
**Licence Agreement
(for licences within 3.30-3.34GHz
Non-national spectrum)
with [operator]**



Radio Spectrum Management
Ministry of Business, Innovation, and Employment
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New Zealand
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LICENCE 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 [], New Zealand Company No. [] (“**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 Ministry requires the Operator to enter into this agreement as a condition of placing spectrum licences within the 3.30-3.34GHz range.
- C This agreement sets out the terms and conditions which will govern the parties’ relationship during the term of any licences which are placed.

AGREEMENT

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

EXECUTION

Signed for and on behalf of

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

Licence ID	Licence Number	Date Registered	Date of Expiry	Reference Freq.	Band width	Transmit location (Community and Local Board Area)	Engineer No.

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1. Grant

1.1. Ministry grants Licences to Operator

The Ministry, in its capacity as the management rights holder, grants each Licence to the Operator from the relevant "Date Registered" (specified for the Licence in Schedule 1) for the term of this agreement subject to the terms and conditions of the Licence and this agreement and to enable the Operator to provide a Qualifying Service.

1.2. Operator to comply with agreement and Licence

The Operator agrees to comply with all the provisions of this agreement and the Licences. In the event of inconsistency between the terms of this agreement and the terms of a Licence, the terms of this agreement will prevail. The Operator also acknowledges and agrees that the Ministry may assess compliance with the provisions of a Licence and this agreement through information which it receives from exercising its powers under the Act.

1.3. Updating Schedule 1

The parties acknowledge and agree that Schedule 1 may be updated by express written agreement between the parties as necessary to reflect changes agreed by the parties, including in connection the granting or cancellation of Licences.

2. Fees and Charges

2.1. Resource Charge

- (a) The Operator must pay the Resource Charge in accordance with this agreement.
- (b) The Resource Charge:
 - (i) is an annual fee applying in relation to each 12 month period during the term of the Licence/s beginning on 1 July (of each year) (**Resource Charge Year**), determined on an annual basis; and
 - (ii) for a Resource Charge Year, shall be the sum of the per-Licence 'Charge per 20MHz' amounts for each Community and Local Board area applicable to the Licences (Registered at the start of the Resource Charge Year), such amounts published on the [RSM] Webpage [no later than 1 June of the prior Resource Charge Year] (or such other webpage as may be notified from time to time),

provided that:

- (iii) the 'Charge per 20MHz' will be adjusted to reflect: (A) changes in the population of Community and Local Board areas (as most recently published by StatsNZ); and (B) the percentage change in CPI (All Groups) (as most recently published by StatsNZ) applied to the per person value of 20MHz of national radio spectrum in the 3.5GHz band for 1 year as determined by the Ministry (being \$0.085 per person per year as at June 2023); and (C) the remaining term of the Licence/s;
- (iv) if the Operator has more than five (5) Licences in a Community and Local Board area, only five (5) Licences shall be counted for the purposes of calculating the Resource Charge on the basis that this limit shall operate as

- a cap on the Resource Charge payable by an Operator in respect of a Community and Local Board area;
- (v) in relation to Licences commencing partway through a Resource Charge Year, the 'Charge per 20MHz' amount will be adjusted pro-rata (per-day), and, subject to the operation of paragraph (iii) above, added to the Resource Charge for the following Resource Charge Year.
- (c) The Resource Charge for a Resource Charge Year is payable as follows:
- (i) the Ministry will invoice the Operator for the Resource Charge once it determines the amount of the Resource Charge for that Resource Charge Year, provided that if the Ministry's invoice is more than 90 days after the start of the relevant Resource Charge Year the Operator will be under no obligation to pay the invoice;
 - (ii) the due date for each invoice is the 20th of the month following the date of the Ministry's invoice;
 - (iii) if the Resource Charge for a Resource Charge Year is less than \$80 (or such higher threshold amount as the Ministry may notify to the Operator from time to time), the Ministry may (except in the last Resource Charge Year) defer that amount until the following Resource Charge Year, on the basis that it will be added to the following Resource Charge; and
 - (iv) if the Operator fails to pay amounts on account of the Resource Charge by the applicable due date, the Operator will pay the Ministry interest on the overdue amount, calculated daily at a rate of 10% per annum applied to the overdue amount and compounding monthly, from and including the due date, up to but excluding the date of payment.
- (d) The Ministry:
- (i) will publish its methodology and the inputs relevant to calculating the each 'Charge per 20MHz';
 - (ii) may modify the way in which it calculates the 'Charge per 20MHz' at any time; and
 - (iii) may modify the way in which the Resource Charge is calculated and charged from time to time, provided that: (A) the Ministry gives at least six (6) months' notice of any material change, the reason for the change and the expected impact the change will have on the amount of the Resource Charge that will be charged in the future; and (B) a change will not affect amounts already invoiced and will only apply to future periods; and (C) any amendment must be applied to all other operators then granted a spectrum licence in the 3.30-3.34GHz band and required to pay a charge calculated in the same way as the Resource Charge.
- (e) If there is any conflict between what is published on the [RSM] Webpage (or such other webpage as may be notified from time to time) in relation to the Resource Charge and this agreement, this agreement prevails unless the Ministry expressly states otherwise in writing.

2.2. Licence Fees

In addition to the Resource Charges, the Operator must pay the Licence Fees in accordance with the Act (including regulations made under the Act).

3. Term

This agreement commences on the date of its execution. Unless terminated early in accordance with its terms, this agreement continues until its expiry on 30 June 2033 (being the date on which each Licence under this agreement is intended to expire).

4. Acquisition Limit, No Interest in Management Rights, and transfer

4.1. Acquisition Limit

The Acquisition Limit applying to the Operator comprises the following:

- (a) the maximum number of different TLA areas that the Operator (together with its Associates) may hold Licences (with transmit locations) in at any one time is fifteen (15);
- (b) the Operator (together with its Associates) may hold Licences (with transmit locations) in no more than one (1) of the following main centres at any one time, provided that if a TLA area, which is part of a main centre is reorganised, then the main centre is deemed to be amended to be made up of the successor TLA areas:
 - (i) Auckland;
 - (ii) Hamilton;
 - (iii) Wellington cities (being the Wellington, Hutt and Porirua city council Territorial Local Authority areas); and
 - (iv) Christchurch.

For clarity, the Operator exceeds the Acquisition Limit by exceeding either of these thresholds.

4.2. Operator not to exceed Acquisition Limit

The Operator will not, at any time, by itself or together with its Associates, hold or have interests in Licences, or Controlling Interests in relation to Licences, if holding or having such interests would cause them to exceed the Acquisition Limit. The grant by the Ministry of a Licence or consent to a transfer, assignment, sub-licence or creation of any Registered Interest in, or Controlling Interest in relation to, a Licence, will not constitute a waiver of this requirement.

4.3. Operator not to have interest in Management Rights

The Operator will not, at any time, by itself or together with or through its Associates, hold or have Registered interests in any Management Rights or Controlling Interest in relation to any Management Rights. The grant by the Ministry of a Licence or consent to a

transfer, assignment, sub-licence or creation of any Registered Interest in, or Controlling Interest in relation to, a Licence, will not constitute a waiver of this requirement.

4.4. Operator may not transfer or create interests

The Operator will not, except as provided in clause 4.5, transfer, assign, sub-licence (including through any arrangement permitting a person to utilise a Licence) or create, or purport to transfer, assign, sub-licence or create, any Registered interest in, or Controlling Interest in relation to, a Licence, in favour of any person other than the Operator itself. The Operator shall utilise the Licences itself and shall not outsource or subcontract the services to a third party or an Associate.

4.5. Operator may transfer or create interest in some circumstances

Notwithstanding clause 4.4, the Operator may transfer, assign or create any Registered Interest in, or Controlling Interest in relation to, a Licence in favour of any person other than the Operator itself, but only if:

- (a) the Operator first obtains the Ministry's prior written consent; or
- (b) the Implementation Requirement for that Licence has already been met.

4.6. Subject to acquisition limit and Management Rights prohibition

As a condition precedent to undertaking an action permitted by clause 4.5, the Operator must:

- (a) demonstrate to the satisfaction of the Ministry that no proposed transferee, assignee, or interest holder, either alone or in conjunction with any Associate of the proposed transferee, assignee or interest holder, will hold or have a Registered interest in, or Controlling Interest in relation to, Licences that would exceed the Acquisition Limit; and
- (b) demonstrate to the satisfaction of the Ministry that no proposed transferee, assignee, or interest holder, either alone or in conjunction with any Associate of the proposed transferee, assignee or interest holder, will hold or have a Registered interest in, or Controlling Interest in relation to any Management Rights; and
- (c) ensure that in the case of a transfer, assignment or other transaction in relation to a Licence, the proposed transferee, assignee, or other party to such a transaction executes an agreement with the Ministry on substantially the same terms as this agreement, and with a term equal to the remaining term of this agreement, but which (in addition) requires the transferee, assignee, or other party to such transaction, to submit a statutory declaration to the Ministry as at the second anniversary of the date of the transfer, assignment or other transaction, confirming that the Licence continues to be in sufficient use, to at least a level in kind and quality commensurate to the Implementation Requirement.

5. Implementation Requirement and use of Licence

5.1. Services must be implemented

The Operator must meet the Implementation Requirement in respect of each Licence no later than the second anniversary of the commencement of that Licence.

5.2. Ministry determines whether implementation requirement is met

Whether or not the Implementation Requirement is met is a matter to be determined by the Ministry (acting reasonably). To meet the Implementation Requirement, all of the following requirements must be met:

- (a) the Operator has deployed a service providing a Qualifying Service using the Licence (**Operator's Service**); and
- (b) the Operator's Service provides a Qualifying Service to at least 5 customers (unless the Ministry agrees in writing to fewer customers in relation to a Licence, taking into account relevant circumstances).

5.3. Operator must provide statutory declaration about use

To assist the Ministry's determination under clause 5.2 and confirm compliance with other requirements, the Operator must submit to the Ministry no later than the second anniversary of the commencement of the relevant Licence (referred to in clause 5.1 above) a Statutory Declaration:

- (a) specifying that the Implementation Requirement is met at that time;
- (b) confirming that the installations and services supported by the Licence are consistent with technical parameters included in or referred to in the Licence, or which otherwise apply to the Licence; and
- (c) if requested by the Ministry, accompanied or supported by reasonably detailed information in connection with the above.

To reduce the administrative and documentary burden on the parties (for example, requirements to approve and sign documents), the Ministry will accept a Statutory Declaration which relates to a bundle of Licences (and the matters set out in this clause 5.3), provided the form of Statutory Declaration is amended to the Ministry's reasonable satisfaction so that it serves the purpose of the Statutory Declaration as contemplated by this clause 5.3.

5.4. Ministry may request further information

The Ministry may assess compliance with clause 5.2 by reference to information received from exercising its powers under the Act or from other sources, and/or may request further information or declarations from the Operator to make its determination under clause 5.2. The Operator must provide any further information or declarations requested by the Ministry within twenty (20) Working Days. Any failure by the Operator to provide information or declarations requested by the Ministry may be treated as a failure to meet the Implementation Requirement.

5.5. Events deemed to be failure to implement

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

- (a) the Operator does not submit the Statutory Declaration under clause 5.3 (including not submitting it on time or not submitting it because the Operator cannot declare that it has met the Implementation Requirement); or
- (b) the Statutory Declaration provided under clause 5.3, in the opinion of the Ministry (including by reference to information received from exercising its powers under the Act or from other sources), omits a material particular or is incorrect, misleading or incomplete.

5.6. Operator must continue to use Licence

The Operator:

- (a) must use each Licence to provide a Qualifying Service and must ensure that each Licence continues to be in sufficient use for the term of this agreement, to at least a level in kind and quality commensurate to the Implementation Requirement; and
- (b) must ensure that the installations and services supported by each Licence are consistent with technical parameters included in or referred to in the Licence, or which otherwise apply to the Licence.

The Ministry may assess compliance with this clause 5.6 by reference to information received from exercising its powers under the Act or from other sources, and/or may request information or declarations from the Operator in order to verify compliance with this clause 5.6 from time to time, and the Operator must provide such further information or declarations within twenty (20) Working Days of the request. Any failure by the Operator to provide information or declarations requested by the Ministry may be treated as a failure to comply with this clause 5.6.

5.7. Consequences of failure to implement or use

Without limiting any other terms of this agreement, if the Implementation Requirement has not been met in relation to a Licence or the Ministry has determined that the Operator is not in compliance with clause 5.6, the Ministry may, in its absolute discretion:

- (a) cancel that particular Licence (in which case, clause 7.3 applies); or
- (b) allow a one-off extension of no longer than six (6) months for the Operator to meet the Implementation Requirement or remedy the failure, as relevant.

5.8. Ministry will notify decisions

The Ministry will promptly provide written notice to the Operator of whether or not it is satisfied that the Implementation Requirement has been met and any determination made in relation to clause 5.6, and any decision under clause 5.7 from time to time. Written notice from the Ministry that the Implementation Requirement has not been met is conclusive in the absence of manifest error.

6. Amendment or Replacement of Licences

6.1. Ministry may amend Licences for interference issue

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

- (a) attempts have been made by the relevant parties (on a formal or informal basis) or under Part 12 of the Act, and these have failed to satisfactorily resolve the issue; or
- (b) the matter is urgent and critical to ensure the proper functioning of the relevant and adjacent bands and/or the radio spectrum resource generally.

6.2. Ministry may amend or replace Licences for better efficiency

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

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

6.3. Operator must cooperate in amendment process

Following a written request from the Ministry (attaching the notice in the prescribed form in accordance with section 57B of the Act) to modify a Licence in accordance with clauses 6.1 or 6.2:

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

7. Cancellation of Licence and Termination of Agreement

7.1. Operator may cancel Licence

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

7.2. Ministry may cancel for reasons of national security

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

7.3. Ministry may cancel Licence where default

If an event of default under clause 7.4 occurs or the Ministry decides to cancel a Licence in accordance with clause 5.7(a), then each of the following applies:

- (a) the Ministry may take immediate steps to cancel one or more Licences in accordance with the Act and give written notice of termination of this agreement (as it relates to that cancelled Licence), with effect from a date not earlier than 20 Working Days after the date of the notice;
- (b) the Ministry must make reasonable efforts to discuss alternative options available to the Operator which might enable the Operator to continue to provide services utilising the Licences and in existence at the date of cancellation (such as applying for a different licence);
- (c) the Operator must do all things and sign all documents reasonably required to cancel the Licence (including as may be necessary to modify Schedule 1 to reflect the cancellation);
- (d) the Operator irrevocably appoints the Ministry as its attorney for the purpose of cancelling the Licence on its behalf and authorises the Ministry to effect the cancellation in the name of the Operator (including granting all necessary rights to do such act).

7.4. Events of default

The following are events of default:

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

7.5. Effect of cancellation of Licence on agreement

Upon cancellation of a Licence:

- (a) this agreement is deemed to be terminated in respect of that Licence with effect from the date of cancellation, provided that cancellation of a Licence and termination of this agreement in respect of that Licence is without prejudice to the rights and obligations that accrued prior to the date of cancellation and termination (for these purposes, the Operator must do all things and sign all documents reasonably required by the Ministry to modify Schedule 1 to reflect the cancellation);

- (b) this agreement continues in full force and effect in respect of any Licences that have not expired or been cancelled; and
- (c) the Operator is not entitled to any refund (partial or otherwise) of any amount paid by the Operator in respect of the Licence, including (without limit) any amount on account of the Resource Charge.

Unless the Ministry expressly permits otherwise in writing, a stand down period of six (6) calendar months will apply from the date the Licence is cancelled before the Operator can apply for a new Licence (in relation to a Licence Area the same or materially overlapping the Licence Area of the cancelled Licence).

8. Remedies

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

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

8.2. Operator must remedy breach of clauses 4, 5 or 6

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

8.3. Operator indemnifies Ministry for breach of clause 4, 5 or 6

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

9. Crown's Caveatable Interest

9.1. Crown may lodge caveat

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

9.2. Ministry consents to certain dealing

The Ministry will consent as caveator to any dealing giving effect to a transaction permitted under clause 4.5.

10. Access, Records and Reporting

10.1. Operator will grant access

The Operator must ensure that the Ministry's representatives (including those exercising the Ministry's powers under the Act) are granted at all reasonable times entry to any place, site, premises or building (including access to equipment installations) for the purpose of assessing and ensuring compliance with the Licences and this agreement.

10.2. The Operator must maintain records

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

10.3. 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 a Licence or on any matter relating to the Operator's provision of services (utilising a Licence) that is specified in the notice. 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.

11. General

11.1. Operator has acquired Licences on own judgement

The Operator acknowledges that it has acquired the Licences and entered into this agreement 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.

11.2. Limitation of liability

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

11.3. No amendment or assignment

No amendment to this agreement or a Licence will be effective unless it is in writing and signed by the parties. The Operator may not assign any rights or obligations under this agreement to any third party without the express written consent of the Ministry.

11.4. No waiver

No party will be deemed to have waived any rights under this agreement or a Licence 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 or a Licence 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 or a Licence.

11.5. Severability

Any unlawful or voidable provision in this agreement or a Licence 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.

11.6. 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.

11.7. 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.

11.8. 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.

12. Definitions and Interpretation

12.1. Definitions

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

“Acquisition Limit”	has the meaning in clause 4.1;
“Act”	means the Radiocommunications Act 1989, as amended from time to time;
“Associate”	has the meaning in clause 12.2 and 12.3, and “Association” has a corresponding meaning;
“Business”	means a business that relates to or includes (in whole or in part) the holding or use of radio frequency spectrum for the provision of telecommunications services or services to the telecommunications industry, or broadband or similar connectivity services;
“Controlling Interest”	means: <ul style="list-style-type: none">(a) in relation to any spectrum licence, an interest which results in the direct or indirect control of any radio frequency spectrum the subject of that spectrum licence, and includes a right to transmit under a spectrum licence; and(b) in relation to any management right, an interest which results in the direct or indirect control of any radio frequency spectrum the subject of that management right, and includes interests by virtue of the creation or transfer of any Registered or unregistered licences of the frequencies to which the Management Rights relate;
“Implementation Requirement”	means the implementation requirement referred to in clause 5.1 and determined by the Ministry in accordance with clause 5.2;
“Licence”	means a Registered spectrum licence described in Schedule 1 (as it may be updated from time to time in accordance with this agreement), and shall also include each other Registered spectrum licence the Operator holds in the 3.30-3.34GHz (at the relevant time) but which is not included in Schedule 1 (e.g., because it is subject to a different licence agreement between the Operator and the Ministry);

“Licenced Area”	<p>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:</p> <p>(a) a right to transmit; or</p> <p>(b) a right to have no harmful interference from co-channel and adjacent channel emissions;</p>
“Licence Fees”	<p>means the annual administration fees payable under the Act (including regulations made under the Act) for the Licences, and any replacement or other fees or charges required to be paid under the Act for one or more of the Licences;</p>
“Ministry”	<p>includes any successor to the Ministry, including as the manager of the radio spectrum frequency band of 3.30-3.34GHz;</p>
“Management Rights”	<p>means a Registered management right (in any frequency range);</p>
“Qualifying Service”	<p>means a non-national, fixed wireless access, point-to-multipoint service providing broadband access (where these terms shall have their industry understood meanings, consistent with the ITU’s definitions), but a non-public broadband service such as a private network (commercial or personal) shall not be considered a Qualifying Service under this agreement;</p>
“Registered”	<p>means recorded on the Register of Radio Frequencies established under section 5 of the Act;</p>
“Related Body Corporate”	<p>A body corporate is related to another body corporate if:</p> <p>(a) the other body corporate is its holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or</p> <p>(b) at least 20% of its issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other body corporate and bodies corporate related to that other body corporate (whether directly or indirectly, but other than in a fiduciary capacity); or</p> <p>(c) at least 20% of the issued shares of each of them, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by shareholders or members of the other (whether directly or indirectly, but other than solely in a fiduciary capacity); or</p> <p>(d) the businesses of the bodies corporate have been so carried on that the separate business of each body corporate, or a substantial part of it, is not readily identifiable; or</p>

(e) there is another body corporate to which both bodies corporate are related;

“Resource Charge” means the resource charge for the Licences calculated in accordance with clause 2.1, as may be amended in accordance with this agreement;

“Statutory Declaration” means a statutory declaration made by the Operator or a person on behalf of the Operator that meets the requirements of the Oaths and Declarations Act 1957, in the form attached as Appendix 1;

“Territorial Local Authority area” or “TLA area” means the geographic areas of territorial local authorities from time to time specified under the Local Government Act 2002 (including any Act that, with or without modification, replaces or corresponds to that enactment);

“Working Day” means between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a public holiday within the meaning of section 44 of the Holidays Act 2003 (including, in relation to section 44(1)(k), Wellington Anniversary Day), or is the 27th, 28th or 29th of December 2023 in a year.

12.2. Persons who are Associates

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

- (a) person A is a body corporate, and person B is:
 - (i) a director of that body corporate; or
 - (ii) a Related Body Corporate of that body corporate; or
 - (iii) a director of a Related Body Corporate of that body corporate; or
- (b) person A is in the same immediate family as person B (including a spouse, civil union partner, de facto partner, child (including step-child), or parent (including step-parent) or sibling (including step-siblings) of person B); or
- (c) person A is a nominee or trustee for person B; or
- (d) person A is a partner of person B in terms of the Partnership Act 1908 or the Limited Partnerships Act 2008; or
- (e) person A is a director of a body corporate, or person A holds any voting power in the body corporate, and person A and person B are parties to an Agreement relating to:
 - (i) the control of that body corporate; or
 - (ii) at least 20% of the voting power in that body corporate; or
- (f) person A holds or controls directly or indirectly at least 20% of the voting power, or at least 20% of the issued shares, in person B; or

- (g) person B (or a director, employee or other Associate of person B) is the trustee of a trust acting in that capacity and person A is a settlor, beneficiary, or trustee, of that trust; or
- (h) person A is a person who, in making a decision or exercising a power materially affecting a Business, is accustomed, or under an obligation, or proposes or is likely (in the Ministry's sole opinion), to act in accordance with the directions or instructions or wishes of person B; or
- (i) person A and person B are acting, or propose or are likely to act (in the Ministry's sole opinion), jointly or in concert in relation to a Business; or
- (j) person A (being a person other than the Ministry) and person B are or were parties to an Agreement that entitles one of the persons to a substantial degree of influence, or the right to obtain a substantial degree of influence, over the Business of the other; or
- (k) person A is an Associate of another person that is an Associate of person B under this Agreement, including an Associate in a chain of Associates.

12.3. Persons who are not Associates

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

- (a) solely by virtue of Person A and Person B both being operators in the 3.30-3.34GHZ band;
- (b) solely by virtue of an Agreement on a standalone basis and on arm's length commercial terms to:
 - (i) share content, sites or technical infrastructure;
 - (ii) purchase and/or install technical infrastructure;
 - (iii) grant access to transmitter sites; or
 - (iv) maintain (but not operate) technical infrastructure.

12.4. Construction

In this 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 – STATUTORY DECLARATION

STATUTORY DECLARATION IN ACCORDANCE WITH THE LICENCE AGREEMENT (FOR LICENCES WITHIN 3.30-3.34GHZ NON-NATIONAL SPECTRUM)

I, [name], [position] of [name], [address], do solemnly and sincerely declare that:

1. I am a [position] of [Operator Name] (the “[Company]”) and authorised by [the Company] to make this declaration on its behalf.
2. In accordance with the Licence Agreement (for licences within 3.30-3.34GHz Non-national Spectrum) between the Sovereign in right of New Zealand and the Company dated [insert date] (the “agreement”), the Company:
 - (a) has met the Implementation Requirement (as this term is defined in the agreement) in relation to the spectrum licence [register number] (the “Licence”) as at the date of this declaration;
 - (b) confirms that the installations and services supported by the Licence are consistent with technical parameters included in or referred to in the Licence, or which otherwise apply to the Licence.

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

Signature:

Declared at [location] this [XX] day of [month] 20[XX].

[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].