AGREEMENT

THIS AGREEMENT (the "**Agreement**") is made as of the date of the last signature affixed hereto, by and between American Samoa Hawaii Cable, LLC ("ASHC"), Samoa American Samoa Cable, LLC ("SASC"), American Samoa License, Inc. ("ASLI"), and AST Telecom, LLC d/b/a Blue Sky Communications ("Blue Sky") (collectively, "**Licensees**") on the one hand, and the U.S. Department of Homeland Security ("**DHS**") and the U.S. Department of Justice ("DOJ"), on the other (each referred to individually as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, U.S. communication systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

WHEREAS, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

WHEREAS, it is critical to the well being of the Nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see e.g., Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Homeland Security Presidential Directive / HSPD-7, Critical Infrastructure Identification, Prioritization, and Protection);

WHEREAS, protection of Classified and Sensitive Information is also critical to U.S. national security;

WHEREAS, eLandia International, Inc. ("eLandia") and its subsidiaries including AST Telecom, LLC d/b/a Blue Sky Communications, American Samoa License, Inc., American Samoa Hawaii Cable, LLC, and Samoa American Samoa Cable, LLC, have applied[1] to the Federal Communications Commission ("FCC") to transfer to Amper S.A. ("Amper") control of the license to land and operate a private fiber-optic submarine cable network (the "American Samoa-Hawaii Cable System" or "ASHC System") between United States and the Independent State of Samoa, with landing stations at Keawaula in Hawaii, Iliili in American Samoa, and Apia, Samoa;

WHEREAS, Amper will indirectly acquire all ownership rights in the ASHC System held by eLandia and its subsidiaries, including the wet-link and shore-end segments of the ASHC System;

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[1] Federal Communications Commission File Nos. SCL-T/C-20101022-00024; SCL-T/C-20101022-00025; SCL-T/C-20101022-00026; ITC-T/C 201001025-00425.

WHEREAS, the Licensees will own and operate a landing station and Network Operations Center in Iliili, and will lease space at an existing landing station in Keawaula from AT&T, Inc., but will not own or control the foreign landing station in Apia;

WHEREAS, the ASHC System will provide telecommunications services to and from the United States which are subject to U.S. privacy and electronic surveillance laws;

WHEREAS, the Licensees will have direct physical and electronic access to a variety of customer and end-user information that is subject to U.S. privacy and electronic surveillance laws;

WHEREAS, the Licensees have an obligation to protect from unauthorized disclosure the contents of wire and electronic communications to and from the United States under U.S. law;

WHEREAS, DHS and DOJ will request that the FCC's grant of the Licensees' submarine cable landing license transfer application be made subject to resolution of issues relating to national security, law enforcement, and public safety, and whereas the Licensees have agreed to enter into this Agreement with DHS and DOJ to address issues raised by DHS and DOJ and to jointly petition that the FCC condition the requested authorization on compliance with this Agreement;

WHEREAS, eLandia has controlling ownership of the Licensees, and Amper will acquire controlling ownership of eLandia upon consummation of a July 29, 2010, Contribution Agreement entered into by eLandia and Amper (collectively, the "Parent Companies");

WHEREAS, the Parent Companies will make assurances to DHS and DOJ that they will exercise their respective ownership authority as required to ensure performance by the Licensees of their obligations under the Agreement;

NOW THEREFORE, the Parties are entering into this Agreement to address national security, law enforcement and public safety concerns.

ARTICLE 1: DEFINITION OF TERMS

As used in this Agreement:

1.1 **"Access"** or **"Accessible"** means the ability to physically or logically undertake any of the following actions: (a) read, divert, or otherwise obtain non-public information or technology from or about software, hardware, a system or a network; (b) add, edit or alter information or technology stored on or by software, hardware, a system or a network; and (c) alter the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).

1.2 **"Affiliate"** means any entity that Amper, eLandia, ASHC, SASC, or Blue Sky owns or Controls.

1.3 **"Cable System"** means all equipment, facilities and services pertaining to the ASHC System, and any other cable system owned or Controlled by the Licensees that lands in the United States; and all network operations centers ("NOCs").

1.4 **"Classified Information"** shall have the meaning indicated in Executive Order 12958, as amended by Executive Order 13292, or any successor executive order, or the Atomic Energy Act of 1954, or any statute that succeeds or amends the Atomic Energy Act of 1954.

1.5 **"Control"** and **"Controls"** means the power, direct or indirect, whether or not exercised, and whether or not exercised or exercisable through the ownership of a majority or a dominant minority of the total outstanding voting securities of an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:

a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;

b) the dissolution of the entity;

c) the closing and/or relocation of the production or research and development facilities of the entity;

d) the termination or nonfulfillment of contracts of the entity;

e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.6(a) through (d); or

f) the Licensees' obligations under this Agreement.

1.6 **"CPNI"** means Consumer Proprietary Network Information.

1.7 ***"De facto"*** and ***"de jure"*** control have the meanings provided in 47 C.F.R. § 1.2110.

1.8 **"Domestic Communications"** means: (a) Wire Communications or Electronic Communications (whether stored or not) from one U.S. location to another U.S. location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates or terminates in the United States.

1.9 **"Domestic Communications Infrastructure"** means any portion of the Cable System used by or on behalf of the Licensees that is: (a) transmission, switching, bridging and routing equipment (including software and upgrades) to provide, process, direct, control, supervise or manage Domestic Communications; (b) facilities and equipment physically located in the United States; and (c) facilities to control the equipment described in (a) and (b) above, but does not include facilities controlled by entities with which the Licensees have contracted for peering,

interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree, nor equipment or facilities used by service providers other than the Licensees that are:

(1) interconnecting communications providers; or

(2) providers of services or content that are:

(A) accessible using the communications services of the Licensees; and

(B) available in substantially similar form and on commercially reasonable terms through communications services of companies other than the Licensees.

1.10 "**Effective Date**" means the date this Agreement becomes effective, which is the date the FCC grants the application of the Licensees and the Parent Companies to transfer control of the cable landing license for the ASHC System.

1.11 "**Electronic Communication**" has the meaning given it in 18 U.S.C. § 2510(12).

1.12 "**Electronic Surveillance**," for the purposes of this Agreement, includes: (a) the interception of wire, oral, or electronic communications as defined in 18 U.S.C. §§ 2510(1), (2), (4) and (12), respectively, and electronic surveillance as defined in 50 U.S.C. § 1801(f); (b) Access to stored wire or electronic communications, as referred to in 18 U.S.C. § 2701 *et seq.*; (c) acquisition of dialing, routing, addressing, or signaling information through pen register or trap and trace devices or other devices or features capable of acquiring such information pursuant to law as defined in 18 U.S.C. § 3121 *et seq.* and 50 U.S.C. § 1841 *et seq.*; (d) acquisition of location-related information concerning a service subscriber or facility; (e) preservation of any of the above information pursuant to 18 U.S.C. § 2703(f); and (f) Access to, or acquisition, interception, or preservation of, wire, oral, or electronic communications or information as described in (a) through (e) above and comparable state laws.

1.13 "**Foreign**" where used in this Agreement, whether capitalized or lower case, means non-U.S.

1.14 "**Government**," "**Government Authority**," or "**Government Authorities**" means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.

1.15 "**Intercept**" or "**Intercepted**" has the meaning defined in 18 U.S.C. § 2510(4).

1.16 "**Lawful U.S. Process**" means lawful U.S. federal, state, or local Electronic Surveillance or other court orders, processes, or authorizations issued under U.S. federal, state, or local law for physical search or seizure, production of tangible things, or Access to or disclosure of Domestic Communications, Transactional Data, or Subscriber Information.

1.17 "**Management of the Licensees**" means the companies' officers and members of their Boards of Directors.

1.18 "**Network Management Information**" means network management operations plans, processes and procedures; descriptions of the placement of NOC(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures; descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; network performance information; and network access ability and procedures.

1.19 **"Network Operations Center" or "NOC"** means the locations and facilities designated as such by the Licensees for purposes of performing network management, monitoring, maintenance, or other operational functions for the Cable System.

1.20 **"Outsource" or "Outsourcing"** means performing functions covered by this Agreement which are normally performed by personnel of the Licensees through the use of contractors.

1.21 **"Principal Equipment"** means the primary electronic components of a submarine cable system, to include the hardware used at the NOC(s), landing station(s) and the cable itself, such as servers, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), and synchronous optical network (SONET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM) or optical carrier network (OCx) equipment, as applicable.

1.22 "***Pro forma* assignments**" or "***pro forma* transfers of control**" are transfers that do not involve a substantial change in ownership or control as provided by Section 63.24 of the FCC's Rules (47 C.F.R. § 63.24).

1.23 "Security Officer" means the Person designated pursuant to Section 3.7 of this Agreement.

1.24 "**Sensitive Information**" means information that is not Classified Information regarding: (a) the persons or facilities that are the subjects of Lawful U.S. Process; (b) the identity of the Government Authority or Government Authorities serving such Lawful U.S. Process; (c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance; (d) the means of carrying out Electronic Surveillance; or (e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state, or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information" of some type recognized by the agency involved. The designation "Sensitive" as used in this Section includes but is not limited to information marked or labeled "Official Use Only," "Limited Official Use Only," "Law Enforcement Sensitive," "Sensitive Security Information," "Sensitive but Unclassified,"

"Controlled Unclassified Information," "Protected Critical Infrastructure Information," or other similar designations.

1.25 "**Subscriber Information**" means all records or other information relating to customers or subscribers of the Licensees of the type referred to and Accessible subject to procedures specified in 18 U.S.C. § 2703(c) or (d) or 18 U.S.C. § 2709. Such information shall also be considered Subscriber Information when it is sought pursuant to the provisions of other Lawful U.S. Process.

1.26 "**Transactional Data**" includes the following when associated with a Domestic Communication but does not include the content of any communication: (a) "call identifying information," as defined in 47 U.S.C. § 1001(2), including without limitation the telephone number or similar identifying designator; (b) any information related to the sender or recipient of that Domestic Communication, including, without limitation subscriber identification, called party number, calling party number, start time, end time, call duration, feature invocation and deactivation, feature interaction, registration information, user location, diverted to number, conference party numbers, post-cut-through dialed digit extraction, in-band and out-of-band signaling, and party add, drop and hold; (c) any information relating specifically to the identity and physical address of a customer or subscriber, or account payer, or the end-user of such customer or subscriber, or account payer, or associated with such person relating to all telephone numbers, domain names, Internet Protocol ("IP") addresses, Uniform Resource Locators ("URLs"), other identifying designators, types of services, length of service, fees, usage including billing records and connection logs, and the physical location of equipment, if known and if different from the location information provided under (e) below; (d) the time, date, size, or volume of data transfers, duration, domain names, Media Access Control ("MAC") or IP addresses (including source and destination), URL's, port numbers, packet sizes, protocols or services, special purpose flags, or other header information or identifying designators or characteristics, including electronic mail headers showing From: and To: addresses; and (e) as to any mode of transmission (including mobile transmissions), and to the extent permitted by U.S. laws, any information indicating as closely as possible the physical location to or from which a Domestic Communication is transmitted.

1.27 "**United States,**" "**US,**" or "**U.S.**" means the United States of America, including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.

1.28 "**Wire Communication**" has the meaning given it in 18 U.S.C. § 2510(1).

1.29 **Other Definitional Provisions**. Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words "include," "includes," or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

ARTICLE 2: OPERATIONS, FACILITIES, INFORMATION STORAGE AND ACCESS

2.1 **Operational Requirements**. With respect to the operation of the Cable System, the Licensees agree as follows:

(a) the existing NOC for the Cable System shall be maintained and remain within the United States and U.S. territories, to be operated by the Licensees, exclusively using Screened Personnel (as defined in Section 3.10);

(b) the Licensees shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the Cable System by disabling or disconnecting circuits at the U.S. cable landing;

(c) the Licensees shall have the ability to isolate the U.S. NOC, U.S. landing stations, and the connecting cable segment from the rest of the Cable System and to restore and continue service on this segment, separate from the rest of the Cable System; and

(d) the Cable System shall be configured so that the U.S. NOC will be able to view the status of the Cable System and individual cable segments.

2.2 **Compliance with Lawful U.S. Process.** The Licensees shall configure the Domestic Communications Infrastructure to be capable of complying, and the employees of the Licensees in the United States will have unconstrained authority to comply, in an effective, efficient, and unimpeded fashion, with:

(a) lawful U.S. Process;

(b) the orders of the President of the United States in the exercise of his/her authority under the Cable Landing License Act of 1921, as amended (47 U.S.C. §§ 34-39) and Executive Order 10530 § 5(a), reprinted as amended in 3 U.S.C. § 301, and § 706 of the Communications Act of 1934, as amended, (47 U.S.C. § 606); and

(c) National Security and Emergency Preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C.§ 151 *et seq.*).

2.3 **Cable System Infrastructure**. Within **ten (10) business days** after the Effective Date the Licensees shall provide to DHS and DOJ a finalized list of:

(a) the Principal Equipment used in all the Cable System, to include information on the Principal Equipment's manufacturer and model; and

(b) all contracts held by the Licensees for the maintenance and security of the Cable System.

The Licensees shall provide at least **fifteen (15) business days**' advance written notice to DHS and DOJ prior to performing any maintenance, repair, or replacement that would result in any modification to the Principal Equipment list for the Cable System. The Licensees need not comply with the advance notice requirement for any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the Cable System; however, in such circumstances the Licensees shall provide advance notice of the modification to DHS and DOJ if practicable, and if impracticable, within **fifteen (15) business days** after the modification of the Principal Equipment located at Keawaula and **(30) business days** after the modification for all other Principal Equipment. The Licensees shall provide at least **thirty (30) business days**' advance written notice to DHS and DOJ prior to making any modifications to its list of contracts for Cable System maintenance and security. The Licensees agree to make the Network Management Information available to DHS and DOJ upon request. The Licensees shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DHS or DOJ may raise with respect to the Cable System's Principal Equipment, contracts, and Network Management Information.

2.4 **Outsourcing Contracts.** The Licensees shall not enter into an Outsourcing contract that affords the contractor Access to Sensitive Information, Classified Information, or Cable System Principal Equipment that is owned in whole or in part by the Licensees unless otherwise agreed to by the Parties. DHS and DOJ agree to negotiate in good faith and promptly with respect to any request by the Licensees to enter into an Outsourcing contract under this Section.

2.5 **Information Storage and Access.** Unless otherwise agreed to by the Parties, the Licensees shall make the following available in the United States:

(a) stored Domestic Communications, if such communications are stored by or on behalf of any of the Licensees for any reason;

(b) any Wire Communications or Electronic Communications received by, intended to be received by, or stored in the account of a domestic customer or subscriber of any of the Licensees, if such communications are stored by or on behalf of any of the Licensees for any reason;

(c) Transactional Data, if such data are stored by or on behalf of any of the Licensees for any reason;

(d) Subscriber Information, if such information is stored by or on behalf of any of the Licensees for any reason; and

(e) billing records of customers or subscribers, if such information is stored by or on behalf of any of the Licensees for any reason. Nothing in this Section is meant to exclude the use of Transactional Data for business or network management purposes in the normal course of business if said data is subject to security and

Access controls. The phrase "on behalf of" as used in this Section does not include entities with which any of the Licensees have contracted for peering, interconnection, roaming, long distance, or other similar arrangements on which the Parties may agree.

2.6 **Storage Pursuant to 18 U.S.C. § 2703(f).** Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Government Authority within the United States to preserve any information in the possession, custody, or control of any of the Licensees, including any information that is listed in Section 2.5 above, the Licensees shall ensure such preserved records or other evidence are stored in the United States.

2.7 **Compliance with U.S. Law.** Nothing in this Agreement shall excuse the Licensees from any obligation they may have to comply with U.S. legal requirements for the retention, preservation, or production of information, records or data as well as all applicable requirements of the Communications Assistance for Law Enforcement Act, 47 U.S.C. § 1001, et seq.

2.8 **Storage of Protected Information.** The Licensees shall store all Classified Information and Sensitive Information exclusively in the United States.

2.9 **CPNI.** The Licensees shall comply, with respect to Domestic Communications, with all applicable FCC rules and regulations governing access to and storage of CPNI, as defined in 47 U.S.C. §222(h)(1)

ARTICLE 3: SECURITY

3.1 **Measures to Prevent Improper Use or Access.** The Licensees shall take all reasonable measures to prevent the use of or Access to the Domestic Communications Infrastructure to conduct Electronic Surveillance, or to Access, obtain or disclose Domestic Communications, Transactional Data, Subscriber Information, Classified Information or Sensitive Information, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. The Licensees shall submit the policies and procedures regarding these measures to DHS and DOJ for review upon request. The Licensees agree to meet and confer with DHS or DOJ and reasonably address any concerns DHS or DOJ may raise about the policies or the procedures described therein.

3.2 **Access by Foreign Government Authorities.** The Licensees shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to Domestic Communications, Transactional Data, or Subscriber Information, stored by or on behalf of any of the Licensees to any person if the purpose of such Access is to respond to the legal process or the request of or on behalf of a Foreign Government, identified representative, component or subdivision thereof, without the express written consent of DHS and DOJ or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to DHS and DOJ as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or known to any of the Licensees. The Licensees shall take reasonable measures to ensure that they each will promptly learn of all such requests or submission of legal process. Provided, however, that nothing in this Section 3.2 shall require the express written consent of DHS or DOJ or the authorization of a court of competent jurisdiction

in the United States with respect to any response to the legal process, or the request of or on behalf of the Independent State of Samoa, identified representative, component or subdivision thereof with respect to the non-U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that may originate or terminate outside the United States."

3.3 **Disclosure to Foreign Government Authorities.** The Licensees shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to:

(a) Classified or Sensitive Information;

(b) Transactional Data, Subscriber Information, or a copy of any Wire or Electronic Communications, intercepted or acquired pursuant to Lawful U.S. Process; or

(c) the existence of Lawful U.S. Process that is not already a matter of public record;

to any Foreign Government, identified representative, component or subdivision thereof, without satisfying all applicable U.S. federal, state and local legal requirements, and without obtaining either the express written consent of DHS or DOJ or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a Foreign Government, an identified representative, a component or subdivision thereof to any of the Licensees for the communications, data or information identified that is maintained by any of the Licensees shall be referred to DHS and DOJ as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or known to any of the Licensees, unless the disclosure of the request or legal process would violate applicable law. The Licensees shall take reasonable measures to ensure that they will promptly learn of all such requests or submission of legal process.

3.4 **Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities.** Within **ten (10) business days** after receiving legal process or requests from Foreign non governmental entities for Access to or disclosure of Domestic Communications, the Licensees shall notify DHS and DOJ in writing of such legal process or requests, unless such disclosure would be in violation of an order of a court of competent jurisdiction within the United States.

3.5 **Security of Lawful U.S. Process.** The Licensees shall protect the confidentiality and security of all Lawful U.S. Process served upon them and the confidentiality and security of Classified and Sensitive Information in accordance with U.S. federal and state law or regulation and this Agreement.

3.6 **Point of Contact.** The Licensees have heretofore designated a Point of Contact with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to its customers or subscribers. The Licensees shall ensure that at least one Point of Contact shall be in the United States, shall be available **twenty-four (24)** hours per day, **seven (7)** days per week, and shall be responsible for responding to inquiries from DHS and DOJ concerning the Licensees' acceptance of service of any Lawful

U.S. Process relating to Domestic Communications carried by or through, in whole or in part, the Domestic Communications Infrastructure, or relating to the customers or subscribers of the Licensees. Licensees shall notify DHS and DOJ in writing of its designated Point or Points of Contact within **thirty (30) business days**. The Licensees shall notify DHS and DOJ of all future changes in such designation, or the designation of alternate Points of Contact, also in **ten (10) business days** or fewer. The Point(s) of Contact shall be a resident U.S. national or nationals who, based on the information in the Licensees' possession, are eligible for appropriate U.S. security clearances. The Licensees shall cooperate with any request by a Government Authority within the United States that a background check, security clearance process or both be completed for a Point of Contact.

3.7 **Designation of Security Officer.** Within 30 days of the Effective Date, the Licensees shall designate a Security Officer. The Security Officer shall have the appropriate senior-level corporate authority within the Licensees, and the necessary resources and skills, to enforce this Agreement, implement the information security plan and the personnel screening process requirements in Sections 3.10 and 3.11 below, and to act as liaison to the USG Parties regarding compliance with this Agreement and any national security issues. The Security Officer shall have access to the Licensees' business information necessary to perform his or her duties. The Licensees shall consult in advance of the designation of the Security Officer with the USG Parties regarding the selection and identify of the Security Officer and shall reasonably address any concerns raised by the USG Parties regarding the selection and identity of the Security Officer. The Security Officer shall:

(a) Possess U.S. citizenship or be a resident U.S. national and maintain U.S. residency;

(b) Be a corporate officer with appropriate authority, skills, and resources to enforce this Agreement with respect to the Licensees; and

(c) Either hold a U.S. security clearance or meet the criteria that would be considered in a security clearance process.

3.8 **Security Officer Responsibilities and Duties.** The responsibilities and duties of the Security Officer shall include, at least, each of the following:

(a) Providing DHS and DOJ the Annual Report required of the Licensees under Section 4.8;

(b) Developing The Licensees' Information Security Plan and personnel screening process requirement to promote full compliance with the Agreement;

(c) Implementing all aspects of compliance with this Agreement and all corporate policies, procedures, and plans to promote and ensure compliance with this Agreement;

(d) Providing reports to the U.S. Government mandated by the Agreement;

(e) Being aware of, and reporting to the USG Parties, changes to corporate structure or operations that would reasonably be deemed to have an effect on the terms or operation of the Agreement;

(f) Being available upon reasonable notice for discussions with the U.S. Government relating to the enforcement of and compliance with the Agreement or any other issue involving national security;

(g) Ensuring procedures are in place for the Licensees to comply with Lawful U.S. Process in an expeditious, effective, and unimpeded fashion.

3.9 **Information Security Plan.** Within **ninety (90) calendar days** of the Effective Date the Licensees shall:

(a) take appropriate measures to prevent unauthorized Access to data or facilities that might contain Classified or Sensitive Information;

(b) assign U.S. nationals, who meet high standards of trustworthiness for maintaining the confidentiality of Sensitive Information, to positions that handle or that regularly deal with information identifiable to such person as Sensitive Information;

(c) upon request from DHS or DOJ provide the name, date of birth, and other relevant requested identifier information of each person who regularly handles or deals with Sensitive Information;

(d) require that personnel handling Classified Information shall have been granted appropriate security clearances pursuant to Executive Order 12968;

(e) provide that the Point(s) of Contact described in Section 3.6 of this Agreement shall have sufficient authority over any employees or contractors of the Licensees who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement; and

(f) maintain appropriately secure facilities (e.g., offices) for the handling and storage of any Classified or Sensitive Information.

The Licensees shall make the policies and procedures regarding their respective Information Security Plans available to DHS or DOJ upon request.

3.10 **Screening of Personnel.** The Licensees shall implement a screening process to ensure compliance with all personnel screening process requirements agreed to by the Licensees and DHS and DOJ pursuant to this Agreement. The Licensees' screening process shall include any existing or newly hired Licensee' personnel or any personnel performing under an agreement with the Licensees in at least the following circumstances:

(a) any person whose position involves Access to the Domestic Communications Infrastructure that enables those persons to monitor the content of Domestic Communications;

(b) all persons who have Access to Classified, Controlled Unclassified, and Sensitive Information; and

(c) The Security Officer and the Point of Contact.

Upon satisfactory completion of the screening process requirements set forth in this Agreement, such persons shall be considered "**Screened Personnel.**" In addition the Licensees will cooperate with any reasonable notice by a U.S. Government Authority to provide additional information necessary for an enhanced background investigation to be conducted by such U.S. Government Authority with respect to Screened Personnel.

3.11 **Screening Process Requirements.** The screening process undertaken pursuant to this Section shall specifically include a background check in addition to a public criminal records check. In addition:

(a) The Licensees shall assign U.S. citizens or U.S. nationals to positions for which screening is contemplated pursuant to Section 3.10;

(b) The Licensees shall consult with DHS and DOJ regarding the screening procedures to be used. The Licensees shall reasonably address any concerns DHS or DOJ may raise with respect to such screening procedures. The Licensees shall use the criteria identified in Section 3.10 of this Agreement to identify the personnel to be screened;

(c) The Licensees shall cooperate with reasonable requests by DHS or DOJ, or any U.S. Government Authority desiring to conduct any further background checks;

(d) Individuals who are rejected pursuant to such further background checks by a U.S. Government Authority shall not be permitted to perform functions that would require screening under this Section. The Licensees shall notify DHS and DOJ of the job modification of any individual rejected because of the screening conducted pursuant to this Agreement within ten (10) business days of such modification, and shall provide DHS and DOJ upon request with the name, date of birth and any other requested identifier information of such individual;

(e) The Licensees shall provide annual training programs to instruct Screened Personnel as to their obligations under the Agreement. The Licensees shall monitor, on a regular basis the status of Screened Personnel, and shall remove personnel who no longer meet the Screened Personnel requirements;

(f) The Licensees shall maintain records relating to the status of Screened Personnel, and shall provide these records, upon request, to any or all of DHS and DOJ; and

(g) any records or other information relating to individual persons provided to or obtained by DHS or DOJ in connection with this Agreement, including implementation and results of screening requirements, shall be maintained in a secure and confidential manner strictly in accordance with applicable law.

3.12 **Nondisclosure of Protected Data.** The Licensees shall not directly or indirectly disclose information concerning Lawful U.S. Process, Classified Information, or Sensitive Information to any third party, or to any officer, director, shareholder, employee, agent, or contractor of the Licensees, including those who serve in a supervisory, managerial or executive role with respect to the employees working with the information, unless disclosure has been approved by prior written consent obtained from DHS and DOJ or there is an official need for disclosure of the information in order to fulfill an obligation consistent with the purpose for which the information is collected or maintained.

3.13 **Notice of Obligations.** The Licensees shall instruct appropriate officials, employees, contractors, and agents as to their obligations under this Agreement, including the individuals' duty to report any violation of this Agreement and the reporting requirements in Article 4 of this Agreement, and shall issue periodic reminders to them of such obligations.

3.14 **Access to Classified or Sensitive Information.** Nothing contained in this Agreement shall limit or affect the authority of a U.S. Government Authority to deny, limit or revoke whatever access any of the Licensees might have to Classified or Sensitive Information under that Government Authority's jurisdiction.

ARTICLE 4: REPORTING AND NOTICE

4.1 **Filings Concerning *de jure* or *de facto* Control of the Licensees.** If any of the Licensees makes any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of that Licensee, or to the Cable System, except for filings with the FCC for assignments or transfers of control that are *pro forma*, the Licensees shall promptly provide to DHS and DOJ written notice and copies of such filing.

4.2 **Change in Control.** If any member of the managements of the Licensees (including officers and members of the Boards of Directors) acquires any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection with the pending FCC Application filed by the Licensees, has or will likely obtain an ownership interest (direct or indirect) in any of the Licensees, or in the Cable System, above ten (10) percent, as

determined in accordance with 47 C.F.R. § 63.09, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or will likely otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of any of the Licensees then such officer or director shall promptly cause that Licensee to notify DHS and DOJ in writing within **ten (10) business days**. Notice under this Section shall, at a minimum:

(a) identify the entity or individual(s) (specifying the name, addresses, and telephone numbers of the entity);

(b) identify the beneficial owners of the increased or prospective increased interest in the Licensee or the Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and

(c) quantify the amount of ownership interest that the entity or individual(s) has or will likely obtain in the Licensee or the Cable System and, if applicable, the basis for their prospective Control of the Licensee or the Cable System.

4.3 **Procedure and Process on Reporting**. Within **forty-five (45) calendar days** of the Effective Date, the Licensees shall adopt and distribute to all officers and directors, a written procedure or process for the reporting by officers and directors of noncompliance with this Agreement. This written procedure or process shall also provide for the reporting by employees, agents and contractors to management of information that must be reported to DHS and DOJ under this Article. Any violation by any of the Licensees of any material term of such corporate policy shall constitute a breach of this Agreement. By a written statement, the Licensees shall notify all employees, contractors and agents that the general categories of information identified in this Article should be disclosed to senior management and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing employees, contractors, and agents of the need to report this information shall also state that the Licensees will not discriminate against, or otherwise take adverse action against, anyone who reports such information to management or the United States government. The Licensees shall make such process or procedure documents available to DHS and DOJ upon request.

4.4 **Non-retaliation**. Within **forty-five (45) calendar days** after the Effective Date, the Licensees shall adopt and distribute to all officers and directors an official corporate policy that strictly prohibits discrimination or any adverse action against any officer, director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a notice or report under this Article, or has notified or attempted to notify the management to report information that he or she believes in good faith is required to be reported to DHS or DOJ under either this Article or under the Licensees' written notices to employees on the reporting of any such information. Any violation by any of the Licensees or any of their Affiliates of any material term of such corporate policy shall constitute a breach of this Agreement. The Licensees shall make such process or procedure documents available to DHS or DOJ upon request.

4.5 **Reporting of Incidents**. The Licensees shall report to DHS and DOJ any information acquired by any of their officers, directors, employees, contractors or agents that reasonably indicates:

(a) a breach of this Agreement;

(b) access to or disclosure of Domestic Communications, or the conduct of Electronic Surveillance, in violation of federal, state or local law or regulation;

(c) access to or disclosure of CPNI or Subscriber Information in violation of federal, state or local law or regulation (except for violations of FCC regulations relating to improper commercial use of CPNI); or

(d) improper access to or disclosure of Classified or Sensitive Information.

This report shall be made in writing by the appropriate officer to DHS and DOJ no later than **ten (10) calendar days** after any of the Licensees acquires information indicating a matter described in this Section. The Licensees shall lawfully cooperate in investigating the matters described in this Section. The Licensees need not report information where disclosure of such information would be in violation of an order of a court of competent jurisdiction in the United States.

4.6 **Access to Information and Facilities**. DHS, DOJ, or other agencies or personnel assigned to assist DHS or DOJ, may visit at any time any part of the Licensees' Domestic Communications Infrastructure and security offices to conduct on-site reviews concerning the implementation of the terms of this Agreement and may at any time require unimpeded access to information concerning technical, physical, management, or other security measures needed by DHS or DOJ to verify compliance with the terms of this Agreement.

4.7 **Access to Personnel**. Upon reasonable notice from DHS, DOJ, or other agencies or personnel assigned to assist DHS or DOJ, the Licensees shall make available for interview any of their officers or employees and any contractor located in the United States, who is in a position to provide information to verify compliance with the terms of this Agreement.

4.8 **Annual Report**. On or before the last day of January of each year, designated senior corporate officers representing each of the Licensees shall submit to DHS and DOJ a report assessing each of the Licensees' compliance with the terms of this Agreement for the preceding calendar year. The report shall include:

(a) a copy of the then current policies and procedures adopted to comply with this Agreement;

(b) a summary of the changes, if any, to the policies or procedures, and the reasons for those changes;

(c) a summary of any known acts of noncompliance with the terms of this Agreement, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future; and

(d) identification of any other issues that, to any of the Licensees' knowledge, will or reasonably could affect the effectiveness of or its compliance with this Agreement.

4.9 **Right to Third Party Audits.** Either DHS or DOJ may in its sole discretion require the Licensees to obtain a third party audit of the Licensees' compliance with the terms of the Agreement and to provide the resultant audit report to either DHS or DOJ.

(a) If this right to third party audits is availed by either DHS or DOJ, the Licensees will, within thirty (30) days of receiving such a request by either DHS or DOJ, propose terms and scope for the audit.

(b) Once the Licensees has submitted the terms and scope of the audit, DHS and DOJ will consult, and the requesting party will have thirty (30) days to respond to the proposed terms and scope of the audit.

(c) The Licensees will reasonably address any concerns raised by either DHS or DOJ and shall commence the audit within ninety (90) days of the earlier of (a) the expiration of the 60-day period set forth in this Section 4.4(a)-(b) above, or (b) reaching agreement on the scope and terms of the audit with DHS and DOJ.

(d) The audit required by this Section 4.9 shall be solely at the Licensees' expense and neither DHS nor DOJ shall be required to make any showing of cause to invoke this right to third party audit. However, if DOJ or DHS invokes its right to a third party audit, the Licensees shall not be requested to conduct another third party audit until twelve (12) months has passed from the conclusion of the previous audit requested by any of the Agencies.

4.10 **Notices.** Effective upon execution of this Agreement by the Parties, all notices and other communications relating to this Agreement, such as a proposed modification, shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail, or if no e-mail is specified, by one of the following methods: (a) delivered personally, (b) sent by facsimile, (c) sent by documented overnight courier service, or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Department of Homeland Security
Assistant Secretary for Policy
Washington, DC 20528

Department of Justice
Assistant Attorney General for National Security
950 Pennsylvania Avenue, NW
Washington, DC 20530
Fax: (202) 305-4211
Email: TTelecom@usdoj.gov

American Samoa Hawaii Cable, LLC
Samoa American Samoa Cable, LLC
Laufou Center
P.O. Box 478
Pago Pago, AS 96799
(684) 699–2759

AST Telecom, LLC
d/b/a Blue Sky Communications
Laufou Center
P.O. Box 478
Pago Pago, AS 96799
(684) 699-2759

With a copy to:

Kent Bressie
Wiltshire & Grannis LLP
1200 18th Street, N.W. Suite 1200
Washington, DC 20036-2516
202–730-1337 tel
202–730-1301 fax
kbressie@wiltshiregrannis.com

ARTICLE 5: FCC CONDITION

5.1 **FCC Approval**. Upon the execution of this Agreement by the Parties DHS and DOJ shall on its own motion at an appropriate time or at the request of any of the Licensees notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the "Condition to FCC Authorization"), DHS and DOJ have no objection to the FCC's grant of the pending Application described in the Recitals of this Agreement. This Section is effective upon the Effective Date, provided however that in the case of a material modification or withdrawal of the Application after the execution of this Agreement the effectiveness of this Section may be suspended by DHS or DOJ, and any such FCC filing is subject to the right to object reserved in Section 5.2.

5.2 **Right to Object to Future FCC Filings**. The Licensees agree that in any application or petition by any of the Licensees to the FCC for licensing or other authority related to any Cable

System filed with or granted by the FCC after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, the Licensee shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 7.9, DHS and DOJ reserve the right to object, formally or informally, to the grant of any other FCC application or petition of any of the Licensees for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

ARTICLE 6: DISPUTES

6.1 **Informal Resolution**. The Parties shall use their best efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. Any disagreement that has not been resolved at that level shall be submitted promptly to the legal counsel for the Licensees and the Assistant Secretary for Policy of DHS and the Assistant Attorney General for National Security of DOJ, or their respective designees, unless DHS or DOJ believes that important national interests can be protected, or the Licensees believe that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2. If, after meeting with higher authorized officials, a Party determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 6.2. If resolution of a disagreement requires access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purpose of resolving that disagreement.

6.2 **Enforcement of Agreement**. Subject to Section 6.1 of this Agreement, if any Party believes that another party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Agency to:

(a) require that the Party believed to have breached, or about to breach, this Agreement cure such breach within **thirty (30) calendar days**, or whatever shorter time period is appropriate under the circumstances, upon receiving written notice of such breach;

(b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC to the Licensees, request that the FCC take other action, or request that the FCC impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty, against the Licensees;

(c) seek civil sanctions for any violation by any of the Licensees of any U.S. law or regulation or term of this Agreement;

(d) pursue criminal sanctions against the Licensees, or any director, officer, employee, representative, or agent thereof, or against any other person or entity, for violations of the criminal laws of the United States; or

(e) seek suspension or debarment of the Licensees from eligibility for contracting with the U.S. Government, in accordance with applicable law and regulation.

6.3 **Irreparable Injury**. The Licensees agrees that the United States would suffer irreparable injury if for any reason they failed to perform any of their obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, the Licensees agree that, in seeking to enforce this Agreement, DHS and DOJ shall be entitled, in addition to any other remedy available at law or equity, to specific performance and injunctive or other equitable relief.

6.4 **Waiver.** The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

6.5 **Waiver of Immunity**. The Licensees agree, to the extent that they or any of their property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of Government from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, they, for themselves and their respective property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a U.S. federal, state, or local Government Authority. The Licensees agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq*. The foregoing waiver shall constitute a present waiver of immunity at any time any action is initiated by a U.S. federal, state, or local Government Authority against any of the Licensees with respect to compliance with this Agreement.

6.6 **Forum Selection.** It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

ARTICLE 7: OTHER

7.1 **Right to Make and Perform Agreement.** Each Party represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of each Party enforceable in accordance with its terms.

7.2 **Headings.** The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.

7.3 **Other Laws.** Nothing in this Agreement is intended to limit or constitute a waiver of: (a) any obligation imposed by any U.S. federal, state, or local laws on the Licensees, (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess over the activities or facilities of the Licensees located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable U.S. law.

7.4 **Statutory References.** All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

7.5 **Non-Parties.** Nothing in this Agreement is intended to confer or does confer any rights on any person other than the Parties and any Government Authorities that utilize Lawful U.S. Process.

7.6 **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by all Parties. DHS and DOJ agree to consider promptly and in good faith possible modifications to this Agreement if any of the Licensees believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within **thirty (30) calendar days** after approval in writing by the Parties.

7.7 **Severability.** The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

7.8 **Changes in Circumstances for the Licensees.** DHS and DOJ agree to negotiate in good faith and promptly with respect to any request by the Licensees for relief from application of specific provisions of this Agreement if there is a change in circumstances such that those

provisions become unduly burdensome or have a demonstrably adverse effect on the Licensees' competitive position.

7.9 **Changes in Circumstances for DHS or DOJ.** If after the date that the Parties have executed this Agreement, DHS or DOJ finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then the Licensees will negotiate in good faith to modify this Agreement to address those concerns.

7.10 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.

7.11 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns. This Agreement shall also be binding on all subsidiaries, divisions, departments, branches, and other components or agents of the Licensees.

7.12 **Effectiveness of Agreement.** Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

7.13 **Notice of Additional Services.** The Licensees shall provide a minimum of **thirty (30) calendar days** advanced notice to DHS and DOJ in the event that they change or intend to change the technical or operational plans set forth in the Recitals to this Agreement such that the material representations made therein are no longer fully accurate, true and complete.

[Signature Pages Follow]

This Agreement is executed on behalf of the Parties:

American Samoa Hawaii Cable, LLC

Date: February 1, 2011

By: _____

Printed Name: Adolfo Montenegro

Title: President

Samoa American Samoa Cable, LLC

Date: February 1, 2011

By: _____

Printed Name: Adolfo Montenegro

Title: President

American Samoa License, Inc.

Date: February 1, 2011

By: _____

Printed Name: Adolfo Montenegro

Title: President

AST Telecom, LLC d/b/a Blue Sky Communications

Date: February 1, 2011

By: _____

Printed Name: Adolfo Montenegro

Title: President and CEO

Department of Homeland Security

Date: _____

By: _____

Printed Name:

Title:

Date: 2/2/11

Department of Justice

By: _____

Printed Name: Richard C. Sofield

Title: Director, Foreign Investment Review Staff

This Agreement is executed on behalf of the Parties:

American Samoa Hawaii Cable, LLC

Date:_____

By:_____

Printed Name:

Title:

Samoa American Samoa Cable, LLC

Date:_____

By:_____

Printed Name:

Title:

American Samoa License, Inc.

Date:_____

By:_____

Printed Name:

Title:

AST Telecom, LLC d/b/a Blue Sky Communications

Date:_____

By:_____

Printed Name:

Title:

Department of Homeland Security

Date: 2/2/11

By:_____

Printed Name:

Title:

Department of Justice

Date:_____

By:_____

Printed Name:

Title: