

## **FORM OF MANAGEMENT AGREEMENT**

**THIS MANAGEMENT AGREEMENT** (this "Management Agreement") is made and entered into as of this 6th day of December, 2003 by and among Cable & Wireless USA, Inc., a Delaware corporation ("CWUSA"), Cable & Wireless Internet Services, Inc., a Delaware corporation ("CWIS", and together with CWUSA and their respective subsidiaries set forth on Annex I to the Asset Purchase Agreement, the "Sellers"), and Gores Asset Holdings, Inc., a Delaware corporation, or its Buyer Designee (as defined in the Asset Purchase Agreement referred to below) ("**Gores**" or "Manager"). Sellers and Manager are referred to individually in this Management Agreement as a "Party" and, collectively, as the "Parties."

### **W I T N E S S E T H :**

**WHEREAS**, Sellers and Manager have entered into an Asset Purchase Agreement dated as of December 6, 2003 (the "Asset Purchase Agreement"), whereby Manager has agreed to purchase the Acquired Assets (as defined therein) from Sellers; and

**WHEREAS**, Sellers have been granted and presently maintain certain federal, state and other Permits and Regulatory Approvals (each as defined in the Asset Purchase Agreement) that authorize the ownership and operation of the regulated aspects of Sellers' Business (as defined in the Asset Purchase Agreement); and

**WHEREAS**, applicable Permits, Regulatory Approvals and other federal and/or state regulatory requirements require prior governmental authorizations, notices and consents in order to effect a transfer of such Permits and Regulatory Approvals, Customers of regulated telecommunications services, and facilities and equipment utilized to provide such regulated telecommunications services, in each case included in the Acquired Assets, and all Assumed Liabilities associated with the foregoing (referred to collectively herein as "Regulated Assets") to Manager as contemplated by the Asset Purchase Agreement; and

**WHEREAS**, Manager and Sellers desire to establish terms and conditions on which the Parties shall, during the Term hereof, seek to comply with applicable federal and state regulations and enter into contractual or other legal arrangements necessary for the consummation of the transactions contemplated by, and as a condition to the Closing under, the Asset Purchase Agreement; and

**WHEREAS**, Sellers desire, in conformity with the rules and policies of state and federal regulatory, judicial (including, without limitation, the Bankruptcy Court (as defined in the Asset Purchase Agreement)) and other governmental authorities, and the terms and conditions of this Management Agreement, to enable and permit Manager to manage and operate the Acquired Assets, including the Regulated Assets and the provision of telecommunications services to customers of Sellers (the "Customers") with respect to such Regulated Assets during the Term hereof; and

**WHEREAS**, the Parties desire to enter into this Management Agreement to ensure the continued operation of Seller's Business and the Acquired Assets, and the associated billing, collection, and administrative functions, as required to provide uninterrupted telecommunications services to the Customers during the Term on and subject to the terms and conditions contained herein;

**NOW, THEREFORE,** in consideration of the above recitals and mutual promises and other good and adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. Definitions. Any capitalized term used herein and not otherwise defined herein shall have the meaning assigned to such term in the Asset Purchase Agreement.

2. Appointment; Operations Services.

(a) Appointment. Sellers hereby grant to Manager, on the terms and conditions set forth herein and during the Term (as defined herein), (i) the right to manage the Acquired Assets and the Business, including, without limitation, the right to have access to and use of the Acquired Assets, and to direct the employees of Sellers as required to provide Operations Services (as defined below) with respect to the Assets and otherwise operate the Acquired Assets and the Business as provided in this Management Agreement, and (ii) the right to perform the Operations Services and to direct Seller's personnel as required to provide such services.

(b) Operations Services. In addition to the responsibilities undertaken by Manager with respect to the payment of certain operating costs and expenses of Sellers with respect to the Assets as specifically set forth in Section 2(d) of this Management Agreement, the duties of Manager shall include, in each case in a manner and of a scope and extent consistent with the ordinary-course operations most recently engaged in by Sellers with respect to the Acquired Assets, the following operations services (the "Operations Services") with respect to the Acquired Assets subject to this Management Agreement:

- (i) Providing all operational personnel necessary to the operation of the Acquired Assets subject to this Management Agreement;
- (ii) Collecting all accounts receivable, rendering all bills, processing all credit card charges and keeping books and records substantially in accordance with Sellers' standard practices prior to the Closing;
- (iii) Providing all technical resources necessary to operate the Acquired Assets subject to this Management Agreement substantially as Sellers had operated such assets prior to the Closing;
- (iv) Monitoring all of the administrative and governmental notice, filing, tax, fee and permit requirements with respect to the Acquired Assets subject to this Management Agreement (other than any notices, filings or fees associated with the transfer of the Permits from Sellers to Manager or other disposition of the Sellers' assets, including the Permits which are addressed in the Asset Purchase Agreement) and, when such notices, reports or fees fall due, Manager shall submit to Sellers those notices, reports or invoices for Sellers to remit to the appropriate agency (together with instructions for remission and payment reimbursing Sellers for any fees or taxes Sellers must pay such agency); and

- (v) Doing all things commercially reasonable to carry out the duties of operating and managing the Acquired Assets subject to this Management Agreement in a manner substantially similar to that of Sellers prior to the Closing Date.]

(c) Notwithstanding the foregoing, without Seller's consent Manager shall not take any actions as part of the Operations Services or otherwise hereunder that would be outside of the ordinary course of Seller's Business as conducted as of the Management Effective Date. In clarification but not limitation of the preceding sentence, Manager shall not, in any manner in connection with Manager's performance of services hereunder without Sellers' consent:

- (i) enter into, modify, intentionally breach or terminate any material agreement relating to the Regulated Assets subject to this Management Agreement, other than in the ordinary course of business;
- (ii) sell, assign, lease, transfer or otherwise dispose of any material Regulated Asset subject to this Management Agreement or purchase or otherwise acquire any material assets for the Sellers;
- (iii) alter or change in any material respect the Sellers' accounting procedures or accounting practices, including their practices with respect to the maintenance of working capital balances, maintenance of inventory and write-downs and charge-offs of accounts receivable, collection of accounts receivable, payment of accounts payable and cash management practices generally;
- (iv) initiate, settle or terminate any material litigation relating to the Regulated Assets subject to this Management Agreement or waive any material rights of such Regulated Assets;
- (v) demote or terminate any employee of the Sellers;
- (vi) hire any employee for the Sellers;
- (vii) delay or hinder the deployment of network facilities in accordance with the existing network deployment plans relating to the Regulated Assets subject to this Management Agreement; or
- (viii) cause the Sellers to take any action or neglect to take any action which would constitute a default under this Agreement or the Asset Purchase Agreement.

(d) During the Term, on behalf of the Sellers, the Manager hereby agrees to pay, to the extent related to the Acquired Assets subject to this Management Agreement, all costs and expenses that are Assumed Liabilities as provided in the Asset Purchase Agreement and all newly-accruing costs and expenses of the ongoing operations of such Acquired Assets. The Manager shall apply all cash received from the operations of such Acquired Assets during the Term of this Management Agreement to the payment of such costs and expenses and the Management Fee.

3. Term. Unless the Parties agree otherwise in writing, this Management Agreement shall become effective as of the Regulatory Escrow Closing (as such term is defined in the Asset Purchase Agreement) (the "Management Effective Date"), and, shall expire on the Second Escrow Closing under the Asset Purchase Agreement (the period from the Management Effective Date through the Second Escrow Closing, the "Term"); provided, however, that upon the receipt of the approvals referred to in clause (1) of the definition of Regulatory Approvals (as such term is defined in the Asset Purchase Agreement), the Acquired Assets other than those, the transfer of which is subject to the approvals referred to in clause (2) of the definition of Regulatory Approvals (the "Intrastate Business") shall be transferred to Manager pursuant to the First Escrow Closing as contemplated by, and pursuant to the terms of, Section **12.4(a)** of the Asset Purchase Agreement, at which time such Acquired Assets shall no longer be subject to this Management Agreement.

4. Compensation. As consideration for Manager providing Sellers the management services described herein, Sellers agree to pay to Manager a monthly fee ("Management Fee") equal to the sum of (x) Manager's costs incurred in providing the management services (including, without limitation, Manager's own out-of-pocket expenses and any of Sellers' costs that are borne by Manager pursuant to Section 2(d) above) ("Manager's Aggregate Monthly Expenses") plus (y) thirty percent (30%) of Manager's Aggregate Monthly Expenses. Manager shall be paid solely out of the revenue generated by the Acquired Assets subject to this Management Agreement for such month (the "Monthly Fee Receipts"), collectible by Manager solely from cash receipts related to such Acquired Assets. In any month during the Term in which the Monthly Fee Receipts are not equal to or in excess of the Management Fee, Sellers will not have any obligation to pay Manager any additional amount or reimburse Manager for any costs or losses associated with such Acquired Assets in excess of such receipts ("Payment Shortfall"), provided that to the extent Monthly Fee Receipts in any month exceed the Management Fee otherwise due to Manager hereunder ("Excess Payments"), such Excess Payments shall, first, be applied to reduce Payment Shortfalls in prior months, if any, and second, any residual Excess Payment amounts shall be held in escrow to be applied to Payment Shortfalls in future months, if any. Upon termination of this Management Agreement any cash receipts from customers in excess of the Management Fee shall be remitted to Sellers. Sellers and Manager agree to review the Management Fee set forth above on a monthly basis and to negotiate in good faith a modification to such fee to reflect changing circumstances or operating results.

5. Management of the Assets.

(a) During the Term, and subject to Sellers' review and coordination, Manager shall have the duty to manage and operate the Business and the Acquired Assets subject to this Management Agreement including any and all facilities and operations authorized under or subject to the Regulatory Approvals, as may be reasonably necessary or appropriate in the ongoing operations of the Acquired Assets consistent with this Management Agreement, and may rely upon the Seller Employees as well as any of Manager's employees that Manager deems necessary or desirable to rely upon for performance of its obligations pursuant to this Management Agreement. Manager shall report to designated senior officers of the Sellers regarding the status or the operations of the Acquired Assets as contemplated hereby. Notwithstanding Manager's operation of the Acquired Assets as contemplated by the foregoing or any other provisions hereof, Sellers shall retain all ownership rights and interests in and to the Acquired Assets and the Business unless and until the same are transferred to Manager in accordance with the terms of the Asset Purchase Agreement and the terms hereof.

(b) During the Term, Manager shall be responsible for providing a reasonable level of care with respect to the Customers and the Acquired Assets (which shall be generally comparable to the level of care provided by Sellers to the Customers in the past), and shall provide its Business-related services hereunder in compliance with all applicable laws. Manager shall be responsible for providing the management services in compliance with the Seller's existing tariffs and service contracts. Manager shall operate and manage the Acquired Assets subject to this Management Agreement in a professional manner and in accordance with applicable professional or industry standards.

(c) In compliance with all applicable federal and state laws regarding the necessary form, content, and applicable notice periods for regulatory approval of the transfer of regulated Assets from Sellers to Manager, Manager and Sellers shall reasonably and in good faith agree when notices, if any, to Customers advising them of the transfer shall be delivered and when applications or other filings with governmental authorities in connection with the transfer shall be filed; provided, however, Sellers shall determine, in their sole discretion, when and if any discontinuance notices shall be delivered to any Customers as to whom Manager has agreed are not to be transferred to Manager upon the Closing and when and if any discontinuance filings relating to any such excluded Customers shall be filed.

(d) Sellers and Manager intend and agree that this Management Agreement and the obligations to be performed hereunder shall be in full compliance with (i) the terms and conditions of all Permits and Regulatory Approvals; (ii) all applicable rules, regulations and policies of the Federal Communications Commission (the "FCC"); (iii) the Communications Act of 1934, as amended, 47 U.S.C. § 151, et seq. (the "Communications Act"); and (iv) any other applicable federal, state and local law or regulation. If the FCC or any state body of competent jurisdiction determines that any provision of this Management Agreement violates any applicable rules, regulations, policies, Permits or Regulatory Approvals, the Parties shall use all commercially reasonable efforts immediately to bring this Management Agreement into compliance, consistent with the remaining terms and provisions of this Management Agreement and consistent in all respects with the terms of the Asset Purchase Agreement. It is expressly understood by Sellers and Manager that nothing in this Management Agreement is intended to give Manager any right which would be deemed to constitute a transfer by Sellers of "control" (as defined in the Communications Act and/or any applicable FCC or state regulations, rules or case law) of or over its operations or Acquired Assets or a transfer of one or more of the Permits or Regulatory Approvals from Sellers to Manager. Manager shall not represent itself as the holder of any of the Permits or as the representative of Sellers before the FCC or the state regulatory commissions.

(e) Manager acknowledges and agrees that Sellers are subject to certain specific obligations and conditions with respect to the ownership, use and operation of the Business and the Acquired Assets as are reflected in the terms of their Permits and Regulatory Approvals relating thereto, in addition to their general obligations of compliance with the Communications Act and the rules and regulations of the FCC and state regulatory commissions. As such, Manager's management and operation of the Assets hereunder is not intended to diminish or restrict Sellers' compliance with their obligations before the FCC, applicable state regulatory commissions and other applicable governmental authorities, and this Management Agreement shall not be construed to diminish or interfere with Sellers' obligation or ability to comply with the rules, regulations or directives of any governmental or jurisdictional authority with respect to Sellers' Permits or Regulatory Approvals or the Acquired Assets generally.

(f) In their discretion and at their expense, Sellers may conduct periodic audits during normal business hours, upon reasonable notice, and in a manner so as not to unreasonably interfere with the management and operation by Manager of the Assets, in order to ensure compliance with this Management Agreement and all applicable government rules and regulations. In addition, Sellers shall have reasonable access to and authority to inspect equipment and related hardware used or required in the Business for transmission and/or receipt of telecommunications, including, but not limited to, network facilities, switching equipment, customer premises equipment, and testing equipment, in all cases included in the Regulated Assets subject to this Management Agreement. Such audits and access shall be for the purpose of ensuring that the Acquired Assets subject to this Management Agreement are being operated in a manner that does not violate the terms of this Management Agreement or of the Asset Purchase Agreement or any applicable law or regulation, or otherwise in a materially harmful or unlawful manner.

(g) Manager and Sellers shall use Sellers' Permits and Regulatory Approvals in the operation of the Assets during the Term in compliance with all applicable laws, ordinances, rules, regulations, and restrictions, including, but not limited to, the Communications Act, the FCC's rules, regulations, and policies, local ordinances, and state regulations. Manager and Sellers recognize that Sellers remain ultimately responsible for ensuring that the use of such Permits and Regulatory Approvals and the operations authorized thereunder are in compliance with the applicable rules, regulations, and policies of applicable federal and local, state or other government authorities, and Manager shall cooperate fully with Sellers to provide any lawfully-required or reasonably-requested information regarding the Regulated Assets subject to this Management Agreement and shall pay Sellers' reasonable administrative costs incurred in complying with such obligations.

(h) During the Term, at Manager's sole expense, Manager shall be responsible for the preparation on Sellers' behalf of all reports, correspondence and other documentation with all federal and state regulatory commissions relating to the use, maintenance, or renewal of Permits relating to the Acquired Assets subject to this Management Agreement; provided that Sellers shall be responsible for review, approval and filing of all such reports, correspondence and other documentation with the FCC or the state regulatory commissions relating to the Regulated Assets. Manager shall provide upon Sellers' reasonable request any information which will enable Sellers to verify the accuracy and completeness of such reports, correspondence and other documentation prior to filing.

(i) The parties shall both have the right to use the Sellers Trademarks during the Term. The Manager shall take reasonable steps to maintain the distinct identities of the Sellers using each such entity's name and logo in all billing and other correspondence on behalf of the Sellers, maintaining accurate accounting books and records of operations for the Acquired Assets separate from the Manager's accounting books and records of operations for other assets and following such other procedures as the parties may mutually agree upon from time to time.

## 6. Employees.

Consistent in all respects with the terms of Section 9.1 of the Asset Purchase Agreement, Manager may designate certain Business Employees whom Manager deems necessary or helpful (the "Seller Employees", who shall also be the Transferred Employees, as that term is used in Article 9 of the Asset Purchase Agreement) for Manager's provision of services hereunder, and Sellers shall use all commercially reasonable efforts to continue the employment of such Seller

Employees throughout the Term; provided, however, Manager and Sellers acknowledge that any and all employees of Sellers shall be under the ultimate supervision and control of Sellers and (z) this provision shall not prohibit Sellers from terminating any employee “for cause”.

7. Obligation to Renegotiate. In the event of any order or decree of an administrative agency or court of competent jurisdiction or any other action or determination by any governmental authority, including, without limitation, any material change or clarification in FCC or state regulatory commission rules, policies, or precedent, that would cause this Management Agreement to be invalid or violate any applicable law, the Parties shall use their respective best efforts and negotiate in good faith to modify this Management Agreement to the minimum extent necessary so as to comply with such order or decree without material economic detriment to either Party (and without deviation from the terms of the Asset Purchase Agreement), and this Management Agreement, as so modified, shall then continue in full force and effect.

8. Chapter 11 Debtor. Manager recognizes that Sellers are debtors and debtors-in-possession under Chapter 11 of the Bankruptcy Code. As such, Manager acknowledges and agrees that Manager shall have no authority nor any obligation to perform any of the fiduciary duties of Sellers, and shall not do anything outside of the ordinary course of business of Sellers without their prior written consent as provided in Section 2(b) or elsewhere in this Management Agreement. Consistent with the foregoing, and without limitation, Manager may not sell Assets, revise Assumed Contracts or Leases, or do any other things outside of the ordinary course of the Business without the consent of Seller. In addition, Manager acknowledges that Sellers, as debtors and debtors-in-possession, are bound by orders of the Bankruptcy Court applicable to them. Notwithstanding the acknowledgement made in the preceding sentence, Manager does not waive or otherwise limit or affect its rights and remedies under this Management Agreement, the Asset Purchase Agreement, the Sale Order, any other order that has been or may be entered in the Bankruptcy Case that relates, concerns or pertains to this Management Agreement, the Asset Purchase Agreement, or at law or equity; and Manager expressly reserves all such rights and remedies in their entirety.

9. Amendment and Modification; Waiver of Compliance; Consents. This Management Agreement may be amended, modified or supplemented only by written agreement of Sellers and Manager. Except as otherwise provided in this Management Agreement, any failure of any Party to comply with any obligation, covenant or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of or estoppel with respect to any subsequent or other failure. Any consent by Sellers provided for in this Management Agreement shall not be unreasonably withheld or delayed.

10. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (i) when personally sent/delivered, by facsimile transmission (with hard copy to follow) or sent by reputable express courier (charges prepaid) or (ii) five (5) days following mailing by registered or certified mail postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Sellers and Manager shall be sent to the addresses provided for Sellers and Manager (in its capacity as the "Buyer" thereunder) in the Asset Purchase Agreement and copies of such notices shall be sent to the persons identified in the Asset Purchase Agreement as being entitled to receive copies of notices thereunder.

11. Assignment. This Management Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Management Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party, including by operation of law, without the prior written consent of the other Party; provided however that Manager may assign this Agreement and any rights, interests, and obligations hereunder in accordance with Section 14.1 of the Asset Purchase Agreement. Subject to the foregoing, this Management Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and except as otherwise expressly provided herein, no other person shall have any right, benefit or obligation hereunder. Any other assignment of this Management Agreement or any of the rights, interests or obligations hereunder in contravention of this Section 11 shall be null and void and shall not bind or be recognized by any of Sellers or Manager.

12. Third Party Beneficiaries; Limitation of Liability. Nothing in this Management Agreement shall be construed as giving any person other than the Parties hereto any legal or equitable right, remedy or claim under or with respect to this Management Agreement. Manager shall have no liability to Sellers or any other person or entity under this Management Agreement for any actual or alleged damage to the Acquired Assets during the Term.

13. Severability. If any provision of this Management Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Management Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith and in a manner consistent with Section 5(d) above to modify this Management Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

14. Governing Law. This Management Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to the principles of conflicts of law thereof), as to all matters, including, but not limited to, matters of validity, construction, effect, performance and remedies.

15. Submission to Jurisdiction. The Parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Management Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each Party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such courts. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum in connection therewith.

16. Counterparts. This Management Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different Parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

17. Entire Agreement. This Management Agreement, together with the Asset Purchase Agreement (including the Exhibits and the Schedules thereto), constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, among the Parties with respect thereto. Nothing in this Management Agreement shall be deemed to amend or modify the Asset Purchase Agreement.

18. Headings. The descriptive headings contained in this Management Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Management Agreement.

19. Remedies. Sellers and Manager hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Management Agreement and that, in such event, Seller or its successors or assigns, or Manager or its successors or assigns, as the case may be, may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Management Agreement.

20. No Partnership or Joint Venture Created. Nothing in this Management Agreement shall be construed or interpreted to make Manager and Sellers partners or joint venturers, or to make one an agent or representative of the other, or to afford any rights to any third party other than as expressly provided herein. Neither Manager nor Sellers are authorized to bind the other to any contract, agreement or understanding.

21. Confidentiality. Any and all materials and information that a Party may from time to time receive from or on behalf of another Party in the course of performance of or otherwise in connection with this Management Agreement shall, to the extent constituting confidential or proprietary information as contemplated thereby, be in all respects subject to the provisions and protections of the Confidentiality Agreement heretofore entered into among Manager and the Sellers with respect to the transactions contemplated by the Asset Purchase Agreement, and each Party to this Management Agreement agrees to be bound by such Confidentiality Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Management Agreement on the day and year first written above.

**CABLE & WIRELESS USA, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**CABLE & WIRELESS INTERNET SERVICES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**GORES ASSET HOLDINGS, INC.**

By: \_\_\_\_\_  
Name:  
Title: