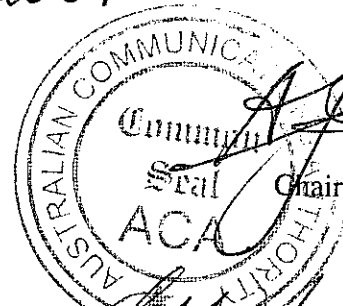




Radiocommunications (Space Licence Allocation) Determination 2001

The AUSTRALIAN COMMUNICATIONS AUTHORITY, under section 106 of the *Radiocommunications Act 1992*, determines the following procedures to be applied in allocating space transmitter licences by a price-based allocation system

Dated *3rd September 2001*



[Signature]
Senior Executive Manager
Radiocommunications

Australian Communications Authority



Radiocommunications (Space Licence Allocation) Determination 2001

made under the

Radiocommunications Act 1992.

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Part 1 Introduction

1.1 Name of determination

This determination is the *Radiocommunications (Space Licence Allocation) Determination 2001*.

1.2 Commencement

This determination commences on 3 September 2001.

1.3 Purpose and application of determination

- (1) This determination sets out the procedures for issuing an SL:
 - (a) by a simultaneous ascending bid multiple round auction of lots; and
 - (b) for a pre-determined price.
- (2) This determination applies to an SL unless the ACA revokes its application under subsection (3).
- (3) The ACA must in writing, revoke the application of this determination to an SL if, within 5 years of the date of the issue of the SL under Part 3 or Part 5 of this determination, the licensee causes or makes reasonable endeavours to cause a space station to be placed in orbit at the relevant orbital location referred to in Schedule 1.
- (4) In deciding whether to revoke the application of this determination under subsection (3), the ACA must not have regard to the licensee's financial circumstances.

Note For paragraph 1.3 (1)(b), see Part 3.

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1.4 Definitions

(1) In this determination, unless the contrary intention appears:

AAT means the Administrative Appeals Tribunal.

ABN has the meaning given to it by the *A New Tax System (Australian Business Number) Act 1999*.

ACA means the Australian Communications Authority a statutory authority continued in existence under section 14 of the *Australian Communications Authority Act 1997*.

ACCC means the Australian Competition and Consumer Commission.

ACN or ARBN means the relevant registration numbers for a company under the *Corporations Act 2001*.

Act means the *Radiocommunications Act 1992*.

activity target, for a registered applicant during a round is 100 percent. That is, the applicant must be the highest bidder in a lot from the previous round and not withdrawn that bid in the current round, or have entered a new valid bid, or taken a waiver in the current round.

additional performance payment means an additional payment paid under section 4.25.

Applicant Information Package has the meaning given by section 2.3.

application closing date means the date and time mentioned in the notice published under subsection 2.2(1) by which applications must be made.

application documents means a completed application form and a completed Deed of Acknowledgment.

application form means the document approved by the ACA under paragraph 1.5 (1) (a).

auction means an auction held by the ACA in accordance with this determination to allocate two lots.

auction centre means the auction centre located at the Canberra office of the ACA.

auction computer system means the computer system operated by the ACA for the purpose of an auction.

auction manager means the person appointed under section 1.6.

balance of the bid price means the amount worked out in accordance with section 5.2.

balance of the pre-determined price means the amount worked out in accordance with subsection 3.2(2).

bank transfer, for a payment, means making the payment by electronic transfer.

bidding instruction means:

- (a) a bid on a lot; or
- (b) an automatic re-bid on a lot; or
- (c) a bid withdrawal on a lot; or
- (d) the exercise of a waiver; or
- (e) an instruction to the auction manager not to apply the automatic waiver.

BIN stands for ***bidder identification number***, which means the number assigned to an applicant by the ACA under paragraph 2.14 (2) (a).

BSS Plan means the plan set out in Appendix S30 and Appendix S30A of the Radio Regulations of the International Telecommunication Union, as revised by the Final Acts of the World Radiocommunications Conference 2000 (Istanbul).

Chair means the Chair of the ACA.

Deed of Acknowledgment means the document approved by the ACA under paragraph 1.5 (1) (c).

Deed of Agreement means a deed entered into by the ACA and the successful applicant for a lot for the coordination and radio interference management of a satellite network, the operation of which is authorised by the SL corresponding to the lot.

Deed of Financial Security means the document approved by the ACA under paragraph 1.5 (1) (b).

electronic communication has the meaning given to it by the *Electronic Transactions Act 1999*.

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eligibility, for a registered applicant, means the registered applicant's initial eligibility (namely 1 unit).

eligibility payment means the eligibility payment worked out under section 2.7.

eligibility payment date means the date and time mentioned in the notice published under subsection 2.2(1) by which eligibility payments must be made.

entry fee means the application fee payable by an applicant.

high bid, for a round, means the highest bid made on the lot in the bidding round or the bid taken to be the high bid under paragraph 4.14 (4) (b), 4.14 (5) (b) or 4.14 (6) (b).

initial eligibility means an applicant's initial eligibility as specified under subsection 2.5A (1) (namely 1 unit).

licensee means a holder of an SL issued under this determination.

lot means the right, subject to this determination, to be issued an SL to transmit services from a spacecraft in conformity with the BSS Plan.

lot rating means the lot rating for each lot, as specified in Schedule 1.

performance payment means moneys lodged with the ACA under section 2.8.

pre-determined price, for a lot, means the price determined under subsection 3.2(1).

register means the register of applicants maintained by the ACA under section 2.13.

registered applicant means an applicant registered under section 2.14.

repayable performance payment means:

- (a) a performance payment; and
- (b) an additional performance payment; and
- (c) moneys paid under a Deed of Financial Security or further Deed of Financial Security.

SL means an apparatus licence that authorises the operation of a space station, which has the orbital location and frequency range specified in Schedule 1.

space station has the meaning given by the *Radiocommunications Regulations 1993*.

stage means a group of successive rounds of an auction. In this auction there will be only be one stage, namely 100 percent activity target.

starting bid has the meaning given by section 2.17.

successful applicant has the meaning given by section 5.1.

working day means a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

- (2) In this determination:
 - (a) a reference to time is a reference to that time in the Australian Capital Territory; and
 - (b) a reference to an amount of money is a reference to that amount in Australian currency; and
 - (c) the range of numbers that identifies a frequency range includes the higher, but not the lower, number.
- (3) If a number worked out in accordance with this determination is not a whole number:
 - (a) the number is to be rounded to the nearest whole number; and
 - (b) a number with 5 in the first decimal place is to be rounded up to the nearest whole number.
- (4) A registered applicant is active on a lot in a round if:
 - (a) in a round to which the starting bid applies—the applicant makes a bid that equals or exceeds the starting bid; and
 - (b) in any other round:
 - (i) the applicant makes a bid that equals or exceeds the minimum bid on the lot worked out in accordance with section 4.12; or
 - (ii) the applicant holds the high bid on the lot from the previous round and does not withdraw that high bid in the current round.

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1.5 Approval of forms

- (1) The ACA must, in writing, approve the following documents:
 - (a) an application form;
 - (b) a Deed of Financial Security that complies with section 2.8;
 - (c) a Deed of Acknowledgment, that includes a statement to the effect that the applicant agrees, if successful in respect of a lot, to pay the ACA the balance of the bid price for the lot as required by section 5.3.
- (2) The ACA may approve more than 1 form of a document.

1.6 Auction manager

The ACA must, in writing, appoint a person (the *auction manager*) to manage an auction.

1.7 Ways in which the ACA gives information

- (1) The ACA may give any information or documents to a person under this determination:
 - (a) by letter; or
 - (b) by telephone; or
 - (c) by facsimile; or
 - (d) by email.
- (2) The ACA may make information available to a person:
 - (a) if the person is using the auction computer system — by making the information available on the system; or
 - (b) by publishing the information by electronic communication via the internet.

1.8 Communicating with ACA

Once an auction has started, a form or notice required to be given to the ACA in relation to the auction must be given by facsimile to a number shown in the Applicant Information Package as the number for giving notices by facsimile.

Note Bidding must, except in emergencies, be done by electronic communication: see section 4.8 and section 4.10.

1.9 Method of payment of moneys to ACA

- (1) All payments to the ACA must be made in Australian currency.
- (2) Moneys due to the ACA for the following purposes must be paid by the date required by this determination and in accordance with this determination:
 - (a) entry fee;
 - (b) eligibility payment;
 - (c) the performance payment;
 - (d) any additional performance payment as required by section 4.25;
 - (e) 10% of the balance of the bid price;
 - (f) the remainder of the balance of the bid price;
 - (g) the balance of the pre-determined price.
- (3) Moneys due to the ACA for any of the purposes set out in subsection (2) must be paid:
 - (a) by bank cheque; or
 - (b) by bank transfer.
- (4) If a payment is required to be made by a specific date, it is sufficient if, by that date:
 - (a) the applicant gives the ACA a bank cheque for the amount of the payment; or
 - (b) if paying by bank transfer, the applicant:
 - (i) does everything necessary to make the payment; and
 - (ii) gives the ACA evidence that the payment has been made.
- (5) A payment by bank transfer must be paid into the ACA's bank account, details of which are as follows:
 - (a) Bank — Reserve Bank of Australia;
 - (b) Branch — Canberra City;

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- (c) BSB number — 092-009;
 - (d) Account number — 92276-5;
 - (e) Account name — ACA Clearing Account.
- (6) A payment by bank transfer must be received in the ACA's bank account within 5 working days after the required date. If it is not, the person's application ceases to have effect and the person is not entitled to take part in the price-based allocation system under this determination.
- (7) For this determination, a payment is not made to the ACA unless the full amount of the payment, net of any bank fees or charges, and net of any Government duties or other imposts, is received by the ACA.

Part 1A— Limits on Allocations of Space Licences

Division 1—Preliminary

1A.1 Purpose of Part

The purpose of this Part is:

- (a) to impose limits on the number of SLs that, under this determination, may be issued to:
 - (i) a person; or
 - (ii) a specified group of persons; and
- (b) to determine procedures to ensure those limits are not exceeded.

Notes:

- 1. The Minister has given a written direction to the ACA under subsection 106(9) of the Act about the exercise of the ACA's power to determine procedures to be applied regarding the number of SLs that may be issued to a person or specified group of persons.
- 2. The following terms used in this Part are defined in section 1A.30 at the end of this Part:
 - associate
 - relevant agreement
 - specified group of persons.
- 3. Other terms used in this Part are defined in section 1.4.

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Division 2—The allocation limit**1A.2 Imposition of allocation limit**

- (1) This section imposes the limits on the number of SLs that may be issued to particular classes of persons.
- (2) No person or group of persons may be issued more than one SL per person or per specified group of persons.

Note: “specified group of persons” is defined in section 1A.30.

1A.2A Bidding not to exceed limits

- (1) A person or specified group of persons must not bid in the auction in a way that would be in breach of the limits in subsection 1A.2(2).
- (2) A person or specified group of persons who bids in breach of the limits will be excluded from taking any further part in the auction and therefore from obtaining an SL in the allocation process.

1A.2B Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining an SL because of bidding in contravention of the limits in subsection 1A.2 (2) (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and all repayable performance payments (if any) of an excluded applicant are refundable.
- (3) However, before refunding the eligibility payment and repayable performance payments (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.

-
- (4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment and repayable performance payments cannot be refunded until then.

Division 3—Matters Relevant to Considering Whether Applicants are Associated

1A.3 Matters relevant to considering whether applicants are associated

When considering, for this Part, whether 2 or more applicants are associated, the ACA must have regard to:

- (a) statutory declarations made under section 1A.5, 1A.15 or 1A.22; and
- (b) any advice given by the ACCC in response to the material sent to it under section 1A.4; and
- (c) any other matter that the ACA considers relevant.

Division 4—Procedures Before Auction

1A.4 ACA to send applications to ACCC

The ACA must send a copy of each applicant's application documents to the ACCC within 5 working days of receiving them.

1A.5 Applicants to provide statutory declarations

- (1) No more than 10 working days after the application closing date, the ACA must:
 - (a) give each applicant details about the identity of all other applicants and their associates; and

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- (b) ask each applicant to make a statutory declaration stating whether the applicant is an associate of another applicant and, if so, giving details of the other applicant and the association.
- (2) The ACA must state a date, not less than 10 working days after the date of the request, by which the statutory declaration must be received by the ACA.
- (3) Each applicant must give the ACA a statutory declaration in accordance with this section.
- (4) The statutory declaration must be made by a director of the applicant.

1A.6 Exclusion of applicants because of failure to make statutory declaration

An applicant who does not give the ACA a statutory declaration in accordance with section 1A.5 is excluded from taking any further part in the price-based allocation system under this determination.

1A.7 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining an SL because of failure to make a statutory declaration (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and all repayable performance payments (if any) of an excluded applicant are refundable.

1A.8 Options available to associated applicants

- (1) If the ACA considers that a group (an *applicant group*) of 2 or more applicants are associated with one another, the ACA must:
 - (a) tell each member why the ACA considers them to be associated; and
 - (b) tell the members of the group of the options available to them under subsection (2); and
 - (c) tell each member of the effect of section 1A.10.

-
- (2) The following options are available to the members of the group:
 - (a) withdrawing applications in accordance with subsection (3); or
 - (b) choosing not to withdraw.
 - (3) For subsection (2), the following ways of withdrawing applications are permissible:
 - (a) withdrawal of applications by all members of the group (whether or not the group then takes advantage of section 1A.11 to make a new application); or
 - (b) withdrawal of applications by all but 1 member of the group.
 - (4) Within 10 days of the ACA telling the members of the group that the ACA considers them to be associated, the members must:
 - (a) tell the ACA, in writing, which option they propose to take; and
 - (b) if an application is to be made under section 1A.11, give the ACA a completed application form for the purposes of that section.

Note: By subsection 1A.11 (3), the Deed of Acknowledgment and the entry fee must accompany the completed application form.

1A.9 Consequences of withdrawal

If an applicant withdraws:

- (a) the application is of no effect; and
- (b) the applicant's entry fee is not refundable; and
- (c) the applicant's eligibility payment and all repayable performance payments (if any) are refundable.

1A.10 Consequences of applicants choosing not to withdraw

- (1) A decision of members of an applicant group not to withdraw has the following consequences:
 - (a) each member of the group (*member*) will be jointly and severally liable for all bids made using the BIN and

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encryption keys and transaction code keys allocated to members;

- (b) an SL will only be issued if members are successful in accordance with an authority and direction, in the approved form, given jointly by the members to the ACA indicating how the lots are to be allocated between them within the allocation limit;
 - (c) the applicant group will be subject to the same consequences as a single applicant under subsection 1A.14 (2).
- (2) Members choosing not to withdraw must acknowledge the consequences mentioned in subsection (1) when telling the ACA under subsection 1A.8(4) that they choose not to withdraw.

1A.11 Making a new application

- (1) If all applications by the members of an applicant group are withdrawn, a new applicant may apply to the ACA for registration.

Note: By subsection 1A.8 (4), the application must be given to the ACA within 10 working days of the ACA telling the members of the group that the ACA considers them to be associated.

- (2) The new applicant must be a legal entity made up of only 1 or more members of the same applicant group who have withdrawn their individual applications under paragraph 1A.8 (3) (a) and who wish to take part in making the new application.
- (3) Sections 2.4 and 2.6 apply to a new application, except that the eligibility payment, and Deed of Financial Security or performance payment, must be given to the ACA within the 10 days mentioned in subsection 1A.8 (4).
- (4) The new application must be accompanied by a statutory declaration by the new applicant that it is not associated with any person except a person making up the entity.

1A.12 New application—limit on acceptance

The ACA must not accept a new application unless it is satisfied that the new applicant is not associated with:

- (a) any other applicant who has not withdrawn; or
- (b) if there is, or may be, another new applicant—the other new applicant.

1A.13 Designation of applicants as associated applicants

- (1) If an applicant group does not tell the ACA that it is exercising 1 of the options under subsection 1A.8 (2) within the 10 day period mentioned in subsection 1A.8 (4), the ACA must designate the members of the group who have not withdrawn as associated applicants.
- (2) If only some members of the group withdraw, the ACA must designate the remaining members as associated applicants.
- (3) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the AAT.

Notes:

- 1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under s 27B of the *Administrative Appeals Tribunal Act 1975*.
- 2. A decision designating applicants as associated applicants can be reviewed by the AAT, see section 1A.29.

1A.14 Consequences of designation as associated applicants

- (1) If the ACA designates members of a group of applicants as associated applicants (a designated applicant group), the members of the group are to be taken, for this determination, to be a single applicant.
- (2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:
 - (a) registering the designated applicant group as a separate bidding entity for the auction; and

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- (b) revoking any BINS, encryption keys and transaction code keys previously issued to the members of the designated applicant group; and
 - (c) issuing a common BIN, password, and set of encryption keys and transaction code keys for use by the designated applicant group; and
 - (d) setting the eligibility of the designated applicant group as 1 unit; and
 - (e) setting the number of waivers for the designated applicant group at the same number as other applicants who are not members of a designated applicant group; and
 - (f) accepting the first relevant bidding instruction file mentioned in section 4.9 that is received by the ACA as the only bid file of members of the designated applicant group; and
 - (g) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant group as if it had been made, withdrawn or exercised by each other member of that group.
- (3) For subsection (2), a *relevant bidding instruction file* is a bid file that was created using the common BIN and set of encryption keys and transaction code keys mentioned in paragraph (2) (b).

Note:

1. A BIN is allocated on registration, as is a set of encryption keys and transaction code keys (subsection 2.14 (2)).

Division 5—Procedures during auction

1A.15 Detection of associated applicants during auction

- (1) If at any time during the auction the ACA considers that 2 or more applicants, that have not been designated as associated applicants, may be associates, the ACA must:
- (a) suspend the auction from the end of the current round; and
 - (b) tell each of the applicants concerned, listing identification details about the other applicants that the ACA believes to be associated and stating the basis of its belief; and

-
- (c) ask each of the applicants concerned to make a statutory declaration stating whether the applicant is an associate of any of the other listed applicants and, if so, giving details of the listed applicant and the association.
 - (2) The ACA must state a date, not more than 5 working days after the date of the request, by which the statutory declaration must be received by the ACA.
 - (3) An applicant asked to make a statutory declaration in accordance with this section must comply with the request.
 - (4) The statutory declaration must be given by a director of the applicant.

1A.16 Exclusion of applicants because of failure to make statutory declaration

An applicant who does not give the ACA a statutory declaration in accordance with section 1A.15 is excluded from taking any further part in the auction and therefore from obtaining an SL in the allocation process.

1A.17 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining an SL because of failure to make a statutory declaration (an excluded applicant) is not refundable.
- (2) The eligibility payment and all repayable performance payments (if any) of an excluded applicant are refundable.
- (3) However, before refunding the eligibility payment and repayable performance payments (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.
- (4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment and repayable performance payments cannot be refunded until then.

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1A.18 Designation of associated applicants during auction

- (1) If, during the auction, the ACA considers that 2 or more applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.
- (2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the AAT.

Notes:

1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under section 27B of the *Administrative Appeals Tribunal Act 1975*.
2. A decision designating applicants as associated applicants can be reviewed by the AAT, see section 1A.29.

1A.19 Consequences of designation as associated applicants

- (1) If the ACA designates members of a group of applicants as associated applicants (a designated applicant group), the members of the group are to be taken, for this determination, to be a single applicant.
- (2) The ACA must deal with members of a designated applicant group taken to be a single applicant for subsection (1) by:
 - (a) revoking the BINs, encryption keys and transaction code keys previously issued to the members of the designated applicant group (*members*); and
 - (b) issuing a new common BIN, password, encryption keys and transaction code keys for use, from the time the auction resumes, by the designated applicant group; and
 - (c) setting the eligibility of each member of the designated applicant group as 1 unit; and
 - (d) setting the number of waivers for the designated applicant group at the highest number held by any of the members at the end of the round immediately before the suspension; and

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- (e) treating any bid or automatic rebid, bid withdrawal, or exercise of waiver by a member of a designated applicant group as if it had been made, withdrawn or exercised by each other member of that group.

1A.20 Effect of designation of associated applicants on bidding

- (1)When the ACA revokes the BINs of members of a designated applicant group, it will remove any high bid held against those BINs.
- (2)When the ACA removes a high bid:
 - (a) the ACA is taken to be the highest bidder for the lot, at the next highest bid (whether the next highest bid was made in that round or a previous round); and
 - (b) the ACA will be identified by the BIN 9999; and
 - (c) the minimum bid for the lot in the next round is equal to that next highest bid.
- (3)For subsection (2), if there is no next highest bid for a lot:
 - (a) the amount of the high bid to be recorded is taken to be zero; and
 - (b) the starting bid for the lot will be the starting bid set for that lot under section 2.17 or, if the amount of the starting bid for the lot has been varied by the Chair under section 4.13, that amount.

Note: No bid withdrawal penalty will apply to an applicant if the ACA removes a high bid under subsection 1A.20 (1). Before the auction resumes, the ACA must recalculate the results of the auction at the end of the round in which the suspension of the auction took effect, taking into account the removal of any high bids under subsection (1) and publish these using the auction computer system and the internet.

1A.21 Telling other applicants of designation of associated applicants

- (1)If the ACA designates any applicants as associated applicants under section 1A.18, the ACA must tell all other applicants before the auction resumes.
- (2)The ACA must also tell all other applicants:

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- (a) that the ACA will reject any instructions about taking part in the auction (ie. bidding, withdrawal of a bid or waiver) received from a member of a designated applicant group if those instructions are inconsistent with earlier instructions that the ACA has received from another member of that group; and
 - (b) the date and time of the resumption of the auction.
- (3) For paragraph (2) (a), instructions are taken to be inconsistent with earlier instructions if it is not open to a single applicant, under this determination, to give the subsequent instructions.

Note: Members of a designated applicant group will have the same BIN.

Division 6—Procedures after auction**1A.22 Successful applicants to make statutory declarations**

- (1) After the close of the auction, but before SLs are issued, the ACA must give each successful applicant identification details of all other successful applicants and ask each successful applicant to make a statutory declaration stating whether the applicant is an associate of any other successful applicant and, if so, giving details of the applicant and the association.
- (2) The ACA must state a date, not less than 10 working days after the date of the request, by which the statutory declaration must be received by the ACA.

1A.23 Exclusion of applicants because of failure to make statutory declaration

A successful applicant who does not give the ACA a statutory declaration in accordance with section 1A.22 is excluded from obtaining an SL in the allocation process.

1A.24 Consequences of exclusion

- (1) If a successful applicant is excluded from obtaining an SL, the lot for which the applicant was successful is taken to be unallocated.

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- (2) The entry fee of a successful applicant who is excluded from obtaining an SL because of failure to make a statutory declaration (an *excluded applicant*) is not refundable.
 - (3) The eligibility payment and all repayable performance payments (if any) of an excluded applicant are refundable.
 - (4) However, before refunding the eligibility payment and repayable performance payments (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties (see Part 4) from the amount to be refunded.
 - (5) In working out the bid withdrawal penalties deductible under subsection (4), all successful bids of the applicant are taken to be withdrawn.

1A.25 Designation of associated applicants after auction

- (1) If the ACA considers that 2 or more successful applicants who have not been excluded are associated, the ACA must designate the applicants as associated applicants.
- (2) The ACA must tell the applicants, in writing, that they have been designated as associated applicants and that the decision is reviewable by the AAT.

Notes:

1. For the contents of a notice telling the applicants that they have been designated as associated applicants, see the Code of Practice made under section 27B of the *Administrative Appeals Tribunal Act 1975*.
2. A decision designating applicants as associated applicants can be reviewed by the AAT, see section 1A.29.

1A.26 Consequences of designation as associated applicants

- (1) If the ACA designates 2 or more successful applicants as associated applicants, the ACA must combine the lots for which the applicants were successful.
- (2) If the issue of SLs for the combined lots would result in the allocation limit under this determination being exceeded, an SL will be issued only:
 - (a) up to the allocation limit; and

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- (b) as directed by the associated applicants.
- (3) The direction must:
 - (a) be given jointly by the associated applicants; and
 - (b) tell the ACA which SL is to be allocated between them within the allocation limit.
- (4) The lot which is not allocated is taken to be unallocated.

1A.27 Unallocated lots

A lot left unallocated because of section 1A.24 or 1A.26 may be allocated as if the lot were an unallocated lot under section 6.1.

1A.28 Moneys payable by a successful applicant

- (1) In spite of an allocation limit being imposed on a successful applicant as mentioned in section 1A.26:
 - (a) the successful applicant must pay the balance of the bid price for a lot where it was the successful bidder; and
 - (b) each applicant with which the successful applicant is designated as being associated is liable to pay the balance of the bid price on a lot where that applicant was the successful bidder.
- (2) The payments of the balance of the bid price must be made in accordance with section 5.3.

Note: For *balance of the bid price*, see section 1.4 and section 5.2.
- (3) If a lot is treated as unallocated and is later allocated under section 6.1, the successful applicant must also pay the ACA:
 - (a) if the amount obtained for the lot is less than the highest bid by the successful applicant—the difference between those amounts; and
 - (b) the costs (if any) reasonably incurred by the ACA in allocating the lot.
- (4) The ACA may deduct any difference payable under subsection (3) from the money paid by the successful applicant to the ACA (including money paid under subsection (1)).

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- (5) The balance (if any) of the money remaining after the deduction will be refunded to the successful applicant.
- (6) If:
- (a) a successful applicant does not pay the money payable under subsection (1); or
 - (b) the amount paid is not enough to satisfy the liability under subsection (3);
- the amount due under subsection (3) is a debt due to the ACA and recoverable from the successful applicant in a court of competent jurisdiction.

Division 7—General

1A.29 Review

An applicant who has been designated as an associated applicant may apply to the AAT for review of the decision within 10 working days of being told of the decision.

1A.30 Definitions of terms used in this Part

- (1) In this Part:

allocation limit means the limit on the number of SLs which may issued to particular applicants under this determination, (namely 1);

applicant means a person who has applied for registration as an applicant under section 2.14 of this determination.

associate, in relation to a person, means:

- (a) for a body corporate:
 - (i) a director or secretary of the body; or
 - (ii) a related body corporate; or
 - (iii) a director or secretary of a related body corporate; or
 - (iv) a business partner of the body; or
 - (v) an individual who controls at least 15% of the voting power or holds at least 15% of the issued shares in the body; or
- (b) for an individual:

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- (i) the individual's spouse; or
 - (ii) another person who, although not legally married to the individual, lives with the individual on a genuine domestic basis as the spouse of the person; or
 - (iii) a business partner of the individual; or
 - (iv) a body corporate in which the individual controls at least 15% of the voting power or holds at least 15% of the issued shares; or
 - (v) a body corporate of which the individual is a director or secretary; or
 - (vi) a body corporate that is related to a body corporate of which the individual is a director or secretary; or
- (c) for any person - any other person (other than the ACA) who has a relevant agreement with the person that:
- (i) entitles one of the parties to the agreement to operate a transmitter under an SL allocated or to be allocated under this determination to another person; or
 - (ii) provides for the acquisition of an SL allocated or to be allocated under this determination;

corporation has the same meaning as in the *Corporations Act 2001*.

designated applicant group means a group of applicants designated as associated applicants for a provision of this Part;

director, in relation to a corporation, has the same meaning as in the *Corporations Act 2001*.

related body corporate has the meaning given by the *Corporations Act 2001*.

relevant agreement means an agreement, arrangement or understanding:

- (a) whether formal or informal or partly formal and partly informal; and
 - (b) whether written or oral or partly written and partly oral; and
 - (c) whether or not having legal or equitable force and whether or not based on legal or equitable rights;
- other than:

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- (d) an agreement between carriers provided for by or under the *Telecommunications Act 1997*, Part XIC of the *Trade Practices Act 1974* or the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*; or
 - (e) an agreement between a carrier and a manufacturer for the testing of devices operated under an SL.

specified group of persons means an applicant and all the associates of that applicant.

- (2) For this Part, 2 or more specified groups of persons having 1 member in common are taken to be 1 specified group of persons.

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Part 2 Preparing for the Auction**Division 1 Application and registration****2.1 Entry fee and eligibility payment**

Before the ACA publishes a notice inviting applications for an auction it must set:

- (a) the amount of the entry fee; and
- (b) the amount of the eligibility payment required for each unit of eligibility; and
- (c) the financial security amount for the auction.

2.2 Publication of notice by ACA

- (1) Before holding an auction, the ACA must publish a notice in a newspaper circulating nationally in Australia:
 - (a) describing the lots to be auctioned; and
 - (b) giving a brief description of the way the auction will be conducted; and
 - (c) inviting people to apply to the ACA to take part in the auction; and
 - (d) stating the date and time by which applications and the entry fee must be received by the ACA (the application *closing date*); and
 - (e) stating that lots will be auctioned in accordance with this determination; and
 - (f) stating that further information (the *Applicant Information Package*) can be obtained from the ACA at the address given in the notice.
- (2) If a matter mentioned in the notice changes, the ACA must publish another notice giving details of the change in a newspaper circulating nationally in Australia.
- (3) The ACA may publish other information about auctions and may publish that information, and the notices mentioned in subsections (1) and (2), in other ways.

2.3 Applicant Information Package

- (1) The Applicant Information Package must contain the following information and documents:
 - (a) a guide to the auction process;
 - (b) this determination;
 - (c) the application form, with instructions for completing and lodging the form;
 - (d) the Deed of Financial Security;
 - (e) information about the performance payment as an alternative to providing a Deed of Financial Security, if required;
 - (f) the Deed of Acknowledgment;
 - (g) the amount of the entry fee for the auction set by the ACA under paragraph 2.1 (a);
 - (h) the amount of the eligibility payment required for each unit of eligibility set by the ACA under paragraph 2.1 (b);
 - (i) the financial security amount set by the ACA under paragraph 2.1(c);
 - (j) the application closing date and time for making applications;
 - (k) the eligibility payment date and time for lodging eligibility payments, and performance payments or Deeds of Financial Security;
 - (l) the address of the auction centre.

- (2) The Applicant Information Package may also contain other information about the auction.

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2.4 Applications

- (1) A person who wants to obtain an SL under this determination must apply to the ACA for registration and pay the entry fee.
- (2) The person must give the ACA the following documents:
 - (a) a completed application form; and
 - (b) a completed Deed of Acknowledgment.
- (3) The entry fee must be paid in accordance with section 1.9.

Note: By section 1.9, the entry fee may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account within 5 working days of the application date, the application ceases to have effect.

2.5 Lodging of applications

- (1) The application must be lodged with the ACA, at the auction centre, by the closing time on the advertised application closing date.
- (2) If the application is lodged by facsimile, the originals of the documents lodged by facsimile must be received by the ACA no later than 2 working days after the advertised closing date. If they are not, the person's application ceases to have effect and the person is not entitled to take part in the auction or be allocated a lot.
- (3) As soon as practicable after receiving the application documents, the ACA must confirm receipt by facsimile or by letter (if the ACA does not know the applicant's facsimile number) noting particulars of the applicant's:
 - (a) name; and
 - (b) address; and
 - (c) ACN or ARBN in accordance with the *Corporations Act 2001*; or ABN in accordance with the *Corporations Regulations 2001*; and
 - (d) initial eligibility.

2.5A Initial eligibility

- (1) The ACA must ensure that the application form provides an initial eligibility of 1 unit.
- (2) An applicant must not change its initial eligibility.

2.6 Eligibility payment

- (1) An applicant must, by the advertised time on the advertised eligibility payment date:
 - (a) pay the ACA an eligibility payment, worked out in accordance with section 2.7; and
 - (b) if required under section 2.8, either:
 - (i) give the ACA a completed Deed of Financial Security; or
 - (ii) pay the ACA a performance payment.

- (2) The eligibility payment and performance payment must be paid in accordance with section 1.9.

Note: By section 1.9, the eligibility payment and performance payment may be paid by bank cheque or bank transfer. If paid by bank transfer, the applicant must give the ACA evidence that the payment has been made. If the payment is not in the ACA's account within 5 working days of the closing date, the application ceases to have effect.

- (3) Acceptance of a payment is not acceptance of the application documents.

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2.7 Calculating the eligibility payment

The amount of eligibility payment payable by an applicant is the amount in dollars worked out by multiplying the amount of the applicant's initial eligibility (namely 1 unit), by the amount set by the ACA under paragraph 2.1 (b).

2.8 Deed of Financial Security or performance payment

- (1) A person who wishes to be registered as an applicant must give the ACA a Deed of Financial Security made by a person who complies with subsection (4) or a performance payment unless:
 - (a) the applicant satisfies the ACA that it is an authority of the Commonwealth, a State or a Territory; or
 - (b) the applicant satisfies the ACA that it is a subsidiary, within the meaning of the *Corporations Act 2001*, of an authority of the Commonwealth, a State or a Territory; or
 - (c) the ACA decides, under subsection (2), that the applicant need not give the ACA a Deed of Financial Security or performance payment.
- (2) If a company satisfies the ACA that it does not carry on business for profit, the ACA:
 - (a) may decide that the company need not give the ACA a Deed of Financial Security or performance payment; and
 - (b) must notify the company in writing of the decision as soon as practicable after making the decision.
- (3) The amount payable to the ACA under the Deed of Financial Security or the performance payment must be at least an amount in dollars calculated by multiplying the initial eligibility (namely 1 unit) by the financial security amount set by the ACA under paragraph 2.1(c).
- (4) A person who makes a Deed of Financial Security 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*.

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- (5) For this section, a company makes a Deed of Financial Security by executing the Deed in accordance with section 127 of the *Corporations Act 2001*.

2.9 Lodging of power of attorney

If a Deed of Financial Security is made under a power of attorney for a company, the applicant must give the ACA a copy of the power of attorney with the Deed.

2.10 Failure to comply with requirements concerning original documents and Deed of Financial Security

- (1) This section applies if:
- (a) the applicant does not lodge the originals of documents lodged by facsimile in accordance with subsection 2.5(2); or
 - (b) the ACA is not satisfied that the person who made the Deed is a person who complies with subsection 2.8 (4).
- (2) The applicant's registration is of no effect.
- (3) The applicant is excluded from taking part (or any further part) in the price-based allocation system under this determination.
- (4) The applicant's eligibility payment and all repayable performance payments (if any) are refundable.
- (5) The applicant's entry fee is not refundable.

2.11 Performance payments

- (1) This section applies if a repayable performance payment is made by or in relation to an applicant.
- (2) The ACA must apply repayable performance payment moneys lodged with or paid to the ACA in the timely discharge of the applicant's financial obligations to the ACA under this determination.
- (3) If an applicant defaults in making payment for a successful bid, the repayable performance payment is forfeited to the ACA to meet any undischarged liability of the applicant in accordance with section 5.4.

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- (4) The ACA must account to the applicant for the repayable performance payment moneys after completion of the auction, as set out in Part 5.

2.12 Forfeiture of repayable performance payments

- (1) To meet any undischarged liability owed by an applicant to the ACA for the matters mentioned in subsection (2), repayable performance payments will be forfeited to the ACA.
- (2) For subsection (1), the matters include:
 - (a) any act or omission by the applicant, its officers, employees, agents, volunteers, subcontractors or associates in connection with the applicant's participation in an allocation process conducted under this determination; or
 - (b) any breach or default by the applicant of its obligations or warranties under the Deed of Acknowledgment, this determination, or both.

2.12A Withdrawal of applicant

- (1) An applicant may withdraw from the allocation process at any time before the auction starts, by written notice given to the ACA.
- (2) An applicant who withdraws (a withdrawn applicant) is excluded from taking part in:
 - (a) the auction; and
 - (b) the allocation of a lot in any other way as part of the current allocation process (for example, for a pre-determined price under Part 3).
- (3) The entry fee paid by a withdrawn applicant is not refundable.
- (4) The eligibility payment and all repayable performance payments (if any) of a withdrawn applicant are refundable.

2.13 Register of applicants

- (1) The ACA must maintain a register of applicants.
- (2) The register may be in electronic form.
- (3) For each applicant, the register must contain details of:
 - (a) the name and address of the applicant; and
 - (b) the applicant's telephone and facsimile numbers; and
 - (c) the applicant's eligibility; and
 - (d) the applicant's BIN; and
 - (e) ACN or ARBN in accordance with *the Corporations Act 2001*, or ABN in accordance with the *Corporations Regulations 2001*.
- (4) The register may also contain any other information that the ACA considers necessary for the running of the auction.
- (5) The ACA must make the changes to the register that the ACA considers necessary or convenient as soon as practicable after:
 - (a) an applicant tells the ACA of any change of name, address, or telephone or facsimile numbers; or
 - (b) the ACA becomes aware that any information on the register is not correct.
- (6) Except as authorised by this determination or as otherwise authorised by law, the ACA must ensure that any details about applicants are not disclosed until the allocation of lots is made.

2.14 Registration of applicants

- (1) The ACA must register an applicant only if:
 - (a) the applicant has:
 - (i) lodged completed application documents; and
 - (ii) paid the entry fee in accordance with section 1.9; and
 - (iii) paid the eligibility payment in accordance with section 1.9, and
 - (iv) lodged a Deed of Financial Security or paid a performance payment, in accordance with section 1.9; and

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- (b) if a Deed of Financial Security is required — the ACA is satisfied that the person who made the Deed is a person who complies with subsection 2.8 (4).
- (2) The ACA must assign to each registered applicant:
 - (a) a BIN; and
 - (b) a password and encryption keys linked to that BIN to use with the auction computer system; and
 - (c) a set of transaction code keys to be used if the applicant needs to bid by telephone in an emergency.
- (3) At least 5 working days before the start of the auction, the ACA must, by writing, tell each registered applicant:
 - (a) that the applicant has been registered; and
 - (b) the applicant's initial eligibility (namely 1 unit), as shown on the register; and
 - (c) the starting date and time of the first round of the auction; and
 - (d) the ACA's telephone and facsimile numbers available for use by registered applicants; and
 - (e) the applicant's BIN, password and transaction code keys.
- (4) At least 5 working days before the start of the auction, the ACA must give each registered applicant the relevant encryption keys.

2.15 Publication of bidder identification numbers

- (1) After the closing date but at least 5 working days before the start of the auction, the ACA must publish a notice in a newspaper circulating in Australia setting out:
 - (a) for each registered applicant:
 - (i) its company name; and
 - (ii) its registered address; and
 - (iii) its ACN or ARBN in accordance with the *Corporations Act 2001* or its ABN in accordance with the *Corporations Regulations 2001*; and
 - (b) the initial eligibility of all registered applicants; and
 - (c) the BINs of all registered applicants.

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- (2) After the notice has been published, the ACA may give out the information in the notice in other ways.

2.16 Preparation for bidding

- (1) A registered applicant who bids must use software made available by the ACA.

Note See section 4.8 for ways of taking part in the auction.

- (2) The ACA will give each applicant:
- (a) assistance in installing the software for the auction computer system; and
 - (b) training in using the software.
- (3) However, subsection (2) does not apply to an applicant who proposes to bid from outside Australia.

Note The ACA will make an auction guide available to each registered applicant to help the applicant take part in the auction: see paragraph 2.3 (1) (a).

Division 2 Things the Auction Manager Must Do Before the Auction

2.17 Starting bids and increments

After the application closing date, the ACA must set the following 3 amounts:

- (a) the starting bid for each lot;
- (b) the increment of price per lot rating;
- (c) the increment of percentage of high bid.

Note The Chair may vary the starting bid, and the auction manager may vary the other amounts set under this section: see sections 4.13 and 4.13A.

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2.18 Stages of auction, eligibility percentage, waivers and rounds

After the application closing date, the auction manager must:

- (a) fix the number of stages for the auction; and
- (b) fix a percentage of eligibility as the percentage to be applied in calculating the activity target during each stage of the auction; and
- (c) fix the number of waivers for each registered applicant, being the same number for all applicants; and
- (d) set the amount of time allocated for the bidding period for each round of the auction; and
- (e) set the amount of time allocated for the results period of each round of the auction; and
- (f) set the schedule for the first and second rounds, based on the amounts referred to in paragraphs (d) and (e), taking into account the effect of section 4.4; and
- (g) tell all registered applicants of these matters.

Part 3 Allocation for a Pre-determined Price

3.1 Allocation for a pre-determined price without an auction

- (1) If the ACA considers that it may be able to allocate a lot or lots without having to conduct an auction to identify the highest value user for the SLs represented by those lots, the ACA will offer to allocate the lot or lots for a pre-determined price, as set out in this Part.
- (2) The offer of an SL under this Part will be conditional on payment of the pre-determined price and the entering into of a Deed of Agreement by the applicant.

3.2 The pre-determined price

- (1) The pre-determined price for an SL is the starting bid for the lot comprising the SL.
Note The starting bid is set by the ACA under section 2.17.
- (2) The balance of the pre-determined price payable by an applicant for an SL is the pre-determined price less the amount of the eligibility payment and performance payment (if any) paid by the applicant.

3.3 ACA must have regard to applicants' requirements

In deciding for subsection 3.4(1) whether it may be able to offer an SL and allocate a lot or lots without an auction, and in identifying a lot or lots for subsection 3.1(1), the ACA must only have regard to:

- (a) each applicant's indication, in the application form, of the lot the applicants require; and
- (b) any other information the ACA may require that the applicants provide about the lots.

Section 3.4**3.4 Offer of an SL**

- (1) The ACA will offer each applicant an SL for one of the lots identified under subsection 3.1(1).
- (2) The ACA will send each applicant, by receipted mail:
 - (a) a draft of the SL; and
 - (b) a notice stating:
 - (i) that the applicant is offered an SL for the lot identified under subsection 3.1(1); and
 - (ii) the amount of the pre-determined price payable for the SL; and
 - (iii) the amount of the eligibility payment and performance payment (if any) made by the applicant and held by the ACA; and
 - (iv) the balance of the pre-determined price payable for the SL; and
 - (v) that the offer is conditional on each other applicant (if any) accepting the SL offered or telling the ACA that it withdraws its application for a lot.
- (3) An applicant who wishes to accept the ACA's offer must do so by notifying the ACA in writing within 10 days of receiving the offer, agreeing to pay the balance of the pre-determined price and to enter into a Deed of Agreement.
- (4) If every applicant accepts the SL offered to the applicant, each applicant is entitled to be issued the SL offered on payment of the balance of the pre-determined price and the entering into of a Deed of Agreement by the applicant in accordance with this determination.
- (5) The ACA must not issue the SL unless the applicant has, within 6 months of the date of the notice referred to in subsection (7), entered into a Deed of Agreement that is substantially in the same terms as the deed specified in Schedule 4 or Schedule 5.

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- (6) If an applicant does not enter into a Deed of Agreement:
- (a) the applicant will not be issued an SL; and
 - (b) the applicant ceases to be entitled to the allocation of a lot; and
 - (c) the lot comprising the SL is to be treated as unallocated under section 6.1; and
 - (d) the eligibility payment and all repayable performance payments (if any) paid by the applicant are forfeited to the ACA; and
 - (e) the allocation of a lot under this Part to other applicants (if any) is not affected.
- (7) The ACA must write to each applicant about each applicant's entitlement under subsection (4) and the requirement to pay the balance of the pre-determined price and to enter into a Deed of Agreement before an SL can be issued to the applicant.

Note For the issue of an SL, see section 100 of the Act.

3.5 Payment of balance of pre-determined price

The balance of the pre-determined price is payable:

- (a) at the auction centre within 10 working days of the date of the notice sent to the applicant under subsection 3.4 (7); and
- (b) in accordance with section 1.9.

3.6 Allocation if offer refused

If an applicant does not accept, in accordance with subsection 3.4(3), an SL offered to it, the ACA may:

- (a) withdraw from the allocation process both lots and terminate the allocation process; or
- (b) allocate both lots by auction under this determination; or

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- (c) issue an SL to the applicant who has accepted the offered SL and paid the balance of the pre-determined price and entered into a Deed of Agreement in respect of the SL in accordance with this determination and, for the other lot that was not accepted:
 - (i) allocate that lot by auction, under this determination; or
 - (ii) withdraw that lot from allocation, terminate the allocation process, and allocate it at a later date.

Note: The ACA may make determinations under section 106 of the Act about allocations other than by auction.

3.7 Refunds if allocation process terminated

If the ACA terminates the allocation process under section 3.6, the eligibility payments and repayable performance payments of all applicants are refundable.

3.8 Default

If, after acceptance of an offer for an SL, an applicant does not pay the balance of the pre-determined price for a lot in accordance with section 3.5:

- (a) the applicant will not be issued an SL; and
- (b) the applicant ceases to be entitled to the allocation of a lot; and
- (c) the eligibility payment and all repayable performance payments (if any) paid by the applicant are forfeited to the ACA; and
- (d) the allocation of a lot under this Part to other applicants (if any) is not affected; and
- (e) the lot comprising the SL is to be treated as unallocated under section .

Part 4 The Auction

Division 1 Auction Arrangements

4.1 Auction procedure

- (1) This auction consists of one stage made up of a number of rounds.
- (2) The first round of the auction starts on the date and time for that round set by the auction manager under paragraph 2.18 (f).

4.2 Rounds of an auction

- (1) Each round of an auction is made up of the following periods and activities:
 - (a) the bidding period — during which registered applicants make their bidding instructions;
 - (b) the results period — during which the auction manager works out the high bids on each lot offered using the auction computer system and then publishes the *results* for the round using the auction computer system.

Note For paragraph (a), the following provisions are relevant:

- (a) in the case of bidding by way of electronic communication — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA's auction computer system in accordance with paragraph 4.9 (1) (f);
- (b) in the case of emergency telephone bidding — a bid is taken to have been made when the bidding instruction file containing the bid has been authenticated by the ACA's auction computer system in accordance with paragraph 4.10 (1) (f);
- (c) in the case of withdrawing bids — withdrawal may be subject to penalties, as set out in section 4.23.

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(2) In this section:

results, for a round, means the following results and information:

- (a) all bids (rounded down to 4 significant digits or fewer) and bid withdrawals made during the round;
- (b) the amount of the high bid on each lot at the end of the round (rounded down to 4 significant digits or fewer) and the BIN of each high bidder;
- (c) the minimum bid on each lot for the next round;
- (d) the total value of high bids held by an applicant at the end of the round;
- (e) each registered applicant's eligibility at the beginning of the next round;
- (f) the schedule for the next round and the round after that, worked out from the times set by the auction manager under paragraphs 2.18 (d) and (e), having regard to the matters set out in section 4.4;
- (g) any other information necessary for the smooth running of the auction.

(3) The information about a bid published under this section must not identify the automatic re-bid limit of any applicant unless that re-bid limit becomes a bid for the round.

4.3 Schedule for a round

The schedule for a round must include:

- (a) the date and time at which the round is to start and bidding opens; and
- (b) the date and time when the bidding period ends and the results period starts; and
- (c) the date and time when the results period ends and the round ends.

4.4 Rounds on a day

- (1) Once the auction opens, there will be at least 1 round each working day unless the day is a recess day.
- (2) No round on a day will start before 9.00 am.
- (3) If, after the end of a round, the auction manager thinks that there will be time to finish another round before 5.30 pm on that day, he or she may decide to hold another round for that day.

4.5 Recess days

- (1) The auction manager may declare a day to be a recess day.
- (2) Before declaring a recess day, the auction manager must give registered applicants an opportunity to comment on the proposed declaration and take into account any comments received.
- (3) If the auction manager decides to declare a day to be a recess day, the auction manager must tell all registered applicants of this.

4.6 Auction manager may vary the length of the bidding or results period

- (1) The auction manager may vary the length of the bidding period or the results period of a round in the auction.
- (2) Before varying the length of time set for the bidding period or the results period of a round in the auction, the auction manager must give registered applicants an opportunity to comment on the proposed variation and take into account any comments received.
- (3) If the auction manager decides to vary the length of time set for the bidding period or the results period of a round in the auction, the auction manager must tell all registered applicants of this and specify the round when the change will take effect.

Section 3.8**4.7 DELETED****Division 2 Bidding and taking part in the auction****4.8 Ways of taking part in the auction**

- (1) The way for a registered applicant to take part in an auction is by electronic communication.
- (2) A registered applicant taking part in an auction must only use the software made available by the ACA.
- (3) However, a registered applicant may take part by telephone if, because of what the ACA considers to be an emergency, the registered applicant is unable to take part by electronic communication.
- (4) In this Division:
taking part means bidding, making automatic re-bids, withdrawing a bid, exercising a waiver or giving instructions not to exercise a waiver.

Note For general rules about bidding, see section 4.16; for rules on using a waiver of the activity rules, see section 4.20; and for withdrawing a bid, see section 4.21.

4.9 Electronic communication bidding procedure

- (1) The procedure for taking part in the auction by electronic communication is as follows:
 - (a) a registered applicant must use the bidding software available from the ACA to prepare its bidding instruction file for the round;
 - (b) the bidding instruction file will be encrypted for transmission and digitally signed using keys provided by the ACA to authenticate the file as having been created by the registered applicant;
 - (c) the bidding software will permit the registered applicant to print out a report of the bidding instructions contained in the bidding instruction file before transmission;

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- (d) the registered applicant must use the software to connect to the ACA's auction computer system;
 - (e) the registered applicant must initiate a file transfer of the bidding instruction file to the ACA's auction computer system;
 - (f) once the bidding instruction file is authenticated, the ACA's auction centre computer will generate a receipt file which will be returned to the registered applicant during the connection;
 - (g) the ACA's auction computer system will process the bidding instructions contained in the bidding instruction file.
- (2) Details of procedures for bid transmission and authentication are set out in Schedule 3.

4.10 Emergency telephone bidding procedure

- (1) The procedure for emergency telephone bidding is as follows:
- (a) a registered applicant must use the telephone number notified by the auction manager as the number for telephone bidding;
 - (b) the registered applicant's call will be taken by an ACA operator;
 - (c) the registered applicant must quote the BIN and transaction code key, as described in Schedule 3, assigned to the applicant by the ACA;
 - (d) the registered applicant must meet any additional identification requirements imposed by the ACA, as set out in Schedule 3;
 - (e) the ACA must create a bidding instruction file in accordance with the bidding instructions given by the registered applicant, and enter that bidding file into the auction computer system as soon as practicable;
 - (f) the time that bidding instructions contained in a bidding instruction file are made is taken to be the time that the file was authenticated by the ACA's auction computer system;
 - (g) the ACA must print out a confirmation of the bidding instructions from the auction computer system;

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- (h) the ACA must send this to the registered applicant by facsimile, if the applicant has nominated a facsimile number;
 - (i) the ACA must process the bidding instructions in the same way as it processes the bids made by electronic communication by registered applicants.
- (2) Details of the procedures for bid transmission and authentication are set out in Schedule 3.

4.11 Identification of registered applicants

- (1) A registered applicant must use its BIN when bidding, and must comply with the other identification requirements set out in Schedule 3.
- (2) If the auction manager tells registered applicants to use additional identification, they must do so.

4.12 Starting and minimum bids

- (1) A bid on a lot below the starting bid for that lot will not be accepted.
Note For starting bids, see sections 2.17 and 4.13.
- (2) After a starting bid has been made on a lot in a round, a bid on the lot below the minimum bid for that lot in a later round will not be accepted.
- (3) The minimum bid for a lot is the sum of the high bid on that lot in the previous round, as published in the results and information for the round, and the higher of:
 - (a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and
 - (b) the increment of percentage of high bid set under section 2.17, multiplied by that high bid.
- (4) However, if a bid on a lot is withdrawn, the minimum bid on that lot is worked out in accordance with section 4.21.
- (5) A registered applicant who holds the high bid on a lot from a previous round is not required by subsection (2) to raise its own high bid, but may do so.

4.13 Changing starting bids

- (1) Despite section 4.12, the Chair may, at any time, vary the amount of the starting bid on a lot.
- (2) Before doing this, the Chair must:
 - (a) tell registered applicants of the proposed change; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the Chair; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all registered applicants of the change before the round when the change takes effect.

4.13A Changing minimum bids

- (1) Despite section 4.12, the auction manager may, at any time during the auction, change the amounts fixed under paragraphs 2.17 (b) and (c) to vary the minimum bid on a lot.
- (2) Before doing this, the auction manager must:
 - (a) tell registered applicants of the proposed change; and
 - (b) ask registered applicants for their comments on the proposal within the time (being not less than 1 hour) set by the auction manager; and
 - (c) take into account any comments received on the proposal.
- (3) The auction manager must notify all registered applicants of the change before the round when the change takes effect.

4.14 Automatic re-bidding

- (1) A registered applicant may not make an automatic re-bid on a lot in a round unless the applicant:
 - (a) makes a bid on the lot in the round; or
 - (b) is the high bidder on the lot from the previous round.

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- (2) An automatic re-bid:
 - (a) may be made only once in a round, and only applies in the round in which it is made; and
 - (b) must be:
 - (i) if the registered applicant makes the starting bid on a lot— at least 1 minimum bid increment above the starting bid; or
 - (ii) if the registered applicant makes a bid on a lot other than the starting bid — at least 1 minimum bid increment more than the applicant's own bid; or
 - (iii) if the registered applicant is already the high bidder on that lot— at least 2 minimum bid increments above the applicant's high bid as published in the results and information for the previous round.
- (3) In working out the high bid in a round, an automatic re-bid made by the bidder who made the next highest bid to the automatic re-bid is disregarded.
- (4) If only 1 bidder makes an automatic re-bid that exceeds the high bid made or held on the lot in the round by another bidder:
 - (a) the bidder is taken to be the high bidder for the lot in the round; and
 - (b) the amount of the high bid for the round is taken to be the lesser of:
 - (i) 1 minimum bid increment more than the highest bid recorded for the lot in the round; or
 - (ii) the amount of the automatic re-bid.
- (5) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder:
 - (a) the bidder who nominated the highest amount to which the automatic re-bid was limited is taken to be the high bidder for the lot; and
 - (b) the amount of the high bid for the round is taken to be the lesser of:
 - (i) 1 minimum bid increment more than the next highest amount to which an automatic re-bid was limited for the lot in that round; or

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- (ii) the highest amount to which an automatic re-bid was limited for the lot in that round; and
 - (c) the amount of the next highest bid is taken to be the next highest amount to which an automatic re-bid was limited for the lot in that round; and
 - (d) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.
 - (6) If more than 1 bidder makes an automatic re-bid that exceeds the high bid made on the lot in the round by another bidder by the same amount, and that automatic re-bid amount exceeds any other automatic re-bid made on the lot in the round:
 - (a) the bidder whose re-bid is recorded in the computer system as being first made is taken to be the high bidder for the lot in that round; and
 - (b) the amount of the high bid for the round is taken to be the amount to which an automatic re-bid was limited for the lot in that round; and
 - (c) any bid instruction, including an automatic re-bid, is to be regarded as a bid for the lot at the amount of the automatic re-bid.
 - (7) In this section:

minimum bid increment for a lot in a round means the higher of:

 - (a) the increment of price per lot rating set under section 2.17, multiplied by the lot rating for the lot; and
 - (b) the increment of percentage of high bid set under section 2.17 multiplied by:
 - (i) the high bid on that lot in the previous round as published in the results and information for that round; or
 - (ii) if there is no high bid published in the results and information for that round or if there is no previous round— zero.

Note The ACA must not disclose automatic re-bid limits: see subsection 4.2 (3).

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4.15 Both lots on offer simultaneously

Both lots on offer at the auction will be open for bidding in each round of the auction in accordance with the allocation limit under this determination.

4.16 General rules about bidding

- (1) Subject to Part 1A and sections 4.17 and 4.18, a registered applicant may bid on either but not both lots.
- (2) In particular, an applicant is not restricted to bidding only on the lot that the applicant nominated in the application form.
- (3) In a round, an applicant may lodge only 1 file containing the applicant's bidding instructions.

Note An automatic re-bid may be made once only in a round: see section 4.14.

- (4) If 2 or more registered applicants make identical bids on the same lot and the bids are the high bids for the round, the bid that is recorded in the auction computer system as being made first in time will be taken to be the high bid on that lot for the round.
- (5) If a bid is disputed:
 - (a) the auction manager is the sole arbiter; and
 - (b) the auction manager's decision is final.
- (6) If a person who is not a registered applicant makes a bid for a lot:
 - (a) the bid is to be ignored; and
 - (b) the bid does not, by itself, affect further bidding on that lot or the validity of the lot.

Note For the emergency telephone bidding procedure, see section 4.10.

4.17 Eligibility bidding cap

- (1) A registered applicant must not bid on more than one lot in a round.
- (2) To ensure that an applicant's eligibility is not exceeded, the ACA will process the applicant's bids as follows:

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- (a) bidding instructions will be processed in order of lot number, starting with the lowest number;
 - (b) bidding instructions will only be processed so that the total of the lot ratings for those bids does not exceed the applicant's eligibility;
 - (c) if the lot rating for a bid to be processed would result in the progressive total of lot ratings exceeding the applicant's eligibility — the ACA will not process that bid or any further bids of the applicant and will treat the bid and those further bids as if they had not been made.

Note As to when an applicant is active, see subsection 1.4 (4).

4.18 Bidding activity targets

Subject to the waiver provisions in section 4.20, a registered applicant must bid in such a way during a round that the total of the lot ratings on the lots on which the applicant is active in that round is equal to the applicant's activity target for the round.

Note 1 For activity target, see subsection 1.4 (1).

Note 2 A registered applicant who does not bid in the way mentioned in this section is liable to lose eligibility, in accordance with section 4.19.

4.19 Loss of eligibility

- (1) A registered applicant's eligibility for the next round will be reduced to zero if:
 - (a) the registered applicant does not meet its activity target; and
 - (b) the registered applicant does not exercise a waiver in that round.

Note In this auction, a registered applicant must do one of the following to remain active in the auction:

- (a) be the highest bidder in a lot from the previous round and not withdrawn that bid in the current round, or
- (b) have entered a new valid bid in the current round, or
- (c) exercised a waiver in the current round.

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Otherwise the registered applicant's eligibility will become zero and consequently will not be able to take any further part in the auction.

4.20 Waiver

- (1) During the bidding period of a round, a registered applicant who would otherwise not meet its activity target may exercise a waiver of the effect of section 4.19.
- (2) A registered applicant may continue to exercise waivers until the applicant has used all its waivers fixed by the auction manager under section 2.18.
- (3) A registered applicant who exercises a waiver does not lose eligibility in that round.
- (4) If an auction manager exercises a waiver on an applicant's behalf, the applicant's eligibility for that round is not lost.
- (5) The auction manager will exercise a waiver on a registered applicant's behalf unless the registered applicant tells the auction manager, during the bidding process, that the waiver is not to be exercised, if:
 - (a) a registered applicant bids in such a way that, but for this section, the applicant would not meet its activity target; and
 - (b) all the waivers fixed by the auction manager for the registered applicant have not been exercised.
- (6) A round will not be regarded as the final round if:
 - (a) there are no bids in a round (and, as a result, the round would be regarded as the final round); and
 - (b) a registered applicant exercises a waiver in that round.

Note For exercising a waiver, see section 4.8.

4.21 Withdrawal of bids

- (1) During a round, a registered applicant may withdraw its bid on a lot from a previous round only if the bid is the high bid on the lot in that round.

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- (2) If a registered applicant withdraws a bid in a round in accordance with subsection (1) and no other applicant has made a bid on that lot in the round:
 - (a) the ACA is taken to be the high bidder in that round for the lot, at the next highest bid (whether the next highest bid was published in the results as a high bid or not); and
 - (b) the ACA will be identified by the BIN 9999; and
 - (c) the minimum bid for the lot in the next round is equal to that next highest bid made on the lot in a previous round, or if there is no other bid, the starting bid for the lot; and
 - (d) the registered applicant may bid again on that lot in a later round; and
 - (e) the registered applicant withdrawing the bid may lose eligibility, as set out in section 4.22.

4.22 Loss of activity on withdrawal

If a registered applicant withdraws a bid in a round, the applicant will not be regarded as being active on that lot.

Note: If a registered applicant withdraws a bid in a round, their eligibility will reduce to zero, unless the applicant (in the same round) either bids on a lot, or exercises a waiver.

4.23 Withdrawal penalty

- (1) A registered applicant is liable for the withdrawal penalty in subsection (2) if:
 - (a) the registered applicant withdraws a bid on a particular lot; and
 - (b) there is a subsequent bid on the lot but no subsequent bid on the lot is equal to or greater than the withdrawn bid.
- Note:* A bid cannot be withdrawn unless it is the high bid for the lot – see section 4.21.
- (2) For subsection (1), the withdrawal penalty is an amount equal to the difference between the withdrawn bid and the highest subsequent bid.

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- (3) A registered applicant is liable for the withdrawal penalty in subsection (4) if:
 - (a) the registered applicant withdraws a bid on a particular lot; and
 - (b) there is no subsequent bid on the lot.
- (4) For subsection (3), the withdrawal penalty is an amount equal to the amount of the withdrawn bid.
- (5) A registered applicant may withdraw a bid on a particular lot more than once, but the applicant is liable for a withdrawal penalty each time.
- (6) The amount of all withdrawal penalties imposed on an unsuccessful applicant will be deducted from the applicant's eligibility payment before any remaining portion is refunded.
- (7) If the amount of all withdrawal penalties exceeds the eligibility payment, the balance will be taken out of the repayable performance payment, with any amount still owing being a debt due to the ACA that may be recovered in a court of competent jurisdiction.

Note If a withdrawal penalty is incurred by a successful applicant, the amount of the penalty will be added to the balance of the bid price payable by the applicant under section 5.2.

- (8) An applicant is not otherwise liable for a withdrawal penalty.

4.24 Suspension of an applicant

- (1) If the ACA considers that a registered applicant's encryption keys or transaction code keys have been compromised and cannot be used to authenticate bidding instructions, the auction manager may suspend the applicant's participation in the auction.
- (2) For subsection (1), the auction manager must tell the applicant:
 - (a) the reason for the suspension; and
 - (b) the period of suspension (if any).

4.25 Further Deed of Financial Security or additional performance payment

- (1) If, after the start of the auction, the amount payable or paid to the ACA under an applicant's Deed of Financial security, or the amount of an applicant's performance payment, falls below 10% of the total of high bids of the registered applicant recorded in the results of a round, the ACA must tell the applicant by written notice to:
 - (a) give the ACA a Deed of Financial Security (the *further Deed*); or
 - (b) pay an additional performance payment.
- (2) The ACA must give the notice by facsimile to a facsimile number nominated by the registered applicant on its application form.
- (3) For a registered applicant who gives the ACA a Deed of Financial Security:
 - (a) if the applicant has previously paid a performance payment—the amount to be secured by the Deed is equal to the amount of performance payment already paid to the ACA; and
 - (b) if it is a further Deed—the amount to be secured by the further Deed is twice the amount secured under the existing Deed of Financial Security; and
 - (c) the Deed must be given to the ACA by 5.00 pm on the third working day after the date of the notice.
- (4) For a registered applicant who pays a performance payment:
 - (a) if the applicant has previously given the ACA a Deed of Financial Security—the amount of the performance payment is equal to the amount secured by the Deed; and
 - (b) if the applicant has previously paid a performance payment—the amount of the additional performance payment is the amount of the performance payment already paid by the applicant; and
 - (c) the payment must be paid to the ACA by 5.00 pm on the third working day after the date of the notice, and in accordance with section 1.9.

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- (5) A registered applicant who fails to give a Deed under subsection (3), or pay a payment under subsection (4), is excluded from taking any further part in the auction and therefore from obtaining a SL in the allocation process.
- (6) If, at any time during the auction, the total of the amount payable to the ACA under an applicant's Deed of Financial Security (if any), and the repayable performance payments of the applicant (if any), falls below 10% of the total of the applicant's high bids, the ACA must again tell the applicant by written notice given in accordance with subsection (2) to:
- (a) give the ACA another Deed of Financial Security (the *further Deed*), in accordance with subsection (3); or
 - (b) pay an additional performance payment, in accordance with subsection (4).

Note: the effect of this paragraph is that the total of the amounts payable under a Deed of Financial Security together with the amount of any performance payments, will double each time the ACA issues a notice under this section.

- (7) A registered applicant who fails to give the ACA a further Deed, or pay the further additional performance payment, in accordance with subsection (6) is excluded from taking any further part in the auction and therefore from obtaining an SL in the allocation process.
- (8) When the ACA receives a further Deed the ACA must, as soon as practicable, cancel the existing Deed of Financial Security by written notice to the Promisor given in accordance with that Deed.
- (9) Sections 2.8, 2.9, 2.10, 2.11 and 2.12 apply to a further Deed and to an additional performance payment.

4.26 Consequences of exclusion

- (1) The entry fee of an applicant who is excluded from obtaining an SL because the applicant fails to pay an additional performance payment (an *excluded applicant*) is not refundable.
- (2) The eligibility payment and repayable performance payments (if any) of an excluded applicant are refundable.

(3) However, before refunding the eligibility payment and repayable performance payments (if any) of an excluded applicant, the ACA must deduct any bid withdrawal penalties from the amount to be refunded.

(4) In working out the bid withdrawal penalties deductible under subsection (3), a high bid of the excluded applicant that was current immediately before the applicant was excluded is taken to be withdrawn.

Note: Because it is not possible to work out any bid withdrawal penalties until the end of the auction, the eligibility payment and repayable performance payments cannot be refunded until then.

Division 3 Bringing the Auction to an End

4.27 Suspension or cancellation of auction

- (1) At any time after a notice in relation to an auction has been issued under section 2.2, the ACA or the auction manager may suspend or cancel the auction, or a round of the auction:
- (a) if the Minister directs the ACA or the auction manager to do so; or
 - (b) because of:
 - (i) an error in, or technical failure of, the auction computer system; or
 - (ii) technical failure of the telecommunications system being used for the auction; or
 - (iii) an event beyond the control of the ACA; or
 - (c) if the ACA is satisfied that there has been, or is likely to be, a breach of the auction procedures of a kind that could compromise the auction; or
 - (d) if the auction manager is satisfied that in the circumstances it is appropriate to do so.

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- (2) If the auction is suspended, the ACA or the auction manager may:
- (a) resume the auction from the end of any round which has been completed, and for which the auction manager is satisfied that the results are correct; or
 - (b) cancel the auction.

Note: the auction manager may give the first round after resumption a higher round number if it is administratively expedient to do so.

- (3) If the auction is cancelled:
- (a) all eligibility payments and repayable performance payments (if any) of registered applicants will be refunded; and
 - (b) the entry fee will not be refunded; and
 - (c) the ACA may allocate the lots:
 - (i) by another auction; or
 - (ii) by tender; or
 - (iii) by a negotiated price; or
 - (iv) by allocation for a pre-determined price.

Note The ACA may make a determination under section 106 of the Act about allocations other than by auction.

4.28 Closing of auction

- (1) The rounds of the auction are to continue until:
- (a) the auction is in its last stage; and
 - (b) no bid is made on any lot on offer; and
 - (c) no bidder exercises a waiver; and
 - (d) no applicant remains under suspension.

- (2) Once this happens, the auction is considered closed, and the auction manager must tell all registered applicants of this.

Note For suspension of an applicant, see section 4.24. For the exercise of waivers, see section 4.20.

- (3) An automatic re-bid on a lot by the high bidder on the lot from the previous round does not constitute a bid for paragraph (1) (b).

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- (4) The exercise of a waiver by the auction manager under subsection 4.20 (5) does not constitute the exercise of a waiver by the bidder for paragraph (1) (c).
 - (5) If bidding is continuing after 20 rounds, the auction manager may consider it necessary, to achieve a result, to close the auction at the end of a round that the auction manager specifies (the *specified closing round*).
 - (6) Before declaring the specified closing round, the auction manager must:
 - (a) at least 2 rounds before the proposed closing time, tell all registered applicants that the auction manager proposes to close the auction at the end of the specified closing round, and ask for their comments within the time (being not less than 1 hour) set by the auction manager; and
 - (b) take registered applicants' comments into account in deciding whether to close the auction (so far as the comments are relevant to the issue); and
 - (c) if the auction manager decides to close the auction:
 - (i) tell all registered applicants of the specified closing round; and
 - (ii) at the end of the specified closing round, tell all registered applicants that the auction is closed.
 - (7) If the auction is closed under subsection (6), the registered applicant who is the highest bidder on a lot at the close of the auction is taken to have made the highest final bid on the lot and to be the successful applicant for that lot.

Part 5 After the Auction

5.1 Requirements before issue of a space licence to highest bidder

- (1) The registered applicant who holds the highest bid on a lot when the auction closes (the *successful applicant*) is entitled to be issued an SL for that lot if:
 - (a) the applicant pays the balance of the bid price, worked out under section 5.2 for the lot for which the applicant was the successful bidder, in accordance with section 5.3; and
 - (b) the applicant enters into a Deed of Agreement in accordance with subsection (2).
- (2) The successful applicant must, within 6 months of the date of the notice referred to in subsection 5.3(1), enter into a Deed of Agreement that is substantially in the same terms as the deed specified in Schedule 4 or Schedule 5.
- (3) If the successful applicant does not enter into a Deed of Agreement:
 - (a) the applicant will not be issued an SL; and
 - (b) the applicant ceases to be entitled to the allocation of a lot; and
 - (c) the highest bid made by the applicant will be treated as a withdrawn bid and the applicant will be penalised for that bid in accordance with section 4.23; and
 - (d) the lot so affected will be regarded as a defaulted lot and the applicant will be taken to be in default of its financial obligations to the ACA under this determination; and
 - (e) subsections 5.4 (2), (3) and (4) shall apply.

5.2 Calculation of balance of the bid price

- (1) The balance of the bid price to be paid by a successful applicant is worked out as follows:
 - (a) the ACA will add up the value of the bid withdrawal penalties imposed on the applicant under section 4.23;

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- (b) the ACA will add the highest bid for the lot and the total of the bid withdrawal penalties for the successful applicant;
 - (c) the ACA will deduct the applicant's eligibility payments and repayable performance payments (if any) from this total.
- (2) The amount remaining is the balance of the bid price.
 - (3) If the applicant's eligibility payments and repayable performance payments (if any) are greater than the total of the highest bid and bid withdrawal penalties:
 - (a) the ACA will refund the difference; and
 - (b) the applicant is entitled to be issued an SL without further payment to the ACA;provided that the applicant enters into a Deed of Agreement in accordance with subsection 5.1(2).

5.3 Payment of balance of bid price

- (1) The ACA will notify each successful applicant, by receipted mail, of the balance of the bid price.
- (2) A successful applicant must pay the balance of the bid price to the ACA as follows:
 - (a) 10% of the balance of the bid price no later than 10 working days after the date of the notice; and
 - (b) the remainder no later than 20 working days after that 10th working day.
- (3) If a notice under subsection (1) contains a material error, the ACA will give the successful applicant a revised notice by receipted mail.
- (4) If the ACA gives a successful applicant a revised notice, the successful applicant must pay the balance of the bid price as follows:
 - (a) if the revised notice is given before the successful applicant has made the 10% payment mentioned in paragraph (2) (a) — 10% of the balance of the bid price no later than 10 working days after the date of

Section 5.4

the revised notice and the remainder no later than 20 working days after that 10th working day; and

- (b) if the revised notice is given after the successful applicant has made that 10% payment— the remainder of the bid price, no later than 20 working days after the date of the revised notice.
- (5) The payment of 10% of the balance of the bid price mentioned in paragraph 2 (a) or 4 (a), must be made in full by the specified time in accordance with section 1.9.
 - (6) The payment of the remainder of the bid price mentioned in paragraph 2 (b) or 4 (b), must be made in full by the specified time in accordance with section 1.9.

5.4 Default by successful applicant

- (1) If a successful applicant does not pay any part of the balance of the bid price in accordance with section 5.3:
 - (a) the applicant will not be issued an SL; and
 - (b) the applicant ceases to be entitled to the allocation of a lot; and
 - (c) the highest bid made by the applicant will be treated as a withdrawn bid and the applicant will be penalised for that bid in accordance with section 4.23; and
 - (d) the lot so affected will be regarded as a defaulted lot and the applicant will be taken to be in default of its financial obligations to the ACA under this determination.
- (2) If the ACA holds a repayable performance payment for a successful applicant who is in default, then so much of the moneys held by the ACA as will meet the undischarged liability of the applicant are forfeited to the ACA.
- (3) Any moneys held by the ACA in excess of the undischarged liability of the successful applicant in default must be refunded to the applicant after that liability has been satisfied.
- (4) However, if a successful applicant remains in default of its financial obligations to the ACA, the amount remaining payable to the ACA is a debt due to the ACA and is recoverable by the ACA from the successful applicant in any court of competent jurisdiction.

5.5 Allocation of defaulted lots

The ACA will treat the defaulted lots as unallocated and offer them for allocation at another time under section 6.1.

5.6 Refunds to unsuccessful applicants

The ACA must account to an unsuccessful applicant:

- (a) for the applicant's eligibility payments less the amount of any bid withdrawal penalties imposed under section 4.23; and
- (b) for money (if any) held by the ACA as a repayable performance payment, less:
 - (i) the balance of any withdrawal penalties not covered by the eligibility payments; and
 - (ii) any other moneys owing by the applicant to the ACA in timely discharge of its financial obligations under this determination.

Part 6 Miscellaneous

6.1 Unallocated lots

A lot offered at an auction but unallocated may be allocated by the ACA, as the ACA determines:

- (a) by another auction; or
- (b) by tender; or
- (c) by allocation for a pre-determined price or
- (d) by allocation for a negotiated price.

Note 1 Unallocated lots include defaulted lots: see sections 3.4, 3.8 and 5.5.

Note 2 The ACA may make determinations under section 106 of the Act about allocations other than by auction.

6.2 Liability of ACA

The ACA is not liable to pay damages or costs arising from an act or omission of any person in relation to the allocation process set out in this determination.

6.3 Recovery of damages by ACA

This determination is without prejudice to any right of action or remedy which the ACA has or may have against any person which arose or arises under the Deed of Acknowledgment, Deed of Financial Security, statute, common law, equity or otherwise.

6.4 ACA may obtain information from applicants

- (1) This clause applies to an applicant if the ACA has reason to believe that the applicant has information or documents that are relevant to the performance of any of the ACA's functions under this determination.
- (2) The ACA may, by written notice to an applicant, require the applicant to give the ACA that information and those

documents, within the period and in the manner and form specified in the notice.

- (3) An applicant must comply with a requirement under subsection (2).

6.5 Information provided by the ACA

Before the ACA issues an SL, it may announce, or publish a notice of:

- (a) the name of the person to whom the SL is to be issued; and
- (b) the highest final price bid for the SL, or the pre-determined price for the SL, as appropriate.

6.6 Information provided by applicant

- (1) An original document given to the ACA by a person for the purposes of the allocation process set out in this determination (including a document that contains intellectual property) becomes the property of the ACA.

Note Subsection (1) does not apply to a document that establishes an individual's identity.

- (2) The ACA may use information provided by an applicant for the purposes of the ACA.

6.7 Refunds of payments under Deed of Financial Security

Where an amount paid under a Deed of Financial Security is refundable under this determination, the ACA must pay that amount to the applicant, or the withdrawn applicant, who gave the ACA the Deed of Financial Security under which the payment was made.

Schedule 1 Description of Lots

(section 1.4)

Each lot that has a number in column 1 relates to the orbital location in column 2 and has the lot rating in column 3 and the frequency range in column 4.

Column 1 Lot No.	Column 2 Orbital location	Column 3 Lot Rating	Column 4 Frequency Range
1	152° East Longitude; 0° Latitude	1	11.7-12.2 GHz
2	164° East Longitude; 0° Latitude	1	11.7-12.2 GHz

Schedule 2 Sample Space Licence

This Schedule sets out a sample SL, and refers to the conditions that may be included in the SL. The SL may also contain other material.

Date of Effect Date of Expiry
Xx/xx/2001 xx/xx/2001

.....(Licensee's name)
.....(Trading/Organisation name)
.....(PO Box/Street address)
.....(SUBURB – in all caps)
.....(STATE – in all caps & POSTCODE)

Licence Type: Space
Licence Number:

This Space Licence authorises the operation of space station(s).

Spectrum Access:

Assigned Frequency:	a frequency in the range 11.7 -12.2
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GHz

Access Area:	Australia Wide
Bandwidth (Chargeable):

STATION:

Operating Mode:	Transmit
Transmitter Power:
EIRP:
Emission Designator:
Antenna Polarisation:

SPECIAL CONDITIONS APPLYING TO SPECTRUM ACCESS

- (1) This licence authorises operation of a space station located at 152° East Longitude in the geostationary orbit (or 164° East).
- (2) This licence has effect only if there is a Deed of Agreement between the ACA and the licensee for the coordination and radio interference management of the satellite network, the operation of which would otherwise be authorised by this licence.
- (3) This licence authorises radiocommunications transmissions in the Broadcasting Satellite Service to places in Australia by a space station that is being operated in accordance with the Australian allotments in Appendix S30 of the Radio Regulations of the International Telecommunication Union (ITU).
- (4) Transmission must not occur in circumstances that would result in harmful interference to radiocommunications services outside Australia.
- (5) Space stations operated under this licence must not cause harmful interference to other radiocommunications services in Australia.

ADVISORY NOTES APPLYING TO LICENCE #

Conditions applicable to the operation of space station(s) authorised under this licence can be found in the Radiocommunications Licence Conditions (Apparatus Licence) Determination. Copies of that determination are available from any ACA office or from the ACA home page (www.aca.gov.au).

Schedule 3 Procedures for bid transmission (including automatic re-bids and withdrawal of bids) and authentication

(sections 4.9, 4.10 and 4.11)

The aim of these procedures is to ensure that information purporting to represent the instructions of a registered applicant during bidding has actually come from that registered applicant.

1. Connection to the auction computer system

Each registered applicant will connect with the auction computer system through the ACA's public network interface using a telephone number supplied to registered applicants by the auction manager, or by electronic communication via the internet.

To log on using a telephone connection, the applicant will need to supply a user ID and password.

Once connection is established, the registered applicant will be able to:

- (a) download from the auction computer system a file containing auction results from the auction computer system; or
- (b) upload to the auction computer system its bid file during a round.

A registered applicant may need to connect a number of times during a round:

- (a) to make bidding instructions; or
- (b) to obtain results after the bidding period.

The auction schedule will provide information to registered applicants about when to make these connections.

2. Encryption of Files for Transmission

The ACA will use 'public key' encryption to secure the privacy and integrity of each registered applicant's bid file as it is transmitted to the ACA. Public key encryption also offers scope to provide sophisticated digital authentication procedures for files that are mathematically improbable to compromise.

Note Public key encryption works on the basis of 2 complementary keys (very large numbers). The 2 keys are mathematically related, but in a way that cannot be easily deduced. One key must be kept private, while the other can be made public. A message encrypted with 1 part of the key pair can ONLY be decrypted with the other part.

Public key cryptography is implemented by users freely distributing their public key, so that other people can encrypt messages to them with that key. The message can then only be decrypted using the person's private key which the person alone holds and which the person must protect.

For the auction, the ACA will provide all pairs of encryption keys. Each registered applicant will be given a copy of the ACA's public key and a copy of the applicant's own private key. The ACA will retain a copy of all public and private keys distributed in the auction.

The ACA will store encryption keys under appropriate security arrangements in the auction centre.

The ACA will specify 1024 bit keys.

3. Bidding instruction files

Each bidding instruction file will be prepared in the form of a database following the Microsoft Access 97 specification. Before transmission, the file will be digitally signed. The signature will then be encrypted with the registered applicant's private encryption key.

Note The digital signature will be calculated by a checksum algorithm that calculates a 128 bit number expressing the whole file. It is so sensitive that the change of a full-stop to a comma will result in a substantially different checksum.

The file itself will then be encrypted using the ACA's public encryption key. The file and the attached signature will then be transmitted to the ACA's auction computer system.

On receipt of the file by the auction computer system, the ACA's auction software will automatically decrypt the file that has been received using the ACA's private encryption key. It will recalculate the digital signature of the file received, decrypt the digital signature attached to the file with the registered applicant's public encryption key and compare the 2 signatures. An exact comparison between the received signature and the private encryption signature will indicate that it is highly unlikely that the file has been intercepted or corrupted during transmission.

Once a file has been received and authenticated, the ACA auction computer system will generate a receipt and transmit it to the registered applicant over the connection while it is held open.

A bidding instruction file bearing an authentic signature, prepared with one of the encryption keys provided by the ACA to a registered applicant, will be taken by the ACA as having originated from that registered applicant and from no other person.

Any bidding instruction file that is not in the format described above will not be accepted for processing under any circumstances.

Note In the Deed of Acknowledgment, each applicant will acknowledge that the mechanisms described above and implemented by the ACA are acceptable to authenticate a bid, and that they will be bound by any bid in a bid file that passes the authentication checks using the key provided to them, until they notify the ACA that their keys may have been compromised.

4. Key handling

When an applicant is registered to participate in an auction, the ACA will assign a 4 digit BIN and a randomly generated 8 character password.

The ACA will generate an encryption key pair for the registered applicant, using a pass-phrase mathematically derived from the registered applicant's password. The private part of the encryption key pair will be copied to a floppy disk and distributed to the registered applicant, together with the BIN and password. These materials will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.

5. One-time transaction code keys

For each registered applicant, the ACA will prepare a list of 'one-time' transaction code keys for use by that registered applicant only in authenticating its telephone bids should this be required in an emergency. Each list will contain a minimum of 200 transaction code keys. No two lists will be the same. No two codes will be the same, except as generated by chance.

Each key will consist of 8 randomly generated letters. The case of the letters will not be significant to their use.

Each key will be used once, in the order in which the keys are listed. The ACA will retain a copy of each list and identify that list as having been issued to the registered applicant.

6. Using Transaction Code Keys

Registered applicants bidding by telephone must identify themselves, to the ACA operator using the next available transaction code key when asked.

Once a transaction code key is used, the registered applicant will strike through that key on the list and note the round and the date and time that it was used.

When the ACA is contacted by a registered applicant wanting to make bidding instructions, the ACA will authenticate the instructions using the transaction code key by:

- (a) looking up the list of keys for that registered applicant; and
- (b) comparing the key provided by the registered applicant with the next available key on the list.

If the key matches, the instructions will be regarded as authentic.

Once a transaction code key is used by a registered applicant, the ACA will note the round and the time and date that the key was used.

Registered applicants may not re-use a transaction code key or use a key other than the next key in the sequence. Any other key will be regarded as invalid. Any communication containing an invalid key will be ignored. The ACA will advise the registered applicant by telephone that the communication has been ignored, and may suspend the registered applicant's participation until new transaction code keys can be delivered.

7. Distributing Encryption and Transaction Code Keys

Encryption and transaction code keys will be distributed by receipted mail or safe-hand courier to the address nominated by the applicant.

If the registered applicant has any suspicion that the integrity of the keys have been compromised in transit, it must advise the ACA immediately so that new keys can be prepared. Depending on the nature of the tampering, replacement keys may be forwarded by receipted mail or by safe-hand courier to the address nominated by the applicant. They may also be held for collection at an ACA office, where they may be collected by the person nominated by the registered applicant as the contact person

for the auction on presentation of the following evidence of identity (one of which must include the signature of the person presenting the identification):

- (a) photographic evidence, being a driver's licence or passport; or
- (b) 2 forms of other identification (such as a birth certificate or credit card).

8. Storing Encryption and Transaction Code Keys

Registered applicants will be responsible for protecting the encryption and transaction code keys from unauthorised use.

The ACA will protect its copy of each registered applicant's keys by appropriate internal security arrangements. The ACA will restrict access to the area where the keys are being used to authenticate bids to all but persons authorised by the ACA or escorted by a person authorised by the ACA.

If a registered applicant discovers that its encryption or transaction code keys have been compromised (through break-in, unauthorised access or any other reason), the registered applicant must immediately inform the ACA. The ACA will then prepare new keys for that registered applicant and forward them to the registered applicant.

The ACA may at any time issue new encryption and transaction code keys to a registered applicant, or to all registered applicants, if it comes to believe that the integrity of the auction may have been compromised. Applicants must use the new keys.

In the period between a registered applicant notifying the ACA that the keys have been compromised and the ACA providing the registered applicant with replacement keys, the registered applicant's participation in the auction will be suspended, without incurring a waiver.

DEED OF AGREEMENT

BETWEEN

AUSTRALIAN COMMUNICATIONS AUTHORITY

AND

[insert company name]

for the coordination and radio interference management
of a satellite network

Table of Clauses

1. Interpretation
2. Commencement
3. Control and Australian presence
4. Notification of network
5. Commencement of operation
6. Interference management
7. Compliance with directions and Radio Regulations
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9. ACA not liable for losses
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11. Radiocommunications licences
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13. Remedies
14. Waiver
15. Variation and amendment
16. Applicable law
17. Notices

DEED made on the day of 2001

BETWEEN

THE AUSTRALIAN COMMUNICATIONS AUTHORITY, a body corporate continued in existence by section 14 of the *Australian Communications Authority Act 1997* ('the ACA')

AND

[Insert company name here], [insert ACN], and having its registered office at [insert full address] ('the Satellite Operator')

RECITALS:

- A. The International Telecommunication Union (ITU) has established procedures for the coordination of satellite systems, and the ACA represents Australia in relation to those procedures.
- B. The ACA has agreed to notify the Satellite Operator's satellite network to the ITU, and carry out its coordination, under those procedures and the terms and conditions set out in this Deed.
- C. The Satellite Operator has agreed to operate and control its network in accordance with the ITU Radio Regulations and related procedures, and the terms and conditions set out in this Deed.

OPERATIVE CLAUSES:

1. INTERPRETATION

1.1 In this Deed:

'Conciliator' means the person nominated in writing by the ACA to the Satellite Operator to be Conciliator for the purposes of this Agreement;

'control' in relation to the network, includes the capability to ensure the station keeping attitude of the satellite, variation of emissions from the network to comply with the notified characteristics and the ability to prevent and rectify harmful interference;

'coordination' has the same meaning as it has in the Radio Regulations;

'Deed' means this Agreement including the Schedules;

'Goods and Services Tax' means 'GST' as defined in the *A New Tax System (Goods and Services Tax) Act 1999*;
'harmful interference' has the same meaning as it has in the Radio Regulations;

'input tax credit' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'ITU' means the International Telecommunication Union;

'Master Register' means the Master International Frequency Register maintained by the ITU in accordance with the Radio Regulations;

'Radio Regulations' means the Radio Regulations of the ITU, in force from time to time, including the Articles, Appendices, Resolutions and Recommendations, and ITU-R Recommendations incorporated into the Radio Regulations by reference;

'Satellite Operator' includes the officers, employees, agents and subcontractors of the Satellite Operator and the Satellite Operator's successors and assigns;

'taxable supply' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'tax invoice' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'the ACA' includes the officers, employees, agents and sub-contractors of the ACA;

'the Act' means the *Radiocommunications Act 1992*;

'the network' means the satellite network established in the channels assigned to Australia at [152° or 164°] East longitude by Appendix S30 and Appendix S30A of the Radio Regulations and any additions or modifications to that network sent to the ITU by the ACA, including

- (a) Notice for space stations in the broadcasting-satellite service under Appendix S30; and
- (b) Notice for feeder-link stations in the broadcasting-satellite service under Appendix S30A.

1.2 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 include the singular;
- (c) clause and subclause headings, words capitalised or in bold format, and notes in square brackets are for convenient reference only, and have no effect in limiting or extending the language of the provisions to which they refer;
- (d) a reference to a clause, subclause, paragraph or Schedule is a reference to the relevant clause, subclause, paragraph or Schedule of this Deed;
- (e) a reference to a subclause is a reference to the relevant subclause of the clause in which the reference appears;
- (f) where any word or phrase has been given a defined meaning, any other part of speech or other

- grammatical form in respect of that word or phrase has a corresponding meaning;
- (g) a reference to any statute, legislation (whether primary or subordinate) or ITU filing number is a reference to that statute, legislation or filing number as in force from time to time; and
 - (h) terms and expressions that are defined in the Act have the meaning given to them by that Act.

2. COMMENCEMENT

- 2.1 This Deed commences on the date on which it is made.

3. CONTROL AND AUSTRALIAN PRESENCE

- 3.1 The Satellite Operator warrants that:
- (a) it has, and will continue to have, the capacity to enter into, and carry out its obligations under, this Deed;
 - (b) its entering into, or complying with the provisions of this Deed will not, under the terms of any existing contract, deed, arrangement or other understanding, or for any other reason, not previously disclosed to the ACA give rise to the transfer, or potential transfer, of control of the network to another person, or otherwise in any way inhibit the Satellite Operator in complying with its obligations under this Deed;
 - (c) at the time that radiocommunications transmissions are first made from the network, it will have entered into all agreements necessary to give the Satellite Operator the capacity to carry out its obligations under this Deed.
- 3.2 The Satellite Operator must not without the prior written consent of the ACA, enter into any contract, deed, arrangement or other understanding, or do any other action or thing, by virtue of which:

-
- (a) a person other than the Satellite Operator may acquire control of the network; or
 - (b) the Satellite Operator may be prevented from complying with its obligations under this Deed.
- 3.3 The ACA must not unreasonably withhold its consent under subclause 2.
- 3.4 It is reasonable for the ACA to withhold its consent under subclause 2 if the person who would otherwise acquire control of the network does not enter into a Deed of Agreement with the ACA for the coordination and radio interference management of the network.
- 3.5 The Satellite Operator must cause a telecommand, tracking and control facility for the control of the network to be maintained and operated in Australia.
- 3.6 The ACA and the Satellite Operator agree that the facility specified in subclause 5 may be owned and operated by a person other than the Satellite Operator.
- 3.7 The Satellite Operator must at all times remain a company which is incorporated in Australia, carries on business in Australia, and has its central management and control in Australia.
- 3.8 The Satellite Operator must take all reasonable steps to ensure that, when and where feasible, launch vehicles that commence their flight in Australia are used to establish and replenish the network.
- 3.9 For subclause 8, in determining what is feasible, the ACA will have regard to:
- (a) technical issues, including launch vehicle capability, availability and reliability;
 - (b) commercial issues, including cost, risk and convenience; and
 - (c) any other matter it considers relevant.

- 3.10 The Satellite Operator must take all reasonable steps to maximise opportunities for the Australian communications industry in domestic and international markets.
- 3.11 The Satellite Operator must cause or make reasonable endeavour to cause the network to be placed in orbit at [152° or 164°] East longitude within 5 years of the commencement of this Deed.

4. NOTIFICATION OF NETWORK BY THE ACA

- 4.1 If the Satellite Operator has not breached its obligations under this Deed, the ACA must provide satellite notification and coordination services to be agreed between the ACA and the Satellite Operator.
- 4.2 The satellite notification and coordination services to be provided under subclause 1 may include participation in coordination meetings both within and outside Australia, and will include:
- (a) forwarding to the ITU within the time limits set down in the Radio Regulations, correct and substantially error free correspondence from the Satellite Operator; and
 - (b) the checking of all coordination and notification correspondence from the Satellite Operator for compliance with the Radio Regulations and Australian Government policy; and
 - (c) return of non-compliant correspondence to the Satellite Operator for rectification within agreed timelines.

5. COMMENCEMENT OF OPERATION

- 5.1 The Satellite Operator:

-
- (a) may operate the network to establish whether the Satellite Operator will, at all times, be able to comply with any directions referred to in subclause 3; and
 - (b) must not otherwise operate all or any part of the network without the ACA's prior written consent or until the network is permanently recorded in the Master Register; and
 - (c) for the avoidance of doubt, the Satellite Operator must not operate the network to provide a service without the written consent of the ACA or until the network is permanently recorded in the Master Register.
- 5.2 The ACA may not unreasonably withhold its consent.
- 5.3 For subclause 2, it is reasonable for the ACA to withhold its consent if the Satellite Operator does not demonstrate that it will, at all times, be able to comply with any directions in relation to the operation of the network that the ACA may reasonably be expected to give to the Satellite Operator for the purposes of containing or eliminating harmful interference.
- 5.4 For subclause 2, it is unreasonable for the ACA to withhold its consent if it does not, where practicable, consult with the Satellite Operator before withholding that consent.
- 5.5 The directions referred to in subclause 3 include directions to immediately remove harmful interference, possibly by the cessation of transmission, and directions in relation to:
- (a) the variation of transponder RF power output;
 - (b) occupied bandwidth;
 - (c) assigned frequency;
 - (d) station keeping;
 - (e) beam pointing accuracy;
 - (f) footprint contours.
- 5.6 The ACA will act in good faith to assist permanent recording of the network in the Master Register.

- 5.7 The ACA and the Satellite Operator agree that operation of the network may result from the operation of more than one satellite at the same time or at different times during the operational life of the network.
- 5.8 Nothing in subclause 7 shall be taken to relieve the Satellite Operator or any other party of any obligations they may have under the *Space Activities Act 1998*.

6. INTERFERENCE MANAGEMENT

- 6.1 The Satellite Operator must take all reasonable steps to ensure that the network does not cause harmful interference.
- 6.2 If a person complains to the Satellite Operator, or the Satellite Operator otherwise believes, that transmissions from the network have caused, are causing, or are likely to cause, harmful interference, the Satellite Operator must, as soon as practicable, provide the ACA with:
- (a) a copy of the complaint, if any; and
 - (b) an engineering assessment of the nature and extent of that harmful interference.
- 6.3 If a person complains to the ACA that transmissions from the network have caused, are causing, or are likely to cause, harmful interference the ACA must, as soon as practicable, provide the Satellite Operator with a copy of the complaint.
- 6.4 For the purposes of this clause, a person who makes a complaint in accordance with subclause 2 or subclause 3, whether a legal person or a natural person, is the Complainant.
- 6.5 The Satellite Operator must use its best endeavours to appropriately resolve complaints, or the occurrence of harmful interference, and the ACA acknowledges that in some cases the

ACA may agree that no action at all need be taken by the Satellite Operator to resolve the complaint.

- 6.6 In seeking to so resolve or eliminate harmful interference, the Satellite Operator must follow the same policies and coordination procedures as the ACA might reasonably be expected to apply in such circumstances.
- 6.7 The Satellite Operator must advise the ACA if it cannot resolve a complaint of harmful interference.
- 6.8 Where subclause 7 applies and Part 4.3 of the Act does not apply, the ACA may:
- (a) by notice in writing given to the Satellite Operator, appoint a Conciliator familiar with radiocommunications or satellite coordination procedures, for the purposes of the complaint; and
 - (b) invite the Complainant to take part in a conciliation to be conducted by the Conciliator.
- 6.9 A Conciliator appointed under paragraph 8(a) may decide not to inquire into a complaint of harmful interference if the Conciliator believes that:
- (a) the matter is trivial;
 - (b) the complaint is frivolous or vexatious or was not made in good faith; or
 - (c) the interests of the Complainant have not been, are not being or are not likely to be affected by the harmful interference.
- 6.10 A Conciliator appointed under paragraph 8(a) must not inquire into a complaint of harmful interference if the Complainant:
- (a) does not wish the inquiry to be made or continued (as the case may be);
 - (b) does not enter into an agreement with the Conciliator for the conduct of the conciliation that is substantially in the same terms as:
 - (i) the agreement in Schedule 2; or

- (ii) such other conciliation agreement as may, from time to time, be agreed between the Conciliator, the Satellite Operator and the Complainant;
 - (c) does not agree to pay one-half of the Conciliator's fees and any other costs of the conciliation reasonably incurred by the Conciliator.
- 6.11 Unless subclause 9 or subclause 10 apply, the ACA must require a Conciliator appointed under paragraph 8(a) to:
 - (a) inquire into the alleged harmful interference; and
 - (b) try to effect settlement of the matter; and
 - (c) if the Conciliator cannot effect a settlement – as soon as practicable, give to the ACA a written report setting out:
 - (i) the Conciliator's recommendations for resolving the matter; and
 - (ii) the reasons for those recommendations.
- 6.12 In carrying out functions under subclause 11 the Conciliator:
 - (a) may obtain information from such persons, and make such inquiries, about the subject matter of the conciliation as he or she thinks fit; and
 - (b) must not make a recommendation to the ACA that is adverse to the Satellite Operator unless it has given the Satellite Operator an opportunity to make submissions in relation to the matter to which the recommendation relates.
- 6.13 The Conciliator may give the Satellite Operator a written direction to attend, at a time and place specified in the notice, a conference to be presided over by the Conciliator for the purposes of conducting an inquiry into, or trying to effect a settlement of, a complaint of harmful interference.
- 6.14 The Satellite Operator must not, without reasonable excuse:
 - (a) fail to attend as required by the direction;

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- (b) fail to attend and report from day-to-day unless excused or released from further attendance, by the Conciliator;
 - (c) fail to cooperate in the conciliation process; or
 - (d) withhold information from the Conciliator or the Complainant that is necessary for, or reasonably incidental to, settlement of the complaint of harmful interference.
- 6.15 For the purposes of subclause 14, it would be unreasonable for the Satellite Operator to refuse to provide confidential information if the party to whom the information would be given is prepared to enter into a deed of confidentiality in relation to that information with the Satellite Operator in the form of the agreement at Schedule 1.
- 6.16 The Satellite Operator must enter into an agreement with the Conciliator for the conduct of the conciliation that is substantially in the same terms as:
 - (a) the agreement in Schedule 2; or
 - (b) such other conciliation agreement as may, from time to time, be agreed between the Conciliator, the Satellite Operator and the Complainant.
- 6.17 The Satellite Operator must pay one-half of the Conciliator's fees and any other costs of the conciliation reasonably incurred by the Conciliator.
- 6.18 For the avoidance of doubt, the Satellite Operator is not required by this Deed to pay the costs incurred by the Complainant in relation to the conciliation.
- 6.19 If the Conciliator does not resolve a complaint of harmful interference, and the ACA is reasonably satisfied that it is necessary to do so in order to prevent harmful interference, or the risk of harmful interference, the ACA may issue a written direction to the Satellite Operator.

- 6.20 Where subclause 19 applies, the ACA may give a direction to the Satellite Operator:
- (a) to take action, or to refrain from taking action, in relation to the operation of the network; or
 - (b) to do, or to refrain from doing, any other thing; within a specified period.
- 6.21 In issuing a direction the ACA must have regard to the Conciliator's report, if any.
- 6.22 If the ACA issues a direction to the Satellite Operator, it must give the Satellite Operator notice of its reasons for that direction.
- 6.23 The ACA and the Satellite Operator acknowledge that certain information relating to the network, which may be requested from the Satellite Operator, is or may be governed by the *USA Arms Export Control Act*, the *International Traffic Arms Regulation* and/or the *USA Export Administration Act* ('the Export Control Laws'). To the extent such information is governed by the Export Control Laws, a license issued pursuant to the Export Control Laws may be required prior to the disclosure of the information and the Satellite Operator agrees to use its reasonable best efforts to obtain or procure an appropriate licence.
- 6.24 Nothing in subclause 23 will relieve the Satellite Operator of its obligation to take all reasonable steps to ensure that the network does not cause harmful interference.
- 6.25 If the Export Control Laws allow certain information to be provided to the ACA but restrict further dissemination of the information, the ACA agrees, except as otherwise required by Australian law, not to disseminate the information other than:
- (a) as is expressly permitted by the Export Control Laws; or
 - (b) as may be specified by the Satellite Operator in a

notice to the ACA.

- 6.26 The Satellite Operator acknowledges and agrees that nothing in subclause 25 should be taken to limit the operation of Australian law.
- 6.27 The ACA and the Satellite Operator agree that following any amendment to, or substitution, consolidation or re-enactment of, the Export Control Laws, the parties will as soon as practicable meet and in good faith discuss and use best efforts to agree on any amendments to this Deed which are required or desirable.

7. COMPLIANCE WITH DIRECTIONS AND RADIO REGULATIONS

- 7.1 The Satellite Operator must not knowingly or recklessly contravene:
- (a) a direction issued to the Satellite Operator by the ACA under this Deed; or
 - (b) a direction issued to the Satellite Operator by the ACA in accordance with section 212 of the Act.
- 7.2 The ACA and the Satellite Operator must comply with the provisions of the Radio Regulations.

8. CHARGES AND GST

- 8.1 The Satellite Operator acknowledges that the ACA will provide it with notification and coordination services on a commercial basis in accordance with section 8 of the *Australian Communications Authority Act 1997*.
- 8.2 The Satellite Operator and the ACA will later, and from time to time, agree on the terms and conditions, including as to fees, on which the notification and coordination services referred to in subclause 1 will be provided by the ACA.

- 8.3 The Satellite Operator acknowledges that it will, in addition to the fees and other consideration, pay to the ACA the amount of all Goods and Services Tax chargeable on any taxable supply made by the ACA to the Satellite Operator under this Deed.
- 8.4 The ACA will provide the Satellite Operator with all necessary tax invoices to enable the Satellite Operator to claim any input tax credits in relation to the Goods and Services Tax paid.
- 8.5 The Satellite Operator must pay all ITU cost recovery charges for the production of Special Sections for the network within 5 months of the issue to it of an invoice by the Finance Department of the ITU.

9. ACA NOT LIABLE FOR LOSSES

- 9.1 This clause survives the expiration or termination of this Deed.
- 9.2 The Satellite Operator indemnifies, and must keep indemnified, the ACA from and against all loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by the ACA arising from:
- (a) any negligent, wilful or unlawful act or omission by the Satellite Operator, its officers, employees or agents, in connection with this Deed; or
 - (b) any breach by the Satellite Operator of its obligations or warranties under this Deed; or
 - (c) the compliance by the Satellite Operator with a properly issued direction.
- 9.3. The Satellite Operator's liability to indemnify the ACA under subclause 2 will be reduced proportionately to the extent that any negligent act or omission of the ACA contributed to

that loss or liability.

- 9.4 The Satellite Operator agrees and acknowledges that the ACA will not be liable to the Satellite Operator for any loss or liability that the Satellite Operator directly or indirectly incurs as a result of the Satellite Operator complying with a direction properly issued to the Satellite Operator by the ACA under this Deed, by reason only that the ACA issued that direction to the Satellite Operator.

10. MEETINGS AND CORRESPONDENCE

- 10.1 This clause applies to specified correspondence and specified meetings about the network for the purposes of:
- (a) effecting coordination with or obtaining the agreement of other administrations in accordance with the procedures established by Appendix S30 and Appendix S30A of the Radio Regulations;
 - (b) ensuring that the network does not cause harmful interference in accordance with the procedures establish by clause 6, Part 4.3 of the Act or Article S15 of the Radio Regulations.
- 10.2 The ACA may attend any specified meeting relating to the network.
- 10.3 If requested in writing by the ACA, the Satellite Operator must, at its own expense, give the ACA copies of:
- (a) all records held by the Satellite Operator of specified meetings about the network; and/or
 - (b) all specified correspondence held by the Satellite Operator about the network.
- 10.4 The Satellite Operator may request, in writing, that an ACA officer attend a specified meeting about the network.

- 10.5 The ACA may, in its absolute discretion, agree to one of its officers attending such a specified meeting.
- 10.6 The Satellite Operator must pay all costs incurred by the ACA in complying with a request under subclause 4, including travel and accommodation expenses which will be worked out in accordance with the relevant provisions of the ACA's Certified Agreement made under the *Workplace Relations Act 1996* as in force from time to time.

11. RADIOCOMMUNICATIONS LICENCES

- 11.1 The Satellite Operator acknowledges that the ACA can only issue, renew, vary, suspend or cancel radiocommunications licences in accordance with Chapter 3 of the Act.
- 11.2 The Satellite Operator acknowledges that other radiocommunication services operate in the 17.3-18.1 GHz frequency range in Australia.
- 11.3 The Satellite Operator acknowledges that:
- (a) the ACA currently intends that use of the frequency ranges specified in subclause 2 by the network will be on a shared basis with other radiocommunication services in accordance with relevant ACA licensing policies and frequency assignment guidelines; and
 - (b) the policies of the ACA may change from time to time.

12. TERMINATION OF AGREEMENT AND SUPPRESSION OF NOTIFICATION

- 12.1 This subclause and subclauses 12.2, 12.3 and 12.6 apply if the ACA, at any time after the date on which the network comes into operation:
- (a) reasonably considers that the Satellite Operator has breached subclause 3.1, 3.2, 3.5, 3.7, 3.8, 3.10,

-
- 3.11, 5.1, 6.1, 6.2, 6.5, 6.6, 6.7, 6.14, 6.16, 6.17, 7.1, 7.2, 8.3, 8.5, 10.3 or 10.6; or
- (b) reasonably considers that the Satellite Operator is, for any reason, not likely to be able to comply with its obligations under this Deed with respect to the causing of harmful interference.
- 12.2 Where subclause 1 applies, the ACA may by notice in writing to the Satellite Operator, require the Satellite Operator to remedy the relevant breach or default within 30 days from the date that the notice is sent to the Satellite Operator.
- 12.3 Where subclause 2 applies, if the breach or default is not remedied to the reasonable satisfaction of the ACA within 30 days from the date that the notice is sent to the Satellite Operator, the ACA may by notice in writing to the Satellite Operator terminate this Deed.
- 12.4 Where subclause 3 applies, any notice of termination made in writing by the ACA will take effect 30 days from the date that the notice is sent to the Satellite Operator.
- 12.5 The Satellite Operator may by notice in writing to the ACA, terminate this Deed:
- (a) because the ACA has entered into a Deed of Agreement with another person for the coordination and radio interference management of the network;
 - (b) because the network has reached the end of its operational life;
 - (c) because it has abandoned the network; or
 - (d) for convenience.
- 12.6 Where subclause 5 applies, any notice of termination made in writing by the Satellite Operator will take effect 60 days from the date that the notice is sent to the ACA.

- 12.7 Where subclause 3 or subclause 5 applies, the Satellite Operator acknowledges that the ACA may:
- (a) suppress the ITU notification of the network; or
 - (b) enter into a Deed of Agreement with another person for the coordination and radio interference management of the network.
- 12.8 For the avoidance of doubt, the ACA must not enter into a Deed of Agreement with another person for the coordination and radio interference management of the network unless:
- (a) subclause 3 or subclause 5 apply; or
 - (b) the Satellite Operator has asked the ACA to enter into a Deed of Agreement with another person.

13. REMEDIES CUMULATIVE

- 13.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 13.2 Subject to the other provisions of this Deed, the rights and obligations of the ACA and the Satellite Operator under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement or contract to which they are parties.
- 13.3 The Satellite Operator and the ACA acknowledge that either party may take legal proceedings against the other party or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

14. WAIVER

-
- 14.1 No waiver by the ACA or the Satellite Operator of a breach of any obligation or provision contained or implied in this Deed will operate as a waiver of another breach of the same, or of any other obligation or provision contained or implied in this Deed.
- 14.2 None of the provisions of this Deed shall be taken either at law or in equity to have been varied, waived, discharged or released by the ACA or the Satellite Operator unless by the express consent in writing of the ACA or the Satellite Operator.

15. VARIATION AND AMENDMENTS

- 15.1 No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and executed by the ACA and the Satellite Operator in the same manner as this instrument.

16. APPLICABLE LAW

- 16.1 This Deed shall be governed and construed in all respects in accordance with the law of the Australian Capital Territory as in force from time to time and the parties agree, subject to the jurisdiction of the High Court of Australia, that the Courts of that Territory shall have exclusive jurisdiction to entertain any action in respect of, or arising out of, this Deed.

17. NOTICES

- 17.1 Any notice, request or other communication to be given or served under this Deed must be in writing and dealt with as follows:
- (a) if given by the Satellite Operator to the ACA - addressed and forwarded to the ACA, for the

attention of the person indicated for this purpose in Schedule 3, and at the address indicated in Schedule 3, or as otherwise notified in writing by the ACA;

- (b) if given by the ACA to the Satellite Operator - addressed and forwarded to the Satellite Operator, for the attention of the person indicated for this purpose in Schedule 3, and at the address indicated in Schedule 3, or as otherwise notified by the Satellite Operator in writing.

17.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post or facsimile, to the address of the party to which it is sent.

17.3 Any notice, request or other communication will be deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
- (c) if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible.

EXECUTED AS A DEED

SIGNED SEALED and DELIVERED)
for and on behalf of the **AUSTRALIAN**)
COMMUNICATIONS AUTHORITY by)

(Signature of signatory)

(Print full name and title
of signatory)

in the presence of:

(Signature of witness)

(Print full name and title
of witness)

SIGNED SEALED and DELIVERED for)
and on behalf of **[insert company**)
name] (insert ACN) by)
authority of its directors:)

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SCHEDULE 1

(Subclause 6.15)

DEED OF CONFIDENTIALITY

BY THIS DEED DATED THE _____ day of _____

BETWEEN Party A ('the Recipient')

AND Party B ('the Provider')

Recitals:

- A. For the purposes of conducting a conciliation or otherwise gathering information or conducting investigations, the parties have agreed that they will comply with the terms of this Deed.
- B. In the course of the above conduct, the Recipient may become aware of information, belonging to or in the possession of the Provider, that is confidential or that is personal information under the *Privacy Act 1988* (Cth),
- C. Improper use or disclosure of that information would severely damage the Provider's ability to perform its commercial functions.
- D. The Provider requires, and the Recipient agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Provider's confidential information is kept confidential and that personal information is protected.

OPERATIVE CLAUSES:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions will have the following meanings:

"Agreement" means the Deed Of Agreement between the Australian Communications Authority and [insert company name] for the Coordination and Radio Interference Management of a Satellite Network, executed on [date of execution];

"confidential information" means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Provider as confidential; or
 - (c) the Recipient knows or ought to know is confidential; and includes:
 - (d) information comprised in or relating to any Intellectual Property Rights of the Provider;
 - (e) any information relating to the financial position of the Provider and in particular includes information relating to the assets or liabilities of the Provider and any other matter that does or may affect the financial position or reputation of the Provider;
 - (f) information relating to the internal management and structure of the Provider, and includes information relating to the personnel, policies and strategies of the Provider;
 - (g) any information relating to the policies, strategies, practices and procedures of the Provider;
 - (h) any information in the Provider's possession relating to the Provider's clients or suppliers, and like information;
- but does not include information which:

-
- (i) is or becomes public knowledge other than by breach of this Deed or by any other unlawful means;
 - (j) is in the possession of the receiving party without restriction in relation to disclosure prior to the date of receipt from the disclosing party;
 - (k) has been independently developed or acquired by the receiving party; or
 - (l) is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted under the Agreement;

"Intellectual Property Rights" includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"notice" means notice in writing given in accordance with this Deed;

"personal information" means, for the purposes of the *Privacy Act 1988* (Cth) and this Deed, information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"writing" means any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2.2 General

Unless the contrary intention appears:

- (a) monetary references are references to Australia currency;

- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;
- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
- (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. Non Disclosure

- 3.1 The Recipient must not disclose the confidential information to any person without the prior written consent of the Provider.
- 3.2 The Provider may grant or withhold its consent in its absolute and unfettered discretion.
- 3.3 If the Provider grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Provider may require that the Recipient procure the execution of a deed in these terms by the person to whom the Recipient proposes to disclose the confidential information.
- 3.4 If the Provider grants consent subject to conditions, the Recipient must comply with those conditions.
- 3.5 The obligations of the Recipient under this Deed will not be taken to have been breached where the confidential information is legally required to be disclosed.

4. Restriction on Use

The Recipient will use the confidential information only for the purpose of its dealings with the Provider (whether directly or indirectly).

5. Privacy

5.1 The Recipient undertakes:

- (a) not to access, use, modify, disclose or retain any personal information he or she has acquired through the performance of the Agreement, except for the purpose of performing the Agreement; and
- (b) in addition to any direction as to particular measures specified by the Provider, take all reasonable measures to ensure that any personal information held in connection with the Agreement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.

5.2 The Recipient acknowledges that:

- (a) any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any Provider computer is an offence under Part VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment; and
- (b) the publication or communication by the Recipient of any fact or document which has come to his or her knowledge or into his or her possession or custody by virtue of the performance of the Agreement (other than to a person to whom the Recipient is authorised to publish or disclose the fact or document) may be an offence under sections 70 or 79 of the *Crimes Act 1914*, punishment for which may involve imprisonment.

6. Reserved.

7. Powers of the Provider

- 7.1 The Provider may demand (without needing to reduce the demand to writing) the delivery up to the Provider of all documents in the possession or control of the Recipient containing confidential information or personal information or which are the property of the Provider.
- 7.2 The Recipient must immediately comply with a demand under this clause 7.
- 7.3 If the Provider makes a demand under this clause 7, and the Recipient has placed or is aware that documents are beyond his or her possession or control, then the Recipient must provide full particulars of the whereabouts of the documents, and the identity of the person in whose custody or control they lie.
- 7.4 In this clause 7, "documents" includes any form of storage of information, whether visible to the eye or not.
- 7.5 The Recipient acknowledges that the Provider may take legal proceedings against the Recipient or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

8. Conflict of Interest

- 8.1 The Recipient warrants that before entering into this Deed it has disclosed to the Provider all the past, current and anticipated interests of the Recipient which may conflict with or restrict the Recipient in performing conciliation in relation to the Agreement fairly and independently.
- 8.2 If during the term of this Deed a conflict of interest arises, or appears likely to arise, the Recipient undertakes to notify the Provider immediately in writing and to take such steps as the Provider may reasonably require to resolve or otherwise deal with the conflict.

9. Reserved.

10. No Exclusion of Law or Equity

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the confidential information.

11. Waiver

11.1 No waiver by the Provider of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed.

11.2 None of the provisions of this Deed will be taken either at law or in equity to have been varied waived discharged or released by the Provider unless by its express consent in writing.

12. Remedies Cumulative

12.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided at law or in equity or by any other right or remedy.

12.2 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

13. Variations and Amendments

No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and signed by the parties to this Deed in the same manner as this instrument.

14. Applicable Law

This Deed will be governed and construed in all respects in accordance with the law of the Australian Capital Territory in force from time to time and the Parties agree, subject to the jurisdiction of the High Court of Australia, that the courts of that Territory shall have exclusive jurisdiction to entertain any action in respect of, or arising out of, this Deed.

EXECUTED by the parties as a Deed

SIGNED SEALED AND DELIVERED)
for and on behalf of the **Provider**)

by)
.....)
{print full name of signatory}) {signature of signatory}

.....)
{insert office of signatory})

in the presence of:)

.....)
.....)
{print name of witness}) {signature of witness}

SIGNED SEALED AND DELIVERED)
for and on behalf of the **Recipient**)

by)
.....)
{print full name of signatory}) {signature of signatory}

.....)
{insert office of signatory})

in the presence of:)

.....)
.....) { signature of witness}
{print name of witness}

SCHEDULE 2

(Subclauses 6.10 and 6.16)

CONCILIATION AGREEMENT

APPOINTMENT OF CONCILIATOR

1. Reserved.

ROLE OF CONCILIATOR

2. The Conciliator will be neutral and impartial. The Conciliator will assist the parties to attempt to resolve the Dispute by helping them to:
 - * systematically isolate the issues in dispute;
 - * develop options for the resolution of these issues;
 - * explore the usefulness of these options; and
 - * meet their interests and needs.
3. The Conciliator may meet with the parties together or separately.
4. The Conciliator will not:
 - * give legal or other professional advice to any party; or
 - * impose a result on any party; or
 - * make decisions for any party.
5. The Conciliator will not accept an appointment in relation to any proceedings concerning the Dispute.

6. Neither party will take action to cause the Conciliator to breach Clause 5.

CONFLICTS OF INTEREST

7. The Conciliator must prior to the commencement of the conciliation disclose to the parties to the best of the Conciliator's knowledge any prior dealings with any of the parties as well as any interest in the Dispute.
8. If in the course of the conciliation the Conciliator becomes aware of any circumstances that might reasonably be considered to affect the Conciliator's capacity to act impartially, the Conciliator must immediately inform the parties of these circumstances. The parties will then decide whether the conciliation will continue with that Conciliator or with a new Conciliator appointed by the parties.

COOPERATION BY THE PARTIES

9. The parties must cooperate in good faith with the Conciliator and each other during the conciliation.

CONDUCT OF THE PRELIMINARY CONFERENCE

10. As part of the conciliation the Conciliator will schedule a preliminary conference at a time and venue convenient to the parties to establish a timetable for the conciliation.
11. The Conciliator, the parties and their representatives who are to attend the conciliation session must attend the preliminary conference.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE CONCILIATION SESSION

-
12. The parties must attend the conciliation with authority to settle by any means or within any range that can reasonably be anticipated.
 13. At the conciliation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

COMMUNICATION BETWEEN THE CONCILIATOR AND THE PARTIES

14. Any information disclosed to a Conciliator in private is to be treated as confidential by the Conciliator unless the party making the disclosure states otherwise.

CONFIDENTIALITY OF THE CONCILIATION

15. The parties and the Conciliator will not disclose to anyone not involved in the conciliation any information or document given to them during the conciliation unless required by law to make such a disclosure.
16. The parties and the Conciliator agree that subject to Clauses 20 and 21, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the Dispute:
 - 16.1 Any settlement proposal whether made by a party or the Conciliator.
 - 16.2 The willingness of a party to consider any such proposal.
 - 16.3 Any statement made by a party or the Conciliator during the conciliation.
 - 16.4 Any information made by a party or the Conciliator during the conciliation.

TERMINATION OF THE CONCILIATION

17. A party may terminate the conciliation at any time after consultation with the Conciliator.
18. The Conciliator may terminate the Conciliator's involvement in the conciliation if, after consultation with the parties, the Conciliator feels unable to assist the parties to achieve resolution of the Dispute.

SETTLEMENT OF THE DISPUTE

19. If settlement is reached at the conciliation, the terms of the settlement must be written down and signed by the parties before they leave the conciliation.

ENFORCEMENT OF THE SETTLEMENT AGREEMENT

20. Any party may enforce the terms of the settlement agreement by judicial proceedings.
21. For the purposes of Clause 20, any party may call evidence of the settlement agreement including evidence from the Conciliator and any other person engaged in the conciliation.

EXCLUSION OF LIABILITY AND INDEMNITY

22. The Conciliator will not be liable to a party for any act or omission in the performance of the Conciliator's obligations under this agreement unless the act or omission is fraudulent.
23. The parties together and separately indemnify the Conciliator against any claim for any act or omission in the performance of the Conciliator's obligations under this agreement unless the act or omission is fraudulent.

THE COST OF THE CONCILIATION

-
24. The parties will each be liable to the Conciliator for one half of the Conciliator's fees described in the Schedule under this agreement and all the other costs of the conciliation described in the Schedule, and will bear their own costs.
 25. If the conciliation does not result in an agreement to resolve the Dispute, the costs of the conciliation will be costs in the cause, ie. costs of the conciliation (including those of the legal representatives to attend the conciliation) will be treated as part of the overall costs in any subsequent court proceedings which are generally payable by the losing party.

EXECUTED by the parties as a Deed

SIGNED SEALED AND DELIVERED)
by)
.....)

.....
{print full name of Conciliator} {signature of
Conciliator}

in the presence of:

.....
.....
{print name of witness} {signature of
witness}

SIGNED SEALED AND DELIVERED)
for and on behalf of the **AUSTRALIAN**)
COMMUNICATIONS AUTHORITY by)
.....)
.....)

.....
{print full name of signatory} {signature of
signatory}

.....
{insert office of signatory}

in the presence of:

.....
.....

{print name of witness}

{ signature of witness}

SIGNED SEALED AND DELIVERED)
for and on behalf of (**insert company**)
name) (ACN --- --- ---) by)
authority of its directors:)

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SCHEDULE

(Clause 24 of CONCILIATION AGREEMENT)

Conciliator's fees and costs

SCHEDULE 3

(Clause 17.1)

ADDRESSES FOR SERVICE OF NOTICES

For paragraph 17.1(a) of the Deed, notices must be for the attention of:

The Manager
Space Systems Team
Radiofrequency Planning Group

For paragraph 17.1(a) of the Deed, the address for notices is:

The Australian Communications Authority
Purple Building
Benjamin Offices
Chan Street
Belconnen
ACT 2617

For paragraph 17.1(b) of the Deed, notices must be for the attention of:

[Insert name or title of Satellite Operator contact]

For paragraph 17.1(b) of the Deed, the address for notices is:

[Insert company name and address of the Satellite Operator]

DEED OF AGREEMENT

BETWEEN

AUSTRALIAN COMMUNICATIONS AUTHORITY

AND

[COMPLIANCE PARTY]

AND

[GUARANTOR]

for the coordination and radio interference management

of a satellite network

Table of Clauses

1. Interpretation
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DEED made on the day of 2001

BETWEEN

The **AUSTRALIAN COMMUNICATIONS AUTHORITY**, a body corporate continued in existence by Section 14 of the *Australian Communications Authority Act 1997* ('the ACA')

AND

[COMPLIANCE PARTY] [Insert ACN] having its registered office at [Insert full address] ('the Compliance Party')

AND

[GUARANTOR] [Insert ACN] having its registered office at [Insert full address] ('the Guarantor')

RECITALS:

- A. The International Telecommunication Union (ITU) has established procedures for the coordination of satellite systems, and the ACA represents Australia in relation to those procedures.
- B. The Guarantor intends to establish the network with the assistance of a Satellite Owner, a Satellite Operator and the Compliance Party to provide radiocommunications services to places outside Australia and to places in Australia.
- C. The ACA has agreed to notify the network to the ITU on behalf of the Compliance Party, and carry out its coordination, under the ITU procedures and the terms and conditions set out in this Deed.
- D. The Compliance Party has agreed to cause the network to be operated and controlled in accordance with the ITU

Radio Regulations and related procedures, and the terms and conditions set out in this Deed.

OPERATIVE CLAUSES:

1. INTERPRETATION

1.1 In this Deed:

'Compliance Party' includes the officers, employees, agents and subcontractors of the Compliance Party and the Compliance Party's successors and assigns;

'Conciliator' means the person nominated in writing by the ACA to the Compliance Party to be Conciliator for the purposes of this Deed;

'control' in relation to the network, includes the capability to ensure the station keeping attitude of a satellite, variation of emissions from the network to comply with the notified characteristics, and the ability to prevent and rectify harmful interference;

'coordination' has the same meaning as it has in the Radio Regulations;

'Deed' means this agreement including the Schedules;

'Goods and Services Tax' means 'GST' as defined in the *A New Tax System (Goods and Services Tax) Act 1999*;

'harmful interference' has the same meaning as it has in the Radio Regulations;

'input tax credit' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'ITU' means the International Telecommunication Union;

'Master Register' means the Master International Frequency Register maintained by the ITU in accordance with the Radio Regulations;

'Radio Regulations' means the Radio Regulations of the ITU, in force from time to time, including the Articles, Appendices, Resolutions and Recommendations, and ITU-R Recommendations incorporated into the Radio Regulations by reference;

'Satellite Operator' means an entity which operates all or any part of the network and which is at all times responsible to the Guarantor by virtue of ownership, control, or specific contractual obligation with respect to the operation of the network or any part thereof (including any one or more satellite(s)), including the entity's successors, assigns, and contractor(s), for the correct and proper operation of all or any part of the network, and in particular, with respect to the compliance with any directives and rulings issued by the ACA or other regulatory body which may have jurisdiction over the operation of the network. **OR**

'Satellite Operator' means an entity which operates all or any part of the network and which is at all times majority owned and controlled, either directly or indirectly, by the Guarantor and includes the entity's successors and assigns. A Satellite Operator may also be a Satellite Owner;

'Satellite Owner' means an entity which owns or has the control of all or any part of the network, including the entity's successors, assigns, and contractor(s), and is responsible to the Guarantor for the provision of satellite capacity by virtue of ownership, control, or specific contractual obligation, such capacity being provided in accordance with and subject to the jurisdiction of the ACA and/or other applicable regulatory body or bodies. **OR**

'Satellite Owner' means an entity which owns all or any part of the network and which is at all times majority owned and controlled, either directly or indirectly, by the Guarantor and includes the entity's successors and assigns. A Satellite Owner may also be a Satellite Operator;

'taxable supply' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'tax invoice' has the same meaning as it has in the *A New Tax System (Goods and Services Tax) Act 1999*;

'the ACA' includes the officers, employees, agents and sub-contractors of the ACA;

'the Act' means the *Radiocommunications Act 1992*;

'the network' means the satellite network established in the channels assigned to Australia at [152° or 164°] East longitude by Appendix S30 and Appendix S30A of the Radio Regulations and any additions or modifications to that network sent to the ITU by the ACA, including

- (a) Notice for space stations in the broadcasting-satellite service under Appendix S30; and
- (b) Notice for feeder-link stations in the broadcasting-satellite service under Appendix S30A.

- 1.2 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 include the singular;
 - (c) clause and subclause headings, words capitalised or in bold format, and notes in square brackets are for convenient reference only, and have no effect in limiting or extending the language of the provisions to which they refer;
 - (d) a reference to a clause, subclause, paragraph or Schedule is a reference to the relevant clause, subclause, paragraph or Schedule of this Deed;

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- (e) a reference to a subclause is a reference to the relevant subclause of the clause in which the reference appears;
 - (f) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (g) a reference to any statute, legislation (whether primary or subordinate) or ITU filing number is a reference to that statute, legislation or filing number as in force from time to time; and
 - (i) terms and expressions that are defined in the Act have the meaning given to them by that Act.

2. COMMENCEMENT

- 2.1 This Deed commences on the date on which it is made.

3. CONTROL AND AUSTRALIAN PRESENCE

- 3.9 The Compliance Party warrants that:

- (d) it has, and will continue to have, the capacity to enter into, and carry out its obligations under, this Deed;
- (e) its entering into, or complying with the provisions of this Deed will not, under the terms of any existing contract, deed, arrangement or other understanding, or for any other reason, not previously disclosed to the ACA give rise to the transfer, or potential transfer, of ownership of the network to a party other than a Satellite Owner or operational control of the network to a party other than a Satellite Operator, or otherwise in any way inhibit it in complying with its obligations under this Deed;
- (f) at the time that radiocommunications transmissions are first made from the network, it will have entered into all agreements necessary to give it the capacity to carry out its obligations under this Deed.

- 3.10 The Compliance Party and the Guarantor must not without the prior written consent of the ACA, enter into any contract, deed, arrangement or other understanding, or do any other action or thing, by virtue of which:
- (a) a person other than a Satellite Owner may acquire ownership of all or any part of the network; or
 - (b) a person other than a Satellite Operator may acquire operational control of all or any part of the network; or
 - (c) the Compliance Party may be prevented from complying with its obligations under this Deed.
- 3.11 The ACA must not unreasonably withhold its consent under subclause 2.
- 3.12 It is reasonable for the ACA to withhold its consent under subclause 2 if the person who would otherwise acquire ownership or operational control of all or any part of the network does not enter into a Deed of Agreement with the ACA for the coordination and radio interference management of the network.
- 3.13 The Compliance Party must cause a telecommand, tracking and control facility for the control of the network to be maintained and operated in Australia.
- 3.14 The ACA and the Compliance Party agree that the facility specified in subclause 5 may be owned and operated by a person other than the Compliance Party.
- 3.7 The Compliance Party must at all times remain a company which is incorporated in Australia, carries on business in Australia, and has its central management and control in Australia.
- 3.8 The Compliance Party must take all reasonable steps to ensure that, when and where feasible, launch vehicles that commence their flight in Australia are used to establish and replenish the network.

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- 3.9 For subclause 8, in determining what is feasible, the ACA will have regard to:
- (a) technical issues, including launch vehicle capability, availability and reliability;
 - (b) commercial issues, including cost, risk and convenience; and
 - (c) any other matter it considers relevant.
- 3.10 The Compliance Party must take all reasonable steps to maximise opportunities for the Australian communications industry in domestic and international markets.
- 3.11 The Compliance Party must cause or make reasonable endeavour to cause the network to be placed in orbit at [152° or 164°] East longitude within 5 years of the commencement of this Deed.
- 3.12 Subject to subclauses 13 and 14, the Guarantor guarantees the performance by the Compliance Party of any obligations which, expressly or by implication under this Deed, the Compliance Party is required to discharge under this Deed or the Compliance Party is required to cause to be discharged by a Satellite Owner or a Satellite Operator.
- 3.13 If the ACA considers that the Compliance Party has failed to discharge, or has failed to cause a Satellite Owner or a Satellite Operator to discharge, any obligation which the ACA reasonably considers to be required of the Compliance Party or the Satellite Owner or the Satellite Operator under this Deed, the ACA will notify the Compliance Party and the Guarantor ('the Notified Parties') of the alleged failure and specify a period of not less than 21 days ('the Cure Period') in which the alleged failure is to be remedied and/or for the Notified Parties to make representations to the ACA on the alleged failure (which the ACA shall consider in good faith).
- 3.14 If the alleged failure is not remedied or a satisfactory explanation is not received from any Notified Party within
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the Cure Period, the ACA may make demand on the Guarantor under subclause 12 by providing written notice to the Guarantor of the obligations to be performed by the Compliance Party or the Satellite Owner or the Satellite Operator. Within 14 days of receipt of such notice the Guarantor will undertake, or procure the undertaking of, the Compliance Party's obligations or the Satellite Owner's obligations or the Satellite Operator's obligations.

4. NOTIFICATION OF NETWORK BY THE ACA

- 4.3 If the Compliance Party and the Guarantor have not breached their obligations under this Deed, the ACA must provide satellite notification and coordination services to be agreed between the ACA and the Compliance Party.
- 4.4 The satellite notification and coordination services to be provided under subclause 1 may include participation in coordination meetings both within and outside Australia, and will include:
- (d) forwarding to the ITU within the time limits set down in the Radio Regulations, correct and substantially error free correspondence from the Compliance Party; and
 - (e) the checking of all coordination and notification correspondence from the Compliance Party for compliance with the Radio Regulations and Australian Government policy; and
 - (f) return of non-compliant correspondence to the Compliance Party for rectification within agreed timelines.

5. COMMENCEMENT OF OPERATION

- 5.1 The Compliance Party:
- (a) may cause the network to be operated to establish whether the Compliance Party will, at all times, be able to comply with any directions referred to in subclause 3; and

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- (b) must not otherwise cause the network or any part of the network to be operated without the ACA's prior written consent or until the network is permanently recorded in the Master Register; and
 - (c) for the avoidance of doubt, the Compliance Party must not cause the network to be operated to provide a service without the written consent of the ACA or until the network is permanently recorded in the Master Register.
- 5.2 The ACA may not unreasonably withhold its consent.
- 5.5 For subclause 2, it is reasonable for the ACA to withhold its consent if the Compliance Party does not demonstrate that it will, at all times, be able to comply with any directions in relation to the operation of the network that the ACA may reasonably be expected to give to the Compliance Party for the purposes of containing or eliminating harmful interference.
- 5.6 For subclause 2, it is unreasonable for the ACA to withhold its consent if it does not, where practicable, consult with the Compliance Party before withholding that consent.
- 5.7 The directions referred to in subclause 3 include directions to immediately remove harmful interference, possibly by the cessation of transmission, and directions in relation to:
- (a) the variation of transponder RF power output;
 - (b) occupied bandwidth;
 - (c) assigned frequency;
 - (d) station keeping;
 - (e) beam pointing accuracy;
 - (f) footprint contours.
- 5.8 The ACA will act in good faith to assist permanent recording of the network in the Master Register.
- 5.9 The ACA, the Compliance Party, and the Guarantor agree that operation of the network may result from the operation

of more than one satellite at the same time or at different times during the operational life of the network.

- 5.10 Nothing in subclause 7 shall be taken to relieve the Compliance Party, the Guarantor, a Satellite Operator, or a Satellite Owner of any obligations they may have under the *Space Activities Act 1998*.

6. INTERFERENCE MANAGEMENT

- 6.1 The Compliance Party must take all reasonable steps to ensure that the network does not cause harmful interference.
- 6.2 If a person complains to the Compliance Party, or the Compliance Party otherwise believes, that transmissions from the network have caused, are causing, or are likely to cause, harmful interference, the Compliance Party must, as soon as practicable, provide the ACA with:
- (a) a copy of the complaint, if any; and
 - (b) an engineering assessment of the nature and extent of that harmful interference.
- 6.3 If a person complains to the ACA that transmissions from the network have caused, are causing, or are likely to cause, harmful interference the ACA must, as soon as practicable, provide the Compliance Party with a copy of the complaint.
- 6.4 For the purposes of this clause, a person who makes a complaint in accordance with subclause 2 or subclause 3, whether a legal person or a natural person, is the Complainant.
- 6.5 The Compliance Party must use its best endeavours to appropriately resolve complaints, or the occurrence of harmful interference, and the ACA acknowledges that in some cases the ACA may agree that no action at all need be taken by the Compliance Party to resolve the complaint.

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- 6.6 In seeking to so resolve or eliminate harmful interference, the Compliance Party must follow the same policies and coordination procedures as the ACA might reasonably be expected to apply in such circumstances.
- 6.7 The Compliance Party must advise the ACA if it cannot resolve a complaint of harmful interference.
- 6.8 Where subclause 7 applies and Part 4.3 of the Act does not apply, the ACA may:
- (a) by notice in writing given to the Compliance Party, appoint a Conciliator familiar with radiocommunications or satellite coordination procedures, for the purposes of the complaint; and
 - (b) invite the Complainant to take part in a conciliation to be conducted by the Conciliator.
- 6.9 A Conciliator appointed under paragraph 8(a) may decide not to inquire into a complaint of harmful interference if the Conciliator believes that:
- (d) the matter is trivial;
 - (e) the complaint is frivolous or vexatious or was not made in good faith; or
 - (f) the interests of the Complainant have not been, are not being or are not likely to be affected by the harmful interference.
- 6.10 A Conciliator appointed under paragraph 8(a) must not inquire into a complaint of harmful interference if the Complainant:
- (c) does not wish the inquiry to be made or continued (as the case may be);
 - (d) does not enter into an agreement with the Conciliator for the conduct of the conciliation that is substantially in the same terms as:
 - (iii) the agreement in Schedule 2; or
 - (iv) such other conciliation agreement as may, from time to time, be agreed between the

Conciliator, the Compliance Party and the Complainant;

- (d) does not agree to pay one-half of the Conciliator's fees and any other costs of the conciliation reasonably incurred by the Conciliator.
- 6.11 Unless subclause 9 or subclause 10 apply, the ACA must require a Conciliator appointed under paragraph 8(a) to:
- (a) inquire into the alleged harmful interference; and
 - (b) try to effect settlement of the matter; and
 - (c) if the Conciliator cannot effect a settlement – as soon as practicable, give to the ACA a written report setting out:
 - (i) the Conciliator's recommendations for resolving the matter; and
 - (ii) the reasons for those recommendations.
- 6.12 In carrying out functions under subclause 11 the Conciliator:
- (a) may obtain information from such persons, and make such inquiries, about the subject matter of the conciliation as he or she thinks fit; and
 - (b) must not make a recommendation to the ACA that is adverse to the Compliance Party unless it has given the Compliance Party an opportunity to make submissions in relation to the matter to which the recommendation relates.
- 6.13 The Conciliator may give the Compliance Party a written direction to attend, at a time and place specified in the notice, a conference to be presided over by the Conciliator for the purposes of conducting an inquiry into, or trying to effect a settlement of, a complaint of harmful interference.
- 6.14 The Compliance Party must not, without reasonable excuse:
- (a) fail to attend as required by the direction;
 - (b) fail to attend and report from day-to-day unless excused or released from further attendance, by the Conciliator;

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- (c) fail to cooperate in the conciliation process; or
 - (d) withhold information from the Conciliator or the Complainant that is necessary for, or reasonably incidental to, settlement of the complaint of harmful interference.
- 6.15 For the purposes of subclause 14, it would be unreasonable for the Compliance Party to refuse to provide confidential information if the party to whom the information would be given is prepared to enter into a deed of confidentiality in relation to that information with the Compliance Party in the form of the agreement at Schedule 1.
- 6.16 The Compliance Party must enter into an agreement with the Conciliator for the conduct of the conciliation that is substantially in the same terms as:
- (a) the agreement in Schedule 2; or
 - (b) such other conciliation agreement as may, from time to time, be agreed between the Conciliator, the Compliance Party and the Complainant.
- 6.17 The Compliance Party must pay one-half of the Conciliator's fees and any other costs of the conciliation reasonably incurred by the Conciliator.
- 6.18 For the avoidance of doubt, the Compliance Party is not required by this Deed to pay the costs incurred by the Complainant in relation to the conciliation.
- 6.19 If the Conciliator does not resolve a complaint of harmful interference, and the ACA is reasonably satisfied that it is necessary to do so in order to prevent harmful interference, or the risk of harmful interference, the ACA may issue a written direction to the Compliance Party.
- 6.20 Where subclause 19 applies, the ACA may give a direction to the Compliance Party:

- (a) to take action, or to refrain from taking action, in relation to the operation of the network; or
 - (b) to do, or to refrain from doing, any other thing; within a specified period.
- 6.21 In issuing a direction the ACA must have regard to the Conciliator's report, if any.
- 6.22 If the ACA issues a direction to the Compliance Party, it must give the Compliance Party notice of its reasons for that direction.
- 6.23 The ACA and the Compliance Party acknowledge that certain information relating to the network, which may be requested from the Compliance Party, is or may be governed by the *USA Arms Export Control Act*, the *International Traffic Arms Regulation* and/or the *USA Export Administration Act* ('the Export Control Laws'). To the extent such information is governed by the Export Control Laws, a license issued pursuant to the Export Control Laws may be required prior to the disclosure of the information and the Compliance Party agrees to use its reasonable best efforts to obtain or procure an appropriate licence.
- 6.24 Nothing in subclause 23 will relieve the Compliance Party of its obligation to take all reasonable steps to ensure that the network does not cause harmful interference.
- 6.25 If the Export Control Laws allow certain information to be provided to the ACA but restrict further dissemination of the information, the ACA agrees, except as otherwise required by Australian law, not to disseminate the information other than:
 - (a) as is expressly permitted by the Export Control Laws; or
 - (b) as may be specified by the Compliance Party in a notice to the ACA.

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- 6.26 The Compliance Party acknowledges and agrees that nothing in subclause 25 should be taken to limit the operation of Australian law.
- 6.27 The ACA and the Compliance Party agree that following any amendment to, or substitution, consolidation or re-enactment of, the Export Control Laws, the parties will as soon as practicable meet and in good faith discuss and use best efforts to agree on any amendments to this Deed which are required or desirable.

7. COMPLIANCE WITH DIRECTIONS AND RADIO REGULATIONS

- 7.1 The Compliance Party must not knowingly or recklessly contravene:
- (a) a direction issued to the Compliance Party by the ACA under this Deed; or
 - (b) a direction issued to the Compliance Party by the ACA in accordance with section 212 of the Act.
- 7.2 The ACA and the Compliance Party must comply with the provisions of the Radio Regulations.

8. CHARGES AND GST

- 8.1 The Compliance Party acknowledges that the ACA will provide it with notification and coordination services on a commercial basis in accordance with Section 8 of the *Australian Communications Authority Act 1997*.
- 8.2 The Compliance Party and the ACA will later, and from time to time, agree on the terms and conditions, including as to

fees, on which the notification and coordination services referred to in subclause 1 will be provided by the ACA.

- 8.3 The Compliance Party acknowledges that it will, in addition to the fees and other consideration, pay to the ACA the amount of all Goods and Services Tax chargeable on any taxable supply made by the ACA to the Compliance Party under this Deed.
- 8.4 The ACA will provide the Compliance Party with all necessary tax invoices to enable the Compliance Party to claim any input tax credits in relation to the Goods and Services Tax paid.
- 8.5 The Compliance Party must pay all ITU cost recovery charges for the production of Special Sections for the network within five months of the issue to it of an invoice by the Finance Department of the ITU.

9. ACA NOT LIABLE FOR LOSSES

- 9.1 This clause survives the expiration or termination of this Deed.
- 9.2 The Compliance Party indemnifies, and must keep indemnified, the ACA from and against all loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by the ACA arising from:
 - (c) any negligent, wilful or unlawful act or omission by the Compliance Party, its officers, employees or agents, in connection with this Deed; or
 - (d) any breach by the Compliance Party of its obligations or warranties under this Deed; or
 - (e) the compliance by the Compliance Party with a properly issued direction.
- 9.3 The Compliance Party's liability to indemnify the ACA under subclause 2 will be reduced proportionately to the extent

that any negligent act or omission of the ACA contributed to that loss or liability.

- 9.4 The Compliance Party and the Guarantor agree and acknowledge that the ACA will not be liable to them for any loss or liability that they directly or indirectly incur as a result of the Compliance Party complying with a direction properly issued to the Compliance Party by the ACA under this Deed, by reason only that the ACA issued that direction to the Compliance Party.

10. MEETINGS AND CORRESPONDENCE

- 10.1 This clause applies to specified correspondence and specified meetings about the network for the purposes of:
- (a) effecting coordination with or obtaining the agreement of other administrations in accordance with the procedures established by Appendix S30 and Appendix S30A of the Radio Regulations;
 - (b) ensuring that the network does not cause harmful interference in accordance with the procedures establish by clause 6, Part 4.3 of the Act or Article S15 of the Radio Regulations.
- 10.2 The ACA may attend any specified meeting relating to the network.
- 10.3 If requested in writing by the ACA, the Satellite Operator must, at its own expense, give the ACA copies of:
- (a) all records held by the Satellite Operator of specified meetings about the network; and/or
 - (b) all specified correspondence held by the Satellite Operator about the network.
- 10.4 The Satellite Operator may request, in writing, that an ACA officer attend a specified meeting about the network.

- 10.5 The ACA may, in its absolute discretion, agree to one of its officers attending such a specified meeting.
- 10.6 The Satellite Operator must pay all costs incurred by the ACA in complying with a request under subclause 4, including travel and accommodation expenses which will be worked out in accordance with the relevant provisions of the ACA's Certified Agreement made under the *Workplace Relations Act 1996* as in force from time to time.

11. RADIOCOMMUNICATIONS LICENCES

- 11.1 The Compliance Party acknowledges that the ACA can only issue, renew, vary, suspend or cancel radiocommunications licences in accordance with Chapter 3 of the Act.
- 11.2 The Compliance Party and the Guarantor acknowledge that other radiocommunication services operate in the 17.3-18.1 GHz frequency range in Australia.
- 11.3 The Compliance Party and the Guarantor acknowledge that:
- (a) the ACA currently intends that use of the frequency ranges specified in subclause 2 by the network will be on a shared basis with other radiocommunication services in accordance with relevant ACA licensing policies and frequency assignment guidelines; and
 - (b) the policies of the ACA may change from time to time.

12. TERMINATION OF AGREEMENT AND SUPPRESSION OF NOTIFICATION

- 12.1 This subclause and subclauses 12.2, 12.3 and 12.8 apply if the ACA, at any time after the date on which the network comes into operation:

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- (a) reasonably considers that the Compliance Party has breached subclause 3.1, 3.2, 3.5, 3.7, 3.8, 3.10, 3.11, 5.1, 6.1, 6.2, 6.5, 6.6, 6.7, 6.14, 6.16, 6.17, 7.1, 7.2, 8.3, 8.5, 10.3 or 10.6; or
 - (b) reasonably considers that the Compliance Party is, for any reason, not likely to be able to comply with its obligations under this Deed with respect to the causing of harmful interference; or
 - (c) reasonably considers that the Guarantor has breached subclause 3.14.
- 12.2 Where subclause 1 applies, the ACA may by notice in writing to the Compliance Party, require the Compliance Party to remedy the relevant breach or default within 30 days from the date that the notice is sent to the Compliance Party.
- 12.3 Where subclause 2 applies, if the breach or default is not remedied to the reasonable satisfaction of the ACA within 30 days from the date that the notice is sent to the Compliance Party, the ACA may by notice in writing to the Compliance Party terminate this Deed.
- 12.4 Where subclause 3 applies, any notice of termination made in writing by the ACA will take effect 30 days from the date that the notice is sent to the Compliance Party.
- 12.5 The Compliance Party may by notice in writing to the ACA, terminate this Deed:
- (e) because the ACA has entered into a Deed of Agreement with another person for the coordination and radio interference management of the network;
 - (f) because the network has reached the end of its operational life;
 - (g) because it has abandoned the network; or
 - (h) for convenience.

- 12.6 Where subclause 5 applies, any notice of termination made in writing by the Compliance Party will take effect 60 days from the date that the notice is sent to the ACA.
- 12.7 For the purposes of subclause 5, a notice from the Compliance Party may be considered by the ACA to be a notice from any or all of the Compliance Party, a Satellite Owner, a Satellite Operator and/or the Guarantor.
- 12.8 Where subclause 3 or subclause 5 applies, the Compliance Party and the Guarantor acknowledge that the ACA may:
- (a) suppress the ITU notification of the network; or
 - (b) enter into a Deed of Agreement with another person for the coordination and radio interference management of the network.
- 12.9 For the avoidance of doubt, the ACA must not enter into a Deed of Agreement with another person for the coordination and radio interference management of the network unless:
- (a) subclause 3 or subclause 5 apply; or
 - (b) the Compliance Party has asked the ACA to enter into a Deed of Agreement with another person.

13. REMEDIES CUMULATIVE

- 13.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.
- 13.2 Subject to the other provisions of this Deed, the rights and obligations of the ACA, the Compliance Party, and the Guarantor under this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement or contract to which they are

parties.

- 13.3 The Compliance Party, the Guarantor and the ACA acknowledge that any party may take legal proceedings against any other party or third parties (including a Satellite Operator or Satellite Owner) if there is any actual, threatened, or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

14. WAIVER

- 14.1 No waiver by the ACA, the Compliance Party, or the Guarantor of a breach of any obligation or provision contained or implied in this Deed will operate as a waiver of another breach of the same or similar type, or of any other obligation or provision contained or implied in this Deed.
- 14.2 None of the provisions of this Deed shall be taken either at law or in equity to have been varied, waived, discharged or released by the ACA, the Compliance Party, or the Guarantor unless by the express consent in writing of the ACA, the Compliance Party, or the Guarantor.

15. VARIATION AND AMENDMENTS

- 15.1 No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and executed by the ACA, the Guarantor, and the Compliance Party in the same manner as this instrument.

16. APPLICABLE LAW

- 16.1 Subject to subclause 2, this Deed shall be governed and construed in all respects in accordance with the law of the Australian Capital Territory as in force from time to time and the parties agree, subject to the jurisdiction of the High Court of Australia, that the Courts of that Territory shall have exclusive jurisdiction to entertain any action in respect of, or arising out of, this Deed.
- 16.2 The Guarantor's submission to the jurisdiction of the Courts of the Australian Capital Territory is hereby limited to, and is only to be in respect of, any demand or claim on, or other matter relating to, the guarantee provided by the Guarantor under subclause 3.11 of this Deed.

17. NOTICES

- 17.1 Any notice, request or other communication to be given or served under this Deed must be in writing and dealt with as follows:
- (a) if given by the Compliance Party to the ACA - addressed and forwarded to the ACA, for the attention of the person indicated for this purpose in Schedule 3, and at the address indicated in Schedule 3, or as otherwise notified in writing by the ACA;
 - (b) if given by the ACA to the Compliance Party - forwarded to the Compliance Party, for the attention of the person indicated for this purpose in Schedule 3, at the address indicated in Schedule 3, or as otherwise notified by the Compliance Party in writing;
 - (c) if given by the ACA to the Guarantor - addressed and forwarded to the Guarantor, for the attention of the person indicated for this purpose in Schedule 3, and at the address indicated in Schedule 3, or as otherwise notified in writing by the Guarantor.

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- 17.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post or facsimile, to the address of the party to which it is sent.
- 17.3 Any notice, request or other communication will be deemed to be received:
- (a) if delivered personally, on the date of delivery;
 - (b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient; and
 - (c) if sent by facsimile, on the business day next following the day of dispatch providing that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible.

EXECUTED AS A DEED

SIGNED SEALED and DELIVERED for)
and on behalf of the **AUSTRALIAN**)
COMMUNICATIONS AUTHORITY by) (Signature of
signatory)

(Print full name and title
of signatory)

In the presence of:

(Signature of witness)

(Print full name and title
of witness)

SIGNED SEALED and DELIVERED for
and on behalf of **[Insert Compliance Party]**
[Insert ACN] by Authority of its directors:

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SIGNED SEALED and DELIVERED for
and on behalf of **[Insert Guarantor]**
by Authority of its directors:

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SCHEDULE 1

(Clause 6.15)

DEED OF CONFIDENTIALITY

BY THIS DEED DATED THE _____ day of _____

BETWEEN Party A ('the Recipient')

AND Party B ('the Provider')

Recitals:

- A. For the purposes of conducting a conciliation or otherwise gathering information or conducting investigations, the parties have agreed that they will comply with the terms of this Deed.
- B. In the course of the above conduct, the Recipient may become aware of information, belonging to or in the possession of the Provider, that is confidential or that is personal information under the *Privacy Act 1988* (Cth),
- C. Improper use or disclosure of that information would severely damage the Provider's ability to perform its commercial functions.
- D. The Provider requires, and the Recipient agrees, that it is necessary to take all reasonable steps (including the execution of this Deed) to ensure that the Provider's confidential information is kept confidential and that personal information is protected.

OPERATIVE CLAUSES:

1. Recitals

The Parties acknowledge the truth and accuracy of the Recitals in every particular.

2. Interpretation

2.1 Definitions

In the interpretation of this Deed unless the contrary intention appears or the context otherwise requires or admits the following expressions will have the following meanings:

"Agreement" means the Deed Of Agreement between the Australian Communications Authority and [insert company name(s)] for the Coordination and Radio Interference Management of a Satellite Network, executed on [date of execution];

"confidential information" means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Provider as confidential; or
 - (c) the Recipient knows or ought to know is confidential;
- and includes:
- (d) information comprised in or relating to any Intellectual Property Rights of the Provider;
 - (e) any information relating to the financial position of the Provider and in particular includes information relating to the assets or liabilities of the Provider and any other matter that does or may affect the financial position or reputation of the Provider;
 - (f) information relating to the internal management and structure of the Provider, and includes information relating to the personnel, policies and strategies of the Provider;
 - (g) any information relating to the policies, strategies, practices and procedures of the Provider;
 - (h) any information in the Provider's possession relating to the Provider's clients or suppliers, and like information;
- but does not include information which:
- (i) is or becomes public knowledge other than by breach of this Deed or by any other unlawful means;
 - (j) is in the possession of the receiving party without restriction in relation to disclosure prior to the date of receipt from the disclosing party;
 - (k) has been independently developed or acquired by the receiving party; or

(l) is in respect of ideas, concepts, know-how, techniques or methodologies where disclosure is permitted under the Agreement;

"Intellectual Property Rights" includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

"notice" means notice in writing given in accordance with this Deed;

"personal information" means, for the purposes of the *Privacy Act 1988* (Cth) and this Deed, information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

"writing" means any mode of representing or reproducing words, figures, drawings or symbols in a visible form.

2.2 General

Unless the contrary intention appears:

- (a) monetary references are references to Australia currency;
- (b) the clause and subclause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (c) a cross reference to a clause number is a reference to all its subclauses;
- (d) words in the singular number include the plural and vice versa;
- (e) words importing a gender include any other gender;

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- (f) a reference to a person includes a partnership and a body whether corporate or otherwise;
 - (g) a reference to a clause or subclause is a reference to a clause or subclause of this Deed; and
 - (h) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

3. Non Disclosure

- 3.6 The Recipient must not disclose the confidential information to any person without the prior written consent of the Provider.
- 3.7 The Provider may grant or withhold its consent in its absolute and unfettered discretion.
- 3.8 If the Provider grants its consent, it may impose conditions on that consent. In particular, but without limiting the generality of the preceding sentence, the Provider may require that the Recipient procure the execution of a deed in these terms by the person to whom the Recipient proposes to disclose the confidential information.
- 3.9 If the Provider grants consent subject to conditions, the Recipient must comply with those conditions.
- 3.10 The obligations of the Recipient under this Deed will not be taken to have been breached where the confidential information is legally required to be disclosed.

4. Restriction on Use

The Recipient will use the confidential information only for the purpose of its dealings with the Provider (whether directly or indirectly).

5. Privacy

- 5.1 The Recipient undertakes:
- (c) not to access, use, modify, disclose or retain any personal information he or she has acquired through the performance of the Agreement, except for the purpose of performing the Agreement; and
 - (d) in addition to any direction as to particular measures specified by the Provider, take all reasonable measures to ensure that any personal information held in connection with the Agreement is protected against loss, unauthorised access, use, modification or disclosure and against other misuse.
- 5.2 The Recipient acknowledges that:
- (c) any unauthorised and intentional access, destruction, alteration, addition or impediment to access or usefulness of personal information stored in any Provider computer is an offence under Part VIA of the *Crimes Act 1914* which may attract a substantial penalty, including imprisonment; and
 - (d) the publication or communication by the Recipient of any fact or document which has come to his or her knowledge or into his or her possession or custody by virtue of the performance of the Agreement (other than to a person to whom the Recipient is authorised to publish or disclose the fact or document) may be an offence under sections 70 or 79 of the *Crimes Act 1914*, punishment for which may involve imprisonment.
6. Reserved.
- 7. Powers of the Provider**
- 7.1 The Provider may demand (without needing to reduce the demand to writing) the delivery up to the Provider of all documents in the possession or control of the Recipient containing confidential information or personal information or which are the property of the Provider.

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- 7.2 The Recipient must immediately comply with a demand under this clause 7.
- 7.3 If the Provider makes a demand under this clause 7, and the Recipient has placed or is aware that documents are beyond his or her possession or control, then the Recipient must provide full particulars of the whereabouts of the documents, and the identity of the person in whose custody or control they lie.
- 7.4 In this clause 7, "documents" includes any form of storage of information, whether visible to the eye or not.
- 7.5 The Recipient acknowledges that the Provider may take legal proceedings against the Recipient or third parties if there is any actual, threatened or suspected breach of this Deed, including proceedings for an injunction to restrain such breach.

8. Conflict of Interest

- 8.1 The Recipient warrants that before entering into this Deed it has disclosed to the Provider all the past, current and anticipated interests of the Recipient which may conflict with or restrict the Recipient in performing conciliation in relation to the Agreement fairly and independently.
- 8.2 If during the term of this Deed a conflict of interest arises, or appears likely to arise, the Recipient undertakes to notify the Provider immediately in writing and to take such steps as the Provider may reasonably require to resolve or otherwise deal with the conflict.

9. Reserved.

10. No Exclusion of Law or Equity

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the confidential information.

11. Waiver

- 11.1 No waiver by the Provider of one breach of any obligation or provision of this Deed will operate as a waiver of another breach of the same or of any other obligation or provision of this Deed.
- 11.2 None of the provisions of this Deed will be taken either at law or in equity to have been varied waived discharged or released by the Provider unless by its express consent in writing.

12. Remedies Cumulative

- 12.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided at law or in equity or by any other right or remedy.
- 12.2 Subject to the other covenants of this Deed, the rights and obligations of the parties pursuant to this Deed are in addition to and not in derogation of any other right or obligation between the parties under any other deed or agreement to which they are parties.

13. Variations and Amendments

No term or provision of this Deed may be amended or varied unless such amendment or variation is reduced to writing and signed by the parties to this Deed in the same manner as this instrument.

14. Applicable Law

This Deed will be governed and construed in all respects in accordance with the law of the Australian Capital Territory in force from time to time and the Parties agree, subject to

the jurisdiction of the High Court of Australia, that the courts of that Territory shall have exclusive jurisdiction to entertain any action in respect of, or arising out of, this Deed.

EXECUTED by the parties as a Deed

SIGNED SEALED AND DELIVERED)

for and on behalf of the **Provider**)

by)

.....) {signature of signatory}
{print full name of signatory})

.....)
{insert office of signatory})

in the presence of:)

.....)
.....) {signature of witness}
{print name of witness})

SIGNED SEALED AND DELIVERED)

for and on behalf of the **Recipient**)

by)

.....) {signature of signatory}
{print full name of signatory})

.....)
{insert office of signatory})

in the presence of:)

.....)
.....) { signature of witness}
{print name of witness}

SCHEDULE 2

(Clauses 6.10 and 6.16)

CONCILIATION AGREEMENT

APPOINTMENT OF CONCILIATOR

1. Reserved.

ROLE OF CONCILIATOR

2. The Conciliator will be neutral and impartial. The Conciliator will assist the parties to attempt to resolve the Dispute by helping them to:
 - * systematically isolate the issues in dispute;
 - * develop options for the resolution of these issues;
 - * explore the usefulness of these options; and
 - * meet their interests and needs.
3. The Conciliator may meet with the parties together or separately.
4. The Conciliator will not:
 - * give legal or other professional advice to any party; or
 - * impose a result on any party; or
 - * make decisions for any party.
5. The Conciliator will not accept an appointment in relation to any proceedings concerning the Dispute.

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6. Neither party will take action to cause the Conciliator to breach Clause 5.

CONFLICTS OF INTEREST

7. The Conciliator must prior to the commencement of the conciliation disclose to the parties to the best of the Conciliator's knowledge any prior dealings with any of the parties as well as any interest in the Dispute.
8. If in the course of the conciliation the Conciliator becomes aware of any circumstances that might reasonably be considered to affect the Conciliator's capacity to act impartially, the Conciliator must immediately inform the parties of these circumstances. The parties will then decide whether the conciliation will continue with that Conciliator or with a new Conciliator appointed by the parties.

COOPERATION BY THE PARTIES

9. The parties must cooperate in good faith with the Conciliator and each other during the conciliation.

CONDUCT OF THE PRELIMINARY CONFERENCE

10. As part of the conciliation the Conciliator will schedule a preliminary conference at a time and venue convenient to the parties to establish a timetable for the conciliation.
11. The Conciliator, the parties and their representatives who are to attend the conciliation session must attend the preliminary conference.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE CONCILIATION SESSION

12. The parties must attend the conciliation with authority to settle by any means or within any range that can reasonably be anticipated.

13. At the conciliation each party may have one or more other persons, including legally qualified persons, to assist and advise them.

COMMUNICATION BETWEEN THE CONCILIATOR AND THE PARTIES

14. Any information disclosed to a Conciliator in private is to be treated as confidential by the Conciliator unless the party making the disclosure states otherwise.

CONFIDENTIALITY OF THE CONCILIATION

15. The parties and the Conciliator will not disclose to anyone not involved in the conciliation any information or document given to them during the conciliation unless required by law to make such a disclosure.
16. The parties and the Conciliator agree that subject to Clauses 20 and 21, the following will be privileged and will not be disclosed in, or be the subject of a subpoena to give evidence or to produce documents, in any proceedings in respect of the Dispute:
 - 16.1 Any settlement proposal whether made by a party or the Conciliator.
 - 16.2 The willingness of a party to consider any such proposal.
 - 16.3 Any statement made by a party or the Conciliator during the conciliation.
 - 16.4 Any information made by a party or the Conciliator during the conciliation.

TERMINATION OF THE CONCILIATION

17. A party may terminate the conciliation at any time after consultation with the Conciliator.

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18. The Conciliator may terminate the Conciliator's involvement in the conciliation if, after consultation with the parties, the Conciliator feels unable to assist the parties to achieve resolution of the Dispute.

SETTLEMENT OF THE DISPUTE

19. If settlement is reached at the conciliation, the terms of the settlement must be written down and signed by the parties before they leave the conciliation.

ENFORCEMENT OF THE SETTLEMENT AGREEMENT

20. Any party may enforce the terms of the settlement agreement by judicial proceedings.
21. For the purposes of Clause 20, any party may call evidence of the settlement agreement including evidence from the Conciliator and any other person engaged in the conciliation.

EXCLUSION OF LIABILITY AND INDEMNITY

22. The Conciliator will not be liable to a party for any act or omission in the performance of the Conciliator's obligations under this agreement unless the act or omission is fraudulent.
23. The parties together and separately indemnify the Conciliator against any claim for any act or omission in the performance of the Conciliator's obligations under this agreement unless the act or omission is fraudulent.

THE COST OF THE CONCILIATION

24. The parties will each be liable to the Conciliator for one half of the Conciliator's fees described in the Schedule under this agreement and all the other costs of the conciliation described in the Schedule, and will bear their own costs.

25. If the conciliation does not result in an agreement to resolve the Dispute, the costs of the conciliation will be costs in the cause, ie. costs of the conciliation (including those of the legal representatives to attend the conciliation) will be treated as part of the overall costs in any subsequent court proceedings which are generally payable by the losing party.

EXECUTED by the parties as a Deed

SIGNED SEALED AND DELIVERED)

by)
)

.....)

.....
{print full name of Conciliator}
Conciliator}

{signature of

in the presence of:

.....

.....
{print name of witness}
witness}

{signature of

SIGNED SEALED AND DELIVERED)

for and on behalf of **(the Compliance**)

Party) (ACN --- --- ---) by)

authority of its directors:)

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SIGNED SEALED AND DELIVERED)
for and on behalf of **(the Complainant)**)
(ACN --- --- ---) by)
authority of its directors:)

(Signature of director)

(Print full name of
director)

(Signature of
director/secretary)

(Print full name of
director/secretary)

SCHEDULE

(Clause 24 of CONCILIATION AGREEMENT)

Conciliator's fees and costs

SCHEDULE 3

(Clause 17.1)

ADDRESSES FOR SERVICE OF NOTICES

For paragraph 17.1(a) of the Deed, notices must be for the attention of:

The Manager
Space Systems Team
Radiofrequency Planning Group

For paragraph 17.1(a) of the Deed, the address for notices is:

The Australian Communications Authority
Purple Building
Benjamin Offices
Chan Street
Belconnen ACT 2617
Australia

For paragraph 17.1(b) of the Deed, notices must be for the attention of:

[Insert name or title of Compliance Party contact]

For paragraph 17.1(b) of the Deed, the address for notices is:

[Insert address for Compliance Party contact]

For paragraph 17.1(c) of the Deed, notices must be for the attention of:

[Insert name or title of Guarantor]

For paragraph 17.1(c) of the Deed, the address for notices is:

[Insert address for Guarantor]
