Form 3—Deed of Confidentiality

For the purposes of Part 3 and sections 29 and 35 of the Radiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018 (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 27(1)(h) of the Allocation Determination.

Paragraph 29(1)(c) of the Allocation Determination provides 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.

Section 35 of the Allocation Determination provides that a person who submits a new application under section 35 must give the ACMA a completed deed of confidentiality form.

Subsections 22(1) and 22(2) of the Allocation Determination provide 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, this obligation only applies if the person is either:

* 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.

This deed of confidentiality must be used by:

* applicants for the purposes of section 29 of the Allocation Determination;
* related persons of an applicant or bidder who are employees of the applicant or bidder or of a related body corporate that provides services to the applicant or bidder, and contractors of the applicant or bidder, for the purposes of section 22 of the Allocation Determination;
* new applicants for the purposes of section 35 of the Allocation Determination.

When to give the deed of confidentiality to the ACMA

Where an applicant gives a deed of confidentiality to the ACMA for the purposes of section 29 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*.

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 22 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 deed of confidentiality must be given to the ACMA in accordance with the procedures for the giving documents to the ACMA as set out in section 7 of the Allocation Determination.

A summary of the procedures (including an email address, fax number 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 a document is given by email or fax.

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.

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:

1. The ACMA proposes to allocate spectrum licences in the 3.6 GHz band by auction.

Under sections 60 and 294 of the *Radiocommunications Act 1992* (the Act), the ACMA hasdetermined the procedures to be applied in allocating spectrum licences, and fixed the spectrum access charge payable for issuing those licences, as set out inthe Allocation Determination.

1. The Confidant is:
2. an applicant who proposes to participate in the auction of spectrum lots held in accordance with the Allocation Determination; or
3. a related person of either an applicant or a bidder, to whom section 22 of the Allocation Determination applies; or
4. a contractor of either an applicant or a bidder, to whom section 22 of the Allocation Determination applies.
5. 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.
6. An applicant’s or bidder’s confidential information about the auction must not be disclosed to any person except as authorised by subsections 18(2) or (3) of the Allocation Determination.
7. The Confidant provides this Deed for the purposes of, and in accordance with, Part 3 and sections 29 and 35 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 means:

1. documents the applicant or bidder has given to the ACMA for the purpose of the auction;
2. information provided to the bidder under section 41 of the Allocation Determination for the purpose of the bidder participating in an auction;
3. a start demand of the bidder for a clock round of the primary stage;
4. a posted demand of the bidder for a clock round of the primary stage;
5. a bid made by the bidder in the auction;
6. a bid proposed to be made by the applicant or bidder or a bid under consideration by the applicant or bidder;
7. a proposed start demand by the applicant or bidder for the first clock round of the primary stage or a proposed start demand under consideration by the applicant or bidder for the first clock round of the primary stage;
8. the applicant’s or bidder’s bidding strategy;
9. 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;
10. information that, if disclosed, could be reasonably expected to affect or be capable of affecting either:
11. bids made or proposed to be made by another applicant or bidder; or
12. start demands for the first clock round of the primary stage or proposed start demands for the first clock round of the primary stage by another applicant or bidder; or
13. another applicant’s or bidder’s bidding strategy;
14. 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 18 of the Allocation Determination except as set out in clause 1.3 of this Deed or subsections 18(2) and 18(3) of the Allocation Determination.

1.3 The Confidant may disclose confidential information about the allocation process:

1. for the purpose of obtaining advice relating to the allocation process from a person in the person’s professional capacity;
2. for the purpose of obtaining finance to make a payment in relation to spectrum licences in the auction;
3. to the ACMA;
4. if the Confidant is an applicant or bidder—to a related person or contractor of the Confidant;
5. if the Confidant is a related person or contractor of an applicant or bidder—to the applicant or bidder, or to another related person of the same applicant or bidder;
6. as authorised by the Allocation Determination or as otherwise required by law; or
7. if the confidential information is already publicly available, and the information was not made available because of a breach of section 18 of the Allocation Determination.

1.4 The Confidant agrees, not to disclose confidential information, in accordance with the obligation in section 18, until:

1. the bidder is notified under section 56 of the Allocation Determination that it is not a winning bidder;
2. the applicant, as a withdrawn applicant, is notified under section 57 of the Allocation Determination that the applicant’s confidentiality obligation is at an end; or
3. the bidder, as a winning bidder, makes a statement about affiliations under section 58 of the Allocation Determination.

**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 theRadiocommunications (Spectrum Licence Allocation – 3.6 GHz Band) Determination 2018.

**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 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 40 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 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 Confidant

Signature of Confidant

in the presence of:

Name of witness

Signature of witness