

Auction forms booklet

26 GHz band auction April 2021

DECEMBER 2020

List of forms

Form 1 – Application form

Form 2 – Deed of acknowledgement

Form 3 – Deed of confidentiality

Form 4 – Associates form – body corporate

Form 5 – Associates form – individuals

Form 6 – Statutory declaration about affiliations

Form 7 – Eligibility nomination form

Form 8 – Deed of financial security

Form 9 – Statement about affiliations for primary and secondary stage winners

Form 10 – Bank guarantee

General information

Introduction

This booklet contains 10 forms that auction participants may be required to complete. The auction will be conducted in accordance with the procedures contained in the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (the allocation determination). 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.

The beginning of each form provides information 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, execute all deeds and ensure the execution of those deeds are appropriately witnessed before giving the completed forms to the ACMA by the applicable deadline in accordance with the lodgement procedures set out below.

Where appropriate, forms in the *Auction forms booklet* are digitally writeable PDFs. Applicants should note that the requirements for electronic execution and witnessing of documents differs depending on the type of document being executed and/or witnessed, as well as the relevant jurisdiction it is being executed in. The ACMA has introduced, where possible, arrangements that will permit electronic execution of some documents.

The information set out below is intended to be used as a guide and does not constitute legal advice. Applicants and bidders should seek their own professional advice about the completion of documents.

Forms 1, 7 and 9

In the case of the application form, the eligibility nomination form and the statement about affiliations for primary and secondary stage winners, applicants may choose to sign the form using an electronic signature.

Both the signatory and witness are able to electronically sign the form by:

- > pasting a copy of their signature into the form
- > signing using a stylus or a finger on a tablet, smartphone or laptop
- > using a digital signature or cloud-based signature platform.

Where an in-person witness is not available or practical to obtain, the signature may be witnessed remotely. The witness must observe the signatory sign the form in real time over audio-visual link. As soon as practicable after the signatory has signed the form, the witness must sign the form, or a copy of the form, as evidence that they witnessed the signature.

For example:

- > The signatory may electronically sign the form, witnessed via audio-visual link. The witness may then electronically sign the same digital copy of the form.
- > The signatory may electronically sign the form, witnessed via audio-visual link. The witness may then physically sign a printed copy of the signed form.
- > The signatory may choose to physically sign the form, witnessed via audio-visual link, and scan the form. The witness may then choose to either physically or electronically sign the scanned copy of the signed form.

The witness must be reasonably satisfied that the copy of the form they are signing is either the same document, or an identical copy of the form that the signatory signed.

Forms 2 and 3

In the case of the deed of acknowledgment and deed of confidentiality, the rules on electronically executing these forms differ across jurisdictions.

Temporary arrangements to allow for the electronic execution of deeds have been implemented across each Australian jurisdiction. The ACMA will accept electronically signed and witnessed deeds so long as execution is in accordance with the relevant laws that apply.

Applicants and bidders should seek their own legal advice about the execution of the deed of acknowledgement and deed of confidentiality. If an applicant or bidder wishes to electronically sign or have a deed remotely witnessed, they must also declare that they have made themselves aware of the rules and have complied with those rules accordingly.

Forms 6, 8 and 10

In the case of the statutory declaration, deed of financial security and the bank guarantee, these documents cannot be electronically executed. Any documents requiring a witness (such as a statutory declaration) will also require a physical signature to be applied in the presence of an appropriate in-person witness.

Attaching additional information to a form

Where an applicant provides additional information in an attachment to a form:

- > the attachment must clearly indicate:
 - > the name of the applicant, as it appears in Part 1 of the application form; and
 - > the form and the part of the form to which the attachment relates (for example, 'Part C of Form 4: Directors and secretaries of related bodies corporate').

Giving forms to the ACMA

Completed forms may be given to the ACMA by:

- > Email: spectrumallocations@acma.gov.au
- > 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 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 60 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 or PDF format or another format approved by the auction manager.

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 in accordance with subsection 36(8).
- > If a deed of financial security is given to the ACMA by email, the original deed of financial security must be received by the ACMA no later than 3 working days after the eligibility deadline or the extended eligibility deadline, or, if the ACMA agrees to a later time, the agreed time.

Special rules also apply in relation to giving the ACMA a bank guarantee via email. Namely:

- > that the original guarantee must be received by the ACMA no later than 3 working days after the date (or, if the ACMA agrees to a later time, the agreed time) for the guarantee to be taken to have been provided to the ACMA.

Additional information about the provision of bank guarantees is available in section 15 to the [Radiocommunications Spectrum Marketing Plan \(26 GHz Band\) 2020](#) (the marketing plan).

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, or be 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 may disclose 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.

The ACMA will not otherwise 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 on the [ACMA website](#) 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.

Queries

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

Email: spectrumallocations@acma.gov.au

Telephone: (02) 6219 5151

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 sections 28, 34, 39 and 41 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Notes on completion

Introduction

This application form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 26(1)(f) of the allocation determination.

Paragraph 28(1)(a) and paragraph 41(1)(a) of the allocation determination provide that a person who applies to become a registered bidder in the auction must, among other things, before the application deadline or new application deadline:

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

Section 34 of the allocation determination provides that a new applicant, formed by affiliated applicants, must give the ACMA a completed application form and pay the application fee within 10 working days of the ACMA notifying the affiliated applicants under section 33. For applications made under section 34 of the allocation determination, the new applicant must be a body corporate whose only members are one or more of the applicants identified as being affiliated. The new applicant must not be affiliated with any other applicant in the updated list who has not withdrawn their application, including another new applicant.

If the ACMA varies the starting prices and lot ratings under section 37 of the allocation determination, subsection 39(4) allows existing applicants to give the ACMA an updated application form before the new application deadline.

Other elements of the bidder registration process

A person wishing to participate in the auction must be registered as a bidder in accordance with the procedures set out in section 45 of the allocation determination. The *Auction guide* explains what is required for applicants to be registered as a bidder for the auction. An applicant is only 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 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 31, 34 and 42 of the allocation determination, information given to the ACMA in the application form about the identity of the applicant, and the applicant's associates, will be given to all other applicants. This information will be given to the other applicants for the purpose of enabling them to make a statutory declaration pursuant to the requirements of those sections.

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 a person gives an application form to the ACMA under section 28 of the allocation determination, this must be done before the application deadline. An application is incomplete if the person 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 a person gives an application form to the ACMA under section 34 of the allocation determination, this must be done within 10 working days of the ACMA notifying the relevant affiliated applicants under subsection 33(1) of the allocation determination.

If the ACMA varies a starting price under paragraph 37(1)(a), it will publish a notice on its website of the date and time of the new application deadline. In the event starting prices are varied by the ACMA, a person wanting to be a new applicant must give an application form to the ACMA under section 41 of the allocation determination before the new application deadline. An application is incomplete if the person fails to give the application form before the new application deadline. Existing applicants are able to update their application forms before the new application deadline under subsection 39(4).

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 set out in section 7 of the allocation determination. The application form can be delivered to:

Email: spectrumallocations@acma.gov.au
Post: Auction Manager
Major Spectrum Allocations Section
Australian Communications and Media Authority
Red Building, Benjamin Offices, Chan Street
Belconnen ACT 2617

A summary of the procedures 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.

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, 'Attachment 1, 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 sign and witness the application form

Physical signature and witnessing

Applicants may choose to complete the application form with a physical signature and an in-person witness.

Electronic signature and remote witnessing

Alternatively, applicants may choose to complete the application form with an electronic signature, witnessed remotely by audio-visual link. The signatory and witness may:

- > paste a copy of their signature into the application form
- > sign the application form on a tablet, smartphone or laptop using a stylus or finger
- > use a cloud-based signature platform.

The witness must:

- > observe the signatory sign the document in real time. The witness may do this over audio-visual link
- > sign the document, or an exact copy of the document, attesting that they witnessed the signature. The witness may sign a counterpart of the document or a scanned copy of the document as soon as practicable after the signature has been witnessed
- > be satisfied that the document they sign is the same document or a copy of the document signed by the signatory.

The witness may choose to either physically or electronically sign the application form in order to attest that they witnessed the signature.

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/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/if any)

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 section 28 of the allocation determination.
- This is an application made for the purposes of section 34 of the allocation determination.
- This is an update to an application made for the purposes of section 39 of the allocation determination.
- This is an application made for the purposes of section 41 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 material.

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:

Title: Mr/Mrs/Ms/Dr/Other	

Given names	

Surname	

Position	

Business address	

_____	_____
Work phone	Email
_____	_____
Mobile	Additional contact if relevant

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	First primary school

Backup contact person:

Title: Mr/Mrs/Ms/Dr/Other

Given names

Surname

Position

Business address

Work phone	Email
Mobile	Additional contact if relevant

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	First primary school
----------------------	----------------------	-----------------------------

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 individuals 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 3 authorised persons. However, applicants can nominate an additional 2 authorised persons (that is, a total of up to 5 persons) if they wish. Where an applicant wishes to nominate more than 3 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	

Business address	

_____	_____
Work phone	Email
_____	_____
Mobile	Additional contact if relevant

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	First primary school

Authorised person #2

Title: Mr/Mrs/Ms/Dr/Other

Given names

Surname

Position

Business address

Work phone

Email

Mobile

Additional contact if relevant

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

First primary school

Authorised person #3

Title: Mr/Mrs/Ms/Dr/Other

Given names

Surname

Position

Business address

Work phone

Email

Mobile

Additional contact if relevant

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

First primary school

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 3.1.6 and 3.4 of the *Auction guide*.

An applicant that is a **body corporate** must provide the information set out in Table 1, by completing **Form 4 – Associates form – body corporate**.

An applicant that is an **individual** must provide the information set out in Table 2, by completing **Form 5 – Associates form – individuals**.

An applicant may provide the same information in a different format than specified in Form 4 or 5 (as is relevant). For example, if the applicant's associates' information can be obtained from a database or similar program, the applicant may choose to provide the information according to the database's format. However, applicant's should ensure that all of the information in tables 1 or 2 below (as is relevant) is provided.

It is recommended that the applicant's associates' information is provided in a searchable format (that is, an electronic format rather than a scan of a physical copy).

The completed templates at tables 1 and 2 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 1: Information about the applicant’s associates that must be provided where the applicant is a *body corporate*

	A	B
	Category of associate in relation to the applicant (the body corporate)	Information that must be provided about each of the applicant’s associates that falls within the category in column A
1	A director or secretary of the body corporate	<ul style="list-style-type: none"> > Name > Position > Registered office address or principal office address
2	A ‘related body corporate’ within the meaning of the <i>Corporations Act 2001</i> .	<ul style="list-style-type: none"> > Name > ACN/ARBN > Registered office address or principal office address > Why the associate meets the definition of a ‘related body corporate’
3	A director or secretary of a ‘related body corporate’	<ul style="list-style-type: none"> > Name > Position > Name of the related body corporate > Registered office address, or principal office address, of the related body corporate
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"> > Name > Address
5	<p>Each person (other than the Commonwealth when represented by the ACMA) who is party to a relevant agreement with the body corporate that either or both:</p> <ul style="list-style-type: none"> > is for the use, by one party to the agreement, of spectrum licensed to another party to the agreement under a spectrum licence, for a part of the spectrum referred to in the re-allocation declaration > relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declaration. 	<ul style="list-style-type: none"> > Name > ACN/ARBN (if applicable) > Address (if the person is a body corporate, enter the person’s registered office or principal office address) > The nature of the agreement <p>Note: ‘relevant agreement’ and ‘re-allocation declaration’ are defined in the allocation determination</p>

This information must be provided by completing **Form 4 – Associates form – body corporate**.

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 (the individual)	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"> > Name > Address
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"> > Name > ACN/ARBN > Registered office address or principal office address
3	A body corporate of which the individual is a director or secretary	<ul style="list-style-type: none"> > Name > ACN/ARBN > Registered office address or principal office address
4	A ‘related body corporate’ (within the meaning of the <i>Corporations Act 2001</i>) of a body corporate of which the individual is a director or secretary	<ul style="list-style-type: none"> > Name > ACN/ARBN > Registered office address or principal office address > Why the associate meets the definition of a ‘related body corporate’
5	<p>Each person (other than the Commonwealth when represented by the ACMA) who is party to a relevant agreement with the individual that either or both:</p> <ul style="list-style-type: none"> > is for the use, by one party to the agreement, of spectrum licensed to another party to the agreement under a spectrum licence, for a part of the spectrum referred to in the re-allocation declaration > relates to the acquisition of a spectrum licence for a part of the spectrum referred to in the re-allocation declaration. 	<ul style="list-style-type: none"> > Name > ACN/ARBN (if applicable) > Address (if the person is a body corporate, enter the person’s registered office or principal office address) > The nature of the agreement <p>Note: ‘relevant agreement’ and ‘re-allocation declaration’ are defined in the allocation determination</p>

This information must be provided by completing **Form 5 – Associates form – individuals**.

Part 5: Application fee

The amount of the application fee set by the ACMA under section 23 of the allocation determination is A\$10,000 (no GST is 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: '26appfee [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 spectrumallocations@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 3 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. The application fee is not subject to GST and therefore GST is not payable on the application fee.

Part 6: Declaration and signature

I understand that knowingly or recklessly making a false or misleading statement in, or in connection with, an application is 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

Address of person before whom the declaration is made

Method by which this form is witnessed (eg in person, via audio visual link etc.)

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 28, 34 and 41 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Notes on completion

Introduction

This deed of acknowledgement form (Deed) has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 26(1)(g) of the allocation determination.

Paragraphs 28(1)(b) and 41(1)(b) of the allocation determination provide 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 relevant application deadline.

Where the ACMA has notified applicants that it is satisfied that they are affiliated under subsection 33(1) of the allocation determination and those applicants decide to submit a new application, the new applicant must give the ACMA a completed Deed under paragraph 34(5)(a) of the allocation determination.

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 the 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 28, 34 or 41 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 28 or section 41 of the allocation determination, this must be done before the relevant 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*. If there is a new application deadline, it will be published on the ACMA's website.

Requirements for when new applicants, applying due to an affiliation between applicants, need to give a completed Deed to the ACMA are contained in section 34 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 section 7 of the allocation determination.

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*. The procedures contain specific requirements where certain documents, including the Deed, are given by email.

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:

- > 2 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 from an Applicant who is an individual, 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.

How to sign and witness the Deed

Physical signature and witnessing

Applicants may choose to execute the Deed with a physical signature and an in-person witness.

Electronic signature and remote witnessing

If the Applicant is a corporation, the signatories may execute a document by electronically signing it in accordance with the [Corporations \(Coronavirus Economic Response\) Determination \(No 3\) 2020 \(Cth\)](#) (corporations determination), if in force at the time the deed is executed, or in accordance with any replacement instrument.

More information about executing deeds is available from the [explanatory statement](#) for the corporations determination.

If the applicant is an individual, the applicant must ensure that they execute the Deed in accordance with the laws of the jurisdiction the Deed is executed in.

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 or ARBN if applicable

of:

Insert address

Purpose:

- A. The ACMA proposes to allocate spectrum licences in the 26 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 has fixed the method for calculating the spectrum access charge payable for issuing those licences, as set out in the Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020 (**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 sections 28, 34 or 41 (in accordance with section 36) or updated under section 39 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 sections 28, 34 or 41 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 26 of the allocation determination and its attachments, including each of the following documents:
 - a. [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020 \(the allocation determination\)](#)
 - b. [Radiocommunications Spectrum Marketing Plan \(26 GHz Band\) 2020 \(the marketing plan\)](#)

- c. [Radiocommunications \(Spectrum Re-allocation—26 GHz Band\) Declaration 2019](#)
 - d. [Radiocommunications \(Spectrum Licence Limits—26 GHz Band\) Direction 2020 \(the spectrum licence limits direction\)](#)
 - e. [Radiocommunications \(Spectrum Access Charges-26 GHz Band\) Direction 2020](#).
- 1.8 The Applicant warrants that it is empowered and authorised to execute this Deed and to agree to the obligations set out in this Deed. The Applicant warrants that it has executed this Deed in accordance with any applicable laws in relation to execution, including any laws that relate to execution electronically and witnessing remotely.

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 48 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 48 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.
- 2.3 The Applicant agrees that it will not misuse the auction system and will comply with section 71 of the allocation determination.

3. Allocation limits and affiliations

- 3.1 The Applicant agrees to comply with the allocation limits set out in Part 2 of the allocation determination.
- 3.2 If, at any time before the deadline for giving a statutory declaration in accordance with section 31 or section 42 of the allocation determination, the Applicant believes that it may be affiliated with another applicant or a bidder, the Applicant:
- a. agrees to notify the ACMA of the affiliation by the relevant deadline as required by section 31 or section 42 of the allocation determination; and
 - b. acknowledges that section 33 and 34 of the allocation determination may apply in relation to the Applicant.
- 3.3 If, at any time during the auction period, the Applicant believes that it may be affiliated with another bidder, the Applicant:
- a. agrees to immediately notify the ACMA of the affiliation as required by section 57 of the allocation determination; and
 - b. acknowledges that sections 59 and 60 of the allocation determination may apply in relation to the Applicant.
- 3.4 If, after the primary stage or secondary stage (if any), the Applicant believes that it may be affiliated with another winning bidder, the Applicant:
- a. agrees to notify the ACMA of the affiliation by the relevant deadline as required by section 60 of the allocation determination; and
 - b. acknowledges that section 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 28(1)(d), paragraph 34(2)(b) or paragraph 41(1)(d) 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 subsection 24(1) of the allocation determination and subject to subsection 24(2), any application fee paid in accordance with the allocation determination will not be refunded by the ACMA. In accordance with subsection 24(2) of the allocation determination, an application fee paid is refundable if the ACMA varies a starting price under paragraph 37(1)(a) of the allocation determination and the Applicant withdraws its application before the extended eligibility deadline by giving the ACMA notice in writing.
- 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 28(2)(b), paragraph 34(6)(b) or paragraph 41(2)(b), or as updated under subsection 39(3), of the allocation determination, and in accordance with section 36 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 36 of the allocation determination.
- 6.3 The Applicant acknowledges that a failure:
- a. to give an eligibility nomination form by the eligibility deadline, under section 28 of the allocation determination;
 - b. to give an eligibility nomination form by the eligibility deadline, under section 34 of the allocation determination;
 - c. to give an updated eligibility nomination form by the extended eligibility deadline, under section 34, section 39 or section 41 of the allocation determination;
- will prevent the Applicant from taking part in the allocation process.
- 6.3 The Applicant acknowledges that a failure to make an eligibility payment or give a Deed of Financial Security by the eligibility deadline, or by the updated eligibility deadline, in accordance with section 36 of the allocation determination, will:
- a. affect the maximum number of lots the Applicant may bid on during the auction;
 - b. may 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 45 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 46 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 56, 57 and 60 of the allocation determination, and acknowledges the consequences of affiliation set out in section 62 of the allocation determination.
- 7.5 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.
- 7.6 If the Applicant withdraws its application, in accordance with section 43 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. Pre-bidding phase and Bids

- 8.1 The Applicant acknowledges and agrees that it will be bound by the criteria described in clause 3 of Schedule 1 to the allocation determination in relation to the pre-bidding phase and the validity of start demand entries for the Applicant, whether or not those entries 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 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 the Applicant's bids, 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 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 15 of Schedule 1, clause 12 of Schedule 2 and clause 6 of Schedule 3 to the allocation determination, whether or not those bids were made by the Applicant or with the Applicant's authority.
- 8.4 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. Failure to pay balance of the winning price

9.1 If, on becoming a winning bidder for any lot and subject to clause 9.2, the Applicant fails to pay the balance of the winning price, or fails to comply with the requirements to pay the balance of the winning price, in accordance with Schedule 4 to the allocation determination:

- a. the Applicant acknowledges that sections 75 and 76 of, and clause 6 of Schedule 4 to, 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.

9.2 If, on becoming a winning bidder for any lot and electing to pay the winning price in instalments under clause 3 of Schedule 4 to the allocation determination, the Applicant:

- a. fails to pay the first instalment in accordance clause 4 of Schedule 4 to the allocation determination; or
- b. fails to give the ACMA a bank guarantee in accordance with clause 3 of Schedule 4 to the allocation determination and section 15 of the marketing plan; or
- c. does not reach an agreement with the ACMA under paragraph 62(2)(b) of the Act in relation to payment of the winning price;

then:

- d. the Applicant acknowledges that it is not entitled to be issued a spectrum licence for the lot; and
- e. 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 the spectrum that would have been covered by the lot. 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.

9.3 If, on becoming a winning bidder for any lot and electing to pay the winning price in instalments under clause 3 of Schedule 4 to the allocation determination, the Applicant is issued a spectrum licence for the lot but fails to pay an instalment, other than the first instalment, in accordance with clause 4 of Schedule 4 to the allocation determination, the Applicant acknowledges that it may be in breach of the licence condition required to be included on the spectrum licence by section 67 of the Act.

9.4 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.

10. Obligation to provide information

- 10.1 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.
- 10.2 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.

11. Information provided by Applicant

- 11.1 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.

12. Failure to comply with obligations

- 12.1 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.

13. Issue of spectrum licence

- 13.1 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.

14. Use of spectrum licence

- 14.1 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.

14.2 In particular, without limitation, the Applicant acknowledges and agrees to comply with the 26 GHz technical framework instruments, where applicable, that are listed from time to time on the ACMA website with the heading '[Technical frameworks for spectrum licences](#)'.

14.3 The Applicant acknowledges and agrees that:

- a. the synchronisation condition mentioned in subsection 20(3) of the marketing plan is proposed to be included in a spectrum licence issued as a result of the allocation process;
- b. the bank guarantee condition mentioned in subsection 20(6) of the marketing plan is proposed to be included in a spectrum licence issued as a result of the allocation process, if a winning bidder elects to pay the winning price in instalments.

15. Changes to instruments and processes

15.1 The Applicant acknowledges that the ACMA or the Minister for Communications, Cyber Safety and the Arts may:

- a. vary, replace or repeal the instruments referred to in clause 1.7 of this Deed in accordance with the Act, or other instruments associated with the allocation process;
- b. may vary the allocation process;
- c. may vary the content of spectrum licences issued or to be issued as a result of the allocation process;
- d. 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.

15.2 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.

15.3 The Applicant acknowledges that the Department of Infrastructure, Transport, Regional Development and Communications 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.

15.4 The Applicant acknowledges that it is solely responsible for informing itself about the potential effects and changes proposed by the Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020 (**the Bill**), or from any Act that results from the Bill receiving Royal Assent.

15.5 The Applicant acknowledges the effect section 153K of the Act may have on any allocation process conducted under the allocation determination.

16. No reliance

16.1 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 the allocation determination 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.

16.2 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.

16.3 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 16.1, 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.

17. Indemnity

17.1 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.

17.2 The Applicant's liability to indemnify the Commonwealth and the ACMA under this clause 17 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.

17.3 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 clause 18.1(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.

18. Liability of the Commonwealth or the ACMA

18.1 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.

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

19. Rights cumulative

19.1 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.

20. Waiver

20.1 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.

20.2 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.

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

20.4 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.

21. Severability

21.1 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.

22. Joint and several liability

22.1 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 or updated 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 or updated 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.

23. Inconsistency

23.1 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.

24. Applicant agrees to meet its own costs

24.1 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.

25. Return of information to the ACMA

25.1 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).

26. Survival of obligations

26.1 Termination of this Deed does not relieve the Applicant from the Applicant's obligations under clauses 1.6, 1.7, 2, 4, 9, 11, 12, 13, 14, 16, 17, 18, 24, and 25, and this clause 26 of this Deed, and any other provisions that by their nature survive termination.

29. Governing law

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

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

30. Definitions and interpretation

30.1 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, and '**affiliated**' has the same meaning as provided in section 14 of the allocation determination.

30.2 In this Deed:

- a. **allocation process** means the process established by the allocation determination for allocating spectrum licences in the 26 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.

30.3 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.

31. No variation of Deed

31.1 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 or ARBN

by authority of the directors:

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

of:

Insert address if signing electronically with a remote witness

in the presence of:

Name of witness

Signature of witness

of:

Insert address if witnessing remotely

I, the applicant, confirm that I am aware of the rules for electronically executing deeds in my state/territory and have executed this Deed accordingly

Form 3 – Deed of Confidentiality

For the purposes of Part 3 and sections 28, 34 and 41 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (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 26(1)(h) of the allocation determination.

Confidential information in relation to an applicant or bidder is defined in section 16 of the allocation determination.

Paragraphs 28(1)(c) and 41(1)(c) of the allocation determination provide 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.

Where the ACMA has notified applicants that it is satisfied the applicants are affiliated under subsection 33(1) 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 34(5)(b) of the allocation determination.

Section 21 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.

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 purpose of obtaining advice relating to the auction from a person in the person's professional capacity; or
- > for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction.

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 28 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*.

Requirements for when new applicants need to give a completed deed of confidentiality to the ACMA are contained in section 34 and section 41 of the allocation determination. In the event that starting prices are varied under Division 5 of Part 4 of the allocation determination, existing applicants do not need to provide additional deeds of confidentiality. New applicants for the purpose of section 41 of the allocation determination must submit a completed deed of confidentiality by the new application deadline.

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 21 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 7 of the allocation determination. A document may be delivered to:

Email: spectrumallocations@acma.gov.au
Post: Auction Manager
Major Spectrum Allocations Section
Australian Communications and Media Authority
Red Building, Benjamin Offices, Chan Street
Belconnen ACT 2617.

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.

How to sign and witness the deed of confidentiality

Physical signature and witnessing

Applicants may choose to execute the deed of confidentiality with a physical signature and an in-person witness.

Electronic signature and remote witnessing

If the applicant is a corporation, the signatories may execute a document by electronically signing it in accordance with the [Corporations \(Coronavirus Economic Response\) Determination \(No 3\) 2020 \(Cth\)](#) (corporations determination), if in force at the time the deed is executed, or in accordance with any replacement instrument.

If the signatory is signing on behalf of an individual, the signatory should ensure that they execute the deed of confidentiality in accordance with the laws of the jurisdiction that the deed of confidentiality is executed in.

Deed of Confidentiality

This Deed of Confidentiality 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 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 26 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 \(Spectrum Licence Allocation – 26 GHz band\) Determination 2020](#) (allocation determination).
- C. 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 subsection 21(1) of the allocation determination applies; or
 - (iii) a contractor of either an applicant or a bidder, to whom subsection 21(2) of the allocation determination applies.
- D. 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.
- E. An applicant's or bidder's confidential information about the auction must not be disclosed to any person except as authorised by subsection 17(2) or (3) of the allocation determination.
- F. The Confidant provides this Deed for the purposes of, and in accordance with, Part 3 and sections 28, 34 and 41 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 section 16 of the allocation determination, and 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 subsection 45(2) of the allocation determination for the purpose of the bidder participating in an auction;
 - c. a provisional start demand of the applicant;
 - d. a start demand of the bidder for a clock round of the primary stage;
 - e. a posted demand of the bidder for a clock round of the primary stage;
 - f. a bid made by the bidder in the auction;
 - g. a proposed bid by the applicant or bidder or a bid under consideration by the applicant or bidder;
 - h. a proposed provisional start demand or proposed start demand by the applicant or bidder for the first clock round of the primary stage or a proposed provisional start demand or 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;

- k. 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. provisional start demands or proposed provisional start demands by another applicant; or
 - iii. start demands or proposed start demands by another applicant or bidder; or
 - iv. another applicant's or bidder's bidding strategy;
 - l. 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 17 of the allocation determination, except as set out in clause 1.3 of this Deed and subsections 17(2) and 17(3) of the allocation determination.
- 1.3 The Confidant may disclose confidential information in accordance with subsections 17(2) and 17(3) of the allocation determination:
- a. for the purpose of obtaining advice relating to the auction 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 a 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 17 of the allocation determination.
- 1.4 The Confidant agrees not to disclose confidential information, in accordance with the obligation in section 17, until:
- a. the applicant, as a withdrawn applicant, is notified under section 63 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 69(1) (after winning bidders are notified in accordance with subsection 69(2)).

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 – 26 GHz Band) Determination 2020.

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 16 of 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 44 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, 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

of:

Insert address if signing electronically with a remote witness

in the presence of:

Name of witness

Signature of witness

of:

Insert address if witnessing remotely

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

Form 4 – 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 form 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 (**Form 1**).

The applicant must complete this form by inserting, either electronically or in legible handwriting, the relevant information where prompted. Where there is insufficient space to provide information in a particular category, the applicant can supply the required information as a list annexed to this form. The annexure should clearly state the applicant's name, the name of the form and define the parts of this form being addressed. Applicants must ensure the annexure contains all the required information for the specified part.

An applicant may provide the information in a different format than specified in this form. For example, if the applicant's associates' information can be obtained from a database or similar program, the applicant may provide the information according to the database's format. However, applicants should ensure that they:

- > clearly indicate the applicant's name as it appears in Part 1 of the application form
- > clearly indicate that the attachment is for the purposes of 'Table 1 in Part 4 of the application form'
- > clearly indicate the form and part of the form the information relates (for example, Form 4, Part A 'Directors and Secretaries of the Applicant')
- > provide all of the required information.

It is recommended that applicants provide their associates' information in a searchable format, that is in an electronic format rather than a scan of a physical copy, if possible.

Applicants are reminded that Part 6 of the application form requires the applicant 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 to participate in an auction for a spectrum 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 can provide details about all additional directors or secretaries that fall within this category as a list annexed to this form. The annexure must specify that it is addressing '**Part A of Form 4**' as specified in the notes on completing this form and must contain all the required information for each additional director or secretary.

Additional details annexed for Part A: Yes No

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 can provide details about all additional related bodies that fall within this category as a list annexed to this form. The annexure must specify that it is addressing **Part B of Form 4** as specified in the notes on completing this form and must contain all the required information for each additional related body corporate.

Please indicate if additional details are annexed for Part B: Yes No

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 can provide details about all additional directors and secretaries that fall within this category as a list annexed to this form. The annexure must specify it is addressing '**Part C of Form 4**' as specified in the notes on completing this form and contain all the required information for each additional director or secretary.

Additional details annexed for Part C: Yes No

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 – 26 GHz Band) Determination 2020 (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/ABN/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/ABN/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/ABN/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 can provide details about all additional persons that fall within this category as a list annexed to this form. The annexure must specify it is addressing ‘**Part E of Form 4**’ as specified in the notes on completing this form and contain all the required information for each additional person.

Additional details annexed for Part E: Yes No

Form 5 – 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 (**Form 1**).

The applicant must complete this form by inserting, either electronically or in legible handwriting, the relevant information where prompted. Where there is insufficient space to provide information in a particular category, the applicant can supply the relevant information as a list annexed to this form. The annexure should clearly state the applicant's name, the name of the form and define the parts of this form being addressed. Applicants must ensure the annexure contains all the required information for that specified part.

An applicant may provide the information in a different format than specified in this form. For example, if the applicant's associates' information can be obtained from a database or similar program, the applicant may provide the information according to the database's format. However, applicants should ensure that they:

- > clearly indicate the applicant's name as it appears in Part 1 of the application form
- > clearly indicate that the attachment is for the purposes of 'Table 2 in Part 4 of the application form'
- > clearly indicate the form and part of the form the information relates (for example, Part C of Form 5, 'Bodies Corporate of which the applicant is a director or secretary')
- > provide all of the required information.

It is recommended that applicants provide their associates' information in a searchable format, that is in an electronic format rather than a scan of a physical copy.

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 to participate in an auction for a spectrum 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	

Applicants can provide details about all additional bodies that fall within this category as a list annexed to this form. The annexure must specify that it is addressing '**Part B of Form 5**' as specified in the notes on completing this form must contain all the required information for each additional body corporate.

Additional details annexed for **Part B**: Yes No

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	

Applicants can provide details about all additional bodies that fall within this category as a list annexed to this form. The annexure must specify that it is addressing '**Part C of Form 5**' as specified in the notes on completing this form and must contain all the required details for each additional body corporate.

Additional details annexed for **Part C**: Yes No

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 can provide details about all additional bodies that fall within this category as a list annexed to this form. The annexure must specify that it is addressing '**Part D of Form 5**' as specified in the notes on completing this form and must contain all the required details for each additional related body corporate.

Additional details annexed for **Part D**: Yes No

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 – 26 GHz Band) Determination 2020 (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/ABN/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/ABN/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 can provide details about all additional bodies that fall within this category as a list annexed to this form. The annexure must specify that it is addressing '**Part E of Form 5**' as specified in the notes on completing this form and must contain all the required details for each additional person.

Additional details annexed for **Part E**: Yes No

Form 6 – Statutory declaration about affiliations

For the purposes of section 31, paragraph 34(5)(c) and section 42 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Notes on completion

Introduction

This statutory declaration form has been approved and is provided by the Australian Communications and Media Authority (ACMA) for the purposes of paragraph 26(1)(k) of the allocation determination.

This form should be used by applicants for the purposes of subsections 31(1), 34(5) and 42(1) of the allocation determination.

Subsection 31(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 and the persons identified as the associates of other applicants; and
- > ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant and, if so, identifying the other applicant and giving details of the affiliation.

Subsection 34(5) provides that a new applicant, formed from one or more of a group of affiliated applicants, must no later than 3 working days after receiving updated information from the ACMA about the identity of all other applicants, and the persons identified as the associates of other applicants, make and give the ACMA a statutory declaration that the new applicant is not affiliated with any other applicant.

If the ACMA varies a starting price under section 37 and the ACMA receives a completed application from a new applicant under subsection 41(a), subsection 42(1) provides that, after the new application deadline, the ACMA must:

- > give each applicant (including new applicants) updated details about the identity of all other applicants, and the persons identified as the associates of other applicants; and
- > ask each applicant to make a statutory declaration stating whether the applicant is affiliated with another applicant and if so, identifying the other applicant and giving details of the affiliation.

When to make the statutory declaration

The ACMA will state the lodgement deadline when it asks an applicant to make the statutory declaration.

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 section 7 of the allocation determination.

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*. The procedures contain specific requirements where a document is given by email.

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.

How to sign and witness the statutory declaration

A physical signature with an in-person witness is required for the completion of 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:**
 - > Architect
 - > Chiropractor
 - > Dentist
 - > Financial adviser or financial planner
 - > Legal practitioner
 - > Medical practitioner
 - > Midwife
 - > Migration agent registered under Division 3 of Part 3 of the *Migration Act 1958*
 - > Nurse
 - > Occupational therapist
 - > Optometrist
 - > Patent attorney
 - > Pharmacist
 - > Physiotherapist
 - > Psychologist
 - > Trademarks 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:

- > Accountant who is a fellow of the National Tax Accountants' Association, or a member of any of the following:
 - > Chartered Accountants Australia and New Zealand;
 - > the Association of Taxation and Management Accountants;
 - > CPA Australia; or
 - > the Institute of Public Accountants
- > 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 5 or more continuous years of service
- > Building society officer with 5 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 5 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
- > Engineer who is:
 - > a member of Engineers Australia, other than at the grade of student; or
 - > a Registered Professional Engineer of Professionals Australia; or
 - > registered as an engineer under a law of the Commonwealth, a state or territory; or
 - > registered on the National Engineering Register by Engineers Australia
- > Finance company officer with 5 or more years of continuous service
- > Holder of a statutory office not specified in another item in this list
- > Judge
- > 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 the Australian Defence Force who is:
 - > an officer; or
 - > a non-commissioned officer within the meaning of the *Defence Force Discipline Act 1982* with 5 or more years of continuous service; or
 - > a warrant officer within the meaning of that Act
- > Member of the Australasian Institute of Mining and Metallurgy
- > Member of the Governance Institute of Australia Ltd
- > 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 including a notary public (however described) exercising functions at a place outside:
 - > the Commonwealth; and
 - > the external territories of the Commonwealth
- > Permanent employee of the Australian Postal Corporation with 5 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 5 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.

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 28 of the Radiocommunications (Spectrum Licence
Allocation – 26 GHz Band) Determination 2020

which is the 'Applicant' under section 28 of the Radiocommunications (Spectrum Licence
Allocation – 26 GHz Band) Determination 2020 (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 section 14 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 subsection 31(1) of the allocation determination and/or subsections 34(3) and 42(1) (if applicable), about the identities of all other applicants or persons identified as associates of other applicants (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.

5. In response to the request made by the ACMA in accordance with section 31 or 42, or in response to information provided by the ACMA under section 34 (if applicable) of the allocation determination, I declare that the Applicant (tick the appropriate boxes):

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;

The other applicant(s) with whom the Applicant is affiliated is/are:

Insert name of applicant(s)

Insert address of applicant(s)

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

describe why the Applicant's relationship with the other applicant(s) falls within the meaning of 'affiliated' in section 14 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 7 – Eligibility nomination form

For the purposes of Part 4, Division 4, and sections 28 and 34 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Introduction

This eligibility nomination form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 26(1)(l) and subsection 27(2) of the allocation determination.

Subsection 28(2) and subparagraph 34(6)(a)(i) 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 desired by the applicant as valid provisional start demands of the applicant before the pre-bidding phase of the primary stage, at the starting price for the lots of the product; and
- (b) specifies the maximum eligibility points of an applicant, based on the specified provisional start demands; and
- (c) in relation to each product, either does not select a provisional minimum spectrum requirement, or selects only one option as the provisional minimum spectrum requirement, for the lots of each product.

The amount required to secure the maximum eligibility points specified by the applicant in this form is calculated in accordance with subsection 36(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 provisional start demands, calculating maximum eligibility points and selecting/not selecting a provisional minimum spectrum requirement (MSR). This form provides guidance about how to:

- > nominate provisional start demands
- > select provisional MSR for products
- > calculate the maximum eligibility points
- > secure the maximum eligibility points by making an eligibility payment and/or providing a deed of financial security.

Before the auction commences, and subject to subsections 36(4) and (5) of the allocation determination, the auction manager will enter into the auction system the provisional start demands and provisional MSRs (if any) for the lots of each product for each bidder as recorded in the register of bidders, in accordance with paragraphs 3(1)(a) and 3(1)(b) of Schedule 1 to the allocation determination.

About start demands

Pursuant to subsection 28(2) of the allocation determination, applicants are required to nominate their provisional start demands in their eligibility nomination form. Applicants should note:

- > their provisional start demands may not:
 - > exceed the applicant's allocation limits for any product or any of the combined products
 - > exceed the supply of a product
- > the provisional start demands nominated by the applicant in this form may be changed or confirmed in the pre-bidding phase, but the resulting actual start demands may not:
 - > exceed the allocation limits for any product or any of the combined products
 - > exceed the supply of a product
 - > result in their initial eligibility points exceeding their maximum eligibility points calculated in accordance with this form
- > if a bidder chooses not to participate in the pre-bidding phase, their start demands and MSR are taken to be their provisional start demands and provisional MSR as recorded for the bidder in the register of bidders, in accordance with subclause 3(3) of Schedule 1 to the allocation determination. In that case, the provisional start demands 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 eligibility points

The maximum eligibility points secured by an applicant, in accordance with section 36 of the allocation determination, determine an applicant's maximum eligibility (expressed in eligibility points) for the pre-bidding phase of the primary stage of the auction. An applicant's maximum eligibility points may be reduced in the circumstances set out in subsection 36(4).

In accordance with section 35 of the allocation determination, the maximum eligibility points that an applicant may specify on this 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 or any of the combined products to be auctioned.

In accordance with clause 3 of Schedule 1 to the allocation determination, in the pre-bidding phase a bidder may change or confirm their provisional start demands and provisional MSR in the auction system. At the conclusion of the pre-bidding phase, a bidder's start demands and MSR become binding and their initial eligibility points will apply to the first clock round of the primary stage. If a bidder changes their provisional start demands, they may do so such that their initial eligibility points do not exceed their maximum eligibility points. If a bidder does not participate in the pre-bidding phase, their initial eligibility points will be taken to be the maximum eligibility points as nominated in this form.

Pursuant to subclause 12(2) of Schedule 1 to 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.

About the MSR

Applicants will need to decide whether or not to select an MSR for each product in the auction. The ACMA has set the MSR for each product to be two lots. Therefore:

- > in Greater Perth, Margaret River and Hobart, where the lot size is 100 MHz, the MSR will be 2 lots (200 MHz)
- > for all other products, where the lot size is 200 MHz, the MSR will be 2 lots (400 MHz).

When completing Table 1 of Part 2 of this form, for each product in column K, indicate whether the applicant wishes to select the provisional MSR for that product. Write "Y" to select the provisional MSR for that product (being two lots of the product). Write "N" if the applicant does not wish to select the provisional MSR for the product.

If you select "Y", you will set a provisional MSR of two lots for a product. This means a bidder is prevented from winning a single lot for that product. If you select "N" for a provisional MSR, this enables the bidder to reduce demand in such a way that the bidder can end up with a single lot for that product. Pursuant to subsection 35(2) of the allocation determination, if a selection is not made, the applicant is taken to have no provisional MSR for the lots of the product

A bidder may change or confirm their provisional MSRs in the pre-bidding phase.

If a bidder, who has selected a MSR for a product, does not 'win' any spectrum of that product during the primary stage, that bidder will not be permitted to bid for lots of that product in the secondary stage.

About the allocation limits

The [Radiocommunications \(Spectrum Licence Limits – 26 GHz Band\) Direction 2020](#) specifies that no person or specified group of persons may, as a result of the allocation of a spectrum licence, use more than an aggregate of **1 GHz** of the 26 GHz band in each designated area. These designated areas form the regions that are defined in the [Radiocommunications Spectrum Marketing Plan \(26 GHz Band\) 2020](#) (marketing plan) and listed in Chapter 2 of the *Auction guide*. When specifying your provisional start demands on this form, please ensure no designated area has an aggregate bandwidth over **1 GHz**. This means:

- > in Greater Perth, Margaret River and Hobart, the maximum aggregate provisional start demand across the lower and upper products in each area is 10 lots
- > in all other areas, the maximum provisional start demand is 5 lots.

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 provisional start demands and provisional MSRs, and calculate the applicant's maximum eligibility points.
- > In Part 3: Calculate the amount required to secure the maximum eligibility points.
- > In Part 4: Nominate the method by which you intend to secure the maximum eligibility points, read the declaration and sign the form.

When to give the eligibility nomination form to the ACMA

If a person applies to become a registered bidder under sections 28 or 34 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*.

Where the ACMA varies a starting price under section 37 of the allocation determination, the ACMA must approve and publish an updated eligibility nomination form.

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 section 7 of the allocation determination. The eligibility nomination form can be delivered to:

Email: spectrumallocations@acma.gov.au
Post: Auction Manager
Major Spectrum Allocations Section
Australian Communications and Media Authority
Red Building, Benjamin Offices, Chan Street
Belconnen ACT 2617

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*. The procedures contain specific requirements where a document is given by email.

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 sign and witness the eligibility form

Physical signature and witnessing

Applicants may choose to complete the eligibility form with a physical signature and an in-person witness.

Electronic signature and remote witnessing

Alternatively, applicants may choose to complete the eligibility form with an electronic signature, witnessed remotely by audio-visual link. The signatory and witness may:

- > paste a copy of their signature into the eligibility form
- > sign the eligibility form on a tablet, smartphone or laptop using a stylus or finger
- > use a cloud-based signature platform.

The witness must:

- > observe the signatory sign the document in real time. The witness may do this over an audio-visual link
- > sign the document, or an exact copy of the document, attesting that they witnessed the signature. The witness may sign a counterpart of the document or a scanned copy of the document as soon as practicable after the signature has been witnessed
- > be satisfied that the document they sign is the same document or a copy of the document signed by the signatory.

The witness may choose to either physically or electronically sign the eligibility form in order to attest that they witnessed the signature.

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 28 or section 34 of the allocation determination

Applicant's ACN/ARBN (if applicable):

enter ACN/ARBN as is appears in Part 1 of the application form submitted by the applicant
under section 28 or section 34 of the allocation determination

Part 2: Provisional start demands, provisional minimum spectrum requirements and maximum eligibility points

The instructions below involve entering information into Table 1 on the page below. Completion of Table 1 is mandatory.

To specify provisional start demands (Column H)

Step 1: For each product, enter in Column H the number of lots of each product you wish to specify as your provisional start demand for the auction. If you do not wish to specify a provisional start demand for a particular product, enter '0'. Leaving the row blank signifies a '0' entry.

Note:

- > Your provisional start demands are the number of lots in each product you want and intend to bid for.
- > You will have the opportunity to change or confirm your provisional start demands in the auction system prior to the commencement of the auction. Bidders that choose to amend their provisional start demands must not exceed their maximum eligibility points.
- > Bidders should be aware they may 'win' the provisional start demand they have specified in this form, if they do not change it during the pre-bidding phase. 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 provisional start demand for that product.
- > Your provisional start demand in each product must not exceed 1 GHz (10 lots in each of Greater Perth, Margaret River and Hobart; 5 lots in all other products) to comply with the allocation limits in the 26 GHz band, specified in Part 2 of the allocation determination.

To select provisional MSRs (Column K)

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

To calculate maximum eligibility points (Box L)

Step 2: For each product, multiply the number you entered on Column H (provisional start demand in lots) by the number in Column F (the lot rating) and enter the result in Column I.

Step 3: Add all of the entries you made in Column I, and enter the result as a number in Box L.

Note: Part 3 of this form explains how the bidder's provisional start demand value is used to calculate the amount to secure the maximum eligibility points.

To calculate the sum of the provisional start demand values (Box M)

Step 4: For each product, multiply the number you entered on Column H (provisional start demand in lots) by the number in Column G (the starting price per lot) and enter the result in Column J.

Step 5: Add all of the entries you made in Column J, and enter the result as a number in Box M.

Table 1: For use by applicants to specify provisional start demands, provisional MSR selections and calculate maximum eligibility points

No.	A	B	C	D	E	F	G	H	I	J	K
	Cat.	Product	Product name	Bandwidth (MHz)	No. of lots avail.	Lot rating	Starting price per lot	Prov. start demand (in lots)	Lot rating multiplied by provisional start demand (Column F x Column H)	Starting price multiplied by provisional start demand (Column G x Column H)	Prov. MSR (Y/N)
1	1	ADEL01	Adelaide	200	12	2,400	\$1,163,000				
2	1	CANB01	Canberra	200	12	800	\$375,000				
3	1	DARW01	Darwin	200	12	240	\$115,000				
4	1	GBRL01	Greater Brisbane/ Lismore	200	12	6,000	\$3,044,000				
5	1	MELB01	Melbourne/ Ballarat	200	12	9,000	\$4,129,000				
6	1	SYBA01	Sydney/ Bathurst	200	12	10,000	\$4,969,000				
7	1	ALAN01	Albany	200	12	60	\$28,000				
8	1	ALUR01	Albury	200	12	180	\$79,000				
9	1	ARMI01	Armidale	200	12	40	\$20,000				
10	1	BEND01	Bendigo	200	12	180	\$87,000				
11	1	BNHB01	Bundaberg/ Hervey Bay	200	12	240	\$123,000				
12	1	CAIR01	Cairns	200	12	300	\$137,000				
13	1	COFF01	Coffs Harbour	200	12	140	\$64,000				
14	1	FRTC01	Forster/ Tuncurry	200	12	40	\$19,000				
15	1	LAUN01	Launceston	200	12	180	\$85,000				
16	1	MACK01	Mackay	200	12	140	\$73,000				
17	1	MILD01	Mildura	200	12	100	\$45,000				
18	1	PTMC01	Port Macquarie	200	12	100	\$46,000				
19	1	ROCK01	Rockhampton	200	12	140	\$71,000				
20	1	SHMO01	Shepparton/ Mooroopna	200	12	100	\$45,000				
21	1	TOWN01	Townsville	200	12	300	\$156,000				
22	1	TRMO01	Traralgon/ Morwell	200	12	140	\$63,000				
23	1	WAGA01	Wagga Wagga	200	12	100	\$49,000				
24	1	WARR01	Warrnambool	200	12	60	\$32,000				
25	2	GPER01	Greater Perth Lower	100	19	1,800	\$869,000				
26	3	GPER02	Greater Perth Upper	100	5	1,800	\$652,000				
27	2	HOBA01	Hobart Lower	100	19	180	\$92,000				
28	3	HOBA02	Hobart Upper	100	5	180	\$69,000				
29	2	MARG01	Margaret River Lower	100	19	10	\$5,000				
30	3	MARG02	Margaret River Upper	100	5	10	\$4,000				
Box L is the sum of column I and is the maximum eligibility points. Box M is the sum of column J and is the total value of the applicant's provisional start demands. Box M is used to calculate the amount to secure the maximum eligibility points in Part 3 of this form.								Total of Column	Box L	Box M	

Note: In total, there are 360 lots available. The geographic area for the GPER01 product is the Perth/Bunbury region as declared by the Minister in the Radiocommunications (Spectrum Re-allocation—26 GHz Band) Declaration 2019.

Explanatory notes to the columns and boxes in Table 1

- A. Specifies the category to which the product belongs, as identified in Table 1 of Schedule 1 to the marketing plan.
- B. Specifies the product, as identified in Table 1 of Schedule 2 to the marketing plan.
- C. Specifies the product name relevant to each product, as identified in Table 1 of Schedule 2 to the marketing plan.
- D. Specifies the bandwidth of each lot of a product.
- 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 27(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 27(1)(a) of the allocation determination.
- H. This is where the applicant enters the number of lots of each product that the applicant wishes to specify as its provisional start demand for the auction.
- I. This is 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 is where the applicant enters the value of the provisional start demands for each product entered in column H. This is calculated by multiplying provisional start demands for a product by the starting price for that product in column G. Where an applicant enters '0' in column H, they should also enter '0' in column J. The sum of these amounts in Box L is used to calculate the amount to secure the maximum eligibility points.
- K. This is where the applicant indicates if they wish to select the only option available for a provisional MSR for each product by writing 'Y' for yes and 'N' for no.

Box L. The sum of the calculation when adding the figures entered in column I for each product. This is the applicant's maximum eligibility points.

Box M. The sum of the calculations for each product listed in column J. The amount in Box M is used to calculate the amount to secure the maximum eligibility points in Part 3 of this form.

Part 3: Amount to secure the maximum eligibility points

Applicants are required to make an eligibility payment and/or provide a deed of financial security to secure their maximum eligibility points for the auction in accordance with section 36 of the allocation determination.

The amount required to secure the maximum eligibility points specified by the applicant in this form is 10% of the amount entered in **Box M** of Part 2.

Please enter the resulting figure in **Box N**, below:

Amount entered in Box M x 0.10 = \$

Box N

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

Step 1: To secure the maximum eligibility points specified in **Box L** of Part 2, the applicant must select the appropriate option(s) below, and enter dollar figures which will equal the amount calculated in **Box N** in Part 3:

- 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 8 – 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 Part 3 above, and another eligibility payment or deed, or both, is not made or given to make up the difference, maximum eligibility points and provisional start demands of the applicant are reduced in accordance with subsection 36(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: '26 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 spectrumallocations@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 how an amount must be 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 relevant 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.

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 maximum 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 8—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 knowingly or recklessly making a false or misleading statement in, or in connection with, an application is 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.

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

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 8 – Deed of financial security

For the purposes of sections 28, 34, 36, 39, and 41 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Notes on completion

Introduction

This deed of financial security form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 26(1)(m) of the allocation determination.

Sections 28, 34, 36, 39, and 41 of the allocation determination provide that an applicant must, before the eligibility deadline (or extended eligibility deadline, if there is one), 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.

Applicants must use this deed of financial security form for the purposes of sections 28, 34, 36, 39, and 41 of the allocation determination where they propose to give the ACMA a deed of financial security for all or part of an amount in Part 3 of **Form 7 – Eligibility nomination form**. Section 36 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 calculated as follows:

- > 10% of the total value of the provisional start demands desired by the applicant before the pre-bidding phase of the primary stage and specified in the eligibility nomination form
- > less any eligibility payment made by the applicant to the ACMA on behalf of the Commonwealth under 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 an applicant gives a deed of financial security to the ACMA for the purposes of section 28 of the allocation determination, they must do so before the eligibility deadline. If section 34 applies, the new applicant must give the deed of financial security 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 their application if the applicant fails to make an eligibility payment or give a deed of financial security before the eligibility deadline or the agreed time (if applicable). The eligibility deadline is included in the *Auction guide*.

If the ACMA varies the eligibility deadline under section 37 an applicant may update their deed of financial security for the purposes of paragraph 39(3)(b) no later than the extended eligibility deadline. If a new applicant gives a deed of financial security to the ACMA for the purposes of paragraph 41(2)(b), they must do so before the extended eligibility deadline.

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 section 7 of the allocation determination.

A summary of the procedures (including an email address 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.

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 before the eligibility deadline (or extended eligibility deadline, if there is one), the original document must be received by the ACMA no later than 3 working days after the eligibility deadline (or the extended eligibility deadline, if there is one); 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 physical signature with an in-person witness is required for the completion of the deed of financial security. As noted above, if the deed of financial security is given by email, the original document must be received by the ACMA in accordance with the allocation determination.

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:

- > 2 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

_____ 2021
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 business 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 \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#).

On behalf of the Applicant:

Insert name

Insert ACN or ARBN if applicable

of:

Insert address

Purpose:

- A. The ACMA has made the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (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 28, 34, 36, 39 or 41 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 \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#).

Amount means the dollar amount specified in clause 1.1.

auction means the auction of spectrum lots held or to be 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 26(1)(g) of the allocation determination and executed or to be 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 9 – Statement about affiliations for primary and secondary stage winners

For the purposes of section 60 of the [Radiocommunications \(Spectrum Licence Allocation – 26 GHz Band\) Determination 2020](#) (allocation determination).

Notes on completion

Introduction

This form has been approved by the Australian Communications and Media Authority (ACMA) pursuant to paragraph 26(1)(k) of the allocation determination.

Section 60 of the allocation determination provides that, if subsection 59(1) applies before the end of the secondary stage (if there is one) or primary stage (if there is no secondary stage), then as soon as practicable after the end of the relevant stage and before the start of the assignment stage, the ACMA must:

- (a) give each primary winner and each secondary winner details about the identity of all other primary winners and all other secondary winners; and
- (b) ask those winners to make a statement whether the winner is an affiliate of another winner and, if so, identifying the other winner and giving details of the affiliation.

This form should be used by primary winners and secondary winners (if any) for the purposes of making a statement in accordance with section 60 of the allocation determination.

When to make the statement

The ACMA will state the deadline for making the statement about affiliations when it asks each primary winner and secondary winner (if there is a secondary stage) to make the statement. The deadline will be at least 10 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 section 7 of the allocation determination. The statement can be delivered to:

Email: spectrumallocations@acma.gov.au
Post: Auction Manager
Major Spectrum Allocations Section
Australian Communications and Media Authority
Red Building, Benjamin Offices, Chan Street
Belconnen ACT 2617

Who should make the statement?

Where the ACMA receives a statement from a primary winner or secondary winner 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 primary winner or secondary winner 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.

How to sign and witness the statement

Physical signature and witnessing

Applicants may choose to complete the statement with a physical signature and an in-person witness.

Electronic signature and remote witnessing

Alternatively, applicants may choose to complete the statement with an electronic signature, witnessed remotely by audio-visual link. The signatory and witness may:

- > paste a copy of their signature into the statement
- > sign the statement on a tablet, smartphone or laptop using a stylus or finger
- > use a cloud-based signature platform.

The witness must:

- > observe the signatory sign the document in real time, The witness may do this over audio-visual link
- > sign the document, or an exact copy of the document, attesting that they witnessed the signature. The witness may sign a counterpart of the document or a scanned copy of the document as soon as practicable after the signature has been witnessed
- > be satisfied that the document they sign is the same document or a copy of the document signed by the signatory.

The witness may choose to either physically or electronically sign the statement in order to attest that they witnessed the signature.

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 primary winner or secondary winner is a body corporate, insert 'director' or 'secretary' or 'authorised officer' as appropriate; otherwise, leave blank

of:

name of the primary winner or secondary winner as it appears in the register of bidders maintained by the ACMA under section 45 of the Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020

which is a 'primary winner' or a 'secondary winner' for the purposes of section 60 of the Radiocommunications (Spectrum Licence Allocation – 26 GHz Band) Determination 2020 (the allocation determination).

2. I have fully read and understand the provisions set out in Part 2 and in Divisions 2 and 3 of Part 5 of the allocation determination, including the meaning of 'associate' in section 13 of the allocation determination and the meaning of 'affiliated' in section 14 of the allocation determination.
3. I have examined the details given to the primary winner or the secondary winner by the Australian Communications and Media Authority (the ACMA) in accordance with subsection 60(1) of the allocation determination, about the identities of the other primary winners and secondary winners in this allocation.
4. I have made my own reasonable inquiries into the identities of the associates of the primary winner or secondary winner, and into whether the primary winner or secondary winner is affiliated with any other primary winner or secondary winner at the auction.
5. In response to the request made in accordance with paragraph 60(1)(b) of the allocation determination, I declare that the primary winner or secondary winner (tick the appropriate box):

- is not** affiliated with another primary winner or secondary winner named in the details provided by the ACMA.
- is** affiliated with another primary winner or secondary winner named in the details provided by the ACMA.

The primary winner or secondary winner with which the primary winner or secondary winner is affiliated is:

Insert name of other primary winner or secondary winner

Insert address of other primary winner or secondary winner

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

Describe why the primary winner's or secondary winner's relationship with the other primary winner or secondary winner falls within the meaning of 'affiliated' in section 14 of the allocation determination, with reference to section 13 of the allocation determination, as appropriate.

I understand that knowingly or recklessly making a false or misleading statement in, or in connection with, an application is an offence under section 136.1 of the *Criminal Code*. I believe that the statements made in this document and attachments 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.



Australian
Communications
and Media Authority

Form 10 – Bank guarantee

For the purposes of **paragraph 3(3)(c) of Schedule 4 to the Radiocommunications (Spectrum Licence Allocation — 26 GHz Band) Determination 2020** and **subsection 15(7) of the Radiocommunications Spectrum Marketing Plan (26 GHz Band) 2020**

DEMAND GUARANTEE

[Insert issuing Bank's name, ACN/ABN & other details]

(the Bank) issues its Demand Guarantee (**Instrument**) as follows:

Type of instrument: On demand payment guarantee

Instrument No:

_____ *[Insert the Bank reference number]*

Applicant:

_____ *[Insert bidder's name, ACN/ABN, address and other details]*

Beneficiary:

The Commonwealth of Australia for the benefit of the Australian Communications and Media Authority ABN 55 386 169 386, established under the *Australian Communications and Media Authority Act 2005* (Cth) (**ACMA**) of Red Building, Benjamin Offices, Chan Street, Belconnen, Australian Capital Territory 2617.

Underlying Relationship:

The issuance to the Applicant of a

_____ *[describe spectrum licence with specific details, including frequency ranges, geographic area and licence number (if known)]*

by the Beneficiary, in respect of which the Applicant is obliged to pay to the Beneficiary certain amounts, including the Second Instalment, the Third Instalment, the Fourth Instalment and the Fifth Instalment (each an **Instalment**). In accordance with the *Radiocommunications (Spectrum Licence Allocation — 26 GHz Band) Determination 2020*, the Applicant is obliged to provide to the Beneficiary this Instrument to secure the Maximum Secured Amount.

Second Instalment:

The amount of _____

_____ *[insert currency and amount in words and (figures)]*

Due date: *[insert due date]*

Third Instalment:

The amount of _____

_____ *[insert currency and amount in words and (figures)]*

Due date: *[insert due date]*

Fourth Instalment:

The amount of _____

_____ *[insert currency and amount in words and (figures)]*

Due date: *[insert due date]*

Fifth Instalment: The amount of _____

[insert currency and amount in words and (figures)]
Due date:
[insert due date]

Maximum Secured Amount: _____

[insert currency and amount in words and (figures)]

being an amount calculated as the sum of five percent (5%) of the Second Instalment, five percent (5%) of the Third Instalment, five percent (5%) of the Fourth Instalment and five percent (5%) of the Fifth Instalment as reduced:

- (a) by the amount of any payments made by the Bank under this Instrument; and
- (b) automatically by the amount of five percent (5%) of the Second Instalment at the earlier of the following times:
 - (i) 4:00 pm on the Business Day the Chair or Deputy Chair of the ACMA, on behalf of the Beneficiary, gives written notice to the Bank that Applicant has paid the Second Instalment to the Beneficiary, or 10:00 am on the next Business Day if the notice is received by the Bank after 4:00 pm; or
 - (ii) 4:00 pm on the 10th Business Day after the due date for the Second Instalment if no notice is given under paragraph (b)(i) and no demand is received by the Bank in relation to the Second Instalment by then; and
- (c) automatically by the amount of five percent (5%) of the Third Instalment at the earlier of the following times:
 - (i) 4:00 pm on the Business Day the Chair or Deputy Chair of the ACMA, on behalf of the Beneficiary, gives written notice to the Bank that Applicant has paid the Third Instalment to the Beneficiary, or 10:00 am on the next Business Day if the notice is received by the Bank after 4:00 pm; or
 - (ii) 4:00 pm on the 10th Business Day after the due date for the Third Instalment if no notice is given under paragraph (c)(i) and no demand is received by the Bank in relation to the Third Instalment by then; and
- (d) automatically by the amount of five percent (5%) of the Fourth Instalment at the earlier of the following times:
 - (i) 4:00 pm on the Business Day the Chair or Deputy Chair of the ACMA, on behalf of the Beneficiary, gives written notice to the Bank that Applicant has paid the Fourth Instalment to the Beneficiary, or 10:00 am on the next Business Day if the notice is received by the Bank after 4:00 pm; or
 - (ii) 4:00 pm on the 10th Business Day after the due date for the Fourth Instalment if no notice is given under paragraph (d)(i) and no demand is received by the Bank in relation to the Fourth Instalment by then.

To avoid doubt, the amount claimable in relation to any of the Second Instalment, the Third Instalment, the Fourth Instalment or the Fifth Instalment is not limited to 5% of the instalment.

Place of Presentation:

[insert the issuing Bank's issuing office address]

or such other address as notified in writing to the Beneficiary by the Bank from time to time.

Form of Presentation

Paper delivered personally, by courier or by post only to the Place of Presentation.

Required Documents:

A statutory declaration which appears on its face to have been made under the *Statutory Declarations Act 1959* (Cth) by the Chair or Deputy Chair of ACMA certifying that the Second Instalment, the Third Instalment, the Fourth Instalment or the Fifth Instalment (as the case may be) has not been paid in full on its due date.

Required language:

Demands, documents and notices issued or required in connection with this Instrument shall be in English.

Expiry:

At the earlier of the following times:

- (a) 4:00 pm on the Business Day the Chair or Deputy Chair of the ACMA, on behalf of the Beneficiary, gives notice to the Bank that Applicant has paid the Fifth Instalment to the Beneficiary, or 10:00 am on the next Business Day if the notice is received by the Bank after 4:00 pm; or
- (b) 4:00 pm on the 10th Business Day after the due date for the Fifth Instalment if no notice is given under paragraph (a) and no demand is received by the Bank in relation to the Fifth Instalment by then, subject to Clause 6 below.

Party liable for charges:

All charges are for the account of the Applicant.

Issue Date:

[insert date]

Business Day:

Means a day other than a Saturday or Sunday or public holiday on which the Bank is open for banking business in the State of the Place of Presentation.

Time of day:

A time of day is a reference to Canberra time.

1. The Bank irrevocably undertakes to pay the Beneficiary any sum or sums not exceeding in aggregate the Maximum Secured Amount upon presentation in the form indicated in this Instrument to the Bank of the Beneficiary's compliant demand together with the Required Documents described above.
2. Demands can only be made by the Beneficiary and must:
 - (a) be marked as drawn under this Instrument;
 - (b) request payment of all or part of the Maximum Secured Amount but in no event shall a demand result in the aggregate amounts paid under this Instrument exceeding the Maximum Secured Amount;
 - (c) state that the Beneficiary has not received from the Applicant the relevant Instalment in full on its due date; and
 - (d) specify the bank account of the Beneficiary into which payment is to be made electronically by the Bank.

3. Demands and Required Documents must be received at the Place of Payment on or before the Expiry of this Instrument. The Bank will not recognise or pay a demand made after the Expiry of this Instrument.
4. Other notices in connection with this Instrument must be signed and delivered personally, by courier or by post to the Place of Payment.
5. Payments under this Instrument will be made electronically to a bank account of the Beneficiary only.
6. The Bank may at any time, without being required to do so, pay the Beneficiary the Maximum Secured Amount or, after having made a part payment of the Maximum Secured Amount, the balance outstanding or any lesser amount that the Beneficiary may require and thereupon this Instrument expires.
7. The Beneficiary must return this Instrument to the Bank at the Place of Payment immediately after it expires.
8. This Instrument is subject to the Uniform Rules for Demand Guarantees 2010 Revision, ICC Publication No. 758.
9. The Bank does not have to do anything under this Instrument if the Bank, acting reasonably, considers that doing so would breach any anti-money laundering, counter-terrorism financing or economic or trade sanctions laws or regulations.

Executed for and on behalf of

[Insert the issuing Bank's name]
