

MINISTRY OF ECONOMIC DEVELOPMENT

RADIO FREQUENCY AUCTION

No. 10a

AUCTION CATALOGUE

October 2008

MINISTRY OF ECONOMIC DEVELOPMENT
RADIO FREQUENCY AUCTION NUMBER 10A
CALL FOR BIDS

On Monday 21 April 2008 the Minister of Broadcasting and the Minister of Communications and Information Technology announced an auction for additional television, AM and FM broadcasting licences. Auction 10 was conducted on Thursday 22 May 2008. One lot which was auctioned at Auction 10 has now become available due to the failure of the successful bidder to settle the transaction. On behalf of the Chief Executive of the Ministry of Economic Development and with his authority, I give notice of intention to conduct an auction of the unsold lot. Auction 10a is an open outcry auction that will be conducted by Dunbar Sloane Limited, Wellington on 30 October 2008. Those rights are to be transferred under section 42 of the Radiocommunications Act 1989 ("the Act") in the licence to be auctioned as specified in Schedule 1 to the Terms and Conditions. The licence is a local commercial FM license.

The licence to be sold by auction is subject to the provisions of the Radiocommunications Act 1989, together with the Radiocommunications Regulations 2001. Before the auction commences, prospective bidders should familiarise themselves thoroughly with that Act and those Regulations, as well as the Terms and Conditions and the Licence (into which successful bidders are required to enter and which contains requirements for services in any spectrum band the subject of the rights). Prospective bidders are advised to seek specific legal advice from a qualified professional person before undertaking any action in reliance on the contents of this publication.

Dated at WELLINGTON this 1st day of October 2008.



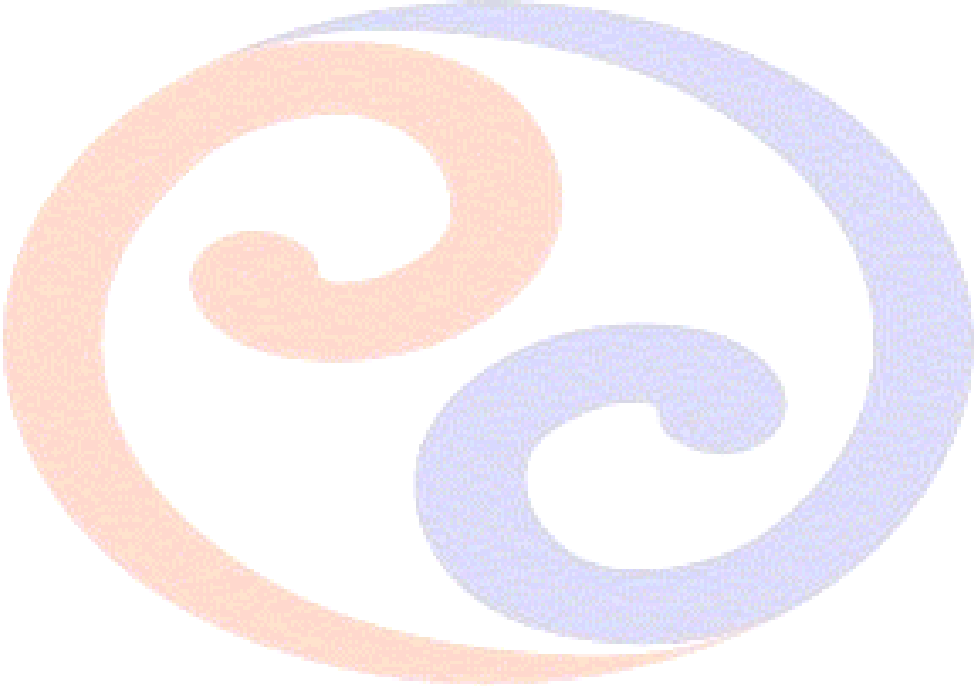
Brian Miller
Manager
Radio Spectrum Policy and Planning
Ministry of Economic Development

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TERMS AND CONDITIONS

The Terms and Conditions applicable to this auction are as follows:

1. INTERPRETATION

1.1 Defined Terms

In these Terms and Conditions, the following terms have the following meanings.

“Act”	The Radiocommunications Act 1989, as amended from time to time;
“Agreement”	Includes an agreement, arrangement or understanding whether: (a) formal or informal or partly formal and partly informal; or (b) written or oral or partly written and partly oral; or (c) having legal or equitable force or not, and whether or not based on legal or equitable rights;
“Applicant”	Those applicants whose fully completed application has been received by the Auction Manager under clause 4;
“Area”	The geographical area of the Licence as described in the Licence Agreement;
“Associate” and “Associate Group”	have the meanings given in clause 1.2;
“Auctioneer”	Dunbar Sloan Limited or such other person appointed by the Chief Executive to conduct the auction on behalf of the Ministry (such other person to be notified by the Chief Executive on the Auction Information Page in advance of the auction).
“Auction Information Page”	The internet site at the following address: http://www.rsm.govt.nz/cms/policy-and-planning/spectrum-auctions/radio-spectrum-auction-no-10a
“Auctioneer’s Rules”	The rules on which the auction will be conducted, as provided to Registered Bidders by the Auctioneer;
“Auction Manager”	The person designated by the Ministry as the Auction Manager from time to time and whose contact details are set out in Schedule 4
“Bidder”	A person who qualifies for participation in the Full Commercial categories of the Auction
“Bidder’s Pack”	The information provided by the Auctioneer to Bidders;
“Business”	A business that relates to or includes (in whole or in part) the holding of radio frequency spectrum licences or management rights or the provision of radio broadcasting;

“Chief Executive”	The Chief Executive of the Ministry of Economic Development and his or her delegate;
“Clause”	A clause of these Terms and Conditions;
“Controlling Interest”	In relation to any licence, an interest which results in the direct or indirect control of other licences suitable for sound broadcasting in the coverage area or elsewhere in New Zealand, including (to avoid doubt) the non-exclusive right for any person to use that licence on arms length commercial terms where that licence is controlled directly or indirectly by another person;
“Crown”	has the meaning given in the Public Finance Act 1989 and includes the Chief Executive (and the Crown acting by and through the Chief Executive) and any other officer of the Ministry of Economic Development;
“GST”	Goods and services tax within the meaning of the Goods and Services Act 1985;
“Local FM Licence Agreement”	The Local FM Licence agreement to be entered into between the Chief Executive and each Provisionally Successful Bidder for the Lots, in the form set out in Schedule 2;
“Lot”	A lot comprising of a licence recorded under the Act over the frequencies described as part of that Lot in Schedule 1;
“Ministry”	The Ministry of Economic Development and any other government department given responsibility for the auction from time to time;
“Provisionally Successful Bidder”	The Registered Bidder with the highest valid bid for any Lot that is accepted by the Auctioneer before the close of the Auction;
“Registered Bidders”	Those persons whose registration as a bidder for the Local FM Commercial category lots has been accepted by the Ministry ;
“Related Body Corporate”	<p>A body corporate is related to another body corporate if:</p> <p>(a) the other body corporate is its holding company or subsidiary within the meaning of sections 5 and 6 of the Companies Act 1993; or</p> <p>(b) at least 20% of its issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by the other body corporate and bodies corporate related to that other body corporate (whether directly or indirectly, but other than in a fiduciary capacity); or</p> <p>(c) at least 20% of the issued shares of each of them, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, is held by shareholders or members of the other (whether directly or indirectly, but other than solely in a fiduciary capacity); or</p> <p>(d) the businesses of the bodies corporate have been so carried on that the separate business of each body corporate, or a substantial part of it, is not readily identifiable; or</p>

	(e) there is another body corporate to which both bodies corporate are related;
“Schedule”	A Schedule to these terms and conditions;
“Successful Bidder/Applicant”	A Successful Applicant/Bidder that has fulfilled the requirements in clauses 10;
“Terms and Conditions”	These Terms and Conditions, including the Schedules attached to it; and
“Working Day”	Between the hours of 8.30am to 5.00pm 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.

1.2 Additional definitions relating to Associations

For the purposes of these Terms and Conditions, person A is an Associate of person B (and vice versa) if:

- (a) person A is a body corporate, and person B is:
 - (i) a director of that body corporate; or
 - (ii) a Related Body Corporate of that body corporate; or
 - (iii) a director of a Related Body Corporate of that body corporate; or
- (b) person A is in the same immediate family as person B (including a spouse, civil union partner, de facto partner, child (including step-child), parent (including step-parent) or sibling (including step-siblings) of person B); or
- (c) person A is a nominee or trustee for person B; or
- (d) person A is a director of a body corporate, or person A holds any voting power in the body corporate, and person A and person B are parties to an agreement relating to:
 - (i) the control of that body corporate; or
 - (ii) at least 20% of the voting power in that body corporate; or
- (e) person A holds or controls directly or indirectly at least 20% of the voting power, or at least 20% of the issued shares, in person B; or
- (f) person B (or a director, employee or other Associate of person B) is the trustee of a trust acting in that capacity and person A is a settlor, beneficiary, or trustee, of that trust; or
- (g) person A is a person who, in making a decision or exercising a power materially affecting a Business, is accustomed, or under an obligation, or proposes or is likely (in the Chief Executive’s sole opinion), to act in accordance with the directions or instructions or wishes of person B; or

- (h) person A and person B are acting, or propose or are likely to act (in the Chief Executive's sole opinion), jointly or in concert in relation to a Business; or
- (i) person A (being a person other than the Chief Executive) and person B are parties to an Agreement that:
 - (i) relates directly or indirectly to the bidding strategy to be adopted by either or both of persons at the auction; or
 - (ii) entitles one of the persons to a substantial degree of influence, or the right to obtain a substantial degree of influence, over radio frequency spectrum covered by the Lots and in respect of which the other person is or will be (subject to these Terms and Conditions) a manager or rightholder under the Act; or
- (j) person A is an Associate of another person that is an Associate of person B under these Terms and Conditions, including an Associate in a chain of Associates,

and Associate Group means a Registered Bidder for management rights under these Terms and Conditions together with any Associate of that bidder that is also a Registered Bidder for management rights under these Terms and Conditions. For the avoidance of doubt, a Registered Bidder for management rights is, by itself, considered to be an Associate Group under these Terms and Conditions if it has no Associate that is also a Registered Bidder.

1.3 Construction

In these Terms and Conditions:

- (a) a reference to "including" or similar phrases does not imply any limitation;
- (b) a reference to a person includes an individual, body corporate or unincorporated body of persons;
- (c) the singular includes the plural, and vice versa;
- (d) a reference to \$ or dollars is a reference to New Zealand currency;
- (e) the headings and clause and sub-clause headings in these Terms and Conditions are for convenience only and have no legal effect; and
- (f) 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.

2. AMENDMENTS TO THIS CALL FOR BIDS

This call, including these Terms and Conditions, may be amended or revoked by the Chief Executive in whole or in part, and at any time, by notice on the Auction Information Page or by notice in writing to Qualifying Applicants.

3. ACQUISITION SUBJECT TO THE ACT

These Terms and Conditions, and any licence acquired under these Terms and Conditions, are subject to all legal requirements that apply to the acquisition and holding of licences created under the Act, including section 138 of the Act which provides that section 47 of the Commerce Act 1986 (relating to acquisitions of assets of a business) applies to the acquisition of licences in relation to the spectrum.

4. REGISTRATION AS A BIDDER

4.1 Who may bid

Persons may bid only if they:

- (a) are a Qualifying Applicant; and
- (b) have provided a completed statutory declaration to the Auction Manager under clause 4.3; and
- (c) are Registered Bidders.

4.2 Prospective applicants to complete the form

Persons wishing to register as an applicant in this auction must complete form 10RFA1, which may be downloaded from the Auction Information Page or obtained in hard copy from the Auction Manager. By submitting form 10RFA1, the person agrees to be bound by these Terms and Conditions.

4.3 Deadline to provide forms and other documents

Form 10RFA1 must be received by the Auction Manager no later than 4.00 pm on * October 2008 for prospective applicants for the Local Non-Commercial FM Licence,(time being of the essence) . The Auction Manager will not accept registrations after this time or registrations that are incomplete.

4.4 Auction Manager to advise that application accepted

The Auction Manager will advise applicants that their application has been accepted or declined by the Ministry by 22 October 2008. Upon receipt of that confirmation the person/applicant are a Qualifying Applicant for the purposes of the Auction.

4.5 Bids not accepted if incorrect information provided

If, in the opinion of the Auction Manager, any information given by an applicant to the Auction Manager under clause 4.2 and 4.3 omits a material particular, or it becomes incorrect or misleading, or is not provided within the required timeframe then (without limitation to any other legal rights and remedies available to the Crown):

- (a) the Auctioneer may refuse to accept any bid from that applicant (including, to avoid doubt, the Registered Bidder) at the auction; and

- (b) clause 13.2 applies (with all necessary modifications).

5. THE LICENCE

5.1 Schedules 1,2 and 3 contain details of the Licence

The license subject to any restriction specified in Schedules 1, 2 and 3 as applying to that Licence. In particular, Registered Bidders should note the commencement and expiry dates for the licence.

5.2 SMART contains full legal and technical descriptions of the Licence

Prospective applicants and Registered Bidders should obtain full legal and technical description of the licence from the Register of Radio Frequencies – SMART. Due to recent enhancements to licence conditions, some post-2011 details may not be available from SMART before the Auction but are posted in a table on the Auction Information Page. If SMART is unable to provide the required information prospective applicants and Registered Bidders should contact the Auction Manager.

5.3 Replacement Licence will be issued on expiry

A replacement local commercial FM licence, on the same terms and conditions as the local commercial FM Licence in the Auction, will be issued to the Licensee, on or before the expiry of the Licence where broadcasting services have been established in the Area within one year from the date of Registration. The replacement licence will have an expire date for a ten-year period from the date of registration of the original licence and will be issued without charge.

5.4 Changes prior to Auction

For technical reasons the details provided in Schedule 1 may change prior to the Auction. Any changes will be notified on the Auction Information Page.

5.5 No representation regarding suitability

It is the responsibility of Registered Bidders to ensure that the Licence for which they are bidding is suitable for their purpose. Despite anything to the contrary in these Terms and Conditions, including the call for bids, the Chief Executive and the Auction Manager make no representations in this respect.

6. THE AUCTION

6.1 Open and sequential outcry auction

The auction will be an open and sequential outcry auction conducted by the Auctioneer in accordance with the Auctioneer's Terms and Conditions.

6.2 Bids must meet requirements to be valid

Bids must meet requirements to be valid

For a bid to be valid it must:

- (a) be made by a registered bidder; and

- (b) comply with the provisions of the Auctioneer's Terms and Conditions.

6.3 Bids by Ministry employees invalid

Any bid made by or on behalf of an employee of the Ministry will be invalid unless the prior written consent of the Chief Executive is obtained to that employee participating in the auction. If the Chief Executive has consented to an employee participating in the auction this will be advertised on the Auction Information Page before the commencement of the auction.

7. WITHDRAWAL OF THE LICENCE

7.1 Chief Executive may withdraw the Licence

The Licence may be withdrawn from the auction at the discretion of the Chief Executive at any time prior to the close of the auction, notwithstanding that valid bids may have been made in excess of the reserve prices of the Licence.

7.2 Withdraws to be announced

If the Chief Executive exercises his discretion to withdraw the Licence from the auction, the Auction Manager will announce on the Auction Information Page and all Qualifying Applicants will be notified.

7.3 No claims if the Licence withdrawn

No Registered Bidder, prospective bidder or Qualifying Applicant will have any claim against the Chief Executive or the Ministry for any expenses or other compensation as a direct or indirect consequence of such withdrawal.

8. CONCLUSION OF AUCTION

8.1 Bidding closes when Auctioneer declares completion

Bidding for the Licence will close when the Auctioneer declares the auction completed.

8.2 Successful Bidder is highest bidder

The Successful Bidder for a Licence is the bidder with the highest valid bid for that Licence.

8.3 Auctioneer to announce Provisionally Successful Bidders

When the Auctioneer is satisfied that the auction is complete:

- (a) the Auctioneer will announce that the auction is concluded, including details of the Provisionally Successful Bidder for the Licence; and
- (b) in accordance with the Auctioneers Rules the Provisionally Successful Bidder will be under a contractual obligation to pay the Auctioneer the full amount of the successful bid; and
- (c) the Provisionally Successful Bidder will be under a contractual obligation to purchase that Licence from the Chief Executive.

9. POST AUCTION PROCESSES

9.1 Publications and licence agreements

Within 1 working day following the conclusion of the Auction the Auction Manager will

- (a) publish the details of the Provisionally Successful Applicants on the Auction Information Webpage; and
- (b) send two copies of the Licence Agreement for execution to each Provisionally Successful Applicant for a Local Commercial FM Licence.

10. SETTLEMENT REQUIREMENTS

10.1 Payment of successful bid

Each Provisionally Successful Bidder must have paid the full amount of their successful bid to the Auctioneer in order for the Licence to be registered in their name.

10.2 Licence Agreement is a condition of settlement for the Local Commercial FM Licence

As a further condition of settlement, the Provisionally Successful Bidder for a Local Commercial FM Licence must

- (a) Enter into a Licence Agreement in the form specified in Schedule 2 with the Chief Executive (and with the relevant Lot details included) within twenty (20) working days of the completion of the Auction; and
- (b) Provide a completed statutory declaration in the form specified in Schedule 5 to the Auction Manager reconfirming their agreement to and conformity with the terms and conditions for Local Non-Commercial FM Licence.

10.3 Grant and Registration of the Licence

The Chief Executive or his/her delegate will procure registration of the Licence in the name of the successful applicant within twenty (20) Working Days of the date of completion of the Licence Agreement.

11. CANCELLATION AND LIABILITY

11.1 Cancellation events

The cancellation events are:

- (a) if a Successful Bidder fails to settle in terms of clause 10.1.
- (b) if a Successful Bidder fails to complete a Licence Agreement in terms of clause 10.2(a)
- (c) if a Successful Bidder fails to provide a satisfactory Statutory Declaration in terms of clause 10.2(b)

11.2 Effect of cancellation event

If an event set out in clause 11.1 occurs, then (without limit to any other legal rights and remedies available to the Crown and despite anything to the contrary in these Terms and Conditions):

- (a) the contract for the purchase of relevant Lot by the Successful Bidder is deemed to be cancelled;
- (b) the following liquidated damages will be payable to the Crown by the Provisionally Successful Bidder in respect of each Licence:
- (c) a sum of money equal to the difference between the final amount bid for the Licence by the Purchaser and the amount eventually paid to the Ministry for that Licence, if that amount is lower than the value of the successful bid; plus
- (d) a sum of money which fully recovers any expenses (including staff time) incurred by the Chief Executive in seeking payment from the bidder. A certificate from the Chief Executive of such losses, costs or expenses is prima facie evidence of such loss, cost or expense; plus
- (e) a sum of money which fully recovers any losses, costs or expenses suffered or incurred by the Crown as a result of processing the bidder's registration and any reallocation of the Licence. A certificate from the Chief Executive of such losses, costs or expenses is prima facie evidence of such loss, cost or expense.

12. ANNOUNCEMENT OF FINAL RESULTS AND PUBLISHING OTHER INFORMATION

12.1 Results published

Final results will be published by the Chief Executive on the Auction Information Page as and when the Licence Agreements have been executed.

12.2 Information of interest may be published on Internet

Registered Bidders agree that the results of the auction (including the names and details of Successful Bidders, and the Licence details) and any other information related to this auction that the Chief Executive believes to be of general interest, may be published on the Auction Information Page or anywhere else.

13. CROWN NOT LIABLE

The Crown will not be liable in any way to a Qualifying Applicant or Registered Bidder (including a for the exercise of any right or obligation set out in these Terms and Conditions, including (to avoid doubt) for any claim for direct or indirect losses, costs or expenses as a result of, or in connection with, that exercise of the right or obligation.

14. NOTICES

14.1 Notices by bidders to be in writing

Any notice or other communication, e.g. provision of information (notice) required to be given under these Terms and Conditions by a Registered Bidder (including a

Provisionally Successful Bidder or Successful Bidder) must be in writing and hand delivered or sent by registered post to the address set out in Schedule 4.

14.2 Notices to meet requirements to be effective

A notice will only be effective:

- (a) if hand delivered, when delivered; or
- (b) if sent by registered post, two (2) Working Days after posting (in proving such posting, it is sufficient to show that the envelope was correctly addressed and posted).

14.3 Facsimile notices effective sometimes

Despite clause 14.2, a Registered Bidder may also provide such notice by facsimile to the number set out in Schedule 4, provided that the Registered Bidder immediately forwards the original notice to the relevant person in accordance with clause 14.2. A facsimile notice is only effective upon production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

14.4 Timing of Notices and Working Days

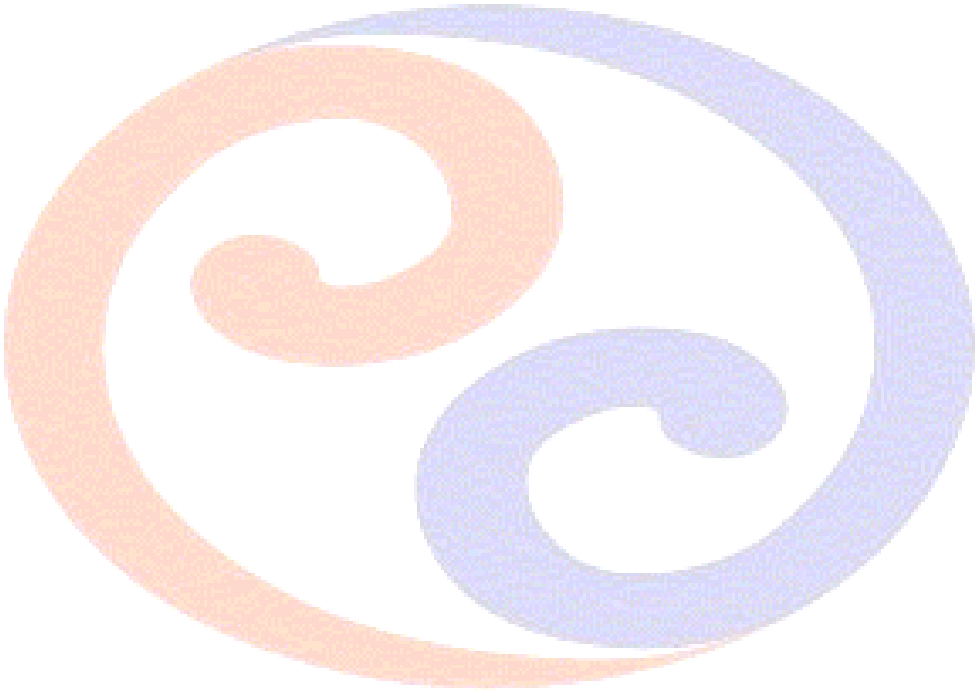
A notice received after 5.00 pm or on a day which is not a Working Day shall be deemed not to have been received until the next Working Day.

SCHEDULE 1 - SCHEDULE OF LOTS

This auction, Radio Frequency Auction No. 10a, is for one local commercial FM license.

The lot is generally described as follows:

1 local commercial FM licence to be assigned by auction					
Lot #	Type	Area	Transmit Site	Freq (MHz)	Licence Id
10LFM004	Local commercial	Christchurch	Huntsbury Hill	100.9	110993



SCHEDULE 2 – TERMS AND CONDITIONS OF THE LOCAL COMMERCIAL FM LICENCE

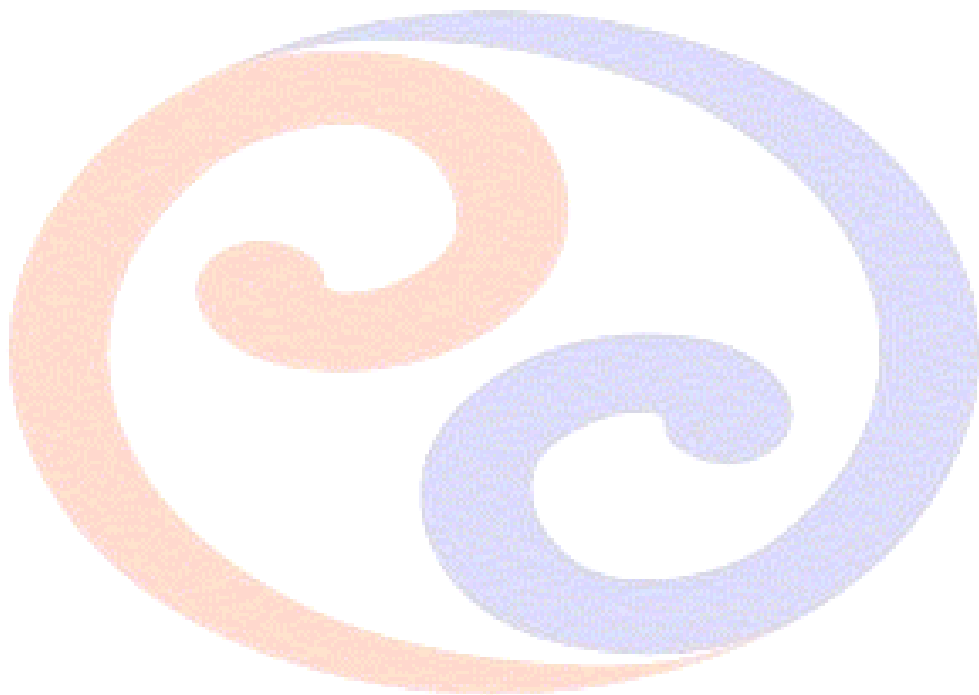
The terms and conditions relating to the licence have been published on the Auction 10 web page at:

<http://www.rsm.govt.nz/cms/policy-and-planning/spectrum-auctions/radio-spectrum-auction-no-10a>

An example licence agreement is also available.

SCHEDULE 3 – LICENCE CONDITIONS

Prospective bidders should obtain full legal and technical descriptions from the Register of Radio Frequencies – SMART. Additional information on recent changes to the licence is published on the Auction Information Page and is available from the Auction Manager.



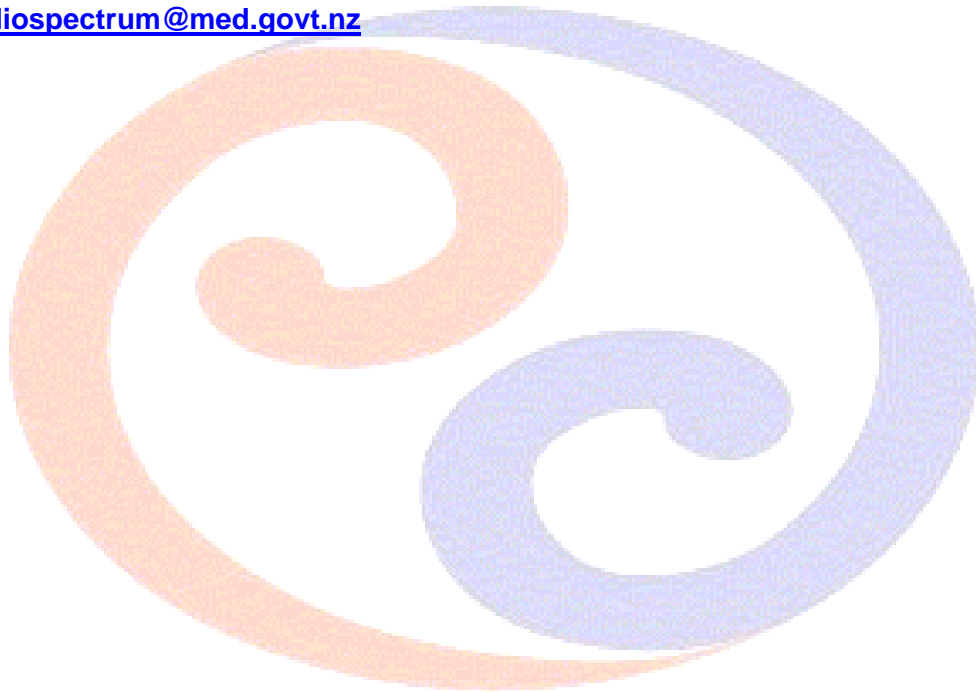
SCHEDULE 4 - CONTACT DETAILS

Jean-Christopher Somers
Auction 10a Manager
Radio Spectrum Policy and Planning
Ministry of Economic Development
PO Box 1473 (33 Bowen Street)
WELLINGTON

DDI: +64-4-462 4279

Fax: +64-4-499 0969

email: radiospectrum@med.govt.nz



LOCAL COMMERCIAL FM RADIO BROADCASTING LICENCE

STATUTORY DECLARATION

I, [Name] of [Place, Occupation], solemnly and sincerely declare that:

1. I am employed and authorised by [Company] to make this declaration on its behalf [*if applicable – otherwise amend to reflect correct relationship – i.e. owner/director*].

3. I declare that:
 - a. the Spectrum Licence [Company] is the Provisionally Successful Bidder for will be used to provide a local commercial FM radio broadcasting service in accordance with the published terms and conditions for such licences; and
 - b. neither [Company] nor any of its Associatesⁱ, has a Controlling Interest in sufficient alternative spectrum rights or radio licences (excluding general user rights and licences) for the provision of sound broadcasting services;

OR

[Company] or an Associate did have a Controlling Interest in alternative spectrum rights or radio licences (excluding general user rights and licences) [*please specify*], all of which have been relinquished [provide specific details about how and when they were relinquished];
 - c. [*if the applicant is not a publicly listed company, it must list its principals including board members, Chief Executive Officers and Senior Managers (or similar) and its ultimate owners (beneficial or otherwise and including significant shareholders, parent companies and holding companies)*]; or
 - d. [*if the applicant is a trust, it must list all of its trustees and the ultimate beneficiaries of the trust.*]

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

[Signed]

Declared at [Place] this [] day of [] 20[].

[Signed by a Justice of the Peace or other person authorised to take a statutory declaration in terms of section 9 of the Oaths and Declarations Act 1957]ⁱⁱ

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- i For the purposes of this declaration, person A is an Associate of person B (and vice versa) if:
- (a) person A is a body corporate, and person B is (i) a director of that body corporate; or (ii) a Related Body Corporate of that body corporate; or (iii) a director of a Related Body Corporate of that body corporate; or (iv) a partner of the body corporate in terms of the Partnership Act 1908 in a Business; or
 - (b) person A is a spouse, civil union partner, de facto partner, child (including step-child), or parent (including step-parent) of person B; or
 - (c) person A is a nominee or trustee for person B; or
 - (d) person A is a partner of person B in terms of the Partnership Act 1908 in a Business; or
 - (e) person A is a director of a body corporate, or person A holds any voting power in the body corporate, and person A and person B are parties to an agreement relating to (i) the control of that body corporate; or (ii) at least 20% of the voting power in that body corporate; or
 - (f) person A holds or controls directly or indirectly at least 20% of the voting power, or at least 20% of the issued shares, in person B; or
 - (g) person B (or a director, employee or other Associate of person B) is the trustee of a trust acting in that capacity and person A is a settlor, beneficiary, or trustee, of that trust; or
 - (h) person A is a person who, in making a decision or exercising a power materially affecting a Business, is accustomed, or under an obligation, or proposes or is likely (in the Chief Executive's sole opinion), to act in accordance with the directions or instructions or wishes of person B; or
 - (i) person A and person B are acting, or propose or are likely to act (in the Chief Executive's sole opinion), jointly or in concert in relation to a Business; or
 - (j) person A (being a person other than the Chief Executive) and person B are parties to an Agreement that entitles one of the persons to the Agreement to a substantial degree of influence, or the right to obtain a substantial degree of influence, over radio frequency spectrum in respect of which the other person is or will be (subject to these Terms and Conditions) a rightholder under the Act; or
 - (k) person A is an Associate of another person that is an Associate of person B under these Terms and Conditions, including an Associate in a chain of Associates;
- For the avoidance of doubt, a commercial arm lengths Agreement between any persons which solely enables one person to use the other person's spectrum rights will not, of itself, be considered to result in that person being an Associate of the other person.

- ii **Examples of persons able to take Declarations** - a person enrolled as a barrister and solicitor of the High Court; a Justice of the Peace; a notary public; the Registrar or a Deputy Registrar of the Supreme Court; Court of Appeal; High Court or a District Court; a member of Parliament; or an employee of Public Trust authorised for that purpose.