

## ANNEX FIVE

### DIGITAL CHANNEL ALLOCATION PROCESS (SIMULCAST PERIOD)

This Annex comprises the following parts and attachments:

**Parts:**

Part 1: General

Part 2: Digital Channel Allocation Process

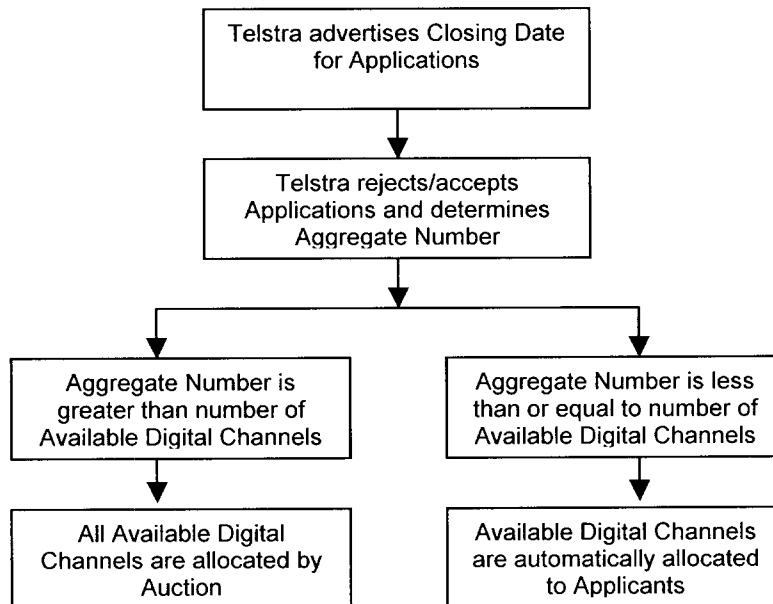
**Attachments:**

Attachment A: Application Form

Attachment B: Security

Attachment C: Auction Terms and Conditions

**Diagram illustrating Digital Channel Allocation Process \***



\* Note this diagram is provided for illustrative purposes only and is not intended to be legally binding or affect the interpretation of this Agreement.

# PART 1

## GENERAL

### 1 Application

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- 1.1 This Annex Five only applies to the allocation of Available Digital Channels during the Simulcast Period.

### 2 Definitions

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- 2.1 In this Annex Five, except if the context requires otherwise, the following words have these meanings:

**8 MHz Stream** has the meaning set out in the Digital Services Module.

**Allocation Date** means the date identified in paragraph 5.1 of Part 2 of this Annex.

**Applicant** means a person (including the Customer) whose Application has been accepted by Telstra in writing in accordance with the terms and conditions set out in the Application Form.

**Application** means an application to acquire one or more Available Digital Channels made using the Application Form.

**Application Form** means a fully completed application form identical to the *Application Form for Digital Services (Simulcast Allocation)* set out in **Attachment A** to this Annex.

**Application Payment** means the application payment made by the Customer as part of its Application.

**Auction** means the simultaneous ascending bid multiple round auction for an individual Available Digital Channel as contemplated by clause 4 of Part 2 of this Annex.

**Auction Manager** means a person appointed by Telstra for the purpose of managing and conducting any Auction.

**Auction Price** means the price determined under paragraph 4.6 of **Attachment C** to this Annex for an Available Digital Channel in an Auction.

**Available Digital Channels** means the Digital Channels advertised by Telstra as available for allocation.

**Channel Price** for an Available Digital Channel means:

- (a) the Reserve Price, if that Available Digital Channel was automatically allocated to the Customer under paragraph 3.2 of Part 2 of this Annex; or
- (b) the Auction Price, if that Available Digital Channel was allocated to the Customer by way of an Auction under paragraph 4.2 of Part 2 of this Annex.

**Closing Date** means the closing date for submission of Applications, as advertised by Telstra.

**Completed**, in relation to the completion of the Digital Channel Allocation Process, means that for every Available Digital Channel that has been advertised by Telstra, either:

- (a) Telstra has received no Applications by the Closing Date or any extension granted under paragraph 2.2 of Part 2; or
- (b) if paragraph 3 of Part 2 of Annex Five applies, Telstra has sent a notice to every Successful Applicant under paragraph 3.3 of Part 2 of Annex Five; or
- (c) if paragraph 4 of Part 2 of Annex Five applies, the Auction Manager (or Telstra) has sent a notice to every Successful Bidder under paragraph 5.2 of Attachment A of Annex Five.

**Digital Channel Allocation Process** means the process for allocating the Available Digital Channels set out in this Annex Five.

**Network Digitisation Date** is the date at which Telstra commenced carriage of FOXTEL's subscription television signals in digital mode on the Telstra HFC Network on a commercial basis, excluding any testing and trials of such carriage.

**Reserve Price** is the Reserve Price as set out by Telstra in the Application Form.

**Security** means a bank guarantee provided by the Applicant to Telstra in the form set out in **Attachment B** completed in accordance with all requirements set out in the Application Form.

**Simulcast Period** means the period commencing on the Network Digitisation Date and ending on the Simulcast End Date.

**Successful Applicant** means, in respect of an Available Digital Channel, if the Available Digital Channel was allocated:

- (a) by way of an Auction, the Applicant who is the successful applicant in accordance with the Auction Terms and Conditions set out in Attachment C; or
- (b) automatically to an Applicant in accordance with paragraph 3.1 of Part 2 of this Annex, that Applicant.

### **3 Consents**

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3.1 Notwithstanding clause 8 of the General Terms and Conditions, the Customer hereby consents to the disclosure by Telstra to other Applicants and Telstra Corporation and their respective People of:

- (a) the number of Available Digital Channels applied for by the Customer in the Application Form;
- (b) the Customer's participation in the Digital Channel Allocation Process;
- (c) the bids made by the Customer during any Auction, if the Customer bids in any such Auction; and
- (d) the number of Available Digital Channels for which the Customer is a Successful Applicant and the Channel Price of those Available Digital Channels.

#### **4. Warranties and Representations**

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- 4.1 The Customer repeats the warranties and representations made by the Customer in the Application Form and acknowledges that such warranties and representations constitute terms and conditions of this Agreement.

#### **5. Liability for Digital Channel Allocation Process**

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- 5.1 Subject to paragraph 5.3, the terms and conditions set out in this Annex apply only as between Telstra and the Customer and are not intended to create rights, benefits or obligations for third parties (including any Applicants other than the Customer).
- 5.2 Notwithstanding clause 10 of the General Terms and Conditions but subject to clause 10.3 of the General Terms and Conditions, Telstra, its People and any Auction Manager will have no Liability whatsoever to the Customer for any act or omission of any person (including Telstra, the Customer, any Auction Manager, or any Applicant) arising under or in relation to the Digital Channel Allocation Process (including under or in relation to any Auction), including (but not limited to) no Liability for:
- (a) any loss of business, loss of profits, loss of revenue, loss of use, loss of contract, or loss of goodwill;
  - (b) any special, indirect or consequential loss, liability, damage, cost, charge or expense incurred;
  - (c) any damages or loss resulting from liability to any other person; or
  - (d) any damages or loss resulting from loss or corruption of or damage to any computer or electronically stored data, software or hardware.
- 5.3 Paragraph 5.2 is not only for the benefit of Telstra, but is also for the benefit of its People and any Auction Manager, is to be interpreted as benefiting its People and any Auction Manager, and to be enforceable by its People and any Auction Manager against the Customer. To that extent only, Telstra has entered into this Agreement on behalf of its People and any Auction Manager.
- 5.4 The Customer acknowledges and agrees that:
- (a) it is solely responsible for its acts and omissions, and the acts and omissions of its People, in relation to its participation in the Digital Channel Allocation Process; and
  - (b) its participation in any stage of the Digital Channel Allocation Process is at its sole risk, cost and expense.
- 5.5 Notwithstanding clause 10 of the General Terms and Conditions, the Customer indemnifies Telstra from, and holds Telstra harmless against, any Loss sustained or incurred by Telstra (including any liability under any indemnity given to any Auction Manager) arising directly or indirectly from:
- (a) any act or omission by the Customer or its People in connection with the Customer's participation in the Digital Channel Allocation Process; or
  - (b) any breach by the Customer of its obligations or warranties under this Annex Five,

irrespective whether there was fault on the part of the person whose conduct gave rise to that Loss (including any Loss sustained or incurred by Telstra due to any need to amend, repeat, suspend, postpone or cancel the Digital Channel Allocation Process in any way in respect of any Available Digital Channel).

5.6 The Customer's liability under paragraph 5.5 will be reduced to the extent that any negligent act or omission of Telstra contributed to the relevant Loss.

## **6. Application Payment**

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6.1 The component of the Application Payment relating to each Available Digital Channel will be:

- (a) subject to sub-paragraph (c), forfeited by the Customer to Telstra if Auctions are held for the Available Digital Channels, but the Applicant does not bid in at least the same number of Auctions as the number of Available Digital Channels for which it applied in its Application; or
- (b) refunded by Telstra to the Customer if the Customer bids in at least the same number of Auctions as the number of Available Digital Channels for which it applied in its Application, but the Customer is not the Successful Applicant for that Available Digital Channel; or
- (c) credited against future Charges pursuant to paragraph 3.2 of the Price List of the Digital Services Module if the Customer is the Successful Applicant for that Available Digital Channel.

## PART 2

### DIGITAL CHANNEL ALLOCATION PROCESS

#### **1 Digital Channel Allocation Process**

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- 1.1 Part 2 of this Annex sets out specific terms and conditions relating to the Digital Channel Allocation Process for Available Digital Channels.

#### **2 Identification of Aggregate Number of Digital Channels applied for**

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- 2.1 Subject to paragraph 2.2, Telstra will identify the aggregate number of Digital Channels applied for by Applicants ("**Aggregate Number**") within 10 Business Days after the Closing Date
- 2.2 If Telstra has provided an extension to the Closing Date under paragraph 5 of the Application Form, Telstra will identify the Aggregate Number within 20 Business Days after the Closing Date.

#### **3 Automatic Allocation**

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- 3.1 This paragraph 3 only applies if the Aggregate Number calculated under paragraph 2 equals or does not exceed the number of Available Digital Channels.
- 3.2 Each Applicant will be allocated the number of Digital Channels they applied for at the Reserve Price. Each Applicant will be the Successful Applicant in respect of the number of Digital Channels it is allocated under this paragraph.
- 3.3 Following such allocation, Telstra will notify the Successful Applicant that it has been allocated those Available Digital Channels at the Reserve Price, such notice including the date of notification ("**Notification Date**"). Telstra must provide any such notice within 20 Business Days after the Closing Date if paragraph 2.1 applies or within 30 Business Days after the Closing Date if paragraph 2.2 applies.
- 3.4 Telstra will aim to allocate all Digital Channels within an 8 MHz Stream before allocating any Available Digital Channels from another 8MHz Stream.
- 3.5 Subject to paragraph 3.4, Telstra will aim to ensure that the Digital Channels allocated to the Customer under this paragraph 3 are Contiguous Digital Channels, but the Customer acknowledges that Telstra has no liability if this does not occur.
- 3.6 Telstra will notify the Customer which of the Digital Channels it has been allocated are Contiguous Digital Channels at the time Telstra notifies the Customer that it is a Successful Applicant for those Digital Channels.

#### **4 Auction**

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- 4.1 This paragraph 4 only applies if the Aggregate Number exceeds the number of Available Digital Channels.
- 4.2 Telstra will arrange for an Auction to be conducted for every Available Digital Channel in accordance with Attachment C to this Annex.

#### **5 Allocation Date**

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- 5.1 The Allocation Date is the later of the following dates:
- (a) if the Applicant is notified that it is the Successful Applicant under paragraph 3 of this Part 2 in respect of the Digital Channels it has applied for, the Notification Date under paragraph 3.3; or
  - (b) if the Digital Channels applied for by the Applicant are allocated to the Applicant under an Auction under paragraph 4 of this Part 2, the latest of the Notifications Dates under paragraph 5.2 of Attachment C for those Digital Channels.

Attachment A to Annex Five

**APPLICATION FORM  
FOR DIGITAL CHANNELS (SIMULCAST PERIOD)**

DATED: \_\_\_\_\_ (Insert date of Application)

OFFER MADE TO: Telstra Multimedia Pty Ltd (ABN 82 069 279 072) (as "Telstra")

OFFER MADE BY: (Insert full legal name and contact details of the Customer below)

Legal name:	_____ (as "Customer")
ABN/ACN:	_____
Address of Customer:	_____ _____
Authorised Representative:	_____
Contact Phone:	_____
Contact Fax:	_____

THE CUSTOMER APPLIES FOR THE FOLLOWING NUMBER OF AVAILABLE DIGITAL CHANNELS WITH THE FOLLOWING RESERVE PRICE:

Customer to insert in this box the number of Available Digital Channels it applies for within this Application:

Number of Channels: _____
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RESERVE PRICE:

Telstra to insert in this box the Reserve Price and the date until which the Reserve Price is valid: \*\*

\$ _____ per Available Digital Channel valid until 30 September 20 _____
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\*\* The Reserve Price above is only valid until the date specified in the box above. This Application will be rejected by Telstra if it is received by Telstra after that date.

**DIGITAL (SIMULCAST) APPLICATION FORM - PAGE 2**

TERMS AND CONDITIONS OF APPLICATION:

## **1 Interpretation**

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- 1.1 Capitalised terms in this Application Form have the same meaning as in the Agreement. However, for the purposes of this Application Form:

“**Agreement**” means the proposed *Telstra Multimedia Access Agreement - Digital Services* set out in **Schedule 2** to this Application Form.

“**Application Form**” means this *Application Form for Digital Channels (Simulcast Period)*.

“**Application Payment**” means an amount equal to \$10,000 multiplied by the number of the Available Digital Channels applied for by the Customer in the Application Form.

## **2 Pre-qualification Criteria**

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- 2.1 The “Pre-Qualification Criteria” are as follows:
- (a) the Customer is a company with share capital, incorporated in Australia under the *Corporations Act 2001 (Cwth)*; and
  - (b) the Customer is not FOXTEL, a Related Party of FOXTEL or Telstra Corporation.

## **3 Offer by Customer**

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- 3.1 The Customer acknowledges and agrees that its Application comprises a legally binding irrevocable offer by the Customer to enter into the Agreement.
- 3.2 This Application is accepted only if, and once, Telstra has executed the Agreement and notified the Customer in writing accordingly, and the Agreement will then commence.
- 3.3 If this Application is submitted in relation to the Initial Allocation, it will not apply to any Subsequent Allocation.

## **4 Warranties and representations by Customer**

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- 4.1 By submitting the Application, the Customer hereby warrants and represents that:
- (a) it meets all of the Pre-Qualification Criteria;
  - (b) the Application Form, and all information set out by the Customer in the Application Form, is complete and accurate;
  - (c) the Security is in the form of Attachment B to Annex Five of the Agreement, has been completed in accordance with this Application Form and has been duly executed by the relevant bank;
  - (d) it can comply with the terms and conditions of the Agreement if, and once, its Application is accepted by Telstra;
  - (e) it has not relied on any representation made by Telstra or its People in relation to its Application for, or the allocation of, an Available Digital Channel; and
  - (f) it is applying for the number of Available Digital Channels it has indicated in the box labelled *Number of Channels* on the cover of this Application Form.

## **DIGITAL (SIMULCAST) APPLICATION FORM - PAGE 3**

## **5 Consideration of Application by Telstra**

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- 5.1 Telstra may reject the Application in any of the following circumstances:



- (a) the Customer does not meet the Pre-Qualification Criteria; or
  - (b) the Customer has not paid the Application Payment in full to Telstra, in cleared funds, by the Closing Date; or
  - (c) the Customer has not provided an original copy of the Security to Telstra by the Closing Date in the form set out in Attachment B to Annex Five of the Agreement, such Security completed in accordance with the requirements set out in this Application Form; or
  - (d) the Customer has not provided an original copy of the Agreement, executed by the Customer, to Telstra by the Closing Date, including with the Profile Annex completed; or
  - (e) the Customer has not executed the Agreement in accordance with section 127 of the Corporations Act; or
  - (f) the Customer has not submitted an original, duly completed, copy of this Application Form to Telstra at the address nominated by Telstra for that purpose by the Closing Date; or
  - (g) the Application is not accurate or is incomplete in any way;
  - (h) any part of the Application has been received by Telstra after the Closing Date; or
  - (i) there are reasonable grounds to believe that the Customer would fail to a material extent, to comply with the Agreement (examples of reasonable grounds for such a belief include evidence that the Customer is not creditworthy and repeated failures by the Customer to comply with the terms and conditions on which the same or similar access has been provided (whether or not by Telstra) but do not include the mere absence of a credit history); or
  - (j) there are reasonable grounds to believe, in connection with the Agreement, that the Customer would fail to protect the integrity of the Telstra HFC Network; or
  - (k) there are reasonable grounds to believe, in connection with the Agreement, that that the Customer would fail to protect the safety of individuals working on, or using services supplied by means of, the Telstra HFC Network or any associated Facility; or
  - (l) the Application is received by Telstra after the validity date for the Reserve Price specified in the Application Form.
- 5.2 Telstra will notify the Customer whether its Application has been accepted or rejected. Telstra's decision is final. Telstra will consider giving reasons for its decision on request in writing by the Customer.
- 5.3 If the Application is rejected by Telstra, Telstra will refund the Application Fee to the Customer as soon as practicable in the circumstances.
- 5.4 Once an Application is accepted by Telstra, Telstra will execute the Agreement and notify the Customer in writing accordingly.
- 5.5 Telstra will interpret sub-paragraphs 5.1(i), 5.1(j) and 5.1(k) in a manner consistent with the interpretation of sections 152AR(9) and 152AR(1) of the TPA.

- 5.6 Customers must take all due care and diligence to ensure that their Applications are complete and accurate. Telstra is not required to reject Applications prior to the Closing Date, although Telstra will aim to process Applications as they are received and will aim to notify a rejection of an Application once that Application has been processed.
- 5.7 The Customer may resubmit an Application which has been rejected by Telstra as long as the re-submitted Application is submitted before the Closing Date. Telstra may (at its absolute discretion) provide the Customer with an opportunity to resubmit an Application by a specified date not later than 10 Business Days after the Closing Date if Telstra believes the Customer can rectify the basis for the prior rejection by that specified date (and paragraph 5.1 will apply to that resubmitted Application as if that specified date were the Closing Date).
- 5.8 The Customer acknowledges that the terms and conditions set out in this Application Form apply to other persons submitting Applications.

**6. Security**

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- 6.1 The Security must be in the form of the bank guarantee set out in Attachment B of Annex Five of the Agreement.
- 6.2 The bank providing the Security must be a reputable bank licensed to operate in Australia.
- 6.3 The Security must be on the letterhead of that bank, must be properly executed by that bank and must be legally binding and enforceable against the bank by Telstra.

## DIGITAL (SIMULCAST) APPLICATION FORM - PAGE 5

### APPLICATION CHECKLIST: (TO BE COMPLETED BY CUSTOMER)

Please tick the boxes to indicate that the following documents are attached to this Application Form:

- |   | Tick                     |
|---|--------------------------|
| • Schedule 1: <b>Security</b> , properly executed by the relevant bank: | <input type="checkbox"/> |
| • Schedule 2: <b>Agreement</b> , properly executed by Customer:         | <input type="checkbox"/> |

Please indicate the aggregate amount of the Application Payment below:

- |  |                                      |
|--|--------------------------------------|
| • Aggregate amount of <b>Application Payment</b> : | <input type="text" value="\$_____"/> |
|--|--------------------------------------|

Note: *The Application Payment is calculated as \$10,000 x the number of Available Digital Channels applied for by the Customer in this Application Form. The Application Payment must be provided in cleared funds by the Closing Date.*

**DIGITAL (SIMULCAST) APPLICATION FORM - SCHEDULE 1 (SECURITY)**

**Schedule 1: Security**

*(attach original copy of bank guarantee executed by bank)*

**DIGITAL (SIMULCAST) APPLICATION FORM - SCHEDULE 2 (AGREEMENT)**

**Schedule 2: Agreement**

*(attach original copy of Agreement duly executed by Customer in accordance with section 127 of the Corporations Act, with the Profile Annex and all other relevant details completed and with the correct Annex Five incorporated)*

Attachment B to Annex Five

Security

*[On Letterhead of Bank]*

Bank Guarantee No. [     ]

To: TELSTRA MULTIMEDIA PTY LIMITED  
(ABN 82 069 279 072)

Address: Level 4, 400 George Street  
Sydney, New South Wales, 2000

Dear Sirs

We issue our irrevocable Bank Guarantee as follows:

**Favouree** TELSTRA MULTIMEDIA PTY LIMITED  
(ABN 82 069 279 072) ("Principal")

**Customer Name** *[Insert Customer's legal name]*  
*[insert Customer's ABN]* ("Customer")

**Agreement** Telstra Multimedia Access Agreement - Digital Services  
between Telstra Multimedia Pty Limited  
and *[Insert Customer's legal name]* ("Agreement")

**Bank** *[Insert Bank's legal name]*  
*[Insert Bank's ABN]* ("Bank")

**Available at** *[Insert Bank office in Sydney]* ("Bank Office")

**Maximum Liability** means the sum of the individual Channel Prices for each Available  
Digital Channel for which the  
Customer is a Successful Applicant under Annex Five of the  
Agreement ("Maximum Liability")

**Expiry Date** means the later of the following dates: ("Expiry Date")

- (a) the date 3 months after the expiry or termination of the Agreement; and
- (b) the date on which all Default Sums have been paid to Telstra.

**Other Definitions** the capitalised terms "Allocation Date", "Available Digital Channel", "Channel Price" and "Successful Applicant" in this Undertaking are as defined in Part 1 of Annex Five of the Agreement.

This Undertaking does not take effect unless and until the Allocation Date occurs.

In consideration of the Principal accepting this Undertaking, the Bank unconditionally and irrevocably:

- (a) agrees to pay the Principal on written demand and subject to the terms of this document, from time to time to any sum or sums due by the Customer in connection with the Agreement which the Customer has failed to pay (each a "**Default Sum**"); and
- (b) as a separate undertaking, indemnifies the Principal subject to the terms of this document against any liability or loss arising from, and any costs, charges or expenses incurred in connection with, the Customer's failure to pay any sum or sums due by the Customer in connection with the Agreement,

to an aggregate amount not exceeding the Maximum Liability.

The Bank will pay each Default Sum (subject to the Maximum Liability) on presentation by the Principal to the Bank at its Bank Office of:

- (a) a written statement that there has been a failure to pay an amount due in connection with the Agreement in full or in part, setting out the amount of the Default Sum;
- (b) a written statement that the Principal has made demand on the Customer for the payment of the Default Sum and that the Customer has defaulted in making such payment for a period of 14 days after the Principal has made the demand, sworn under oath by an officer of the Principal; and
- (c) a request for payment by the Bank of the Default Sum or the Maximum Liability (whichever is the lesser).

The Bank will pay each Default Sum in full (subject to the Maximum Liability) to the Principal without deduction or withholding, without reference to the Customer and even if the Customer has given the Bank notice not to pay the money, and without regard to the performance or non-performance of the Customer or Principal under the terms of the Agreement.

The liabilities of the Bank under this Undertaking as a guarantor, indemnifier or principal debtor and the rights of the Principal under this Undertaking are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following: any termination, rescission, variation or assignment of the Agreement, the invalidity or unenforceability of an obligation or liability of a person other than the Bank, acquiescence, delay, acts, omissions or mistakes on the part of the Principal or any alterations or time or any other forbearance by the Principal or Customer.

Any alterations to the terms of the Agreement or any alterations of time or any other forbearance by the Principal or Customer will not impair or discharge the Bank's liability under this Undertaking.

This Undertaking remains in force until one of the following events occurs:

- (a) the Principal notifies the Bank in writing that the Undertaking is no longer required; or
- (b) the Bank has paid the Maximum Liability to the Principal; or
- (c) the Expiry Date.

Notwithstanding anything stated in this Undertaking, the Bank has the right to terminate it at any time by paying the Principal the balance outstanding from the Customer under the Agreement, or any lesser amount that the Principal may, in writing, agree.

This Undertaking is governed by the law in force in New South Wales and the Bank irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

Dated at *[insert location]* this *[insert date]*

Signed by the Bank at *[location]*

*[insert correct execution clauses]*



**Attachment C to Annex Five**  
**Auction Terms and Conditions**

**1 Appointment of Auction Manager**

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- 1.1 Telstra will appoint an Auction Manager to undertake each Auction and notify each Applicant following such appointment.

**2 Notification of the Auction**

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- 2.1 The Auction Manager will notify each Applicant in writing of:
- (a) the time and date of the first round of the Auction ("First Round");
  - (b) the Reserve Price for the relevant Available Digital Channel in the First Round;
  - (c) which of the Available Digital Channels are Contiguous Digital Channels;
  - (d) the time allocated for bidding in each round and the likely time within which results will be available after the conclusion of each round;
  - (e) the method of bidding in the Auction (for example, electronic or otherwise); and
  - (f) any further auction terms and conditions, not inconsistent with Annex Five of this Agreement, such terms and conditions deemed to constitute part of this Attachment C.
- 2.1 Where the Auction Manager uses an electronic bidding mechanism, the Customer acknowledges that it may be required to enter into a software licence agreement and may not be permitted to bid in the Auction until they have done so.

**3 Structure of the Auction**

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- 3.1 The Auction will be a simultaneous ascending multiple bid round auction, commencing with the First Round.
- 3.2 Once a bid has been made, it cannot be amended or withdrawn. The Applicant must make a bid only in the manner prescribed by the Auction Manager and must comply with this Attachment A (including any further auction terms and conditions notified under paragraph 2.1).
- 3.3 Each Auction will involve a single Available Digital Channel. Telstra will advise the Auction Manager in writing of the order in which the Available Digital Channels are to be auctioned. All Available Digital Channels within an 8 MHz Stream will typically be auctioned consecutively before any Available Digital Channels are auctioned from the next 8 MHz Stream.
- 3.4 After the First Round and at least 1 hour before the start of the subsequent round, the Auction Manager will make the following information available to each Applicant:
- (a) the amounts of the bids in the prior round including the identity of each Applicant;
  - (b) the identity of any Applicant who has notified their withdrawal from the Auction;

- (c) the time at which the next round will start; and
  - (d) the period of time for the next round.
- 3.5 The final round of the Auction will be the round at which no Applicant makes a bid or is willing to make an increased bid, or the Auction reaches its final round as notified by the Auction Manager.
- 3.6 If two or more Applicants have submitted the same bid price in the final round (or the immediately preceding round if no bids are made in the final round) ("Tie"), the Auction Manager may hold further rounds with lesser increment bids of not less than \$500 until no Applicants are willing to make an increased bid, such round being the final round.
- 3.7 If there is still a Tie following the procedure described in paragraph 3.6, then the Auction Manager will determine the Successful Applicant by lot.

#### **4 Bidding and Auction Price**

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- 4.1 During a round, each Applicant must:
- (a) notify a bid of an amount higher than the last bid of any Applicant in the prior round (and if the round is the First Round, notify a bid of an amount no lower than the Reserve Price); or
  - (b) notify a withdrawal from the Auction.
- 4.2 Each Applicant is entitled to make a single bid in each round. However, if an Applicant withdraws from the Auction, the Applicant is not entitled to participate in further rounds of that Auction.
- 4.3 An Applicant who fails to make a bid or fails to notify a withdrawal from the Auction in any round, or who makes a bid which does not comply with this Attachment C, will be contacted by the Auction Manager and asked to immediately make a complying bid or notify their withdrawal. If the Applicant still fails to make a complying bid or notify its withdrawal, the Applicant will be deemed to notify its withdrawal from the Auction.
- 4.4 Subject to paragraph 3.6, all bids must be multiples of \$10,000.
- 4.5 Each round of the Auction comprises the bidding period, during which Applicants place their bids, and the results period, during which the Auction Manager determines the bid and notifies the results of that round. The Auction Manager may vary the length of the bidding period or the results period of any round in the Auction.
- 4.6 The Auction Price will be the highest bid made by the Successful Applicant and must not be lower than the Reserve Price.
- 4.7 The Auction Manager may suspend an Auction if the Auction Manager is satisfied that in the circumstances it is appropriate to do so. Without limitation, such circumstances could include a failure or error in any auction computer system or a breach of the Auction terms and conditions that could compromise the Auction. In the event of a suspension, the Auction Manager may 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 (which may be the First Round).
- 4.8 The Customer must not (and the Customer hereby warrants and represents that it has not):

- (a) communicate in any way with any other Applicant in relation to any price it has bid, is bidding or is intending to bid (including any indication of the likely price or price range) at the Auction, or in relation to any strategy that it has pursued, is pursuing, or intends to pursue in bidding at the Auction, or any other related matters concerning the Auction; or
- (b) enter into any agreement, arrangement or understanding with any other Applicant in relation to any matters pertaining to the Auction (including the prices to be bid by any Applicant, the order of bidding, any bidding strategy, or any division of channels between Applicants).

## **5 Notification and Allocation of Available Digital Channels**

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- 5.1 After the conclusion of the final round, the Applicant who has bid the highest amount in respect of the Available Digital Channel will be the Successful Applicant for that Available Digital Channel (unless paragraph 3.7 applies).
- 5.2 Within 5 Business Days after the final round (or determination under paragraph 3.7), the Auction Manager (or Telstra) will notify the Successful Applicant (copied to Telstra) of:
  - (a) the fact that it is the Successful Applicant;
  - (b) the details of the Available Digital Channel which has been allocated to it; and
  - (c) the Auction Price for that Available Digital Channel,the date of such notification being the Notification Date.
- 5.3 Within 5 Business Days after the final round (or determination under paragraph 3.7), the Auction Manager will use reasonable endeavours to notify each Applicant other than the Successful Applicant of:
  - (a) the fact that they are not the Successful Applicant;
  - (b) the details of the Successful Applicant in respect of the Available Digital Channel; and
  - (c) the Auction Price for the Available Digital Channel.