

Reference Interconnection Offer

Samoa Submarine Cable Company Limited

REFERENCE INTERCONNECT OFFER

This Reference Interconnect Offer (**RIO**) is offered by Samoa Submarine Cable Company Limited (**SSCC**) under section 37 of the *Telecommunications Act 2005* (Samoa) (**Act**).

Capacity and services are offered on the basis of this RIO to service providers licensed by the Office Of The Regulator to operate in Samoa. Section 37 of the Act requires SSCC to include in its RIO the services to be supplied to service providers, the terms and conditions of such supply, and the relevant charges.

Upon acceptance and signing of the Capacity Lease Agreement (attachment B to this RIO), that agreement becomes the binding agreement between SSCC and the service provider.

This RIO consists of the following documents:

- | | |
|---------------------|---|
| Attachment A | Capacity Purchase Agreement (IRU terms and conditions) |
| Attachment B | Capacity Lease Agreement (lease terms and conditions) |
| Attachment C | Access Guidelines (colocation and interconnection services) |
| Attachment D | Services and Charges Book |

Version: v4 initial

SAMOA SUBMARINE CABLE COMPANY LIMITED

REFERENCE INTERCONNECT OFFER

ATTACHMENT A

CAPACITY PURCHASE AGREEMENT

Capacity Purchase Agreement

Samoa Submarine Cable Company Limited

[Customer name]

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Schedule 1 - Capacity Purchase Details

Schedule 2 - SSCC Network Configuration and Specification

Schedule 3 - O&M Charge

Schedule 4 - Capacity Unavailability Credits

Schedule 5 - Operations and Maintenance Principles

DATE

PARTIES

1. SSCC

Name	SAMOA SUBMARINE CABLE COMPANY LIMITED
Incorporated in	Samoa
Address	Unit No. 203A Gold Star Building, ACC Mall Matafele Apia, Samoa
Senior Representative	
Contact Name	
Contact Details	Fax Email

2. Customer

Name	[Customer name/company number]
Incorporated in	
Address	
Senior Representative	
Contact Name	
Contact Details	Fax Email

BACKGROUND

- A. SSCC and its related bodies corporate operate the SSCC Network.
- B. The Customer wishes to purchase telecommunications capacity from SSCC.

- C. This Capacity Purchase Agreement sets out the terms and conditions that apply to the provision of telecommunications capacity by SSCC to the Customer.

IT IS AGREED as follows.

1. Definitions and Interpretation

1.1 Definitions

In this agreement unless the context otherwise requires:

Acceptance Test Plan means the document with that title published from time to time by SSCC.

Access Guidelines means the document with that title published from time to time by SSCC.

Access Point means the location within each of the Facilities specified in Schedule 1 at which the Purchased Capacity is connected.

Agreement means this Capacity Purchase Agreement and its schedules and annexures, as varied from time to time.

Authorisations means all licences, permits, consents and approvals of any type (including any such authorisations by Government Agencies) required for the Customer to acquire and use the Purchased Capacity.

Base Price means the amount specified in item 5 of Schedule 1.

Business Day means a day that is not a Saturday, Sunday or public holiday in Apia, Samoa.

Cable Interface means the digital/optical input/output ports on the digital/optical distribution frame (excluding the digital/optical distribution frame itself) at the Facility where the Capacity connects with other transmission facilities or equipment, as described in Schedule 2.

Cable Station means each of the SSCC Network cable landing stations at (where relevant) Apia (Samoa), Tuasivi (Samoa) and Suva (Fiji).

Capacity means capability for carriage of a certain amount of communications by transmission on the SSCC Network and other networks.

Capacity Activation Date means each activation date for Purchased Capacity as specified in Schedule 1, as adjusted in accordance with the terms of this Agreement.

Capacity Payment means each of the amounts specified in Schedule 1 to be paid by the Customer in accordance with clause 5 on a Capacity Payment Date.

Capacity Payment Date means each date specified as a capacity payment date in Schedule 1.

Capacity Unavailability Credit has the meaning given to it in Schedule 4.

Charge means each fee, charge, cost or payment payable by the Customer to SSCC under this Agreement.

CIF means “contract in force”, as that term is commonly understood in the telecommunications submarine cable industry, for the SSCC Network.

CIF Date means the date on which CIF is achieved for the SSCC Network.

Companies Act means the *Companies Act 2001*.

Confidential Information of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.

Emergency means a situation which poses an immediate danger to the health or safety of any person or immediate risk of damage to any network, systems, Facility or other property.

Facility means a Cable Station or other location where SSCC permits the Customer’s equipment to connect to the SSCC Network.

First Capacity Payment means the Capacity Payment specified as the first capacity payment in Schedule 1.

Force Majeure Event means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement including (without limitation):

- (a) any force of nature, act of God, fire, storm or explosion;
- (b) any war, civil disturbance, sabotage, strike, lockout or industrial action;
- (c) any action or inaction by any organ of government or Government Agency or by any third party not under the control of SSCC.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Insolvency Event means in relation to a party:

- (a) a receiver, liquidator, administrator or similar official is appointed over any of the assets or undertakings of the party;
- (b) the party suspends payment of its debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts;
- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;
- (h) any event which is analogous to an event described in (a) – (g);
- (i) a party threatens to do any of (a) – (h).

IRU means indefeasible right of use.

Landing Party means SSCC in Samoa and Fiji International Telecommunications Limited in Fiji.

O&M Charge means the charge for operations and maintenance calculated in accordance with Schedule 3.

Payment Support means the payment support specified in Schedule 1.

Prescribed Rate means the annual rate of 4% above the United States Dollar LIBOR – six months.

Purchased Capacity means the unit(s) and configuration(s) of Capacity which is to be delivered to the Customer as specified in Schedule 1.

Regulatory Event means:

- (a) a decision or determination by a Government Agency or court of law, or an anticipation by SSCC in its reasonable opinion, that this Agreement or a provision of this Agreement contravenes or may contravene any applicable law or regulation; or
- (b) a refusal by a Government Agency to grant a necessary licence, permit, consent or approval, or a suspension or revocation of a necessary licence, permit, consent or approval, affecting the parties' obligations under this Agreement.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer or sub-contractor of that party.

Resale Restriction Date means the date which is 24 months after the RFS Date.

RFS Date means the date on which SSCC announces that the SSCC Network is ready for commercial service.

Senior Representative means a person listed as a senior representative in the Parties section above.

SSCC Network means the cable system described in Schedule 2.

SSCC Network Configuration means the configuration set out in Schedule 2.

Total Capacity means the total amount of Capacity on the SSCC Network which is or can be activated ready for use by a customer of SSCC.

VAGST means value added goods and services tax under the law of the Independent State of Samoa.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to dollars or \$ is a reference to United States currency;
- (d) a reference to a person includes a body corporate, an unincorporated body, partnership, firm, trust, joint venture or other entity;
- (e) a reference to a clause, schedule or annexure is to a clause of, or schedule or annexure to, this Agreement;
- (f) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) a reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- (i) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- (j) terms defined in the Companies Act have the same meaning in this agreement, unless the context expresses otherwise;
- (k) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day;

- (l) if an obligation must be performed by two or more persons it binds them jointly and individually.

2. Effectiveness of Agreement

2.1 Condition Precedent

This Agreement and the rights, obligations and commitments of the parties under this Agreement (except clauses 2.2(a), 6, 11, 12 and 13, which are effective from the date of this Agreement) are subject to, and conditional in all respects upon, CIF being achieved. If this condition is not satisfied within 12 months from the date of this Agreement then either party may terminate this Agreement on 20 Business Days' notice to the other party.

2.2 Termination before RFS

- (a) The Customer must, within 20 Business Days from the date of this Agreement, deliver to SSCC the Payment Support. If the Customer fails to comply with this obligation, SSCC may terminate this Agreement on 10 Business Days' notice to the Customer.
- (b) If either:
 - (i) SSCC does not announce an RFS Date within 36 months from the date of this Agreement; or
 - (ii) at any time before the RFS Date, SSCC publicly announces that it is not proceeding with the construction of the SSCC Network,

then either SSCC or the Customer may terminate this Agreement by giving 10 Business Days' notice to the other party and SSCC will return to the Customer any Capacity Payments paid by the Customer within 30 Business Days of receipt of the termination notice (the "**refund due date**") and such termination will be without liability for either party (except in relation to the obligation to pay the foregoing refund). If SSCC fails to make payment to the Customer by the refund due date, it must pay interest on the overdue amount at the Prescribed Rate on a daily basis (compounded monthly) from the refund due date until the payment is received by the Customer.

3. Sale and Purchase of Capacity

3.1 Acquisition of Capacity

- (a) SSCC agrees to grant to the Customer an IRU over the Purchased Capacity from the relevant Capacity Activation Dates and for the remainder of the term of this Agreement, subject to and in accordance with this Agreement.
- (b) The grant of an IRU under paragraph (a) does not give the Customer any property rights to any part of the Purchased Capacity or the SSCC Network.
- (c) Should SSCC, for technical, operational or other reason, decide that the SSCC Network should no longer continue to be operated, nothing in this Agreement will oblige SSCC to continue to operate the SSCC Network. SSCC must notify the Customer of any such decision promptly upon making the decision.

3.2

The Customer must:

- (a) comply with all reasonable requests and directions made by SSCC in relation to the Purchased Capacity or in relation to the SSCC Network, including in respect of SSCC's legal or regulatory obligations;
- (b) relinquish the Purchased Capacity, at such times as SSCC may reasonably require from time to time, to permit SSCC or another person to make any tests and adjustments, and to perform any maintenance, that may be necessary for that Capacity to be provided efficiently and for the SSCC Network to be maintained in efficient working order;
- (c) obtain and maintain, for the term of this Agreement, all Authorisations;
- (d) make all payments required under this Agreement in full by the date required in this Agreement;
- (e) use the Purchased Capacity in such a way as to not degrade the performance of the SSCC Network, damage any part of the SSCC Network, or cause interruption or interference to or impairment of any Capacity on the SSCC Network; and

- (f) not use the Purchased Capacity, or permit or authorise the use of the Purchased Capacity, in any manner which may constitute a breach of any applicable law or of any duty or obligation in contract, tort, or otherwise to any third person.

3.3 Progress and Acceptance Testing

- (a) SSCC must keep the Customer informed as to the progress and achievement of the construction of the SSCC Network.
- (b) SSCC will use its reasonable endeavours to give the Customer:
 - (i) no less than one month's notice of the actual RFS Date; and
 - (ii) no less than three months' notice of the month in which the RFS Date will fall.
- (c) Prior to activation of the relevant portion of the Purchased Capacity, SSCC will carry out testing to determine whether the Purchased Capacity is useable for the transmission of communication services, and provide the Customer with the test results and the opportunity to accept or not accept the relevant Purchased Capacity, in accordance with the then current version of the Acceptance Test Plan.

4. Capacity and Configuration

4.1 Capacity Activation

The Customer may at any time request SSCC to activate any or all of the Purchased Capacity from the relevant Capacity Activation Date and SSCC will activate the Purchased Capacity in accordance with its applicable activation procedures. Purchased Capacity may only be activated in minimum 10Gbps increments.

4.2 Cable Interface

Subject to interface availability at the time of activation, the Customer is permitted direct interface access in relation to the Purchased Capacity at the Cable Interface.

4.3 Interruption to Service

Subject to SSCC's obligation to pay applicable Capacity Unavailability Credits in accordance with Schedule 4, any part of the Capacity, or the Customer's use of

the Purchased Capacity, may be suspended or interrupted for any of the following reasons:

- (a) unplanned fault;
- (b) planned maintenance, upgrade or reconfiguration;
- (c) in the event of an Emergency;
- (d) in order to comply with any applicable law or any requirement of a Government Agency; or
- (e) if the Customer's use of the Purchased Capacity is a threat or risk to the security or proper functioning of any Capacity or any plant or equipment associated with the SSCC Network,

and for the avoidance of doubt the Customer must continue to perform its obligations under this Agreement notwithstanding the suspension and interruption.

4.4 Modifications to SSCC Network

SSCC may, from time to time, add to or vary the SSCC Network Configuration, Facilities or Landing Parties. SSCC will consult with the Customer if SSCC believes that such a change is likely to cause the Customer to incur significant costs in order to change its equipment or to enable it to continue to access the Purchased Capacity. If SSCC proceeds with the change, SSCC must promptly give notice to the Customer and issue a replacement Schedule 1 or Schedule 2 as necessary which will, on issue, be incorporated into and form part of this Agreement.

4.5 Capacity Changes

If, as a result of physical deterioration or a Force Majeure Event, the Total Capacity is or may be reduced, SSCC must use its reasonable endeavours to enforce any warranty rights it may have with its supplier of the SSCC Network in an effort to mitigate the reduction in Total Capacity. If, notwithstanding these efforts, the Total Capacity is reduced, SSCC must promptly give notice to the Customer of the reduction, and may make any amendments to the SSCC Network Configuration, as are necessary in the circumstances. If, under this clause, the Total Capacity of all users is reduced to an amount below the total amount of Capacity, SSCC may reduce the Purchased Capacity (including Capacity) in the same proportion that the Total Capacity was reduced.

4.6 Operations and Maintenance

- (a) Where planned maintenance, upgrade or reconfiguration is envisaged, the Customer will be advised, unless circumstances do not permit, 14 days in advance of the timing and expected duration of the interruption. SSCC will use reasonable endeavours to choose the timing to minimise the aggregate impact on all customers after taking into account the operational urgency for the planned activity.
- (b) Should any circumstances arise that are likely to adversely affect availability of the Capacity, SSCC will use its reasonable endeavours to initiate or cause to be initiated maintenance in accordance with SSCC's then current operations and maintenance procedures. SSCC will ensure that its operations and maintenance procedures will be based on and consistent with the operations and maintenance principles set out in Schedule 5.
- (c) SSCC will not be responsible for the operation or maintenance of the Customer-provided equipment or for the transmission or reception of signals by Customer-provided equipment or for the quality of, or defects in, such transmission or reception. The Customer will be solely responsible for the compliance of its own equipment with applicable standards and for obtaining any necessary approvals or authorisations prior to its use.

4.7 Access to Access Points

- (a) SSCC agrees to provide the Customer with access to the Access Points relevant to the Purchased Capacity (as detailed in Schedule 1) in accordance with the Access Guidelines.
- (b) The Customer agrees to procure and provide safe and uninterrupted access to the Customer's premises, and to any other premises at which the Customer's relevant equipment is located, for SSCC and its employees, suppliers, agents and contractors as necessary for SSCC to make available the Purchased Capacity.

5. Charges and Payment

5.1 Payments for Purchased Capacity

The Customer must pay to SSCC:

- (a) the First Capacity Payment for the Purchased Capacity on the later of the CIF Date and the date which is 20 Business Days following execution of this Agreement (and the First Capacity Payment constitutes a debt due to SSCC as from that date); and
- (b) the remaining Capacity Payments for the Purchased Capacity on the Capacity Payment Dates as specified in Schedule 1 (and each remaining Capacity Payment constitutes a debt due to SSCC as from the relevant payment date),

provided however that, if an Insolvency Event occurs in relation to the Customer, then the aggregate of all Capacity Payments as yet unpaid (for the avoidance of doubt, including those which were not yet due) and the associated interest and financing costs (if any) becomes immediately due and payable on the date that the Insolvency Event occurs (and that aggregate amount constitutes a debt due to SSCC as from the date that the Insolvency Event occurs).

5.2 O&M Charge

The Customer must pay the O&M Charge for the operation and maintenance services needed to support availability of the Capacity. The O&M Charge will be invoiced quarterly, starting on the earliest Capacity Activation Date and will be in advance of the period which the O&M Charge covers and shall be due on the first day of such period.

5.3 Invoicing

In the event that a Charge is payable by the Customer to SSCC, SSCC must provide to the Customer an invoice setting out the Charge or Charges. An invoice from SSCC is sufficient evidence of the validity of the Charges contained in the invoice unless it is shown to be incorrect.

5.4 Payment Due Date

- (a) Subject to paragraph (b), an invoice from SSCC is due and payable 20 Business Days from the date that the invoice is received. The Customer must pay SSCC's invoices on or before the due date by direct bank transfer in available funds to the account specified by SSCC from time to time.
- (b) The Customer must make all payments in full and without deduction, set-off or counterclaim. In the event of a disputed invoice the Customer may only seek resolution of the dispute in accordance with the Dispute

Resolution Procedure. If that process establishes that the Customer has made a payment in excess of the amount properly owed then SSCC will refund that excess plus interest on that amount at the Prescribed Rate.

- (c) Any payment not received by SSCC on or before the due date will be deemed overdue and a material breach by the Customer of this Agreement. The Customer must pay interest on the overdue amount at the Prescribed Rate on a daily basis (compounded monthly) from the due date until payment in full is received by SSCC.

5.5 Exclusive of Taxes

Charges under this Agreement are exclusive of any applicable value added taxes, goods and services taxes, VAGST, or other sales, use, excise, privilege, gross receipts and other taxes, duties, and charges imposed by any governmental authority (excluding those relating to SSCC's income, profit or capital gains). Such taxes, duties and charges (if any) will be charged to and paid by the Customer in addition to the relevant Charge unless the Customer provides SSCC with a valid tax exemption certificate or other evidence reasonably satisfactory to SSCC that the Customer is not subject to such taxes, duties and charges.

5.6 No Deduction for Withholding Taxes

- (a) If the Customer is required by law to make any deduction or withholding from any payment due to SSCC, the gross amount payable by the Customer to SSCC is increased so that, after any such deduction or withholding for taxes, the net amount received by SSCC will not be less than SSCC would have received had no such deduction or withholding been required.
- (b) If any taxing or governmental authority asserts that the Customer should have made a deduction or withholding for or on account of any taxes with respect to all or a portion of any payments made under this Agreement, or that SSCC should have collected certain taxes from the Customer which the SSCC did not collect, the Customer will pay SSCC the amount of such taxes (including any interest or penalty on such taxes) such that the amount retained by SSCC in connection with this Agreement net of such taxes, interest and penalties will not be less than SSCC would have retained had those taxes not applied.

6. Confidentiality

6.1 Confidentiality Obligation

Each party agrees in relation to the Confidential Information of the other party:

- (a) to keep confidential the Confidential Information for the term of this Agreement and for two years from its expiry or termination;
- (b) to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
- (c) to disclose the Confidential Information only to those of its employees, advisors, related entities and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.

6.2 Exceptions

The obligations of confidentiality under this Agreement do not extend to information which (whether before or after this Agreement is executed):

- (a) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under this clause 6; or
- (c) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required and not without prior written advice to the other party.

6.3 Reference to Customer

SSCC may refer to the Customer as a customer of SSCC in any press release, marketing, sales or stock exchange reporting materials.

6.4 Reference to SSCC

The Customer may publish objective and factual information relating to any degraded performance or outage affecting the SSCC Network, in accordance with its normal practices for updating customers on the status of the Customer's network.

7. Representations and Warranties

7.1 Disclaimer

Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and
- (b) any guarantees, conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law,

and each party, to the extent permitted by law, releases the other party from all actions, claims, demands and liability (whether or not known) which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Agreement.

7.2 Warranties

Each party warrants that, as at the date of this Agreement:

- (a) it is a company incorporated in the place of incorporation specified in this Agreement and has full corporate power to enter into and perform this Agreement and has obtained or will by the RFS Date have obtained all necessary approvals, licences, consents and permits to enable it to do so; and
- (b) the entry into and performance of this Agreement by it does not constitute a breach of any obligation (including, without limitation, any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it is bound.

8. Term and Termination

8.1 Term

This Agreement commences on the date that it is executed by both parties and continues until 15 years after the RFS Date, unless terminated earlier in accordance with this Agreement. This Agreement may be renewed for a further term by agreement between the parties and any negotiation of such renewal must be conducted by the parties in good faith.

8.2 Suspension and Termination

SSCC may by giving notice to the Customer terminate this Agreement, or suspend provision of the Purchased Capacity or other services, effective from the date specified in the notice if:

- (a) the Customer fails to pay any amount when due under this Agreement and does not, within 20 Business Days of being requested to do so by notice from SSCC, remedy that failure;
- (b) the Customer materially breaches any other provision of this Agreement and does not, within 10 Business Days of being requested to do so by notice from SSCC, remedy that breach where it is capable of being remedied;
- (c) the Customer materially breaches any provision of this Agreement, which breach is not capable of being remedied; or
- (d) an Insolvency Event occurs in relation to the Customer.

8.3 Termination for Deterioration

SSCC may (but is not obliged to) terminate this Agreement on 12 months' notice, if physical deterioration or a Force Majeure Event has caused the Total Capacity to be reduced substantially or the O&M Charges to be increased substantially on an ongoing basis and SSCC, having used its reasonable endeavours, reasonably determines that it is not economic to remedy, or that SSCC is otherwise unable to remedy, the reduction in Total Capacity or the increase in O&M Charges.

8.4 Regulatory Event

If:

- (a) there occurs a Regulatory Event in a particular country or region where SSCC is required to perform an obligation under this Agreement; or
- (b) SSCC is either unable (having made reasonable endeavours) or unwilling (acting reasonably and having regard to SSCC's normal business practices and legitimate commercial interest) to obtain any licence, permit, consent or approval that is or may reasonably be required to perform its obligations under this Agreement,

then, notwithstanding anything else in this Agreement, the parties must meet as soon as practicable and negotiate in good faith such amendments to this Agreement as are necessary or appropriate to ensure that this Agreement does not and will not cause SSCC to contravene any applicable law or regulation, but if the parties do not agree on amendments which will ensure that this Agreement does not and will not cause SSCC to contravene any applicable law or regulation, SSCC may terminate this Agreement by written notice to the Customer.

8.5 Consequences of Suspension

If provision of the Purchased Capacity is suspended by SSCC in accordance with clause 8.2, SSCC will be entitled, but not obliged to:

- (a) disconnect and prevent the Customer from using the Purchased Capacity;
- (b) continue to charge the Customer for the Purchased Capacity, including O&M Charges and interest on overdue amounts;
- (c) charge a reconnection fee (being not more than the actual cost to SSCC of performing the reconnection) if the suspension by SSCC is lifted and the Purchased Capacity is reinstated.

8.6 Consequences of Termination

- (a) On termination or expiry of this Agreement:
 - (i) the Customer will cease to be entitled to use the Purchased Capacity and the Purchased Capacity will be deemed to have been abandoned by the Customer;
 - (ii) each party may be required by the other party to return, destroy or delete any Confidential Information of the other party in its possession or control.
- (b) In the case of termination under clauses 8.3 and 8.4, SSCC will refund to the Customer any O&M Charges paid in advance for periods falling after the termination date. SSCC is otherwise entitled to retain any Capacity Payments and O&M Charges paid by the Customer and the Customer will not be entitled to any refund of such Charges.
- (c) Termination of this Agreement will be without prejudice to any accrued rights or remedies of either party.

9. Limitation of Liability

9.1 No Liability for Certain Events

Subject to SSCC's obligation to pay applicable Capacity Unavailability Credits in accordance with Schedule 4, SSCC will not be liable to the Customer or any of its customers, whether in contract, tort, restitution or otherwise, for any loss, claim, cost or damage (including loss of profit), whether direct, indirect, consequential or special, caused by or arising out of any delay in or failure to activate the Purchased Capacity, breakdown, interruption, degradation, change or variation in the SSCC Network Configuration or Purchased Capacity (whatever is the cause of such delay, failure, breakdown, interruption, degradation, change or variation) however long it lasts.

9.2 No Indirect Loss

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any indirect or consequential loss or for any loss of profits, revenue, data, business or opportunity or for any exemplary, special or punitive damages however caused in connection with or related to this Agreement.

9.3 Resupply of Services

Where legislation implies in this Agreement any guarantee, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such guarantee, condition or warranty, the guarantee, condition or warranty is deemed to be included. The liability of SSCC for any breach of such guarantee, condition or warranty is limited, at the option of SSCC, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the products repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

9.4 Limitation of Liability

- (a) The liability of SSCC and its Related Bodies Corporate, employees, directors, agents and representatives in respect of any claim made under this Agreement or in relation to the performance by SSCC of its obligations under this Agreement (including in respect of any claims in tort or negligence), and which relates to or is caused by an interruption to any Purchased Capacity, is limited to the specified Capacity Unavailability Credit.
- (b) The total aggregate liability of SSCC and its Related Bodies Corporate, employees, directors, agents and representatives in respect of all claims made under this Agreement or in relation to the performance by SSCC of its obligations under this Agreement (including in respect of any claims in tort or negligence), other than claims which relate to or are caused by an interruption to any Purchased Capacity, is limited to \$100,000.

9.5 Exceptions to the cap

Subject to clause 9.2, nothing in this Agreement will operate so as to limit SSCC's liability to the Customer:

- (a) for death or personal injury caused as a result of SSCC's negligence; or
- (b) for breach by SSCC of its obligations under clause 6 (*Confidentiality*).

10. Indemnity

The Customer indemnifies SSCC and its Related Bodies Corporate, directors, officers, employees and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising directly or indirectly as a result of:

- (a) a claim against SSCC by any third person (including a Landing Party) which suffers loss or damage as a result of an act or omission of the Customer or any Related Entity, Representative or customer of the Customer or any representative or customer of a Related Entity of the Customer;
- (b) a claim against SSCC by any third person for infringement of any intellectual property right in respect of telecommunications traffic, calls, data, information or content transmitted by the Customer;
- (c) a claim against SSCC by any third person in relation to the performance or non-performance of, or failure of or interruption to, the Purchased Capacity.

11. Force Majeure

- (a) SSCC is not liable for any delay or failure to perform its obligations under this Agreement, and such delay or failure will not be deemed a breach of this Agreement, if such delay or failure arises out of a Force Majeure Event.
- (b) On the occurrence of a Force Majeure Event, SSCC must promptly notify the Customer of the existence of the Force Majeure Event and the cessation or termination of the Force Majeure Event.
- (c) To avoid doubt, the obligation of the Customer to pay O&M Charges under this Agreement will be suspended if a Force Majeure Event results

in an interruption to the Purchased Capacity for more than 60 consecutive days, for the remaining duration of the relevant Force Majeure Event.

12. Assignment

12.1 Resale or Assignment by Customer

The Customer may not, with effect on or before the Resale Restriction Date, resell, swap, assign, transfer, novate, mortgage, charge, encumber or otherwise deal with any of its Purchased Capacity or any its rights and obligations under this Agreement, or attempt or purport to do so, without the prior written consent of SSCC (which consent may not be unreasonably withheld or delayed).

12.2 Assignment by SSCC

SSCC may assign, transfer, novate, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement to:

- (a) any person which provides financing to SSCC (or any Related Body Corporate of such person), without the Customer's consent;
- (b) any Related Body Corporate of SSCC, without the Customer's consent;
or
- (c) any other person, but only with the Customer's consent (which may not be unreasonably withheld or delayed) if the dealing is to be effective on or before to the Resale Restriction Date or without the Customer's consent if the dealing is to be effective after the Resale Restriction Date.

The Customer agrees to execute any documents as may be reasonably necessary to give effect to this clause 12.2 (including without limitation any novation agreement).

12.3 Subcontracting by SSCC

SSCC may subcontract or delegate any of its obligations under this Agreement to any person. For the avoidance of doubt, such subcontracting or delegation will not relieve SSCC from any liability or obligation under this Agreement.

13. General

13.1 Notices

(a) A notice or other communication required or permitted to be given by one party to another must be in writing and:

- (i) delivered personally;
- (ii) sent by pre-paid mail (by air, if international) to the address of the addressee specified in this Agreement; or
- (iii) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee,

except that an invoice provided under this Agreement may be delivered by email to the email address of the addressee specified in this Agreement.

(b) A notice or other communication is taken to have been given:

- (i) if delivered personally, immediately upon delivery;
- (ii) if mailed to an address within the same country, on the second Business Day after posting;
- (iii) if mailed to an address within another country, on the tenth Business Day after posting; or
- (iv) if sent by facsimile or email before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

(c) A party may change its address for service by giving notice of that change in writing to the other party.

(d) The parties' respective contact details for notification under this Agreement are as set out in the Parties section above.

13.2 Disputes

(a) A party must not start court proceedings about a dispute arising out of this Agreement unless it first complies with this clause, except:

- (i) where a party seeks urgent injunctive relief; or
 - (ii) where the dispute relates to compliance with this clause.
- (b) A party claiming that a dispute has arisen must notify each other party giving details of the dispute.
- (c) Each party to the dispute must use its best endeavours to resolve the dispute within five Business Days following receipt of notice of the dispute or a longer period agreed by the parties to the dispute.
- (d) If the parties do not resolve the dispute under paragraph (c), the chief executive officer or other senior employee of each party must negotiate in good faith to resolve the dispute for a period of up to ten Business Days after the end of the period referred to in paragraph (c).
- (e) If the dispute is not resolved within the time specified in paragraph (d), or within such further period as the parties agree, then the parties must refer the dispute to mediation in accordance with the Alternative Dispute Resolution Act 2007 (Samoa).

13.3 Further Assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement. Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with this Agreement.

13.4 Counterparts

This Agreement may be executed in any number of counterparts each of which constitutes an original and all of which collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other. This clause does not apply if counterpart signing is not required.

13.5 Survivability

- (a) Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the parties and their successors, trustees,

permitted assigns or receivers but will not enure to the benefit of any other persons.

- (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiry or termination of this Agreement will remain in full force and effect following the expiry or termination of this Agreement.
- (c) Each indemnity in this Agreement survives the expiry or termination of this document.

13.6 Severance

If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

13.7 Whole Agreement

In relation to the subject matter of this Agreement this Agreement is taken to be the whole agreement between the parties and supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of the Agreement.

13.8 Relationship

The parties agree that this Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency and that SSCC is an independent contractor.

13.9 Governing Law

This Agreement is governed by the laws of the Independent State of Samoa. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Independent State of Samoa and the courts of appeal from them in respect of any disputes arising under or relating to this Agreement.

Schedule 1

Capacity Purchase Details

1. Name of Customer	
----------------------------	--

2. Purchased Capacity	[SEE RIO FOR LIST OF SERVICES AND PRICING AVAILABLE TO CUSTOMERS]
------------------------------	---

3. Segment		
Country A		
Access Point A		
Country B		
Access Point B		

4. RFS Date	Expected to be	[XXX] 2017
--------------------	----------------	------------

5. Base Price	[SEE RIO FOR LIST OF SERVICES AND PRICING AVAILABLE TO CUSTOMERS]
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6. First Capacity Payment and Capacity Payment Date	
--	--

7. Other Capacity Payments and Capacity Payment Dates	
--	--

8. O&M Charge	To be determined quarterly as per Schedule 3
9. O&M Charge Date	Quarterly in advance

10. Capacity Activation Date(s)	[RFS Date or promptly thereafter in accordance with SSCC's Acceptance Test Plan]
--	--

11. Payment Support	Bank guarantee in favour of SSCC from a bank with credentials, and on terms, acceptable to SSCC and for an amount not less than the aggregate of the Capacity Payments
----------------------------	--

Schedule 2

SSCC Network Configuration and Specification

[TBA]

Schedule 3

O&M Charge

The O&M Charge for the Customer will be determined at the RFS Date and at the end of the calendar quarter following the RFS Date and at the end of each subsequent calendar quarter, and based on the expected costs for the following quarter (each such quarter being an “**O&M period**”).

The O&M Charge will be based on the expected aggregated costs for the next O&M period payable by SSCC for:

- network and marine maintenance charges (including ship standby charges, standby repair charges, planned maintenance and inspection charges, spares storage and other related system costs);
- Landing Parties and Facilities costs;
- network operating centre(s) costs;
- any repairs incurred and not previously recovered, or expected to be incurred; and
- a 10% administration fee (being 10% of the above charges and costs) payable to SSCC for administering the various contracts necessary to operate, maintain and repair the SSCC Network.

Any positive balance remaining with SSCC after all payments associated with the previous O&M period's O&M Charge determination will be offset against then current O&M period's determination.

Where the actual aggregate costs are more than the expected aggregate costs, any shortfalls will be included in the then current O&M period's determination.

The aggregated cost for each O&M period will be pro-rated across the total activated IRU (purchased) Capacity and total activated lease Capacity on the SSCC Network (as scheduled as at the end of the O&M period) to determine the O&M Charge to be allocated to each customer on the SSCC Network.

The Customer's O&M Charge will be determined on the following basis:

$$\text{O\&M Charge for an O\&M period (\$)} = \frac{A \times C}{T}$$

where:

- A = the aggregated O&M costs for the SSCC Network for the O&M period (\$)
- C = the Customer's activated Purchased Capacity scheduled as at the end of the O&M period (bps)
- T = the aggregate of total activated IRU (purchased) Capacity and total activated lease Capacity on the SSCC Network scheduled as at the end of the O&M period (bps)

SSCC will keep books, records, receipts and vouchers as may be appropriate and the Customer will have the right to inspect these and other documents relating to the determination of the O&M Charge for an O&M period, so long as the inspection is completed within six months of the issue of the invoice for the O&M Charge being considered. The Customer's rights under this paragraph are subject to the Customer providing reasonable prior notice to SSCC, and subject to the Customer complying with SSCC's reasonable security, access, privacy, confidentiality and safety requirements.

SSCC will provide at the commencement of each O&M period a forecast of the expected O&M Charge for the year commencing at the end of the current upcoming O&M period. The forecast provided will be provided in good faith and with reasonable endeavours by SSCC. SSCC will not be liable for any variations between the forecast provided and the actual O&M Charge which results for the relevant O&M period.

Schedule 4

Capacity Unavailability Credits

1 Unavailability

SSCC does not warrant that the Purchased Capacity will be available on an uninterrupted basis, as interruptions may occur outside the control of SSCC. SSCC will nevertheless use reasonable endeavours to ensure that any periods of unavailability are minimised and, in the event of a period of unavailability, may provide to the Customer a credit in accordance with this Schedule ("**Capacity Unavailability Credit**"). The Capacity Unavailability Credits described in this Schedule are the Customer's sole and exclusive remedies for all matters related to any periods of unavailability. In this Schedule, a month is deemed to begin at 12:00AM Greenwich Mean Time ("**GMT**") on the first day of a calendar month and end at 12:00AM GMT on the first day of the next calendar month ("**Month**").

2 Calculation

At the end of a Month in which the Customer requests a Capacity Unavailability Credit, SSCC will calculate the total amount of time that the Customer's activated Purchased Capacity was unavailable ("**Capacity Unavailability Time**"), based on SSCC's network records. The Capacity Unavailability Time will be used to determine any Capacity Unavailability Credit. The Capacity Unavailability Credit will be deducted from the O&M Charge in respect of the relevant Month, in the following amounts:

Duration of unavailability of activated Purchased Capacity in the Month (in minutes)	Capacity Unavailability Credit (percentage of the O&M Charge for the Month)
0 – 216	No credit
217 – 480	5%
Above 480	10%

3 Exclusions

The calculation of Capacity Unavailability Credit amounts will not include periods of any outage or unavailability or other degradation of the Purchased Capacity associated with or caused (in whole or part) by or attributable to any of the following:

- (a) a planned outage;
- (b) planned maintenance during which an outage occurs;
- (c) a cable cut on the SSCC Network (which was not caused by or contributed to by the fault or negligence of SSCC);
- (d) an outage on any non-physically diverse or non-redundant terrestrial section of the SSCC Network;
- (e) an outage on any local access, local loop or domestic backhaul facility ordered directly by the Customer or provided by SSCC on a pass-through basis;
- (f) any act or omission of the Customer or the Customer's agents, contractors, or vendors;
- (g) Customer provided power, equipment or facilities; or
- (h) a Force Majeure Event.

4 Application of credit

SSCC will calculate the amount of any applicable Capacity Unavailability Credit and deduct this amount from the invoice for the O&M Charge next issued by SSCC after the end of the Month in which the Capacity-affecting event occurred. Capacity Unavailability Credits are calculated after deduction of all discounts and other special pricing arrangements, and may not be applied to governmental fees, taxes, VAGST, surcharges, local access charges or any other charges other than recurring O&M Charges.

5 Other conditions

If the Customer is entitled to receive more than one Capacity Unavailability Credit due to the same Capacity-affecting event, the Customer will only receive the largest possible credit that it would otherwise be entitled to receive. In no event will the total amount of Capacity Unavailability Credits issued to the Customer for a quarter exceed thirty percent (30%) of the O&M Charge invoiced to the Customer for the affected Capacity for that quarter.

Schedule 5

Operations and Maintenance Principles

[TBA]

SIGNED by the parties as an agreement.

SIGNED for **Samoa Submarine
Cable Company Limited** by its duly
authorised representative,
in the presence of:

Signature of witness

Signature of representative

Name of witness (print)

Name/title (print)

SIGNED by [**Customer legal name**]
by its duly authorised
representative,
in the presence of:

Signature of witness

Signature of representative

Name of witness (print)

Name/title (print)

SAMOA SUBMARINE CABLE COMPANY LIMITED

REFERENCE INTERCONNECT OFFER

ATTACHMENT B

CAPACITY LEASE AGREEMENT

Capacity Lease Agreement

Samoa Submarine Cable Company Limited

[Customer name]

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Schedule 1 - Capacity Lease Details

Schedule 2 - SSCC Network Configuration and Specification

Schedule 3 - Capacity Unavailability Credits

Schedule 4 - Special Conditions

DATE**PARTIES****1. SSCC**

Name	SAMOA SUBMARINE CABLE COMPANY LIMITED
Incorporated in	Samoa
Address	Unit No. 203A Gold Star Building, ACC Mall Matafele Apia, Samoa
Senior Representative	
Contact Name	
Contact Details	Fax Email

2. Customer

Name	[Customer name/company number]
Incorporated in	
Address	
Senior Representative	
Contact Name	
Contact Details	Fax Email

BACKGROUND

- A. SSCC and its related bodies corporate operate the SSCC Network.
- B. The Customer wishes to lease telecommunications capacity from SSCC.

- C. This Capacity Lease Agreement sets out the terms and conditions that apply to the lease of telecommunications capacity by SSCC to the Customer.

IT IS AGREED as follows.

1. Definitions and Interpretation

1.1 Definitions

In this agreement unless the context otherwise requires:

Acceptance Test Plan means the document with that title published from time to time by SSCC.

Access Guidelines means the document with that title published from time to time by SSCC.

Access Point means the location within each of the Facilities specified in Schedule 1 at which the Leased Capacity is made available to the Customer.

Agreement means this Capacity Lease Agreement and its schedules and annexures, as varied from time to time.

Authorisations means all licences, permits, consents and approvals of any type (including any such authorisations by Government Agencies) required for the Customer to acquire and use the Leased Capacity.

Business Day means a day that is not a Saturday, Sunday or public holiday in Apia, Samoa.

Cable Interface means the digital/optical input/output ports on the digital/optical distribution frame (excluding the digital/optical distribution frame itself) at the Facility where the Capacity connects with other transmission facilities or equipment, as described in Schedule 2.

Cable Station means each of the SSCC Network cable landing stations at (where relevant) Apia (Samoa), Tuasivi (Samoa) and Suva (Fiji).

Capacity means capability for carriage of a certain amount of communications by transmission on the SSCC Network and other networks.

Capacity Activation Date means each activation date for Leased Capacity as specified in Schedule 1, as adjusted in accordance with the terms of this Agreement.

Capacity Payment means each of the amounts specified in Schedule 1 to be paid by the Customer in accordance with clause 5 on a Capacity Payment Date.

Capacity Payment Date means each date specified as a capacity payment date in Schedule 1.

Capacity Unavailability Credit has the meaning given to it in Schedule 3.

Carrier Capacity means any underlying capacity provided by a third party carrier which must be made available to SSCC in order for SSCC to provide the relevant Leased Capacity.

Charge means each fee, charge, cost or payment payable by the Customer to SSCC under this Agreement.

CIF means “contract in force”, as that term is commonly understood in the telecommunications submarine cable industry, for the SSCC Network.

CIF Date means the date on which CIF is achieved for the SSCC Network.

Companies Act means the *Companies Act 2001*.

Confidential Information of a party means any information marked as confidential or which by its nature the other party knows or ought to know is confidential (regardless of the form of the information and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, know-how, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.

Emergency means a situation which poses an immediate danger to the health or safety of any person or immediate risk of damage to any network, systems, Facility or other property.

Facility means a Cable Station or other location where SSCC permits the Customer’s equipment to connect to the SSCC Network.

Force Majeure Event means any event that is beyond the reasonable control of a party and which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement including (without limitation):

- (a) any force of nature, act of God, fire, storm or explosion;
- (b) any war, civil disturbance, sabotage, strike, lockout or industrial action;
- (c) any action or inaction by any organ of government or Government Agency or by any third party not under the control of SSCC.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Initial Lease Term means each initial lease term specified in Schedule 1.

Insolvency Event means in relation to a party:

- (a) a receiver, liquidator, administrator or similar official is appointed over any of the assets or undertakings of the party;
- (b) the party suspends payment of its debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts;
- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;

- (h) any event which is analogous to an event described in (a) – (g);
- (i) a party threatens to do any of (a) – (h).

Landing Party means SSCC in Samoa and Fiji International Telecommunications Limited in Fiji.

Leased Capacity means each unit and configuration of Capacity which is to be made available to the Customer as specified in Schedule 1.

Payment Support means the payment support specified in Schedule 1.

Prescribed Rate means the annual rate of 4% above the United States Dollar LIBOR – six months.

Regulatory Event means:

- (a) a decision or determination by a Government Agency or court of law, or an anticipation by SSCC in its reasonable opinion, that this Agreement or a provision of this Agreement contravenes or may contravene any applicable law or regulation; or
- (b) a refusal by a Government Agency to grant a necessary licence, permit, consent or approval, or a suspension or revocation of a necessary licence, permit, consent or approval, affecting the parties' obligations under this Agreement.

Renewal Lease Term means each renewal lease term (if any) specified in Schedule 1.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer or sub-contractor of that party.

RFS Date means the date on which SSCC announces that the SSCC Network is ready for commercial service.

Senior Representative means a person listed as a senior representative in the Parties section above.

Special Conditions means the conditions in Schedule 4.

SSCC Network means the cable system described in Schedule 2.

SSCC Network Configuration means the configuration set out in Schedule 2.

Term means the period from the date that this Agreement is executed by both parties and continues until it expires or terminates in accordance with clause 8.

Total Capacity means the total amount of Capacity on the SSCC Network which is or can be activated ready for use by a customer of SSCC.

Transfer Restriction Date means the date which is 24 months after the RFS Date.

VAGST means value added goods and services tax under the law of the Independent State of Samoa.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to dollars or \$ is a reference to United States currency;
- (d) a reference to a person includes a body corporate, an unincorporated body, partnership, firm, trust, joint venture or other entity;
- (e) a reference to a clause, schedule or annexure is to a clause of, or schedule or annexure to, this Agreement;
- (f) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (h) a reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- (i) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;

- (j) terms defined in the Companies Act have the same meaning in this agreement, unless the context expresses otherwise;
- (k) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day;
- (l) if an obligation must be performed by two or more persons it binds them jointly and individually.

2. Effectiveness of Agreement

2.1 Condition Precedent

This Agreement and the rights, obligations and commitments of the parties under this Agreement (except clauses 2.2(a), 6, 11, 12 and 13, which are effective from the date of this Agreement) are subject to, and conditional in all respects upon, CIF being achieved. If this condition is not satisfied within 12 months from the date of this Agreement then either party may terminate this Agreement on 20 Business Days' notice to the other party.

2.2 Termination before RFS

- (a) The Customer must, within 20 Business Days from the date of this Agreement, deliver to SSCC the Payment Support. If the Customer fails to comply with this obligation, SSCC may terminate this Agreement on 10 Business Days' notice to the Customer.

- (b) If either:

- (i) SSCC does not announce an RFS Date within 36 months from the date of this Agreement; or
- (ii) at any time before the RFS Date, SSCC publicly announces that it is not proceeding with the construction of the SSCC Network,

then either SSCC or the Customer may terminate this Agreement by giving 10 Business Days' notice to the other party and SSCC will return to the Customer any Capacity Payments paid by the Customer within 30 Business Days of receipt of the termination notice (the "**refund due date**") and such termination will be without liability for either party (except in relation to the obligation to pay the foregoing refund). If

SSCC fails to make payment to the Customer by the refund due date, it must pay interest on the overdue amount at the Prescribed Rate on a daily basis (compounded monthly) from the refund due date until the payment is received by the Customer.

3. Leased Capacity

3.1 Provision of Capacity

- (a) SSCC agrees to make available to the Customer the Leased Capacity specified in Schedule 1 for the Term, subject to and in accordance with this Agreement.
- (b) The making available of Leased Capacity under paragraph (a) does not give the Customer any property rights to any part of the Leased Capacity or the SSCC Network.
- (c) Should SSCC, for technical, operational or other reason, decide that the SSCC Network should no longer continue to be operated, nothing in this Agreement will oblige SSCC to continue to operate the SSCC Network. SSCC must notify the Customer of any such decision promptly upon making the decision.

3.2 Customer's Obligations

The Customer must:

- (a) comply with all reasonable requests and directions made by SSCC in relation to the Leased Capacity or in relation to the SSCC Network, including in respect of SSCC's legal or regulatory obligations and any requirements imposed on SSCC and end users in relation to Carrier Capacity;
- (b) relinquish the Leased Capacity, at such times as SSCC may reasonably require from time to time, to permit SSCC or another person to make any tests and adjustments, and to perform any maintenance, that may be necessary for that Capacity to be provided efficiently and for the SSCC Network to be maintained in efficient working order;
- (c) obtain and maintain, for the Term, all Authorisations;
- (d) make all payments required under this Agreement in full by the date required in this Agreement;

- (e) use the Leased Capacity in such a way as to not degrade the performance of the SSCC Network, damage any part of the SSCC Network, or cause interruption or interference to or impairment of any Capacity on the SSCC Network;
- (f) not use the Leased Capacity, or permit or authorise the use of the Leased Capacity, in any manner which may constitute a breach of any applicable law or of any duty or obligation in contract, tort, or otherwise to any third person; and
- (g) comply with the Special Conditions.

3.3 Progress and Acceptance Testing

- (a) SSCC must keep the Customer informed as to the progress and achievement of the construction of the SSCC Network.
- (b) SSCC will use its reasonable endeavours to give the Customer:
 - (i) no less than one month's notice of the actual RFS Date; and
 - (ii) no less than three months' notice of the month in which the RFS Date will fall.
- (c) Prior to activation of the Leased Capacity, SSCC will carry out testing to determine whether the Leased Capacity is useable for the transmission of communication services and provide the Customer with the test results and the opportunity to accept or not accept the Leased Capacity, in accordance with the then current version of the Acceptance Test Plan.

4. Capacity and Configuration

4.1 Capacity Activation

The Customer may at any time request SSCC to activate the Leased Capacity from the Capacity Activation Date and SSCC will activate the Leased Capacity in accordance with its applicable activation procedures.

4.2 Cable Interface

Subject to interface availability at the time of activation, the Customer is permitted direct interface access in relation to the Leased Capacity at the Cable Interface.

4.3 Interruption to Service

Subject to SSCC's obligation to pay applicable Capacity Unavailability Credits in accordance with Schedule 3, any part of the Capacity, or the Customer's use of the Leased Capacity, may be suspended or interrupted for any of the following reasons:

- (a) unplanned fault;
- (b) planned maintenance, upgrade or reconfiguration;
- (c) suspension or interruption of Carrier Capacity;
- (d) in the event of an Emergency;
- (e) in order to comply with any applicable law or any requirement of a Government Agency; or
- (f) if the Customer's use of the Leased Capacity is a threat or risk to the security or proper functioning of any Capacity or any plant or equipment associated with the SSCC Network,

and for the avoidance of doubt the Customer must continue to perform its obligations under this Agreement notwithstanding the suspension and interruption.

4.4 Modifications to SSCC Network

Subject to clause 8.3(c), SSCC may, from time to time, add to or vary the SSCC Network Configuration, Facilities or Landing Parties. SSCC will consult with the Customer if SSCC believes that such a change is likely to cause the Customer to incur significant costs in order to change its equipment or to enable it to continue to access the Leased Capacity. If SSCC proceeds with the change, SSCC must promptly give notice to the Customer and issue a replacement Schedule 1 or Schedule 2 as necessary which will, on issue, be incorporated into and form part of this Agreement.

4.5 Capacity Changes

If, as a result of physical deterioration or a Force Majeure Event, the Total Capacity is or may be reduced, SSCC must use its reasonable endeavours to enforce any warranty rights it may have with its supplier of the SSCC Network in an effort to mitigate the reduction in Total Capacity. If, notwithstanding these efforts, the Total Capacity is reduced, SSCC must promptly give notice to the

Customer of the reduction, and may make any amendments to the SSCC Network Configuration, as are necessary in the circumstances. If, under this clause, the Total Capacity of all users is reduced to an amount below the total amount of Capacity, SSCC may, subject to clause 8.3(c), reduce the Leased Capacity (including Capacity) in the same proportion that the Total Capacity was reduced.

4.6 Operations and Maintenance

- (a) Where planned maintenance, upgrade or reconfiguration is envisaged, the Customer will be advised, unless circumstances do not permit, 14 days in advance of the timing and expected duration of the interruption. SSCC will use reasonable endeavours to choose the timing to minimise the aggregate impact on all customers after taking into account the operational urgency for the planned activity.
- (b) Should any circumstances arise that are likely to adversely affect availability of the Capacity, SSCC will use its reasonable endeavours to initiate or cause to be initiated maintenance in accordance with SSCC's then current operations and maintenance procedures.
- (c) SSCC will not be responsible for the operation or maintenance of the Customer-provided equipment or for the transmission or reception of signals by Customer-provided equipment or for the quality of, or defects in, such transmission or reception. The Customer will be solely responsible for the compliance of its own equipment with applicable standards and for obtaining any necessary approvals or authorisations prior to its use.

4.7 Access to Access Points

- (a) SSCC agrees to provide the Customer with access to the Access Points relevant to the Leased Capacity (as detailed in Schedule 1) in accordance with the Access Guidelines.
- (b) The Customer agrees to procure and provide safe and uninterrupted access to the Customer's premises, and to any other premises at which the Customer's relevant equipment is located, for SSCC and its employees, suppliers, agents and contractors as necessary for SSCC to make available the Leased Capacity.

5. Charges and Payment

5.1 Payments for Leased Capacity

The Customer must pay to SSCC the Capacity Payments for the Leased Capacity on the Capacity Payment Dates as specified in Schedule 1 (and each Capacity Payment constitutes a debt due to SSCC as from the relevant payment date) provided however that, if an Insolvency Event occurs in relation to the Customer, then the aggregate of all Capacity Payments as yet unpaid (for the avoidance of doubt, including those which were not yet due) and the associated interest and financing costs (if any) becomes immediately due and payable on the date that the Insolvency Event occurs (and that aggregate amount constitutes a debt due to SSCC as from the date that the Insolvency Event occurs).

5.2 Invoicing

In the event that a Charge is payable by the Customer to SSCC, SSCC must provide to the Customer an invoice setting out the Charge or Charges. An invoice from SSCC is sufficient evidence of the validity of the Charges contained in the invoice unless it is shown to be incorrect.

5.3 Payment Due Date

- (a) Subject to paragraph (b), an invoice from SSCC is due and payable 20 Business Days from the date that the invoice is received. The Customer must pay SSCC's invoices on or before the due date by direct bank transfer in available funds to the account specified by SSCC from time to time.
- (b) The Customer must make all payments in full and without deduction, set-off or counterclaim. In the event of a disputed invoice the Customer may only seek resolution of the dispute in accordance with the Dispute Resolution Procedure. If that process establishes that the Customer has made a payment in excess of the amount properly owed then SSCC will refund that excess plus interest on that amount at the Prescribed Rate.
- (c) Any payment not received by SSCC on or before the due date will be deemed overdue and a material breach by the Customer of this Agreement. The Customer must pay interest on the overdue amount at

the Prescribed Rate on a daily basis (compounded monthly) from the due date until payment in full is received by SSCC.

5.4 Exclusive of Taxes

Charges under this Agreement are exclusive of any applicable value added taxes, goods and services taxes, VAGST, or other sales, use, excise, privilege, gross receipts and other taxes, duties, and charges imposed by any governmental authority (excluding those relating to SSCC's income, profit or capital gains). Such taxes, duties and charges (if any) will be charged to and paid by the Customer in addition to the relevant Charge unless the Customer provides SSCC with a valid tax exemption certificate or other evidence reasonably satisfactory to SSCC that the Customer is not subject to such taxes, duties and charges.

5.5 No Deduction for Withholding Taxes

- (a) If the Customer is required by law to make any deduction or withholding from any payment due to SSCC, the gross amount payable by the Customer to SSCC is increased so that, after any such deduction or withholding for taxes, the net amount received by SSCC will not be less than SSCC would have received had no such deduction or withholding been required.
- (b) If any taxing or governmental authority asserts that the Customer should have made a deduction or withholding for or on account of any taxes with respect to all or a portion of any payments made under this Agreement, or that SSCC should have collected certain taxes from the Customer which the SSCC did not collect, the Customer will pay SSCC the amount of such taxes (including any interest or penalty on such taxes) such that the amount retained by SSCC in connection with this Agreement net of such taxes, interest and penalties will not be less than SSCC would have retained had those taxes not applied.

6. Confidentiality

6.1 Confidentiality Obligation

Each party agrees in relation to the Confidential Information of the other party:

- (a) to keep confidential the Confidential Information for the Term and for two years from the end of the Term;

- (b) to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
- (c) to disclose the Confidential Information only to those of its employees, advisors, related entities and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.

6.2 Exceptions

The obligations of confidentiality under this Agreement do not extend to information which (whether before or after this Agreement is executed):

- (a) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under this clause 6; or
- (c) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required and not without prior written advice to the other party.

6.3 Reference to Customer

SSCC may refer to the Customer as a customer of SSCC in any press release, marketing, sales or stock exchange reporting materials.

6.4 Reference to SSCC

The Customer may publish objective and factual information relating to any degraded performance or outage affecting the SSCC Network, in accordance with its normal practices for updating customers on the status of the Customer's network.

7. Representations and Warranties

7.1 Disclaimer

Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and
- (b) any guarantees, conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law,

and each party, to the extent permitted by law, releases the other party from all actions, claims, demands and liability (whether or not known) which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Agreement.

7.2 Warranties

Each party warrants that, as at the date of this Agreement:

- (a) it is a company incorporated in the place of incorporation specified in this Agreement and has full corporate power to enter into and perform this Agreement and has obtained or will by the RFS Date have obtained all necessary approvals, licences, consents and permits to enable it to do so; and
- (b) the entry into and performance of this Agreement by it does not constitute a breach of any obligation (including, without limitation, any statutory, contractual or fiduciary obligation), or default under any agreement or undertaking, by which it is bound.

8. Term and Termination

8.1 Term and Renewal

- (a) This Agreement commences on the date that it is executed by both parties and continues until the earlier to occur of (i) termination of this Agreement in accordance with its terms or (ii) the last expiry or termination of any of the Leased Capacity. The Leased Capacity terminates upon this Agreement terminating.
- (b) Each Leased Capacity has the Initial Lease Term and Renewal Lease Term specified in Schedule 1. Except as otherwise provided in this Agreement, the Customer may not terminate or cancel the Initial Lease

Term in respect of each Leased Capacity, but may terminate the Renewal Lease Term in accordance with Schedule 1.

- (c) Following termination of any Leased Capacity, the Customer will cease to be entitled to use the Leased Capacity and the Leased Capacity will be deemed to have been abandoned by the Customer.

8.2 Suspension and Termination

SSCC may by giving notice to the Customer terminate this Agreement, or suspend provision of the Leased Capacity or other services, effective from the date specified in the notice if:

- (a) the Customer fails to pay any amount when due under this Agreement and does not, within 20 Business Days of being requested to do so by notice from SSCC, remedy that failure;
- (b) the Customer materially breaches any other provision of this Agreement and does not, within 10 Business Days of being requested to do so by notice from SSCC, remedy that breach where it is capable of being remedied;
- (c) the Customer materially breaches any provision of this Agreement, which breach is not capable of being remedied; or
- (d) an Insolvency Event occurs in relation to the Customer.

8.3 Termination in Adverse Circumstance

- (a) SSCC may (but is not obliged to) terminate this Agreement on 12 months' notice, if physical deterioration or a Force Majeure Event has caused the Total Capacity to be reduced substantially or the cost to SSCC of operating and maintaining the SSCC Network to be increased substantially on an ongoing basis and SSCC, having used its reasonable endeavours, reasonably determines that it is not economic to remedy, or that SSCC is otherwise unable to remedy, the reduction in Total Capacity or the increase in operations and maintenance costs.
- (b) SSCC may terminate or suspend this Agreement or the Leased Capacity, on notice to the Customer, if any Carrier Capacity is no longer available for any reason.

- (c) If SSCC has exercised its right under clause 4.4 to proceed with a change or its right under clause 4.5 to reduce the Leased Capacity, and such exercise has the result that the Customer is no longer able to enjoy substantially the benefit of the Leased Capacity, the Customer may terminate this Agreement on 40 Business Days' notice.

8.4 Regulatory Event

If:

- (a) there occurs a Regulatory Event in a particular country or region where SSCC is required to perform an obligation under this Agreement; or
- (b) SSCC is either unable (having made reasonable endeavours) or unwilling (acting reasonably and having regard to SSCC's normal business practices and legitimate commercial interest) to obtain any licence, permit, consent or approval that is or may reasonably be required to perform its obligations under this Agreement,

then, notwithstanding anything else in this Agreement, the parties must meet as soon as practicable and negotiate in good faith such amendments to this Agreement as are necessary or appropriate to ensure that this Agreement does not and will not cause SSCC to contravene any applicable law or regulation, but if the parties do not agree on amendments which will ensure that this Agreement does not and will not cause SSCC to contravene any applicable law or regulation, SSCC may terminate this Agreement by written notice to the Customer.

8.5 Consequences of Suspension

If the Leased Capacity is suspended by SSCC in accordance with clause 8.2, SSCC will be entitled, but not obliged to:

- (a) disconnect and prevent the Customer from using the Leased Capacity;
- (b) continue to charge the Customer for the Leased Capacity for the remainder of the Term, including interest on overdue amounts;
- (c) charge a reconnection fee (being not more than the actual cost to SSCC of performing the reconnection) if the suspension by SSCC is lifted and the Leased Capacity is reinstated.

8.6 Consequences of Termination

- (a) On termination or expiry of this Agreement:
 - (i) the Customer will cease to be entitled to use the Leased Capacity and the Leased Capacity will be deemed to have been abandoned by the Customer;
 - (ii) each party may be required by the other party to return, destroy or delete any Confidential Information of the other party in its possession or control.
- (b) In the case of termination under clauses 8.3 and 8.4, SSCC will refund to the Customer any Capacity Payments paid in advance for periods falling after the termination date. SSCC is otherwise entitled to retain any Capacity Payments paid by the Customer and the Customer will not be entitled to any refund of such Charges.
- (c) Termination of this Agreement will be without prejudice to any accrued rights or remedies of either party.

9. Limitation of Liability

9.1 No Liability for Certain Events

Subject to SSCC's obligation to pay applicable Capacity Unavailability Credits in accordance with Schedule 3, SSCC will not be liable to the Customer or any of its customers, whether in contract, tort, restitution or otherwise, for any loss, claim, cost or damage (including loss of profit), whether direct, indirect, consequential or special, caused by or arising out of any delay in or failure to activate the Leased Capacity, breakdown, interruption, degradation, change or variation in the SSCC Network Configuration or Leased Capacity (whatever is the cause of such delay, failure, breakdown, interruption, degradation, change or variation) however long it lasts.

9.2 No Indirect Loss

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any indirect or consequential loss or for any loss of profits, revenue, data, business or opportunity or for any exemplary, special or punitive damages however caused in connection with or related to this Agreement.

9.3 Resupply of Services

Where legislation implies in this Agreement any guarantee, condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such guarantee, condition or warranty, the guarantee, condition or warranty is deemed to be included. The liability of SSCC for any breach of such guarantee, condition or warranty is limited, at the option of SSCC, to one or more of the following:

- (a) if the breach relates to goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of such goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the products repaired; and
- (b) if the breach relates to services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

9.4 Limitation of Liability

- (a) The liability of SSCC and its Related Bodies Corporate, employees, directors, agents and representatives in respect of any claim made under this Agreement or in relation to the performance by SSCC of its obligations under this Agreement (including in respect of any claims in tort or negligence), and which relates to or is caused by an interruption to any Leased Capacity, is limited to the specified Capacity Unavailability Credit.
- (b) The total aggregate liability of SSCC and its Related Bodies Corporate, employees, directors, agents and representatives in respect of all claims made under this Agreement or in relation to the performance by SSCC of its obligations under this Agreement (including in respect of any claims in tort or negligence), other than claims which relate to or are caused by an interruption to any Leased Capacity, is limited to \$100,000.

9.5 Exceptions to the cap

Subject to clause 9.2, nothing in this Agreement will operate so as to limit SSCC's liability to the Customer:

- (a) for death or personal injury caused as a result of SSCC's negligence; or
- (b) for breach by SSCC of its obligations under clause 6 (*Confidentiality*).

10. Indemnity

The Customer indemnifies SSCC and its Related Bodies Corporate, directors, officers, employees and agents from and against all losses, damages, liabilities, claims and expenses incurred (including but not limited to reasonable legal costs and defence or settlement costs) arising directly or indirectly as a result of:

- (a) a claim against SSCC by any third person (including a Landing Party) which suffers loss or damage as a result of an act or omission of the Customer or any Related Entity, Representative or customer of the Customer or any representative or customer of a Related Entity of the Customer;
- (b) a claim against SSCC by any third person for infringement of any intellectual property right in respect of telecommunications traffic, calls, data, information or content transmitted by the Customer;
- (c) a claim against SSCC by any third person in relation to the performance or non-performance of, or failure of or interruption to, the Leased Capacity.

11. Force Majeure

- (a) SSCC is not liable for any delay or failure to perform its obligations under this Agreement, and such delay or failure will not be deemed a breach of this Agreement, if such delay or failure arises out of a Force Majeure Event.
- (b) On the occurrence of a Force Majeure Event, SSCC must promptly notify the Customer of the existence of the Force Majeure Event and the cessation or termination of the Force Majeure Event.

12. Assignment

12.1 Transfer or Assignment by Customer

The Customer may not, at any time during the Term, re-lease, sublease, swap, assign, transfer, novate, mortgage, charge, encumber or otherwise deal with any of its Leased Capacity or any its rights and obligations under this Agreement, or attempt or purport to do so, without the prior written consent of SSCC (which consent may not be unreasonably withheld or delayed).

12.2 Assignment by SSCC

SSCC may assign, transfer, novate, mortgage, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement to:

- (a) any person which provides financing to SSCC (or any Related Body Corporate of such person), without the Customer's consent;
- (b) any Related Body Corporate of SSCC, without the Customer's consent;
or
- (c) any other person, but only with the Customer's consent (which may not be unreasonably withheld or delayed) if the dealing is to be effective on or before to the Transfer Restriction Date or without the Customer's consent if the dealing is to be effective after the Transfer Restriction Date.

The Customer agrees to execute any documents as may be reasonably necessary to give effect to this clause 12.2 (including without limitation any novation agreement).

12.3 Subcontracting by SSCC

SSCC may subcontract or delegate any of its obligations under this Agreement to any person. For the avoidance of doubt, such subcontracting or delegation will not relieve SSCC from any liability or obligation under this Agreement.

13. General

13.1 Notices

- (a) A notice or other communication required or permitted to be given by one party to another must be in writing and:

- (i) delivered personally;
- (ii) sent by pre-paid mail (by air, if international) to the address of the addressee specified in this Agreement; or
- (iii) sent by facsimile transmission to the facsimile number of the addressee with acknowledgment of receipt from the facsimile machine of the addressee,

except that an invoice provided under this Agreement may be delivered by email to the email address of the addressee specified in this Agreement.

- (b) A notice or other communication is taken to have been given:
 - (i) if delivered personally, immediately upon delivery;
 - (ii) if mailed to an address within the same country, on the second Business Day after posting;
 - (iii) if mailed to an address within another country, on the tenth Business Day after posting; or
 - (iv) if sent by facsimile or email before 4pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (c) A party may change its address for service by giving notice of that change in writing to the other party.
- (d) The parties' respective contact details for notification under this Agreement are as set out in the Parties section above.

13.2 Disputes

- (a) A party must not start court proceedings about a dispute arising out of this Agreement unless it first complies with this clause, except:
 - (i) where a party seeks urgent injunctive relief; or
 - (ii) where the dispute relates to compliance with this clause.
- (b) A party claiming that a dispute has arisen must notify each other party giving details of the dispute.

- (c) Each party to the dispute must use its best endeavours to resolve the dispute within five Business Days following receipt of notice of the dispute or a longer period agreed by the parties to the dispute.
- (d) If the parties do not resolve the dispute under paragraph (c), the chief executive officer or other senior employee of each party must negotiate in good faith to resolve the dispute for a period of up to ten Business Days after the end of the period referred to in paragraph (c).
- (e) If the dispute is not resolved within the time specified in paragraph (d), or within such further period as the parties agree, then the parties must refer the dispute to mediation in accordance with the Alternative Dispute Resolution Act 2007 (Samoa).

13.3 Further Assurance

Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement. Each party acknowledges that it has obtained legal advice, or had the opportunity to obtain legal advice, in connection with this Agreement.

13.4 Counterparts

This Agreement may be executed in any number of counterparts each of which constitutes an original and all of which collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other. This clause does not apply if counterpart signing is not required.

13.5 Survivability

- (a) Subject to any provision to the contrary, this Agreement will enure to the benefit of and be binding upon the parties and their successors, trustees, permitted assigns or receivers but will not enure to the benefit of any other persons.
- (b) The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiry or termination of this Agreement will remain in full force and effect following the expiry or termination of this Agreement.

- (c) Each indemnity in this Agreement survives the expiry or termination of this document.

13.6 Severance

If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

13.7 Whole Agreement

In relation to the subject matter of this Agreement this Agreement is taken to be the whole agreement between the parties and supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of the Agreement.

13.8 Relationship

The parties agree that this Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency and that SSCC is an independent contractor.

13.9 Governing Law

This Agreement is governed by the laws of the Independent State of Samoa. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the Independent State of Samoa and the courts of appeal from them in respect of any disputes arising under or relating to this Agreement.

Schedule 1

Capacity Lease Details

Part A

1.	Name of Customer		
2.	Capacity Payment Dates	Payment in respect of the Leased Capacity shall be made monthly in advance (that is, prior to the first day of each month). SSCC may issue an invoice 20 Business Days before each such date.	
3.	Currency	United States Dollars	
4.	RFS Date	Expected to be	
5.	Payment Support	Bank guarantee in favour of SSCC from a bank with credentials, and on terms, acceptable to SSCC and for an amount not less than the aggregate of the Capacity Payments for 12 months.	

Part B

	Capacity Lease 1	Capacity Lease 2	Capacity Lease 3	Capacity Lease 4
6. Leased Capacity*				
7. Access Point A				
8. Access Point B				
9. Capacity Payment (per month ex VAGST)*				
10. Capacity Activation Date				
11. Initial Lease Term				

(months from the Capacity Activation Date)				
12. Renewal Lease Term	Month-to-month following the Initial Lease Term until terminated by either party on not less than two months' notice.	Month-to-month following the Initial Lease Term until terminated by either party on not less than two months' notice.	Month-to-month following the Initial Lease Term until terminated by either party on not less than two months' notice.	Month-to-month following the Initial Lease Term until terminated by either party on not less than two months' notice.

*** Note:** [SEE RIO FOR LIST OF SERVICES AND PRICING AVAILABLE TO CUSTOMERS]

Schedule 2

SSCC Network Configuration and Specification

[TBA]

Schedule 3

Capacity Unavailability Credits

1 Unavailability

SSCC does not warrant that the Leased Capacity will be available on an uninterrupted basis, as interruptions may occur outside the control of SSCC. SSCC will nevertheless use reasonable endeavours to ensure that any periods of unavailability are minimised and, in the event of a period of unavailability, may provide to the Customer a credit in accordance with this Schedule ("**Capacity Unavailability Credit**"). The Capacity Unavailability Credits described in this Schedule are the Customer's sole and exclusive remedies for all matters related to any periods of unavailability. In this Schedule, a month is deemed to begin at 12:00AM Greenwich Mean Time ("**GMT**") on the first day of a calendar month and end at 12:00AM GMT on the first day of the next calendar month ("**Month**").

2 Calculation

At the end of a Month in which the Customer requests a Capacity Unavailability Credit, SSCC will calculate the total amount of time that the Leased Capacity was unavailable ("**Capacity Unavailability Time**"), based on SSCC's network records. The Capacity Unavailability Time will be used to determine any Capacity Unavailability Credit. The Capacity Unavailability Credit will be deducted from the Capacity Payment for the Leased Capacity in respect of the relevant Month, in the following amounts:

Duration of unavailability of Leased Capacity in the Month (in minutes)	Capacity Unavailability Credit (percentage of the Capacity Payment for the Month)
0 – 216	No credit
217 – 480	2%
Above 480	4%

3 Exclusions

The calculation of Capacity Unavailability Credit amounts will not include periods of any outage or unavailability or other degradation of the Leased Capacity associated with or caused (in whole or part) by or attributable to any of the following:

- (a) a planned outage;
- (b) planned maintenance during which an outage occurs;
- (c) a cable cut on the SSCC Network (which was not caused by or contributed to by the fault or negligence of SSCC);
- (d) an outage on any non-physically diverse or non-redundant terrestrial section of the SSCC Network;
- (e) an outage on any local access, local loop or domestic backhaul facility ordered directly by the Customer or provided by SSCC on a pass-through basis;
- (f) an outage on any Carrier Capacity;
- (g) any act or omission of the Customer or the Customer's agents, contractors, or vendors;
- (h) Customer provided power, equipment or facilities; or
- (i) a Force Majeure Event.

4 Application of credit

SSCC will calculate the amount of any applicable Capacity Unavailability Credit and deduct this amount from the invoice for the Capacity Payment next issued by SSCC after the end of the Month in which the Capacity-affecting event occurred. Capacity Unavailability Credits are calculated after deduction of all discounts and other special pricing arrangements, and may not be applied to governmental fees, taxes, VAGST, surcharges, local access charges or any other charges other than Capacity Payments.

5 Other conditions

If the Customer is entitled to receive more than one Capacity Unavailability Credit due to the same Capacity-affecting event, the Customer will only receive the largest possible credit that it would otherwise be entitled to receive. In no event will the total amount of Capacity Unavailability Credits issued to the Customer for a Month exceed ten percent (10%) of the Capacity Payment invoiced to the Customer for the affected Capacity for that Month.

Schedule 4

Special Conditions

Nil.

SIGNED by the parties as an agreement.

SIGNED for **Samoa Submarine
Cable Company Limited** by its duly
authorised representative, in the
presence of:

Signature of witness

Signature of representative

Name of witness (print)

Name/title (print)

SIGNED by [**Customer legal name**]
by its duly authorised
representative, in the presence of:

Signature of witness

Signature of representative

Name of witness (print)

Name/title (print)

SSCC NETWORK

ACCESS GUIDELINES

VERSION 4

Guidelines for access to the SSCC Network at designated access points
and an overview of the locations of access points

These Access Guidelines (including the locations and addresses for access points)
are subject to change from time to time.

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1. Introduction

Samoa Submarine Cable Company Limited (“SSCC”) is establishing international submarine cable connectivity between Apia (Samoa), Suva (Fiji) and West Coast USA, and domestic submarine cable connectivity between Apia and Tuasivi (Savaii, Samoa), via the SSCC Network consisting initially of Samoa-Fiji Cable 1 (SFC1).

Access to the SSCC Network will be facilitated via designated Capacity Access Points (“CAPs”) located strategically in Apia, Suva and West Coast USA. SSCC CAPs are optimally located for convenience to SSCC customers. SSCC cable capacity services can be accessed by appropriately licensed customers.

This document provides an overview of the locations which may be provided and will be updated from time to time as the number of access points grow and change. Terms not defined in this document are defined in the Capacity Purchase Agreement or Capacity Lease Agreement entered into between SSCC and the Customer.

2. Summary of Connections and Capacity

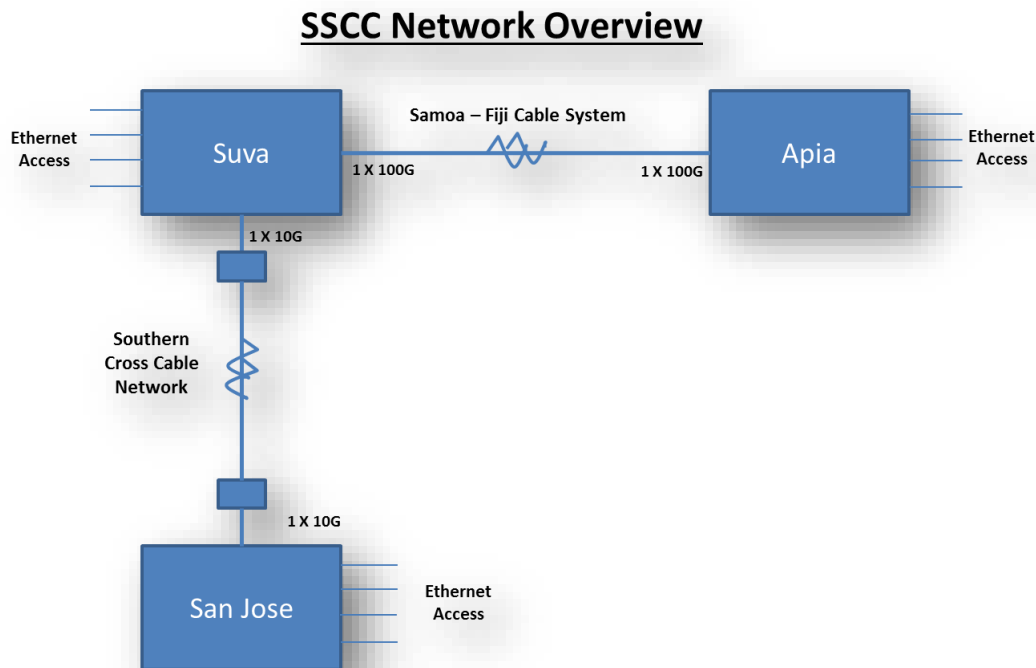
Between Apia and Suva, one 100G wavelength of capacity will be initially connected. Between Apia and Tuasivi, one 100G wavelength of capacity will be connected. Onward connection from Suva to West Coast USA will also be provided via third-party cable systems. All capacity on the SSCC Network will be established via a CAP.

- In Apia, Customers will access capacity directly from the SSCC Cable Landing Station located in Fagalii (Apia CAP).
- In Tuasivi, Customers will access capacity by interconnection to the BlueSky Samoa technical site located just north of the hospital (Tuasivi CAP).
- In Suva, Customers will access capacity by interconnection at the FINTEL Cable Landing Station (Suva CAP).
- In West Coast USA, Customers will access capacity at the Coresite Data Centre facility, located in San Jose (SV1 CAP).

The basic product offered by SSCC between CAPs is Ethernet connectivity.

3. Connectivity and Access Description

SSCC provides connectivity between Samoa, Fiji and USA as depicted in the following diagram:



4. SSCC Cable Capacity Solutions

Three options exist for capacity services on the SSCC Network:

- Apia – Suva Termination
- Apia – San Jose Termination
- Apia – Tuasivi Termination

NOTE: Customers seeking to “transit” Samoa for onward extension to SAS/ASH systems will essentially “terminate” in Apia and will need to make appropriate backhaul and interconnection arrangements with BlueSky Samoa.

Capacity will be offered in the SSCC Network as a “leased service”. The minimum capacity interface will be 100M Ethernet. Additionally 1GigE & 10GigE interfaces are also available. Capacity will be assigned and sold dynamically, which means a Customer can commit for a data speed of their choice within the speed of the interface selected. Capacity can be delivered electrically or optically.

Further details of the SSCC products will be made available in the SSCC Product Description which will be reviewed from time to time.

5. SSCC Access

SSCC is a NEUTRAL INTERNATIONAL CABLE CARRIER. As a neutral cable carrier, SSCC provides to each Customer the same and best possible services. It means that any eligible Customers will have the opportunity to gain best connectivity directly from convenient centres in Apia, Suva and West Coast USA.

In general the Customer will be responsible for obtaining access to the SSCC Network Cable Interface at the CAP in line with the relevant Ethernet or Optical interface type and such other technical requirements as specified from time to time, and must follow the processes and procedures for requesting and being granted access to each Facility, which may vary between Facilities.

SSCC will provide the Customer or its nominated third-party service provider (if approved by SSCC) with reasonable access to the CAP for the purpose of the Customer testing the capacity, and (if available at the CAP) installing, testing, operating and maintaining the Customer's equipment or for any other reasonable purpose related to the Customer's use of the capacity.

SSCC will provide access to the Cable Interface Distribution Frame in each CAP and will allow the Customer or its approved service provider to cause to be installed an interconnect cable from the Cable Interface to another location either within the same CAP, whether within a colocation area or a carrier interconnect area. In general, and unless agreed otherwise, SSCC will deliver capacity to the appropriate interconnect point at each CAP, the Customer will be responsible for all interconnection costs, including cross-connect from such CAP interconnect point.

Subject to space restrictions, SSCC will may also provide colocation and/or carrier interconnect space, connection facilities and necessary services to the Customer or its approved service provider as a separate service promptly, on reasonable terms and without discrimination. This service will be provided under a separate Colocation Agreement or Carrier Interconnect Agreement provided by SSCC, and subject to the terms of those agreements.

6. SSCC Cable Capacity Access in Apia and Suva

SSCC owns and operates the Cable Landing Station (CLS) in Apia, Samoa. SSCC has entered into a landing party agreement for CLS facilities in Fiji with FINTEL.

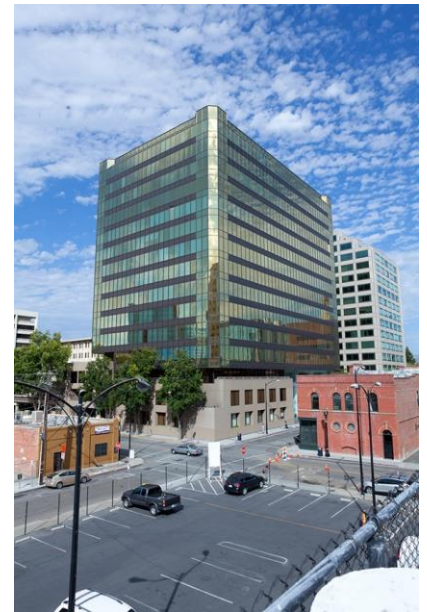
If requested by an SSCC Customer, the Landing Party will provide to the Customer a reasonable amount of suitable space, connection facilities and necessary services at the Cable Landing Station for reasonable purposes relating to the Customer's use of its capacity on the SSCC Network, subject to space restrictions. The Landing Party will grant the Customer the right to provide its own equipment in such space and to access the equipment, under terms agreed between the Landing Party and the Customer. Space, connection facilities and necessary services are to be provided to the Customer promptly, on reasonable terms and without discrimination.

SSCC will use its reasonable endeavours to ensure that the Landing Party provides access to the Landing Party's Cable Stations in accordance with the provisions of the landing party agreement described above.

7. SSCC Cable Capacity Access in USA

SSCC owns capacity on the Southern Cross Cable Network (SSCN) between Fiji and West Coast USA. In Fiji, direct interconnection links SSCC onto SSCN, initially extending 10G submarine cable capacity from the SSCC CAP in Apia to the SSCC CAP in San Jose SV1 Building.

SSCN terminates at SV1, which is owned and operated by Coresite. At SV1, Customers can arrange direct connection to a multitude of IP service and content providers.



8. SSCC Cable Landing Station Details

The locations of the Cable Stations are as follows:

Fagalii, Apia, Samoa

Currently planned for Fagalii

[Picture to be added when constructed]



Suva, Fiji

Fiji International Telecommunications Limited
151 Rifle Range Road, Vatuwaqa, Suva, Fiji
Attention: George Samisoni
Telephone: +679 – 3300065
Facsimile: +679 - 3300750



9. SSCC Apia City Access Services

Under further consideration. Currently SSCC is considering a potential Apia centrally located CAP or series of CAPs.

End of Access Guidelines

SAMOA SUBMARINE CABLE COMPANY LIMITED

REFERENCE INTERCONNECT OFFER

ATTACHMENT D

SERVICES AND CHARGES BOOK

Service	Charges	
	Capacity payments	Charges O&M and other
Tui-Samoa Cable Capacity Lease – Tier 1 Wholesale Connectivity – Samoa/USA(W): - Charges based upon 12 month commitment term - Charges are applicable for pre-Ready For Service Date commitments only	Usage Charge per (Mbps) Mbps per month (USD) 1000 \$107 2000 \$71	N/A
Tui-Samoa Cable Capacity IRU (10Gbps, 15 years) – Tier 1 Wholesale Connectivity – Samoa/Fiji: - Charges are applicable for pre-Ready For Service Date commitments only	Charge (USD) \$15,120,000	3%

Notes

Cost-based pricing in accordance with SSCC's agreed governance procedures and policies.

All charges are in United States Dollars and exclusive of VAGST and other taxes and duties. See Capacity Lease Agreement (lease) and Capacity Purchase Agreement (IRU) for terms and conditions.