend or other entitlement, C&W shall issue such additional number of C&W Shares, using the same VWAP for these purposes, as have a value equal to the amount of any such dividend or other cash entitlement or, as the case may be, the Fair Market Value of any entitlement or dividend (where that is other than cash) as at the date of announcement of such entitlement or dividend per C&W Share (excluding, in the case of a dividend in cash, any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom) multiplied by the number of C&W Shares to be issued on the relevant Payment Date (excluding any C&W Shares to be issued under this paragraph 2.3.3);

- 7.3.4 it shall be a condition of C&W satisfying any Payment (in whole or in part) in C&W Shares that such C&W Shares shall be admitted to the Official List and to trading on the London Stock Exchange's market for listed securities by the UKLA and the London Stock Exchange respectively in accordance with their respective rules and will be listed, quoted or dealt in on any other stock exchange or securities market on which the C&W Shares may then be listed or quoted or dealt in, and C&W undertakes to use all reasonable endeavours to procure that such condition is satisfied, failing which the entirety of the relevant Payment shall be satisfied in cash; and
- 7.3.5 no C&W shares shall be issued at a discount to their nominal or par value.
- 7.4 If, prior to the last Payment Date:
- 7.4.1 a Change of Control occurs, C&W shall pay to or for the benefit of the Lenders in cash not later than 10 dealing days after that Change of Control occurs an amount of Contingent Consideration calculated as follows:

$$CC = £1,250,000 \times CP \times \left[(OP - RP) \times \frac{IRP}{RP} \right] - ACC$$

Where

- CC = the Contingent Consideration (if any) to be paid on that date;
- IRP = the Initial Reference Price,
- RP = the Reference Price, as in force at that date;
- ACC = the aggregate amount of the Contingent Consideration paid under this Deed on all previous Payment Dates (if any);
- OP = the offer price expressed in pence per share to be paid per C&W Share in the context of the Change of Control, provided that if the offer price is not payable wholly in cash, then for these purposes OP shall be the value of the offer per C&W Share stated in the press announcement which announces the offer (or any amended or revised offer) in consequence of which the Change of Control occurs;
- CP = the Facility C Contingent Consideration Percentage expressed as a fraction, the denominator of which is 100.

7.4.2 C&W Shares cease to be both admitted to the Official List and to trading on the London Stock Exchange's market for listed securities, C&W shall pay to or for the benefit of the Lenders in cash not later than 10 dealing days after such event occurs a sum calculated in accordance with the formula set out in paragraph 2.4.1, subject only to the modification that for these purposes "OP" shall mean the VWAP of a C&W Share expressed in pence on the last day on which C&W Shares are traded on the London Stock Exchange's market for listed securities, provided that the provisions of this paragraph 2.4.2 shall not apply:

7.4.2.1 if (a) the C&W Shares cease to be both admitted to the Official List and to trading on the London Stock Exchange's market for listed securities in connection with a Topco Scheme and (b) it is a condition of the Topco Scheme that ordinary shares in Topco are both admitted to the Official List and to trading on the London Stock Exchange's market for listed securities and (c) the condition referred to in sub-paragraph (b) is satisfied and (d) such consequential changes have been made to the terms of this Deed as are determined by an Independent Financial Adviser to be necessary and reasonable in the context of the nature and terms of the Topco Scheme; or

7.4.2.2 if the C&W Shares are, or immediately upon such listing and trading ceasing become, listed, quoted or dealt in on any other major international securities exchange and such consequential changes have been made to the terms of this Deed as are determined by an Independent Financial Adviser to be necessary and reasonable to reflect the change in listing,

provided that:

7.4.3 no payment shall be made under this paragraph 2.4 if the product of the formula applied to calculate the Contingent Consideration is nil or negative; and

7.4.4 the aggregate amount of the Contingent Consideration paid (under this paragraph and under paragraph 2.1) shall not exceed the Specified Maximum.

7.5 Each of the Lenders hereby appoints the Paying Agent to act as paying agent in respect of Payments and the Paying Agent accepts such appointment. Subject as expressly provided in this Deed, each Payment shall be apportioned by the Paying Agent among the Lenders in the proportions shown against their names in Schedule 1, subject to assignments of such entitlements in accordance with Clause 4. Each Lender authorises C&W to make Payments in cash to the Paying Agent and authorises the Paying Agent to make payments of the Contingent Consideration to which that Lender is entitled to a United Kingdom bank account. Where Payments are in whole or in part in C&W Shares, each Lender authorises C&W to issue the relevant C&W Shares as directed by the Paying Agent in writing at least five dealing days prior to the Payment Date. The making by C&W of Payments as aforesaid shall discharge the obligations of C&W to make the relevant Payment and C&W shall not be concerned to see that the relevant Payment is applied in paying the Lenders in accordance with their respective entitlements. Payments in cash to the Paying Agent shall be made by electronic transfer (for value on the Payment Date) to the United Kingdom bank account notified by the Paying Agent to C&W at least 5 dealing days prior to the Payment Date.

7.6 C&W Shares to be issued in satisfaction of any Payment shall be issued in uncertificated form through the dematerialised securities trading system generated by

CRESTCo Limited, known as CREST, unless the Paying Agent notifies C&W in writing at least five dealing days prior to the Payment Date that some or all of the C&W Shares (as it may direct) should be issued in certificated form or, at the time of issue, the C&W Shares are not a participating security in CREST. Where C&W Shares are to be issued through CREST, they will be delivered in amounts proportionate to the entitlement to Payments of Contingent Consideration to Lenders to the accounts notified in writing to C&W by the Paying Agent at least five dealing days prior to the Payment Date. Where C&W Shares are to be issued in certificated form, a certificate in respect thereof will be dispatched by mail free of charge (but uninsured and at the risk of the person entitled thereto) to the relevant Lender or as it may direct in writing to the Paying Agent and C&W at least five dealing days prior to the Payment Date.

- 7.7 If C&W elects to satisfy any Payment in C&W Shares, any fractional entitlement to C&W Shares or such number of C&W Shares as would remain outstanding when the maximum number of C&W Shares that can be issued to Lenders in proportion to their entitlements have been issued, shall not be issued and the liability shall be satisfied by C&W in cash which shall be paid to the Paying Agent. The Paying Agent shall hold such cash, and any residue of a cash payment which cannot be equitably distributed to Lenders in accordance with their entitlements, on behalf of Lenders for distribution on any subsequent Payment Date or, if there is none, to satisfy the expenses of the Paying Agent.

8 Anti Dilution

- 8.1 On the happening of any of the events described below, the Reference Price shall be adjusted as follows (subject to paragraph 3.2):
- 8.1.1 If and whenever there shall be an alteration to the nominal value of C&W Shares as a result of consolidation or subdivision, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the nominal amount of one C&W Share immediately after such alteration; and

B is the nominal amount of one C&W Share immediately before such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

- 8.1.2 If and whenever C&W shall issue any C&W Shares credited as fully paid to the holders of C&W Shares (the **Shareholders**) by way of capitalisation of profits or reserves (including any share premium account or capital redemption reserve) other than any such C&W Shares issued instead of the whole or part of a cash dividend which the Shareholders concerned would or could otherwise have received, the Reference Price shall be thereafter adjusted by multiplying the Reference Price in force immediately prior to such issue by the following fraction:

$$\frac{A}{B}$$

where:

- A** is the aggregate nominal amount of the issued C&W Shares immediately before such issue; and
- B** is the aggregate nominal amount of the issued C&W Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such C&W Shares.

- 8.1.3 If and whenever C&W shall pay or make any Capital Distribution (as defined below) to the Shareholders, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such Capital Distribution by the following fraction:

$$\frac{A - B}{A}$$

where:

- A** is the Current Market Price (as defined below) of one C&W Share on the dealing day immediately preceding the date on which the C&W Shares are traded on the London Stock Exchange ex-the relevant Capital Distribution; and
- B** is the portion of the Fair Market Value (as defined below) (as determined as at the date of announcement of the relevant Dividend) of the Capital Distribution attributable to one C&W Share.

Such adjustment shall become effective on the date on which such Capital Distribution is made.

- 8.1.4 If and whenever C&W shall issue C&W Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any C&W Shares, in each case at a price per C&W Share which is less than 95 per cent. of the Current Market Price per C&W Share on the dealing day immediately preceding the date of the first public announcement of the terms of the issue or grant of such C&W Shares, options, warrants or other rights, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A** is the number of C&W Shares in issue immediately before such announcement;

- B is the number of C&W Shares which the aggregate amount (if any) payable for the C&W Shares issued by way of rights, or for the options or warrants or other rights issued by way of rights and for the total number of C&W Shares comprised therein would purchase at such Current Market Price per C&W Share; and
- C is the number of C&W Shares issued or, as the case may be, comprised in the grant.

Such adjustment shall become effective on the first date on which the C&W Shares are traded ex-rights, ex-options or ex-warrants on the London Stock Exchange.

- 8.1.5 If and whenever C&W shall issue any securities (other than C&W Shares or options, warrants or other rights to subscribe for or purchase any C&W Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any securities (other than C&W Shares or options, warrants or other rights to subscribe for or purchase C&W Shares), the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one C&W Share on the dealing day immediately preceding the first date on which the terms of such issue or grant are publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the rights attributable to one C&W Share.

Such adjustment shall become effective on the first date on which the C&W Shares are traded ex-rights, ex-options or ex-warrants on the London Stock Exchange.

- 8.1.6 If and whenever C&W shall issue (otherwise than as mentioned in paragraph 3.1.4 above) wholly for cash any C&W Shares (other than C&W Shares issued on the exercise of any rights of conversion into, or exchange or subscription for, C&W Shares), or grant (otherwise than as mentioned in paragraph 3.1.4 above) wholly for cash or for no consideration any options, warrants or other rights to subscribe for or purchase any C&W Shares in each case at a price per C&W Share which is less than 95 per cent. of the Current Market Price per C&W Share on the dealing day immediately preceding the date of the first public announcement of the terms of such issue or grant, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such issue by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of C&W Shares in issue immediately before the issue of such additional C&W Shares or the grant of such options, warrants or rights;
- B is the number of C&W Shares which the aggregate consideration (if any) receivable for the issue of such additional C&W Shares or, as the case may be, for the C&W Shares to be issued or otherwise made available upon the exercise of any such options, warrants or rights, would purchase at such Current Market Price per C&W Share; and
- C is the maximum number of C&W Shares to be issued pursuant to such issue of such additional C&W Shares or upon exercise of such options, warrants or rights.

Such adjustment shall become effective on the date of issue of such additional C&W Shares or, as the case may be, the grant of such options, warrants or rights.

- 8.1.7 If and whenever C&W or any Subsidiary of C&W or (at the direction or request of or pursuant to any arrangements with C&W or any Subsidiary of C&W) any other company, person or entity (otherwise than as mentioned in paragraphs 3.1.4, 3.1.5 or 3.1.6 above) shall issue wholly for cash or for no consideration any securities which by their terms of issue carry (directly or indirectly) rights of conversion into, or exchange or subscription for, C&W Shares to be issued by C&W (or shall grant any such rights in respect of existing securities so issued) or securities which by their terms might be redesignated as C&W Shares, and the consideration per C&W Share receivable upon conversion, exchange, subscription or redesignation is less than 95 per cent. of the Current Market Price per C&W Share on the dealing day last preceding the date of the first public announcement of the terms of issue of such securities (or the terms of such grant), the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such issue (or grant) by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of C&W Shares in issue immediately before such issue or grant (but where the relevant securities carry rights of conversion into or rights of exchange or subscription for C&W Shares which have been issued by C&W for the purposes of or in connection with such issue, less the number of such C&W Shares so issued);
- B is the number of C&W Shares which the aggregate consideration (if any) receivable for the C&W Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to such securities or, as the case may be, for the C&W Shares to be issued or to arise from any such redesignation would purchase at such Current Market Price per C&W Share; and
- C is the maximum number of C&W Shares to be issued or otherwise made available upon conversion or exchange of such securities or upon the exercise of such right of subscription attached thereto at the initial conversion, exchange or subscription price or rate or, as the case may be, the maximum number of C&W Shares to be issued or to arise from any such redesignation,

provided that if at the time of issue of the relevant securities or date of grant of such rights (the **Specified Date**) such number of C&W Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such securities are converted or exchanged or rights of subscription are exercised or, as the case may be, such securities are redesignated or at such other time as may be provided) then for the purposes of this paragraph 3.1.7, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange, subscription, purchase or acquisition or, as the case may be, redesignation had taken place on the Specified Date.

Such adjustment shall become effective on the date of issue or grant of such securities.

- 8.1.8 If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such securities as are mentioned in paragraph 3.1.7 above (other than in accordance with the terms (including terms as to adjustment) applicable to such securities) so that following such modification the consideration per C&W Share receivable has been reduced and is less than 95 per cent. of the Current Market Price per C&W Share on the dealing day last preceding the date of the first public announcement of the proposals for such modification, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to such modification by the following fraction:

$$\frac{A+B}{A+C}$$

where:

- A is the number of C&W Shares in issue immediately before such modification (but where the relevant securities carry rights of conversion into or rights of exchange or subscription for C&W Shares which have been issued by C&W for the purposes of or in connection with such issue, less the number of such C&W Shares so issued);
- B is the number of C&W Shares which the aggregate consideration (if any) receivable for the C&W Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the securities so modified would purchase at such Current Market Price per C&W Share or, if lower, the existing conversion, exchange or subscription price of such securities; and
- C is the maximum number of C&W Shares to be issued or otherwise made available upon conversion or exchange of such securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as an Independent Financial Adviser shall consider appropriate for any previous adjustment under this paragraph or paragraph 3.1.7 above,

provided that if at the time of such modification (the **Specified Date**) such number of C&W Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may

be when such securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then for the purposes of this paragraph 3.1.8, "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such securities.

- 8.1.9 If and whenever C&W or any Subsidiary of C&W or (at the direction or request of or pursuant to any arrangements with C&W or any Subsidiary of C&W) any other company, person or entity shall offer any securities in connection with which offer Shareholders as a class are entitled to participate in arrangements whereby such securities may be acquired by them (except where the Reference Price falls to be adjusted under paragraph 3.1.4 above (or would fall to be so adjusted if the relevant issue or grant was at less than 95 per cent. of the Current Market Price per C&W Share on the relevant dealing day) or under paragraph 3.1.5 above) the Reference Price shall be adjusted by multiplying the Reference Price in force immediately before the making of such offer by the following fraction:

$$\frac{A-B}{A}$$

where:

- A is the Current Market Price of one C&W Share on the dealing day immediately preceding the date on which the terms of such offer are publicly announced; and
- B is the Fair Market Value on the date of such announcement of the portion of the relevant offer attributable to one C&W Share.

Such adjustment shall become effective on the first date on which the C&W Shares are traded ex-rights on the London Stock Exchange.

- 8.1.10 If and whenever a Topco Scheme is effected, the Reference Price shall be adjusted by multiplying the Reference Price in force immediately prior to the Topco Scheme becoming effective by the following fraction:

$$\frac{A}{B}$$

- A is the number of C&W Shares in issue immediately before such scheme becomes effective; and
- B is the number of ordinary shares in Topco issued in exchange for C&W Shares under the terms of the Topco Scheme

provided that such adjustment shall be subject to such modification as an Independent Financial Adviser may determine to be fair and reasonable having regard to the terms of the Topco Scheme, and including in particular the rights attaching to the shares in Topco issued under the terms of the Topco Scheme.

Such adjustment shall become effective on the date on which holders of C&W Shares become unconditionally entitled to have ordinary shares in Topco issued to them under the terms of the Topco Scheme.

- 8.1.11 If C&W (after consultation with the Paying Agent) determines that an adjustment should be made to the Reference Price as a result of one or more events or circumstances not referred to above in this paragraph 3.1 (even if the relevant event or circumstance is specifically excluded from the operation of sub-paragraphs 3.1.1 to 3.1.10 above), C&W shall, at its own expense and acting reasonably, request an Independent Financial Adviser to determine as soon as practicable what adjustment (if any) to the Reference Price is fair and reasonable to take account thereof and the date on which such adjustment should take effect and upon such determination such adjustment (if any) shall be made and shall take effect in accordance with such determination, provided that an adjustment shall only be made pursuant to this paragraph 3.1.11 if such Independent Financial Adviser is so requested to make such a determination not more than 21 days after the date on which the relevant event or circumstance arises.
- 8.2 Paragraph 3.1 shall have effect subject to the following provisions:
- 8.2.1 notwithstanding the foregoing provisions, where the circumstances giving rise to any adjustment pursuant to paragraph 3.1 have already resulted or will result in an adjustment to the Reference Price or where the circumstances giving rise to any adjustment arise by virtue of any other circumstances which have already given or will give rise to an adjustment to the Reference Price or where more than one event which gives rise to an adjustment to the Reference Price occurs within such a short period of time that, in the opinion of C&W, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be advised by an Independent Financial Adviser to be in its opinion appropriate to give the intended result;
- 8.2.2 no adjustment will be made to the Reference Price where C&W Shares or other securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including Directors holding or formerly holding executive office or the personal service company of any such person) of C&W or any of its Subsidiaries or any associated company or to trustees to be held for the benefit of any such person, in any such case pursuant to any employees' share scheme (as defined in Section 743 of the Companies Act 1985 or any modification or re-enactment thereof);
- 8.2.3 on any adjustment, the resultant Reference Price, shall be rounded down to the nearest whole penny or half penny. No adjustment shall be made to Reference Price where such adjustment (rounded down if applicable) would be less than 1 per cent. of the Reference Price then in effect. Any adjustment not required to be made and/or any amount by which the Reference Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time;
- 8.3 For the purpose of any calculation of the consideration receivable pursuant to paragraphs 3.1.6, 3.1.7 and 3.1.8, the following provisions shall apply:
- 8.3.1 the aggregate consideration receivable for C&W Shares issued for cash shall be the amount of such cash provided that in no case shall any deduction be made for any

commission, fees or any expenses paid or incurred by C&W for any underwriting of the issue or otherwise in connection therewith;

- 8.3.2 (x) the aggregate consideration receivable for C&W Shares to be issued or otherwise made available upon the conversion or exchange of any securities shall be deemed to be the consideration received or receivable for any such securities, and (y) the aggregate consideration receivable for C&W Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration received or receivable for such securities or, as the case may be, for such options, warrants or rights which is attributed by C&W to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration is so attributed, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such securities or, as the case may be, such options, warrants or rights plus in the case of each of (x) and (y) above, the additional minimum consideration (if any) payable upon the conversion or exchange of such securities, or upon the exercise of such rights of subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights (the consideration in all such cases to be determined subject to the proviso in paragraph 3.3.1 above) and (z) the consideration per C&W Share receivable upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration referred to in (x) or (y) above (as the case may be) converted into pounds sterling if such consideration is expressed in a currency other than pounds sterling at such rate of exchange as may be determined in good faith by an Independent Financial Adviser to be the spot rate ruling at the close of business on the date of the first public announcement of the terms of issue of such securities, divided by the number of C&W Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate.

- 8.4 If any dispute shall arise as to:

- 8.4.1 whether an event has occurred which may or will lead to an adjustment to the Reference Price under this paragraph 3;

- 8.4.2 the appropriate adjustment to the Reference Price; or

- 8.4.3 the provisions of this Deed;

a written opinion of an Independent Financial Adviser in respect of such dispute shall be conclusive and binding on all concerned, save in the case of manifest or proven error.

- 8.5 As used in this Deed the following terms have the following meanings:

Capital Distribution:

- (a) any Dividend which is expressed by C&W or declared by the Board of Directors of C&W to be a capital distribution, extraordinary distribution, special dividend, special distribution or return of value to shareholders of C&W or any analogous or similar term, in which case the Capital Distribution shall be the Fair Market Value of such Dividend; or

- (b) any Dividend which, when taken together with all other Dividends (other than any Dividend or portion thereof deemed to be a Capital Distribution) made in respect of the same fiscal year as such Dividend, exceeds 5 per cent. of the Fair Market Value of a C&W Share on the date immediately preceding the announcement of such Dividend multiplied by the number of C&W Shares in issue on such date. In such case, the Capital Distribution shall be the amount by which such Dividend, when taken together with all other Dividends as aforesaid, exceeds 5 per cent. of the Fair Market Value of a C&W Share multiplied by the number of C&W Shares in issue as aforesaid.

In making any such calculation, such adjustments (if any) shall be made as an Independent Financial Adviser may consider appropriate to reflect any consolidation or subdivision of any C&W Shares or the issue of C&W Shares by way of capitalisation of profits or reserves, or any like or similar event.

Current Market Price: in respect of a C&W Share at a particular date, the average of the bid and offer quotations published in the London Stock Exchange's Daily Official List for one C&W Share for the five consecutive dealing days ending on the dealing day immediately preceding such date; provided that if at any time during the said five day period the C&W Shares shall have been quoted ex-dividend (or ex-any other entitlement) and during some other part of that period the C&W Shares shall have been quoted cum-dividend (or cum- any other entitlement) then:

- (a) if the C&W Shares to be issued do not rank for the dividend (or entitlement) in question, the quotations on the date on which the C&W Shares shall have been quoted cum-dividend (or cum- such other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend or other cash entitlement or, as the case may be, the Fair Market Value of any entitlement or dividend (where that is other than cash) per C&W Share as at the date of announcement of such dividend or entitlement (excluding any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom); or
- (b) if the C&W Shares to be issued to rank for the dividend in question, the quotations on the dates on which the C&W Shares shall have been quoted ex-dividend (or ex- any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount, and provided further that if the C&W Shares on each of the said five dealing days have been quoted cum-dividend (or cum- such other entitlement) in respect of a dividend (or other entitlement) which has been declared or announced but the C&W Shares to be issued do not rank for that dividend (or other entitlement) the quotations on each of such dates shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend or other cash entitlement or, as the case may be, the Fair Market Value of any entitlement or dividend (where that is other than cash) per C&W Share as at the date of announcement of such dividend or entitlement (excluding any associated tax credit and less the tax (if any) falling to be deducted on payment thereof to a resident of the United Kingdom),

provided that if such bid and offer quotations are not available on each of the said five dealing days, then the average of such bid and offer quotations which are available in that five dealing day period shall be used (subject to a minimum of two such bid and offer quotations) and if only one or no such bid and offer quotation is available in the

relevant period the average bid and offer quotations shall be determined in good faith by an Independent Financial Adviser.

Dividend: any dividend or distribution, whether of cash, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes without limitation an issue of shares or other securities credited as fully or partly paid up by way of capitalisation of profits or reserves) provided that:

- (a) where a cash Dividend is announced which is to be, or may at the election of a holder or holders of C&W Shares be, satisfied by the issue or delivery of C&W Shares or other property or assets, then, for the purposes of the above definition, the Dividend in question shall be treated as a Dividend of (i) the cash Dividend so announced or (ii) the Fair Market Value, on the date of announcement of such Dividend, of the C&W Shares or other property or assets to be issued or delivered in satisfaction of such Dividend (or which would be issued if all holders of C&W Shares elected therefor, regardless of whether any such election is made) if the Fair Market Value of such C&W Shares or other property or assets is greater than the Fair Market Value of the cash Dividend so announced;
- (b) any issue of C&W Shares falling within paragraph 3.1.2 shall be disregarded; and
- (c) a purchase or redemption of share capital by C&W shall not constitute a Dividend unless in the case of purchases of C&W Shares by or on behalf of C&W, the volume weighted average price paid per C&W Share (before expenses) on any one day in respect of such purchases exceeds by more than 5 per cent. the closing price of the C&W Shares on the London Stock Exchange on the immediately preceding dealing day as derived from the Daily Official List of the London Stock Exchange at the opening of business either (1) on that day, or (2) where an announcement (excluding for the avoidance of doubt for these purposes, any general authority for such purchases or redemptions approved by a general meeting of Shareholders of C&W or any notice convening such a meeting of Shareholders) has been made of the intention to purchase C&W Shares at some future date at a specified price, on the dealing day immediately preceding the date of such announcement and, if in the case of either (1) or (2), the relevant day is not a dealing day, the immediately preceding dealing day, in which case such purchase shall be deemed to constitute a Dividend to the extent that the aggregate price paid (before expenses) in respect of such C&W Shares purchased by C&W exceeds the product of: (i) 105 per cent. of the closing price of the C&W Shares determined as aforesaid; and (ii) the number of C&W Shares so purchased.

Fair Market Value means, with respect to any property on any date, the fair market value of that property as determined in good faith by an Independent Financial Adviser provided that: (i) the Fair Market Value of a cash Dividend paid or to be paid shall be the amount of such cash Dividend; (ii) the Fair Market Value of any other cash amount shall be the amount of such cash; (iii) where options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by an Independent Financial Adviser) the fair market value of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights during the period of five trading days on the relevant market commencing on the first such trading day such options, warrants or other rights are publicly traded, or such shorter period as such options, warrants or other rights are

publicly traded; and (iv) in the case of (i) converted into sterling (if declared or paid in a currency other than sterling) at a rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid the cash Dividend in sterling; and in the case of (ii) and (iii) converted into sterling (if expressed in a currency other than sterling) at such rate of exchange as may be determined in good faith by an Independent Financial Adviser to be the spot rate ruling at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available).

securities includes, without limitation, shares in the share capital of C&W and options, warrants and other rights to subscribe for or purchase or acquire shares in the capital of C&W.

References to any issue or offer to Shareholders "as a class" or "by way of rights" shall be taken to be references to an issue or offer to all or substantially all Shareholders other than Shareholders to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any other stock exchange in any territory or in connection with fractional entitlements, it is determined not to make such issue or offer.

Reference to the "issue" of C&W Shares shall include the transfer and/or delivery of C&W Shares by C&W or any of its Subsidiaries, whether newly issued and allotted or previously existing, but C&W Shares held by C&W or any of its Subsidiaries shall not be considered as or treated as "in issue".

9 Transfer

9.1 A Lender may at any time assign in whole or in part any entitlement to receive Contingent Consideration:

9.1.1 to another Lender, subject always to the restrictions in paragraph 4.2 as regards any further assignment; or

9.1.2 to a company which is a Group Company of the Lender, provided however that the relevant Lender shall procure that such Group Company abides by the restrictions in paragraph 4.2 and provided further that if the relevant company ceases to be a Group Company of the relevant Lender, the relevant Lender shall procure that such entitlement is re-assigned to the Lender prior to such time.

Such assignment shall be notified in writing to the Paying Agent in the form set out in Schedule 2.

9.2 No Lender (including any Lender to whom entitlements are assigned under paragraph 4.1.1) may at any time assign, and each Lender will procure that any Group Company to which it assigns all or part of its entitlement will not assign, all or any part of the benefit of, or its rights or benefits under, this Deed otherwise than as permitted under paragraph 4.1.

9.3 For the avoidance of doubt, C&W shall not be required to maintain any register of holders of entitlements to receive Contingent Consideration nor shall any person other than a Lender or a person to whom a Lender has assigned its entitlement in accordance with this paragraph 4 have any entitlement to Contingent Consideration.

Reduction of Contingent Consideration

10.1

The Contingent Consideration payable under this Deed will be reduced by the amount of the Facility C Contingent Consideration Percentage of any Verified Claim, and Payments otherwise due under this Deed in respect of Contingent Consideration will be reduced until such percentage of such Verified Claim is extinguished, provided that:

- (a) the aggregate amount of the reduction by reference to Verified Claims under this Deed and under Schedule 6 to the Share Purchase Agreement shall not exceed £12,500,000 plus up to £250,000 for the costs and expenses of the Paying Agent reasonably incurred in connection with any dispute arising under this paragraph 5; and
- (b) no reduction will be made unless and until the aggregate amount of Verified Claims, exceeds £250,000, whereupon the entire amount of the Facility C Contingent Consideration Percentage of Verified Claims shall be included for the purposes of the reduction under this Deed and not merely the excess.

Claim: any amount notified to the Paying Agent on behalf of the Lenders (such notice to be accompanied by a certificate from KPMG confirming the amount of the Claim) within six months of the date of Share Completion or, if earlier, by 31 March, 2006, unless this would result in the period between the date of Share Completion and expiry of the notification period being less than three months, in which case the notification period will expire three months after the date of Share Completion, and which falls into any of the following categories:

- (i) the amount of any Financial Indebtedness (excluding finance leases to the order of £37 million notified to the Purchaser before 22 July 2005) of any member of the Energis Group in existence at the date of Share Completion and not discharged under the Share Purchase Agreement or the Schemes or acquired under this Agreement;
- (ii) the cost of terminating any interest rate or currency derivative transaction (including a swap, option, contract for difference or any other contract containing an embedded derivative for the purposes of International Financial Reporting Standards) in existence at Completion and which is not a cost identified in the Fees and Costs Schedule (as defined in the Share Purchase Agreement) provided that this paragraph (ii) will not apply to any such transaction entered into in the ordinary course of business in relation to a customer contract;
- (iii) the cost of discharging any mortgage, charge, debenture, or other security in respect of Financial Indebtedness (subject as referred to in (i) above) over the undertaking or assets of any member of the Energis Group in existence at the date of Share Completion and not discharged pursuant to the Share Purchase Agreement or the Schemes or acquired under this Agreement;

- (iv) the amount of any professional or other fees or third party expenses incurred by a member of the Energis Group arising as a result of the transactions contemplated by the Share Purchase Agreement and/or this Agreement and/or the Schemes which fees and expenses are not itemised in the Fees and Costs Schedule excluding any liabilities or expenses relating to contracts with customers or suppliers;
- (v) the amount due by any member of the Energis Group to any employee of any member of the Energis Group pursuant to obligations existing prior to the date of Share Completion in respect of:

- (a) the Energis Group's Cash Bonus Plan;

Appendix A (b) the shares in the Company; or

- (c) any other incentive, bonus or other entitlement arising by reason of or as a result of the transactions contemplated by the Share Purchase Agreement and/or this Agreement,

to the extent that the same is not identified in Schedule 3 of the Share Purchase Agreement; provided that this paragraph (v) shall not apply to any amounts retained from sums otherwise payable in accordance with the Share Purchase Agreement in respect of the Cash Bonus Plan or A Ordinary Shares in respect of income tax or employees' national insurance contributions;

- (vi) an amount equal to any tax or NICs (as defined in the Share Purchase Agreement) and any related costs and expenses not identified in schedule 3 to the Share Purchase Agreement and which is required to be paid, accounted for, deducted or withheld by the Purchaser or any member of the Energis Group as a result of any payment under the Energis Group's Cash Bonus Plan or in respect of the 2005 MIP Equity-based Entitlements (as defined in the Share Purchase Agreement) or in relation to the shares in the Company, including in respect of the Contingent Consideration payable under the Share Purchase Agreement, save to the extent any such tax or NICs and any related costs and expenses are deducted or withheld from the relevant payment. Without limitation, and for the avoidance of doubt, any reference herein to any tax or NICs shall include a reference to any additional tax or NICs arising in consequence of a failure by any person to make good the Company, any other Energis Group Company or the Purchaser for any tax paid or accounted for within any relevant period of time (whether under section 222 ITEPA 2003 (as defined in the Share Purchase Agreement) or otherwise), and any reference herein to any related costs or expenses shall include any interest, fine or penalty payable as a result of any failure to deduct, withhold, pay or account for any tax or NICs when due or required or to make any related

report to or filing with HMRC (as defined in the Share Purchase Agreement) (whether pursuant to section 421J ITEPA 2003 or otherwise); and

- (vii) an amount equal to any interest costs incurred by the Purchaser and/or any member of the Energis Group by reason of the existence of the facts or circumstances outlined in paragraphs (i) to (vi).

Financial Indebtedness: indebtedness owed by a member of the Energis Group to financial institutions in respect of borrowed money, whether sole, joint or several, and whether actual or contingent which amounts are or would be treated as debts of the relevant member of the Energis Group in accordance with the accounting policies applied in the preparation of the consolidated accounts of the Energis Group for the year ended 31 March 2005 excluding operating leases, hire purchase agreements, trade payables and financing provided by customers under customer contracts entered into the ordinary course of business and asset leases where the whole of the lease costs are recharged to a customer under a customer contract entered into in the ordinary course of business;

Verified Claim: a Claim which has been duly notified to the Paying Agent as set out in the definition of "Claim" above where either:

- (a) the Paying Agent has not given written notice to C&W disputing the Claim within 10 Business Days of receipt of notice of the Claim; or
- (b) the Paying Agent having given such notice, the Claim has been upheld in the disputes procedure provided for in paragraph 5.2 below (the amount in respect of which the Claim has been upheld being the Verified Claim).

5.2 Disputes Procedure

If:

5.2.1 a Claim is duly notified to the Paying Agent; and

5.2.2 the Paying Agent (acting on the instructions of a majority of the Lenders by value) duly gives written notice to C&W disputing such Claim;

the matter in dispute shall be referred to a firm of independent chartered accounts (the **Independent Expert**) as expeditiously as possible.

5.3 The Independent Expert shall be appointed by agreement between C&W and the Paying Agent or, in default of agreement, by the President of the Institute of Chartered Accountants on the application of either of them.

5.4 If a dispute is referred to the Independent Expert under paragraph 5.2:

5.4.1 the Independent Expert shall act as an expert, not an arbitrator, and the Arbitration Acts 1996 and 1950, as amended shall not apply;

5.4.2 within 20 Business Days of the Paying Agent serving notice as provided in the definition of Verified Claim, both the Paying Agent and the Purchaser shall make written submissions to the Independent Expert on the matter in dispute;

- 5.4.3 each of the Paying Agent and the Purchaser shall promptly provide each other and the Independent Expert with such further information as it or he may request;
- 5.4.4 the Paying Agent and the Purchaser shall seek to ensure that the Independent Expert determines the dispute as expeditiously as possible and in any event within 20 Business Days of the dispute being referred to it or him (and such determination when notified shall be final and binding); and
- 5.4.5 if the dispute referred to the Independent Expert confirms the validity of the Claim, it will be a Verified Claim and therefore capable of reducing the Contingent Consideration. In such cases, the costs of the Independent Expert will be added to the amount of the Verified Claim. In such cases, the costs of the Paying Agent up to an aggregate limit of £250,000 will be paid by C&W but will be treated as a Verified Claim up to a limit of £250,000 in aggregate.
- 5.4.6 If the Independent Expert determines that the Claim in dispute is not a Verified Claim, the costs of the Paying Agent up to £250,000 in aggregate and the costs of the Independent Expert will be paid by C&W.

5.5 **Proportions**

Verified Claims will be attributed between Payments due under (i) Schedule 6 to the Share Purchase Agreement and (ii) this Deed in the proportion the A Ordinary Contingent Consideration Percentage (as defined in the Share Purchase Agreement) bears to the Facility C Contingent Consideration Percentage.

SCHEDULE 1
to the Contingent Consideration Deed

[To be completed by reference to the Definitive Statement]

The Lenders

Name	Address	Percentage entitlement of Contingent Consideration (%)

SCHEDULE 2
to the Contingent Consideration Deed

Notification and Deed of Assignment

To: The Royal Bank of Scotland as Paying Agent

To: Cable and Wireless plc

From: [] (the "**Existing Beneficiary**") and [] (the "**New Beneficiary**")

Dated:

Contingent Consideration pursuant to the Contingent Consideration Deed
dated [●] 2005 (the "Agreement")

- 11 We refer to the Agreement. This is a notice of assignment pursuant to paragraph 4 of the Agreement. Terms defined in the Agreement have the same meaning in this Notice unless given a different meaning in this Notice.
- 12 We refer to paragraph 4 of the Agreement:
- (a) the Existing Beneficiary and the New Beneficiary, both being Lenders agree to the Existing Beneficiary assigning to the New Beneficiary the Existing Beneficiary's rights referred to in the Agreement in respect of the percentage of the aggregate Contingent Consideration to be transferred (the "**Transferred Contingent Consideration Rights**").
 - (b) the New Beneficiary undertakes to the Paying Agent and C&W to satisfy its obligations in, and to be bound by all restrictions under, the Agreement in respect of all rights to Contingent Consideration owned by it (in particular the prohibition of assignment of the Transferred Contingent Consideration Rights set out in paragraph 4 of the Agreement), including its Transferred Contingent Consideration Rights.
 - (c) the proposed Transfer Date is [].
 - (d) the Transferred Contingent Consideration Rights are in respect of []% of the Contingent Consideration.
 - (e) the payment details for the New Beneficiary, to the extent any cash payments are made in relation to the Contingent Consideration, are as follows:

Account reference:

Account number:

Sort code:

Branch:
 - (f) the shareholder details for the New Beneficiary, to the extent any shares are issued in relation to the Contingent Consideration, are as follows:

Name:

Address:

Attention:

Telephone:

Fax:

CREST ID:

13 This Notice may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Notice.

14 This Notice is governed by English law.

[Existing Beneficiary]

[New Beneficiary]

By:

By:

This Notice is accepted by the Agent and the Transfer Date is confirmed as

[].

[Agent]

By:

EXECUTED as a DEED by)
CABLE AND WIRELESS PLC)
acting by two duly authorised officers)

.....

.....

SCHEDULE 2
to the Order

Undertaking of Cable and Wireless plc

Cable and Wireless plc hereby undertakes to be bound by the Scheme and to execute and do, and to procure to be executed and done all such documents, acts and things as may be necessary or desirable to be executed and done by it for the purpose of giving effect to the Scheme, if the Scheme becomes effective in accordance with its terms, including to pay the Cash Consideration and to execute and deliver the Contingent Consideration Deed in accordance with Part 3 of the Scheme.

SCHEDULE 3
to the Order

Undertaking of The Royal Bank of Scotland plc

The Royal Bank of Scotland plc hereby undertakes, if the Scheme becomes effective in accordance with its terms, to perform its obligations in accordance with the Scheme.

No 5977 of 2005

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

COMPANIES COURT

BEFORE:

THE 2 DAY OF November 2005

**IN THE MATTER OF ENERGIS
HOLDINGS LIMITED**

- and -

**IN THE MATTER OF
THE COMPANIES ACT 1985**

ORDER

Macfarlanes
10 Norwich Street
London
EC4A 1BD
Ref: WGD/589421

Tel: 020 7831 9222
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DX 138 Chancery Lane