

THIS AGREEMENT is made the day of 2008

BETWEEN **HER MAJESTY THE QUEEN** in the right of the Government of New Zealand acting by and through **BRIAN MILLER**, Manager, Radio Spectrum Planning and Policy, acting under the delegated authority from the CHIEF EXECUTIVE OF THE MINISTRY OF ECONOMIC DEVELOPMENT (“the Licensor”)

AND [legal entity] a company having its registered office at [address], (“the Licensee”)

Background

A The Ministry of Economic Development conducted an auction of Local Commercial FM Broadcasting Licences. The Licensee was the Successful Applicant for the Licence and therefore was required to execute this Licence Agreement with the Ministry as a condition of settlement.

B The terms and conditions in this Licence Agreement are intended to be read in combination with and in addition to the terms and conditions outlined in the Licence(s) to which this Licence Agreement applies.

1 Interpretation

1.1 In this Licence Agreement, unless the context otherwise requires:

- “**Act**” means the Radiocommunications Act 1989, as amended from time to time;
- “**Agreement**” includes an agreement, contract, 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;
- “**Area**” Means the geographical area of the Licence as described in Schedule 1;

“Associate” means:

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
 - (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.

“Association”	has a corresponding meaning to Associate;
“Auction Rules”	means the auction catalogue dated 16 May 2008 for Radio Frequency Action No. 10;
“Business”	means a business that relates to or includes (in whole or in part) the holding of radio frequency spectrum and/or the provision of sound broadcasting services;
“Chief Executive”	means the Chief Executive of the Ministry of Economic Development;
“Controlling Interest”	in relation to any radio frequency spectrum or a sound broadcasting licence, means an interest which results in the direct or indirect control of that radio frequency spectrum or sound broadcasting licence, but does not include the non-exclusive right for any person to use any radio frequency spectrum or network on arms length commercial terms, where that frequency or sound broadcasting licence is controlled directly or indirectly by another person, unless there is evidence that the non-exclusive right is being used for the purpose of or has the effect of the right-holder exercising control of that spectrum or sound broadcasting licence;
“Date of Registration”	means that date that the Licence was registered in the name of the Licensee;
“Licence”	means the licence or licences as listed in the Schedule to this Licence Agreement and as registered in accordance with section 48 of the Act, as such licence or licences may be amended from time to time;
“Licence Agreement”	means this licence agreement and includes the Licence;
“Licence Price”	means the amount paid in settlement under the Auction Rules for the purchase of the Licence;
“Ministry”	means the Ministry of Economic Development or any other department given responsibility for the Licences;
“Regulations”	means regulations made pursuant to the Act, in the form in force at the relevant time;
“Related Company”	A company is related to another company if— a The other company is its holding company or

subsidiary; or

- b At least 20% of the issued shares of the company, 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 company and companies related to that other company (whether directly or indirectly, but other than solely in a fiduciary capacity); or
- c At least 20% of the issued shares, other than shares that carry no right to participate beyond a specified amount in a distribution of either profits or capital, of each of them is held by members of the other (whether directly or indirectly, but other than solely in a fiduciary capacity); or
- d The businesses of the companies have been so carried on that the separate business of each company, or a substantial part of it, is not readily identifiable; or
- e There is another company to which both companies are related;

“Term”

has the meaning given to it in clause 3;

“Working Day”

means between the hours of 8.30am to 5.00pm on any day that is not a Saturday or a Sunday or a public holiday within the meaning of section 44 of the Holidays Act 2003 (other than in section 44(1)(k), Wellington Anniversary Day).

- 1.2 In the event of inconsistency between the terms of this Licence Agreement and the terms of a Licence, the terms of this Licence Agreement prevail.
- 1.3 In this Licence Agreement, unless the context requires otherwise:
 - a. the singular includes the plural, and vice versa; and
 - b. **“including”** and similar words do not imply any limitation.

2 Grant

- 2.1 In consideration of the payment of the Licence Price made by the Licensee, and subject to the Licensee observing the terms and conditions of this Licence Agreement, the Licensor agrees to grant to the Licensee for the Term, the Licence in accordance with the provisions of this Licence Agreement.
- 2.2 The Licensee is subject to, and must comply with, all laws (including the Act and the Regulations) pertaining to the Licence.
- 2.3 The Licensee warrants that it has read and understood the general principles for Local FM Radio Broadcasting Licences set out in Schedule 2.

3 Term

- 3.1 This Licence Agreement commences on the date of execution and continues until the expiry of the Licence on 2 April 2011 or termination of the Licence in accordance with this Licence Agreement.

4. Right to replacement Licence

- 4.1 Replacement local commercial FM licences, on the same terms and conditions as the local commercial FM Licences in the auction, will be issued to Licensees, on the expiry of the Licences where broadcasting services have been established in the coverage area within two years from the date of Registration. Replacement licences will be for a ten-year period from the date of registration of the original licence and will be issued without charge.

5 Fees

- 5.1 The Licensee must pay to the Chief Executive fees as prescribed in and in accordance with the Regulations.
- 5.2 If the Licensee defaults on payment, the Ministry reserves the right to cancel the Licence with immediate effect and without financial compensation.

6 Obligations of the Licensee

Eligibility

- 6.1 The Licence is to be registered in the name of a natural person or persons, or a legal entity owned or governed by a natural person or persons (“the owner”), normally resident in the Area. This condition must be maintained throughout the term of the Licence.
- 6.2 The inclusion of the owner in the Electoral Roll for an electorate substantially within the Area will be accepted as evidence of normal residence.

No other controlling interests to be held

- 6.3 The Licensee may not hold (directly, or through associations) any controlling interest in other licences suitable for sound broadcasting in the coverage area or elsewhere in New Zealand.
- 6.4 No shares or other financial interest in the Licensees licensed broadcasting operation may be owned or funded by a third party with any controlling interest in other licences suitable for sound broadcasting in the coverage area or elsewhere in New Zealand.

Operations

- 6.5 The station’s office and studio operations are to be located within the Area.
- 6.6 The broadcasting service must operate for a minimum of 12 hours daily.

- 6.7 The Licensee will establish and maintain working relationships with significant groups within the local community of 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 will facilitate the provision of relevant broadcasting content from such organisations.

Content

- 6.8 Locally generated programming shall be designed with a strong emphasis on previously unmet needs and interests of listeners within the Area, and will include the following content broadcast from within the Area:
- local news, information, stories and history;
 - discussion of community issues, including political processes;
 - programming aimed to inform, entertain and involve a specified or under-served local community or communities of interest.
- 6.9 Locally generated programming will be broadcast for at least one third of the hours of broadcasting between 0600hrs and 2000hrs.

7 Transfer rights

- 7.1 The Licensee must not transfer, modify, lease or share the frequency, or otherwise surrender control of transmissions, without first obtaining the written consent of the Chief Executive, and such consent may be declined in the absolute discretion of the Chief Executive
- 7.2 An application for such permission must demonstrate to the Chief Executive that any new owner or lessor meets the same criteria as the initial applicant, including the application requirements specified in the Auction Rules.

8 Implementation Requirement

- 8.1 The Licensee must demonstrate that it has commenced providing FM radio broadcasting services within the Area within one year of the date of this Licence Agreement.
- 8.2 The determination of whether or not implementation had occurred is a matter to be determined by the Chief Executive in his or her sole discretion exercising a common sense judgment. The minimum requirement is a FM radio broadcasting service accessible to no less than 25% of the population in the Area.
- 8.3 To assist the Chief Executive with his or her determination in clause 8.2 the Licensee must submit to the Chief Executive, prior to the first anniversary of the date of this Licence Agreement, a statutory declaration:
- a. Stating that FM radio broadcasting services have commenced in the Area;
and

- b. certification by an Approved Radio Engineer of the coverage of that service.
- 8.4 The Chief Executive may request further information from the Licensee to make his or her determination under clause 8.2.
- 8.5 Without limitation to the terms of this Licence Agreement if a broadcasting services has not commenced within the Area the Chief Executive may in the exercise of his or her absolute discretion cancel that particular Licence and terminate this Licence Agreement in respect of that Licence.

9 Compliance

- 9.1 All licensees will comply with the requirements of the Broadcasting Act 1989 and Broadcasting Standards Authority regarding station identification, codes of broadcasting practice and complaints procedures.
- 9.2 The Licensee agrees to the Licensor undertaking a compliance audit at any time to demonstrate the terms and conditions are being adhered to.
- 9.3. The Licensee shall respond in writing to individual complaints received or referred to them within 21 days of receipt and shall provide copies of the complaint and response to the Ministry of Economic Development within 30 days. The Chief Executive may undertake further investigation, including conducting a compliance audit, as seen necessary.
- 9.4 The Chief Executive of the Ministry of Economic Development will retain the right to modify, transfer, or revoke the licence in terms of the Radiocommunications Act 1989.
- 9.5 All licences are subject to the provisions of the Radiocommunications Act 1989 and the Radiocommunications Regulations 2001. Where a compliance issue can not be referenced directly to the Act or Regulations, these Terms and Conditions will apply. In all cases, the decision of the Chief Executive of the Ministry of Economic Development will be final.

10 Annual Reporting Required

- 10.1 The Licensee will submit to the Chief Executive not less than three months before each anniversary of the granting of the licence, a compliance report demonstrating that the terms and conditions of this Licence Agreement are being adhered to, including providing separate financial information demonstrating compliance with clause 6.4.
- 10.2 The compliance report will include a statutory declaration affirming the broadcaster's adherence to the terms and conditions of this Licence Agreement.
- 10.3 The licensee will make a copy of each annual compliance report available to the general public for at least three years from the original publication date. Commercially sensitive financial information may be withheld from the published report provided that it is not required to be published under relevant commercial legislation.

11 Cancellation and termination

- 11.1 Subject to clause 8.5, this Licence Agreement expires on the expiry of the Licence.
- 11.2 In addition to the specific rights of cancellation and termination specified in this Licence Agreement, the Chief Executive may, at his or her sole discretion, cancel any Licence (or all Licences) and terminate this Licence Agreement by giving notice in writing to the Licensee, if the Licensee:
- a commits any serious breach of its obligations under this Licence Agreement;
or
 - b repeats or continues, after having been warned in writing, any breach of its obligations under this Licence Agreement.
- 11.3 Cancellation of any Licence and termination of this Licence Agreement by the Licensor in accordance with this Licence Agreement will be effective from the date of service of the written notice of cancellation and termination on the Licensee.
- 11.4 In the event of the Chief Executive terminating this Licence Agreement under clause 8.5 or clause 11.2 the Licensee is not entitled to any refund of the Licence Price and will be ineligible to receive any future Licences.
- 11.5 The Licensee may cancel a Licence at anytime by notifying the Chief Executive in writing at least twenty (20) Working Days prior to the cancellation taking effect. This Licence Agreement expires on such cancellation being effective.
- 11.6 Cancellation of a Licence and termination of this Licence Agreement is without prejudice to the rights and obligations that accrued prior to the date of cancellation and termination.

12 Limitation of Liability

- 12.1 Neither the Crown nor the Ministry nor any officer of the Ministry will be liable for any indirect, consequential, incidental, or special loss or damage (including loss of profit, loss of revenue, loss of business or any other form of economic loss) resulting from or connected with the performance of its rights and obligations under the Licence or this Licence Agreement.
- 12.2 The total maximum liability of the Crown, the Ministry and any officer of the Ministry for breach of contract, statutory duty, in tort (including negligence), equity or in respect of any other cause of action resulting from or connected with the performance of their rights and obligations under the Licence or this Licence Agreement shall not exceed the GST exclusive Licence Fee paid to the Crown by the Licensee for the Licence in question.

13 Waiver

- 13.1 A waiver by either party of any rights arising from any breach of any term of this Licence Agreement will not be a continuing waiver of any other rights arising from any other breaches of the same or other terms or conditions of the Licence or this Licence Agreement. To be effective, any waiver by a party must be in writing.
- 13.2 No failure or delay on the part of either party in the exercise of any right or remedy in this Licence Agreement will operate as a waiver. No single or partial exercise of any such right or remedy will preclude any other or further exercise of that or any other right or remedy.

14 Maintenance of Records and Provision of Information

- 14.1 The Licensee must maintain all records of information that relates to its obligations and compliance with the terms of this Licence Agreement. The Licensee must make this information available to the Ministry on its written request within 10 (ten) Working Days of receiving the request.

15 Severability

- 15.1 If any part or provision of this Licence Agreement is invalid, unenforceable or in conflict with the law, the invalid or unenforceable part or provision will be replaced with a provision which, as far as possible, accomplishes the original purpose of the part or provision. The remainder of the Licence Agreement will be binding on the Parties.

16 Notices

- 16.1 Any notice to be given under this Licence Agreement will be in writing and will be hand delivered or sent by registered post to the Parties' respective addresses as set out in clause 16.3 and clause 16.4.
- 16.2 Any notice will be deemed to be served on the date of delivery or the Business Day next 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.
- 16.3 The address for the service of notices on the Ministry, unless otherwise notified in writing, is:
- Ministry of Economic Development
33 Bowen Street
PO Box 1473
WELLINGTON
- Attention: Manager Radio Spectrum Policy and Planning
- 16.4 The address for the service of notices on the Licensee, unless otherwise notified, is as described in the Licence.

17 Entire Agreement

17.1 The parties acknowledge that this Licence Agreement sets out the entire agreement and understanding of the parties and supersedes all prior oral or written agreements, understanding or arrangements relating to its subject matter.

18 No Warranties

18.1 The Licensee acknowledges that it has acquired the Licence and entered into this Licence Agreement acting entirely on its own judgment and not in reliance on any warranty or representation made by the Crown or the Ministry or any officer of the Ministry and that it has no cause of action against the Crown or the Ministry or any officer of the Ministry 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 Ministry and all officers of the Ministry for the purposes of the Contracts (Privity) Act 1982.

19 Amendments

19.1 Any amendment to this Licence Agreement must be in writing duly executed by both parties in the same manner and with the same formality as this Licence Agreement is executed.

20 New Zealand Law

20.1 This Licence Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the exclusive jurisdiction of the Courts of New Zealand.

Signed for and on behalf of)
HER MAJESTY THE QUEEN)
in right of the Government of)
New Zealand by Brian Miller, Manager Radio)
Spectrum Policy and Planning, Energy and)
Communications, Ministry of Economic)
Development) _____

in the presence of:

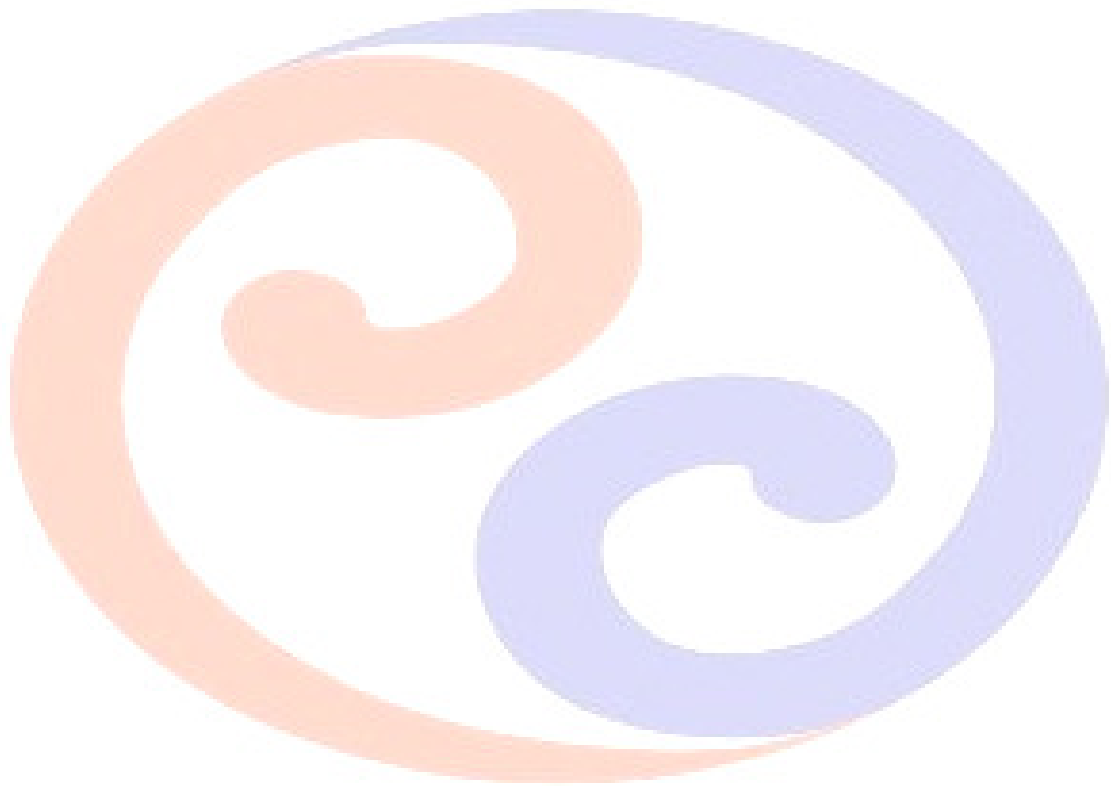
Signed for and on behalf of)
)

by _____

in the presence of:

SCHEDULE 1 – Licence

Spectrum Licence #	Area	Type	Reference (MHz)
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SCHEDULE 2 – General Principles

As a general principle, the owners of a ‘local’ radio broadcasting station must:

- demonstrate a strong geographic, social or cultural affinity with the target audience;
- locate the offices and studios of the radio station operating under the licence within the coverage area;

As a general principle, the owners of a local commercial radio licence must:

- have no interest in other radio broadcasting licences and have no economic, contractual, operational, or family associations with holders of such licences;
- broadcast identifiably ‘local’ content from the studio to the coverage area during peak hours (0600hrs to 1000hrs and 1600hrs to 1900hrs).

there is any doubt as to interpretation of these principles or of the Terms and Conditions , the decision of Chief Executive will be final.

