

## Form 3 – Deed of Confidentiality

For the purposes of Division 1 of Part 4, and paragraphs 34(2)(d), 45(2)(d) and 50(2)(d) of the [Radiocommunications \(Spectrum Licence Allocation – 3.4/3.7 GHz Bands\) Determination 2023](#) (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 23(1)(e) of the allocation determination.

Confidential information in relation to an applicant or bidder is defined in section 28 of the allocation determination.

Paragraphs 34(2)(d) and 50(2)(d) of the allocation determination provide that a person who applies to become a registered bidder in the allocation process must give the ACMA a completed deed of confidentiality before the relevant application deadline.

Where the ACMA has notified applicants that it is satisfied the applicants are affiliated under section 44 of the allocation determination and those applicants decide to submit a new application, the new applicant must give the ACMA a completed deed of confidentiality under paragraph 45(2)(d) of the allocation determination by the specified time.

Section 33 of the allocation determination provides 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, the person must give the ACMA a completed deed of confidentiality if they are:

- > 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.

Section 33 of the allocation determination also provides that a contractor of an applicant or bidder who has knowledge of confidential information of the applicant or bidder must give the ACMA a completed deed of confidentiality.

However, in the case of a contractor, the person is not required to give the ACMA a completed deed of confidentiality if the contract is:

- > for the sole purpose of providing, in the contractor's professional capacity, advice relating to the allocation process; or
- > for the sole purpose of obtaining finance to make a payment in relation to the allocation process.

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

Where an applicant gives a completed deed of confidentiality to the ACMA for the purposes of section 34 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 an applicant gives a completed deed of confidentiality to the ACMA for the purposes of section 45 of the allocation determination, this must be done before the deadline set by the ACMA.

In the event that starting prices are varied under Division 5 of Part 4 of the allocation determination, new applicants for the purpose of section 50 of the allocation determination must submit a completed deed of confidentiality by the new application deadline. The new application deadline is published by the ACMA on its website.

Where a deed of confidentiality is given to the ACMA by a related person or a contractor of an applicant or bidder, for the purposes of section 33 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 completed deed of confidentiality must be given to the ACMA in accordance with the procedures for the giving of documents to the ACMA as set out in section 6 of the allocation determination through the following methods:

Online portal: <https://www.acma.gov.au/acma-assist#/auctions/3a71276a-3d16-ee11-9cbd-000d3a798fb7>

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

Post: Auction Manager  
Major Spectrum Allocations Section  
Australian Communications and Media Authority  
Level 32, Melbourne Central Tower  
360 Elizabeth Street  
Melbourne VIC 3000

## Where a copy of a deed of confidentiality is given using the online portal or by email, the applicant should retain the original deed of confidentiality.

A summary of the procedures (including an email address 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*.

## Who should execute the deed of confidentiality?

Where the ACMA requires 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 requires a deed of confidentiality from:

- > an individual; or
- > a related person who is an employee of the applicant or bidder; or
- > a related person who is an employee of a related body corporate of the applicant or bidder; or
- > a contractor of an applicant or bidder

the deed of confidentiality 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.

People executing a deed of confidentiality may want to obtain legal advice about the manner of its execution.

# 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) 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 the Confidant:

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Insert name

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Insert ACN or ARBN if applicable

of:

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Insert address

as:

- ☐ an applicant who proposes to participate in the allocation process
- ☐ a related person of the following applicant who proposes to participate in the allocation process, or following bidder who is registered as a bidder in the allocation process.

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insert name of applicant as it appears in Part 1 of the application form submitted by the applicant, or the name of the bidder as it appears on the register of bidders.

- ☐ a contractor of the following applicant who proposes to participate in the allocation process, or following bidder who is registered as a bidder in the allocation process

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insert name of applicant as it appears in Part 1 of the application form submitted by the applicant, or the name of the bidder as it appears on the register of bidders.

## Purpose:

- A. The ACMA proposes to allocate spectrum licences in the 3.4/3.7 GHz bands by a combination of auction and direct allocation.
- B. Under sections 60 and 294 of the *Radiocommunications Act 1992*, the ACMA has determined the procedures to be applied in allocating spectrum licences, and has fixed the spectrum access charge payable for issuing those licences, as set out in the Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023 (allocation determination).
- C. The Confidant is:
  - (i) an applicant who proposes to participate in an 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 subsection 33(1) of the allocation determination applies; or
  - (iii) a contractor of either an applicant or a bidder to whom subsection 33(2) of the allocation determination applies.
- D. Disclosure of an applicant's or bidder's confidential information about the allocation process by an applicant, a bidder, a related person or contractor may severely damage the allocation process and the allocation of spectrum licences.
- E. An applicant's or bidder's confidential information about the allocation process must not be disclosed to any person except as authorised by section 29 of the allocation determination.
- F. The Confidant provides this Deed for the purposes of, and in accordance with, Division 1 of Part 4, and paragraphs 34(2)(d), 45(2)(d) and 50(2)(d) 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, has the same meaning as specified in section 28 of the allocation determination, and means:
  - a. documents the applicant or bidder has given to the ACMA for the purpose of the allocation process;
  - b. information provided to the applicant or bidder under section 24, section 46, section 51, or subsection 54(3) of the allocation determination for the purpose of participating in the allocation process;
  - 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. eligibility points available to a bidder in the allocation process;
  - f. a bid made by the bidder in an auction;
  - g. a proposed bid by the applicant or bidder or a bid under consideration by the applicant or bidder;
  - h. a proposed start demand of the applicant or bidder, or a proposed start demand under consideration by the applicant or bidder;
  - i. the applicant's or bidder's bidding strategy;
  - j. 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 available for allocation in accordance with the allocation determination;
  - k. information about the terms of agreements, or possible future agreements, affecting the use of relevant spectrum, to the extent the agreements:

- i. relate to authorisations that are, or would be, permitted by section 68 of the Radiocommunications Act; or
    - ii. relate to assignments made, or to be made, under section 85 of the Radiocommunications Act; or
    - iii. deal with spectrum that is available in this allocation process;
  - l. information that, if disclosed, could be reasonably expected to affect or be capable of affecting:
    - i. bids made or proposed to be made by another applicant or bidder; or
    - ii. start demands or proposed start demands by another applicant or bidder; or
    - iii. another applicant's or bidder's bidding strategy;
  - m. information that, if disclosed, could be reasonably expected to affect or be capable of affecting the outcome of the allocation process.
- 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 subsection 29(1) of the allocation determination, except as set out in clause 1.3 of this Deed and subsections 29(2) and 29(3) of the allocation determination.
- 1.3 The Confidant may disclose confidential information in accordance with subsections 29(2) and 29(3) of the allocation determination:
- a. for the purpose of obtaining advice relating to the allocation process from a person in the person's professional capacity; or
  - b. for the purpose of obtaining finance to make a payment in relation to the allocation process; or
  - c. to the ACMA; or
  - d. if the Confidant is an applicant or bidder—to a related person or contractor of the Confidant; or
  - e. if the Confidant is a related person or contractor of an applicant or bidder—to the applicant or bidder, or to a related person of the same applicant or bidder; or
  - f. for the purpose of announcing or publishing that the applicant or bidder is participating in the allocation process; or
  - g. as authorised by the allocation determination or as otherwise required by law; or
  - h. if the confidential information is already publicly available, and the information was not made available because of a breach of section 29 of the allocation determination.
- 1.4 The Confidant agrees not to disclose confidential information, in accordance with the obligation in section 29, until:
- a. the applicant, as a withdrawn applicant, is notified under section 83 of the allocation determination that the applicant's confidentiality obligation is at an end; or
  - b. if the Confidant is a bidder (whether or not a winning bidder), the ACMA announces or publishes the information mentioned in subsection 92(1) 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 and the Commonwealth of Australia.
- 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 – 3.4/3.7 GHz Bands) Determination 2023.

**allocation process** has the same meaning as specified in the allocation determination.

**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 section 28 of the allocation determination.

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

**lot** has the same meaning as specified in the allocation determination.

**register** means the register of bidders maintained by the ACMA under section 55 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:

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Name of Confidant

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ACN or ARBN

by authority of the Directors:

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Name of Director

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Signature of Director

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Name of Director/Secretary

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Signature of Director/Secretary

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

**OR**



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

Signed, sealed and delivered by:

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Name of Confidant

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Signature of Confidant

of:

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Insert address

in the presence of:

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Name of witness

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Signature of witness

of:

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Insert address

- ☐ I, the Confidant, confirm that I am aware of the rules for executing deeds in my State/Territory and have executed this Deed accordingly.