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STATUTORY INSTRUMENTS

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**2007 No. 3380**

**ELECTRONIC COMMUNICATIONS**

**The Wireless Telegraphy (Licence  
Award) (No. 2) Regulations 2007**

*Made - - - - 30th November 2007*

*Coming into force - - 21st December 2007*

The Office of Communications (“OFCOM”) make the following Regulations in exercise of the powers conferred on OFCOM by section 14(1), (2), (3), (4), (6) and (7) and section 122(7) of the Wireless Telegraphy Act 2006(1) (“the 2006 Act”).

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the 2006 Act, published notice of their proposal in accordance with section 122(4)(b) of the 2006 Act and have considered the representations made to them before the time specified in that notice in accordance with section 122(4)(c) of the 2006 Act.

**PART 1**

**INTRODUCTORY**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 and shall come into force on 21st December 2007.

(2) These Regulations shall not extend to the Channel Islands or to the Isle of Man.

**Interpretation**

2.—(1) In these Regulations—

“additional price” has the meaning given in regulation 58;

“applicant” means a body corporate making an application for a licence;

“assignment stage” has the meaning given in regulation 14(1);

“assignment stage bid” has the meaning given in regulation 46(4);

- “assignment stage bid form” has the meaning given in regulation 46(8);
- “assignment stage round” has the meaning given in regulation 46(2);
- “associate” means, in relation to an applicant or bidder, a person who has a material interest in that applicant or bidder;
- “authorised person” means a person specified by an applicant in its application as authorised to bind that applicant for all purposes relating to the award process;
- “available total” has the meaning given in regulation 14(4);
- “base price” has the meaning given in regulation 42;
- “bid total” has the meaning given in regulation 18(1);
- “bidder” means an applicant which has qualified to bid in the award process and which has not withdrawn from the award process on or before the last day for withdrawal;
- “bidder group” means, in relation to an applicant or bidder—
- (a) that applicant or bidder;
  - (b) each associate of that applicant or bidder; and
  - (c) each person in respect of whom the applicant or bidder has delivered to OFCOM a completed document in the form set out in Schedule 4;
- “confidential information” means, in relation to any applicant or bidder, any information which is not in the public domain and which if it were made public, or disclosed to another applicant (or potential applicant) or bidder or a member of their respective bidder groups, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;
- “deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—
- (a) the time,
  - (b) the date, or
  - (c) the date, and the time on that date,
- by which that requirement must be fulfilled by that person;
- “electronic auction system” means the system established by OFCOM for bidders to participate in the award process;
- “end of round time” has the meaning given in regulation 27(2);
- “grant stage” has the meaning given in regulation 14(1);
- “initial deposit” shall be construed in accordance with regulation 4(3)(b);
- “last day for withdrawal” has the meaning given in regulation 9(1);
- “licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or instal or use wireless telegraphy apparatus in the United Kingdom at frequencies to be determined in accordance with the procedure set out in Part 4 or Part 5 of these Regulations;
- “material interest” means, whether held directly or indirectly—
- (a) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006(2)) in—

- (i) any share which carries, or any shares which together carry, more than twenty five per cent. of the votes entitled to be cast at a general meeting of the applicant or bidder; or
  - (ii) any share or shares in the case of which the consent of the holder of that share or those shares is required for the conduct of any business of the applicant or bidder; or
- (b) the right to appoint or remove a majority of the applicant's or bidder's board of directors;
- "OFCOM's bank account" means the bank account nominated by OFCOM for the purposes of the award process, details of which are published on their internet website;
- "paired frequency range selection form" has the meaning given in regulation 45(3);
- "paired frequency range selection menu" shall be construed in accordance with regulation 11(1);
- "pounds" means pounds sterling;
- "primary bid" has the meaning given in regulation 15(1);
- "primary bid form" has the meaning given in regulation 15(3);
- "primary bid rounds" has the meaning given in regulation 14(2);
- "principal stage" has the meaning given in regulation 14(1);
- "principal stage bid" means a primary bid or a supplementary bid;
- "round" means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in Part 5 of these Regulations;
- "round price" has the meaning given in regulation 15(2);
- "selection of lots" means a specified number of lots in one or more bands;
- "supplementary bid" has the meaning given in regulation 17(1);
- "supplementary bids form" has the meaning given in regulation 17(3);
- "supplementary bids round" has the meaning given in regulation 14(2);
- "valid assignment stage bid" has the meaning given in regulation 49(1);
- "valid primary bid" has the meaning given in regulation 24(1);
- "valid principal stage bid" means a valid primary bid or a valid supplementary bid;
- "valid supplementary bid" has the meaning given in regulation 25(1);
- "winning assignment stage bid" shall be construed in accordance with regulation 57;
- "winning bidder" means a bidder that submitted a winning principal stage bid; and
- "winning principal stage bid" shall be construed in accordance with regulation 41.
- (2) A reference in these Regulations to a "band", "lot" or "paired frequency range" shall be construed in accordance with Schedule 1.

## PART 2

### APPLICATION STAGE

#### **Applications for the grant of a licence**

3. Applications for the grant of a licence shall only be made in accordance with the procedure set out in these Regulations.

## **Application**

- 4.—(1) Only a body corporate may apply to OFCOM for a licence.
- (2) A body corporate may only make one application.
- (3) To apply for a licence, a body corporate must—
- (a) on the day specified by OFCOM for receipt of applications, deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA within the times on that day specified by OFCOM a sealed envelope containing—
    - (i) a document containing the application information required by Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (ii) a document in the form set out in Schedule 3, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (iii) for each person, not being an associate of the applicant, which the applicant wishes to join its bidder group, a document in the form set out in Schedule 4 which has been—
      - (aa) completed by the applicant and signed on its behalf by two authorised persons; and
      - (bb) completed by and signed by or on behalf of the person in respect of whom that document is completed; and
  - (b) by the deadline specified by OFCOM, pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the applicant, an initial deposit of twenty-five thousand pounds.
- (4) OFCOM shall publish the day, times and deadline on their internet website no later than one week before whichever is the earlier of that day or that deadline.

## **PART 3**

### **QUALIFICATION STAGE**

#### **Assessment of bidder groups**

- 5.—(1) OFCOM shall give notice to each applicant of—
- (a) the name of each other applicant and the names of their associates; and
  - (b) the deadline by when each applicant must notify OFCOM under paragraph (3) or (4) (as the case may be).
- (2) On receipt of that notice, each applicant must examine the names of the other applicants and their associates and determine whether any member of its bidder group is also an associate of another applicant or is also an applicant.
- (3) Where an applicant determines that a member of its bidder group is also an associate of another applicant or is also an applicant, it must notify the other applicant and OFCOM of that fact by the deadline specified by OFCOM, and OFCOM shall specify a further deadline by when each applicant concerned must—
- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is an associate of another applicant or is an applicant; and
  - (b) where changes have occurred to its bidder group, provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions in the changed circumstances.

(4) Where an applicant determines that no member of its bidder group is an associate of another applicant or is an applicant it must notify OFCOM of that fact by the deadline specified by OFCOM.

(5) If it appears to OFCOM from any application that a member of one bidder group is also a member of another bidder group, OFCOM shall give notice to each of the applicants concerned of that fact and specify the deadline by when each applicant concerned must—

- (a) notify OFCOM of any change in circumstances the effect of which is that no member of its bidder group is also a member of another bidder group; and
- (b) where changes have occurred to its bidder group provide OFCOM with versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions in the changed circumstances.

(6) OFCOM shall record the members of each applicant's bidder group as soon as reasonably practicable after the last deadline specified by OFCOM under paragraphs (3) and (5).

### **Subsequent changes to bidder groups**

6.—(1) An applicant or a bidder may change its bidder group after the recording by OFCOM of the members of each applicant's bidder group.

(2) Where the change involves the addition or removal of an associate, the applicant or bidder must notify OFCOM of the change and submit versions of the documents provided under regulation 4(3)(a)(i) and (ii) which comply with those provisions in the changed circumstances.

(3) To add a person who is not an associate of the applicant or bidder to its bidder group, the applicant or bidder must deliver to OFCOM a document in the form set out in Schedule 4 completed by the applicant or bidder and signed on its behalf by two authorised persons and completed by and signed by or on behalf of the person in respect of whom that document is completed.

### **Determination of applicants which are qualified to bid**

7.—(1) OFCOM shall determine whether each applicant which has submitted an application in accordance with regulation 4 is qualified to bid in the award process.

(2) An applicant shall not be qualified to bid in the award process if a member of its bidder group is also a member of another applicant's bidder group.

(3) In making their determination under paragraph (1) OFCOM shall take into account whether —

- (a) the grant of a licence to the applicant would be prejudicial to the interests of national security;
- (b) the applicant is a fit and proper person to hold a licence having regard to the probity of —
  - (i) the applicant;
  - (ii) each member of the applicant's bidder group; and
  - (iii) each director of each member of the applicant's bidder group;
- (c) any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) any member of the applicant's bidder group has colluded or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process;
- (e) any member of the applicant's bidder group has acted or is acting in a way which is likely to distort the outcome of the award process;
- (f) any member of the applicant's bidder group, or any person to whom confidential information has been disclosed, has disclosed, or is disclosing or attempting to disclose, or

has incited or is inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—

- (i) to OFCOM;
  - (ii) to a member of the applicant's bidder group;
  - (iii) to a provider of finance for the purpose of raising finance for the applicant's application; or
  - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (g) any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;
- (h) any member of the applicant's bidder group is receiving or is attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process; and
- (i) any person who is a member or a director or employee of a member of the applicant's bidder group and is also a director or employee of a member of another bidder group is—
- (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups.

(4) Applicants must, if requested to do so by OFCOM, provide by a deadline specified by OFCOM any information or documentation which OFCOM reasonably require to make their determination.

(5) If an applicant does not provide such information or documentation by the deadline specified by OFCOM, OFCOM shall also take that fact into account in making their determination.

(6) Where OFCOM determine that an applicant is not qualified to bid in the award process, that applicant's initial deposit shall not be forfeited for that reason.

### **Publication of determination**

8.—(1) OFCOM shall notify each applicant of their determination under regulation 7(1).

(2) OFCOM shall also notify each applicant qualified to bid of the name of each other applicant which is so qualified and shall publish the names of all applicants which are qualified to bid on OFCOM's internet website.

### **Withdrawal of an application**

9.—(1) OFCOM shall notify each applicant qualified to bid of the last day for withdrawal from the award process ("last day for withdrawal") and shall publish the last day for withdrawal on OFCOM's internet website.

(2) If, on or before the last day for withdrawal, OFCOM receive notice of an applicant's intention to withdraw its application, signed by two authorised persons of that applicant, the application shall be withdrawn and the applicant shall be excluded from the award process and OFCOM shall notify all other applicants of the withdrawal.

(3) Where an applicant withdraws its application in accordance with paragraph (2)—

- (a) that applicant shall not be re-admitted to the award process; and
- (b) that applicant's initial deposit shall not be forfeited for that reason.

### **Determination of number of bidders**

**10.**—(1) After the last day for withdrawal, OFCOM shall determine the number of bidders.

(2) Where there are no bidders, OFCOM shall complete the award process by refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 64) but not any interest which has accrued on the deposits.

(3) Where there is only one bidder, OFCOM shall grant a licence in accordance with the procedure set out in Part 4 of these Regulations.

(4) Where the number of bidders is more than one, OFCOM shall grant a licence or licences (as the case may be) in accordance with the procedure set out in Part 5 of these Regulations.

(5) OFCOM shall publish the names of the bidders on OFCOM's internet website together with a statement of whether OFCOM will proceed to grant licences in accordance with Part 4 or Part 5 (as the case may be) of these Regulations.

## **PART 4**

### **PROCEDURE WHERE THERE IS ONLY ONE BIDDER**

#### **Paired frequency range selection menu**

**11.**—(1) Where there is only one bidder, OFCOM shall notify that bidder of—

- (a) a deadline by when the bidder must deliver to OFCOM at Riverside House, 2a Southwark Bridge Road, London SE1 9HA a paired frequency range selection menu in the form set out in Schedule 5 completed in accordance with paragraph (2) and signed on its behalf by two authorised persons; and
- (b) a further deadline by when the bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum determined in accordance with paragraph (4).

(2) The bidder must ensure that its selection of paired frequency ranges satisfies the following conditions—

- (a) the selection includes at least one paired frequency range;
- (b) the selection includes no more than one paired frequency range in each band;
- (c) the total amount of the prices indicated on the paired frequency range selection menu for the paired frequency ranges included in the selection is not greater than four hundred and twenty thousand pounds.

(3) The licence fee shall be the total amount of the prices indicated on the paired frequency range selection menu for the paired frequency ranges selected by the bidder.

(4) The sum which the bidder must pay to OFCOM shall be—

- (a) where the initial deposit has not been forfeited in accordance with regulation 64, a sum equal to the licence fee less the initial deposit;
- (b) where the initial deposit has been so forfeited, a sum equal to the licence fee.

(5) Where, due to the manner of completion, the completed paired frequency range selection menu is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the selection.

(6) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the menu in its entirety shall be accepted by OFCOM on that basis.

(7) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the selections of paired frequency ranges made on the paired frequency range selection menu, that selection or those selections (as the case may be) shall be rejected by OFCOM and accordingly the bidder shall not be entitled to the grant of a licence for those selected paired frequency ranges;
- (b) where sub-paragraph (a) does not apply, the paired frequency range selection menu in its entirety shall be rejected by OFCOM and accordingly the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 64) be forfeited.

(8) Where all of the selections of paired frequency ranges made on the paired frequency ranges selection menu are rejected by OFCOM in accordance with paragraph (7)(a), the bidder shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 64) be forfeited.

(9) Where the bidder does not—

- (a) deliver a completed paired frequency range selection menu to OFCOM in accordance with paragraph (1)(a), or
- (b) pay OFCOM the required sum in accordance with paragraph (1)(b),

the bidder shall not be entitled to the grant of a licence and shall not receive a refund of its initial deposit, which shall (where it has not already been forfeited under regulation 64) be forfeited.

### **Grant of licence**

12. Where OFCOM have received from the bidder a completed paired frequency range selection menu in accordance with regulation 11(1)(a) and the required sum in accordance with regulation 11(1)(b), OFCOM shall grant the bidder a licence for the paired frequency ranges selected on the paired frequency range selection menu that the bidder delivered to OFCOM.

### **Completion of the award process**

13.—(1) After the grant of the licence, OFCOM shall complete the award process by—

- (a) publishing on their internet website the name of the bidder to which a licence has been granted, the details of the paired frequency ranges in respect of which the licence was granted and the licence fee paid; and
- (b) refunding to applicants which were not qualified, or withdrew in accordance with regulation 9, the initial deposits (where such deposits have not been forfeited under regulation 64) but not any interest which has accrued on the deposits.

## PART 5

### PROCEDURE WHERE THERE IS MORE THAN ONE BIDDER

#### CHAPTER 1

##### Principal stage, assignment stage and grant stage

#### The three stages

14.—(1) Where there is more than one bidder, the process for the award of licences shall consist of the procedure set out in Chapters 2 to 5 of this Part (“principal stage”), the procedure set out in Chapters 6 and 7 of this Part (“assignment stage”) and the procedure set out in Chapter 8 of this Part (“grant stage”).

(2) During the principal stage there shall be one or more rounds for the making of primary bids (“primary bid rounds”) and a further round for the making of supplementary bids (“supplementary bids round”).

(3) A bid made during the principal stage shall be a bid for a selection of lots.

(4) The number of lots available in each band (“available total”) is the number set out in subparagraphs (a) to (g)—

- (a) ten lots in the national 10 GHz band;
- (b) two lots in the national 28 GHz band;
- (c) one lot in the first sub-national 28 GHz band;
- (d) one lot in the second sub-national 28 GHz band;
- (e) one lot in the third sub-national 28 GHz band;
- (f) six lots in the national 32 GHz band;
- (g) six lots in the national 40 GHz band.

(5) Following completion of the principal stage, the paired frequency ranges that are to be assigned to the winning bidders shall be determined in accordance with the assignment stage.

(6) Licences for the paired frequency ranges so determined shall be granted in accordance with the grant stage.

#### CHAPTER 2

##### Primary bids and supplementary bids

#### Primary bids

15.—(1) A bid made during a primary bid round (“primary bid”) shall be at an amount in whole pounds, being the total amount of the round prices in that primary bid round for each lot included in the selection of lots in that primary bid.

(2) The round price means the price per lot determined in accordance with regulation 19 at which lots in a particular band are offered to bidders during a primary bid round.

(3) In order to make a primary bid a bidder must, on a form provided to the bidder by OFCOM (“primary bid form”)—

- (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and

- (b) specify an amount in whole pounds that it is willing to pay for the licence, being the total amount of the round prices in that primary bid round for the lots specified under subparagraph (a).
- (4) In respect of each band, the number of lots in a band specified by a bidder under paragraph (3)(a) must not be greater than the available total for that band.
- (5) Where the selection of lots in a primary bid includes lots in the national 10 GHz band, it must include at least two such lots.
- (6) A bidder must not submit more than one primary bid in any primary bid round.
- (7) The selection of lots in a primary bid made by a bidder must be such that the total number of eligibility points associated with the primary bid in accordance with paragraph (8) does not exceed the bidder's eligibility limit for that primary bid round as determined in accordance with regulation 21 or 22 (as the case may be) and notified to the bidder in accordance with regulation 27(1)(c).
- (8) The number of eligibility points associated with a primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

#### **Requirement for a valid primary bid in the first primary bid round**

16. Any bidder which does not submit a valid primary bid in the first primary bid round shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum that the bidder has paid as a deposit under regulation 23, which shall (where not already forfeited under regulation 64) be forfeited.

#### **Supplementary bids**

- 17.—(1) A bid made during the supplementary bids round (“supplementary bid”) shall be at an amount in whole pounds.
- (2) The amount of the supplementary bid shall be determined by the bidder, subject to the restrictions set out in regulation 26.
  - (3) In order to make a supplementary bid a bidder must, on a form provided to the bidder by OFCOM (“supplementary bids form”)—
    - (a) specify in respect of one or more bands how many lots in each of those bands it wishes to be included in a licence; and
    - (b) specify an amount in whole pounds that it is willing to pay for the licence.
  - (4) In respect of each band, the number of lots specified by a bidder under paragraph (3)(a) must not be greater than the available total for that band.
  - (5) Where the selection of lots in a supplementary bid includes lots in the national 10 GHz band, it must include at least two such lots.
  - (6) The selection of lots in a supplementary bid made by a bidder may be the same as or different from the selections of lots in primary bids made by the bidder.
  - (7) A bidder may submit any number of supplementary bids in the supplementary bids round, subject to the restriction set out in paragraph (8).
  - (8) A bidder may not submit more than one supplementary bid for each particular selection of lots.
  - (9) A bidder is not required to submit a supplementary bid.

### **Number of primary bid rounds**

**18.**—(1) After each primary bid round, OFCOM shall determine in respect of each band whether the total number of lots in the band included in selections of lots in valid primary bids submitted during that round (“bid total”) is greater than the available total for the band.

(2) Where for each band the bid total is not greater than the available total—

- (a) there shall be no further primary bid rounds; and
- (b) there shall be a supplementary bids round.

(3) Where for at least one band the bid total is greater than the available total, there shall be another primary bid round unless OFCOM determine, in accordance with paragraph (4), that there shall be no further primary bid rounds.

(4) OFCOM shall only make such a determination where they are satisfied that it is unlikely that the information that would be made available to bidders by OFCOM in accordance with regulation 32 following any further primary bid rounds would affect—

- (a) the determination of the winning combination of principal stage bids in accordance with regulation 41;
- (b) the determination of the base price payable by a winning bidder in accordance with regulation 42.

(5) Where OFCOM have determined under paragraph (3) that there shall be no further primary bid rounds, there shall be a supplementary bids round.

### **Determination of round prices for primary bid rounds**

**19.**—(1) In the first primary bid round, the round price for a lot in each band shall be the amount set out in Schedule 6.

(2) In subsequent primary bid rounds, the round price for a lot in each band shall be determined by OFCOM in accordance with paragraph (3) or (5) (as the case may be).

(3) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for a band is greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be an amount that is higher than the amount that was the round price for a lot in that band in the previous primary bid round, subject to the limit in paragraph (4).

(4) Where paragraph (3) applies, the amount of the round price for a lot in that band in the next primary bid round shall not be more than twice the amount of the round price for a lot in that band in the previous primary bid round.

(5) Where after a primary bid round OFCOM determine under regulation 18(1) that the bid total for the band is not greater than the available total for the band, the round price for a lot in that band in the next primary bid round shall be the same amount as it was in the previous primary bid round.

### **Bidder’s eligibility limit for primary bid rounds**

**20.** Before each primary bid round OFCOM shall determine an eligibility limit for each bidder for that primary bid round in accordance with regulation 21 or 22 (as the case may be).

### **Determination of bidder’s eligibility limit for the first primary bid round**

**21.**—(1) After the deadline specified in regulation 23(2) and before the start of the first primary bid round, OFCOM shall determine each bidder’s eligibility limit for the first primary bid round in accordance with the requirements of this regulation.

(2) OFCOM shall divide by ten thousand the total amount of pounds that the bidder has on deposit (including the initial deposit and any additional sum paid under regulation 23, but not including any sum forfeited under regulation 64).

(3) Where the number that results from the calculation in paragraph (2) is greater than forty-two, the eligibility limit shall be forty-two.

(4) Where the number that results from the calculation in paragraph (2) is not greater than forty-two, the eligibility limit shall be—

- (a) that number, or
- (b) where the number is not a whole number, that number rounded down to the nearest whole number.

#### **Determination of bidder's eligibility limit for subsequent primary bid rounds**

**22.**—(1) For subsequent primary bid rounds, each bidder's eligibility limit shall be determined under paragraph (2) or (5) (as the case may be).

(2) Where a bidder makes a valid primary bid in a primary bid round, OFCOM shall determine the bidder's eligibility limit for the next primary bid round by calculating the number of eligibility points associated with the valid primary bid.

(3) The number of eligibility points associated with a valid primary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that primary bid in accordance with Schedule 7.

(4) The bidder's eligibility limit shall be a number equal to the number of eligibility points associated with that valid primary bid.

(5) Where a bidder does not make a valid primary bid in a primary bid round, the bidder's eligibility limit for the next primary bid round shall be zero.

#### **Additional deposit before the first primary bid round**

**23.**—(1) In addition to the initial deposit, a bidder may pay an additional sum in pounds as a deposit which shall be taken into account by OFCOM in accordance with regulation 21 for the purpose of calculating the bidder's eligibility limit for the first primary bid round.

(2) A bidder wishing to pay such an additional sum must, by a deadline specified by OFCOM, pay the additional sum into OFCOM's bank account by a same day electronic transfer with accompanying information which identifies the bidder.

#### **Valid primary bids**

**24.**—(1) A primary bid shall only be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 18(1);
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42;

if it satisfies the conditions set out in paragraph (2) ("valid primary bid").

(2) The conditions are that—

- (a) the primary bid is made on a primary bid form that has been completed in accordance with regulation 15(3);
- (b) the primary bid is submitted in accordance with the restriction set out in regulation 15(6);
- (c) the primary bid complies with the restrictions set out in regulation 15(4) and (7) and with the requirement set out in regulation 15(5); and

- (d) the completed primary bid form is submitted to OFCOM in accordance with regulation 28(1) and is received by OFCOM in accordance with regulation 28(2).

### **Valid supplementary bids**

**25.—**(1) A supplementary bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42;

if it satisfies the conditions set out in paragraph (2) (“valid supplementary bid”).

(2) The conditions in respect of a supplementary bid are that—

- (a) the supplementary bid is made on a supplementary bids form that has been completed in accordance with regulation 17(3);
- (b) the amount of the supplementary bid specified by the bidder under regulation 17(3)(b) complies with the restrictions set out in regulation 26;
- (c) the supplementary bid complies with the requirement set out in regulation 17(5);
- (d) the supplementary bid is submitted in accordance with the restrictions set out in regulation 17(4) and (8); and
- (e) the completed supplementary bids form is submitted to OFCOM in accordance with regulation 35(1) and is received by OFCOM in accordance with regulation 35(2).

### **Restrictions on amount of supplementary bid**

**26.—**(1) The restrictions that apply to the amount of a supplementary bid specified by a bidder under regulation 17(3)(b) are that—

- (a) the amount of the supplementary bid must not be less than the total amount of the round prices in the first primary bid round for the lots included in the selection of lots in that bid;
- (b) where the supplementary bid is for a selection of lots in respect of which the bidder has also made a primary round bid, the amount of the supplementary bid must be greater than the amount of the highest primary round bid made by the bidder for that selection of lots;
- (c) where—

- (i) the bidder did not make a valid primary bid in the final primary bid round, or
- (ii) the total number of eligibility points associated with the supplementary bid in accordance with paragraph (4) is greater than the total number of eligibility points associated with the valid primary bid made by the bidder in the final primary bid round in accordance with paragraph (4),

the amount of the supplementary bid must not be greater than the amount determined in accordance with paragraph (2).

(2) That amount shall be the total amount of the round prices in the primary bid round referred to in paragraph (3) for the lots included in the selection of lots in the supplementary bid.

(3) That primary bid round is the latest primary bid round in which a primary bid made by the bidder for that selection of lots could have satisfied the restriction set out in regulation 15(7).

(4) The number of eligibility points associated with a primary bid or a supplementary bid shall be a number equal to the total of the eligibility points associated with each lot included in the selection of lots in that bid in accordance with Schedule 7.

## CHAPTER 3

### Procedure for primary bid rounds

#### **Notice to be given to bidders before primary bid rounds and extensions to rounds**

- 27.**—(1) Before the start of each primary bid round, OFCOM shall notify each bidder of—
- (a) the date on which, and the times on that date within which, the primary bid round will take place;
  - (b) in respect of each band, the round price for the band in that primary bid round (determined in accordance with regulation 19);
  - (c) the bidder’s eligibility limit for that primary bid round (determined in accordance with regulation 21 or 22, as the case may be).
- (2) The time notified by OFCOM under paragraph (1)(a) as the end of the primary bid round (“end of round time”) may be treated by a bidder in respect of—
- (a) no more than two primary bid rounds, and
  - (b) for each primary bid round in respect of which paragraph (3) applies to the bidder, a further primary bid round,

as that time extended by thirty minutes, and OFCOM shall treat that extended time as the end of round time for the purposes of paragraph (1)(a).

- (3) This paragraph applies to a bidder where—
- (a) in respect of a previous primary bid round, the bidder treated the end of round time for that round as extended by thirty minutes in accordance with paragraph (2);
  - (b) the bidder submitted its completed primary bid form for that primary bid round so that it was received by OFCOM by the end of round time so extended; and
  - (c) OFCOM have notified the bidder that they are satisfied that, in respect of that primary bid round, circumstances existed which were beyond the bidder’s control which had the effect that the bidder could not have submitted its primary bid form so that it was received by OFCOM by the end of round time without such an extension.

#### **Submission of primary bid form to OFCOM**

- 28.**—(1) Except as provided for in regulation 29, a bidder must submit the completed primary bid form to OFCOM by using the electronic auction system.
- (2) The completed primary bid form must be received by OFCOM by the end of round time.

#### **Alternative method for submission of primary bid form**

- 29.**—(1) Where OFCOM are satisfied that a bidder is unable to submit a primary bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the primary bid form and any requirements relating to the authentication of communications made by means of the alternative method.
- (2) The bidder must submit the primary bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

### **Incomplete or defective primary bid form**

**30.**—(1) Where, due to the manner of completion, a primary bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the primary bid, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of the primary bid.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the primary bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the primary bid form in its entirety shall be rejected by OFCOM and the primary bid submitted on the primary bid form shall not be a valid primary bid and accordingly shall not be taken into consideration for the purposes of determining—

- (a) the bid total for a band in accordance with regulation 18(1);
- (b) the winning combination of principal stage bids in accordance with regulation 41;
- (c) the base price payable by a winning bidder in accordance with regulation 42.

### **Notification that primary bid not valid**

**31.** Where a bidder submits a primary bid that is not a valid primary bid during a primary bid round OFCOM shall, after the end of that primary bid round, notify the bidder of that fact and shall give the reasons why the bid is not a valid primary bid.

### **Release of information on primary bids**

**32.** After the end of a primary bid round and before the start of the subsequent primary bid round (or before the start of the supplementary bids round if there is no subsequent primary bid round), OFCOM shall notify bidders of the bid total for each band for the primary bid round that has ended.

### **Further deposit for primary bid rounds**

**33.**—(1) Where in respect of a primary bid the amount specified by a bidder under regulation 15(3)(b) is greater than the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) OFCOM may, having regard to the desirability of securing an efficient outcome of the principal stage, subsequently notify the bidder that the bidder is required to pay a further sum in pounds as a deposit.

(2) The further sum shall be an amount such that the total amount that the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 and any sum or sums paid as a deposit under this regulation, but not including any sum forfeited under regulation 64) is not less than the amount of the highest valid primary bid that the bidder made before OFCOM gave notice to the bidder under paragraph (1).

(3) Any such sum shall be paid into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(4) Where a bidder does not satisfy the requirements set out in paragraph (3), OFCOM shall notify the bidder of that fact, and for any primary bid rounds following notice being given under this paragraph the bidder's eligibility limit shall be zero.

## CHAPTER 4

### Procedure for supplementary bids round and final principal stage deposit

#### Notice to be given to bidders before supplementary bids round

- 34.** Before the start of the supplementary bids round, OFCOM shall notify each bidder of —
- (a) the date on which, and the times on that date within which, the supplementary bids round will take place;
  - (b) the deadline by when bidders must pay a further sum in pounds as a deposit in accordance with regulation 40.

#### Submission of supplementary bids form to OFCOM

**35.—(1)** Except as provided for in regulation 36, a bidder must submit the completed supplementary bids form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 37, the completed supplementary bids form must be received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

#### Alternative method for submission of supplementary bids form

**36.—(1)** Where OFCOM are satisfied that a bidder is unable to submit a supplementary bids form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder's ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the supplementary bids form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the supplementary bids form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

#### Extension to supplementary bids round

**37.—(1)** Where—

- (a) OFCOM have not received a completed supplementary bids form from a bidder by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round, and
- (b) paragraph (2) applies,

the time by which the bidder's completed supplementary bids form must be received by OFCOM shall be the time sixty minutes after the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its supplementary bids form so that it was received by OFCOM by the time notified to bidders under regulation 34(a) as the end of the supplementary bids round.

#### Incomplete or defective supplementary bids form

**38.—(1)** Where, due to the manner of completion, a supplementary bids form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the supplementary bid or bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM

by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of the supplementary bid or bids.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the supplementary bids form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the supplementary bids made on the supplementary bids form, that supplementary bid or those supplementary bids (as the case may be) shall be rejected by OFCOM and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids in accordance with regulation 41;
  - (ii) the base price payable by a winning bidder in accordance with regulation 42;
- (b) where sub-paragraph (a) does not apply, the supplementary bids form in its entirety shall be rejected by OFCOM and none of the supplementary bids made on that supplementary bids form shall be taken into consideration for the purposes of determining—
  - (i) the winning combination of principal stage bids in accordance with regulation 41;
  - (ii) the base price payable by a winning bidder in accordance with regulation 42.

#### **Notification that supplementary bid not valid**

**39.** Where a bidder submits a supplementary bid that is not a valid supplementary bid OFCOM shall, after the end of the supplementary bids round, notify the bidder of that fact and shall give the reasons why the bid is not a valid supplementary bid.

#### **Final principal stage deposit**

**40.**—(1) By the deadline notified to bidders under regulation 34(b), each bidder must pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23 or 33 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is not less than whichever is the greater of—

- (a) the amount of the bidder's highest valid primary bid as specified by the bidder under regulation 15(3)(b);
- (b) the amount of the bidder's highest valid supplementary bid as specified by the bidder under regulation 17(3)(b).

(2) Where a bidder does not satisfy the requirements set out in paragraph (1), OFCOM shall notify the bidder and the bidder shall be excluded from the award process and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 23 or 33 or under paragraph (1), which shall (where not already forfeited under regulation 64) be forfeited, and all of that bidder's primary bids and supplementary bids (if any) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids in accordance with regulation 41;
- (b) the base price payable by a winning bidder in accordance with regulation 42.

## CHAPTER 5

### Determination of winning principal stage bids and conclusion of principal stage

#### **Determination of the winning principal stage bids and the winning combination of principal stage bids**

**41.**—(1) The winning principal stage bids shall be those valid principal stage bids that comprise the winning combination of principal stage bids.

(2) Unless paragraph (4) applies, the winning combination of principal stage bids shall be the valid combination of principal stage bids having the highest total value of amounts bid.

(3) A valid combination of principal stage bids is any combination of valid principal stage bids within which—

- (a) there is at most one valid principal stage bid from any one bidder; and
- (b) in respect of each band, the bid total for that band for the bids included in the combination is not greater than the available total for that band.

(4) Where there is more than one valid combination of principal stage bids for which the total value is equal highest, the winning combination of principal stage bids shall be determined in accordance with the order of precedence set out in paragraph (5) or, where paragraph (6) applies, in accordance with that paragraph.

(5) The order of precedence shall be determined by the number of eligibility points associated with each such valid combination of principal stage bids in accordance with paragraph (7) such that valid combinations of principal stage bids with which a greater number of eligibility points are associated prevail over valid combinations of principal stage bids with which a lesser number of eligibility points are associated.

(6) Where there is more than one valid combination of principal stage bids for which—

- (a) the total value is equal highest, and
- (b) the associated number of eligibility points is equal highest,

OFCOM shall employ a method of random selection from amongst those valid combinations of principal stage bids to determine the winning combination of principal stage bids.

(7) The number of eligibility points associated with a valid combination of principal stage bids shall be a number equal to the total of the eligibility points associated with each lot included in the selections of lots in the bids constituting that valid combination of principal stage bids in accordance with Schedule 7.

#### **Determination of base prices for winning principal stage bids**

**42.** In respect of each winning principal stage bid, OFCOM shall determine an amount in accordance with Schedule 8 (“base price”) which shall be payable by the relevant winning bidder.**(3)**

#### **Notification of results of principal stage and refund of deposits**

**43.** Following the determination of the winning principal stage bids and the winning combination of principal stage bids under regulation 41 and the determination of the base price for each winning principal stage bid under regulation 42, OFCOM shall—

- (a) notify each winning bidder of—

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(3) OFCOM have provided notes on the determination of the licence fees payable by bidders in a document called ‘Notes on determination of licence fees payable by bidders in relation to the award of the 10, 28, 32 and 40 GHz spectrum bands: Schedules 8 and 9 to the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007’ published on 30th November 2007.

- (i) the selection of lots in its winning principal stage bid;
- (ii) the base price for that winning principal stage bid;
- (b) notify each bidder of—
  - (i) the names of the winning bidders;
  - (ii) in respect of each winning bidder, the selection of lots in its winning principal stage bid; and
- (c) refund to applicants which were not qualified or which withdrew in accordance with regulation 9 and to bidders which were not winning bidders the initial deposits and any sum paid as a deposit under regulation 23, 33 or 40 (where such deposits have not been forfeited under regulation 16, 40 or 64), but not any interest which has accrued on the deposits.

## CHAPTER 6

Assignment of paired frequency range to a winning bidder for a band  
where only one winning principal stage bid includes lots in the band

### **Procedure where there is only one winning principal stage bid for lots in a band and that bid includes all lots in the band**

**44.**—(1) This regulation applies to any band where lots in that band were specified in only one winning principal stage bid and all of the available lots in that band were so specified.

(2) In respect of each such band, the paired frequency range to be assigned to the bidder that submitted the winning principal stage bid that specified all of the lots in that band shall be the paired frequency range comprising all of the frequencies in that band.

### **Procedure where there is only one winning principal stage bid for lots in a band and that bid does not include all lots in the band**

**45.**—(1) This regulation applies to any band where lots in that band were specified in only one winning principal stage bid and not all of the available lots in the band were so specified.

(2) In respect of each such band, OFCOM shall notify the bidder that submitted the winning principal stage bid of—

- (a) the paired frequency ranges in the band that the relevant bidder may select, being the paired frequency ranges which satisfy the following conditions—
  - (i) the bandwidth of the paired frequency range is the same as the total bandwidth of the lots in that band specified in the bidder’s winning principal stage bid;
  - (ii) the frequencies in that band that are not included in the paired frequency range form one paired frequency range; and
- (b) a deadline by when its selection must be received by OFCOM.

(3) To select a paired frequency range the bidder must, on a form provided to the bidder by OFCOM (“paired frequency range selection form”), select no more than one of the paired frequency ranges notified to the bidder by OFCOM under paragraph (2)(a).

(4) Except as provided for in paragraph (5), the bidder must submit the completed paired frequency range selection form to OFCOM by using the electronic auction system, and the form must be received by OFCOM by the deadline notified to the bidder under paragraph (2)(b).

(5) Where OFCOM are satisfied that a bidder is unable to submit a paired frequency range selection form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM

shall notify the bidder of an alternative method of submitting the paired frequency range selection form and any requirements relating to the authentication of communications made by means of the alternative method.

(6) Where OFCOM have notified the bidder under paragraph (5), the bidder must submit the paired frequency range selection form by means of the alternative method and must comply with any requirements which have been notified to it under that paragraph relating to the authentication of communications.

(7) Where, due to the manner of completion, a paired frequency range selection form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of the selection, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of the selection.

(8) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the paired frequency range selection form in its entirety shall be accepted by OFCOM on that basis.

(9) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder, the paired frequency range selection form in its entirety shall be rejected by OFCOM and OFCOM shall determine which of the paired frequency ranges notified to the bidder under paragraph (2)(a) shall be assigned to the bidder.

(10) Where OFCOM have received from the bidder in accordance with paragraph (4) a paired frequency range selection form completed in accordance with paragraph (3), the paired frequency range to be assigned to the bidder shall be the paired frequency range selected on the paired frequency range selection form that the bidder submitted to OFCOM.

(11) Where paragraph (10) does not apply, OFCOM shall determine which of the paired frequency ranges notified to the bidder under paragraph (2)(a) shall be assigned to the bidder.

## CHAPTER 7

Assignment of paired frequency ranges to winning bidders for a band  
where more than one winning principal stage bid includes lots in the band

### **Assignment stage round and assignment stage bids**

**46.**—(1) The procedure set out in this chapter applies to any band where lots in that band were specified in more than one winning principal stage bid.

(2) In respect of those bands, there shall be one further round (“assignment stage round”) to determine which paired frequency ranges in those bands shall be assigned to winning bidders.

(3) Only bidders that submitted a winning principal stage bid where the lots specified in that bid included a lot or lots in one or more of the bands to which the assignment stage round relates may take part in the assignment stage round.

(4) A bid made during the assignment stage round (“assignment stage bid”) shall be a bid for a paired frequency range at an amount in whole pounds specified by the bidder.

(5) A bidder taking part in the assignment stage round may only bid for the paired frequency ranges that OFCOM determine are available to that bidder in accordance with regulation 47.

(6) A bidder may submit no more than one assignment stage bid for each paired frequency range so determined.

(7) A bidder is not required to submit an assignment stage bid.

(8) In order to make an assignment stage bid for a paired frequency range in a band, a bidder must, on a form provided to the bidder by OFCOM (“assignment stage bid form”), specify an amount in whole pounds that it is willing to pay for a licence that includes that paired frequency range, in addition to the base price for that bidder’s winning principal stage bid determined under regulation 42.

### **Determination of paired frequency ranges**

47. For each band to which the assignment stage round relates, the paired frequency ranges in the band that are available to a bidder in the assignment stage round shall be the paired frequency ranges that satisfy the following conditions—

- (a) the bandwidth of the paired frequency range is equal to the total bandwidth of the lots in the band that were specified in the bidder’s winning principal stage bid; and
- (b) the frequency limits of the two blocks of frequencies comprised in the paired frequency range are such that the following conditions could be satisfied—
  - (i) each winning bidder that specified lots in that band in its winning principal stage bid is assigned a paired frequency range that, in respect to that bidder’s winning principal stage bid, satisfies the condition set out in paragraph (a);
  - (ii) there is no overlap between the paired frequency ranges so assigned; and
  - (iii) any frequencies in the band that are not so assigned form one paired frequency range.

### **Assignment stage bid deposit**

48.—(1) Each bidder that makes an assignment stage bid must, by a deadline specified by OFCOM, pay into OFCOM’s bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a further sum in pounds as a deposit so that the total amount the bidder has on deposit (including the initial deposit, any sum paid as a deposit under regulation 23, 33 or 40 and any sum paid as a deposit under this paragraph, but not including any sum forfeited under regulation 64) is an amount that is not less than the amount, *d*, calculated in accordance with the formula set out in paragraph (2).

(2) The formula is—

$$d = b + \sum a$$

where—

“*b*” is the amount of the base price of the bidder’s winning principal stage bid (determined in accordance with regulation 42);

“*a*” is, in respect of each band to which the assignment stage round relates, the amount of the highest assignment stage bid made by the bidder for a paired frequency range in that band.

(3) Where a bidder does not satisfy the provisions set out in paragraph (1)—

- (a) all of the assignment stage bids submitted by the bidder in the assignment stage round shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—
  - (i) the winning combination of assignment stage bids under regulation 57;
  - (ii) the additional price payable by a winning bidder under regulation 58;
- (b) the bidder will be deemed to have made a valid assignment stage bid of zero for each paired frequency range available to the bidder in accordance with regulation 47 for the purposes mentioned in sub-paragraph (a).

### **Valid assignment stage bids**

**49.**—(1) An assignment stage bid shall only be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58;

if it satisfies the conditions set out in paragraph (2) (“valid assignment stage bid”).

(2) The conditions are—

- (a) the assignment stage bid is submitted in accordance with the restrictions set out in regulation 46(5) and (6);
- (b) the assignment stage bid is made on an assignment stage bid form that has been completed in accordance with regulation 46(8);
- (c) the completed assignment stage bid form is submitted to OFCOM in accordance with regulation 51(1) and is received by OFCOM in accordance with regulation 51(2).

### **Notice to bidders before the assignment stage round**

**50.** Before the start of the assignment stage round, OFCOM shall notify each bidder that may take part in the assignment stage bid round in accordance with regulation 46(3) of—

- (a) the paired frequency ranges that are available to that bidder as determined in accordance with regulation 47;
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

### **Submission of assignment stage bid form to OFCOM**

**51.**—(1) Except as provided for in regulation 52, a bidder must submit the completed assignment stage bid form to OFCOM by using the electronic auction system.

(2) Except as provided for in regulation 53, the completed assignment stage bid form must be received by OFCOM by the time notified to the bidder under regulation 50(b) as the end of the assignment stage round.

### **Alternative method for submission of assignment stage bid form**

**52.**—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage bid form by using the electronic auction system because of technical failure (or an event or circumstance with similar effect on the bidder’s ability to use the electronic auction system), OFCOM shall notify the bidder of an alternative method of submitting the assignment stage bid form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the assignment stage bid form by means of the alternative method and must comply with any requirements which have been notified to it under paragraph (1) relating to the authentication of communications.

### **Extension to assignment stage round**

**53.**—(1) Where—

- (a) OFCOM have not received a completed assignment stage bid form from a bidder by the time notified to bidders under regulation 50(b) as the end of the assignment stage round, and

(b) paragraph (2) applies,

the time by which the bidder's completed assignment stage bid form must be received by OFCOM shall be the time thirty minutes after the time notified to bidders under regulation 50(b) as the end of the assignment stage round.

(2) This paragraph applies where OFCOM are satisfied that circumstances existed which were beyond the bidder's control which had the effect that the bidder could not submit its assignment stage bid form so that it was received by OFCOM by the time notified to bidders under regulation 50(b) as the end of the assignment stage round.

#### **Incomplete or defective assignment stage bid form**

54.—(1) Where, due to the manner of completion, an assignment stage bid form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the making of assignment stage bids, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a specified deadline that OFCOM have correctly ascertained the bidder's intention in relation to the making of assignment stage bids.

(2) Where the bidder confirms in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder that OFCOM have correctly ascertained the bidder's intention, the assignment stage bid form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation in a notice given to OFCOM by the specified deadline which is signed by two authorised persons of that bidder—

- (a) where the incompleteness or defect relates to one or more of the assignment stage bids made on the assignment stage bid form, that assignment stage bid or those assignment stage bids (as the case may be) shall be invalid, and regulation 56 shall apply accordingly;
- (b) in all other cases, the assignment stage bid form in its entirety shall be rejected by OFCOM and all of the assignment stage bids made on that assignment stage bids form shall be invalid, and regulation 56 shall apply accordingly.

#### **Notification that assignment stage bid is not valid**

55. Where a bidder submits an assignment stage bid that is not a valid assignment stage bid OFCOM shall, after the end of the assignment stage round, notify the bidder of that fact and shall give the reasons why the bid is not a valid assignment stage bid.

#### **Procedure where there is no valid assignment stage bid**

56. In respect of each paired frequency range available to a bidder in accordance with regulation 47, where the bidder does not make a valid assignment stage bid for a paired frequency range, the bidder shall be deemed to have made a valid assignment stage bid of zero for the paired frequency range for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58.

#### **Determination of the winning assignment stage bids and the winning combination of assignment stage bids**

57.—(1) For each band to which the assignment stage round relates, OFCOM shall determine separately the winning assignment stage bids for paired frequency ranges in that band.

(2) For each such band, the winning assignment stage bids for paired frequency ranges in the band shall be those valid assignment stage bids for paired frequency ranges in that band that comprise the winning combination of assignment stage bids.

(3) Unless paragraph (5) applies, the winning combination of assignment stage bids shall be the valid combination of assignment stage bids having the highest total value of amounts bid.

(4) A valid combination of assignment stage bids is any combination of valid assignment stage bids for paired frequency ranges in that band within which—

- (a) there is one valid assignment stage bid from each winning bidder that specified lots in that band in its winning principal stage bid;
- (b) there is no overlap between the paired frequency ranges comprised in those valid assignment stage bids; and
- (c) any frequencies in that band which are not included in those valid assignment stage bids form one paired frequency range.

(5) Where there is more than one valid combination of assignment stage bids for which the total value is equal highest, OFCOM shall employ a method of random selection from amongst those valid combinations of assignment stage bids to determine the winning combination of assignment stage bids.

#### **Determination of additional prices for winning assignment stage bids**

**58.** In respect of each winning assignment stage bid, OFCOM shall determine an amount in whole pounds in accordance with Schedule 9 (“additional price”) which shall be payable by the relevant winning bidder.

#### **Notification of results of assignment stage**

**59.** Following determination of the winning assignment stage bids and the winning combination of assignment stage bids under regulation 57, and the determination of the additional price for each winning assignment stage bid under regulation 58, OFCOM shall notify each winning bidder of—

- (a) the paired frequency ranges in respect of which the bidder made winning assignment stage bids;
- (b) the additional price for each winning assignment stage bid made by the bidder.

### CHAPTER 8

#### Grant stage

#### **Determination of the licence fee**

**60.** The licence fee payable by a winning bidder shall be an amount equal to the total of—

- (a) the base price for the bidder’s winning principal stage bid determined by OFCOM under regulation 42; and
- (b) the additional price for each winning assignment stage bid made by the bidder determined by OFCOM under regulation 58.

#### **Procedure where amount of winning bidder’s deposit is less than the licence fee**

**61.—(1)** Where, after completion of the assignment stage, the amount of a winning bidder’s deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) is an amount that is less than the amount of the winning bidder’s licence fee calculated in accordance with regulation 60—

- (a) OFCOM shall notify the bidder of a deadline by when the bidder must comply with sub-paragraph (b);
  - (b) the bidder must by that deadline pay into OFCOM's bank account by a same day electronic transfer, with accompanying information which identifies the bidder, a sum in pounds calculated in accordance with paragraph (2).
- (2) The sum which the bidder must pay to OFCOM shall be the difference between the amount of the winning bidder's licence fee calculated in accordance with regulation 60 and the amount of the bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64).
- (3) Where a bidder has satisfied the requirement set out in paragraph (1)(b), OFCOM shall grant the bidder a licence for—
- (a) the paired frequency range or ranges (as the case may be) that are to be assigned to the bidder in accordance with Chapter 6 of this Part; and
  - (b) the paired frequency range or ranges (as the case may be) for which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part.
- (4) Where a bidder does not satisfy the requirement set out in paragraph (1)(b), the bidder shall not be entitled to the grant of a licence under these Regulations and shall not receive a refund of its initial deposit or any sum paid as a deposit under regulation 23, 33, 40 or 48, which shall (where not already forfeited under regulation 64) be forfeited.

#### **Procedure where amount of winning bidder's deposit is greater than or equal to the licence fee**

- 62.**—(1) Where, after completion of the assignment stage, the amount of a winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) is greater than or equal to the amount of the winning bidder's licence fee calculated in accordance with regulation 60, OFCOM shall—
- (a) grant the winning bidder a licence for—
    - (i) the paired frequency range or ranges (as the case may be) that are to be assigned to the bidder in accordance with Chapter 6 of this Part;
    - (ii) the paired frequency range or ranges (as the case may be) in respect of which the bidder submitted a winning assignment stage bid or winning assignment stage bids under Chapter 7 of this Part;
  - (b) refund to the winning bidder a sum in pounds calculated in accordance with paragraph (2).
- (2) The sum which OFCOM shall refund to a winning bidder shall be the difference (if any) between the amount of the winning bidder's deposit (including the initial deposit and any sum paid as a deposit under regulation 23, 33, 40 or 48, but not including any sum forfeited under regulation 64) and the amount of the winning bidder's licence fee calculated in accordance with regulation 60, but not any interest which has accrued on the deposit.

#### **Completion of the award process**

**63.** After the grant of licences and the payment of refunds to winning bidders in accordance with regulation 62(1)(b), OFCOM shall complete the award process by publishing on their internet website details of all valid principal stage bids and all valid assignment stage bids made by each bidder, the names of the persons to whom licences were granted, the details of the paired frequency ranges in respect of which those licences were granted and the details of the licence fees paid.

## PART 6

### ACTIVITY RULES

#### **Forfeit of deposit and exclusion from award process**

**64.** If, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events set out in regulation 66 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process—

- (a) the initial deposit and any sum or sums paid as a deposit under regulation 23, 33, 40 or 48 shall be forfeited by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded by OFCOM from the award process by OFCOM giving that applicant or bidder notice in writing.

#### **Bids made by an excluded bidder**

**65.**—(1) Where a bidder is excluded from the award process under regulation 64(b) during the principal stage, all of the principal stage bids submitted by the bidder shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of principal stage bids under regulation 41;
- (b) the base price payable by a winning bidder under regulation 42.

(2) Where a bidder is excluded from the award process under regulation 64(b) during the assignment stage, all of the assignment stage bids submitted by the bidder (including any bids which the bidder is deemed to have submitted under regulation 56) shall be deemed to be invalid and shall not be taken into consideration for the purposes of determining—

- (a) the winning combination of assignment stage bids under regulation 57;
- (b) the additional price payable by a winning bidder under regulation 58.

#### **Events**

**66.** The events referred to in regulation 64, in relation to an applicant or bidder, are—

- (a) the submission to OFCOM of any information in connection with the award process which is false or misleading;
- (b) any member of that applicant's or bidder's bidder group colluding or attempting to collude with another person to distort the outcome of the award process;
- (c) any member of that applicant's or bidder's bidder group acting in a way which is likely to distort the outcome of the award process;
- (d) any member of that applicant's or bidder's bidder group, or any person to whom confidential information has been disclosed, disclosing, or attempting to disclose, or inciting another person to disclose, any confidential information, whether directly or indirectly, to any person, except where the disclosure is—
  - (i) to OFCOM;
  - (ii) to a member of that applicant's or bidder's bidder group;
  - (iii) to a provider of finance for the purpose of raising finance for a bid; or
  - (iv) to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's or bidder's bidder group;
- (e) any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder;

- (f) any member of that applicant's or bidder's bidder group receiving or attempting to receive services in relation to the award process from any person who has provided or is providing services to OFCOM in relation to the award process;
- (g) any person who is a member or a director or employee of a member of that applicant's or bidder's bidder group and also a director or employee of a member of another bidder group—
  - (i) taking part in the preparation of both bidder groups for participation in the award process; or
  - (ii) receiving confidential information relating to both bidder groups;
- (h) a member of that applicant's or bidder's bidder group is or becomes a member of another applicant's or bidder's bidder group;
- (i) a change occurring in the membership of that applicant's or bidder's bidder group from that notified to OFCOM in its application except as a result of—
  - (i) a person ceasing to be a member of that bidder group;
  - (ii) a person joining that bidder group under the procedure in regulation 6(3);
  - (iii) a person becoming an associate through merger or acquisition activity provided that such activity is not for a purpose related to the award process.

## PART 7

### MISCELLANEOUS

#### **General power of exclusion**

67. OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process if, in their opinion, the grant of a licence to that applicant or bidder would be prejudicial to the interests of national security or the applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

68. If, in accordance with any provision of these Regulations, an applicant or bidder is required, or wishes, to notify OFCOM of any fact or circumstance, it must do so by notice in writing which is marked for the attention of the OFCOM personnel who are specified by OFCOM for that purpose on OFCOM's internet website and must deliver that notice to OFCOM—

- (a) by electronic mail to an electronic mail address dedicated to the award process which is published by OFCOM on their internet website;
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1A 9HA;  
or
- (c) by fax to a number dedicated to the award process which is published by OFCOM on their internet website.

#### **Changes to timing or location**

69.—(1) Subject to regulations 70 and 71, paragraph (2) applies where OFCOM determine that it is impracticable for any reason—

- (a) for any document which is to be delivered to OFCOM under these Regulations to be delivered at the place specified or by the deadline specified under these Regulations; or

- (b) for any action which is required to be undertaken in accordance with these Regulations to be completed by the deadline specified.
- (2) Where this paragraph applies, OFCOM shall take all reasonable steps to notify the applicants or bidders (as the case may be) that—
  - (a) delivery must be made on a different day or within different times on that day or at a different place;
  - (b) the action must be completed on a different day or by a different deadline.

### **Changes to round times and use of electronic auction system**

**70.**—(1) Where a time for the start of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason to start the round at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the start of the round.

(2) Where a time for the end of a round has been notified to bidders and OFCOM determine that it is impracticable for any reason for the round to end at that time, OFCOM shall take all reasonable steps to notify bidders of a revised time for the end of the round.

(3) Where OFCOM determine that it is impracticable for any reason to use the electronic auction system for any of the purposes specified in Part 5 of these Regulations, OFCOM shall take all reasonable steps to notify bidders of an alternative method of participating in the award process and any requirements relating to the authentication of communications made by means of the alternative method.

(4) Bidders must use the alternative method of participating in the award process in accordance with a notification under paragraph (3).

### **Rerunning rounds**

**71.**—(1) Paragraph (2) applies where a round is in progress and OFCOM determine that it is not possible to continue the round because of technical failure (or an event or circumstance with similar effect on the continuation of the round).

(2) Where this paragraph applies, OFCOM shall—

- (a) take all reasonable steps to notify bidders of its determination under paragraph (1);
- (b) disregard the bids made in that round;
- (c) resume the award procedure from the end of the previous round (or, if there was no previous round, from the start of the first primary bid round).

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions of Part 5 of these Regulations because of technical failure (or an event or circumstance with similar effect on the continuation of the award process).

(4) Where this paragraph applies, OFCOM shall—

- (a) determine the rounds for which bids made in those rounds should be disregarded in order to have a fair and efficient outcome of the award process;
- (b) take all reasonable steps to notify bidders of its determinations under paragraph (3) and sub-paragraph (a);
- (c) resume the award process from the end of the latest round for which bids are not disregarded under sub-paragraph (a) or, where all bids are to be disregarded under that sub-paragraph, to rerun the award process from the start of the first primary bid round.

## **Refunds**

**72.** OFCOM may, in such cases as they think fit, refund, in whole or in part, sums which have been paid to them in accordance with any provision of these Regulations.

30th November 2007

*Philip Rutnam*  
Partner, Spectrum Policy  
For and by authority of the Office of  
Communications

SCHEDULE 1

Regulation 2(2)

MEANING OF BAND, LOT AND PAIRED FREQUENCY RANGE

In these Regulations—

- (a) “band” means one of the frequency bands consisting of a lower sub-band and an upper sub-band listed in the column headed “Band” of the following table;
- (b) “lot”, in relation to a band, means two blocks of frequencies within the band where—
  - (i) the lower frequency limit and the upper frequency limit of each block is not specified;
  - (ii) the conditions relating to bandwidth and frequency separation specified in relation to that band in the column headed “Lot” of the following table are satisfied;
- (c) “paired frequency range”, in relation to a band, means two blocks of frequencies each specified by a lower frequency limit and an upper frequency limit such that the following conditions are satisfied—
  - (i) one block of frequencies is entirely within the lower sub-band of the band;
  - (ii) the other block of frequencies is entirely within the upper sub-band of the same band; and
  - (iii) the conditions specified in relation to that band in the column headed “Paired frequency range” of the following table.

<i>Band</i>		<i>Lot</i>		<i>Paired frequency range</i>		
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies, comprising the lot</i>	<i>Separation between (i) the lower frequency limit of one block of frequencies, and (ii) the lower frequency limit of the other block of frequencies</i>	
National	The 10 GHz band	The frequencies between 10.125 GHz and 10.475 GHz	National	10 MHz	350 MHz	(a) The lower frequency limit of the lower block of frequencies is one of the following: 10.125 GHz, 10.135 GHz, 10.145 GHz, 10.155 GHz, 10.165 GHz, 10.175 GHz, 10.185 GHz, 10.195 GHz or 10.205 GHz; (b) the bandwidth of each block of frequencies is one of the following: 20 MHz, 30 MHz, 40 MHz,

<i>Band</i>		<i>Lot</i>		<i>Paired frequency range</i>	
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies, comprising the lot</i>	<i>Separation between (i) the lower frequency limit of block of frequencies, (ii) the lower frequency limit of the other block of frequencies</i>
					50 MHz, 60 MHz, 70 MHz, 80 MHz, 90 MHz or 100 MHz; and (c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 350 MHz.
National 28 GHz band	The frequencies between 27.8285 GHz and 28.0525 GHz	The frequencies between 28.8365 GHz and 29.0605 GHz	National 28 GHz lot	112 MHz	1008 MHz (a) The lower frequency limit of the lower block of frequencies is one of the following: 27.8285 GHz or 27.9405 GHz; (b) the bandwidth of each block of frequencies is one of the following: 112 MHz or 224 MHz; and (c) the separation between the lower frequency limit of one block of frequencies and the lower frequency limit of the other block of frequencies is 1008 MHz.
First national 28 GHz band	The frequencies between 28.0525 GHz and 28.1645 GHz	The frequencies between 29.0605 GHz and 29.1725 GHz	First national 28 GHz lot	112 MHz	1008 MHz (a) the lower block of frequencies is the frequencies between 28.0525 GHz and 28.1645 GHz; (b) the upper block of frequencies is the frequencies between

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<i>Band</i>		<i>Lot</i>		<i>Paired frequency range</i>		
<i>Name</i>	<i>Lower sub-band</i>	<i>Upper sub-band</i>	<i>Name</i>	<i>Bandwidth of each of the two blocks of frequencies, comprising the lot</i>	<i>Separation between (i) the lower limit of block of frequencies, (ii) the lower frequency limit of the other block of frequencies</i>	
Second national sub-band	28.1925 GHz and 28.3045 GHz	The frequencies between 29.2005 GHz and 29.3125 GHz	Second national sub-band lot	12 MHz	1008 MHz	(a) 29.0605 GHz and 29.1725 GHz; (b) the lower block of frequencies is the frequencies between 28.1925 GHz and 28.3045 GHz; the upper block of frequencies is the frequencies between 29.2005 GHz and 29.3125 GHz;
Third national sub-band	28.3325 GHz and 28.4445 GHz	The frequencies between 29.3405 GHz and 29.4525 GHz	Third national sub-band lot	12 MHz	1008 MHz	(a) the lower block of frequencies is the frequencies between 28.3325 GHz and 28.4445 GHz; (b) the upper block of frequencies is the frequencies between 29.3405 GHz and 29.4525 GHz;
National band	31.815 GHz and 32.571 GHz	The frequencies between 32.627 GHz and 33.383 GHz	National sub-band lot	12 MHz	812 MHz	(a) The lower frequency limit of the lower block of frequencies is one of the following: 31.815 GHz, 31.941 GHz, 32.067 GHz, 32.193 GHz, 32.319 GHz or 32.445 GHz; (b) the bandwidth of each block of frequencies is one of the following: 126 MHz, 252 MHz,



SCHEDULE 2

Regulation 4(3)(a)(i)

APPLICATION INFORMATION

**1. Details of the applicant**

Provide the following details for the applicant—

Applicant’s full name

Registered number of company

Registered office of company

Applicant’s contact address (if different from registered office)

Telephone number

Fax number

Electronic mail address

Bank sort code and account number

**2. Authorised persons**

Provide details of the name and position in the applicant of at least three and no more than five persons, each of whom has authority to bind the applicant for all purposes relating to the award process. Also provide a specimen signature of each of these persons.

**3. Directors or members of managing body**

Provide the name and job title of each of the directors of the applicant or each of the members of the managing body of the applicant.

**4. Bidder group**

Provide the names of the applicant’s associates (as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 (“the Regulations”)) and for each provide details of their material interest (as defined in the Regulations) in the applicant.

Provide the names of all other members of the bidder group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 4 to the Regulations in accordance with regulation 4(3)(a)(iii) of the Regulations.

**5. Qualification to bid**

In relation to the determination by the Office of Communications (“OFCOM”) under regulation 7 of the Regulations concerning whether or not to qualify the applicant to bid in the award process—

- (a) provide details of any reason why the grant of a licence to the applicant may be prejudicial to the interests of national security;
- (b) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (c) state whether any member of the applicant’s bidder group has colluded or attempted to collude, or is colluding or attempting to collude, with another person to distort the outcome of the award process and provide a description of any such collusion;
- (d) state whether any member of the applicant’s bidder group has acted or is acting in a way which is likely to distort the outcome of the award process and provide a description of any such actions;

- (e) state whether confidential information has been disclosed, and if so, whether and under what circumstances, and whether the disclosure was (i) was intentional and (ii) was negligent;
- (f) state whether the applicant has attempted to obtain confidential information, and if so, provide a description of the circumstances;
- (g) state whether the applicant has received confidential information, and if so, provide a description of the source of the information;
- (h) state whether the applicant is a member of a cartel, and if so, also a description of the cartel;
- (i) taking into account the interests of national security, provide a description of the process;
- (ii) receive confidential information;

**6. Other information**

Provide a brief description of—

- (a) agreements or arrangements entered into by the applicant or any of its directors;
- (b) any criminal proceedings in which the applicant or any of its directors is involved;

SCHEDULE 3

Regulation 4(3)(a)(ii)

APPLICATION DOCUMENT

[Insert name of applicant] (the “applicant”) represents and warrants to the Office of Communications that—

- (a) the persons authorised in section 2 of the applicant’s application have read and understood the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 (“the Regulations”), the terms of the licence to be granted under the Regulations and the Wireless Telegraphy Act 2006;
- (b) the applicant has the legal authority to participate in the award process under the Regulations and to have a licence granted to it, and has in place all necessary consents, permissions and internal approvals for this purpose;
- (c) the information provided in, or in support of, the application is, to the best of the knowledge and belief of the applicant true, accurate and complete in all material respects; and
- (d) the applicant is aware of the provisions in regulations 64 and 66 of the Regulations, including the provisions about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder and that any such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

## SCHEDULE 4

Regulation 4(3)(a)(iii)

DOCUMENT FOR MEMBER OF APPLICANT'S  
BIDDER GROUP WHO IS NOT AN ASSOCIATE

[Insert name of applicant or bidder] (the "applicant/bidder") wishes to include [insert name and address of person to be included in bidder group who is not an associate] as a member of the applicant/bidder's bidder group as defined in the Wireless Telegraphy (Licence Award) (No. 2) Regulations 2007 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 7(2) of the Regulations an applicant shall not be qualified to bid in the award process where a member of its bidder group is also a member of another applicant's bidder group. Regulations 64 and 66 contain provisions on disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder. Under the Regulations such activities may lead to forfeiture of sums on deposit and exclusion from the award process.

**1. Applicant/bidder**

In relation to regulations 7(2), 64 and 66 of the Regulations, the applicant/bidder represents and warrants to the Office of Communications ("OFCOM") that so far as it is aware, having made all reasonable enquiries, [insert name of person to be included in bidder group who is not an associate] is not a member of any other applicant's or bidder's bidder group.

The applicant/bidder undertakes to inform OFCOM immediately if it becomes aware that [insert name of person to be included in bidder group who is not an associate]—

- (a) has ever been or becomes a member of any other applicant's or bidder's bidder group;
- (b) has ever been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) has ever obtained or ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

**2. [Insert name of person to be included in bidder group who is not an associate]**

[Insert name of person to be included in bidder group who is not an associate] represents and warrants to OFCOM that it—

- (a) consents to be a member of the applicant/bidder's bidder group;
- (b) is not a member of any other applicant's or bidder's bidder group; and
- (c) is aware of the provisions in regulations 64 and 66 of the Regulations about disclosure of confidential information (as defined in the Regulations) and obtaining confidential information relating to another applicant or bidder.

[Insert name of person to be included in bidder group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder—

- (a) if it has ever been or becomes a member of any other applicant's or bidder's bidder group;
- (b) if it has ever been or becomes a subsidiary of a member of any other applicant's or bidder's bidder group during the award process; or
- (c) if it has ever obtained or if it ever obtains confidential information (as defined in the Regulations) relating to another applicant or bidder.

## SCHEDULE 5

Regulation 11(1)(a)

**PAIRED FREQUENCY RANGE SELECTION  
MENU WHERE THERE IS ONLY ONE BIDDER**

Bidder's full name:

Bidder's address:

Telephone number:

Fax number:

E-mail address:

<i>Paired frequency range</i>	<i>Price of paired frequency range</i>	<i>Selection of paired frequency ranges (indicate selected paired frequency ranges with a cross ("X"), selecting no more than one paired frequency range from each band)</i>
<b>National 10 GHz band</b>		
1. 10.125–10.145 GHz paired with 10.475–10.495 GHz	£20,000	
2. 10.125–10.155 GHz paired with 10.475–1.505 GHz	£30,000	
3. 10.125–10.165 GHz paired with 10.475–10.515 GHz	£40,000	
4. 10.125–10.175 GHz paired with 10.475–10.525 GHz	£50,000	
5. 10.125–10.185 GHz paired with 10.475–10.535 GHz	£60,000	
6. 10.125–10.195 GHz paired with 10.475–10.545 GHz	£70,000	
7. 10.125–10.205 GHz paired with 10.475–10.555 GHz	£80,000	
8. 10.125–10.215 GHz paired with 10.475–10.565 GHz	£90,000	
9. 10.125–10.225 GHz paired with 10.475–10.575 GHz	£100,000	
10. 10.205–10.225 GHz paired with 10.555–10.575 GHz	£20,000	
11. 10.195–10.225 GHz paired with 10.545–10.575 GHz	£30,000	
12. 10.185–10.225 GHz paired with 10.535–10.575 GHz	£40,000	

- 13. 10.175–10.225 GHz paired with £50,000  
10.525–10.575 GHz
- 14. 10.165–10.225 GHz paired with £60,000  
10.515–10.575 GHz
- 15. 10.155–10.225 GHz paired with £70,000  
10.505–10.575 GHz
- 16. 10.145–10.225 GHz paired with £80,000  
10.495–10.575 GHz
- 17. 10.135–10.225 GHz paired with £90,000  
10.485–10.575 GHz

**National 28 GHz band**

- 18. 27.8285–27.9405 GHz paired with £60,000  
28.8365–28.9485 GHz
- 19. 27.8285–28.0525 GHz paired with £120,000  
28.8365–29.0605 GHz
- 20. 27.9405–28.0525 GHz paired with £60,000  
28.9485–29.0605 GHz

**First sub-national 28 GHz band**

- 21. 28.0525–28.1645 GHz paired with £20,000  
29.0605–29.1725 GHz

**Second sub-national 28 GHz band**

- 22. 28.1925–28.3045 GHz paired with £10,000  
29.2005–29.3125 GHz

**Third sub-national 28 GHz band**

- 23. 28.3325–28.4445 GHz paired with £30,000  
29.3405–29.4525 GHz

**National 32 GHz band**

- 24. 31.815–31.941 GHz paired with £60,000  
32.627–32.753 GHz
- 25. 31.815–32.067 GHz paired with £120,000  
32.627–32.879 GHz
- 26. 31.815–32.193 GHz paired with £180,000  
32.627–33.005 GHz
- 27. 31.815–32.319 GHz paired with £240,000  
32.627–33.131 GHz
- 28. 31.815–32.445 GHz paired with £300,000  
32.627–33.257 GHz
- 29. 31.815–32.571 GHz paired with £360,000  
32.627–33.383 GHz
- 30. 32.445–32.571 GHz paired with £60,000  
33.257–33.383 GHz
- 31. 32.319–32.571 GHz paired with £120,000  
33.131–33.383 GHz

32. 32.193–32.571 GHz paired with £180,000  
33.005–33.383 GHz
33. 32.067–32.571 GHz paired with £240,000  
32.879–33.383 GHz
34. 31.941–32.571 GHz paired with £300,000  
32.753–33.383 GHz

**National 40 GHz band**

35. 40.50–40.75 GHz paired with 42.00– £30,000  
42.25 GHz
36. 40.50–41.00 GHz paired with 42.00– £60,000  
42.50 GHz
37. 40.50–41.25 GHz paired with 42.00– £90,000  
42.75 GHz
38. 40.50–41.50 GHz paired with 42.00– £120,000  
43.00 GHz
39. 40.50–41.75 GHz paired with 42.00– £150,000  
43.25 GHz
40. 40.50–42.00 GHz paired with 42.00– £180,000  
43.50 GHz
41. 41.75–42.00 GHz paired with 43.25– £30,000  
43.50 GHz
42. 41.50–42.00 GHz paired with 43.00– £60,000  
43.50 GHz
43. 41.25–42.00 GHz paired with 42.75– £90,000  
43.50 GHz
44. 41.00–42.00 GHz paired with 42.50– £120,000  
43.50 GHz
45. 40.75–42.00 GHz paired with 42.25– £150,000  
43.50 GHz

## SCHEDULE 6

Regulation 19(1)

## ROUND PRICE IN THE FIRST PRIMARY BID ROUND

In the first primary bid round the round price for a lot of a description mentioned in an entry in Column (1) is the price shown in the corresponding entry in Column (2).

<i>Column (1)</i>	<i>Column (2)</i>
<i>Description of lot</i>	<i>Price in the first primary bid round</i>
National 10 GHz lot	£10,000
National 28 GHz lot	£60,000
First sub-national 28 GHz lot	£20,000

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Second sub-national 28 GHz lot	£10,000
Third sub-national 28 GHz lot	£30,000
National 32 GHz lot	£60,000
National 40 GHz lot	£30,000

## SCHEDULE 7

Regulations 15(8), 22(3), 26(4) and 41(7)

## ELIGIBILITY POINTS ASSOCIATED WITH LOTS

The number of eligibility points associated with a lot of a description mentioned in an entry in Column (1) is the number of points shown in the corresponding entry in Column (2).

<i>Column (1)</i>	<i>Column (2)</i>
<i>Description of lot</i>	<i>Number of eligibility points</i>
National 10 GHz lot	1
National 28 GHz lot	6
First sub-national 28 GHz lot	2
Second sub-national 28 GHz lot	1
Third sub-national 28 GHz lot	3
National 32 GHz lot	6
National 40 GHz lot	3

## SCHEDULE 8

Regulation 42

## DETERMINATION OF BASE PRICE

*Base price*

1.—(1) OFCOM shall determine a base price for each winning principal stage bid by imposition of the requirements that the base prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where a base price so determined includes a fraction of a pound, the base price shall be that price rounded up to the nearest pound.

*First requirement*

2. The base price for each winning principal stage bid shall be—
- no less than the total of the round prices in the first primary bid round for the lots included in the selection of lots in that winning principal stage bid; and
  - no greater than the amount of that winning principal stage bid.

*Second requirement*

3.—(1) Taking the base prices for the winning principal stage bids together, the base prices shall be such that if—

- (a) the amount bid by each winning bidder for the selection of lots in its winning principal stage bid had been the base price rather than the amount of its winning principal stage bid (“reduced winning principal stage bid”), and
- (b) the amount bid by each winning bidder in respect of each other valid principal stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning principal stage bid and the base price for that winning principal stage bid,

the combination of the reduced winning principal stage bids submitted by the winning bidders would have been the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid.

(2) The bids mentioned in sub-paragraph (1)(a) and (b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid principal stage bids for the purposes of this paragraph.

*Third requirement*

4. Taking the base prices for the winning principal stage bids together, the total of those base prices shall be no greater than the total of any other prices for the winning principal stage bids that satisfy the requirements set out in paragraphs 2 and 3.

*Fourth requirement*

5.—(1) Taking the base prices for the winning principal stage bids together, the opportunity cost variance of those base prices calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance, calculated in accordance with sub-paragraph (2), of any other prices for the winning principal stage bids that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“

$$OCV_B$$

”) of the prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_B = \sum (p_B - c_B)^2$$

where—

“

$$p_B$$

” is the price for a winning principal stage bid; and

“

$$c_B$$

” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning principal stage bid.

(3) The formula is—

$$c_B = u_B - t_B + b_B$$

where—

“

$u_B$

” is the amount calculated in accordance with sub-paragraph (4);

“

$t_B$

” is the total amount of the winning principal stage bids; and

“

$b_D$

” is the amount of the winning principal stage bid for which

$P_B$

is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of principal stage bids or one of the valid combinations of principal stage bids (as the case may be) having the highest total value of amounts bid, where the valid combination or combinations of principal stage bids do not include any of the principal stage bids made by the winning bidder that submitted the winning principal stage bid for which

$P_B$

is the price.

#### *Interpretation*

**6.** In this Schedule “valid combination of principal stage bids” shall be construed in accordance with regulation 41.

## SCHEDULE 9

Regulation 58

### DETERMINATION OF ADDITIONAL PRICE

#### *Additional price*

1.—(1) OFCOM shall determine an additional price for each winning assignment stage bid by imposition of the requirements that the additional prices must satisfy that are set out in paragraphs 2 to 5.

(2) Where an additional price so determined includes a fraction of a pound, the additional price shall be that price rounded up to the nearest pound.

#### *First requirement*

2. The additional price for each winning assignment stage bid shall be no less than zero and no greater than the amount of that winning assignment stage bid.

#### *Second requirement*

3.—(1) Taking the additional prices for the winning assignment stage bids for paired frequency ranges in the same band together, the additional prices for winning assignment stage bids for paired frequency ranges in a band shall be such that if—

- (a) the amount bid by each winning bidder for the paired frequency range selected in its winning assignment stage bid for a paired frequency range in that band had been the additional price rather than the amount of its winning assignment stage bid (“reduced winning assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid assignment stage bid made by that bidder for a paired frequency range in that band had been reduced by an amount equal to the difference between the amount of its winning assignment stage bid for a paired frequency range in that band and the additional price for that relevant winning assignment stage bid,

the combination of the reduced winning assignment stage bids submitted by the winning bidders would have been the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for paired frequency ranges in that band having the highest total value of amounts bid.

(2) Where the amount of a bid has been reduced in accordance with sub-paragraph (1)(b) and is less than zero, the amount of that bid shall be treated as if it were zero for the purposes of this paragraph.

(3) The bids mentioned in sub-paragraph (1)(a) and (b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid assignment stage bids for the purposes of this paragraph.

#### *Third requirement*

4. Taking the additional prices for the winning assignment stage bids for paired frequency ranges in the same band together, the total of those additional prices for winning assignment stage bids for paired frequency ranges in a band shall be no greater than the total of any other prices for the winning assignment stage bids for paired frequency ranges in that band that satisfy the requirements set out in paragraphs 2 and 3.

*Fourth requirement*

5.—(1) Taking the additional prices for the winning assignment stage bids for paired frequency ranges in the same band together, the opportunity cost variance of those additional prices for winning assignment stage bids for paired frequency ranges in a band calculated in accordance with sub-paragraph (2) shall be less than the opportunity cost variance, calculated in accordance with sub-paragraph (2), of any other prices for the winning assignment stage bids for paired frequency ranges in that band that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“

$OCV_A$

”) of the prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula—

$$OCV_A = \sum (p_A - c_A)^2$$

where—

“

$p_A$

” is the price for a winning assignment stage bid; and

“

$c_A$

” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning assignment stage bid.

(3) The formula is—

$$c_A = u_A - t_A + b_A$$

where—

“

$u_A$

” is the amount calculated in accordance with sub-paragraph (4);

“

$t_A$

” is the total amount of the winning assignment stage bids; and

“

$b_A$

” is the amount of the winning assignment stage bid for which

$p_A$

is the price.

(4) The amount calculated in accordance with this sub-paragraph is the total amount of the valid combination of assignment stage bids or one of the valid combinations of assignment stage bids (as the case may be) for paired frequency ranges in the same band having the highest total value of amounts bid where, for each assignment stage bid for a paired frequency range in that band made by the winning bidder that submitted the winning assignment stage bid for which

$P_A$

is the price, the amount of that assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.

(5) Where the amount of an assignment stage bid is treated as if it were zero under sub-paragraph (4), that assignment stage bid shall be treated as a valid assignment stage bid for the purposes of that sub-paragraph.

#### *Interpretation*

6. In this Schedule “valid combination of assignment stage bids” shall be construed in accordance with regulation 57.

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### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out the procedure that will apply to the grant of wireless telegraphy licences at frequencies between 10.125 GHz to 10.575 GHz, 27.8285 GHz to 29.4525 GHz, 31.815 GHz to 33.383 GHz and 40.50 GHz to 43.50 GHz.

To apply, a body corporate must deliver the documents required by regulation 4(3) to the Office of Communications (“OFCOM”) on a day specified by OFCOM on their internet website. An initial deposit of twenty-five thousand pounds must also be paid to OFCOM (regulation 4(3)(b)).

An applicant will not be qualified to bid where a member of its bidder group is also a member of another bidder group (regulation 7(2)). OFCOM will determine which applicants are qualified to bid in the auction, taking into account the matters set out in regulation 7(3). Under regulation 8, OFCOM will publish the names of all applicants qualified to bid on their internet website.

OFCOM will follow the procedure in Part 4 of these Regulations where there is only one bidder, or the procedure in Part 5 of these Regulations where there is more than one bidder.

Under Part 4, where there is only one bidder OFCOM will give the bidder a notice, setting out the deadline by when the completed paired frequency range selection menu must be provided to OFCOM and the deadline by when the bidder must transfer to OFCOM the balance of the licence fee (regulation 11).

Under Part 5, the process for the award of licences will consist of three stages.

The first stage, called the principal stage, is the procedure set out in Chapters 2 to 5 of Part 5. During the principal stage there will be an auction with at least two rounds during which bidders will be able to make bids for lots (a term defined in regulation 2(2)). OFCOM will determine the winning bids

in accordance with regulation 41, and will determine the price payable in respect of each winning bid in accordance with regulation 42 and Schedule 8.

The second stage, called the assignment stage, is the procedure for determining the paired frequency ranges (a term defined in regulation 2(2)) that are to be assigned to each winning bidder. OFCOM will determine the winning assignment stage bids in accordance with the requirements of regulation 57, and the price payable in respect of each winning assignment stage bid in accordance with regulation 58 and Schedule 9.

The third stage, called the grant stage, is the procedure set out in Chapter 8 of Part 5. OFCOM will grant licences to winning bidders and refund any sums due to winning bidders under regulation 62(1) (b).

If in relation to an applicant which is qualified to bid or a bidder OFCOM are satisfied that certain events are occurring or have occurred and that the occurrence would materially affect the outcome of the award process, the applicant or bidder concerned will forfeit sums on deposit held by OFCOM and may be excluded from the award process (regulation 64).

A full regulatory impact assessment of the effect of these Regulations will have on the cost to business has been prepared. Copies of the impact assessment and copies of the publication referred to on page 20 of these Regulations are available to the public from the OFCOM library at Riverside House, 2a Southwark Bridge Road, London SE1 9HA, telephone 020 7981 3000 or on the OFCOM internet website at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the impact assessment have also been placed in the libraries of both Houses of Parliament.