

Australian Communications Authority

Deed of Financial Security

NOTES ON COMPLETION

A Deed of Financial Security must be submitted with an Application Form by every prospective applicant, unless the prospective applicant gives the ACA a Performance Payment under subsection 3.3(1) of the *Radiocommunications (Spectrum Licence Allocation Open Outcry Auction-800 MHz Band) Determination 2000* (the Determination) or the ACA decides under subsection 3.3(2) of the Determination that it need not give a Deed of Financial Security. A prospective applicant that wishes to establish its exempt status should submit a statutory declaration (or other evidence of status acceptable to the ACA) attesting to that status.

As provided in subsection 3.3(4), a Promisor must be:

- (a) a bank licensed to operate in Australia; or
- (b) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973 (Cth)*; or
- (c) if Part VII of the *Insurance Act 1973 (Cth)* has not ceased to have effect, a Lloyd's underwriter.

All sections of this Deed of Financial Security must be completed. The prospective applicant(s) referred to in this Deed must be the same as on the related Application Form.

DEED OF FINANCIAL SECURITY

THIS DEED OF FINANCIAL SECURITY
is made this

day of

 2001

in favour of the AUSTRALIAN COMMUNICATIONS AUTHORITY ('ACA') a body corporate continued in existence under the *Australian Communications Authority Act 1997 (Cth)*

by

(the 'Promisor')

(Insert name and ACN/ARBN if applicable)

of

(Insert address)

in relation to an application or applications for participation in the Auction Process

by

(the 'Applicant(s)')

PURPOSE:

- A. The ACA has made the Determination under subsection 60(1) of the Act.
- B. The Applicant wishes to lodge an Application Form and proposes to participate in the allocation of spectrum licences that will take place in accordance with the Determination (auction process).
- C. The Promisor provides this Deed for the purposes of, and in accordance with, section 3.3 of the Determination.
- D. The Promisor relies solely on its own judgment and does not rely on any representations or warranties made to it or to any other person by the ACA.

OPERATIVE PART:

1. FINANCIAL UNDERTAKING

- 1.1 The Promisor unconditionally and irrevocably undertakes and covenants to pay to the ACA immediately on demand in writing, and without reference to the Applicant, and notwithstanding any notice given by the Applicant not to pay the same, any sum or sums which may from time to time be demanded in writing by the Commonwealth including the ACA up to the amount of

\$1,000,000

This amount of \$1,000,000 has been set by the ACA under paragraph 2.1(b) of the Determination.

- 1.2 The Promisor is to not make any inquiry as to the grounds of the ACA's demand.
- 1.3 The Promisor's obligations under this Deed are continuing obligations and shall continue in full force and effect until:
- (a) the ACA, by written notice to the Promisor, has cancelled the undertaking; or
 - (b) the Promisor has made payment to the ACA of the whole of the amount referred to in clause 1.1.
- 1.4 In addition to clause 1.1, the Promisor may, at any time in its discretion, pay unconditionally to the ACA the whole of the amount referred to in clause 1.1 (or, if applicable, that whole amount less any amount already paid to the ACA pursuant to this Deed), and in such circumstances:
- (a) the Promisor's liability to pay under clause 1.1 shall be deemed to be fully satisfied; and
 - (b) the Promisor shall, at and from that time of such payment, be deemed to have relinquished all rights and interests in the amount paid.
- 1.5 Any notice by the ACA to the Promisor under this undertaking will be deemed to have been duly given or served if it is in writing and purports to be signed for and on behalf of the ACA and is either delivered by hand or posted in a letter addressed to the Promisor at its above address and any notice to the ACA is to be deemed to have been duly given or served if it is in writing signed by or on behalf of the Promisor and is delivered by hand to the ACA Auction Centre.

Street address of the ACA Auction Centre:

Purple Building
Benjamin Offices
Chan Street
BELCONNEN ACT 2616

2. NO DISCHARGE

- 2.1 Neither the Promisor's obligations under this Deed nor the binding effect of this Deed shall in any way be affected, waived or impaired by:
- (a) any furnishing to, or acceptance by, the ACA of additional security;
 - (b) any release by the ACA of any security (except this Deed);
 - (c) any waiver, compromise, abandonment, renewal, consent or other action or inaction or any exercise or non-exercise by the ACA of any right, remedy or power (including the granting

of any time or indulgence) with respect to the Promisor or the Applicant (whether with or without the consent of the Promisor);

- (d) any insolvency, bankruptcy, reorganisation, arrangement, composition, liquidation, or dissolution of, or appointment of a liquidator and/or receiver or administrator to, the Promisor or the Applicant;
- (e) any amendment of the Determination with or without the consent of the Promisor;
- (f) the Determination or the Deed of Acknowledgment, or both, being void or otherwise unenforceable in whole or in part; or
- (g) the revocation of the Determination or the termination of the Deed of Acknowledgment, or both.

2.2 For the avoidance of doubt no variation to the terms of the Determination or Deed of Acknowledgment will increase the liability of the Promisor under this Deed.

3. REPRESENTATIONS AND WARRANTIES

The Promisor represents and warrants that:

- (a) it is:
 - (i) a bank licensed to operate in Australia; or
 - (ii) a person authorised to carry on business in Australia as an insurer under the *Insurance Act 1973*; or
 - (iii) if Part VII of that Act has not ceased to have effect - a Lloyd's underwriter; and
- (b) it is a duly organised and validly existing legal entity and that it has the power and authority to execute and deliver this Deed and to carry out its terms and conditions; and
- (c) the execution, delivery and performance by the Promisor of this Deed does not:
 - (i) contravene any law in Australia; or
 - (ii) contravene any provision of the Constitution, Memorandum or Articles of Association, Certificate of Incorporation, or By Laws as the case may be for the Promisor.

4. FURTHER ASSURANCE

The Promisor must, at its own expense, sign and execute any document and do any acts which are necessary to carry out and give effect to the terms, conditions and purpose of this Deed.

5. SEVERABILITY

If any provision of this Deed is invalid and not enforceable in accordance with its terms, all other provisions that are capable of separate enforcement without regard to the invalid provision are, and continue to be, valid and enforceable in accordance with their terms.

6. GOVERNING LAW AND JURISDICTION

- 6.1 This Deed is to be construed and take effect in accordance with the laws in force in the Australian Capital Territory, Australia, and any dispute relating to the construction, meaning or effect of this Deed is governed by those laws.
- 6.2 The Promisor irrevocably submits to the jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia.
- 6.3 The submission to the jurisdiction of the courts of the Australian Capital Territory and the Federal Court of Australia is exclusive except in so far as the High Court of Australia has jurisdiction to hear any matter involving the ACA.

7. ASSIGNMENT

The Promisor must not assign or novate part or all of its obligations under this Deed without the prior written consent of the ACA, such consent not to be unreasonably withheld.

8. DEFINITIONS AND INTERPRETATION

- 8.1 In this Deed:

“ACA” means the Australian Communications Authority.

“Act” means the *Radiocommunications Act 1992 (Cth)*.

“Application Form” means that form approved by the ACA under paragraph 2.4(a) of the Determination.

“Auction Process” means the proposed auction process referred to at the start of this document.

“Deed of Acknowledgment” means the Deed of Acknowledgment approved by the ACA under paragraph 2.4(b) of the Determination and executed by the Applicant.

“Determination” means the *Radiocommunications (Spectrum Licence Allocation Open Outcry Auction-800 MHz Band) Determination 2000*.

8.2 In this Deed, unless the contrary intention appears:

- (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) all references to dollars are to Australian dollars;
- (d) a reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time.

8.3 No variation of this Deed is binding unless it is agreed in writing between the Promisor and the ACA.

EXECUTED AS A DEED.

Signed, sealed and delivered for and on behalf of the

ACN/ARBN

by authority of the Directors :

(Print name of Director)

(Print name of Director/Secretary)

(Signature of Director)

(Signature of Director/Secretary)

OR

SIGNED for and on behalf of

ACN/ARBN

By

(Print name of Attorney)

(Signature of Attorney)

who is duly authorised by Power of Attorney

Insert number or date or other means of document identification.

and who states that [He/She] has no notice of its revocation

in the presence of

(Print name of Witness)

(Signature of Witness)