AGREEMENT

THIS AGREEMENT (the "**Agreement**") is made as of the date of the last signature affixed hereto, by and between **GU Holdings Inc.**, a company organized and existing under the laws of Delaware, United States of America, with its principal office at 2711 Centerville Road, Suite 300, PMB 811, Wilmington, Delaware 19808, for itself and its Affiliates (collectively and individually referred to hereafter as "**GU Holdings**") 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. communication systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

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

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

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

WHEREAS, Bharti Airtel Limited ("Bharti Airtel"), Global Transit Limited ("GTL"), Google Cable Bermuda Ltd., KDDI Corporation ("KDDI"), Pacnet Services (USA) Inc. ("Pacnet"), and Singapore Telecommunications Limited ("SingTel") are members of a consortium (the "**Consortium**") that intends to construct, land and operate a private, non-common carrier, fiber-optic submarine cable system between Japan and the United States, which will be called the Unity Cable System (the "**Unity Cable System**");

WHEREAS, each member of the Consortium will own all common infrastructure of the Unity Cable System in proportionate and indivisible shares;

WHEREAS, each member of the Consortium will own individual fiber pairs and associated equipment and capacity on the Unity Cable System, which will either be used by each individual member of the Consortium to meet its own internal needs for bandwidth or may be made available to third parties based on individually tailored agreements;

WHEREAS, GU Holdings and the Consortium members each have agreed that GU Holdings has the authority to negotiate and execute this Agreement for the U.S. portions of the Unity Cable System; to enter into contractual arrangements with third parties to operate and manage the U.S. facilities associated with the Unity Cable System, including the landing and

terminal power feed equipment, terrestrial transmission facilities associated with the landing, and the U.S. Network Operations Center; and to direct the activities of any vendors, suppliers, or providers of services to GU Holdings or its designee related to the U.S. portions of the Unity Cable System;

WHEREAS, on May 16, 2008, the Consortium 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-20080516-00010 (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 GU Holdings has agreed to enter into this Agreement with DHS to address issues raised by DHS and to jointly petition that the FCC 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 GU Holdings owns or Controls.

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

1.4 "**Control**" and "**Controls**" means 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 production or research and development facilities of the entity;

(d) the termination or non-fulfillment of contracts of the entity;

(e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.4(a) through (d); or

(f) GU Holdings' obligations under this Agreement.

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

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

1.7 "**Domestic Infrastructure**" means:

(a) the U.S. cable landing station;

(b) the U.S. facility or facilities housing the termination point and point of presence;

(c) the U.S. NOC; and

(d) all equipment located at the these locations that is used to operate, control, monitor, or otherwise manage the Unity Cable System.

1.8 "**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).

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

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

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

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

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

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

1.15 **"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; 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; and network performance information; and network access ability and procedures.

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

1.17 **"Outsourcing Contract"** means a contract between GU Holdings or its designee and an individual or entity to perform functions or meet obligations covered by this Agreement which otherwise would be performed by GU Holdings.

1.18 **"Principal Equipment"** means the primary electronic components of the Domestic Infrastructure and the cable itself, including servers, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), and synchronous optical network (SONET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM) or optical carrier network (OCx) equipment, as applicable.

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

1.20 **"Sensitive Information"** means information that is not Classified Information regarding:

(a) the persons or facilities that are the subjects of Lawful U.S. Process;

(b) the identity of the Government Authority or Government Authorities serving such Lawful U.S. Process;

(c) the location or identity of the line, circuit, transmission path, or other facilities or equipment used to conduct Electronic Surveillance;

(d) the means of carrying out Electronic Surveillance; or

(e) the type(s) of service, telephone number(s), records, communications, or facilities subjected to Lawful U.S. Process; as well as all other information that is not Classified Information but is designated in writing by an authorized official of a federal, state, or local law enforcement agency or a U.S. intelligence agency as "Sensitive Information" of some type recognized by the agency involved. The designation "Sensitive" as used in this Section includes but is not limited to information marked or labeled "Official Use Only," "Limited Official Use Only," "Law Enforcement Sensitive," "Sensitive Security Information," "Sensitive but Unclassified," "Controlled Unclassified Information," "Protected Critical Infrastructure Information," or other similar designations.

1.21 **"Screened Personnel"** means those persons who, through appropriate screening procedures, are deemed to possess a high degree of trustworthiness. Screening procedures include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness.

1.22 **"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.

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

1.24 **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 Unity Cable System, GU Holdings agrees as follows:

(a) a NOC for the Unity Cable System shall be established within the United States (the "U.S. NOC"), to be operated by, or on behalf of, GU Holdings utilizing Screened Personnel;

(b) GU Holdings shall have the ability to promptly and effectively interrupt traffic to and from the United States on the Unity Cable System; and

(c) GU Holdings shall ensure that the U.S. NOC will be able to view the status of the Unity Cable System.

2.2 **Compliance with Lawful U.S. Process.** GU Holdings shall configure its Domestic Infrastructure to be capable of complying, and GU Holdings employees in the United States will have authority unconstrained by any other Consortium member to comply, with:

(a) Lawful U.S. Process;

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

(c) national security and emergency preparedness rules, regulations and orders issued pursuant to the Communications Act of 1934, as amended (47 U.S.C. § 151 *et seq.*).

2.3 **Cable System Infrastructure.** Within **ninety (90) business days** after the Effective Date, GU Holdings shall provide DHS a finalized list of:

(a) the Principal Equipment used in the Unity Cable System, including manufacturer and model; and

(b) all contracts held by GU Holdings or its designee(s) for the maintenance and security of the Unity Cable System.

2.4 **Information Storage and Access.** Unless otherwise agreed to by the Parties, GU Holdings shall make its Network Management Information available in the United States. Notwithstanding the foregoing, nothing in this Section imposes any restriction on storage of (i) any information to the extent necessary to administer and maintain GU Holdings' relationships with parties (if any) who have contracted specifically for use of the Unity Cable System; and (ii) Network Management Information to the extent necessary to administer and maintain GU Holdings' relationships with other Consortium members in connection with the Unity Cable System.

2.5 **Storage Pursuant to 18 U.S.C. § 2703(f).** Upon a request made pursuant to 18 U.S.C. § 2703(f) by a Government Authority within the United States to preserve any information in the United States in the possession, custody, or control of GU Holdings, including any information that is listed in Section 2.4 above, GU Holdings shall store such preserved records or other evidence in the United States.

2.6 **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 as well as for Electronic Surveillance.

2.7 **Storage of Protected Information.** GU Holdings shall store all Classified Information and Sensitive Information exclusively in the United States.

ARTICLE 3: SECURITY

3.1 **Measures to Prevent Improper Use or Access.** GU Holdings shall take all reasonable measures to prevent the use of or Access to the Domestic Infrastructure to conduct unauthorized Electronic Surveillance or to Access, obtain or disclose Domestic Communications, Classified Information or Sensitive Information, 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 Infrastructure. GU Holdings shall submit such policies and procedures regarding these measures to DHS within **ninety (90) days** of the Effective Date for review, and GU Holdings agrees to meet and confer with the DHS and reasonably address any concerns it may raise about such policies and procedure described therein.

3.2 **Access by Foreign Government Authorities or Non-Governmental Entities.** GU Holdings shall not, directly or indirectly, disclose or permit disclosure of, or provide Access to Domestic Communications, stored by or on behalf of GU Holdings, to any person if the known purpose of such Access is to respond to the legal process or the request of or on behalf of a Foreign Government, identified representative, component or subdivision thereof, without the written consent of DHS or the authorization of a court of competent jurisdiction in the United States. Any such requests or submission of legal process shall be reported to DHS as soon as possible and in no event later than **ten (10) business days** after such request or legal process is received by or known to GU Holdings. GU Holdings shall take reasonable measures to ensure that it will promptly learn of all such requests for Access.

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

(a) Classified or Sensitive Information;

(b) any information or Wire or Electronic Communications that have been intercepted or acquired pursuant to Lawful U.S. Process; or

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

to any Foreign Government, identified representative, component or subdivision thereof, without satisfying all applicable U.S. federal, state and local legal requirements, and without obtaining either the written consent of DHS or the authorization of a court of competent jurisdiction in the United States. Any requests or any legal process submitted by a Foreign Government, an identified representative, a component or subdivision thereof to GU Holdings for the communications, data or information identified in this Section that is maintained by GU Holdings shall be referred to DHS as soon as possible and in no event later than **ten (10)**

business days after such request or legal process is received by or known to GU Holdings, unless the disclosure of the request or legal process would violate applicable law. GU Holdings shall take reasonable measures to ensure that it will promptly learn of all such requests or submission of legal process.

3.4 **Notification of Access or Disclosure Requests from Foreign Non-Governmental Entities.** Within **ten (10) business days** after receiving legal process or requests from foreign non-governmental entities for Access to or disclosure of Domestic Communications stored by or on behalf of GU Holdings in the United States, GU Holdings shall provide Notice of such legal process or requests, unless such disclosure would be in violation of an order of a court of competent jurisdiction within the United States.

3.5 **Security of Lawful U.S. Process.** GU Holdings shall protect the designated confidentiality and security of all Lawful U.S. Process served upon it and the designated confidentiality and security of Classified and Sensitive Information in accordance with applicable U.S. federal and state law or regulation and this Agreement.

3.6 **Points of Contact.** Within **sixty (60) business days** after the Effective Date, GU Holdings shall designate points of contact within the United States with the authority and responsibility for accepting and overseeing the carrying out of Lawful U.S. Process on the Domestic Infrastructure. A point of contact shall be in the United States, shall be available twenty-four (24) hours per day, seven (7) days per week and shall be responsible for accepting service on GU Holdings of specified Lawful U.S. Process on the Domestic Infrastructure. Promptly after designating such points of contact, GU Holdings shall provide Notice of the points of contact and the type of Lawful U.S. Process each is designated and cleared to receive, and thereafter shall promptly provide Notice of any change in such designation. The points of contact shall be resident U.S. citizens and Screened Personnel. GU Holdings shall notify DHS of any change in its designated points of contact within **ten (10) business days** or fewer. GU Holdings shall cooperate with any reasonable notice by a U.S. Government Authority within the United States that a further background check, security clearance process or both be completed for a designated point of contact.

3.7 **Information Security Plan.** Within **ninety (90) days** of the Effective Date, GU Holdings shall:

(a) Take appropriate measures to prevent unauthorized Access to or disclosure of Classified or Sensitive Information;

(b) Assign only U.S. citizens who are Screened Personnel to positions that regularly deal with or are responsible for maintaining the confidentiality of Sensitive Information;

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

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

(e) Provide that the points of contact described in Section 3.6 of this Agreement shall have sufficient authority over any person who may handle Classified or Sensitive Information to maintain the confidentiality and security of such information in accordance with applicable U.S. legal authority and the terms of this Agreement;

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

(g) Implement screening procedures for personnel with Access to Domestic Infrastructure; and

(h) Provide the policies and procedures regarding its Information Security Plan to DHS.

GU Holdings shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DHS may raise with respect to the Information Security Plan.

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

3.9 **Notice of Obligations.** GU Holdings shall instruct appropriate officials, employees, contractors, and agents as to GU Holdings' 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. GU Holdings shall issue these instructions in writing within **forty-five (45) days** of the Effective Date, and shall submit a copy thereof to DHS at the same time.

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

ARTICLE 4: REPORTING AND NOTICE

4.1 **Filings Concerning *de facto or de jure* Control of GU Holdings.** GU Holdings shall promptly provide Notice of any filing with the FCC or any other Government Authority

relating to the *de facto* or *de jure* control of GU Holdings or the Unity Cable System, except for filings with the FCC for assignments or transfers of control that are *pro forma*.

4.2 **Change in Control.** If any member of the Management of GU Holdings 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 GU Holdings or the Unity 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 GU Holdings, then such officer or director shall cause GU Holdings, to the maximum extent possible, to provide Notice in writing 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 GU Holdings or the Unity 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 GU Holdings or the Unity Cable System and, if applicable, the basis for their prospective Control of GU Holdings or the Unity Cable System.

4.3 **Outsourcing Contracts.** In any Outsourcing Contract pertaining to Access, control or operation of the Domestic Infrastructure as defined herein, GU Holdings shall take reasonable steps to ensure that the contractor complies with the applicable terms of this Agreement.

4.4 **Offshoring.** GU Holdings shall comply with all aspects of this Agreement with respect to any personnel it may have offshore.

4.5 **Notice of Foreign Influence.** If any member of the Management of GU Holdings 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 GU Holdings or the Unity Cable System in such a way that:

(a) Materially interferes with or impedes the performance by GU Holdings of its duties and obligations under the terms of this Agreement;

(b) Materially interferes with or impedes the exercise by GU Holdings of its rights under the Agreement; or

(c) Raises a material concern with respect to the successful fulfillment by GU Holdings of its obligations under this Agreement;

then such officer or director shall within **ten (10) business days** provide Notice in writing of the timing and the nature of the Foreign Government's or entity's plans or actions.

4.6 **Change in Cable Infrastructure, Contracts and Network Management.** GU Holdings shall provide at least **fifteen (15) days'** advance written notice to DHS prior to performing any maintenance, repair, or replacement that would result in any modification to the Principal Equipment list submitted pursuant to Section 2.3 above. GU Holdings need not comply with the advance notice requirement for any maintenance, repair or replacement that is undertaken pursuant to a bona fide emergency and is necessary to ensure the continued operability of the Unity Cable System; however, in such circumstances GU Holding shall provide advance notice of the modification to DHS if practicable, and if impracticable, within **five (5) business days** after modification. GU Holdings shall provide at least **thirty (30) business days'** advance written notice to DHS prior to making any modifications to the list of contracts submitted pursuant to Section 2.3 above. GU Holdings agrees to make its Network Management Information available to DHS upon request. GU Holdings shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns DHS may raise with respect to the Cable System's Principal Equipment, contracts, and Network Management Information.

4.7 **Procedure and Process on Reporting.** Within **forty-five (45) days** of the Effective Date, GU Holdings shall adopt and distribute to the Management of GU Holdings, a written procedure or process for the reporting by the Management of GU Holdings of any noncompliance with this Agreement. This written procedure or process shall also provide for the reporting by employees, agents and contractors to the Management of GU Holdings of information that requires Notice under Sections 4.2, 4.5, 4.6, and 4.9 of this Agreement. Any violation by GU Holdings of any material term of such policy shall constitute a breach of this Agreement. By a written statement, GU Holdings shall notify all relevant employees, contractors and agents that the general categories of information identified in Sections 4.2, 4.5, 4.6, and 4.9 of this Agreement should be disclosed to the Management of GU Holdings 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 GU Holdings shall not discriminate against, or otherwise take adverse action against, anyone who reports such information to the Management of GU Holdings or the United States Government. GU Holdings shall make such process or procedure documents available to DHS upon request.

4.8 **Non-retaliation.** Within **forty-five (45) days** of the Effective Date, GU Holdings shall adopt a policy that strictly prohibits GU Holdings 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 Sections 4.2, 4.5, 4.6, or 4.9 of this Agreement, or has notified or attempted to notify the Management of GU Holdings to report information that he or she believes in good faith requires Notice under either Sections 4.2, 4.5, 4.6, or 4.9 of this Agreement or under GU Holdings' written notice to employees on the reporting of any such information. Any violation by GU Holdings of any material term of such

policy shall constitute a breach of this Agreement. GU Holdings shall make such process or procedure documents available to DHS upon request.

4.9 **Reporting of Incidents.** GU Holdings shall provide Notice if it learns of any information that reasonably indicates:

(a) a material breach of this Agreement;

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

(c) Access to or disclosure of Network Management Information in violation of federal, state, or local law or regulation; or

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

Notice shall be promptly made in writing by an appropriate representative of GU Holdings no later than **ten (10) business days** after GU Holdings learns of any information that reasonably indicates a matter described in this Section. GU Holdings shall lawfully cooperate in investigating the matters described in this Section. GU Holdings need not give Notice where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States.

4.10 **Notice of Changes to / Additional Services** GU Holdings shall provide a minimum of **thirty (30) days** advanced Notice in the event that it, any Affiliate or the Consortium changes or intends 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.

4.11 **Availability of Information and Facilities.** DHS may visit, at any time upon reasonable Notice, any part of GU Holdings' Domestic Infrastructure to conduct on-site 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.

4.12 **Personnel Interviews.** Upon reasonable Notice, GU Holdings 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.

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

(a) a copy of the then current policies and procedures adopted to comply with this Agreement, if any, and a summary of the changes and reasons therefore;

(b) a summary of any known acts of noncompliance with the terms of this Agreement, not otherwise reported under Section 4.9, 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;

(c) a summary of any other events occurring during the reporting period that, to the knowledge of GU Holdings, will or reasonably could affect the effectiveness of or compliance with this Agreement; and

(d) a detailed description and map reporting any changes to the Unity Cable System's physical and logical topology during the reporting period, including the addition of new NOCs or cable landing stations.

4.14 **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:

Department of Homeland Security
Assistant Secretary for Policy
Washington, DC 20528
ip-fcc@dhs.gov

GU Holdings Inc.

_____

_____

_____

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: DISPUTES

5.1 **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 by person or by phone within **five (5) 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) days** of such meeting may be submitted by any Party to the Assistant Secretary for Policy of DHS and the designated counsel for GU Holdings, unless DHS believes that important national interests can be protected, or GU Holdings believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 5.2.

The Parties shall meet by person or by phone within **ten (10) 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 determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 5.2. If resolution of a disagreement requires Access to Classified Information, the Parties shall designate a person or persons possessing the appropriate security clearances for the purposes of resolving that disagreement. A Party resorting to measures set forth in Section 5.2 shall give prior written notice of its intent to do so to each other Party.

5.2 **Enforcement of Agreement.** Subject to Section 5.1 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 written notice of such breach;

(b) Request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC, 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 GU Holdings of any U.S. law or regulation or term of this Agreement;

(d) Pursue criminal sanctions against GU Holdings or any member of the Consortium, or any officer, director, employee, contractor, or agent of GU Holdings, or against any other person or entity, for violations of the criminal laws of the United States; or

(e) Seek suspension or debarment of GU Holdings or any member of the Consortium from eligibility for contracting with the U.S. Government in accordance with applicable law and regulation.

5.3 **Irreparable Injury.** GU Holdings agrees that the United States would suffer irreparable injury if for any reason GU Holdings failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, GU Holdings 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.

5.4 **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.

5.5 **Waiver of Immunity.** GU Holdings 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. GU Holdings 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 GU Holdings with respect to compliance with this Agreement.

5.6 **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 6: FREEDOM OF INFORMATION ACT

6.1 **Protection from Disclosure.** DHS shall take all reasonable measures to protect from public disclosure all information submitted by GU Holdings (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 Confidential; subject to protection under 5 U.S.C. § 552(b); not to be released without notice to the filing party" or similar designation. Such markings shall signify that it is GU Holdings' 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 GU Holdings of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If GU Holdings objects to the notifying Party with respect to the intended disclosure and GU Holdings' objections are not satisfactorily resolved, DHS shall

notify GU Holdings of its intention to release (as provided by Section 5 of E.O. 12600) not later than **ten (10) business days** prior to disclosure of the challenged information.

6.2 **Use of Information for U.S. Government Purposes.** Subject to Section 6.1, 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 take all reasonable measures to protect from public disclosure the information marked as described in Section 6.1. Further, subject to its obligations under Section 6.1, 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 7: FCC CONDITION

7.1 **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 GU Holdings, 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 7.2.

7.2 **Right to Object to Future FCC Filings.** GU Holdings 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 Unity Cable System after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, GU Holdings 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 GU Holdings or any other Consortium member 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 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 GU Holdings 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 GU Holdings believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within **thirty (30) 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 GU Holdings.** DHS agrees to negotiate in good faith and promptly with respect to any request by GU Holding 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 GU Holdings' 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 GU Holdings shall negotiate in good faith to modify this Agreement to address those concerns.

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

8.11 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.

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

[Signature Page Follows]

This Agreement is executed on behalf of the Parties:

GU Holdings Inc.

Date: _____ By: _____

Printed Name: Leo Hoelzle

Title: Authorized Signatory

United States Department of Homeland Security

Date: 21-Sep-09 By: _____

Printed Name: DAVID HEYMAN

Title: A/S DHS for Policy

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 GU Holdings Inc., on the one hand, and the Department of Homeland Security ("**DHS**"), on the other, dated _____, which Agreement is designed to address national security, law enforcement, and public safety concerns of DHS regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligations imposed by federal law or regulation