

**REFERENCE INTERCONNECTION OFFER**  
**WHOLESALE SUBMARINE CAPACITY SERVICES**  
**2016**

**THIS REFERENCE INTERCONNECTION OFFER IS**

**MADE BY:** **AMERICAN SAMOA HAWAII CABLE LLC**, a company duly incorporated in Delaware Samoa and having its principal place of business at Laufou Center, Nuuuli, American Samoa ("**ASH**")

**BACKGROUND:**

1. ASH holds a submarine cable landing licence granted by the Office of the Regulator under the Telecommunications Act 2005 on 28 May 2009 for the establishment and operation of a submarine cable system in Samoa known as Samoa-American Samoa Cable System ("**SAS Cable**").
  
2. The Regulator has issued Determination of the Regulator No. 2015/T02 ("**Determination**") which finds that at the wholesale level of the submarine cable industry, ASH is dominant as only ASH has submarine cable capacity for sale in Samoa via the SAS Cable. This capacity is delivered locally by Bluesky Samoa Ltd ("**Bluesky**") as local delivery agent. Bluesky has provided a Reference Access Offer for a range of wholesale access services involving access to international bandwidth for Internet Services on the SAS Cable.
  
3. Under section 37(1)(a) of the Act, every dominant service provider shall prepare a reference interconnection offer ("**Offer**"). ASH therefore provides this Offer for submarine cable capacity, as specified in Schedule 1. This Offer is made to operators licensed to operate as services providers under the Telecommunications Act 2005 in the Samoan market.

**1. Effective Date of Offer**

- 1.1 This Offer is for new or additional Services within the scope of the Offer and has no effect on existing contractual obligations for the supply of the Services within the scope of the Offer by ASH to a Licensed Operator prior to the Commencement Date.

**2. Service Description and Pricing**

- 2.1 The service description and Charges for the Services are set out in Schedule 1.

**3. Application for Interconnection**

- 3.1 Where a Licensed Operator makes a request to ASH for new or additional capacity for the Services, the Licensed Operator shall serve an Interconnection Request on Bluesky.

- 3.2 The Interconnection Request must:

- (a) contain the name and contact details of the Licensed Operator;
- (b) specify the Services in respect of which access is sought;
- (c) indicate that the Licensed Operator wishes to accept this Offer;
- (d) specify forecasts of the capacity which the Licensed Operator reasonably requires;
- (e) provide the relevant information relating to the Licensed Operator's Network and the functionality of its Services, to the extent that the Licensed Operator is aware that such information may affect ASH's Network;
- (f) contain confirmation that the Licensed Operator is not currently being supplied with the requested Services, or alternatively, that the Licensed Operator wishes to obtain additional Services under this Offer to those that it receives under a prior contract for international bandwidth on the SAS Cable.
- (g) specify the type of telecommunications licences held by the Licensed Operator and a copy of the licence where a copy had not been previously provided;
- (h) contain a letter, signed by the chief executive officer or a director of the Licensed Operator, stating that the Licensed Operator is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction;

(i) contain relevant technical information relating to the interface standards of the Licensed Operator; and

(j) contain such other information that ASH may reasonably request.

#### **4. Processing of Interconnection Request**

4.1 ASH shall within twenty (20) Business Days of receipt of the Interconnection Request inform the Licensed Operator in writing in accordance with clauses 5 to 7.

#### **5. Assessment of Interconnection Request**

5.1 ASH may refuse to accept an Interconnection Request for the supply of a Service and may refuse to supply that Service to the Licensed Operator for any of the following reasons:

- (a) the Licensed Operator's Interconnection Request was not made in good faith;
- (b) in ASH's opinion, the Interconnection Request does not contain any information reasonably required by ASH where ASH has sought the information from the Licensed Operator and ASH has not received that information within twenty (20) Business Days of making such a request;
- (c) it is not technically feasible to provide access to the requested Services to the Licensed Operator;
- (d) ASH has insufficient capacity or space to provide the requested Services and is unable to obtain additional capacity or space to meet the request;
- (e) there are reasonable grounds to believe that the Licensed Operator would fail to make timely payment for the supply of the relevant Service;
- (f) there are reasonable grounds to believe that the Licensed Operator would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Services;
- (g) there are reasonable grounds for ASH to refuse access in the national interest, after consultation with the Regulator; or
- (h) the access is being sought to services which are not within the scope of the Services in this Offer.

## **6. Notification of Rejection to the Licensed Operator**

6.1 Where ASH rejects the Interconnection Request, Bluesky shall:

- (a) notify the Licensed Operator in writing within twenty (20) Business Days from receipt of the Interconnection Request or additional information requested pursuant to clause 5.1(a), as the case may be;
- (b) provide the basis for ASH's rejection of the Interconnection Request; and
- (c) indicate a date and time, not later than fifteen (15) Business Days from the date of the notice of rejection, at which representatives of ASH will be available to meet with representatives of the Licensed Operator to discuss the rejection of the Interconnection Request.

6.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to clause 6.1(c), either Operator may request resolution of the dispute in accordance with the dispute resolution provisions of the Telecommunications Act.

## **7. Acceptance of Interconnection Request**

7.1 If, in accordance with clause 4, a Licensed Operator submits an Interconnection Request to ASH, and ASH has accepted such Interconnection Request, within twenty (20) Business Days of accepting such request ASH must enter into a Supply Agreement with the Licensed Operator for the supply of the Services on the terms of this Offer.

7.2 Upon execution by the Licensed Operator of the Supply Terms, the parties must use their reasonable endeavours to implement the accepted prices, terms and conditions of the Supply Terms.

7.3 For the avoidance of doubt, if the Licensed Operator requests ASH to provide services outside the scope of the Services and the service description in Schedule 1, ASH has no obligation to enter into Supply Terms with the Licensed Operator for the supply of those services.

7.4 ASH will not be taken to have agreed to provide, and the Licensed Operator will not be taken to have agreed to acquire, the requested Service until a Supply Agreement has been executed between the Operators.

## 8. Interpretation

**Business Day** means a day on which banks are open for general banking business in Samoa, other than a Saturday and Sunday or a public holiday.

**Charges** means the sums payable by the Licensed Operator to ASH for accessing and/or being provided the Services as described in Table 1 of Schedule 1.

**Equipment** means any equipment (including software) provided by ASH to the Licensed Operator to enable the Licensed Operator to use the Service.

**Interconnection Request** means a request made by the Licensed Operator to ASH for interconnection to the Services, and containing the information in clause 3.

**Licensed Operator** means an Operator who:

- (a) is a service provider who holds a valid licence issued under the Telecommunications Act; and
- (b) makes a written request for interconnection to the Services;

**Network** means network facilities and/or network services comprising a system, or a series of systems within Samoa, that carries or is capable of carrying communications by means of guided or unguided electromagnetic energy or both.

**Operator** means ASH or the Licensed Operator and “**Operators**” means ASH and the Licensed Operator collectively.

**Samoa** means the Independent State of Samoa.

**Services** means wholesale submarine capacity services on or for use of the SAS Cable, as specified in Schedule 1.

**Supply Agreement** means an agreement between ASH and a Licensed Operator for the supply of the Services on the terms of this Offer, and any additional technical or other terms or agreements to give effect to this Offer, as referred to in Schedule 1.

**Supply Terms** means the terms of this Offer.

**Telecommunications Act** means the Telecommunications Act 2005, as amended from time to time.

In this Offer, unless the context otherwise requires:

- i. words denoting the singular shall include the plural and vice versa;

- ii. one gender shall include the other genders;
- iii. words denoting persons shall include any individual, principal, corporation, partnership, joint venture, association, organisation, trust, state, agency of a state, municipal authority, government or any statutory body in each case whether or not having separate legal identity;
- iv. any covenant or agreement on the part of two or more persons shall bind those persons jointly and severally;
- v. reference to anything of a particular nature following upon a general statement shall not in any way derogate from or limit the application of the general statement unless the particular context requires such derogation or limitation;
- vi. references to sections, clauses and schedules are references to sections, clauses and schedules in this Offer;
- vii. the section headings and clause headings have been inserted for convenience and a guide to the provisions of this Offer and shall not form part of this Offer or affect its interpretation in any way;
- viii. references to this Offer or any document or statement (however described) shall include references to that document as modified, novated, supplemented, varied or replaced from time to time;
- ix. reference to **dollars** or **\$** is to the lawful currency of the United States of America;
- x. reference to any statute, regulation, ordinance or bylaw shall be deemed to extend to all statutes, regulations, ordinances or bylaws amending, consolidating or replacing the same;
- xi. where any consent or approval is required pursuant to any provision of this Offer such consent or approval shall be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on any prior occasion; and
- xii. this Offer shall not be construed adversely to a party just because that party prepared, or procured the preparation of, this Offer.

## SCHEDULE 1

### SERVICE DESCRIPTION & CHARGES

#### A. Service Description

1. The Services are wholesale submarine capacity services provided to licensed operators in Samoa being international bandwidth capacity delivered over the SAS Cable terminating in American Samoa. For the avoidance of doubt, the Services do not include the purchase of IP transit at the termination point or purchase of onward international bandwidth capacity on the ASH Cable from American Samoa to Hawaii.
2. The Services shall be delivered to the Licensed Operator via Bluesky Samoa Ltd (“**Bluesky**”) as ASH’s local delivery agent in Samoa. The terms of Bluesky’s transport capacity services for delivery of the Services are itemised in Bluesky’s Reference Access Offer for Wholesale Submarine Capacity Services dated 16 December 2015. Licensed Operators will contract directly with Bluesky for transport capacity services in order to be delivered the International Bandwidth Capacity on the SAS Cable.
3. All commercial terms and conditions applicable to the provision by ASH of the Services and the operational and technical requirements shall be specified in the Supply Agreement.

#### B. Pricing For International Bandwidth Capacity on the SAS Cable

1. Pricing For International Bandwidth Capacity on the SAS Cable is itemized below.

Item	Monthly Recurring Charge	Installation Fee
DS3 (extension of ASH)	USD\$3650	Included in ASH setup
DS3 (local) (Half Circuit)	USD\$3650	USD\$1500
E1 (Half Circuit)	USD\$250	USD\$1000
T1 (Half Circuit)	USD\$200	USD\$1000
STM-1/OC3 Activation		USD\$5000 (Half Circuit)

## SCHEDULE 2

### SUPPLY TERMS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless otherwise specified capitalised words used in these Supply Terms have the meaning given to them and the rules of construction and interpretation in clause 9 of the Reference Interconnection Offer.
- 1.2 If there is any inconsistency between this document and the Reference Interconnection Offer, then the inconsistency must be resolved in accordance with the following descending order of precedence:
- (a) main body of the Reference Interconnection Offer;
  - (b) Schedule 1 (Service Description & Charges) of the Reference Interconnection Offer; and
  - (c) the main body of these Supply Terms.

#### 2. TERM

- 2.1 These Supply Terms become effective on the date of execution of these Supply Terms (**Effective Date**).
- 2.2 These Supply Terms continue in full force and effect, as varied from time to time, for an initial period of 10 years or until the SAS Cable is retired without replacement, whichever is the earliest (**Minimum Term**). Unless a party notifies the other party at least 30 days prior to the end of the Minimum Term that it wishes to terminate these Supply Terms, the operation of these Supply Terms will be extended beyond the Minimum Term until such time as either party gives the other party 30 days written notice of termination these Supply Terms are otherwise terminated.
- 2.3 If the Regulator approves or mandates any change to the Reference Interconnection Offer, then these Supply Terms are automatically amended to incorporate the same change in respect of the Services only, unless or until such order of the Regulator is revised or withdrawn by the Regulator, or stayed or invalidated by a competent Tribunal or Court.
- 2.4 If the rights and obligations of either of the parties under these Supply Terms are or may be likely to be affected by:
- a) amendments to or repeals of the Telecommunications Act or of a condition of a party's licence issued duly under the Telecommunications Act; or
  - b) a ruling, determination, approval, order or directive of the Regulator (other than one within Paragraph 2.3 above); or
  - c) ASH reasonably believing, based on some action of the Regulator, that a part of the Supply Terms contravenes or may contravene any provision of

the Telecommunications Act, ASH's licence or other statutory requirements,

the parties must meet as soon as practicable and negotiate in good faith any amendment to these Supply Terms necessary or appropriate to ensure that they remain consistent with the Telecommunications Act, ruling, determination, approval, order or directive of the Regulator or such other regulatory requirement. If the parties cannot agree any amendment, clause 16 applies.

- 2.5 Before the end of the Minimum Term, the parties may agree to extend the duration of these Supply Terms for an agreed period.

### **3. ASH'S OBLIGATIONS**

- 3.1 ASH will provide the Services requested by the other party ("**Licensed Operator**") in accordance with the terms set out in these Supply Terms.
- 3.2 ASH will provide the Services with reasonable care and skill. It will use all reasonable efforts to ensure that the Services are reliable at all times but it does not guarantee that the Services will be continuous or fault free.
- 3.3 Where ASH performs work for the Licensed Operator in connection with the provision of the Services, it will ensure that all work is carried out by competent and suitably qualified personnel, in a professional manner and in accordance with applicable standards and regulations.

### **4. LICENSED OPERATOR'S OBLIGATIONS**

- 4.1 The Licensed Operator agrees that it will not use the Services or permit the Services to be used in any way which:
- d) is illegal; or
  - e) in breach of ASH's Acceptable Use Policy described in the Agreement, or
  - f) could damage ASH's network or other property or the property of any other operator.
- 4.2 The Licensed Operator will ensure that all information it gives to ASH is accurate.
- 4.3 The Licensed Operator will use the Services for the purposes for which they are provided and in accordance with any reasonable directions given by ASH.

### **5. CHARGES**

- 5.1 The Licensed Operator will pay to ASH the Charges for the International Bandwidth Capacity on the SAS Cable. The Licensed Operator must pay any and all applicable taxes associated with its purchase, access to and use of the Services.

- 5.2 ASH will send the Licensed Operator a quarterly invoice for all Services on the SAS Cable provided to the Licensed Operator which its records show are chargeable to the Licensed Operator's account.
- 5.3 Fixed charges will be invoiced in advance.
- 5.4 The Licensed Operator must pay all Charges by the Payment Date.
- 5.5 The Licensed Operator is solely responsible for billing and collecting its charges for services supplied to the Licensed Operator's customers using the Services.

## **6. LATE PAYMENT AND SUSPENSION OF SERVICES**

- 6.1 ASH may charge the Licensed Operator interest at a rate of 1% per month on accounts which remain unpaid after the Payment Date. Interest will not be payable on amounts in dispute under clause 7.1, provided the dispute is resolved in favour of the Licensed Operator. Interest will accrue from the Payment Date until the date of actual payment.
- 6.2 If the Licensed Operator fails to make payment to ASH for any Service by the Payment Date, ASH may suspend the provision of that Service without notice.
- 6.3 ASH may require the Licensed Operator to pay a deposit as a condition of lifting any suspension imposed under clause 6.2.

## **7. DISPUTED ACCOUNTS**

- 7.1 If the Licensed Operator wishes to dispute any item appearing on an invoice, the Licensed Operator must write to ASH and seek resolution of the disputed amount. The Licensed Operator must pay any undisputed amount by the Payment Date. If ASH agrees there is a mistake it will correct the bill. If ASH finds there is no mistake, the Licensed Operator will pay the outstanding amount immediately on being notified of ASH's finding, or by the Payment Date, whichever is the later.

## **8. REBATE FOR DISRUPTED SERVICE**

- 8.1 If any Service for which a fixed charge is payable to ASH is unavailable for more than 24 continuous hours (other than due to any act or omission of the Licensed Operator or any circumstance covered by clause 10 of this Schedule) then ASH will give the Licensed Operator upon request a proportionate rebate of the applicable fixed charge for the period of unavailability.

## **9. EQUIPMENT**

- 9.1 For the avoidance of doubt, ASH will not install and maintain Equipment on the Licensed Operator's Premises in order to provide the Services. Should any Equipment need to be installed on the Licensed Operator's Premises, the terms and conditions of such installation will be governed by the agreement between the Licensed Operator and Bluesky Samoa Ltd as ASH's local delivery agent.

## **10. FAULTS, OUTAGES AND MAINTENANCE**

- 10.1 Where any Service has a fault or unscheduled outage ASH will use reasonable endeavours to remedy that fault or outage.
- 10.2 Where remedial action is required as a result of any act or omission of the Licensed Operator, ASH may charge the Licensed Operator at its standard rates for the cost of remedying the fault or outage.
- 10.3 ASH shall give the Licensed Operator three (3) Business Days' notice of any scheduled maintenance operations affecting the Services and shall provide the Licensed Operator with information about ASH's method of operations for such scheduled maintenance. ASH shall, where practicable, coordinate scheduled maintenance at times that minimize interference with the business of the Licensed Operator.

## **11. FORCE MAJEURE**

- 11.1 Neither party is liable to the other for a breach of contract for failing to meet its obligations under these Terms of Service the extent that the failure was caused by an act of God or other circumstance beyond its reasonable control ("**force majeure**").
- 11.2 Where a party is unable to perform its obligations under these Terms of Service as a result of a force majeure, that party must immediately upon becoming aware of the force majeure inform the other party.
- 11.3 Where a party has been unable to perform its obligations for a period of at least 30 days as a result of a force majeure the other party may immediately terminate these Terms of Service by giving notice in writing to the first party.
- 11.4 Nothing in this Clause shall excuse the Licensed Operator from any obligation to pay the Charges for the Services provided to the Licensed Operator under these Terms of Service.

## **12. SUSPENSION OR RESTRICTION OF SERVICES**

- 12.1 ASH may from time to time be required for operational or other reasons to suspend or restrict the Service. In those circumstances ASH will give the Licensed Operator as much advance notice as is reasonably possible prior to the suspension or restriction. ASH will use reasonable endeavours to ensure that any suspensions or restrictions take place outside normal business hours.

## **13. TERMINATION**

- 13.1 Either party may terminate these Supply Terms after the expiry of the Minimum Term by giving 30 days' notice in writing to the other party.

13.2 These Supply Terms may be terminated immediately by either party ("**First Party**") giving notice in writing to the other party ("**Other Party**") at any time without any further financial obligation, under the following circumstances.

- a) upon the Other Party committing any material breach of these Supply Terms which is incapable of being rectified;
- b) upon the Other Party committing any material breach of these Supply Terms which is not rectified within 30 days of written notice of the breach having been given to the Other Party by the First Party;
- c) upon the Other Party committing three or more material breaches of these Supply Terms in respect of which the First Party has given notice under clause 15.2(b) in any 12 month period;
- d) upon termination or suspension of the Other Party's business as a result of bankruptcy, insolvency or similar event.
- e) upon the appointment of a receiver or manager of any asset of the Other Party, or an order made or resolution passed for the liquidation of the Other Party.

13.3 Termination of these Supply Terms for any reason shall not affect the rights or obligations of the parties in relation to any Services provided up to the date of termination.

13.4 The Licensed Operator may choose to terminate these Supply Terms for convenience before the expiry of the Minimum Term. In this case, Licensed Operator is liable to pay all remaining payments due under these Supply Terms from the date of termination to the end of the Minimum Term.

#### **14. CONFIDENTIALITY AND PUBLICITY**

14.1 Subject to clauses 14.3 and 14.4, neither party may reveal any information concerning these Supply Terms or its subject matter or the business of the other party to any third party other than:

- a) As required by law;
- b) To its professional advisers; or
- c) Information already in the public domain.

14.2 The Licensed Operator may not issue any press release or announcement concerning these Supply Terms or its subject matter or the business of ASH to the news media without the prior approval of ASH.

14.3 ASH may collect and disclose information or opinions about the Licensed Operator from or to any credit agency, bank, financial institution or business for the purpose of giving or obtaining advice about the Licensed Operator's creditworthiness.

- 14.4 ASH may use or disclose information in its possession about the Licensed Operator for the purposes of marketing its products and services, or the products and services of third parties.

## **15. LIABILITY AND INDEMNITY**

- 15.1 ASH will compensate the Licensed Operator for any physical damage which it causes to the Licensed Operator's property through not taking reasonable care, up to the maximum value of one month's Charges.
- 15.2 The Licensed Operator will compensate ASH for any physical damage which it causes to ASH's property through not taking reasonable care of such property, up to the maximum value of one month's Charges.
- 15.3 Subject to clause 15.1, ASH's liability arising from any cause (including the negligence of ASH or any of its employees, contractors or authorized representatives) in the provision of the Services or any failure to provide any Service shall be limited:
- a) where a fixed charge is payable for that Service, to ASH's monthly Charge for providing the Service giving rise to the claim against ASH; and
  - b) in all other cases, to ASH's actual Charge for providing the Service giving rise to the claim against ASH.

All other liability is excluded to the fullest extent permitted by law.

- 15.4 All liability of any kind (including but not limited to negligence) on the part of any third party network operator, its officers, employees, contractors and agents, however arising in the provision of services by such network operator to ASH is expressly excluded. This exclusion is included by ASH as the agent of such persons for their benefit and may be enforced by them as a complete defence to any claim.
- 15.5 ASH will not be liable to the Licensed Operator for indirect or consequential losses or damages of any kind (including but not limited to loss of profit, loss of business opportunity or loss of income) caused by third parties contracted by the Licensed Operator.
- 15.6 The Licensed Operator indemnifies ASH in respect of any claim or demand made or action commenced by any person against ASH or for which ASH is liable in connection with any loss or damage suffered in connection with these Supply Terms or the subject matter of these Supply Terms, including but not limited to any legal costs as between solicitor and client on a full indemnity basis incurred by ASH or for which ASH is liable, with the exception of any claims arising out of any wilful or reckless conduct of ASH, its employees, agents or contractors.

## **16. DISPUTE RESOLUTION**

- 16.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless it has complied with the procedure set out in this clause 16. The parties must continue to comply with their respective obligations under the Supply Agreement during any dispute between them about the Supply Agreement.
- 16.2 A party claiming that a dispute has arisen must notify the other party in writing and shall promptly pay any undisputed amounts due to the other party.
- 16.3 Within 7 days after a notice is given under clause 16.2, the parties must nominate in writing to each other a representative authorised to settle the dispute on their behalf.
- 16.4 Each party must ensure that during the 20 day period after a notice is given under clause 16.2 its representatives use their best endeavours, with the other representative:
- a) to resolve the dispute; or
  - b) to agree on:
    - (i) a process to resolve all or at least part of the dispute without arbitration or court proceedings (e.g. by mediation, conciliation, executive appraisal or independent expert determination);
    - (ii) the selection and payment of any person to be appointed by the parties for, and the involvement of any dispute resolution organisation in the process;
    - (iii) any procedural rules;
    - (iv) the timetable, including any exchange of relevant information and documents; and
    - (v) the place where any meetings will be held.
- 16.5 The role of any person appointed as a mediator will be to facilitate a resolution of the dispute. A decision of any mediator is not binding on a party unless that party's representative has so agreed in writing.
- 16.6 Any information or documents disclosed by a representative under this clause:
- a) must be kept confidential in accordance with clause 14; and
  - b) may not be used except to attempt to settle the dispute.
- 16.7 After the 20 days referred to in clause 16.4 above, a party that has complied with clauses 16.1 to 16.4 (inclusive) may terminate the dispute resolution process by giving written notice to the other parties to the dispute. If a party to a dispute does not comply with any provision of clauses 16.1 to 16.4 (inclusive), the other parties to the dispute will not be bound by clauses 16.1 to 16.4 (inclusive).
- 16.8 Disputes can be lodged by either party on any transaction provided that the transaction occurred less than 180 days prior to the date the dispute was raised. Neither party shall dispute any Charges that are in excess of 180 days of the date of the relevant invoice.
- 16.9 This clause does not prevent a party from applying for an interim injunction to restrain breach of confidentiality or any claim for urgent interlocutory relief.

## **17. NOTICES**

- 17.1 Any notice given pursuant to these Supply Terms will be deemed to be validly given if personally delivered, posted, or forwarded by facsimile transmission to the usual business address of the party (attention to its CEO) to be notified or to such other address as the party to be notified may designate by written notice given to the other party.
- 17.2 Any notice given pursuant to these Supply Terms will be deemed to be validly given:
- a) in the case of delivery, when received;
  - b) in the case of facsimile transmission, when sent provided the sender has a facsimile confirmation receipt recording successful transmission; and
  - c) in the case of posting, on the third Working Day following the date of posting, provided that any notice personally delivered or sent by facsimile either after 4.30pm on a Working Day or on any day that is not a Working Day will be deemed to have been received on the next Working Day.

## **18. ENTIRE AGREEMENT AND VARIATION**

- 18.1 These Supply Terms contains all of the terms, representations and warranties made between the parties and supersedes all prior discussions and agreements covering the subject matter of these Supply Terms.
- 18.2 No variation or waiver of any provision of these Supply Terms shall be recognized or binding on the Parties unless reduced into writing and signed by both parties.

## **19. ASSIGNMENT**

- 19.1 The Licensed Operator must not assign these Supply Terms or any right or obligation under these Supply Terms without the prior written consent of ASH. A change in control of the Licensed Operator will be deemed to be an assignment for the purposes of this clause. For the purposes of this clause "change in control" means:
- a) a change of shareholding which results in a new majority shareholder; or
  - b) a change in the right to appoint a majority of the directors.
- 19.2 ASH may assign these Supply Terms or any right or obligation under these Supply Terms without the consent of the Licensed Operator.

## **20. NO WAIVER**

- 20.1 No failure to exercise or delay in exercising any right or remedy by either party will constitute a waiver by that party of that or any other right or remedy available to it.

## **21. COUNTERPART EXECUTION**

21.1 These Supply Terms may be executed in any number of counterparts (including copies) and provided that every party has executed a counterpart, the counterparts together shall constitute a binding and enforceable agreement between the parties.

**SIGNED** as an agreement on [insert date].

**SIGNED by AMERICAN SAMOA HAWAII)  
CABLE, LLC.** by its duly authorized officer ) \_\_\_\_\_  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

Signature by **#INSERT NAME OF COMPANY#)**  
by its duly authorized officer ) \_\_\_\_\_  
in the presence of: )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name of witness (print)

