



Managed Spectrum Park Allocation Rules

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Radio Spectrum Management
Ministry of Business, Innovation, and Employment
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New Zealand
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Context

A Managed Spectrum Park (MSP) has been established to allow access to a number of users in a common band of spectrum on a shared and, as far as possible, self-managed basis. The objective of MSPs is to encourage the efficient use of spectrum, innovation and flexibility, and to provide for low-cost compliance and administration.

The 45 MHz allocated for the MSP is located at 2575 - 2620 MHz, although 5 MHz is required for a guard band at the lower boundary of the allocated frequency. The effective bandwidth available for services in the MSP is therefore 40 MHz, at 2580 - 2620 MHz.

The Ministry held an initial application round in March 2009 with the intention of granting spectrum licences under section 48 of the Radiocommunications Act 1989 to eligible successful applicants to the MSP. The initial round closed in September 2009 and eighty licences were subsequently awarded.

Following the licence allocations from the first round, the Ministry has decided to allocate future licences within the MSP on an ongoing “first-come-first-served” basis commencing from 1 November 2010, in accordance with these allocation rules.

Any future allocation rules may differ from these rules, including in terms of application eligibility requirements such as acquisition limits and rules preventing association with management right holders or holders of other spectrum licences.

Applicant Familiarisation and Ministry Disclaimer

The spectrum licences are subject to the provisions of the Act, together with the Radiocommunications Regulations 2001. Before applying, prospective applicants should familiarise themselves thoroughly with that Act and those Regulations, as well as these Allocation Rules, and Licence Agreement and Park Rules (which, among other things, contain acquisition limits, association rules, implementation rules and sharing obligations).

Prospective applicants should seek specific legal and technical advice from suitably qualified professionals, before undertaking any action in reliance on the contents of this document.

The Crown does not accept any responsibility or legal liability in contract, tort, equity or otherwise for any warranty or representation or other pre-contractual statement or action by the Crown, the Ministry or any officer of the Ministry, or for any action taken or reliance placed on all or any part of the information in this document, or for any error in or omission from this document.

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1. Applications

1.1 Chief Executive invites applications from 1 Nov 2010 onwards

The Chief Executive invites applications from Eligible Applicants for MSP Licences under these allocation rules. The term of the MSP Licences offered is six (6) years, subject to the terms and conditions (including renewal rights) under the Licence Agreement. The Chief Executive will accept Licence applications on an ongoing 'first-come-first-served' basis from 1 November 2010, until such further time as determined by the Chief Executive.

1.2 Applicants agree to allocation rules and approve Licence Agreement and Park Rules

By submitting an application, the applicant agrees to these allocation rules, and approves the form of the Licence Agreement and the Park Rules.

1.3 Chief Executive may amend or revoke rules

These allocation rules, including any Schedule, and any notice on the MSP Webpage may be amended or revoked by the Chief Executive in whole or in part, at any time, by notice in writing to applicants who have submitted a completed Application Form, or by notice on the MSP Webpage, provided that no amendment or revocation will affect any MSP Licence that is registered in the name of a Successful Applicant before the amendment or revocation. Where the invitation to apply for MSP Licences under these allocation rules is revoked, the MSP Licences are deemed to be withdrawn under clause 7.2.

1.4 Crown and its agents are not liable to applicants

Neither the Crown, the Ministry nor any officer of the Ministry will be liable to any applicant for the exercise or non-exercise of any right, obligation or discretion set out in these allocation rules.

1.5 Crown is not required to grant Licences

Neither the Crown, the Ministry nor any officer of the Ministry is obliged to grant any MSP Licences until a Licence Agreement has been executed by a Successful Applicant.

1.6 Applicants must meet own costs

In addition to paying the Application Fee to cover the Ministry's Costs, the applicant is responsible for meeting all its costs associated with its application and the application process, including costs related to engaging an Accredited Radio Engineer (ARE) and specifying and negotiating the terms of the MSP Licences that are acceptable to the Chief Executive and signing a Licence Agreement.

1.7 Provision of false information may lead to rejection

If any information given by an applicant during the allocation process covered by these allocation rules is or becomes false, incorrect or misleading (in the sole opinion of the Chief Executive), then (without limit to any other legal rights and remedies available to the Crown), the Chief Executive will have the right to reject the application of that applicant and to refuse to accept any further application from that applicant for MSP Licences in any subsequent allocation.

2 Application Requirements and Eligibility

2.1 Applicants apply by submitting an ARE certified draft Licence(s) with application fee

Applications for MSP Licences must be made by an applicant submitting an ARE certified “planned” Licence(s) and paying a \$1,000 deposit to be credited towards the Application Fee to be invoiced in accordance with clause 6.

2.2 Only experienced engineers may be used to certify MSP Licences

A proposed MSP Licence and ARE Certificate provided under clause 2.1 and clause 4.3, is only valid for the purposes of these allocation rules if it was engineered and issued by an approved radio engineer who has (in the reasonable opinion of the Chief Executive) significant experience in the engineering of Licences such as those required to provide the Services specified in the relevant application. The Chief Executive will respond promptly to any request to confirm whether an approved radio engineer has such experience.

2.3 Applicants must be eligible

Applicants are only eligible if the Chief Executive is satisfied that:

- (a) the applicant has paid the deposit towards the Application Fee (including, in the case of payment by cheque or bank transfer, that the payment has cleared); and
- (b) the ARE certified draft licence(s) (proposed MSP Licences) defines the technical characteristics, including the Licence Areas of the proposed MSP Licences, in a manner that is capable of being registered as spectrum licences under the Act without provision of further information in compliance with the Engineering Rules (particularly PIB 39);
- (c) the proposed MSP Licences are consistent with the guard band at the lower boundary of Managed Spectrum Park;
- (d) the Services proposed by the applicant have a local or regional focus;
- (e) neither the applicant nor any Associates of the applicant hold nationwide management rights or Controlling Interests in nationwide management rights in the 2.3 GHz or 2.5 GHz spectrum bands;
- (f) the applicant and the Associates of the applicant are only submitting one application between them; and
- (g) if the application is successful, the applicant, and its Associates (if any), will not exceed the Acquisition Limit.

2.4 Applicants must demonstrate eligibility

- (a) To assist the Chief Executive to determine whether the applicant is an Eligible Applicant, the applications for MSP Licences must be accompanied by a Statutory

Declaration confirming that the applicant is an Eligible Applicant in the form set out in Schedule 2.

- (b) The Chief Executive may, in his or her absolute discretion, seek further information from an applicant within a timeframe specified by the Chief Executive and may require that information to be confirmed by Statutory Declaration.

2.5 Chief Executive determines eligibility and rejects ineligible applications

The Chief Executive will determine that an applicant is not an Eligible Applicant, and will by notice in writing to the applicant, reject its application if:

- (a) the Statutory Declaration is not provided by the applicant that complies with clause 2.4;
- (b) any further information requested is not provided within the required period or such further time as the Chief Executive in his or her absolute discretion allows (time being of the essence); or
- (c) any information provided under clause 2.4 is not satisfactory in the opinion of the Chief Executive.

3 How Eligible Applications Will Be Processed

3.1 Chief Executive will publish information about eligible applicants

- (a) The Chief Executive will publish on the MSP Webpage and advertise in the Ministry's monthly Business Update, details of any individual applications received including the name of the Eligible Applicant, within twenty (20) Working Days of receiving an application.
- (b) Should no qualifying competing application be received within 30 Working Days of the application's being advertised, the MSP spectrum licence(s) applied for will be assigned to the Eligible Applicant ("Category One" applications).
- (c) Eligible Applicants with Category One applications will be the Provisionally Successful Applicants with respect to those applications.

3.2 Competing applications

The Ministry will identify applications from Eligible Applicants where MSP Licences are unlikely to be able to be issued for any reason including the risk of interference between Services under the MSP Licences applied for by Eligible Applicants (assuming all the MSP Licences applied for by the Eligible Applicants will be granted) ("Category Two" applications).

3.3 Categorisation is not open to question

The Ministry's categorisation of applications as Category One and Category Two applications and into Competing Applicant Groups will be a one-off assessment, and there will be no rights of appeal, review or reconsideration of any categorisation or re-categorisation of an application.

4 Competing Application Groups

4.1 Competing Application Groups will be announced

Eligible Applicants in Competing Application Groups will be Competing Applicants for the purposes of every MSP Licence applied for by members of the Competing Application Group. The Chief Executive will advise the Competing Applicants in writing, and on the MSP Webpage, as soon as practicable that they are Competing Applicants, and identify the other Competing Applicants in the Competing Application Group (if any).

4.2 Competing Application Groups must seek to agree a Solution

- (a) Competing Applicants must make reasonable efforts to agree among their Competing Application Groups on how they will co-ordinate, revise or modify the specifications of their proposed MSP Licences to accommodate each other's Services on a non-interfering basis and enable the creation of a proposed MSP Licence in the Ministry's SMART system and the issue of ARE Certificates in compliance with the Act and the Engineering Rules (particularly PIB 39) ("a Solution").
- (b) A Solution may involve one or more Competing Applicants withdrawing their applications under clause 7.1. Upon withdrawal, an applicant is automatically removed from a Competing Application Group for the purposes of these allocation rules. Solutions may include, without limit, amendments (such as by adopting Licence Conditions) to enable the creation of proposed MSP licences and the issue of ARE Certificates and interference mitigation techniques including antenna discrimination, polarisation, frequency offset, shielding, site selection, and power control.

4.3 Agreed Solutions are to be submitted to Chief Executive with ARE Certificate

If all Competing Applicants in a Competing Application Group agree to a Solution in writing which allows one or more MSP Licences to be granted to the applicant(s) in the Competing Application Group, then the applicant(s) which would be granted an MSP Licence under the Solution may submit the Solution to the Chief Executive, together with:

- (a) the written and dated Agreement signed by or on behalf of all the Competing Applicants in the Competing Application Group as at the date of the Agreement, and containing all the terms and conditions on which the Solution was agreed; and
- (b) details of the MSP licences that would be granted to the applicant under the Solution (which must have been entered into the Ministry's SMART system as "planned licences") and copies of valid ARE Certificates, all at the applicant's arrangement and cost; and
- (c) confirmation by the certifying approved radio engineer that the proposed MSP licences were engineered in accordance with the Act and Engineering Rules (including PIB 39) and give effect (as Licence Conditions or otherwise) to all technical limitations represented by the application or as amended in the Solution.

4.4 Solutions are subject to Chief Executive's consent

The Chief Executive will consent to a Solution if he or she is satisfied that the Solution has been agreed by all Competing Applicants and that it meets the requirements of clause 4.3. Upon the Chief Executive consenting to a Solution, the Applicants which are to be granted MSP Licences under the Solution are Provisionally Successful Applicants and are automatically removed from the Competing Application Group for the purposes of these allocation rules.

4.5 Chief Executive may require information before consenting

To assist the Chief Executive to determine whether to consent to a Solution, the Chief Executive may, in his or her absolute discretion, seek further information from a Competing Applicant or any other person and may require such information to be confirmed by Statutory Declaration. If any further information sought by the Chief Executive is not provided or still does not satisfy the Chief Executive, the Solution may be rejected.

4.6 Competing Applicant eliminated by ballot after 1 month

The Chief Executive will hold a ballot to eliminate one of the Competing Applicants from a Competing Application Group if:

- (a) the Chief Executive does not receive notification of a proposed Solution in relation to the group within one (1) month of the announcement of the Competing Application Groups; or
- (b) the Chief Executive received notification of a proposed Solution in relation to the group within one (1) month of the announcement of the Competing Application Groups however:
 - (i) the Solution did not resolve all the interference issues in the Competing Application Group (i.e. under the Solution, not all members of the Competing Application Group were removed under clause 4.2 or 4.4); or
 - (ii) the Chief Executive declines consent to a proposed Solution under clause 4.4.

4.7 Additional Competing Applicant eliminated by ballot every month

The Chief Executive will hold successive ballots to eliminate one Competing Applicant from each Competing Application Group following the ballot held under clause 4.6 if:

- (a) the Chief Executive does not receive notification of a proposed Solution in relation to the group within one (1) month of the announcement of the previous ballot result for the Competing Applicant Group; or
- (b) the Chief Executive received notification of a proposed Solution in relation to a group within one (1) month of the announcement of the Competing Application Groups but:
 - (i) the Solution did not resolve all the interference issues in the Competing Application Group (i.e. under the Solution, not all members of the Competing Application Group were removed under clause 4.2 or 4.4); or
 - (ii) the Chief Executive declines consent to a proposed Solution under clause 4.4.

4.8 Ballot process will be on MSP Webpage

The ballot process will be determined at the discretion of the Chief Executive and advised on the MSP Webpage. Ballot results will be announced on the MSP Webpage.

4.9 Multiple Competing Applicants may be eliminated in a single ballot

Despite clauses 4.6 and 4.7, where there is a group of more than five (5) Competing Applicants for MSP Licences in a Competing Application Group, the Chief Executive may eliminate more than one Competing Applicant from the group through a single ballot, provided the members of the affected Competing Application Group are given notice of the Chief Executive's intention to do so.

4.10 If only one Competing Applicant, then its application is a proposed Solution

If for any reason a Competing Application Group comprises one applicant, then the proposal in that Competing Applicant's application, subject to any amendments that may be proposed by the Applicant to enable an ARE Certificate to be issued in accordance with the Engineering Rules, will be deemed to be a proposed Solution for the purposes of clause 4.2. If the Chief Executive declines consent to that Solution in accordance with clause 4.4, the Chief Executive may reject the application.

5 Confirmation of Provisionally Successful Applicants and Successful Applicants

5.1 Provisionally Successful Applicants will be notified

Within ten (10) Working Days of Provisionally Successful Applicants being determined under clauses 3.1 or 4.4, the Chief Executive will advise the Provisionally Successful Applicant of its provisional success in writing, and on the MSP Webpage.

5.2 Chief Executive will confirm successful applicants if they are eligible

The Chief Executive will confirm in writing and on the MSP Webpage that a Provisionally Successful Applicant is a Successful Applicant when the Chief Executive is satisfied that the Provisionally Successful Applicant is an Eligible Applicant and that the application should not be rejected under clause 5.5.

5.3 Provisionally Successful Applicants must provide information

To assist the Chief Executive in his or her determination under clause 5.2, a Provisionally Successful Applicant must, within ten (10) Working Days from receipt of notice under clause 5.1, deliver to the Chief Executive:

- (a) written confirmation that it wishes to proceed to have the MSP Licences issued; and
- (b) a Statutory Declaration in the form set out in Schedule 2.

5.4 Chief Executive may require further information

The Chief Executive may, in his or her absolute discretion, seek further information from a Provisionally Successful Applicant within a timeframe specified by the Chief Executive and may require that information to be confirmed by Statutory Declaration.

5.5 Chief Executive to reject applications in certain circumstances

The Chief Executive will, by notice in writing to a Provisionally Successful Applicant, reject its application if:

- (a) the Chief Executive is not satisfied that the Provisionally Successful Applicant is an Eligible Applicant; or
- (b) the Statutory Declaration that complies with clause (b) is not provided by the Provisionally Successful Applicant, or any further information requested is not provided in accordance with clause 5.4, within the required period or such further time as the Chief Executive in his or her absolute discretion allows (time being of the essence); or
- (c) any information provided under clause 5.3 or 5.4 is not satisfactory in the opinion of the Chief Executive.

6 Payment of Fees and Transfer of Licences

6.1 Application fee for Successful Applicants upon confirmation as Successful Applicant

Upon confirmation of a Successful Applicant, the Chief Executive will estimate the Costs that have been and will be incurred by the Ministry under these allocation rules, and apportion those Costs to determine the amount of the Application Fee (plus GST, if any) payable by the Successful Applicant on a per MSP Licence basis. The Chief Executive may, in his or her sole discretion, determine that different classes of Successful Applicants should be apportioned different Application Fees, but need not consider allocating Costs on an individual basis.

6.2 Successful Applicants will be invoiced for application fee

The Chief Executive will send an invoice to Successful Applicants for the Application Fee calculated by the Chief Executive under clause 6.1, which will be paid by Successful Applicants as follows:

- (a) the \$1,000 deposit received from the Successful Applicant with its applications will be applied to the Application Fee; and
- (b) any shortfall in the amount of the Application Fee must be paid by the Successful Applicant as a condition of settlement of the MSP Licences.

6.3 Excess deposits will be retained as credit

If the Application Fee calculated in accordance with clause 6.1 is less than the deposit paid by the Successful Applicant, the Ministry will retain the balance as a credit towards the licence fees payable by those Successful Applicants under the Licence Agreement.

6.4 Application fee for unsuccessful applicants confirmed on completion of allocation

Following completion of the allocation of all MSP Licences under these allocation rules, the Chief Executive will calculate the Costs that have been incurred by the Ministry under these allocation rules, subtract the aggregate of Application Fees payable by Successful Applicants, and apportion the remainder among unsuccessful applicants as the Application Fee (plus GST, if any) payable by unsuccessful applicants on a per application basis. The Chief Executive may, in his or her sole discretion, determine that different classes of unsuccessful applicants should pay different Application Fees, but need not consider apportioning Costs on an individual basis.

6.5 Unsuccessful applicants will be invoiced for application fee, and deposit will be applied

The Chief Executive will send an invoice to unsuccessful applicants for the amount of the Application Fee calculated by the Chief Executive under clause 6.4, which will be paid by applying the \$1,000 deposit received from the Applicant with its application.

6.6 Excess deposits will be refunded, and unsuccessful applicant must pay any shortfall

If the Application Fee calculated in accordance with clause 6.4 is:

- (a) more than the amount of the deposit paid by the unsuccessful applicant, the unsuccessful applicant must pay to the Ministry the amount of any shortfall by the 20th of the month following the date of the invoice;
- (b) less than the amount deposit paid by the unsuccessful applicant, the Ministry will issue a partial refund of the deposit to the unsuccessful applicant.

6.7 Registration of MSP Licences

The Chief Executive will procure registration of the relevant MSP Licences in the name of each Successful Applicant within twenty (20) Working Days of the last to occur of:

- (a) the Successful Applicant receiving confirmation from the Chief Executive in accordance with clause 5.2; and
- (b) the Successful Applicant entering into the Licence Agreement with the Chief Executive; and
- (c) the Successful Applicant paying any amount required in accordance with clause (b) (if any).

7 Withdrawal and Rejection

7.1 Applicants may withdraw at any time

An applicant may withdraw its application for MSP Licences, with no liability to pay any amount other than the Application Fee, by giving written notice to the Chief Executive at any time prior to the date or time (as the case may be) that the applicant is advised it is a Provisionally Successful Applicant under clause 5.1. The Chief Executive will announce withdrawals on the MSP Webpage.

7.2 Chief Executive may withdraw at any time

Without limiting any other clause in these allocation rules, all or any of the frequencies at any location in the Managed Spectrum Park may be withdrawn from the allocation process at the absolute discretion of the Chief Executive at any time before an MSP Licence is registered under the Act in the name of the Successful Applicant in respect of those frequencies, notwithstanding (without limit) that a valid application may have been lodged, or that a Provisionally Successful Applicant or Successful Applicant has been determined, and that the applicant supplied the information required under clause 5.3 or 5.4.

7.3 Chief Executive will announce any withdrawals and will not be liable for withdrawing

If the Chief Executive exercises his or her discretion to withdraw all or any of the frequencies at any location in the Managed Spectrum Park from the allocation process, the Chief Executive will announce that decision on the MSP Webpage. However, the Chief Executive will, on request of an applicant, fully refund any deposit paid under clause 2.1 if the Chief Executive is satisfied that the applicant has withdrawn its application under clause 7.1 because the application is incapable of being granted without significant modification due to the withdrawal of frequencies by the Chief Executive.

7.4 Chief Executive not liable for withdrawal or rejection

No applicant (including Competing Applicants, Provisionally Successful Applicants, and Successful Applicants) or potential applicant will have any claim against the Crown, the Chief Executive, the Ministry or any officer of the Ministry for any losses, costs or expenses, or any other compensation, as a direct or indirect consequence of the Chief Executive's decision to withdraw frequencies under clause 7.3 or to reject an application under these rules.

8 Suitability for Purpose

8.1 Applicants to determine if suitable

It is the responsibility of applicants to ensure that any MSP Licences for which they apply are suitable for their purpose or purposes. Neither the Crown, nor the Ministry, nor any officer of the Ministry makes any warranty or representation (express or implied) in this respect. In particular, while the 2.5 GHz spectrum band is, among other uses, generally suitable for the provision of broadband services, neither the Crown, nor the Ministry, nor any officer of the Ministry makes any warranty or representation that the Services can be established under MSP Licences granted in accordance with these allocation rules, or that the Services can achieve coverage of the License Areas in the MSP Licences.

8.2 Co-ordination may be required

Every applicant acknowledges that co-ordination on a frequency, time and geographic basis may be required prior to commencing transmissions under any MSP Licences granted under these allocation rules. Any co-ordination is solely the responsibility of the Successful Applicants and the Successful Applicants have sole responsibility for the prevention of harmful interference in terms of the Act.

8.3 MSP Licences subject to the Act

Any MSP Licences acquired under these allocation rules are subject to all legal requirements that apply to the acquisition and holding of spectrum licences created under the Act.

9 Publication

9.1 Results will be published

Results for the allocations under these allocation rules may be published by the Chief Executive in the *New Zealand Gazette* as the MSP Licences are registered in accordance with clause 6.7.

9.2 Application and other information will be published

Participation in this allocation process is subject to the condition that participants agree that details of applicants, applications, Eligible Applicants, Competing Applicants, Provisionally Successful Applicants, Successful Applicants, the withdrawal (deemed or otherwise) or rejection of an application, the results of the allocation process and any other information that the Chief Executive believes to be of general interest related to the allocation process or call for applications will be published on the MSP Webpage. Details to be published will include the name of the applicant, contact details and the details of the particular MSP Licences to which the application applies.

9.3 Official Information Act applies

All communications relating to this allocation are subject to the provisions of the Official Information Act 1982. Applicants must clearly identify any specific information they wish withheld, together with the reasons for withholding it. The Ministry will take into account this information when responding to requests under the Official Information Act 1982.

10 Notices

10.1 Notice to applicant deemed received after 2 days

Where the Chief Executive or his/her delegate is required to give notice in writing under these allocation rules, such notice is deemed to have been received two (2) Working Days after the notice has been posted to the address of the applicant as notified in its application.

10.2 Information from applicants to be addressed to the Project Manager

Where an applicant provides any application, Statutory Declaration, information or notice under these allocation rules, the applicant must address those to the Project Manager.

10.3 Information to be in writing, and electronic versions followed by paper originals

Any application, Statutory Declaration, information or notice from the applicant under these allocation rules must be in writing and must be posted or sent by registered post to the

address in Schedule 1. PDF files will only be valid if the original documentation is received by the Ministry within three (3) Working Days.

11 Definitions and Interpretation

11.1 Definitions

In these allocation rules (unless the context otherwise requires) the following terms have the following meanings:

“2.3 or 2.5 GHz spectrum bands”	Means the radio spectrum frequencies in the ranges 2300 MHz to 2395 MHz or 2500 MHz to 2690 MHz;
“Acquisition Limit”	means a Controlling Interest (by itself or together with its Associates) in MSP Licences which have License Areas within: (a) the Territorial Local Authority areas of no more than fifteen (15) territorial local authorities; and (b) the Territorial Local Authority areas of no more than one of the following main centres: i. Auckland cities (made up of the Auckland, Manukau, North Shore and Waitakere city council Territorial Local Authority areas); ii. Hamilton (being 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);
“Act”	means the Radiocommunications Act 1989, as amended from time to time;
“Agreement”	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;
“Application Fee”	means an application charge sufficient to cover the Ministry’s internal and external Costs, as calculated by the Chief Executive under clause 6.1;
“ARE Certificate”	means a certificate from an approved radio engineer made in compliance with the Engineering Rules (including PIB 39) and under section 25 of the Act (which certifies that, in the opinion of the approved radio engineer, a spectrum licence (among other things) will not cause harmful interference and is technically compatible with services under other radio licences and spectrum licences);

“Associate”	has the meaning in clauses 11.2 and 11.3, and “Association” has a corresponding meaning;
“Business”	means a business that relates to or includes (in whole or in part) the holding of radio frequency spectrum for the provision of telecommunications services or services to the telecommunications industry;
“Chief Executive”	means the Chief Executive of the Ministry of Business, Innovation, and Employment and his or her delegate;
“Competing Applicant”	means an applicant for the allocation of MSP Licences for which there is more than one Eligible Applicant and “Competing Application” has a corresponding meaning;
“Competing Application Group”	means a group of Competing Applications made in accordance with clauses (b) and 4.7;
“Costs”	include the Ministry’s costs associated with commissioning the Contractor to evaluate the applications, ensure compliance with the Engineering Rules (including PIB 39), preparing a database and the MSP Webpage, administration costs, costs of issuing the MSP Licences and legal costs;
“Controlling Interest”	means: <ul style="list-style-type: none"> (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 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 spectrum licences of the frequencies to which the management rights relate;
“Eligible Applicant”	means an applicant for the allocation of MSP Licences who meets the requirements of clause 2.3 to the satisfaction of the Chief Executive;
“GST”	means goods and services tax within the meaning of the Goods and Services Tax Act 1985;
“Engineering Rules”	means all rules which the Ministry may require approved radio engineers to comply with from time to time when engineering licences and issuing ARE Certificates relating to spectrum licence applications, and includes: <ul style="list-style-type: none"> (a) PIB39 (including amendments to PIB 39); and (b) any rules applicable to engineering MSP Licences that the Ministry may issue from time to time, such as rules for specifying Licence Conditions, or protection areas or locations;

“Licence Agreement”	means an agreement to be entered into between the Chief Executive and each Successful Applicant in the form set out in Schedule 3, and which requires compliance with the Park Rules;
“Licence Area”	means every area or location at which there is, or is proposed to be: <ul style="list-style-type: none"> (a) a right to transmit; or (b) a right to have no harmful interference from co-channel and adjacent channel emissions;
“Licence Conditions”	means conditions that apply to the exercise of a rightholder’s rights under a spectrum licence made in accordance with the Engineering Rules (including PIB 39);
“Managed Spectrum Park”	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;
“Ministry”	includes any successor to the Ministry as the Manager of the Managed Spectrum Park;
“MSP Licences”	means spectrum licences to be granted in the Managed Spectrum Park in accordance with these allocation rules, the Licence Agreement and the Park Rules, and “Licensee” has a corresponding meaning;
“MSP Webpage”	means an Internet webpage maintained in relation to the Managed Spectrum Park within www.rsm.govt.nz , or such other website as may be notified in writing to the Licensees;
“Park Rules”	means the Park Rules for the Managed Spectrum Park, which are required to be complied with as a condition of these allocation rules and the Licence Agreement, and which are, at the date of these allocation rules, in the form set out in Schedule 4;
“Project Manager”	means the person designated by the Ministry as the Project Manager from time to time and whose address is: <p style="margin-left: 40px;">Crown Spectrum Assets Manager 2.5 GHz Managed Spectrum Park Ministry of Business, Innovation, and Employment PO Box 1473 Wellington New Zealand</p> <p>or such other address as notified from time to time by the Ministry;</p> <p>To avoid doubt, any reference to “an officer of the Ministry”</p>

	includes the Project Manager;
“Provisionally Successful Applicant”	means an Eligible Applicant or Competing Applicant which receives notice from the Chief Executive that it is a Provisionally Successful Applicant under clause 5.1;
“Regulations”	means regulations made pursuant to the Act, as amended from time to time;
“Related Body Corporate”	a body corporate is related to another body corporate if: <ul style="list-style-type: none"> (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 (b) at least 20% of the issued shares of the company, 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 solely fiduciary capacity); or (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 in a solely fiduciary capacity); or (d) the businesses of the body corporates have been so carried on that the separate business of each body corporate, or a substantial part of it, is not readily identifiable; or (e) there is another body corporate to which both bodies corporate are related;
“Schedule”	means a schedule to these allocation rules;
“Services”	means local or regional telecommunication services proposed to be provided by the applicant using the MSP Licences as specified in its application;
“Statutory Declaration”	means a statutory declaration made by the applicant, or a person on behalf of the applicant, that meets the requirements of the Oaths and Declarations Act 1957;
“Successful Applicant”	means a Provisionally Successful Applicant which is confirmed as a successful applicant for MSP Licences in accordance with clause 5.2;
“Territorial Local Authority area”	means the geographic areas of territorial local authorities 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).

11.2 Persons who are Associates

In these allocation rules (unless the context otherwise requires) 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 Company of that body corporate; or**
 - iii. **a director of a Related Company 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 Chief Executive'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 Chief Executive's sole opinion), jointly or in concert in relation to a Business; or
- (j) person A (being a person other than the Chief Executive) 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.

11.3 Persons who are not Associates

Despite clause 11.2, person A is not an **Associate** of person B (and vice versa):

- (a) solely by virtue of person A and person B both holding licences 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 arms-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.**

11.4 Rules of interpretation

In these allocation rules, the following rules of interpretation apply (unless the context otherwise requires):

- (a) the singular includes the plural, and vice versa;
- (b) a reference to “including” or similar wording does not imply any limitation;
- (c) references to a “company” include a company incorporated under the Companies Act 1993 and any other body corporate;
- (d) the headings and clause and sub-clause headings and subheadings are for convenience only and have no legal effect;
- (e) references to a person include an individual, body corporate or unincorporated body of persons;
- (f) references to \$ or dollars is a reference to New Zealand currency;
- (g) 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.

Schedule 1 – Contact Details

Crown Spectrum Assets Manager
2.5 GHz Managed Spectrum Park
Ministry of Business, Innovation, and Employment
PO Box 1473
WELLINGTON

Fax: 04 499 0969 (with **'2.5 GHz Managed Spectrum Park'** in the subject line)

Web Address: www.rsm.govt.nz

Email Address: radio.spectrum@mbie.govt.nz (with **'2.5 GHz Managed Spectrum Park'** in the subject line)

Schedule 2 – Statutory Declaration

I, [Name] of [Place, Occupation], solemnly and sincerely declare that:

1. I am employed and authorised by [the Applicant] to make this Statutory Declaration on its behalf [if applicable – otherwise amend to reflect correct relationship – i.e. owner/director].
2. I declare that:
 - a. the MSP Licences [the Applicant] is applying for will be used to provide the following Services, which have a local or regional focus:
[Details of the Services the Applicant is proposing to provide]
 - b. neither [the Applicant] nor any of its Associates has a nationwide management right, or a Controlling Interest in a nationwide management right, in the 2.3 GHz or 2.5 GHz spectrum bands; and
 - c. that [the Applicant] and its Associates are only submitting one application for MSP Licences between them; and
 - d. that [the Applicant] and its Associates will not, if successful in its application for every MSP Licence applied for under the Allocation Rules, exceed the Acquisition Limit; and
 - e. [if the Applicant is not a publicly listed company, it must list its principals including Board Members, Chief Executive Officers and Senior Managers (or similar) and its ultimate owners (beneficial or otherwise and including parent companies and holding companies)]; or
 - f. [if the Applicant is a trust, it must list all of its trustees and the ultimate beneficiaries of the trust]; and
 - g. that [the Applicant] has read and understands the Allocation Rules and the terms and conditions on which the MSP Licences it has applied for would be granted.
3. Capitalised terms used in this Statutory Declaration bear the same meaning as in the Allocation Rules.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

[Signed]

Declared at [Place] this [] day of [] 20[].

[Signed by a Justice of the Peace or other person authorised to take a Statutory Declaration in terms of section 9 of the Oaths and Declarations Act 1957] ¹

¹ **Examples of persons able to take declarations** - a person enrolled as a barrister and solicitor of the High Court; a Justice of the Peace; a notary public; the Registrar or a Deputy Registrar of the Supreme Court; Court of Appeal; High Court or a District Court; a member of Parliament; or an employee of Public Trust authorised for that purpose.

Schedule 3 – Licence Agreement

Schedule 4 – Park Rules