

AGREEMENT

THIS AGREEMENT (the “Agreement”) is made as of the date of the last signature affixed hereto, by and between GTI Corporation d/b/a GTI Telecom (“GTI”), Hawaiian Telcom Services Company, Inc. (“HT”), RAM Telecom International, Inc. (“RTI”), and TeleGuam Holdings, LLC d/b/a GTA (“GTA”) (each a “SEA-US Mitigation Party” and collectively the “SEA-US Mitigation Parties”), on the one hand, and the United States Department of Homeland Security (“DHS”), on the other hand (each referred to individually as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, U.S. communications 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 Presidential Policy Directive/PPD-21, Critical Infrastructure Security and Resilience);

WHEREAS, the SEA-US Mitigation Parties and GTI’s parent company Globe Telecom, Inc. (“Globe”), Telekomunikasi Indonesia International (USA) Inc. (“Telkom USA”), and Telkom USA’s parent company PT Telekomunikasi Indonesia International (“Telin,” together with Globe and the SEA-US Mitigation Parties, “SEA-US Owners”) seek to construct, land, and operate a private, non-common carrier, fiber-optic submarine cable system with six segments connecting Indonesia, the Philippines, Guam, Hawaii, and California, which will be called the Southeast Asia-US (“SEA-US”) Cable System;

WHEREAS, each SEA-US Owner will own all common infrastructure of the SEA-US Cable System in indivisible shares based on their proportionate interests in the SEA-US Cable System;

WHEREAS, each SEA-US Mitigation Party has contractual responsibilities for the operation and control of landing facilities and equipment at U.S. landings in Guam, Hawaii, and California—GTA in Guam, HT in Hawaii, and GTI, RTI, and Telkom USA jointly in California, although Telkom USA has assigned to GTI and RTI its performance obligations under the California landing party agreement;

WHEREAS, the SEA-US Mitigation Parties have the authority to negotiate and execute this Agreement for the U.S. portions of the SEA-US Cable System; to enter into contractual arrangements with third parties to operate and manage the U.S. facilities associated with the SEA-US Cable System, including the landing and terminal power feed equipment, terrestrial

transmission facilities associated with the landing, and the operations of the U.S. Network Operations Center (“NOC”); and to direct the activities of any vendors, suppliers, or providers of services to the SEA-US Owners or their designee related to the U.S. portions of the SEA-US Cable System;

WHEREAS, on June 26, 2015, the SEA-US Owners applied to the Federal Communications Commission (“FCC”) for a submarine cable landing license under the Cable Landing License Act of 1921 and Executive Order No 10530, FCC File No. SCL-LIC-20150626-00016 (the “Application”);

WHEREAS, DHS will request that the FCC’s grant of the pending Application be made subject to resolution of issues relating to national security, law enforcement, and public safety as set forth herein, and whereas the SEA-US Mitigation Parties have agreed to enter into this Agreement with DHS to resolve issues raised by DHS and to jointly petition the FCC to condition the requested authorization on compliance with this 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 Globe, HT, RTI, GTA, or Telin owns or controls.
- 1.3 **“Control”** and **“Controls”** mean the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in 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 facilities of the entity; the termination or non-fulfillment of contracts of the entity;

- (d) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.3(a) through (d) above; or
 - (e) any of the SEA-US Mitigation Parties' obligations under this Agreement.
- 1.4 **"De facto"** and **"de jure"** control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.5 **"Domestic Communications"** means (a) Wire Communications or Electronic Communications (whether stored or not) originating at 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 from or terminates in the United States.
- 1.6 **"Domestic Communications Infrastructure"** or **"DCI"** means any portion of the SEA-US Cable System that is physically located in the United States up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (with the exception of commercial off-the-shelf ("COTS") software used for common business functions; e.g., MS Office) used by or on behalf of any of the SEA-US Mitigation Parties for the SEA-US Cable System to provide, process, direct, control, supervise, or manage Domestic Communications, and NOC facilities that may be used to control the SEA-US Cable System.
- 1.7 **"Effective Date"** means the date this Agreement becomes effective, which is the date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party's signature).
- 1.8 **"Electronic Communication"** has the meaning given it in 18 U.S.C. § 2510(12).
- 1.9 **"Foreign"** where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.10 **"Government," "Government Authority" or "Governmental 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.
- 1.11 **"Management"** means the respective officers, managers (in the case of a limited-liability company), and members of the boards of directors of each of the SEA-US Mitigation Parties and their Affiliates.
- 1.12 **"Network Management Information"** means: the 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 (e.g. domestic telecommunications and content providers); 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.

- 1.13 **“Network Operations Center”** or **“NOC”** means the locations and facilities designated as such by the SEA-US Owners for purposes of performing network management, monitoring, maintenance or other operational functions for the SEA-US Cable System.
- 1.14 **“Notice”** shall have the meaning set forth in Section 4.15 of this Agreement.
- 1.15 **“Principal Equipment”** means the primary electronic components of the SEA-US Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes the cable itself, network element servers, routers, switches, repeaters, submarine line terminal equipment (“SLTE”), system supervisory equipment (“SSE”), signal modulators and amplifiers, power feed equipment (“PFE”), tilt and shape equalizer units (“TEQ/SEQ”), optical distribution frames (“ODF”), branching units (“BU”), 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, and any non-embedded software necessary for the proper monitoring, administration and provisioning of the SEA-US Cable System (with the exception of COTS software used for common business functions; e.g. MS Office).
- 1.16 **“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 1.767(g)(7) and 63.24 of the FCC’s Rules (47 C.F.R. §§ 1.767(g)(7) and 63.24).
- 1.17 **“Screened Personnel”** means those persons, as set forth at Section 3.6, who, through appropriate screening procedures, are deemed to possess a high degree of trustworthiness.
- 1.18 **“United States”** 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.
- 1.19 **“Wet Infrastructure”** means hardware components installed and residing on the undersea portion of the SEA-US Cable System, and includes fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the SEA-US Cable System.
- 1.20 **“Wire Communication”** has the meaning given it in 18 U.S.C. § 2510(1).
- 1.21 **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 SEA-US Cable System, each SEA-US Mitigation Party agrees as follows:

- (a) the primary NOC for the SEA-US Cable System shall be established within the United States (“U.S. NOC”) to be operated by, or on behalf of, HT and its Affiliates, on behalf of the SEA-US Owners, exclusively using Screened Personnel;
- (b) a secondary NOC shall be established within the Philippines, to be owned and operated by Globe on behalf of the SEA-US Owners, exclusively using Screened Personnel;
- (c) the SEA-US Mitigation Parties shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the SEA-US Cable System by disabling or disconnecting circuits at the U.S. cable landing stations or at other locations within the United States, as follows:
 - i. Hermosa Beach, California, cable landing station and the California end of SEA-US Cable System Segment 6 (which connects the Hermosa Beach cable landing station to Branch Unit 2 off the coast of Hawaii): GTI and RTI;
 - ii. Makaha, Hawaii, cable landing station and the Hawaii end of Segment 5 (which connects the Makaha cable landing station to Branch Unit 2 off the coast of Hawaii): HT; and
 - iii. Piti, Guam, cable landing station and the Guam end of SEA-US Cable System Segment 3 (which connects the Piti cable landing station to Branch Unit 1 located off the coast of the Philippines) and Segment 4 (which connects the Piti cable landing station to Branch Unit 2 off the coast of Hawaii): GTA.
- (d) the SEA-US Mitigation Parties shall have the ability to isolate the U.S. NOC, the U.S. cable landing stations, or the connecting cable segment from the rest of the SEA-US Cable System; and
- (e) HT shall ensure that the U.S. NOC will be able to view the status of the SEA-US Cable System and individual cable segments and maintain exclusive supervision and control of those segments, except in the event of a failure of the U.S. NOC.

If any SEA-US Mitigation Party interrupts traffic to or from the United States as the result of lawful U.S. process from a Government Authority, it shall be permitted to disclose

publicly that it was required to interrupt service in response to a request for or the receipt of lawful U.S. process, without disclosing any of the content of such request.

2.2 Cable System Infrastructure. Within ninety (90) business days after the Effective Date, the SEA-US Mitigation Parties shall jointly provide DHS with:

- (a) a complete and current list of Principal Equipment, including each item's manufacturer and the model and/or version number of any hardware or software; any vendors, contractors, or subcontractors involved in installing, operating, managing, or maintaining the Principal Equipment; and a description of each Principal Equipment item and the functions supported;
- (b) a complete and current list of all contracts held by the SEA-US Mitigation Parties or their designee(s) for the maintenance and security of the SEA-US Cable System;
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the SEA-US Cable System;
- (d) a logical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the SEA-US Cable System, which plan shall include measures to ensure that security patches for systems and applications are kept up to date;
- (e) a physical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the SEA-US Cable System; and
- (f) a network map that includes a physical and logical topology, Network Management Information, network and telecommunications architecture descriptions and associated descriptions of interconnection points, controlled gateways to the DCI and the Wet Infrastructure, network operational plans, processes and procedures, locations and functions of any NOCs, and descriptions of disaster recovery and administrative functions.

The SEA-US Mitigation Parties, whether individually or collectively, shall provide at least ten (10) business days' advance Notice prior to performing any maintenance, repair, or replacement that would result in any material modification to the Principal Equipment list for the SEA-US Cable System. The SEA-US Mitigation Parties need not comply with the advance Notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and is necessary to ensure the continued operability of the SEA-US Cable System; however, in such circumstances the SEA-US Mitigation Parties shall jointly provide advance Notice of the modification if practicable, and if impracticable, within ten (10) business days after the material modification of the Principal Equipment. The SEA-US Mitigation Parties shall jointly provide at least five (5) business days' advance Notice prior to making any material modifications to their contracts for SEA-US Cable System maintenance and security. Each

SEA-US Mitigation Party agrees to meet and confer with DHS and consider any concerns DHS may raise about materials submitted pursuant to this provision.

- 2.3 **California Landing Arrangements.** Although GTI, RTI, and Telkom USA are formally joint landing parties for the California landing of the SEA-US Cable System, Telkom USA has assigned to GTI and RTI its performance obligations under the California landing party agreement and will have no Access to Domestic Communications Infrastructure or Domestic Communications.
- 2.4 **Compliance with Applicable Law.** Nothing in this Agreement shall excuse any Party from any obligation it may have to comply with applicable legal requirements for the retention, preservation, or production of information, records or data.

ARTICLE 3: SECURITY

- 3.1 **Measures to Prevent Improper Use or Access.** Each SEA-US Mitigation Party shall take all reasonable measures to prevent the use of or Access to the Domestic Communications Infrastructure to Access, obtain or disclose Domestic Communications, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. Such measures shall include contractual safeguards as well as screening procedures for personnel with Access to the Domestic Communications Infrastructure. Each SEA-US Mitigation Party shall submit such policies and procedures regarding these measures to DHS within ninety (90) business days of the Effective Date for review, and each SEA-US Mitigation Party agrees to meet and confer with DHS and consider any concerns DHS may raise about such policies and procedures.

Furthermore, each SEA-US Mitigation Party agrees to report to DHS if it learns of information that reasonably indicates unauthorized third-party disruption of the SEA-US Cable System or any Domestic Communications being carried on the SEA-US Cable System. Any such reports should be provided in writing to DHS within ten (10) business days of discovery of the relevant information. Each SEA-US Mitigation Party further agrees to confer with, and reasonably consider any recommendations by DHS with respect to how to remediate such events. Each SEA-US Mitigation Party will provide Notice within ten (10) business days of the receipt of any such recommendation whether that SEA-US Mitigation Party has adopted the recommendation. The Notice will include an explanation of why the SEA-US Mitigation Party has not adopted any recommendation that it does not adopt and a description of the actions taken to implement any recommendation that it does adopt.

- 3.2 **Physical Security Measures.** Each SEA-US Mitigation Party shall take all reasonable measures to physically secure the Domestic Communication Infrastructure and shall require that any personnel of a SEA-US Owner that wish to physically access any U.S. cable landing station or the U.S. NOC and that are not Screened Personnel of a SEA-US Mitigation Party be escorted at all times by Screened Personnel of a SEA-US Mitigation Party. Each SEA-US Mitigation Party shall submit such policies and procedures regarding

these measures to DHS within ninety (90) business days of the Effective Date for review, and each SEA-US Mitigation Party agrees to meet and confer with DHS and consider any concerns DHS may raise about such policies and procedures.

Furthermore, each SEA-US Mitigation Party agrees to report to DHS if it learns of information that reasonably indicates unauthorized third-party disruption of the SEA-US Cable System or any Domestic Communications being carried on the SEA-US Cable System. Any such reports should be provided in writing to DHS within ten (10) business days of discovery of the relevant information. Each SEA-US Mitigation Party further agrees to confer with, and reasonably consider any recommendations by DHS with respect to how to remediate such events. Each SEA-US Mitigation Party will provide Notice within ten (10) business days of the receipt of any such recommendation whether that SEA-US Mitigation Party has adopted the recommendation. The Notice will include an explanation of why the SEA-US Mitigation Party has not adopted any recommendation that it does not adopt and a description of the actions taken to implement any recommendation that it does adopt.

- 3.3 **Points of Contact.** Within sixty (60) business days after the Effective Date, each SEA-US Mitigation Party shall designate one or more points of contact within the United States for purposes of this agreement (“**Points of Contact**”). A Point of Contact from each SEA-US Mitigation Party shall be available to engage with DHS regarding any national security, law enforcement or public safety concerns that may be raised by DHS with respect to the SEA-US Cable System. A Point of Contact from each SEA-US Mitigation Party shall reside within the United States and shall be available twenty-four (24) hours per day, seven (7) days per week. Promptly after designating such Points of Contact, the SEA-US Mitigation Parties shall provide Notice of the Points of Contact, and thereafter the SEA-US Mitigation Parties shall notify DHS of any change in the designated Points of Contact within ten (10) business days or fewer. Each SEA-US Mitigation Party shall cooperate with any Notice by a Government Authority within the United States that a further background check, security clearance process or both be completed for a designated Point of Contact.
- 3.4 **Operational Control of NOCs.** Except as set forth in Section 2.1 or otherwise agreed to in writing by DHS, operational control of the Domestic Communications Infrastructure will be restricted to the U.S. NOC owned and operated by HT in Honolulu, Hawaii. The SEA-US Mitigation Parties will provide DHS with advance Notice of any proposed changes in operational or network control that affect the Domestic Communications Infrastructure. DHS shall have the right to review and object to such changes.
- 3.5 **Instruction of Obligations.** Each SEA-US Mitigation Party and its Affiliates shall instruct appropriate officials, employees, contractors, and agents as to that SEA-US Mitigation Party’s obligations under this Agreement, including the individuals’ duty to report any violation of this Agreement, and shall issue periodic reminders to them of such obligations. Each SEA-US Mitigation Party shall issue these instructions in writing within forty-five (45) business days of the Effective Date, and shall submit a copy thereof to DHS at the same time.

3.6 **Screening of Personnel.** Each SEA-US Mitigation Party shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired SEA-US Mitigation Party personnel or any personnel performing under an agreement with a SEA-US Mitigation Party in at least the following circumstances:

- (a) any person who requires Access to the Domestic Communications Infrastructure; and
- (b) all personnel charged with securing the Domestic Communications Infrastructure.

Screening procedures include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the screening process requirements set forth in this Agreement, such persons shall be considered "Screened Personnel." In addition, each SEA-US Mitigation Party will cooperate with any reasonable request by a U.S. Government Authority to provide additional identifying information regarding Screened Personnel.

ARTICLE 4: REPORTING AND NOTICE

4.1 **Filings Concerning *De Facto* or *De Jure* Control of Any of the SEA-US Owners.** Each SEA-US Mitigation Party agrees to provide prompt Notice of any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of any SEA-US Owner or the SEA-US Cable System, except for filings with the FCC for assignments or transfers of control that are *pro forma*. Each SEA-US Mitigation Party agrees to provide prompt Notice and copies of such filing.

4.2 **Change in Control.** If any SEA-US Mitigation Party or any of its Affiliates learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection in the pending FCC Application(s), has or will likely obtain an ownership interest (direct or indirect) in any SEA-US Mitigation Party or the SEA-US Cable System above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09(b), or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely will otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of any SEA-US Mitigation Party, then each such SEA-US Mitigation Party shall provide Notice within ten (10) business days. Notice under this Section shall, at a minimum:

- (a) identify the entity or individual(s) acquiring Control (specifying the name, addresses, and telephone numbers of the entity);
- (b) identify the beneficial owners of the increased or prospective increased interest in a SEA-US Mitigation Party or the SEA-US 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 SEA-US Mitigation Party or the SEA-US Cable System and, if applicable, the basis for their prospective Control of such a SEA-US Mitigation Party or the SEA-US Cable System.
- 4.3 **Offshoring.** Each SEA-US Mitigation Party shall comply with all aspects of this Agreement with respect to any personnel it may have offshore.
- 4.4 **Notice of Foreign Influence.** If any SEA-US Mitigation Party or any of its Affiliates discovers any information that reasonably indicates that any Foreign Government, any Foreign Government-controlled entity, or any foreign entity plans to participate or has participated in any aspect of the day-to-day management of any SEA-US Mitigation Party or the SEA-US Cable System in such a way that:
 - (a) materially interferes with or impedes the performance by a SEA-US Mitigation Party of its duties and obligations under the terms of this Agreement;
 - (b) materially interferes with or impedes the exercise by a SEA-US Mitigation Party of its rights under the Agreement; or
 - (c) raises a material concern with respect to the successful fulfillment by a SEA-US Mitigation Party of its obligations under this Agreement;then an appropriate representative of such SEA-US Mitigation Party or its Affiliate shall within ten (10) business days provide Notice of the timing and the nature of the Foreign Government's or entity's plans or actions.
- 4.5 **Change in Cable Infrastructure, Contracts and Network Management.** In addition to the obligation contained in Section 4.13, the SEA-US Mitigation Parties shall jointly provide upon request from DHS an updated list of Principal Equipment, physical security plan, logical security plan, or restoration plan. The SEA-US Mitigation Parties shall jointly provide at least thirty (30) business days' advance Notice prior to making any modifications to the list of contracts submitted pursuant to Section 2.2(b) above. Each SEA-US Mitigation Party agrees to make Network Management Information available to DHS upon request. Each SEA-US Mitigation Party agrees to negotiate in good faith to resolve any national security, law enforcement or public safety concerns that DHS may raise with respect to the SEA-US Cable System's Principal Equipment, physical security plan, logical security plan, restoration plan, contracts, and Network Management Information.
- 4.6 **Reporting Policy.** Within forty-five (45) business days of the Effective Date, each SEA-US Mitigation Party shall adopt and distribute to the Management of that SEA-US Mitigation Party and its Affiliates, a written policy for the reporting by the Management of that SEA-US Mitigation Party and its Affiliates of any noncompliance with this Agreement. This written policy shall also provide for the reporting by employees, agents and contractors to the Management of each SEA-US Mitigation Party of information that

requires Notice under Sections 4.2, 4.4, 4.5, 4.8, 4.9, and 4.14 of this Agreement. Each SEA-US Mitigation Party shall make such policy available to DHS upon request. Any violation by a SEA-US Mitigation Party of any material term of such policy shall constitute a breach of this Agreement.

By a written statement, each SEA-US Mitigation Party shall notify all relevant employees, contractors and agents that the general categories of information identified in Sections 4.2, 4.4, 4.5, 4.8, 4.9, and 4.14 of this Agreement should be disclosed to the Management of each SEA-US Mitigation Party 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 each such SEA-US Mitigation Party shall not discriminate against, or otherwise take adverse action against, anyone who reports such information to the Management of each such SEA-US Mitigation Party or DHS. Each SEA-US Mitigation Party shall make such statement available to DHS upon request.

4.7 **Non-Retaliation.** Within forty-five (45) business days of the Effective Date, each SEA-US Mitigation Party shall adopt a policy that strictly prohibits that SEA-US Mitigation Party from discriminating or taking 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 of that SEA-US Mitigation Party or any of its Affiliates to report information that he or she believes in good faith requires Notice under either this Article or under that SEA-US Mitigation Party's written instruction to employees on the reporting of any such information. Any violation by that SEA-US Mitigation Party of any material term of such policy shall constitute a breach of this Agreement. Each SEA-US Mitigation Party shall make such policy available to DHS upon request.

4.8 **Reporting of Incidents.** Each SEA-US Mitigation Party shall provide Notice if it learns of any information that reasonably indicates:

- (a) a material breach of this Agreement;
- (b) Unauthorized physical access to any U.S. cable landing station or the U.S. NOC;
- (c) Access to or disclosure of Domestic Communications in violation of federal, state, or local law or regulation; or
- (d) Access to or disclosure of Network Management Information in violation of federal, state, or local law or regulation;

Notice shall be promptly made by an appropriate representative of that SEA-US Mitigation Party no later than ten (10) business days after that SEA-US Mitigation Party learns of any information that reasonably indicates a matter described in this Section. Each SEA-US Mitigation Party shall lawfully cooperate in investigating the matters described in this Section. No SEA-US Mitigation Party is required to give Notice where disclosure of such

information would be in violation of an order of a court of competent jurisdiction within the United States.

- 4.9 **Notice of Changes to / Additional Services.** Each SEA-US Mitigation Party shall provide a minimum of thirty (30) business days advance Notice in the event that it, any Affiliate or the SEA-US Owners changes or announces plans to change the technical or operation plans set forth in the Recitals of this Agreement such that the material representations made therein are no longer fully accurate, true and complete.
- 4.10 **Access to Information and Facilities.** DHS may visit, at any time upon reasonable Notice, any part of the Domestic Communications Infrastructure to conduct onsite reviews concerning the implementation of the terms of this Agreement and may at any time require copies or review of information concerning technical, physical, management, or other security measures reasonably required by DHS to verify compliance with the terms of this Agreement.
- 4.11 **Access to Personnel.** Upon reasonable Notice from DHS, the SEA-US Mitigation Parties shall make available for interview any and all knowledgeable personnel who are in a position to provide information to verify compliance with the terms of this Agreement.
- 4.12 **Right to Third Party Audits.** DHS may require the SEA-US Mitigation Parties to obtain a third party audit of their compliance with the terms of this Agreement and to provide DHS with the resultant audit report.
- (a) If this right to third party audits is availed by DHS, the SEA-US Mitigation will, within fifteen (15) business days of receiving such request, jointly propose the third party auditor, as well as the terms and scope for the audit.
 - (b) Once the SEA-US Mitigation Parties have jointly submitted the proposed auditor and the terms and scope of the audit, DHS will have thirty (30) business days to provide a response to the proposed auditor and the terms and scope of the audit. If DHS does not respond to the proposed auditor and terms and scope within thirty (30) business days, the proposed auditor and terms and scope will be deemed to have been accepted.
 - (c) The SEA-US Mitigation Parties shall reasonably address any concerns raised by DHS and shall commence the audit within ninety (90) business days of reaching agreement on the scope and terms of the audit. This ninety (90) business day time limit will be extended on a day for day basis for every day of delay caused solely by DHS.
 - (d) The audit required by this Section shall be undertaken solely at the SEA-US Mitigation Parties' expense, and DHS shall not be required to make any showing of cause to invoke this right to third party audit. Nevertheless, if DHS invokes its right to a third party audit, the SEA-US Mitigation Parties shall not be requested to

conduct another third party audit until eighteen (18) months have passed from the conclusion of the previous audit.

4.13 **Annual Report.** On or before each anniversary of the Effective Date, an appropriate and joint representative of the SEA-US Mitigation Parties shall submit to DHS a report assessing the SEA-US Mitigation Parties' compliance with the terms of this Agreement for the preceding year. The report shall include:

- (a) an updated list of Principal Equipment, including but not limited to any material changes or upgrades to the system components or applications since the list was most recently provided to DHS;
- (b) a copy of the then current plans, policies and procedures adopted to comply with this Agreement, including those set forth in Section 2.2 above, and a summary of the changes and reasons therefore;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, not otherwise reported under Section 4.8, 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;
- (d) a summary of any other events occurring during the reporting period that, to the knowledge of each of the SEA-US Mitigation Parties, will or reasonably could affect the effectiveness of or compliance with this Agreement; and
- (e) a detailed description and map reporting any changes to the SEA-US Cable System's physical and logical topology during the reporting period, including the addition of new NOCs or cable landing stations.

4.14 **Notice of Establishment of Additional NOCs.** In the event that any of the SEA-US Owners proposes to establish a new NOC, the SEA-US Mitigation Parties shall jointly provide advance Notice of such establishment at least thirty (30) business days prior to the commencement of such NOC operations. DHS shall have the right to review and object to such an establishment.

4.15 **Notices.** Following the Effective Date, all notices and other communications required under this Agreement ("**Notice**") shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and 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:

Assistant Secretary for Policy
Office of Policy

Foreign Investment Risk Management
U.S. Department of Homeland Security
Washington, D.C. 20528
ip-fcc@hq.dhs.gov

GTI Corporation d/b/a GTI Telecom
700 North Central Avenue, Suite 205
Glendale, California 91203
Attn: Maria Olivia Clavio, President and Chief Executive Officer
olive.clavio@gtitel.com

Hawaiian Telcom Services Company, Inc.
P.O. Box 2200
Honolulu, Hawaii 96841
Attention: Les Ueoka, Executive Director & Assistant General Counsel
les.ueoka@hawaiiantel.com

RAM Telecom International, Inc.
268 Bush Street #77
San Francisco, California 94104
Attn: Russell Matulich, Chief Executive Officer
russ.matulich@rticable.com

TeleGuam Holdings, LLC d/b/a GTA
624 North Marine Corps Drive
Tamuning, Guam 96913
Attn: Roland Certeza, Executive Vice President of Sales and Marketing
rcerteza@gta.net

with a copy to:

Kent Bressie
Harris, Wiltshire & Grannis LLP
1919 M Street, N.W., Suite 800
Washington, D.C. 20036-3537
kbressie@hwglaw.com

Notices shall be deemed received as of the date of personal delivery; the date of confirmed delivery printed on a facsimile confirmation; or the day following transmission by overnight courier or registered, certified mail. A Party may change its addresses for Notice under this Section by providing Notice of such change to each other Party in accordance with this Section.

ARTICLE 5: FCC CONDITION

- 5.1 **FCC Approval.** Upon the execution of this Agreement by all the Parties, DHS shall, on its own motion, at an appropriate time or at the request of the SEA-US Mitigation Parties, 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 has no objection to the FCC’s grant of the pending Application. 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, 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.** Each of the SEA-US Mitigation Parties agrees that in any application or petition it makes to the FCC for licensing or other authority filed with or granted by the FCC in connection with the SEA-US Cable System after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, the SEA-US Mitigation Parties shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 8.9, DHS reserves the right to object, formally or informally, to the grant of any other FCC application or petition of the SEA-US Owners 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 reasonable 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. The Parties shall meet in person or by phone within five (5) business days of identification of a dispute, or at such other time as they shall mutually agree. Any disagreement that has not been resolved at the staff level within ten (10) business days of such meeting may be submitted

by any Party to DHS's Assistant Secretary for Policy and the designated counsel for the SEA-US Mitigation Parties, unless DHS believes that important national interests can be protected, or the SEA-US Mitigation Parties believe that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2. The Parties shall meet in person or by phone within ten (10) business days, or at such later date as they may mutually agree, after notification of the dispute and inability to resolve it at the staff level. If, after meeting with higher authorized officials, any of the Parties determine that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 6.2. A Party resorting to measures set forth in Section 6.2 shall give prior advance Notice of its intent to do so to each other Party.

6.2 **Enforcement of Agreement.** Subject to Section 6.1 of this Agreement, if any of the Parties believes that any other 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 Authority to:

- (a) request that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving 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 for the SEA-US Cable System, 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;
- (c) seek civil sanctions for any violation by any of the SEA-US Mitigation Parties of any U.S. law or regulation or term of this Agreement;
- (d) pursue criminal sanctions against any SEA-US Mitigation Party or SEA-US Owner, or any officer, director, employee, contractor, or agent of any SEA-US Mitigation Party or SEA-US Owner, or against any other person or entity, for violations of the criminal laws of the United States; or
- (e) seek suspension or debarment of any SEA-US Mitigation Party or SEA-US Owner from eligibility for contracting with the U.S. Government in accordance with applicable law and regulation.

6.3 **Irreparable Injury.** Each SEA-US Mitigation Party agrees that the United States would suffer irreparable injury if for any reason that SEA-US Mitigation Party failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, each SEA-US Mitigation Party agrees that, in seeking to enforce this Agreement, DHS shall be entitled, in addition to any other remedy available at law or equity, to seek 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.** Each SEA-US Mitigation Party agrees that, to the extent that it or any of its 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 a “Foreign State” (as defined in 18 U.S.C. § 1603) 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, it, for itself and its 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 federal, state, or local U.S. Government Authority. Each SEA-US Mitigation Party 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 on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of a Foreign State at any time any action is initiated by a federal, state, or local U.S. Government Authority against any SEA-US Mitigation Party 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: FREEDOM OF INFORMATION ACT

- 7.1 **Protection from Disclosure.** DHS shall take all reasonable measures to protect from public disclosure all information submitted by any SEA-US Mitigation Parties individually or jointly (or other entities in accordance with the terms of this Agreement) to DHS in connection with this Agreement and clearly marked with the legend “Business Proprietary, Exempt from Public Disclosure Under the Freedom of Information Act, 5 U.S.C. § 552(b)” or similar designation. Such markings shall signify that it is the SEA-US Mitigation Parties’ position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4).

For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted and is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) under Exemption (b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, DHS shall notify the requesting SEA-US Mitigation Party or Parties of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If the requesting SEA-US Mitigation Party or Parties object to DHS with respect to the intended disclosure and requesting SEA-US Mitigation Party or Parties' objections are not satisfactorily resolved, DHS shall notify the requesting SEA-US Mitigation Party or Parties of their intention to release (as provided by Section 5 of Executive Order 12600) not later than ten (10) business days prior to disclosure of the challenged information.

- 7.2 **Use of Information for U.S. Government Purposes.** Subject to Section 7.1, nothing in this Agreement shall prevent DHS from lawfully disseminating information as appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other federal, state, or local Government Authorities to protect public safety, law enforcement, or national security interests; provided further that DHS shall take all reasonable measures to protect from public disclosure the information marked as described in Section 7.1. Further, subject to its obligations under Section 7.1, nothing in this Agreement shall limit the ability of DHS to disclose this Agreement or any information related to this Agreement to enforce or comply with any federal law or regulation.

ARTICLE 8: OTHER

- 8.1 **Right to Make and Perform Agreement.** Each Party hereby 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 such Party enforceable in accordance with its terms.
- 8.2 **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.
- 8.3 **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 any Party; (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 any of the SEA-US Mitigation Parties 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 law.
- 8.4 **Statutory References.** All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.

- 8.5 **Non-Parties.** Nothing in this Agreement is intended to confer or does confer any rights or obligations on any person other than the Parties.
- 8.6 **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 of the Parties. DHS agrees to consider promptly and in good faith possible modifications to this Agreement if the SEA-US Mitigation Parties jointly submit 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) days after approval in writing by the Parties.
- 8.7 **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.
- 8.8 **Changes in Circumstances for the SEA-US Mitigation Parties.** DHS agrees to negotiate in good faith and promptly with respect to any joint request by the SEA-US Mitigation Parties 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 any the SEA-US Mitigation Party's competitive position.
- 8.9 **Changes in Circumstances for DHS.** If after the date that all the Parties have executed this Agreement, DHS finds that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then each of the SEA-US Mitigation Parties shall negotiate in good faith to modify this Agreement to address those concerns.
- 8.10 **Termination of Agreement.** This Agreement may be terminated at any time by a written agreement signed by the Parties. The Parties agree that they will reasonably consider any termination request submitted pursuant to this Agreement.
- 8.11 **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.
- 8.12 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.
- 8.13 **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.

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: 1/11, 2017

By: 

Alan Bersin
Assistant Secretary for International Affairs &
Chief Diplomatic Officer

GTI Corporation d/b/a GTI Telecom

Date: _____, 2017

By: _____

Maria Olivia Clavio
President and Chief Executive Officer

Hawaiian Telcom Services Company, Inc.

Date: _____, 2017

By: _____

Les Ueoka,
Executive Director & Assistant General Counsel

RAM Telecom International, Inc.

Date: _____, 2017

By: _____

Russell Matulich
Chief Executive Officer

TeleGuam Holdings, LLC d/b/a GTA

Date: _____, 2017

By: _____

Robert Houlbrook
President and CEO

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

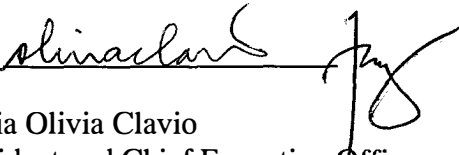
Date: _____, 2017

By: _____

Alan Bersin
Assistant Secretary for International Affairs &
Chief Diplomatic Officer

GTI Corporation d/b/a GTI Telecom

Date: January 11, 2017

By: 

Maria Olivia Clavio
President and Chief Executive Officer

Hawaiian Telcom Services Company, Inc.

Date: _____, 2017

By: _____

Les Ueoka
Executive Director & Assistant General Counsel

RAM Telecom International, Inc.

Date: _____, 2017

By: _____

Russell Matulich
Chief Executive Officer

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: _____, 2017

By: _____

Alan Bersin
Assistant Secretary for International Affairs &
Chief Diplomatic Officer

GTI Corporation d/b/a GTI Telecom

Date: _____, 2017

By: _____

Maria Olivia Clavio
President and Chief Executive Officer

Hawaiian Telcom Services Company, Inc.

Date: January 11, 2017

By:  _____

Les Ueoka
Executive Director & Assistant General Counsel

RAM Telecom International, Inc.

Date: __ __, 2017

By: _____

Russell Matulich
Chief Executive Officer

This Agreement is executed on behalf of the Parties:

United States Department of Homeland Security

Date: _____, 2017

By: _____

Alan Bersin
Assistant Secretary for International Affairs &
Chief Diplomatic Officer

GTI Corporation d/b/a GTI Telecom

Date: _____, 2017

By: _____

Maria Olivia Clavio
President and Chief Executive Officer

Hawaiian Telcom Services Company, Inc.

Date: _____, 2017

By: _____

Les Ueoka
Executive Director & Assistant General Counsel

RAM Telecom International, Inc.

Date: January 11, 2017

By: 

Russell Matulich
Chief Executive Officer

TeleGuam Holdings, LLC d/b/a GTA

Date: January 11, 2017

By: 

Robert Haulbrook
President and CEO

**EXHIBIT A:
CONDITION TO FCC AUTHORIZATION**

IT IS FURTHER ORDERED, that this authorization and any licenses granted thereunder are subject to compliance with the provisions of the agreement (the "Agreement") between GTI Corporation d/b/a GTI Telecom, Hawaiian Telcom Services Company, Inc., RAM Telecom International, Inc., and TeleGuam Holdings, LLC d/b/a GTA, on the one hand, and the United States Department of Homeland Security, on the other, dated _____, which Agreement is designed to address national security, law enforcement and public safety concerns regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligations imposed by federal law or regulation.