



CAPACITY LEASE AGREEMENT

Kiritimati SX NEXT Submarine Cable

[Customer name]

TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION	5
1.1 DEFINITIONS	5
1.2 INTERPRETATION	9
2. LEASE OF CAPACITY	10
2.1 LEASE	10
2.2 CONDITIONS PRECEDENT	10
2.3 CUSTOMER'S OBLIGATIONS	11
3. CAPACITY AND CONFIGURATION	11
3.1 CAPACITY ACTIVATION	11
3.2 CABLE INTERFACE	12
3.3 INTERRUPTION TO SERVICE	12
3.4 MODIFICATIONS TO BNL NETWORK	13
3.5 CAPACITY CHANGES	13
3.6 ACCESS TO ACCESS POINTS	13
4. GOVERNMENT OF FIJICUSTOMER FORUM	13
5. CHARGES	13
5.1 PAYMENTS FOR LEASED CAPACITY	13
5.2 CUSTOMER GENERATED COSTS	14
5.3 PAYMENT SUPPORT	14
6. PAYMENT TERMS AND TAXES	14
6.1 INVOICING	14
6.2 PAYMENT DUE DATE	14
6.3 EXCLUSIVE OF TAXES	15
6.4 NO DEDUCTION FOR WITHHOLDING TAXES	15
7. CONFIDENTIALITY	15
7.1 CONFIDENTIALITY OBLIGATION	15
7.2 EXCEPTIONS	16
7.3 REFERENCE TO CUSTOMER	16
8. REPRESENTATIONS AND WARRANTIES	16
8.1 DISCLAIMER	16
8.2 CUSTOMER WARRANTIES	17
9. TERM AND TERMINATION	17
9.1 TERM AND RENEWAL	17
9.2 SUSPENSION AND TERMINATION	18
9.3 TERMINATION FOR DETERIORATION	18

9.4	REGULATORY EVENT	18
9.5	ACCRUED RIGHTS.....	19
10.	LIMITATION OF LIABILITY	19
10.1	NO LIABILITY FOR CERTAIN EVENTS.....	19
10.2	NO INDIRECT LOSS	19
10.3	RESUPPLY OF SERVICES	19
10.4	LIMITATION OF LIABILITY.....	20
11.	INDEMNITY	20
12.	FORCE MAJEURE	21
13.	ASSIGNMENT	21
13.1	ASSIGNMENT BY CUSTOMER.....	21
13.2	ASSIGNMENT BY THE SUPPLIER	21
13.3	SUBCONTRACTING BY THE SUPPLIER.....	21
14.	GENERAL.....	22
14.1	NOTICES	22
14.2	DISPUTES AND GOVERNING LAW.....	22
14.3	FURTHER ASSURANCE	23
14.4	COUNTERPARTS AND FACSIMILE SIGNATURES.....	23
14.5	SURVIVABILITY.....	23
14.6	SEVERANCE	23
14.7	WHOLE AGREEMENT.....	24
14.8	RELATIONSHIP.....	24

Schedule 1 - Capacity Lease Details

Schedule 2 – BNL Network Configuration

Schedule 3 - Access Guidelines

Schedule 4 - Not used

Schedule 5 - Capacity Unavailability Credits

Schedule 6 - Not used

Schedule 7 - Dispute Resolution Procedure

Schedule 8 – Not Used

DATE

PARTIES

1. Supplier

Name:	BwebwerikiNet Ltd
	Republic of Kiribati
Address	Tarawa, Kiribati
Senior Representative	tba
Contact Name	Ioane Koroivuki, CEO
Contact Details	Email ceo@bnl.com.ki

2. Customer

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

BACKGROUND

- A. The BwebwerikiNet Limited (BNL) is a State-Owned Enterprise in the Republic of Kiribati under the State-Owned Enterprise Act 2013 (the SOE Act). BNL was incorporated under the Companies Ordinance 1979 (Cap. 10A) on 23 November 2017. As a state-owned open access entity (OAE) BNL is established to provide high speed and low-cost telecommunication broadband services to Retail Service Providers (RSP) in the Republic of Kiribati.
- B. The Customer wishes to lease capacity on the BNL Submarine Cable SX NEXT.
- C. This Transport Service Lease Agreement sets out the terms and conditions that apply to the lease of capacity to the Customer.

IT IS AGREED as follows.

1. Definitions and Interpretation

1.1 Definitions

In this agreement unless the context otherwise requires:

Access Guidelines means the guidelines set out in Schedule 3.

Access Point means each of the Facilities specified in Schedule 1 at which the Leased Capacity is connected

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

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

Business Day means a day that is not a Saturday, Sunday or public holiday in Suva, Republic of Fiji.

Cable Interface means the digital/optical input/output ports on the digital/optical distribution frame (excluding the digital/optical distribution frame itself) at the Facility where the Capacity connects with other transmission facilities or equipment, carrying client signals whose technical parameters for the interface are specified in the Capacity Access Offer.

Cable Station means the BNL cable landing station in Tabwakea, Kiritimati, and/or the Southern Cross cable landing station located outside Kiribati.

Capacity means capability for carriage of a certain amount of communications by transmission on the BNL Network.

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

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

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

Capacity Unavailability Credit has the meaning given to it in Schedule 5.

Capacity User means any other user of Capacity.

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

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

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

Corporations Act means the *Companies Act of 2021* as enacted by the Parliament of the Republic of Kiribati.

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

Customer Generated Costs means:

- (a) any costs or expenses reasonably incurred by the Supplier for which the Supplier may be liable in connection with the installation of any additional equipment, or the provision of the Leased Capacity, not included in the original provisioning of the Leased Capacity.
- (b) any additional costs or expenses incurred by the Supplier at the request of the Customer, its lessees, clients, any other person associated with the Customer in connection with the Leased Capacity; or
- (c) any other additional costs reasonably incurred by the Supplier in relation to the Leased Capacity.

Dispute Resolution Procedure means the procedure set out in Schedule 7.

Facility means a Cable Station or other location where the Supplier permits the Customer's equipment to connect to the BNL Network.

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

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

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

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

GST has the same meaning as Value Added Tax (VAT). In Republic of Kiribati VAT is a tax on spending that is levied on the supply of goods and services in RoK at the rate of 12.5%, with effect from 2014.

Initial Term means the initial term specified in Schedule 1.

Insolvency Event means in relation to a party:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the Corporations Act or similar official is appointed over any of the assets or undertaking of the party;
- (b) the party suspends payment of its debts generally;
- (c) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the Corporations Act;
- (d) the party enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;

- (e) the party ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (g) an application or order is made for the winding up or dissolution of the other party, or a resolution is passed, or any steps are taken to pass a resolution, for the winding up or dissolution of the other party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the first party;
- (h) any event which is analogous to an event described in (a) – (g);
- (i) a party threatens to do any of (a) – (h).

Landing Party means the Supplier in Kiritimati, BNL.

Leased Capacity means the unit and configuration of the Transport Service which is to be leased to the Customer as specified in Schedule 1.

Payment Support means the payment support specified in Schedule 1.

Prescribed Rate means the business banking rate charged to the Supplier from time to time by the **Bank of Kiribati** plus 2%.

Regulatory Event means:

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

Renewal Term means the renewal term (if any) specified in Schedule 1.

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

RFS Date means the date on which the Supplier announces that the BNL Network is ready for commercial service and Capacity is ready to be first activated.

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

Telecommunications Act means the *Republic of Kiribati Telecommunications Act of 2004*.

Term means, in respect of each unit of Leased Capacity, the period from the date that this Agreement is executed by both parties and continues, if the Initial Term is not renewed, until the end of the Initial Term or, if the Initial Term is renewed, until the end of the last Renewal Term.

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

BNL Network means the cable system described in Schedule 2.

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

1.2 Interpretation

Headings are for convenience only and do not affect interpretation.

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

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to dollars or \$ is a reference to Australian dollars;
- (d) a reference to a person includes a body corporate, an unincorporated body, partnership, firm, trust, joint venture or other entity;
- (e) a reference to a clause, schedule or annexure is to a clause of, or schedule or annexure to, this Agreement;
- (f) a reference to any party to this Agreement or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and,

when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (h) a reference to conduct includes any omission, statement or undertaking, whether or not in writing;
- (i) a reference to a party is a party to this agreement or any person who executes a deed of accession to this agreement;
- (j) terms defined in the Corporations Act have the same meaning in this agreement, unless the context expresses otherwise;
- (k) if any payment by a party under this agreement is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day;
- (l) if an obligation must be performed by two or more persons it binds them jointly and individually.

2. Lease of Capacity

2.1 Lease

- (a) The Supplier leases to the Customer each unit of the Leased Capacity specified in Schedule 1 for each respective Term, subject to and in accordance with this Agreement.
- (b) The lease under paragraph (a) does not give the Customer any property rights to any part of the Leased Capacity or the BNL Network.
- (c) If the Supplier, for technical, operational or other reason, decides that the BNL Network should no longer continue to be operated, nothing in this Agreement will oblige the Supplier to continue to operate the BNL Network.

2.2 Conditions Precedent

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

- (b) The obligation of the Supplier to provide the Leased Capacity to the Customer is conditional on the construction and commencement of operation of the BNL Network and on the Supplier announcing the RFS Date.

2.3 Customer's Obligations

The Customer must:

- (a) comply with all reasonable requests and directions made by the Supplier in relation to the Leased Capacity or in relation to the BNL Network, including in respect of the Supplier's legal or regulatory obligations;
- (b) relinquish the Leased Capacity, at such times as the Supplier may reasonably require from time to time, to permit the Supplier or another person to make any tests and adjustments, and to perform any maintenance, that may be necessary for that Capacity to be provided efficiently and for the BNL Network to be maintained in efficient working order;
- (c) obtain and maintain all Authorisations required for it to enter into and to perform its obligations under this Agreement throughout the term of this Agreement;
- (d) make all payments required under this Agreement in full by the date required in this Agreement;
- (e) use the Leased Capacity in such a way as to not degrade the performance of the BNL Network, damage any part of the BNL Network, or cause interruption or interference to or impairment of any Capacity on the BNL Network; and
- (f) not use the Leased Capacity, or permit or authorise the use of the Leased Capacity, in any manner which may constitute a breach of any applicable law or of any duty or obligation in contract, tort, or otherwise to any third person.

3. Capacity and Configuration

3.1 Capacity Activation

The Customer may at any time request the Supplier to activate any or all of the Leased Capacity from the relevant Capacity Activation Date and the Supplier will

activate the Leased Capacity in accordance with its applicable activation procedures.

3.2 Cable Interface

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

3.3 Interruption to Service

Any part of the Capacity, or the Customer's use of the Leased Capacity, may be suspended or interrupted for any of the following reasons:

- (a) unplanned fault;
- (b) planned maintenance;
- (c) in the event of an emergency;
- (d) upgrade or reconfiguration of any part of the BNL Network;
- (e) in order to comply with any applicable law or any requirement of a Government Agency;
- (f) in order to safeguard the provision of services to other Capacity Users; or
- (g) if the Customer's use of the Leased Capacity is a threat or risk to the security or proper functioning of any plant or equipment associated with the BNL Network,

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

Where planned maintenance, upgrade or reconfiguration is envisaged, the Customer will be advised, unless circumstances do not permit, seven days in advance of the timing and expected duration of the interruption. The Supplier will use reasonable endeavours to choose the timing to minimise the aggregate impact on all Capacity Users after taking into account the operational urgency for the planned activity.

3.4 Modifications to BNL Network

The Supplier may, from time to time, add to or vary the BNL Network Configuration, Facilities or Landing Parties. In that event, the Supplier will advise the Customer and issue a replacement Schedule 1, Schedule 2 or Schedule 3 as necessary which will, on issue, be incorporated into and form part of this Agreement. The Supplier will consult with the Customer if the Supplier believes that such a change is likely to cause the Customer to incur significant costs in order to upgrade its equipment to enable it to continue to access the BNL Network.

3.5 Capacity Changes

If, as a result of physical deterioration or a Force Majeure Event, the Total Capacity is reduced, the Supplier must promptly give notice to the Customer of the reduction and may make any amendments to the BNL Network Configuration, as are necessary in the circumstances. If, under this clause, the Total Capacity of all users is reduced to an amount below the total amount of Capacity, the Supplier may reduce the Leased Capacity in the same proportion that the Total Capacity was reduced.

3.6 Access to Access Points

The Supplier agrees to provide the Customer with access to the Access Points relevant to the Leased Capacity (as detailed in Schedule 1) in accordance with the Access Guidelines (Schedule 3).

4. Not Used

Not Used

5. Charges

5.1 Payments for Leased Capacity

The Customer must pay to the Supplier:

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

Capacity Payment constitutes a debt due to the Supplier as from the relevant payment date).

5.2 Customer Generated Costs

The Customer must pay the Customer Generated Costs. The Customer Generated Costs will be invoiced quarterly in arrears.

5.3 Payment Support

The Customer must deliver to the Supplier the Payment Support within 30 days from the date of this Agreement. Failure by the Customer to comply with this obligation shall be deemed a material breach by the Customer of this Agreement.

6. Payment Terms and Taxes

6.1 Invoicing

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

6.2 Payment Due Date

- (a) Subject to paragraph (b), an invoice from the Supplier is due and payable 30 days from the date that the invoice is received. The Customer must pay the Suppliers invoices on or before the due date by direct bank transfer in available funds to the account specified by the Supplier from time to time.
- (b) The Customer must make all payments in full and without deduction, set-off or counterclaim. In the event of a disputed invoice the Customer may only seek resolution of the dispute in accordance with the Dispute Resolution Procedure. If that process establishes that the Customer has made a payment in excess of the amount properly owed then the Supplier will refund that excess plus interest on that amount at the Prescribed Rate.
- (c) Any payment not received by the Supplier on or before the due date will be deemed overdue and a material breach by the Customer of this Agreement. The Customer must pay interest on the overdue amount at

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

6.3 Exclusive of Taxes

Charges under this Agreement are exclusive of any applicable value added taxes, goods and services taxes, GST, or other federal, state or local sales, use, excise, privilege, gross receipts and other taxes, duties, and charges imposed by any governmental authority. Such taxes, duties and charges (if any) will be charged to and paid by the Customer in addition to the relevant Charge unless the Customer provides the Supplier with a valid tax exemption certificate or other evidence reasonably satisfactory to the Supplier that the Customer is not subject to such taxes, duties and charges.

6.4 No Deduction for Withholding Taxes

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

7. Confidentiality

7.1 Confidentiality Obligation

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

- (a) to keep confidential the Confidential Information for the term of this Agreement and for two years from its expiry or termination;

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

7.2 Exceptions

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

- (a) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (b) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under this clause 7; or
- (c) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required and not without prior written advice to the other party.

7.3 Reference to Customer

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

8. Representations and Warranties

8.1 Disclaimer

Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and

- (b) any guarantees, conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law,

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

8.2 Customer Warranties

The Customer warrants that, as at the date of this Agreement:

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

9. Term and Termination

9.1 Term and Renewal

- (a) This Agreement is effective during and continues for the Term, unless terminated earlier in accordance with this Agreement.
- (b) The Customer may renew the Initial Term of any Leased Capacity for the Renewal Term, if specified in Schedule 1, by giving any notice specified therein. The Customer must pay the Capacity Payments applicable to the Renewal Term.
- (c) If no Renewal Term is specified, then, if the Customer wishes to renew the Initial Term of any Leased Capacity, it must notify the Supplier not later than 90 days before the expiry of the Initial Term. The Supplier may at its discretion renew the Initial Term for a Renewal Term, commencing on the expiry of the Initial Term. Any renewal will be subject to price and other appropriate terms to be agreed.

9.2 Suspension and Termination

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

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

9.3 Termination for Deterioration

The Supplier may (but is not obliged to) terminate this Agreement on 12 months' notice, if physical deterioration or a Force Majeure Event has caused the Total Capacity to be reduced substantially or the Supplier's costs of operating, maintaining and repairing the BNL Network to be increased substantially on an ongoing basis and BSCC, having used its reasonable endeavours, reasonably determines that it is not economic to remedy, or that the Supplier is otherwise unable to remedy, the reduction in Total Capacity or the increase in costs.

9.4 Regulatory Event

If:

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

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

9.5 Accrued Rights

Termination of this Agreement will be without prejudice to any accrued rights or remedies of either party.

10. Limitation of Liability

10.1 No Liability for Certain Events

The Supplier will not be liable to the Customer, whether in contract, tort, restitution or otherwise, for any loss, claim, cost or damage (including loss of profit), whether direct, indirect, consequential or special, arising in connection with any delay in or failure to activate Capacity, breakdown, interruption, degradation, change or variation in the BNL Network Configuration or Capacity (whatever is the cause of such delay, failure, breakdown, interruption, degradation, change or variation) however long it lasts.

10.2 No Indirect Loss

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

10.3 Resupply of Services

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

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

10.4 Limitation of Liability

The total aggregate liability of the Supplier and its Related Bodies Corporate, employees, directors, agents and representatives in respect of all claims made under this Agreement or in relation to the performance by the Supplier of its obligations under this Agreement (including in respect of any claims in tort or negligence) is limited as follows:

- (a) where the breach occurs as a result of an interruption to any Leased Capacity, the specified Capacity Unavailability Credit;
- (b) in every other case, \$100,000.

11. Indemnity

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

- (a) a claim against the Supplier by any third person (including a Landing Party) which suffers loss or damage as a result of an act or omission of the Customer or any Related Entity, Representative or customer of the Customer or any representative or customer of a Related Entity of the Customer;

- (b) a claim against the Supplier by any third person for infringement of any intellectual property right in respect of telecommunications traffic, calls, data, information or content transmitted by the Customer.

12. Force Majeure

The Supplier is not liable for any delay or failure to perform its obligations under this Agreement, and such delay or failure will not be deemed a breach of this Agreement, if such delay or failure arises out of a Force Majeure Event.

13. Assignment

13.1 Assignment by Customer

The Customer may not resell, assign, transfer, novate, mortgage, charge, encumber or otherwise deal with any of its Leased Capacity or any its rights and obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the Supplier, which may not be unreasonably withheld or delayed.

13.2 Assignment by the Supplier

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

- (a) any person which provides financing to the Supplier (or any Related Body Corporate of such person), without the Customer's consent;
- (b) any Related Body Corporate of the Supplier, without the Customer's consent; or
- (c) any other person, but only with the Customer's consent (which may not be unreasonably withheld or delayed).

The Customer agrees to execute any documents as may be reasonably necessary to give effect to this clause 13.2 (including without limitation any novation agreement).

13.3 Subcontracting by the Supplier

The Supplier may subcontract or delegate any of its obligations under this Agreement to any person.

14. General

14.1 Notices

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

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

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

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

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

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

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

14.2 Disputes and Governing Law

(a) Any dispute, controversy or claim that arises between the parties will be settled in accordance with the Dispute Resolution Procedure.

- (b) This Agreement is governed by the laws of the Republic of Fiji. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Fiji.

14.3 Further Assurance

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

14.4 Counterparts and Facsimile Signatures

- (a) This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.
- (b) The transmission by a party by email, fax or other electronic means of an executed copy of this Agreement will be deemed proof of signature of the original for the purposes of constituting a binding agreement between the parties, and the signed copy so transmitted will be deemed the original for the purposes of this Agreement.

14.5 Survivability

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

14.6 Severance

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

14.7 Whole Agreement

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

14.8 Relationship

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

DRAFT

SIGNED by the parties as an agreement.

SIGNED for the **SUPPLIER** by its
duly authorised officer, in the
presence of:

.....
Signature of witness

.....
Signature of officer

.....
Name of witness (print)

.....
Name/title (print)

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

.....
Signature of witness

.....
Signature of officer

.....
Name of witness (print)

.....
Name/title (print)

Schedule 1

Capacity Lease Details

1. Name of Customer	Vodafone	
2. Leased CapacityGigE	
3. Segment		
Point A	Kiribati, Kiritimati	
Access Point A		
Point B		
Access Point B		
4. RFS Date	tba	
5. Base Price	AUD\$.....	
6. First Capacity Payment and Capacity Payment Date	RFS: \$AUD..... Quarterly: \$AUD.....	
7. Other Capacity Payments and Capacity Payment Dates	[specify amounts and dates/monthly/quarterly in advance, if relevant]	
8. Capacity Activation Date(s)		
9. Initial Term	[12 months] from Capacity Activation Date	

10. Renewal Term	[Period: A further period of 12 months succeeding the Initial Term, at the option of Customer, option to be exercised by giving notice to the Supplier not later than 90 days before expiry of the Initial Term Capacity Payments: \$AUD..... per quarter in advance]
11. Payment Support	TBA

DRAFT

Schedule 2

BNL Network Configuration

The BNL Submarine Cable Network currently comprises 50G of capacity on the SX NEXT cable system landing in Kiritimati. The SX NEXT system has been installed by ASN (Alcatel Submarine Networks) and is initially equipped with 50G capacity.

Service Description

The BNL Ethernet Transport Service (the Service) is a point-to-point Ethernet communications service offered by BNL between Kiritimati and specified locations on the Southern Cross network.

Southern Cross Network

With the addition of the Southern Cross NEXT ("SX NEXT") cable, the Southern Cross Network consists of three separate submarine cable paths laid over diverse routes between Australia and the United States West Coast. High capacity, secure fibre optic connections link each of the cable landing stations in the common jurisdictions, such as Australia, New Zealand, Hawaii and the US West Coast. SX NEXT adds diverse landings in Fiji (Savusavu) and new cable landings in both Tokelau and Kiribati (Kiritimati Island).



For the Operators in Kiritimati, BNL now offers international Ethernet transport to anywhere on the Southern Cross network.

Schedule 3

BNL Access Guidelines

Refer to document BNL Access Guidelines....

DRAFT

Schedule 4

Not used

DRAFT

Schedule 5

Capacity Unavailability Credits – not offered

The Supplier does not warrant that the Leased Capacity will be available on an uninterrupted basis, as interruptions may be outside the control of the Supplier. The Supplier will nevertheless use reasonable endeavors to ensure that any periods of unavailability are minimized, but in the event of a period of unavailability, will NOT provide to the Customer a credit.

DRAFT

Schedule 6

Not used

DRAFT

Schedule 7

Dispute Resolution Procedure

1 Dispute

If a dispute, controversy or claim arises between any of the parties:

- (a) as to the construction of this Agreement; or
- (b) the rights or obligations of a party under this Agreement; or
- (c) any other matter arising out of or relating to this Agreement,

(other than entitling a party to proceed for equitable relief) the parties to the dispute undertake in good faith to use all reasonable endeavours to settle the dispute.

2 Non-compliance with Dispute Resolution Procedure

Unless a party to the dispute has complied with clauses 3 to 7 of this Schedule, that party may not commence court proceedings or arbitration relating to any dispute arising from this Agreement except where that party seeks urgent interlocutory relief. Where a party fails to comply with clauses 3 to 7 of this Schedule, the other party in dispute with the party failing to comply need not comply with this clause before referring the dispute to arbitration or commencing court proceedings.

3 Written notice of dispute

Any party claiming that a dispute has arisen under this Agreement will give written notice to the other party to the dispute designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute. The other party given written notice will promptly give notice in writing to the first party in dispute designating as its representative in negotiations relating to the dispute a person with similar authority.

4 Designated person to resolve dispute

The designated persons appointed under clause 3 of this Schedule will, within 14 days of the last designation required by clause 3, following whatever investigations each considers appropriate, use their reasonable endeavours to resolve the dispute.

5 Senior representative

If the designated persons named in clause 3 of this Schedule are unable to resolve the dispute to the satisfaction of all parties to the dispute within 14 days from such submission, the dispute will be submitted to the Senior Representative of each party to the dispute, who will meet as soon as possible to attempt to resolve the dispute.

6 Implementation of resolution

Any resolution reached pursuant to clauses 3 and 5 of this Schedule that is satisfactory to all parties to the dispute will be implemented as soon as possible.

7 If no satisfactory resolution

If no satisfactory resolution of the dispute is agreed to within 14 days or such further period as the Senior Representatives agree after the submission pursuant to clause 5 of this Schedule, the parties in dispute will within a further 14 days seek to agree on a process for resolving the whole or part of the dispute through means other than litigation or arbitration, such as further negotiations, mediation, conciliation, independent expert determination or mini-trial.

8 Alternative dispute resolution process

If the parties to the dispute are unable to agree on the dispute resolution process within the time period specified in clause 7 of this Schedule, or agreed on the dispute resolution process but fail to resolve the dispute within the period agreed for resolution of the dispute, any party which has complied with the provisions of clauses 3 to 7 of this Schedule may in writing terminate the dispute resolution process provided for in those clauses and may then refer the dispute to arbitration in accordance with clause 9 of this Schedule or reserve its rights under this Agreement.

9 UNCITRAL

Any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The place of arbitration will be Suva, Fiji. The language of the arbitration will be English.

10 Exchange of information during dispute resolution process

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause for any purpose other than in an attempt to settle a dispute between the parties. The parties acknowledge that any exchange of information or documents or the making of any offer of settlement pursuant to this clause is strictly on a without prejudice basis as regards any rights that a party may have.

DRAFT

Schedule 8

Not Used

DRAFT