CSE Crosscom Terms and Conditions of Sale

1. Part A – General Terms and Conditions

Clause 1 Definitions applies to Part A, Part B, Part C, Part D and Part E.

1. Definitions

1.1. Accession, Collateral, Financing Statement, Financing Change Statement, Purchase Money Security Interest, Security Agreement, Security Interest and Verification Statement have the meanings given to them in the PPSA.

1.2. Agreement means the agreement between the Parties constituted by the documents specified in clause 2 of Part A of the Agreement.

1.3. RSM means Radio Spectrum Management, a business unit of the Ministry of Business, Innovation and Employment.

1.4. Confidential Information means all information and materials, in any form, which comes into a Party's possession about the other Party pursuant to, or as a result of or in performance of the Agreement, excluding information:

1.5. which at the time of its first disclosure or observation under the Agreement was in the public domain?

1.6. which, after disclosure or observation under the Agreement, comes into the public domain otherwise than by disclosure in breach of the Agreement.

1.7. which is received by either Party from a third party who has the right to provide the information.

1.8. which was already in the receiving Party's possession or knowledge without restriction prior to its disclosure or observation; or

1.9. which the disclosing Party is required by law to disclose.

1.10. Commencement Date means the date specified in the Proposal as the commencement date.

1.11. CSE Crosscom means CSE Crosscom New Zealand Pty Ltd (NZBN 942 903 189 5248).

1.12. CSE Crosscom's Premises means the premises notified by CSE Crosscom, from time to time for the purposes of the Agreement.

1.13. Customer means the entity described in the Proposal or Service Agreement and in the case of a company includes its permitted successors and assigns and in the case of natural persons includes his, her or their heirs, executors, administrators and permitted assigns.

1.14. Delivery means the delivery of the Equipment to the nominated address of the Customer.

1.15. Defective means any fault in the Services, Equipment or Network, or malfunction of the Equipment or Network and includes where the equipment is not fit for purpose or is not of merchantable quality, and Defect has the same meaning.

1.16. Equipment means the equipment as specified in the Proposal or Service Agreement.

1.17. Equipment Payback Period means the term stated in the Proposal or Service Agreement that the Equipment is required to be paid for in full and is expressed in months.

1.18. Expiry Date means the date specified on the Proposal or Service Agreement as the expiry date.

1.19. Fee means the amount(s) set out in the Proposal. or Service Agreement

1.20. Intellectual Property Right means all intellectual property rights, whether or not now existing, arising under statute or common law anywhere in the world in respect of works protected by copyright, trademarks, designs, patentable inventions, circuit layouts, databases, know-how, confidential information and trade secrets, and any application or right to apply for registration of any intellectual property in respect of such subject matter.

1.21. GST means the goods and services tax payable under the Goods and Services Tax Act 1985 (as amended).

1.22. Rental Period means the period commencing from the Commencement Date as specified in the Proposal or Service Agreement and ending on the Expiry Date or when the Equipment is returned to CSE Crosscom, whichever occurs last.

1.23. Licence Expiry Date means the date the RSM licence expires.

1.24. Lost Equipment means any Equipment which the Customer fails to return in accordance with the Agreement or notifies CSE Crosscom has been lost or is unable to make available for CSE Crosscom's inspection within seven (7) days of a request from CSE Crosscom for such an inspection to take place.

1.25. Minimum Term means the period in months noted in the Proposal or Service Agreement as the Minimum Term (if applicable) and constitutes the minimum period the Equipment in placed with the Customer.

1.26. Network means a system or service provided on a non-exclusive basis by CSE Crosscom that allows for the transmission of data or voice via telecommunications, the internet or other means of such data or voice transmission.

1.27. Network Access means the shared use of Network.

1.28. Network Access Period means the period commencing from the Commencement Date and ending on the Expiry Date or when the Customer advises CSE Crosscom in writing that it no longer requires Network Access, whichever occurs last, as that period may be extended under Part D.

1.29. Party means CSE Crosscom [insert NZ entity name] Limited NZBN [insert] or the Customer, and Parties refer to both in the plural.

1.30. Personal Information means Personal Information as defined in the Privacy Act 2020 (as amended).

1.31. PPSA means the Personal Property Securities Act 1999.

1.32. PPSR means the Personal Property Securities Register established under Section 139 of the PPSA.

1.33. Privacy Act means the Privacy Act 2020.

1.34. Proposal means proposal or quotation for the Services as issued by CSE Crosscom to the Customer.

1.35. Replacement Equipment Fee means 75% of the recommended retail price of the Equipment.

1.36. Security Deposit means any amount payable by the Customer as security for the fulfilment of the Customer's obligations under the Agreement, as set out in the Proposal.

1.37. Service Agreement means the Service Agreement entered into by the Parties for the provision of Equipment and Network Access charged on a monthly rental scheme over a specified period.

1.38. Services means the services described in or referred to in the Proposal or Service Agreement, together with all tasks and activities incidental to and necessary for the performance of the Services and includes the provision of goods, equipment and/or materials.

1.39. Tax Invoice means any invoice issued by CSE Crosscom, which shall constitute a Tax Invoice as defined in the Goods and Services Tax Act 1985 (as amended).

1.40. Term means the period stated in months in the Proposal.

1.41. Up-Front Payment means a deposit paid by the Customer where the value of Equipment exceeds $100,000.00, the rate of Up-Front Payment to be expressed in the Proposal and payable upon the Commencement Date.

1.42. Warranty Period means the period (if any) set out in the Proposal.

1.43. Zero Dollar Upfront Fee means the Customer purchases the Equipment as specified in the Proposal and does not pay any monies at the initial handover of the Equipment.

2. Agreement

2.1. The Agreement comprises 6 components:

2.1.1. Proposal (including all assumptions, qualifications and exclusions that may be noted in the Proposal).

2.1.2. Part A – General Terms and Conditions applying to all Services.

2.1.3. Part B – Services Terms and Conditions.

2.1.4. Part C – Equipment Rental Terms and Conditions.

2.1.5. Part D – Network Access Terms and Conditions; and

2.1.6. Part E – Zero Dollar Upfront Equipment Purchase Terms and Conditions.

2.2. Where there is any ambiguity, discrepancy or inconsistency in the documents comprising the Agreement, the order of precedence as stated in clause 2.1 shall apply.

2.3. The Agreement comprises the entire understanding between the Parties and no regard will be had to any prior dealings. Any terms that may have been attached or embodied in CSE Crosscom's tender (if any), any quotation from CSE Crosscom or other correspondence between the Parties are deemed to have been withdrawn in favour of the terms stated in the Agreement. For avoidance of doubt, any additional terms and conditions associated and presented in conjunction with the Customer's purchase order will be null and void.

2.4. The Agreement comes into effect and operates from the Commencement Date.

2.5. In the interpretation of the Agreement, no rule of construction applies to the disadvantage of CSE Crosscom on the basis that CSE Crosscom prepared or put forward the Agreement or any part of it.

2.6. The Agreement is governed by and is to be construed in accordance with the laws of New Zealand.

2.7. Any provision of the Agreement that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

2.8. If it is not possible to read down a provision as required by clause 2.7, the part or all of the provision that is unlawful or unenforceable will be severed from the Agreement and the remaining provisions continue in force.

2.9. Without limiting any other way in which documents or notices may be given by a Party to the other Party under the Agreement, a notice or document may be given by electronic delivery to the email address stated in the Proposal or to a substitute email address advised by one Party to other from time to time as an address at which notices may be given.

2.10. All obligations to indemnify under the Agreement survive termination or expiration and completion of the Agreement.

2.11. Failure or delay on the part of CSE Crosscom to exercise any right, remedy, power or privilege to which it is entitled under the Agreement does not operate as a waiver of such right, remedy, power or privilege.

2.12. Unless otherwise expressly stated, CSE Crosscom or an authorised representative of CSE Crosscom may exercise a right or power under or arising out of the Agreement in its absolute discretion.

3. Default Payment

3.1. CSE Crosscom has the right to charge interest on overdue accounts at the rate provided for by the Interest on Money Claims Act 2016 plus 2% compounded daily from (and including) the date of due payment until (but excluding) the date of payment in full of the overdue account with interest.

3.2. The Customer shall pay to CSE Crosscom any costs, expenses or losses incurred by CSE Crosscom as a result of the Customer's failure to pay to CSE Crosscom all monies outstanding from the Customer to CSE Crosscom, including, without limiting the generality of the obligations set out in the Agreement, any debt collection, mercantile agent and legal costs.

4. Warranties

4.1. CSE Crosscom warrants that:

4.1.1. the Services will be reasonably fit for purpose; and

4.1.2. any Equipment is of merchantable quality, free from defect in material and workmanship and reasonably fit for the purpose for which it is designed.

4.2. All warranties, representations, promises, conditions or statements regarding the Services or the Equipment, whether express or implied are expressly excluded to the full extent permitted by law and the Customer expressly acknowledges that they have relied entirely on their own knowledge, skill and judgement in selecting the Services and ordering and selecting the Equipment for purchase or Rent.

5. Liability and Limitations of

5.1.1. The Parties acknowledge that under the Consumer Guarantees Act 1993 and the Fair Trading Act 1986, consumers have certain rights which cannot be excluded. Nothing in this Agreement will be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.

5.2. To the fullest extent permitted by Law, CSE Crosscom expressly excludes all rights, representation, guarantees, conditions, warranties, undertakings, remedies, liabilities or other terms that are not set out in this Agreement.

5.3. CSE Crosscom shall not be liable for any loss, damage or injury of any kind whatsoever and howsoever caused to the Customer, it employees and agents, its property and/or equipment, to any other person or to the property and/or equipment of any other person arising from or relating to:

5.3.1. a failure to provide the Services.
5.3.2. the unavailability of the Services, Equipment or the Network.
5.3.3. mechanical failure of Equipment or the Network.
5.3.4. any Defect in the Services or the Equipment.
5.3.5. Network Access failure, disruption, disturbance, or discontinuance.
5.3.6. disruption or discontinuance of the RSM Service.
5.3.7. any asserted or established violation of legal requirements relating to the safe use of the Equipment.
5.3.8. the Customer's use or operation of the Equipment.
5.3.9. a failure by CSE Crosscom to deliver or supply the Equipment or the Network Access, except to the extent that such loss, damage or injury is caused by any breach of Agreement or negligence on the part of CSE Crosscom or its agents and/or servants.

5.4. The Customer shall defend, indemnify, and hold CSE Crosscom harmless for all claims for such loss, damage or injury.

5.5. Subject to the terms of this Agreement, the Parties are not liable for consequential or economic loss or damage, including loss or liability that is not the direct result of or the immediately identifiable consequence of its act or omission, loss of all profits or revenue (whether direct or indirect); loss of benefit of any contract, delay damages, loss of production or production stoppage; or loss of data whether such loss is direct or indirect and is not liable for any exemplary or punitive damages of any kind

6. Price and Payment

6.1. Any price or amount specified in the Proposal or Service Agreement, including the Fee are:

6.1.1. expressed in New Zealand dollars.

6.1.2. inclusive of GST, levies and any other applicable taxes unless otherwise expressly stated in writing; and

6.1.3. exclusive of delivery and installation costs unless otherwise expressly stated in the Proposal.

6.2. Subject to receipt of a valid Tax Invoice in the form proposed by CSE Crosscom, the Customer will pay CSE Crosscom the Fee by electronic funds transfer no later than 30 days from the date when CSE Crosscom issues the tax invoice, unless stated otherwise in the Proposal.

6.3. CSE Crosscom reserves the right to request non-refundable Up-Front Payment for Customer orders where the cost of Equipment is in excess of NZD$100,000. Where this is the case then the CSE Crosscom Proposal shall set out the percentage of the Up-Front Payment and any other milestone payment requirements.

6.4. Neither part nor the whole of any invoiced value shall be withheld from CSE Crosscom due to non-payment to the Customer by the Customer's client, or for any other reason.

6.5. CSE Crosscom may in its sole discretion require the payment of a Security Deposit prior to Delivery of the Equipment which shall be held by CSE Crosscom as security for payment of the Fee and other amounts due from the Customer to CSE Crosscom for the performance of the Customer's obligations under the Agreement, and against any damages caused to the Equipment by the Customer.

6.6. The Security Deposit will be returned to the Customer within seven (7) days of the termination of the Agreement less any offset as provided for under the Agreement.

6.7. Any increase in the rate or number of the taxes shall be paid by the Customer to CSE Crosscom by way of additional fees. The Customer shall receive the benefit of any reduction in the taxes.

7. Intellectual Property

7.1. All Intellectual Property Rights subsisting in the Services, Equipment or Network Access, designs, materials, documents, specifications or methods of working created under the Agreement or otherwise by or on behalf of CSE Crosscom for the purposes of the Equipment or Network Access, is and remains the property of CSE Crosscom.

7.2. Each Party retains ownership of its Intellectual Property which was in existence prior to the date of the Agreement, and which was not created in connection with the Agreement.

7.3. CSE Crosscom grants to the Customer a non-exclusive, royalty-free licence to use the CSE Crosscom intellectual property solely for purpose of using the Equipment or Network Access.

7.4. The Customer must not infringe any Intellectual Property Right of CSE Crosscom and indemnifies CSE Crosscom for any such infringement.

8. Termination Generally

8.1. Without limiting any other termination rights under the Agreement, a Party can, without prejudice to any other rights and remedies it has under the Agreement, terminate the Agreement prior to the Expiry Date (if applicable) in whole or part with immediate effect by notice in writing if the other Party:

8.1.1. is in breach of any term of the Agreement.

8.1.2. being an individual, commits an act of bankruptcy, becomes a bankrupt, makes a proposal to creditors under the Insolvency Act 2006 (as amended) or a creditor accepts a composition under that Act or any analogous overseas law.

8.1.3. being a corporation (other than for the purpose of a reconstruction or amalgamation):

8.1.3.1. is the subject of a compromise or arrangement with its creditors.

8.1.3.2. in respect of property of which a receiver or a receiver and manager is appointed; or

8.1.3.3. in respect of which a provisional liquidator or liquidator is appointed.

8.2. If the Agreement is terminated pursuant to clause 9 of Part A, if the other Party is CSE Crosscom, CSE Crosscom is entitled to any costs, expenses or losses incurred by CSE Crosscom as a result of the termination under clause 9 of Part A of the Agreement.

9. Personal Property Securities Act 1999

9.1. The Agreement constitutes a Security Agreement for the purposes of the PPSA and a Purchase Money Security Interest is taken by CSE Crosscom in the Equipment, including, but not limited to, all other present and after-acquired property.

9.2. The Customer undertakes to:

9.2.1. sign any further documents and/or provide further information, such information to be complete, accurate and up to date in all respects which CSE Crosscom may reasonably require to register a Financing Statement or Financing Change Statement on the PPSR.

9.2.2. indemnify, and upon demand, reimburse CSE Crosscom for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR; and

9.2.3. give CSE Crosscom not less than 14 days' prior written notice of any proposed change in the Customer's details, including but not limited to, changes in address, facsimile number, or business practice.

9.2.4. Unless otherwise agreed to in writing by CSE Crosscom, the Customer waives its right to receive a Verification Statement in accordance with section 148 of the PPSA.

9.2.5. Pursuant to section 177 of the PPSA, the Customer agrees it will not disclose to an interested person information pertaining to CSE Crosscom's Purchase Money Security Interest without prior approval of CSE Crosscom.

9.2.6. Pursuant to section 107 of the PPSA, the Customer agrees, to the extent permitted by law, that it shall have no rights under Part 9 (Enforcement of security interests) to receive:

9.2.6.1.1. a notice of removal of Accession.

9.2.6.1.2. a notice of enforcing Security Interests in accordance with land law decisions.

9.2.6.1.3. a notice of disposal of Collateral.

9.2.6.1.4. a statement of account where there is no disposal of Collateral; and

9.2.6.1.5. a notice of retention of Collateral.

10. Force Majeure

CSE Crosscom shall not be liable for default or failure in performance of obligations pursuant to the Agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, industrial disputes, shortage of suitable parts, components, materials or any other cause beyond the reasonable control of CSE Crosscom.

11. Access and Safety

11.1. If the Customer requires access to the CSE Crosscom Premises in connection with the performance of the Agreement, CSE Crosscom will, subject to its usual security requirements, permit the Customer and its personnel reasonable access to the premises at such times as may be reasonably necessary to enable the Customer to perform its obligations under the Agreement.

11.2. When the Customer enters the CSE Crosscom Premises, the Customer must, and must ensure that its personnel, use their best endeavors to:

11.2.1. protect people and property.

11.2.2. prevent nuisance and unnecessary noise and disturbance.

11.2.3. act in a safe and lawful manner and comply with the safety standards and policies of the CSE Crosscom (as notified to the Customer); and

11.2.4. comply with all applicable health and safety laws, including the Health and Safety at Work Act 2015.

12. Credit Reporting and the Privacy Act

12.1. The Customer acknowledges that CSE Crosscom may utilise any sources which it considers necessary in determining whether or not to provide the Equipment to the Customer on credit or at all, including obtaining a report from a credit reporting agency or the PPSR which report may include personal credit information about the Customer.

12.2. The Customer agrees that for the purposes of the Privacy Act, the Credit Reporting Privacy Code 2020 and generally CSE Crosscom may give to PPSR or a credit reporting agency information including, but not limited to:

12.2.1. about the Customer or otherwise concerning the agreement between CSE Crosscom and the Customer pursuant to the Agreement.
12.2.2. that CSE Crosscom is (if it is the case) a current credit provider to the Customer.
12.2.3. details of payments overdue more than 60 days and for which collection has commenced.
12.2.4. details of payments no longer overdue.
12.2.5. details of cheques drawn by the Customer which have been dishonoured; or
12.2.6. advise that credit provided to the Customer by CSE Crosscom or other obligation of the Customer to CSE Crosscom has been paid or discharged.

12.3. The Customer authorises CSE Crosscom to give, or seek from, any credit providers that may be named in a:

12.3.1. credit report.
12.3.2. PPSR; or
12.3.3. credit reporting agency report, information that credits providers are permitted to give or receive under the Privacy Act.

13. Privacy, Confidentiality and Data Security

13.1. The Customer acknowledges that the Services may include the collection of information including Personal Information, which may be processed as part of the provision of Services. The Customer further acknowledges that CSE Crosscom may transfer the Personal Information to and process the Personal Information in other countries/territories, however pursuant to all applicable Privacy Law.

13.2. If CSE Crosscom collects or has access to Personal Information in performing the Services, CSE Crosscom will:

13.2.1. not collect, use, disclose or transfer such Personal Information except in accordance with the applicable Data Protection Laws and for the purposes of performing the Services; and
13.2.2. comply with all privacy and security measures as the Customer reasonably requires from time to time.

13.3. CSE Crosscom will notify the Customer of any actual or suspected breach of clause 14.1 and/or Privacy Law as soon as reasonably practicable, and in any case within 48 hours.

13.4. CSE Crosscom will:

13.4.1. not use any Customer Data for its own purposes or for any purposes other than those contemplated by the Services or the Proposal.
13.4.2. in connection with its access to and dealings with the Customer
13.4.3. Data, comply with all laws, including Privacy Law; and
13.4.4. use its reasonable endeavours to ensure that all Customer Data in the possession or control of CSE Crosscom from time to time is kept secure.

13.5. Each Party must not disclose or otherwise make available any Confidential Information of the other Party to any other person or Party without the prior written consent of the other Party, other than in accordance with the terms of this Agreement (refer to clause 1.4).

13.6. If either Party becomes aware of or suspects that any unauthorised person has obtained, attempted to obtain, or may obtain access to any Confidential Information or data of the other Party, that Party must notify the other Party as soon as reasonably practicable, and in any case within 48 hours, and the Parties must work together to take such steps as are available to them to identify the unauthorised person and mitigate the effect of such unauthorised access.

14. Dispute Resolution

If any dispute arises between CSE Crosscom and the Customer in relation to any transaction which is subject to the Agreement or the terms of the Agreement, either Party may give written notice of the existence of such dispute within one (1) calendar month, and each Party must appoint a senior employee of that Party to promptly meet and engage in good faith discussions with the objective of resolving the dispute by agreement. If a dispute cannot be resolved by good faith discussions, the dispute shall be settled by the competent court in New Zealand.

15. Representations and Implied Terms

The Customer acknowledges that neither CSE Crosscom nor any person acting or purporting to act on its behalf has made any representations, warranties or statements other than those embodied in the Agreement. To the extent permitted by law, any condition or warranty (including, without limitation, any implied warranty of merchantability, acceptable quality or fitness for a particular purpose) which would otherwise be implied in any contract between CSE Crosscom, and the Customer is hereby excluded.

16. Insurances

16.1. The Customer is required to insure and maintain insurance cover for the Equipment delivered to it or in its possession for full market value where the Equipment is under a Rent Period or Equipment Payback Period until such time as the Equipment ownership and title has transferred to the Customer by way of payment in full.

16.2. The Customer shall, whenever requested by CSE Crosscom produce evidence of the currency of the insurance policies in accordance with clause 16.1.

17. No Offset

The Customer shall not withhold any payments due under this Agreement in order to offset payments due (or to become due) to the Customer pursuant to this Agreement unless such withholding is mutually agreed to by the Parties in writing or is provided for in the final ruling of a court. Any required adjustment to payments due hereunder will be made as a subsequent invoice.

18. Operation

The Customer must at all times conform to the provisions and requirements of the *Radiocommunications Act 1989*, the *Telecommunications Act 2001*, the RSM and the Ministry of Business, Innovation and Employment standards and regulations for the use of frequencies; and any other relevant legislation or regulations that govern the use of the Services and Equipment provided, as are amended and enacted from time to time.

19. RSM Frequency Licence Management

If the customer is being provided with RSM Frequency from CSE Crosscom on a recurring billing subscription. Use of RSM licences is being provided under a 3rd party authorisation and must always comply with the relevant RSM regulatory licence conditions.

19.1. When the Customer elects to cancel the subscription, cancellations must be provided by thirty (30) days' written notice prior to the billing cycle anniversary of the subscription to CSE Crosscom.

19.1.1. Pursuant to subclause 19.1, and unless directed by the Customer in writing thirty (30) days prior to the anniversary billing cycle, CSE Crosscom will auto-renew the RSM frequency licence/s on the anniversary of the billing cycle date and will continue to do so indefinitely until such time the Customer advises CSE Crosscom in writing by providing thirty (30) days' written notice.

19.1.2. Under this clause 19, failure by the Customer to provide notice to cancel the RSM license subscription strictly in accordance with this clause 19, then CSE Crosscom shall not be liable to refund the customer for the period the Services were not accessed.

Part B – Services Terms and Conditions

Part B applies to all Services except for those Services under Parts:

a) Part C – Equipment Rental Terms and Conditions
b) Part D – Network Access Terms and Conditions; and
c) Part E - Zero Dollar Upfront Terms and Conditions.

1. Delivery of Equipment

1.1. Where the Services include the purchase of Equipment, delivery of the Equipment occurs when the Equipment leaves CSE Crosscom's Premises, unless specified in the Proposal.

1.2. If CSE Crosscom determines that it is or may be unable to deliver the Equipment within a reasonable time or at all the Proposal may be cancelled by CSE Crosscom and in the event of cancellation, the Customer shall be entitled to a refund of any portion of the Fee already paid but shall not have any claim against CSE Crosscom for any damage, loss, cost or expense whatsoever.

1.3. A carrier's docket, signed by CSE Crosscom (or other form of verification), or the collection of the Equipment by or on behalf of the Customer from CSE Crosscom's Premises shall be conclusive evidence of Delivery.

2. Price and Payment

Refer to clause 6 of Part A.

3. Ownership and Risk

Title in and ownership of any Equipment purchased by the Customer passes to the Customer upon payment by the Customer to CSE Crosscom of all amounts owing on any account.

4. Defective Services

4.1. During any Warranty Period, the Customer may by notice in writing to CSE Crosscom advise it when it considers that the Services are Defective.

4.2. Any notice issued by the Customer under clause 4 of Part B must state the reasons for the Customer's opinion.

4.3. Upon notice from the Customer, CSE Crosscom may elect to either:

4.3.1. reperform or replace the Services or relevant part of the Services (as the case may be).
4.3.2. perform such rectification works as are necessary; or
4.3.3. deny that the Services are Defective.

4.4. Except as expressly nominated by CSE Crosscom in clause 4.3 of Part B, CSE Crosscom is not liable for any cost, loss or expense arising from or in connection with Defective Services, except to the extent the Defective Services were caused or contributed to by CSE Crosscom.

4.5. CSE Crosscom shall make available the manufacturer's warranty of the Equipment or product (if any) to the Customer.

4.6. If the Customer requires the Equipment or product (if any) to be repaired or replaced under warranty, then the Customer shall return the Equipment to CSE Crosscom.

5. Termination

5.1. The Customer may terminate the Agreement prior to completion of the Services, but only after any minimum term specified in the Proposal or Service Agreement, subject to providing CSE Crosscom thirty (30) days written notice of intention to terminate. CSE

Crosscom may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by CSE Crosscom as a result of termination under clause 5 of Part B.

5.2. CSE Crosscom may terminate the Agreement at any time subject to providing the customer thirty (30) days written notice. The Customer will have no entitlement or claim against CSE Crosscom in relation to or arising out of any termination under clause 5.2 of Part B, however for clarity, the Customer shall be entitled to the return of any Security Deposit (less any amount rightly offset pursuant to the Agreement), and any other monies paid in advance as from the date of such termination (if any).

Part C – Equipment Rental Terms and Conditions

If the Services include the Rental of Equipment to the Customer, then Part C applies.

1. Price and Payment

In addition to clause 6 of Part A, the following terms apply:

1.1. In consideration of the Rental of the Equipment, the Customer shall pay without offset the Fee.

1.2. Unless otherwise agreed in writing the amount of the Fee and any applicable Security Deposit payable is specified in the Proposal or Service Agreement.

1.3. The Fee shall be paid in the manner and at the time specified in the Proposal or Service Agreement. If the Proposal or Service Agreement does not specify payment terms, then payment of the Fee shall be paid 30 days from the date the invoice is rendered.

2. Obligations of Customer During Rental Period

2.1. During the Rental Period, the Customer must:

2.1.1. assume complete responsibility for control of the physical operation of Equipment.

2.1.2. comply with all legal requirements relating to the safe use of the Equipment, including compliance with any safety guidelines and/or instructions provided by CSE Crosscom.

2.1.3. exercise care to prevent damage to or destruction or loss of Equipment (including ensuring the secure lock-up of the Equipment) and in the event of the loss or destruction of, or damage to, Equipment or it is becoming non-functional by reason of the neglect or default of the Customer then, the Customer shall pay the Replacement Equipment Fee; and

2.1.4. permit CSE Crosscom upon request to inspect Equipment at all reasonable times.

2.2. The Customer must not:

2.2.1. make any additions or alterations to the Equipment without the written consent of CSE Crosscom.

2.2.2. remove, obscure or deface any identifying mark, label or device on the Equipment or any part thereof.

2.2.3. allow the Equipment to be used by any unauthorised person.

2.2.4. abandon the Equipment.

2.2.5. purport or attempt to sell or on-rent the Equipment; dispose of, charge or encumber the Equipment; or assign the Customer's rights to the Equipment, without CSE Crosscom's prior written consent (which consent may be withheld by CSE Crosscom in its sole and absolute discretion) and without immediately accounting to CSE Crosscom for any amounts owing by the Customer to CSE Crosscom in respect of the Equipment.

2.3. If, despite clause 2.2 of Part C, the Customer supplies any of the Equipment to any person, the Customer agrees that:

2.3.1. the Customer holds the proceeds of the resupply of the Equipment on trust for and as agent for CSE Crosscom immediately when they are receivable or are received.

2.3.2. The Customer must pay the amount of the proceeds of resupply to CSE Crosscom immediately when they are received or pay those proceeds into an account with a bank or financial institution or deposit taking institution as trustee for CSE Crosscom; and

2.3.3. if the Customer fails to pay for the Equipment within the period of credit (if any) extended by CSE Crosscom to the Customer, CSE Crosscom may recover possession of the Equipment at any place owned, possessed, occupied or controlled by the Customer and the Customer agrees that CSE Crosscom has an irrevocable licence to do so without incurring liability to the Customer or any other person.

3. Maintenance of Equipment

3.1. During the Rental Period the Customer shall maintain the Equipment in accordance with maintenance standards prescribed by CSE Crosscom from time to time.

3.2. The Customer shall immediately advise CSE Crosscom of any damage to, or Defect in, the Equipment and shall not permit any person not authorised by CSE Crosscom to repair or maintain Equipment, other than to replace batteries and only with those batteries supplied by CSE Crosscom.

3.3. At the request of CSE Crosscom or upon the Equipment becoming non-functional or Defective the Customer shall, at the Customer's expense, deliver the Equipment to CSE Crosscom or CSE Crosscom's authorised agent, for adjustment, maintenance, service or repair.

3.4. If Equipment having been maintained by CSE Crosscom in accordance with clause 3 of Part C remains Defective, the Equipment shall be returned immediately to CSE Crosscom and exchanged for similar Equipment which shall be rented pursuant to the Agreement as though it had been the original Equipment.

3.5. The Customer must not connect accessories or other equipment which are not supplied by CSE Crosscom to the Equipment.

4. Return of Equipment

4.1. Upon the completion of the Rental Period or the earlier termination of the Agreement howsoever arising, the Customer shall return the Equipment in a clean and usable condition to CSE Crosscom's Premises.

4.2. If the Customer returns the Equipment in a worse condition than can be accounted for by fair wear and tear, CSE Crosscom may charge the Customer for cleaning, reconditioning, renewing or replacing the Equipment as it considers necessary.

4.3. If the Customer intends to continue to hire the equipment, the Customer must by notice advise CSE Crosscom sixty (60) days prior to the end of term date of their intention to continue with the hire of Equipment; of which CSE Crosscom would not unreasonably object to.

4.4. Pursuant to subclause 4.3 of Part C, should CSE Crosscom not agree to the extension of hire of Equipment, and the Customer does not return the Equipment at the end of the hire period, then CSE Crosscom reserves the right to charge the Customer 200% of the hire charge as set out in the Agreement and the Customer will be liable to CSE Crosscom to pay the increased hire charge until the Equipment is returned.

5. Ownership and Risk

5.1. Title and ownership in the Equipment shall at all times remain with CSE Crosscom.

5.2. The Customer is responsible for any loss or damage caused to the Equipment during the Rental Period and will indemnify CSE Crosscom against any loss of or damage to the Equipment whatsoever and howsoever caused regardless of whether or not the Customer has obtained and maintained insurance in respect of the Equipment.

5.3. If the Equipment becomes Lost Equipment, CSE Crosscom may at its sole discretion invoice the Customer for the Replacement Equipment Fee. The Fee for the item of Lost Equipment will continue to accrue until the Customer pays the Replacement Equipment Fee.

6. Delivery

6.1. Delivery of the Equipment occurs when the Equipment leaves CSE Crosscom's Premises.

6.2. All transport of Equipment during the Rental Period is at the Customer's own risk and the Customer must ensure that it has sufficient insurance cover for any loss that occurs during such transportation.

6.3. Where CSE Crosscom arranges the transport of the Equipment during the Rental Period:

6.3.1. it does so as agent only for the Customer and accepts no responsibility or liability in respect of such transport arrangements.

6.3.2. the Customer shall be responsible for payment of all expenses associated with the transport arrangements.

6.4. If CSE Crosscom determines that it is or may be unable to deliver the Equipment within a reasonable time or at all the Proposal may be cancelled by CSE Crosscom and in the event of cancellation, the Customer shall be entitled to a refund of any portion of the Fee already paid and the return of any Security Deposit paid, but shall not have any claim against CSE Crosscom for any damage, loss, cost or expense whatsoever.

6.5. A carrier's docket, signed by CSE Crosscom (or other form of verification), or the collection of the Equipment by or on behalf of the Customer from CSE Crosscom's Premises shall be conclusive evidence of Delivery.

7. Cancellation

7.1. The Customer may cancel part or all of an order prior to Delivery of the Equipment, the subject of the Proposal.

7.2. In the event of cancellation under clause 7.1 of Part C, the Customer shall pay to CSE Crosscom its direct costs resulting from the cancellation.

8. Termination

8.1. The Customer may terminate the Agreement prior to the Delivery of the Equipment or during the Term, but after any minimum term specified in the Proposal, subject to providing CSE Crosscom thirty (30) days written notice of intention to terminate. CSE Crosscom may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by CSE Crosscom as a result of termination under clause 8 of Part C.

8.2. CSE Crosscom may terminate the Agreement at any time subject to providing the customer thirty (30) days written notice. The customer will have no entitlement or claim against CSE Crosscom in relation to or arising out of any termination under clause 8.2 of Part C, however for clarity, the Customer shall be entitled to the return of a Security Deposit (less any amount paid in advance as from the date of such termination (if any).

8.3. In the event the Agreement is terminated by the Customer prior to the Expiry Date (but after any minimum term specified in the Proposal or Service Agreement), the Customer shall pay to CSE Crosscom:

8.3.1. a sum equivalent to the pro-rata Fee at the prevailing rate applicable to the amended term of the Agreement, for the period between the Commencement Date and the date the Equipment is wholly returned to CSE Crosscom; and

8.3.2. a cancellation fee equivalent to one week's Fee.

8.4. The Customer may request in writing to CSE Crosscom to terminate the Agreement during any minimum term specified in the Proposal or Service Agreement and CSE Crosscom, may in its sole and absolute discretion, agree to such termination request, and if so, agreed the Customer must pay to CSE Crosscom the balance of the Fee due for the remainder of the minimum term Rental Period as a consequence of such termination.

9. Term

9.1. The term of Part C of the Agreement shall be for the Rental Period unless terminated earlier in accordance with clause 9 of Part A or Clause 7 or 8 of Part C.

Part D – Network Access Terms and Conditions

If the Services include the provision of Network Access by the Customer, then this Part D applies.

1. Prices and Payment

In addition to clause 6 of Part A, the following terms apply

1.1. In consideration of CSE Crosscom granting Network Access, the Customer must pay to CSE Crosscom the Fee specified in the Proposal or Service Agreement.

1.2. Unless otherwise agreed in writing the amount of the Fee and any applicable Security Deposit payable is specified in the Proposal or Service Agreement.

1.3. The Customer shall pay the Fee in advance within thirty (30) days from the date the invoice is rendered for the Fee by CSE Crosscom for that forthcoming month, unless specified in the Proposal or Service Agreement.

2. Fee Review

The Fee shall be subject to review by CSE Crosscom once each calendar year, unless specified in the Proposal or Service Agreement, and CSE Crosscom may vary the Fee, in its sole and absolute discretion, by giving 14 days' written notice to the Customer.

3. Automatic Renewal

For the purposes of Network Access only, the Agreement will be automatically renewed on a month-to-month basis at the end of the initial Network Access Period, unless terminated pursuant to the Agreement.

4. Operation

During the Network Access Period, the Customer must all at times conform to the provisions and requirements of the Radiocommunications Act 1989, the Telecommunications Act 2001, the RSM and the Ministry of Business, Innovation and Employment standards and regulations for the use of frequencies; and any other relevant legislation or regulations that govern the use of the Services and Equipment, as are amended and enacted from time to time.

5. Network Access

5.1. In the event of a Defect or a system failure in relation to the Network Access, including any failure of communications for any reason, CSE Crosscom will use all reasonable endeavours to repair the Defect and reinstate communications within a minimum service time.

5.2. CSE Crosscom is not liable to the Customer for any service downtime, quality of radio signals or any interference in relation to the Network and any costs, loss, expenses or damage arising from or in connection with Network Access for any reason whatsoever and howsoever caused.

5.3. Where there is a change in law or policy regarding Network Access from any governmental authority or regulator or any Network owner, which results in CSE Crosscom no longer having access to the Network, CSE Crosscom may terminate the Agreement pursuant to clause 7.2 of Part D.

5.4. The Customer must not use or access the Network in a way which is not intended or considered fair and appropriate use. If CSE Crosscom considers in its sole and absolute discretion that the Customer has misused its Network Access, CSE Crosscom may terminate the Agreement in accordance with clause 7.2 of Part D and the Customer indemnifies CSE Crosscom for any cost, loss, expense or damage incurred as a result of any misuse of the Network Access and termination under clause 5.4 of Part D.

6. Suspension

6.1. In the event the Customer fails to comply with clause 1.3 of Part D, CSE Crosscom may suspend granting Network Access to the Customer, at any time with immediate effect, by giving written notice to the Customer.

6.2. The Customer will have no entitlement or claim against CSE Crosscom in relation to or arising out of any suspension under clause 6 of Part D.

6.3. CSE Crosscom may revoke any suspension under clause 6 of Part D upon receipt of the outstanding Fee from the Customer.

7. Termination

7.1. The Customer may terminate the Agreement prior to the Expiry Date, but after any minimum term specified in the Proposal, subject to providing CSE Crosscom thirty (30) days written notice of intention to terminate. CSE Crosscom may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by CSE Crosscom as a result of termination under clause 7 of Part D.

7.2. CSE Crosscom may terminate the Agreement at any time subject to providing the customer thirty (30) days written notice. The customer will have no entitlement or claim against CSE Crosscom in relation to or arising out of any termination under clause 7.2 of Part D, however for clarity, the Customer shall be entitled to the return of a Security Deposit (less any amount paid in advance as from the date of such termination (if any)).

7.3. In the event the Agreement is terminated by the Customer prior to the Expiry Date (but after any minimum term specified in the Proposal or Service Agreement), the Customer shall pay to CSE Crosscom:

7.3.1. a sum equivalent to the pro-rata Fee at the prevailing rate applicable to the amended term of the Agreement, for the period between the Commencement Date and the date the Network Access is cancelled; and

7.3.2. a cancellation fee equivalent to one week's Fee.

7.4. The Customer may request in writing to CSE Crosscom to terminate the Agreement during any minimum term specified in the Proposal and CSE Crosscom, may in its sole and absolute discretion, agree to such termination request, and if so, agreed the

Customer must pay to CSE Crosscom the balance of the Fee due for the remainder of the Network Access Period as a consequence of such termination.

8. Term

The term of Part D of the Agreement shall be for the Network Access Period unless terminated earlier in accordance with clause 9 of Part A or clause 7 of Part D.

Part E – Zero Dollar Upfront Equipment Purchase Terms and Conditions

If the Services include the purchase of Equipment with a Zero Dollar Upfront Fee and the total cost of the Equipment as specified in the Proposal is amortised over a period of time known as the Equipment Payback Period, then this Part E applies:

1. Price and Payment

In addition to clause 6 of Part A, the following terms apply

1.1. CSE Crosscom shall supply the Equipment to the Customer as specified in the Proposal at Zero Upfront Fee.

1.2. The price of the Equipment specified in the Proposal will be amortised at equal monthly installments over the term of the Equipment Payback Period.

1.3. In the event the Customer Terminates the Agreement pursuant to clause 7.1 of Part E prior to the expiry of the Equipment Payback Period, then the Customer is liable to pay for the balance owing of the Equipment Payback Period at the time of termination.

2. Delivery of Equipment

2.1. Delivery of the Equipment occurs when the Equipment leaves CSE Crosscom's Premises, unless specified in the Proposal.

2.2. If CSE Crosscom determines that it is or may be unable to deliver the Equipment within a reasonable time or at all the Proposal may be cancelled by CSE Crosscom and in the event of cancellation, the Customer shall be entitled to a refund of any portion of the Fee already paid but shall not have any claim against CSE Crosscom for any damage, loss, cost or expense whatsoever.

2.3. A carrier's docket, signed by CSE Crosscom (or other form of verification), or the collection of the Equipment by or on behalf of the Customer from CSE Crosscom's Premises shall be conclusive evidence of Delivery.

3. Ownership and Risk

3.1. Title in and ownership of any Equipment purchased by the Customer passes to the Customer upon payment by the Customer to CSE Crosscom of all amounts owing by the Customer on any account.

3.2. Until the Equipment Payback Period is reached, all Equipment in the Customer's possession is at the Customer's risk and any damage caused to the Equipment will be at the Customer's expense.

3.3. The Customer is entitled to pay for the Equipment in full prior to the Equipment Payback Period end date, at which time the Equipment ownership is passed to the Customer.

3.4. Pursuant to Clause 3.3 of Part E, the buy-out value is the value that remains owing on the Equipment only.

4. Maintenance of Equipment

4.1. During the Buy Out Period the Customer shall maintain the Equipment in accordance with maintenance standards prescribed by CSE Crosscom from time to time.

4.2. The Customer shall immediately advise CSE Crosscom of any damage to, or Defect in, the Equipment and shall not permit any person not authorised by CSE Crosscom to repair or maintain Equipment, other than to replace batteries and only with those batteries supplied by CSE Crosscom.

4.3. At the request of CSE Crosscom or upon the Equipment becoming non-functional or Defective the Customer shall, at the Customer's expense, deliver the Equipment to CSE Crosscom or CSE Crosscom's authorised agent, for adjustment, maintenance, service or repair.

4.4. If Equipment having been maintained within the manufacturer's standards remains defective, the equipment shall be returned to CSE Crosscom for repair under either:

a) Manufacturer's warranty if applicable; or
b) Assessment and chargeable repair via the CSE Crosscom service department.

4.5. The Customer must not connect accessories or other equipment which are not supplied by CSE Crosscom to the Equipment.

5. Defective Services

5.1. During any Warranty Period, the Customer may by a notice in writing to CSE Crosscom advise it when it considers the Equipment is Defective.

5.2. Any notice issued by the Customer under Clause 5 of Part E must state the reasons for the Customer's opinion.

5.3. Upon notice from the Customer, CSE Crosscom may elect to either:

5.3.1. Return the Equipment to the manufacturer for warranty repair/replacement.
5.3.2. Perform such rectification works as necessary; or
5.3.3. Deny that the Equipment is Defective.

5.4. Except as expressly nominated by CSE Crosscom in Clause 5.3 of Part E, CSE Crosscom is not liable for any cost, loss or expense arising from or in connection with Defective Services.

5.5. CSE Crosscom shall make available the manufacturer's warranty of the Equipment or product (if any) to the Customer.

5.6. If the Customer requires the Equipment or product (if any) to be repaired or replaced under warranty, then the Customer shall return the Equipment to CSE Crosscom.

5.7. Equipment that has been subject to liquid ingress or damage not covered by manufacturer warranty will void warranty and may deem the Equipment to be unserviceable.

6. Default and Suspension

6.1. In the event the Customer fails to comply with clause 6.2 of Part A, CSE Crosscom may suspend Services to the Customer, at any time by giving one week's written notice to the Customer.

6.2. The Customer is granted one week from the date of the written notice to return all Equipment specified in the Proposal under Part E of this Agreement to CSE Crosscom at its own expense.

6.3. The value of Equipment already paid by the Customer will be forfeited by the Customer and the Equipment will remain under the ownership of CSE Crosscom.

6.4. The Customer will have no entitlement or claim against CSE Crosscom in relation to or arising out of any suspension under clause 6 of Part E.

6.5. CSE Crosscom may revoke any suspension under clause 6 of Part E upon receipt of the outstanding Fee from the Customer.

7. Termination

7.1. The Customer may terminate the Agreement prior to the Expiry Date, by making payment in full for the remaining amount of the term of the Equipment Payback Period. CSE Crosscom may claim, in its sole and absolute discretion, the costs, losses and expenses incurred by CSE Crosscom as a result of termination under clause 7 of Part E. For avoidance of doubt, CSE Crosscom will not buy back and is not required to buy back any Equipment under this Part E.

7.2. CSE Crosscom may terminate the Agreement in accordance with clause 9 of Part A.

8. Term

The term of Part E of the Agreement shall be for the Equipment Payback Period unless terminated earlier in accordance with clause 9 of Part A or Clause 6 or 7 of Part E.