

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]
