

Auction Rules

Rules and procedures for the allocation of excess capacity access entitlements to Content Service Providers

Digital Radio Broadcasting Sydney Pty Ltd

Webb Henderson
Legal and Regulatory Advisors

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Background

- (a) The JVC is the holder of a Foundation Category 1 Digital Radio Multiplex Transmitter Licence in the Designated BSA Radio Area.
- (b) The Radiocommunications Act 1992 (**Radiocommunications Act**) governs the process by which the JVC must allocate Excess-Capacity Access Entitlements to Content Service Providers in the Designated BSA Radio Area.
- (c) On 28 August 2009, pursuant to section 118NT(2) of the Radiocommunications Act, the JVC sought to ascertain the level of demand for Excess-Capacity Access Entitlements from Content Service Providers in the Designated BSA Radio Area (**Consultation Process**).
- (d) The interest expressed by Content Service Providers in the Designated BSA Radio Area during the Consultation Process revealed that indicative demand for Excess-Capacity Access Entitlements outweighed supply, thereby obliging the JVC to allocate Excess-Capacity Access Entitlements through an open and transparent auction process.
- (e) These Auction Rules set out the rules and processes through which the JVC will conduct the Auction and allocate Excess-Capacity Access Entitlements in the Designated BSA Radio Area.

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in clause 1 of Schedule 1 (**Dictionary**) has the meaning given to it in Schedule 1 (**Dictionary**);
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

1.2 Interpretation

The interpretation clause set out in clause 2 of Schedule 1 (**Dictionary**) sets out rules of interpretation for these Auction Rules.

2 Prior to the auction – registration

2.1 Eligibility criteria

A person may only register to participate in the Auction in the Designated BSA Radio Area if that person is one of the following in the Designated BSA Radio Area:

- (a) an Incumbent Digital Commercial Radio Broadcasting Licensee;
 - (b) the holder of a Digital Community Broadcasting Licence; or
 - (c) the holder of a Restricted Datacasting Licence,
- (each an **Eligible Person**).

2.2 Registration by Eligible Persons

- (a) If an Eligible Person (**Applicant**) wishes to participate in the Auction in the Designated BSA Radio Area, the Applicant must register with the Auction Manager as an auction participant by:
 - (i) submitting the following documents to the Auction Manager:
 - A. a completed Registration Form, as set out in Schedule 2;
 - B. a completed Form of Authority, as set out in Schedule 3;
 - C. a completed Deed of Acknowledgement, as set out in Schedule 4; and
 - D. a completed Deed of Undertaking to provide Financial Security, as set out in Schedule 5,

(together the **Registration Documents**)
 - (ii) paying the following to the Auction Manager:
 - A. the entry fee, as set out in Schedule 6; and
 - B. the Financial Security, as set out in Schedule 6.

(together the **Registration Fees**).
- (b) For the avoidance of doubt, where two or more Applicants in a Designated BSA Radio Area are Related Bodies Corporate, each of those Applicants must lodge separate Registration Documents and Registration Fees with the Auction Manager.

2.3 Form of Authority

- (a) The Applicant must nominate a person to bid on behalf of the Applicant during the Auction by completing the Form of Authority set out in Schedule 3, except where clause 2.4 applies.
- (b) The person nominated by the Applicant to bid at the auction must be either:
 - (i) a director, officer or employee of the Applicant (**Applicant Representative**);
or
 - (ii) a third party representative that is authorised to bid on behalf of the Applicant, such as a legal or financial advisor (**Third Party Representative**),

(each an **Authorised Representative**).

- (c) The Authorised Representative will:
 - (i) represent the Applicant during the auction process;
 - (ii) be authorised by the Applicant:
 - A. to bid on behalf of the Applicant for Excess Capacity Lots;
 - B. bind the Applicant through their actions during the Auction; and
 - C. perform any other activities that are reasonably related to the Applicant's participation in the auction process.
- (d) In the Form of Authority, the Applicant must also specify whether the Authorised Representative will bid:
 - (i) in person at the Auction; and / or
 - (ii) by telephone (**Telephone Bidder**).
- (e) An Applicant may nominate more than one person as an Authorised Representative, provided that there is only one Authorised Representative acting on behalf of the Applicant at any given time during the Auction. For the avoidance of doubt, if an Applicant nominates more than one person as an Authorised Representative pursuant to this clause 2.3(e), those Authorised Representatives may be a combination of Telephone Bidders and persons that will bid in person at the Auction.
- (f) The Applicant must not nominate a Third Party Representative without the prior written consent of that Third Party Representative.

2.4 Absentee Bids

- (a) The Applicant does not need to lodge a Form of Authority (and clause 2.3 does not apply) if the Applicant wishes to lodge an Absentee Bid during the Auction.
- (b) If the Applicant wishes to lodge an Absentee Bid during the Auction, the Applicant must:
 - (i) indicate that it wishes to lodge an Absentee Bid in the Registration Form; and
 - (ii) prior to the commencement of the Auction (and subject to the Applicant becoming a Registered Bidder pursuant to clause 2.5) , provide the Auction Manager with the following details:
 - A. the Excess Capacity Lots in respect of which the Applicant wishes to submit an Absentee Bid; and
 - B. the maximum price that the Applicant wishes to bid for those Excess Capacity Lots.

2.5 Acceptance Notice / Rejection Notice

- (a) Upon receipt of the Registration Documents and Registration Fees, the Auction Manager will, via e-mail to the e-mail address specified in the Applicant's Registration Form, inform the Applicant that the Registration Documents and Registration Fees have either been:
 - (i) accepted, in which case the JVCs will also provide the following information:
 - A. if the Applicant has indicated that its Authorised Representative will bid in person, the Applicant's unique buyer number, which will be issued to the Authorised Representative on the day of the auction on a bidding paddle; and / or
 - B. if the Applicant has indicated that its Authorised Representative will bid by telephone, the Applicant's unique buyer number and password,

(Acceptance Notice),

- (ii) rejected on one or more of the following grounds:
 - A. the Registration Form is incomplete or inaccurate;
 - B. the Registration Fees have not been satisfied in full;
 - C. the Applicant is not an Eligible Person

(Rejection Notice).

- (b) If an Applicant receives an Acceptance Notice in accordance with clause 2.5(a)(i), the Applicant will become registered for the purpose of participating in the Auction (**Registered Bidder**).
- (c) If an Applicant receives a Rejection Notice in accordance with clause 2.5(a)(ii)A or 2.5(a)(ii)B (as the case may be), the Applicant may re-submit their Registration Documents or Registration Fees either:
 - (i) before the date of the Auction; or
 - (ii) on the day of the Auction, provided that it does so prior to the commencement of the auction,subject to the approval of the Auction Manager.
- (d) The Applicant will become registered for the purpose of participating in the Auction if the Auction Manager provides its approval pursuant to clause 2.5(c) (**Registered Bidder**).

2.6 Register of Registered Bidders

- (a) The Auction Manager will maintain a list of Registered Bidders (**Register**) for the purposes of conducting the Auction.

- (b) Except as authorised by these Auction Rules, or as otherwise authorised by law, JVCs and the Auction Manager will ensure that any details about Registered Bidders are kept confidential.
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3 Auction parameters – key aspects

3.1 Auction format

- (a) The Auction will be conducted using an open sequential ascending auction format (i.e. English open-cry).
- (b) The key features of the auction format include the following:
 - (i) Excess Capacity Lots will be auctioned one at a time in a sequential manner;
 - (ii) Registered Bidders will be invited to bid openly against each other for each Excess Capacity Lot by lodging a bid that is higher than the opening bid or previous bid (as the case may be) by a specified increment set by the Auction Manager; and
 - (iii) if the final bid by a Registered Bidder in respect of an Excess Capacity Lot:
 - A. equals or exceeds the Reserve Price, that Excess Capacity Lot subject will be sold to the highest bidder; and
 - B. does not equal or exceed the Reserve Price, that Excess Capacity Lot will be passed in.

3.2 Reserve Price

- (a) Excess Capacity Lots may have a Reserve Price (**Reserve Price**).
- (b) If Excess Capacity Lots have a Reserve Price, that Reserve Price will be notified to all Registered Bidders prior to the date of the Auction.

3.3 Time, date and place of the Auction

- (a) The auction for the Excess Capacity Lots will take place on Friday, 27 November 2009.
- (b) The auction will take place at 7 Anderson Street, Double Bay NSW 2028 (**Auction Venue**) and will comprise:
 - (i) pre-auction screening phase between 11am and 12pm, Sydney time, (or such other period as may be determined by the Auction Manager on the day); and
 - (ii) auction phase, commencing at 12pm, Sydney time, (or such other period as may be determined by the Auction Manager on the day) and continuing until such time as each Excess Capacity Lot is successfully auctioned or passed in (as the case may be).

3.4 Excess Capacity Lots to be made available in the Designated BSA Radio Area

The following table sets out the number and size of the Excess Capacity Lots that will be made available to Registered Bidders during the Auction in the Designated BSA Radio Area, as well as the excess capacity lots to be auctioned in Other Designated BSA Radio Areas in conjunction with the Auction (**Excess Capacity Lots**):

Designated BSA Radio Area / Multiplex	Available Spectrum	32 Kbps lot	64 Kbps lot
Adelaide	128 Kbps	32 Kbps x 4	None
Brisbane 9A	384 Kbps	32 Kbps x 8	64 Kbps x 2
Brisbane 9B	384 Kbps	32 Kbps x 8	64 Kbps x 2
Melbourne 9A	256 Kbps	32 Kbps x 8	None
Melbourne 9B	128 Kbps	32 Kbps x 4	None
Perth	128 Kbps	32 Kbps x 4	None
Sydney 9A	256 Kbps	32 Kbps x 8	None
Sydney 9B	128 Kbps	32 Kbps x 4	None

3.5 Sequencing of Excess Capacity Lots

- (a) The Auction for the Designated BSA Radio Area will be conducted in conjunction with auctions for excess capacity lots in Other Designated BSA Radio Areas.
- (b) The following table sets out the sequence in which the Excess Capacity Lots will be auctioned on the Auction Date across the various Designated BSA Radio Areas:

Lot Number	Designated BSA Area	Channel	Excess Capacity Lot
1	Brisbane	9A	64 Kbps
2	Brisbane	9A	64 Kbps
3	Brisbane	9A	32Kbps
4	Brisbane	9A	32Kbps
5	Brisbane	9A	32Kbps
6	Brisbane	9A	32Kbps
7	Brisbane	9A	32Kbps
8	Brisbane	9A	32Kbps
9	Brisbane	9A	32Kbps

Lot Number	Designated BSA Area	Channel	Excess Capacity Lot
10	Brisbane	9A	32Kbps
11	Brisbane	9B	64 Kbps
12	Brisbane	9B	64 Kbps
13	Brisbane	9B	32Kbps
14	Brisbane	9B	32Kbps
15	Brisbane	9B	32Kbps
16	Brisbane	9B	32Kbps
17	Brisbane	9B	32Kbps
18	Brisbane	9B	32Kbps
19	Brisbane	9B	32Kbps
20	Brisbane	9B	32Kbps
21	Melbourne	9A	32 K bps
22	Melbourne	9A	32 Kbps
23	Melbourne	9A	32 Kbps
24	Melbourne	9A	32 Kbps
25	Melbourne	9A	32 K bps
26	Melbourne	9A	32 Kbps
27	Melbourne	9A	32 Kbps
28	Melbourne	9A	32 Kbps
29	Melbourne	9B	32Kbps
30	Melbourne	9B	32Kbps
31	Melbourne	9B	32Kbps
32	Melbourne	9B	32Kbps
33	Sydney	9A	32 Kbps
34	Sydney	9A	32 Kbps
35	Sydney	9A	32 Kbps
36	Sydney	9A	32 Kbps
37	Sydney	9A	32 Kbps
38	Sydney	9A	32 Kbps

Lot Number	Designated BSA Area	Channel	Excess Capacity Lot
39	Sydney	9A	32 Kbps
40	Sydney	9A	32 Kbps
41	Sydney	9B	32 Kbps
42	Sydney	9B	32 Kbps
43	Sydney	9B	32 Kbps
44	Sydney	9B	32 Kbps
45	Perth	N/A	32 Kbps
46	Perth	N/A	32 Kbps
47	Perth	N/A	32 Kbps
48	Perth	N/A	32 Kbps
49	Adelaide	N/A	32 Kbps
50	Adelaide	N/A	32 Kbps
51	Adelaide	N/A	32 Kbps
52	Adelaide	N/A	32 Kbps

3.6 Capacity Cap on Incumbent Digital Commercial Radio Broadcasters

- (a) Pursuant to section 118NV of the Radiocommunications Act, Incumbent Digital Commercial Radio Broadcasters are not entitled to access to more than 2 x 128Kbps of Multiplex Capacity in the Designated BSA Radio Area (**Capacity Cap**).
- (b) The total amount of Excess Capacity Lots acquired by an Incumbent Digital Commercial Radio Broadcaster in the Designated BSA Radio Area during the Auction must not, when added to the total amount of Standard Access Entitlements held by that Incumbent Digital Commercial Radio Broadcaster in the Designated BSA Radio Area, exceed the Capacity Cap.
- (c) An Incumbent Digital Commercial Radio Broadcaster must not bid for Excess Capacity Lots in a way that would result in breach of the Capacity Cap.
- (d) If an Incumbent Digital Commercial Radio Broadcaster is the Successful Bidder in respect of one or more Excess Capacity Lots that exceed the Capacity Cap, that Incumbent Digital Commercial Radio Broadcaster:
 - (i) will not be entitled to acquire the Excess Capacity Lots that exceed the Capacity Cap; and
 - (ii) will forfeit the amount of Financial Security; and

- (iii) must pay the JVC or the Auction Manager (as the case may be) the difference between the Financial Security and the total amount of fees charged by the Auction Manager to conduct the auction in respect of the Designated BSA Radio Area and Other Designated BSA Radio Areas (**Additional Fees**).
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4 Participation in auction

4.1 Verification of Authorised Representative

- (a) Each Authorised Representative must confirm their identity prior to the commencement of the Auction, during the pre-auction screening phase referred to in clause 3.3(b)(i).
- (b) If the Authorised Representative is:
 - (i) to bid in person, that person must present themselves at the Auction Venue prior to the commencement of the auction and provide:
 - A. the buyer number for the Registered Bidder; and
 - B. an Australian drivers licence, passport or other form of identification acceptable to the Auction Manager to enable the Auction Manager to verify the person's identity,following which the Auction Manager will issue the Authorised Representative with bidding paddle marked with Registered Bidder's buyer number (or other appropriate reference); and
 - (ii) a Telephone Bidder, the Auction Manager will contact the Telephone Bidder during the pre-auction screening phase (or any other reasonable time prior to the commencement of the Auction) to verify the identity of that Telephone Bidder by requesting one or more of the following:
 - A. the buyer number for the Registered Bidder; and
 - B. their password,following which the Auction Manager will provide the Telephone Bidder with the necessary information and facilities to enable the Telephone Bidder to participate in the auction.

4.2 Replacement of Authorised Representative on day of the Auction

- (a) If a Registered Bidder wishes to replace an Authorised Representative on the day of the Auction with another person that is not an Authorised Representative, the Auction Manager must be provided with a completed Form of Authority for that other person prior to the commencement of the Auction.
- (b) The Auction Manager may either:

- (i) accept the Form of Authority submitted under clause 4.2(a), in which case the person nominated in the Form of Authority will become an Authorised Representative of the Registered Bidder; or
- (ii) reject the Form of Authority submitted under clause 4.2(a) if:
 - A. the Form of Authority is incomplete or inaccurate; or
 - B. the Form of Authority is submitted at a time that, in the opinion of the Auction Manager, is unreasonably close to the commencement time of the Auction.

4.3 Auction Manager responsible for conducting the Auction

- (a) The Auction Manager will be responsible for conducting the Auction.
- (b) The Auction Manager may:
 - (i) start the bidding in respect of an Excess Capacity Lot at any figure that the Auction Manager thinks fit; and
 - (ii) set any minimum bidding increment in respect of an Excess Capacity Lot that the Auction Manager thinks fit,by giving verbal notice to Authorised Representatives during the Auction.
- (c) The Auction Manager may, during the course of the Auction, accept or reject any bids for an Excess Capacity Lot made by a Registered Bidder that the Auction Manager thinks fit.

4.4 Bidding by Authorised Representatives

- (a) Except where a Registered Bidder has lodged an Absentee Bid, only Authorised Representatives may bid for an Excess Capacity Lot on behalf of Registered Bidders at the Auction.
- (b) An Authorised Representative may bid on behalf of a Registered Bidder for an Excess Capacity Lot by:
 - (i) where:
 - A. the Authorised Representative is bidding in person, by raising their paddle to the Auction Manager; and
 - B. the Authorised Representative is a Telephone Bidder, by complying with the procedure specified by the Auction Manager in accordance with clause 4.1(b)(ii), and
 - (ii) improving on the starting bid price or previous bid price (as the case may be) by the increment specified by the Auction Manager.
- (c) For the avoidance of doubt, where the Authorised Representative:

- (i) is bidding in person, that Authorised Representative may use a public telecommunications service to communicate with the Applicant during the Auction, including but not limited exchanging information about the Auction and determining whether (and the amount) to bid in the Auction; and
- (ii) is a Telephone Bidder, the Telephone Bidder will be represented in the Auction Venue by a representative of the Auction Manager (or another person authorised by the Auction Manager), which will participate in the Auction on behalf of the Telephone Bidder.

4.5 Identifying the Successful Bidder

- (a) If the highest bid made for an Excess Capacity Lot is:
 - (i) at least equal to the Reserve Price for the Excess Capacity Lot, the Registered Bidder who made the highest bid will be the successful bidder for that Excess Capacity Lot (**Successful Bidder**); and
 - (ii) lower than the Reserve Price for the Excess Capacity Lot, then that Excess Capacity Lot will not be allocated to a Registered Bidder (i.e. the Excess Capacity Lot will be passed in).
- (b) For the avoidance of doubt, the Auction Manager will take account of any Absentee Bids given by a Registered Bidder when determining the highest bid made for an Excess Capacity Lot.

4.6 Calculation of Bid Price and issuance of an Invoice to Successful Bidders

- (a) The Auction Manager will, following the completion of the Auction, provide each Successful Bidder with written notice of the following:
 - (i) a description of the Excess Capacity Lot(s) acquired by the Successful Bidder during the Auction (including the size of the Excess Capacity Lot and the Designated BSA Radio Area and channel (i.e. 9A or 9B));
 - (ii) the final amount payable for the Excess Capacity Lot(s) acquired by the Successful Bidder during the Auction (**Bid Price**); and
 - (iii) the means by which the Successful Bidder may pay the Bid Price, (**Invoice**).
- (b) In calculating the Bid Price for an Excess Capacity Lot, the Auction Manager will calculate the amount payable by using the highest bid made by the Successful Bidder during the Auction for the relevant Excess Capacity Lot(s).
- (c) For the avoidance of doubt, if a Successful Bidder has acquired more than one Excess Capacity Lot during an Auction, the Auction Manager may provide a single Invoice to cover all those Excess Capacity Lots.

4.7 Disputes

(a) If, during the bidding for allocation of Excess Capacity Lots, a dispute arises in respect of:

- (i) a bid (or series of bids);
- (ii) whether a person is entitled to bid; or
- (iii) the conduct of the Auction,

the Auction Manager may decide the dispute and may, either:

- (iv) continue the auction;
- (v) re-start the bidding at a figure lower than the amount of the disputed bid; or
- (vi) take such other action as may be reasonable in the circumstances.

(b) A decision under clause 4.7 by the Auction Manager is final and may not be challenged by an Authorised Representative or a Registered Bidder

5 Allocation of Excess Capacity Lots

5.1 Payment of Bid Price

(a) The Successful Bidder must pay the Bid Price (as set out in the Invoice) to the Auction Manager within 30 days of the date of completion of the auction (**Due Date**).

(b) All payments of the Bid Price must:

- (i) be paid without any set-off or counter-claim and free of any withholding or deduction, except where agreed otherwise with the Auction Manager or JVC (as the case may be);
- (ii) paid by electronic funds transfer directly to the nominated account of the Auction Manager, or as otherwise specified in the Invoice; and
- (iii) include such details as may be required by the Auction Manager (as described in the Invoice or otherwise communicated to the Successful Bidder) to enable the Auction Manager to identify, track and correctly allocate the payment of the Bid Price (i.e. buyer number).

(c) Payments are deemed to be received on the date of receipt by the Auction Manager, unless the payment is subsequently dishonored, in which case payment is deemed not to have been received until cleared funds are received by the Auction Manager together with all dishonor fees and charges that are payable.

(d) The Successful Bidder must pay all bank charges and government imposed duties in respect of the transfer, and a payment will not be regarded as having been

made unless the full net amount of any charges is received by the Auction Manager.

5.2 GST exclusive

- (a) Any consideration or amount payable under these Auction Rules, including the entry fee, Financial Security, Bid Price and any non-monetary consideration (as reduced in accordance with clause 5.2(e), if required)(**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with these Auction Rules, an additional amount (**Additional Amount**) is payable by the person providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the person making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 5.2(b) is payable without set off, demand or deduction at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice within 14 days after the time of payment of the Additional Amount.
- (d) If for any reason (including, without limitation, the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 5.2(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in these Auction Rules:
 - (i) if an amount payable under or in connection with these Auction Rules (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a person, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that person is entitled in respect of that Amount Incurred; and
 - (ii) no Additional Amount is payable under clause 5.2(b) in respect of a Supply to which section 84-5 of the GST Law applies.

- (f) Any reference in this clause to an Input Tax Credit to which a person is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that person but to which the Representative Member of a GST Group of which the person is a member is entitled.

5.3 Excess Capacity Term

- (a) An Excess Capacity Lot will become an Excess-Capacity Access Entitlement on the date that the Successful Bidder pays the Bid Price for that Excess Capacity Lot in accordance with clause 5.1 (**Commencement Date**).
- (b) Subject to clause 5.3(e), the Successful Bidder will be entitled to access the Excess-Capacity Access Entitlement:
 - (i) from the Commencement Date; and
 - (ii) if, the Successful Bidder:
 - A. is an Incumbent Digital Commercial Radio Broadcasting Licensee, for such time as that entity continues to hold a Commercial Radio Broadcasting Licence (as may be amended, renewed or replaced from time to time);
 - B. is the holder of a Digital Community Radio Broadcasting Licence, for such time as that entity continues to hold a Community Radio Broadcasting Licence (as may be amended, renewed or replaced from time to time); or
 - C. is the holder of a Restricted Datacasting Licence, for such time as that entity continues to hold a Restricted Datacasting Licence (as may be amended, renewed or replaced from time to time),

until such time as the Successful Bidder transfers the Excess-Capacity Access Entitlement to another Content Service Provider pursuant to section 118NT(7)(c) of the Radiocommunications Act, in which case:

- (iii) the Successful Bidder will cease to be entitled to access the Excess-Capacity Access Entitlement on the date of such transfer; and
- (iv) the Content Service Provider to whom the Excess-Capacity Access Entitlement is transferred will become entitled to access the Excess-Capacity Access Entitlement from the date of such transfer

(Excess Capacity Term).

- (c) If a Excess-Capacity Access Entitlement is transferred pursuant to section 118NT(7)(c) of the Radiocommunications Act, the Content Service Provider to whom that Excess-Capacity Access Entitlement is transferred will be entitled to access the Excess-Capacity Access Entitlement for such time as that entity continues to hold a Commercial Radio Broadcasting Licence, Community Radio Broadcasting Licence or Restricted Datacasting Licence (as the case may be), until transferred to another Content Service Provider pursuant to section 118NT(7)(c) of the Radiocommunications Act.

- (d) The JVC will supply the Successful Bidder (and any Content Service Provider to whom an Excess-Capacity Access Entitlement is transferred) with access to the Excess-Capacity Access Entitlement pursuant to the Access Agreement between the JVC and the Successful Bidder (or the Content Service Provider to whom an Excess-Capacity Access Entitlement is transferred).
- (e) For the avoidance of doubt:
 - (i) the Successful Bidder (and any Content Service Provider to whom an Excess-Capacity Access Entitlement is transferred) will not be entitled to access any Excess-Capacity Access Entitlement unless that entity has executed an Access Agreement with the JVC; and
 - (ii) nothing in this clause 5.3 obliges the JVC to provide access to an Excess-Capacity Access Entitlement in a manner that is inconsistent with the Radiocommunications Act, the ACCC Access Undertaking or an Access Agreement, or where to do so would result in a breach of the Radiocommunications Act, the ACCC Access Undertaking or an Access Agreement.

5.4 Default of payment by a Successful Bidder

- (a) If the Successful Bidder fails to pay the full amount of the Bid Price by the Due Date (**Defaulting Bidder**):
 - (i) the Excess Capacity Lot in respect of which the default has occurred will not become an Excess-Capacity Access Entitlement (as contemplated under clause 5.3(a), unless it is subsequently allocated to the second highest bidder in accordance with this clause 5.4);
 - (ii) the Defaulting Bidder will forfeit the Financial Security and will be liable to pay the Additional Fees to the JVC or the Auction Manager (as the case may be) on written request; and
 - (iii) the JVC will offer the Excess Capacity Lot to the Registered Bidder that lodged the second highest bid during the Auction for that Excess Capacity Lot, provided that the second highest bid is at least equal to the Reserve Price for that Excess Capacity Lot (or the second highest bidder is willing to meet the Reserve Price where the second highest bid is below that Reserve Price) and the acquisition of that Excess Capacity Lot by the second highest bidder would not result in a breach of the Capacity Cap.
- (b) If the second highest bidder for an Excess Capacity Lot agrees to acquire that Excess Capacity Lot (as contemplated under clause **Error! Reference source not found.**), the second highest bidder must pay either:
 - (i) if the second highest bid price is at least equal to the Reserve Price for that Excess Capacity Lot, the second highest bid price; or
 - (ii) if the second highest bid price is below the Reserve Price for the Excess Capacity Lot, the Reserve Price,

within 30 days of the date on which the JVC offers the Excess Capacity Lot to the second highest bidder (or such other date as may be specified by the JVC or the Auction Manager)

- (c) Nothing in this clause 5.4 affects any rights that the JVC may have under these Auction Rules, the Form of Authority, Deed of Acknowledgement, the Deed of Undertaking to provide Financial Security or at law to take action against the Defaulting Bidder to recover all or part of the Bid Price as a debt that is due and owing to the JVC.

5.5 Unallocated Excess Capacity Lots

If:

- (a) the highest bid for an Excess Capacity Lot fails to meet the Reserve Price (i.e. it is passed in);
- (b) the Successful Bidder fails to pay the full amount of the Bid Price by the Due Date pursuant to clause 5.4(a)(i);
- (c) the second highest bidder does not accept the offer of the Excess Capacity Lot pursuant to clause 5.4(a)(iii);
- (d) the second highest bidder fails to pay for the Excess Capacity Lot pursuant to clause 5.4(b); or
- (e) an Excess Capacity Lot is not otherwise allocated at the Auction (i.e. it is passed in) for any other reason,

then that Excess Capacity Lot:

- (f) will be treated as unallocated (**Unallocated Excess Capacity Lot**); and
- (g) may be auctioned by the JVC at a later date in accordance with section 118NT(1)(b) and 118NT(3) of the Radiocommunications Act and any auction rules developed for that subsequent auction.

5.6 Refund of Financial Security

Except where:

- (a) a Financial Security is forfeited pursuant to clause 3.6(d)(ii) or 5.4(a)(ii); or
- (b) there is a set-off of the Bid Price against the Financial Security already paid by the Successful Bidder,

the Auction Manager will refund the Financial Security to each Registered Bidder as soon as reasonably practicable after the Auction is completed.

Schedule 1 – Dictionary

1 Defined terms

Absentee Bid means the highest bid for an Excess Capacity Lot notified to the Auction Manager by a Registered Bidder who will not participate in the Auction in person or as a Telephone Bidder.

ACCC Access Undertaking means the digital radio access undertaking approved by the ACCC on 23 April 2009 pursuant to section 118NF(5) of the Radiocommunications Act, as may be amended from time to time.

Acceptance Notice has the meaning given to it in clause 2.5(a).

Access Agreement means the access agreement between a JVC and a Successful Bidder, made pursuant to the ACCC Access Undertaking.

Additional Amount has the meaning given to it in clause 5.2(b).

Additional Fees has the meaning given to it in clause 3.6(d)(iii).

Amount Incurred has the meaning given to it in clause 5.2(e)(i).

Applicant has the meaning given to it in clause 2.2(a).

Applicant Representative has the meaning given to it in clause 2.3(b)(i).

Auction Manager means the person appointed by the JVCs to manage and perform the auction of Excess Capacity Lots pursuant to these Auction Rules.

Auction means the auction for Excess Capacity Lots in the Designated BSA Radio Area contemplated by these Auction Rules.

Auction Rules means these auction rules, including the main body and all schedules and attachments.

Auction Venue has the meaning given to it 3.3(b).

Authorised Representative has the meaning given to it in clause 2.3(b) .

Bid Price has the meaning given to it in clause 4.6(a)(ii).

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open generally for business in Sydney.

Capacity Cap has the meaning given to it in clause 3.6(a).

Commencement Date has the meaning given to it in clause 5.3(a).

Commercial Radio Broadcasting Licence has the same meaning given to it in the Broadcasting Services Act 1992.

Community Radio Broadcasting Licence has the same meaning given to it in the Broadcasting Services Act 1992.

Consideration has the meaning given to it in clause 5.2(a).

Consultation Process has the meaning given to it in the 'Background' clause.

Content Service has the meaning given to it in section 118NB of the Radiocommunications Act.

Content Service Provider has the meaning given to it in section 118NB of the Radiocommunications Act.

Deed of Acknowledgement means the deed set out in Schedule 4 of the Auction Rules.

Deed of Undertaking to provide Financial Security means the deed set out in Schedule 5 of the Auction Rules.

Defaulting Bidder has the meaning given to it in clause 5.4(a).

Designated BSA Radio Area has the meaning given to it in section 5 of the Radiocommunications Act and for the purposes of these Auction Rules means the capital city in which the JVC holds a Foundation Category 1 Digital Radio Multiplex Transmitter Licence.

Digital Commercial Radio Broadcasting Licence has the meaning given to it in section 5 of the Radiocommunications Act.

Digital Commercial Radio Broadcasting Service has the meaning given to it in section 5 of the Radiocommunications Act.

Digital Community Broadcasting Licence has the meaning given to it in section 5 of the Radiocommunications Act.

Digital Community Broadcasting Service has the meaning given to it in the Broadcasting Services Act 1992.

Due Date has the meaning given to it in clause 5.1(a).

Eligible Person has the meaning given to it in clause 2.1.

Excess-Capacity Access Entitlement has the meaning given to it in section 118NB of the Radiocommunications Act.

Excess Capacity Lot has the meaning given to it in clause 3.4.

Excess Capacity Term has the meaning given to it in clause 5.3(b).

Form of Authority means the form set out in Schedule 3 of the Auction Rules.

Foundation Category 1 Digital Radio Multiplex Transmitter Licence has the meaning given to it in section 98C of the Radiocommunications Act.

Foundation Category 2 Digital Radio Multiplex Transmitter Licence has the meaning given to it in section 98D of the Radiocommunications Act.

Incumbent Digital Commercial Radio Broadcasting Licensee has the meaning given to it in section 9D(1) of the Radiocommunications Act.

Invoice has the meaning given to it in clause 4.6.

JVC means Digital Radio Broadcasting Sydney Pty Ltd (ACN 128 742 978).

Multiplex Capacity has the meaning given to it in section 118NB of the Radiocommunications Act.

Other Designated BSA Radio Areas means a Designated BSA Radio Area other than the Designated BSA Radio Area in which the JVC holds a Foundation Category 1 Digital Radio Multiplex Transmitter Licence.

Recipient has the meaning given to it in clause 5.2(b).

Register has the meaning given to it in clause 2.6(a).

Registered Bidder has the meaning given to it in clause 2.5(b) or 2.5(d) (as the context requires).

Registration Documents has the meaning given to it in clause 2.2(a)(i).

Registration Fees has the meaning given to it in clause 2.2(a)(ii), and as set out in Schedule 6 of the Auction Rules.

Registration Form means the form set out in Schedule 2 of the Auction Rules.

Reserve Price means the minimum price at which an Excess Capacity Lot may be sold at the Auction, as determined in accordance with clause 3.2(a).

Restricted Datacaster means a person that holds a Restricted Datacasting Licence.

Restricted Datacasting Licence has the meaning given to it in the Broadcasting Services Act 1992.

Rejection Notice has the meaning given to it in clause 2.5(a)(ii).

Standard Access Entitlement has the meaning given to it in section 118NB of the Radiocommunications Act.

Successful Bidder has the meaning given to it in clause 4.5(a)(i).

Supplier has the meaning given to it in clause 5.2(b).

Telephone Bidder has the meaning given to it in clause 2.3(d)(ii).

Third Party Representative has the meaning given to it in clause 2.3(b)(ii).

Unallocated Excess Capacity Lot has the meaning given to it in clause 5.5.

2 Interpretation

In these Auction Rules, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of these Auction Rules
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) 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;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a Person includes its successors and permitted assigns;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, person, schedule or attachment is a reference to a clause or term of, or Person, schedule or attachment to these Auction Rules;
 - (vi) these Auction Rules includes all schedules and attachments to it;
 - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, or a clause of an applicable stock exchange or financial market and is a reference to that law as amended, consolidated or replaced;
 - (viii) a monetary amount is in Australian dollars;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (h) in determining the time of day, where relevant to these Auction Rules, the relevant time of day is:
 - (i) for the purposes of giving or receiving notices, the time of day where a person receiving a notice is located; or
 - (ii) for any other purpose under these Auction Rules, the time of day in the place where the person required to perform an obligation is located.

Schedule 2 – Registration Form

1 Instructions for completion

- (a) Before completing this Registration Form, please ensure you understand the conditions under which Excess Capacity Lots will be allocated.
- (b) You should understand the provisions contained in:
 - (i) the Auction Guide; and
 - (ii) the Auction Rules.
- (c) We recommend that you seek legal and financial advice before participating at the auction.
- (d) A completed Registration Form must be submitted, together with:
 - (i) a completed Form of Authority set out in Schedule 3;
 - (ii) a completed Deed of Acknowledgement set out in Schedule 4;
 - (iii) a completed Deed of Undertaking to provide Financial Security set out in Schedule 5;
 - (iv) the Entry Fee set out in Schedule 6; and
 - (v) the Financial Security set out in Schedule 6,

2 Submission of Registration Documents and Registration Fees

2.1 Time and date of lodgement of Registration Documents and Registration Fees

The Applicant must submit the Registration Documents and Registration Fees to the Auction Manager **no later than 5:00pm on Thursday, 26 November 2009** (or such other time as may be agreed between the Applicant and the Auction Manager, provided that any such time is no later than the time of commencement of the Auction, as described in clause 3.3(b)(ii) of the Auction Rules).

2.2 Lodgement must occur via e-mail to Auction Manager

The Registration Documents (and written evidence of payment of the Registration Fees) must be submitted to the Auction Manager via e-mail to suzanne.brett@bonhamsandgoodman.com.au

2.3 Means of payment of Entry Fee

- (a) The amount of the Entry Fee is set out in Schedule 6 (**Registration Fees**).
- (b) The Entry Fee must be paid through one of the following means:
 - (i) by direct deposit into the following bank account:

Institution: ANZ Bank
Account Name: First East Auction Holding P/L trading as Bay East Auctions
Account Number: 2602 79327
BSB Number: 012 281

(ii) by cheque made out to 'First East Auction Holding P/L trading as Bay East Auctions'.

(c) The Entry Fee is mandatory and not refundable.

2.4 Provision of Financial Security

(a) The amount of the Financial Security is set out in Schedule 6 (**Registration Fees**).

(b) The Financial Security must be provided to the Auction Manager through any of the means specified in clause 3(b) of Schedule 5 (**Deed of Undertaking to provide Financial Security**).

(c) The Entry Fee is mandatory and is refundable in accordance with clause 5.6 of the Auction Rules.

3 Registration Form

Applicant details	Company Name: ABN: Registered Address:
Primary contact person	Name: Phone Number (fixed): Phone Number (mobile):

	Facsimile: E-mail: [Note: Official communications in respect of the Auction will be sent to this email address]
Applicant's Licence Number	[Note: Please insert the licence number of your Incumbent Digital Commercial Radio Broadcasting Licence, Digital Community Radio Broadcasting Licence or Restricted Datacasting Licence (as the case may be)]
Does the Applicant wish to submit an Absentee Bid?	Yes / No

4 Authorisation of registration

The Applicant acknowledges that, by signing this Registration Form and submitting the Registration Document and the Registration Fees, the Applicant will, upon acceptance of the Registration Document and confirmation of payment of the Registration Fees by the Auction Manager, be authorised to participate in the Auction in the Designated BSA Radio Area.

Signed by **[insert name of signatory]** as authorised signatory for **[insert name of Applicant]** in the presence of:

Signature of witness

Signature of **[authorised signatory]**

Name of witness (print)

Date:

Schedule 3 – Form of Authority

1 Instructions for completion

- (a) Persons completing this Form of Authority should read the Auction Rules and, if necessary, seek appropriate advice.
 - (b) The Authority confers certain powers and obligations on the Authorised Representatives, which they must clearly understand before completion.
 - (c) A duly executed copy of this Form of Authority must be submitted at the same time as other Registration Documents to suzanne.brett@bonhamsandgoodman.com.au
-

2 Purpose

The purpose of this Form of Authority is for the Applicant to authorise, either:

- (a) an employee of the Applicant (**Applicant Representative**);
- (b) a third party representative that is authorised to bid on behalf of the Applicant, such as a legal advisor (**Third Party Representative**),

(each an **Authorised Representative**)

to represent and act on behalf of the Applicant during the Auction in the Designated BSA Radio Area.

3 Authorisation

The Applicant hereby authorises the nominated Authorised Representative to represent and act on behalf of the Applicant during the Auction in the Designated BSA Radio Area.

4 Representation and warranties

The Applicant represents and warrants that:

- (a) the Applicant has authority to appoint the Authorised Representative;
- (b) where the Applicant has obtained the consent of a Third Party Representative, the Applicant has obtained the consent of that Third Party Representative; and
- (c) the Authorised Representative is aware of the duties and obligations that apply to the person under the Auction Rules.

5 Duration

This Form of Authority remains in force until the Auction in the Designated BSA Radio Area has been completed in accordance with the Auction Rules, or until the JVCs receive from the Applicant a notice of revocation executed by the Applicant in the same manner and with the same formality as this Authority.

6 No sub-delegation

The Authorised Representative is not authorised under this Authority to appoint any substitutes, delegates or other representatives to act on the Applicant's behalf under this Authority.

7 Amendments

No variation, modification or waiver of any provision of this Authority has any force or effect unless the variation, modification or waiver is agreed to by the JVC and confirmed in writing and executed by the Applicant in the same manner and with the same formality as this Authority is executed.

8 Severability

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

9 Indemnity

The Applicant hereby indemnifies and holds harmless the JVCs, its officers, servants, agents, representatives, advisors and contractors from and against any loss, liability or damage (including legal costs and expenses on a solicitor/own client basis) arising from any claim, suit, demand, action or proceeding arising out of any act or omission whether negligent, or otherwise, arising from a breach of this Form of Authority by the Applicant or an Authorised Representative.

10 Ratification

The Applicant undertakes to ratify all acts that the Authorised Representative purports to do in accordance with the Authority given by the Applicant under this Authority.

11 Governing law

This Form of Authority is governed by the laws in force in the state of New South Wales and the Applicant irrevocably submits to the non exclusive jurisdiction of the courts of New South Wales.

12 Definitions

A term or expression starting with a capital letter has the same meaning given to it in Schedule 1 (**Dictionary**) of the Auction Rules.

13 Form of Authority

13.1 Nomination of Applicant Representative

The Applicant nominates the following one or more persons as an Applicant Representative:

1. Nomination of Applicant Representative	
Name of Applicant Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

2. Nomination of Applicant Representative	
Name of Applicant Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

3. Nomination of Applicant Representative	
Name of Applicant Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

13.2 Nomination of Third Party Representative

The Applicant nominates the following one or more persons as a Third Party Representative:

1. Nomination of Third Party Representative	
Name of Third Party Representative	
Company/Firm of Third Party Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

2. Nomination of Third Party Representative	
Name of Third Party Representative	

Company/Firm of Third Party Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

3. Nomination of Third Party Representative	
Name of Third Party Representative	
Company/Firm of Third Party Representative	
Phone Number (fixed):	
Phone Number (mobile):	
Facsimile (if applicable):	
E-mail:	
Bidding in Person?	Yes / No
Telephone Bidder?	Yes / No

14 Authorisation of Authorised Representative

The Applicant acknowledges that, by signing this Form of Authority, the Applicant will, subject to acceptance of the Registration Document and confirmation of payment of the Registration Fees by the Auction Manager, authorise the Authorised Representative to represent and act on behalf of the Applicant during the Auction in the Designated BSA Radio Area.

Signed by **[insert name of signatory]** as
authorised signatory for **[insert name of
Applicant]** in the presence of:

Signature of witness

Signature of **[authorised signatory]**

Name of witness (print)

Date:

Signed by **[insert name of Applicant
Representative, if applicable]** in the presence of:

Signature of witness

Signature of **[authorised signatory]**

Name of witness (print)

Date:

Signed by **[insert name of Third Party
Representative, if applicable]** in the presence of:

Signature of witness

Signature of **[authorised signatory]**

Name of witness (print)

Date:

Schedule 4 – Deed of Acknowledgement

1 Instructions for completion

A duly executed copy of this Deed of Acknowledgement must be submitted at the same time as other Registration Documents to suzanne.brett@bonhamsandgoodman.com.au

2 Purpose

The purpose of this Deed Acknowledgement is to bind the Applicant in respect of its participation and conduct at the Auction in accordance with the Auction Rules and pursuant to the terms of this Deed of Acknowledgement.

3 Acknowledgement

- (a) The Applicant acknowledges and agrees that:
 - (i) the Applicant is bound by, and will comply with, the terms of the Auction Rules;
 - (ii) the Applicant is responsible for its own costs and expenses related to its participation in the Auction;
 - (iii) the Applicant will, on becoming the Successful Bidder in relation to an Excess Capacity Lot, pay the Bid Price in accordance with the Auction Rules; and
 - (iv) if the Applicant fails to pay the Bid Price in accordance with the Auction Rules, clause 5.4 of the Auction Rules will apply and is binding on the Applicant.
 - (b) The Applicant's obligations under this Deed of Acknowledgement will not be affected or impaired if the Deed of Undertaking to provide Financial Security is void or otherwise unenforceable in whole or in part.
 - (c) The rights and obligations referred to in this clause 3 will survive the expiration or termination of this Deed of Acknowledgement.
-

4 Release and indemnity

- (a) The Applicant hereby indemnifies and holds harmless the JVC, its officers, servants, agents, representatives, advisors and contractors from and against any loss, liability or damage (including legal costs and expenses on a solicitor/own client basis) arising from any claim, suit, demand, action or proceeding arising out of any act or omission whether negligent, or otherwise, arising from a breach of this Deed of Acknowledgement by the Applicant or an Authorised Representative.
- (b) The right of the JVCs to be indemnified under this clause 4 is in addition to, and not exclusive of, any other right, power or remedy of the JVC which arises under statute, common law, equity or otherwise against the Applicant for a breach of the Auction Rules.

(c) The Applicant releases the JVC, its officers, servants, agents, representatives, advisors and contractors from and against all demands, claims, actions or proceedings arising from the acts or omissions of any person that are undertaken pursuant to, or conducted in accordance with, the Auction Rules.

(d) This clause 4 will survive the expiration or termination of this Deed of Acknowledgement.

5 Severability

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

6 Governing law

This Deed of Acknowledgement is governed by the laws in force in the state of New South Wales and the Applicant irrevocably submits to the non exclusive jurisdiction of the courts of New South Wales.

7 Definitions and interpretations

A term or expression starting with a capital letter has the same meaning given to it in Schedule 1 (**Dictionary**) of the Auction Rules.

8 Execution

Executed as a deed

[Note: Please utilise appropriate signing box depending on your company]

Signed and delivered by #company name# by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

The common seal of #company name# is fixed in the presence of:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

The common seal of #company name# is fixed in the presence of:

Signature of #sole director/secretary name# who states that #he/she# is the sole director and sole secretary of #company name#

Signed and delivered by #company name# by:

Signature of #sole director/secretary name# who states that #he/she# is the sole director and sole secretary of #company name#

Schedule 5 – Deed of Undertaking to provide Financial Security

1 Instructions for completion

A duly executed copy of this Deed of Undertaking to provide Financial Security must be submitted at the same time as other Registration Documents to suzanne.brett@bonhamsandgoodman.com.au

2 Deed of Undertaking to provide Financial Security

This Deed of Undertaking to provide Financial Security is made in favour of the JVC by the Applicant.

3 Financial undertaking

- (a) The Applicant agrees to provide a financial security to the JVC in respect of the Auction in the Designated BSA Area for the amount of AUD \$10,000 (excluding GST).
- (b) The Applicant may discharge its obligations to the JVC under clause 3(a) through one of the following means (at the Applicant's option):

- (i) direct bank deposit / transfer into the following account;

Institution:	ANZ Bank
Account Name:	First East Auction Holding P/L trading as Bay East Auctions
Account Number:	2602 79327
BSB Number:	012 281

- (ii) by bank cheque made out to 'First East Auction Holding P/L trading as Bay East Auctions';
- (iii) a bank guarantee;
- (iv) a parent company guarantee;
- (v) a personal guarantee from company directors of the Applicant;
- (vi) such other means as may be agreed between the Applicant and the JVC (via the Auction Manager).
- (c) The Applicant's obligations under this Deed of Undertaking to provide Financial Security are continuing obligations and will continue in full force and effect until:
- (i) the JVC, by written notice to the Applicant, has cancelled the undertaking; or

- (ii) the Applicant has made full payment to the Auction Manager of the Bid Price for Excess Capacity Lots in respect of which the Applicant is the Successful Bidder.
 - (d) For the avoidance of doubt, the payment of the Financial Security will not relieve the Applicant, if it is the Successful Bidder in respect of an Excess Capacity Lot, from paying the JVC the full amount of the Bid Price in respect of that Excess Capacity Lot as it becomes payable.
-

4 No discharge

- (a) The Applicant's obligations under this Deed of Undertaking to provide Financial Security will not be affected, waived or impaired by:
 - (i) any furnishing to, or acceptance by, the JVC of additional security;
 - (ii) any release by the JVC of any additional security (except this Deed of Undertaking to provide Financial Security);
 - (iii) any waiver, compromise, abandonment, renewal, consent or other action or inaction or any exercise or non-exercise by the JVC of any right, remedy or power (including the granting of any time or indulgence) with respect to the Applicant (whether with or without the consent of the Applicant) under the Auction Rules or otherwise;
 - (iv) any insolvency, bankruptcy, reorganisation, arrangement, composition, liquidation, or dissolution of, or appointment of a liquidator and/or receiver or administrator to the Applicant;
 - (v) any amendment of the Auction Rules by the JVC;
 - (vi) the Auction Rules or the Deed of Acknowledgment, or both, being void or otherwise unenforceable in whole or in part; or
 - (vii) the revocation of the Auction Rules or the termination of the Deed of Acknowledgment, or both.
-

5 Further assurance

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

6 Governing law

This Deed of Undertaking to provide Financial Security is governed by the laws in force in the state of New South Wales and the Applicant irrevocably submits to the non exclusive jurisdiction of the courts of New South Wales.

7 Definitions and interpretations

A term or expression starting with a capital letter has the same meaning given to it in Schedule 1 (**Dictionary**) of the Auction Rules.

8 Execution

Executed as a deed

[Note: Please utilise appropriate signing box depending on your company]

Signed and delivered by #company name# by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

The common seal of #company name# is fixed in the presence of:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

The common seal of #company name# is fixed in the presence of:

Signature of #sole director/secretary name# who states that #he/she# is the sole director and sole secretary of #company name#

Signed and delivered by #company name# by:

Signature of #sole director/secretary name# who states that #he/she# is the sole director and sole secretary of #company name#

Schedule 6 – Registration Fees

The following table sets out the Registration Fees payable by the Applicant:

Fee	Amount
Entry Fee	AUD \$500.00 (excluding GST)
Financial Security	AUD \$10,000.00 (excluding GST)