

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