

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.