

Form 2 – Deed of Acknowledgement

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

Paragraphs 34(2)(c) and 50(2)(c) of the allocation determination provide that a person who applies to become registered as a bidder 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 44(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 45(2)(c) 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 as part of this application.

When to give the Deed to the ACMA

Where an applicant gives this Deed to the ACMA for the purposes of section 34 of the allocation determination, this must be done before the application deadline. An application is incomplete if the applicant fails to give the Deed to the ACMA before the application deadline. The application deadline is published by the ACMA on its website and in the *Auction guide*.

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

In the event that starting prices are varied under section 25 of the allocation determination, new applicants for the purposes of section 50 of the allocation determination must submit a completed Deed by the new application deadline. The new application deadline will be published on the ACMA's website, if required.

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 6 of the allocation determination through the following methods:

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

Email: spectrumallocations@acma.gov.au

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

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

A summary of the procedures (including an email address and physical address for giving documents to the ACMA) is provided at the beginning of the *Auction forms booklet*. The procedures are also summarised under the heading 'Giving documents to the ACMA' in the *Auction guide*.

Who should execute the Deed?

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.

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

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 3.4/3.7 GHz bands by a combination of auction and direct allocation.
- B. Under sections 60 and 294 of the *Radiocommunications Act 1992* (the Radiocommunications Act), the ACMA has determined the procedures to be applied in allocating spectrum licences, and has fixed the method for calculating the spectrum access charges payable for issuing those licences, as set out in the Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023 (allocation determination).
- C. The 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 Radiocommunications (Spectrum Licence Allocation – 3.4/3.7 GHz Bands) Determination 2023 (**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 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 34, 45 or 50 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 27 of the allocation determination and its attachments, including each of the following documents:
 - a. the allocation determination;
 - b. Radiocommunications Spectrum Marketing Plan (3.4/3.7 GHz Bands) 2023 (**the marketing plan**);
 - c. Radiocommunications (Spectrum Re-allocation—3.4 GHz and 3.7 GHz Bands) Declaration 2022.

- 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 process

2. Security

- 2.1 The Applicant agrees that it will keep secure any information and items provided to it for the purpose of accessing the auction system, as required by section 63 of the allocation determination.
- 2.2 The Applicant agrees that it will immediately notify the ACMA if any information or item provided to the Applicant for the purpose of accessing the auction system is lost or stolen, as required by section 63 of the allocation determination, or if the Applicant otherwise forms the view that the security, confidentiality or integrity of such information or such an item has been compromised.
- 2.3 The Applicant agrees that it will not misuse the auction system and will comply with section 151 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, before the deadline for giving a statutory declaration in accordance with section 37, 45 or 52 of the allocation determination, the Applicant believes that it may be affiliated with another applicant, the Applicant:
- a. agrees to give a statutory declaration that notifies the ACMA of the affiliation by the relevant deadline, as required by sections 37, 45 or 52 of the allocation determination; and
 - b. acknowledges that section 44 of the allocation determination may apply in relation to the Applicant.
- 3.3 If, at any time after the eligibility deadline and before the end of the assignment stage of the 3.4 GHz auction, 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 67 of the allocation determination; and
 - b. acknowledges that Division 3 of Part 5 of the allocation determination may apply in relation to the Applicant.
- 3.4 The Applicant agrees to comply with Division 3 of Part 5 of the allocation determination, and acknowledges the consequences of affiliation set out in sections 72 and 73 of the allocation determination.
- 3.5 If, after the eligibility deadline and before the commencement of the assignment stage of the 3.4 GHz auction, the ACMA notifies the Applicant that the ACMA believes that an affiliation exists between the Applicant and another applicant, the Applicant may be required to provide a statement as required by section 70 of the allocation determination.
- 3.6 The Applicant acknowledges that the allocation determination makes provision for the direct allocation of leftover lots.

4. Confidentiality

- 4.1 The Applicant agrees to comply with the obligations set out in Division 1 of Part 4 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 34(2)(e), 45(2)(e) or 50(2)(e) 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:
- a. subject to paragraph (b), in accordance with section 35 of the allocation determination, any application fee paid by the Applicant will not be refunded by the ACMA; and
 - b. in accordance with subsection 35(2) of the allocation determination, an application fee paid is refundable if the ACMA varies starting prices under section 25 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 sections 41 and 48 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 section 6 and subsections 41(4) and 41(5) of the allocation determination, by the relevant deadline in accordance with sections 34, 45 or 50 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 39 of the allocation determination; or
 - b. to give an updated eligibility nomination form by the extended eligibility deadline, under section 48 or 50 of the allocation determination;
- will prevent the Applicant from taking part in the allocation process.
- 6.4 The Applicant acknowledges that a failure to make an eligibility payment or give a Deed of Financial Security securing the eligibility points specified by the Applicant in its eligibility nomination form, or updated eligibility nomination form, by the applicable deadline, in accordance with section 41 of the allocation determination, may affect the maximum number of lots of each product the Applicant is eligible to bid on, in the manner set out in section 42.

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 allocation process if the requirements referred to in section 54 of the allocation determination are satisfied (and, for the avoidance of doubt, if the Applicant has not withdrawn, or is not taken to have withdrawn, its application).
- 7.2 The Applicant agrees to comply with section 56 of the allocation determination to ensure the ACMA has the correct information about the Applicant in the register of bidders.
- 7.3 The Applicant acknowledges that the allocation process will be conducted in accordance with, and the Applicant agrees to comply with, Part 5 and Part 6 of the allocation determination.
- 7.4 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, contractors, subcontractors and associates, in relation to the allocation process.
- 7.5 If the Applicant withdraws its application, in accordance with section 53 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, except where permitted by Division 5 of Part 4 of the allocation determination.

8. Pre-bidding round and bids

- 8.1 The Applicant acknowledges and agrees that:
 - a. its start demands for products must be consistent with the requirements described in section 101 of 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;
 - b. if the Applicant elects, for a product, to adopt the minimum spectrum requirement for the primary stage, it will not be possible for the Applicant to be allocated a single lot of that product.
- 8.2 The Applicant acknowledges and agrees that its bids must be consistent with the requirements described in Part 6 of the allocation determination in relation to the validity of the Applicant's bids.
- 8.3 The Applicant acknowledges and agrees that:
 - a. its bids will be subject to the data validation checks that are performed by the auction system for bids made and the processing of bids in the primary stage as set out in section 103 of the allocation determination; and
 - b. the Applicant will be bound by the bids validated by the auction system, 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 and bound by its acts and omissions, and the acts and omissions of its officers, employees, agents, subcontractors and associates, in relation to any bid in the primary stage, secondary stage or assignment stage of the 3.7 GHz auction or the 3.4 GHz auction.

9. Failure to pay balance of the total winning price

- 9.1 If, on becoming a winning bidder for any lot, the Applicant fails to pay the balance of the total winning price, or fails to comply with the requirements to pay the balance of the total winning price, in accordance with Division 7 of Part 5 of the allocation determination:
- a. the Applicant acknowledges that section 91 of the allocation determination applies; 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 150 of the allocation determination applies as a result of the Applicant's failure to pay the balance of the total 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 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 any Deed of Financial Security, at any time, in accordance with the relevant Deed of Financial Security. For the purposes of this Deed, '**Promisor**' has the meaning given to that term in such 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 152 of the allocation determination 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 155 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 156 of the allocation determination.
- 10.3 The Applicant acknowledges that the ACMA's power to require the provision of information or documents in accordance with section 152 of the allocation determination is in addition to, and does not replace, any other power the ACMA or another person has under the Radiocommunications Act (including Part 5.5A of the Radiocommunications Act).

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 153 of the allocation determination.

- 11.2 The Applicant acknowledges and agrees that, if it has provided or does provide information or documents to the ACMA for the purposes of the allocation process, and that information or documents contains the personal information of any person, the Applicant has or will notify the person of the following matters:
- a. that the personal information has been, or will be, provided to the ACMA;
 - b. the contact details of the ACMA;
 - c. the circumstances in which the personal information has been, or will be, provided to the ACMA;
 - d. that the personal information has been, or will be, provided to the ACMA for the purposes of the allocation determination, and is authorised by the allocation determination;
 - e. that the Applicant may not be able to participate in the allocation process if it does not provide the personal information;
 - f. that the ACMA may disclose the personal information to the Australian Competition and Consumer Commission;
 - g. that the ACMA's privacy policy contains information about how the person may access their personal information held by the ACMA, and how the person may seek the correction of such information; and
 - h. that the ACMA may disclose the personal information to its auction system provider, which is based in the United States of America.

11.3 However, the Applicant does not have to comply with the obligation in clause 11.2 if it would cause the Applicant to contravene its Deed of Confidentiality or the confidentiality obligation in subsection 29(1) of the allocation determination.

11.4 In this clause, '**personal information**' has the meaning given by the *Privacy Act 1988*.

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 155 and 156 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 Radiocommunications 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 Radiocommunications Act;
 - b. section 69A of the Radiocommunications Act, which requires a spectrum licence to include a condition that the licensee, for income tax purposes, is 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 Radiocommunications 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 conduct engaged in by the Applicant.

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 Radiocommunications Act and other laws, and will be subject to any conditions imposed on the licence by the Radiocommunications Act or the ACMA.
- 14.2 In particular, without limitation, the Applicant acknowledges and agrees to comply with the 3.4/3.7 GHz bands technical framework instruments, where applicable, that are listed from time to time on the ACMA website with the heading '*Technical frameworks for spectrum licences*'. The Applicant acknowledges and agrees that, at the time this Deed was executed, the 3.4/3.7 GHz bands technical framework instruments consisted of:
- a. the Radiocommunications Advisory Guidelines (Managing Interference from Spectrum Licensed Transmitters – 3.4 GHz Band) 2015;
 - b. the Radiocommunications Advisory Guidelines (Managing Interference to Spectrum Licensed Receivers – 3.4 GHz Band) 2015;
 - c. the Radiocommunications (Unacceptable Levels of Interference – 3.4 GHz Band) Determination 2015.

15. Changes to instruments and processes

- 15.1 The Applicant acknowledges that the ACMA, of its own initiative or as a result of a direction from the Minister for Communications, may do any of the following:
- a. vary, replace or repeal the instruments referred to in clause 1.7 of this Deed in accordance with the Radiocommunications Act, or other instruments associated with the allocation process;
 - b. vary the allocation process;
 - c. vary the content of spectrum licences issued or to be issued as a result of the allocation process;
 - d. suspend the allocation process, under or in accordance with the terms of the allocation determination, the other instruments referred to in clause 1.7 of this Deed, and the Radiocommunications 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 this 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 the effect section 153K of the Radiocommunications 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 stages of the auction and rules in Part 5 and 6 of the allocation determination, the rights and responsibilities of the holder of a spectrum licence to be issued pursuant to section 62 of the Radiocommunications 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 Radiocommunications Act and other Commonwealth legislation, the allocation determination and the other instruments referred to in clause 1.7, any deeds, statutory

declarations, statements or completed forms 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 17.1, including but not limited to any information, advice, statement or representation contained in or made in the applicant 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; or
- f. any breach by the Applicant of its obligations or warranties under this Deed, or its obligations under 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 19.1(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 Part 6 of the allocation determination, or any spectrum licences issued (or not issued) pursuant to

section 62 of the Radiocommunications 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), 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; or
- 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 processes, the rules in Part 6 of 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.

18.2 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:

- a. after the pre-bidding round for the primary stage of the 3.7 GHz auction, the Applicant has a start demand of at least one lot of one 3.7 GHz product; and
- b. the Applicant is affiliated with another applicant that, after the pre-bidding round for the primary stage of the 3.7 GHz auction, has a start demand of at least one lot of one 3.7 GHz product (whether or not the same as the product mentioned in paragraph (a)) (**affiliated applicant**); and
- c. section 72 of the allocation determination applies in relation to the products mentioned in paragraphs (a) and (b);

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 in relation to any lots of any 3.7 GHz products.

22.2 If:

- a. after the pre-bidding round for the primary stage of the 3.4 GHz auction, the Applicant has a start demand of at least one lot of one 3.4 GHz product; and
- b. the Applicant is affiliated with another applicant that, after the pre-bidding round for the primary stage of the 3.4 GHz auction, has a start demand of at least one lot of one 3.4 GHz product (whether or not the same as the product mentioned in paragraph (a)) (**affiliated applicant**); and
- c. section 72 of the allocation determination applies in relation to the products mentioned in paragraphs (a) and (b);

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 in relation to any lots of any 3.4 GHz products.

23. Inconsistency

23.1 To the extent that there is an inconsistency between a provision in the allocation determination and a clause 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, 15, 17, 18, 19, 25, and 26, and this clause 27 of this Deed, and any other provisions that by their nature survive termination.

27. Governing law

27.1 This Deed is governed by the laws in force in the Australian Capital Territory and the Commonwealth of Australia.

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

28. Definitions and interpretation

28.1 This Deed is to be interpreted in accordance with the provisions of the Radiocommunications Act, the allocation determination and the marketing plan. Unless otherwise provided, terms in this Deed have the same meanings as provided in the Radiocommunications Act, the allocation determination or the marketing plan. In particular, '**associate**' has the same meaning as provided in section 16 of the allocation determination.

28.2 In this Deed:

- a. **Radiocommunications Act** means the *Radiocommunications Act 1992*;
- 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;
- b. **Commonwealth** means the Crown in right of the Commonwealth and all departments, agencies and authorities of the Commonwealth.

28.3 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, legislative instrument or notifiable instrument is to a statute or other legislation, legislative instrument or notifiable instrument 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.

29. No variation of Deed

29.1 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

in the presence of:

Name of witness

Signature of witness

of:

Insert address

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