

## Memorandum of Understanding

This Memorandum of Understanding dated as of 21 June 2016, between each of DataLink, Ltd. ("**DataLink**") and Westtel Limited t/a Logic ("**Logic**") and Caribbean Utilities Company, Ltd. ("**CUC**").

### Recitals

WHEREAS on 20 March 2012, CUC entered into an agreement with DataLink, a wholly owned subsidiary of CUC, for the joint use of CUC's poles by placing and maintaining certain attachments on those poles (the "**CUC Agreement**");

AND WHEREAS pursuant to Article XIX of the CUC Agreement, DataLink is entitled to grant sub-licenses to third parties to place certain attachments on CUC's poles;

AND WHEREAS on 18 July 2013, DataLink and Logic entered into a master pole joint use agreement (the "**Agreement**") whereby DataLink may issue permits to Logic (each, a "**Permit**") granting it a sublicense to place Attachments on CUC's poles subject to the terms thereof (each, an "**Attachment**");

AND WHEREAS pursuant to the terms of the Agreement, if make-ready work is required to accommodate an Attachment, DataLink or its contractors perform make-ready work to CUC's poles for the purpose of ensuring that the poles are in a suitable condition to accommodate Attachments;

AND WHEREAS the make-ready work process described above has been fraught with difficulties that have led to these three parties being engaged in various legal and regulatory disputes;

AND WHEREAS Logic has agreed to pay invoice numbers 1315, 1323 and 1331 issued prior to the signing of this Memorandum of Understanding (the "**MOU**") within 14 days of execution;

AND WHEREAS notwithstanding the existing contractual agreements in place between the parties, this MOU outlines the manner in which the parties intend to resolve and settle disputes and agree upon a protocol for the future in a practical and constructive manner;

AND WHEREAS the MOU is intended to create a protocol for the purpose of resolving certain matters under the Agreement and, but for the provisions of this MOU, it is not intended to amend the Agreement; provided, however, that in the event of a conflict between the Agreement and the MOU, the MOU shall prevail;

AND WHEREAS the procedure below will apply to single-phase poles only and not to three-phase poles.

NOW THEREFORE in consideration of the mutual provisions and covenants herein, the sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**Procedure to be adopted for all future applications**

1. When submitting applications for Permits, Logic will:
  - 1.1 include no more than twenty five (25) poles in each batch of applications (a "**Batch**") and each Batch will cover a contiguous area;
  - 1.2 submit a maximum of twenty (20) Batches which contain in aggregate no more than two hundred (200) poles in any month;
  - 1.3 submit each Batch in a prioritized and systematic way; and
  - 1.4 maintain a priority list (which shall be updated and sent to DataLink on a monthly basis) that sets out where in the priority the requested Batch falls in relation to any other Batches (the "**Batch Priority List**").
2. Within fifteen (15) Business Days (as that term is defined in Section 17.3 below) after receiving a Batch, DataLink will provide a preliminary assessment in a written notice (each, a "**Batch Notice**") which will:
  - 2.1 identify and inform Logic of any poles within the Batch that do not require any work to be completed prior to an Attachment being made (each such pole, a "**Green Pole**"); and,
  - 2.2 identify and inform Logic of any poles within the Batch that require work to be completed by CUC prior to an Attachment being made (each such pole, a "**Red Pole**").
3. For each pole identified as a Green Pole the following will occur:
  - 3.1 Logic will, within fourteen (14) Business Days of receipt of Batch Notice so identifying a pole, pay the Fixed Fee (as that term is defined in Section 14.1 below);
  - 3.2 within ten (10) Business Days of receipt of such payment from Logic, DataLink will grant a Permit to Logic for each Green Pole; and,

- 3.3 upon receipt of a Permit, Logic may proceed with the attachment to the poles identified in such Permit. For the avoidance of doubt, Article IIF of the Agreement remains in full effect and no grant of any permit under these provisions may be construed as permission to attach to any pole for which no permit has been issued, even if in consequence of a permit granted under these provisions Logic has received permits for poles to which it cannot attach for lack of contiguous poles for which permit have been issued.
4. For the poles identified as a Red Pole the following will occur:
- 4.1 within ten (10) Business Days of each Batch Notice that identifies Red Poles, Logic and DataLink will meet to discuss what work is necessary for such poles, the time frame within which the work will be completed and any potential alternative routes or work-arounds;
- 4.2 in the event that Logic wishes to proceed with an Attachment for any Red Pole following its meeting with DataLink, it will pay the Fixed Fee to DataLink for each such pole;
- 4.3 within seventy five (75) Business Days of receipt of the Fixed Fee from Logic, DataLink will complete, design, cause any works necessary to be completed to allow Logic to proceed with the Attachment and grant a Permit in connection with the same, subject to obtaining necessary wayleaves from property owners; provided, however, that if Logic has not paid the Fixed Fee to DataLink within three (3) months of a pole being identified as a Red Pole at a meeting held pursuant to Section 4.1, then the corresponding Permit application will be treated as withdrawn; and
- 4.4 provided further that, if work that is necessary to allow Logic to proceed with an Attachment has not been completed within seventy five (75) Business Days of delivery of the Fixed Fee to DataLink, then the Fixed Fee shall either be set-off against future Fixed Fees owing by Logic or paid to Logic as a refund pursuant to Section 14.4 hereof. In the event the work is completed after seventy five (75) Business Days, the pole will be classified as a Green Pole and, if Logic still wishes to attach to the pole, it will follow the procedure set out in clause 3 above.

#### **Existing Application for Permits**



5. Logic shall include in the Batch Priority List all applications for Permits that have been submitted to DataLink prior to the date of this MOU that remain outstanding. For greater certainty, DataLink agrees that Logic shall not be required to resubmit any such applications. Any previously submitted applications shall be reviewed and assessed by DataLink in accordance with the priority set forth in the Batch Priority List.

#### **Existing Unauthorised Attachments**

6. Logic and DataLink will meet and, acting in good faith, agree upon a list of all current attachments of Logic's on CUC poles that are unauthorised (the "**Unauthorised Attachment List**").
7. Logic will pay the Fixed Fee for each of the poles identified in the Unauthorised Attachment List for which DataLink has not already received payment for Make-Ready work, within fourteen (14) Business Days of the list being agreed upon.
8. For any pole on the Unauthorised Attachment List for which no Permit has previously been sought, Logic will apply for a Permit within fourteen (14) Business Days of the Unauthorised Attachment List being agreed upon and Logic shall include such applications in the Batch Priority List.
9. In the event that safety concerns exist with respect to any pole(s) on the list, such pole(s) will be identified to Logic and Logic will refrain from performing any work on the poles so identified unless and until DataLink has advised Logic that the safety concerns have been addressed and a Permit has been issued (the poles will be treated as Red Poles to which an attachment has already been made). DataLink will prepare and provide to Logic a schedule setting forth the priority order in which the works will be completed, subject to the provisions of this MOU and with consideration for any particular requests Logic may have concerning the establishment of said priority. Nothing in this clause limits DataLink's or CUC's existing rights under Article IV.D of the Agreement to remove any attachment to any pole if either of them consider that removal is necessary to address any safety concern.

#### **DataLink's Processing Obligations**

10. Logic acknowledges that the resources available to DataLink only provide it with the capacity to process Permit applications and perform work on a total of three hundred (300) poles per month in response to Permit applications from all entities with contractual rights to attach to poles. Logic acknowledges further that any new applications for Permits will be difficult for DataLink to process until the backlog of

existing applications, including those applications related to unauthorised Attachments, has been reviewed, processed and resolved.

11. DataLink shall process all applications in accordance with the Batch Priority List, as the same may be modified and amended from time to time whether as a result of new Permit applications, existing Permit applications or applications related to unauthorized Attachments.
12. DataLink shall use its best efforts to process in each calendar month during the term of this MOU a total of two hundred (200) Permit applications. In so processing the applications, DataLink shall not be required to commence the assessment of more than one batch on any working day and shall be permitted to have regard to the requests of other entities with contractual rights to attach to CUC's poles and shall not be required to give priority to Logic over other such entities. In this clause "process" means to acknowledge and review two hundred (200) applications on the Batch Priority List within the timeframe set out at clauses 2 to 4 above and for greater certainty, is a distinct action from issuing permits. Permits shall only be issued following such process in accordance with the obligations of DataLink hereunder.

### **Fixed Fee**

13. Logic and DataLink agree as follows with respect to the payment of fees for the poles:
  - 13.1 there will be a fixed fee of C\$850 by way of advance payment for make-ready work for each pole with any Attachment (the "**Fixed Fee**") in substitution for the advance payment requirement under Clause VII.B of the Agreement. For the avoidance of doubt, payment of the Fixed Fee and the provisions of this agreement do not relieve Logic of any other payment obligation under the Agreement, in particular any existing or future obligation to pay additional sums for unauthorized attachments, nor shall any provision of this agreement deprive DataLink of its existing rights under Article XIV.A of the Agreement to remove unauthorized attachments where additional sums due in respect of them are not paid;
  - 13.2 the Fixed Fee shall be paid in advance for each pole whether work is required to make a pole ready for the Attachment or not;



- 13.3 every three (3) months during the term of the Agreement, DataLink will provide a report to Logic showing the variance between actual costs of make-ready work completed and the aggregate Fixed Fees paid (each, a "**Variance Report**");
- 13.4 on the last Business Day of each six-month period during the term of the Agreement (the first such six-month period commencing on the execution date of this MOU), Logic and DataLink will agree upon a mutually convenient time to meet and review the total actual costs incurred for the make-ready work as against the total Fixed Fees collected based on the two previously delivered Variance Reports (each, a "**Reconciliation Meeting**"). Any difference in the two amounts where the Fixed Fees collected in aggregate exceed the make-ready work costs in aggregate will be set-off against future Fixed Fees and other amounts owing by Logic to DataLink, effective immediately from the commencement of the next following six (6) month period. Any difference in the two amounts where the Fixed Fees collected in aggregate fall short of the make-ready work costs in aggregate will be paid by Logic effective immediately from the commencement of the next following six (6) month period;
- 13.5 annually, at every other Reconciliation Meeting, the rate of the Fixed Fee will be reviewed by the parties for adjustment up or down based upon the information in the Variance Reports delivered to Logic over the preceding twelve-month period; the rate will be assessed based on actual ready-made work costs incurred during the relevant period and aggregate Fixed Fees paid by Logic;
- 13.6 in the event of a dispute between the parties over either the calculations contained in the Variance Reports or the determination of the amounts to be set-off against Fixed Fees as described in Clause 13 above, Logic and DataLink shall, within fifteen (15) Business Days of notice of such a dispute being delivered in writing by either party to the other, mutually engage an independent accounting firm that has not been retained by either of them or CUC during the previous 5 (five) years to resolve the dispute (the five year requirement may be waived by mutual agreement). Such independent accounting firm shall be permitted to conduct an audit of the information of all parties that was used in the preparation of the Variance Reports or calculations for the set-off against Fixed Fees and it shall deliver its report containing the results of such audit to all parties. If the parties cannot agree on the identity of a firm, they will refer that issue to be determined by the Grand Court. The parties shall bear their own costs of any such dispute and shall share the costs of the accounting firm equally. The determination made by the mutually appointed independent accounting firm shall be binding on all of the parties;

### **Make Ready Rebates**

14. Reconciliation of any rebate due to Logic under Article VII.E of the Agreement for authorised attachments of other telecommunications providers on poles that are shared with Logic will be assessed at each Reconciliation Meeting and the rebate will be paid in the form of a set-off against amounts due and payable by Logic to DataLink during the following calendar quarter or, in the event that no such amounts are owing, the rebate shall be paid immediately by wire transfer or cheque to Logic.

### **End to Legal Proceedings/ICTA Dispute**

15. CUC is a party to this memorandum solely for the purposes of this clause and for no other. Upon execution of this memorandum:
  - 15.1 The proceedings in the Grand Court of the Cayman Islands (cause no. G115 of 2015) (the "**Proceedings**") between CUC and Logic will be discontinued with each party bearing its own costs. CUC and Logic agree that no steps will be taken to enforce any existing orders as to costs. A draft Court Order to this effect is exhibited hereto at Exhibit 1, which said Order will be executed by the attorneys for CUC and Logic and filed in Court within five (5) Business Days of the execution of this MOU;
  - 15.2 CUC will withdraw its Appeal to the Court of Appeal in the Proceedings with each party bearing its own costs and Logic agrees that no steps will be taken to enforce any entitlement to costs under Court of Appeal rule 23;
  - 15.3 Logic will notify ICTA that it has withdrawn its notice of dispute and each party will bear its own costs relating to that dispute;
  - 15.4 Logic will provide to CUC in writing the undertaking to abstain from attaching to CUC poles without a Permit in the form as attached here to as Exhibit 2;
  - 15.5 This memorandum will operate as a full and final settlement of all previous complaints regarding the processing of permits and the making of unauthorized attachments.

## **Interpretation; Miscellaneous**

16. In this MOU:

- 16.1 Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the relevant period is not a Business Day.
- 16.2 All references to "**month**" are to calendar months.
- 16.3 "**Business Day**" means any day, other than a Saturday, Sunday or public holiday in the Cayman Islands.
- 16.4 This MOU shall be governed by, construed and enforced in accordance with the laws of the Cayman Islands. Any disputes that arise in respect of the MOU shall be resolved in accordance with Article XXIV of the Agreement.
- 16.5 Unless extended or otherwise terminated earlier by mutual agreement, this MOU will expire on 31 December 2018 (the end of the Build Out Period) or the date that the Agreement terminates, whichever is earlier.

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**IN WITNESS WHEREOF** the parties hereto have executed this Memorandum of Understanding as of the 15<sup>th</sup> day of June 2016.

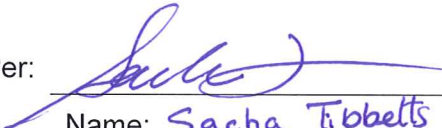
**WESTTEL LIMITED (T/A LOGIC)**

Per: 

Name: Michael Edenholm

Title: Chief Executive Officer

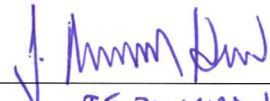
**DATALINK, LTD.**

Per: 

Name: Sacha Tibbelts

Title: President & CEO

**CARIBBEAN UTILITIES COMPANY, LTD.**

Per: 

Name: J.F. RICHARD HEW

Title: PRESIDENT & CEO