

TELECOMMUNICATIONS ACT 2019

TELECOMMUNICATIONS LICENCE-ACLNo.3 For AVAROA CABLE LTD

Explanatory note

Avaroa Cable Limited is the company operating the undersea telecommunications cable, linking Avarua and Aitutaki in Cook Islands, to the other regional destinations on the Manatua One Polynesia international cable system. The Company's amended authorization under the Telecommunications Act 2019 of 21 November 2022, which enabled it to continue commercial operations for one year, is revoked and replaced by this Amended Telecommunications Licence-ACL No.3.

IN exercise of the powers conferred upon it by section 28 of the Telecommunications Act 2019 the Competition and Regulatory Authority issues a telecommunications licence to Avaroa Cable Limited, on the following terms and conditions:

1. COMMENCEMENT AND TERM

- 1.1** This Licence commences on 31 October 2022 and shall remain in full force and effect until the date appointed for its amendment or revocation in a subsequent licence issued by the Authority, or on 1 November 2023, whichever is the earlier.
- 1.2** This Licence replaces the Amended Telecommunications Licence issued to the Company on 21 November 2022.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Licence:

“ACL” or **“Company”** means Avaroa Cable Limited, a company duly incorporated under Cook Islands law;

“Act” means the Telecommunication Act 2019 and all regulations made under it;

“Authority” or **“CRA”** means the Competition and Regulatory Authority established by the Competition and Regulatory Authority Act 2019;

“cable system” means the undersea optic fibre telecommunications cable, and associated cable landing and terrestrial interconnection facilities, forming the Avarua and Aitutaki branches of the Manatua One Polynesia undersea cable linking Cook Islands, Samoa, Niue, and French Polynesia; the exclusive rights to the ownership or use of which are held by the Company;

“Capacity” means a quantity of telecommunications transport availability on the international or domestic sections of the cable system, defined by its particular service configuration, in units of Mbps or Gbps; **“Leased Capacity”** means a specific Capacity, the exclusive rights to the use of which may be purchased from the Company;

“transport service” means the transport of telecommunications traffic on the international or domestic sections of the cable system, measured and paid for in units of MB or GB of data;

“Gbps” and **“Mbps”** mean megabit per second and gigabit per second respectively; and **“GB and MB”** mean gigabyte and megabyte respectively;

“IP Transit service” means the deployment of the physical and commercial connections maintained by the Company in other countries, to enable telecommunications traffic on the cable system, to be delivered to and received from the Internet;

“Licence” means this telecommunication licence-ACL No.3;

“Licensed Services” means the telecommunications services which the Company is authorised to provide by this Licence;

- 2.2 Subject to subsection (1), words and expressions which appear in this Licence, and which also appear in the Act, have the meaning ascribed to them by the Act.
- 2.3 This Licence is issued to ACL on a non-exclusive basis, and nothing in this Licence modifies any power of the Authority; any obligation or liability of the Company under the Act; or any effect or operation of the Act.

3. LICENCE TO OPERATE TELECOMMUNICATIONS NETWORK AND EQUIPMENT

- 3.1 This Licence authorises the Company’s construction, installation and operation of the cable system, providing international and domestic telecommunication connectivity to and within Cook Islands, including all telecommunications apparatus, network equipment, and associated facilities, required for the provision of the telecommunications services authorised in clause 4.1.

4. LICENCE TO PROVIDE CERTAIN TELECOMMUNICATIONS SERVICES

- 4.1 This Licence authorises the Company to provide telecommunications services of the following kinds to service providers:

- (a) International transport service;
 - (b) International ethernet Leased Capacity;
 - (c) Domestic ethernet Leased Capacity;
 - (d) Domestic transport service;
 - (e) IP Transit service;
 - (f) The provision of Internet exchange and service provider peering, caching, hosting, and co-location services and facilities, whether related to the cable system or otherwise, and;
 - (g) Alternative international telecommunications transport capacity, in response to interruption on or affecting the cable system.
 - (h) The provision of domestic wholesale back-haul services to telecommunications services providers licensed to provide services to end users in Cook Islands, and the provision of any associated facilities and operations management services.
- 4.2 This Licence authorises the Company to use the cable system to provide services to non-resident telecommunications service providers for the transport of telecommunications traffic to and from destinations outside of Cook Islands.
- 4.3 Subject to clause 4.1(h), this Licence does not authorise the Company, and its interconnected bodies corporate, to own, invest in, or operate, including with other persons, a telecommunications network within Cook Islands, other than the cable system.
- 4.4 This Licence does not authorise the Company to provide internet access or other telecommunications or media content services to:
- (a) End users in Cook Islands; or,
 - (b) Subject to clause 4.2, any other person, unless that person is licensed to provide telecommunications services or the telecommunications services they provide are exempted.
- 4.5 Except as specifically authorised by the Authority in writing, this Licence does not permit the Company to sell particular services on the condition that other services are also purchased from the Company, and any such condition may not be enforced by the Company and shall constitute a contravention of this Licence.
- 4.6 Nothing in this Licence prevents the Company from acquiring, using, or reselling international telecommunications capacity supplied or contracted for by other service providers, and nothing in this Licence or in any contract with the Company prevents service providers reselling Leased Capacity acquired by them from the Company.

- 4.7 The Company shall provide the Commission with a copy of every contract which it enters into with any Cook Islands service provider, within two weeks of its execution by the parties.
- 4.8 Every agreement entered into by the Company for the provision of Licensed Services shall be deemed to be subject to the terms and conditions of this Licence and any provision of any such agreement which contravenes any of the Licence restrictions shall be unenforceable by or against the Company.

5. ANNUAL REPORT ON OPERATIONS

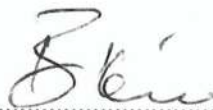
- 5.1 By 30 September 2023, the Company shall provide a report to the Authority, detailing the following information in relating to the Company's operations from commencement of this Licence, to 31 August 2023;
- (a) The quantity, in Gbps and Mbps, of international and domestic Leased Capacity on the cable system under contract during the reporting period with service providers, and non-resident telecommunications service providers, in aggregate and in respect of each provider;
 - (b) The quantity, in Gbps and Mbps, of international and domestic Leased Capacity on the cable system used during the reporting period by service providers and non-resident telecommunications service providers, from month to month, in aggregate and in respect of each service provider;
 - (c) The quantity, in GB and MB, of data transported on each of the domestic and international sections of the cable system, from month to month, in aggregate and in respect of each service provider and non-resident telecommunications service provider;
 - (d) The monthly cable system network availability and network performance statistics for each section of the system.

6. GENERAL OBLIGATIONS

- 6.1 The Company must comply with all applicable provisions of the Telecommunications Act 2019 and all directions, determinations and orders made by the Authority.
- 6.2 The Company must keep full records of the cable system's network infrastructure, including information from operational support systems, traffic flow information, and database information relating to the manner in which communications on the system are treated.

- 6.3 The Company must not exercise any right or power or perform any duty or obligation under this Licence in a manner which is inconsistent with any of Cook Islands' international obligations which are advised to the Company as relevant to its activities.
- 6.4 The Company must take reasonable steps to protect the cable system and the services provided over it from unauthorised access or interference, in order to ensure:
- (a) Continuity in the availability and integrity of telecommunications to, from and within Cook Islands; and
 - (b) The confidentiality of the communications transported.

DATED this 25th day of October 2022



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Bernard M Hill,
Chair, Competition & Regulatory Authority Cook Islands