

# Australian Communications and Media Authority

## Deed of Acknowledgment

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### NOTES ON COMPLETION

This Deed of Acknowledgment (the ‘Deed’) has been approved under paragraph 10(b) of the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025* (the LPON ‘Determination’). People completing this Deed should read the LPON Determination and seek appropriate advice if required. The Deed affirms the statutory obligations imposed upon applicants by the LPON Determination in respect of their participation in any allocation by an auction or for a reserve price, the right to apply for a licence authorising the operation of a Low Power Open Narrowcasting (LPON) service, conducted under the LPON Determination. The Deed also requires that applicants, in addition to their statutory obligations owed under the LPON Determination, agree to be bound by the same obligations under contract. Prospective applicants should clearly understand these obligations before completing the Deed.

A completed Deed must be submitted with each Application Form by every prospective applicant.

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

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## Deed of Acknowledgment

This DEED OF ACKNOWLEDGMENT is made this

day of

In favour of the Commonwealth of Australia, represented by the Chair of the AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY ('ACMA'), a non-corporate Commonwealth entity established under the *Australian Communications Media Authority Act 2005*

by

(the 'Applicant(s)')

(Insert name and ACN/ARBN if applicable)

of

(Insert address)

### PURPOSE:

- A. The Australian Communications and Media Authority ('ACMA') proposes to allocate the right to apply for LPON licences using a price based allocation. The ACMA has determined the procedures to be applied in allocating this right, by auction or for a reserve price, in the *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025* (the 'LPON Determination').
- B. The Applicant wishes to submit bids for a lot when there is more than one applicant, or be offered the opportunity to acquire a lot for a reserve price when there is only one applicant for that lot.
- C. The Applicant has agreed to compete for lots, and to participate in any allocation for a reserve price, in accordance with the terms and conditions set out in the LPON Determination and in this Deed.

**OPERATIVE PART:**

**PART 1: GENERAL UNDERTAKING**

**ACKNOWLEDGMENT & AGREEMENT THAT APPLICANT WILL BE BOUND**

- 1.1 The Applicant understands and acknowledges that it will be bound by the statutory obligations contained in the LPON Determination, and in addition by this Deed agrees to be contractually bound to strictly comply with each and every provision of the LPON Determination.
- 1.2 The remaining clauses of this Deed do not in any way limit this acknowledgment by the Applicant that it will be bound by all applicable statutory obligations contained in the LPON Determination.
- 1.3 The remaining clauses of this Deed supplement, and do not in any way limit, the Applicant's contractual duty to perform or satisfy its statutory obligations contained in the LPON Determination.
- 1.4 Notwithstanding anything in this Deed, neither the Applicant's obligations under this Deed nor the binding effect of this Deed shall in any way be affected or impaired by the LPON Determination or both, being void or otherwise unenforceable in whole or in part.
- 1.5 The Applicant has read and understood each of the following documents:
  - (a) *Australian Communications Authority (LPON Transmitter Licence Allocation) Direction No. 3 of 2000;*
  - (b) *Radiocommunications (Allocation of Transmitter Licences – Low Power Open Narrowcasting Licences) Determination 2025*
  - (c) *Planning Model for Low Power Open Narrowcasting (LPON) Services;*
  - (d) *Radiocommunications Licence Conditions (Transmitter Licence) Determination 2025;*
  - (e) *Radiocommunications Licence Conditions (Broadcasting Licence) Determination 2025;* and
  - (f) The Applicant Information Package (including the registration documents).

## **PART 2: ALLOCATION WHERE THERE IS MORE THAN ONE APPLICANT FOR A LOT**

### **DETERMINATION OF LOTS**

- 2.1 The Applicant acknowledges and agrees that the mechanisms described in the LPON Determination are acceptable to determine lots and to determine when the ACMA should allocate a lot by auction in accordance with Part 4 of the LPON Determination.

### **APPLICANT BOUND BY REGISTERED BIDDER**

- 2.2 The Applicant acknowledges and agrees that the Applicant will be bound by the actions of the applicant's registered bidder at the auction.

### **PAYMENT OF THE AUCTION DEPOSIT**

- 2.3 The Applicant agrees to pay the auction deposit as required by section 23 of the LPON Determination.

### **FAILURE TO PAY THE AUCTION DEPOSIT**

- 2.4 If the applicant fails to pay the auction deposit as required by section 23 of the LPON Determination the applicant acknowledges that paragraph 22(4) of the LPON Determination applies.

### **PAYMENT OF THE BALANCE OF THE BID PRICE**

- 2.5 If the applicant is successful bidding for a lot, they agree to pay the balance of the bid price as required by paragraph 27(3) of the LPON Determination.

### **FAILURE TO PAY THE BALANCE OF THE BID PRICE**

- 2.6 If the successful applicant bidding for a lot fails to pay the balance of the bid price as required by paragraph 27(3) of the LPON Determination they acknowledge that section 35 of the LPON Determination applies and agrees to perform and satisfy the obligations under section 35 of the LPON Determination.
- 2.7 The rights and obligations referred to in this clause will survive the expiration or termination of this Deed.

## **BIDS**

- 2.8 The Applicant acknowledges and agrees that the mechanisms described in the LPON Determination are acceptable to authenticate bids submitted by the Applicant. The Applicant is bound by any bids that satisfy those authentication checks, whether or not those bids were submitted by the Applicant or from the Applicant's nominated agent.
- 2.9 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.

## **PART 3: ALLOCATION OF A LOT IF THERE IS ONLY ONE APPLICANT**

### **OFFER OF A LICENCE FOR THE RESERVE PRICE**

- 3.1 The Applicant acknowledges and agrees that if there is only one registered applicant for a lot the ACMA will allocate that lot for the reserve price in accordance with section 31 of the LPON Determination.

### **PRICE PAYMENT OF THE RESERVE**

- 3.2 The Applicant agrees to pay the reserve price for the lot in accordance with paragraph 31(2)(a) of the LPON Determination or to advise the ACMA that the application has been withdrawn in accordance with paragraph 31(2)(b).

### **FAILURE TO PAY THE RESERVE PRICE**

- 3.3 If the Applicant does not act in accordance with section 31 of the LPON Determination, then the Applicant acknowledges and agrees that section 32 of the LPON Determination applies and the application ceases to have effect.

## **PART 4: GENERAL**

### **NO RELIANCE**

- 4 The Applicant is responsible to undertake their own independent enquiries about the use and effectiveness of all potential LPON services they wish to be allocated, or propose to bid for in an auction. The Applicant acknowledges and agrees that they have not relied on any representation made by the ACMA, its officers, employees or agents in the application.

## **RELEASE AND INDEMNITY**

- 4.1 The Applicant indemnifies the Commonwealth, including the ACMA against any loss or costs which may be suffered or incurred as a result of an act, default or omission by the applicant or their nominated agent at any stage of the allocation process for a LPON transmitter licence under the LPON Determination. The Applicant must pay to the ACMA immediately upon demand, the amount of the losses or costs suffered or incurred as a result of such an act default or omission.
- 4.2 The Applicant Releases the ACMA from and against all demands, claims, actions or proceedings arising from the acts or omissions of any person in relation to the allocation procedures set out in the LPON Determination.

### **APPLICANT MUST MEET ITS OWN COSTS**

- 4.3 The Applicant agrees that its participation in any stage of procedures referred to in the LPON Determination shall be at its sole risk, cost and expense.

### **CONFIDENTIAL INFORMATION**

- 4.4 The Applicant and its respective officers, employees, agents, advisers and associates must not take steps to obtain, or use in any unauthorised way, or disclose confidential information of the Commonwealth or the ACMA relating to the Commonwealth's or the ACMA's activities or the auction process other than information which is publicly available or made available by the Commonwealth or the ACMA to registered applicants during the auction process.

### **RETURN OF INFORMATION TO THE ACMA**

- 4.5 The Commonwealth and the ACMA reserves the right, in its absolute discretion, to require that any written information provided to the Applicant (and copies of the information) be returned to the ACMA at any stage, at the Applicant's sole expense.

### **CONFLICT OF INTEREST**

- 4.6 The Applicant and its respective officers, employees, agents and advisers must not place themselves in a position which may, or does, give rise to a conflict of interest (or a potential conflict of interest) between the interests of the ACMA (on the one hand) and any other interests (on the other hand) during the auction process.

### **GOVERNING LAW**

- 4.7 This Deed is governed by the laws in force in the Australian Capital Territory.
- 4.8 The Applicant irrevocably submits to the non exclusive jurisdiction of the courts of the Australian Capital Territory and of the Commonwealth of Australia.

### **DEFINITIONS AND INTERPRETATION**

- 4.9 This Deed shall be interpreted in accordance with the provisions of the LPON Determination and the *Radiocommunications Act 1992* (the 'Act'). Unless otherwise provided, terms in this Deed shall have the same meanings as provided in that LPON Determination or Act.
- 4.10 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) 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.
- (d) 'ACMA' includes the officers, employees, subcontractors and agents of the ACMA.

**NO VARIATION UNLESS AGREED**

- 4.11 No variation of this Deed is binding unless it is agreed in writing between the Applicant and the Commonwealth.

**EXECUTED AS A DEED**

*[If more than 1 person is applying as joint applicants then each person should complete an appropriate execution block.]*

*[Appropriate execution block if the Applicant is an individual: ]*

**SIGNED, SEALED AND** )

**DELIVERED** )

)

by \_\_\_\_\_ )

(Print Name of the Applicant)

Signature \_\_\_\_\_

in the presence of )

)

\_\_\_\_\_ )

(Print Name)

Signature \_\_\_\_\_

*[Appropriate execution block if the Applicant is a company:]*

**SIGNED, SEALED AND DELIVERED**

for and on behalf of

\_\_\_\_\_  
(Print Name of the Company)

ACN or ARBN \_\_\_\_\_

(Print ACN or ARBN)

by authority of the Directors:

\_\_\_\_\_

(Print name of Director)

\_\_\_\_\_

(Print name of Director/Secretary)

\_\_\_\_\_

(Signature of Director)

\_\_\_\_\_

(Signature of Director/Secretary)

*[If the Applicant is a statutory authority or other body corporate, then please execute a Deed in the appropriate manner.]*