



## SCHEDULE 1 - DETAILS

This schedule lists all Management Rights for information. When prepared for execution, only the Management Rights which are relevant to the specific signatories will be included in the Deed.

Each lot comprises three Management Rights. The first Management Right listed is the **Early Management Right**, the second listed is the **Buy-out Management Right** and the third listed is the **Conditional Management Right** for the relevant frequency range.

Each lot is generally described as follows:

Lot No.	Management Right		Commencement Date	Expiry Date
	Lower Boundary	Upper Boundary		
1	2300.0 MHz	2335.0 MHz	26 Nov 2010	31 Dec 2014
	2300.0 MHz	2335.0 MHz	1 Jan 2015	31 Dec 2016
	2300.0 MHz	2335.0 MHz	1 Jan 2017	25 Nov 2030
2	2335.0 MHz	2370.0 MHz	26 Nov 2010	31 Dec 2014
	2335.0 MHz	2370.0 MHz	1 Jan 2015	31 Dec 2016
	2335.0 MHz	2370.0 MHz	1 Jan 2017	25 Nov 2030
CROWN	2370.0 MHz	2395.0 MHz	26 Nov 2010	31 Dec 2014
	2370.0 MHz	2395.0 MHz	1 Jan 2015	31 Dec 2016
	2370.0 MHz	2395.0 MHz	1 Jan 2017	25 Nov 2030
3	2500.0 MHz	2520.0 MHz	1 Jan 2009	31 Dec 2014
	2500.0 MHz	2520.0 MHz	1 Jan 2015	31 Dec 2016
	2500.0 MHz	2520.0 MHz	1 Jan 2017	31 Dec 2028
4	2520.0 MHz	2540.0 MHz	1 Jan 2009	31 Dec 2014
	2520.0 MHz	2540.0 MHz	1 Jan 2015	31 Dec 2016
	2520.0 MHz	2540.0 MHz	1 Jan 2017	31 Dec 2028
5	2540.0 MHz	2575.0 MHz	1 Jan 2009	31 Dec 2014
	2540.0 MHz	2575.0 MHz	1 Jan 2015	31 Dec 2016
	2540.0 MHz	2575.0 MHz	1 Jan 2017	31 Dec 2028
6	2620.0 MHz	2640.0 MHz	1 Jan 2009	31 Dec 2014
	2620.0 MHz	2640.0 MHz	1 Jan 2015	31 Dec 2016
	2620.0 MHz	2640.0 MHz	1 Jan 2017	31 Dec 2028
7	2640.0 MHz	2660.0 MHz	1 Jan 2009	31 Dec 2014
	2640.0 MHz	2660.0 MHz	1 Jan 2015	31 Dec 2016
	2640.0 MHz	2660.0 MHz	1 Jan 2017	31 Dec 2028
8	2660.0 MHz	2690.0 MHz	1 Jan 2009	31 Dec 2014
	2660.0 MHz	2690.0 MHz	1 Jan 2015	31 Dec 2016
	2660.0 MHz	2690.0 MHz	1 Jan 2017	31 Dec 2028

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Deed, unless the context otherwise requires:

<b>“Acquisition Limit”</b>	the holding of, or having a Controlling Interest in, management rights for not more than 40 MHz of spectrum in: (a) the bands from 2300 MHz to 2396 MHz and from 2500MHz to 2690 MHz that were the subject of the Auction; and (b) the band from 2370 MHz to 2395 MHz.
<b>“Act”</b>	the Radiocommunications Act 1989;
<b>“Agreement”</b>	includes an agreement, arrangement or understanding whether: (a) formal or informal or partly formal and partly informal; or (b) written or oral or partly written and partly oral; or (c) having legal or equitable force or not, and whether or not based on legal or equitable rights;
<b>“Associate”</b>	has the meaning in clause 1.2;
<b>“Auction”</b>	means the 2.3 and 2.5 GHz band auction conducted on behalf of the Crown in December 2007, and in which the Purchaser was the provisionally successful bidder for the Management Rights, and “terms and conditions of the Auction” means the terms and conditions of the Auction as contained in the Auction Catalogue (as amended from time to time in accordance with that catalogue);
<b>“Buy-out Management Right”</b>	means the Buy-out Management Rights described in Schedule 1;
<b>“Buy-out Price”</b>	means the price referred to in clause 6.2;
<b>“Chief Executive”</b>	means the chief executive of the Ministry of Economic Development from time to time and his or her delegate;
<b>“Conditional Management Right”</b>	means the Conditional Management Rights described in Schedule 1;
<b>“Controlling Interest”</b>	means 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, including (to avoid doubt) the non-exclusive right for any person to use that spectrum on arms length commercial terms where that frequency is controlled directly or indirectly by another person;
<b>“Deed”</b>	means this Deed and includes Schedules 1 and 2;
<b>“Early Management”</b>	means the Early Management Rights described in Schedule 1;

## Right”

“Implementation Requirement”	means the implementation requirement set out in clause 5.2;
“Management Rights”	means the management rights referred to in Schedule 1;
“Registered”	means recorded on the Register of Radio Frequencies established under section 5 of the Act;
“Related Body Corporate”	A body corporate is related to another body corporate if:  (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 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;
“2.3 GHz band”	means the band of radio spectrum within the frequency ranges 2.300 GHz and 2.396 GHz;
“2.5 GHz band”	means the band of radio spectrum within the frequency ranges 2.500GHz and 2.690GHz; and
“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 day that is the anniversary of any province or a public holiday within the meaning of section 7A(2) of the Holidays Act 1981.

### 1.2 Additional definitions relating to associations

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

- (a) person A is a body corporate, and person B is:
  - (i) a director of that body corporate; or
  - (ii) a Related Body Corporate of that body corporate; or
  - (iv) a director of a Related Body Corporate of that body corporate; or
- (b) person A is in the same immediate family as person B (including a spouse, civil union partner, de facto partner, child (including step-child), or parent (including step-parent) or sibling (including step-siblings) of person B); or
- (c) person A is a nominee or trustee for person B; or

- (d) person A is a 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), 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), 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 or were parties to an Agreement that:
  - (i) relates or related directly or indirectly to the bidding strategy 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 in the Auction and in respect of which the other person is or will be (subject to this Deed) 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 this Deed, including an Associate in a chain of Associates.

### 1.3 Construction

In this Deed:

- (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 subclause headings in this Deed 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. TERM OF THIS DEED

### 2.1 Term expires on Implementation Requirement being met

The term of this Deed commences from the date of this Deed and expires on the date the Conditional Management Rights is granted, unless terminated earlier in accordance with this Deed.

### 2.2 Acquisition Limit expires

Despite clause 2.1, clause 3 expires on 31 December 2012.

### 2.3 Co-ordination obligation continues

Despite clause 2.1, clause 8 survives expiry of this Deed.

## 3. ACQUISITION LIMIT

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

## 4. TRANSFER

### 4.1 Transfers and creation of interests prohibited

The Purchaser will not, except as provided in clause 4.3, transfer, assign, or create, or purport to transfer, assign or create, any Registered Interest in, or Controlling Interest in relation to, the Management Rights, in favour of any person other than the Purchaser itself.

### 4.2 Licences are interests

The interests referred to in clause 4.1 include the interests by virtue of the creation or transfer of any Registered or unregistered licences of the frequencies to which the Management Rights relate.

### 4.3 Chief Executive may consent to transfer

The Purchaser may with the prior written consent of the Chief Executive transfer, assign or create any Registered interest in, or Controlling Interest in relation to, the Management Rights in favour of any person other than the Purchaser itself.

### 4.4 Consent subject to Acquisition Limit if limit not expired

If the Chief Executive's consent is first sought under clause 4.3 on or before the expiry of clause 3, as a condition precedent to that consent the Purchaser must:

- (a) demonstrate to the satisfaction of the Chief Executive that no proposed transferee, assignee, or interest holder, either alone or in conjunction with any Associate of the proposed transferee, assignee or interest holder, will hold or have a Registered interest in, or Controlling Interest in relation to, management rights that would exceed the Acquisition Limit; and
- (b) ensure that in the case of a transfer, assignment or other transaction in relation to a Management Right, the proposed transferee, assignee, or other party to such a transaction executes a management rights deed with the Crown in a form containing covenants to the same effect and with a term equal to the remaining term of this Deed, including the Implementation Requirement and the prohibition on any new transferee, assignee or interest holder without the prior written consent of the Chief Executive either:
  - (i) holding either alone or with its Associates interests in management rights exceeding the Acquisition Limit; or
  - (ii) transferring, assigning, or creating any Registered interest in, or Controlling Interest in relation to, the Management Rights.

#### 4.5 **Consent subject to implementation if Acquisition Limit has expired**

If the Chief Executive's consent is first sought under clause 4.3 after expiry of clause 3, as a condition precedent to that consent the Purchaser must:

- (a) ensure that in the case of a transfer, assignment or other transaction in relation to a Management Right, the proposed transferee, assignee, or other party to such a transaction executes a management rights deed with the Crown;
- (b) ensure that the form of management rights deed is acceptable to the Crown, and contains covenants to the same effect and with a term equal to the remaining term of this Deed:
  - (i) including the Implementation Requirement and the prohibition on any new transferee, assignee or interest holder without the prior written consent of the Chief Executive transferring, assigning, or creating any Registered interest in, or Controlling Interest in relation to, the Management Rights; but
  - (ii) excluding clause 3 and clause 4.4.

### 5. **IMPLEMENTATION REQUIREMENT**

#### 5.1 **Further Management Rights subject to implementation**

The Implementation Requirement must be met before the following Management Rights are registered and transferred to the Purchaser:

- (a) where the Purchaser does not extend, in accordance with clause 6, the date for meeting the Implementation Requirement, the Buy-out Management Right and the Conditional Management Right; or
- (b) where the Purchaser extends, in accordance with clause 6, the date for meeting the Implementation Requirement, the Conditional Management Right.

#### 5.2 **Continuous ongoing service required**

By 31 December 2014, the Purchaser must have implemented a continuous and ongoing telecommunications service using the spectrum that is;

- (a) covered by the Early Management Right; and
- (b) available to a substantial portion of New Zealand's population.

#### 5.3 **Implementation requirements**

In order to meet the Implementation Requirement, the Purchaser, as a minimum, must have implemented a continuous and ongoing telecommunications service that:

- (a) is provided using substantially the Early Management Right; and
- (b) in the case of a broadband wireless access service (such as a fixed wireless access or WiMax service):
  - (i) is provided in at least 15 Areas;
  - (ii) is available for use by, and being offered for use on a commercial basis to, at least 30% New Zealand's resident population in each of those Areas; and
- (c) in the case of a cellular service, is available for use by, and being offered for use on a commercial basis to (and may be a part of a network covering), at least 50% of New Zealand's resident population without relying on infrastructure (including networks) provided by persons other than the Purchaser;



- (d) operates 24 hours per day, 7 days per week (excluding reasonable outages including those for maintenance and construction);
- (e) has met the requirements in clauses 5.3(a), 5.3(b) (in the case of a broadband wireless access service), 5.3(c) (in the case of a cellular service), and 5.3(d) for the 6 month period prior to the date on which the Purchaser is required to submit its statutory declaration under clause 5.5; and
- (f) will continue to meet the requirements in those clauses up to and on 31 December 2014.

In this clause New Zealand's resident population is determined using the Statistics New Zealand's National Population Estimates for the most recently published quarter prior to the Chief Executive's determination.

#### **5.4 Chief executive determines whether implemented**

Whether or not the Implementation Requirement has been met is a matter to be determined by the Chief Executive in his or her sole discretion (exercising a common sense judgement), subject to clause 5.3.

#### **5.5 Purchaser must submit a statutory declaration**

To assist the Chief Executive with his or her determination under clause 5.4, the Purchaser must submit to the Chief Executive no later than 30 May 2014 (time being of the essence), a statutory declaration:

- (a) stating that the Implementation Requirement is met; and
- (b) attaching sufficient evidence to satisfy the Chief Executive that the Implementation Requirement is met; and
- (c) undertaking that the Implementation Requirement will continue to be met up to and on 31 December 2014.

#### **5.6 Chief Executive may require further information**

The Chief Executive may request further information from the Purchaser to make his or her determination under clause 5.4 and the Purchaser must respond promptly to such a request.

#### **5.7 Chief Executive will notify if implemented**

The Chief Executive will provide written notice to the Purchaser of whether or not he or she is satisfied that the Implementation Requirement has been met. Written notice from the Chief Executive that the Implementation Requirement has not been met is conclusive in the absence of manifest error.

#### **5.8 Effect of failure to implement or meet requirements**

If an event in clause 5.9 occurs, then:

- (a) the Implementation Requirement is deemed to have not been met; and
- (b) to avoid doubt:
  - (i) the Buy-out Management Right and Conditional Management Right will not be transferred to the Purchaser under clause 7; and

- (ii) the Purchaser is not entitled to any refund (partial or otherwise) of the price paid by the Purchaser at the Auction for the relevant lot comprising the Management Rights.

#### **5.9 Events leading to failure to implement**

The events are:

- (a) subject to clause 6, the Purchaser does not submit the statutory declaration under clause 5.5 (including not submitting it on time or not submitting it because the Purchaser cannot declare that it has met the Implementation Requirement); or
- (b) the Chief Executive provides notice under clause 5.7 that the Implementation Requirement has not been met; or
- (c) the statutory declaration provided under clause 5.5, in the opinion of the Chief Executive, omits a material particular or is incorrect, misleading or incomplete.

#### **5.10 No further obligation if implemented**

To avoid doubt, if the Chief Executive gives notice under clause 5.7 that the Implementation Requirement has been met, the Purchaser is under no other obligation in respect of the Implementation Requirement on or after 31 December 2014.

### **6. BUY-OUT RIGHT**

#### **6.1 Purchaser can buy more time to implement**

A Purchaser may extend the date for meeting that the Implementation Requirement from 31 December 2014 to 31 December 2016 by:

- (a) giving notice, by 30 May 2014, that it proposes to exercise the buy-out right; and
- (b) paying the Buy-out Price in accordance with this clause.

#### **6.2 Buy-out price**

The price payable by the Purchaser for a buy-out is:

Price paid by the Purchaser at the Auction for the relevant lot(s) comprising the Management Rights x 0.15, plus GST

#### **6.3 Invoices to be provided**

If notice is given under clause 6.1, the Chief Executive will invoice the Purchaser for the buy-out plus GST.

#### **6.4 Payment by bank cheque or electronic funds transfer**

The payment of the Buy-out Price must be made in New Zealand dollars by:

- (a) a currently dated bank cheque drawn on a bank registered in New Zealand; or
- (b) electronic funds transfer (in same day cleared funds). Account details will be provided to the Purchaser upon request.

#### **6.5 Payment within 15 Working Days of invoice**

Full payment of the Buy-out Price is due within 15 Working Days of the invoice date. Bank Cheques are to be made payable to the Ministry of Economic Development and must be sent to the address in clause 10.5(c).

#### **6.6 Buy-out Management Right transferred**

Subject to compliance with all conditions under this Deed, the Buy-out Management Right will be transferred to the Purchaser within 30 Working Days of the invoice date, provided the Chief Executive has received payment of the Buy-out Price in accordance with clause 6.5.

### **6.7 Re-determination if extended**

Clause 5 applies, with all necessary modifications, to the Chief Executive's redetermination of whether the Implementation Requirement has been met, and to avoid doubt, the implementation requirement must be met by 31 December 2016 and the statutory declaration referred to in clause 5.5 must be submitted by the Purchaser by 30 May 2016.

### **6.8 Single right**

To avoid doubt, the buy-out right described in this clause 6 may only be exercised once.

## **7. TRANSFER OF CONDITIONAL MANAGEMENT RIGHT IF IMPLEMENTED**

If the Chief Executive gives notice under clause 5.7 that the Implementation Requirement is met, then the Crown consents to transfer to the Purchaser, under section 42 of the Act:

- (a) where the Purchaser did not extend, in accordance with clause 6, the date for meeting the Implementation Requirement, the Buy-out Management Right and the Conditional Management Right; or
- (b) where the Purchaser extended, in accordance with clause 6, the date for meeting the Implementation Requirement, the Conditional Management Right,

on the terms and conditions set out in this Deed.

## **8. CO-ORDINATION OF USE**

### **8.1 Best endeavours obligation**

The Purchaser must use its best endeavours to negotiate Agreements with adjacent management rightholders to co-ordinate frequencies to maximise technical efficiency and minimise interference risks in a fair and objective spirit by discussion. Where the Purchaser and an adjacent rightholder are unable to agree, the Purchaser agrees to submit the dispute to such dispute resolution procedures as are from time to time nominated by the Chief Executive (which may include expert determination or arbitration by an arbitrator nominated by the Chief Executive). The Purchaser agrees that the decision resulting from the dispute resolution procedure will be final and binding in the absence of manifest error.

### **8.2 Contracts privity**

The Chief Executive agrees to use reasonable endeavours to obtain similar undertakings from other prospective rightholders. This clause is for the benefit of, and enforceable by, adjacent rightholders for the purposes of the Contracts (Privity) Act 1982.

## **9. CROWN'S CAVEATABLE INTEREST**

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

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

### **9.2 Crown consents to certain dealing**

The Crown will consent as caveator to any dealing:

- (a) giving effect to a transaction that the Chief Executive has consented to under clause 4.3; or
- (b) for which the Chief Executive's consent under clause 4.3 is not required.

### 9.3 Crown's interest survives expiry

The equitable interest of the Crown under this Deed will survive the expiry of this Deed, although the Crown agrees to withdraw any caveat lodged under clause 9.1 at the time of such expiry.

## 10. GENERAL

### 10.1 Purchaser's liability and indemnity

- (a) Other than in respect of any breach by the Purchaser of clauses 3, 4, 5 or 6, no party will have any liability to any other party under or in connection with this Deed in contract, tort (including negligence) or breach of statutory duty or otherwise, including for any direct, indirect or consequential losses (including loss of profits, revenue, business or anticipated savings).
- (b) The parties agree that in respect of any breach by the Purchaser of clauses 3, 4, 5 and 6, damages alone are likely to be an inadequate remedy, and discretionary relief by way of injunction or order for specific performance is likely to provide a more adequate remedy for the Crown.
- (c) The Purchaser agrees to remedy any breach of clause 4.1 as soon as reasonably practicable and in any event within 3 months of becoming aware of such a breach. The measures necessary to remedy such a breach may include divestment of any Registered interests in management rights, or Controlling Interests in relation to management rights, to the extent the Purchaser is exceeding the Acquisition Limit.
- (d) The Purchaser fully indemnifies the Crown against all losses, costs or claims arising as a direct or indirect result of a breach by the Purchaser of clause 3, 4, 5 or 6.

### 10.2 No amendment

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

### 10.3 No waiver

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

### 10.4 Severability

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

### 10.5 Communications and notices

- (a) Any notice to be given under this Deed must be in writing and must be delivered or sent by registered post to the parties' respective addresses as set out in clause 10.5(c) and clause 10.5(d), or if a written notice of change of address is given in accordance with this clause 10.5, then to the new address.
- (b) Any notice will be deemed to be served on the date of delivery or the Business Day next following the date of posting as the case may be. In proving the giving of a notice it is sufficient to prove that the envelope containing such notice was properly addressed and posted.
- (c) The address for the service of notices on the Crown is:

Ministry of Economic Development  
PO Box 1473  
WELLINGTON

Attention: Manager, Radio Spectrum Policy and Planning

(d) The address for the service of notices on the Purchaser is:

*[Insert name]*

*[Insert postal address]*

Attention: *[Insert position]*

