

CROWN LICENCE AGREEMENT FOR BROADCASTING

This Agreement dated the day of 20

BETWEEN **HER MAJESTY THE QUEEN** in right of New Zealand, acting by and through
 [NAME], [Title], [Ministry for Culture and Heritage] [Te Puni Kokiri] [Ministry of
 Economic Development] ("**Licensor**")

AND **[X]**, of [X] ("**Licensee**")

LICENCE

The Licensor agrees to grant the Licence to the Licensee for the term of this Agreement on the terms and conditions set out in Schedule 1 (Licence Specific Provisions) and Schedule 2 (Standard Terms and Conditions).

Signed for and on behalf of
HER MAJESTY THE QUEEN
in right of New
Zealand by **[NAME/TITLE]**,
[Branch], **[Ministry]**

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Signature

Signed for and on behalf of
[INSERT FULL NAME OF LICENSEE]
by:

)
)
)
)

Signature

Print Full Name

Print Title

SCHEDULE 1 – LICENCE SPECIFIC PROVISIONS

LICENCE DETAILS

1. **LICENCE** (CLAUSE 1.1 SCHEDULE 2)
Licence Number: [X]
Licence ID: [X]
Frequency: [X]
Transmitter Location: [X]
Power: [X]
2. **AREA** (CLAUSE 1.1 SCHEDULE 2, AND CONTROL OPERATION AND CONTENT REQUIREMENTS)
The geographic area of the [insert names of territorial local authorities or regional council areas or rohe related to the licence]
3. **START DATE** (CLAUSE 2.1, 4.1, SCHEDULE 2)
[insert start date]
4. **EXPIRY DATE** (CLAUSE 2.1, SCHEDULE 2)
[Insert expiry date on the Licence]
[The Licensor agrees that, at least 6 months prior to expiry of the Licence on 2 April 2011, it will offer the Licensee by notice in writing the option to renew the Licence at no charge, if the Licensor is satisfied that the Licensee is in compliance with all the terms of this Agreement. This Agreement applies for the period of any renewed Licence.
The expiry date of the Licence offered for renewal is [XX].]
5. **COMPLIANCE REPORTING PERIODS AND REPORT DATE** (CLAUSE 5.3, SCHEDULE 2)
[insert period and date]
6. **LICENSOR'S ADDRESS FOR NOTICES** (CLAUSE 11.5, SCHEDULE 2)
Ministry of Economic Development
33 Bowen Street
PO Box 1473
WELLINGTON
Attention: [Insert details]

CONTROL, OPERATION AND CONTENT REQUIREMENTS (CLAUSE 4, 5, SCHEDULE 2)

7. **LICENCE USE**
This Licence may only be used to broadcast a Local commercial/Non-commercial][Māori language and culture] broadcasting service
8. **SERVICES** (CLAUSE 1.1, SCHEDULE 2)
[insert description of broadcasting service to be provided]

[REQUIREMENTS SPECIFIC TO LOCAL COMMERCIAL LICENCES

9. **LICENCE CAP AND RESIDENCY REQUIREMENTS** (CLAUSE 4, 5, SCHEDULE 2)
 - 9.1 **Licence Cap**
The Licensee, every Controlling Person and every person with a Controlling Interest in the Licence may hold (whether directly or indirectly) Registered interests or Controlling Interests in no more than [X] licences suitable for sound broadcasting]

9.2 Residency requirement

The Licensee, every Controlling Person, and every person who has a Controlling Interest in the Licence must:

- (a) in the case of a natural person or persons, be normally resident in the Area; and
- (b) in the case of a body corporate:
 - (i) the body corporate, must have its registered office and principal place of business in the Area; and
 - (ii) every natural person who is a director or a shareholder of the body corporate must be normally resident in the Area, except for independent directors and minority shareholders.

9.3 Definitions for the purposes of residency requirements

In this clause:

- (a) **“Independent director”** means a director or other officeholder who is not an executive of the body corporate and who has no direct or indirect interest or relationship that could reasonably influence, in a material way, the director’s decisions in relation to the company, including (without limit), a security holding or a director who is likely to derive a substantial portion of his annual revenue from the body corporate; and
- (b) **“Minority shareholders”** means persons who individually and collectively have legal or beneficial ownership of any shares or other interests in the body corporate which:
 - (i) amount to less than 10 per cent of the capital or retained earnings of the body corporate; and
 - (ii) enable those persons to control less than 10 per cent of the voting power at a meeting of the body corporate; and
 - (iii) do not enable the persons to appoint directors or officers of the body corporate.

9.4 Meaning of normal residence

In this clause, the address recorded on the Electoral Roll is deemed to be a person’s place of normal residence.

10. OPERATION REQUIREMENTS (CLAUSE 4, 5, SCHEDULE 2)

10.1 Broadcasting service to be located within the Area

The Licensee must ensure that the principal place of business and the studio for the Service is located within the Area.

10.2 Hours of Operation

The Licensee must ensure that the Service operates for a minimum of 12 hours daily.

11. CONTENT REQUIREMENTS (CLAUSE 4, 5, SCHEDULE 2)

11.1 Broadcasters must broadcast local programming in peak hours

The Licensee must ensure that Local Programming is broadcast for at least 5 hours per day during Peak Hours.

11.2 Reasonable efforts

The Licensee must make reasonable efforts to:

- (a) maximise broadcast Local Programming inside and outside Peak Hours; and

- (b) establish and maintain working relationships with local community groups in the Area, such as territorial and regional government, emergency management, iwi and runanga, educational institutions, youth and community groups, and organisations for the disabled and make reasonable efforts to facilitate the provision of relevant broadcasting content from such organisations.

11.3 **Removal of other broadcasting brands**

The Licensee must minimise the broadcast of any brand used by other broadcasting services in New Zealand, including, for example, using technical solutions to replace the brand where the Licensee re-broadcasts content sourced from another broadcaster.

11.4 **Definitions for the purposes of local programming requirements**

In this clause:

- (a) **“Local Programming”** means programming designed with a strong emphasis on the needs and interests of listeners within the Area, and includes the following content:
 - (i) local news, information, stories and history;
 - (ii) discussion of community issues, including political processes;
 - (iii) programming aimed to inform, entertain and involve a specific local community or community of interest; or
 - (iv) advertising of businesses that operate in the Area.
- (b) **“Peak Hours”** means:
 - (i) 6:00 am to 10:00 am and 4:00 pm to 7:00 pm on a Working Day; and
 - (ii) any time between 6:00 am and midnight on any day that is not a Working Day.
- (c) **“Working Day”** means a day that is not a Saturday or a Sunday or a day that is the anniversary of the province the Area is in, or a public holiday within the meaning of section 7A(2) of the Holidays Act 1981.]

12. **SPECIFIC REPORTING REQUIREMENTS** (CLAUSE 5.3, SCHEDULE 2)

[insert (if any)]

CROWN LICENCE AGREEMENT FOR BROADCASTING SCHEDULE 2: STANDARD TERMS AND CONDITIONS

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| <p>1. DEFINITIONS AND INTERPRETATION</p> <p>1.1 Definitions
In this Agreement, unless the context otherwise requires:</p> <p>“Act” means the Radiocommunications Act 1989;</p> <p>“Area” means the Area specified in Schedule 1;</p> <p>“Change of Control” means any change in the Controlling Person, and includes a change in the legal or beneficial ownership of any shares or other interest in the Licensee which results in any other person holding or ultimately controlling interests in the Licensee which, on its own or when added to any interest already held by that person:</p> <p>(a) amounts to at least 50 per cent of the capital or retained earnings of the Licensee; or</p> <p>(b) enables that other person to control at least 50 per cent of the voting power at a meeting of members of the Licensee or to appoint the majority of directors or officers of the Licensee;</p> <p>“Controlling Person” means the person or persons who either individually or collectively and whether directly or indirectly have the capacity to determine the outcome of decisions about the financial and operating policies of the Licensee;</p> <p>“Controlling Interest” means an interest which results in the direct or indirect control of any radio frequency spectrum the subject of the Licence, and includes the interest of being a broadcaster (within the meaning of the Broadcasting Act 1989) under a Licence;</p> <p>“Licence” means a Registered spectrum licence described in Schedule 1 (subject to any changes in accordance with clause 7 or clause 11.2), and includes any corresponding replacement spectrum licence provided in accordance with this Agreement;</p> <p>“Licensor” (a) includes the Crown acting by and through the chief executive Ministry of Economic Development in its capacity as the management right holder of the frequency band in which the Licence is granted, and any successor to the chief executive as the manager; and (b) any delegate of the Licensor;</p> <p>“Registered” means recorded on the Register of Radio Frequencies established under section 5 of the Act;</p> <p>“Services” means the broadcasting services specified in Schedule 1;</p> <p>“Start Date” means the Start Date specified in Schedule 1; and</p> <p>“Working Day” means between the hours of 8.30 am to 5.00 pm on any day that is not a Saturday or a Sunday or a day that is the anniversary of any province or a public holiday within the meaning of section 7A(2) of the Holidays Act 1981.</p> | <p>1.2 Construction
In this Agreement:</p> <p>(a) If there is any conflict of meaning between Schedules 1 and 2, Schedule 2 will prevail except where Schedule 1 expressly states otherwise;</p> <p>(b) A reference to a Schedule means a Schedule to this Agreement, and a reference to a clause means a clause in that Schedule, unless a different Schedule is expressly referred to;</p> <p>(c) a reference to “including” or similar phrases does not imply any limitation;</p> <p>(d) a reference to a person includes an individual, body corporate or unincorporated body of persons;</p> <p>(e) the singular includes the plural, and vice versa;</p> <p>(f) a reference to \$ or dollars is a reference to New Zealand currency;</p> <p>(g) the headings and clause and sub-clause headings in this Agreement are for convenience only and have no legal effect; and</p> <p>(h) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.</p> <p>2. GRANT</p> <p>2.1 Licensor grants the Licence
The Licensor agrees to grant the Licences to the Licensee for the period commencing with effect from the Start Date and an ending on the expiry date specified in Schedule 1 or earlier cancellation of the relevant Licence in accordance with this Agreement.</p> <p>2.2 Licensee to comply with Agreement
The Licensee must comply with all the provisions of this Agreement and the Licences. If there is any inconsistency between the terms of this Agreement and the terms of a Licence, the terms of this Agreement will prevail.</p> <p>2.3 Licensee must use the Licences
The Licensee must use the Licences only to provide the Services in accordance with this Agreement.</p> <p>2.4 Licensee must pay fees
The Licensee must pay all regulatory fees and charges in accordance with regulations made under the Act.</p> <p>2.5 Licensee must comply with laws
The Licensee must, when using the Licence, comply with all applicable laws, regulations, rules and legal or professional codes of conduct or practice.</p> |
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3. TRANSFER AND CHANGE OF CONTROL

3.1 No transfer, assignment

The Licensee will not, except with the Licensor's prior written consent, transfer, assign, or create, or purport to transfer, assign or create, any Registered interest in, or Controlling Interest in relation to, the Licences, in favour of any other person.

3.2 No change of control

The Licensee must obtain the Licensor's prior written consent before a Change of Control occurs.

3.3 Condition of consent changes

As a condition precedent to the Licensor's consent under clause 3.1 and 3.2, the Licensee must:

- (a) demonstrate to the satisfaction of the Licensor that the other person or the Controlling Person (as the case may be) satisfies all the requirements of this Agreement, including any requirements specified in Schedule 1;
- (b) ensure that in the case of the creation of a Registered interest, the proposed transferee executes an agreement with the Licensor in the form and containing covenants to the same effect as this Agreement, and with a term equal to the remaining term of this Agreement;
- (c) ensure in the case of the creation of a Controlling Interest, or a Change in Control, the other person executes such agreement as the Licensor may require relating to the Licensee's compliance with this Agreement, and with a term equal to the remaining term of this Agreement.

4. COMMENCEMENT OF SERVICE

4.1 Service must commence by first anniversary of Start Date

The Licensee must commence use of the Licence to provide the Service in accordance with clause 5 and Schedule 1 by the first anniversary of the Start Date.

4.2 Consequences of failure to commence

To the extent that the Licensee fails to commence use of a Licence in accordance with clause 4.1, then, without limitation any other term of this Agreement, the Licensor may, in its discretion, decide to:

- (a) allow a one-off extension of not longer than six (6) months for the Licensee to commence use, but only if the Licensor is satisfied that despite the Licensee making all reasonable efforts to establish the Service, it has been unable to commence use by reason of any cause or circumstance beyond the Licensee's reasonable control; or
- (b) determine that the Licensee has defaulted, and cancel that licence in accordance with clause 8; or
- (c) amend the Licence to accord to the actual level of implementation achieved in accordance with clause 7 (including, for example, by reducing the maximum power of emissions).

5. OPERATION AND CONTENT COMPLIANCE

5.1 Services must comply with Schedule 1

The Licensee must use the Licences to provide the Service in accordance with Schedule 1 from the date the service is implemented under clause 4 and throughout the remainder of the term of the Licences.

5.2 Licensor determines compliance

The determination of whether or not the Licensee complies with clause 5.1 is a matter to be determined from time to time by the Licensor acting reasonably through annual and *ad hoc* compliance checks in accordance with this clause 5.

5.3 Licensee must report on use of Licences

The Licensee must provide compliance reports on the use of the Licences:

- (a) in compliance reports for each reporting period specified in Schedule 1, which reports must be provided on or before the report date specified in Schedule 1;
- (b) in such other reports as may be requested by the Licensor by notice in writing, which must be provided within 20 Working Days of the Licensor's request;
- (c) in any format, using any template and on any medium required by the Licensor; and
- (d) in accordance with any specific reporting requirements that may be specified in Schedule 1;
- (e) supported by any declaration or confirmation by any person that may be required by the Licensor.

5.4 Licensee must respond to complaints

Without limitation to clause 5.6, if any complaint of non-compliance with clause 5.1 is received by the Licensee from any third party, or is raised with the Licensee by the Licensor, the Licensee must:

- (a) Report in writing to the Licensor within 10 Working Days of receiving the complaint (or such further period as the Licensor may allow due to exceptional circumstances) attaching the complaint, setting out whether it considers there to be non-compliance, and including a plan of how it intends to remedy any non-compliance; and
- (b) remedy any non-compliance to the satisfaction of the Licensor within 20 Working Days of responding to the Licensor.

5.5 No report or action means non-compliance

The Licensor must determine that the Licensee is not compliant with clause 5.1 if:

- (a) the Licensee does not submit a compliance report under clause 5.2 (including not submitting on time); or
- (b) the information provided under clause 5.2, in the opinion of the Licensor, omits a material particular or is incorrect, misleading or incomplete; or

- (c) the Licensee fails to respond to a complaint of a breach or fails to remedy a breach in accordance with clause 5.4.

5.6 Consequences of non-compliance

If the Licensor determines that the Licensee is not compliant with clause 5.1, the Licensor, in its discretion, may (without limitation to any other provision of this Agreement):

- (a) take no action, but only if the Licensor considers that the breach was trivial and transitory, and has been remedied; or
- (b) issue a written warning to the Licensee, requiring that the breach is remedied as soon as practicable, and in any case within 20 Working Days of the notice (or such further period as the Licensor may allow due to exceptional circumstances); or
- (c) if the Licensee has previously been given any written warning during the term of this Agreement, determine that the Licensee has defaulted, and cancel that licence in accordance with clause 9.

6. RECORDS

6.1 Licensee must maintain records

The Licensee must:

- (a) at all times retain detailed running records of the Service of no less than the previous 20 days' broadcasts under a Licence in accordance with any direction given by the Licensor (which may include, for example, a requirement to record the Service); and
- (b) maintain true and accurate records in connection with compliance with this Agreement and retain such records for at least 2 years after termination or expiry of this Agreement.

6.2 Licensee must allow access to records

The Licensee must:

- (a) permit the Licensor or the Licensor's representative, at the Licensor's expense, to inspect or audit (using an auditor nominated by the Licensor), from time to time until 2 years after termination or expiry of this Agreement, all records relevant to this Agreement; and
- (b) ensure that the Licensor or the Licensor's representatives will be granted at all reasonable times entry to any place, premises or building for the purpose of ensuring compliance with the Licences and this Agreement.

6.3 Official Information Act

The content of any information provided to the Licensor under this Agreement may be subject to release under the Official Information Act 1982. At the time it provides information to the Licensor, the Licensee must clearly indicate any information it considers should be withheld if it is requested in the future, together with the reason(s) for withholding the information. The Licensor will consider all such objections when responding to requests for information under the Official Information Act 1982.

7. AMENDMENT OR REPLACEMENT OF LICENCES

7.1 Amendments where interference

The Licensee agrees that from time to time the Licensor may amend any Licence, if the Licensor considers that a modification to the Licence is necessary or desirable to resolve a serious interference or technical incompatibility issue. The Licensor will only exercise this power if it considers that:

- (a) attempts to resolve the matter under Part 12 of the Act have failed to satisfactorily resolve the issue; or
- (b) the matter is urgent and critical to ensure the proper functioning of the radio spectrum.

7.2 Amendments for efficiency

The Licensor may amend any Licence or replace any Licence with a spectrum licence or radio licence on substantially similar commercial and technical terms, provided that:

- (a) the Licensor is satisfied that the change is necessary or desirable to achieve the efficient and effective use of the radio spectrum; and
- (b) the Licensor has first consulted the Licensee.

7.3 How changes are made

The Licensor must give effect to any changes to Licence in accordance with clause 4.2(c), 7.1 or 7.2 by:

- (a) presenting the relevant forms to the Registrar in accordance with the Act; and
- (b) providing written notice to the Licensee, upon which the Licence details in Schedule 1 are deemed amended to the new technical details of the Licence.

7.4 Licensee must cooperate in changes

Following a written request from the Licensor (attaching the notice in the prescribed form in accordance with section 57B of the Act) to modify or replace a Licence in accordance with clause 4.2(c), 7.1 or 7.2:

- (a) the Licensee agrees to promptly sign such notice and return that notice to the Licensor; and
- (b) if the Licensee does not sign the notice within 10 Working Days of the request, the Licensee agrees that the Licensor may modify the Licence on the Licensee's behalf in the manner described in that notice; and
- (c) the Licensee, by this clause, irrevocably and automatically appoints the Licensor as its attorney for the purpose of modifying the Licence on its behalf and authorises the Licensor to effect the proposed modification in the name of the Licensee (including granting all necessary rights to do such act).

8. CANCELLATION AND TERMINATION

8.1 Licensee may cancel Licence

The Licensee may exercise its right to cancel a Licence at any time in accordance with the Act,

provided that it first gives the Licensor at least 20 Working Days prior written notice of cancellation.

8.2 Licensor must cancel licence if default

If an event of default in clause 8.3 occurs, then each of the following applies:

- (a) the Licensor must take immediate steps to cancel a Licence in accordance with the Act and give written notice of termination of the Licensee's right to use the Licence, with effect from a date not earlier than 20 Working Days and not later than 60 Working Days after the date of the notice;
- (b) the Licensor must make reasonable efforts to discuss alternative options available to the Licensee which might enable the Licensee to continue to provide any Services in existence at the date of cancellation (such as applying for a different licence);
- (c) the Licensee must do all things and sign all documents reasonably required to cancel the Licence; and
- (d) the Licensee, by this clause, irrevocably and automatically appoints the Licensor as its attorney for the purpose of cancelling the Licence on its behalf and authorises the Licensor to effect the cancellation in the name of the Licensee (including granting all necessary rights to do such act).

8.3 Events of default

Each of the following are events of default:

- (a) A determination in accordance with clause 4.2(b) or 5.6(c) that the Licensee has defaulted; or
- (b) the Licensee commits any other breach of its obligations under this Agreement that, in the Licensor's reasonable opinion, is not capable of being remedied; or
- (c) the Licensee repeats or continues, after having been given 20 Working Days (or such further period as the Licensor may allow due to exceptional circumstances) notice of a breach of its obligations under this Agreement; or
- (d) the Licensee fails to pay a regulatory fee when they fall due and payable; or
- (e) the Licensee uses the Licence for a purpose other than for providing the Services; or
- (f) the Licensee has given or gives any information to the Licensor which is misleading or inaccurate in any material respect; or
- (g) the Licensee becomes insolvent, bankrupt or subject to any form or insolvency action or administration.

8.4 Effect of cancellation on Agreement

Upon cancellation of a Licence:

- (a) this Agreement is deemed to be terminated in respect of the Licence with effect from the date

of cancellation, provided that termination and cancellation of a Licence and termination of this Agreement is without prejudice to the rights and obligations of the Licensee that accrued prior to the date of cancellation and termination;

- (b) this Agreement continues in full force and effect in respect of any Licences that have not expired or been cancelled;
- (c) the Licensee is not entitled to any refund (partial or otherwise) of any amount paid by the Licensee in respect of the Licence, including any payment made under any allocation rules for the Licence or annual charges.

9. LICENSOR'S REMEDIES AND PROTECTIONS

9.1 Damages inadequate remedy

The parties agree that in respect of any breach by the Licensee of clause 3, damages alone are likely to be an inadequate remedy, and discretionary relief by way of injunction or order for specific performance is likely to provide a more adequate remedy for the Licensor.

9.2 Licensee must remedy breach

The Licensee agrees to remedy any breach of clause 3 as soon as reasonably practicable and in any event within 3 months of becoming aware of such a breach. The measures necessary to remedy such a breach may include divestment of any Registered interests in spectrum licences, or Controlling Interests in relation to spectrum licences.

9.3 Licensee indemnifies Licensor

The Licensee fully indemnifies the Licensor against all losses, costs or claims arising as a direct or indirect result of a breach by the Licensee of clause 3.

9.4 Licensor may lodge caveat

The Licensor may at any time during the term of this Agreement lodge with the Registrar of Radio Frequencies a caveat pursuant to section 89 of the Act which, so long as the caveat remains in force, will have the effect of prohibiting the Registrar from making any entry on the register charging or transferring the Licences, other than a transaction in favour of the Licensor or with the consent of the Licensor.

9.5 Licensor consents to certain dealing

The Licensor will consent as caveator to any dealing giving effect to a transaction that the Licensor has consented to under this Agreement.

10. WARRANTIES

10.1 Each party has the power to perform

Each Party warrants to the other Party that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with this Agreement's terms.

10.2 Licensee warrants that not insolvent and information provided is accurate

The Licensee warrants that:

- (a) it is not insolvent or bankrupt and no action has been taken to initiate any form of insolvency administration in relation to the Licensee;

- (b) all information provided by it to the Ministry in connection with this Agreement was, at the time it was provided, true, complete and accurate in all material respects; and
- (c) it is not aware of any information that has not been disclosed to the Ministry which may, if disclosed, materially adversely affect the decision of the Ministry whether to grant a Licence.

10.3 No guarantee of access to the site

The Licensor makes no warranty that the Licensee will be able to transmit from any transmitter site specified for the Licence, nor that the transmit power specified on the Licence will be able to be used.

10.4 Licensee relies on own judgement

The Licensee acknowledges that it has acquired the Licences and entered into this Agreement acting entirely on its own judgment and not in reliance on any warranty or representation made by the Crown or the Licensor or any officer of the Licensor and that it has no cause of action against the Crown or the Licensor or any officer of the Licensor for any pre-contractual statement or action by them or any of them. This acknowledgement is intended for the benefit of the Crown and the Licensor and all officers of the Crown for the purposes of the Contracts (Privity) Act 1982.

11. GENERAL

11.1 Limitation of liability

The Licensor is not liable for any loss of profit, loss of revenue or other indirect, consequential or incidental loss or damage arising under or in connection with this Agreement. The maximum liability of the Licensor under or in connection with this Agreement whether arising in contract, tort (including negligence) or otherwise is \$10,000.

11.2 No amendment

No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

11.3 No waiver

No party will be deemed to have waived any rights under this Agreement unless the waiver is in writing and signed by that party. A failure to exercise or a delay in exercising any right under this Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Agreement.

11.4 Severability

Any unlawful or voidable provision in this Agreement will be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from this Agreement without affecting the validity, legality, or enforceability of the remaining provisions, provided the reading down or severing does not materially affect the purpose of or frustrate this Agreement.

11.5 Sending notices

Any notice to be given under this Agreement must be in writing and must be delivered or sent by registered post to:

- (a) In the case of the Licensee, to the Licensee's address specified in the Register; and

- (b) In the case of the Licensor, to the address specified in Schedule 1, or such other address as the Licensor may notify to the Licensee from time to time.

11.6 When notices deemed served

Any notice will be deemed to be delivered on the date of physical delivery or the second Working Day following the date of posting as the case may be. In proving the giving of a notice it is sufficient to prove that the envelope containing such notice was properly addressed and posted.

11.7 Entire Agreement

This Agreement sets out the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.

11.8 Counterparts allowed

This Agreement may be signed in any number of counterparts (including facsimile copies) and provided that each Party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the Parties.

11.9 New Zealand law applies

This Agreement will be governed by and construed in accordance with the law of New Zealand.