

REFERENCE ACCESS OFFER
WHOLESALE SUBMARINE CAPACITY SERVICES
16 December 2015

THIS REFERENCE ACCESS OFFER IS

MADE BY: **BLUESKY SAMOA LIMITED**, a company duly incorporated in Samoa and having its registered office at Maluafofou, Apia, Samoa ("**Bluesky**")

BACKGROUND:

1. Bluesky Samoa provides transport capacity services to enable it and other licensed operators in Samoa to receive international bandwidth for internet services delivered over the SAS Cable. Bluesky Samoa also acts as delivery agent for American Samoa Hawaii Cable LLC ("**ASH**") and AST Telecom LLC ("**AST**") to provide wholesale international bandwidth on the SAS Cable for internet services to licensed providers in Samoa where those licensed providers have contracted directly with ASH and AST for relevant capacity.
2. The Regulator has issued Order of the Regulator No. 2015/T02 ("**Order**") and Determination of the Regulator No. 2015/T02 ("**Determination**") requiring Bluesky to provide a Reference Access Offer ("**Offer**") for a range of wholesale access services involving access to international bandwidth for Internet Services on the SAS Cable and equivalent in price and scope to such services using the SAS submarine Cable provided by ASH or AST to the Bluesky retail business in Samoa
3. Bluesky provides this Offer in relation to above Order. This Offer includes the transport capacity service in Samoa that Bluesky provides for connection to the SAS Cable, and access to services on the SAS Cable supplied by ASH or AST, as specified in Schedule 1. This Offer is made to operators licensed to operate as services providers under the Telecommunications Act 2005 in the Samoan market.

1. Effective Date of Offer

- 1.1 This Offer is for new or additional Services within the scope of the Offer and has no effect on existing contractual obligations for the supply of the Services within the scope of the Offer by Bluesky to an Access Seeker prior to the Commencement Date.

2. Service Description and Pricing

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

3. Application for Access to Services

- 3.1 Where an Access Seeker makes a request to Bluesky for new or additional capacity for the Services, the Access Seeker shall serve an Access Request on Bluesky.

- 3.2 The Access Request must:

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

- (i) contain relevant technical information relating to the interface standards of the Access Seeker; and
- (j) contain such other information that Bluesky may reasonably request.

4. Processing of Access Request

- 4.1 Bluesky shall within twenty (20) Business Days of receipt of the Access Request inform the Access Seeker in writing in accordance with clauses 5 to 7.

5. Assessment of Access Request

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

6. Notification of Rejection to the Access Seeker

6.1 Where Bluesky rejects the Access Request, Bluesky shall:

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

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

7. Acceptance of Access Request

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

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

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

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

8. Interpretation

Access Request means a request made by the Access Seeker to Bluesky for access to the Services, and containing the information in clause 3.

Access Seeker means an Operator who:

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

Bluesky Website means the website owned and operated by Bluesky at www.blueskysamoa.ws.

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

Charges means the sums payable by the Access Seeker to Bluesky for accessing and/or being provided the Services as described in Table 1 of Schedule 1.

Equipment means any equipment (including software) provided by Bluesky to the Access Seeker to enable the Access Seeker to use the Service.

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

Operator means Bluesky or the Access Seeker and "**Operators**" means Bluesky and the Access Seeker collectively.

Samoa means the Independent State of Samoa.

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

Supply Agreement means an agreement between Bluesky and an Access Seeker for the supply of the Services on the terms of this Offer, and any additional technical or other terms or agreements to give effect to this Offer, including a supply agreement for capacity on the SAS Cable with ASH or AST, as referred to in Schedule 1.

Supply Terms means the terms of this Offer.

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

In this Offer, unless the context otherwise requires:

- (a) words denoting the singular shall include the plural and vice versa;
- (b) one gender shall include the other genders;

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

SCHEDULE 1

SERVICE DESCRIPTION & CHARGES

A. Service Description

1. The Services are the following wholesale submarine capacity services to licensed operators in Samoa, as follows:
 - (a) **Transport Capacity Services** provided by Bluesky from the SAS Cable Station located at Bluesky's NOC, Maluafofou to the network of a licensed operator in Samoa; and
 - (b) **International Bandwidth Capacity on the SAS Cable** for internet services, with Bluesky as delivery agent for AST or ASH.
2. Bluesky shall deliver the Services utilising the most appropriate technology based on factors including the Access Seeker's location. The Services may be delivered using fibre, copper, wireless, microwave or other technologies as may be available at the time. The Services do not constitute an exclusive physical link layer. Circuit speeds are symmetrical or as the case may be. The Services are provided as a high priority, uncontended, semi-managed service from SAS landing station, Maluafofou to customer premises. The Services are provided solely for the provisioning of transport capacity services for wholesale internet.
3. All commercial terms and conditions applicable to the provision by Bluesky of the Services and the operational and technical requirements shall be specified in the Supply Agreement.
4. For the avoidance of doubt, Bluesky's role in relation to the International Bandwidth Capacity on the SAS Cable referred to in Paragraph A above is limited to that of delivery agent for AST or ASH and does not constitute a reseller or pass-through arrangement between the Access Seeker and Bluesky for such Capacity. Access Seekers will contract with ASH or AST on their standard terms and conditions (including billing) for the International Bandwidth Capacity on the SAS Cable referred to in Paragraph A above to implement Bluesky's role as delivery agent for that International Bandwidth Capacity on the SAS Cable.

B. Bluesky Charges for Transport Capacity Services

1. Transport Capacity Services supplied by Bluesky as specified in Paragraph A above shall be subject to the Charges itemized in Table 1 below.
2. For the avoidance of doubt:

- (a) the Charges are mandated charges for supply of the transport capacity services as described in clause A.1(a) above.
- (b) all other services and charges not described in Annex 1 to Schedule 1 are negotiated services and charges.

Service	Apia Metro					Upolu				
	12 mths	24 mths	48 mths	60 mths	120 mths	12 mths	24 mths	48 mths	60 mths	120 mths
2,000	1,000	870	750	670	503	1,300	975	923	871	653
5,000	2,610	2,271	1,958	1,749	1,312	3,393	2,545	2,409	2,273	1,705
10,000	4,800	4,176	3,600	3,216	2,412	6,240	4,680	4,430	4,181	3,136
20,000	9,120	7,934	6,840	6,110	4,583	11,856	8,892	8,418	7,944	5,958
40,000	16,667	14,500	12,500	11,167	8,375	21,667	16,250	15,383	14,517	10,888
155,000	61,354	53,378	46,016	41,107	30,830	90,675	68,006	64,379	60,752	45,564

Service	Savaii				
	12 mths	24mths	48 mths	60mth	120 mths
2,000	1,500	1,125	1,065	1,005	754
5,000	3,915	2,936	2,780	2,623	1,967
10,000	7,200	5,400	5,112	4,824	3,618
20,000	13,680	10,260	9,713	9,166	6,874
40,000	25,000	18,750	17,750	16,750	12,563
155,000	104,625	78,469	74,284	70,099	52,574

Table 1: Bluesky Charges for transport capacity services

* burstable over 40Mbps up to approximately 45Mbps subject to available capacity and Access Seeker obtaining a contract with a third party securing internet services delivered over SAS Cable.

Pricing is inclusive of discounts for volume, duration of contract and location and is payable monthly in advance.

All prices are in Samoan tala and are VAGST exclusive.

Apia metro: within 3km radius from Bluesky Maluafofou headquarters

Upolu: all areas not included in Apia metro

Installation & set up fee

Installation and set up fees will be negotiated with the Access Seeker on a case by case basis. Such fees vary depending on factors such as location of closest Bluesky point of presence to the Access Seeker's location and engineering requirement for access to Access Seeker's premises.

C. Pricing For International Bandwidth Capacity on the SAS Cable Referred To In Paragraph A

1. Pricing For International Bandwidth Capacity on the SAS Cable referred to in Paragraph A above delivered by Bluesky as delivery agent are itemized in Annex 1 to Schedule 1. These are the last standard prices published by ASH and AST respectively as provided to Bluesky and are those available to or used by Bluesky Samoa at the time of this Offer.

Annex 1: Pricing For International Bandwidth Capacity on the SAS Cable Referred To In Paragraph A

Standard Pricing Schedule

ASH CABLE



Effective Date: September 7, 2010

Eligibility: All customers

Basic Capacity unit: DS3

Monthly Recurring Charge: USD\$66,544

Term: 10 years

Volume Discounts:

Discounts are given when buying more than 1 DS3. The discount is applied to each of the DS3's following the first one purchased as detailed on the table below:

	Monthly Recurring Charge
DS3#2	USD\$58500
DS3#3	USD\$49000
DS3#4	USD\$45700
DS3#5	USD\$44000
DS3#6	USD\$43000

Activation and Payments

Contract must be signed and 10% of the first year should be in deposit before the service will be sent to provisioning.

First month payment is due 30 days from contract signature or earlier if agreed by both parties.

The term is 10 years or until cable is retired without replacement whichever is the earliest.

No resell or assignment of DS3 capacity allowed – sub rate capacity may be resold. Any customer who does resell or assign any DS3 of a volume capacity agreement will be charged regular rates retroactively as if no volume capacity was contracted.

Setup Fees:

The setup fee for each DS3 is \$10,000.

SAS CABLE

	Monthly Recurring Charge	Installation Fee
DS3 (extension of ASH)	USD\$3650	Included in ASH setup
DS3 (local) (Half Circuit)	USD\$3650	USD\$1500
E1 (Half Circuit)	USD\$250	USD\$1000
T1 (Half Circuit)	USD\$200	USD\$1000
STM-1/OC3 Activation		USD\$5,000 (Half Circuit)

AST Standard Pricing Schedule

Effective Date: November 1, 2012

Basic Capacity unit: DS3 (40Mbps)

Monthly Recurring Charge: USD\$70,000.00

Term: 4years

Terms other than price for supply of International Bandwidth Capacity on the SAS Cable Referred To In Paragraph A are AST's standard terms and conditions in effect with Bluesky Samoa on the date of this Offer.

SCHEDULE 2

SUPPLY TERMS

1. DEFINITIONS AND INTERPRETATION

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

2. TERM

- 2.1 These Supply Terms become effective on the date of execution of these Supply Terms (**Effective Date**).
- 2.2 These Supply Terms continue in full force and effect, as varied from time to time, for an initial period equivalent to the term of the supply agreement for capacity on the SAS Cable between the Access Seeker and ASH or AST from the Effective Date (**Minimum Term**). Unless a party notifies the other party at least 30 days prior to the end of the Minimum Term that it wishes to terminate these Supply Terms, the operation of these Supply Terms will be extended beyond the Minimum Term until such time as either party gives the other party 30 days written notice of termination these Supply Terms are otherwise terminated.
- 2.3 If the Regulator approves or mandates any change to the Reference Access Offer, then these Supply Terms are automatically amended to incorporate the same change in respect of the Services only, unless or until such order of the Regulator is revised or withdrawn by the Regulator, or stayed or invalidated by a competent Tribunal or Court.
- 2.4 If the rights and obligations of either of the parties under these Supply Terms are or may be likely to be affected by:
- a) amendments to or repeals of the Telecommunications Act or of a condition of a party's licence issued duly under the Telecommunications Act; or

- b) a ruling, determination, approval, order or directive of the Regulator (other than one within Paragraph 2.3 above); or
- c) Bluesky reasonably believing, based on some action of the Regulator, that a part of the Supply Terms contravenes or may contravene any provision of the Telecommunications Act, Bluesky's licence or other statutory requirements,

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

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

3. BLUESKY'S OBLIGATIONS

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

4. ACCESS SEEKER'S OBLIGATIONS

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

5. CHARGES

- 5.1 The Access Seeker will pay to Bluesky the Charges for the Transport Services, and to ASH or AST (as the case may be) the Charges for the International Bandwidth Capacity on the SAS Cable. Unless otherwise stated the Charges shown exclude VAGST. The Access Seeker must pay any and all applicable taxes associated with its purchase, access to and use of the Services.
- 5.2 Bluesky will send the Access Seeker a monthly invoice for all Transport Services provided to the Access Seeker and which Bluesky's records show are chargeable to the Access Seeker's account. ASH or AST (as the case may be) will send the Access Seeker a quarterly invoice for all International Bandwidth Capacity on the SAS Cable provided to the Access Seeker which its records show are chargeable to the Access Seeker's account.
- 5.3 Fixed charges will be invoiced in advance. Usage based charges will be invoiced in arrears.
- 5.4 The Access Seeker must pay all Charges by the Payment Date.
- 5.5 Bluesky may set-off any sums owing to the Access Seeker for the Transport Service, under these Supply Terms or otherwise, against sums owing to Bluesky under these Supply Terms.
- 5.6 The Access Seeker is solely responsible for billing and collecting its charges for services supplied to the Access Seeker's customers using the Services.

6. LATE PAYMENT AND SUSPENSION OF SERVICES

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

7. DISPUTED ACCOUNTS

- 7.1 If the Access Seeker wishes to dispute any item appearing on an invoice, the Access Seeker must write to Bluesky and seek resolution of the disputed amount. The Access Seeker must pay any undisputed amount by the Payment Date. If Bluesky

agrees there is a mistake it will correct the bill. If Bluesky finds there is no mistake, the Access Seeker will pay the outstanding amount immediately on being notified of Bluesky's finding, or by the Payment Date, whichever is the later.

8. REBATE FOR DISRUPTED SERVICE

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

9. EQUIPMENT

- 9.1 To provide Services to the Access Seeker it may be necessary for Bluesky to install and maintain Equipment on the Access Seeker's Premises. Except as otherwise agreed in writing, Bluesky will retain ownership of the Equipment installed or located on the Access Seeker's Premises.
- 9.2 The Access Seeker will provide Bluesky access to the Access Seeker's Premises at all reasonable times and on reasonable notice (subject to compliance with the Access Seeker's reasonable security and health and safety requirements) to install, inspect, remove and maintain the Equipment.
- 9.3 The Access Seeker must not interfere with the Equipment in any way.
- 9.4 The Access Seeker shall:
- a) provide a suitable operating environment for the Equipment;
 - b) take reasonable precautions to protect the Equipment from theft or other loss or damage including when the Equipment is installed in a common IT equipment room or is shared with another Access Seeker of Bluesky;
 - c) follow Bluesky's reasonable directions when using the Equipment;
 - d) remove any equipment from Bluesky's network upon notification from Bluesky that it believes the equipment may cause or have caused damage or disruption to Bluesky's network. Bluesky may disconnect any equipment or suspend Service if it deems it necessary to safeguard any service or its network;
 - e) take reasonable precautions to protect the Equipment from radio or electrical interference and power fluctuations; and
 - f) if required by Bluesky, obtain and maintain insurance to a reasonable value as determined by Bluesky, with a reputable insurance company against any loss or damage to any Equipment while under the Access Seeker's control or on the Access Seeker's Premises. The Access Seeker will ensure that Bluesky's interest is noted on the policy.
- 9.5 Bluesky will ensure that all Equipment is safe, of merchantable quality and fit for the purpose for which it is provided.

10. FAULTS, OUTAGES AND MAINTENANCE

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

11. FORCE MAJEURE

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

12. SUSPENSION OR RESTRICTION OF SERVICES

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

13. TERMINATION

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

- 13.2 These Supply Terms may be terminated immediately by either party ("**First Party**") giving notice in writing to the other party ("**Other Party**") at any time without any further financial obligation, under the following circumstances.
- a) upon the Other Party committing any material breach of these Supply Terms which is incapable of being rectified;
 - b) upon the Other Party committing any material breach of these Supply Terms which is not rectified within 30 days of written notice of the breach having been given to the Other Party by the First Party;
 - c) upon the Other Party committing three or more material breaches of these Supply Terms in respect of which the First Party has given notice under clause 15.2(b) in any 12 month period;
 - d) upon termination or suspension of the Other Party's business as a result of bankruptcy, insolvency or similar event.
 - e) upon the appointment of a receiver or manager of any asset of the Other Party, or an order made or resolution passed for the liquidation of the Other Party.
- 13.3 Termination of these Supply Terms for any reason shall not affect the rights or obligations of the parties in relation to any Services provided up to the date of termination.
- 13.4 The Access Seeker may choose to terminate these Supply Terms for convenience before the expiry of the Minimum Term. In this case, Access Seeker is liable to pay all remaining payments due under these Supply Terms from the date of termination to the end of the Minimum Term.
- 13.5 The Access Seeker may, with 6 months' notice to Bluesky, terminate these Supply Terms if the Access Seeker's supply agreement with ASH or AST for capacity on the SAS Cable is no longer in effect.
- 13.6 On termination of these Supply Terms for whatever reason, the Access Seeker must immediately return to Bluesky all Equipment that is property of Bluesky.

14. CONFIDENTIALITY AND PUBLICITY

- 14.1 Subject to clauses 14.3 and 14.4, neither party may reveal any information concerning these Supply Terms or its subject matter or the business of the other party to any third party other than:
- a) As required by law;
 - b) To its professional advisers; or
 - c) Information already in the public domain.

- 14.2 The Access Seeker may not issue any press release or announcement concerning these Supply Terms or its subject matter or the business of Bluesky to the news media without the prior approval of Bluesky.
- 14.3 Bluesky may collect and disclose information or opinions about the Access Seeker from or to any credit agency, bank, financial institution or business for the purpose of giving or obtaining advice about the Access Seeker's creditworthiness.
- 14.4 Bluesky may use or disclose information in its possession about the Access Seeker for the purposes of marketing its products and services, or the products and services of third parties.

15. LIABILITY AND INDEMNITY

- 15.1 Bluesky will compensate the Access Seeker for any physical damage which it causes to the Access Seeker's property through not taking reasonable care, up to the maximum value of one month's Charges.
- 15.2 The Access Seeker will compensate Bluesky for any physical damage which it causes to Bluesky's property through not taking reasonable care of such property, up to the maximum value of one month's Charges.
- 15.3 Subject to clause 15.1, Bluesky's liability arising from any cause (including the negligence of Bluesky or any of its employees, contractors or authorized representatives) in the provision of the Services or any failure to provide any Service shall be limited:
- a) where a fixed charge is payable for that Service, to Bluesky's monthly Charge for providing the Service giving rise to the claim against Bluesky; and
 - b) in all other cases, to Bluesky's actual Charge for providing the Service giving rise to the claim against Bluesky.
- All other liability is excluded to the fullest extent permitted by law.
- 15.4 All liability of any kind (including but not limited to negligence) on the part of any third party network operator, its officers, employees, contractors and agents, however arising in the provision of services by such network operator to Bluesky is expressly excluded. This exclusion is included by Bluesky as the agent of such persons for their benefit and may be enforced by them as a complete defence to any claim.
- 15.5 Bluesky will not be liable to the Access Seeker for indirect or consequential losses or damages of any kind (including but not limited to loss of profit, loss of business opportunity or loss of income) caused by third parties contracted by the Access Seeker.

- 15.6 The Access Seeker indemnifies Bluesky in respect of any claim or demand made or action commenced by any person against Bluesky or for which Bluesky is liable in connection with any loss or damage suffered in connection with these Supply Terms or the subject matter of these Supply Terms, including but not limited to any legal costs as between solicitor and client on a full indemnity basis incurred by Bluesky or for which Bluesky is liable, with the exception of any claims arising out of any willful or reckless conduct of Bluesky, its employees, agents or contractors.

16. DISPUTE RESOLUTION

- 16.1 A party must not start arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless it has complied with the procedure set out in this clause 16. The parties must continue to comply with their respective obligations under the Supply Agreement during any dispute between them about the Supply Agreement.
- 16.2 A party claiming that a dispute has arisen must notify the other party in writing and shall promptly pay any undisputed amounts due to the other party.
- 16.3 Within 7 days after a notice is given under clause 16.2, the parties must nominate in writing to each other a representative authorised to settle the dispute on their behalf.
- 16.4 Each party must ensure that during the 20 day period after a notice is given under clause 16.2 its representatives use their best endeavours, with the other representative:
- a) to resolve the dispute; or
 - b) to agree on:
 - (i) a process to resolve all or at least part of the dispute without arbitration or court proceedings (e.g. by mediation, conciliation, executive appraisal or independent expert determination);
 - (ii) the selection and payment of any person to be appointed by the parties for, and the involvement of any dispute resolution organisation in the process;
 - (iii) any procedural rules;
 - (iv) the timetable, including any exchange of relevant information and documents; and
 - (v) the place where any meetings will be held.
- 16.5 The role of any person appointed as a mediator will be to facilitate a resolution of the dispute. A decision of any mediator is not binding on a party unless that party's representative has so agreed in writing.
- 16.6 Any information or documents disclosed by a representative under this clause:
- a) must be kept confidential in accordance with clause 14; and

b) may not be used except to attempt to settle the dispute.

- 16.7 After the 20 days referred to in clause 16.4 above, a party that has complied with clauses 16.1 to 16.4 (inclusive) may terminate the dispute resolution process by giving written notice to the other parties to the dispute. If a party to a dispute does not comply with any provision of clauses 16.1 to 16.4(inclusive), the other parties to the dispute will not be bound by clauses 16.1 to 16.4 (inclusive).
- 16.8 Disputes can be lodged by either party on any transaction provided that the transaction occurred less than 180 days prior to the date the dispute was raised. Neither party shall dispute any Charges that are in excess of 180 days of the date of the relevant invoice.
- 16.9 This clause does not prevent a party from applying for an interim injunction to restrain breach of confidentiality or any claim for urgent interlocutory relief.

17. NOTICES

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

18. ENTIRE AGREEMENT AND VARIATION

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

19. ASSIGNMENT

- 19.1 The Access Seeker must not assign these Supply Terms or any right or obligation under these Supply Terms without the prior written consent of Bluesky. A change in

control of the Access Seeker will be deemed to be an assignment for the purposes of this clause. For the purposes of this clause "change in control" means:

- a) a change of shareholding which results in a new majority shareholder; or
- b) a change in the right to appoint a majority of the directors.

19.2 Bluesky may assign these Supply Terms or any right or obligation under these Supply Terms without the consent of the Access Seeker.

20. NO WAIVER

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

21. COUNTERPART EXECUTION

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

SIGNED as an agreement on [insert date].

SIGNED by BLUESKY SAMOA LIMITED)

by its duly authorized officer) _____
in the presence of:)

Signature of witness

Name of witness (print)

Signature by **#INSERT NAME OF COMPANY#)**

by its duly authorized officer) _____
in the presence of:)

Signature of witness

Name of witness (print)