



BERMUDA  
**REGULATORY  
AUTHORITY**

Fairness ~ Innovation ~ Integrity

**Final Decision  
on the  
Award of Spectrum  
Pursuant to the Authority's  
Request for Applications for the  
Assignment of Designated HDS-1  
Frequencies in the 850 MHz, 700  
MHz and 2100 MHz Bands**

Matter: HDS-1

Date: 26 October 2016

## TABLE OF CONTENTS

	Page
I. INTRODUCTION.....	1
II. DEFINITIONS.....	4
III. BACKGROUND ON THE HDS-1 CONSULTATION PROCESS AND ISSUANCE OF THE RFA.....	8
IV. RFA PROCESS AND ADVISORY PANEL RECOMMENDATIONS.....	8
<i>IV-1 Receipt of HDS-1 Applications by the Authority</i> .....	8
<i>IV-2 Appointment of the Advisory Panel and the Panel's Recommendations</i> .....	9
<i>IV-3 The Notice and Further Notice Regarding Additional or Modified Mandatory Licence Conditions and the Panel's Supplementary Recommendation</i> .....	16
<i>IV-4 Further Amendment of the HDS-1 Schedule</i> .....	18
V. NOTIFICATION OF PRELIMINARY DECISION TO DISQUALIFY AND PROPOSED FINAL DECISION.....	18
VI. FINAL DECISION.....	20
VII. SUCCESSFUL APPLICANT SERVICE FEE; PERFORMANCE BOND.....	21
<i>VII-1 Successful Applicant Service Fee</i> .....	22
<i>VII-2 Performance Bond</i> .....	22
<i>VII-3 Failure to Remit Successful Applicant Service Fee or Put in Place the Performance Bond</i> .....	23
VIII. AWARD OF HDS-1 LICENSES TO SUCCESSFUL APPLICANTS .....	23
IX. RETURN OF LOT L-4 TO THE HDS POOL FOR POTENTIAL FUTURE AWARD.....	23
X. CONCLUSION .....	24

## I. INTRODUCTION

1. The Authority hereby issues its Final Decision on the award of HDS-1 Lots pursuant to Section 14.3.5 of the Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands (“RFA”).
2. The Final Decision culminates a Comparative Selection Process for the award of HDS-1 Frequencies in accordance with the assignment procedure specified by the Minister’s Spectrum Policy Statement of 22 September 2014. The Comparative Selection Process was conducted by the Authority adhering to a transparent set of procedures, criteria and conditions, which were set out in the RFA.
3. The RFA was adopted by the Authority after completing a comprehensive public consultation process, which commenced in August 2015. The HDS-1 consultation process was open to participation by any interested party.
4. The HDS-1 selection process formally commenced on 31 May 2016. All existing ICOL holders were entitled to register to participate in the process.<sup>1</sup> Because of the importance of the HDS-1 Frequencies to the deployment of superfast mobile broadband networks in Bermuda, the Authority instituted an ambitious but reasonable timetable, which was introduced and thoroughly considered during the HDS-1 consultation process.
5. The RFA selection criteria and conditions were proposed and debated during the HDS-1 consultation process. In line with the policy priorities set out in ECA Section 5 and the Spectrum Policy Statement, the RFA was designed to encourage the rapid deployment of 4G technologies—and the superfast broadband speeds they enable—in order to improve Bermuda’s competitiveness in international business and global tourism markets.
6. Moreover, in accordance with the spectrum management objectives set out in ECA Section 37(1), the RFA was designed to ensure that: (1) the HDS-1 Frequencies are awarded to Successful Applicants that will make efficient use of the spectrum; and (2) the outcome of the selection process preserves and/or promotes effective and sustainable competition in the provision of electronic communications.
7. Spectrum is a scarce national resource and a public good.<sup>2</sup> The HDS-1 Frequencies are critical inputs for the delivery of superfast mobile broadband and other mobile services. For these reasons, it is the Authority’s responsibility to ensure that the available HDS-1 Lots are awarded to Applicants that have demonstrated a minimum level of technical competence and financial strength to use the spectrum efficiently and to meet the HDS-1 roll-out, coverage and quality of service requirements on a timely basis.

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<sup>1</sup> In accordance with ECA Section 75(5), no new ICOLs may be awarded prior to a decision made by the Minister to end the statutory moratorium on the award of new ICOLs.

<sup>2</sup> ECA Section 35(1).

8. Preserving and promoting effective and sustainable competition in the mobile communications market are also important objectives of the spectrum assignment process. During the HDS-1 consultation process, the Authority made clear that the RFA should be designed to allow for the potential entry of a third mobile operator—despite the views of the incumbent mobile operators that the size of the market in Bermuda is too small to sustain a new entrant.<sup>3</sup> The RFA was designed to ensure that any qualified participant—new entrants and incumbents alike—would have a fair chance of being selected for the award of HDS-1 spectrum. In keeping with the ECA’s focus on “*effective and sustainable competition*,” however, the RFA required all Applicants to demonstrate the viability and soundness of their Technical Solutions and Business Plans for use of the requested HDS-1 Lots.
9. The ECA’s competition objective has another dimension in the context of the prevailing conditions in Bermuda’s mobile market. As observed in the Spectrum Policy Statement at paragraphs 120-22:

*The amount of spectrum assigned to a network is a determinant of its capacity to provide service . . . and of its ability to increase capacity in future years. . . . In addition, the relative spectrum holdings of a network as compared to other networks affect its relative cost of production and its cost structures. . . . [This] illustrates the importance of ensuring that wireless networks have sufficient spectrum to compete effectively and that substantial imbalances in spectrum between networks have the potential to distort competition.*

10. As discussed during the HDS-1 consultation process, there is currently a significant imbalance in the HDS spectrum holdings of the two incumbent mobile operators.<sup>4</sup> CellOne currently enjoys a competitive advantage over Digicel due to the fact that CellOne is licensed to use two blocks of HDS spectrum below 1 GHz (in the 700 MHz and 850 MHz bands). This spectrum has particularly favourable propagation characteristics for indoor penetration. Digicel, by contrast, currently has no HDS frequencies below 1 GHz. The Authority notes that the Advisory Panel considered the implications of this imbalance during their deliberations on Digicel’s two Alternative Requests, both of which included available HDS-1 Lots in the 700 MHz and 850 MHz bands. Specifically, the Advisory Panel considered the plausibility and credibility of Digicel’s representations regarding the efficient utilisation of the HDS-1 Lots requested in its Application. The Authority carefully considered the Advisory Panel’s assessment as well as the Spectrum Policy Statement when evaluating the HDS-1 Applications.
11. The Authority has taken great care to conduct the HDS-1 Comparative Selection Process on a fair, objective and non-discriminatory basis. The process has entailed a comprehensive assessment of the information and documentation provided by all three of the Applicants across a wide range of

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<sup>3</sup> HDS-1 Second Consultation Document, Annex C, Response to Question 2.

<sup>4</sup> *Id.* Section 5.2 and Annex C, Response to Question 11.

technical, financial and commercial requirements. The Authority has done its utmost to ensure a fair outcome, including by giving all Applicants the opportunity to identify any inaccuracies or omissions in its assessment of their respective Applications before issuing this Final Decision. The Authority is confident that the outcome of HDS-1 is fully supported by the evidence and will advance the interests of the people of Bermuda and the competitiveness of the country.

12. The Final Decision has been taken following consideration by the Authority of the Recommendations of the Advisory Panel, which included specialist advisors in spectrum and spectrum assignment. The Authority is grateful to the Advisory Panel members for the thorough review and assessment that they conducted, together with the well-reasoned set of Recommendations that the Advisory Panel has provided to assist the Board in evaluating the HDS-1 Applications. The Authority also appreciates the intensive efforts of the management and staff of the Authority to complete this process on a timely basis and in a highly professional manner.
13. The Authority also wishes to thank the Applicants for the time and effort they devoted to the preparation of their submissions and their participation in the HDS-1 process. The Authority appreciates the cooperation of each of the Applicants in meeting the timetable set by the RFA, which was established with the dual goals of ensuring a fair and robust process while at the same time bringing superfast mobile broadband to the people of Bermuda as soon as possible.
14. In this Final Decision, the Authority:
  - (a) Awards CellOne HDS-1 Lot L-1 consisting of the Lower Band B (704-710/734-740 MHz) and Lower Band C (710-716/740-746 MHz) of the 700 MHz Band;
  - (b) Awards Digicel HDS-1 Lot L-2 consisting of the Upper Band C (746-757/776-787 MHz) of the 700 MHz Band plus HDS-1 Lot L-3, consisting of the B (880.0-890.0/835.0-845.0 MHz) and B' (891.5-894.0/846.5-849.0 MHz) Blocks of the 850 MHz Band;
  - (c) Disqualifies a Third HDS-1 Participant for failure to achieve a Passing Score in the Baseline Review of the three Alternative Requests included in its Application; and
  - (d) Returns Lot L-4, Blocks E and F of the 2100 MHz band to the pool of HDS spectrum that may be made available for assignment in the future.

These awards are subject to fulfilment of the conditions set forth in Section 15.2 of the RFA, as discussed in Section VII below.

## II. DEFINITIONS

15. In this document, unless the context otherwise requires:

“**Advisory Panel**” means the panel appointed by the Authority on 9 August 2016 to evaluate Applications, the members of which were selected on the basis of their expertise;

“**Alternative Request**” means each HDS-1 Package requested by an Applicant in cases where it requested multiple HDS-1 Packages and a singular request for one sole HDS-1 Package by an individual Applicant;

“**Applicant**” means an ICOL holder that completed an Application for HDS-1 Frequencies;

“**Application**” means the proposal of an Applicant submitted in accordance with the requirements of Section 14 of the RFA;

“**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;

“**Baseline Application**” means the baseline information that was required to be submitted to the Authority by all Applicants, in accordance with Section 14.1 of the RFA;

“**Baseline Review**” means the review process set out in Section 14.3.3.1 of the RFA;

“**Board**” means the Board of Commissioners of the Authority;

“**BodyTrace**” means BodyTrace Netherlands B.V.;

“**Business Plan**” means the Applicant’s business plan for deployment of a superfast mobile network that was required to be provided as part of its Baseline Application, in accordance with Section 14.1.6 of the RFA, and that was required to be included for any Alternative Requests made by an Applicant;

“**CellOne**” means Bermuda Digital Communications Ltd.;

“**Comparative Selection Process**” means the rules in Section 14.3.3 of the RFA that applied where there was Contention for a particular HDS-1 Lot and/or the Authority determined that that particular HDS-1 Lot or HDS-1 Package was subject to assignment by the Comparative Selection Process and required the Applicant to submit its Baseline Application and invited Applicants to offer Optional Commitments;

“**Contention**” means where two or more Requests for HDS-1 Assignments were received by the Authority for a particular HDS-1 Lot (including a particular HDS-1 Lot within an HDS-1 Package);

“**Digicel**” means the Telecommunications (Bermuda & West Indies) Limited;

“**ECA**” means Electronic Communications Act 2011;

“**Eligibility Documentation**” means the declarations and other documents specified in Annex C-1 of the RFA;

“**Final Decision**” means this Final Decision on the Award of Spectrum Pursuant to the Authority’s Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands, issued pursuant to paragraph 137 of the RFA;

“**Final Report**” means the Final Report & Final Decision on the Criteria and Procedures for Assigning High Demand Spectrum issued by the Authority on 19 May 2016;

“**Financial Position**” means an Applicant’s financial position that it was required to provide as part of its Baseline Application, in accordance with Section 14.1.2 of the RFA;

“**Further Qualitative Assessment**” means the process set out in Section 14.3.3.2 of the RFA;

“**HDS**” means High Demand Spectrum;

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

“**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;

“**HDS-1 Initial 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;

“**HDS-1 Lots**” means each of the four frequency ranges, identified as L-1 through L-4 in Table 1 of the RFA, for which an Applicant was permitted to apply;

“**HDS-1 Package**” means one or more HDS-1 Lots that an Applicant identified as being requested inseparably, and which were evaluated in HDS-1 independently as such;

“**HDS-1 Second Consultation Document**” means the Preliminary Report, Preliminary Decision and Order, Matter HDS-1, issued on 21 January 2016;

“**ICOL**” means Integrated Communications Operating Licence;

**“Mandatory Licence Conditions”** means the licence conditions set out in Part C of the RFA, including any amendments that must be fulfilled by Successful Applicants;

**“Minister”** means the Minister responsible for the electronic communications sector;

**“Optional Commitments”** means the optional commitments set out in Section 14.2.2(b) of the RFA that Applicants were invited to make where the Authority determined that a particular HDS-1 Lot or HDS-1 Package was subject to the Comparative Selection Process and were required to be included for any Alternative Requests made by an Applicant;

**“Panel”** means the Advisory Panel appointed by the Authority pursuant to RFA Section 31.11 and RAA Section 35, as set out in a Notice published by the Authority on 20 July 2016;

**“Participant”** means Registrants, Approved Registrants, Applicants, and Successful Applicants;

**“Passing Score”** means (1) the minimum number of points an Applicant was required to be allocated for each of the four 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 evaluated using the Further Qualitative Assessment process;

**“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;

**“Preliminary Decision to Disqualify”** means the Notification of Preliminary Decision to Disqualify the Third HDS-1 Participant issued by the Authority on 21 September 2016 pursuant to paragraph 33 of the RFA;

**“Proposed Final Decision”** means the decision, together with its Annexes, issued by the Authority on 12 October 2016;

**“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 136 of the RFA;

**“Registrant”** means an ICOL holder that submitted the Required Registration Documentation;

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



**“Required Registration Documentation”** means the Registration Form, Request for HDS-1 Assignments and Eligibility Documentation as set out in Sections 13.2 to 13.5 of the RFA;

**“RFA”** means the Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands, together with its Annexes, as published on 31 May 2016 and subsequently modified in accordance with Section 9 of the RFA by notices dated 16 June 2016, 23 August 2016, 31 August 2016, 13 September 2016, and 5 October 2016;

**“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”** means an Applicant to which the Authority intends to award HDS-1 Frequencies;

**“Successful Applicant Service Fee”** means the fee paid by each Successful Applicant in accordance with Section 13.6 of the RFA as may be prescribed by the Minister;

**“Technical Capability and Experience”** means the technical capability and experience that Applicants were required to 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 was required to be provided as part of its Baseline Application, in accordance with Sections 14.1.4 and 14.1.5 of the RFA, and that was required to be included for any Alternative Requests made by an Applicant;

**“Third HDS-1 Participant”** means the ICOL holder that participated as an Applicant in HDS-1 but was disqualified based on its failure to achieve a Passing Score in the Baseline Review stage of the process; and

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

16. 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. In addition, all terms, words, or expressions used herein that are defined in Annex A of the RFA, but that are not defined in this Section, are to be given the same meaning as that accorded to them in Annex A of the RFA.

### **III. BACKGROUND ON THE HDS-1 CONSULTATION PROCESS AND ISSUANCE OF THE RFA**

17. On 12 August 2015, the Authority commenced the HDS-1 Initial Consultation concerning the criteria and procedures for the award of High Demand Spectrum, in accordance with RAA Section 70, ECA Section 38(6)(c) and the Minister's Spectrum Policy Statement. The HDS-1 Initial Consultation document included a draft of the proposed RFA, which included, among other things, a list of the basic documentation and information necessary to support Applications for HDS-1 Frequencies. The Authority received responses from CellOne and Digicel on 2 September 2015. Supplementary comments were received from CellOne and Digicel following a technical workshop conducted by the Authority on 19 October 2015.
18. Following consideration of the comments received, the Authority initiated a further consultation on 21 January 2016 regarding HDS-1 pursuant to RAA Section 72. The HDS-1 Second Consultation Document included a revised version of the RFA and solicited comment on additional consultation questions. The HDS-1 Second Consultation Document encouraged interested ICOL holders to begin preparing their Applications in line with the basic documentation requirements of the RFA in order to take advantage of the time available prior to formal launch of the process. On 22 February 2016, the Authority received responses from CellOne, Digicel, BodyTrace, and Mr. Raymond Seymour.
19. On 13 May 2016, following Board approval, the Authority provided an advance copy of the RFA to all ICOL holders by email so that interested parties would have as much time as possible to prepare their Applications prior to publication of the General Determination adopting the RFA and the formal launch of the process.
20. On 20 May 2016, following consideration of the additional comments received in response to the HDS-1 Second Consultation Document, the Authority issued its Final Report together with a General Determination adopting the RFA, a summary of which was published in the Official Gazette on 25 May 2016. In accordance with the Authority's General Determination, the Chief Executive of the Authority formally initiated the HDS-1 application process on 31 May 2016 by publishing an updated version of the RFA that reflected the final timetable and the official launch date of the RFA.<sup>5</sup>

### **IV. RFA PROCESS AND ADVISORY PANEL RECOMMENDATIONS**

#### ***IV-1 Receipt of HDS-1 Applications by the Authority***

21. On 7 June 2016, the Authority received Required Registration Documentation from three ICOL holders: CellOne; Digicel; and the Third HDS-1 Participant.

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<sup>5</sup> See Regulatory Authority (Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands) General Determination 2016, BR 46/2016, sec. 4, para. 4, *available at* <http://rab.bm/index.php/decisions/1393-criteria-and-procedures-for-assigning-high-demand-spectrum/file>.

22. Also on 7 June 2016, the Authority received requests for clarification of the RFA from Digicel and the Third HDS-1 Participant, in accordance with Table 2 and Section 13.8 of the RFA.
23. On 9 June 2016, the Authority notified the Registrants that their registrations were accepted in accordance with Section 13.9 of the RFA and the timetable set out in Table 2 of the RFA.
24. On 13 June 2016, the Authority responded to the requests for clarification of the RFA as specified by Table 2 of the RFA. The responses were published on the Authority's website.
25. On 16 June 2016, the Authority published an amended version of the RFA in accordance with Section 9 of the RFA. The amended RFA was published on the Authority's website.
26. Timely Applications were received from each of the Registrants on 15 July 2016 in accordance with Section 14 of the RFA.
27. Based on the Applications received, the Authority determined that there was Contention for Lot L-1 (requested by all three Applicants), Lot L-2 (requested by two Applicants), and Lot L-3 (requested by two Applicants). No Applicant requested the Lot L-4 spectrum available in the 2100 MHz Band (also known as the AWS Band). The Authority therefore proceeded with the Comparative Selection Process set out in Section 14.3.3 of the RFA in respect of Lots L-1, L-2 and L-3.

#### ***IV-2 Appointment of the Advisory Panel and the Panel's Recommendations***

28. As provided for in Section 13.11 of the RFA, an Advisory Panel was appointed by the Authority to assist with the evaluation of the Applications. The Advisory Panel consisted of four members:
  - (a) Matthew Copeland, Chief Executive of the Authority. Mr. Copeland has a wide range of senior regulatory and strategic experience in fixed and mobile telecommunications networks. He was part of the management team that developed and launched one of Europe's first GSM 1800 mobile networks (Orange now part of BT/EE group in the UK). He was Director of Strategic and Regulatory Affairs at Telewest Plc, a cable TV/broadband company that built a high speed fiber/coax network to approximately six million UK homes.

Mr. Copeland was part of the management team that merged Telewest with NTL to create what became Virgin Media, a cable broadband/TV network that goes past 14 million UK homes. He has acted as a high level advisor to companies such as Sky Plc, Liberty Global and 4G networks, in the areas of spectrum and regulatory strategy. He has advised UK Local Enterprise Partnerships on broadband policy and Government intervention to rectify broadband network coverage. On behalf of a 4G network (UKB/PCCW Group of Hong Kong), he was responsible for a submission to the European Commission on the role of 4G LTE wireless networks in resolving the broadband deficit in the rural and sub-urban areas of Europe.

- (b) Michael Wells, Chief Technical Officer of the Authority. Mr. Wells is a trained Electrical Engineer, who specializes in Power Systems, Telecommunications Systems (Fixed and Wireless). He has worked in the United States of America through Hitachi Telecom, and Movaz Networks located in Atlanta, Georgia, both companies specializing in Dense Wavelength Division Multiplexing (“DWDM”). With this background, he brings a high level of experience in both the Energy and Telecommunications sectors. He was also a key member in the introduction of the Regulatory Authority and Electronic Communications Acts 2011 while at the Government Department of Telecommunications.

Mr. Wells has a Master’s Degree in Electrical Engineering from the Florida Institute of Technology and has also earned Institute of Electrical and Electronics Engineers (“IEEE”) certifications as well as numerous other accolades, thus making him a well-rounded technical expert across multiple disciplines. Mr. Wells remains a longstanding member of the IEEE Power & Energy and Communications Societies.

- (c) Professor Dennis Roberson. Professor Roberson has been Vice Provost and Research Professor with the Illinois Institute of Technology (“IIT”) since June 2003, where he established a new undergraduate business school, a wireless research centre (WiNCom), IIT's corporate relations initiative, and is currently responsible for the latter two efforts and IIT's research efforts, strategic plan assessment, and its technology commercialization office and externally focused entrepreneurial efforts.

Professor Roberson is also President, Chief Executive Officer and Member of Roberson and Associates, LLC, a technology and management consulting firm serving a variety of government and commercial customers since 2008. Professor Roberson’s industry experience includes serving as Executive Vice President and Chief Technical Officer of Motorola, Inc. from 1998 to 2004 and holding senior executive positions with NCR Corporation, AT&T, Digital Equipment Corp. (now part of

Hewlett Packard) and IBM from 1971 to 1998. Professor Roberson is a Director of Advanced Diamond Technologies, Cleversafe, Caerus Institute, OnKol and SonSet Solutions.

Professor Roberson also chairs the U.S. Federal Communication Commission's Technology Advisory Council and serves on the U.S. Commerce Department's Commerce Spectrum Management Advisory Committee ("CSMAC"). He has served as an invited expert for the development of the PCAST Spectrum Policy Report, the Board of Directors of FIRST Robotics, the National Advisory Council for the Boy Scouts of America, the Board of Singapore's Agency for Science, Technology and Research, and as an International Advisory Panel member for the Prime Minister of Malaysia. He holds Bachelor of Science Degrees in Physics and Electrical Engineering from Washington State University and a Master of Science in Electrical Engineering from Stanford University.

- (d) Professor William Webb. Professor Webb is a highly regarded expert in the world of wireless communications. He is currently pioneering a new global standard for wireless M2M communications, Weightless, which he was instrumental in designing. Professor Webb established the standard body, the Weightless Special Interest Group ("SIG"), of which he is Chief Executive Officer, wrote the book "Understanding Weightless" and presents worldwide on the possibilities it offers. He has 17 patents pending or granted for the technology. He was a co-founder and Chief Technical Officer of Neul, a Cambridge start-up established to commercialise Weightless technology.

Prior to this, Professor Webb led the formation of spectrum strategy at the UK's Office of Communications ("Ofcom"), authoring the "Spectrum Framework Review" and leading on new spectrum property rights, white space spectrum access and running Ofcom's research and development activities. He has worked as Director of Corporate Strategy at Motorola and for a range of consulting companies. His Ph.D. pioneered variable level modulation for wireless links—a technique now used in virtually all wireless communications systems.

Professor Webb was recently elected Deputy President of the Institution of Engineering and Technology, the UK institute for engineering, with over 150,000 members and is President-elect, taking on the role in October 2014. He is on the Board of Cambridge Wireless, a member of Ofcom's Spectrum Advisory Board ("OSAB"), on the Board of TPRC, a judge of the Wall Street Journal's innovation awards since 2002, and has chaired major IEEE conferences. He is a Visiting Professor at the 5G centre at Surrey University and holds an MBA. He has authored 12 books, over 100 papers and contributes weekly to articles around the world. Professor Webb has been widely recognised by his peers. In 2005 he became one of the youngest ever Fellows of the Royal Academy of Engineering, a select group of the top engineers in the UK, with entry limited to 50 top achievers per year. In 2007 he was elected a Fellow of the Institute of Electrical and Electronics Engineers, a grade restricted to only 0.1% of the membership.

29. On 9 August 2016, the Board approved a resolution referring the Applications received (and the constituent Alternative Requests) to the Advisory Panel for its review and Recommendation, in accordance with Section 14.3.4 of the RFA.
30. The members of the Advisory Panel met in Bermuda from 15 to 19 August 2016. Matthew Copeland was selected to act as Chair. On 15 and 16 August 2016, the Advisory Panel met with representatives from Plum Consulting, KPMG Advisory Limited, and the Authority's Finance team, which had been requested by the Authority to provide their respective views on relevant aspects of the Applications (see paragraph 32 below). The Advisory Panel heard presentations from Plum Consulting, KPMG Advisory Limited, and the Authority's Finance team regarding their respective reviews of the HDS-1 Applications. After hearing those presentations, the Advisory Panel was afforded the opportunity to discuss the information presented by the experts and ask questions.
31. The Advisory Panel reviewed the Applications and considered the Baseline Application information provided by each Applicant, including the detailed information specified by Section 14.1 of the RFA:
  - (a) Financial Position: Section 14.1.2 of the RFA required Applicants to provide:
    - (i) Any financial information that is relevant to consideration of the Applicant's proposed Business Plan;
    - (ii) Any significant changes in the Applicant's financial status that have occurred over the past 6 months;

- (iii) Any material changes in the Applicant's financial status that are reasonably likely to occur over the next 12 months; and
  - (iv) Any other information or documentation specified by the Authority.
- (b) Technical Capability and Experience: Section 14.1.3 of the RFA required Applicants to demonstrate a minimum number of ten 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 purpose of deploying a superfast mobile network in the event it were a Successful Applicant. With regard to such experience, the Applicant was required to describe the:
  - (i) Specific types of services provided in and outside of Bermuda by the Applicant and/or its outsourcing partner and/or management company (as applicable);
  - (ii) Number of customers served by the Applicant and/or its outsourcing partner and/or management company (as applicable);
  - (iii) Experience deploying 4G/LTE networks by the Applicant and/or its outsourcing partner and/or management company (as applicable);
  - (iv) 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;
  - (v) 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
  - (vi) Any other information or documentation specified by the Authority.
- (c) Technical Solution: The RFA permitted Applicants to submit multiple requests for the HDS-1 spectrum Lots available (or HDS-1 Packages comprising multiple Lots) and required the Applicants to prioritize each Alternative Request. For each Alternative Request, Section 14.1.4 of the RFA required Applicants to provide a detailed Technical Solution to achieve the Mandatory Licence Conditions set out in Part C of the RFA. The Technical Solution for each Alternative Request was

required to be detailed in an Alternative Request Annex in the form stipulated by Annex E of the RFA. The Applicants were required to provide a detailed description of the following:

- (i) Network/Technology;
  - (ii) Coverage;
  - (iii) Roll-out timetable;
  - (iv) Quality of service;
  - (v) Need and prioritization;
  - (vi) Efficient Use;
  - (vii) Infrastructure sharing and ECA Section 9(2)(c)(xi) objectives;
  - (viii) Site plan;
  - (ix) ICOL licence conditions;
  - (x) Additional spectrum;
  - (xi) Network capacity;
  - (xii) Backhaul deployment;
  - (xiii) Carrier aggregation;
  - (xiv) Sub-sea cable capacity;
  - (xv) Use of small cells;
  - (xvi) Network resilience;
  - (xvii) LTE-Advanced;
  - (xviii) VoLTE approach; and
  - (xix) Any other information or documentation specified by the Authority.
- (d) Business Plan. Section 14.1.6 of the RFA required Applicants to provide a proposed Business Plan for each Alternative Request, together with any supporting documentation for the three years following the award of an HDS-1 Licence. The Business Plan was required to be detailed in an Alternative Request Annex in the form stipulated by Annex E of the RFA and include, at a minimum, a description of:
- (i) Services;



- (ii) Customer service;
- (iii) Marketing;
- (iv) Personnel;
- (v) Competition;
- (vi) Billing; and
- (vii) Financial Plan.

32. The Advisory Panel also considered a report prepared at the request of the Authority by Plum Consulting, a highly respected consulting firm specializing in the application of economics and engineering to the telecommunications, broadcasting and online industries which addressed the technical aspects and business case presented in each of the Applications. The Advisory Panel also considered a report prepared by KPMG Advisory Limited at the Authority's request, which provided an overview of the financial position of the Applicants (including their major shareholders) as gleaned from publicly available sources. In addition, the Advisory Panel considered a report prepared by the Authority's Finance team, which reviewed the financial information submitted by the Applicants.
33. Based on a detailed review of the criteria for the Baseline Review and using the scoring system set out in paragraphs 126 and 127 of the RFA, the Advisory Panel unanimously recommended to the Authority that CellOne and Digicel be found to have met the minimum requirements established for the Baseline Review under Section 14.3.1 of the RFA and proceed to the Further Qualitative Assessment stage.
34. The Advisory Panel also recommended that the Third HDS-1 Participant be found to have failed to meet, by a significant margin, the minimum requirements established for the Baseline Review under Section 14.3.1 of the RFA and not be considered for the award of HDS-1 spectrum. The Advisory Panel's assessment considered, and took account of, various material financial, technical and Business Plan aspects of the Third HDS-1 Participant's Application that were highlighted in the reports prepared for the Authority by Plum Consulting, KPMG Advisory Limited and the Authority's Finance team.
35. For CellOne and Digicel, which satisfied the minimum requirements established for the Baseline Review (both of which had applied for Lot L-1), the Advisory Panel further considered the Optional Commitments that each proposed in accordance with paragraphs 119(b), 132 and 133 of the RFA.
36. As noted above, the RFA permitted Applicants to submit multiple requests for different HDS-1 Lots (or HDS-1 Packages) and required the Applicants to prioritize each Alternative Request, if made, and provide an explanation for the order of priority requested. The prioritization given to each Alternative Request submitted by the Applicant (where applicable), along with the

strength of the supporting justification provided, were considered by the Advisory Panel.

37. Based on the Advisory Panel's detailed review of the submissions and using the scoring system set out in paragraph 134(a) of the RFA, the members of the Advisory Panel unanimously recommended that: CellOne should receive the highest total score and should therefore be awarded its priority Alternative Request for HDS-1 spectrum; and Digicel, which received a lower total score than CellOne, should be awarded its second priority Alternative Request. Accordingly, the Advisory Panel recommended that CellOne and Digicel should be selected as the Successful Applicants, as follows:<sup>6</sup>
- (a) CellOne should be awarded HDS-1 Lot L-1 consisting of the Lower Band B (704-710/734-740 MHz) and Lower Band C (710-716/740-746 MHz) of the 700 MHz Band; and
  - (b) Digicel should be awarded HDS-1 Lot L-2 consisting of the Upper Band C (746-757/776-787 MHz) of the 700 MHz Band plus HDS-1 Lot L-3, consisting of the B (880.0-890.0/835.0-845.0 MHz) and B' (891.5-894.0/846.5-849.0 MHz) Blocks of the 850 MHz Band.
38. On 19 August 2016, the Board met with representatives from Plum Consulting, KPMG Advisory Limited, and the Authority's Finance team as well as the Advisory Panel. After receiving presentations from Plum Consulting, KPMG Advisory Limited, and the Authority's Finance team, the Board heard a report from the Advisory Panel concerning its review and assessment of the Applications. Both the Advisory Panel and the other experts responded to a number of questions posed by the Board regarding the Applications.

#### ***IV-3 The Notice and Further Notice Regarding Additional or Modified Mandatory Licence Conditions and the Panel's Supplementary Recommendation***

39. On 23 August 2016, the Authority issued a Notice of Additional or Modified Mandatory Licence Conditions (the "Notice") to the Applicants informing them, in accordance with Section 9 of the RFA, of a modification to the RFA to amend the Mandatory Licence Conditions set out in Part C of the RFA. In the Notice, the Authority, based on a recommendation made by the Advisory Panel, revised the Coverage/Roll-Out Obligation (RFA Section 10.1.1) and the associated performance bond condition (RFA paragraph 68(c)) (the "America's Cup Condition") for the purpose of ensuring that good quality mobile voice and

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<sup>6</sup> The Authority notes that the detailed information and documentation provided by the each of the Applicants in relation to its Financial Position, Technical Capability and Experience, Technical Solution, and Business Plan contain trade secrets, as well as proprietary and commercially sensitive information. Because the comparative assessment conducted by the Advisory Panel and the Authority is based on their evaluation of the details provided in the Applicants' confidential submissions, this Final Decision describes how the requirements of the RFA process were met and sets forth the evaluation and scoring of each Application in confidential Annex 1. See paragraph 53 *infra*.

superfast broadband coverage and capacity would be available in the Great Sound and Dockyard area for the America's Cup event, which is scheduled to take place in May-June 2017.

40. As noted in the Minister's Spectrum Policy Statement (at paragraph 118), one of the benefits of the HDS-1 Comparative Selection Process is the Authority's ability "to assign spectrum in a manner that pursues the Spectrum Management Objectives and the general purposes of the ECA." These include, among others, enhancing "Bermuda's competitiveness in the area of electronic communications so that Bermuda is well-positioned to compete in the international business and tourist markets" (ECA Sec. 5(1)(b)), and encouraging "the development and rapid migration of innovative electronic communications technologies to Bermuda" (ECA Sec. 5(1)(d)). The America's Cup is one of the most significant events that will occur in Bermuda in the near term and is of great importance given Bermuda's increasing reliance on sailing events of this kind and the tourism they generate. Bermuda's ability to deliver levels of mobile coverage and speeds that are close to those available in the United States and Europe will be important for Bermuda's reputation in hosting such events and, more broadly, to the people of Bermuda, the wider tourist community and international businesses.
41. In the Notice, the Authority also modified the RFA to include an additional mandatory condition intended to ensure that no divestitures or similar corporate restructuring of certain assets could be undertaken by a Successful Applicant without the Authority's prior approval, and only if the licensee was able to demonstrate that the change would not impair the licensee's ability to deliver good quality superfast broadband to the people of Bermuda.
42. The Authority considered this modification to be necessary to ensure that the Successful Applicants would remain in a position to deliver on the commitments made in their Applications, which contain information on the network facilities they plan to use to provide superfast mobile services across Bermuda, including cell sites and backhaul equipment. If, having been awarded a licence, an Applicant were to divest assets important to the proper functioning of the 4G/LTE network and, as a result, this change in position impaired its ability to provide superfast broadband mobile services without providing an alternative solution, it would negatively impact the RFA commitments made by the Applicants.
43. On 23, 24, and 29 August 2016, the Authority received responses from the Applicants in respect of the Notice. The Applicants expressed concerns about the content of the Notice and requested additional time in which to respond. The Authority subsequently granted the Applicants an extension of time until 2 September 2016 within which to submit their responses.
44. On 30 August 2016, the Authority considered the concerns raised by the Applicants in response to the Notice. Following consideration of these concerns, the Authority revised the text of the Additional or Modified Mandatory Licence Conditions to clarify the Authority's intent to apply the two new conditions reasonably.

45. The Applicants were notified of the revisions on 31 August 2016 in the Further Notice Regarding Additional or Modified Mandatory Licence Conditions (the "Further Notice"). The Further Notice provided an additional extension of time, until 6 September 2016, for the Applicants to confirm their acceptance of the conditions contained in the Further Notice. In view of this extension of time, the Further Notice also modified the timetable in Table 2 of the RFA. Each Applicant received an Applicant-specific copy of the Further Notice (containing site maps generated on the basis of their respective Applications in relation to the America's Cup Condition). The Further Notice also permitted Applicants to modify their Applications, including their Optional Commitments, if such modifications were necessary to enable the Applicant to accommodate the new Additional or Modified Mandatory Licence Conditions. No Applicant, however, proposed any changes to its Application.
46. Following the release of the Further Notice, the Chief Executive of the Authority invited the Applicants to meet individually with the Authority's staff on 1 and 2 September 2016. The Chief Executive, accompanied by the Authority's Legal Advisor, Monique Lister, met with each of the Applicants on 1 and 2 September. Each Applicant was given the same amount of time to meet with the Authority's staff.
47. The Additional or Modified Mandatory Licence Conditions, as amended, were ultimately accepted by all three Applicants. Each Applicant submitted its updated Eligibility Documentation, duly executed by its Authorized Person, confirming its commitment to fulfil these conditions as well as the other Mandatory Conditions set out in the RFA.<sup>7</sup>

#### ***IV-4 Further Amendment of the HDS-1 Schedule***

48. On 13 September 2016, the Authority, acting pursuant to Section 9 of the RFA, issued a Notice of Amendment of Table 2 of the RFA. The Notice of Amendment extended the date for the issuance of a Final Decision regarding the HDS-1 Applications until 5 October 2016 and the deadline for the award of the HDS-1 Licenses (contingent on the payment of the Successful Applicant Fee and the posting of a Performance Bond) until 21 October 2016.

#### **V. NOTIFICATION OF PRELIMINARY DECISION TO DISQUALIFY AND PROPOSED FINAL DECISION**

49. After meeting with the Advisory Panel, the Authority independently reviewed and assessed the Applications submitted during the HDS-1 process. The Authority also carefully considered the Panel's Recommendations and the reasoning provided. In addition, the Authority considered the reports presented by Plum Consulting, KPMG Advisory Limited and the Authority's Finance team discussed in paragraph 32 above. Based on the foregoing, the

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<sup>7</sup> CellOne requested an adjustment to the site map accompanying the America's Cup Condition that was furnished by the Authority, which the Board of the Authority concluded was reasonable and approved on 5 October 2016. A further discussion of CellOne's request and the Authority's consideration of same appear in Annex 1.

Authority made two preliminary determinations. First, the Authority issued the Preliminary Decision to Disqualify the Third HDS-1 Participant for failure to achieve a Passing Score in the Baseline Reviews of its Alternative Requests; and, second, it issued a Proposed Final Decision on HDS-1.

50. The Preliminary Decision to Disqualify and the integration of that disqualification procedure with the process established by the Authority for comment on a Proposed Final Decision are addressed in the confidential Annex 1 pertaining to the Third HDS-1 Participant.
51. On 5 October 2016, the Authority, acting pursuant to Section 9 of the RFA, issued a further Notice of Amendment of Table 2 of the RFA. The Notice of Amendment: provided for the issuance of a Proposed Final Decision on 12 October 2016; extended the date for the issuance of a Final Decision regarding the HDS-1 Applications until 26 October 2016; and extended the deadline for the award of the HDS-1 Licences (contingent on the payment of the Successful Applicant Fee and the posting of a Performance Bond) until 31 October 2016.
52. On 12 October 2016, the Authority issued a Proposed Final Decision regarding the award of HDS-1 Frequencies pursuant to Section 14.3.5 of the RFA. The Proposed Final Decision preliminarily concluded, subject to the Applicants' fulfilment of licence-related pre-Conditions that:
  - (a) CellOne should be awarded HDS-1 Lot L-1 consisting of the Lower Band B (704-710/734-740 MHz) and Lower Band C (710-716/740-746 MHz) of the 700 MHz Band;
  - (b) Digicel should be awarded HDS-1 Lot L-2 consisting of the Upper Band C (746-757/776-787 MHz) of the 700 MHz Band, plus HDS-1 Lot L-3, consisting of the B (880.0-890.0/835.0-845.0 MHz) and B' (891.5-894.0/846.5-849.0 MHz) Blocks of the 850 MHz Band; and
  - (c) Lot L-4, Blocks E and F of the 2100 MHz band should be returned to the pool of HDS spectrum that may be made available for assignment in the future.
53. Each Applicant received the relevant parts of the Proposed Final Decision that were generally applicable to all Applicants and those that pertained to that Applicant specifically. The Proposed Final Decision was accompanied by an Annex consisting of three Applicant-specific sections, each of which separately set out the preliminary scoring and salient observations identified during the evaluation of the HDS-1 Applications. Each Applicant received only that section of the Annex which addressed its Application. Because the Applications contained trade secrets as well as proprietary and commercially sensitive information, the Authority afforded confidential treatment to each

supportive analysis of the Applicant's submissions as they pertained to each Applicant.<sup>8</sup>

54. The Proposed Final Decision also incorporated by reference the aforementioned Preliminary Decision to Disqualify, which was issued by the Authority on 21 September 2016.
55. The Applicants were given until 19 October 2016 to respond to the Proposed Final Decision if they chose to do so. (Because of Hurricane Nicole, the deadline was subsequently extended until 21 October 2016.) In order to prevent circumvention of the Application filing requirements and timetable, the Proposed Final Decision strictly limited the responses to: (1) comments identifying what the Applicant believed to be material errors or omissions in the evaluation of its Application; and/or (2) representations highlighting or clarifying any aspect of its Application which, in the Applicant's view, were materially relevant to the assessment of the Application. The Applicants were not permitted to supplement their Applications or provide any additional information not contained in their existing Applications.

## **VI. FINAL DECISION**

56. On 21 October 2016, CellOne and the Third HDS-1 Participant submitted responses to the Proposed Final Decision. Digicel advised the Authority that it had no comments on the Proposed Final Decision.
57. CellOne addressed two issues in its response. First, CellOne asked the Authority to reconsider the scoring of its Optional Commitments. CellOne did so on the basis that the responses submitted by other Applicants might change the comparative scoring of CellOne's Application and, by extension, the preliminary award to CellOne. Given the nature of the response submitted by Digicel and the Authority's conclusions regarding the response submitted by the Third HDS-1 Participant, the Authority finds it unnecessary to revisit the scoring of CellOne's Optional Commitments. Second, CellOne sought clarification of certain requirements for the Performance Bond required by the RFA. CellOne's request for clarification is addressed in the discussion of the requirements of the Performance Bond in Section VII below.
58. The response submitted by the Third HDS-1 Participant is addressed in the confidential Annex pertaining to the Third HDS-1 Participant.

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<sup>8</sup> See note 6 *supra*. In respect of the reports prepared by Plum Consulting, KPMG Advisory Limited and the Authority's staff, the Authority noted that these reports make reference to, and include, detailed information and documentation provided by the each of the Applicants in relation to its Financial Position, Technical Capability and Experience, Technical Solution, and Business Plan, as well as comparative assessments of the Applicants and their Applications. As a consequence, the reports contain trade secrets and proprietary and commercially sensitive information provided by the Applicants that cannot be redacted. For these reasons, the reports were and will continue to be afforded confidential treatment by the Authority.

59. Having considered the responses to the Proposed Financial Decision, the Applications submitted during the HDS-1 process, the Recommendations of the Advisory Panel, and the reports presented by Plum Consulting, KPMG Advisory Limited and the Authority's Finance team, the Authority:
- (a) Awards CellOne HDS-1 Lot L-1 consisting of the Lower Band B (704-710/734-740 MHz) and Lower Band C (710-716/740-746 MHz) of the 700 MHz Band;
  - (b) Awards Digicel HDS-1 Lot L-2 consisting of the Upper Band C (746-757/776-787 MHz) of the 700 MHz Band plus HDS-1 Lot L-3, consisting of the B (880.0-890.0/835.0-845.0 MHz) and B' (891.5-894.0/846.5-849.0 MHz) Blocks of the 850 MHz Band;
  - (c) Disqualifies the Third HDS-1 Participant for failing to achieve a Passing Score in the Baseline Review of its three Alternative Requests; and
  - (d) Returns Lot L-4, Blocks E and F of the 2100 MHz band to the pool of HDS spectrum that may be made available for assignment in the future.

The Authority also revises the RFA timetable (Table 2) as discussed in the following section with regard to the final stages of HDS-1.

## **VII. SUCCESSFUL APPLICANT SERVICE FEE; PERFORMANCE BOND**

60. The RFA requires the completion of certain formalities by the Successful Applicants before they may be awarded HDS-1 Frequencies by means of modifications to their ICOLs and associated spectrum licences:
- (a) Section 13.6 of the RFA requires Successful Applicants to remit to the Authority payment in full of the Successful Applicant Service Fee in the amount of BMD 40,000.00;<sup>9</sup> and
  - (b) Section 10.3 of the RFA, as amended by the Notice and Further Notice, requires Successful Applicants to put in place a Performance Bond in the amount of BMD 1,250,000.

Section 4.6 of the RFA provides that a Successful Applicant that fails to pay the Successful Applicant Fee or put in place the Performance Bond will be subject to disqualification from further participation in the HDS-1 process.

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<sup>9</sup> See Electronic Communications (Spectrum Service Fees) Regulations 2016, *available at* [http://www.bermudalaws.bm/laws/Annual%20Laws/2016/Statutory%20Instruments/Electronic%20Communications%20\(Spectrum%20Service%20Fees\)%20Regulations%202016.pdf](http://www.bermudalaws.bm/laws/Annual%20Laws/2016/Statutory%20Instruments/Electronic%20Communications%20(Spectrum%20Service%20Fees)%20Regulations%202016.pdf).

### **VII-1 Successful Applicant Service Fee**

61. The Successful Applicants shall remit to the Authority, in accordance with the requirements of Section 13.6 of the RFA, full payment of the Successful Applicant Service Fee no later than 11:00 AM on 2 November 2016.

### **VII-2 Performance Bond**

62. A form of Performance Bond, acceptable to the Authority, appeared as Annex 2 to the Proposed Final Decision. CellOne has requested clarification of the Performance Bond requirement, noting a number of practical concerns presented by strict compliance with the Performance Bond requirement. Specifically, CellOne asked whether the Authority would accept an irrevocable letter of credit in lieu of a Performance Bond, whether the Bonded Sum could be denominated in U.S. dollars, and whether the Authority would eliminate the requirement that the Bonded Sum be restored to BMD 1,250,000 in the event that the Authority receives payment under the Performance Bond.
63. In the Proposed Final Decision, the Authority recognized that entities providing Performance Bonds may have their own unique requirements and preferences as to the form of the surety. The Authority therefore indicated that it would accommodate other forms, provided that the surety achieves the same purpose and incorporates the text that appears in underlined italics in the form of Performance Bond appearing in Annex 2 (to the Proposed Final Decision and this Final Decision).<sup>10</sup> Consistent with the foregoing, the Authority will entertain irrevocable letters of credit and sureties denominated in U.S. dollars, provided that the italicised underlined text appearing in the attached form of Performance Bond is included and the Authority is otherwise satisfied, in its sole discretion, that the surety protects the Authority's interests.
64. Although the Authority appreciates the concerns raised by CellOne regarding the requirement that the Bonded Sum be restored, the Authority is not persuaded that the requirement should be eliminated. If a Successful Applicant submits an otherwise acceptable Performance Bond or other surety that does not require the Bonded Sum to be restored to BMD 1,250,000, the Applicant will be required, as a condition of its spectrum licence, to secure an additional Performance Bond or other surety in the event that the Bonded Sum is drawn down. The additional Performance Bond or surety, which must be approved in advance in writing by the Authority, must be in an amount equal to the amount by which the original Performance Bond or other surety has been drawn down.<sup>11</sup> The additional Performance Bond or other surety must be in place and effective within ten Working Days of the date on which the original Performance Bond or other surety is drawn down.

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<sup>10</sup> If a Successful Applicant has made Optional Commitments that have been accepted by the Authority, these must also be included in the Performance Bond.

<sup>11</sup> The Authority, within its sole discretion, will entertain alternative approaches to ensuring that the full amount of the Bonded Sum, BMD 1,250,000, remains available to the Authority.



65. Each Successful Applicant must submit its proposed form of Performance Bond or other surety to the Authority for approval no later than 2 November 2016. If the proposed form of Performance Bond or other surety does not contain a requirement that the Bonded Sum be restored, it must be accompanied by a letter from the Applicant's Authorized Person confirming the Successful Applicant's commitment to secure an additional Performance Bond or other surety if the Bonded Sum is drawn down. The Authority will approve, or indicate what changes are necessary in order for the Authority to approve, the Performance Bond or other surety on or before 7 November 2016. The Successful Applicants must provide the Authority with documentation confirming that the Performance Bond or other surety, as approved by the Authority, is in place and effective no later than 9 November 2016, unless the Authority, in its sole discretion, approves in writing a request for an extension by the Successful Applicant for good cause shown.

**VII-3 Failure to Remit Successful Applicant Service Fee or Put in Place the Performance Bond**

66. If a Successful Applicant fails to remit the Successful Applicant Service Fee or put in place the Performance Bond or other surety by the dates set forth in paragraphs 61 and 65 above:
- (a) the Applicant shall be disqualified from further participation in the HDS-1 process in accordance with paragraphs 31(d), 31(j) and 94 of the RFA; and
  - (b) the decision to award the HDS-1 spectrum Lot or Lots to that Applicant shall be rescinded.

In such an eventuality, the Authority may, in its sole discretion, award the HDS-1 Lot or Lots to the other Successful Applicant in order to satisfy the Applicant's first priority. Alternatively, the Authority may elect to return the HDS-1 Lot or Lots to the pool of HDS spectrum that may be made available for assignment in the future.

**VIII. AWARD OF HDS-1 LICENSES TO SUCCESSFUL APPLICANTS**

67. Following publication of this Final Decision on the Authority's official website, and confirmation that the Successful Applicant Service Fee has been paid in full and that the Performance Bond or other surety is in place and effective, the Authority will issue to the Successful Applicants modified ICOLs and spectrum licences in accordance with Section 15.2 of the RFA.

**IX. RETURN OF LOT L-4 TO THE HDS POOL FOR POTENTIAL FUTURE AWARD**

68. As there were no Applications for the award of Lot L-4, Blocks E and F of the 2100 MHz band (as set out in Table 1 of the RFA), these frequencies will be returned to the pool of HDS spectrum that may be made available for assignment in the future.

**X. CONCLUSION**

69. This Final Decision shall be published on the Authority's official website in accordance with paragraphs 139 and 140 of the RFA. Upon the issuance of modified ICOLs and spectrum licences to the Successful Applicants, HDS-1 shall terminate.

**ANNEX 1**

**CONFIDENTIAL  
TO  
CELLONE**

**ANNEX 1**

**CONFIDENTIAL  
TO  
DIGICEL**

**ANNEX 1**

**CONFIDENTIAL  
TO THE  
THIRD HDS-1 PARTICIPANT**

**ANNEX 2**  
**PERFORMANCE BOND**

## Form of Performance Bond

### **Mandatory content in this form is italicized and underlined**

WHEREAS [**Successful Applicant**], whose registered office is at [**address**] (“**Successful Applicant**”), has been selected by the Regulatory Authority of Bermuda (“the Authority”) for the award of certain high demand spectrum in the 850 MHz and 700 MHz Bands (“HDS-1 Frequencies”) in accordance with the Final Decision of the Authority issued on [**date**];

WHEREAS the Final Decision was adopted by the Authority in exercise of the powers granted by the Electronic Communications Act 2011 (the “ECA”) and the procedures set forth in the Request for Applications for the Assignment of Designated HDS-1 Frequencies in the 850 MHz, 700 MHz and 2100 MHz Bands as amended and including, for the avoidance of doubt, the Further Notice Regarding Additional or Modified Mandatory Licence Conditions dated 31 August 2016 (hereinafter, “the RFA”);

**WHEREAS in accordance with the conditions for the award of the HDS-1 Frequencies set forth in the RFA, [**Successful Applicant**] must put in place a Performance Bond for failure by [**Successful Applicant**] to meet certain obligations to which [**Successful Applicant**] committed<sup>12</sup> as a condition precedent for its participation in the HDS-1 assignment process, and which are to be embodied in the licence conditions authorizing its use of the HDS-1 Frequencies for which [**Successful Applicant**] has been selected (such obligations being repeated as Critical Milestones in Annex 1 below).**

**KNOW ALL PERSONS BY THESE PRESENTS THAT the undersigned [**Successful Applicant**] and [**name**], whose registered office is at [**address**] (“the Surety”), as a surety and primary obligor on behalf of [**Successful Applicant**], irrevocably and unconditionally bind themselves, and each of their heirs, administrators, executors and assigns, jointly and severally, to hold a sum of BMD 1,250,000 (“Bonded Sum”) as a Performance Bond unto the Authority and to discharge the Bonded Sum promptly and without delay, upon request made by the Chief Executive of the Authority in writing, as follows:**

- (a) **1<sup>st</sup> Bond Payment:** BMD 625,000 for failure by [**Successful Applicant**] to comply with Critical Milestone 1 as decided by the Authority, in its absolute discretion;
- (b) **2<sup>nd</sup> Bond Payment:** an amount determined by the Authority, in its absolute discretion, for failure by [**Successful Applicant**] 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
- (c) **Additional Bond Payments:** monthly amounts determined by the Authority, in its absolute discretion, for continued failure by [**Successful Applicant**] to cure its

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<sup>12</sup> Section 9 of [**Successful Applicant**] “Required Registration Documentation – Undertakings of Registrant”, signed by the [**Signatory for Successful Applicant**] and dated [**date of signing**], and updated on [**date of update**].

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.

The Bond Payment Date on which each of the above Bond Payments shall become payable is set out in Annex 1 against each of the Critical Milestones. In the event that any such payments are made out of the Bonded Sum, the Bonded Sum shall be restored, as soon as reasonably practicable, to the amount of BMD 1,250,000, until the Performance Bond terminates in accordance with condition 3 below.

**PROVIDED THAT** this Performance Bond is subject to the following conditions:

1. Where applicable, words and expressions used in this Performance Bond shall have the meaning assigned to them in the Final Decision or the RFA.

2. Payment shall be made by the Surety into an account to be specified by the Authority without objection, set-off or legal proceedings of any kind. The Surety shall not delay the payment, nor shall it oppose it for any reason whatsoever. The Surety shall inform the Authority in writing as soon as the payment has been made.

3. The Surety's liability under this Performance Bond 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 [Successful Applicant] to 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 [Successful Applicant] to cure its default in respect of Critical Milestone 2 as decided by the Authority in its absolute discretion, one year following the date specified by the Authority for the payment of the 2<sup>nd</sup> Bond Payment.

4. The Surety hereby agrees that it shall not otherwise be discharged or released from this Performance Bond by any arrangement between [Successful Applicant] and the Authority [with or without the Surety's consent] or by any alteration in the obligations undertaken by [Successful Applicant] or by any forbearance by the Authority.

5. The Authority shall be entitled to assign the benefit of this Performance Bond to any Government or Statutory body at any time without the Surety's consent being required.

6. All documents arising out of or in connection with this Performance Bond shall be served in writing by hand or post, with a copy via facsimile to the following addresses:

- Upon the Authority, 1<sup>st</sup> Floor, Craig Appin House, 8 Wesley Street, Hamilton, HM 11, Bermuda



- Upon **[Successful Applicant]** at [ ], Bermuda;
- Upon the Surety at [ ], Bermuda.

7. A party may change its respective address for service of documents to another address in Bermuda but only by prior written notice to each other given in accordance with clause 6 above.

8. This Performance Bond shall be governed by and construed according to the laws of Bermuda. The Surety and **[Successful Applicant]** agree to submit to the exclusive jurisdiction of the courts of Bermuda.

Signed and sealed **[date]** 2016.

**[Successful Applicant]**

By: \_\_\_\_\_

Witness: \_\_\_\_\_

**The Surety**

By: \_\_\_\_\_

Witness: \_\_\_\_\_

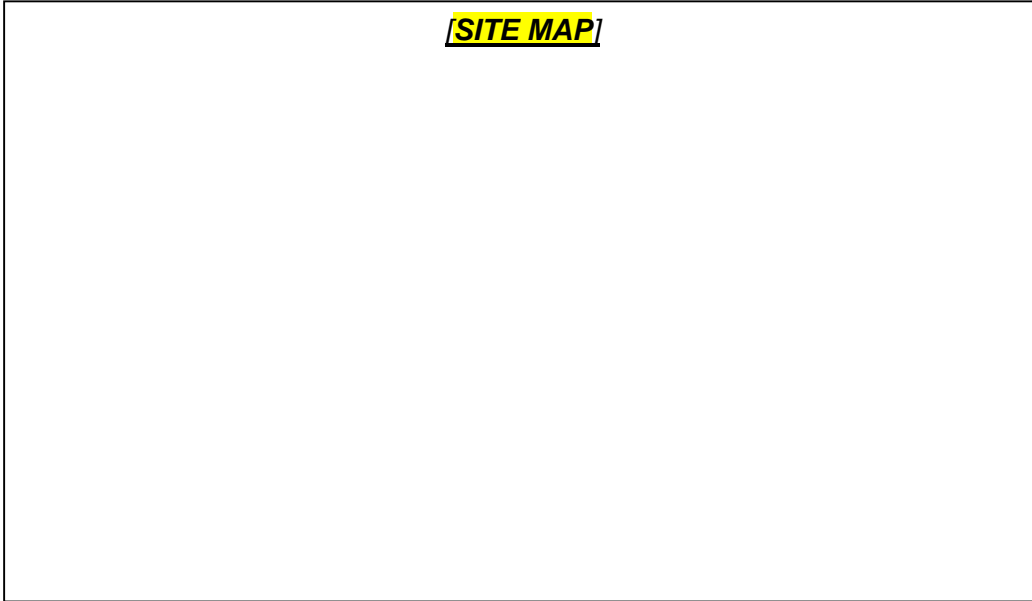
**Confidential Annex 1 – Critical Milestones**

<b><u>Critical Milestone</u></b>	<b><u>Bond Payment Date</u></b>
<p><b><u>Critical Milestone 1 (America's Cup Obligation)</u></b></p> <p><u>Within 6 months from the date on which [Successful Applicant] is awarded the use of the HDS-1 Frequencies for which [Successful Applicant] has been selected, [Successful Applicant] must provide full coverage of the Great Sound and Dockyard area (the "America's Cup Race Area"). In this regard, 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 as listed in [Successful Applicant's] HDS-1 Application and attached hereto as Annex 2, subject to any adjustments that may reasonably be required or approved by the Authority, including the provision of any additional cell sites 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.</u></p>	<p><u>The 1<sup>st</sup> Bond Payment shall become payable on the date on which the Authority decides that [Successful Applicant] has failed to meet Critical Milestone 1.</u></p>

<u>Critical Milestone</u>	<u>Bond Payment Date</u>
<p><b><u>Critical Milestone 2 (Final Coverage/Roll-Out Obligation and Minimum Quality Of Service Obligation)</u></b></p> <p><u>Within 18 months [or another time period specified in any Optional Commitment accepted by the Authority] from the date on which [Successful Applicant] is awarded the use of the HDS-1 Frequencies for which [Successful Applicant] has been selected or by the alternative date specified by a waiver approved by the Authority, [Successful Applicant] must provide mobile broadband services to its subscribers and users at:</u></p> <p><u>(a) a Minimum Download User Data Rate equal to at least 4 Mbps in outdoor areas when the network is lightly loaded with 99.9% Geographic Coverage for the entire land mass of Bermuda and its surrounding islands, or the alternative geographic coverage/roll-out commitment levels specified by a waiver approved by the Authority pursuant to the terms and conditions set out in the Final Decision or the RFA; and</u></p> <p><u>(b) a Minimum Average Download User Data Rate of 15 Mbps within the Coverage Area.</u></p>	<p><u>The 2<sup>nd</sup> Bond Payment shall become payable on the date on which the Authority decides that [Successful Applicant] has failed to cure its failure to meet Critical Milestone 2.</u></p> <p><u>The Additional Bond Payments shall be made on a monthly basis following the payment date specified by the Authority for the payment of the 2<sup>nd</sup> Bond Payment, in case of continued failure by [Successful Applicant] to meet and/or cure its default in respect of Critical Milestone 2 as decided by the Authority.</u></p>

**Confidential Annex 2 – Site Map**

The attached Site Map for the Dockyard/Great Sound Area will be included as Annex A to the modified Coverage/Roll-Out Condition pertaining to the America's Cup event.



<u>Site ID</u>	<u>Sector ID</u>	<u>Latitude</u>	<u>Longitude</u>