

Terms and Conditions of the grant scheme in support for PMSE equipment owners

These terms and conditions are issued by The Office of Communications, an entity established by the Office of Communications Act 2002, whose principal office is at Riverside House, 2a Southwark Bridge Road, London SE1 9HA ("**Ofcom**") and govern the payment of Grant monies to each individual PMSE Equipment Owner ("**You**") ("**Terms and Conditions**").

BACKGROUND

- (A) Ofcom has decided to clear the 700 MHz band (694 to 790 MHz) with the result that access to the 700 MHz band will cease to be available for use by PMSE services from 1 May 2020 and Ofcom will not authorise its use for PMSE services beyond this date. Government has agreed to fund a grant scheme to support eligible PMSE Equipment Owners who will have to vacate the 700 MHz band earlier than expected. Funding will be equivalent to the estimated residual value of the PMSE Equipment operating in the 700 MHz band that needs to be replaced at the time of clearance plus a 10 per cent mark up to reflect the costs of PMSE Equipment Owners' participation in the Scheme. In the case of Modified Equipment, Ofcom will fund the cost of modifications to Equipment so long as the modifications are not more expensive than the funding that would have been available to a PMSE Equipment Owner had they decided to replace their Equipment instead. Ofcom will provide funding pursuant to its powers under section 1 of the Wireless Telegraphy Act 2006 in circumstances according to funding principles set out in its statements dated 23 August 2018 and [DATE – scheduled for 12 December 2018] and subject to HM Treasury consent.
- (B) Ofcom has appointed an administrator ("**Ofcom's Representative**") to manage Applications for Grants from PMSE Equipment Owners who meet the Eligibility Criteria.
- (C) Ofcom's Representative will assess Your Application for a Grant against the Rate Card and the Eligibility Criteria. If You are deemed to be eligible, You will be notified of the value of the Grant You may receive. These Terms and Conditions apply by virtue of section 1(6) of the Wireless Telegraphy Act 2006 and explain the obligations applying to You.

TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

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| Application | means the application made by You for a Grant. |
| Eligibility Criteria | means the criteria by which Your eligibility for a Grant will be assessed as set out in the annex, as amended by Ofcom from time to time; |
| Equipment | means PMSE equipment and/or ancillary equipment which meet the applicable Eligibility Criteria and which are subject to an Application for a Grant; |
| Grant | means the payment made by Ofcom to You under the Scheme on these Terms and Conditions; |
| Modified Equipment | means Equipment that has been modified so that it can operate outside of the 700 MHz band instead of being surrendered to Ofcom's Representative; |

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| Ofcom's Representative | means Equiniti Ltd, part of Equiniti Group Plc, the company appointed by Ofcom to administer the Scheme; |
| PMSE | means programme making and special events; |
| PMSE Equipment Owners | means the owners of Equipment; |
| Rate Card | means the document, amended from time to time by Ofcom, specifying the level of the grant which is available in respect of specified items of PMSE equipment; |
| Scheme | means the scheme run by Ofcom to facilitate the clearance of the 700 MHz band, under which Grants may be made to PMSE Equipment Owners; and |
| Website | means www.pmsefunding.co.uk , a website established and controlled by Ofcom's Representative. |

2 ACCEPTANCE AND ASSESSMENT

- 2.1 On completion of the registration process on the Website You shall be deemed to have irrevocably accepted the obligations imposed by these Terms and Conditions.
- 2.2 You agree that Ofcom uses the information You provide in Your Application to assess:
- (a) whether You are eligible to receive a Grant; and
 - (b) the value of the Grant,
- according to the Rate Card and the Eligibility Criteria.

3 CONDITIONS OF PAYMENT

- 3.1 Payment of a Grant shall be on the terms set out in these Terms and Conditions.
- 3.2 Subject to clause 3.3 below, legal and beneficial title and risk ("**Title**") in the Equipment will automatically transfer from You to Ofcom's Representative on payment of a Grant and for the avoidance of doubt until such time of transfer You shall remain liable for and retain all risks associated with the Equipment.
- 3.3 In respect of Modified Equipment Title will remain with You at all times.
- 3.4 Payment of a Grant shall be at Ofcom's sole discretion and shall be in full and final settlement of any monies due to You in accordance with the Scheme and, to the fullest extent permitted by law, Ofcom and Ofcom's Representative shall have no liability for any costs, expenses, liabilities, damages or other losses howsoever incurred by You in connection with or arising out of the Scheme.
- 3.5 If Ofcom considers that the relevant Eligibility Criteria may be met, then You will be notified of the estimated grant offered which is subject to:
- (a) Ofcom confirming the relevant Eligibility Criteria are met, including by:

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- (i) inspection and testing in the case of Equipment that is not Modified Equipment; or
 - (ii) in the case of Modified Equipment, testing that Ofcom may request at its discretion, in which case You agree to deliver and collect the Modified Equipment to Ofcom's Representative for such purpose at Your own cost;
 - (b) the date of surrender that You have specified in Your Application in the case of Equipment that is not Modified Equipment. The offer of grant will be recalculated if you surrender Your Equipment after such date and will lapse if You do not surrender Your Equipment by 30 May 2020; and
 - (c) in the case of Modified Equipment, submission of sufficient evidence of modification on or before 30 May 2020, after which date the offer of grant will lapse.
- 3.6 On receipt of Equipment (or in respect of Modified Equipment on receipt of evidence of modification) and subject to Ofcom determining that the Eligibility Criteria are met in accordance with clause 3.5, You will receive payment of the Grant in accordance with the payment methods available to You as set out in the Application (and, provided You have submitted all necessary information in a clear and complete form, Ofcom will use reasonable endeavours to ensure payment is made to you as set out in the timetable for payment contained therein).
- 3.7 If Ofcom determines that the Eligibility Criteria are not met in respect of any Equipment following its receipt, Ofcom's Representative will retain that Equipment for your collection at Your cost for a reasonable period. You agree that Ofcom may dispose of that Equipment if You do not collect it within that period. In those circumstances, You agree to pay Ofcom's reasonable costs of that disposal.

4 WARRANTIES AND REPRESENTATIONS

4.1 You warrant, represent and agree that:

- (a) in the case of Equipment, immediately prior to surrendering the Equipment pursuant to clause 3.5 above You were the legal and beneficial owner of the Equipment and that the Equipment is free from any legal charge, lien and/or encumbrance;
- (b) in the case of Modified Equipment, at the time of receipt of the Grant You are the legal and beneficial owner of the Modified Equipment;
- (c) You have the requisite power, capacity and authority to comply with these Terms and Conditions and to make the statements in Your Application; and
- (d) the statements You have made to Ofcom and Ofcom's Representative including, but not limited to those statements made in Your Application, are true and accurate in all respects;

and Ofcom and Ofcom's Representative may rely upon such warranties and representations.

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5 OFCOM'S RIGHTS

Adjustment of Rate Card and Eligibility Criteria

5.1 Ofcom may, to the fullest extent permitted by law, amend the Rate Card or the Eligibility Criteria at any time and such amendments will be published on the Website from time to time.

Recovery of Grants

5.2 Without prejudice to any other rights or remedies available to Ofcom under these Terms and Conditions, Ofcom may recover the whole or part of a Grant from You on demand if:

- (a) the Grant has been wrongly paid or overpaid to You for any reason;
- (b) You have provided inaccurate, incomplete or misleading information either in Your Application or in any other statement made to Ofcom or Ofcom's Representative in relation to the Scheme; or
- (c) in the case of Modified Equipment, You have not used the Grant to modify the Equipment and/or on inspection of such Modified Equipment pursuant to clause 5.4(b) below, or on the documentary evidence provided pursuant to clause 5.4(c) below, Ofcom reasonably determines that the Grant should not have been paid to You.

5.3 Ofcom shall have the right to revisit and investigate Your Application to ascertain whether the whole or any part of a Grant should be recovered.

5.4 If Ofcom exercises its right to revisit and investigate Your Application under clause 5.3 You shall in good faith:

- (a) assist Ofcom in the investigation;
- (b) provide, on Ofcom's reasonable written request, Ofcom with full access to any Equipment (including, for the avoidance of doubt, any Modified Equipment), documents or other information reasonably requested in connection with the investigation; and
- (c) in respect of Modified Equipment that You have sold, disposed of or is no longer in Your possession for whatever reason, provide Ofcom with all relevant documentary evidence in respect of such sale, disposal, or loss of possession.

5.5 If Ofcom decides that whole or part of a Grant is to be recovered for any of the reasons set out at clause 5.2 above, Ofcom shall notify You in writing of:

- (a) the amount;
- (b) the reason(s);
- (c) the method; and
- (d) the timescale

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for such repayment.

6 GENERAL

Freedom of Information Act

- 6.1 Ofcom is obliged to meet its statutory obligations relating to the disclosure of information under the Freedom of Information Act 2000. All information provided to Ofcom under these Terms and Conditions may need to be disclosed by Ofcom in response to a request for information under that Act. Therefore, nothing in these Terms and Conditions prevents Ofcom from complying with its statutory obligations under that Act.

Data Protection Act and General Data Protection Regulation

- 6.2 In performing its obligations under these Terms and Conditions, Ofcom shall comply with all relevant data protection legislation, including but not limited to the Data Protection Act 2018 and the General Data Protection Regulation. [You consent to the processing of Your personal data (as defined in the General Data Protection Regulation) by Ofcom, Ofcom's Representative and its subcontractors for the purpose of fulfilling these Terms and Conditions.]

Assignment and other dealings

- 6.3 Ofcom may at any time assign, subcontract, delegate, or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions and may permit Ofcom's Representative to subcontract any of the obligations that Ofcom has subcontracted to it.
- 6.4 You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of Your rights and obligations under these Terms and Conditions.

Third Party Rights

- 6.5 Except in relation to Ofcom's Representative and as provided for in clause 6.3, it is not intended that these Terms and Conditions, either expressly or by implication, confers any benefit on any person who is not a party to these Terms and Conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

Notices

- 6.6 Any notice or other communication given to a party under or in connection with these Terms and Conditions shall be in writing and shall be sent using the portal on the Website.
- 6.7 Any notice or communication shall be deemed to have been received at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 6.7 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 6.8 Clauses 6.6 and 6.7 do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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Entire Agreement

- 6.9 These Terms and Conditions and the Application Form set out the entire agreement between the You and Ofcom relating to the Scheme and supersede all prior oral or written agreements, arrangements or understandings between them.
- 6.10 You acknowledge that You have not accepted the obligations in these Terms and Conditions in reliance upon any warranty, representation, covenant, undertaking, agreement, term or condition which is not set out in these Terms and Conditions or the Application.

Severability

- 6.11 If any condition, clause or provision of these Terms and Conditions not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court in any proceedings relating to these Terms and Conditions, the validity or enforceability of the remainder of these Terms and Conditions shall not be affected.

Law and Jurisdiction

- 6.12 These Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 6.13 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or their subject matter or formation.

Annex

A1 ELIGIBILITY CRITERIA FOR THE SCHEME

- A1.1 The criteria by which Your eligibility for a Grant will be assessed are:
- (a) equipment owners must either have held a licence in the 700 MHz band between 17 October 2014 and 23 August 2018 or must be able to produce verifiable evidence that their business is based on hiring out PMSE equipment rather than using it and therefore does not require a licence;
 - (b) claimants can only claim for equipment that belongs to them;
 - (c) equipment being claimed for must be in working order;
 - (d) equipment being claimed for must have been purchased before 23 August 2018;
 - (e) equipment being claimed for must have at least some of its tuning range in the 700 MHz band; and
 - (f) ancillary equipment that cannot be used because its related eligible equipment is made unusable by the clearance of the 700 MHz band will be eligible for funding. Ancillary equipment will have to satisfy the eligibility

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criteria, except for the tuning range requirement in the event that the equipment has no tuning function.

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