



BERMUDA  
**REGULATORY  
AUTHORITY**

Fairness ~ Innovation ~ Integrity

**Request for Applications  
for the Assignment of  
Designated HDS-1 Frequencies in the  
850 MHz, 700 MHz and 2100 MHz Bands**

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## Request for Applications for the Assignment of Designated Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands

### 1. STATEMENT OF PURPOSE

1. The Authority has adopted, and will implement the provisions of, this Request for Applications (“RFA”),<sup>1</sup> together with its Annexes, in accordance with the Public Interest Factors set out in ECA Section 5(1), the spectrum management objectives established in ECA Section 37(1), the principal functions of the Authority provided in RAA Section 12 and the general policy for HDS assignment set out in Section 3.3.1 of the Spectrum Policy Statement issued by the Minister responsible for electronic communications on 22 September 2014. The RFA establishes the procedures, criteria and conditions for the award of individual spectrum licences for the Lots of HDS frequencies designated below.
2. The RFA invites applications for designated Lots of high demand spectrum within the 850 MHz, 700 MHz and 2100 MHz (“AWS”) bands in accordance with ECA Section 36(2), the Minister's Spectrum Policy Statement and the Authority's General Determination following the consultation. The HDS frequencies listed in Table 1 below will be made available for assignment in this first phase of the overall HDS assignment process (referenced herein as “HDS-1”) on the basis of a hybrid first-come first-served (“FCFS”)/Comparative Selection assignment process, in accordance with the procedures set forth in the RFA:

**Table 1: Designated HDS-1 Frequencies**

LOT	BLOCK(S)	FREQUENCY RANGE	BANDWIDTH
<b>700 MHz Band</b>			
L-1	Lower Band B Lower Band C	704-710 / 734-740 MHz 710-716 / 740-746 MHz	2 x 12 MHz
L-2	Upper Band C	746-757 / 776-787 MHz	2 x 11 MHz
<b>850 MHz Band</b>			
L-3	B	880.0-890.0 / 835.0-845.0 MHz	2 x 10 MHz
	B'	891.5-894.0 / 846.5-849.0 MHz	2 x 2.5 MHz
<b>AWS Band</b>			
L-4	E	2140 / 2155 MHz	2 x 15 MHz
	F	1740 / 1755 MHz	

3. Each Applicant may apply for one or more of the HDS-1 Lots identified in Table 1 and may apply for multiple combinations of HDS-1 Lots in the alternative. Each individual

<sup>1</sup> Capitalized terms used in the RFA shall have the meaning referred to in Annex A to the RFA, and the RFA shall be interpreted in accordance with the general interpretation provisions set out in Annex A.

**Issue Date: 13 May 2016**

**Version: Advance Copy for Information Purposes**

HDS-1 Lot or combination of Lots requested by an Applicant shall be considered an HDS-1 Package. An Applicant may not be awarded more than one of the HDS-1 Packages requested. Each alternative HDS-1 Package that is requested by an Applicant shall be evaluated independently, on its own merits, in accordance with the criteria and procedures established by the RFA. If for any reason an HDS-1 Lot is not assigned through the grant of an HDS-1 Licence in accordance with the procedures set out in the RFA at the conclusion of HDS-1, it will be considered for assignment at a later date.

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## **PART A: OVERVIEW OF PROCESS AND TIMETABLE**

### **2. OVERVIEW OF PROCESS STEPS**

4. An overview of the process for the assignment of Designated HDS-1 Frequencies is set out for informational purposes below. Each step is described in detail in Part C below. In the event of any inconsistency or conflict between the general descriptions provided in this Part A and the detailed requirements set out in Part C, the latter shall prevail. The process and timetable are also subject to the Authority's discretion to amend, suspend, postpone or abandon the process, as set out in Section 9 below.

#### **2.1 REGISTRATION STAGE**

5. ICOL holders wishing to participate in HDS-1 shall provide the Required Registration Documentation (including a complete a Registration Form, a Request for HDS-1 Assignment and the Eligibility Documentation).
6. Among other things, the Registrant will be required to declare that it accepts and will commit to fulfil the applicable Mandatory Licence Conditions that are set forth in Part C of the RFA, along with the other Eligibility Requirements set out in section 13.4 of the RFA.
7. A Registrant's Request for HDS-1 Assignment must specify each alternative HDS-1 Package for which it intends to apply. Alternative Requests for HDS-1 Packages need not be mutually exclusive, i.e. they may have some of the same individual HDS-1 Lots in common.
8. Following its review of the Required Registration Documentation, the Authority will notify those Registrants that it has concluded are Approved Registrants, in accordance with Section 13.9 of the RFA.
9. The Authority will assess the Requests for HDS-1 Assignment received and determine whether the FCFS Process should apply in accordance with Section 13.10.1 of the RFA.

#### **2.2 APPLICATION STAGE**

10. Where the Authority has determined that the FCFS Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Applicant must provide the Baseline Application, including the specified information concerning its Financial Position, Technical Capability and Experience, Technical Solution and Business Plan.
11. Where the Authority has determined that the Comparative Selection Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Applicant must provide the Baseline Application, including a Technical Solution and Business Plan corresponding to each Alternative Request, and is also invited to propose Optional Commitments.

## 2.3 SCORING AND SELECTION STAGE

### 2.3.1 *FCFS Process*

12. Where there is no Contention and the Authority has determined that the FCFS Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Authority may assign the relevant spectrum to the sole Applicant following its assessment whether:
  - (a) the Applicant's Baseline Application is complete in respect of each specified HDS-1 Lot (or HDS-1 Package); and
  - (b) the Applicant has achieved a Passing Score in relation to the Baseline Application for the relevant HDS-1 Lot (or HDS-1 Package).
13. If the sole Applicant achieves a Passing Score, the Applicant will be selected as the Successful HDS-1 Applicant for that particular HDS-1 Lot (or HDS-1 Package), provided that all other requirements and conditions of the RFA have been met by the Applicant, and the Authority may proceed to issue the applicable HDS-1 Licence, provided that the required Performance Bond has been put in place and the Successful Applicant Service Fee has been paid by the Applicant.

### 2.3.2 *Comparative Selection Process*

14. Where the Authority has determined that the Comparative Selection Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Authority will appoint an expert Advisory Panel to assist it with the overall evaluation process. The evaluation will be carried out in accordance with Section 14.3 of the RFA.

## 2.4 LICENCE AWARD STAGE

15. The Authority will issue a Final Decision confirming the Successful HDS-1 Applicants (if any) for each HDS-1 Lot and/or HDS-1 Package.
16. The Authority will stipulate a deadline by which payment of a one-time Successful Applicant Service Fee (or such other amount as may be set by regulation in respect of this HDS-1 process) must be made for any and all HDS-1 frequencies that are awarded to the Applicant, irrespective of the number of HDS-1 Lots for which an individual Applicant is selected.
17. Following publication of the HDS-1 Final Decision (or Decisions), and after confirming that the required Performance Bond has been put in place and the Successful Applicant Service Fee has been paid by the Applicant, the Authority will issue an HDS-1 Licence to each Successful HDS-1 Applicant (for MNOs, by means of modifying its Mobile Licence) incorporating the relevant Mandatory Licence Conditions and any Optional Commitments proposed by the Successful HDS-1 Applicant and accepted by the Authority.
18. The ICOL of any Successful HDS-1 Applicant shall also be modified to incorporate the relevant Mandatory Licence Conditions and any Optional Commitments proposed by the successful HDS-1 Applicant and accepted by the Authority, as the Authority deems appropriate.



**3. TIMETABLE**

19. The timetable for the assignment of Designated HDS-1 Frequencies, including milestones and key dates, is set out below. Times referred to are local times in Bermuda (Atlantic Time Zone). The dates are subject to change at the sole discretion of the Authority.

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Table 2: Timetable

Date <sup>2</sup>	Item
X = RFA Launch Date	<ul style="list-style-type: none"> <li>RFA is issued and availability announced.</li> </ul>
X + 4 calendar days	<ul style="list-style-type: none"> <li>Deadline for requests for clarification of Required Registration Documentation.</li> </ul>
4:30pm Atlantic Time on (X + 7 calendar days)	<ul style="list-style-type: none"> <li>Deadline for submission of Required Registration Documentation; and</li> <li>Deadline for clarification requests on RFA and/or Required Documentation.</li> </ul>
X + 9 calendar days	<ul style="list-style-type: none"> <li>Authority notifies Approved Registrants who may proceed to Application stage; and</li> <li>Authority confirms whether FCFS Process or Comparative Selection Process applies based on lack of Contention for available spectrum identified in Requests for HDS-1 Assignments received.</li> </ul>
X + 12 calendar days	<ul style="list-style-type: none"> <li>End date for Authority's responses to requests for clarification.</li> </ul>
4:30pm Atlantic Time on (X + 45 calendar days)	<ul style="list-style-type: none"> <li>Deadline for submission of Application.</li> </ul>
X + 50 calendar days	<ul style="list-style-type: none"> <li>Deadline for publication of statement appointing Advisory Panel on Authority's Website (as applicable).</li> </ul>
X + 55 calendar days	<ul style="list-style-type: none"> <li>Where there is no Contention, Authority announces its decision on the Successful HDS-1 Applicants (if any) following review of Applications, and may proceed to award HDS-1 Licences for the relevant HDS-1 Lots (provided Performance Bond is in place and Successful Applicant Licence Fee has been paid)..</li> </ul>
X = 100 calendar days	<ul style="list-style-type: none"> <li>Where there is Contention, Authority announces its decision on the Successful HDS-1 Applicants (if any) following Recommendation from Advisory Panel and review of Applications by the Authority.</li> </ul>
By X + 115 calendar days	<ul style="list-style-type: none"> <li>Formal award of HDS-1 Licences to Successful HDS-1 Applicants and modification of ICOLs, as the</li> </ul>

<sup>2</sup> Any deadline that falls on a day that is not a Working Day shall be interpreted as falling on the following Working Day.

	Authority deems appropriate (provided Performance Bond is in place and Successful Applicant Service Fee has been paid).
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## **PART B: GENERAL PROVISIONS APPLICABLE TO PARTICIPANTS**

### **4. CONDUCT OF PARTICIPANTS**

20. Participants shall meet the obligations set out in this Part B, commit to the Part C obligations and otherwise comply at all times with the terms and conditions of the RFA.

#### **4.1 PROVISION OF INFORMATION TO THE AUTHORITY**

21. At all times during HDS-1, Participants shall:

- (a) provide the Authority with complete and accurate information; and
- (b) provide timely responses to any formal documents or other requests for information issued by the Authority.

#### **4.2 CHANGES TO INFORMATION PROVIDED**

22. Participants must notify the Authority of any change to the information provided and/or any representation made in the Required Documentation that occurs at any time after submission of the Required Registration Documentation, during HDS-1 and up to the award of any HDS-1 Licence (including but not limited to proposed changes of Control of the Participant, Control of the Controlling Interest Holder of the Participant and/or changes to the composition of the board of directors of the Participant, or its voting provisions), or any other matter which may affect the validity of any Declarations made or any proposals made in the Application, including any Optional Commitments, as soon as possible and in any event no later than 3 Working Days after the date the Participant knows of such change or ought to have known about such change.

23. If, following the receipt of such information, the Authority has reason to believe that the new information is material and could affect the outcome of HDS-1, the Authority may suspend HDS-1 pending review in accordance with Section 9 of the RFA or proceed in accordance with section 4.6 below.

#### **4.3 COMMUNICATIONS WITH THE AUTHORITY, THE AUTHORITY'S AGENTS AND ADVISORS, THE ADVISORY PANEL AND THE MINISTER**

24. Unless expressly stated otherwise in the RFA or by the Authority, if a Participant wishes to communicate with the Authority during HDS-1 in respect of any matter relating to HDS-1, up to and including issuance of the Authority's Final Decision pursuant to paragraph 138 of the RFA, any such communication shall be in writing and must be sent by email to [hds-1@rab.bm](mailto:hds-1@rab.bm) or in hard copy to the following address:

Michael Wells  
Chief Technical Officer Regulatory Authority  
Regulatory Authority  
3rd Floor Cumberland House 1 Victoria Street  
Hamilton HM11  
Bermuda

25. There is no obligation on the Authority to confirm receipt of communications.

26. Participants are prohibited from communicating with any of the Authority's Agents and Advisors and the Advisory Panel in relation to HDS-1 at any time during the HDS-1 process. Any such communication may be grounds for disqualification in accordance with Section 4.6 below. In addition to the foregoing prohibition against communicating with the Authority's Agents and Advisors and the Advisory Panel, Participants acknowledge that any communication or correspondence with the Minister, Ministry staff or the Department of Telecommunications relating to HDS-1 during the HDS-1 process that is inappropriate may constitute grounds for disqualification in accordance with Section 4.6 below.

#### 4.4 PROHIBITED BEHAVIOUR

27. Each Participant shall not, and shall ensure that its Controlling Interest Holders and Affiliates shall not, at any time:

- (a) collude or attempt to collude with another person or entity for the purposes of influencing the outcome of HDS-1, or in any manner likely to affect the outcome of HDS-1;
- (b) violate any applicable anti-bribery, competition or corruption law of Bermuda or otherwise offer, promise or give any overture, gift, commission payment or any other form of inducement, whether financial or otherwise, direct or indirect, to any of the following persons, in an effort to induce that person to perform improperly a function or activity relating to HDS-1 or gain an advantage in HDS-1:
  - (i) another Participant, Controlling Interest Holder or Affiliate;
  - (ii) the Authority, its staff, contractors, Agents or professional Advisors;
  - (iii) the Advisory Panel; or
  - (iv) any officer or official of the Government, or any professional advisor to the Government on any matter related to HDS-1;
- (c) disclose, or attempt to disclose, or persuade another person to disclose, Confidential Information whether directly or indirectly, to any person except where the disclosure is:
  - (i) to a professional advisor for the purpose of and to the extent necessary to prepare the Required Documentation and subject to such advisor entering into a non-disclosure agreement;
  - (ii) to the Authority;
  - (iii) otherwise as compelled by the laws of Bermuda; or
  - (iv) to a provider of finance for the purpose of raising finance for an Application.

28. Any breach or attempt to breach these clauses shall constitute grounds for disqualification in accordance with Section 4.6 below.

**4.5 BREACH OF TERMS AND CONDITIONS OF THE RFA**

29. A Participant must notify the Authority as soon as is reasonably practicable if it has evidence or has reasonable grounds to suspect that:
- (a) a Participant, its Controlling Interest Holder or Affiliates have or may have breached any of the terms and conditions of the RFA; or
  - (b) any of the Participant's, its Controlling Interest Holder's or its Affiliate's directors or employees have or may have acted in a manner that is in contradiction any of the terms and conditions of the RFA.
30. In such an event, the Participant must supply to the Authority such evidence and/or a statement showing reasonable grounds of suspicion. If the Participant fails to do so, or the evidence or grounds prove to be unreasonable and/or obtained by illegal means in contradiction of public order, such Participant may be subject to disqualification by the Authority in accordance with Section 4.6 below.

**4.6 DISQUALIFICATION**

31. Participants will be subject to disqualification by the Authority if, in the opinion of the Authority, the Participant, its Controlling Interest Holders, its Affiliates or any of their directors or employees have breached any of the terms and conditions of the RFA, including but not limited to the following:
- (a) the Participant fails to commit to meeting the Mandatory Licence Conditions set out in Part C;
  - (b) there is a breach of the undertakings contained in the letter executed by an Authorized Person as part of the Eligibility Documentation;
  - (c) the Participant fails to provide all of the Required Documentation in compliance with Sections 13 and 14 below, subject to the right of the Authority to waive any minor irregularities and request clarification of Required Documentation in accordance with Section 12.3 below;
  - (d) the Applicant fails to pay the Successful Applicant Service Fee before or on the date stipulated by the Authority;
  - (e) the Participant fails to comply with the formality requirements for Required Documentation set out in Section 12.1 below;
  - (f) the Applicant fails to meet the Passing Score for its Baseline Application;
  - (g) the Applicant communicates or attempts to communicate with the Authority other than as provided for in Section 4.3 above;
  - (h) the Applicant communicates or attempts to communicate with the Authority's Advisors, Agents or the Advisory Panel in violation of Section 4.3 above;
  - (i) the Applicant communicates inappropriately with the Minister, the Ministry staff or the Department of Telecommunications in relation to the HDS-1 process in breach of Section 4.3 above; or
  - (j) a successful Applicant fails to put in place the required Performance Bond.

32. Participants will also be subject to disqualification by the Authority if, in the opinion of the Authority:
- (a) the Participant has provided false and/or misleading information; or
  - (b) there is a material change to the information and/or any representation made in the Required Documentation, whether or not provided to the Authority pursuant to Section 4.2 above; or
  - (c) the Participant, its Controlling Interest Holders or its Affiliates engage in any other conduct that has a material adverse effect on the conduct of HDS-1.
33. Where in the opinion of the Authority, in accordance with paragraphs 31 and 32 above, a Participant should be disqualified, the Authority will first write to that Participant explaining the basis for the proposed disqualification and allow the Participant 5 Working Days to respond before making its final decision. While considering whether to disqualify a Participant, the Authority may suspend HDS-1 in accordance with Section 9 below.

#### **4.7 CONFLICTS OF INTEREST / SOLICITATION OF ADVICE**

34. Participants are not permitted to solicit or receive advice in connection with HDS-1 from any person who:
- (a) is or has been an employee, consultant or professional advisor (or a sub-contractor to such advisor) of the Government or any agency of the Government in any capacity related to HDS-1 in the period from 12 months prior to the publication date of the Consultation to the RFA Launch Date; or
  - (b) is or has been a member of the board of the Authority, employee, consultant or professional advisor (or a sub-contractor to such advisor) of the Authority in the period from 12 months prior to the publication date of the Consultation to the RFA Launch Date .

### **5. CONFIDENTIALITY OBLIGATIONS**

#### **5.1 CONFIDENTIAL INFORMATION**

35. Any documents, correspondence and information provided by the Authority to a Participant as part of HDS-1 comprise confidential proprietary information belonging to the Authority and shall be covered by the Confidentiality Undertaking attached as Annex B to the RFA, submitted as part of the Eligibility Documentation. Such information shall not be disclosed by any Participant to any third party except as follows:
- (a) the information has been disclosed by the Government or the Authority and is already in the public domain;
  - (b) the information is disclosed to the Participant's staff, agents, professional advisors, sub-contractor or any other person, including a financial provider, on a strictly need-to-know basis for the purpose of participating in HDS-1, provided that such person has first been made aware of the confidentiality of the information and is subject to a confidentiality obligation equivalent to the Confidentiality Undertaking attached as Annex B to the RFA;

- (c) the information is disclosed pursuant to legal requirements of a competent legal or other regulatory authority, provided that: (i) the Authority has been notified by the Participant of the intended disclosure prior to the disclosure taking place (where permitted); and (ii) the Participant has provided (where permitted) such assistance as has been reasonably requested by the Authority in order to restrict the scope of the intended disclosure to the maximum extent.

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**5.2 PUBLIC STATEMENTS**

36. Participants shall be prohibited from making any public statements or communicating any information regarding HDS-1 that is not permitted by the RFA, without first obtaining the written approval of the Authority. The timing and content of any public statements or announcements regarding HDS-1 will be determined by the Authority.

**5.3 PUBLICATION OF DOCUMENTS SUBMITTED BY PARTICIPANTS**

37. The Authority will not publish any of the Required Documentation submitted by Participants and will respect the confidentiality of any information provided to it by any party in connection with HDS-1.
38. The Authority may publish anonymised questions seeking clarification on the Required Documentation or the RFA submitted by Participants in accordance with Section 13.8 below, subject to any requests for confidentiality made by the submitting party in the following manner:
- (a) If a submission contains any information that is confidential in nature, a clearly marked "Non-Confidential Version," redacted to delete the confidential information, should be provided together with a complete version that is clearly marked as the "Confidential Version." The "Confidential Version" should highlight the information that has been redacted. Redactions should be limited to trade secrets, information whose commercial value would be diminished or destroyed by public disclosure, information whose disclosure would have an adverse effect on the commercial interests of the party making the submission, or information that is legally subject to confidential treatment. Any Participant claiming confidentiality in respect of the information submitted must provide a full justification for the claim in writing with its request.
  - (b) Requests for confidentiality will be treated in the manner provided for in Rule 30 of the Authority's Interim Administrative Rules.

**6. COSTS**

39. Notwithstanding any modification, suspension, postponement or abandonment of HDS-1 in accordance with Section 9 of the RFA, each Participant shall bear all costs incurred in connection with the preparation and submission of the Required Documentation or otherwise arising out of, or in connection with, the Consultation, consultation process, the RFA or HDS-1, and the Authority shall have no obligation to reimburse any costs to Participants.

**7. DISCLAIMER**

40. Although care has been, and will be, taken to ensure that the information provided in the RFA and during HDS-1, is accurate, current, and complete, the Authority makes no guarantees and assumes no responsibility for the reliability of any information provided by it. All information is provided "as-is" without any representation or endorsement made and without warranty of any kind, whether express or implied, including but not limited to those relating to satisfactory quality, fitness for a particular purpose, non-infringement, compatibility and security.
41. Each Participant should conduct its own independent investigation, due diligence, translation and analysis of all relevant documents, facts and conditions (including the



regulatory and policy framework) associated with the telecommunications sector in Bermuda as well as the information provided in the RFA.

42. The RFA is not an offer, declaration or undertaking, express or implied, by the Authority or by any other person to award any HDS-1 Licence or any other licence.
43. The Authority has no liability to any Participant or any other person arising out of, or in connection with, the RFA or HDS-1, whether for any actual or anticipated costs or direct or indirect losses, including but not limited to direct or indirect loss of profits or moral damages.
44. By submitting a Registration Form or Request for HDS-1 Assignment, each Participant irrevocably and unconditionally:
  - (a) waives any and all objections that it may have to the terms of the RFA, including but not limited to the Mandatory Licence Conditions, the RFA procedures, the Successful Applicant Service Fee, or to any interim actions taken by the Authority to complete the HDS-1 process; and
  - (b) agrees, not to commence, or assist or encourage any third party to commence, any claim, action or proceedings against the Authority, its employees, agents, officers or advisors in relation to the terms of the RFA, including the Mandatory Licence Conditions, the RFA procedures, the Successful Applicant Service Fee or in relation to any interim actions taken by the Authority to complete the HDS-1 process, including any claim, action or proceedings which are designed (or have the effect), in whole or in part, to hinder, prevent, delay, interrupt, postpone, cancel, change or vary HDS-1.

## **8. GOVERNING LAW**

45. The RFA, the HDS-1 Final Decision and any HDS-1 Licences that may be awarded following HDS-1 shall be governed by the laws of Bermuda and shall be subject to the exclusive jurisdiction of the courts of Bermuda.

## **9. AMENDMENT, SUSPENSION, POSTPONEMENT AND ABANDONMENT OF HDS-1**

46. The Authority may amend, suspend, postpone or abandon the terms and conditions of the RFA, or reject any and all Requests for HDS-1 Assignments or Applications, at any time and for any reason in the Authority's sole discretion after giving reasonable notice by posting a notice on the Website or, if the deadline for registering has passed, by informing all Participants in writing (including by email).
47. In the event that the Authority amends the terms or conditions of the RFA, the Authority will inform all Participants in writing (including by email) as soon as reasonably practicable after making such a decision.
48. It is the responsibility of all Participants to ensure that they comply with the current version of the RFA and any amendment, suspension, postponement or abandonment thereof. The Authority may, in its sole discretion, waive any non-material failure to comply with the current version of the RFA for good cause shown.

49. Participants will be responsible for any costs they have incurred prior to or in connection with the amendment, suspension, postponement or abandonment of the terms or conditions of the RFA or HDS-1 in accordance with Section 6 above.
50. If a Participant discovers any error or omission in the RFA, such Participant must immediately notify the Authority in writing of such error or omission which will be resolved by the Authority in such manner as it considers appropriate.

## **PART C: MANDATORY LICENCE CONDITIONS**

### **10. MANDATORY LICENCE CONDITIONS**

51. Each Registrant must include with its Eligibility Documentation an undertaking, contained in Annex C-1 and signed by the Authorized Person, confirming that it accepts and will commit to fulfil the Mandatory Licence Conditions set out in this section as a condition of its participation in this HDS-1 assignment process and as a pre-condition for the award of an HDS-1 Licence.

#### **10.1 KEY PERFORMANCE OBLIGATIONS**

52. The following Key Performance Obligations shall apply to each HDS-1 Licensee, and may be satisfied by using any HDS Frequencies assigned to the HDS-1 Licensee (whether in HDS-1 or previously), unless a particular HDS-1 Lot is explicitly referenced in relation to a particular obligation:

##### **10.1.1 Coverage/Roll-Out Obligation**

53. The HDS-1 Licensee shall be subject to a Coverage/Roll-Out Obligation pursuant to which the Licensee must provide mobile broadband services to its subscribers and users at a Minimum Download User Data Rate equal to at least 4 Mbps in outdoor areas when the network is lightly loaded<sup>3</sup> with:
  - (a) 50% Geographic Coverage for the entire land mass of Bermuda and its surrounding islands, within 9 months of award of an HDS-1 Licence; and
  - (b) 99.9% Geographic Coverage for the entire land mass of Bermuda and its surrounding islands, within 18 months of award of an HDS-1 Licence.
54. With the exception of an Applicant that is awarded an HDS-1 Package consisting of HDS-1 Lot L-1, an Applicant may submit as part of the relevant Alternative Request a request for waiver of the 99.9% Geographic Coverage Obligation, provided that the Applicant is able to demonstrate in its statement of its Financial Position and its Technical Solution that meeting the 99.9% Geographic Coverage Obligation would be technically infeasible or cost-prohibitive. In addition to providing a technical and financial justification, any Applicant seeking such a waiver must propose alternative Geographic Coverage Obligations corresponding to a roll-out schedule for the 9 and 18 month milestones during the period following licence award.<sup>4</sup>

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<sup>3</sup> For this purpose, a network shall be considered "lightly loaded" when there is only a single user in a given cell and adjacent cells are lightly loaded such that their common channels are transmitting at 22% of the maximum cell power.

<sup>4</sup> All references to the "99.9% Geographic Coverage Obligation" in the following paragraphs of the RFA may be interpreted to mean, if applicable, the alternative maximum geographic coverage proposed by the Applicant and accepted by the Authority pursuant to the waiver request procedure set out in paragraph 54 of the RFA.

55. Applicants may propose enhanced Geographic Coverage commitments for achieving the interim or final roll-out milestones on an accelerated timetable as part of their Optional Commitments in conformity with at least 2 of the following milestones for achieving 50% and 99.9% Geographic Coverage: 6, 9 and 12 months. In any case in which a waiver of the Coverage/Roll-out Obligation is sought in accordance with paragraph 54 of the RFA, enhanced Geographic Coverage commitments corresponding to at least 2 of these same milestones may also be proposed by the Applicant. Any enhanced commitments contained in the relevant Alternative Request(s) will be scored accordingly, provided that the proposed enhancements are adequately supported by the accompanying Technical Solution and Business Plan (see Section 14.3.3.2). Any Optional Commitments to accelerate achievement of the Coverage/Roll-Out Obligation will be scored giving the greatest weight (up to 80%) to a credible commitment to accelerate the timing of the end date for delivering 99.9% Geographic Coverage as defined in paragraph 53(b) of the RFA.
56. HDS-1 Licensees shall be subject to an obligation to maintain at least the coverage obligations to which they commit in their successful HDS-1 Request over the entire term of the HDS-1 Licence, including any enhanced Geographic Coverage commitments.
57. The Applicant must furnish as part of its technical proposal a Site Plan which shall be sufficiently detailed to convincingly demonstrate: (i) how the Coverage/Roll-Out Obligation will be achieved; and (ii) how any enhanced Geographic Coverage commitments proposed in the Applicant's Optional Commitments will be achieved. The relevant sections of the Successful Applicant's proposed Site Plan shall be included as a schedule to the HDS-1 Licence.

#### 10.1.2 **Minimum Quality Of Service Obligation**

58. Commencing 9 months<sup>5</sup> after the date on which the HDS-1 frequencies are assigned to it, and continuing for the remaining term of the HDS-1 Licence, the HDS-1 Licensee shall provide mobile broadband services to its subscribers and users falling within the Coverage Area at a Minimum Average Download User Data Rate of 15 Mbps, and shall provide the data necessary to prepare the Quality of Service Reports specified in paragraph 58(b) of the RFA. Consistent with the Technical Solution for the relevant Alternative Request, the HDS-1 Licensee may use any spectrum that has lawfully been assigned to it and which has been allocated for this purpose, including but not limited to the HDS-1 frequencies awarded to the Licensee in the RFA process.
- (a) Measurement of the actual Average Download User Data Rate delivered by the Licensee shall be carried out by the Authority, or by the Licensee acting under the Authority's direction, in accordance with a timetable, methodology and procedures which the Authority shall establish by issuing a decision to all licensees that are subject to this obligation, after having conferred with the HDS-1 Licensees and taking into account available measurement technologies and other relevant factors. The precise components of downloaded data to be included in the calculation may vary depending on the type of data download and the nature of the metrics captured by the operations support system. Therefore, the appropriate metrics and the

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<sup>5</sup> If an Applicant's successful HDS-1 request contains an enhanced commitment for achieving the 50% Coverage Obligation on an accelerated basis as set forth in paragraph 55 of the RFA, this 9-month deadline will be adjusted accordingly in the final HDS-1 Licence Conditions.

detailed measurement and verification process will be specified by the Authority after conferring with the HDS-1 Licensees.

- (b) Commencing one year<sup>6</sup> after the date of the HDS-1 assignment and every 3 months thereafter unless otherwise directed by the Authority, the Licensee shall be required to submit a Quality of Service Report to the Authority that conforms to the decision, in accordance with a reporting format to be approved by the Authority, and which shall include, at a minimum, aggregated session records showing:
- (i) the distribution of download user data rates experienced by all of the HDS-1 Licensee's mobile broadband subscribers and users over the preceding 3 month period, and the Average Download User Data Rate achieved in that period; and
  - (ii) in general terms, the sum of the aggregate user data downloaded (measured in megabits) divided by the total aggregate time of download data transmission (measured in seconds), which shall be measured as specified by the Authority taking into account all data sessions undertaken within the relevant Coverage Area over the 3-month period preceding the reporting date and which shall include both peak and off-peak periods at all locations where the Licensee's superfast broadband services are accessible within the relevant coverage area, and also shall include the daily totals for data volume and aggregate transmission times.

59. The Applicant must demonstrate as part of its proposed technical solution that it is capable of generating the aggregated session records specified in paragraph 58(b) above for purposes of the quarterly reports to be submitted to the Authority.
60. An Applicant may propose an enhanced Minimum Average Download User Data Rate, and the enhanced commitment contained in the relevant Alternative Request(s) will be scored accordingly (see Section 14.3.3.2). The HDS-1 Licence will incorporate any enhanced commitments that are proposed as part of the successful HDS-1 Request that is submitted by an Applicant.

10.1.3 ***Delivery Of Service Quality And Broadband Speeds In Line With International Best Practice***

61. HDS-1 Licensees shall be subject to an obligation to deliver service quality and broadband speeds in line with international best practice.
62. The Authority may unilaterally modify the HDS-1 Licence and/or ICOL on or following the fifth anniversary of the HDS-1 Licence if the Authority considers that an increase in the Minimum Download User Data Rate and/or the Minimum Average Download User Data Rate (and/or the addition of other new parameters) is in the public interest and is necessary and appropriate to ensure that Bermuda remains in line with technology developments and international best practice.

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<sup>6</sup> If an Applicant's successful HDS-1 Request contains one or more enhanced commitments for achieving the Coverage Obligation, this one-year deadline may be adjusted accordingly in the final HDS-1 licence conditions.

## 10.2 CORE SERVICE OBLIGATIONS

### 10.2.1 *Efficient Use*

63. Commencing 9 months after the date on which the HDS-1 frequencies are assigned to it, and continuing for the remaining term of the HDS-1 Licence, the HDS-1 Licensee shall make Efficient Use of any HDS-1 frequencies that are assigned to it.
- (a) The Licensee shall be deemed to be making Efficient Use of spectrum if the Authority is satisfied that: (1) all of the HDS-1 Blocks requested by an Applicant in a particular HDS-1 Package, alone or in combination with other HDS Frequencies previously awarded to the Licensee, are necessary for the delivery of the Business Plan and Technical Solution; (2) the Alternative Request is successful and the network is deployed as described in the Application for the duration of the licence term; and (3) the Applicant remains in material compliance with the Key Performance Obligations in accordance with the terms of the HDS-1 Licence.
  - (b) If, following an adjudication, the Authority concludes that there has been a breach of this condition for an extended period, the Authority may order the HDS-1 Licensee to relinquish some or all of the HDS-1 frequencies that have been assigned to it.
64. Each Applicant shall bear the burden of demonstrating that all of the HDS-1 Lots included in any given HDS-1 Package requested by it are necessary to support the associated Business Plan and Technical Solution, and that this cannot be achieved more efficiently, including by using current spectrum holdings or the selection of an alternative HDS-1 Package requesting less spectrum (or a combination of these alternatives). No Alternative Request for HDS-1 spectrum will be accepted unless the Authority is satisfied, based on the information available to it, that the HDS-1 Package under consideration proposes a solution that uses no more spectrum than is necessary to deliver the Key Performance Obligations.

### 10.2.2 *Net Neutrality/Open Internet Obligation*

65. HDS-1 Licensees shall be subject to the obligation set out in paragraph 66 below as a transitional measure, and this condition shall be applicable to all mobile broadband services provided by the HDS-1 Licensee using any and all HDS Frequencies assigned to the HDS-1 licensee (whether as part of HDS-1 or otherwise). These obligations shall remain in effect until the Authority issues an administrative determination following an industry-wide consultation which addresses all of the relevant issues concerning net neutrality, reasonable traffic management practices and the open internet.
66. (1) The Licensee shall ensure that end user customers have the right to access and use lawful information, content, applications and services ("ICAS") provided over the internet, and to use the terminal equipment of their choice, irrespective of the nature, origin or destination of the ICAS.
- (2) The Licensee shall not limit the exercise of these rights in its agreements with end users or by means of technical or commercial practices.

(3) The Licensee shall not discriminate against or interfere with the routing or delivery of lawful internet traffic on the basis of the sender or recipient, the type of ICAS accessed, used, distributed or provided, or the terminal equipment used.

(4) The Licensee shall not block, throttle or otherwise impede any lawful internet traffic unless such action is objectively justified for purposes of legitimate traffic management, and prior approval is obtained from Authority on the basis of such justification.

(5) The Licensee shall ensure that its contracts with subscribers provide full and effective transparency regarding its traffic management policies, volume limitations and any other lawful restrictions on the use of the Licensee's mobile broadband services.

### 10.2.3 *Wholesale Mobile Resale Obligation*

67. HDS-1 Licensees shall, upon request from an unaffiliated ICOL holder, be subject to an obligation to provide wholesale mobile services, including on a capacity lease basis, using any of the HDS Frequencies assigned to the HDS-1 Licensee (whether as part of HDS-1 or otherwise). Each Licensee shall be required to negotiate in good faith and provide services, upon request to unaffiliated third parties seeking to act as MVNOs, on a fair and reasonable basis in accordance with the following licence condition. In the event a Licensee receives requests to enter into an agreement to provide wholesale mobile services from more than 2 unaffiliated third parties, it will be obligated to provide services only to 2 parties. This condition will be incorporated in the Licensee's Commercial Mobile Radio Service Licence. At the Authority's discretion, this condition may be modified to include any specific minimum terms and conditions that the Licensee offers as an enhancement by proposing an Optional Commitment in line with paragraph 120(b)(viii).

(1) The Licensee shall, if requested by another ICOL holder, provide the requesting party with wholesale mobile access and termination services that enable the requesting party to provide the full range of mobile voice and data services to its customers on a resale basis, subject to reasonable terms and conditions, including:

- (a) at the election of the requesting party, the provision of a wholesale mobile service on a white label resale basis or a capacity lease basis (including, in the latter case, arrangements allowing for the requesting party to operate or use its own home location register, mobile switches and number range if so required);
- (b) terms and conditions that are no less favourable than those which the Licensee provides to its own affiliates, at speeds and service quality levels that are the same as those on offer to its own retail customers;
- (c) wholesale prices which exclude any retail sales, marketing or irrelevant general and administrative costs and, in the case of capacity arrangements, which reflect appropriate term and volume discounts, and subject to a rebuttable presumption that the effective wholesale discount off the best retail rates on offer for equivalent services provided by the Licensee (including the imputed retail prices of mobile services that are part of any bundled retail offerings) shall be no less than 15% (unless the Licensee provides evidence to the Authority's satisfaction that a discount of other than 15% is justified); and

- (d) the provision of adequate wholesale support services, including but not limited to: (i) the timely disclosure of any technical network and billing information that is needed by the requesting party to operate its MVNO services; and (ii) ordering, provisioning, maintenance and repair services that are equivalent to those provided to the Licensee's own retail operations in terms of price, quality and functionality; and
- (e) no restrictions on the ability of the requesting party to resell the agreed wholesale mobile services to other ICOL holders.

(2) The Licensee shall be obligated to provide wholesale mobile broadband access and termination services to at least 2 ICOL holders on a first-come, first-served basis, if so requested. An eligible party shall include any ICOL holder except one that: (1) is affiliated with the Licensee in any way; or (2) has itself been awarded HDS-1 Frequencies, unless the Authority determines that competition in the provision of high-speed mobile broadband services would otherwise be impeded, in which case such requesting party shall be deemed to be the first requesting party, regardless of the order in which requests for mobile access are received by the Licensee.

(3) The Licensee shall promptly commence negotiations following receipt of a reasonably detailed request for the provision of wholesale mobile services, a copy of which shall be submitted to the Authority by the requesting party. The Licensee shall carry out the negotiations in good faith, in accordance with an agreed timetable. If the requesting party is unable to reach agreement with the Licensee on reasonable terms and conditions within 60 calendar days following the date on which the requesting party submits its request to the Licensee, the requesting party may refer the matter (or any unresolved issues) to the Authority. The Authority shall have the discretion to impose mandatory interim terms and conditions on the Licensee after conferring with both parties, and these interim terms and conditions shall remain in full force and effect until a definitive agreement is reached between the parties or the relevant terms and conditions are determined by the Authority.

### 10.3 OBLIGATIONS RELATING TO ENFORCEMENT OF THE LICENSEE'S COVERAGE AND QUALITY OF SERVICE COMMITMENTS

68. Accordingly, each HDS-1 Licence shall contain conditions that obligate the Licensee to demonstrate its compliance with the commitments it has made in its successful HDS-1 Request, including the following (or text that is substantially similar):

- (a) *The relevant provisions of the Site Plan provided which support the Key Performance Obligations (mandatory or optional commitments) contained in the Licensee's successful HDS-1 Request shall be included as a schedule to the HDS-1 Licence insofar as its provisions demonstrate how the applicable Coverage/Roll-Out Obligation will be achieved for the coverage milestones (6, 9, 12 and/or 18 months). The HDS-1 Licensee shall comply with the provisions of the Site Plan unless the Licensee obtains a written waiver from the Authority with respect to a specific aspect of the Site Plan. In the absence of a waiver, the Licensee's failure to comply with the Site Plan shall constitute prima facie evidence that the Coverage/Roll-Out Obligation has been breached, and the Licensee shall carry the burden of demonstrating that it is not in breach of this obligation. If found to be in prima facie breach of the Coverage/Roll-Out Obligation following a review by the Authority on or immediately following the Licensee's committed dates for fulfilling each committed coverage milestone, the Licensee shall take the*

*necessary remedial actions to comply with the relevant obligation within a time period to be specified by the Authority.*

- (b) *The HDS-1 Licence shall comply with the methods of verifying compliance with the Coverage/Roll-Out Obligation and the Minimum Quality of Service Obligation in the areas covered pursuant to the Coverage/Roll-out Obligation (including any enhanced commitments proposed by the Licensee as part of a successful HDS-1 Request), which methods shall be established by the Authority by issuing a decision to all licensees that are subject to these obligations, after conferring with the HDS-1 Licensees and considering the available technologies, best practice methods and other relevant considerations. The decision will establish the tests, procedures and methodologies that will be used by the Authority to measure the actual performance of each HDS-1 Licensee against the Coverage/Roll-Out Obligation and the Minimum Quality of Service Obligation.<sup>7</sup> If, after following the approach adopted in its decision, the Authority concludes that the Licensee has failed to meet either or both of these obligations, the Licensee shall take the necessary remedial actions to comply with the relevant obligation within a time period to be specified by the Authority.*
- (c) *The Licensee shall put in place, as a pre-condition to the grant of this Licence, a Performance Bond in the amount of BMD 1,250,000, and shall maintain the Performance Bond until the Authority confirms to the Licensee in writing that the committed end date for achieving the 99.9% Coverage/Roll-Out Obligation and the Minimum Quality of Service Obligation set out in this Licence [which shall include any enhanced commitments made by the Licensee during HDS-1 or alternative Coverage/Roll-Out Obligations agreed with the Authority under Clause 54 of the RFA] have each been fulfilled over a reasonable measurement period [to be defined by the Authority by decision after conferring with all affected Licensees]. The Licensee shall carry the burden of demonstrating that the Coverage/Roll-Out and Minimum Quality of Service Obligations have been and are being fully satisfied. If the Authority determines that the Licensee has failed to meet any of these obligations and also has failed to remedy the breach within a reasonable time period specified by the Authority, the Authority shall issue a decision setting out its findings and conclusions pursuant to RAA Section 93(1)(e), after following the procedures set out in RAA Section 81. In such case, the Performance Bond shall become due and payable to the Authority as follows: (1) up to BMD 1 Million for failure to comply with any of the obligations and failure to cure within the specified time period; and (2) up to BMD 40,000 for each additional month of delay in fulfilling either or both obligations.<sup>8</sup> This condition is without prejudice to the Authority's powers to impose penalties or other sanctions in the event that the Licensee fails to meet any of its Licence obligations, including the applicable Geographic Coverage Obligations (interim or final) and the Minimum Quality of Service obligations by the deadlines established by this Licence, or if the Licensee fails to comply with the applicable Geographic Coverage and Minimum Quality of Services Obligations on a continuing basis throughout the term of this Licence.*

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<sup>7</sup> Such methods may include, for example, the use of smartphone applications and/or field measurement of data throughput.

<sup>8</sup> If, in the Optional Commitments, the Applicant offers to provide 99.9% Geographic Coverage before the 18-month date specified in paragraph 53(b) and the Applicant fails to meet that commitment, the Performance Bond will become due at the expiration of the end date specified by the Applicant in its Optional Commitments.



#### **10.4 CONSENT TO MODIFICATION OF LICENCES**

69. The Applicant's participation in HDS-1 will constitute its consent to modification of the following licences, as determined by the Authority, in order to incorporate the relevant Mandatory Licence Conditions:
- (a) its ICOL, for the purposes of Clause 16(a) of the ICOL; and/or
  - (b) if the Successful HDS-1 Applicant is an MNO, its Mobile Licence, for the purposes of Clause 6(a) of such Mobile Licence.

#### **11. IMPOSITION OF PENALTIES AND/OR CALL ON PERFORMANCE BOND FOR FAILURE TO MEET MANDATORY LICENCE CONDITIONS**

70. In the event an HDS-1 Licensee fails to meet any of the Mandatory Licence Conditions (as modified by an approved waiver or by any Optional Commitments that form part of a successful HDS-1 Request), the HDS-1 Licensee may be subject to enforcement proceedings initiated by the Authority pursuant to RAA Section 92 and the imposition of fines or the application of other remedies (including recovery of the HDS-1 Lots assigned as set forth in paragraph 63(b)). Without prejudice to the Authority's powers to impose fines or other sanctions for any breach of a licence condition, and subject to the Authority's consideration of all relevant factors including those set out in RAA Section 94(2), the Authority may exercise its rights under the Performance Bond if, after considering all of the relevant evidence, it determines that the Licensee has failed to meet the final committed Coverage/Roll-out and Minimum Quality of Service Obligations (i.e. achievement of 99% coverage<sup>9</sup>). The Authority may call on the Performance Bond in the event that the Licensee fails to meet the final committed milestone for its Coverage/Roll-Out Obligation and/or the Minimum Quality of Service Obligation, and fails to cure the breach within a reasonable period of time to be determined by the Authority, in light of the material importance to the people of Bermuda of each HDS-1 Licensee's compliance with these Key Performance Obligations. The procedures set out in RAA Section 81 shall apply and the HDS-1 Licensee shall have the burden of demonstrating its compliance in accordance with the Site Plans it submitted in accordance with paragraph 57 of the RFA and/or measurements taken by the Authority in accordance with the Authority's decision establishing the timetable, methodology and procedures for taking such measurements, as set forth in paragraph 58(a) of the RFA.
71. Further, in the event of failure to meet any of the Mandatory Licence Conditions (as modified by an approved waiver or by any Optional Commitments that form part of a successful Alternative Request), by an HDS-1 Licensee, it may be determined by the Authority that such HDS-1 Licensee is ineligible for participation in HDS-2 or future assignments of HDS Frequencies or should be subject to a reduced score in HDS-2 or future assignments of HDS Frequencies should the HDS-1 Licensee choose to participate.

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<sup>9</sup> The 99% coverage figure may be waived and a lower coverage percentage approved by the Authority, except in regard to Lot L-1, in line with paragraph 54 of the RFA.

## **PART D. DETAILED REQUIREMENTS AND PROCEDURES**

### **12. REQUIRED DOCUMENTATION**

#### **12.1 GENERALLY APPLICABLE SUBMISSION FORMALITIES**

72. Required Documentation must be strictly in compliance with the provisions of the RFA and comply with the submission formalities set out below as well as any additional instructions which the Authority may release prior to the commencement of the RFA process.
73. An original and 10 copies of the Required Documentation shall be delivered to the Authority in hard copy and in soft copy by USB memory stick in Microsoft compatible format by the time and date set out in the Timetable in Table 2 of the RFA in person or by a courier company (and, in each case, a signed receipt obtained). It is the sole responsibility of the Participant to ensure that Required Documentation arrives at both the physical and email address provided in paragraph 24 no later than the relevant date and time specified in the RFA. If a Participant fails to deliver Required Documentation to the Authority by the relevant date and time, the Authority may elect not to consider the untimely filed documents.
74. If there is any conflict between the original documents signed by an Authorized Person and any hard or soft copies, the original documents signed by an Authorized Person shall prevail.
75. The Required Documentation shall be in the English language and each page and paragraph must be numbered.
76. The body of the Application shall be no more than 50 single-spaced 8.5" x 11" pages and shall set out the Applicant's priority request as set out in paragraph 88(c). An additional 15 pages may be added for each Alternative Request Annex, setting out the relevant changes in the Applicant's proposed Technical Solution, Business Plan and any Optional Commitments offered in relation to each Alternative Request. Supporting technical appendices may also be included separately if directly relevant and material to the evaluation process, and will not count towards these page limits, provided that the main body of the Application contains the basic information identified in Section 14.1 below. Applicants may not rely on or cross-reference any financial or other data that may already be in the possession of the Authority outside the HDS-1 framework. Failure to include the required information in the Application may result in disqualification or a reduced score.
77. The Required Documentation, including each Alternative Request Annex, must be signed by an Authorized Person, and any corrections or changes must be initialled by an Authorized Person.
78. The Required Documentation must be accurate and kept up-to-date for a period of six months following submission or the completion of HDS-1, whichever occurs first. Applicants shall, upon request by the Authority, extend the validity of an Application for a further period of three months.

#### **12.2 MODIFICATION OR WITHDRAWAL OF REQUIRED DOCUMENTATION**

79. Subject to Section 4.2 above requiring Participants to notify the Authority of any change to the information provided and/or any representation made in the Required Documentation, and subject to paragraph 80 below, Applicants shall be prohibited from modifying their Application or any of the information provided in their Required Documentation after their submission in accordance with the RFA, unless otherwise permitted by the Authority in writing.

80. Participants shall have the right to withdraw their Required Documentation or make modifications to reduce the number of Alternative Requests or the number of HDS-1 Lots requested as part of an Alternative Request covered by their Required Documentation at any time prior to the announcement of the Successful HDS-1 Applicant for the relevant HDS-1 Lot, provided that they notify the Authority in writing and do not increase the number of, or otherwise modify the Alternative Requests covered by their Application. No other modifications will be permitted.

### **12.3 CLARIFICATION OF REQUIRED DOCUMENTATION BY THE AUTHORITY**

81. The Authority may seek clarification from a Participant relating to any aspect of its Required Documentation during any stage of HDS-1. Participants must respond promptly and fully to any clarification requests of the Authority within the timeframes and in the manner requested by the Authority. The Authority will not, however, use this process to rectify a failure by the Applicant to submit the complete Required Documentation, in accordance with the submission formalities in Section 12.1 above or otherwise. Any such failure may result in disqualification, in accordance with Section 4.6 of the RFA.

### **12.4 REQUESTS FOR MULTIPLE HDS-1 LOTS AND ALTERNATIVE REQUESTS**

82. If a Participant intends to apply for multiple HDS-1 Lots, the Request for HDS-1 Assignment and the Application must specify whether each HDS-1 Lot is being applied for separately or in combination with other HDS-1 Lots to form an HDS-1 Package. Each individual HDS-1 Lot or HDS-1 Package specified is referred to herein as an "Alternative Request" or "HDS-1 Request."

83. The Participant may submit Alternative Requests for multiple HDS-1 Packages. The Participant must clearly identify the HDS-1 Lots forming each Alternative Request. Each Alternative Request will stand or fall on its own, and the Authority will not consider or evaluate a subset of an Alternative Request unless such subset is identified independently as an HDS-1 Package, and submitted as a separate Alternative Request by the Participant.

84. Each Alternative Request must be ranked in order of priority by the Participant, and no two Alternative Requests may be given the same ranking by that Participant.

85. No Applicant will be awarded more or different HDS-1 Lots than those specified as an HDS-1 Package in a single Alternative Request, and the Authority will not award an Applicant any HDS-1 Lot that does not form part of an Alternative Request applied for by that Applicant, including any submission made pursuant to paragraph 136 of the RFA. Further, the Authority will not consider or evaluate any Alternative Request unless the Applicant has submitted an Alternative Request Annex corresponding to each Alternative Request separately applied for.

13. **STAGE 1 – REGISTRATION FORM, REQUESTS FOR HDS-1 ASSIGNMENT, ELIGIBILITY REQUIREMENTS AND AUTHORITY'S DECISION ON FURTHER PROCESS STEPS**

86. Each Registrant must complete and submit the following Required Registration Documentation, as detailed in the paragraphs that follow, in order for the Authority to assess whether the registering party is an Approved Registrant:

- (a) Registration Form and Confidentiality Undertaking;
- (b) Request for HDS-1 Assignment, including all Alternative Requests; and
- (c) Eligibility Documentation.

Each of these requirements is discussed below.

13.2 **REGISTRATION FORM**

87. Registrants must complete and submit the Confidentiality Undertaking and the Registration Form attached to the RFA as Annexes B and C, respectively.

13.3 **REQUEST FOR HDS-1 ASSIGNMENT**

88. Registrants must submit a Request for HDS-1 Assignment which shall, at a minimum, include the information set out below:

- (a) specification of all Alternative Requests for which the Registrant is eligible to apply as determined in accordance with the Eligibility Requirements set out in Section 13.4 below. (Note: a Registrant must specify each HDS-1 Lot or HDS-1 Package for which it intends to apply, in accordance with Section 12.4 above).
- (b) the planned use (types of networks and services) of each HDS-1 Lot (or HDS-1 Package) for which the Registrant intends to apply; and
- (c) the prioritization and ranking of all Alternative Requests. For the ranking of Alternative Requests, "1" shall denote the Registrant's highest priority, and no 2 Alternative Requests may receive the same ranking.

13.4 **ELIGIBILITY REQUIREMENTS**

89. All Participants are required to meet, and to confirm that they comply with, the following Eligibility Requirements in order to be considered eligible to submit an Application for HDS-1 Lots or HDS-1 Packages in stage 2 of HDS-1:

- (a) The Participant must be an ICOL holder and no two Affiliates may participate in HDS-1;
- (b) No ICOL holder currently subject to a Spectrum Cap, nor any affiliate of such ICOL holder, may apply for Designated HDS-1 Frequencies if the potential award to the Participant would cause the combined holdings of the Participant and its affiliated ICOL holder to exceed the Spectrum Cap for that band;
- (c) Each Participant must identify an Authorized Person to bind the Participant in all matters relating to the RFA and HDS-1;

- (d) All Alternative Requests must conform to the Designated HDS-1 Frequencies;
- (e) All Alternative Requests must be in compliance with the Spectrum Cap (if applicable);
- (f) There must be no Government Authorization Fees or Regulatory Authority Fees owed by the Participant that are currently outstanding;
- (g) At the dates of submission of the Required Registration Documentation, there must be no outstanding or unresolved issues involving the Participant's compliance with any administrative decision or information request issued by the Authority to the Participant;
- (h) Participants must agree to comply with the rules on the conduct of Participants set out in Section 4 of the RFA; and
- (i) Each Participant must accept and commit to fulfil the Mandatory Licence Conditions set forth in Part C of the RFA and, further, must consent to the modification of its Mobile Licence and ICOL (if applicable) to incorporate the Mandatory Licence Conditions and any Optional Commitments accepted by the Authority should the Participant be a Successful HDS-1 Applicant.

### **13.5 ELIGIBILITY DOCUMENTATION**

90. Registrants are required to demonstrate that they meet the Eligibility Requirements by providing a letter in the form set out in Annex C-1 under the heading "Eligibility Documentation" confirming the Registrant's eligibility to participate in HDS-1 and which contains the following information and undertakings:
- (a) Written confirmation of status as ICOL holder and that no Affiliate is a Registrant in the HDS-1 process;
  - (b) Confirmation whether the Registrant is an ICOL holder currently subject to a Spectrum Cap or any Affiliate of such ICOL holder;
  - (c) Proof of authority of the Authorized Person to bind the Registrant in all matters relating to the RFA and HDS-1;
  - (d) Confirmation of intent to apply for Designated HDS-1 Frequencies;
  - (e) Confirmation of compliance with the Spectrum Cap;
  - (f) Confirmation that no Government Authorization Fees or Regulatory Authority Fees owed by the Registrant are currently outstanding;
  - (g) Confirmation that, on the date of submission of the Required Registration Documentation, there are no outstanding or unresolved issues involving the Registrant's compliance with any administrative decision or information request issued by the Authority to the Registrant;
  - (h) Confirmation of current compliance, and agreement to comply throughout HDS-1, with the rules on the conduct of Participants set out in Section 4 of the RFA;

- (i) Confirmation that the Registrant accepts and commits to fulfil the Mandatory Licence Conditions set forth in Part C of the RFA (including but not limited to the obligation to provide a Performance Bond); and, further, that the Registrant consents to the modification of its Mobile Licence and ICOL (if applicable) to incorporate the Mandatory Licence Conditions and any Optional Commitments accepted by the Authority should the Registrant be a Successful HDS-1 Applicant;
- (j) Confirmation that the Registrant agrees to pay such amount that may be set by regulation in respect of this HDS-1 process if the Registrant becomes an Applicant and is selected by decision of the Authority for the award of any and all HDS-1 frequencies pursuant to the RFA and that the Registrant accepts that no HDS-1 Lot or Lots will be awarded and the Applicant shall be disqualified from this HDS-1 process if payment of the Successful Applicant Service Fee is not remitted by the deadline stipulated by the Authority following the Applicant's selection for the award of an HDS-1 Lot or Lots.
- (k) Confidentiality Undertaking, attached as Annex B to the RFA, signed by the Authorized Person.

### 13.6 SUCCESSFUL APPLICANT SERVICE FEE

- 91. Each Registrant must confirm that it will pay a one-time Successful Applicant Service Fee if one or more of its Eligible Alternative Requests are selected by the Authority in accordance with Section 14.3 of this RFA. The Successful HDS-1 Applicant shall remit payment of the Successful Applicant Service Fee to the Authority following the Authority's HDS-1 Final Decision and before the award or modification of the HDS-1 Licence in accordance with Section 15.2 of the RFA. .
- 92. The Successful Applicant Service Fee shall be paid by either certified cheque addressed to the Authority or by electronic transfer to the bank account detailed below, with such transfer to clearly identify the payer and the payment type e.g. "[Payer's Name] Successful Applicant Service Fee." No later than the date which shall be stipulated by the Authority, the Successful HDS-1 Applicant shall deliver to the Authority either the certified cheque or, in the case of an electronic transfer, proof of transfer confirmed by the Registrant's bank of the fee amount. . For the avoidance of doubt, no payment shall be deemed to have been made to the Authority for the purposes of the RFA until such time as: (1) the certified cheque is received by the Authority, in the case of payment by certified cheque; or (2) in the case of an electronic transfer, the Registrant provides proof of transfer of the requisite amount (net of any transfer charges) from its bank, in a form acceptable to the Authority.

Bank	HSBC
Branch office	N/A
Account name	Regulatory Authority
Account number	011-084456-011
IBAN	N/A
Bank Swift	BBDA BMHM

- 93. It is the responsibility of the Participant making a payment pursuant to the terms of the RFA to ensure that any and all charges associated with the transfer of funds are met, such that the exact amount of the Successful Applicant Service Fee is received by the Authority in full and cleared funds, i.e. net of any charges levied by the payer's own

bank and by the Authority's receiving bank and any other charges or sums of any kind whatsoever. For the avoidance of doubt, cleared funds that are less than the sum required by the Authority will not be considered as received by the Authority for the purposes of the RFA. In such circumstances, the Authority will notify the payer that such shortfall must be received in cleared funds in the Authority's account within 3 Working Days.

94. If a Successful HDS-1 Applicant fails to remit payment of the Successful Applicant Service Fee before or on the date stipulated by the Authority, the Successful HDS-1 Applicant shall be disqualified in accordance with Section 4.6 of the RFA and no HDS-1 Lot or Lots shall be awarded to such Applicant pursuant to the RFA. In such cases, the HDS-1 Lot or Lots that were to have been awarded to the disqualified Applicant will be withdrawn from the process and may be made available by the Authority in a future HDS licence award process.

**13.7 SUBMISSION OF REQUIRED REGISTRATION DOCUMENTATION AND APPLICATION FEE**

95. Registrants must submit the Required Registration Documentation to the Authority, in accordance with the terms of the RFA, by no later than the time and date set out in Table 2 of the RFA.

**13.8 REQUESTS BY REGISTRANTS FOR CLARIFICATION OF THE RFA**

96. If a Registrant has questions relating to the Required Registration Documentation, it should complete the Required Registration Documentation to the best of its ability and submit it, together with a separate document clearly labelled "REQUEST FOR CLARIFICATION OF REQUIRED REGISTRATION DOCUMENTATION," to the Authority at least three Working Days prior to the deadline for submission of the Required Registration Documentation as set out in Table 2 above. The Authority may, at its sole discretion, allow all Registrants to amend any documentation filed in advance of the Authority's issuance of the requested clarifications, which shall be made available to all Registrants.

97. Any Approved Registrant may seek clarification of any aspect of the RFA, save the Required Registration Documentation. Questions must refer to specific paragraph numbers of the RFA and can be submitted in writing no later than the time and date set out in Table 2 above.

98. The Authority will send all responses on an anonymised basis to each Approved Registrant/Applicant, subject to any confidentiality requests agreed by the Authority in accordance with Section 5.3 above. The Authority will provide responses to questions on a rolling basis and by the date set out in Table 2 above. Responses shall not be construed as in any way amending, modifying or altering the meaning and intent of the RFA unless the RFA is amended in accordance with Section 9 above.

**13.9 CONFIRMATION OF APPROVED REGISTRANTS BY THE AUTHORITY**

99. Following the deadline for submission of the Required Registration Documentation in accordance with the time and date set out in Table 2 above:

- (a) if the Authority is satisfied that a Registrant has provided complete Required Registration Documentation, in accordance with the submission formalities in Section 12.1 above the Authority will notify the Approved Registrant that its registration was successful;

- (b) if the Authority determines that a Registrant has not provided complete Required Registration Documentation, or has not met the Eligibility Requirements, or has breached the submission formalities in Section 12.1 above, the Authority will notify the Registrant that it has been disqualified in accordance with Section 4.6 above.

### **13.10 ASSESSMENT OF SUPPLY AND DEMAND AND DECISION ON FURTHER PROCESS STEPS**

- 100. Following the publication of Approved Registrants, the Authority will assess the Requests for HDS-1 Assignment received to determine whether there is Contention for any particular HDS-1 Lot (or HDS-1 Lot within an HDS-1 Package).
- 101. The Authority will inform each Approved Registrant in writing (including by email) whether the FCFS Process or the Comparative Selection Process will apply to each particular HDS-1 Lot in accordance with Sections 13.10.1 and 13.10.2 below.

#### **13.10.1 Assignment Using FCFS Process**

- 102. If there is no Contention for a particular HDS-1 Lot (or HDS-1 Lot within an HDS-1 Package), that HDS-1 Lot (or HDS-1 Package) may be eligible for the FCFS Process. For the avoidance of doubt, an HDS-1 Lot (or HDS-1 Package) will not be eligible for the FCFS Process if:
  - (a) more than one Approved Registrant has identified that HDS-1 Lot (or HDS-1 Package) as one for which it intends to apply (regardless of the priority given);
  - (b) an Approved Registrant (A) has requested the assignment of an HDS-1 Package, and at least one of the HDS-1 Lots within that HDS-1 Package is also requested by another Approved Registrant (B), in which case all of the HDS-1 Lots within the HDS-1 Package requested by (A) will be evaluated pursuant to the Comparative Selection Process; or
  - (c) an Approved Registrant submits Alternative Requests and anyone of those Alternative Requests includes a request for an HDS-1 Lot or HDS-1 Package that is in Contention, in which case the Authority has the discretion to subject all HDS-1 Lots applied for by that Approved Registrant to the Comparative Selection Process.
- 103. Where the Authority has determined that the FCFS Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Applicant must provide the Baseline Application, in accordance with Section 14.1 below, including the required information on its Financial Position, Technical Capability and Experience, and proposed Technical Solution and Business Plan.

#### **13.10.2 Assignment Using Comparative Selection Process**

- 104. If there is Contention for a particular HDS-1 Lot (or HDS-1 Lot within an HDS-1 Package), the Authority will proceed using the Comparative Selection Process for the evaluation of that HDS-1 Lot (or HDS-1 Package).
- 105. Where the Authority has determined that the Comparative Selection Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Applicant must provide the Baseline Application, set out in Section 14.1 below, and is also invited to offer Optional



Commitments, in line with those set out in Section 14.2.2(b) below. The Applicant must provide Alternative Request Annexes corresponding to each Alternative Request.

#### **13.11 ADVISORY PANEL**

106. No more than 5 working days following the date established by the RFA for submission of the Applications, the Authority will appoint an expert Advisory Panel to assist the Authority with the overall evaluation process following the procedures set out in RAA Section 35. In the event that all of the available HDS-1 Lots are eligible for assignment by means of the FCFS Process, the Authority may elect not to appoint an expert Advisory Panel.
107. The Advisory Panel will be composed of up to 5 panel members including the Authority's Chief Executive, the Authority's Chief Technical Officer and up to 3 external experts selected by the Authority on the basis of their expertise and high level of independence and impartiality.
108. Prior to being appointed, each member of the Advisory Panel must provide the Authority with a signed declaration that he or she has no relationship with any Participant or Affiliate of any Participant and that there are no conflicts of interest in his or her appointment to the Advisory Panel.

#### **14. STAGE 2 – APPLICATION PROCESS**

109. Applicants must submit an Application containing the following information in the format prescribed in Section 12.1 above no later than the time and date set out in the Timetable in Table 2 above.

##### **14.1 BASELINE APPLICATION – ALL APPLICANTS (FCFS AND COMPARATIVE SELECTION)**

110. All Applicants must reconfirm the Request for HDS-1 Assignments made pursuant to Section 13.3 above or submit a "Modified Request," labelled as such, in conformity with Section 12.2 above. In addition, each Applicant must provide the following baseline information to the Authority which will be evaluated in accordance with the scoring system set out in Section 14.3 below:
  - (a) Information concerning the Applicant's Financial Position and Technical Capability and Experience, as specified in Sections 14.1.2 and 14.1.3 below, must be provided in the body of the Baseline Application.
  - (b) Information concerning the Applicant's Technical Solution and Business Plan, as specified in Sections 14.1.4 and 14.1.5 below, must be provided in the Alternative Request Annexes, corresponding to each Alternative Request (unless the Applicant only submits a single request for an HDS-1 Lot or HDS-1 Package in which case, such information may be provided in the body of the Baseline Application).

##### **14.1.2 Financial Position**

111. The Applicant shall provide:
  - (a) any financial information that is relevant to consideration of the Applicant's proposed Business Plan;

- (b) any significant changes in the Applicant's financial status that have occurred over the past 6 months;
- (c) any material changes in the Applicant's financial status that are reasonably likely to occur over the next 12 months; and
- (d) any other information or documentation specified by the Authority.

#### **14.1.3 *Technical Capability And Experience***

112. The Applicant shall be required to demonstrate a minimum number of 10 years' experience in cellular/wireless technology either independently or in cooperation with an outsourcing partner or management company with which the Applicant has established a commercial arrangement for the purposes of deployment of a superfast mobile network in the event it is a Successful HDS-1 Applicant. With regard to such experience, the Applicant should describe the:
- (a) specific types of services provided in and outside of Bermuda by the Applicant and/or its outsourcing partner and/or management company (as applicable);
  - (b) number of customers served by the Applicant, and/or its outsourcing partner and/or management company (as applicable);
  - (c) experience deploying 4G/LTE networks by the Applicant and/or its outsourcing partner and/or management company (as applicable);
  - (d) experience of key personnel of the Applicant, and/or its outsourcing partner and/or management company (as applicable), and demonstration that they have adequate qualifications and experience;
  - (e) details of any arrangement between the Applicant and its outsourcing partner and/or management company (as applicable), including copies of all relevant contracts, if relied upon for purposes of satisfying the requirements of this section; and
  - (f) any other information or documentation specified by the Authority.

#### **14.1.4 *Technical Solution***

113. For each Alternative Request, the Applicant shall provide a detailed Technical Solution to achieve the Mandatory Licence Conditions set out in Part C above, and any Optional Commitments (as detailed in Section 14.2.2), taking into consideration the totality of the Designated HDS-1 Frequencies requested and any HDS Frequencies already assigned.
114. Applicants are reminded that, pursuant to Section 10.4 of the RFA, each HDS-1 Licence will be modified to include conditions obligating the Licensee to demonstrate its compliance with the commitments it has made in its successful HDS-1 Request, including the relevant provisions of its Site Plan.
115. The Technical Solution for each Alternative Request shall be detailed in an Alternative Request Annex in the form, and providing the information, stipulated in Annex E. In summary, each Alternative Request Annex shall be independently supported by the information required, which shall, at a minimum, include a detailed description of:

- (a) Network/Technology: A description and the specifications of the state-of-the-art technology (at least, 4G/LTE or equivalent) and equipment that will be deployed.
- (b) Coverage: A statement regarding the percentage of land area covered at 6, 9, 12 and 18 months following award of an HDS-1 Licence. Coverage prediction maps for the Applicant's network for each deadline must be included with best practice assumptions used for analysis.
- (c) Roll-out timetable: A description of the Applicant's proposed timetable for launching superfast mobile broadband services in accordance with the Key Performance Obligations set out in Part C of the RFA and the Optional Commitments.
- (d) Quality of service: A statement detailing the Minimum Average Download User Data Rate that will be delivered to subscribers using the HDS-1 Frequencies including those data rates the Applicant would expect to achieve on its deployed network, a description of how the Applicant intends to ensure that a high quality of service will be delivered to customers in Bermuda, and a demonstration of the Applicant's capability to generate the aggregated session records specified in paragraph 58(b) of the RFA for purposes of the quarterly reports to be submitted to the Authority. For the avoidance of doubt, consistent with the Technical Solution for the relevant Alternative Request, the HDS-1 Licensee may use any spectrum that has lawfully been assigned to it and which has been allocated for this purpose, including but not limited to the HDS-1 Frequencies awarded to the Licensee in the RFA process.
- (e) Need and prioritization: An explanation of the need for each HDS-1 Lot or HDS-1 Package, and the basis for prioritization of one Alternative Request over another. If the Applicant wishes its Application to be considered in relation to various Alternative Requests, the Applicant must clearly describe and explain the impact of the Alternative Requests in the Alternative Request Annexes including combinations of spectrum sought as well as carrier aggregation approaches. The Applicant should also describe its planned use of spectrum in both stand-alone mode and carrier aggregation mode.
- (f) Efficient Use: An explanation of the Applicant's proposed Efficient Use of each HDS-1 Block applied for in each Alternative Request.
- (g) Infrastructure Sharing and ECA Section 9(2)(c)(xi) Objectives: A plan for sharing towers, masts and other passive infrastructure with other holders of spectrum licenses where feasible, and an explanation of how the proposed network design and Site Plan will minimize the duplication of towers, masts and other passive infrastructure so as to limit any potential negative impact on the environment, tourism, health and safety or the public interest. (Note: In light of the importance of this criterion 5 points out of the total of 35 points allocated to the Technical Solution will be based on the degree to which the Applicant's HDS-1 Request(s) achieve the foregoing objectives.)
- (h) Site Plan: A Site Plan corresponding to the relevant provisions of Annex E (items E2, E3 and E8) for meeting the Coverage/Roll-Out Obligation and any Optional Commitments proposed in this regard. Pursuant to paragraph 57 of the RFA, the Site Plan must be sufficiently detailed to convincingly demonstrate how the Coverage/Roll-Out Obligation (including any

enhanced commitments) will be achieved and should also include the Applicant's base station and sector strategy for each frequency band it intends to deploy.

- (i) ICOL licence conditions: Confirmation that the Applicant intends to comply with ICOL Condition A.5.1, which, among other things, restricts the relocation of network assets abroad.
- (j) Additional spectrum: Any likely additional requirements for spectrum that are not HDS Frequencies, i.e. for backhaul and supplemental links.
- (k) Network Capacity: A statement showing that the network to be provided will meet the capacity requirements of the Applicant's traffic forecast for the next 5 years. The traffic forecast should be supplied with a description of how the access network and the backhaul network will be provided to deliver a system that will handle the traffic at a good quality of service. The Applicant should specify key parameters including the design quality of service targets for the system and the overhead ratio for catering to system traffic peaks (i.e. the peak to mean design traffic ratio). The Applicant should also describe its policy for capacity upgrades.
- (l) Backhaul deployment: A description of the Applicant's strategy for backhaul including the mechanisms to be used to provide it (radio or fixed connections) and the dimensioning rules it intends to follow. A description of the backhaul roadmap technology roadmap for the Applicant should be supplied.
- (m) Carrier aggregation: A description of the Applicant's strategy for use of carrier aggregation and the roadmap it intends to follow, including what aggregation possibilities it will adopt from current and future 3rd Generation Partnership Project (3GPP) releases, and when these are likely to be implemented.
- (n) Sub-sea cable capacity: A description of the Applicant's approach to provision of sub-sea cable capacity in order to meet the demand likely to be driven by content and applications and how that approach is likely to change over time.
- (o) Use of small cells: A strategy for the introduction and use of small cells in more dense traffic areas, which must include a strategy for the use of small cells in indoor areas.
- (p) Network Resilience: A description of the Applicant's approach to network resilience. The description should include how the Applicant handles network failures (including power failures), the likely impact on users, and the mitigation measures that the Applicant intends to deploy. The description should also include both the access and core network elements and resilience of other systems essential to the proper functioning of the system (e.g. Home Location Registers) and the Applicant's planned resilience measures for severe weather events.
- (q) LTE-Advanced: A description of how the Applicant intends to deploy LTE-Advanced capability, including plans for introduction of advanced techniques such as multiple-input and multiple-output ("MIMO") and the impact these upgrades will have on the Applicant's rollouts. This description should also

include what the Applicant's cell data throughput curve will look like over time (by band and site type) and indicate the measures that cause step changes in performance.

- (r) VoLTE Approach: A description of the Applicant's voice strategy, which should include a description of the Applicant's plans to move to VoLTE, the projected timeline for doing so, and the spectrum that the Applicant believes it will be necessary to retain in the 850 MHz Band and 1900 MHz Band for non-VoLTE voice service.
- (s) Any other information or documentation specified by the Authority.

#### 14.1.5 **Business Plan**

- 116. For each Alternative Request, the Applicant must provide its proposed Business Plan (with any necessary supporting documentation) for the 3 years following the award of an HDS-1 Licence. The Business Plan should take into account the totality of the Designated HDS-1 Frequencies requested and any HDS Frequencies already assigned and should be commensurate with the scale and complexity of the proposed networks and services to be deployed and associated risks.
- 117. The Business Plan for each Alternative Request shall be detailed in the Alternative Request Annex as stipulated in Annex E. The Alternative Request Annex shall include, at a minimum, a detailed description of:
  - (a) Services: A detailed description of the services the Applicant intends to provide (whether new or upgraded) utilizing the Designated HDS-1 Frequencies.
  - (b) Customer service: A description of customer service standards and procedures.
  - (c) Marketing: A description of the Applicant's proposed marketing strategy for any new services (including superfast mobile or other wireless broadband services) that the Applicant proposes to offer utilizing Designated HDS-1 Frequencies.
  - (d) Personnel: A description of the impact of the proposed network plans and on staffing levels generally.
  - (e) Competition: An explanation of how the Applicant's proposals will promote and preserve effective and sustainable competition.
  - (f) Billing: A description of the Applicant's proposed billing system and methods and/or any changes or improvements planned.
  - (g) Financial plan: A description of the Applicant's financial plan for the 3 years following the award of an HDS-1 Licence.

#### 14.2 **APPLICANTS PARTICIPATING IN COMPARATIVE SELECTION PROCESS**

- 118. If the Application is for a particular HDS-1 Lot (or HDS-1 Package) that the Authority has determined is subject to the Comparative Selection Process, the following rules shall apply:

14.2.1 **Review Of Applications By The Authority**

119. Following the time and date set out in the Timetable in Table 2 above for the submission of Applications, the Authority will review the Applications and seek any clarifications or additional information from the Applicants that it determines is necessary and appropriate in accordance with Section 12.3 above, provided that the Application is materially complete and the clarification or additional information can be provided without delaying the process. If an Applicant fails to provide a materially complete Application, the Applicant will be subject to disqualification in accordance with Section 4.6 above.

14.2.2 **Criteria For Evaluating Applications**

120. Applications will be evaluated in accordance with the following criteria:

- (a) Baseline Application: Applicants shall provide the information required to satisfy the requirements of the Baseline Application set out at Section 14.1 above, including any Alternative Request Annexes, which shall also include any Optional Commitments offered in accordance with subsection (b) below.
- (b) Optional Commitments: Applicants are also invited to make proposals in line with the following Optional Commitments, which will be evaluated and scored in accordance with the scoring system set out in Section 14.3 below:
  - (i) An enhanced Coverage/Roll-Out Obligation that provides for an earlier roll-out than that set out in the Mandatory Licence Conditions addressed in Part C of the RFA. This shall comprise commitments to achieve the stated percentages of the relevant Coverage Area at 6, 9 and 12 months following the award of the HDS-1 Licence. Where Applicants seek a waiver of the Coverage and Roll-out obligation as described in section 10.1.1 they shall state the percentage of Geographic Coverage they will provide at 6, 9, 12 and 18 months following HDS-1;
  - (ii) An enhanced Minimum Quality of Service Obligation in terms of Minimum Average Download User Data Rates above the applicable rates set out in the Mandatory Licence Conditions addressed in Part C of the RFA;
  - (iii) Promotion of Bermudian employment above what may be expected by ECA Section 5, for example, proposals to up-skill Bermudians to fill key managerial positions and engaging as many local contractors and design and construction professionals as may be appropriate for network deployment;
  - (iv) Promotion of Bermudian ownership above what may be expected by ECA Section 5, taking into account the Applicant's existing ownership structure and any planned changes that are expected to take place before 31 December 2016;
  - (v) Promotion of local benefits, for example, by committing to maximise the supply of goods and services from within Bermuda for network deployment;

- (vi) A commitment to facilitate the introduction of specifically identified new technologies and/or roll-out of new innovative services;
  - (vii) A commitment to invest in the electronic communications sector and enhance Bermuda's global competitiveness; and
  - (viii) A commitment to offer specific terms and conditions for the provision of wholesale mobile capacity or resold services to 2 or more unaffiliated requesting ICOL holders within a stipulated timeframe as an enhancement to the Mandatory Condition set out in paragraph 67 of the RFA.
121. Applicants must provide with their Application precise legal text encapsulating each Optional Commitment suitable for inclusion as a licence condition in the ICOL and HDS-1 Licence that will be issued by the Authority in the licence award phase of HDS-1. The precision, clarity, and enforceability of the proposed Optional Commitment as embodied in the proposed licence condition text will be a material consideration in evaluating and scoring each proposed Optional Commitment. Proposals that lack precision and clarity or are unenforceable shall receive low or zero points and may be disregarded by the Authority.
122. Applicants must identify the Optional Commitments that correspond to each Alternative Request (where applicable) in the relevant Alternative Request Annexes.
123. The Applicant's participation in HDS-1 will constitute its consent to the modification of the following licences in order to incorporate any Optional Commitments offered, should the Authority decide to include such Optional Commitments as licence conditions:
- (a) its ICOL, for the purposes of Clause 16(a) of the ICOL; and/or
  - (b) if the Successful HDS-1 Applicant is an MNO, its Mobile Licence, for the purposes of Clause 6(a) of such Mobile Licence.

### 14.3 SCORING SYSTEM

#### 14.3.1 *Review Of Baseline Application And Alternative Requests*

124. For each Baseline Application or Alternative Request submitted, points will be allocated on the basis of the extent to which the Authority determines that each Applicant fulfils the minimum requirements of the Baseline Application described in detail in Section 14.1 above, in accordance with the scoring set out in Table 4 below. Points will be allocated on either a half or whole point basis.
125. No Applicant will be recommended or selected as a Successful HDS-1 Applicant and eligible for the award of any of the Designated HDS-1 Frequencies (whether there is Contention or not) unless the Applicant receives at least the Passing Score based on the points system set out in Table 4 below, for at least one of its Alternative Requests.
126. For each Alternative Request, an Applicant must achieve (1) the minimum number of points allocated for each of the 4 key requirements of the Baseline Application for any Alternative Request as set out in Table 4 of the RFA, and (2) a total of at least 75 points in order for that Alternative Request to be considered an Eligible Alternative Request and for an Applicant to be recommended or selected as a Successful HDS-1 Applicant for the relevant spectrum.

127. Each Alternative Request will be evaluated and scored in accordance with the values set out in the following table:

**Table 4: Scoring for Baseline Application**

Baseline Application	Maximum Number of Points Available	Minimum Points Required
1. Financial Position	15	10
2. Technical Capability and Experience	20	15
3. Technical Solution (of which 5 points will be attributed to achievement of objectives of ECA Section 9(2)(c)(xi))	35	30
4. Business Plan	30	20
<b>Passing Score</b>	100	75

128. The requirements of the Baseline Application will be evaluated and scored based on:
- (a) completeness, clarity and transparency;
  - (b) relevance;
  - (c) plausibility, feasibility and credibility;
  - (d) applicable timetables;
  - (e) ease of enforcement (where relevant); and
  - (f) the degree to which the Application (and each Alternative Request) advances the public interest and the policies set out in the Minister's Spectrum Policy Statement.

#### 14.3.2 **FCFS Process**

129. Where the Authority has determined that the FCFS Process applies to a particular HDS-1 Lot (or HDS-1 Package), the Authority will evaluate, for any request relating to that particular HDS-1 Lot (or HDS-1 Package):
- (a) whether the Applicant has met all the requirements of the Baseline Application; and



- (b) whether the Applicant has achieved a Passing Score in relation to the Baseline Application, which review the Authority may carry out before the final deadline for the submission of Applications if the Application is submitted prior to the deadline.

130. If the Authority determines that the Applicant has achieved a Passing Score for any request for an HDS-1 Lot or HDS-1 Package that qualifies for FCFS, the Authority may issue a Final Decision selecting that Applicant for the relevant spectrum and immediately proceed to the Licence Award Stage of HDS-1 set out in Section 15 below.

#### **14.3.3 Comparative Selection Process**

##### **14.3.3.1 Baseline Review**

131. Where the Authority has determined that the Comparative Selection Process applies to a particular HDS-1 Lot (or HDS-1 Package), each Alternative Request for that particular HDS-1 Lot (or HDS-1 Package) will be evaluated to determine whether:

- (a) the Applicant has met all the requirements of the Baseline Application and for Alternative Request Annexes (where applicable); and
- (b) the Applicant has achieved a Passing Score in relation to each Alternative Request.

132. If only one Applicant achieves a Passing Score on its Baseline Application for a particular HDS-1 Lot or HDS-1 Package, the Authority will consider that Applicant's prioritization of any Alternative Requests for that particular HDS-1 Lot or HDS-1 Package and may issue a Final Decision selecting that Applicant as the Successful HDS-1 Applicant for the relevant spectrum and proceed immediately to the Licence Award Stage of HDS-1 set out in Section 15 below. Such a Successful HDS-1 Applicant shall be subject to any Optional Commitments offered that the Authority decides to accept. The Authority may also elect to issue an Interim HDS-1 Decision in relation to the relevant HDS-1 Lots and award a temporary licence, or it may delay licensing until the entire HDS-1 process is completed.

##### **14.3.3.2 Further Qualitative Assessment**

133. If, in the Baseline Review, more than one Applicant achieves a Passing Score on its Baseline Application for any particular HDS-1 Lot or HDS-1 Package that forms an Alternative Request (referred to herein as an "Eligible Alternative Request"), that Eligible Alternative Request will be evaluated based, in part, on the quality, precision, clarity and enforceability of the Optional Commitments offered in accordance with the types of commitments identified in paragraph 120(b) and the criteria set out in paragraph 121 above, subject to the points system set out in Table 5 below. The points awarded to the Applicant following evaluation of the relevant Optional Commitments will be added to the points achieved for the Applicant's Technical Solution and Business Plan, as set out in paragraph 135(a), for each respective Eligible Alternative Request.

**Table 5: Scoring for Optional Commitments**

Optional Commitments	Maximum Number of Points Available
<p>Enhanced delivery date for the Coverage/Roll-Out Obligation<sup>10</sup></p> <p>Points will be attributed for each enhanced (accelerated) roll-out milestone commitment, with up to 80% of the points being reserved for a credible commitment to achieve the 99.9% coverage milestone on an accelerated basis.</p> <p>Note: Applicants may not change the 4 Mbps Minimum Download User Data Rate for purposes of the Applicant's Optional Commitments related to the Coverage/Roll-Out Obligation.</p>	20
<p>Enhanced quality of service (over and above that specified in the Mandatory Licence Conditions)</p> <p>50% of the points will be attributed according to the Minimum Average Download User Data Rate that is committed to in line with the committed Coverage/Roll-Out timetable. The remaining 50% will be attributed according to the measures the Licensee proposes to put in place to ensure that the commitment will be met.</p>	20
Pricing commitments	5
Bermudian employment	5
Bermudian ownership (current and expected)	5
Public Interest Factors other than those otherwise specified in this Table 5, including any local benefits for the people of Bermuda	10
New technologies/new innovative services	5
Investment in the sector	15
Wholesale capacity on retail-minus basis	15
<b>TOTAL</b>	<b>100</b>

134. In assessing each Eligible Alternative Request, the Authority will take account of the feasibility and the credibility of the commitments made, and the ease of enforcement, given the information provided in the Alternative Request Annex. Such assessment

<sup>10</sup> Enhanced commitments must correspond to intervals of 6, 9 and/or 12 months, and all Applicants must specify two milestones, one for achieving 50% and one for achieving 99.9% coverage, in line with paragraph 53 of the RFA.

may result in the Authority awarding fewer points where there is significant doubt regarding an Applicant's ability to adhere to the enhanced commitments made. It is up to the Applicant to provide convincing evidence in support of each Alternative Request.

135. For each Eligible Alternative Request, the Successful HDS-1 Applicant for each HDS-1 Lot or HDS-1 Package will be determined as follows:

(a) In the first instance, on the basis of the highest total score achieved by adding together:

(i) the combined number of points achieved for the proposed Technical Solution and Business Plan (i.e. items 3 and 4 of Table 4); plus

(ii) the total number of points achieved for the proposed Optional Commitments (all relevant items in Table 5).

(b) In any case where a decisive winner cannot be determined on the basis of the total scores achieved in subpart (a), the Authority will make the selection based on the total score achieved by combining:

(i) the total number of points achieved for the Baseline Application (i.e. all 4 items contained in Table 4); plus

(ii) the total number of points achieved for the proposed Optional Commitments (all relevant items in Table 5).

136. If, following the procedures set out in subsections (a) and then (b), a decisive winner cannot be determined, the Authority may issue a call for modified Applications to Applicants competing for a Contested HDS-1 Lot or HDS-1 Package to consider alternative HDS-1 Package combinations, offering new or enhanced Optional Commitments and/or other criteria relevant to the assignment of the specific Designated HDS-1 Frequencies.

(a) This option will only be utilised if, in the Authority's sole discretion, it will assist the Authority in reaching a final decision on assignment of the Designated HDS-1 Frequencies in question that would be in the public interest, after considering the relevant Public Interest Factors in accordance with ECA Section 5(2) and the Spectrum Policy Statement.

(b) In making its final decision under the procedures set out in this paragraph, the Authority will consider whether competing requests for the same spectrum can be addressed by identifying an overall assignment configuration that reasonably satisfies all Applicants' requests, with due regard for the prioritization and ranking of each Eligible Alternative Request provided in a Registrant's Request for HDS-1 Assignment and/or Application and the explanation for this ranking that is provided in the relevant Technical Solutions, including any supplemental submissions.

#### 14.3.4 **Recommendation From Advisory Panel To Authority**

137. The Advisory Panel will evaluate the Applications submitted and each Alternative Request, upon referral by the Authority, in accordance with subsection (a) of paragraph 135 and, if necessary, subsection (b) of paragraph 135 of the RFA. The Advisory Panel will operate on the basis of consensus and shall submit its final Recommendation to the Authority for the proposed assignment of the referred HDS-1 Lots (or HDS-1 Packages) based on the criteria set out in Section 14.2.2 above, and in line with the provisions of the RFA. The Advisory Panel shall provide a reasoned basis for its final Recommendation for the assignment of each HDS-1 Lot referred to it for evaluation by the Authority. If the Advisory Panel is unable to recommend a decisive winner for any HDS-1 Lot on the basis of the submitted Applications or is unable to reach a consensus on a recommended Successful Applicant for any HDS-1 Lot, the Advisory Panel shall provide the Authority with an explanatory statement which sets out the relevant issues and factors that have contributed to the panel's inability to make a Recommendation.

#### 14.3.5 **Decision Of The Authority**

138. The Authority will consider the Recommendations of the Advisory Panel (or explanatory statement, as the case may be) as inputs to its Final Decision on the HDS-1 assignments. Following its review of the inputs received from the Advisory Panel, the Authority may seek additional information from the Advisory Panel or an Applicant and/or proceed with a call for further Applications as provided for in paragraph 136 of the RFA. The Authority will make its independent assessment of the results, in line with the evaluation criteria and scoring procedures set out in Section 14.3 in line with the relevant Public Interest Factors. Following this, the Authority will issue its HDS-1 Final Decision identifying the Successful HDS-1 Applicants for each HDS-1 Lot that is to be awarded in accordance with the RFA.

### 15. **STAGE 3 - SUCCESSFUL HDS-1 APPLICANT NOTIFICATION AND AWARD OF LICENCES**

#### 15.1 **SUCCESSFUL HDS-1 APPLICANT NOTIFICATION**

139. The Authority will notify all Applicants in writing whether or not their Application for Designated HDS-1 Frequencies was successful.
140. The Authority will determine the timing of the public announcement of the HDS-1 results and will publish the names of the Successful HDS-1 Applicants on the Website, along with a reasoned decision.

#### 15.2 **AWARD OF HDS-1 LICENCES**

141. Following publication of the HDS-1 Final Decision and after confirming that the Successful HDS-1 Applicant has put in place the required Performance Bond and paid the Successful Applicant Service Fee by the date stipulated by the Authority, the Authority will:
- (a) if the Successful HDS-1 Applicant is an MNO, modify its Mobile Licence and, as appropriate, its ICOL to incorporate the Mandatory Licence Conditions set out in Part C of the RFA and any Optional Commitments accepted by the Authority; or

- (b) if the Successful HDS-1 Applicant is a New Entrant, issue an HDS-1 Licence (in the standard form of Mobile Licence issued to MNOs, as published on the Website) and, as appropriate, modify its ICOL to incorporate the Mandatory Licence Conditions set out in Part C of the RFA and any Optional Commitments accepted by the Authority.
142. The HDS-1 Licences will be awarded for a period of 10 years from the date they are modified or issued, in accordance with ECA Section 38(7), and any pre-existing HDS assignments shall be extended accordingly.
16. **END OF HDS-1**
143. HDS-1 shall terminate with the issuance of new or modified ICOLs and HDS-1 Licences to the Successful HDS-1 Applicants, as the case may be, and/or by a decision of the Authority to defer the assignment of one or more HDS-1 Lots, or by termination of the process by the Authority in accordance with Section 9 of the RFA.

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## ANNEX A

### INTERPRETATION OF RFA

#### DEFINITIONS

1. In the RFA, unless the context requires otherwise:

**"Advisory Panel"** means the panel appointed by the Authority to evaluate Applications and who have been selected on the basis of their expertise and high level of independence and impartiality;

**"Affiliate"** has the meaning given to it in ECA Section 2(1), i.e.:

*"any entity that directly or indirectly, controls, is controlled by or is under common control with another legal person, and for this purpose "control"—*

*(a) means the power, whether held directly or indirectly, to exercise decisive influence over another entity by directing its management and policies, whether through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise; and*

*(b) is deemed to exist in any case involving the ownership of 25 per cent or more of the shares, stocks or other securities or voting rights in an entity, including through an agreement or arrangement of any type."*

**"Alternative Request"** means each HDS-1 Package requested by an Applicant in cases where it requests multiple HDS-1 Packages and, where the context of the relevant text of the RFA so implies, a singular request for one sole HDS-1 Package by an individual Applicant;

**"Alternative Request Annex"** means the Technical Solution, Business Plan and Optional Commitments that must be submitted for each HDS-1 Package requested by an Applicant;

**"Applicant"** means an Approved Registrant that completes an Application for Designated HDS-1 Frequencies;

**"Application"** means the proposal of an Approved Registrant submitted to the Authority in accordance with the requirements of Section 14 of the RFA including either (1) the Baseline Application if the FCFS Process applies; or (2) the Baseline Application and any Optional Commitments offered if the Comparative Selection Process applies;

**"Approved Registrant"** means a Registrant that the Authority considers eligible to submit an Application for HDS-1 Lots and/or HDS-1 Packages, and that the Authority has notified in writing that it is eligible to submit an Application;

**"Authorized Person"** means any person duly authorized to act on behalf of the Participant in all matters relating to the RFA and HDS-1;

**"Authority"** means the Regulatory Authority of Bermuda;

**"Average Download User Data Rate"** means the download user data rate that is delivered on average to all mobile broadband subscribers and users by the network under operational load conditions and identified in Section 10.1.2 of the RFA;

"**Baseline Application**" means the baseline information that must be submitted to the Authority by all Applicants, in accordance with Section 14.1 of the RFA, regardless of whether the FCFS Process or the Comparative Selection Process applies;

"**Baseline Review**" means the review process set out in 14.3.3.1 of the RFA;

"**BMD**" means Bermudian dollars;

"**Business Plan**" means the Applicant's business plan for deployment of a superfast mobile network that must be provided as part of its Baseline Application, in accordance with Section 14.1.5 of the RFA, and must be included within each Alternative Request Annex for any Alternative Requests for which the Comparative Selection Process applies;

"**Comparative Selection Process**" means the rules that apply where there is Contention for a particular HDS-1 Lot and/or the Authority determines that that particular HDS-1 Lot or HDS-1 Package is subject to assignment by the Comparative Selection Process, and requires the Applicant to submit its Baseline Application and invites Applicants to offer Optional Commitments;

"**Confidential Information**" means any information that is not in the public domain and which, if it were made public, or disclosed to another actual or potential Participant, would be likely to affect the decisions that such a Participant might make in relation to its response to the RFA and/or its participation in HDS-1, including but not limited to a Participant's business case, strategy and proposed Request for HDS-1 Assignment;

"**Consultation**" means the consultation document accompanying the RFA on the Criteria and Procedures for Assigning High Demand Spectrum, Matter: HDS-1, and dated 12 August 2015;

"**Contention**" means where 2 or more Requests for HDS-1 Assignments are received by the Authority for a particular HDS-1 Lot (including a particular HDS-1 Lot within an HDS-1 Package) and "contested" shall be construed accordingly;

"**Control**" has the meaning given to it in RAA Section 2, i.e.:

*"the power, whether held directly or indirectly, to exercise decisive influence over a body corporate, including by directing its management and policies through ownership of shares, stocks or other securities or voting rights, or through an agreement or arrangement of any type, or otherwise, and "controls" and "controlled" shall be construed accordingly"*

"**Controlling Interest Holder**" means a corporation or individual that is in Control of a Participant;

"**Coverage Area**" means the land mass of Bermuda and its surrounding islands;

"**Coverage/Roll-Out Obligation**" refers to the obligation contained in Section 10.1.1 of the RFA;

"**DCF**" means Discounted Cash Flow;

"**Declaration**" means a formal declaration submitted to the Authority as part of the Eligibility Documentation in order to meet certain Eligibility Requirements;

"**Designated HDS-1 Frequencies**" means the HDS-1 Lots in the 850 MHz, 700 MHz and 2100 MHz Bands designated by the Authority as suitable for assignment in HDS-1, as set out in Table 1 of the RFA;

"**Document Checklist**" means the list of information and documents that must be provided to the Authority as part of a Required Registration Documentation, and set out in Annex D to the RFA;

"**ECA**" means Electronic Communications Act 2011;

"**Efficient Use**" means the efficient use of a scarce spectrum resource, which will be evaluated considering (1) whether an HDS-1 Lot is being utilized at all and, if so, (2) whether the parameters set out in Section 10.2.1 of the RFA have been satisfied;

"**Eligible Alternative Request**" means an Alternative Request that has achieved a Passing Score;

"**Eligibility Documentation**" means the Declarations and other documents provided by a Registrant in order to demonstrate to the Authority that it has met the Eligibility Requirements;

"**Eligibility Requirements**" means the requirements that must be met through the provision of Eligibility Documentation in order to be considered eligible to submit an Application for HDS-1 Lots and/or HDS-1 Packages;

"**FCFS**" means first-come first-served;

"**FCFS Process**" means the rules that apply where there is no Contention for a particular HDS-1 Lot and the Authority has determined that a particular HDS-1 Lot or HDS-1 Package is subject to assignment by the FCFS Process, and requires the Applicant to submit its Baseline Application;

"**Financial Position**" means an Applicant's financial position that it must provide as part of its Baseline Application, in accordance with Section 14.1.2 of the RFA;

"**Geographic Coverage**" means the percentage of the land area of Bermuda and its surrounding islands, over which the coverage performance requirement must be satisfied;

"**Geographic Coverage Obligation**" means the obligation contained in paragraph 53(b) of the RFA;

"**Government**" means the Government of Bermuda;

"**Government Authorization Fees**" means the fees established in connection with the grant of an authorization pursuant to section 52 of the RAA;

"**HDS Frequencies**" means any of the frequencies identified in the High Demand Spectrum Table set out in Appendix A to the Spectrum Policy Statement issued by the Minister of Education and Economic Development on 22 September 2014 (incorporating the typographical corrections contained in Table 1 of the Authority's Consultation on HDS-1 (at page 6), issued on 12 August 2015);

"**HDS-1**" means the process for the assignment of Designated HDS-1 Frequencies commencing with the publication of the Consultation by the Authority and concluding in accordance with Section 16 of the RFA;



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**"HDS-1 Block(s)"** means a specific block(s) of bandwidth making up the HDS-1 Lots that are identified within the Designated HDS-1 Frequencies, and set out in Table 1 of the RFA;

**"HDS-1 Final Decision"** means any final decision resulting from the FCFS Process or the Comparative Selection Process published by the Authority on its Website identifying the Successful HDS-1 Applicant for a given HDS-1 Lot or HDS-1 Package;

**"HDS-1 Licence"** means either (1) a modified Mobile Licence awarded to a Successful HDS-1 Applicant that is an MNO; or (2) a new Mobile Licence awarded to a Successful HDS-1 Applicant that is a New Entrant, authorizing the use of Designated HDS-1 Frequencies;

**"HDS-1 Licensee"** means a Successful HDS-1 Applicant that has been awarded an HDS-1 Licensee;

**"HDS-1 Lots"** means each of the 4 frequency ranges, identified as L-1 through L-4 in Table 1, for which an Applicant may apply;

**"HDS-1 Package(s)"** means one or more HDS-1 Lots that a Participant has identified as being requested inseparably, and which will be evaluated in HDS-1 independently as such;

**"HDS-1 Request"** means each HDS-1 Package requested by an Applicant in cases where it requests multiple HDS-1 Packages and, where the context of the relevant text of the RFA so implies, a singular request for one sole HDS-1 Package by an individual Applicant;

**"HDS-2"** means the process for the assignment of some of the HDS Frequencies that are not Designated HDS-1 Frequencies in a second stage to be commenced at a time to be determined by the Authority following the award of HDS-1 Licences;

**"ICAS"** means information, content, applications and services provided over the internet;

**"ICOL"** means Integrated Communications Operating Licence;

**"Key Performance Obligations"** means the Mandatory Licence Conditions set out in Section 10.1 of the RFA;

**"Key Service Obligations"** means the Mandatory Licence Conditions set out in Section 10.2 of the RFA;

**"LTE"** means Long-Term Evolution;

**"Mandatory Licence Conditions"** means the licence conditions set out in Part C of the RFA that must be fulfilled by HDS-1 Licensees in the exercise of their HDS-1 Licence;

**"Minimum Average Download User Data Rate"** means the minimum download user data rate that shall be delivered on average to all broadband subscribers and users by the network under operational load conditions and identified in Section 10.1.2 of the RFA;

**"Minimum Download User Data Rate"** means the lowest download user data rate that must be supported by the network for a geographic location to be considered within coverage;

**"Minimum Quality of Service Obligation"** means the guarantee contained in Section 10.1.2 of the RFA;

**"Minister"** means the Minister responsible for electronic communications;

**"Ministry"** means the Ministry of Economic Development;

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**"Mobile Licence"** means a Commercial Mobile Radio Service Licence;

**"MNO"** means an existing mobile network operator being Telecommunications (Bermuda & West Indies) Limited (t/as Digicel) and Bermuda Digital Communications Limited;

**"MVNO"** means mobile virtual network operator;

**"New Entrant"** means an ICOL holder than is not an MNO;

**"Optional Commitments"** means the optional commitments set out in Section 14.2.2(b) of the RFA that Applicants are invited to make where the Authority has determined that a particular HDS-1 Lot or HDS-1 Package is subject to the Comparative Selection Process, and must be included within each Alternative Request Annex for any Alternative Requests for which the Comparative Selection Process applies;

**"Participants"** means Registrants, Approved Registrants, Applicants and Successful HDS-1 Applicants;

**"Passing Score"** means (1) the minimum number of points an Applicant must be allocated for each of the 4 key requirements of the Baseline Application for an Alternative Request, and (2) a total of at least 75 points, based on the points system set out in Table 4 of the RFA, in order for that Alternative Request to be considered an Eligible Alternative Request and for an Applicant to be recommended or selected as a Successful HDS-1 Applicant;

**"Performance Bond"** means a collateralized performance guarantee, which may include a surety issued by a bank or insurance company in a form to be approved by the Authority, and the proceeds of which shall be paid into the Consolidated Fund;

**"Public Interest Factors"** means the legislative purposes set out in ECA Section 5(1), the spectrum management objectives established in ECA Section 37(1), the principal functions of the Authority provided in RAA Section 12, and the general policy for HDS assignment set out in Section 3.3.1 of the Spectrum Policy Statement;

**"RAA"** means Regulatory Authority Act 2011;

**"Recommendation"** means the Advisory Panel's recommendation to the Authority for the proposed assignment of a particular HDS-1 Lot (or HDS-1 Package) to a particular Applicant pursuant to paragraph 137 of the RFA;

**"Registrant"** means an ICOL holder that submits a Registration Form, Request for HDS-1 Assignment and/or Eligibility Documentation to the Authority;

**"Registration Form"** means the form set out in Annex C of the RFA that must be submitted to the Authority by Participants that wish to apply for HDS-1 Lots (or HDS-1 Packages);

**"Regulatory Authority Fees"** has the same meaning established by RAA and the ECA;

**"Request for HDS-1 Assignment"** means the request for a particular HDS-1 Lot (or HDS-1 Package) that is part of the Required Registration Documentation;

**"Relevant Turnover"** has the meaning given to it in ECA Section 2(1), i.e.

*"for the purposes of calculating applicable fees under this Act, the portion of a licence holder's total turnover minus payments to other COL holders, as specified by the Authority"*

**"Required Documentation"** means the Registration Form, Request for HDS-1 Assignments, Eligibility Documentation and Application;

**"Required Registration Documentation"** means the Registration Form, Request for HDS-1 Assignments and Eligibility Documentation;

**"RFA"** means this Request for Applications, together with its Annexes;

**"RFA Launch Date"** means the date upon which RFA is issued and availability announced;

**"Site Plan"** means the information referenced in paragraph 115(h) of the RFA;

**"Spectrum Cap"** means the cap on all assignments of HDS Frequencies, imposed in Section 3.3.1.3 of the Spectrum Policy Statement, that no firm or Affiliate is permitted to hold more than 50% of the total amount of commercially usable spectrum in each band of HDS Frequencies (i.e. spectrum for which equipment is commercially available), which for the avoidance of doubt will prevent any Applicant from including Lots L-1 and L-2 in the same HDS-1 Package;

**"Spectrum Policy Statement"** means the statement by the Minister effective on 22 September 2014 for the purpose of providing the spectrum management policies for the Authority to implement going forward with respect to spectrum allocations, spectrum assignments and spectrum related fees;

**"Successful Applicant Service Fee"** means the fee paid by each Successful HDS-1 Applicant in accordance with Section 13.6 of this RFA as may be prescribed the Minister;

**"Technical Capability and Experience"** means the technical capability and experience that Applicants must demonstrate as part of their Baseline Application, in accordance with Section 14.1.3 of the RFA;

**"Technical Solution"** means the Applicant's technical solution for deployment of a superfast mobile network that will achieve the Mandatory Licence Conditions and that must be provided as part of its Baseline Application, in accordance with Section 14.1.4 of the RFA, and must be included within each Alternative Request Annex for any Alternative Requests for which the Comparative Selection Process applies;

**"Timetable"** means the timetable for the assignment of Designated HDS-1 Frequencies, including milestones and key dates, set out in Table 2 of the RFA;

**"VoLTE"** means voice over LTE;

**"Website"** means the Authority's website at [www.rab.bm](http://www.rab.bm);

**"Working Day"** means a day other than a Saturday, Sunday or a public holiday in Bermuda.

2. All other terms, words or expressions, shall, except insofar as the context otherwise requires, have the meaning, if any, assigned to them by the RAA, the ECA and the Interpretation Act 1951.

#### **GENERAL INTERPRETATION OF RFA**

3. In the RFA:
  - (a) the singular includes the plural and vice versa and any gender includes any other gender;

- (b) the headings in the RFA are inserted for convenience only and do not affect its construction or interpretation;
  - (c) references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to each of the same as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof; and
  - (d) the wording and phrases "other", "including" and "in particular" do not limit the generality of any preceding words and words which follow them shall not be construed as being limited in scope to these same classes as the preceding words where a wider construction is possible.
4. If there is any conflict, inconsistency or ambiguity between the Sections of and Annexes to the RFA, the Sections of the RFA shall prevail.
  5. In the RFA, unless expressly stated otherwise (i) "Section" means one of Sections 1 to 16 of the RFA which are set out before the Annexes, (ii) "Annexes" means Annex A to E of the RFA.
  6. The language for communications between the Participants and the Authority on all matters relating to the RFA and HDS-1 shall be English.
  7. The provisions of the RFA are binding. The Annexes to the RFA form an integral part of the RFA and must be read alongside the provisions of the RFA.

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## ANNEX B

### CONFIDENTIALITY UNDERTAKING

This Confidentiality Undertaking adopts the definitions referred to in Annex A of the RFA.

On behalf of the Participant, **[INSERT NAME OF ICOL HOLDER]** and in consideration of participating in HDS-1, I agree and confirm that any documents, correspondence and information provided by the Authority to the Participant as part of HDS-1 comprise confidential proprietary information belonging to the Authority, and I undertake to the Authority for and on behalf of the Participant, that the Participant will hold and keep confidential all such information, and refrain from disclosing it to any third party except in the following circumstances:

- (a) the information has been disclosed by the Government or the Authority and is already in the public domain;
- (b) the information is disclosed to the Participant's staff, agents, professional advisors, sub-contractor or any other person, including a financial provider, on a strictly need-to-know basis for the purpose of participating in HDS-1, provided that such person has first been made aware of the confidentiality of the information and is subject to a confidentiality obligation equivalent to this Confidentiality Undertaking;
- (c) the information is disclosed pursuant to legal requirements of a competent legal or other regulatory authority, provided that: (i) the Authority has been notified by the Participant of the intended disclosure prior to the disclosure taking place (where permitted); and (ii) the Participant has provided (where permitted) such assistance as has been reasonably requested by the Authority in order to restrict the scope of the intended disclosure to the maximum extent.

Signature: .....

Name of Authorized Person: .....

Date: .....

**ANNEX C**  
**REGISTRATION FORM**

This Registration Form adopts the definitions referred to in Annex A of the RFA.

<b>Name of Registrant</b>	
<b>Address of Registrant</b>	
<b>Telephone Number</b>	
<b>Email Address</b>	
<b>Authorized Person</b>	
<b>Name</b>	
<b>Position</b>	
<b>Number of Alternative Requests to be submitted (corresponding to details provided in response to Annex D, Item 5)</b>	

I, the undersigned, hereby declare that I am duly authorized by the Registrant to:

- (a) submit this Registration Form for and on behalf of the Registrant for the purpose of applying for Designated HDS-1 Frequencies; and
- (b) act on behalf of the Registrant in all matters relating to the RFA and HDS-1.

I further acknowledge that Applications submitted as part of HDS-1 will only be accepted from the Registrant named in this Registration Form, or such other entity that the Authorized Person may notify to the Authority in writing.

I hereby attach a letter in the form set out in Annex C-1 under the heading “Eligibility Documentation” confirming the Registrant’s eligibility to participate in HDS-1 in accordance with paragraphs 89 and 90 of the RFA.

I acknowledge that this registration shall only take effect upon written confirmation by the Authority that the Authority has received completed Required Registration Documentation, in accordance with the submission formalities in Section 12.1 of the RFA, and the Registrant has met the Eligibility Requirements.

Signature of Authorized Person: .....

Date: .....

## ANNEX C-1

### ELIGIBILITY DOCUMENTATION

Michael Wells  
Regulatory Authority  
3rd Floor Cumberland House  
1 Victoria Street  
Hamilton  
HM 11, Bermuda

Re: Required Registration Documentation – Undertakings of Registrant

Dear Mr. Wells:

On behalf of **[INSERT NAME OF ICOL HOLDER]**, which is submitting its Required Registration Documentation to participate in the HDS-1 process, I hereby confirm, as an Authorized Person, the following:

1. I confirm that the Registrant is an ICOL holder with licence number **[INSERT LICENCE NUMBER]**.
2. I confirm that the Registrant is not an ICOL holder currently subject to a Spectrum Cap or any Affiliate of such ICOL holder such that the potential award to the Registrant would cause the combined holdings of the Registrant and its affiliated ICOL holder to exceed the Spectrum Cap for that band.
3. I have attached to this declaration a Power of Attorney signed by an authorized executive or board member of the Registrant, which provides proof of authority for me to bind the Registrant in all matters relating to the RFA and HDS-1.
4. I confirm that the Registrant intends to apply for Designated HDS-1 Frequencies.
5. I confirm that the Registrant has complied with the Spectrum Cap (if applicable).
6. I confirm that the Registrant has no Government Authorization Fees or Regulatory Authority Fees currently outstanding.
7. I confirm that, on the date of submission of the Required Registration Documentation, there are no outstanding or unresolved issues involving the Registrant's compliance with any administrative decision or information request issued by the Authority to the Registrant.
8. I confirm that Registrant is currently compliant with the rules on the conduct of Participants set out in Section 4 of the RFA and will comply with those rules throughout the HDS-1 process.
9. I confirm that the Registrant accepts and commits to fulfil the Mandatory Licence Conditions set forth in Part C of the RFA (including but not limited to the obligation to provide a Performance Bond); and further confirm that the Registrant consents to the modification of its Mobile Licence and ICOL (if applicable) to incorporate the Mandatory Licence Conditions and any Optional Commitments accepted by the Authority should the Registrant be a Successful HDS-1 Applicant.
10. I confirm that the Registrant agrees to pay the Successful Applicant Service Fee if the Registrant becomes an Applicant and is selected by decision of the Authority for the award of any and all HDS-1 frequencies pursuant to the RFA; and that, furthermore, the Registrant accepts that no HDS-1 Lot or Lots will be awarded, and the Applicant shall be disqualified from this HDS-1 process, if payment of the Successful Applicant Service Fee is not remitted

by the deadline stipulated by the Authority following the Applicant's selection for the award of an HDS-1 Lot or Lots.

11. The Registrant has executed the Confidentiality Undertaking in the form set out in Annex B to the RFA.

Signature of Authorized Person: .....

Date: .....

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## ANNEX D

### REQUIRED REGISTRATION DOCUMENTATION - DOCUMENT CHECKLIST

This Document Checklist adopts the definitions referred to in Annex A of the RFA.

Registrants must provide the following Required Registration Documentation:

#### **Required Forms**

1. Confidentiality Undertaking (Annex B)
2. Registration Form (Annex C)
3. Eligibility Documentation (Annex C-1)

#### **Request for HDS-1 Assignment**

4. For each Alternative Request the following information shall be provided in the format below:

#### **RFA paragraph 88 Request for HDS-1 Assignment**

Alternative Request (specifying HDS-1 Lot to be requested)	Planned use of each HDS- 1 Lot	Priority Ranking

## ANNEX E

### APPLICATION INFORMATION TO BE INCLUDED IN EACH ALTERNATIVE REQUEST ANNEX

Each Alternative Request Annex must include the following information on the Technical Solution and Business Plan. Additional information may be annexed where it is impractical to include it in the table format provided below. Any information provided should clearly reference the appropriate item number and should comply with any formatting instructions provided by the Authority.

#### Technical Solution

Section	Item number	Minimum information to be included	Applicant's submitted information
E1 Network / Technology	E1.1	Technology/Standard proposed.	
	E1.2	Version of standard proposed (e.g. 3GPP release numbers) and deployment dates.	
	E1.3	Network design and means of delivering capacity.	
	E1.4	Interconnection with other networks in Bermuda.	
	E1.5	Approach to the provision of backhaul.	
E2 Coverage	E2.1	Link budgets showing the maximum permissible path loss to support the minimum download user data rate.	
	E2.2	Details of path loss model used for coverage prediction.	
	E2.3	Clutter assumptions (propagation losses and standard deviations).	
	E2.4	Coverage prediction maps on A3 paper at a resolution of 50 metre grid or better for 6, 9, 12 and 18 month time periods following HDS-1 licence award. Prediction should be based on a local area probability of coverage of 90%.	
E3 Roll-out timetable	E3.1	Network deployment timetable including a Gantt chart depicting project sequencing, scheduling and resource allocation.	
	E3.2	Approach to construction and logistics management and project management.	
	E3.3	Planned project activities including communication and key stakeholder engagement.	

Section	Item number	Minimum information to be included	Applicant's submitted information
	E3.4	Perceived key risks and approach to resolving project issues.	
E4 Quality of service	E4.1	Minimum Average Download User Data Rate in Mbps to be provided to subscribers by the network using HDS-1 Frequencies.	
	E4.2	Approach to technology choice that will ensure capability to deliver the Minimum Average Download User Data Rate.	
	E4.3	Approach to network dimensioning that will ensure compliance with the mandatory requirements and the Applicant's quality of service commitments. The Applicant should detail the traffic volume that their network is expected to deliver over the licence term.	
	E.4.4	Evidence that the network support systems are capable of generating the aggregated session records specified in paragraph 58(b) of the RFA for the purposes of the quarterly report to be submitted to the Authority.	
E5 Needs and prioritization	E5.1	Explanation of: <ul style="list-style-type: none"> <li>• the need for each HDS-1 lot within the HDS-1 Package applied for;</li> <li>• the minimum bandwidth with which the Technical Solution may be implemented; and</li> <li>• why the requirement cannot be met using existing spectrum holdings.</li> </ul>	
	E5.2	Explanation for the Alternative Request position within the overall ranking of Alternative Requests; in particular the ideal or optimal HDS-1 Lot or HDS-1 Package for realisation of the Applicant's proposal in line with the Mandatory Licence Conditions and Optional Commitments.	
E6 Efficient Use	E6.1	Description of how the proposed Technical Solution constitutes Efficient Use of each HDS-1 Block applied for taking into account combined use with (1) other HDS-1 Blocks requested and (2) existing HDS Frequencies assigned.	

Section	Item number	Minimum information to be included	Applicant's submitted information
E7 Infrastructure Sharing and ECA Section 9(2)(c)(xi) Objectives	E7.1	A plan for sharing towers, masts and other passive infrastructure with other holders of Spectrum Licenses where feasible and an explanation of how the proposed network design and Site Plan will minimize the duplication of towers, masts, and other passive infrastructure so as to limit any potential negative impact on the environment, tourism, health and safety or the public interest.	
E8 Site Plan for each technology and HDS-1 frequency band used	E8.1	<p>Site information including for each site:</p> <ul style="list-style-type: none"> <li>• the site name, address and ID;</li> <li>• site coordinates in latitude and longitude (accurate to 4 decimal places);</li> <li>• ground height above sea level;</li> <li>• description of the nature of the facilities (e.g. lattice tower, rooftop or monopole).</li> </ul> <p>The Site Plan must be sufficiently detailed to demonstrate each of the factors discussed in paragraph 57 of the RFA.</p>	
	E8.2	<p>Sector information including:</p> <ul style="list-style-type: none"> <li>• sector and site ID;</li> <li>• antenna type, gain and radiation pattern. Supplier datasheets for antennas should also be included;</li> <li>• antenna height above ground level; and</li> <li>• azimuth and downtilt.</li> </ul>	
	E8.3	<p>Equipment configuration including for each sector:</p> <ul style="list-style-type: none"> <li>• sector ID;</li> <li>• technology and version/revision number;</li> <li>• frequency band;</li> <li>• Carrier frequencies and channels;</li> <li>• total transmitted power (EIRP);</li> <li>• channel power (EIRP); and</li> <li>• bandwidth.</li> </ul>	

Section	Item number	Minimum information to be included	Applicant's submitted information
	E8.4	<p>State of site development: including for each site whether the site is existing, shared with other operators or under development. Where the site is new or upgrade is required, the Site Plan shall detail:</p> <ul style="list-style-type: none"> <li>• whether new sites are located close to the existing sites of any ICOL holder;</li> <li>• the nature of upgrades required; and</li> <li>• whether all necessary leases, permissions and approvals have been sought and/or granted.</li> </ul>	
	E8.5	<p>Demonstration of how the Applicant plans to comply with ICOL Condition 7.2, namely:</p> <p><i>“The Licensee shall, where technically feasible, share with Other Licensees that may be designated by the Authority Masts and other support structures suitable for the placement of Radiocommunication Equipment in an efficient manner that allows for the sharing of such facilities on terms and conditions that are fair, reasonable and transparent. ...The Licensee shall provide the Authority with advance notice of its intent to construct new Masts or other support structures and such information as the Authority may require to determine the Licensee’s compliance with this Condition.”</i></p>	
	E8.6	<p>Explanation of how the Applicant intends to comply with any applicable environmental or planning legislation.</p>	
E9 ICOL licence conditions	E9.1	<p>Confirmation that the Applicant intends to comply with ICOL Condition A.5.1 in deploying its new facilities, which requires that no personnel, Electronic Communications Network facilities, Associated Facilities and Associated Services relating to the provision of Electronic Communications Services (as defined in the ECA), can be moved abroad without first obtaining the permission of the Authority.</p>	
E10 Additional spectrum	E10.1	<p>Details of any additional spectrum requirements that are not HDS frequencies (e.g. for backhaul and supplemental links).</p>	

Section	Item number	Minimum information to be included	Applicant's submitted information
E11 Network Capacity	E11.1	A statement showing that the network to be provided will meet the capacity requirements of the Applicant's traffic forecast for the next five years. The traffic forecast should be supplied with a description of how the access network and the backhaul network will be provided to deliver a system that will handle the traffic at a good quality of service. The applicant should specify key parameters including the design quality of service targets for the system and the overhead ratio for catering to system traffic peaks (i.e. the peak to mean design traffic ratio). The applicant should also describe its policy for capacity upgrades.	
E12 Backhaul deployment	E12.1	A description of the Applicant's strategy for backhaul including the mechanisms to be used to provide it (radio or fixed connections) and the dimensioning rules it intends to follow. A description of the backhaul roadmap technology roadmap for the Applicant should be supplied.	
E13 Carrier aggregation	E13.1	A description of the Applicant's strategy for use of carrier aggregation and the roadmap it intends to follow, including what aggregation possibilities it will adopt from current and future 3rd Generation Partnership Project (3GPP) releases, and when these are likely to be implemented.	
E14 Sub-sea cable capacity	E14.1	A description of the Applicant's approach to provision of sub-sea cable capacity in order to meet the demand likely to be driven by content and applications and how that approach is likely to change over time.	
E15 Use of small cells	E15.1	A strategy for the introduction and use of small cells in more dense traffic areas, which must include a strategy for the use of small cells in indoor areas.	
E16 Network resilience	E16.1	A description of the Applicant's approach to network resilience. The description should include how the Applicant handles network failures (including power failures), the likely impact on users, and the mitigation measures that the Applicant intends to deploy. The description should also include both the access and core network elements and resilience of other systems essential to the proper functioning of the system (e.g. HLRs) and the Applicant's planned resilience measures for severe weather events.	

Section	Item number	Minimum information to be included	Applicant's submitted information
E17 LTE-Advanced	E17.1	A description of how the Applicant intends to deploy LTE-Advanced capability, including plans for introduction of advanced techniques such as multiple-input and multiple-output (MIMO) and the impact these upgrades will have on the Applicant's rollouts. This description should also include what the Applicant's cell data throughput curve will look like over time (by band and site type) and indicate the measures that cause step changes in performance.	
E18 VoLTE Approach	E18.1	A description of the Applicant's voice strategy, which should include a description of the Applicant's plans to move to VoLTE, the projected timeline for doing so, and the spectrum the Applicant believes will be necessary to retain in the 850 MHz Band and 1900 MHz Band for non-VoLTE voice service.	

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**Business Plan**

Section	Item number	Minimum information to be included	Applicant's submitted information
E19 Services	E19.1	Detailed description of services intends to provide (whether new or upgraded) utilizing the Designated HDS-1 Frequencies.	
	E19.2	Detailed plans for roll-out of services in compliance with the Key Performance Obligations in Part C of the RFA and Optional Commitments.	
	E19.3	The specific markets that will be served and how the services will be delivered to those markets.	
E20 Customer service	E20.1	A description of customer service standards and procedures, including any expected upgrades to existing procedures and standards.	
E21 Marketing	E21.1	A description of the Applicant's proposed marketing strategy for any new services (including superfast mobile or other wireless broadband services) that the Applicant proposes to offer utilizing Designated HDS-1 Frequencies.	
	E21.2	A description of the Applicant's target level of market share and its strategy for achieving that market share.	
	E21.3	The proposed service pricing strategy.	
	E21.4	The proposed quality of service standards.	
	E21.5	The proposed service accessibility by end users, i.e. how customers will be able to access the service, in compliance with ECA Section 5(1)(a).	
E22 Personnel	E22.1	A description of the impact of the proposed network plans and on staffing levels generally.	
	E22.2	An explanation of how its plans are compatible with the purpose of ECA Section 5(1)(i) to " <i>promote ... Bermudian employment at all levels of the electronic communications sector.</i> "	
E23 Competition	E23.1	An explanation of how the Applicant's proposals will promote and preserve effective and sustainable competition in compliance with RAA Section 12(a) and ECA Section 5(1)(f).	
E24 Billing	E24.1	A description of the Applicant's proposed billing system and methods and/or any changes or improvements planned.	



Section	Item number	Minimum information to be included	Applicant's submitted information
E25 Financial Plan	E25.1	A description of the Applicant's financial plan for the three years following the award of an HDS-1 Licence.	
	E25.2	The impact on volume and revenue forecasts in line with the Applicant's expected market share, proposed network technology, services and quality of service to be provided (including pursuant to the Mandatory Licence Conditions and any Optional Commitments offered).	
	E25.3	A capital expenditure forecast (by year) consistent with the speed of roll-out, including any Optional Commitments offered, and the technology proposed.	
	E25.4	A forecast of operating expenditure (by year) consistent with the other aspects of the plan (i.e. the Applicant's marketing plan, planned network deployment and service offerings), breaking out any anticipated management or outsourcing fees payable to strategic partners, if applicable.	
	E25.4	A Discounted Cash Flow (DCF) analysis for five years of operation from the award of an HDS-1 Licence which demonstrates that the planned deployments are likely to generate a positive net present value. The DCF analysis should identify the funding requirements and the cost of capital used in the DCF analysis should be justified.	
	E25.5	All relevant key assumptions, including proposed rates and charges.	
	E25.6	Sources of funding and financing costs, including: <ul style="list-style-type: none"> <li>• baseline information on the timing and level of funding to meet the Mandatory Licence Conditions and (separately) any Optional Commitments offered, including key terms and conditions (e.g., interest rate arrangements, terms of funding);</li> <li>• details regarding debt related financing arrangements, including amounts and sources (short and long term); and</li> <li>• a risk assessment, including contingencies.</li> </ul>	
E25.7	Any other financial documentation, data, projections or estimates specified by the Authority.		