

October 31, 2019

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Ladies and Gentlemen:

This Letter of Assurances (“LOA”) modifies and updates the commitments originally made by Hawaiiki Submarine Cable USA LLC (“Hawaiiki”) to the U.S. Department of Homeland Security (“DHS”) and the U.S. Department of Defense (“DOD”) (collectively, the “USG Parties”) in a December 15, 2017 Letter of Assurances (“2017 LOA”) to address national security, law enforcement, and public safety concerns raised with regard to Hawaiiki’s application to the Federal Communications Commission (“FCC”) for a license to land and operate a fiber-optic submarine cable network connecting the United States, Australia and New Zealand, the Hawaiiki Cable System (“Hawaiiki Cable”)¹.

Hawaiiki understands that the 2017 LOA is being terminated and superseded in light of the modified and updated commitments provided through this LOA with respect to the Hawaiiki Cable. Hawaiiki has agreed to provide this LOA to the USG Parties, and Hawaiiki understands that the USG Parties will petition the FCC to condition the cable

¹ SCL-LIC-20160906-00019, Application for Cable Landing License.

landing license for the Hawaiki Cable, and the application to transfer control of the license,² on compliance with this LOA.

For purposes of this LOA:

- A. “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, or its territories.
- B. “Domestic Communications Infrastructure” or “DCI” means: (a) any portion of the Hawaiki Cable that physically is located in the United States, or its territories, up to and including 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.*, Microsoft Office) used to provide, process, direct, control, supervise, or manage Domestic Communications; and (b) Network Operations Center (“NOC”) facilities, as defined in Section D below.
- C. “Electronic Communication” has the meaning given it in 18 U.S.C. § 2510(12).
- D. “Network Operations Center” or “NOC” means the locations and facilities designated as such by Hawaiki for purposes of performing network management, monitoring, maintenance, or other operational functions for the Hawaiki Cable.
- E. “Principal Equipment” means the primary electronic components of the Hawaiki Cable, which includes the DCI and Wet Infrastructure. Principal Equipment includes, but is not limited to: 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”); 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 used for monitoring, administration, or provisioning of the Hawaiki Cable (with the exception of COTS software used for common business functions, *e.g.*, Microsoft Office).
- F. “Screened Personnel” has the meaning given it in Section 10 below.

² SCL-T/C-20181130-00038, Application for Transfer of *De Facto* Control of Cable Landing License.

- G. “Wet Infrastructure” means hardware components installed and residing on the undersea portion of the Hawaiki Cable, including fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used to define the topology of the undersea portion of the Hawaiki Cable.
- H. “Wire Communication” has the meaning given it in 18 U.S.C. § 2510(1).

Hawaiki undertakes to comply with the following commitments:

1. Security Point of Contact

Hawaiki agrees to maintain a Security Point of Contact (“Security POC”) for purposes of this LOA. The Security POC will be a U.S. citizen residing in the United States and is able to hold and maintain U.S. Government security clearance at the “Secret” level or higher. The Security POC will possess the appropriate authority, reporting lines, independence, skills and resources to ensure compliance with the terms of this LOA. Hawaiki agrees to nominate a proposed Security POC within thirty (30) business days of the execution of this LOA. Hawaiki understands that the Security POC will be subject to the USG Parties’ review and non-objection and will be subject to a background check at the sole discretion of the USG Parties. In order to facilitate this, upon request by the USG Parties, Hawaiki will provide personal identifying information as needed by the USG Parties.

The Security POC will be available twenty-four (24) hours per day, seven (7) days per week, regarding any national security, law enforcement, or public safety concerns that the USG Parties may raise with respect to the Hawaiki Cable. Upon request by the USG Parties, the Security POC will make himself/herself available in person within the United States within 72-hours, at a date and location, including in a classified setting, as deemed necessary by the USG Parties. The Security POC will be responsible for receiving and promptly effectuating any lawful inquiries or requests for information and for otherwise ensuring compliance with obligations set forth in this LOA.

Hawaiki agrees to notify the USG Parties of any proposed change to the Security POC at least ten (10) business days in advance (except in the case of the unexpected firing, resignation or death of the Security POC in which case such written notice must be provided within five (5) days of such event) of such proposed change. Hawaiki understands that any proposed Security POC will be subject to the USG Parties’ review and non-objection and may be subject to a background check at the sole discretion of the USG Parties.

2. Cable System Information

Within sixty (60) business days of the execution of this LOA, and, thereafter, within fifteen (15) business days upon request by the USG Parties, Hawaiki agrees to make available the following Hawaiki Cable Information:

- (a) Network management information, including, as follows: (1) a network map that includes physical and logical topology; (2) network and telecommunications architecture descriptions and associated descriptions of interconnection points and controlled gateways to the DCI and Wet Infrastructure; (3) network operational plans, processes, and procedures; (4) locations and functions of any NOCs, data centers, and main distribution facilities; (5) organizational chart, to include specific reference to the names and positions of senior officials responsible for operations of the Hawaiki Cable; and (6) descriptions of interfaces and connections to the Hawaiki Cable for service offload, disaster recovery, or administrative functions;
- (b) A complete and current list of all contracts held by Hawaiki or its designee(s) for the maintenance, repair and security of the Hawaiki Cable; and
- (c) A restoration plan for the Principal Equipment and the Wet Infrastructure for the Hawaiki Cable.

3. Operational Requirements

With respect to the operation of the Hawaiki Cable, Hawaiki agrees as follows:

- (a) Hawaiki will have the ability to promptly and effectively interrupt, in whole or in part, traffic to and from the United States, or its territories, on the Hawaiki Cable by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States, or its territories;
- (b) Hawaiki will configure all necessary systems to ensure the NOC can suspend or interrupt the optical carrier signal or all of the Hawaiki Cable within the DCI.

4. Principal Equipment List

Within thirty (30) business days of the execution of this LOA, Hawaiki agrees to provide the USG Parties with a list to include:

- (a) A complete and current list of all Principal Equipment, including:
 - (1) a description of each item and the functions supported;
 - (2) each item's manufacturer; and
 - (3) the model and/or version number of any hardware or software; and
- (b) Any vendors, contractors, or subcontractors involved in providing, installing, operating, managing, or maintaining the Principal Equipment.

At the sole discretion of the USG Parties, Hawaiki agrees to supplement in writing the foregoing definition of Principal Equipment to address subsequent technological developments with submarine systems.

Hawaiki understands the USG Parties will approve or disapprove the Principal Equipment List within thirty (30) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not being waived unless provided in writing by the USG Parties.

5. Modifications to Existing Principal Equipment

Hawaiki agrees to provide the USG Parties at least ten (10) business days' advance notice prior to any maintenance, repair, or replacement that would result in any modification to existing Principal Equipment for the Hawaiki Cable.

Hawaiki may request a waiver of the advance notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and that is necessary to ensure the continued operability of the Hawaiki Cable; however, in such circumstances, Hawaiki agrees to provide advance notice to the USG Parties of the modification, if practicable, and, if impracticable, Hawaiki agrees to provide notice within ten (10) business days after the modification of the Principal Equipment. Where providing notice is impracticable, Hawaiki shall provide a detailed description of the equipment replaced and the circumstances surrounding the need to replace the Principal Equipment without prior notice.

Hawaiki may continue to utilize any Principal Equipment maintained, repaired or replaced pursuant to the process outlined in this Section, provided that the USG

Parties do not object within thirty (30) business days of notification. In the event of such an objection, Hawaiki will not expand the existing deployment or enhance the capabilities of any Principal Equipment to which the USG Parties have objected, and Hawaiki agrees to meet, confer and otherwise attempt in good faith to resolve the USG Parties' objection. Until the objection is resolved, Hawaiki will not upgrade, install, replace, or service any objectionable Principal Equipment without written authorization from the USG Parties.

6. Change in Vendors, Contractors, or Subcontractors for Principal Equipment

Hawaiki agrees to provide at least thirty (30) business days' advance notice prior to any change to the list of vendors, contractors, or subcontractors involved in providing, installing, operating, managing, repairing, or maintaining the Principal Equipment.

In addition, Hawaiki agrees to provide at least thirty (30) business days' advance notice prior to any change to the service offerings or support from a previously-listed vendor, contractor, subcontractor (*i.e.*, where a previously-listed provider will be offering support in a previously unidentified way).

Hawaiki understands that the USG Parties will approve or disapprove any modification or change proposed pursuant to this Section within forty-five (45) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not being waived unless provided in writing by the USG Parties.

7. Equipment Testing

Hawaiki agrees to provide at least thirty (30) business days' advance notice prior to initiating the testing of any new Principal Equipment connected to the Hawaiki Cable by any vendor not already on the approved Principal Equipment List. Hawaiki understands that the USG Parties will approve or disapprove the testing proposed pursuant to this Section within thirty (30) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not being waived unless provided in writing by the USG Parties.

8. Measures to Prevent Improper Use and Unauthorized Logical Access

Hawaiki agrees to take all practicable measures to prevent unauthorized logical access to the Hawaiki Cable and to prevent any unlawful use or disclosure of information carried on the same, and Hawaiki will include these measures in the policies that it will develop and implement pursuant to this LOA. For purposes of this Section, "all practicable measures," at a minimum, include ensuring compliance with all U.S. laws and regulations governing cybersecurity,

information security, and privacy and will be measures consistent with best practices and guidelines, including but not limited to the Cybersecurity Framework of the National Institute of Standards and Technology (“NIST”). These measures also should include items such as configuration management, security audits, and system interconnection documentation, as well as contractual safeguards and screening procedures for personnel with logical access to the DCI.

Hawaiki agrees to take appropriate measures to protect and promote resiliency of the Hawaiki Cable, including measures to ensure that security patches for systems and applications are up to date.

Hawaiki agrees to maintain or exceed security standards and best practices generally utilized within the U.S. telecommunications industry for maintenance of password systems and firewalls, non-destructive access logs, and periodic internal audits of network security and associated network devices.

Hawaiki agrees to submit a policy regarding logical security measures adopted in accordance with the requirements of this Section to the USG Parties within sixty (60) business days of the date of execution of this LOA. The USG Parties will approve or disapprove the policy within sixty (60) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not waived unless provided in writing by the USG Parties.

9. Physical Security Measures

Hawaiki agrees to take all practicable measures to physically secure the Hawaiki Cable, including the DCI. Hawaiki will screen appropriate persons in accordance with Section 10 below, and Hawaiki will require that all persons who physically access the DCI are escorted at all times by Screened Personnel, as defined in Section 10. Hawaiki agrees to submit a policy regarding physical security measures adopted in accordance with the requirements of this Section to the USG Parties within sixty (60) business days of the date of execution of this LOA. The USG Parties will approve or disapprove the policy within sixty (60) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not waived unless provided in writing by the USG Parties.

10. Screening of Personnel

Hawaiki agrees to implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired Hawaiki personnel (or any personnel performing under an agreement or arrangement with Hawaiki) in, at minimum, the following circumstances:

- (a) Any person whose position could involve logical access to the DCI; and
- (b) All personnel charged with securing the DCI.

Hawaiki's personnel screening process will be reflected in a written policy and will include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the requirements set forth in the screening policy, such persons will be considered "Screened Personnel."

Hawaiki agrees to submit the screening policy to the USG Parties within sixty (60) business days of the date of execution of this LOA. The USG Parties will approve or disapprove the policy within sixty (60) business days of receipt or as otherwise agreed to by Hawaiki and the USG Parties, with the right of approval not waived unless provided in writing by the USG Parties. Hawaiki agrees to cooperate with any request by the USG Parties to provide additional identifying information regarding Screened Personnel.

11. Reporting Incidents and Breaches

Hawaiki agrees to report to the USG Parties in writing within 48-hours if it learns of information that reasonably indicates:

- (a) Unauthorized third-party access to, or disruption or corruption of, the Hawaiki Cable or any information being carried on the Hawaiki Cable;
- (b) Any other unauthorized access to or disclosure of Domestic Communications in violation of federal, state, or local law; or
- (c) Any material breach of the commitments made in this LOA.

Hawaiki agrees to submit in writing a follow-up report describing in greater detail the incident and Hawaiki's steps to remediate to the USG Parties within ten (10) business days of discovery of the relevant conduct. Hawaiki further agrees to remediate any incidents or breaches reported pursuant to this provision to the satisfaction of the USG Parties.

12. Instruction of Obligations

Hawaiki agrees to instruct appropriate officers, employees, contractors, and agents as to Hawaiki's obligations under this LOA, including the individuals' duty to report any violation, and to issue periodic reminders of such obligations. Hawaiki agrees to issue initial instructions in writing within sixty (60) business days of the date of execution of this LOA, and updated instructions annually thereafter. Hawaiki will submit a copy of such instructions to the USG Parties at the same time.

13. Change in Services or Cable Operations

Hawaiki agrees to notify the USG Parties in writing at least thirty (30) business days prior to implementing any changes to the communications services or operations of the Hawaiki Cable. Hawaiki agrees to provide a detailed description of the proposed change including the terms, conditions, individuals and/or entities involved in making the change to the communications services or operations.

14. Change in Control

If Hawaiki learns of any information that reasonably indicates that any foreign entity or individual, other than those already identified, has or likely will obtain an ownership interest, whether direct or indirect, in Hawaiki or the Hawaiki Cable above ten (10) percent, or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely otherwise will gain either: (i) control, as determined in accordance with 47 C.F.R. § 63.09(b); or (ii) *de facto* or *de jure* control of Hawaiki, Hawaiki agrees to provide notice in writing to the USG Parties within ten (10) business days. Notice under this Section will, at a minimum:

- (a) Identify the entity or individual(s) acquiring control (specifying the name, addresses, and telephone numbers of the entity or individual(s));
- (b) Identify the beneficial owners of any such increased or prospective increased ownership interest in Hawaiki or the Hawaiki Cable 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 likely will obtain in Hawaiki or the Hawaiki Cable and, if applicable, the basis for their prospective control of Hawaiki or the Hawaiki Cable.

15. Annual Report

On the anniversary of the date of this LOA, Hawaiki agrees to submit to the USG Parties a report assessing Hawaiki's compliance with the terms of this LOA for the preceding year. The report shall include:

- (a) The names and contact information of the then-current POCs;
- (b) Cable System Information, as described in Section 2 above, noting any changes during the reporting period;
- (c) An updated Principal Equipment List containing all information described in Section 4 above, identifying any material modifications during the reporting period;
- (d) A copy of the then-current policies adopted in accordance with this LOA, including policies for logical security (Section 8), physical security (Section 9), personnel screening (Section 10), incident reporting (Section 11), and employee training (Section 12), and a summary of any changes during the reporting period and the reasons therefore;
- (e) A summary of any events that occurred during the reporting period that will or reasonably could impact the effectiveness of or compliance with this LOA; and
- (f) A summary of any known acts of noncompliance with the terms of this LOA that occurred during the reporting period, 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.

16. Third-Party Audit

At its sole discretion, but no more frequently than once every calendar year unless the original audit is found by the USG Parties to have been unsatisfactory, the USG Parties may request a third-party audit of Hawaiki's compliance with the terms of this LOA. In connection with the audit:

- (a) Hawaiki agrees to nominate two (2) third-party auditors, subject to the approval of the USG Parties. If the USG Parties do not object within thirty (30) business days, the third-party auditors selected by Hawaiki will be deemed approved unless otherwise agreed to by Hawaiki and the USG Parties.

- (b) If the USG Parties object to the nominated third-party auditors, Hawaiki agrees to nominate, within twenty (20) business days of such objection, another third-party auditor. If the USG Parties object to the nominated third-party auditor, Hawaiki shall provide to the USG Parties three (3) additional candidates to be considered for third-party auditor from which the USG Parties may choose at their discretion.
- (c) When providing third-party auditor nominees to the USG Parties, Hawaiki will disclose whether in the previous five (5) years there has been any work performed or any financial arrangement between the third-party auditor and Hawaiki.
- (d) Hawaiki will be solely responsible for any costs associated with any third-party audit carried out pursuant to this Section. The USG Parties, however, will consider avoidance of unreasonable costs as a factor when exercising their rights under this Section.
- (e) Hawaiki will ensure the selected third-party auditor submits a methodology and proposed scope of audit, both of which will be subject to the USG Parties' approval.
- (f) Hawaiki will ensure that its executed engagement agreement and all compensation terms with the third-party auditor is provided to the USG Parties within five (5) days of execution.
- (g) The third-party auditor will promptly deliver to Hawaiki and the USG Parties all reports and related information generated or gathered during its review that relate directly to Hawaiki's compliance with the terms of this LOA and shall meet independently with the USG Parties upon request.

17. USG Parties Consultation and Visitation

Hawaiki agrees to meet and confer with the USG Parties and to resolve to the satisfaction of the USG Parties any concerns the USG Parties may raise regarding compliance with this LOA.

Hawaiki agrees to negotiate in good faith to resolve to the satisfaction of the USG Parties any national security, law enforcement, or public safety concerns the USG Parties may raise with respect to any matters set forth in this LOA.

Hawaiki agrees that, upon advance notice, the USG Parties may visit Hawaiki and/or Hawaiki Cable facilities to conduct on-site reviews to verify the implementation of the terms of this LOA and Hawaiki's compliance with its terms. Subject to applicable law, Hawaiki will cooperate for these purposes and provide access to any information, facilities, and personnel necessary to verify compliance with the terms of this LOA.

This LOA shall inure to the benefit of, and shall be binding upon, Hawaiki and its successors, assigns, subsidiaries, and affiliates.

Hawaiki agrees that, in the event that Hawaiki breaches the commitments set forth in this LOA, the USG Parties may request that the FCC modify, condition, revoke, cancel, terminate, or render null and void any relevant license, permit, or other authorization granted by the FCC to Hawaiki or any successors-in-interest, in addition to any other remedy available at law or equity.

If, after this LOA takes effect, the USG Parties or Hawaiki believes that changed circumstances warrant modifying or terminating this LOA (including if the USG Parties determine that the terms of this LOA are inadequate or no longer necessary to address national security, law enforcement, or public safety concerns), Hawaiki agrees to negotiate in good faith with the USG Parties to modify this LOA. Rejection of a proposed modification alone shall not constitute evidence of a failure to negotiate in good faith.

Nothing in this LOA excuses Hawaiki from its obligations to comply with any and all applicable legal requirements and obligations, including all applicable statutes, regulations, requirements, or orders.

For and on behalf of Hawaiki Submarine Cable USA LLC



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