

**RADIO SPECTRUM  
MANAGEMENT**



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# Managed Spectrum Park Licence Agreement

**March 2015**

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**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI

New Zealand Government

Radio Spectrum Management  
Ministry of Business, Innovation, and Employment  
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# MANAGED SPECTRUM PARK LICENCE AGREEMENT

This Agreement dated the                      day of                      20

**BETWEEN**            in right of the Government of New Zealand acting by and through Len Starling, Manager Radio Spectrum Policy and Planning, in the Resources, Energy and Communications Branch, Ministry of Business, Innovation, and Employment, acting under the authority of the Chief Executive of the Ministry of Business, Innovation, and Employment (“**Manager**”)

**AND**                    [X], of [X] (“**Licensee**”)

## BACKGROUND

- A            The Manager manages a spectrum management right in the 2.5 GHz band on behalf of the Crown as a “managed spectrum park”. The Manager conducted an allocation of spectrum licences out of the management right.
- B            The Licensee was a successful applicant. The Manager’s allocation rules require this agreement to be entered into by the Licensee as a condition of settlement of the sale and purchase of the spectrum licence.
- C            The purpose of this agreement is to promote the shared use of the managed spectrum park while minimising risk of interference to services operating in the band and adjacent bands.

## AGREEMENT

The Licensee and the Manager agree to comply with the terms and conditions in Schedule 1 (Details) and Schedule 2 (Terms and Conditions).

## EXECUTION

Signed for and on behalf of **HER MAJESTY THE QUEEN**            )  
in right of the Government of New Zealand acting by and            )  
through Len Starling, Manager Radio Spectrum Policy and            )  
Planning, in the Resources, Energy and Communications            )  
Branch, Ministry of Business, Innovation, and Employment,            )  
under the authority of the Chief Executive of the Ministry of            )  
Business, Innovation, and Employment.            )

\_\_\_\_\_  
Signature

Signed for and on behalf of [**Licensee**]

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

## **SCHEDULE 1 – DETAILS**

### **SPECTRUM LICENCES**

[insert full details of the Licences as at initial grant from the Register of Radio Frequencies]

### **SERVICES**

[insert details of services from the application]

### **TERRITORIAL LOCAL AUTHORITY AREAS**

[insert names]

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# 1. Grant

## 1.1. Manager grants licences to Licensee

The Manager grants the Licences to the Licensee for the term of this Agreement for the purpose of providing the Services.

## 1.2. Licensee to comply with Licence Agreement and Licence

The Licensee agrees to comply with all the provisions of this Licence Agreement and the Licences. In the event of inconsistency between the terms of this Licence Agreement and the terms of a Licence, the terms of this Licence Agreement will prevail.

## 1.3. Licensee to comply with Park Rules

The Licensee agrees to comply with the Park Rules that are in place from time to time during the term of this Agreement. The Manager must give prior written notice of any change to the Park Rules published after the date of this Agreement. Wherever possible, this Agreement must be interpreted in a manner consistent with the Park Rules, but this Agreement prevails over the Park Rules in the event of a direct conflict.

# 2. Fees and Charges

## 2.1. Licensee must pay annual fees and charges

The Licensee must, in addition to any fees and charges payable under any allocation rules issued by the Manager, pay annual licence fees (plus GST, if any) under this Agreement as follows:

- (a) annual Managed Spectrum Park management charge, at the rate of \$200 per base transmitter, to a maximum of \$1,000; and
- (b) annual resource rental (per MHz) =  $a / b \times c / 20 \times d$

where,

$a$  = the population in the most recent census of each Territorial Local Authority in which the Licence has a Licence Area.

$b$  = the population of New Zealand in the most recent census

$c$  = \$20,346, being the average price per MHz paid in Auction No. 9 (for 2.3 MHz and 2.5 MHz spectrum for a 20 year right)

$d$  = percentage increase in the Consumer Price Index since 1 January 2008.

## 2.2. Licensee must pay regulatory fees

In addition to the Licence Fees specified in clause 2.1, the Licensee must pay all fees and charges in accordance with regulations made under the Act.

### **2.3. Manager to publish schedule of resource rentals**

The Manager will publish a schedule of annual resource rentals payable under clause 2.1(b) in relation to each Territorial Local Authority area from time to time on the MSP Webpage, which will be conclusive of the resource rental payable in the absence of manifest error.

### **2.4. Licence Areas recorded in Schedule 1**

For the purposes of the calculations in clause 2.1, the Territorial Local Authority areas in which the Licence has a Licensed Area is specified in Schedule 1. In the event that there are changes to the Territorial Local Authority boundaries that affect Schedule 1, the parties agree to arrange for Schedule 1 to be updated by amendment to the Agreement.

### **2.5. Licence fees are payable annually in advance**

The Licensee must pay Licence Fees annually in advance by the 20<sup>th</sup> of the month following the date of the Manager's invoice. The Manager will make reasonable efforts to include all charges (including regulatory fees) payable by the Licensee in one annual itemised invoice, and for this purpose may issue part year invoices.

### **2.6. Licence fees may be reviewed**

The Manager may from time to time amend the Licence Fees as follows:

- (a) the annual Managed Spectrum Park management charge, including without limit the basis for its calculation, may be amended upon not less than 2 years notice in writing to the Licensee; and
- (b) the annual resource rental, including without limit the basis for its calculation, may be amended upon not less than 5 years notice in writing to the Licensee

## **3. Term and Renewal**

### **3.1. Licence agreement continues until expiry of Licences**

This Licence Agreement commences on the date of execution and continues until the expiry or earlier cancellation of the Licences, including any Licence renewed in accordance with clause 3.2 or replaced in accordance with clause 6.1.

### **3.2. Manager to offer renewal of Licences**

The Manager agrees that it will offer the Licensee by notice in writing the option to renew the Licences in accordance with clause 3.3 on substantially the same terms if the Manager is satisfied that the Licensee has complied with all the terms of this Licence Agreement, including (without limit) the Implementation Requirement and the Park Rules. Each renewal offer will be made not less than 18 months before the expiry of the then current Licence.



### **3.3. Licence period to be six years or until a date five years from renewal offer**

The expiry date of every Licence offered for renewal under clause 3.2 must be a date six (6) years from the expiry date of the Licence it renews or 31 December 2028 (whichever is the earlier), unless the Manager decides (in its absolute discretion) to offer a shorter renewal period. The Manager must ensure that, in the case the Manager decides to offer a shorter renewal period, the expiry date of the renewed Licence offered is a date at least five (5) years after the date the renewal offer is made.

## **4. Acquisition Limit, No Interest in Other Management Rights, and Transfer**

### **4.1. Acquisition limit applies**

The acquisition limit applying to Licences is a Controlling Interest in Licences with Licence Areas in:

- (a) the geographic areas of no more than fifteen (15) Territorial Local Authority areas; and
- (b) the geographic areas of no more than one of the following main centres, provided that if a Territorial Local Authority area, which is part of a main centre is reorganised, then the main centre is deemed to be amended to be made up of the successor Territorial Local Authority areas:
  - i. Auckland (being the Auckland council Territorial Local Authority area;
  - ii. Hamilton (being the Hamilton city council Territorial Local Authority area);
  - iii. Wellington cities (being the Wellington, Hutt and Porirua city council Territorial Local Authority areas); and
  - iv. Christchurch (being the Christchurch city council Territorial Local Authority area);

### **4.2. Licensee not to exceed acquisition limit**

The Licensee will not, at any time, by itself or together with its Associates, hold or have interests in Licences, or Controlling Interests in relation to Licences, if holding or having such interests would cause them to exceed the Acquisition Limit.

### **4.3. Licensee not to have interest in other 2.3 or 2.5 GHz management rights**

The Licensee will not, at any time, by itself or together with its Associates, hold or have Registered interests in the Other Management Rights or Controlling Interests in relation to such management rights.

#### **4.4. Licensee may not transfer or create interests**

The Licensee will not, except as provided in clause 4.5, transfer, assign, or create, or purport to transfer, assign or create, any Registered Interest in, or Controlling Interest in relation to, the Licences, in favour of any person other than the Licensee itself.

#### **4.5. Manager may consent to transfer**

The Licensee may with the prior written consent of the Manager transfer, assign or create any Registered Interest in, or Controlling Interest in relation to, the Licences in favour of any person other than the Licensee itself.

#### **4.6. Consent subject to acquisition limit and other Management Rights prohibition**

As a condition precedent to the Manager's consent under clause 4.5, but subject to clause 4.7, the Licensee must:

- (a) demonstrate to the satisfaction of the Manager that no proposed transferee, assignee, or interest holder, either alone or in conjunction with any Associate of the proposed transferee, assignee or interest holder, will hold or have a Registered interest in, or Controlling Interest in relation to, Licences that would exceed the Acquisition Limit; and
- (b) demonstrate to the satisfaction of the Manager that no proposed transferee, assignee, or interest holder, either alone or in conjunction with any Associate of the proposed transferee, assignee or interest holder, will hold or have a Registered interest in, or Controlling Interest in relation to any of the Other Management Rights; and
- (c) ensure that in the case of a transfer, assignment or other transaction in relation to a Licence, the proposed transferee, assignee, or other party to such a transaction executes an agreement with the Manager in the form and containing covenants to the same effect as this Agreement, and with a term equal to the remaining term of this Agreement.

#### **4.7. Ministry may waive non-association rule if currently implemented**

The Manager may waive the condition in clause 4.6(b) by approving a particular transferee or assignee and its particular holdings or Associations:

- (a) if the Ministry has notified that the Service in relation to the Licences proposed to be dealt with has been implemented in accordance with clause 5.7, including at the most recent decision notified; and
- (b) if the Applicant satisfies the Manager that the proposed arrangements will promote the provision of rural, local or regional services to consumers which would not otherwise be provided; and

- (c) subject to any terms and conditions as the Ministry may require in its absolute discretion to be included in the agreement required in clause 4.6(c), which agreement will be modified accordingly.

## **5. Implementation Requirement**

### **5.1. Services must be implemented**

The Licensee must ensure that it makes sufficient ongoing use of the Licences in providing the Services by the second anniversary of Registration of the Licences in the name of the Licensee and throughout the remainder of the term of this Agreement.

### **5.2. Manager determines whether implementation requirement is met**

Whether or not the Implementation Requirement is met at any particular time is a matter to be determined by the Manager (acting reasonably) considering the following factors:

- (a) the use of the Licences in light of their terms, conditions and restrictions (for example, the actual power of transmissions compared with the maximum power specified in the Licences);
- (b) the amount and pattern of the use of the Licences compared to licences that authorise:
  - i. similar types of transmissions; or
  - ii. the use of similar types of transmitting equipment;
- (c) whether the Licensee is able to provide the same or equivalent service as the Services that are being provided under the Licence using:
  - i. another radio licence or spectrum licence held by the Licensee or an Associate of the Licensee; or
  - ii. a telecommunications network available to the Licensee or an Associate of the Licensee;
- (d) any other relevant considerations or any other special circumstances justifying the continuation or cancellation of the Licences.

### **5.3. Licensee must provide statutory declaration about use**

To assist a Manager's determinations under clause 5.2, the Licensee must submit to the Manager within one month after every two-year anniversary of Registration of the Licences in the name of the Licensee, and by any date that may be specified in writing by the Ministry from time to time, a Statutory Declaration:

- (a) specifying whether the Implementation Requirement is met at that time; and
- (b) containing detailed information that responds to each of the factors referred to in clause 5.2.

## **5.4. Manager may request further information**

The Manager may request further information or declarations from the Licensee to make his or her determination under clause 5.2, and to confirm that the Licences continue to be in sufficient use from time to time after the initial determination is made. The Licensee must provide any further information or declarations requested by the Manager within twenty (20) Working Days. Any failure by the Licensee to provide information or declarations requested by the Manager will be treated as confirmation that the Licences are not in sufficient use.

## **5.5. Events deemed to be failure to implement**

The Manager must determine that the Implementation Requirement has not been met if:

- (a) the Licensee does not submit the Statutory Declaration under clause 5.3 (including not submitting it on time or not submitting it because the Licensee cannot declare that it has met the Implementation Requirement); or
- (b) the Statutory Declaration provided under clause 5.3, in the opinion of the Manager, omits a material particular or is incorrect, misleading or incomplete.

## **5.6. Consequences of failure to implement**

Without limitation to the terms of this Licence Agreement, to the extent that the Implementation Requirement has not been met in relation to a Licence, the Manager may, in the exercise of its absolute discretion, decide to:

- (a) cancel that particular Licence in accordance with clause 7;
- (b) amend the Licence to accord to the actual level of implementation achieved in accordance with clause 6; or
- (c) allow a one-off extension of not longer than six (6) months for the Licensee to meet the Implementation Requirement.

## **5.7. Manager will notify decisions**

The Manager will provide written notice to the Licensee of whether or not it is satisfied that the Implementation Requirement has been met and any decision under clause 5.6 from time to time. Written notice from the Manager that the Implementation Requirement has not been met is conclusive in the absence of manifest error.

# **6. Amendment or Replacement of Licences**

## **6.1. Manager may amend Licences if interference issue**

The Licensee agrees that from time to time the Manager may amend any Licence, if the Manager considers that a serious interference or technical incompatibility issue with another Licensee has arisen as a result of which a modification to the Licence is necessary or desirable. The Manager will only exercise this power if it considers that:

- (a) attempts have been made under the Park Rules or under Part 12 of the Act which have failed to satisfactorily resolve the issue; or

- (b) the matter is urgent and critical to ensure the proper functioning of the Managed Spectrum Park or the radio spectrum resource generally.

## **6.2. Manager may amend or replace Licences for better efficiency**

The Manager may amend any Licence or replace any Licence with a spectrum licence or radio licence on substantially similar commercial and technical terms, provided that:

- (a) the Manager, is satisfied that the change is necessary or desirable to achieving the efficient and effective use of the radio spectrum; and
- (b) the Manager has first consulted the Licensee.

## **6.3. Licensee must cooperate in amendment process**

Following a written request from the Manager (attaching the notice in the prescribed form in accordance with section 57B of the Act) to modify a Licence in accordance with clause 5.6(b), 6.1 or 6.2:

- (a) the Licensee agrees to promptly sign such notice and return that notice to the Manager;
- (b) if the Licensee does not sign the notice within ten (10) Working Days of the request, the Licensee agrees that the Manager may modify the Licence on the Licensee's behalf in the manner described in that notice;
- (c) the Licensee irrevocably appoints the Manager as its attorney for the purpose of modifying the Licence on its behalf and authorises the Manager to effect the proposed modification in the name of the Licensee (including granting all necessary rights to do such act).

# **7. Cancellation of Licence and Termination of Agreement**

## **7.1. Licensee may cancel Licence**

The Licensee may exercise its right to cancel the Licence at any time in accordance with the Act, provided that it first gives the Manager at least 5 Business Days prior written notice of cancellation.

## **7.2. Manager may cancel for reasons of national security**

The Manager may exercise its right to cancel any Licence (or all Licences) in accordance with the Act, if the Manager considers such cancellation is necessary to protect national security. The Manager must give the Licensee notice in writing of any cancellation under this clause.

### **7.3. Manager must cancel licence where default**

If an event of default in clause 7.4 occurs or the Manager decides to cancel a Licence in accordance with clause 5.6(a), then each of the following applies:

- (a) the Manager must take immediate steps to cancel the Licence in accordance with the Act and give written notice of termination of this Licence Agreement, with effect from a date not earlier than 20 Working Days and not later than 60 Working Days after the date of the notice:
- (b) the Manager must make reasonable efforts to discuss alternative options available to the Licensee which might enable the Licensee to continue to provide any Services in existence at the date of cancellation (such as applying for a different licence):
- (c) the Licensee must do all things and sign all documents reasonably required to cancel the Licence:
- (d) the Licensee irrevocably appoints the Manager as its attorney for the purpose of cancelling the Licence on its behalf and authorises the Manager to effect the cancellation in the name of the Licensee (including granting all necessary rights to do such act).

### **7.4. Events of default**

The following are events of default:

- (a) the Licensee commits any serious breach of its obligations under this Licence Agreement;
- (b) the Licensee repeats or continues, after having been warned in writing, any breach of its obligations under this Licence Agreement, the Licence or the Park Rules;
- (c) the Licensee fails to pay the Licence Fees or regulatory fees when they fall due and payable; or
- (d) the Licensee uses the Licence for a purpose other than for providing the Services.

### **7.5. Effect of cancellation of Licence on Agreement**

Upon cancellation of a Licence:

- (a) this Licence Agreement is deemed to be terminated in respect of that Licence with effect from the date of cancellation, provided that termination and cancellation of a Licence and termination of this Licence Agreement is without prejudice to the rights and obligations that accrued prior to the date of cancellation and termination.
- (b) this Licence Agreement continues in full force and effect in respect of any Licences that have not expired or been cancelled.
- (c) the Licensee is not entitled to any refund (partial or otherwise) of any amount paid by the Licensee in respect of the Licence, including (without limit) any initial payment under any allocation rules or annual charges.

- (d) A stand down period of [insert time period] will apply from the date the Licence is cancelled by the Licensee before the former Licensee can apply for a new Licence. The Licensee can, however, submit a new application for a Licence during that stand down period as a Competing Applicant as defined in the Managed Spectrum Park Allocation Rules.

## **8. Remedies**

### **8.1. Damages inadequate remedy for breach of clauses 4, 5 or 6**

The parties agree that in respect of any breach by the Licensee of clauses 4, 5 or 6, damages alone are likely to be an inadequate remedy and discretionary relief by way of injunction or order for specific performance is likely to provide a more adequate remedy for the Crown.

### **8.2. Licensee must remedy breach of clauses 4, 5 or 6**

The Licensee agrees to remedy any breach of clause 4, 5 or 6 as soon as reasonably practicable and in any event within 3 months of becoming aware of such a breach. The measures necessary to remedy such a breach may include divestment of any Registered interests in spectrum licences or Other Management Rights, or Controlling Interests in relation to spectrum licences or Other Management Rights, to the extent the Licensee is exceeding the Acquisition Limit or is interested in Other Management Rights.

### **8.3. Licensee indemnifies Manager for breach of clause 4, 5 or 6**

The Licensee fully indemnifies the Crown against all losses, costs or claims arising as a direct or indirect result of a breach by the Licensee of clause 4, 5 or 6.

## **9. Crown's Caveatable Interest**

### **9.1. Crown may lodge caveat**

Pursuant to section 89 of the Act, the Crown may at any time during the term of this Licence Agreement lodge with the Registrar of Radio Frequencies a caveat which, so long as the caveat remains in force, will have the effect of prohibiting the Registrar from making any entry on the register charging or transferring the Licences, other than a transaction in favour of the Crown or with the consent of the Crown.

### **9.2. Manager consents to certain dealing**

The Manager will consent as caveator to any dealing giving effect to a transaction that the Manager has consented to under clause 4.5.

## **10. Access, Records and Reporting**

### **10.1. Licensee will grant access**

The Licensee must ensure that the Manager's representatives will be granted at all reasonable times entry to any place, premises or building for the purpose of ensuring compliance with the Licences and this Licence Agreement.

### **10.2. The Licensee must maintain records**

The Licensee must maintain all records of information relating to its obligations and compliance with the terms of this Licence Agreement as the Manager may (acting reasonably) require by notice in writing. The Licensee must make this information available to the Manager on its written request within 10 (ten) Working Days of receiving the request.

### **10.3. The Licensee must report**

If the Manager (acting reasonably) requires by notice in writing from time to time, the Licensee must fully and accurately report to the Manager on compliance with any clause or clauses of this Licence Agreement or on any matter relating to the Licensee's use of the Managed Spectrum Park that is specified in the notice. The Licensee must report within any time period specified in the notice. The Manager may provide a reporting template or other documentation in relation to such reports which the Licensee must complete fully and accurately and return.

## **11. General**

### **11.1. Licensee has acquired Licences on own judgement**

The Licensee acknowledges that it has acquired the Licences and entered into this Licence Agreement acting entirely on its own judgment and not in reliance on any warranty or representation made by the Crown or the Manager or any officer of the Manager and that it has no cause of action against the Crown or the Manager or any officer of the Manager for any pre-contractual statement or action by them or any of them. This acknowledgement is intended for the benefit of the Crown and the Manager and all officers of the Manager for the purposes of the Contracts (Privity) Act 1982.

### **11.2. Limitation of liability**

Other than in respect of any breach by the Licensee of clause 4, 5 or 6, no party will have any liability to any other party under or in connection with this Licence Agreement in contract, tort (including negligence) or breach of statutory duty or otherwise, including for any direct, indirect or consequential losses (including loss of profits, revenue, business or anticipated savings).



### **11.3. No amendment**

No amendment to this Licence Agreement will be effective unless it is in writing and signed by the parties.

### **11.4. No waiver**

No party will be deemed to have waived any rights under this Licence Agreement unless the waiver is in writing and signed by that party. A failure to exercise or a delay in exercising any right under this Licence Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Licence Agreement.

### **11.5. Severability**

Any unlawful or voidable provision in this Licence Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Licence Agreement without affecting the validity, legality, or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Licence Agreement.

### **11.6. Notices sent to addresses specified on Register**

Any notice to be given under this Licence Agreement must be in writing and must be delivered or sent by registered post to the parties' respective addresses as specified in the Register of Radio Frequencies under section 5 of the Act.

### **11.7. Notices deemed served on delivery or two days after posting**

Any notice will be deemed to be delivered on the date of physical delivery or the second Working Day following the date of posting as the case may be. In proving the giving of a notice it is sufficient to prove that the envelope containing such notice was properly addressed and posted.

## 12. Definitions and Interpretation

### 12.1. Definitions

In this Licence Agreement, (unless the context otherwise requires) the following terms have the following meanings:

<b>“2.3 or 2.5 GHz spectrum bands”</b>	Means the radio spectrum frequencies in the ranges 2300 MHz to 2395 MHz or 2500 MHz to 2690 MHz;
<b>“Acquisition Limit”</b>	has the meaning in clause 4.1;
<b>“Act”</b>	means the Radiocommunications Act 1989, as amended from time to time;
<b>“Agreement”</b>	includes an agreement, arrangement or understanding whether:  (a) formal or informal or partly formal and partly informal; or  (b) written or oral or partly written and partly oral; or  (c) having legal or equitable force or not, and whether or not based on legal or equitable rights;
<b>“Associate”</b>	has the meaning in clause 12.2 and 12.3, and “Association” has a corresponding meaning;
<b>“Business”</b>	means a business that relates to or includes (in whole or in part) the holding or use of radio frequency spectrum for the provision of telecommunications services or services to the telecommunications industry;
<b>“Controlling Interest”</b>	means:  (a) in relation to any spectrum licence, an interest which results in the direct or indirect control of any radio frequency spectrum the subject of that spectrum licence, and includes a right to transmit under a spectrum licence; and  (b) in relation to any management right, an interest which results in the direct or indirect control of any radio

frequency spectrum the subject of that management right, and includes interests by virtue of the creation or transfer of any Registered or unregistered licences of the frequencies to which the Management Rights relate;

<b>“Implementation Requirement”</b>	means the implementation requirement set out in clause 5.1 and determined by the Manager in accordance with clause 5.2;
<b>“Licence”</b>	means a Registered spectrum licence that is described as at the date of this Agreement in Schedule 1, and any corresponding renewed spectrum licence under clause 3.2 or any replacement spectrum licence in the Managed Spectrum Park provided under clause 6.2;
<b>“Licence Fees”</b>	means the licence fee described in clause 2.1, as may be amended in accordance with clause 2.5;
<b>“Licence Areas”</b>	means every area or location under a Licence at which there is:  (a) a right to transmit; or  (b) a right to have no harmful interference from co-channel and adjacent channel emissions;
<b>“Managed Spectrum Park”</b>	means management right numbers 241 (with a commencement date 1 January 2009 and expiry date 31 December 2014) and 258 (with a commencement date 1 January 2015 and expiry date 31 December 2028), and any replacement management right registered in respect of the same range of frequencies under sections 45 or 47 of the Act.
<b>“Manager”</b>	includes any successor to the Ministry as the manager of the radio spectrum frequency band of 2575 – 2620 MHz;
<b>“MSP Webpage”</b>	means an Internet webpage maintained in relation to the Managed Spectrum Park within <a href="http://www.rsm.govt.nz">www.rsm.govt.nz</a> , or such other website as may be notified in writing to the Licensee;
<b>“Other Management”</b>	means any Registered management right, other than the Managed Spectrum Park, which covers a radio spectrum frequency band within the range 2300 MHz to 2395 MHz or

<b>“Rights”</b>	2500 MHz to 2690 MHz;
<b>“Park Rules”</b>	means the Park Rules for the Managed Spectrum Park, which are required to be complied with as a condition of the Allocation Rules and the Licence Agreement;
<b>“Registered”</b>	means recorded on the Register of Radio Frequencies established under section 5 of the Act;
<b>“Related Body Corporate”</b>	<p>A body corporate is related to another body corporate if:</p> <p>(a) the other body corporate is its holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or</p> <p>(b) at least 20% of its issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other body corporate and bodies corporate related to that other body corporate (whether directly or indirectly, but other than in a fiduciary capacity); or</p> <p>(c) at least 20% of the issued shares of each of them, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by shareholders or members of the other (whether directly or indirectly, but other than solely in a fiduciary capacity); or</p> <p>(d) the businesses of the bodies corporate have been so carried on that the separate business of each body corporate, or a substantial part of it, is not readily identifiable; or</p> <p>(e) there is another body corporate to which both bodies corporate are related;</p>
<b>“Services”</b>	means any local or regional telecommunication services the Licensee proposes to provide using the Licences as specified in Schedule 1;
<b>“Statutory Declaration”</b>	means a statutory declaration made by the Licensee or a person on behalf of the Licensee that meets the requirements of the Oaths and Declarations Act 1957;
<b>“Territorial Local</b>	means the geographic areas of territorial local authorities from

**Authority area”** time to time specified under the Local Government Act 2002 (including any Act that, with or without modification, replaces or corresponds to that enactment);

**“Working Day”** means between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a public holiday within the meaning of section 44 of the Holidays Act 2003 (including, in relation to section 44(1)(k), Wellington Anniversary Day).

## 12.2. Persons who are Associates

For the purposes of this Agreement, person A is an **Associate** of person B (and vice versa) if:

- (a) person A is a body corporate, and person B is:
  - i. a director of that body corporate; or
  - ii. a Related Body Corporate of that body corporate; or
  - iii. a director of a Related Body Corporate of that body corporate; or
- (b) person A is in the same immediate family as person B (including a spouse, civil union partner, de facto partner, child (including step-child), or parent (including step-parent) or sibling (including step-siblings) of person B); or
- (c) person A is a nominee or trustee for person B; or
- (d) person A is a partner of person B in terms of the Partnership Act 1908 or the Limited Partnerships Act 2008; or
- (e) person A is a director of a body corporate, or person A holds any voting power in the body corporate, and person A and person B are parties to an Agreement relating to:
  - i. the control of that body corporate; or
  - ii. at least 20% of the voting power in that body corporate; or
- (f) person A holds or controls directly or indirectly at least 20% of the voting power, or at least 20% of the issued shares, in person B; or
- (g) person B (or a director, employee or other Associate of person B) is the trustee of a trust acting in that capacity and person A is a settlor, beneficiary, or trustee, of that trust; or
- (h) person A is a person who, in making a decision or exercising a power materially affecting a Business, is accustomed, or under an obligation, or proposes or is likely (in the Manager’s sole opinion), to act in accordance with the directions or instructions or wishes of person B; or
- (i) person A and person B are acting, or propose or are likely to act (in the Manager’s sole opinion), jointly or in concert in relation to a Business; or
- (j) person A (being a person other than the Manager) and person B are or were parties to an Agreement that entitles one of the persons to a substantial degree

of influence, or the right to obtain a substantial degree of influence, over the Business of the other; or

- (k) person A is an Associate of another person that is an Associate of person B under this Agreement, including an Associate in a chain of Associates.

### **12.3. Persons who are not Associates**

Despite clause 12.2, person A is not an Associate of person B (and vice versa):

- (a) solely by virtue of Person A and Person B both being Licensees in the Managed Spectrum Park and interacting with each other in accordance with the Park Rules;
- (b) solely by virtue of an Agreement on a standalone basis and on arm's length commercial terms to:
  - i. share content, sites or technical infrastructure;
  - ii. purchase and/or install technical infrastructure;
  - iii. grant access to transmitter sites; or
  - iv. maintain (but not operate) technical infrastructure.

### **12.4. Construction**

In this Licence Agreement:

- (a) a reference to "including" or similar phrases does not imply any limitation;
- (b) a reference to a person includes an individual, body corporate or unincorporated body of persons;
- (c) the singular includes the plural, and vice versa;
- (d) a reference to \$ or dollars is a reference to New Zealand currency;
- (e) the headings and clause and sub clause headings in this Agreement are for convenience only and have no legal effect; and
- (f) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.