

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

## **BACKGROUND**

- (A) Ofcom has decided to clear channel 69 of the 800 MHz band with the result that users of PMSE equipment will no longer be able to use it from 2012, and has announced its intention to provide funding pursuant to its powers under section 1 of the Wireless Telegraphy Act 2006 to licensed users in circumstances according to funding principles set out in its statement dated 5 August 2010 and subject to HM Treasury consent.
- (B) Ofcom has appointed an administrator ("**Ofcom's Representative**") to manage Applications for Grants from PMSE Users of channel 69.
- (C) Ofcom's Representative will assess Your Application for a Grant against the Rate Card and the Eligibility Criteria. If You are deemed to be eligible, You will be notified of the value of the Grant You may receive. These Terms and Conditions apply by virtue of section 1(6) of the Wireless Telegraphy Act 2006 and explain the obligations applying to You if You accept the Grant from Ofcom.

## **TERMS AND CONDITIONS**

### **1 DEFINITIONS AND INTERPRETATION**

<b>Application</b>	means the application made by You for a Grant under the Scheme.
<b>Eligibility Criteria</b>	means the criteria by which Your eligibility for a Grant will be assessed, as amended from time to time;
<b>Equipment</b>	means PMSE equipment using channel 69 which is subject to an Application for a Grant;
<b>Grant</b>	means the payment made by Ofcom to You under these Terms and Conditions;
<b>Modification Equipment</b>	means Equipment that will be modified so that it can operate on a frequency other than channel 69;
<b>Ofcom's Representative</b>	means the company appointed by Ofcom to administer the Scheme;
<b>PMSE</b>	means programme making and special events;
<b>PMSE Users</b>	means the users of Equipment using channel 69;
<b>Rate Card</b>	means the document, amended from time to time by Ofcom, specifying the level of the Grant which is available in respect of specified items of Equipment where applications are successfully verified;

<b>Scheme</b>	means the scheme run by Ofcom to facilitate the clearance of channel 69, under which Grants may be made to PMSE Users; and
<b>Website</b>	means <a href="http://www.pmsefunding.co.uk">www.pmsefunding.co.uk</a> , a website established and controlled by Ofcom's Representative.

## **2 ASSESSMENT AND NOTIFICATION**

- 2.1 Ofcom's Representative will use the information You provide in Your Application to determine:
- (a) whether You are eligible to receive a Grant; and
  - (b) the value of the Grant,
- according to the Rate Card and the Eligibility Criteria.

## **3 CONDITIONS OF PAYMENT**

- 3.1 Payment of a Grant shall be on the terms set out in these Terms and Conditions. On receipt of Equipment (or in respect of Modification Equipment on receipt of a request from You for a Grant) by Ofcom's Representative You shall be deemed to have irrevocably accepted the obligations imposed by these Terms and Conditions.
- 3.2 Subject to clause 3.3 below, title and risk in the Equipment will automatically transfer from You to Ofcom's Representative on payment of a Grant and for the avoidance of doubt until such time of transfer You shall remain liable for and retain all risks associated with the Equipment.
- 3.3 In respect of Modification Equipment, title and risk will remain with You at all times.
- 3.4 Payment of a Grant shall be at Ofcom's sole discretion and shall be in full and final settlement of any monies due to You in accordance with the Scheme and, to the fullest extent permitted by law, Ofcom shall have no liability for any costs or other losses howsoever incurred by You in connection with or arising out of the Scheme.
- 3.5 You will receive payment of the Grant in accordance with the payment methods available to You as set out in the Application.

## **4 WARRANTIES AND REPRESENTATIONS**

- 4.1 You warrant, represent and agree that:
- (a) You are the legal and beneficial owner of the Equipment and that the Equipment is free from any legal charge, lien and/or encumbrance;
  - (b) You have the requisite power, capacity and authority to comply with these Terms and Conditions and to make the statements in Your Application; and
  - (c) the statements You have made to Ofcom and Ofcom's Representative including, but not limited to those statements made in Your Application, are true and accurate in all respects;

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

## **5 OFCOM'S RIGHTS**

### **Adjustment of Rate Card and Eligibility Criteria**

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

### **Recovery of Grants**

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

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

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

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

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

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

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

for such repayment.

**Return of Equipment**

- 5.6 Ofcom reserves the right following receipt by Ofcom's Representative of Equipment to withdraw any offer of a Grant but in such circumstances will direct Ofcom's Representative to return the Equipment to You. Should the withdrawal of any offer of a Grant result from a reasonable determination following inspection of Equipment that no Grant is payable, You will be required to pay Ofcom's reasonable costs.

**6 GENERAL**

**Freedom of Information Act**

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

**Data Protection Act**

- 6.2 In performing its obligations under these Terms and Conditions, Ofcom shall comply with all relevant legislation, including but not limited to the Data Protection Act 1998.

**Third Party Rights**

- 6.3 It is not intended that these Terms and Conditions, either expressly or by implication, confers any benefit on any person who is not a party to these Terms and Conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply.

**Entire Agreement**

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

**Severability**

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

**Law and Jurisdiction**

- 6.7 These Terms and Conditions shall be governed by and construed in accordance with English Law, and shall be subject to the exclusive jurisdiction of the courts of England and Wales.