



BERMUDA
**REGULATORY
AUTHORITY**

Spectrum Licence

Commercial Mobile Radio Service

Licensee: Bermuda Digital Communications Ltd.

Address: 30 Victoria Street
Hamilton, HM12
Bermuda

Licence Number: 003-CMR-03

Issue Date: 28 January 2015

Modification Date: 9 November 2016;
20 March 2017

Expiry Date: 9 November 2026

The Regulatory Authority of Bermuda, in the exercise of the authority conferred upon it by the Electronic Communications Act 2011, hereby grants to Bermuda Digital Communications Ltd. this Radio Spectrum Licence, which provides the right to use the assigned Radio Spectrum in accordance with the terms and conditions of this Licence and its Schedules, the terms and conditions of the Licensee's associated Integrated Communications Operating Licence, the Electronic Communications Act 2011, the Regulatory Authority Act 2011, and any Regulations, General Determinations, Adjudicative Decisions, Orders or Directives made or issued in accordance with these Acts and applicable international treaties and regulations.

1 Definitions and Interpretation

1.1 In this Licence, unless the context otherwise requires:

"America's Cup Obligation" means the obligation set forth in Section 1.1(a) of Schedule B of this Licence;

"Assigned Frequencies" means the frequencies assigned to the Licensee, as set forth in Schedule A of this Licence;

"Associated ICOL" means the Integrated Communications Operating Licence granted to the Licensee;

"Authority" means the Regulatory Authority;

"Authorised Use" means the use of the Assigned Frequencies as described in Condition 3.1 of this Licence;

"Average Download User Data Rate" means the download user data rate that is delivered on average to all mobile broadband Subscribers and End-Users by the Licensee's network under operational load conditions and identified in Section 1.2 of Schedule B of this Licence;

"Bermuda Frequency Assignment Register" means a register containing a table of radio frequency spectrum assignments, including the name of the licensee, the frequencies assigned, the Authorized Use(s) and any other relevant information contained in Schedule A of this Licence;

"Commercial Mobile Radio Service" means a Radiocommunication Service, the functionality of which enables the continued use of such service during movement between radio coverage cells with no interruption of service during the handover from cell to cell, or as otherwise defined by the Authority;

"Co-Primary Basis" means the nature of a right granted to the holder of a Radio Spectrum Licence to use specified frequencies, subject to the condition that the licensee shall coordinate with other Co-Primary licensees to limit Harmful Interference to existing links and services operating in the relevant frequency bands, and facilitate the introduction of additional links and services in the relevant frequencies. Co-Primary licensees shall refrain from causing Harmful Interference to, and may not require protection from, the links and services of other Co-Primary licensees that were previously authorized and operating in the licensed frequencies. All Co-Primary licensees are authorized to use the frequencies covered by their respective licences

subject to protection from: (1) Harmful Interference caused by any other licensee that may be authorized to use the same Radio Spectrum on a Secondary Basis; and (2) claims of Harmful Interference from holders of secondary licences with respect to the frequencies;

“Control” means:

- (a) the power, whether held directly or indirectly, to exercise decisive influence over the Licensee, including 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) shall, in any event, be deemed to exist in any case involving the ownership of 25 percent or more of the shares, stock or other securities or voting rights, including through an agreement or arrangement of any type;

“Coverage Area” means the land mass of Bermuda and its surrounding islands;

“Coverage/Roll-Out Obligation” means the obligation set forth in Section 1.1 of Schedule B of this Licence;

“Critical Milestone” means the obligations set out in Section 4.1 of Schedule B of this Licence;

“Distress signal” means radio signals broadcast to indicate that a person, ship, aircraft or other vehicle is in distress and requires immediate assistance;

“ECA” means the Electronic Communications Act 2011;

“Geographic Coverage” means the percentage of the land area of Bermuda and its surrounding islands, over which the Coverage/Roll-Out Obligation set forth in Section 1.1 of Schedule B of this Licence must be satisfied;

“HDS Frequencies” means any of the frequencies identified in the High Demand Spectrum Table set forth in Appendix A to the Spectrum Policy Statement issued by the Minister of Education and Economic Development on 22 September 2014;

“HDS-1” means the process defined in Annex A (Definitions) of the RFA;

“HDS-1 Application” means the documents submitted by the Licensee on 15 July 2016 (as amended by letter dated 29 September 2016) and signed by the Licensee’s Chief Executive Officer, and which includes the Licensee’s Business Plan and Technical Solution;

“HDS-1 Frequencies” means the HDS Frequencies assigned to the Licensee in HDS-1 and identified in Schedule A-2 of this Licence;

“HDS-1 Key Performance Obligations” means the obligations set forth in Section 1 of Schedule B of this Licence;

“HDS-1 Obligations” means all of the obligations contained in Schedule B of this Licence together with the obligations contained in Annex A, Transitional Condition A6 of the Associated ICOL;

“ITU” means the International Telecommunication Union;

“Licence” means this Radio Spectrum Licence granted to the Licensee;

“Licensee” means Bermuda Digital Communications Ltd. and, for the avoidance of doubt, does not include any Affiliates of the Licensee;

“Lightly Loaded” means a network when there is only a single End-User in a given cell and adjacent cells are lightly loaded such that their common channels are transmitting at 22 percent of the maximum cell power;

“Minimum Average Download User Data Rate” means the minimum download user data rate that shall be delivered on average to all broadband Subscribers and End-Users by the Licensee’s network under operational load conditions as set forth in Section 1.2 of Schedule B of this Licence;

“Minimum Download User Data Rate” means the lowest download user data rate that must be supported by the Licensee’s network for a geographic location to be considered within coverage;

“Minimum Quality of Service Obligation” means the obligation contained in Section 1.2 of Schedule B of this Licence;

“Primary Basis” means the nature of a right granted to the holder of a Radio Spectrum Licence, pursuant to which the licensee is the only Person authorized to use the specified frequencies who is also entitled to protection from: (1) Harmful Interference caused by any other licensee who may be authorized to use the same spectrum on a Secondary Basis; and (2) claims of Harmful Interference by any such licensee;

“RAA” means the Regulatory Authority Act 2011;

“Secondary Basis” means the nature of a right granted to a holder of a Radio Spectrum Licence that is authorized to use specified frequencies subject to the condition that such licensee does not cause any Harmful Interference to, or claim protection from any Harmful Interference caused by, other licensees who have been granted the right to use the same frequency bands on a Primary or Co-Primary Basis;

“Sub-license” means any segregation or partition of the radio frequency usage rights granted herein and shall include any arrangement by the Licensee to share radio frequency rights with one or more third parties, including any Affiliate; and

“Surety Instrument” means the instrument referenced in Section 3.3 of Schedule B of this Licence that the Licensee was required to secure as a condition of the award of the HDS-1 Frequencies, a copy of which is included as Annex C to Schedule B of this Licence;

- 1.2 For the purpose of interpreting this Licence, words or expressions shall have the meaning assigned to them in the Associated ICOL, unless otherwise specified, and the rules of interpretation in Condition 2 of the Associated ICOL shall apply.

2 ASSIGNED FREQUENCIES AND USAGE RIGHTS

- 2.1 Subject to the Applicable Regulatory Framework, the Associated ICOL and the terms and conditions of this Licence, the Licensee is hereby authorized to use the Assigned Frequencies. The Licensee shall have the right to use the Assigned Frequencies on a Primary Basis. Schedule A shall be revised and updated, as necessary, to reflect the assignment of frequencies under this Licence.
- 2.2 The Licensee shall comply with any technical or other requirements that the Authority may adopt in respect of the Authorized Use.
- 2.3 The Licensee shall utilize the Assigned Frequencies in full conformity with the Bermuda Frequency Allocation Table and the Bermuda Frequency Assignment Register maintained by the Authority, including any amendments thereto, subject to Condition 3 of this Licence.

3 SCOPE OF LICENCE

- 3.1 This Licence grants the Licensee the right to use the Assigned Frequencies in conjunction with the Associated ICOL, exclusively for the provision of Commercial Mobile Radio Services.
- 3.2 This Licence does not grant the Licensee any ownership rights in the Assigned Frequencies, and no such rights shall be created or implied by virtue of the Licensee's use of the Assigned Frequencies.
- 3.3 The Licensee shall not use the Assigned Frequencies in the provision of Public Electronic Communications Services unless the Associated ICOL is and remains valid and effective.
- 3.4 Nothing in this Licence shall relieve the Licensee of the obligation to comply with any other requirement of law or practice to obtain additional consents, permissions, authorizations, licences or permits as may be necessary to operate Radio Apparatus or Radio Stations, establish, construct and operate an Electronic Communications Network, or provide Electronic Communications Services.

4 GRANT AND DURATION OF THE LICENCE

This Licence is valid and effective from the date hereof and shall remain in effect, provided that the Associated ICOL is valid and effective, until the earlier of:

- (a) 9 November 2026;
- (b) the date on which the Licensee surrenders this Licence; or
- (c) the date on which this Licence is revoked pursuant to Section 93(5) of the RAA.

5 RENEWAL

- 5.1 This Licence may be renewed, at the discretion of the Authority, for a term not to exceed ten years, provided that the duration of the renewed Licence shall not exceed that of the Associated ICOL.
- 5.2 This Licence may only be renewed if the Associated ICOL remains valid and effective.

6 MODIFICATION

This Licence, including its Schedules, may be modified by the Authority:

- (a) with the consent of the Licensee;
- (b) pursuant to the provisions of Section 51 of the RAA and Section 9(2)(c)(i) of the ECA;
- (c) to conform to the terms and conditions of the Associated ICOL, including any modifications thereto;
- (d) to bring the terms of the Licence into conformity with international treaty obligations or regulations or the Applicable Regulatory Framework (including the Bermuda Frequency Allocation Table);
- (e) following an enforcement proceeding, pursuant to the provisions of Section 93 of the RAA; or
- (f) following the conclusion of a spectrum investigation pursuant to Section 78 of the ECA or following an adjudication pursuant to Section 41 of the ECA.

7 OBLIGATIONS UNDER THE LICENCE

- 7.1 The Licensee shall comply with existing and future international coordination requirements and procedures, including the relevant international Radio Regulations issued by the ITU. Upon request of the Authority, the Licensee shall provide technical assistance and support to the Minister and the Authority in connection with the Government of Bermuda's participation in regional and international governmental organizations for purposes of spectrum management and coordination.
- 7.2 The Licensee shall coordinate, when necessary, with other Radio Spectrum licensees in Bermuda to avoid Harmful Interference. In the event of a disagreement between or among licensees regarding the prevention or causation of Harmful Interference, the affected licensees shall be responsible for resolving such disputes expeditiously and, if such efforts are unsuccessful, one or more of the licensees involved may request that the Authority intervene to resolve the dispute.
- 7.3 The Licensee shall assist the Authority in the coordination and management of Radio Spectrum and shall make efficient use of the Assigned Frequencies for the Authorized Use. The Licensee shall notify the Authority promptly if the Licensee no longer requires the use of any or all of the Assigned Frequencies.

- 7.4 The Licensee shall cooperate fully with the Authority in identifying whether and to what extent the Assigned Frequencies are being used efficiently and whether the Licensee has a reasonable need for all or a portion of the Assigned Frequencies in accordance with Section 78 of the ECA, including as follows:
- (a) The Licensee shall promptly provide any information requested by the Authority concerning the Licensee's actual or proposed use of the Assigned Frequencies and other Radio Spectrum resources.
 - (b) The Licensee shall submit to the Authority, no later than six months following the effective date of this Licence, a report approved by the Licensee's Board of Directors containing a detailed analysis of spectrum usage by the Licensee, in the format prescribed by the Authority, in relation to services that were provided using the Assigned Frequencies for the Authorized Uses as at the date of the commencement of Part 12 of the ECA.
 - (c) The Licensee shall comply fully with any timetables established by the Authority for the release of any of the Assigned Frequencies if required by the Authority, provided that the timetable for release shall commence no sooner than 29 October 2014.
- 7.5 Subject to the provisions of Section 92 of the RAA, the Licensee shall permit the Authority or Persons designated by the Authority to enter the Licensee's premises, and shall facilitate access by them to premises used by the Licensee, to inspect, examine, investigate or audit the Licensee's use of Radio Stations, Radio Apparatus and Radio Spectrum.
- 7.6 The Licensee shall accept distress signals and messages with absolute priority as required by Section 43(5) of the ECA and take any necessary actions as required by the Convention.
- 7.7 The Licensee shall provide one or more forms of Wholesale wireless access, including a resale offer, on a non-discriminatory basis, if the Authority determines, following a Public Consultation, that such arrangements are necessary for the benefit of consumers.
- 7.8 The Licensee's HDS-1 Obligations under this Licence are set forth in Schedule B of this Licence and in Annex A, Transitional Condition A6 of the Associated ICOL.

8 FEES AND PENALTIES

- 8.1 The Licensee shall pay to the Authority any Government Authorization Fees relating to the Assigned Frequencies in such amounts and at such times as may be prescribed pursuant to Section 40(1) of the ECA, Section 52 of the RAA, and the Government Fees Act 1965.
- 8.2 The Licensee shall pay to the Authority any Regulatory Authority Fees relating to the Assigned Frequencies in such amounts and at such times as may be prescribed pursuant to Section 40(3) of the ECA and Section 44 of the RAA.

- 8.3 The Licensee shall pay all applicable fees for Radio Stations and Radio Apparatus using the Assigned Frequencies.
- 8.4 The Licensee shall continue to pay, or collect and remit, to the Minister any licence fees that it was responsible for paying, or collecting and remitting, for the use of Radiocommunication equipment as at the date of commencement of Part 12 of the ECA in accordance with the Government Fees Regulations 1976 until a new schedule of fees is established.
- 8.5 The Licensee shall pay to the Authority any penalties and interest that may be imposed on the Licensee by the Authority for failure to make any payment due under this Licence and for any other contraventions of this Licence or the Applicable Regulatory Framework, without prejudice to the Licensee's obligations regarding the Surety Instrument or the requirements set out in Section 4 of Schedule B to this Licence.

9 COMPLIANCE

Failure to comply with the terms of this Licence shall constitute a violation of the conditions of this Licence and the Associated ICOL, and violations shall be dealt with in accordance with the procedures set forth in the RAA and ECA and Section 4 of Schedule B of this Licence.

10 ENFORCEMENT AND REVOCATION

The Authority may initiate enforcement proceedings pursuant to Section 93 of the RAA if there is reason to believe that the Licensee has contravened the conditions of this Licence or the Applicable Regulatory Framework, including failure to pay any fees prescribed for use of the Assigned Frequencies in full on a timely basis.

11 ASSIGNMENT

The Licensee shall not transfer, assign, Sub-Licence or lease, in whole or in part, this Licence or the spectrum usage rights granted herein to any third party, including any Affiliate, without the prior written authorization of the Authority acting with the written consent of the Minister. For purposes of this condition, "assignment" shall be deemed to include a change of Control of the Licensee.

12 RECORD-KEEPING OBLIGATIONS

The Licensee shall maintain the following records up-to date and promptly provide the Authority with copies upon request:

- (a) the equipment specifications of all Radio Stations and other Radio Apparatus operating under this Licence;
- (b) the coverage area of the Licensee's Electronic Communications Network and of each Radio Station;
- (c) the effective radiated power of any Radio Station and its location and height;

- (d) the measures taken to ensure that each Radio Station is not a source of harmful radiation to the public, and the Licensee's employees and contractors;
- (e) any information necessary for the Authority to develop and keep updated the Bermuda Frequency Allocation Table and Bermuda Frequency Assignment Register;
- (f) the emission designation of each Radio Station, as prescribed by the Applicable Regulatory Framework; and
- (g) the types of services provided to the Licensee's End-Users and Subscribers using the Assigned Frequencies.

13 NOTICES

The notice provisions of the Associated ICOL shall apply to this Licence.

SCHEDULE A-1

ASSIGNMENT OF RADIO FREQUENCY SPECTRUM

The frequency bands listed in the Schedule below have been assigned for use by the Licensee in the provision of Commercial Mobile Radio Services.

Band	Frequency (MHz)		Block Size (MHz)	Frequency (MHz)		Block Size (MHz)
	Mobile to Base Station			Base Station to Mobile		
850 MHz A	824.0	835.0	11	869.0	880.0	11
850 MHz A'	845.0	846.5	1.5	890.0	891.5	1.5
PCS E	1885.0	1890.0	5	1965.0	1970.0	5
PCS F	1890.0	1895.0	5	1970.0	1975.0	5
PCS C	1895.0	1910.0	15	1975.0	1990.0	15

SCHEDULE A-2

ASSIGNMENT OF HDS-1 FREQUENCIES

The frequency bands listed in the Schedule below have been assigned for use by the Licensee in the provision of Commercial Mobile Radio Services. This assignment is effective as of 9 November 2016.

Band	Frequency (MHz)		Block Size (MHz)	Frequency (MHz)		Block Size (MHz)
	Mobile to Base Station			Base Station to Mobile		
700 MHz Band (Lower B)	704.0	710.0	6	734.0	740.0	6
700 MHz Band (Lower C)	710.0	716.0	6	740.0	746.0	6

SCHEDULE B
HDS-1 OBLIGATIONS

This Schedule B, together with its Annexes, and Annex A, Transitional Condition A6, of the Associated ICOL set forth the HDS-1 Obligations of the Licensee.

1 HDS-1 KEY PERFORMANCE OBLIGATIONS

1.1 Coverage/Roll-Out Obligation

- (a) As a matter of priority, no later than Tuesday, 9 May 2017, the Licensee shall provide full coverage for the Great Sound and Dockyard area (the “America’s Cup Race Area”) as follows:
 - (i) Full coverage of the America’s Cup Race Area shall mean, at a minimum, making fully operational all of the cell sites that pertain to the America’s Cup Race Area set out in Annex A to this Schedule and providing any additional cell sites that may be deemed necessary by the Authority, along with adequate backhaul and other facilities necessary for delivering sufficient capacity and support to ensure good quality mobile voice and superfast broadband services during the America’s Cup event in all areas where the America’s Cup teams and spectators will be situated; and
 - (ii) The Licensee shall cooperate fully with the Authority to ensure that its network provides good quality mobile voice and superfast broadband service for the full period of the America’s Cup event, based on expected demand during the event, and shall submit its plan for meeting this condition to the Authority for its review and approval no later than Monday, 9 January 2017; and
- (b) The Licensee shall provide mobile broadband services to Subscribers and End-Users at a Minimum Download User Data Rate equal to at least 4 Mbps in outdoor areas when the network is lightly loaded with:
 - (i) 75 percent Geographic Coverage for the entire land mass of Bermuda and its surrounding islands, no later than Tuesday, 9 May 2017; and
 - (ii) 99.9 percent Geographic Coverage for the entire land mass of Bermuda and its surrounding islands, no later than Thursday, 9 November 2017.

1.2 Minimum Quality of Service Obligation

- (a) Commencing on Wednesday, 9 May 2017, and continuing for the remaining term of the Licence, the Licensee shall provide mobile broadband services to Subscribers and End-Users 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 Section 1.2(a)(i) below. The 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 HDS-1 Frequencies specified in Schedule A-2 to this Licence.

- (i) Commencing on Thursday, 9 November 2017 and every three 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 to be issued by the Authority and described in Section 3.2(c) of this Schedule B below, in accordance with a reporting format to be approved by the Authority, and which shall include, at a minimum, aggregated session records showing:
 - (A) the distribution of download user data rates experienced by all of the Licensee's mobile broadband Subscribers and End-Users over the preceding three-month period, and the Average Download User Data Rate achieved in that period; and
 - (B) 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 three-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.

1.3 *Delivery of Service Quality and Broadband Speeds in Line with International Best Practice*

- (a) The Licensee shall be subject to an obligation to deliver service quality and broadband speeds in line with international best practice.
- (b) The Authority may unilaterally modify this Licence on or following the fifth anniversary of this 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.

1.4 *Drawings against the Surety Instrument For Failure to Meet Certain HDS-1 Key Performance Obligations*

- (a) The Licensee shall carry the burden of demonstrating that the Coverage/Roll-Out and Minimum Quality of Service Obligations set out in Sections 1.1 and 1.2 of this Schedule B have been and are being fully satisfied.
- (b) 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 Section 93(1)(e) of the RAA, after following the procedures set out in Section 81 of the RAA.

- (i) In such case, the Authority shall have the right to draw against the Surety Instrument as follows:
 - (A) If the Licensee fails to meet the America's Cup Obligation set out in Section 1.1(a) of this Schedule B, the Authority shall have the right to draw one-half of the value of the Surety Instrument (i.e., BMD 625,000) unless the Licensee demonstrates that it acted with reasonable diligence and in good faith to meet the requirements and that the failure was due to circumstances beyond its control.
- (ii) If the Licensee fails to meet the Coverage/Roll-Out Obligation specified in Section 1.1(b) of this Schedule B and/or the Minimum Quality of Service Obligation requiring a Minimum Average Download User Data Rate of 15 Mbps within the Coverage Area, as determined by the Authority:
 - (A) up to BMD 1,000,000 for failure to comply with any of the obligations and failure to cure within the specified time period; and
 - (B) up to BMD 40,000 for each additional month of delay in fulfilling either or both obligations.

2 HDS-1 CORE SERVICE OBLIGATIONS

2.1 *Efficient Use*

- (a) Commencing on Wednesday, 9 August 2017, and continuing for the remaining term of this Licence, the Licensee shall make efficient use of the HDS-1 Frequencies specified in Schedule A-2.
- (b) For purposes of this HDS-1 Obligation, the Licensee shall be deemed to be making efficient use of spectrum if the Authority is satisfied that:
 - (i) the HDS-1 Frequencies, alone or in combination with other HDS Frequencies held by the Licensee, are necessary for the delivery of the Business Plan and Technical Solution set forth in the Licensee's HDS-1 Application, the relevant sections of which are reproduced in Annex B to this Schedule B;
 - (ii) the network is deployed as described in the Licensee's HDS-1 Application for the duration of the term of this Licence; and
 - (iii) the Licensee remains in material compliance with the terms of the Licence.
- (c) If, following an adjudication, the Authority concludes that there has been a breach of this efficient use condition for an extended period, the Authority may order the Licensee to relinquish some or all of the HDS-1 Frequencies.

2.2 *Net Neutrality Obligation*

- (a) The Net Neutrality Obligation is set forth in Annex A, Transitional Condition A6.1 of the Associated ICOL.

2.3 *Facilitation of MVNOs*

- (a) The MVNO Obligation is set forth in Annex A, Transitional Condition A6.2 of the Associated ICOL.

3 **OBLIGATIONS RELATING TO ENFORCEMENT OF THE LICENSEE'S COVERAGE AND QUALITY OF SERVICE COMMITMENTS**

3.1 *Compliance with the Terms of the Site Plan*

- (a) The Licensee shall comply with the provisions of the Site Plan set out in the Licensee's Technical Solution in Annex B to this Schedule B unless the Licensee obtains a written waiver from the Authority with respect to a specific aspect of the Site Plan.
- (b) 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 Obligations set out in Section 1.1 of this Schedule B has been breached, and the Licensee shall carry the burden of demonstrating that it is not in breach of its obligations.
- (c) 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.

3.2 *Compliance with the Method of Verifying Compliance with the Coverage/Roll-Out Obligation and the Minimum Quality of Service Obligation*

- (a) The Licensee 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 by the Coverage/Roll-Out Obligation, 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 Licensee and considering the available technologies, best practice methods and other relevant considerations.
- (b) The Authority's decision will establish the tests, procedures and methodologies that will be used by the Authority to measure the actual performance of the Licensee against the Coverage/Roll-Out Obligation and the Minimum Quality of Service Obligation.

- (c) 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 the Minimum Quality of Service Obligation specified in Section 1.2 of this Schedule B, after having conferred with the Licensee 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. Accordingly, the appropriate metrics and the detailed measurement and verification process will be specified by the Authority after conferring with the Licensee.
- (d) If, after following the tests, procedures and methodologies established by the Authority, the Authority concludes that the Licensee has failed to meet any 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.

3.3 *Surety Instrument*

- (a) The Licensee shall maintain the Surety Instrument in the amount of BMD 1,250,000 that it has secured as a condition of the award of this Licence until the Authority confirms to the Licensee in writing that it has complied with its obligation to meet the deadline of Tuesday, 9 May 2017 to meet Critical Milestone 1, the America's Cup Obligation, set out in Section 4.1(a) below and to meet the deadline of Thursday, 9 November 2017 to meet Critical Milestone 2, the 99.9 percent Coverage/Roll-Out Obligation and associated Quality of Service requirement, as set as set forth in Section 4.1(b) below. The Licensee's Surety Instrument is attached as Annex C to this Schedule B.
- (b) The following sums shall be discharged promptly and without delay upon request made by the Chief Executive of the Authority in writing, as follows:
 - (i) **Draw against the Surety Instrument as to Critical Milestone 1:** BMD 625,000 for failure by the Licensee to comply with Critical Milestone 1 as decided by the Authority, in its absolute discretion;
 - (ii) **Draw against the Surety Instrument as to Critical Milestone 2:** an amount determined by the Authority, in its absolute discretion, for failure by the Licensee to comply with Critical Milestone 2 as decided by the Authority, in its absolute discretion, provided that such amount shall be subject to a cap of BMD 1,000,000; and
 - (iii) **Additional draws against the Surety Instrument:** monthly amounts determined by the Authority, in its absolute discretion, for continued failure by the Licensee to cure its default in respect of Critical Milestone 2

as decided by the Authority, in its absolute discretion, subject to a cap of BMD 40,000 per month.

- (c) The date on which the Authority shall be authorized to make draws against the Surety Instrument shall be as follows:
 - (i) The draw against the Surety Instrument for failure to comply with Critical Milestone 1 shall be authorized on the date on which the Authority decides, in its absolute discretion, that the Licensee has failed to meet Critical Milestone 1.
 - (ii) The draw against the Surety Instrument for failure to comply with Critical Milestone 2 shall be authorized on the date on which the Authority decides, in its absolute discretion, that the Licensee has failed to cure its failure to meet Critical Milestone 2.
 - (A) Additional draws against the Surety Instrument shall be authorized on a monthly basis following the payment date specified by the Authority for the payment in respect of the Licensee's failure to meet Critical Milestone 2, in case of continued failure by the Licensee to meet and/or cure its default in respect of Critical Milestone 2 as decided by the Authority in its absolute discretion.
- (d) Payment shall be made by into an account to be specified by the Authority without objection, set-off or legal proceedings of any kind. The Licensee shall not delay the payment, nor shall it oppose it for any reason whatsoever. The Licensee shall inform the Authority in writing as soon as the payment has been made.
- (e) The Licensee's obligation to maintain the Surety Instrument shall terminate on the earlier of:
 - (i) The date on which the Authority, in its absolute discretion, issues certificates of completion in respect of all of the Critical Milestones;
 - (ii) In case of failure by the Licensee comply with Critical Milestone 2 as decided by the Authority, in its absolute discretion, the date on which the Authority decides, in its absolute discretion, that such default has been cured; or
 - (iii) In case of a continued failure by the Licensee to cure its default in respect of Critical Milestone 2 as decided by the Authority in its absolute discretion, one year following the cure date specified by the Authority in Section 3.3(c)(ii)(A) above in respect of the Licensee's failure to comply with Critical Milestone 2.

4 ENFORCEMENT PROCEEDINGS AND DRAWS AGAINST THE SURETY INSTRUMENT

4.1 Without prejudice to the Authority's powers to impose fines and other sanctions for any breach of the conditions of this Licence, and subject to the Authority's consideration of all relevant factors including those set out in Section 94(2) of the RAA, the Authority may exercise its rights under the Surety Instrument if the Licensee fails to meet, and has failed to cure the breach within the time period specified by the Authority, either or both of the following HDS-1 Key Performance Obligations, set out in Sections 4.1(a) and (b) below and in Sections 1.1 and 1.2 above, which shall constitute the Critical Milestones:

- (a) **Critical Milestone 1:** The America's Cup Obligation which the Licensee has committed to meet by Tuesday, 9 May 2017, in accordance with the Site Map set out in Annex A to this Schedule B and/or as measured by the Authority on that date or within 7 Days thereafter; and/or
- (b) **Critical Milestone 2:** The Coverage/Roll-Out Obligation set out in Section 1.1(b)(ii) of this Schedule B which the Licensee has committed to meet by Thursday, 9 November 2017 and/or the Minimum Quality of Service Obligation requiring a Minimum Average Download User Data Rate of 15 Mbps within the Coverage Area in accordance with the Site Plan set out in Annex B to this Schedule B and/or as measured by the Authority on that date or within 30 Days thereafter.

4.2 The procedures set out in Section 81 of the RAA shall apply, and the Licensee shall have the burden of demonstrating:

- (a) that it has complied with the relevant HDS-1 Key Performance Obligation in accordance with the applicable Site Plan and/or the measurements taken by the Authority in accordance with the Authority's decision establishing the applicable methodology and measurement procedures; or
- (b) in the event of non-compliance, that any failure to meet the relevant HDS-1 Key Performance Obligation is due to circumstances beyond its control, that it acted with reasonable diligence and in good faith to meet the obligation, and that it is pursuing an adequate remediation plan in cooperation with the Authority.

4.3 If the amount guaranteed by the Surety Instrument is drawn down following either of the following default events, the Licensee shall within ten Working Days deliver or cause to be delivered an additional Surety Instrument, approved in advance by the Authority in the amount specified below:

- (a) In the case of a failure of the Licensee to comply with Critical Milestone 1 (the America's Cup Obligation), in an amount equal to the value of the draw against the Surety Instrument (up to BMD 625,000) as determined by the Authority in its sole discretion; and/or
- (b) In the case of a continuing failure of the Licensee to comply with Critical Milestone 2 (the 99.9 percent Coverage/Roll-Out Obligation) if the default event is not rectified

within six (6) months of the cure date specified in Section 3.3(c)(ii)(A) above as determined by the Authority in its sole discretion, in the amount of BMD 230,000.

- 4.4 In the event of the Licensee's persistent failure to meet either or both of the HDS-1 Key Performance Obligations, and without prejudice to the Authority's powers under Section 41 of the ECA, the Authority may, in any future procedure for the award of HDS Frequencies, declare the Licensee ineligible for participation in future assignments of HDS Frequencies or take into account the Licensee's failure to meet the HDS-1 Key Performance Obligations when evaluating the Licensee's application for additional HDS Frequencies.

LIST OF ANNEXES TO SCHEDULE B

Schedule B to this Licence contains the following confidential Annexes:

- **ANNEX A:** Site Map for the Dockyard/Great Sound area originally provided to the Licensee in the Further Notice Regarding Additional or Modified Mandatory Licence Conditions dated 31 August 2016;
- **ANNEX B:** The Licensee's Business Plan and Technical Solution from the Licensee's HDS-1 Application; and
- **ANNEX C:** The Licensee's Surety Instrument.

ANNEX A TO SCHEDULE B (CONFIDENTIAL)

Site Map for the Dockyard/Great Sound area originally provided to the Licensee in the Further Notice Regarding Additional or Modified Mandatory Licence Conditions dated 31 August 2016

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ANNEX B TO SCHEDULE B (CONFIDENTIAL)

**The Licensee's Business Plan and Technical Solution in respect of the Licensee's HDS-1
Application**

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ANNEX C TO SCHEDULE B (CONFIDENTIAL)

The Licensee's Surety Instrument

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