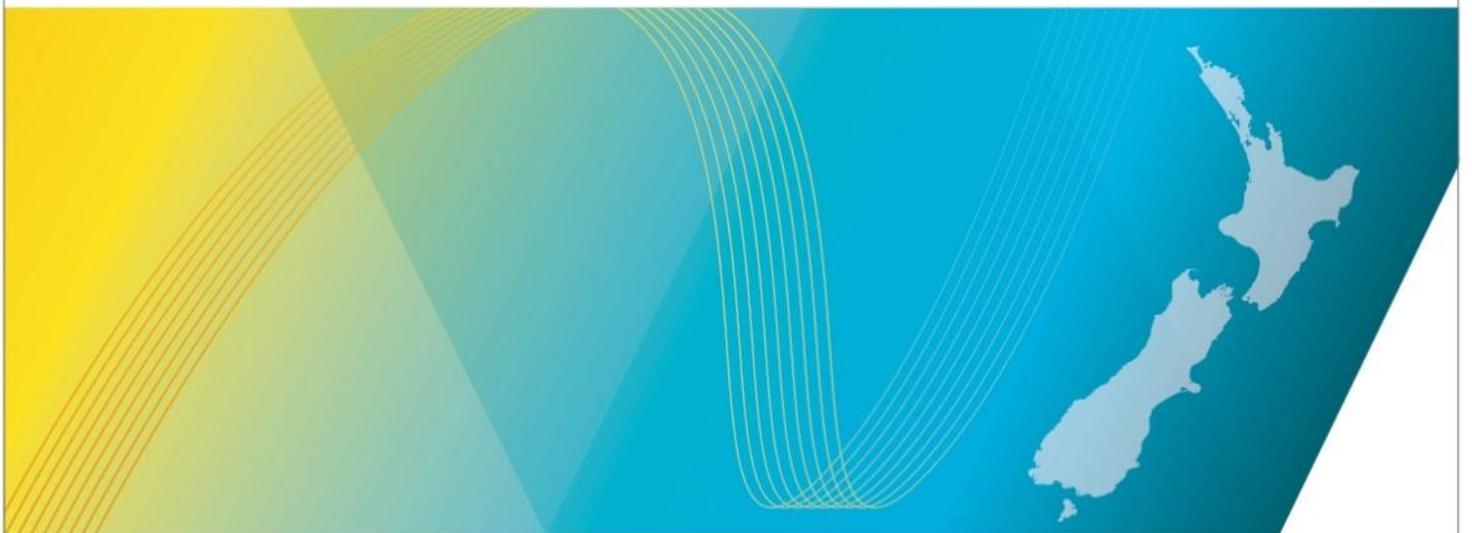

**Exclusive Rights Agreement
(for licences within 3.30-3.34GHz
Non-national Spectrum)
with [operator]**



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Ministry of Business, Innovation, and Employment
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New Zealand
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EXCLUSIVE RIGHTS AGREEMENT
(for licences within 3.30-3.34GHz Non-national Spectrum)

This Agreement dated the _____ day of _____ 2023

BETWEEN **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Manager of Radio Spectrum Policy and Planning, in the Building, Resources and Markets Group, Ministry of Business, Innovation, and Employment, acting under the authority of Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation & Employment and Chief Executive of the Ministry of Business, Innovation, and Employment (“**Ministry**”)

AND [REDACTED], New Zealand Company No. [REDACTED] (“**Operator**”)

BACKGROUND

- A The Ministry manages a spectrum management right in the 3.30-3.40 GHz band on behalf of the Crown. Of this, the 3.30-3.34GHz range has been allocated for delivering non-national/regional broadband services.
- B The Operator has been assigned, subject to the terms and conditions of this agreement, the exclusive right to place spectrum licences within one or more specified regional areas for a period ending 31 December 2023.
- C The Ministry requires the Operator to enter into this agreement as a condition before the Operator may begin placing spectrum licences.
- D This agreement sets out the Operator’s exclusive rights to place spectrum licences, as well as other terms and conditions, and the limits which are relevant to this.

AGREEMENT

The Operator and the Ministry agree to comply with the terms and conditions in Schedule 1 (Details) and Schedule 2 (Terms and Conditions). This agreement is conditional on satisfaction of the requirements set out in clause 2.2.

EXECUTION

Signed for and on behalf of

THE SOVEREIGN IN RIGHT OF NEW ZEALAND acting by and through the Manager of Radio Spectrum Policy and Planning, in the Building, Resources and Markets Group, Ministry of Business, Innovation, and Employment, under the authority of Te Tumu Whakarae mō Hikina Whakatutuki, Secretary for Business, Innovation & Employment and Chief Executive of the Ministry of Business, Innovation, and Employment

Signature

Signed for and on behalf of

[OPERATOR]

Each of us confirms that we have authority to sign for and on behalf of **[Operator]**

Signature

Signature

SCHEDULE 1 – DETAILS

Lot #	Territorial Local Authority – TLA area	Frequency range	Comments (if any)	Purchase Price (incl. GST)
##	[TLA code/name]	[range]	[comment or 'NA']	[bid amount or '\$0' for direct assignment]

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1. Grant of Exclusive Right

1.1. Ministry grants Exclusive Right to Operator

- (a) Subject to the terms and conditions of this agreement, the Ministry grants an Exclusive Right to the Operator for each Lot for the Exclusive Period, to facilitate the granting of one or more Licences to the Operator to enable it to provide a Qualifying Service in the relevant TLA area.
- (b) Under this agreement, an Exclusive Right in respect of a Lot comprises the exclusive right for the Operator (but only the Operator) to request that the Ministry (in its capacity as the relevant management rights holder) grant one or more Licences in the relevant TLA area during the Exclusive Period. The Ministry agrees that, during the Exclusive Period:
 - (i) if requested by the Operator, the Ministry will grant one or more Licences in the TLA area of a Lot in the name of the Operator in accordance with (and subject to) the terms of this agreement, and subject to the Act;
 - (ii) except as referred to in paragraph (c)(iii) below, the Ministry will not grant any spectrum licence in favour of any other person in the spectrum and TLA area which is the subject of an Exclusive Right of the Operator; and
 - (iii) the Ministry will not reserve to itself the right to transmit and/or a right to have no harmful interference from co-channel and adjacent channel emissions, within the spectrum and TLA area which is the subject of an Exclusive Right of the Operator.
- (c) The Operator acknowledges and agrees that:
 - (i) an Exclusive Right may only be exercised in accordance with clause 1.2;
 - (ii) in order to exercise an Exclusive Right under this agreement, the Operator must submit each Application before the end of the Exclusive Period, but the Ministry does not guarantee registration of resulting Licences will occur prior to the end of the Exclusive Period;
 - (iii) just as the Licensed Area for a Licence may extend beyond the geographical boundaries of the TLA area, spectrum licences granted in respect of other TLA areas (in favour of other operators in the same band) may extend into a TLA area in which the Operator has an Exclusive Right under this agreement, and:
 - (A) this will not be a breach of clause 1.1(b)(ii); and
 - (B) in relation to interference from co-channel and adjacent channel emissions, the Ministry may prioritise the interests of a third party (and its spectrum licence) over those of the Operator (and a Licence to be granted pursuant to this agreement), provided that the Ministry complies with its obligations in clause 1.2(e) below; and

- (iv) at any time after the end of the Exclusive Period the Ministry may (in its capacity as the holder of the relevant management right) grant spectrum licences within each TLA area referred to in a Lot to third parties (subject to the Act).

1.2. Application for Licences

- (a) If the Operator wishes to be granted a Licence in a TLA area of a Lot, the Operator shall submit an Application to the Ministry (in its capacity as the holder of the relevant management right) through the Register of Radio Frequencies or through other means as may be notified by the Ministry to the Operator from time to time.
- (b) An Application shall comprise a “planned” licence which complies with PIBs 39 and 59 (as amended or replaced from time to time) and is subject to other conditions required by the Ministry from time to time (in its capacity as the management rights holder), and is certified by an approved radio engineer, in a manner that is capable of being Registered under the Act without provision of further information. By submitting an Application, the Operator confirms that:
 - (i) it will use any resulting Licence for the purposes of providing a Qualifying Service; and
 - (ii) technical parameters included in the Application accurately reflect the planned installations and services to be supported by the resulting Licence.
- (c) If the Ministry is satisfied that the Application meets the requirements of clause 1.2(b) and complies with the Act, and there are no grounds to withhold or revoke the resulting Licence (under the Act), the Ministry will notify the Operator that the Application is an Approved Application and/or register the relevant Licence (without limiting clause 1.3).
- (d) If the Ministry is not satisfied that the Application is an Approved Application, the Ministry may:
 - (i) reject the Application, by giving notice to the Operator together with reasons why the Application fails to meet the relevant requirements; or
 - (ii) by notice to the Operator, make one or more requests to the Operator to provide further information or clarification, or to modify the Application, in any case, as may be necessary to satisfy the Ministry that the Application meets the requirements to be an Approved Application. Until the Ministry is satisfied that the Application meets such requirements, the Ministry may give notice to the Operator rejecting the Application.
- (e) If the Ministry determines that an Application has a Competing Application:
 - (i) the Ministry must first advise the Operator and the relevant Other Applicant in writing that their applications are in conflict;
 - (ii) the Operator and the Other Applicant must make reasonable efforts to agree on a Solution (where “Solution”, for the purposes of this clause 1.2(e), means a solution whereby the Ministry is satisfied that the relevant applications are not in conflict, and may include withdrawal of

- an application or co-ordination or revision or modification of specifications, or any other mitigation);
- (iii) if the Operator and the Other Applicant agree to a Solution, the two parties must jointly submit the Solution to the Ministry in writing, together with updated versions of their applications (through the Register of Radio Frequencies or other means as may be notified by the Ministry from time to time), and the Operator's submission will be treated (and assessed) by the Ministry as an Application submitted under this clause 1.2 (which the Ministry has yet to approve), except that it will also be treated as-if it was received at the time that the original Application was received;
 - (iv) if the Operator and the Other Applicant do not submit to the Ministry a Solution within 10 Working Days of first receiving the advisory from the Ministry of the conflict (under sub-paragraph (e)(i)), then, unless the Operator and Other Applicant agree to extend the period to agree a Solution (by joint notice in writing to the Ministry, which period must not be longer than 10 Working Days), the application (being either the Application of the Operator or the Competing Application of the Other Applicant) received by the Ministry first in time shall take priority;
 - (v) the licence described in the application which has priority shall be Registered;
 - (vi) if an Application is rejected under clause 1.2(d), the Competing Application shall be deemed to have priority, even if it was received second in time; and
 - (vii) however, if an Application is received by the Ministry more than 10 Working Days after it received a Competing Application (or vice versa), this clause 1.2(e) will not apply (and the Ministry will not be bound by it) unless the Ministry expressly determines otherwise (in its sole discretion).
- (f) To reduce the administrative and documentary burden on the parties (for example, requirements to approve and sign documents), the Operator agrees to use reasonable endeavours to bundle Applications (for multiple Licences) and submit them at the same time. The Ministry may prioritise operators (including the Operator) who bundle Applications in the manner contemplated by this clause 1.2(f).
- (g) For clarity, if the Ministry agrees to grant the Operator one or more Licences independently of this agreement after the Exclusive Period, the parties may agree that such Licences be added to the Operator's Licence Agreement (entered into in connection with it exercising an Exclusive Right under this agreement) such that the terms of the Licence Agreement apply to those Licences. The Operator acknowledges that the Ministry will not be bound by this clause 1.2 after the end of the Exclusive Period (except in relation to Applications submitted prior to the end of the Exclusive Period) and that the Ministry makes no representations regarding how it will address or assess spectrum licence proposals after the end of the Exclusive Period.

1.3. Registration and Licence Agreement

Subject to clause 1.2(e), the Ministry will (in its capacity as holder of the relevant management

right) register each Licence described in each Approved Application in the name of the Operator on the Register of Radio Frequencies, provided that the Ministry will be under no obligation to do so until:

- (a) if the Operator has not entered into a Licence Agreement with the Ministry, the Operator has provided the Ministry with a copy of the Licence Agreement (in respect of the Licence/s described in the Approved Application/s) signed for and on behalf of the Operator; or
- (b) if the Operator has already entered into a Licence Agreement with the Ministry, the Operator has provided the Ministry with documents (signed for and on behalf of the Operator, as necessary) which the Ministry has determined necessary to ensure the terms of the Licence Agreement apply to the Licence/s described in the Approved Application/s.

If the Operator fails to comply with paragraph (a) or (b) above (as relevant) within 10 Working Days of being provided with the relevant documents, the Ministry may cancel its approval by notice to the Operator, in which case the Application will be treated as-if it had been rejected under clause 1.2(d)(i) above and the Ministry is relieved of its obligation to register under this clause 1.3. The Ministry will use reasonable endeavours to register the Licence within 20 Working Days of the Operator satisfying paragraph (a) or (b) above (as relevant), provided always that no Licence may commence prior to the 1 July 2023.

2. Term and agreement conditional

2.1. Term

This agreement commences on the date of its execution, but is conditional on satisfaction of the requirements of clause 2.2. If this has not occurred within 10 Working Days of the date of this agreement (and without limiting any other rights that the Ministry may have under this agreement or otherwise), then the Ministry may give notice cancelling this agreement without liability to the Operator. Unless cancelled or terminated early in accordance with its terms, this agreement continues until its expiry at the end of the Exclusive Period.

2.2. Conditions

This agreement is conditional on:

- (a) payment by the Operator of the Settlement Amount in accordance with the Auction Catalogue and the Conditions of Auction, provided that if the Settlement Amount is \$0, then this condition shall be deemed satisfied on the date this agreement is fully executed;
- (b) the Operator registering on the Register of Radio Frequencies as a client (if not already Registered); and
- (c) payment by the Operator of all overdue administration fees on other radio or spectrum licences held by (or previously held by) the Operator, if any.

The Operator will confirm to the Ministry in writing once the above requirements have been met.

3. Termination of agreement

3.1. Ministry may terminate for reasons of national security

The Ministry may terminate this agreement by notice if it exercises, or would exercise in relation to Licences that are yet to be Registered, its right to cancel a Licence (or all Licences) in accordance with the Act, if the Ministry considers that such cancellation is (or would be in relation to Licences yet to be Registered) necessary to protect national security.

3.2. Ministry may terminate where default

If an event of default under clause 3.3 occurs, then the Ministry may give written notice terminating this agreement with immediate effect. If the Ministry terminates this agreement under this clause 3.2:

- (a) the Ministry will be under no obligation to continue with any Application which is then in progress (and may reject it); and
- (b) for clarity, each Exclusive Right under this agreement also terminates.

3.3. Events of default

The following are events of default:

- (a) the Operator commits any serious breach of its obligations under this agreement or the Licence Agreement;
- (b) the Operator repeats or continues, after having been warned in writing, any breach of its obligations under this agreement or the Licence Agreement;
- (c) the Operator fails to pay the Resource Charges (under the Licence Agreement) or Licence Fees (under the Licence Agreement and the Act, in connection with one or more Licences) when they fall due and payable; or
- (d) the Operator does not use a Licence for providing a Qualifying Service.

4. Reports

4.1. The Operator must report

If the Ministry (acting reasonably) requires by notice in writing from time to time, the Operator must fully and accurately report to the Ministry on compliance with any clause or clauses of this agreement or on any matter relating to the Operator's utilisation of Lots. The Operator must report within any time period specified in the notice. The Ministry may provide a reporting template or other documentation in relation to such reports which the Operator must complete fully and accurately and return.

5. General

5.1. Operator's own judgement

The Operator acknowledges that it has entered into this agreement and acquired the Exclusive Right/s, acting entirely on its own judgment and not in reliance on any warranty or representation made by the Crown or the Ministry or any officer of the Ministry and that it has

no cause of action against the Crown or the Ministry or any officer of the Ministry for any pre-contractual statement or action by them or any of them. This acknowledgement is intended for the benefit of the Crown and the Ministry and all officers of the Ministry for the purposes of the Contract and Commercial Law Act 2017.

5.2. Limitation of liability

No party will have any liability to any other party under or in connection with this agreement in contract, tort (including negligence) or breach of statutory duty or otherwise, including for any direct, indirect or consequential losses (including loss of profits, revenue, business or anticipated savings).

5.3. No amendment or assignment

No amendment to this agreement will be effective unless it is in writing and signed by the parties. The Operator may not transfer or assign any rights or obligations under this agreement (including any Exclusive Right) to any third party without the express written consent of the Ministry, which may be withheld in its discretion.

5.4. No waiver

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

5.5. Severability

Any unlawful or voidable provision in this agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this agreement or the Licence 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 agreement.

5.6. Relationship with the Act

Nothing in this agreement limits or modifies any rights or obligations that the Ministry may have under the Act, whether in its capacity as the holder of spectrum management rights or otherwise. This agreement will as far as possible be read so to be consistent with the Act, but the Act prevails to the extent of any inconsistency.

5.7. Notices sent to addresses specified on Register

Without limiting any specific requirements in relation to notices under the Act, any notice to be given under this agreement must be in writing and must be delivered or sent by registered post, or by email, to the parties' respective addresses as specified in the Register of Radio Frequencies under section 5 of the Act.

5.8. Notices deemed served on delivery or two days after posting

Any notice delivered in person or by post will be deemed to be delivered on the date of physical delivery or the second Working Day following the date of posting as the case may be. In proving the giving of a notice it is sufficient to prove that the envelope containing such notice was properly addressed and posted. Any notice sent by email will be deemed to be delivered no later than one Working Day after sending, unless within that time the sender's email server receives a notification that the email has not been delivered, or an automated "out of office" or similar notification.

6. Definitions and Interpretation

6.1. Definitions

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

“Approved Application”	means an Application which has been notified as an Approved Application in accordance with clause 1.2;
“Act”	means the Radiocommunications Act 1989, as amended from time to time;
“Application”	means an application by the Operator to place a Licence in accordance with clause 1.2;
“Associate”	has the meaning given to it in the Licence Agreement;
“Business”	has the meaning given to it in the Licence Agreement;
“Competing Application”	An application to place a spectrum licence by an Other Applicant, in which the licence conflicts with a Licence described in an Application;
“Controlling Interest”	has the meaning given to it in the Licence Agreement;
“Exclusive Period”	means the period beginning on the date that this agreement becomes unconditional (see clause 2.2) and continues until the end of 31 December 2023;
“Exclusive Right”	means the right referred to in clause 1.1(b);
“Licence”	means a Registered spectrum licence granted in accordance with this agreement;
“Licence Agreement”	means the licence agreement entered into between the Ministry and the Operator in the form attached to this agreement as Appendix 1, provided that “Licence Agreement” shall mean the form of licence agreement attached as Appendix 1 until the Ministry and the Operator enter into it;

“Licensed Area”	means, in respect of a particular Licence, the area or location under that Licence (determined by technical characteristics of the Licence) at which there is: (a) a right to transmit; or (b) a right to have no harmful interference from co-channel and adjacent channel emissions;
“Lot”	means a “Lot” in Schedule 1;
“Ministry”	includes any successor to the Ministry, including as the manager of the radio spectrum frequency band of 3.30-3.34GHz;
“Management Rights”	has the meaning given to it in the Licence Agreement;
“Other Applicant”	means an applicant who has applied to be granted a spectrum licence and the application is a Competing Application;
“Qualifying Service”	has the meaning given to it in the Licence Agreement;
“Registered”	means recorded on the Register of Radio Frequencies established under section 5 of the Act;
“Related Body Corporate”	has the meaning given to it in the Licence Agreement;
“Settlement Amount”	means the “Settlement Amount” set out in Schedule 1, being the amount derived from summing the “Purchase Price” amounts corresponding to the Lots as set out in Schedule 1, and which may be \$0 (a “Purchase Price” will be \$0 if the Lot was directly allocated to the Operator, without auction);
“Territorial Local Authority area” or “TLA area”	has the meaning given to it in the Licence Agreement
“Working Day”	has the meaning given to it in the Licence Agreement.

6.2. Construction

In this agreement:

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

APPENDIX 1 – LICENCE AGREEMENT

Attached.