

# Auction forms

## 3.6 GHz band auction, November 2018

AUGUST 2018



## List of forms

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# General information

## Introduction

This booklet contains the 10 forms that auction participants may be required to complete. The auction will be conducted in accordance with the procedures contained in the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination). Chapter 4 of the *Auction guide* provides practical information to guide participants through the auction process—including information about when and by whom each form must be given to the ACMA.

Information is also provided at the beginning of each form about:

- > the purpose of each form;
- > who must complete the form (including, where applicable, who can execute or witness the form);
- > when the completed form must be given to the ACMA;
- > any amount payable in association with the form (for example, an application fee or eligibility payment);
- > other relevant matters.

## Completing forms

Auction participants must complete all relevant forms and execute all deeds by hand and give the completed forms to the ACMA by the applicable deadline in accordance with the lodgement procedures set out below.

## Giving forms to the ACMA

Completed forms may be given to the ACMA by:

- > Email: [spectrumauctions@acma.gov.au](mailto:spectrumauctions@acma.gov.au)
- > Fax: (02) 6219 5427
- > Delivery to: Auction Manager  
Major Spectrum Allocations Section  
Australian Communications and Media Authority  
Red Building, Benjamin Offices, Chan Street  
Belconnen ACT 2617

Section 7 of the Allocation Determination sets out procedures for giving documents to the ACMA by email, fax or via delivery of documents to the physical address listed above.

If a document is **emailed**:

- > the document must be included as an attachment; and
- > the document must be:
  - > if it is a statutory declaration, statement under section 58 of the Allocation Determination or a deed—in PDF format or another format approved by the auction manager; or
  - > if it is not a document mentioned above—in Word, RTF or PDF format or another format approved by the auction manager.

If a document is **faxed**, it must be accompanied by a cover sheet that states:

- > the sender's name, postal address, telephone number and fax number; and
- > the number of pages transmitted, including the cover sheet.

If a faxed document is a completed application form, a completed eligibility nomination form, a statutory declaration, a statement under section 58 of the Allocation Determination or a deed, the cover sheet must also state the type of document.

Special rules in the Allocation Determination apply in relation to giving the ACMA a deed of financial security:

- > if a deed of financial security is executed by a person acting under a power of attorney for a body corporate, a copy of the power of attorney must be given with the deed (subsection 38(8))
- > if a deed of financial security is given under subsection 29(2) by email or fax, the original deed of financial security must be received by the ACMA no later than three working days after the eligibility deadline or, if the ACMA agrees to a later time, the agreed time (subsection 29(6))
- > if a deed of financial security is given under subsection 35(6) by email or fax, the original deed of financial security must be received by the ACMA no later than three working days after the eligibility deadline or, if the ACMA agrees to a later time, the agreed time (subsection 35(8))
- > if a deed of financial security is given under subsection 38(1) by email or fax, the original deed of financial security must be received by the ACMA no later than three working days after the eligibility deadline or, if the ACMA agrees to a later time, the agreed time (subsection 38(9)).

## Privacy collection notice

The ACMA will collect personal information directly from applicants in accordance with the procedures and requirements contained in the Allocation Determination and related forms. The ACMA will use that personal information for purposes related to the conduct of an auction pursuant to the Allocation Determination, which may include the provision of information about the auction to applicants, to verify the identity of auction participants and to investigate potential contraventions of the Allocation Determination. The information may also be provided to the Australian Competition and Consumer Commission under section 74 of the Allocation Determination, and disclosed under Part 7A of the Australian Communications and Media Authority Act 2005 or as otherwise authorised by law.

A failure to provide personal information as requested by the ACMA for the purposes of the Allocation Determination and related forms may affect an auction participant's ability to participate in the auction.

The ACMA will not use or disclose the personal information it collects from auction participants unless as required or permitted by law.

The ACMA's Privacy Policy is available at: <https://www.acma.gov.au/theACMA/About/Corporate/Accountability/privacy-policy> and sets out:

- > how auction participants can access their personal information as held by the ACMA and seek correction of that personal information; and
- > how auction participants may complain about an alleged breach of the Australian Privacy Principles as set out in the Privacy Act 1988 and how the ACMA will deal with such complaints.

The ACMA may disclose the personal information collected from applicants to [Power Auctions LLC](#) being the provider of the software used to conduct the auction. Power Auctions LLC is based in the United States.

## Queries

Queries about the auction process may be directed to the auction manager, by:

Email: [spectrumauctions@acma.gov.au](mailto:spectrumauctions@acma.gov.au)

Telephone: (02) 6219 5151

Fax: (02) 6219 5427

Post: Auction Manager  
Major Spectrum Allocations Section  
Australian Communications and Media Authority  
Red Building, Benjamin Offices, Chan Street  
Belconnen ACT 2617

## Form 1—Application form

For the purposes of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

### Notes on completion

#### Introduction

This application form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(f) of the Allocation Determination.

Subsection 29(1) of the Allocation Determination provides that a person who applies to become a registered bidder in the auction must, among other things, before the application deadline:

- > give the ACMA a completed application form; and
- > pay the application fee.

Section 35 of the Allocation Determination provides that a new applicant, formed by affiliated applicants notified under subsection 34(1), must give the ACMA a completed application form and pay the application fee within 10 working days of the ACMA notifying the affiliated applicants. For applications made under section 35 of the Allocation Determination, the new applicant must be a body corporate whose only members are one or more of those affiliated applicants.

#### Other elements of the bidder registration process

A person wishing to participate in the auction will need to be registered as a bidder in accordance with the procedures set out in the Allocation Determination. An applicant will only be entitled to participate in the auction when it has fulfilled all of the requirements of the bidder registration process (including the completion and lodgement of all relevant deeds and other forms) within the applicable deadlines.

Practical information to guide applicants through the registration process is provided in Chapter 4 of the *Auction guide*. Applicants should read the Allocation Determination and the *Auction guide* carefully to make sure they are aware of all of the steps they need to take if they wish to be registered as a bidder.

#### Disclosure of information

Pursuant to sections 32 and 35 of the Allocation Determination, information given to the ACMA in the application form about the identity of the applicant, and its associates, will be given to all other applicants. This information will be given to the applicants for the purpose of enabling them to make a statutory declaration pursuant to the requirements of section 32 or section 35 of the Allocation Determination, as appropriate.

The Allocation Determination, the *Auction guide* and Form 2—Deed of acknowledgement describe other circumstances in which information and documents obtained by the ACMA in the performance of its functions under the Allocation Determination may also be released by the ACMA.

## **When to give the application form to the ACMA**

Where an applicant gives an application form to the ACMA under section 29 of the Allocation Determination, this must be done before the application deadline. An application is incomplete if the applicant fails to give the application form before the application deadline. The application deadline is published by the ACMA on its website and included in the *Auction guide*.

Where an applicant gives an application form to the ACMA under section 35 of the Allocation Determination, this must be done within 10 working days of the ACMA notifying the relevant affiliated applicants under subsection 34(1) of the Allocation Determination.

## **How to give the application form to the ACMA**

The application form must be lodged in accordance with the procedures for giving documents to the ACMA as set out in section 7 of the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is given by email or fax.

## **Attaching additional information to the application form**

Where an applicant provides additional information in an attachment to the application form:

- > the first page of the attachment must clearly indicate:
  - > the name of the applicant, as it appears in Part 1 of the application form; and
  - > the part of the form to which the attachment relates (for example, 'Part 3: Details of the applicant's authorised persons'); and
- > each page of the attachment must show the page number and the total number of pages in the attachment (for example, 'Page 1 of 3').

## **Who should sign the application form?**

If the application is from a body corporate, the form must be signed by a director, a secretary or an authorised officer of the body corporate.

If the application form is from an individual, the form must be signed by that individual.

## **Who can witness the application form?**

The application form must be signed before a person who is above the age of 18.

## **How to pay the application fee**

Information about how to pay the application fee is provided in Part 5 of this form.



## Part 1: Applicant details

If the applicant is a body corporate:

_____
Name
_____
ACN/ABN/ARBN
_____
Trading name

If the applicant is an individual:

_____
Title: Mr/Mrs/Ms/Dr/Other
_____
Given names
_____
Surname

All applicants to complete:

_____
ACMA client number (if known)
_____
_____
_____
Address (if the applicant is a body corporate, enter the applicant's registered office or principal office address)

Tick whichever is applicable below:

- ☐ This is an application made for the purposes of paragraph 29(1)(a) of the Allocation Determination
- ☐ This is an application made for the purposes of paragraph 35(2)(a) of the Allocation Determination

## Part 2: Details of principal and backup contact persons

The ACMA may need to contact auction participants to make queries, or to provide information or materials.

During the course of the auction, the ACMA will communicate with participants primarily through the 'authorised persons' nominated in Part 3 of this form, using the electronic messaging facility in the online auction system. Where an alternative mode of communication is appropriate (for example: during the bidder registration process; before participants have access to the auction system), the ACMA will communicate with participants directly through the contact persons nominated below.

The same individual can be nominated in Part 2 and Part 3 of this form.

Provide name and contact details for:

- > the person through whom the ACMA should communicate with the applicant in relation to the auction, as described above (the principal contact person)
- > an alternative person through whom the ACMA should communicate with the applicant if the principal contact person cannot be reached (the backup contact person).

### Principal contact person:

<hr/>	
Title: Mr/Mrs/Ms/Dr/Other	
<hr/>	
Given names	
<hr/>	
Surname	
<hr/>	
Position	
<hr/>	
<hr/>	
Street address	
<hr/>	
<hr/>	<hr/>
Work phone	Facsimile
<hr/>	<hr/>
Mobile	Email

The following secret questions may be used for verification purposes—for example, where the person takes delivery of auction-related material or contacts the ACMA to seek information:

<hr/>	<hr/>	<hr/>
Date of birth	City of birth	Mother's maiden name

**Backup contact person:**

_____	
Title: Mr/Mrs/Ms/Dr/Other	
_____	
Given names	
_____	
Surname	
_____	
Position	
_____	
Street address	
_____	
_____	_____
Work phone	Facsimile
_____	_____
Mobile	Email

The following secret questions may be used for verification purposes—for example, where the person takes delivery of auction-related material or contacts the ACMA to seek information:

_____	_____	_____
Date of birth	City of birth	Mother's maiden name

### Part 3: Details of the applicant's authorised persons

Provide the name and contact details of each 'authorised person' who the applicant authorises to access and use the auction system (for example, to make bids in the auction) on its behalf (authorised persons).

The same individual can be nominated in Part 2 and Part 3.

In the interests of operational efficiency and security, applicants are encouraged to nominate no more than three authorised persons. However, applicants can nominate an additional two authorised persons (that is, a total of up to five persons) if they wish. Where an applicant wishes to nominate more than three authorised persons, the name, contact details and signature (as required below) of each additional person must be provided as an attachment to this form, in accordance with the instructions set out under the heading 'Attaching additional information to the application form', above.

#### Authorised person #1

_____	
Title: Mr/Mrs/Ms/Dr/Other	
_____	
Given names	
_____	
Surname	
_____	
Position	
_____	
_____	
Street address	
_____	
_____	_____
Work phone	Facsimile
_____	_____
Mobile	Email

The following secret questions may be used for verification purposes—for example, where the person submits a bid using the alternative bidding procedures (to be supplied after the application deadline) or contacts the ACMA to seek information:

_____	_____	_____
Date of birth	City of birth	Mother's maiden name

## Authorised person #2

_____	
Title: Mr/Mrs/Ms/Dr/Other	
_____	
Given names	
_____	
Surname	
_____	
Position	
_____	
Street address	
_____	
_____	_____
Work phone	Facsimile
_____	_____
Mobile	Email

The following secret questions may be used for verification purposes—for example, where the person submits a bid using the alternative bidding procedures (to be supplied after the application deadline) or contacts the ACMA to seek information:

_____	_____	_____
Date of birth	City of birth	Mother's maiden name

### Authorised person #3

_____	
Title: Mr/Mrs/Ms/Dr/Other	
_____	
Given names	
_____	
Surname	
_____	
Position	
_____	
_____	
Street address	
_____	
_____	_____
Work phone	Facsimile
_____	_____
Mobile	Email

The following secret questions may be used for verification purposes—for example, where the person submits a bid using the alternative bidding procedures (to be supplied after the application deadline) or contacts the ACMA to seek information:

_____	_____	_____
Date of birth	City of birth	Mother's maiden name

## Part 4: Details of the applicant's associates

Information about the applicant's 'associates' is required for the purposes of ensuring compliance with the allocation limits as described in Part 2 of the Allocation Determination. The allocation limits restrict the total amount of spectrum that a person or specified group of persons can acquire in the auction. The allocation limits, the meaning of 'associate' and other relevant matters are set out in the Allocation Determination, and are discussed under headings 3.2.6 and 3.2.7 in the *Auction guide*.

An applicant that is a **body corporate** must provide the information set out in Table 1, by completing **Form 8—Associates form—body corporate**.

An applicant that is an **individual** must provide the information set out in Table 2, by completing **Form 9—Associates form—individuals**.

**Table 1: Information about the applicant's associates that must be provided where the applicant is a *body corporate***

	<b>A</b>	<b>B</b>
	<b>Category of associate (in relation to the applicant)</b>	<b>Information that must be provided about each of the applicant's associates that falls within the category in column A</b>
1	A director or secretary of the body corporate	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; Position</li> <li>&gt; Registered office address or principal office address</li> </ul>
2	A 'related body corporate'	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN</li> <li>&gt; Registered office address or principal office address</li> <li>&gt; Why the associate meets the definition of a 'related body corporate'</li> </ul>
3	A director or secretary of a 'related body corporate'	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; Position</li> <li>&gt; Name of the related body corporate</li> <li>&gt; Registered office address, or principal office address, of the related body corporate</li> </ul>
4	An individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body corporate	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; Address</li> </ul>
5	<p>Each person (other than the Commonwealth when represented by the ACMA) who has a relevant agreement with the body corporate that:</p> <ul style="list-style-type: none"> <li>&gt; is for the use by a party to the agreement of spectrum licensed to another of the parties under a spectrum licence for a part of the spectrum referred to in the re-allocation declarations; or</li> <li>&gt; relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declarations.</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN (if applicable)</li> <li>&gt; Address (if the person is a body corporate, enter the person's registered office or principal office address)</li> <li>&gt; The nature of the agreement</li> </ul> <p>Note: 'relevant agreement' and 're-allocation declarations' are defined in the Allocation Determination</p>

This information must be provided by completing **Form 8—Associates form—body corporate**.

The completed template must be provided to the ACMA as an attachment to this form, in accordance with the instructions set out under 'Attaching additional information to the application form', above.



**Table 2: Information about the applicant's associates that must be provided, where the applicant is an *individual***

	A	B
	Category of associate (in relation to the applicant)	Information that must be provided about each of the applicant's associates that falls within the category in column A
1	The individual's spouse or de facto partner within the meaning of the <i>Acts Interpretation Act 1901</i>	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; Address</li> </ul>
2	A body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN</li> <li>&gt; Registered office address or principal office address</li> </ul>
3	A body corporate of which the individual is a director or secretary	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN</li> <li>&gt; Registered office address or principal office address</li> </ul>
4	A related body corporate of a body corporate of which the individual is a director or secretary	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN</li> <li>&gt; Registered office address or principal office address</li> <li>&gt; Why the associate meets the definition of a 'related body corporate'</li> </ul>
5	<p>Each person (other than the Commonwealth when represented by the ACMA) who has a relevant agreement with the individual that:</p> <ul style="list-style-type: none"> <li>&gt; is for the use by a party to the agreement of spectrum licensed to another of those parties under a spectrum licence for a part of the spectrum referred to in the re- allocation declarations; or</li> <li>&gt; relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declarations.</li> </ul>	<ul style="list-style-type: none"> <li>&gt; Name</li> <li>&gt; ACN/ARBN (if applicable)</li> <li>&gt; Address (if the person is a body corporate, enter the person's registered office or principal office address)</li> <li>&gt; The nature of the agreement</li> </ul> <p>Note: 'relevant agreement' and 're- allocation declarations' are defined in the Allocation Determination</p>

This information must be provided by completing **Form 9—Associates form—individuals**.

The completed template must be provided to the ACMA as an attachment to this form, in accordance with the instructions set out under 'Attaching additional information to the application form', above.

## Part 5: Application fee

The amount of the application fee set by the ACMA under section 24 of the Allocation Determination is AUD\$10,000 (GST not payable). Indicate, by ticking the appropriate box, whether you wish to pay the application fee by:

- ☐ electronic transfer
- ☐ bank cheque

The application fee must be paid in Australian currency by either:

### Electronic transfer

**Bank:** ANZ Bank

**Branch:** Belconnen

**BSB:** 012-951 **Account no.:** 8379 24272

**Account name:** ACMA Official Administered Receipts

**Transfers should be labelled:** '36 appfee [name of applicant]'.

Note: Because transfer labels are limited to 15 alphanumeric characters, abbreviations must be used.

Evidence of the electronic transfer (for example, a transfer receipt) should be emailed to [spectrumauctions@acma.gov.au](mailto:spectrumauctions@acma.gov.au) as soon as practicable after the transfer is made.

### Bank cheque

Crossed 'not negotiable'

**Made payable to:** Australian Communications and Media Authority on behalf of the Commonwealth

**Delivered to:**  
Auction Manager  
Major Spectrum Allocations Section  
Australian Communications and Media Authority  
Red Building, Benjamin Offices, Chan St  
Belconnen ACT 2617

Subsection 9(4) of the Allocation Determination sets out when an amount is taken to have been paid by a relevant deadline. An amount is taken to have been paid by a deadline specified in the Allocation Determination if:

- > the ACMA receives a bank cheque for the full amount on or before the deadline; or
- > the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (for example, a transfer receipt) *and* the amount is received in the ACMA's bank account no later than three working days after the deadline; or
- > the ACMA receives other evidence that satisfies it that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.

Subsection 9(5) of the Allocation Determination provides that an amount due under the Allocation Determination is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount due. The effect of subsection 9(5) is that an applicant or bidder must add the value of any bank charge or government duty to the amount of the payment in order to validly apply to participate in the auction. GST is not payable on the application fee.

## Part 6: Declaration and signature

I understand that a person who knowingly or recklessly makes a false or misleading statement in, or in connection with, an application for a licence is guilty of an offence under section 136.1 of the *Criminal Code*. I believe that the statements made in this document and its attachments are true in every particular.

---

Signed by or on behalf of the applicant

---

Name of the signatory if signed on behalf of the applicant

Signed at:

---

Place

On

---

Day / Month / Year

Before me,

---

Signature of person before whom the declaration is made

---

Name of person before whom the declaration is made

**Note** It is a serious offence under Part 7.4 of the *Criminal Code* to give false or misleading information to the Commonwealth.

## Form 2—Deed of Acknowledgement

For the purposes of sections 27, 29 and 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Notes on completion

#### Introduction

This deed of acknowledgement form (Deed) has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(g) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

Section 29 of the Allocation Determination provides that a person who applies to become registered as a bidder in the auction of spectrum licences under the Allocation Determination must give the ACMA a completed Deed before the application deadline. In some cases, section 35 of the Allocation Determination also requires a deed of acknowledgement to be given.

Persons completing this Deed should read the Allocation Determination and, if necessary, seek independent advice. The Deed affirms the statutory obligations imposed upon an applicant in respect of their participation in an allocation process conducted under the Allocation Determination, and requires an applicant to agree to be bound by the Allocation Determination. Prospective applicants should review and clearly understand their obligations under the Allocation Determination and this Deed, before completing this Deed.

All sections of this Deed must be completed. The prospective applicant referred to in this Deed must be the same as on the application form given by the applicant under section 29 or 35 of the Allocation Determination.

#### When to give the Deed to the ACMA

Where an applicant gives this Deed to the ACMA for the purposes of section 29 of the Allocation Determination, this must be done before the application deadline. An application is incomplete if the applicant fails to give the Deed before the application deadline. The application deadline is published by the ACMA on its website and in the Auction Guide. Requirements for new applications are contained in section 35 of the Allocation Determination.

#### How to give the Deed to the ACMA

The Deed must be given to the ACMA in accordance with the procedures for giving documents to the ACMA set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the auction forms booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the Auction Guide. The procedures contain specific requirements where certain documents, including the Deed, are given by email or fax.

### **Who should execute the Deed?**

Where the ACMA receives a Deed from an Applicant that is a body corporate, it must be executed by either:

- > two (2) directors of the company;
- > a director and a company secretary of the company; or
- > if it is a proprietary company that has a sole director who is also the company secretary, that director.

Where the ACMA receives a Deed from an Applicant who is an individual person, it must be executed by that individual.

### **Who can witness the Deed?**

Where the Deed is executed by an individual, this must be witnessed by a person who is above the age of 18 and is not a party to the Deed. The witness must print their full name next to their signature.

# Deed of Acknowledgement

This Deed of Acknowledgement is made on this

---

Day / Month / Year

in favour of the Commonwealth of Australia (the Commonwealth) for the benefit of the Australian Communications and Media Authority, ABN 55 386 169 386, (the ACMA), established under the *Australian Communications and Media Authority Act 2005*.

by the Applicant:

---

Insert name

---

Insert ACN, ABN or ARBN if applicable

of:

---

Insert address

## Purpose:

- A. The ACMA proposes to allocate spectrum licences in the 3.6 GHz band by auction.
- B. Under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act), the ACMA has determined the procedures to be applied in allocating spectrum licences, and fixed the spectrum access charge payable for issuing those licences, as set out in the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination).
- C. The Applicant wishes to submit an application and participate in the allocation process, in accordance with the terms and conditions set out in the Allocation Determination and in this Deed.

## Operative part:

### Part 1: General undertakings

#### 1. Acknowledgement and agreement that Applicant will be bound

- 1.1 This Deed is entered into as a deed poll in favour of the Commonwealth (for the benefit of the ACMA) and is enforceable by the Commonwealth.
- 1.2 The Applicant:
  - a. acknowledges that it understands, and agrees to be bound by, the obligations contained in the Allocation Determination; and
  - b. agrees to comply with each and every applicable provision of the Allocation Determination.
- 1.3 The Applicant:
  - a. acknowledges and agrees that, where acting on behalf of the Applicant, its officers, employees, agents, contractors, subcontractors and associates are bound by the obligations contained in the Allocation Determination; and
  - b. agrees to ensure its officers, employees, agents, contractors, subcontractors and associates comply with each and every applicable provision of the Allocation Determination.
- 1.4 The remaining clauses of this Deed supplement, and do not in any way limit the acknowledgement and agreement by the Applicant that it and, where acting on behalf of the Applicant, its officers, employees, agents, contractors, subcontractors and associates, are bound by the obligations contained in the Allocation Determination.
- 1.5 The remaining clauses of this Deed supplement, and do not in any way limit, the Applicant's agreement that it will comply with, and will ensure that, where acting on behalf of the Applicant, its officers, employees, agents, contractors, subcontractors and associates will comply with each and every applicable provision of the Allocation Determination. Notwithstanding anything in this Deed, neither the Applicant's obligations under this Deed nor the binding effect of this Deed will in any way be affected or impaired by the Allocation Determination or a deed of financial security (if any) provided under section 29, section 35 or section 38 of the Allocation Determination, or both, being void, voidable or otherwise unenforceable in whole or in part.
- 1.6 The Applicant acknowledges and agrees that it is responsible for obtaining appropriate technical, legal or other specialist advice, independent of the ACMA, before submitting its application under section 29 or section 35 of the Allocation Determination, and that the ACMA is not responsible for the provision of any advice to the Applicant.
- 1.7 The Applicant warrants that it has read and understood the *Applicant information package* published under section 27 of the Allocation Determination and its attachments, including each of the following documents:
  - a. Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination);
  - b. Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018 (the marketing plan);
  - c. Radiocommunications (Spectrum Re-allocation—3.6 GHz Band for Adelaide and Eastern Metropolitan Australia) Declaration 2018;



- d. Radiocommunications (Spectrum Re-allocation – 3.6 GHz Band for Perth) Declaration 2018;
- e. Radiocommunications (Spectrum Re-allocation – 3.6 GHz Band for Regional Australia) Declaration 2018;
- f. Radiocommunications (Spectrum Licence Limits—3.6 GHz Band) Direction 2018 (the spectrum limits direction).

## **Part 2: Allocation by auction**

### **2. Security**

- 2.1 The Applicant agrees that it will keep secure any items provided to it for the purpose of accessing the auction system, as required by section 44 of the Allocation Determination.
- 2.2 The Applicant agrees that it will immediately notify the ACMA if any item provided to the Applicant for the purpose of accessing the auction system is lost or stolen, as required by section 44 of the Allocation Determination, or if the Applicant otherwise forms the view that the security, confidentiality or integrity of such an item has been compromised.

### **3. Allocation limits**

- 3.1 The Applicant agrees to comply with the allocation limits set out Part 2 of the Allocation Determination.
- 3.2 If, at any time during the auction period, the Applicant believes that it may be an affiliate of another applicant or a bidder, the Applicant:
  - a. agrees to immediately notify the ACMA of the affiliation as required by section 53 of the Allocation Determination; and
  - b. acknowledges that sections 52, 75 and 76 of the Allocation Determination may apply in relation to the Applicant.
- 3.3 If the Applicant is a winning bidder and, at any time after the auction period but before a spectrum licence is issued to the Applicant, the Applicant is an affiliate of another winning bidder, the Applicant acknowledges that sections 59 and 60 of the Allocation determination may apply in relation to the Applicant.
- 3.4 If, at any time during the auction period, the Applicant believes that it may be an affiliate of an existing relevant band licensee, the Applicant:
  - a. agrees to immediately notify the ACMA of the affiliation as required by section 53 of the Allocation Determination; and
  - b. acknowledges that sections 61 and 62 of the Allocation Determination may apply in relation to the Applicant.

### **4. Confidentiality**

- 4.1 The Applicant agrees to comply with the obligations set out in Part 3 of the Allocation Determination, and agrees to ensure its officers, employees, agents, contractors, subcontractors, advisors and associates comply with those obligations.

### **5. Payment of application fee**

- 5.1 The Applicant agrees that it will pay the application fee as required by paragraph 29(1)(d) or 35(2)(b) of the Allocation Determination.

- 5.2 The Applicant agrees that payment of the application fee will be made to the ACMA on behalf of the Commonwealth in accordance with section 9 of the Allocation Determination.
- 5.3 The Applicant acknowledges that, in accordance with section 25 of the Allocation Determination, any application fee paid in accordance with the Allocation Determination will not be refunded by the ACMA in any circumstances.
- 5.4 The Applicant acknowledges that a failure to pay the application fee in accordance with the Allocation Determination will prevent the Applicant from taking part in the allocation process.

## **6. Eligibility payment and Deed of Financial Security**

- 6.1 The Applicant agrees to make an eligibility payment to the ACMA (on behalf of the Commonwealth) or give the ACMA (on behalf of the Commonwealth) a Deed of Financial Security, or both, as required by paragraph 29(2)(b), paragraph 35(6)(b) or section 38 of the Allocation Determination.
- 6.2 The Applicant agrees to make any eligibility payment to the ACMA (on behalf of the Commonwealth) in accordance with section 9 of the Allocation Determination, and to give any Deed of Financial Security to the ACMA (on behalf of the Commonwealth) in accordance with sections 7 and 38 of the Allocation Determination.
- 6.3 The Applicant acknowledges that a failure to give an eligibility nomination form by the eligibility deadline under section 29 of the Allocation Determination or in accordance with section 35 of the Allocation Determination (if applicable), or to make an eligibility payment or give a Deed of Financial Security by the eligibility deadline or in accordance with section 35 of the Allocation Determination (if applicable), will prevent the Applicant from taking part in the allocation process.

## **7. Registration, and conduct of and participation in the allocation process**

- 7.1 The Applicant acknowledges that it will only be registered as a bidder and be entitled to participate in the auction if the requirements referred to in section 41 of the Allocation Determination are satisfied (and, for the avoidance of doubt, the Applicant has not withdrawn, or is not taken to have withdrawn, its application).
- 7.2 The Applicant agrees to comply with section 42 of the Allocation Determination to ensure the ACMA has the correct information about the Applicant on the register.
- 7.3 The Applicant acknowledges that the auction will be conducted in accordance with, and the Applicant agrees to comply with, Part 5 of, and Schedules 1, 2 and 3 to, the Allocation Determination.
- 7.4 The Applicant agrees to comply with sections 52, 53 and 58 of the Allocation Determination, and acknowledges the consequences of affiliation after the end of the auction period set out in sections 60 and 62 of the Allocation Determination.
- 7.5 The Applicant agrees to comply with section 71 of the Allocation Determination.
- 7.6 The Applicant acknowledges and agrees that it will be responsible for its acts and omissions, and the acts and omissions of its officers, employees, agents, contractors, subcontractors and associates in relation to the allocation process.

- 7.7 If the Applicant withdraws its application, in accordance with section 39 of the Allocation Determination, or is taken to have withdrawn its application under another provision of the Allocation Determination, the Applicant acknowledges that it will not be re-admitted to the allocation process.

## **8. Bids**

- 8.1 The Applicant acknowledges and agrees that it will be bound by the criteria described in Schedule 1 (Rules for the primary stage of the auction), Schedule 2 (Rules for the secondary stage of the auction) and Schedule 3 (Rules for the assignment stage of the auction) to the Allocation Determination in relation to the validity of bids made by the Applicant, whether or not those bids were made by the Applicant or with the Applicant's authority.
- 8.2 The Applicant acknowledges and agrees that it will be bound by the data validation checks that are performed by the auction system for bids made and the processing of bids as set out in clause 14 of Schedule 1, clause 10 of Schedule 2 and clause 5 of Schedule 3 to the Allocation Determination, whether or not those bids were made by the Applicant or with the Applicant's authority.
- 8.3 The Applicant acknowledges and agrees that it will be responsible for its acts and omissions, and the acts and omissions of its officers, employees, agents, subcontractors and associates, in relation to any bid for a lot.

## **9. Balance of the winning price**

- 9.1 The Applicant, if it becomes a winning bidder for any lot, agrees to pay the balance of the winning price as required by subsections 66(2) and 66(4) of the Allocation Determination.
- 9.2 The Applicant, if it becomes a winning bidder for any lot, acknowledges and agrees that the balance of the winning price is the price specified in subsection 63(2) of the Allocation Determination.
- 9.3 The Applicant, if it becomes a winning bidder for any lot, agrees that payment of the balance of the winning price will be made to the ACMA in accordance with section 9 of the Allocation Determination.

## **10. Failure to pay balance of the winning price**

- 10.1 If, on becoming a winning bidder for any lot, the Applicant fails to pay the balance of the winning price as required by section 66 of the Allocation Determination:
- a. the Applicant acknowledges that sections 68, 75 and 76 of the Allocation Determination apply; and
  - b. the Applicant agrees to indemnify the Commonwealth (for the benefit of the ACMA) from and against any loss, damage, liability, cost or expense incurred by the Commonwealth or the ACMA in connection with arranging for, and conducting, an allocation of lots to which section 70 of the Allocation Determination applies as a result of the Applicant's failure to pay the balance of the winning price. This indemnity includes, but is not limited to:
    - i. the Commonwealth's and the ACMA's legal costs and expenses on a solicitor/own client basis; and
    - ii. the cost of all time spent or resources used or disbursements paid by the Commonwealth or the ACMA.

10.2 The Applicant acknowledges that, notwithstanding anything in this Deed, the Commonwealth (represented by the ACMA) may recover any amount guaranteed or indemnified by the Applicant's Promisor under the Deed of Financial Security, if any, at any time in accordance with the Deed of Financial Security. For the purposes of this Deed, '**Promisor**' has the meaning given to that term in the Deed of Financial Security.

#### **11. Obligation to provide information**

11.1 The Applicant acknowledges and agrees that the ACMA may, by written notice, require the Applicant to provide information or documents to the ACMA in accordance with section 72, and the Applicant agrees to provide such information or documents pursuant to such notice.

11.2 The Applicant acknowledges that a failure to provide such information or documents in accordance with the written notice may result in the Applicant's eligibility payment being retained, or Deed of Financial Security being enforced, as set out in section 75 of the Allocation Determination, and the Applicant may not be entitled to be issued a spectrum licence as a result of the allocation process, as set out in section 76 of the Allocation Determination.

#### **12. Information provided by Applicant**

12.1 The Applicant acknowledges and agrees that information or documents obtained by the ACMA in the performance of its functions under the Allocation Determination, may be used, possessed and disclosed as set out in section 73 of the Allocation Determination.

#### **13. Failure to comply with obligations**

13.1 If the Applicant or any of its officers, employees, agents, contractors, subcontractors and associates fails to comply with any of the obligations contained in the Allocation Determination, the Applicant acknowledges and agrees that sections 75 and 76 of the Allocation Determination may apply in accordance with their terms.

#### **14. Issue of spectrum licence**

14.1 The Applicant acknowledges and agrees that the issue of any spectrum licence to a winning bidder is subject to, and the Applicant agrees to comply with, all applicable laws, including the following:

- a. section 67 of the Act, which requires a spectrum licence to include a condition that the licensee must meet all obligations (if any) of the licensee to pay, among other things, the spectrum access charges fixed by determinations made under section 294 of the Act;
- b. section 69A of the Act, which requires a spectrum licence to include a condition that the licensee, for income tax purposes, to be an Australian resident or to have income, profits or gains attributable to a permanent establishment in Australia through which the licensee carries on business;
- c. section 71A of the Act, which states that, for the purposes of provisions of the *Competition and Consumer Act 2010*, the issue of a spectrum licence to a person is taken to be an acquisition by the person of an asset of another person; and
- d. the allocation limits.

## 15. Use of spectrum licence

- 15.1 The Applicant acknowledges and agrees that the use of radiocommunications devices under a spectrum licence issued pursuant to the Allocation Determination will be subject to the operation of the Act and other laws, and will be subject to any conditions imposed on the licence by the Act or the ACMA.
- 15.2 In particular, without limitation, the Applicant acknowledges and agrees to comply with the technical framework instruments, where applicable, that are listed from time to time on the ACMA website on the pages with the heading '*Technical framework 3.4 GHz*'.
- 15.3 The Applicant acknowledges and agrees that:
- the condition mentioned in subsection 20(4) of the marketing plan is proposed to be included in a spectrum licence issued as a result of the allocation process;
  - the ACMA has proposed the inclusion of that condition on the basis that the ACMA has received a direction from the Minister pursuant to section 14 of the *Australian Communications and Media Authority Act 2005*, the *Australian Communications and Media Authority (Radiocommunications Licence Conditions – 3.4 and 3.6 GHz Bands Interference Management) Direction 2018*. The direction requires the ACMA to consider exercising its powers and functions so that an equivalent condition is included on spectrum licences and certain apparatus licences in the 3.4 GHz band;
  - notwithstanding its compliance with the condition, there may be spectrum licences or apparatus licences in the 3.4 GHz band that do not have an equivalent condition included;
  - if that is the case, the ACMA may consider applying different interference management arrangements to spectrum licences issued as a result of the allocation process.

## 16. Changes to instruments and processes

- 16.1 The Applicant acknowledges that the ACMA or the Minister for Communications may:
- vary, replace or repeal the instruments referred to in clause 1.7 of this Deed in accordance with the Act;
  - may vary the allocation process;
  - may vary the content of spectrum licences issued or to be issued as a result of the allocation process;
  - may terminate the allocation process, under or in accordance with the terms of the Allocation Determination, the other instruments referred to in clause 1.7, and the Act.
- 16.2 The Applicant agrees that this Deed applies in respect of the Allocation Determination and the other instruments referred to in clause 1.7 as in force or in existence from time to time, or as repealed and replaced, with such amendments as may be necessary for the proper operation of the Deed. In the event that the Allocation Determination is repealed, the ACMA (representing the Commonwealth) may terminate this Deed by notice to the Applicant.
- 16.3 The Applicant acknowledges that the Department of Communications and the Arts is undertaking reforms to spectrum regulation in Australia, and acknowledges that, as a consequence of these reforms, its rights, obligations and liabilities under the Act and in relation to this allocation process or any spectrum licences issued as a result of this allocation process may be affected.

16.4 The Applicant acknowledges the effect section 153K of the Act may have on any allocation process conducted under the Allocation Determination.

## **17. No reliance**

17.1 The Applicant warrants that it has made its own independent inquiries about and assessment of the proposed allocation of spectrum licences pursuant to the Allocation Determination including: the auction and rules in Part 5 of, and Schedules 1, 2 and 3 to, the Allocation Determination, the rights and responsibilities of the holder of a spectrum licence to be issued pursuant to section 62 of the Act as a consequence of the allocation process, the cost of and value of such spectrum licences, and the use and effectiveness of the spectrum.

17.2 The Act and other Commonwealth legislation, the Allocation Determination and the other instruments referred to in clause 1.7, any deeds, forms or guarantees given in accordance with the Allocation Determination, and this Deed form the relationship between the Applicant and the ACMA and the Commonwealth on everything connected with the subject matter of this Deed, and this Deed supersedes any prior deed, agreement, arrangement or understanding on anything connected with that subject matter.

17.3 The Applicant agrees that it has not relied on any information or advice given or statement or representation made by the ACMA or any person purporting to represent the ACMA, in relation to its application for, or the allocation of, spectrum licences, or any other matters referred to in clause 17.1, including but not limited to any information, advice, statement or representation contained in or made in the application information package, the marketing plan, or any other instrument referred to in clause 1.7 of this Deed, any consultations or briefings given by or on behalf of the ACMA, or any other written or oral communications by or on behalf of the ACMA.

## **18. Indemnity**

18.1 The Applicant agrees to indemnify the Commonwealth and the ACMA from and against any:

- a. liability sustained or incurred by the Commonwealth or the ACMA; or
- b. costs or expenses incurred by the Commonwealth or the ACMA in enforcing a Deed of Financial Security given to the ACMA (on behalf of the Commonwealth) for the Applicant under the Allocation Determination; or
- c. loss of or damage to property of the Commonwealth; or
- d. loss or expense sustained or incurred by the Commonwealth or the ACMA in dealing with any Claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used or disbursements paid by the Commonwealth or the ACMA;

arising from:

- e. any act or omission by the Applicant, its officers, employees, agents, subcontractors or associates in connection with the Applicant's participation in the allocation process conducted under the Allocation Determination;
- f. any breach by the Applicant of its obligations or warranties under this Deed, or the Allocation Determination, or both;

irrespective of whether there was fault on the part of the person whose conduct gave rise to that liability, cost or expense, loss or damage, or loss or expense.

18.2 The Applicant's liability to indemnify the Commonwealth and the ACMA under this clause 18 will be reduced proportionately to the extent that any negligent act or omission of the Commonwealth or the ACMA contributed to the relevant liability, cost or expense, loss or damage, or loss or expense.

18.3 The Applicant releases the Commonwealth and the ACMA from all sums of money, accounts, claims, actions, proceedings, demands and expenses which the Applicant at any time had or has against the Commonwealth or the ACMA for or by reason or in respect of any act, cause, matter or thing in connection with this Deed, the Allocation Determination, or any of the matters described in clauses 19.1(a) to (c) of this Deed, including an allocation process conducted under the Allocation Determination, the Applicant's application to participate in the allocation process, the payment by the Applicant or retention by the Commonwealth (represented by the ACMA) of any money, the Applicant's participation (or non-participation) in an allocation process, the allocation (or non-allocation) of spectrum licences pursuant to an allocation process, the cancellation or cessation of an allocation process for any reason, the rules in Schedules 1, 2 and 3 to the Allocation Determination, or any spectrum licences issued (or not issued) pursuant to section 62 of the Act as a consequence of the allocation process or the Allocation Determination.

## **19. Liability of the Commonwealth or the ACMA**

19.1 The Applicant acknowledges and agrees that, to the fullest extent permitted by law, the Commonwealth, the ACMA, the auction manager, and their officers, employees, agents, contractors, subcontractors, associates and delegates (including any person to whom the auction manager delegates its functions and powers under section 80 of the Allocation Determination), are not and will not be liable to the Applicant for, or in respect of, any damages, losses, costs or expenses whatsoever, whether arising in contract, in tort (including negligence), in equity, under statute or otherwise, directly or indirectly from, or in connection with:

- a. this Deed or the Allocation Determination, or their contents, any statement or information contained in them, or any error in, or omission from this Deed or the Allocation Determination;
- b. any act or omission in relation to this Deed or the Allocation Determination, or their implementation, including, but not limited to, the procedures before auction, the Applicant's application to participate in the allocation of spectrum licences under the Allocation Determination, the payment by the Applicant or retention by the Commonwealth (represented by the ACMA) of any fees or charges, the allocation process, the rules in Schedules 1, 2 and 3 to the Allocation Determination, the Applicant's participation (or non-participation) in an allocation process, the determination of winning bids and winning prices, or the allocation of, or contents of, spectrum licences, referred to in this Deed or the Allocation Determination; or
- c. the auction system, its operation by, or on behalf of, the ACMA or the auction manager or their delegates, or its use by bidders, including, but not limited to, any failure of, error or defect in, or non-availability of the auction system, non-compliance of the auction system with the Allocation Determination or any description or specifications, or any viruses, hacker attacks or other harmful or malicious code.

19.2 The Commonwealth (for the benefit of the ACMA) excludes all statutory and implied conditions, guarantees and warranties to the extent permitted by law.

## **20. Rights cumulative**

20.1 The Applicant acknowledges and agrees that:

- a. the rights, powers and remedies provided by the clauses of this Deed are in addition to, and do not in any way limit any other right of action or remedy which the Commonwealth or the ACMA has, against a person, whether arising under the Allocation Determination, statute, common law, equity or otherwise; and
- b. each right, power and remedy provided in this Deed (including any right of indemnity) is additional to and not exclusive of any other right, power or remedy provided in this Deed or the Allocation Determination.

## **21. Waiver**

21.1 The ACMA's or the Commonwealth's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

21.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

21.3 A waiver is not effective unless it is in writing.

21.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## **22. Severability**

22.1 If any provision of this Deed is unenforceable, illegal or void, or makes this Deed or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Deed remains in force.

## **23. Joint and several liability**

23.1 If the Applicant:

- a. nominates at least one lot of a product as the Applicant's start demand for that product in its eligibility nomination form; and
- b. is affiliated with another applicant that has nominated at least one lot of that product as that applicant's start demand for that product in its eligibility nomination form (affiliated applicant);

the Applicant agrees that it will be jointly and severally liable for any liability owed to the Commonwealth or the ACMA by the affiliated applicant.

## **24. Inconsistency**

24.1 To the extent that there is an inconsistency between a provision in the Allocation Determination and a provision in any of the clauses of this Deed, to the extent necessary to resolve the inconsistency, the provision in the Allocation Determination prevails.

## **25. Applicant agrees to meet its own costs**

25.1 The Applicant agrees that its participation in any stage of the procedures referred to in the Allocation Determination is at its sole risk, cost and expense.



## 26. Return of information to the ACMA

26.1 The Applicant agrees to, at its sole expense, upon request by the ACMA in its absolute discretion at any time, return to the ACMA any items or written information provided to the Applicant (and copies of the information).

## 27. Survival of obligations

27.1 Termination of this Deed does not relieve the Applicant from the Applicant's obligations under clauses 1.6, 1.7, 2, 4, 9.3, 10, 12, 13, 14, 15, 17, 18, 19, 25, and 26 of this Deed, and any other provisions that by their nature survive termination.

## 28. Governing law

28.1 This Deed is governed by the laws in force in the Australian Capital Territory.

28.2 The Applicant irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

## 29. Definitions and interpretation

29.1 This Deed is to be interpreted in accordance with the provisions of the Act, the Allocation Determination, the marketing plan and the spectrum licence limits direction. Unless otherwise provided, terms in this Deed have the same meanings as provided in the Act, the Allocation Determination, the marketing plan or the spectrum licence limits direction. In particular, '**associate**' has the same meaning as provided in section 13 of the Allocation Determination.

29.2 In this Deed:

- a. **allocation process** means the process established by the Allocation Determination for allocating spectrum licences in the 3.6 GHz band;
- b. **claim** means any prosecution, claim, writ, action, proceeding, suit, demand, cause of action, arbitration, verdict, judgment, or other like matter whether present, prospective or contingent, whether arising in contract, tort (including negligence), in equity, under statute, or otherwise, and whether or not the facts, matters or circumstances giving rise to any such claim or other matter are known as at the date of this Deed;
- c. **Commonwealth** means the Crown in right of the Commonwealth and all departments, agencies and authorities of the Commonwealth.

29.3 In this Deed:

- a. words importing a gender include any other gender;
- b. words in the singular number include the plural and words in the plural number include the singular;
- c. a person includes a body corporate;
- d. a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth of Australia as amended or replaced from time to time;
- e. '**ACMA**' includes the members, officers, employees, agents, contractors, subcontractors, associates and delegates of the ACMA;
- f. '**including**' and similar expressions are not words of limitation;
- g. headings are for convenience only and do not form part of this Deed or affect its interpretation; and

- h. a provision of this Deed must not be construed to the disadvantage of the ACMA or the Commonwealth merely because the ACMA or the Commonwealth was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

**30. No variation of Deed**

- 30.1 The Applicant acknowledges and agrees that there can be no variation of this Deed unless it is in writing and the Commonwealth (represented by the ACMA) consents in writing to the variation.

## Executed as a Deed

### Where the Deed is executed by a body corporate:

Signed, sealed and delivered:

For and on behalf of:

---

Name of Applicant

---

ACN, ABN or ARBN

by authority of the directors:

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Name of director

---

Signature of director

---

Name of director/secretary

---

Signature of director/secretary

(If the Applicant is a statutory authority or other body corporate, then please execute in the appropriate manner for a Deed.)

**OR**

### Where the Deed is executed by an individual:

Signed, sealed and delivered by:

---

Name of Applicant

---

Signature of Applicant

in the presence of:

---

Name of witness

---

Signature of witness

## Form 3—Deed of Confidentiality

For the purposes of Part 3 and sections 29 and 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

### Notes on completion

#### Introduction

This deed of confidentiality form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(h) of the Allocation Determination.

Paragraph 29(1)(c) of the Allocation Determination provides that a person who applies to become a registered bidder in the auction must give the ACMA a completed deed of confidentiality before the application deadline.

Section 35 of the Allocation Determination provides that a person who submits a new application under section 35 must give the ACMA a completed deed of confidentiality form.

Subsections 22(1) and 22(2) of the Allocation Determination provide that a related person of an applicant or bidder, or a contractor of an applicant or bidder, who has knowledge of the applicant's or bidder's confidential information must give the ACMA a completed deed of confidentiality. In the case of a related person, this obligation only applies if the person is either:

- > an employee of the applicant or bidder; or
- > an employee of a related body corporate of the applicant or bidder that provides services to the applicant or bidder.

This deed of confidentiality must be used by:

- > applicants for the purposes of section 29 of the Allocation Determination;
- > related persons of an applicant or bidder who are employees of the applicant or bidder or of a related body corporate that provides services to the applicant or bidder, and contractors of the applicant or bidder, for the purposes of section 22 of the Allocation Determination;
- > new applicants for the purposes of section 35 of the Allocation Determination.

#### When to give the deed of confidentiality to the ACMA

Where an applicant gives a deed of confidentiality to the ACMA for the purposes of section 29 of the Allocation Determination, this must be done before the application deadline. An application is incomplete if the applicant fails to give a deed of confidentiality before the application deadline. The application deadline is published by the ACMA on its website and in the *Auction guide*.

Where a deed of confidentiality is given to the ACMA by a related person of an applicant or bidder who is an employee, or by a contractor of an applicant or bidder, for the purposes of section 22 of the Allocation Determination, and the related person or contractor receives knowledge of an applicant's confidential information before the application deadline, the completed deed must be given to the ACMA before the application deadline. Otherwise, this deed must be given to the ACMA as soon as reasonably practicable after the related person or contractor receives knowledge of an applicant's or bidder's confidential information.

## **How to give the deed of confidentiality to the ACMA**

The deed of confidentiality must be given to the ACMA in accordance with the procedures for the giving documents to the ACMA as set out in section 7 of the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the auction forms booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is given by email or fax.

## **Who should execute the deed of confidentiality?**

Where the ACMA receives a deed of confidentiality from an applicant that is a body corporate, or from a contractor of an applicant or bidder that is a body corporate, it must be executed by either:

- > two directors of the company; or
- > a director and a company secretary of the company; or
- > if it is a proprietary company that has a sole director who is also the company secretary, that director.

Where the ACMA receives a deed of confidentiality from an applicant who is an individual person, from a related person of an applicant or bidder who is an employee, or from a contractor of an applicant or bidder who is an individual, it must be executed by that individual.

## **Who can witness the deed of confidentiality?**

Where the deed of confidentiality is executed by an individual, this must be witnessed by a person who is above the age of 18 and is not a party to the deed. The witness must print their full name next to their signature.

# Deed of Confidentiality

This Deed of Confidentiality is made on this

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Day / Month / Year

in favour of the Commonwealth of Australia (the Commonwealth) for the benefit of the Australian Communications and Media Authority, ABN 55 386 169 386, (the ACMA) established under the *Australian Communications and Media Authority Act 2005*,

by the Confidant:

---

Insert name

---

Insert ACN or ARBN if applicable

of:

---

Insert address

as:

- ☐ an applicant who proposes to participate in the auction
- ☐ a related person of the following applicant who proposes to participate in the auction

---

insert name of applicant as it appears in Part 1 of the application form submitted by the applicant.

- ☐ a related person of the following bidder who is registered as a bidder in the auction

---

insert name of bidder as it is to appear on the register of bidders maintained by the ACMA.

- ☐ a contractor of the following applicant who proposes to participate in the auction

---

insert name of applicant as it appears in Part 1 of the application form submitted by the applicant.

- ☐ a contractor of the following bidder who is registered as a bidder in the auction

---

insert name of bidder as it is to appear on the register of bidders maintained by the ACMA.

## Purpose:

- A. The ACMA proposes to allocate spectrum licences in the 3.6 GHz band by auction.
- Under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act), the ACMA has determined the procedures to be applied in allocating spectrum licences, and fixed the spectrum access charge payable for issuing those licences, as set out in the Allocation Determination.
- B. The Confidant is:
- (i) an applicant who proposes to participate in the auction of spectrum lots held in accordance with the Allocation Determination; or
  - (ii) a related person of either an applicant or a bidder, to whom section 22 of the Allocation Determination applies; or
  - (iii) a contractor of either an applicant or a bidder, to whom section 22 of the Allocation Determination applies.
- C. Disclosure of an applicant's or bidder's confidential information about the auction by an applicant, a bidder, a related person or contractor may severely damage the allocation process and the allocation of spectrum licences.
- D. An applicant's or bidder's confidential information about the auction must not be disclosed to any person except as authorised by subsections 18(2) or (3) of the Allocation Determination.
- E. The Confidant provides this Deed for the purposes of, and in accordance with, Part 3 and sections 29 and 35 of the Allocation Determination, as applicable.

## Operative part

### 1. Information to be kept confidential

- 1.1 The Confidant acknowledges and understands that **confidential information** in relation to an applicant or bidder means:
- a. documents the applicant or bidder has given to the ACMA for the purpose of the auction;
  - b. information provided to the bidder under section 41 of the Allocation Determination for the purpose of the bidder participating in an auction;
  - c. a start demand of the bidder for a clock round of the primary stage;
  - d. a posted demand of the bidder for a clock round of the primary stage;
  - e. a bid made by the bidder in the auction;
  - f. a bid proposed to be made by the applicant or bidder or a bid under consideration by the applicant or bidder;
  - g. a proposed start demand by the applicant or bidder for the first clock round of the primary stage or a proposed start demand under consideration by the applicant or bidder for the first clock round of the primary stage;
  - h. the applicant's or bidder's bidding strategy;
  - i. the amount the applicant or bidder is willing to pay for a lot or combination of lots or for a part or parts of the spectrum;
  - j. information that, if disclosed, could be reasonably expected to affect or be capable of affecting either:
    - i. bids made or proposed to be made by another applicant or bidder; or
    - ii. start demands for the first clock round of the primary stage or proposed start demands for the first clock round of the primary stage by another applicant or bidder; or
    - iii. another applicant's or bidder's bidding strategy;
  - k. information that, if disclosed, could be reasonably expected to affect or be capable of affecting the outcome of the auction.

- 1.2 The Confidant acknowledges and understands that it must not directly or indirectly disclose the applicant's or bidder's confidential information to any person in accordance with section 18 of the Allocation Determination except as set out in clause 1.3 of this Deed or subsections 18(2) and 18(3) of the Allocation Determination.
- 1.3 The Confidant may disclose confidential information about the allocation process:
- a. for the purpose of obtaining advice relating to the allocation process from a person in the person's professional capacity;
  - b. for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction;
  - c. to the ACMA;
  - d. if the Confidant is an applicant or bidder—to a related person or contractor of the Confidant;
  - e. if the Confidant is a related person or contractor of an applicant or bidder—to the applicant or bidder, or to another related person of the same applicant or bidder;
  - f. as authorised by the Allocation Determination or as otherwise required by law; or
  - g. if the confidential information is already publicly available, and the information was not made available because of a breach of section 18 of the Allocation Determination.
- 1.4 The Confidant agrees, not to disclose confidential information, in accordance with the obligation in section 18, until:
- a. the bidder is notified under section 56 of the Allocation Determination that it is not a winning bidder;
  - b. the applicant, as a withdrawn applicant, is notified under section 57 of the Allocation Determination that the applicant's confidentiality obligation is at an end; or
  - c. the bidder, as a winning bidder, makes a statement about affiliations under section 58 of the Allocation Determination.

## 2. No variation

- 2.1 The Confidant acknowledges and agrees that there can be no variation of this Deed.

## 3. Governing law and jurisdiction

- 3.1 This Deed is governed by the laws in force in the Australian Capital Territory.
- 3.2 The Confidant irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

## 4. Interpretation

- 4.1 In this Deed, unless the contrary intention appears:

**ACMA** means the Australian Communications and Media Authority.

**Allocation Determination** means the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

**applicant** has the same meaning as specified in the Allocation Determination and, if the Confidant is not the applicant, means the applicant for whom the Confidant is a related person or contractor.

**auction** has the same meaning as specified in the Allocation Determination.

**bidder** has the same meaning as specified in the Allocation Determination and, if the Confidant is not the bidder, means the bidder for whom the Confidant is a related person or contractor.

**confidential information** has the same meaning as specified in the Allocation Determination.



**Deed** means this document, including any schedule or annexure to it and has the same interpretation as specified in the Allocation Determination.

**lot** has the same meaning as specified in the Allocation Determination.

**register** means the register of bidders maintained by the ACMA under section 40 of the Allocation Determination.

**related person** has the same meaning as specified in the Allocation Determination.

## Executed as a Deed

### Where the Deed is executed by a body corporate:

Signed, sealed and delivered:

For and on behalf of:

---

Name of Confidant

---

ACN or ARBN

by authority of the Directors:

---

Name of Director

---

Signature of Director

---

Name of Director/Secretary

---

Signature of Director/Secretary

(If the Confidant is a statutory authority or other body corporate, then please execute in the appropriate manner for a Deed.)

**OR**

### Where the Deed is executed by an individual:

Signed, sealed and delivered by:

---

Name of Confidant

---

Signature of Confidant

in the presence of:

---

Name of witness

---

Signature of witness

## Form 4—Statutory declaration about affiliations

For the purposes of section 32 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Notes on completion

#### Introduction

This statutory declaration form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(k) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

This form should be used by applicants for the purposes of subsection 32(1) of the Allocation Determination.

Subsection 32(1) of the Allocation Determination provides that, after the application deadline, the ACMA must:

- > give each applicant details about the identity of all other applicants, the persons identified as the associates of other applicants, and all existing relevant band licensees, other than an existing relevant band licensee who is either an applicant or identified as an associate of an applicant; and
- > ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant or with an existing relevant band licensee and, if so, identifying the other applicant or existing relevant band licensee and giving details of the affiliation.

Information about existing relevant band licensees can be obtained from the ACMA's Register of Radiocommunications Licences. For the purposes of the Allocation Determination and this form, an 'existing relevant band licensee' is the licensee of a spectrum licence that authorises the operation of radiocommunications devices in a part or parts of the spectrum from 3400 MHz to 3700 MHz, or the licensee of a PTS licence for a PMTS Class B service (within the meaning given to those expressions by the Radiocommunications (Interpretation) Determination 2015) that authorises the operation of radiocommunications devices in a part or parts of the spectrum from 3400 MHz to 3700 MHz.

#### When to make the statutory declaration

The ACMA will state the lodgement deadline when it asks an applicant to make the statutory declaration. The deadline will be at least five working days after the date of the request.

## How to give the statutory declaration to the ACMA

The statutory declaration must be given to the ACMA in accordance with the procedures for giving documents to the ACMA set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is given by email or fax.

## Who should make the statutory declaration?

Where the ACMA receives a statutory declaration from an applicant that is a body corporate, it must be made by a director or secretary of the body corporate.

Where the ACMA receives a statutory declaration from an applicant who is an individual person, it must be made by that individual.

## Who can witness the statutory declaration?

A statutory declaration made under the *Statutory Declarations Act 1959* must be made before:

1. **a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in one of the following occupations:**
  - > Chiropractor
  - > Dentist
  - > Legal practitioner
  - > Medical practitioner
  - > Nurse
  - > Optometrist
  - > Patent attorney
  - > Pharmacist
  - > Physiotherapist
  - > Psychologist
  - > Trade marks attorney
  - > Veterinary surgeon
2. **a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or**
3. **a person who is in the following list:**
  - > Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
  - > Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
  - > Bailiff
  - > Bank officer with five or more continuous years of service
  - > Building society officer with five or more years of continuous service
  - > Chief executive officer of a Commonwealth court
  - > Clerk of a court

- > Commissioner for Affidavits
- > Commissioner for Declarations
- > Credit union officer with five or more years of continuous service
- > Employee of the Australian Trade and Investment Commission who is:
  - > in a country or place outside Australia; and
  - > authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
  - > exercising his or her function in that place
- > Employee of the Commonwealth who is:
  - > in a country or place outside Australia; and
  - > authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
  - > exercising his or her function in that place
- > Fellow of the National Tax Accountants' Association
- > Finance company officer with five or more years of continuous service
- > Holder of a statutory office not specified in another item in this list
- > Judge of a court
- > Justice of the Peace
- > Magistrate
- > Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
- > Master of a court
- > Member of Chartered Secretaries Australia
- > Member of Engineers Australia, other than at the grade of student
- > Member of the Association of Taxation and Management Accountants
- > Member of the Australian Defence Force who is:
  - > an officer; or
  - > a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with five or more years of continuous service; or
  - > a warrant officer within the meaning of that Act
- > Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the Institute of Public Accountants
- > Member of:
  - > the Parliament of the Commonwealth; or
  - > the Parliament of a State; or
  - > a Territory legislature; or
  - > a local government authority of a State or Territory
- > Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
- > Notary public
- > Permanent employee of the Australian Postal Corporation with five or more years of continuous service who is employed in an office supplying postal services to the public

- > Permanent employee of:
  - > the Commonwealth or a Commonwealth authority; or
  - > a State or Territory, or a State or Territory authority; or
  - > a local government authority;with five or more years of continuous service who is not specified in another item in this list
- > Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- > Police officer
- > Registrar, or Deputy Registrar, of a court
- > Senior Executive Service employee of:
  - > the Commonwealth or a Commonwealth authority; or
  - > a State or Territory, or a State or Territory authority
- > Sheriff
- > Sheriff's officer
- > Teacher employed on a full-time basis at a school or tertiary education institution
- > Member of the Australasian Institute of Mining and Metallurgy.

# Commonwealth of Australia statutory declaration

## *Statutory Declarations Act 1959*

I,

---

Name of person making the declaration

---

Occupation of person making the declaration

---

Address of person making the declaration

make the following declaration under the *Statutory Declarations Act 1959*:

1. I am a:

---

where applicant is a body corporate, insert 'director' or 'secretary' as appropriate;  
otherwise, leave blank

of:

---

insert name of applicant as it appears in Part 1 of the application form  
submitted by the Applicant under section 29 of the Radiocommunications (Spectrum Licence  
Allocation – 3.6 GHz Band) Determination 2018

which is the 'Applicant' under section 29 of the Radiocommunications (Spectrum Licence  
Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination).

2. I have fully read and understand the provisions set out in Part 2 of the Allocation Determination, including the meaning of 'associate' in section 13 of the Allocation Determination and the meaning of 'affiliated' in sections 14 and 15 of the Allocation Determination.
3. I have examined the details given to the Applicant by the Australian Communications and Media Authority (the ACMA) in accordance with paragraphs 32(1)(a) and (b) of the Allocation Determination, about the identities of all other applicants, persons identified as associates of other applicants and existing relevant band licensees (within the meaning given that term by the Allocation Determination).
4. I have made my own reasonable inquiries into the identities of the associates of the Applicant, and into whether the Applicant is affiliated with any other applicant or existing relevant band licensee.

5. In response to the request made by the ACMA in accordance with paragraph 32(1)(c) of the Allocation Determination, I declare that the Applicant (tick the appropriate boxes):

In relation to other applicants

- ☐ **is not** affiliated with another applicant named in the details provided by the ACMA.
- ☐ **is** affiliated with another applicant named in the details provided by the ACMA;

In relation to existing relevant band licensees

- ☐ **is not** affiliated with an existing relevant band licensee named in the details provided by the ACMA.
- ☐ **is** affiliated with an existing relevant band licensee named in the details provided by the ACMA.

The other applicant(s) and/or existing relevant band licensee(s) with whom the Applicant is affiliated is/are:

---

Insert name of applicant(s) and/or existing relevant band licensee(s)

---

---

Insert address of applicant(s) and/or existing relevant band licensee(s)

---

The details of the affiliation(s) are as follows:

---

describe why the Applicant's relationship with the other applicant(s) and/or existing relevant band licensee(s) falls within the meaning of 'affiliated' in sections 14 and 15 of the Allocation Determination, with reference to section 13 of the Allocation Determination, as appropriate

---



I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959* and I believe that the statements in this declaration are true in every particular.

---

signature of person making the declaration

Declared at:

---

Place

On:

---

Day / Month / Year

Before me,

---

signature of person before whom the declaration is made

---

full name of person before whom the declaration is made (in printed letters)

---

qualification of person before whom the declaration is made (in printed letters)

---

---

address of person before whom the declaration is made (in printed letters)

**Note 1** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of four years—see section 11 of the *Statutory Declarations Act 1959*.

**Note 2** Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*.

## Form 5—Statutory declaration about affiliations

For the purposes of section 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Notes on completion

#### Introduction

This statutory declaration form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(k) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

This form should be used by new applicants for the purposes of subsection 35(5) of the Allocation Determination.

Subsection 35(3) of the Allocation Determination provides that, after receiving a new application from a new applicant under subsection 35(2), the ACMA must give each applicant (including the new applicant) updated details about the identity of all other applicants and the persons identified as the associates of other applicants.

Paragraph 35(5)(c) of the Allocation Determination provides that a new applicant must, after receiving the updated details about the identity of all other applicants and the persons identified as the associates of other applicants, give the ACMA a statutory declaration stating that the new applicant is not affiliated with any other applicant and whether the applicant is affiliated with an existing relevant band licensee.

Information about existing licensees can be obtained from the ACMA's Register of Radiocommunications Licences. For the purposes of the Allocation Determination and this form, an 'existing relevant band licensee' is the licensee of a spectrum licence that authorises the operation of radiocommunications devices in a part or parts of the spectrum from 3400 MHz to 3700 MHz, or the licensee of a PTS licence for a PMTS Class B service (within the meaning given to those expressions by the Radiocommunications (Interpretation) Determination 2015) that authorises the operation of radiocommunications devices in a part or parts of the spectrum from 3400 MHz to 3700 MHz.

#### When to make the statutory declaration

The statutory declaration must be given to the ACMA no later than three working days after the ACMA gives the new applicant the updated details about the identities of all other applicants and the persons identified as their associates (or, if the ACMA agrees to a later time, by the agreed time).

## How to give the statutory declaration to the ACMA

The statutory declaration must be given to the ACMA in accordance with the procedures for giving documents to the ACMA set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is given by email or fax.

## Who should make the statutory declaration?

As the statutory declaration must be made by an applicant that is a body corporate, it must be made by a director or secretary of the body corporate.

## Who can witness the statutory declaration?

A statutory declaration made under the *Statutory Declarations Act 1959* must be made before:

1. a person who, under a law in force in a State or Territory, is currently licensed or registered to practise in one of the following occupations:
  - > Chiropractor
  - > Dentist
  - > Legal practitioner
  - > Medical practitioner
  - > Nurse
  - > Optometrist
  - > Patent attorney
  - > Pharmacist
  - > Physiotherapist
  - > Psychologist
  - > Trade marks attorney
  - > Veterinary surgeon
2. a person who is enrolled on the roll of the Supreme Court of a State or Territory, or the High Court of Australia, as a legal practitioner (however described); or
3. a person who is in the following list:
  - > Agent of the Australian Postal Corporation who is in charge of an office supplying postal services to the public
  - > Australian Consular Officer or Australian Diplomatic Officer (within the meaning of the *Consular Fees Act 1955*)
  - > Bailiff
  - > Bank officer with five or more years of continuous service
  - > Building society officer with five or more years of continuous service
  - > Chief executive officer of a Commonwealth court
  - > Clerk of a court
  - > Commissioner for Affidavits
  - > Commissioner for Declarations

- > Credit union officer with five or more years of continuous service
- > Employee of the Australian Trade and Investment Commission who is:
  - > in a country or place outside Australia; and
  - > authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
  - > exercising his or her function in that place
- > Employee of the Commonwealth who is:
  - > in a country or place outside Australia; and
  - > authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
  - > exercising his or her function in that place
- > Fellow of the National Tax Accountants' Association
- > Finance company officer with five or more years of continuous service
- > Holder of a statutory office not specified in another item in this list
- > Judge of a court
- > Justice of the Peace
- > Magistrate
- > Marriage celebrant registered under Subdivision C of Division 1 of Part IV of the *Marriage Act 1961*
- > Master of a court
- > Member of Chartered Secretaries Australia
- > Member of Engineers Australia, other than at the grade of student
- > Member of the Association of Taxation and Management Accountants
- > Member of the Australian Defence Force who is:
  - > an officer; or
  - > a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with five or more years of continuous service; or
  - > a warrant officer within the meaning of that Act
- > Member of the Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or the Institute of Public Accountants
- > Member of:
  - > the Parliament of the Commonwealth; or
  - > the Parliament of a State; or
  - > a Territory legislature; or
  - > a local government authority of a State or Territory
- > Minister of religion registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*
- > Notary public
- > Permanent employee of the Australian Postal Corporation with five or more years of continuous service who is employed in an office supplying postal services to the public

- > Permanent employee of:
  - > the Commonwealth or a Commonwealth authority; or
  - > a State or Territory, or a State or Territory authority; or
  - > a local government authority;with five or more years of continuous service who is not specified in another item in this list
- > Person before whom a statutory declaration may be made under the law of the State or Territory in which the declaration is made
- > Police officer
- > Registrar, or Deputy Registrar, of a court
- > Senior Executive Service employee of:
  - > the Commonwealth or a Commonwealth authority; or
  - > a State or Territory, or a State or Territory authority
- > Sheriff
- > Sheriff's officer
- > Teacher employed on a full-time basis at a school or tertiary education institution
- > Member of the Australasian Institute of Mining and Metallurgy.

# Commonwealth of Australia statutory declaration

## *Statutory Declarations Act 1959*

I,

---

Name of person making the declaration

---

Occupation of person making the declaration

---

---

Address of person making the declaration

make the following declaration under the *Statutory Declarations Act 1959*:

1. I am a:

---

insert 'director' or 'secretary' as appropriate

of:

---

insert name of new applicant as it appears in Part 1 of the application form submitted by the Applicant under subsection 35(2) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018

which is the 'new applicant' under section 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination).

2. I have fully read and understand the provisions set out in Part 2 of the Allocation Determination, including the meaning of 'associate' in section 13 of the Allocation Determination and the meaning of 'affiliated' in sections 14 and 15 of the Allocation Determination.
3. I have examined the updated details given to the new applicant by the Australian Communications and Media Authority (the ACMA) in accordance with subsection 35(3) of the Allocation Determination, about the identities of all other applicants and persons identified as associates of other applicants.
4. I have made my own reasonable inquiries into the identities of the associates of the new applicant, and into whether the new applicant is affiliated with any other applicant or existing relevant band licensee (within the meaning given that term by the Allocation Determination).

5. In accordance with paragraph 35(5)(c) of the Allocation Determination, I declare that the new applicant is not affiliated with another applicant named in the updated details provided by the ACMA.

6. In accordance with paragraph 35(5)(c) of the Allocation Determination, I declare that the Applicant (tick the appropriate boxes):

☐ **is not affiliated with an existing relevant band licensee.**

☐ **is affiliated with an existing relevant band licensee.**

The existing relevant band licensee(s) with whom the Applicant is affiliated is/are:

---

Insert name of existing relevant band licensee(s)

---

---

Insert address of existing relevant licensee(s)

---

The details of the affiliation(s) are as follows:

---

---

describe why the Applicant's relationship with the existing relevant band licensee(s) falls within the meaning of 'affiliated' in section 15 of the Allocation Determination, with reference to section 13 of the Allocation Determination, as appropriate

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

---

signature of person making the declaration

Declared at:

---

Place

On:

---

Day / Month / Year

Before me,

---

signature of person before whom the declaration is made

---

full name of person before whom the declaration is made (in printed letters)

---

qualification of person before whom the declaration is made (in printed letters)

---

---

address of person before whom the declaration is made (in printed letters)

**Note 1** A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of four years—see section 11 of the *Statutory Declarations Act 1959*.

**Note 2** Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*.



## Form 6—Deed of financial security

For the purposes of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Notes on completion

#### Introduction

This deed of financial security form has been approved by the Australian Communications and Media Authority (the ACMA) pursuant to paragraph 27(1)(m) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Declaration).

Sections 29 and 38 of the Allocation Determination provide that an applicant must, before the eligibility deadline, secure its initial eligibility points by:

- > making an eligibility payment of an amount to the ACMA on behalf of the Commonwealth; or
- > giving the ACMA on behalf of the Commonwealth a deed of financial security, which has been completed in the approved form and executed, for an amount; or
- > making an eligibility payment of part of an amount and giving a deed of financial security for the remainder.

Under section 35, an applicant may also give a deed of financial security.

Applicants must use this deed of financial security form for the purposes of sections 29, 35 and 38 of the Allocation Determination where they propose to give the ACMA a deed of financial security for all or part of an amount. Section 38 contains further requirements in relation to the deed of financial security.

#### Who can be the Promisor

The Promisor who makes a deed of financial security must be one of the following:

- > an authorised deposit-taking institution within the meaning given by the *Banking Act 1959*;
- > a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*;
- > a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.

## Working out the amount secured by the deed of financial security

The information needed to calculate the amount secured by the deed of financial security (that is, the amount to be inserted at clause 1.1 of the deed) is included in the eligibility nomination form.

The amount required to be secured by the deed of financial security is the amount calculated by reference to:

- > the number of initial eligibility points specified by the applicant in the eligibility nomination form multiplied by the dollar value of each initial eligibility point for the primary stage of the auction set by the ACMA under paragraph 28(1)(a) of the Allocation Determination,
- > less any eligibility payment made by the applicant to the ACMA on behalf of the Commonwealth under paragraph 29(2)(b), subsection 35(6) or section 38 of the Allocation Determination.

The amount inserted in clause 1.1 of the deed of financial security must be the same as the amount inserted by the applicant at Option 1 of Part 4 of the eligibility nomination form.

## When to give the deed of financial security to the ACMA

If a deed of financial security is given to the ACMA for the purposes of section 29 of the Allocation Determination, it must be given to the ACMA before the eligibility deadline. If section 35 applies, the deed of financial security must be given to the ACMA before the eligibility deadline or, if the ACMA agrees to a later time, the agreed time. An applicant is taken to have withdrawn the application if the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline or the later time (if applicable). The eligibility deadline is included in the *Auction guide*.

## How to give the deed of financial security

The deed of financial security must be given to the ACMA in accordance with the procedures for giving documents set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for the lodgements) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is lodged by email or fax.

Additional procedures apply in relation to giving a deed of financial security. Where a deed of financial security is given to the ACMA by email or fax before the eligibility deadline, the original document must be received by the ACMA no later than three working days after the eligibility deadline (or, if the ACMA agrees to a later time, by the agreed time) for the deed to be taken to have been given to the ACMA.

## Who should execute and witness the deed of financial security?

A deed of financial security must be executed by:

- > an authorised deposit-taking institution within the meaning given by the *Banking Act 1959*;
- > a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*;
- > a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*.

An applicant is taken to have withdrawn its application if the ACMA is not satisfied that the person executing the deed of financial security is such a person.

Where the deed is executed by a body corporate, it must be executed by:

- > two directors;
- > a director and a company secretary;
- > if it is a proprietary company that has a sole director who is also the company secretary, that director; or
- > a person acting under a power of attorney for a body corporate.

If the deed is executed by a person acting under a power of attorney for a body corporate:

- > the applicant must give the ACMA a copy of the power of attorney with the deed; and
- > the execution of the deed must be witnessed by a person who is above the age of 18 and is not a party to the deed.

# Deed of financial security

This deed of financial security is made on this

\_\_\_\_\_ 2018  
day of month

in favour of the Commonwealth of Australia (the Commonwealth) to the benefit of the Australian Communications and Media Authority, ABN 55 386 169 386, (the ACMA) established under the *Australian Communications and Media Authority Act 2005*,

by:

\_\_\_\_\_  
Insert name

\_\_\_\_\_  
Insert ACN or ARBN if applicable

of:

\_\_\_\_\_

\_\_\_\_\_  
Insert address

(the Promisor) in relation to the allocation of spectrum licences, and an application for registration as a bidder in an auction, under the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination).

On behalf of the Applicant:

\_\_\_\_\_  
Insert name

\_\_\_\_\_  
Insert ACN or ARBN if applicable

of:

\_\_\_\_\_

\_\_\_\_\_  
Insert address

## Purpose:

- A. The ACMA has made the Allocation Determination under subsections 60(1) and 294(1) of the *Radiocommunications Act 1992*.
- B. The Applicant has given, or intends to give, the ACMA an application form under the Allocation Determination and proposes to be registered as a bidder in the auction.
- C. The Promisor provides this deed of financial security for the purposes of, and in accordance with, section 29, section 35 or section 38 of the Allocation Determination.
- D. In giving this Deed, the Promisor relies solely on its own judgment and does not rely on any representations or warranties made to it or to any other person by the ACMA or the Commonwealth.

### 1. Financial undertaking

- 1.1 The Promisor unconditionally and irrevocably undertakes and covenants to pay to the ACMA on behalf of the Commonwealth immediately on demand in writing, without reference to the Applicant, and notwithstanding any notice given by the Applicant not to pay the same, and irrespective of the performance or non-performance by the Applicant under the Allocation Determination, any sum or sums which may from time to time be demanded in writing by the ACMA on behalf of the Commonwealth of a dollar amount not exceeding the Amount in aggregate. The Amount is:

Insert amount

\$
----

- 1.2 The Promisor is not to make any inquiry as to the grounds of the ACMA's demand under clause 1.1.
- 1.3 The Promisor's obligations under this Deed are continuing obligations and continue in full force and effect until either:
- a. the Chair of the ACMA, by written notice to the Promisor, has cancelled the undertaking under clause 1.1; or
  - b. the Promisor has made payment to the ACMA on behalf of the Commonwealth of the whole of the Amount.
- 1.4 In addition to clause 1.1, the Promisor may, at any time in its discretion, pay unconditionally to the ACMA on behalf of the Commonwealth the whole of the amount referred to in clause 1.1 (or, if applicable, that whole amount less any amount already paid to the ACMA on behalf of the Commonwealth pursuant to this Deed), and in such circumstances:
- a. the Promisor's liability to pay under clause 1.1 is deemed to be fully satisfied; and
  - b. the Promisor, at and from the time of such payment, is deemed to have relinquished all rights and interests in the amount paid.

- 1.5 Any notice by the ACMA or the Commonwealth to the Promisor about this undertaking will be deemed to have been duly given or served if it is in writing and purports to be signed for and on behalf of the ACMA or the Commonwealth and is either delivered by hand or posted in a letter addressed to the Promisor at its above address. Any notice to the ACMA or the Commonwealth is to be deemed to have been duly given or served if it is in writing signed by or on behalf of the Promisor and is either delivered by hand or posted in a letter addressed to:

Auction Manager  
Major Spectrum Allocation Section  
Australian Communications and Media Authority  
Red Building, Benjamin Offices, Chan Street  
Belconnen ACT 2617

## **2. No discharge**

- 2.1 Neither the Promisor's obligations under this Deed nor the binding effect of this Deed are in any way be affected, waived or impaired by any of the following:
- a. any furnishing to, or acceptance by, the ACMA or the Commonwealth of additional security;
  - b. any release by the Chair of the ACMA of any security (except this Deed);
  - c. any waiver, compromise, forbearance, abandonment, renewal, consent or other action or inaction or any exercise or non-exercise by the ACMA or the Commonwealth of any right, remedy or power (including the granting of any time or indulgence) with respect to the Promisor or the Applicant (whether with or without the consent of the Promisor);
  - d. any insolvency, bankruptcy, reorganisation, arrangement, composition, liquidation or dissolution of, or appointment of a liquidator and/or receiver, receiver and manager or administrator to, the Promisor or the Applicant;
  - e. any amendment of the Allocation Determination or deed of acknowledgement with or without the consent of the Promisor;
  - f. the Allocation Determination or the deed of acknowledgment, or both, being void or otherwise unenforceable in whole or in part; or
  - g. the revocation of the Allocation Determination or the termination of the deed of acknowledgment, or both.
- 2.2 For the avoidance of doubt, no variation to the terms of the Allocation Determination or deed of acknowledgment will increase the liability of the Promisor under this Deed without the Promisor's prior consent or confirmation.

## **3. Representations and warranties**

- 3.1 The Promisor represents and warrants that:
- a. it is one of the following:
    - i. an authorised deposit-taking institution, within the meaning of the *Banking Act 1959*;
    - ii. a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*;
    - iii. a Lloyd's underwriter authorised to carry on insurance business under Part VII of the *Insurance Act 1973*;
  - b. it is a duly organised and validly existing legal entity and it has the power and authority to execute and deliver this Deed and to carry out its terms and conditions; and

- c. the execution, delivery and performance by the Promisor of this Deed does not:
- i. contravene any law applicable to it; or
  - ii. contravene any provision of the Constitution, Charter, Memorandum or Articles of Association, or any instrument or law, constituting or defining the Promisor or for the governance of the Promisor.

#### **4. Severability**

- 4.1 If any provision of this Deed is invalid and not enforceable in accordance with its terms, all other provisions that are capable of separate enforcement without regard to the invalid provision are, and continue to be, valid and enforceable in accordance with their terms.

#### **5. Governing law and jurisdiction**

- 5.1 This Deed is to be construed and take effect in accordance with the laws in force in the Australian Capital Territory and the Commonwealth of Australia, and any dispute relating to the construction, meaning or effect of this Deed is governed by those laws.
- 5.2 The Promisor irrevocably submits to the jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.
- 5.3 The submission to the jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia is exclusive except in so far as the High Court of Australia has jurisdiction to hear any matter involving the ACMA or the Commonwealth.

#### **6. No variation**

- 6.1 The Promisor acknowledges and agrees that there can be no variation of this Deed.

#### **7. No assignment**

- 7.1 Neither the ACMA nor the Commonwealth may assign its rights under this Deed.

#### **8. Definitions and interpretation**

- 8.1 In this Deed:

**Allocation Determination** means the *Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018*.

**Amount** means the dollar amount specified in clause 1.1.

**auction** means the auction of spectrum lots held in accordance with the Allocation Determination.

**Deed** means this document, including any schedule or annexure to it.

**deed of acknowledgment** means the deed of acknowledgment in the form approved by the ACMA under paragraph 27(1)(g) of the Allocation Determination and executed by the Applicant.

**Promisor** means the person making this Deed.

## Executed as a deed

### Where the Deed is executed by a body corporate:

For and on behalf of:

---

Name of Promisor

---

ACN or ARBN

by authority of the directors:

---

Name of director

---

Signature of director

---

Name of director/secretary

---

Signature of director/secretary

**OR**



## Executed as a deed

### Where the Deed is executed by a person acting under a power of attorney for a body corporate:

Signed, sealed and delivered for and on behalf of:

---

Name of Promisor

---

ACN or ARBN

by:

---

Name of Attorney

---

Signature of Attorney

who is duly authorised by power of attorney

---

Insert number or date or other means of document identification

in the presence of

---

Name of witness

---

Signature of witness

**Note** If the Deed is executed by a person acting under a power of attorney for a body corporate, the Applicant must give the ACMA a copy of the power of attorney with the Deed; and the execution of the Deed must be witnessed by a person who is above the age of 18

## Form 7—Statement about affiliations for winning bidders

For the purposes of section 58 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Notes on completion

#### Introduction

This form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 27(1)(k) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

Subsection 58(1) of the Allocation Determination provides that, as soon as practicable after the end of the auction period, the ACMA must:

- > give each winning bidder details about the identity of all other winning bidders and all existing relevant band licensees; and
- > ask the bidder to make a statement whether the bidder is an affiliate of another winning bidder or of an existing relevant band licensee and, if so, identifying the other bidder or existing relevant band licensee and giving details of the affiliation.

This form should be used by winning bidders for the purposes of making a statement in accordance with section 58 of the Allocation Determination.

#### When to make the statement

The ACMA will state the deadline for making the statement about affiliations when it asks a winning bidder to make the statement. The deadline will be at least five working days after the date of the request.

#### How to give the statement to the ACMA

The statement must be given to the ACMA in accordance with the procedures for giving documents to the ACMA set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction Guide*. The procedures contain specific requirements where a document is given by email or fax.

#### Who should make the statement?

Where the ACMA receives a statement from a winning bidder that is a body corporate, it must be made by a director, secretary or authorised officer of the body corporate.

Where the ACMA receives a statement from a winning bidder who is an individual, it must be made by that individual.

**Who can witness the statement?**

The statement must be witnessed by a person who is above the age of 18.

# Statement about affiliations

I,

---

Name of person making the statement

---

Occupation of person making the statement

---

Address of person making the statement

make the following statement:

1. I am a/an:

---

where the winning bidder is a body corporate, insert 'director' or 'secretary' or 'authorised officer' as appropriate; otherwise, leave blank

of:

---

name of the winning bidder as it appears in the register of bidders maintained by the ACMA under section 40 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018

which is a 'winning bidder' for the purposes of section 58 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination).

2. I have fully read and understand the provisions set out in Part 2 and in Division 1 of Part 6 of the Allocation Determination, including the meaning of 'associate' in section 13 of the Allocation Determination and the meaning of 'affiliated' in sections 14 and 15 of the Allocation Determination.
3. I have examined the details given to the Winning Bidder by the Australian Communications and Media Authority (the ACMA) in accordance with subsection 58(1) of the Allocation Determination, about the identities of the other winning bidders in this allocation and all existing relevant band licensees (within the meaning given that term by the Allocation Determination).
4. I have made my own reasonable inquiries into the identities of the associates of the Winning Bidder, and into whether the Winning Bidder is affiliated with any other winning bidder at the auction and whether the Winning Bidder is affiliated with an existing relevant band licensee.

5. In response to the request made in accordance with paragraph 58(1)(b) of the Allocation Determination, I declare that the Winning Bidder (tick the appropriate box):

- ☐ **is not** affiliated with another winning bidder named in the details provided by the ACMA, or with an existing relevant band licensee.
- ☐ **is** affiliated with another winning bidder named in the details provided by the ACMA, or with an existing relevant band licensee.

The winning bidder or existing relevant band licensee with which the Winning Bidder is affiliated is/are:

---

Insert name of other winning bidder/existing relevant band licensee

---

---

Insert address of other winning bidder/existing relevant band licensee

---

The details of the affiliation(s) are as follows:

---

---

---

Describe why the winning bidder's relationship with the other winning bidder or existing relevant band licensee falls within the meaning of 'affiliated' in section 14 or section 15 of the Allocation Determination, with reference to section 13 of the Allocation Determination, as appropriate

I understand that a person who knowingly or recklessly makes a false or misleading statement in, or in connection with, an application for a licence is guilty of an offence under section 136.1 of the *Criminal Code*. I believe that the statements made in this document are true in every particular.

---

Signature of person making the statement

Made at:

---

Place

On:

---

Day / Month / Year

Before me,

---

Signature of person before whom the statement is made

---

Name of person before whom the statement is made (printed)

**Note** Part 7.4 of the *Criminal Code* applies to all offences in relation to false and misleading statements.

## Form 8—Associates form—body corporate

To be completed for the purposes of Part 4 of the application form: 'Details of the applicant's associates' where the applicant is a body corporate.

### Notes on completion

This template must be used by an applicant that is a body corporate to provide the information listed in Table 1 in Part 4 of the application form.

The applicant must complete the template by inserting, either electronically or in legible handwriting, the relevant information where prompted. Where there is insufficient space to provide information about all associates in a particular category, the applicant should copy and paste additional tables into the relevant part of the template, as necessary.

Applicants are reminded that Part 6 of the application form requires them to declare that they:

- > understand that a person who knowingly or recklessly makes a false or misleading statement in, or in connection with, an application for a licence is guilty of an offence under section 136.1 of the *Criminal Code*;
- > believe that the statements made in the application form and its attachments are true in every particular.

### Name of applicant

--

[Insert applicant's name as it appears in Part 1 of the application form]

## Part A: Directors and secretaries of the applicant (body corporate)

Insert the relevant information in the right-hand column of each table.

### Details of director or secretary #1

Name	
Position	
Registered office address or principal office address	

### Details of director or secretary #2

Name	
Position	
Registered office address or principal office address	

### Details of director or secretary #3

Name	
Position	
Registered office address or principal office address	

### Details of director or secretary #4

Name	
Position	
Registered office address or principal office address	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.



## Part B: Related bodies corporate

Insert the relevant information in the right-hand column of each table. The term 'related body corporate' is defined in sections 9 and 50 of the *Corporations Act 2001*.

### Details of related body corporate #1

Name	
ACN/ARBN	
Registered office address or principal office address	
Why the associate meets the definition of a 'related body corporate'	

### Details of related body corporate #2

Name	
ACN/ARBN	
Registered office address or principal office address	
Why the associate meets the definition of a 'related body corporate'	

### Details of related body corporate #3

Name	
ACN/ARBN	
Registered office address or principal office address	
Why the associate meets the definition of a 'related body corporate'	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

## Part C: Directors and secretaries of related bodies corporate

Insert the relevant information in the right-hand column of each table. The term 'related body corporate' is defined in sections 9 and 50 of the *Corporations Act 2001*.

### Details of director or secretary #1

Name	
Position	
Name and ACN of the related body corporate	
Registered office address or principal office address	

### Details of director or secretary #2

Name	
Position	
Name and ACN of the related body corporate	
Registered office address or principal office address	

### Details of director or secretary #3

Name	
Position	
Name and ACN of the related body corporate	
Registered office address or principal office address	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

**Part D: Individuals who control at least 15% of the voting power or hold at least 15% of the issued shares in the applicant**

Insert the relevant information in the right-hand column of each table.

Details of individual #1

Name	
Address	

Details of individual #2

Name	
Address	

Details of individual #3

Name	
Address	

Details of individual #4

Name	
Address	

Details of individual #5

Name	
Address	

Details of individual #6

Name	
Address	

**Part E: Each person who has a relevant agreement with the applicant that is of a type described in paragraph 13(1)(c) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination)**

Insert the relevant information in the right-hand column of each table. The term 'relevant agreement' is defined in subsection 13(2) of the Allocation Determination.

Details of person #1

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Details of person #2

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Details of person #3

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

## Form 9—Associates form—individuals

To be completed for the purposes of Part 4 of the application form: 'Details of the applicant's associates' where the applicant is an individual.

### Notes on completion

This template must be used by an applicant that is an individual, to provide the information listed in Table 2 in Part 4 of the application form.

The applicant must complete the template by inserting, either electronically or in legible handwriting, the relevant information where prompted. Where there is insufficient space to provide information about all associates in a particular category, the applicant should copy and paste additional tables into the relevant part of the template, as necessary.

Applicants are reminded that Part 6 of the application form requires them to declare that they:

- > understand that a person who knowingly or recklessly makes a false or misleading statement in, or in connection with, an application for a licence is guilty of an offence under section 136.1 of the *Criminal Code*
- > believe that the statements made in the application form and its attachments are true in every particular.

### Name of applicant

--

[Insert applicant's name as it appears in Part 1 of the application form]

## Part A: Applicant's spouse or de facto partner

Insert the relevant information in the right-hand column of the table. The term 'de facto partner' has the meaning given by section 2D of the *Acts Interpretation Act 1901*.

### Details of the spouse or de facto partner

Name	
Address	

**Part B: Bodies corporate in which the applicant controls at least 15% of the voting power or holds at least 15% of the issued shares**

Insert the relevant information in the right-hand column of each table.

Details of body corporate #1

Name	
ACN/ARBN	
Registered office address or principal office address	

Details of body corporate #2

Name	
ACN/ARBN	
Registered office address or principal office address	

Details of body corporate #3

Name	
ACN/ARBN	
Registered office address or principal office address	

Details of body corporate #4

Name	
ACN/ARBN	
Registered office address or principal office address	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.



## Part C: Bodies corporate of which the applicant is a director or secretary

Insert the relevant information in the right-hand column of each table.

### Details of body corporate #1

Name	
ACN/ARBN	
Registered office address or principal office address	

### Details of body corporate #2

Name	
ACN/ARBN	
Registered office address or principal office address	

### Details of body corporate #3

Name	
ACN/ARBN	
Registered office address or principal office address	

### Details of body corporate #4

Name	
ACN/ARBN	
Registered office address or principal office address	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

**Part D: Related bodies corporate in relation to a body corporate of which the applicant is a director or secretary**

Insert the relevant information in the right-hand column of each table. The term 'related body corporate' is defined in sections 9 and 50 of the *Corporations Act 2001*.

Details of related body corporate #1

Name	
ACN/ARBN	
Registered office address or principal office address	
Why the associate meets the definition of a 'related body corporate'	

Details of related body corporate #2

Name	
ACN/ARBN	
Registered office address or principal office address	
Why the associate meets the definition of a 'related body corporate'	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

**Part E: Each person who has a relevant agreement with the applicant that is of a type described in paragraph 13(1)(c) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (the Allocation Determination)**

Insert the relevant information in the right-hand column of each table. The term 'relevant agreement' is defined in subsection 13(2) of the Allocation Determination.

Details of person #1

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Details of person #2

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Details of person #3

Name	
ACN/ARBN (if applicable)	
Address (if the person is a body corporate, enter the person's registered office or principal office address)	
Nature of the agreement	

Applicants should copy and paste additional tables here as necessary to provide details of all associates that fall within this category.

## Form 10—Eligibility nomination form

For the purposes of sections 29 and 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

### Introduction

This eligibility nomination form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to subsection 28(2) of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (Allocation Determination).

Subsections 29(2) and 35(6) of the Allocation Determination provide that an applicant is required to give the ACMA a completed eligibility nomination form, which:

- (a) specifies the number of lots of each product wanted by the applicant as valid start demands of the applicant for the first clock round of the primary stage, at the starting price for the lots of the product; and
- (b) specifies the initial eligibility points of an applicant based on those specified start demands; and
- (c) in relation to each product, either does not select a minimum spectrum requirement, or selects only one option as the minimum spectrum requirement, for the lots of each product.

The amount required to secure the initial eligibility points specified by the applicant in this form is calculated in accordance with subsection 38(2) of the Allocation Determination and Part 3 of this form.

This eligibility nomination form must be used by applicants for the purposes of specifying the start demands, calculating initial eligibility points and, if the applicant wishes, selecting a minimum spectrum requirement (MSR) for relevant products.

This form also provides guidance about how to:

- > nominate start demands
- > select minimum spectrum requirements for products
- > calculate initial eligibility points
- > secure initial eligibility points and make an eligibility payment and/or provide a deed of financial security.

### About start demand

Pursuant to subsection 29(2) of the Allocation Determination, applicants are required to nominate their start demand in the eligibility nomination form. Before the auction commences, and subject to subsections 36(2) and 38(4) of the Allocation Determination, the auction manager will enter into the auction system the start demand and MSR selected (if any) for each product for each bidder as specified in the eligibility nomination form. Applicants should note:

- > start demands are used to determine the number of initial eligibility points an applicant will need to secure, and therefore affect the bidder's ability to bid in the first clock round of the primary stage of the auction (and all subsequent clock rounds);

- > an applicant's ability to specify start demands for each product for the first clock round of the primary stage of the auction is subject to the validity criteria specified in section 30 of the Allocation Determination.
- > the start demands nominated by an applicant in this form may result in the **allocation of some or all of the nominated products at the starting price** (subject to, amongst other things, demand for the nominated spectrum, the auction process and the auction rules).

An overview of the auction rules, and an example of how they may work in practice, is provided in the *Auction guide*.

## About the MSR

The ACMA has set one option for the MSR: two lots (10 MHz).

Applicants will need to decide whether or not they wish to use the MSR feature in the auction by setting the MSR for each of the products as 'on' or 'off'. If an applicant wishes to use the feature, they must set their MSR before the auction via this form. Applicants should note:

- > a selection of 'on' for a product means the applicant has selected that the MSR option of two lots applies to the product;
- > an applicant may set the MSR as 'on' or 'off' for each of the different products. Pursuant to subsection 37(2) of the Allocation Determination, if a selection is not made, the applicant is taken to have no MSR for the lots of the product;
- > an applicant may set the MSR as 'on' for any product, even if they have specified a start demand of 'zero' for a product, or have not specified a start demand for a product
- > if the MSR is selected for a product, the auction system will prevent a bidder being left with one lot of the product;
- > if a bidder, who has set their MSR to 'on' for a product, does not 'win' any spectrum of that product during the primary stage, that bidder will not be permitted to bid for that product in the secondary stage.

Further information about the MSR is available at section 3.1.1 of the *Auction guide*.

## About initial eligibility points

Initial eligibility points, secured by an applicant in accordance with sections 37 and 38 of the Allocation Determination, determine an applicant's maximum eligibility (expressed in eligibility points) for bidding in the first clock round of the primary stage of the auction.

In accordance with subsection 37(1), and subject to subsection 37(3) of the Allocation Determination, the maximum number of initial eligibility points that an applicant may specify in its completed eligibility nomination form is the sum of the lot ratings for the number of lots of each product, up to the applicant's allocation limits (expressed in eligibility points):

- > applicable to the product, other than the Perth lower band product and the Perth upper band product; or
- > applicable to the Perth combined products.

The number of initial eligibility points specified in the completed eligibility nomination form may be reduced in the circumstances set out in section 36 and subsection 37(3), and in accordance with section 38.

Pursuant to subsection 12(2) of Schedule 1 of the Allocation Determination, a bidder is not entitled to bid in such a way that the sum, in eligibility points, of:

- (a) the total value of the lots of each product, in eligibility points, for the start demands of the bidder; and
- (b) the total value of the lots of each product, in eligibility points, for all the increase bids of the bidder;  
less:
- (c) the total value of the lots of each product, in eligibility points, for all the decrease bids of the bidder;

in any one clock round is greater than the bidder's eligibility points at the time of the bid or bids.

## **How to complete the eligibility nomination form**

To complete the eligibility nomination form:

- > In Part 1: Provide applicant details.
- > In Part 2: Provide details of the applicant's start demands and MSR, and calculate the applicant's initial eligibility points.
- > In Part 3: Calculate the amount required to secure initial eligibility points
- > In Part 4: Nominate the method by which you intend to secure initial eligibility points, read the declaration and sign the form.

## **When to give the eligibility nomination form to the ACMA**

If an application is made under section 29 of the Allocation Determination, the eligibility nomination form must be given to the ACMA before the eligibility deadline. An application is incomplete if the applicant fails to give the eligibility nomination form before the eligibility deadline. The eligibility deadline is published by the ACMA on its website and included in the *Auction guide*.

If an application is made under section 35 of the Allocation Determination, the eligibility nomination form must be given to the ACMA before the eligibility deadline or, if the ACMA agrees to a later time, the agreed time.

## **How to give the eligibility nomination form to the ACMA**

The eligibility nomination form must be given to the ACMA in accordance with the procedures for giving documents to the ACMA set out in the Allocation Determination.

A summary of the procedures (including an email address, fax number and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms* booklet. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*. The procedures contain specific requirements where a document is given by email or fax.

## **Who should sign the eligibility nomination form**

Where the ACMA receives an eligibility nomination form from an applicant that is a body corporate, the form must be signed by a director, a secretary or an authorised officer of the body corporate.

Where the ACMA receives an eligibility nomination form from an applicant that is an individual, the form must be signed by that individual.



**Who can witness signing the eligibility nomination form?**

The signature of the applicant or authorised person of the applicant on the eligibility nomination form must be witnessed by a person who is above the age of 18.

**How to make an eligibility payment or give a deed of financial security**

Information about how to make an eligibility payment, and how to give a deed of financial security, is provided at Part 4 of the form.

## Part 1: Applicant details

Applicant's name:

---

enter applicant's name as it appears in Part 1 of the application form submitted  
by the applicant under section 29 or section 35 of the Allocation Determination

Applicant's ACN/ABN/ARBN (if applicable):

---

enter ACN/ABN/ARBN as is appears in Part 1 of the application form submitted by the applicant  
under section 29 or section 35 of the Allocation Determination

## Part 2: Start demands, minimum spectrum requirements and initial eligibility points

The instructions below involve entering information into Table 1 on the page below.

Completion of Table 1 is mandatory.

### To specify start demand

For each product, enter in Column H the number of lots of each product you wish to specify as your start demand for the auction. If you do not wish to specify a start demand for a particular product, enter '0'. Leaving the row blank signifies a '0' entry.

In specifying start demands, applicants should have regard to the allocation limits described in Part 2 of the Allocation Determination. For the purposes of the allocation limits, the Perth upper band product and the Perth lower band product are treated as just one product.

Bidders should be aware they may 'win' the start demand they have specified in this form. If aggregate start demand (demand from all bidders) is below supply for a certain product and remains so until the conclusion of the primary stage of the auction, the bidder will be liable to pay the starting price for their start demand for that product.

Part 3 of this form explains how the start demand is used to calculate the amount of the eligibility payment to be made or deed of financial security to be given.

### To select whether or not to apply the minimum spectrum requirement

For each product, indicate in Column J whether the applicant wishes to select the MSR for that product. Enter 'on' to select the MSR for the product (being 2 lots of the product). Enter 'off' if the applicant does not wish to select the MSR for the product (being zero lots of the product). Leaving a cell in Column J blank will result in the MSR for that particular product to be set to 'off'.

### To calculate initial eligibility points (Box K)

1. For each product, multiply the number you entered on Column H (start demand in lots) by the number in Column F (the lot rating) and enter the result in Column I.
2. Add all of the entries you made in Column I, and enter the result as a number in Box K.

**Table 1: For use by applicants to specify start demands, calculate initial eligibility points and select the minimum spectrum requirement**

Applicants should refer to the instructions. The dollar value set by the ACMA for each initial eligibility point for the auction in accordance with paragraph 28(1)(a) of the Allocation Determination is \$500 per eligibility point.

A	B	C	D	E	F	G	H	I	J
Cat.	Product	Bandwidth	Region	No of lots available	Lot rating	Starting price per lot	Start demand (in lots)	Lot rating multiplied by start demand (Column F x Column H)	MSR ('on' = 2 lots or 'off' = 0 lots)
1	ADEL01	5 MHz	Adelaide	25	60	\$536,000			
1	BRIS01	5 MHz	Brisbane	25	100	\$880,000			
1	CANB01	5 MHz	Canberra	25	20	\$184,000			
1	MELB01	5 MHz	Melbourne	25	200	\$1,898,000			
1	SYDN01	5 MHz	Sydney	25	200	\$2,164,000			
2	PERT01	5 MHz	Perth	16	100	\$538,000			
3	PERT02	5 MHz	Perth	9	100	\$811,000			
1	NQLD01	5 MHz	North Queensland	25	10	\$40,000			
1	CQLD01	5 MHz	Central Queensland	25	20	\$95,000			
1	RNSQ01	5 MHz	Regional Northern NSW/ Southern Queensland	25	100	\$344,000			
1	RSWN01	5 MHz	Regional Southern/ Western NSW	25	60	\$226,000			
1	RVIC01	5 MHz	Regional Victoria	25	60	\$225,000			
1	TASM01	5 MHz	Tasmania	25	20	\$79,000			
1	RESA01	5 MHz	Regional South Australia	25	10	\$58,000			
1	REWA01	5 MHz	Regional Western Australia	25	10	\$49,000			
The total number of initial eligibility points that an applicant may nominate in Box K is the total of the start demand (in lots) multiplied by the relevant lot rating.							<b>Total of Column I (Box K)</b>		

There are 13 products with 25 lots and two products (in the Perth region), one with 16 and one with nine lots, for a total of 350 lots.

## Explanatory notes to the columns and boxes in Table 1

- A. Specifies the categories for the 3.6 GHz band, as identified in Table 1 of Schedule 1 to the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018*.
- B. Specifies the product to which a lot belongs, as identified in Table 1 of Schedule 2 to the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018*.
- C. Specifies the bandwidth of each lot of a product.
- D. Specifies the region relevant to each product, as identified in Schedule 3 to the *Radiocommunications Spectrum Marketing Plan (3.6 GHz Band) 2018*.
- E. Specifies the number of lots of a product that are available for allocation.
- F. Specifies the lot rating for each lot of a product, set by the ACMA in accordance with paragraph 28(1)(b) of the Allocation Determination.
- G. Specifies the starting price for each lot of a product for the first round of the auction, set by the ACMA in accordance with paragraph 28(1)(d) of the Allocation Determination.
- H. This will be where the applicant enters the number of lots of each product that the applicant wishes to specify as its start demand for the auction.
- I. This will be where the applicant enters the number of eligibility points required to bid on the number of lots of a product entered by the applicant in column H. The figure to be entered in column I is calculated by multiplying the number of lots entered by the applicant in column H by the lot rating (in column F). Where an applicant has entered '0' in column H, they should also enter '0' in column I.
- J. This will be where the applicant selects whether the MSR is to apply in relation to a product. Applicants are able to set their MSR as 'on' (2 lots of a product) for products where they have not expressed start demand.

Box K. The sum of the calculation when adding the figures entered in column I for each product.

### Part 3: Secure initial eligibility points

Applicants are required to make an eligibility payment and/or provide a deed of financial security to secure their initial eligibility points for the auction.

The amount required to secure the initial eligibility points specified by the applicant in this form is calculated by multiplying the total number of initial eligibility points (at Box K) by the dollar value of initial eligibility points set by the ACMA under paragraph 28(1)(a) (\$500).

Enter the resulting figure in Box L, below.

Total number of initial eligibility points x \$500 = \$ (Box L)

## Part 4: Eligibility payment and/or deed of financial security for initial eligibility points

**Step 1:** To secure the initial eligibility points nominated in Part 2, indicate, by ticking the appropriate box(es) and entering dollar figures (that will equal the amount calculated in Part 3) as required, which option(s) you will use to secure your initial eligibility points:

- ☐ Option 1: giving a deed of financial security for \$ \_\_\_\_\_.
- ☐ Option 2: making an eligibility payment of \$ \_\_\_\_\_ by electronic transfer
- ☐ Option 3: making an eligibility payment of \$ \_\_\_\_\_ by bank cheque.

Note: The amount inserted by the applicant against Option 1 above should be the same as the amount inserted by the applicant in clause 1.1 of **Form 6—Deed of financial security**.

**Step 2:** Make an eligibility payment and/or give your deed of financial security before the eligibility deadline, in accordance with the procedures below.

Note: If an applicant makes an eligibility payment or gives a deed, or both, for an amount less than that worked out in this Part above, and another eligibility payment or deed, or both, is not made or given to make up the difference, initial eligibility points and start demands of the applicant are worked out by reference to subsection 38(4) of the Allocation Determination.

Eligibility payments must be made in Australian currency by either:

### Electronic transfer:

**Bank:** ANZ Bank

**Branch:** Belconnen

**BSB:** 012-951 **Account no.:** 8379 24272

**Account name:** ACMA Official Administered Receipts

**Transfers should be labelled:** '36 eligpay [name of applicant]'

Note: Because transfer labels are limited to 15 alphanumeric characters, abbreviations must be used.

Evidence of the electronic transfer (for example, a transfer receipt) should be emailed to [spectrumauctions@acma.gov.au](mailto:spectrumauctions@acma.gov.au) as soon as practicable after the transfer is made.

### Bank cheque:

Crossed 'not negotiable'

**Made payable to:** Australian Communications and Media Authority on behalf of the Commonwealth

**Delivered to:**

Auction Manager

Major Spectrum Allocations Section

Australian Communications and Media Authority

Red Building, Benjamin Offices, Chan St

Belconnen ACT 2617

Subsection 9(4) of the Allocation Determination sets out when an amount is taken to have been paid by a relevant deadline. An amount is taken to have been paid by a deadline if:

- > the ACMA receives a bank cheque for the full amount on or before the deadline;
- > the ACMA receives evidence that an electronic transfer of the full amount was made on or before the deadline (for example, a transfer receipt) *and* the amount is received in the ACMA's bank account no later than three working days after the deadline; or
- > the ACMA receives other evidence that satisfies it that the person making the payment has taken all reasonable steps to pay the amount on or before the deadline.

An amount due under the Allocation Determination is not paid in full if bank charges or government duties imposed on a payment reduce the net payment to less than the amount due. An applicant or bidder must add the value of any bank charge or government duty to the amount of their eligibility payment in order to secure their nominated initial eligibility points.

If you choose to give the ACMA a deed of financial security for all or part of the amount worked out in this Part, the deed of financial security must be given to the ACMA using **Form 6—Deed of financial security** in the *Auction forms* booklet accessible through the *Applicant information package*. The deed of financial security form contains information about how to complete the deed, who can execute the deed and how to lodge the deed with the ACMA.

GST is not payable on an eligibility payment.

## Declaration and signature

I understand that a person who knowingly or recklessly makes a false or misleading statement in, or in connection with, an application is guilty of an offence under section 136.1 of the *Criminal Code*. I believe that the statements made by or on behalf of the applicant in this document and its attachments are true in every particular.

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Signed by or on behalf of the applicant

---

Name of signatory where signed on behalf of the applicant

Signed at:

---

Place

On

---

Day / Month / Year



Before me,

---

Signature of person before whom the declaration is made

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Name of person before whom the declaration is made

**Note** It is a serious offence under Part 7.4 of the *Criminal Code* to give false or misleading information to the Commonwealth.