



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



3.5 GHz Management Rights Agreement with [Purchaser name]

July 2020

Document Control

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1.0	10 February 2020	MBIE DRAFT RELEASE
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PREAMBLE

In December 2018, the Government agreed that the frequency range between 3410-3800 MHz (known as the '3.5 GHz band') will be used to provide 5G services. Rights for national networks will be allocated as management rights, by auction, for a term of up to 20 years. Rights would begin in November 2022, once existing management rights in the 3.5 GHz band expire on 31 October 2022.

In July 2019, the Ministry of Business, Innovation & Employment released a discussion document seeking feedback on technical arrangements of the 3.5 GHz band. This document set out the proposed rules and the technical requirements for operating in the 3.5 GHz band once new management rights begin in November 2022.

Feedback received through this consultation indicated interest in accessing spectrum within the 3.5 GHz band prior to November 2022. Spectrum was identified in the upper portion of the 3.5 GHz band (3 590 MHz – 3 800 MHz) that could be made available for a limited period between mid-2020 and up to 31 October 2022.

In December 2019, the Minister of Broadcasting, Communications and Digital Media announced the Government would allocate short-term management rights in 3.5 GHz band for 5G. The decision to enable early access to this spectrum is intended to allow the telecommunications industry to bring forward their development and deployment of 5G services, rather than waiting until long-term rights are available in November 2022.

The Government confirmed the basis for the short-term allocation of the 3.5 GHz band as follows:

- Spectrum rights be allocated as national management rights for a term beginning mid-2020 until 31 October 2022.
- These national rights will be allocated via a simplified Combinatorial Clock Auction.
- Spectrum will be allocated in 10 MHz lot sizes, with 16 lots total available covering frequency ranges between (3 590 – 3 750 MHz) at a reserve price of \$250,000 per lot.
- An initial acquisition limit of 40 MHz to any one network operator. The acquisition limit may be raised at the discretion of the Auction Manager.
- Winning bidders must use 3.5 GHz rights to implement international 5G standards (3GPP) and synchronise with other users of early access rights.
- Rights purchased at auction cannot be traded without MBIE approval for the duration of the management rights.
- Successful bidders will be required to return to the Crown existing management rights they hold elsewhere in the 3.5 GHz band to maximise the efficient use of spectrum.
- Minimal conditions will be imposed to reflect the short duration of the rights and that there is no guarantee of long-term access to spectrum.

In February 2020, a package of information was released including an auction catalogue, management rights agreement and associated documentation to implement the government decisions and commence the auction for allocation of spectrum between 3 590 and 3 750 MHz.

The Crown acknowledges that the quantity of spectrum available to a mobile service provider is linked to the quality and capacity of service able to be offered on their network. Consequently, the spectrum allocation process has the potential to determine the future shape of the mobile communications market which has implications in terms of the Commerce Act 1986. Clearance or authorisation from the Commerce Commission may therefore be required before management rights are transferred under the Management Rights Agreement.

MANAGEMENT RIGHTS AGREEMENT

This Agreement dated the day of **July** 2020

BETWEEN **The Sovereign in Right of New Zealand**, acting by and through the Manager Radio Spectrum Policy and Planning, Infrastructure and Resource Markets Branch, Ministry of Business, Innovation and Employment, acting under the authority of the Chief Executive of the Ministry of Business, Innovation and Employment ("**Ministry**")

AND **[Name]** of [address] ("**Purchaser**")

BACKGROUND

- A The Ministry conducted an auction of short term management rights in part of a radio frequency band known as the 3.5 GHz band, in which the Purchaser was a provisionally successful bidder.
- B The auction rules require this Management Rights Agreement to be entered into by the Purchaser as a condition of settlement of the sale and purchase of lots in the auction. Its purpose is to implement Government policies on an on-going basis in regard to acquisition and usage of the short term management rights in the 3.5 GHz band.

AGREEMENT

In respect of the Management Rights identified in Schedule 1 that are the subject of this Management Rights Agreement and for the consideration referred to in this Management Rights Agreement, the Purchaser and the Ministry agree to comply with the terms and conditions in Schedule 2 (Terms and Conditions).

Signed for and on behalf of **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Manager Radio Spectrum Policy and Planning, Commerce, Consumers and Communications Branch, Ministry of Business, Innovation and Employment, acting under the authority of the Chief Executive of the Ministry of Business, Innovation and Employment ("**Ministry**").

Signature

Date

Signed for and on behalf of **[Name]** ("**Purchaser**")

Signature

Signature

Date

SCHEDULE 1 – DETAILS

[Note: This schedule lists all Lots for information purposes. When prepared for execution, only the Management Rights which are relevant to the specific signatories will be included in the Management Rights Agreement.]

Each lot comprises 10 MHz. The commencement date on the Management Rights is [1 July 2020] and will expire on 31 October 2022. The Management Rights will be available for use from the date of transfer.

The Management Rights will be subject to the conditions of Registered Management Right ID 463, the terms of this Management Rights Agreement and the technical requirements set out in Schedule 3.

The lot numbers refer to the lots purchased at the Auction. Each lot is generally described as follows:

Lot No.	Lower Boundary	Upper Boundary	Commencement Date	Expiry Date
1	3590 MHz	3600 MHz	1-July-2020	31-Oct-2022
2	3600 MHz	3610 MHz	1-July-2020	31-Oct-2022
3	3610 MHz	3620 MHz	1-July-2020	31-Oct-2022
4	3620 MHz	3630 MHz	1-July-2020	31-Oct-2022
5	3630 MHz	3640 MHz	1-July-2020	31-Oct-2022
6	3640 MHz	3650 MHz	1-July-2020	31-Oct-2022
7	3650 MHz	3660 MHz	1-July-2020	31-Oct-2022
8	3660 MHz	3670 MHz	1-July-2020	31-Oct-2022
9	3670 MHz	3680 MHz	1-July-2020	31-Oct-2022
10	3680 MHz	3690 MHz	1-July-2020	31-Oct-2022
11	3690 MHz	3700 MHz	1-July-2020	31-Oct-2022
12	3700 MHz	3710 MHz	1-July-2020	31-Oct-2022
13	3710 MHz	3720 MHz	1-July-2020	31-Oct-2022
14	3720 MHz	3730 MHz	1-July-2020	31-Oct-2022
15	3730 MHz	3740 MHz	1-July-2020	31-Oct-2022
16	3740 MHz	3750 MHz	1-July-2020	31-Oct-2022

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1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Management Rights Agreement, unless the context otherwise requires:

“3.5 GHz band”	means the band of radio spectrum within the frequency range 3 410 MHz to 3 800 MHz;
“5G”	All network infrastructure, associated equipment and handsets deployed in accordance with specifications for 5G in 3 rd Generation Partnership Project (3GPP) 38.101 series for user equipment and 38.104 series for base stations;
“Act”	means the Radiocommunications Act 1989;
“Agreement”	Includes an agreement, arrangement or understanding whether: <ul style="list-style-type: none"> (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”	has the meaning in clause 1.2;
“Auction”	means Auction 20, the early access 3.5 GHz band auction conducted on behalf of the Crown in 2020, in which the Purchaser was the provisionally successful bidder for the Management Rights;
“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”	means the Chief Executive of the Ministry of Business, Innovation and Employment from time to time and his or her delegate;
“Controlling Interest”	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;
“Early Access Spectrum”	means 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”	means management rights in the frequency range 3 410 MHz to 3 590 MHz held by the Purchaser and/or its Associates at 5pm on the closing date for bidder registration for the Auction;
“GST”	Goods and services tax within the meaning of the Goods and Services Tax Act 1985;
“Incumbent Licence”	means a licence that has been registered for use within the frequency range 3 590 MHz to 3 750 MHz and is described in Schedule 3 of the auction catalogue for the Auction;
“Management Rights”	means the management rights referred to in Schedule 1, and includes any management right or rights created by aggregation or transfer within the same frequency ranges as described in Schedule 1;
“Material Breach”	means any breach of this Management Rights Agreement and includes: <ul style="list-style-type: none"> (a) any breach that adversely impacts on the benefits the Crown may expect under this Management Rights Agreement; or (b) any default on payment that cannot be remedied within the specified time; or (c) a series of breaches of this Management Rights Agreement that together constitute a Material Breach;
“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: <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;

“Working Day”

means a 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 this Management Rights Agreement, 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), 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, 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:
 - (iii) relates directly or indirectly to the bidding strategy to be adopted by either or both of persons at the auction; or
 - (iv) 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.

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 this Management Rights Agreement if treating person A and person B as Associates is not necessary to meet the policy objectives of the acquisition limits applying to the Auction or the 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 this Management Rights Agreement:

- (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 this Management Rights 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 subclause headings in this Management Rights 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.

2. TERM OF THIS MANAGEMENT RIGHTS AGREEMENT

2.1 Term

The term of this Management Rights Agreement commences from the date of this Management Rights Agreement and expires on 31 October 2022, unless terminated earlier in accordance with this Management Rights Agreement.

2.2 No extension of the Management Rights

The granting of Management Rights under this Management Rights Agreement does not confer any right to be granted any further right following the expiry of this Management Rights Agreement. The Ministry intends to conduct a further auction for rights in the 3.5 GHz band to take effect following the expiry of this Management Rights Agreement.

3. PURCHASE AND SETTLEMENT

3.1 Settlement amount

- (a) The settlement amount is NZ\$ [xxxxx.xx], plus GST.
- (b) Payment must be made in New Zealand dollars.

3.2 Settlement

Settlement must be undertaken by full payment of the settlement amount.

3.3 Settlement on invoice

Settlement is due within 20 Working Days of the invoice date.

4. PROVISION OF THE MANAGEMENT RIGHT BY THE CROWN

The Management Rights set out in Schedule 1 will be transferred to the Purchaser within 20 Working Days of all of the following conditions being satisfied:

- (a) full payment of the settlement amount in accordance with clause 3; and
- (b) 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 the Purchaser has provided 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 and the Ministry has not notified the Purchaser that it considers clearance or authorisation is required; and
- (c) Existing 3.5 GHz Management Rights have been transferred to the Crown in accordance with clause 5; and
- (d) the Purchaser has submitted a notice of cancellation in respect of relevant licences under the Existing 3.5 GHz Management Rights in accordance with clause 5.2; and
- (e) the Purchaser has executed a power of attorney pursuant to clause 9.

5. EXISTING 3.5 GHZ MANAGEMENT RIGHTS TO BE TRANSFERRED TO THE CROWN

5.1 Purchaser to transfer Existing 3.5 GHz Management Rights to the Crown

- (a) If the Purchaser has Existing 3.5 GHz Management Rights, the Purchaser must transfer, or procure that its Associates transfer, to the Crown all Existing 3.5 GHz Management Rights before the Management Rights are transferred in accordance with clause 4 and clause 6.
- (b) The Purchaser must transfer Existing 3.5 GHz Management Rights to the Crown by submitting a notice of transfer (or procuring that a notice of transfer be submitted) in the form prescribed under the Radiocommunications Regulations 2001 to the Registrar of Radio Frequencies.

5.2 Existing licences on transfer of Existing 3.5 GHz Management Rights to the Crown

- (a) The Purchaser agrees to cancel its existing licences (or procure cancellation of its Associate's licences) that it holds under the Existing 3.5 GHz Management Rights at the date of transfer of the Management Rights. The Purchaser must submit a notice of cancellation in respect of each such licence in the form prescribed under the Radiocommunications Regulations 2001 to the Registrar of Radio Frequencies. The date from which the cancellation must apply is no later than 3 (three) months of the date on which the Existing 3.5 GHz Management Rights are transferred to the Crown (as per clause 5.1).
- (b) Any licences under the Existing 3.5 GHz Management Rights that are held by a third party (ie not the Purchaser or an Associate of the Purchaser) will continue to remain in force in accordance with their terms.

6. TRANSFERS AND CREATION OF INTERESTS BY THE PURCHASER

6.1 Transfers and creation of interests prohibited

- (a) The Purchaser must not, except as provided in clause 6.3, transfer, assign, or create, or purport to transfer, or assign or create, any Registered or unregistered interest in, or Controlling Interest in relation to, the Management Rights, in favour of any person other than the Purchaser itself or the Crown.
- (b) To avoid doubt, paragraph (a) does not prohibit the Purchaser from entering into any agreement for a transaction that is conditional on receiving the consent of the Chief Executive and that will not take effect until the consent of the Chief Executive is received.

6.2 Licences are interests

The interests referred to in clause 6.1 include the interests by virtue of the creation or transfer of any licences on frequencies to which the Management Rights relate.

6.3 Chief Executive may give consent

- (a) The Purchaser may, with the prior written consent of the Chief Executive, transfer, assign or create any Registered or unregistered interest in, or Controlling Interest in relation to, the Management Rights in favour of any person other than the Purchaser itself.
- (b) Consent under paragraph (a) must be applied for no later than 20 Working Days prior to the proposed date of the transaction.

6.4 Consent subject to conditions

If the Chief Executive's consent is sought under clause 6.3, the Purchaser must:

- (a) demonstrate to the satisfaction of the Chief Executive that the Purchaser has complied with the terms of this Management Rights Agreement;
- (b) confirm that the proposed transaction has been given clearance, or an authorisation has been granted, in accordance with Part 5 of the Commerce Act 1986, or provide an explanation as to why the Purchaser does not consider that it is necessary to seek clearance or authorisation for the proposed transaction;
- (c) 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 an agreement containing equivalent terms to this Management Rights Agreement with the Crown;
- (d) ensure that the form of the transaction is acceptable to the Crown, and contains covenants to the same effect and with a term equal to the remaining term of this Management Rights Agreement, including the prohibition on transfers and creation of interests as set out in clause 6.1 and the retention of a Caveat on the Management Rights in favour of the Crown as set out in clause 10; and
- (e) undertake to complete all payment obligations (if any) relating to the Management Rights in the 3.5 GHz band for which consent under clause 6.3 is being sought.

7. REQUIREMENTS RELATING TO LICENCES

7.1 General requirements

The Purchaser may only create licences under the Management Rights for the purpose of providing a 5G service and must comply with the technical requirements set out in Schedule 3.

7.2 Incumbent licences

The Purchaser must not cancel, transfer, or modify the Incumbent Licences related to the Management Rights without the written permission of the Chief Executive.

7.3 Licence conditions and technical requirements

- (a) The Purchaser must ensure that any licences created and recorded on the Register of Radio Frequencies under section 48 of the Act specify that the rightholder must cooperate to manage and minimise interference issues with all adjacent rightholders and licensees. This includes, but is not limited to, rights and licences immediately adjacent to Early Access Spectrum.
- (b) The conditions specified in the Management Rights (as described in Schedule 3) apply to licences under the Management Rights in accordance with section 101 of the Act.

8. TERMINATION OF MANAGEMENT RIGHTS AGREEMENT

8.1 Termination for cause

The Ministry may terminate this Management Rights Agreement at any time by giving 10 Working Days' notice to the Purchaser, if the Purchaser:

- (a) commits a Material Breach of any of its obligations under this Management Rights Agreement and that breach is not capable of being remedied; or
- (b) fails to remedy any Material Breach of its obligations under clause 6 within the timeframes for remedy set out in clause 13.1(c) of this Management Rights Agreement.

8.2 Rights and obligations on termination

Termination of this Management Rights Agreement is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination. To avoid doubt, where this Management Rights Agreement is terminated in accordance with clause 8.1, the Purchaser is not entitled to any payment or compensation of any kind from the Ministry for the Management Rights.

9. TRANSFER OBLIGATION AND POWER OF ATTORNEY

The Purchaser must execute a power of attorney irrevocably appointing the Chief Executive (or the Chief Executive's duly authorised delegate) as its attorney for the purpose of transferring the Management Rights to the Crown under section 42 of the Act if the Ministry terminates this Management Rights Agreement under clause 8.1.

10. CROWN'S CAVEATABLE INTEREST

10.1 Caveat lodged by Crown

The Purchaser agrees that, pursuant to section 89 of the Act, the Crown will lodge with the Registrar of Radio Frequencies a caveat over the Management Rights.

10.2 Effect of caveat

The caveat 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 with the consent of the Crown.

10.3 Duration of Caveat

Any caveat lodged under clause 10.1 will remain in force for the duration of the Management Rights.

10.4 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 6.3; or
- (b) for which the Chief Executive's consent under clause 6.3 is not required; and
- (c) to create or modify any spectrum licence under the Management Rights in accordance with this Management Rights Agreement, except for licences existing or created pursuant to clause 7.2.

11. DISPUTE RESOLUTION

11.1 Good faith

The parties must attempt to resolve any dispute or difference that may arise under or in connection with this Management Rights Agreement amicably and in good faith, referring the dispute to the parties' senior managers if necessary.

11.2 Inability to resolve

If the parties' senior managers are unable to resolve within 10 Working Days of it being referred to them, the parties must refer the dispute to mediation or another form of alternative dispute resolution agreed between the parties.

11.3 Mediation

If a dispute is referred to mediation, the mediation must be conducted by a single mediator appointed by the parties (or, if they cannot agree, appointed by the Chair of the Resolution Institute) and on the terms of the Resolution Institute standard mediation agreement (unless the parties agree otherwise). The parties must pay their own costs relating to any mediation or other form of alternative dispute resolution (unless they agree otherwise).

11.4 Contractual obligations

The parties must continue to perform their obligations under this Management Rights Agreement as far as possible as if no dispute had arisen pending final resolution of the dispute.

11.5 Urgent relief

Nothing in this clause 11 precludes either party from taking immediate steps to seek urgent relief before a New Zealand Court.

12. APPLICATION OF THE COMMERCE ACT 1986

12.1 Commerce Act clearance

None of the provisions of this Management Rights Agreement relating to the acquisition of the Management Rights 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 Purchaser 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.

This Management Rights Agreement will be automatically terminated and the Ministry may dispose of the relevant Management Rights as the Ministry sees fit if: (i) clearance or authorisation for the proposed acquisition is declined; or (ii) the Ministry notifies the Purchaser that it considers clearance or authorisation is required for the proposed acquisition and the Purchaser does not obtain clearance or authorisation.

12.2 No warranty

The Crown makes no warranty that a holding of Management Rights complies with section 47 of the Commerce Act 1986.

12.3 Ministry indemnified

The Purchaser indemnifies the Crown against any claim, liability, loss or expense (including legal fees on a solicitor and client basis) brought or threatened against, or incurred by the Crown in the event that the holding of Management Rights by the Purchaser breaches or is alleged to breach the Commerce Act 1986.

13. GENERAL

13.1 Purchaser's liability and indemnity

- (a) Other than in respect of any breach by the Purchaser of clauses 5, 6, or 7, neither party will have any liability to any other party (in contract, tort (including negligence) or breach of statutory duty or otherwise), for any indirect or consequential losses (including loss of profits, revenue, business or anticipated savings) arising out of or in connection with this Management Rights Agreement.
- (b) The parties agree that in respect of any breach by the Purchaser of clauses 5, 6 and 7, 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 6.1 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 which have been transferred, assigned or created without consent under clause 6.3.

13.2 No amendment

No variation to this Management Rights Agreement is effective unless it is in writing and signed by the parties.

13.3 No waiver

No party is deemed to have waived any rights under this Management Rights 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 Management Rights 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 Management Rights Agreement.

13.4 Severability

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

13.5 New Zealand law to apply

This Management Rights Agreement will be governed by and construed in accordance with New Zealand law.

13.6 Communications and notices

- (a) Any notice to be given under this Management Rights Agreement must be in writing and must be delivered or sent by registered post to the parties' respective

addresses as set out in clause 14.6(c) and clause 14.6(d), or if a written notice of change of address is given in accordance with this clause 14.6, then to the new address.

(b) Any notice will be deemed to be served on the date of delivery or the Working 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 Business, Innovation and Employment
PO Box 1473
WELLINGTON

Attention: Manager, Radio Spectrum Policy and Planning

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

[Name
Registered address]

SCHEDULE 3 –MANAGEMENT RIGHT CONDITIONS AND TECHNICAL REQUIREMENTS

The technical requirements are detailed below for operating in the Management Rights listed in Schedule 1. These Management Rights are envisioned for use by Time Division Duplex (TDD) systems. The Management Right holders must synchronise their transmissions to a specified frame structure and the start point of their frames must be aligned with Universal Time Coordinated (UTC) primary reference time clock (PRTC).

The Adjacent Frequency Emission Limits (AFEL) and Protection Limits for the equipment operating between 3 590 MHz – 3 800 MHz have been calculated using 3GPP standard TS 38.104. The unwanted emissions have been regulated by the absolute maximum allowable level in adjacent bands.

Technical requirements

1. Synchronisation Requirement

(a) Synchronisation frame structure

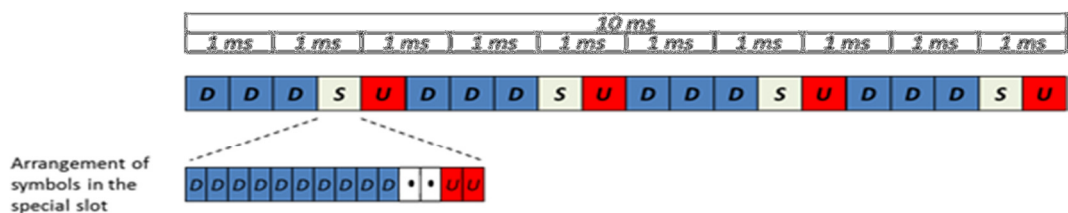
The frame structure for Early Access Spectrum uses terminologies specific to the 3GPP standard for defining the frame structure. Specifications for the frame structure are defined in Table 1 and Figure 1.

Table 1 Specifications for the frame structure required for Early Access Spectrum

Duration of a frame	10 ms
Reference Subcarrier Spacing	30 kHz (20 slots in one frame)
OFDM symbols in each slot	14
Periodicity of the DL-UL pattern	2.5ms
Number of consecutive full DL slots at the beginning of each pattern	3
Number of consecutive DL symbols in the beginning of the slot following the last full DL slot	10
Number of consecutive full UL slots at the end of each pattern	1
Number of consecutive UL symbols in the end of the slot preceding the first full UL slot	2
Number of guard period symbols	2

Using the parameters in Table 1, one TDD frame is constructed as shown in Figure 1.

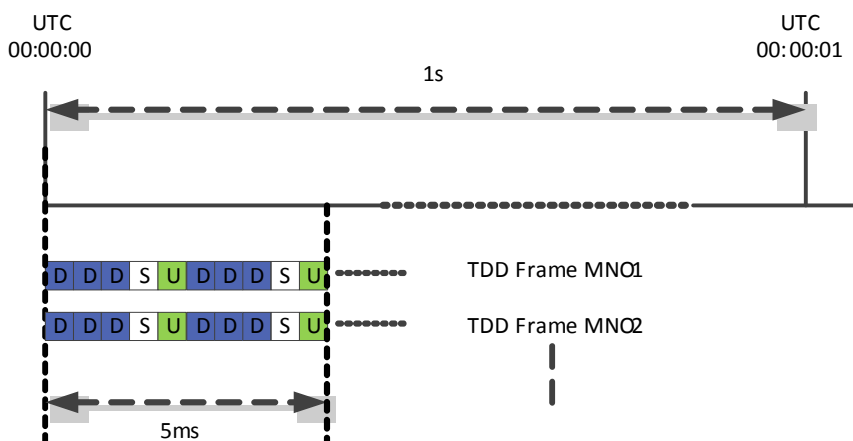
Figure 1 Frame structure for Early Access Spectrum



(b) Common phase clock reference and accuracy requirement

Right holders must synchronise their frame structure on a UTC primary reference time clock. The start point of the first timeslot in the frame must align with the UTC second with a time offset $T_{\text{offset}} = 0$ and an accuracy of $\leq \pm 1.5 \mu\text{s}$. The frequency accuracy must be within $\pm 50 \text{ppb}$. Figure 2 shows the concept of time alignment between two different Mobile Network Operators (MNO).

Figure 2 MNO 1 and 2's frame synchronisation on time



2. AFEL, Protection Limits and Power Floor

The AFEL, Protection Limits and Power Floor are specified in EIRP (effective isotropic radiated power) as required by the Radiocommunications Regulations 2001.

Limits relating to the AFEL and Protection Limits are based on the existing management rights and the unwanted emissions limits specified in 3GPP TS 38.104, and have been normalised to a bandwidth of 1 MHz.

(a) AFEL

The power of the unwanted emissions consists of out-of-band emissions and spurious emissions. The out-of-band emissions requirement for the base station (BS) transmitter is specified in terms of the Operating Band Unwanted Emissions.

- Operating band class: n78 (3300 – 3800 MHz)
- BS type: 1-C, 1-H and 1-O, Wide area BS category B
- The unit of power: dBW/MHz EIRP

For 5G Base Stations operating under passive antenna systems, antenna gain of 17 dBi is added as the EIRP requirement for AFEL.

$$\text{AFEL}_{\text{EIRP}} \text{ (dBW)} = \text{Basic Unwanted Emissions Limits (dBW)} + G_{\text{Ant}} \text{ (dBi)}$$

where $G_{\text{Ant}} = 17 \text{ dBi}$

The AFEL limits for each Management Right are listed in Table 2.

Table 2 AFEL limits for 3.5 GHz Early Access spectrum

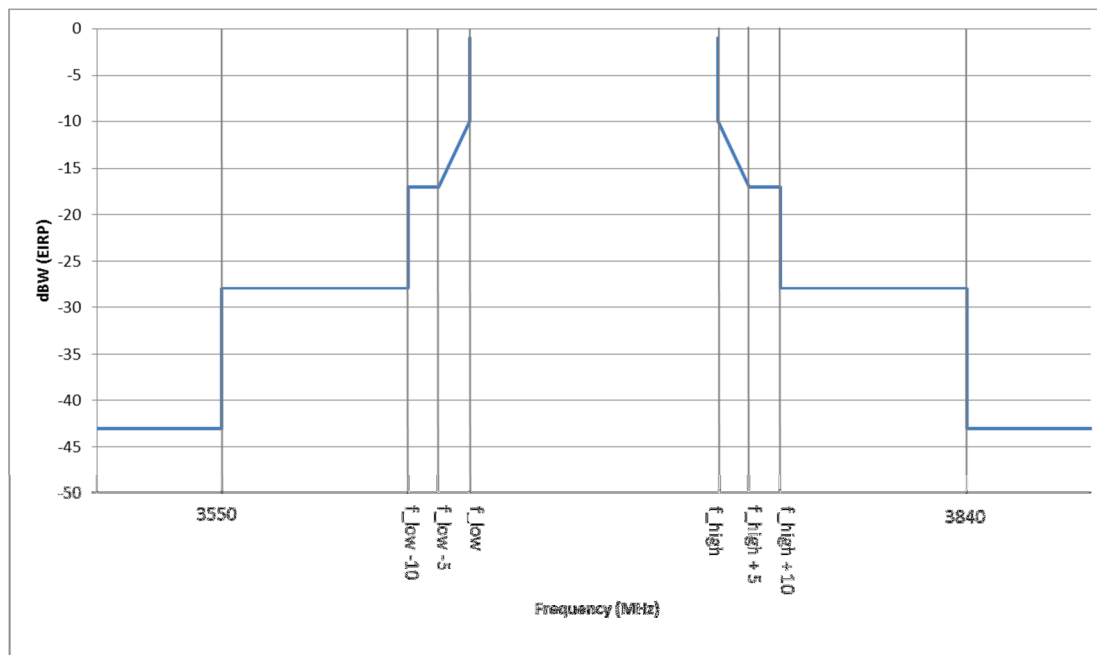
Frequency (MHz)	Maximum Level (dBW) E.I.R.P.
< 3550	-43
3550	-28
f_low – 10	-28
f_low – 10	-17
f_low – 5	-17
f_low	-10
f_high	-10
f_high + 5	-17
f_high + 10	-17
f_high + 10	-28
3840	-28
≥ 3840	-43

f_low: The lower edge frequency of the Management Right

f_high: The upper edge frequency of the Management Right

A graphic representation of the AFEL is shown in Figure 3.

Figure 3 AFEL for Early Access Spectrum



The Radiocommunications Regulations 2001 set EIRP limits based on passive antenna technology. However, for a 5G type base station using active antenna systems, the antenna gain may vary a few dBs. In 3GPP TS 38.104, the unwanted emissions limits for active antenna base stations are defined in Total Radiated Power (TRP).

The AFEL in TRP terms ($AFEL_{TRP}$) for active antenna BS is defined in the following formula:

$$AFEL_{TRP} \text{ (dBW)} = \text{Basic Unwanted Emissions Limits (dBW)} + 9 \text{ dB}$$

Within 10 Working Days after registering a spectrum licence under the Management Rights for a base station employing active antenna systems, the Management Right holder must provide the Chief Executive with a statutory declaration in the form set out in Annex 1 to provide evidence of compliance with the AFEL.

(b) Protection Limit

The protection limit for a management right is equal to the AFEL of adjacent management rights. Where multiple AFEL values exist at the same frequency, the highest value will be used to set the protection limit.

(c) Power Floor

The Power Floor limit is -50 dBW EIRP across the Management Right and is normalised to a bandwidth of 1 MHz.

ANNEX 1 –STATUTORY DECLARATION FOR BEAM FORMING AND ACTIVE ANTENNA SYSTEMS**Statutory Declaration**

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

1. I am employed and authorised by **[Full legal name of Management Right holder]** to make this Statutory Declaration on its behalf.

2. I declare that:

- a. the base station type in licences ID: **[List Licence IDs]** comply with active antenna-type base stations defined in 3GPP TS 38.104.
- b. the unwanted emissions level in licences ID: **[List Licence IDs]** comply with the unwanted emissions limits defined in 3GPP TS 38.104.

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

Signed by authorised signatory:

Declared at **[Place]** this **[]** day of **[Month] [Year]**.

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

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