



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



3.5 GHz: Early Access Auction Catalogue

24 February 2020



MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT

RADIO FREQUENCY AUCTION No. 20

CALL FOR BIDS

On behalf of the Chief Executive of the Ministry of Business, Innovation & Employment and with the Chief Executive's authority, I give notice of intention to conduct an auction of Management Rights commencing at **10:00 am, Monday, 30 March 2020** in accordance with the Terms and Conditions attached to this notice. Those rights are to be transferred under section 42 of the Radiocommunications Act 1989 ("the Act") in Lots as specified in Schedule 1 to the Terms and Conditions (such transfer subject to the requirements of the Management Rights Agreement discussed below).

The Management Rights to be sold by auction are subject to the provisions of the Radiocommunications Act 1989, together with the Radiocommunications Regulations 2001, and the conditions to be specified in the Management Rights as described in Schedule 2 to the Terms and Conditions. Before the auction commences, prospective bidders should familiarise themselves thoroughly with that Act and those Regulations, as well as the Terms and Conditions and Management Rights Agreement (into which Provisionally Successful Bidders are required to enter and which contains a requirement that licences under the Management Rights may only be created for the purpose of providing a 5G service).

Prospective bidders are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication.

Dated at WELLINGTON this 24th day of February 2020.




Len Starling
Manager, Radio Spectrum Policy and Planning
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment



TABLE OF CONTENTS

1	INTERPRETATION	2
1.1	Defined Terms	2
1.2	Additional definitions relating to Associations	4
1.3	Exceptions to Associations	5
1.4	Construction.....	6
2	AMENDMENTS TO THIS CALL FOR BIDS.....	6
3	ACQUISITION SUBJECT TO THE ACT	6
4	APPLICATION OF COMMERCE ACT 1986	6
5	REGISTRATION AS A BIDDER	7
5.1	Who may bid.....	7
5.2	Prospective bidders to complete registration form	7
5.3	Deadline to provide form RFA1 and Banker's Certificate	7
5.4	Auction Manager to advise of successful registration	8
5.5	Bidders to provide details of principals	8
5.6	Auction Manager to publish bidder principal details	8
5.7	Bidders to advise of associations with other bidders	9
5.8	Auction Manager to publish details of associated bidders	9
5.9	Bids not accepted or invalid if incorrect information provided	9
6	BANKER'S CERTIFICATE.....	10
6.1	Bidders to provide Banker's Certificate	10
6.2	Banker's Certificate from Provisionally Successful Bidders held securely	10
6.3	Return of Banker's Certificate to unsuccessful bidders.....	10
7	THE LOTS.....	10
7.1	Schedules 1 and 2 contain details of Lots and Management Rights	10
7.2	Reserve price.....	10
7.3	Minimum Lot bid	11
7.4	Conditions on Management Rights and creation of Licences	11
7.5	Incumbent licences and adjacent rights.....	11
7.6	No representation regarding suitability.....	11
8	THE AUCTION.....	11
8.1	Combinatorial Clock Auction.....	11
8.2	Auction to consist of successive rounds until conclusion	11
8.3	Rounds held according to time schedule.....	12
8.4	Clock Round bidding requirements	12
8.5	Clock Round bids are unconditional	12
8.6	Advice of Clock Round outcome.....	12
8.7	Auction Manager may vary the price for subsequent Clock Rounds.....	12
8.8	Completion of Clock Rounds.....	12
8.9	Commencement of Supplementary Rounds	13
8.10	Eligibility to Bid in Supplementary Rounds	13
8.11	Lots available in Supplementary Rounds.....	13
8.12	Acquisition Limit altered for Supplementary Rounds.....	13
8.13	Supplementary Round bidding requirements.....	13
8.14	Advice of Supplementary Round outcome	14
8.15	Auction Manager will vary the price for subsequent Supplementary Rounds.....	14
8.16	Completion of Supplementary Rounds	14
8.17	Placement Round bidding.....	14

8.18 Associate Group to inform of intention to share spectrum.....	15
8.19 Auction Manager to identify options for contiguous Lots.....	15
8.20 Not all options for contiguous Lots available.....	15
8.21 Placement Round bidding requirements.....	15
8.22 Result of Placement Round.....	15
8.23 Result of Placement Round – placement price mechanism.....	15
8.24 Tied bids in the Placement Round.....	16
8.25 Conclusion of the auction.....	16
8.26 Management Rights prepared for Provisionally Successful Bidders.....	16
The Ministry will create and transfer the appropriately sized Management Right for Provisionally Successful Bidders, in accordance with the Management Rights Agreement.....	16
8.27 Bids must meet requirements to be valid.....	16
8.28 Bids by Ministry employees invalid.....	16
8.29 Bidders to advise of Technical Difficulties.....	17
8.30 Auction Manager may halt auction if Technical Difficulty arises.....	17
8.31 Auction Manager may choose to not conclude auction.....	17
8.32 Non-disclosure.....	17
9 ACQUISITION LIMIT APPLIES TO BIDDING.....	17
9.1 Acquisition Limit.....	17
9.2 Bidders must not bid if success would exceed Acquisition Limit.....	18
9.3 Associate Groups bidding separately.....	18
9.4 Crown has no obligation to notify about Acquisition Limit.....	18
10 WITHDRAWAL OF LOTS.....	18
10.1 Auction Manager may withdraw Lots.....	18
10.2 Withdrawals to be announced.....	18
10.3 No claims if Lots withdrawn.....	18
11 POST AUCTION PROCESSES.....	18
11.1 Provisional Auction Results Announced.....	18
11.2 Statutory Declaration to be provided confirming matters.....	19
11.3 Changes to details in statutory declaration.....	19
12 SETTLEMENT REQUIREMENTS.....	19
12.1 Settlement amount.....	19
12.2 Invoices to be provided.....	19
12.3 GST is payable.....	20
12.4 Payment.....	20
12.5 Payment by electronic funds transfer.....	20
12.6 Payment in full within 20 Working Days of invoice.....	20
12.7 Management Rights Agreement is a condition of settlement.....	20
12.8 Management Rights Agreement to provide for caveat to be lodged by Crown.....	20
12.9 Management Rights Agreement imposes obligations.....	20
12.10 Successful Bidders must work with incumbent licensees.....	21
13 CANCELLATION AND LIABILITY.....	21
13.1 Cancellation events.....	21
13.2 Effect of cancellation event.....	21
14 MANAGEMENT RIGHT TO BE TRANSFERRED TO SUCCESSFUL BIDDER.....	22
15 PUBLICATION OF FINAL RESULTS AND OTHER INFORMATION.....	22
15.1 Results published.....	22
15.2 Agreement to Publication of Results.....	22



16 CROWN NOT LIABLE	22
17 NOTICES.....	23
17.1 Notices by bidders to be in writing	23
17.2 Notices to meet requirements to be effective	23
17.3 Email notices	23
17.4 Timing of Notices and Working Days	23
SCHEDULE 1 – SCHEDULE OF LOTS	24
SCHEDULE 2 – REGISTERED MANAGEMENT RIGHT ID XXX	25
SCHEDULE 3 – INCUMBENT LICENCE	26
SCHEDULE 4 – EXAMPLE STATUTORY DECLARATION	28
SCHEDULE 5 – AUCTION MANAGER CONTACT DETAILS.....	29



Document Control

Version number	Date of publication	Summary of changes
1.0	10 February 2020	MBIE DRAFT RELEASE
2.0	24 February 2020	MBIE FINAL
2.1	12 March 2020	Update to clause 6.1, Bidders to provide Banker's Certificate

TERMS AND CONDITIONS

The Terms and Conditions applicable to this auction are as follows:

1 INTERPRETATION

1.1 Defined Terms

In these Terms and Conditions, the following terms have the following meanings.

“5G”	All network infrastructure, associated equipment and handsets deployed in accordance with specifications for 5G in 3rd Generation Partnership Project (3GPP) 38.101 series for user equipment and 38.104 series for base stations;
“Acquisition Limit”	A limit on the number of Lots able to be purchased in this auction. This number may be varied at the discretion of the Auction Manager;
“Act”	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;
“Associate” and “Associate Group”	have the meanings given in clause 1.2;
“Auction Manager”	The person designated by the Chief Executive as the Auction Manager from time to time and whose contact details are provided to Registered Bidders;
“Banker’s Certificate”	A Banker’s Certificate of Undertaking is an absolute guarantee given by the issuing bank to make payment up to the face value of the certificate on demand by the Ministry without further reference to the Registered Bidder;
“Business”	A business that relates to or includes (in whole or in part) the holding of radio frequency spectrum licences or Management Rights or the provision of telecommunications services;
“Chief Executive”	The Chief Executive of the Ministry of Business, Innovation & Employment and his or her delegate;
“Crown”	Has the meaning given in the Public Finance Act 1989 and includes the Chief Executive (and the Crown acting by and through the Chief Executive) and any other officer of the Ministry of Business, Innovation & Employment;


“Discount”	The value of Existing 3.5 GHz Management Rights to be transferred to the Crown up to a maximum of the Provisionally Successful Bidder’s bid at the auction, calculated as follows: <ul style="list-style-type: none"> a) the Provisionally Successful Bidder’s successful bid for Early Access Spectrum in the Clock and Supplementary Rounds at the auction (in NZ\$) b) divided by the number of MHz allocated to the Provisionally Successful Bidder at the auction c) multiplied by the number of MHz of the Existing 3.5 GHz Spectrum Management Rights.
“Early Access Spectrum”	The band of radio spectrum released for short-term access from 1 July 2020 (or earlier if agreed by the Crown) to 31 October 2022 within the frequency range 3 590 MHz to 3 750 MHz;
“Existing 3.5 GHz Management Rights”	Management Rights in the frequency range 3 410 MHz to 3 590 MHz held by the Provisionally Successful Bidder and/or its Associates at 5pm on the closing date for bidder registration for this auction;
“GST”	Goods and services tax within the meaning of the Goods and Services Tax Act 1985;
"Incumbent Licence"	A licence that has been registered for use within the frequency range 3 590 MHz and 3 750 MHz and is described in Schedule 3;
“Lot”	A lot comprising a range of frequencies for the purposes of the auction as described in Schedule 1 that will be incorporated in a Management Right to be allocated under this auction;
“Management Right”	A management right under the Act;
“Management Rights Agreement ”	The agreement to be entered into between the Chief Executive and each Provisionally Successful Bidder for Lots;
“Ministry”	The Ministry of Business, Innovation and Employment and any other government department given responsibility for the auction from time to time;
“Provisionally Successful Bidder”	A Registered Bidder who has made a winning bid in the final Clock Round and/or final Supplementary Round;
“Registered Bidders”	Those persons whose registration as a bidder has been advised as accepted by the Auction Manager under clause 5.4;
“Registered Bidder’s Pack”	The information provided by the Auction Manager to Registered Bidders on registration under clause 5.4;
“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 section 5 of the Companies Act 1993; or (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

	(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
	(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
	(e) there is another body corporate to which both bodies corporate are related;
“Roaming Agreement”	means National Roaming as described in Part 3 of Schedule 1 of the Telecommunications Act 2001;
“Schedule”	A Schedule to these Terms and Conditions;
“Successful Bidder”	A Provisionally Successful Bidder that has fulfilled the requirements in clauses 11.2, 11.3, 12.4 to 12.7 (and an event in clause 13.1 has not occurred);
“Technical Difficulty”	A difficulty relating to the operation of any hardware or software associated with the computer system, or internet browser belonging to or operated by any Registered Bidder, the Ministry, or any contractor to the Ministry involved in running the auction, and includes any interruption in the operation of the internet as a medium of communication affecting the auction;
“Terms and Conditions”	These Terms and Conditions, including the Schedules attached to it; and
“Working Day”	Between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a day that is a public holiday within the meaning of section 44 of the Holidays Act 2003.

1.2 Additional definitions relating to associations

For the purposes of these Terms and Conditions, person A is an Associate of person B (and vice versa) if any of the following paragraphs apply, unless the Chief Executive has determined that a person is not an Associate under clause 1.3:


- (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), parent (including step-parent) or sibling (including step-siblings and half-siblings) of person B); or
- (c) person A is a nominee or trustee for person B; or

- 
- (d) 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
 - (e) 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
 - (f) 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
 - (g) 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, which is final), to act in accordance with the directions or instructions or wishes of person B; or
 - (h) person A and person B are acting, or propose or are likely to act (in the Chief Executive's sole opinion, which is final), jointly or in concert in relation to a Business; or
 - (i) person A (being a person other than the Chief Executive) and person B are parties to an Agreement that:
 - (i) relates directly or indirectly to the bidding strategy to be adopted by either or both of persons at the auction; or
 - (ii) entitles one of the persons to a substantial degree of influence, or the right to obtain a substantial degree of influence, over radio frequency spectrum covered by the Lots and in respect of which the other person is or will be (subject to these Terms and Conditions) a manager or rightholder under the Act; or
 - (j) person A is an Associate of another person that is an Associate of person B under these Terms and Conditions, including an Associate in a chain of Associates.

For the purposes of these Terms and Conditions, Associate Group means a Registered Bidder for Management Rights under these Terms and Conditions together with any Associate of that bidder that is also a Registered Bidder for Management Rights under these Terms and Conditions. For the avoidance of doubt, a Registered Bidder for Management Rights is, by itself, considered to be an Associate Group under these Terms and Conditions if it has no Associate that is also a Registered Bidder.

1.3 Exceptions to associations

The Chief Executive may, in their discretion, determine that person A is not regarded as an Associate of person B for the purposes of these Terms and Conditions if treating person A and person B as Associates is not necessary to meet the policy objectives of the Acquisition Limits or requirement to transfer Existing 3.5 GHz Management Rights.



For the avoidance of doubt, the following types of agreements are not associations for the purposes of the 3.5 GHz early access auction:

- (a) Roaming Agreements;
- (b) Agreements under the Rural Broadband Initiatives, including the Rural Broadband Agreements dated 20 April 2011 between Telecom New Zealand Limited and the Crown, and between Vodafone New Zealand Limited and the Crown;
- (c) Agreements, deeds and joint ventures to deliver cellular mobile and broadband services under the Rural Connectivity Group (RCG) arrangements with Crown Infrastructure Partners.

1.4 Construction

In these Terms and Conditions:

- (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 these Terms and Conditions 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.

2 AMENDMENTS TO THIS CALL FOR BIDS

This call, including these Terms and Conditions, may be amended or revoked by the Chief Executive in whole or in part, and at any time, by notice on the Ministry's website (www.rsm.govt.nz) or by notice to Registered Bidders by email to the nominated email address(es).


3 ACQUISITION SUBJECT TO THE ACT

These Terms and Conditions, and any Management Rights acquired under these Terms and Conditions, are subject to all legal requirements that apply to the acquisition and holding of Management Rights created under the Act, including section 138 of the Act which provides that section 47 of the Commerce Act 1986 (relating to acquisitions of assets of a business) applies to the acquisition of Management Rights in relation to the spectrum.

4 APPLICATION OF COMMERCE ACT 1986

4.1 Commerce Act clearance

The Management Rights Agreement to be entered into between the Ministry and each Provisionally Successful Bidder on the completion of the auction is subject to the



condition that none of its provisions relating to the acquisition of the relevant Management Rights will come into force unless:

- (a) The proposed acquisition has been given a clearance, or an authorisation has been granted, in accordance with Part 5 of the Commerce Act 1986; or
- (b) The Provisionally Successful Bidder does not consider that it is necessary to seek clearance or authorisation for the proposed acquisition, and has provided, within 10 Working Days of the completion of the auction, an explanation to the Ministry as to why it does not consider that it is necessary to seek clearance or authorisation for the proposed acquisition.

The Ministry may dispose of the relevant Lot or Lots as the Ministry sees fit if: (i) clearance or authorisation for the proposed acquisition is declined; or (ii) the Ministry notifies the Provisionally Successful Bidder that it considers clearance or authorisation is required for the proposed acquisition and the Provisionally Successful Bidder does not obtain clearance or authorisation.

4.2 No warranty

The Ministry makes no warranty that an acquisition within the Acquisition Limit complies with section 47 of the Commerce Act 1986.

4.3 Ministry indemnified

Every Registered Bidder indemnifies the Ministry against any claim, liability, loss or expense (including legal fees on a solicitor own client basis) brought or threatened against, or incurred by the Ministry, in the event that the purchase of the Lot, or Lots, by the Registered Bidder breaches, or is alleged to breach, the Commerce Act 1986.

5 REGISTRATION AS A BIDDER

5.1 Who may bid


Persons may bid only if they:

- a) are Registered Bidders; and
- b) have disclosed the information required to be disclosed to the Auction Manager under clauses 5.5 and 5.7; and
- c) bid in a manner that meets the requirements of clauses 8.4, 8.13 and 8.21.

5.2 Prospective bidders to complete registration form

Persons wishing to register as a bidder in this auction must complete form RFA1, which may be downloaded from the Ministry's website or obtained from the Auction Manager. By submitting form RFA1, the person agrees to be bound by these Terms and Conditions.

5.3 Deadline to provide form RFA1 and Banker's Certificate



Form RFA1 and the Banker's Certificate required under clause 6.1 must be received by the Auction Manager no later than 4.00 pm on 13 March 2020.

The postal address for the delivery of form RFA1 and Banker's Certificate is:

Auction Manager (3.5 GHz)
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment
PO Box 1473
WELLINGTON 6140

The address for hand delivery of form RFA1 and Banker's Certificate is:

Auction Manager (3.5 GHz)
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment
15 Stout Street
Wellington 6011

5.4 Auction Manager to advise of successful registration

The Auction Manager will advise applicants of their successful registration, and will issue a Registered Bidder's Pack, including a Registered Bidder's number, rules of procedure and other documentation required for participation in this auction.

5.5 Bidders to provide details of principals

A Registered Bidder that is:

- (a) not a publicly listed company is required to disclose the following information to the Auction Manager no later than 4.00 pm on the date specified in clause 5.3:
 - (i) the identity or identities of its principals and ultimate beneficial owners; and
 - (ii) any other information that the Auction Manager requires to confirm that Registered Bidder's structure, ownership, or Associates.
- (b) a publicly listed company is required to disclose the identity of any person with a shareholding of 5% or more in that company no later than 4.00 pm on the date specified in clause 5.3.

5.6 Auction Manager to publish bidder principal details

The Auction Manager will publish the information received from Registered Bidders under clause 5.5 to all Registered Bidders on the next Working Day after the date specified in clause 5.3.

Each Registered Bidder must not use and/or disclose any information received under clause 5 for purposes other than compliance with clause 5.

5.7 Bidders to advise of associations with other bidders

Registered Bidders shall notify the Auction Manager before 4.00 pm on the fourth Working Day after the date specified in clause 5.3 whether or not they are an Associate of any other Registered Bidder. If a Registered Bidder provides notification to the Auction Manager under this clause, the notification must include:

- (a) the identities of the Registered Bidder(s) that are their Associate(s); and
- (b) details of how any associations arise.

5.8 Auction Manager to publish details of associated bidders

The Auction Manager will provide to Registered Bidders on or before the sixth Working Day after the date specified in clause 5.3 the composition of any Associate Groups and the identities of any disclosed principals or ultimate beneficial owners as advised to the Auction Manager. Registered Bidders must advise the Auction Manager of any changes in the composition of their Associate Groups as and when they arise up to, and including, the completion date of the auction. The Auction Manager will provide updates to all Registered Bidders if the Auction Manager becomes aware that the composition of any Associate Group changes or that any new Associate Group has been formed prior to completion of the auction.

5.9 Bids not accepted or invalid if incorrect information provided


If, in the opinion of the Auction Manager, any information given by a Registered Bidder to the Auction Manager under clause 5.5, 5.7, or 5.8 omits a material particular, or it becomes incorrect or misleading, or is not provided within the required timeframe then (without limitation to any other legal rights and remedies available to the Crown) the Auction Manager may refuse to accept any bid from the Associate Group of the Registered Bidder (including, to avoid doubt, the Registered Bidder) at the auction or may choose to declare any bid invalid.

5.10 Bidders to transfer Existing 3.5 GHz Management Rights if successful

If a person or company, or their Associate, held any Existing 3.5 GHz Management Rights in New Zealand as at 5pm on the closing date for bidder registration such Management Rights must be transferred to the Crown if they are successful in this auction.

The transfer to the Crown must take place before any Management Right from this auction is transferred to the Provisionally Successful Bidder, by submitting the appropriate form to the Registrar of Radio Frequencies.

Before any Management Rights are transferred to the Provisionally Successful Bidder, the Provisionally Successful Bidder will also be required to submit a notice of cancellation in respect of all licences under the Existing 3.5 GHz Management Rights that are held by the Provisionally Successful Bidder (or an Associate) at the date of transfer of the Existing 3.5 GHz Management Rights. The date from which the cancellation must apply is no later than 3 (three) months after the date on which the Existing 3.5 GHz Management Rights are transferred to the Crown.



Licences under the Existing 3.5 GHz Management Rights that are held by a third party (i.e. not the Provisionally Successful Bidder or an Associate) will continue to remain in force in accordance with their terms.

6 BANKER'S CERTIFICATE

6.1 Bidders to provide Banker's Certificate

A Banker's Certificate of five hundred thousand dollars (\$500,000) is required as a part of the bidder registration process. The Banker's Certificate must be in whole New Zealand dollars and must be made in the form of a currently dated certificate provided by a bank registered in New Zealand, and must not include an expiry date. No request for registration will be accepted unless such a Banker's Certificate is provided.

The Chief Executive may, in their discretion, accept for the purposes of this clause 6.1 an alternative surety to the Banker's Certificate. If a party requires an alternative surety they must seek the agreement of the Chief Executive at, or prior to, the time they register. Alternative forms of surety will only be agreed if the Chief Executive is satisfied that they provide equivalent value and surety for the Crown.

The Banker's Certificate must be received by the Auction Manager, at the address provided in clause 5.3, no later than 4.00 pm on 13 March 2020.

6.2 Banker's Certificate from Provisionally Successful Bidders held securely

Banker's Certificate provided by Provisionally Successful Bidders will be held secure until that bidder has made payment in full. Upon such payment, the Banker's Certificate will be returned to the bidder, together with a letter of release to the bank.

6.3 Return of Banker's Certificate to unsuccessful bidders

Banker's Certificates provided by unsuccessful Registered Bidders will be held securely. Banker's Certificates will be returned to unsuccessful Bidders, together with a letter of release to the bank, after the names of Provisionally Successful Bidders have been published.

7 THE LOTS

7.1 Schedules 1 and 2 contain details of Lots and Management Rights

Management Rights allocated under this auction are subject to any restriction specified in these Terms and Conditions, including Schedules 1, 2, and 3. In particular, Registered Bidders should note the commencement and expiry dates for the Management Rights and any licences registered in relation to those Management Rights. Each Lot comprises 10 MHz.

7.2 Reserve price

The following reserve price will apply in the auction:

Two hundred and fifty thousand New Zealand Dollars (\$250,000) per Lot (plus GST).

7.3 Minimum Lot bid

Each bidder must bid for a minimum of two (2) Lots in the auction.

7.4 Conditions on Management Rights and creation of Licences

Use of the frequencies covered by the Management Rights in this auction requires Successful Bidders to register spectrum licences under the Act. The technical parameters for use of the frequencies covered by this auction that will form part of the conditions of the relevant Management Rights and licences under the Management Rights are set out in Schedule 2 and in the Management Rights Agreement.

7.5 Incumbent licences and adjacent rights

Any rights acquired in the Early Access Spectrum are subject to Incumbent Licences. Information relating to these licences is provided in Schedule 3.

Any licences under Early Access Spectrum Management Rights created and recorded on the Register of Radio Frequencies under section 48 of the Act must specify that the rightholder must cooperate to manage and minimise interference issues for adjacent rightholders and licensees. This includes, but is not limited to, rights and licences immediately adjacent to Early Access Spectrum.

7.6 No representation regarding suitability

It is the responsibility of Registered Bidders to ensure that all Lots are suitable for their purpose. Despite anything to the contrary in these Terms and Conditions, including the call for bids, the Chief Executive and the Auction Manager make no representations in this respect.

8 THE AUCTION

8.1 Combinatorial Clock Auction


The auction will be a simplified combinatorial clock auction conducted by the Auction Manager in accordance with these Terms and Conditions. The Chief Executive or the Auction Manager may refuse to accept any bid that does not comply with these Terms and Conditions.

8.2 Auction to consist of successive rounds until conclusion

The auction will consist of a number of successive rounds until the auction is concluded in accordance with clause 8.25. Registered Bidders must lodge bids in accordance with these Terms and Conditions. The auction rounds are of three types:

8.2.1 Clock Rounds, in which the price per Lot is progressively increased until the aggregate number of Lots bid for is not greater than the number of Lots available. The auction will commence using Clock Rounds.

8.2.2 Supplementary Rounds, which may be held if the aggregate number of bids in a Clock Round falls below the number of Lots available. These may be used to offer any remaining Lots unsold in the Clock Rounds.



8.2.3 Placement Round, which is a single round in which Provisionally Successful Bidders, having established the number of Lots they are to acquire through the Clock Rounds and Supplementary Rounds (if applicable), are able to bid for which specific Lots they will acquire according to the options offered and their preference for each of the offered options. Bidding in the Placement Round is optional, and the value bid is in addition to the price per Lot determined during the Clock Round and Supplementary Round (if applicable).

8.3 Rounds held according to time schedule

Bidding rounds will be held in accordance with the time schedule provided in the Registered Bidder's Pack, subject to any amendments advised by the Auction Manager. The Auction Manager may vary the duration of bidding rounds and the time interval between rounds.

8.4 Clock Round bidding requirements

Bidders are required to bid for the number of Lots they wish to acquire at the price per Lot specified for each Clock Round. The price per Lot for the commencement round will be the reserve price as stated in clause 7.2. A bidder may not increase the number of Lots bid for in subsequent clock rounds. Bidders may reduce the number of Lots bid for in Clock Rounds in response to the price per Lot advised for each round.

If a Registered Bidder fails to bid during any Clock Round they are ineligible to lodge further bids during the Clock Rounds.

8.5 Clock Round bids are unconditional

All bids in the Clock Rounds are to be unconditional.

8.6 Advice of Clock Round outcome


Following the close of each round, the Auction Manager will advise Registered Bidders whether a further Clock Round is to take place. Where the aggregate number demand for Lots is greater than the number available, a further round will be held.

8.7 Auction Manager may vary the price for subsequent Clock Rounds

The Auction Manager will specify the price per Lot applicable in each Clock Round. The price per Lot is at the sole discretion of the Auction Manager. The Auction Manager will notify Registered Bidders of the change to the price per Lot at, or before, the commencement of a new round.

8.8 Completion of Clock Rounds

When the aggregate demand for Lots in a Clock Round is not greater than the number of Lots available, the Auction Manager will advise the bidders that they are the Provisionally Successful Bidder for the number of Lots on which they have bid. At this point the Clock Rounds have been completed and Provisionally Successful Bidders are



bound to purchase the Lots they bid for at no less than the price per Lot of the final Clock Round.

8.9 Commencement of Supplementary Rounds

If the aggregate demand for Lots in the final Clock Round is less than the number of Lots available, the Auction Manager may initiate Supplementary Rounds. The Auction Manager will advise Registered Bidders using email to the nominated email address(es) if Supplementary Rounds are to take place.

All Registered Bidders eligible under clause 8.10 to bid in Supplementary Rounds may initially bid on Lots offered in the Supplementary Rounds subject to their previous acquisitions in the final Clock Round and application of the Acquisition Limit.

8.10 Eligibility to Bid in Supplementary Rounds

If the Supplementary Rounds commence following only one (1) Clock Round, all Registered Bidders are eligible to bid in the first Supplementary Round.

If the Supplementary Rounds commence following two (2) or more Clock Rounds, all Registered Bidders who placed bids in the penultimate Clock Round are eligible to bid in the first Supplementary Round.

8.11 Lots available in Supplementary Rounds

If the Auction Manager elects to have Supplementary Rounds, the Auction Manager will advise bidders of the number of Lots available in the Supplementary Rounds. The Auction Manager may choose not to offer all unsold Lots for sale in Supplementary Rounds.

8.12 Acquisition Limit altered for Supplementary Rounds


The Auction Manager may alter the Acquisition Limit for any Supplementary Round at his or her sole discretion.

If the Auction Manager alters the Acquisition Limit, all Registered Bidders that participated in the previous round will be eligible to bid in the following Supplementary Round, or Rounds. The relevant bidding requirements in clause 8.13 apply.

8.13 Supplementary Round bidding requirements

The process for holding each Supplementary Round is broadly the same as the Clock Rounds.

Bidders are required to bid for the number of Lots they wish to acquire at the price per Lot specified for each Supplementary Round. The price per Lot for the initial Supplementary Round will be a price determined by the Auction Manager. A bidder may not increase the number of Lots bid for in subsequent Supplementary Rounds, unless the Auction Manager increases the acquisition limit and the bid lodged in the preceding round was for an amount of spectrum equal to the previous acquisition limit. Bidders



may reduce the number of Lots bid for in Supplementary Rounds in response to the price per Lot advised for each round.

If a Registered Bidder fails to bid during any Supplementary Round, they are ineligible to lodge further bids during the Supplementary Rounds.

8.14 Advice of Supplementary Round outcome

Following the close of each round, the Auction Manager will advise Registered Bidders whether a further Supplementary Round is to take place. Where the aggregate demand for Lots is greater than the number available, a further round will be held. Where the aggregate demand is less than the number of Lots available and one or more eligible bidders remain, the Auction Manager may decide to further raise the acquisition limit in a subsequent Supplementary Round.

8.15 Auction Manager will vary the price for subsequent Supplementary Rounds

The Auction Manager will specify the price per Lot applicable in each Supplementary Round. The price per Lot is at the sole discretion of the Auction Manager. The Auction Manager will notify Registered Bidders of the change to the price per Lot at, or before, the commencement of a new round.

8.16 Completion of Supplementary Rounds

When the aggregate demand for Lots in a Supplementary Round is not greater than the number of Lots available, the Auction Manager will advise the bidders that they are the Provisionally Successful Bidder for the number of Lots on which they have bid. At this point the Supplementary Rounds have been completed and Provisionally Successful Bidders are bound to purchase the Lots they bid for at no less than the price per Lot in that final Supplementary Round.

If no bids are received in the first Supplementary Round, the Auction Manager may declare that the Supplementary Rounds are completed.

8.17 Placement Round bidding

The conclusion of bidding in the Clock Rounds and Supplementary Rounds (if applicable) determines the number of Lots that are purchased by the Provisionally Successful Bidders.

As the Lots will be provided as a contiguous group, the Placement Round provides Provisionally Successful Bidders with an opportunity to identify their preferred option of contiguous Lots. Provisionally Successful Bidders are not required to bid for any option or options offered in the Placement Round. Where a Provisionally Successful Bidder does not bid for any option offered in the Placement Round, they will be deemed to have bid zero dollars (\$0) for that option or options.

There is one round of bidding in the Placement Round.

8.18 Associate Group to inform of intention to share spectrum

If an Associate Group intends or is likely to intend to construct a network that shares spectrum (for example, two parties each own 20 MHz and intend to construct a network that uses 40 MHz carriers across both parties' spectrum holdings), the Associate Group must notify the Auction Manager of this before the Placement Round commences.

The Auction Manager may choose to take this into account when deciding on options for contiguous Lots in accordance with clause 8.19.

8.19 Auction Manager to identify options for contiguous Lots

The Auction Manager will advise each Provisionally Successful Bidder of the options available for the contiguous Lots they are able to bid on in the Placement Round.

8.20 Not all options for contiguous Lots available

The identification of options of contiguous Lots to be offered to Provisionally Successful Bidders is to be determined solely by the Auction Manager. Not all options for contiguous Lots may be offered.

8.21 Placement Round bidding requirements

All Provisionally Successful Bidders will be invited to bid in whole New Zealand dollars for each of the option or options offered. The timetable for the commencement and conclusion of the Placement Round will be provided to Provisionally Successful Bidders by the Auction Manager.


8.22 Result of Placement Round

The result of the Placement Round will be determined by the Auction Manager accepting the Placement Round bids that result in the highest value combination of bids made by Provisionally Successful Bidders. The assessment is based on bidding in the Placement Round only.

8.23 Result of Placement Round – placement price mechanism

If there is only one bidder in the placement round, the Placement Round price for the winning bidder (which is payable in addition to the allocation price) will be zero. Otherwise, the Placement Round price for each winning bid in each Placement Round will be calculated using a placement price mechanism as described in the placement price methodology published by the Ministry.

Under this mechanism, the Placement Round price for each winning bidder will be an amount that is sufficient to ensure there is no other bidder, or group of bidders, prepared to pay more for the frequency range options, and is no greater than the amount offered by the winning bidder for the specific frequency range option it has been assigned.



The net effect of this mechanism is that the price of a winning bid will be greater than or equal to zero, but less than or equal to the winning bid amount.

8.24 Tied bids in the Placement Round

Where two or more combinations of bids result in the same price payable to the Crown, the bids are considered to be tied. The winning combination of bids will be determined by random selection, supervised by a Justice of the Peace.

8.25 Conclusion of the auction

The Auction Manager will advise each Provisionally Successful Bidder which of their bids made in the Placement Round were accepted and the associated Lots assigned to them following the Placement Round for which they are required to make settlement.

The Auction Manager will also advise all Registered Bidders that the Placement Round has concluded and that the auction is completed.

8.26 Management Rights prepared for Provisionally Successful Bidders

The Ministry will create and transfer the appropriately sized Management Right for Provisionally Successful Bidders, in accordance with the Management Rights Agreement.

8.27 Bids must meet requirements to be valid

For a bid to be valid it must:

- (a) be made in accordance with any applicable instructions in the Registered Bidder's Pack; and
- (b) be received by the Auction Manager during the prescribed time period of a round; and
- (c) in a Clock Round, must not be for a greater number of Lots than the number of Lots bid for in a previous Clock Round; and
- (d) in a Supplementary Round, must not be for a greater number of Lots than the number of Lots bid for in a previous Supplementary Round, where the Acquisition Limit has not changed between the rounds; and
- (e) not be invalid under clause 9.1 (acquisition limit); and
- (f) otherwise comply with the provisions of this clause and these Terms and Conditions.

8.28 Bids by Ministry employees invalid

Any bid made by or on behalf of an employee of the Ministry will be invalid unless the prior written consent of the Chief Executive is obtained to that employee participating in the auction. If the Chief Executive has consented to an employee participating in the auction this will be advertised on the Ministry's website before the commencement of the auction.

8.29 Bidders to advise of Technical Difficulties

If any Registered Bidder is prevented from placing a bid in any round by Technical Difficulties, the Registered Bidder must promptly (and in any event no later than completion of the round in which the Technical Difficulties first arose) advise the Auction Manager by telephone that he or she is unable to place a bid.

8.30 Auction Manager may halt auction if Technical Difficulty arises

Where the Auction Manager is advised under clause 8.29 that Technical Difficulties are preventing any Registered Bidder from placing bids, or if the Auction Manager experiences Technical Difficulties, the Auction Manager may advise Registered Bidders by email, or by the telephone number provided on the bidder registration form if Technical Difficulties have affected email communications, of a temporary halt to the auction to allow the Technical Difficulty to be resolved.

8.31 Auction Manager may choose to not conclude auction

Where Technical Difficulties have prevented any Registered Bidder from placing bids or prevented the Auction Manager from receiving bids, or where other events beyond the control of the Auction Manager force the Auction Manager to do so, the Auction Manager may elect to reset the auction to the previous round, restart the auction, not conclude the auction, or take other steps as appropriate including halting or abandoning the auction, notwithstanding that one or more rounds may have occurred.

If the Auction Manager takes any of the steps described above the Auction Manager will, to their best endeavour, keep Registered Bidders regularly updated

8.32 Non-disclosure

All Registered Bidders and Provisionally Successful Bidders will keep information relating to any bid, bidding strategy and any provisional and final auction results confidential until results are formally announced by the Ministry; and will not disclose that information to any person or use that information for any purpose other than to the extent necessary to meet any obligations under law or regulation binding on it (including the rules of any stock exchange).

To the extent disclosure is required by law or regulation, Registered Bidders and Provisionally Successful Bidders will immediately give the Ministry notice of the requirement to disclose.

9 ACQUISITION LIMIT APPLIES TO BIDDING

9.1 Acquisition Limit

The Acquisition Limit is initially set at four (4) Lots for the Clock Rounds.

The Auction Manager may alter the limit for Supplementary Rounds and will advise Registered Bidders via email or telephone should this occur.

9.2 Bidders must not bid if success would exceed Acquisition Limit

Registered Bidders are not permitted to make bids for Lots which, if successful, would result in the bidder or its Associate Group exceeding the Acquisition Limit. The order in which such bids are received will be the basis for determining which bid will be accepted. Where it is not possible to determine the order in which bids are received, the Auction Manager will have the sole discretion to determine which bid or bids causes a bidder to exceed the Acquisition Limit and accordingly which bid or bids will be treated as invalid.

9.3 Associate Groups bidding separately

Where Associate Groups are bidding separately the Acquisition Limit will apply to the Associate Groups as if they are a single bidder. If a Registered Bidder lodges a bid that is within the Acquisition Limit, a later bid in that round by a different Registered Bidder that is an Associate Group will only be valid if the sum of the bids is within the Acquisition Limit.

9.4 Crown has no obligation to notify about Acquisition Limit

The Auction Manager has no obligation to notify any member of an Associate Group whether a bid by a member of an Associate Group would exceed the Acquisition Limit and, therefore, be invalid.

10 WITHDRAWAL OF LOTS

10.1 Auction Manager may withdraw Lots

All or any of the Lots may be withdrawn from the auction at the discretion of the Auction Manager at any time, providing that sufficient Lots remain in the auction to meet the purchases of Provisionally Successful Bidders (if any).

10.2 Withdrawals to be announced

If the Auction Manager decides to withdraw all or any of the Lots from the auction, the decision will be announced by email to the registered bidders and on the Ministry's website.

10.3 No claims if Lots withdrawn

No Registered Bidder or prospective bidder will have any claim against the Chief Executive or the Ministry for any expenses or other compensation as a direct or indirect consequence of such withdrawal.

11 POST AUCTION PROCESSES

11.1 Provisional Auction Results Announced

The Auction Manager will arrange for the publication of the provisional auction results. These will be made available on the Ministry's website.

11.2 Statutory declaration to be provided confirming matters

A Provisionally Successful Bidder must, before 4.00 pm on a date within five (5) Working Days of the publication of the provisional auction results by the Auction Manager (time being of the essence), deliver to the Auction Manager a statutory declaration confirming that the Provisionally Successful Bidder's Associate Group (if any) has not exceeded the Acquisition Limit and:

- (a) confirming that the bidder is not an Associate of any other Provisionally Successful Bidder; or
- (b) identifying any Provisionally Successful Bidders that are Associates of that bidder.

Further, the statutory declaration should:

- (a) confirm that there are no Existing 3.5GHz Management Rights in New Zealand of either the bidder or its Associates; or
- (b) identify the Existing 3.5GHz Management Rights in New Zealand of the bidder and/or its Associates.

A form of statutory declaration required is contained in Schedule 4.

11.3 Changes to details in statutory declaration

A Provisionally Successful Bidder must notify the Auction Manager immediately in writing if any of the details provided in the statutory declaration under clause 11.2 change prior to settlement.

12 SETTLEMENT REQUIREMENTS

12.1 Settlement amount

The amount required from each Provisionally Successful Bidder in settlement is:

- (a) the sum of:
 - i. the price per Lot in the final Clock Round for the number of Lots for which it was a Provisionally Successful Bidder; and
 - ii. the price per Lot in the final Supplementary Round for the number of Lots for which it was a Provisionally Successful Bidder; and
 - iii. the accepted Placement Round price from that bidder;
- (b) less any Discount to be applied.

12.2 Invoices to be provided

Each Provisionally Successful Bidder will be invoiced for the amount payable in settlement as soon as possible after the condition in clause 11.2 has been complied with.

12.3 GST is payable

The Inland Revenue Department has previously advised the Ministry that GST is payable in respect of successful bids in spectrum auctions. For the purposes of determining the results of this auction, all bids will be considered to exclude GST. GST will be recovered from Successful Bidders at the time that they are invoiced for payments in settlement. GST will be additional to the amount otherwise payable by the Provisionally Successful Bidder.

12.4 Payment

Payment must be made in full.

12.5 Payment by electronic funds transfer

Any payment must be made in New Zealand dollars by electronic funds transfer (in same day cleared funds). Account details will be provided to Provisionally Successful Bidders.

12.6 Payment in full within 20 Working Days of invoice

Payment is due in full, to be settled within 20 Working Days of the invoice date.

12.7 Management Rights Agreement is a condition of settlement

As a further condition of settlement, each Provisionally Successful Bidder, and such members of its Associate Group as the Provisionally Successful Bidder may nominate (if any), will be required to enter into the Management Rights Agreement with the Chief Executive (and with the relevant Lots detail included) on or before the date on which payment of the settlement amount is due.

12.8 Management Rights Agreement to provide for caveat to be lodged by Crown

The Management Rights Agreement will provide for the Crown to lodge a caveat over each Management Right that is the subject of the Management Rights Agreement to secure obligations and restrictions on the Management Rights holder.

12.9 Management Rights Agreement imposes obligations

The Management Rights Agreement (among other things):

- (a) requires that licences under the Management Rights that are the subject of the Management Rights Agreement may only be created for the purpose of providing a 5G service;
- (b) restricts the transfer of the relevant Management Rights and licences;
- (c) provides for caveats over the relevant Management Rights to be lodged by the Crown with the Registrar of Radio Frequencies; and
- (d) describes the synchronisation and timing verification requirements with adjacent management right holders that will form part of the conditions of the relevant Management Rights.

12.10 Successful Bidders must work with incumbent licensees

Management Rights are subject to any Incumbent Licences.

13 CANCELLATION AND LIABILITY

13.1 Cancellation events

The cancellation events are:


- (a) a Provisionally Successful Bidder provides the Auction Manager with information under clause 5.5 or 5.7 that omits a particular, is or becomes incorrect or misleading, or is not provided within the required timeframe (without limitation to any other legal rights and remedies available to the Crown);
- (b) a Provisionally Successful Bidder fails to provide a statutory declaration under clause 11.2, including failing to provide that declaration on time or being unable to declare those matters set out under clause 11.2;
- (c) the Commerce Commission advises the Chief Executive or the Ministry that the acquisition of Lots by a Provisionally Successful Bidder would breach the Commerce Act;
- (d) a statutory declaration provided by a Provisionally Successful Bidder under clause 11.2 which, in the opinion of the Chief Executive, omits a material particular, is incorrect, misleading or incomplete, or the Provisionally Successful Bidder can no longer declare those matters in clause 11.2; or
- (e) if a Provisionally Successful Bidder fails to pay the sum owing under clause 12.1 or fails to enter into a Management Rights Agreement in terms of clause 12.7.

13.2 Effect of cancellation event

This clause is for the benefit of the Crown and may be imposed at the Crown's discretion.

If an event set out in clause 13.1 occurs, then (without limit to any other legal rights and remedies available to the Crown and despite anything to the contrary in these Terms and Conditions):

- (a) the contract for the purchase of a Lot or Lots by the Provisionally Successful Bidder is deemed to be cancelled;
- (b) the Provisionally Successful Bidder will no longer be eligible to purchase the Lot or Lots nor will the Provisionally Successful Bidder (or any member of its Associate Group) be eligible to participate in any re-allocation process for the Lot or Lots; and
- (c) the following liquidated damages will be payable to the Crown by the Provisionally Successful Bidder:
 - (i) a sum of money equal to the difference between the final amount bid for the Lot or Lots, as per clause 12.1, and the amount eventually paid to the



Crown for that Lot or Lots, if that amount is lower than the value of the successful bid; plus

- (ii) a sum of money which fully recovers any expenses (including staff time) incurred by the Auction Manager in seeking payment from the bidder. A certificate from the Auction Manager of such losses, costs or expenses is prima facie evidence of such loss, cost or expense; plus
- (iii) a sum of money which fully recovers any losses, costs or expenses suffered or incurred by the Crown as a result of processing the bidder's registration and any reallocation of the Lot. A certificate from the Auction Manager of such losses, costs or expenses is prima facie evidence of such loss, cost or expense.

14 **MANAGEMENT RIGHT TO BE TRANSFERRED TO SUCCESSFUL BIDDER**

Subject to compliance with all conditions under the Management Rights Agreement and these Terms and Conditions, including clauses 12.6 and 12.7, the Management Right referred to in the Management Rights Agreement will be transferred to the Successful Bidder within 20 Working Days of all of the conditions under the Management Rights Agreement being satisfied.

Before transferring a Management Right in accordance with the Management Rights Agreement, the Ministry will create a Management Right that covers all of the frequencies for which the Successful Bidder has won Lots.

15 **PUBLICATION OF FINAL RESULTS AND OTHER INFORMATION**

15.1 **Results published**

Provisional results will be published by the Auction Manager on the Ministry's website after the completion of the Placement Round.

Final results will be published by the Auction Manager on the Ministry's website as and when all Management Rights Agreements have been executed.

15.2 **Agreement to Publication of Results**

Registered Bidders agree that the results of the auction (including the names and details of Provisionally Successful Bidders, Successful Bidders, and the Lot details) and any other information related to this auction that the Auction Manager believes to be of general interest, may be published on the Ministry's website or anywhere else.

16 **CROWN NOT LIABLE**

The Crown will not be liable in any way to a Registered Bidder (including a Provisionally Successful Bidder or Successful Bidder) for the exercise of any right or obligation set out in these Terms and Conditions, including (to avoid doubt) for any claim for direct or indirect losses, costs or expenses as a result of, or in connection with, that exercise of the right or obligation.

17 NOTICES

17.1 Notices by bidders to be in writing

Any notice or other communication, e.g. provision of information (notice) required to be given under these Terms and Conditions by a Registered Bidder (including a Provisionally Successful Bidder or Successful Bidder), not including bids in the auction, must be in writing and hand delivered or sent by registered post to the appropriate address set out in this clause.

The address for registered post is:

Auction Manager (3.5 GHz)
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

The address for hand delivery is:

Auction Manager (3.5 GHz)
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment
15 Stout St
Wellington 6011

17.2 Notices to meet requirements to be effective

A notice will only be effective:

- (a) if hand delivered, when delivered; or
- (b) if sent by registered post, three (3) Working Days after posting (in proving such posting, it is sufficient to show that the envelope was correctly addressed and posted).

17.3 Email notices

Despite clause 17.2, a Registered Bidder may also provide such notice by email, provided that the Registered Bidder immediately forwards the original notice to the relevant person in accordance with clause 17.2, and receipt of the email is acknowledged by the Auction Manager.

17.4 Timing of Notices and Working Days

A notice received after 5.00 pm on a Working Day or on a day which is not a Working Day shall be deemed not to have been received until the next Working Day.

SCHEDULE 1 – SCHEDULE OF LOTS

This auction comprises 16 Lots within the band 3 590 – 3 750 MHz .

Each Lot comprises 10 MHz.

The range of frequencies, adjacent frequencies emission limits, and protection limits are based on limits for equipment specified in the 3rd Generation Partnership Project (3GPP) standards 3GPP TS 38.104.

Each Lot is described as follows:

Lot No.	Lower Boundary (MHz)	Upper Boundary (MHz)	Commencement Date ¹	Expiry Date
1	3 590	3 600	1 July 2020	31 October 2022
2	3 600	3 610	1 July 2020	31 October 2022
3	3 610	3 620	1 July 2020	31 October 2022
4	3 620	3 630	1 July 2020	31 October 2022
5	3 630	3 640	1 July 2020	31 October 2022
6	3 640	3 650	1 July 2020	31 October 2022
7	3 650	3 660	1 July 2020	31 October 2022
8	3 660	3 670	1 July 2020	31 October 2022
9	3 670	3 680	1 July 2020	31 October 2022
10	3 680	3 690	1 July 2020	31 October 2022
11	3 690	3 700	1 July 2020	31 October 2022
12	3 700	3 710	1 July 2020	31 October 2022
13	3 710	3 720	1 July 2020	31 October 2022
14	3 720	3 730	1 July 2020	31 October 2022
15	3 730	3 740	1 July 2020	31 October 2022
16	3 740	3 750	1 July 2020	31 October 2022

¹ or earlier as may be agreed by the Crown and the Provisionally Successful Bidder.



SCHEDULE 2 – REGISTERED MANAGEMENT RIGHT ID 463

Registered Management Right ID 463 has been created for the Early Access Spectrum and will be subdivided according to the results of the Auction.

Conditions are detailed in Management Right ID 463.

Each new management right will be subject to the conditions of Registered Management Right ID 463 and the terms of the management rights agreement between the Ministry and the Management Right holder.

SCHEDULE 3 – INCUMBENT LICENCE

There are incumbent licences for Inmarsat New Zealand Limited as set out in the table below.

	Existing Licence ID in the RRF which will be used as the basis of the new licence			
	201413 (existing)	201410 (existing)	201414 201415 201416 (existing)	New licence
RRF Location ID (i.e. if one exists) and or geographic reference (for locations without a Location ID in the RRF):	1653 -36.748258, 174.696273	1653 -36.748258, 174.696274	1653 -36.748258, 174.696275	-36.432356, 174.668477
Address	24 Unity Drive North, Rosedale, Auckland 0632.	24 Unity Drive North, Rosedale, Auckland 0632.	24 Unity Drive North, Rosedale, Auckland 0632.	Spark satellite earth station, Satellite Rd, Warkworth
Commencement date	01/04/2020	01/04/2020	01/04/2020	01/04/2020
End date	31/12/2020	31/12/2020	31/12/2020	31/10/2022
Receiving frequency (MHz)*:	3 589 - 3 639	3 589.25 – 3 639.25	3 626.0125 – 3 626.3875	3 589.25 – 3 639.25
MPIS: (Max Permitted Interfering Signal)	-190 dBW/kHz	-190.2 dBW/kHz	-190 dBW/kHz	-190.2 dBW/kHz
Receive Power:	-169 dBW/kHz	-169 dBW/kHz	-169 dBW/kHz	-169 dBW/kHz
Satellite name and ITU SNS ID:	INMARSAT-3 POR-2 SNS ID 92520037	INMARSAT-4A 143.5E SNS ID 115500221	NSS-9 SNS ID 99520281	INMARSAT-4A 143.5E SNS ID 115500221
Other technical parameters that are material to licence:	Licence to be cancelled on or before 31 Dec 2020, and be "Rights holder only cancel" permission	Licence to be cancelled on or before 31 Dec 2020, and be "Rights holder only cancel" permission	Licence to be cancelled on or before 31 Dec 2020, and be "Rights holder only cancel" permission	

**Note that the new early access Management Rights commence at 3 590 MHz. Additional radio licences below 3 590 MHz will be issued to cover the additional spectrum required.*

There is one (1) GURL (General User Radio Licence) which has the Licence ID 189439.

Details are available on the SMART database which is used to register all licences. The URL is:

<https://rrf.rsm.govt.nz/smart-web/smart/page/-smart/WelcomePage.wdk>

SCHEDULE 4 – EXAMPLE STATUTORY DECLARATION

[SAMPLE FORM] STATUTORY DECLARATION

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

1. I am employed by [Company] (the 'Company') and am authorised by the Company to make this declaration on its behalf [if applicable].
2. On behalf of the Company:
 - a. I confirm that the [Company][Company's Associate Group*], has not exceeded the acquisition limit for Radio Frequency Auction No. 20.
 - b. [I confirm that the Company is not an Associate* of any other Provisionally Successful Bidder*]/[I confirm that the following Provisionally Successful Bidders* comprise all Associates* of the Company: *[list Associates]*].

(to be included in the statutory declaration delivered under clause 11.2 of the auction catalogue)

- c. [I confirm that there are no Existing 3.5GHz Management Rights* in New Zealand of either the Company or its Associates][I confirm that the following Existing 3. 5GHz Management Rights* in New Zealand comprise all Existing 3. 5GHz Management Rights* in New Zealand of the Company and/or its Associates: *[list Existing 3. 5GHz Management Rights]*].

*as defined in the auction catalogue for Radio Frequency Auction No. 20.

And 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 [].

[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]

Examples of people 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 5 – AUCTION MANAGER CONTACT DETAILS

Peter Gent
Auction Manager (3.5 GHz)
Radio Spectrum Management Policy and Planning
Commerce, Consumers and Communications Branch
Ministry of Business, Innovation and Employment
15 Stout St
PO Box 1473
WELLINGTON 6140

DDI: (04) 462 4279

email: peter.gent@mbie.govt.nz