

# **Statement on the final draft of the Regulations for the award of spectrum in the 700 MHz and 3.6-3.8 GHz frequency bands**

Notice of Ofcom's final draft of the Wireless  
Telegraphy (Licence Award) Regulations 2020

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**STATEMENT:**

**Publication date:** 13 March 2020

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# 1. Overview

This document provides notice of Ofcom's intention to make a statutory instrument for the award of spectrum in the 700 MHz and 3.6-3.8 GHz frequency bands.

## **What we have decided – in brief**

On 28 October 2019, we published a consultation on our proposals for the design of the auction of spectrum in the 700 MHz and 3.6-3.8 GHz frequency bands. At the same time, we published a notice of our proposal to make regulations which would implement those proposals.

We have considered the responses to that consultation, and we have today published a statement setting out our decisions for the auction of spectrum in the 700 MHz and 3.6-3.8 GHz frequency bands. This document provides notice of our final draft of the Regulations, which, when enacted, will give effect to the decisions set out in today's statement.

This overview is a high-level summary only. The decisions and reasoning are set out in the full document.

## 2. Introduction

- 2.1 Ofcom has the statutory power under sections 14 and 122(7) of the Wireless Telegraphy Act 2006 (the “2006 Act”) to make regulations to award licences by means of an auction. For the avoidance of doubt, the Regulations take precedence over anything we say in this document.
- 2.2 On 28 October 2019, we published a notice in respect of our proposal to make the Wireless Telegraphy (Licence Award) Regulations 2020 (the “**October 2019 notice**”).<sup>1</sup>
- 2.3 The October 2019 notice contained a draft statutory instrument and invited comments on this by 9 December 2019.
- 2.4 The draft statutory instrument published for consultation in October 2019 was published together with a consultation document setting out our revised proposals on auction design for the award of the 700 MHz and 3.6-3.8 GHz spectrum bands.<sup>2</sup>

### Responses to the October 2019 notice

- 2.5 We received three responses to the October 2019 notice. The two non-confidential ones are published on our website.<sup>3</sup> We summarise and discuss the comments received in section 3.

### Making and publication of the Regulations for the award

- 2.6 Having considered the responses to the October 2019 notice, we have finalised the Wireless Telegraphy (Licence Award) Regulations 2020 (the “**Regulations**”). As set out in our statement “*Award of the 700 MHz and 3.6-3.8 GHz spectrum bands*”,<sup>4</sup> we will make the Regulations once we are certain that stakeholders will either not seek to challenge the decisions set out in that statement, or any such challenges have been disposed of. Once we have made the Regulations, they will be available on [www.legislation.gov.uk](http://www.legislation.gov.uk), which is the only authorised source for published statutory instruments.
- 2.7 We have annexed a final draft of the Regulations to this statement for indicative purposes, in substantially the form we intend to submit for registration and publication once we have made them.

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<sup>1</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/auction-regulations-award-700-mhz-3.6-3.8-ghz-spectrum>

<sup>2</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/award-700-mhz-3.6-3.8-ghz-spectrum-revised-proposals>

<sup>3</sup> We received non-confidential responses from BT/EE and O2. We also received a confidential response from [REDACTED] BT/EE’s and O2’s responses are available here: <https://www.ofcom.org.uk/consultations-and-statements/category-2/auction-regulations-award-700-mhz-3.6-3.8-ghz-spectrum> The confidential response did not raise comments of a specific nature on the draft regulations and focused on matters of a more general nature.

<sup>4</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/192413/statement-award-700mhz-3.6-3.8ghz-spectrum.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/192413/statement-award-700mhz-3.6-3.8ghz-spectrum.pdf)

2.8 We have also published a separate document, 'Process guidance for potential applicants and bidders in the auction' alongside this statement.<sup>5</sup> This document provides guidance on the running of the auction process.

## Document structure

2.9 The structure of this document is as follows:

- a) Section 3 summarises stakeholders' responses to our October 2019 notice and Ofcom's subsequent decisions.
- b) Section 4 sets out next steps for the award.
- c) Annex 1 contains a copy of the final draft of the Regulations substantially in the form we intend to submit for registration and publication after they are made.

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<sup>5</sup> [https://www.ofcom.org.uk/\\_data/assets/pdf\\_file/0027/192474/process-guidance-700mhz-3.6-3.8ghz-auction.pdf](https://www.ofcom.org.uk/_data/assets/pdf_file/0027/192474/process-guidance-700mhz-3.6-3.8ghz-auction.pdf)

## 3. Responses to the Notice and Ofcom's decisions

3.1 We received three responses to the October 2019 notice,<sup>6</sup> two from organisations Telefónica UK Limited (“O2”) and British Telecommunications plc and EE Limited (“BT/EE”) and one confidential respondent. Non-confidential versions of the responses received from BT/EE and O2 are published on our website.<sup>7</sup> Vodafone also noted that it was content that the draft regulations implemented the policy proposals set out in the October 2019 consultation.<sup>8</sup>

### Summary of stakeholder comments and Ofcom's response

#### Auction design

3.2 O2's response to the consultation on the draft regulations included various general comments on full band reconfiguration, the determination of bid constraints, lot size, eligibility points, pricing rule and the information policy for the auction.<sup>9</sup>

3.3 These comments relate to the auction design policy and we have therefore responded to them in our statement ‘Award of the 700 MHz and 3.6-3.8 GHz spectrum bands’ (the “**March 2020 Statement**”), which has been published alongside this document.<sup>10</sup> Please see Section 5 of the March 2020 Statement. O2<sup>11</sup> noted that the Regulations included a term “other bidding indications” in relation to the rules concerning excluding bids made by an excluded bidder and rerunning rounds and asked for clarification of the term.

3.4 We can confirm that “other bidding indications” is intended to refer to any other decisions that a bidder may make in a round, i.e. submission of an eligibility event. Therefore, in the event that Ofcom were to exclude a bidder and re-run rounds under regulations 122 and 129, Ofcom may disregard both any bids and eligibility events from that excluded bidder.

#### Round prices, number of rounds and procedural guidance for bidders

3.5 BT/EE proposed that boundaries are set in the Regulations for the amount that Ofcom can increase prices in each round and that Ofcom provides guidance on its intended approach.<sup>12</sup>

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<sup>6</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/proposal-auction-regulations-700mhz-3.6-3.8-ghz>

<sup>7</sup> <https://www.ofcom.org.uk/consultations-and-statements/category-2/auction-regulations-award-700-mhz-3.6-3.8-ghz-spectrum>

<sup>8</sup> Email sent by Vodafone to Ofcom on 9 December 2019.

<sup>9</sup> O2 non-confidential response to the October 2019 notice, pages 3 and 4.

<sup>10</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0020/192413/statement-award-700mhz-3.6-3.8ghz-spectrum.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0020/192413/statement-award-700mhz-3.6-3.8ghz-spectrum.pdf)

<sup>11</sup> O2 non-confidential response to the October 2019 notice, page 5.

<sup>12</sup> BT/EE non-confidential response to the October 2019 notice, page 3.

- 3.6 O2 asked for guidance on bid increments, number and duration of bidding rounds and general timings.<sup>13</sup> It requested that Ofcom publish a procedural guidance document for potential applicants and bidders, similar to that published in the Ofcom 2.3 GHz and 3.4-3.6 GHz spectrum auction. It proposed the document should detail procedures for use of the electronic auction system, downloading auction files, how to make alternative bid submissions and the process for communicating questions and answers before and during the auction.
- 3.7 We respond to BT/EE's proposal for setting limits on bid increments in our March 2020 Statement. We note that price increments will be subject to Ofcom's discretion, in order to enable us to best respond to circumstances in the auction as they unfold. Please see paragraphs 5.85-5.90 in the March 2020 Statement. The 'Process guidance for potential applicants and bidders in the auction' provides guidance in relation to price increments, number and duration of bidding rounds and general timings.<sup>14</sup>

## Fax

- 3.8 BT/EE suggested that Ofcom should remove the requirement that bidders provide fax details in their application form and warranty and that it does not use fax to communicate with bidders, as the technology is rapidly becoming obsolete.<sup>15</sup>
- 3.9 In previous auctions, Ofcom has used fax as an alternative form of communication with bidders. We have also typically used fax as the alternative method for bid submission, in the event that a bidder is unable to submit their bid using the electronic auction system. Having reviewed this, we consider that there are now other more appropriate technologies that Ofcom can use for these purposes, such as a password protected email attachments.
- 3.10 We have therefore removed the requirement for prospective bidders to provide fax details in the Regulations. Please see the 'Process guidance for potential applicants and bidders in the auction' on our methods of communication with applicants and bidders throughout the auction process.

## Procedure for the negotiation period

- 3.11 We received comments from BT/EE and O2 on the procedure for the negotiation period, including some suggested improvements. We address these comments below.

### Appointment of independent third party for negotiation period

- 3.12 BT/EE suggested that Ofcom should appoint an independent third party to help facilitate any negotiations between winners of 3.6-3.8 GHz spectrum and help broker potential agreements.<sup>16</sup>

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<sup>13</sup> O2 non-confidential response to the October 2019 notice, page 5.

<sup>14</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0027/192474/process-guidance-700mhz-3.6-3.8ghz-auction.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0027/192474/process-guidance-700mhz-3.6-3.8ghz-auction.pdf)

<sup>15</sup> BT/EE non-confidential response to the October 2019 notice, page 2.

<sup>16</sup> BT/EE non-confidential response to the October 2019 notice, page 4.

- 3.13 We do not consider it is appropriate for Ofcom to appoint a third party to facilitate negotiations. However, this does not preclude bidders from appointing an independent third-party as a facilitator, if they decided this would be appropriate and consistent with the Regulations.

#### **Deposit requirements for participation in the negotiation period**

- 3.14 O2 requested that Ofcom drop the condition that only bidders that have paid their required assignment stage deposit will be allowed to enter into adjacency agreements during the negotiation period.<sup>17</sup>
- 3.15 BT/EE also noted that draft regulation 84(1) stated winning bidders that have failed to pay the required assignment stage deposit are prohibited from participating in the negotiation period and suggested that this was contradicted by draft regulation 85(1)(b) which indicates that each winner of 3.6-3.8 GHz can participate. It suggested that 84(1) be redrafted, if our intention was to prevent bidders that do not pay their assignment deposit from expressing a wish to participate in the negotiation period, while not preventing them from ultimately doing so.
- 3.16 For the avoidance of doubt, Ofcom's intention is that only winning bidders of 3.6-3.8 GHz spectrum that have paid their assignment stage deposit may participate in the negotiation period and enter into an adjacency agreement. Accordingly, we have amended 85(1)(b) to make this clear.
- 3.17 We consider it is appropriate for winning bidders of 3.6-3.8 GHz lots to make a serious commitment to participation in the award, including the negotiation period, and therefore to pay their required assignment stage deposit (if any) before having the opportunity to participate in negotiations. The amendment we have made to the final draft of regulation 85(1)(b) makes this clear.

#### **Trigger for the negotiation period**

- 3.18 O2 suggested that negotiations should proceed unless all relevant parties notify Ofcom that they do not wish to participate.<sup>18</sup> O2 felt that even if only one bidder initially wants to engage in negotiation it should be given the opportunity to present its case to other winners of 3.6-3.8 GHz spectrum.
- 3.19 We consider that if only one winner expresses a desire to negotiate and the others choose not to, then it is very unlikely that a partial adjacency agreement or a full adjacency agreement would be reached. However, it would mean that there would be a delay in the award of spectrum licences during the negotiation period. The final draft of the Regulations has been drafted to expedite release of the frequencies and in the above circumstances it is likely that there would be an unnecessary delay. We have therefore decided to not adopt O2's suggestion.

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<sup>17</sup> O2 non-confidential response to the October 2019 notice, page 6.

<sup>18</sup> O2 non-confidential response to the October 2019 notice, page 7.

### Procedure for submitting adjacency agreement forms

- 3.20 O2 proposed that Ofcom allow bidders to submit a single common adjacency agreement form (signed by the authorised representatives of the relevant parties). It also requested clarification that it would be permissible for the parties to prepare a common form which is then duplicated and signed by each participant. O2 additionally requested clarification that it would be acceptable for parties to a negotiated agreement to submit all forms together in a common submission.<sup>19</sup>
- 3.21 O2 also proposed changes to Ofcom's approach to dealing with incomplete or defective adjacency agreement forms which included the provision of specified time periods to resolve issues.<sup>20</sup> O2 said that these proposed changes were to guard against mistakes or the possibility that a party might act in bad faith and deliberately undermine an agreement.
- 3.22 We have not incorporated O2's proposal relating to bidders submitting a single common form into the final draft of the Regulations, as we consider that this could add an unnecessary amount of potential complexity to the negotiation period. Allowing multiple methods of submitting an adjacency agreement form (i.e. common forms and individual forms) also introduces ambiguity into the process, which could result in confusion and inadvertent errors. We also note that BT/EE agreed with our proposed approach and no other stakeholders raised comments. We expect bidders that wish to enter the negotiation period to note carefully and follow the procedure prescribed in the Regulations.
- 3.23 In the case of O2's suggestions, regarding incomplete or defective adjacency agreement forms, we consider this would result in further complexity to the process and may also add to the potential length of the negotiation period. We have therefore decided not to implement these suggestions. We have, however, made an amendment in the final draft of the Regulations to which will allow bidders to submit another adjacency agreement form in the second phase of the negotiation period, if a valid full adjacency agreement is not determined by Ofcom after the end of the first phase. We believe this will help to guard against mistakes and reduce the impact of a bidder acting in bad faith in the first phase of the negotiation period, which we describe below in paragraphs 3.41-3.46.
- 3.24 We do not envisage that bidders preparing a common form that is duplicated and then signed by each participant would be in contravention of the auction Regulations, provided that bidders follow the process described in the Regulations relating to validity of adjacency agreements.
- 3.25 The 'Process guidance for potential applicants and bidders in the auction' provides guidance in relation to submission of adjacency agreement forms.

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<sup>19</sup> O2 non-confidential response to the October 2019 notice, page 7.

<sup>20</sup> O2 non-confidential response to the October 2019 notice, pages 7 and 8.

### Clarification on the small winner restriction for those not in a partial adjacency agreement

- 3.26 O2 noted that a bidder winning 20 MHz or less of 3.6-3.8 GHz spectrum who is not part of a partial adjacency agreement must be placed closer to one of the edges of the band than any bidders within a partial adjacency agreement, even if all such members in the agreement also won 20 MHz or less. Whilst O2 had no objections to this rule, it requested that Ofcom clarified that this was the intent.<sup>21</sup>
- 3.27 We can confirm that this is the intent, i.e. that small winners that are not part of an adjacency agreement must be placed at either the top or the bottom of the band.

### Clarification on exclusion rules during the negotiation period

- 3.28 In relation to the negotiation period, O2 requested that Ofcom clarify the position regarding events such as collusion, distortion of the outcome of the award process, obtaining confidential information about another applicant or bidder and if a member of a bidder group could be deemed to have become a member of another bidder's bidder group as result of receiving information during the negotiation period. It also requested that the period of exclusion of events be extended from the beginning of the negotiation period through to the end of the award process.<sup>22</sup>
- 3.29 Regulation 122 provides that if Ofcom is satisfied that any of the events set out in regulation 124 are occurring (or have occurred), and that the occurrence would materially affect the outcome of the award process, Ofcom may exclude that bidder from the award process, and any sum paid as a deposit shall be forfeited. Regulation 122(2), however, provides that if certain specified events occur only during the negotiation period, Ofcom shall not exclude a bidder or require its deposit to be forfeited. In regulation 122(2), as suggested by O2, we have now additionally included any of the events specified in regulation 124(2)(e)<sup>23</sup> within this.
- 3.30 With regards to O2's request for further clarification, we are not able to pre-determine whether bidders' actions during the negotiation period would constitute collusion or other grounds for exclusion under the auction Regulations. We also note that all bidding, including negotiations, must be compliant with competition law.
- 3.31 However, we note that participation in the negotiation period would be part of the award process, as opposed to something that may materially affect or distort the outcome of the award process. We therefore do not expect that participating in negotiations or entering into a valid full or partial adjacency agreement would, in and of itself, constitute grounds for exclusion under the Regulations. On that same basis, we do not consider it necessary to extend the regulation 122(2) to the end of the award process.

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<sup>21</sup> O2 non-confidential response to the October 2019 notice, page 8.

<sup>22</sup> O2 non-confidential response to the October 2019 notice, pages 8 and 9.

<sup>23</sup> 'any member of that applicant's or bidder's bidder group obtaining or attempting to obtain confidential information relating to another applicant or bidder'.

- 3.32 We also note that any information exchanged between bidders during the negotiation period takes place after, and therefore cannot affect, the submission of principal stage bids and assignment stage bids.

## Summary of changes in the final draft of the Regulations

- 3.33 In addition to the amendments made in light of stakeholder responses, we have made some further refinements to the Regulations which we describe below.

### Minimum bid in 3.6-3.8 GHz

- 3.34 As set out in our March Statement, we have decided to implement a minimum bid of 10 MHz (two lots) in 3.6-3.8 GHz band. Accordingly, we have included an additional provision in regulation 36(a). See section 5 of our March 2020 Statement for more information.

### Refinements to the negotiation period procedure

#### Publication of whether the negotiation period has been triggered

- 3.35 We have added a provision to regulation 85(1) that, where two or more winning bidders of 3.6-3.8 GHz lots have indicated that they wish to participate in a negotiation period, we will publish on our website the start and end days (and times on those days) for the first phase of the negotiation period and the proposed start and end days (and times on those days) for the second phase of the negotiation period, were it to go ahead.
- 3.36 We consider it is beneficial to publish this information, given that the negotiation period will extend the award process.

#### Length of each phase in the negotiation period

- 3.37 If the negotiation period were to go ahead, there will be up to two phases. As set out in our March 2020 Statement, we envisage the first phase will last up to three weeks, and the second phase (if required) will last one week.
- 3.38 However, we consider it is important to avoid any unnecessary delay in the auction outcome. We have therefore made an amendment to the Regulations in which Ofcom can bring the first phase of the negotiation period to an end earlier than the end day we will have notified to bidders and published on our website, if we receive full adjacency agreement forms from all winning bidders of 3.6-3.8 GHz before that day. This is set out in regulation 95(1).
- 3.39 If Ofcom determines a full adjacency agreement after the end of the first phase, there would be no need for a second phase. Ofcom will therefore proceed to determine the outcome and proceed to the grant stage. This is set out in regulation 95(3).
- 3.40 In the event each winning 3.6 GHz bidder submits a full adjacency agreement form in the first phase, but Ofcom does not determine that there is a valid full adjacency agreement,

regulation 95(4) states there shall be a second phase of negotiation. If there is a second phase of the negotiation period, we will confirm and notify bidders of the timings for the second phase and publish these on our website. These timings may be different to the proposed timings notified under regulation 85.

### **Submission of forms in the first and second phases of the negotiation period**

- 3.41 We have made an amendment to the procedure for submitting forms in the first and second phases of the negotiation period, which is intended to minimise potential errors when submitting the form and guard against strategic play during the negotiation period.
- 3.42 Regulation 86 now says that there will be a valid full adjacency agreement either where:
- a) each winning bidder for 3.6 GHz lots has submitted a matching full adjacency agreement form using the prescribed method in the first phase; or
  - b) each winning bidder for 3.6 GHz lots has submitted a matching full adjacency agreement form using the prescribed method in the second phase.
- 3.43 Regulation 87 remains in substance the same as set out in our draft statutory instrument published with the October 2019 Notice.
- 3.44 The effect of this amendment is, regardless of whether a bidder has submitted a full adjacency agreement form in the first phase, if Ofcom has determined there is no valid full adjacency agreement at the end of the first phase, that bidder may submit a new adjacency agreement form in the second phase. This form may be either a full adjacency agreement form or partial adjacency agreement form.
- 3.45 In other words, Ofcom will not consider forms submitted in the first phase of the negotiation period for the purposes of determining whether there is a valid adjacency agreement in the second phase. Therefore, if a bidder wishes to enter into an adjacency agreement after the first phase of the negotiation period, it must submit a new adjacency agreement form in the second phase.
- 3.46 We have amended regulation 95(4) to the effect that if we do not determine a valid full adjacency agreement after the end of the first phase, we shall make clear our reasoning to winning 3.6 GHz bidders for not determining a full adjacency agreement.

### **Mitigations to strategic play during the negotiation period**

- 3.47 We have included a revised regulation 93 which sets out that, if a bidder were to submit more than one adjacency agreement form, Ofcom will only accept the first adjacency agreement form delivered by the winning 3.6-3.8 GHz bidder in a phase of the negotiation period.
- 3.48 This means that only the first full adjacency agreement form submitted by a bidder in the first phase of the negotiation period will be considered by Ofcom for the purposes of determining whether there is a valid full adjacency agreement after the end of the first phase. Similarly, only the first form (whether full or partial adjacency agreement form) submitted by a bidder in the second phase of the negotiation period will be considered by

Ofcom for the purposes of determining whether there is a valid adjacency agreement after the end of the second phase.

- 3.49 The purpose of this amendment is to eliminate opportunities for bidders to deliver multiple forms strategically as part of the negotiations. For the avoidance of doubt, we expect bidders to deliver only one adjacency agreement form in a phase of the negotiation period, as they may only be party to one adjacency agreement (in accordance with regulation 92).
- 3.50 We have also made clear in regulations 90 and 91 that Ofcom will reject any forms received outside of the times notified to bidders for each phase.

### **Changes to improve clarity of drafting**

- 3.51 BT/EE supplied a list of comments on the draft regulations which included minor editorial suggestions and suggestions to improve clarity of drafting.<sup>24</sup> With the exception of the comment regarding boundaries being set for price increases in each round, and some of the minor editorial suggestions we considered to be unnecessary, we have incorporated these into the final draft of the Regulations.
- 3.52 We have also made various minor drafting changes to the final draft of the Regulations for clarity.

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<sup>24</sup> BT/EE non-confidential response to the October 2019 notice, pages 2 and 3.

## 4. Next steps

- 4.1 We have published a final draft of the Auction Regulations at Annex 1. We intend to make the Auction Regulations once we are certain that stakeholders will either not seek to challenge the decisions set out in our March 2020 Statement, or any such challenges have been disposed of.
- 4.2 The Auction Regulations will come into force after we formally make them – we will specify the date of entry into force in the final Regulations. Once the Regulations are in force, we will publish details of when and how potential bidders may apply to participate in the auction.

# A1. Final draft of the Wireless Telegraphy (Licence Award) Regulations 2020

STATUTORY INSTRUMENTS

2020 No. 0000

## ELECTRONIC COMMUNICATIONS

### The Wireless Telegraphy (Licence Award) Regulations 2020

*Made* - - - - [ ] 2020

*Coming into force* [ ] 2020

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

Before making these Regulations OFCOM have given notice of their proposal to do so in accordance with section 122(4)(a) of the Act, published notice of their proposal in accordance with section 122(4)(b) of the 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 Act.

## PART 1

### Introductory

#### Citation, commencement, and extent

1.—(1) These Regulations may be cited as the Wireless Telegraphy (Licence Award) Regulations 2020 and shall come into force on [ ] 2020.

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

#### Interpretation

2.—(1) In these Regulations—

“3.6 GHz assignment stage bid” shall be construed in accordance with regulation 68(1);

“3.6 GHz assignment stage option” has the meaning given in regulation 68(4);

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<sup>(a)</sup> 2006 c.36.

“3.6 GHz assignment stage option list” has the meaning given in regulation 68(4);

“3.6 GHz base price” has the meaning given in regulation 34(1);

“3.6 GHz licence” has the meaning given in regulation 107(a);

“3.6 GHz lot additional price” has the meaning given in regulation 100 or regulation 101 as the context requires;

“700 MHz individual frequency lot additional price” has the meaning given in regulation 103;

“700 MHz individual frequency lot assignment stage bid” shall be construed in accordance with regulation 71(1);

“700 MHz individual frequency lot assignment stage option” has the meaning given in regulation 71(4);

“700 MHz individual frequency lot assignment stage option list” has the meaning given in regulation 71(4);

“700 MHz individual frequency lot base price” has the meaning given in regulation 34(2);

“700 MHz licence” has the meaning given in regulation 107;

“700 MHz paired frequency lot additional price” has the meaning given in regulation 105;

“700 MHz paired frequency lot assignment stage bid” shall be construed in accordance with regulation 74(1);

“700 MHz paired frequency lot assignment stage option” has the meaning given in regulation 74(4);

“700 MHz paired frequency lot assignment stage option list” has the meaning given in regulation 74(4);

“700 MHz paired frequency lot base price” has the meaning given in regulation 34(3);

“additional deposit” has the meaning given in regulation 15(1);

“additional price” means the 3.6 GHz lot additional price, the 700 MHz individual frequency lot additional price or the 700 MHz paired frequency lot additional price;

“adjacency agreement” means a full adjacency agreement or a partial adjacency agreement;

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

“applicant group” means in relation to an applicant—

- (a) that applicant;
- (b) each associate of that applicant; and
- (c) each person in respect of whom the applicant has delivered to OFCOM a completed document in the form set out in Schedule 3;

“assignment stage” has the meaning given in regulation 19;

“assignment stage bid” means a 3.6 GHz assignment stage bid, a 700 MHz individual lot assignment stage bid or a 700 MHz paired frequency lot assignment stage bid;

“assignment stage form” shall be construed in accordance with regulation 65;

“assignment stage option” means a 3.6 GHz assignment stage option, a 700 MHz individual frequency lot assignment stage option or a 700 MHz paired frequency lot assignment stage option;

“assignment stage round” shall be construed in accordance with regulation 57;

“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;

“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” shall be construed in accordance with regulation 7(3);

“bidder ranking list” has the meaning given in regulation 30(2);

“category one bidders” has the meaning given in regulation 30(1)(a);

“category two bidders” has the meaning given in regulation 30(1)(b);

“category three bidder” has the meaning given in regulation 30(1)(c);

“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 applicant or bidder group, would be likely to affect decisions that such other applicant (or potential applicant) or bidder may make in relation to the award process;

“current round” means, except in regulations 41 to 43 where the meaning in regulation 40(2) applies, the principal stage round that has begun but has not yet ended;

“deadline”, in relation to any requirement imposed on any person by or under these Regulations, means (as the case may require)—

- (d) the time;
- (e) the date; or
- (f) 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;

“eligibility event” shall be construed in accordance with regulation 43;

“eligibility limit” means, in relation to a bidder, a number of eligibility points which limits the bids that may be made by the bidder in a principal stage round;

“eligibility points used” shall be construed in accordance with regulation 42;

“excess demand” shall be construed in accordance with regulation 46;

“existing spectrum holdings” has the meaning given in regulation 5(1);

“financial exposure” shall be construed in accordance with regulation 54;

“full adjacency agreement” shall be construed in accordance with regulation 82;

“full adjacency agreement form” means the form in Schedule 9;

“GHz” means gigahertz;

“grant stage” has the meaning given in regulation 19;

“initial deposit” shall be construed in accordance with regulation 4(3)(b);

“last day for withdrawal” has the meaning given in regulation 13(1);

“leftover 3.6 GHz lots” has the meaning given in regulation 69(2)(b)(ii), regulation 97(4)(e) or regulation 98(4)(d) as the context requires;

“licence” means a wireless telegraphy licence to be granted pursuant to these Regulations to establish or use a wireless telegraphy station or install or use wireless telegraphy apparatus in the United Kingdom at frequencies comprised in one or more of the 3.6 GHz lots, 700 MHz individual frequency lots or 700 MHz paired frequency lots to be determined in accordance with the procedure set out in these Regulations;

“material interest” means, whether held directly or indirectly—

- (g) any interest (construed in accordance with sections 820 to 825 of the Companies Act 2006<sup>(a)</sup>) 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

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<sup>(a)</sup> 2006 c.46.

(ii) any share or shares in the case where 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

(h) the right to appoint or remove a majority of the applicant's or bidder's board of directors;

“MHz” means megahertz;

“most recent round” means the principal stage round that has most recently ended;

“negotiation period” shall be construed in accordance with regulation 84(2);

“OFCOM” means the Office of Communications;

“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 website;

“overall bid list” has the meaning given in regulation 31(3);

“overall bid constraint” shall be construed in accordance with regulation 18;

“partial adjacency agreement” shall be construed in accordance with regulation 83;

“partial adjacency agreement form” means the form in Schedule 8;

“partial agreement parties” has the meaning given in regulation 83;

“pounds” means pounds sterling;

“previous round” means the principal stage round that immediately preceded the most recent round;

“principal stage” has the meaning given in regulation 19;

“principal stage bid” shall be construed in accordance with regulation 22;

“principal stage form” shall be construed in accordance with regulation 21;

“principal stage round” shall be construed in accordance with regulation 20;

“required assignment stage deposit” shall be construed in accordance with regulation 81;

“required final principal stage deposit” shall be construed in accordance with regulation 55;

“round” means a period of time specified by OFCOM during which bidders may make bids in accordance with the procedure set out in these Regulations;

“round event” shall be construed in accordance with regulation 23;

“round price” shall be construed in accordance with regulations 24 to 28;

“standing high bid status” shall be construed in accordance with regulations 29 to 32;

“third party” has the meaning given in regulation 4(3)(a)(iii)(ee);

“third party parent” has the meaning given in regulation 4(3)(a)(iii)(ff);

“total 3.6 GHz base price” has the meaning given in regulation 35(1);

“total 700 MHz individual frequency lot base price” has the meaning given in regulation 35(2);

“total 700 MHz paired frequency lot base price” has the meaning given in regulation 35(3);

“total auction sum” shall be construed in accordance with regulation 114;

“total base price” means, in respect of a bidder, the sum of that bidder’s total 3.6 GHz base price (if any), total 700 MHz individual frequency lot base price (if any), and total 700 MHz paired frequency lot base price (if any);

“total frequencies associated with a bidder’s principal stage form” has the meaning given in regulation 37(2);

“valid 3.6 GHz assignment stage bid” shall be construed in accordance with regulation 70(4);

“valid 700 MHz individual frequency lot assignment stage bid” shall be construed in accordance with regulation 73(4);

“valid 700 MHz paired frequency lot assignment stage bid” shall be construed in accordance with regulation 76(4);

“valid assignment stage bid” means a valid 3.6 GHz assignment stage bid, a valid 700 MHz individual frequency lot assignment stage bid and 700 MHz paired frequency lot assignment stage bid;

“valid assignment stage form” shall be construed in accordance with regulation 66;

“valid combination of 3.6 GHz assignment stage bids” shall be construed in accordance with regulation 97(4) or regulation 98(4) as the context requires;

“valid combination of 700 MHz individual frequency lot assignment stage bids” shall be construed in accordance with regulation 102(4);

“valid combination of 700 MHz paired frequency lot assignment stage bids” shall be construed in accordance with regulation 104(4);

“valid full adjacency agreement” shall be construed in accordance with regulation 86;

“valid partial adjacency agreement” shall be construed in accordance with regulation 87;

“valid request to carry forward its eligibility limit” shall be construed in accordance with regulation 21;

“valid principal stage bid” shall be construed in accordance with regulation 21;

“valid principal stage form” shall be construed in accordance with regulation 21;

“winning 3.6 GHz assignment stage bid” shall be construed in accordance with regulation 97(2) or 98(2) as the context requires;

“winning 700 MHz individual frequency lot assignment stage bid” shall be construed in accordance with regulation 102(2);

“winning 700 MHz paired frequency lot assignment stage bid” shall be construed in accordance with regulation 104(2);

“winning assignment stage bid” means a winning 3.6 GHz assignment stage bid, a winning 700 MHz individual frequency lot assignment stage bid or a winning 700 MHz paired frequency lot assignment stage bid;

“winning bidder” means a winning bidder for 3.6 GHz lots, a winning bidder for 700 MHz individual frequency lots or a winning bidder for 700 MHz paired frequency lots;

“winning bidder for 3.6 GHz lots” means a bidder who made bids for 3.6 GHz lots which became winning principal stage bids in accordance with regulations 33;

“winning bidder for 700 MHz individual frequency lots” means a bidder who made bids for 700 MHz individual frequency lots which became winning principal stage bids in accordance with regulations 33;

“winning bidder for 700 MHz paired frequency lots” means a bidder who made bids for 700 MHz paired frequency lots which became winning principal stage bids in accordance with regulations 33;

“winning combination of valid 3.6 GHz assignment stage bids” shall be construed in accordance with regulation 97(3) or regulation 98(3) as the context requires;

“winning combination of valid 700 MHz individual frequency lot assignment stage bids” shall be construed in accordance with regulation 102(3);

“winning combination of valid 700 MHz paired frequency lot assignment stage bids” shall be construed in accordance with regulation 104(3); and

“winning principal stage bid” shall be construed in accordance with regulations 33.

(2) A reference in these Regulations to a “3.6 GHz lot”, a “700 MHz individual frequency lot” or a “700 MHz paired frequency lot” shall be construed in accordance with Schedule 1.

(3) A reference in these Regulations to a “lot type” or “lot” shall be construed in accordance with Schedule 1.

(4) A reference in these Regulations to a numbered 3.6 GHz lot, a numbered 700 MHz individual frequency lot, a numbered 700 MHz paired frequency lot or a “block” of such lots 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 or days 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 or those days specified by OFCOM a sealed envelope containing—
    - (i) a document containing the application information required by, and the warranty set out in, Schedule 2, completed in respect of the applicant and signed on its behalf by two authorised persons;
    - (ii) for each person, not being an associate of the applicant, which the applicant wishes to join its applicant group, a document in the form set out in Schedule 3 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
    - (iii) a document setting out the details of the existing spectrum holdings of—
      - (aa) the applicant;
      - (bb) each other member of its applicant group;
      - (cc) each person in whom the applicant has a material interest;
      - (dd) each person in whom any other member of its applicant group has a material interest;
      - (ee) any person (“third party”) who has entered into a contract or arrangement with the applicant (or with any other member of its applicant group or any person in whom the applicant or any other member of its applicant group has a material interest) to acquire rights under a licence granted pursuant to the award process;
      - (ff) any person who has a material interest in a third party (“third party parent”);
      - (gg) any person in whom a third party has a material interest;
      - (hh) any person in whom a third party parent has a material interest; and
  - (b) by a deadline specified by OFCOM, pay into OFCOM’s bank account, with accompanying information which identifies the applicant, an initial deposit of one hundred thousand pounds.
- (4) OFCOM shall publish the day or days, times and deadline on their website.
- (5) The details of existing spectrum holdings that are required are—
- (a) the wireless telegraphy licence number; and
  - (b) the frequencies.

## **Meaning of existing spectrum holdings**

- 5.—(1) In these Regulations “existing spectrum holdings” means—
- (a) any authorisation to establish or use a wireless telegraphy station, or to install or use wireless telegraphy apparatus, under a wireless telegraphy licence which relates to any of the frequencies in the frequency bands listed in Schedule 7; and
  - (b) any contract or arrangement under which such an authorisation is to be acquired.

## **PART 3**

### **Qualification stage**

#### **CHAPTER 1**

#### **Qualification**

### **Notification of names of applicants and associates**

- 6.—(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 which each applicant must notify OFCOM under paragraph (3).
- (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 applicant group is also an associate of another applicant or is also an applicant.
- (3) Where an applicant determines that a member of its applicant 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.
- (4) If it appears to OFCOM from any application or notice that a member of one applicant group is also a member of another applicant group, OFCOM shall give notice to each of the applicants concerned of that fact and specify a deadline by when each applicant concerned must notify OFCOM of any change in circumstances the effect of which is that no member of its applicant group is also a member of another applicant group.

### **Recording of applicant group members**

- 7.—(1) Where there has been a change in the composition of an applicant’s applicant group since the date of the application, that applicant must deliver to OFCOM revised versions of the documents provided under regulations 4(3)(a)(i) to 4(3)(a)(iii) which comply with those provisions following that change.
- (2) OFCOM shall record the members of each applicant group, taking account of any changes notified under paragraph (1).
- (3) Each applicant group so recorded shall constitute a bidder group.

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

- 8.—(1) An applicant or bidder may change its bidder group but, in relation to the award process, the applicant or bidder shall be subject to regulations 11(2), 122 and 124 if they apply to any such change.
- (2) If a change involves the addition or departure of an associate, the applicant or bidder must notify OFCOM of the change and deliver to OFCOM a revised version of the documents provided under regulations 4(3)(a)(i) and 4(3)(a)(iii) which comply with those provisions following the change.

(3) If a change involves the addition of 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) a document in the form set out in Schedule 3 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; and
- (b) a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

### **Changes to existing spectrum holdings**

9. If an applicant or, in relation to an applicant, any person referred to in regulation 4(3)(a)(iii) changes its existing spectrum holdings before existing spectrum holdings are recorded under regulation 17, the applicant must notify OFCOM and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

### **Fitness to hold a licence**

10.—(1) OFCOM shall, for each applicant which has submitted an application in accordance with regulation 4, determine whether that applicant is fit to hold a licence.

(2) In making their determination under paragraph (1), OFCOM shall take into account—

- (a) any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003<sup>(a)</sup>;
- (b) whether the applicant is a fit and proper person to hold a licence having regard to the probity of—
  - (i) the applicant;
  - (ii) each other member of the applicant's bidder group; and
  - (iii) each director of each member of the applicant's bidder group;
- (c) whether any of the information submitted to OFCOM by the applicant in connection with the award process is false or misleading;
- (d) 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;
- (e) 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;
- (f) whether 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) whether any member of the applicant's bidder group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant;

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<sup>(a)</sup> 2003 c.21.

- (h) whether 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) whether any person who is a member or a director or an employee of a member of the applicant's bidder group and is also a director or an 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.

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

(4) 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.

(5) Where OFCOM determine that an applicant is not fit to hold a licence the applicant shall be disqualified from the award process.

(6) OFCOM shall inform an applicant which is disqualified of their decision and the reasons for it but that applicant's initial deposit shall not be forfeited because of that decision.

### **Qualification to participate in the award process**

**11.**—(1) Each applicant—

- (a) which was not disqualified under regulation 10, and
- (b) which has no member of its bidder group which is also a member of the bidder group of another applicant (which was not disqualified under regulation 10),

shall be qualified to participate in the award process.

(2) An applicant which has a member of its bidder group which is also a member of the bidder group of another applicant shall not be qualified to participate in the award process.

(3) Where an applicant is not qualified to participate in the award process, OFCOM shall inform that applicant of that fact but that applicant's initial deposit shall not be forfeited for that reason.

### **Publication of names of qualified applicants**

**12.**—(1) OFCOM shall notify each applicant qualified to participate of—

- (a) the name of each other applicant who is so qualified; and
- (b) the names of their associates.

(2) OFCOM shall publish the names of all applicants who are so qualified on OFCOM's website.

### **Withdrawal of an application**

**13.**—(1) OFCOM shall notify each applicant qualified to participate of the last day for withdrawal from the award process ("last day for withdrawal") and shall publish the last day for withdrawal (with refund of the initial deposit) on OFCOM's website.

(2) If, on or before the last day for withdrawal, OFCOM receives notice from an applicant that it wishes to withdraw its application, signed by two authorised persons, the application shall be withdrawn and the applicant shall be excluded from the award process but that applicant's initial deposit shall not be forfeited for that reason.

(3) That applicant shall not be re-admitted to the award process.

(4) OFCOM shall notify all other applicants of the withdrawal.

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

- 14.—(1) An applicant may not withdraw from the award process after the last day for withdrawal.
- (2) After the last day for withdrawal, OFCOM shall determine the number of bidders.
- (3) 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 13, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit.
- (4) Where there are one or more bidders—
- (a) OFCOM shall refund to applicants which were not qualified, or withdrew in accordance with regulation 13, their initial deposit (where such deposit has not been forfeited) but not any interest which has accrued on the deposit; and
- (b) OFCOM shall grant licences in accordance with the procedure set out in these Regulations.
- (5) OFCOM shall publish the names of the bidders on OFCOM's website.

## **CHAPTER 2**

### **Additional deposit and eligibility limit for the first principal stage round**

#### **Additional deposit before the first principal stage round**

15.—(1) A bidder which wishes to participate in the principal stage must pay, in addition to the initial deposit, a deposit of at least nine hundred thousand pounds (the “additional deposit”) which shall be taken into account by OFCOM in accordance with regulation 16 for the purpose of calculating the bidder's eligibility limit for the first principal stage round.

(2) To pay the additional deposit, a bidder must, by a deadline specified by OFCOM, pay the additional deposit into OFCOM's bank account with accompanying information which identifies the bidder.

(3) Where a bidder does not pay the additional deposit by the deadline, that bidder shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

(4) After the deadline specified under paragraph (2), OFCOM shall determine each bidder's eligibility limit for the first principal stage round in accordance with regulation 16 and shall record each bidder's existing spectrum holdings in accordance with regulation 17.

#### **Determination of a bidder's eligibility limit for the first principal stage round**

- 16.—(1) A bidder's eligibility limit for the first principal stage round shall be—
- (a) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is less than four million pounds, the number which is the amount of such deposit in pounds divided by one million;
- (b) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is equal to or more than four million pounds but less than four hundred and eighty four million pounds, the number (E) which is calculated in accordance with the formula set out in paragraph (2); and
- (c) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is equal to or more than four hundred and eighty four million pounds but less than one billion and eighty four million pounds, the number (F) which is calculated in accordance with the formula set out in paragraph (3); and
- (d) where the amount which the bidder has on deposit (including the initial deposit and the additional deposit) is equal to or more than one billion and eighty four million pounds, fifty two.

(2) The formula is  $E = 4 + [(D - 4,000,000)/(20,000,000)]$ , where “D” is the amount of the deposit in pounds.

(3) The formula is  $F = 28 + 4 \times [(D - 484,000,000)/(100,000,000)]$ , where “D” is the amount of the deposit.

(4) Where the number which results from the calculation in paragraphs (1)(a), to (1)(d) is not a whole number, the bidder’s eligibility limit shall be that number rounded down to the nearest whole number.

(5) That number shall be expressed as a number of points.

## CHAPTER 3

### Recording of existing spectrum holdings and overall bid constraints

#### **Recording of existing spectrum holdings**

**17.**—(1) After the deadline specified in regulation 15(2), OFCOM shall, for each bidder, record the bidder’s existing spectrum holdings.

(2) A bidder’s existing spectrum holdings to be recorded are those which have been notified by that bidder under regulation 4(3)(a)(iii), as amended to take account of any notifications of subsequent changes to those spectrum holdings which may have been made under regulations 7(1), 8(2), 8(3) and 9.

(3) After the recording of spectrum holdings, the bidder and, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) may change its spectrum holdings but in relation to the award process—

- (a) the bidder shall be subject to regulations 122 and 124 if they apply to that change; and
- (b) the bidder’s recorded spectrum holdings shall not be amended.

(4) If there is such a change, the bidder concerned must notify OFCOM of the change and deliver to OFCOM a revised version of the document provided under regulation 4(3)(a)(iii) which complies with that provision following the change.

#### **Determination of overall bid constraints**

**18.**—(1) Before the first principal stage round OFCOM shall—

- (a) determine for each bidder; and
- (b) notify to each bidder an overall bid constraint.

(2) The overall bid constraint may be different for each bidder.

(3) The overall bid constraint shall be expressed as a quantity of frequencies (a number in MHz) and shall be calculated in accordance with paragraph (4).

(4) The number referred to in paragraph (3) shall be calculated in accordance with the formula  $(416 \text{ MHz} - z)$  rounded down to the nearest multiple of 5 MHz, where  $z$  is the total in MHz of the bidder’s recorded existing spectrum holdings.

(5) Where the number of MHz resulting from the calculation referred to in paragraph (4) is higher than 200 MHz, the number shall be 200 MHz and not that higher number.

(6) A bidder’s overall bid constraint shall not change during the principal stage.

## PART 4

### Award process

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

19.—(1) The process for the award of licences shall consist of the procedure set out in Part 5 (“principal stage”), the procedure set out in Parts 6, 7 and 8 (“assignment stage”) and the procedure set out in Part 9 (“grant stage”).

(2) During the principal stage, OFCOM shall determine the total number of 3.6 GHz lots, the total number of 700 MHz individual frequency lots, and the total number of 700 MHz paired frequency lots which each bidder wins, but not the particular numbered 3.6 GHz lots, particular numbered 700 MHz individual frequency lots and particular numbered 700 MHz paired frequency lots.

(3) Following completion of the principal stage, OFCOM shall determine the particular numbered 3.6 GHz lots, particular numbered 700 MHz individual frequency lots, and the particular numbered 700 MHz paired frequency lots that are to be assigned to the winning bidders in accordance with the procedure set out in the assignment stage.

(4) Following completion of the assignment stage, OFCOM shall grant licences authorising the use of the frequencies determined in accordance with the grant stage.

## PART 5

### The principal stage

#### CHAPTER 1

#### Principal stage rounds

#### **Principal stage rounds**

20.—(1) During the principal stage, there shall be one or more principal stage rounds.

(2) A principal stage round shall begin and end at the times notified by OFCOM under regulation 45.

(3) The number of principal stage rounds shall be determined by OFCOM in accordance with regulation 23.

#### **Principal stage form**

21.—(1) OFCOM shall provide each bidder in the principal stage with a principal stage form.

(2) Subject to paragraph (7), a bidder is not required to submit a principal stage form in respect of each principal stage round.

(3) Where a bidder chooses to complete a principal stage form in respect of a principal stage round, that bidder must, on the principal stage form—

- (a) specify the number of principal stage bids for 3.6 GHz lots it wishes to make in that round;
- (b) specify the number of principal stage bids for 700 MHz individual frequency lots it wishes to make in that round;
- (c) specify the number of principal stage bids for 700 MHz paired frequency lots it wishes to make in that round; and
- (d) except in the first principal stage round, indicate whether it wishes to carry forward its eligibility limit (as determined for that round) to the next round.

(4) A principal stage form submitted by a bidder in a round is a valid principal stage form if—

- (a) the bidder has completed the form in accordance with paragraph (3);
- (b) the bidder has submitted the form in accordance with regulation 50 or 51;

- (c) the bidder has complied with regulations 38 and 40 in respect of any principal stage bids specified on the form;
  - (d) the bidder has complied with regulation 37 in respect of the total frequencies associated with the form; and
  - (e) the bidder has complied with regulation 39 in respect of any request to carry forward its eligibility limit indicated on the form.
- (5) A principal stage bid is a valid principal stage bid if it is specified on a valid principal stage form.
- (6) Any request by a bidder to carry forward its eligibility limit is a valid request to carry forward the eligibility limit if it is indicated on a valid principal stage form.
- (7) Any bidder which, in the first principal stage round, does not specify at least one valid principal stage bid shall be excluded from the award process and shall not receive a refund of any sums which the bidder has paid as a deposit under these Regulations, which shall (where not already forfeited) be forfeited together with any interest which has accrued on the deposit.

### **Principal stage bids**

22. Each principal stage bid is a bid for the inclusion in a licence of one lot of a particular type at the round price for a lot of that type.

### **Number of principal stage rounds**

23.—(1) After the end of each principal stage round, OFCOM shall determine whether there was a round event in that round in accordance with paragraph (4).

(2) Where OFCOM determine that there was no round event in that principal stage round there shall be no further principal stage rounds, and OFCOM shall determine the winning principal stage bids in accordance with regulation 33.

(3) Where OFCOM determine that there was a round event in that principal stage round, there shall be another principal stage round.

(4) There was a round event in a principal stage round where—

- (a) a bidder specified a valid principal stage bid in that round; or
- (b) an eligibility event occurred in that round.

### **Round prices for the first principal stage round**

24. For the first principal stage round—

- (a) the round price for each 3.6 GHz lot shall be twenty million pounds;
- (b) the round price for each 700 MHz individual frequency lot shall be one million pounds; and
- (c) the round price for each 700 MHz paired frequency lot shall be one hundred million pounds.

### **Determination of round prices for subsequent principal stage rounds**

25.—(1) For each subsequent principal stage round—

- (a) the round price for each 3.6 GHz lot shall be determined by OFCOM in accordance with regulation 26;
- (b) the round price for each 700 MHz individual frequency lot shall be determined by OFCOM in accordance with regulation 27; and
- (c) the round price for each 700 MHz paired frequency lot shall be determined by OFCOM in accordance with regulations 28.

(2) The round price shall be the same for each lot of the same type.

### **Round price for 3.6 GHz lots**

26.—(1) The round price for each 3.6 GHz lot shall be the same as it was for the most recent round, except where paragraph (3) applies.

(2) Where paragraph (3) applies, the round price for each 3.6 GHz lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to twenty four valid principal stage bids for 3.6 GHz lots at the round price of the most recent round.

### **Round price for 700 MHz individual frequency lots**

27.—(1) The round price for each 700 MHz individual frequency lot shall be the same as it was for the most recent round, except where paragraph (3) applies.

(2) Where paragraph (3) applies, the round price for each 700 MHz individual frequency lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to four valid principal stage bids for 700 MHz individual frequency lots at the round price of the most recent round.

### **Round price for 700 MHz paired frequency lots**

28.—(1) The round price for each 700 MHz paired frequency lot shall be the same as it was for the most recent round, except where paragraph (3) applies.

(2) Where paragraph (3) applies, the round price for each 700 MHz paired frequency lot shall be higher than it was for the most recent round.

(3) This paragraph applies where, after the end of the most recent round, OFCOM assigned standing high bid status to six valid principal stage bids for 700 MHz paired frequency lots at the round price of the most recent round.

## **CHAPTER 2**

### **Assignment of standing high bid status**

#### **Assignment of standing high bid status by OFCOM after the end of each principal stage round**

29.—(1) After the end of each principal stage round, OFCOM shall assign standing high bid status to valid principal stage bids for 3.6 GHz lots, valid principal stage bids for 700 MHz individual frequency lots and valid principal stage bids for 700 MHz paired frequency lots in accordance with paragraphs (2) and (3).

(2) OFCOM shall assign standing high bid status for each lot type separately.

(3) OFCOM shall assign standing high bid status by—

- (a) first, identifying and ranking the bidders in accordance with regulation 30;
- (b) second, identifying and ranking the bids made by those bidders in accordance with regulation 31; and
- (c) third, assigning standing high bid status to those bids in accordance with regulation 32.

#### **Process for assigning standing high bid status: ranking the bidders**

30.—(1) For each lot type separately, OFCOM shall identify the bidders that fall into one of the following three categories such that—

- (a) the first category contains the bidders (if any) (“category one bidders”) which made valid principal stage bids for a lot of that type at the round price of the most recent round (whether made in the most recent round or in an earlier round);

- (b) the second category contains the bidders (if any) (“category two bidders”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—
    - (i) the bids were made at a round price which was lower than the round price of the most recent round; and
    - (ii) all of the bids were assigned standing high bid status by OFCOM after the end of the previous round; and
  - (c) the third category contains the only bidder (if any) (“category three bidder”) which made valid principal stage bids for lots of that type in the latest round in which the bidder submitted bids for lots of that type satisfying the following conditions—
    - (i) the bids were made at a round price which was lower than the round price of the most recent round; and
    - (ii) some but not all of the bids were assigned standing high bid status by OFCOM after the end of the previous round.
- (2) For each lot type separately, OFCOM shall rank the bidders on a list (“bidder ranking list”) so that—
- (a) category one bidders appear above category two bidders and above any category three bidder;
  - (b) category two bidders appear above any category three bidder; and
  - (c) within each category, bidders are ranked in a random order.

**Process for assigning standing high bid status: ranking the bids**

**31.—**(1) For each lot type separately, OFCOM shall identify the relevant valid principal stage bids for each bidder included in the bidder ranking list.

- (2) The relevant valid principal stage bids are—
- (a) for category one bidders, all the valid principal stage bids for lots of that type made by the bidder in the latest round in which it submitted bids;
  - (b) for category two and category three bidders, all the valid principal stage bids for lots of that type made by the bidder which were assigned standing high bid status after the end of the previous round.

(3) For each lot type separately, OFCOM shall rank those bids on a list (“overall bid list”) so that all the relevant valid principal stage bids made by a bidder which is ranked higher on the bidder ranking list appear above the relevant valid principal stage bids made by a bidder which is ranked lower on the bidder ranking list.

**Process for assigning standing high bid status: assigning standing high bid status to the bids**

**32.—**(1) For each lot type separately, OFCOM shall assign standing high bid status to bids in the overall bid list by giving such status to bids in the order in which they appear in the list, starting from the top of the list.

(2) For each lot type separately, OFCOM shall assign standing high bid status to bids until each bid in the overall bid list has been assigned standing high bid status or until the number of bids to which OFCOM has assigned standing high bid status is equal to the number of lots of that type which are available in the award process (whichever happens first).

## CHAPTER 3

### Winning principal stage bids and determination of base price

#### Determination of the winning principal stage bids

**33.**—(1) Where OFCOM have determined in accordance with regulation 23 that there shall be no further principal stage rounds principal stage bids with standing high bid status shall become winning principal stage bids if they are bids to which paragraph (2) applies.

(2) The bids to which this paragraph applies are—

- (a) the principal stage bids for 3.6 GHz lots to which OFCOM assigned standing high bid status after the end of the final principal stage round;
- (b) the principal stage bids for 700 MHz individual frequency lots to which OFCOM assigned standing high bid status after the end of the final principal stage round; and
- (c) the principal stage bids for 700 MHz paired frequency lots to which OFCOM assigned standing high bid status after the end of the final principal stage round.

#### Determination of base price

**34.**—(1) The base price for a 3.6 GHz lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 33 (“3.6 GHz base price”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.

(2) The base price for a 700 MHz individual frequency lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 33 (“700 MHz individual frequency lot base price”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.

(3) The base price for a 700 MHz paired frequency lot for which a bidder made a bid that became a winning principal stage bid in accordance with regulation 33 (“700 MHz paired frequency lot base price”) will be a sum equal to the round price at which the winning bidder made that winning principal stage bid.

#### Determination of total base price

**35.**—(1) A reference to a winning bidder’s “total 3.6 GHz base price” is a reference to that winning bidder’s 3.6 GHz base price multiplied by the number of 3.6 GHz lots won by that bidder.

(2) A reference to a winning bidder’s “total 700 MHz individual frequency lot base price” is a reference to that winning bidder’s 700 MHz individual frequency lot base price multiplied by the number of 700 MHz individual frequency lots won by that bidder.

(3) A reference to a winning bidder’s “total 700 MHz paired frequency lot base price” is a reference to that winning bidder’s 700 MHz paired frequency lot base price multiplied by the number of 700 MHz paired frequency lots won by that bidder.

## CHAPTER 4

### Constraints on principal stage bids

#### Maximum and minimum number of principal stage bids for 3.6 GHz lots, 700 MHz individual frequency lots and 700 MHz paired frequency lots

**36.** In any principal stage round—

- (a) the number of principal stage bids for 3.6 GHz lots that a bidder may make shall not exceed twenty four and shall not be fewer than two;

- (b) the number of principal stage bids for 700 MHz individual frequency lots that a bidder may make shall not exceed four; and
- (c) the number of principal stage bids for 700 MHz paired frequency lots that a bidder may make shall not exceed six.

**Overall bid constraint rule**

37.—(1) In addition to the limitations on bidding in regulation 36, in any principal stage round, the total frequencies associated with a bidder’s principal stage form must not exceed the number of MHz for that bidder which is that bidder’s overall bid constraint.

(2) The “total frequencies associated with a bidder’s principal stage form” means, in relation to a bidder in a principal stage round, the total number of MHz which is the sum of A plus B plus C where—

- (a) “A” is—
  - (i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 3.6 GHz lots, the number of such bids multiplied by 5 MHz; or
  - (ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 3.6 GHz lots—
    - (aa) the number of principal stage bids for 3.6 GHz lots made by that bidder which were assigned standing high bid status after the end of the most recent round, if any, multiplied by 5 MHz; and
    - (bb) if no such principal stage bids for 3.6 GHz lots made by that bidder were assigned standing high bid status after the end of the most recent round, zero;
- (b) “B” is—
  - (i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 700 MHz individual frequency lots, the number of such bids multiplied by 5 MHz; or
  - (ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 700 MHz individual frequency lots—
    - (aa) the number of principal stage bids for 700 MHz individual frequency lots made by that bidder which were assigned standing high bid status after the end of the most recent round, if any, multiplied by 5 MHz; and
    - (bb) if no such principal stage bids for 700 MHz individual frequency lots made by that bidder were assigned standing high bid status after the end of the most recent round, zero; and
- (c) “C” is—
  - (i) where that bidder has specified on its principal stage form in that principal stage round that it wishes to make one or more principal stage bids for 700 MHz paired frequency lots, the number of such bids multiplied by 10 MHz; or
  - (ii) where that bidder makes no new bids on its principal stage form in that principal stage round for 700 MHz paired frequency lots—
    - (aa) the number of principal stage bids for 700 MHz paired frequency lots made by that bidder which were assigned standing high bid status after the end of the most recent round, if any, multiplied by 10 MHz; and
    - (bb) if no such principal stage bids for 700 MHz paired frequency lots made by that bidder were assigned standing high bid status after the end of the most recent round, zero.

### **Number of principal stage bids following assignment of standing high bid status**

**38.** A bidder which made principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round must, if making bids for lots of the same type in the next round, specify on its principal stage form a number of bids for lots (of that type) which—

- (a) is the same as or higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has increased from the most recent round; or
- (b) is higher than the number of bids made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round, if the round price for lots of that type has not increased from the most recent round.

### **Request by a bidder to carry forward its eligibility limit**

**39.**—(1) In any principal stage round except the first one, a bidder may indicate on its principal stage form that it wishes to carry forward its eligibility limit (as determined for that round in accordance with regulation 41) to the next round if the conditions set out in paragraphs (2) to (4) are met.

(2) The first condition is that the bidder does not, in the current round, do any of the following—

- (a) specify a valid principal stage bid for 3.6 GHz lots on its principal stage form;
- (b) specify a valid principal stage bid for 700 MHz individual frequency lots on its principal stage form; or
- (c) specify a valid principal stage bid for 700 MHz paired frequency lots on its principal stage form.

(3) The second condition is that the number of eligibility points used by the bidder in relation to the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the most recent round is lower than the bidder's eligibility limit for the current round.

(4) The third condition is that carrying forward the eligibility limit would comply with the limit on the number of eligibility events set out in regulation 43(3).

### **Eligibility rule**

**40.**—(1) The number of eligibility points used by a bidder in a principal stage round, calculated in accordance with regulation 42, may not exceed that bidder's eligibility limit for that round, calculated in accordance with regulation 41.

(2) In regulations 41 to 43, a round in relation to which the number of eligibility points used is calculated is referred to as the "current round".

### **Determination of a bidder's eligibility limit**

**41.**—(1) A bidder's eligibility limit shall be the number determined by OFCOM—

- (a) for the first principal stage round, in accordance with regulation 16; and
- (b) for the second and each subsequent principal stage round, in accordance with paragraphs (2) and (3).

(2) In relation to the second and each subsequent principal stage round, the bidder's eligibility limit shall be equal to the number of eligibility points used by the bidder in the most recent round, except where an eligibility event occurred in relation to that bidder in the most recent round.

(3) In relation to each principal stage round where an eligibility event occurred in relation to a bidder in the most recent round, the bidder's eligibility limit shall be the same as its eligibility limit for the most recent round.

### **Eligibility points used by a bidder**

42.—(1) The number of eligibility points used by a bidder in the current round shall be the number equal to the sum of the 3.6 GHz number calculated in accordance with paragraph (2), the 700 MHz individual frequency lot number calculated in accordance with paragraph (3) and the 700 MHz paired frequency lot number calculated in accordance with paragraph (4).

(2) The 3.6 GHz number referred to in paragraph (1) is—

- (a) where the bidder has specified a number of principal stage bids for 3.6 GHz lots in the current round, the number of bids for 3.6 GHz lots in that round specified on that bidder's principal stage form;
- (b) where the bidder has not specified any principal stage bids for 3.6 GHz lots in the current round, the number of bids for 3.6 GHz lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round; and
- (c) where the bidder has not specified any principal stage bids for 3.6 GHz lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 3.6 GHz lots made by that bidder, zero.

(3) The 700 MHz individual frequency lot number referred to in paragraph (1) is—

- (a) where the bidder has specified a number of principal stage bids for 700 MHz individual frequency lots in the current round, the number of bids for 700 MHz individual frequency lots in that round specified on that bidder's principal stage form;
- (b) where the bidder has not specified any principal stage bids for 700 MHz individual frequency lots in the current round, the number of principal stage bids for 700 MHz individual frequency lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round; and
- (c) where the bidder has not specified any principal stage bids for 700 MHz individual frequency lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 700 MHz individual lots made by that bidder, zero.

(4) The 700 MHz paired frequency lot number referred to in paragraph (1) is—

- (a) where the bidder has specified a number of principal stage bids for 700 MHz paired frequency lots in the current round, the number of bids for 700 MHz paired frequency lots in that round specified on that bidder's principal stage form multiplied by four;
- (b) where the bidder has not specified any principal stage bids for 700 MHz paired frequency lots in the current round, the number of principal stage bids for 700 MHz paired frequency lots made by that bidder to which OFCOM assigned standing high bid status after the end of the most recent round multiplied by four; and
- (c) where the bidder has not specified any principal stage bids for 700 MHz paired frequency lots in the current round and OFCOM did not assign standing high bid status after the end of the most recent round to any bids for 700 MHz paired lots made by that bidder, zero.

### **Eligibility event**

43.—(1) An eligibility event has occurred in a round where—

- (a) a bidder indicated a valid request to carry forward its eligibility limit in the most recent round on its principal stage form; or
- (b) the conditions set out in paragraph (2) apply.

(2) The conditions are that—

- (a) the bidder did not, in the most recent round, submit a valid principal stage form;
- (b) the number of eligibility points used by the bidder in relation to the bidder's principal stage bids to which OFCOM assigned standing high bid status after the end of the previous round is lower than the bidder's eligibility limit for the most recent round; and
- (c) the limit on the number of eligibility events set out in paragraph (3) is not met.

(3) For each bidder, an eligibility event may not occur on more than three occasions.

(4) After the end of each principal stage round, except after the end of the final principal stage round, OFCOM will notify each bidder of the remaining number of occasions on which an eligibility event may occur in respect of that bidder.

### **Deposit constraint on bidding**

**44.**—(1) Where, after the end of a principal stage round, OFCOM has notified a bidder under regulation 54(5) that it has not complied with the requirement to pay a further sum as a deposit, that bidder—

- (a) may not submit a principal stage form in the next principal stage round nor in any subsequent principal stage rounds; and
- (b) may not submit an assignment stage form in the assignment stage round, may not participate in any negotiation period and shall be deemed to have made a valid assignment stage bid with a value of zero pounds for each of its assignment stage options.

(2) Such a bidder is not excluded from the award process for that reason.

(3) Any principal stage bids made by that bidder to which OFCOM has assigned standing high bid status after the end of the final principal stage round will become winning principal stage bids in accordance with regulation 33.

## **CHAPTER 5**

### **Information released during and following the principal stage**

#### **Notice to be given to bidders before each principal stage round**

**45.** Before the start of each principal stage round, OFCOM shall notify each bidder of—

- (a) the date on which, and the times on that date within which, the principal stage round will take place;
- (b) the round price for—
  - (i) a 3.6 GHz lot;
  - (ii) a 700 MHz individual frequency lot; and
  - (iii) a 700 MHz paired frequency lot;
- (c) the remaining number of occasions on which an eligibility event may occur in respect of that bidder; and
- (d) the bidder's eligibility limit for that principal stage round.

#### **Notification of information to bidders after the end of each principal stage round**

**46.**—(1) After the end of each principal stage round, except the final principal stage round, and before the start of the next principal stage round, OFCOM shall notify each bidder of—

- (a) for each lot type, the number of valid principal stage bids made by the bidder in the most recent round;
- (b) for each lot type, the number of valid principal stage bids made by the bidder to which OFCOM has assigned standing high bid status after the end of the most recent round;
- (c) for each lot type for which the bidder made valid principal stage bids to which OFCOM assigned standing high bid status, the round price of the round when those principal stage bids were made;
- (d) the remaining number of occasions on which an eligibility event may occur in respect of that bidder;
- (e) the bidder's eligibility limit for the next principal stage round;
- (f) the bidder's financial exposure after the end of the most recent round;

- (g) for 3.6 GHz lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (2);
  - (h) for 700 MHz individual frequency lots, the amount in MHz which is the smallest strictly positive whole multiple of ten which is greater than the excess demand as determined in accordance with paragraph (5); and
  - (i) for 700 MHz paired frequency lots, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand as determined in accordance with paragraph (6).
- (2) The excess demand for 3.6 GHz lots ( $ed_{3.6 GHz}$ ) is the amount in MHz which is calculated in accordance with the formula set out in paragraph (3).
- (3) The formula is  $ed_{3.6 GHz} = (e + f - 24) \times 5$ , where—
- (a) “e” is the total number of valid principal stage bids for 3.6 GHz lots made by all bidders in the most recent round; and
  - (b) “f” is the total number of bids for 3.6 GHz lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 3.6 GHz lots in the most recent round.
- (4) The excess demand for 700 MHz individual frequency lots ( $ed_{700 MHz individual}$ ) is the amount in MHz which is calculated in accordance with the formula set out in paragraph (5).
- (5) The formula is  $ed_{700 MHz individual} = (g + h - 4) \times 5$  where—
- (a) “g” is the total number of valid principal stage bids for 700 MHz individual frequency lots made by all bidders in the most recent round; and
  - (b) “h” is the total number of valid bids for 700 MHz individual frequency lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 700 MHz individual frequency lots in the most recent round.
- (6) The excess demand for 700 MHz paired frequency lots ( $ed_{700 MHz paired}$ ) is the amount in MHz which is calculated in accordance with the formula set out in paragraph (7).
- (7) The formula is  $ed_{700 MHz paired} = (i + j - 6) \times 10$  where—
- (a) “i” is the total number of valid principal stage bids for 700 MHz paired frequency lots made by all bidders in the most recent round; and
  - (b) “j” is the total number of valid bids for 700 MHz paired frequency lots with standing high bid status immediately prior to the most recent round made by all bidders who have not made bids for 700 MHz paired frequency lots in the most recent round.

#### **Publication of information at the end of each day during the principal stage**

47. After the end of the latest principal stage round to take place on any given day, OFCOM shall publish on their website, in relation to that latest principal stage round—

- (a) the round price for—
  - (i) a 3.6 GHz lot;
  - (ii) a 700 MHz individual frequency lot; and
  - (iii) a 700 MHz paired frequency lot;
- (b) for the 3.6 GHz lot type, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand;
- (c) for the 700 MHz individual frequency lot type, the amount in MHz which is the smallest strictly positive whole multiple of ten which is greater than the excess demand; and
- (d) for the 700 MHz paired frequency lot type, the amount in MHz which is the smallest strictly positive whole multiple of twenty which is greater than the excess demand.

### **Notification of results of the principal stage to bidders**

48. After the end of the final principal stage round, and after the determination of the winning principal stage bids and the determination of the base price for each winning principal stage bid, OFCOM shall notify each bidder of—

- (a) the end of the principal stage;
- (b) the names of the winning bidders, and in respect of each of them—
  - (i) the number of 3.6 GHz lots won, the 3.6 GHz base price;
  - (ii) the number of 700 MHz individual frequency lots won, the 700 MHz individual frequency lot base price; and
  - (iii) the number of 700 MHz paired frequency lots won, the 700 MHz paired frequency lot base price; and
- (c) the number of 3.6 GHz lots, the number of 700 MHz individual frequency lots and the number of 700 MHz paired frequency lots not won by any bidder.

### **Publication of results of the principal stage**

49. After the notification given in accordance with regulation 48, OFCOM shall publish on their website—

- (a) the names of the winning bidders, and in respect of each of them—
  - (i) the number of 3.6 GHz lots won, the 3.6 GHz base price and the total 3.6 GHz base price;
  - (ii) the number of 700 MHz individual frequency lots won, the 700 MHz individual frequency lot base price and the total 700 MHz individual frequency lot base price; and
  - (iii) the number of 700 MHz paired frequency lots won, the 700 MHz paired frequency lot base price and the total 700 MHz paired frequency lot base price; and
- (b) the number of 3.6 GHz lots and the number of 700 MHz individual frequency lots and the number of 700 MHz paired frequency lots not won by any bidder.

## **CHAPTER 6**

### **Procedure for principal stage**

#### **Submission of principal stage form to OFCOM**

50.—(1) A bidder must submit the completed principal stage form to OFCOM by using the electronic auction system, except as provided for in regulation 51.

(2) The completed principal stage form must be received by OFCOM by the time notified by OFCOM under regulation 45(a) the end of the principal stage round.

#### **Alternative method for submission of principal stage form**

51.—(1) Where OFCOM are satisfied that a bidder is unable to submit a principal stage 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 principal stage form and any requirements relating to the authentication of communications made by means of the alternative method.

(2) The bidder must submit the principal stage 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 principal stage form**

**52.**—(1) Where, due to the manner of completion, a principal stage form is incomplete or defective but OFCOM believe that they can ascertain the bidder’s intention in relation to the matters set out in regulation 21(3), OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder’s intention in relation to its decisions on the principal stage form.

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

(3) Where the bidder does not give such confirmation, the principal stage form in its entirety shall be invalid and rejected by OFCOM.

### **Notification that principal stage form is not valid**

**53.** Where a bidder submits a principal stage form that is not a valid principal stage form during a principal stage round, OFCOM shall, after the end of that principal stage round, notify the bidder of that fact and shall give the reasons why the principal stage form is not a valid principal stage form.

## **CHAPTER 7**

### **Deposits during and following the principal stage**

#### **Deposits during the principal stage**

**54.**—(1) Where, after the end of any principal stage round, the amount a bidder has on deposit with OFCOM for the purposes of the award process is less than the bidder’s financial exposure, OFCOM may, having regard to the desirability of securing an efficient outcome to the principal stage, notify the bidder that it is required to pay a further sum in pounds as a deposit.

(2) A bidder’s financial exposure after the end of a principal stage round shall be the amount in pounds which is equal to the sum of—

- (a) the number of that bidder’s principal stage bids for 3.6 GHz lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made;
- (b) the number of that bidder’s principal stage bids for 700 MHz individual frequency lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made; and
- (c) the number of that bidder’s principal stage bids for 700 MHz paired frequency lots to which OFCOM assigned standing high bid status after the end of that principal stage round, multiplied by the round price at which those bids were made.

(3) The further sum shall be an amount determined by OFCOM such that the total amount that the bidder is required to have on deposit is at most the amount of the bidder’s highest financial exposure after the end of any of the previous principal stage rounds before OFCOM gave notice to the bidder under paragraph (1).

(4) Any such sum must be paid into OFCOM’s bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM.

(5) Where a bidder does not satisfy the requirements set out in paragraph (4), OFCOM shall notify the bidder of that fact.

#### **Required final principal stage deposit**

**55.**—(1) After the final principal stage round, a further sum in pounds must be paid into OFCOM’s bank account with accompanying information which identifies the bidder, by a deadline specified by OFCOM (“required final principal stage deposit”).

(2) In respect of any bidder, the required final principal stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is the sum of—

- (a) that bidder's total 3.6 GHz base price;
- (b) that bidder's total 700 MHz individual frequency lot base price; and
- (c) that bidder's total 700 MHz paired frequency lot base price.

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

- (a) OFCOM shall notify the bidder; and
- (b) the bidder shall not be excluded from the award process, but may not make assignment stage bids, may not participate in any negotiation period and will be deemed to have made valid assignment stage bids with a value of zero pounds for its assignment stage options.

## PART 6

### Assignment stage

#### CHAPTER 1

##### Overview

#### **No assignment stage if there are no winning principal stage bidders**

56. Where there are no winning bidders following completion of the principal stage there shall be no assignment stage and no licences shall be granted.

#### **Assignment stage process**

57. Where there is one winning bidder, or more than one winning bidder, following completion of the principal stage, there shall be one assignment stage round and OFCOM shall determine the assignment of lots in light of that round (and in light of the negotiation period, if any).

#### CHAPTER 2

##### Assignment of lots of a particular type without bidding

#### **Assignment of numbered 3.6 GHz lots without bidding**

58. Where there is only one winning bidder for all of the 3.6 GHz lots, OFCOM shall assign all of the 3.6 GHz lots to that winning bidder.

#### **Assignment of 700 MHz individual frequency lots without bidding.**

59. Where there is only one winning bidder for all of the 700 MHz individual frequency lots, OFCOM shall assign all of the 700 MHz individual frequency lots to that winning bidder.

#### **Assignment of 700 MHz paired frequency lots without bidding**

60. Where there is only one winning bidder for all of the 700 MHz paired frequency lots, OFCOM shall assign all of the 700 MHz paired frequency lots to that winning bidder.

## CHAPTER 3

Assignment of lots of a particular type by means of a bidding process (and negotiation period, if any)

### Assignment of 3.6 GHz lots by bidding

**61.** Except where regulation 58 applies, the particular numbered 3.6 GHz lots that are to be assigned to the winning bidders for 3.6 GHz lots shall be determined by—

- (a) bidding in the assignment stage round; or
- (b) the outcome of the negotiation period (if any),

in accordance with the procedure set out in regulations 68 to 70 and Part 7.

### Assignment of numbered 700 MHz individual frequency lots by bidding

**62.** Except where regulation 59 applies, the particular numbered 700 MHz individual frequency lots that are to be assigned to the winning bidder or bidders for the 700 MHz individual frequency lots shall be determined by bidding in the assignment stage round in accordance with the procedure set out in regulations 71 to 73.

### Assignment of numbered 700 MHz paired frequency lots by bidding

**63.** Except where regulation 60 applies, the particular numbered 700 MHz paired frequency lots that are to be assigned to the winning bidder or bidders for the 700 MHz paired frequency lots shall be determined by bidding in the assignment stage round in accordance with the procedure set out in regulations 74 to 76.

### Assignment stage round

**64.—**(1) Only the following bidders may bid in the assignment stage round—

- (a) winning bidders for 3.6 GHz lots;
- (b) winning bidders for 700 MHz individual frequency lots; and
- (c) winning bidders for 700 MHz paired frequency lots.

(2) The assignment stage round shall begin and end at the times notified by OFCOM under regulation 77.

## CHAPTER 4

### Assignment stage form

#### Assignment stage form

**65.—**(1) OFCOM shall provide each winning bidder with an assignment stage form.

(2) To bid in the assignment stage round, a bidder must specify on the assignment stage form—

- (a) the bidder's 3.6 GHz assignment stage bids, if any, in accordance with regulation 70;
- (b) the bidder's 700 MHz individual frequency lot assignment stage bids, if any, in accordance with regulation 73; and
- (c) the bidder's 700 MHz paired frequency lot assignment stage bids, if any, in accordance with regulation 76.

#### Valid assignment stage form

**66.** An assignment stage form is a valid assignment stage form if—

- (a) the bidder has complied with regulations 70(1) and 70(2), regulations 73(1) and 73(2) or regulations 76(1) and 76(2) in respect of all assignment stage bids specified on the form; and
- (b) the bidder has submitted the form in accordance with regulation 78 or 79.

**Notification that an assignment stage form is not valid**

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

CHAPTER 5

3.6 GHz lot assignment stage bidding

**Bidding for numbered 3.6 GHz lots in the assignment stage**

68.—(1) A 3.6 GHz assignment stage bid shall be a bid for a licence that authorises the use of frequencies corresponding to the particular numbered 3.6 GHz lots comprised in a block of numbered 3.6 GHz lots.

(2) OFCOM shall determine which blocks of numbered 3.6 GHz lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks of numbered 3.6 GHz lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “3.6 GHz assignment stage option list” and each block of 3.6 GHz lots in that list shall be known as a “3.6 GHz assignment stage option”.

**Preparing a 3.6 GHz assignment stage option list for each bidder**

69.—(1) OFCOM shall determine which 3.6 GHz assignment stage options shall be included in the 3.6 GHz assignment stage option list for each bidder which is eligible to bid.

(2) A bidder’s 3.6 GHz assignment stage options shall be each of those blocks of numbered 3.6 GHz lots which satisfy all of the following conditions—

- (a) the number of 3.6 GHz lots contained in the block is equal to the number of that bidder’s winning principal stage bids for 3.6 GHz lots;
- (b) if that bidder were assigned the 3.6 GHz lots contained in the block the following two conditions would be satisfied—
  - (i) each other bidder could be assigned 3.6 GHz lots contained in a block that, in respect of that other bidder’s winning principal stage bids for 3.6 GHz lots, satisfies the condition in sub-paragraph (a);
  - (ii) the 3.6 GHz lots not assigned to that bidder or any other bidder (the “leftover 3.6 GHz lots”) would form a single block of numbered 3.6 GHz lots; and
- (c) if a bidder made winning principal stage bids for fewer than five 3.6 GHz lots and that bidder were to be assigned the 3.6 GHz lots contained in the block, at least one of the following five conditions would be satisfied—
  - (i) the block would include either 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
  - (ii) the block would be adjacent to a block of fewer than five 3.6 GHz lots which would include 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
  - (iii) the block would be adjacent to the block of leftover 3.6 GHz lots which includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
  - (iv) the block would be adjacent to a block of fewer than five 3.6 GHz lots which would itself be adjacent to a block in a series of other contiguous blocks of fewer than five

3.6 GHz frequency lots, provided that at least one block in this series would include 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24; or

- (v) the block would be adjacent to a block in a series of contiguous blocks (which comprises the block of leftover 3.6 GHz lots and blocks containing fewer than five 3.6 GHz lots) provided that at least one block in this series would include 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24.

### **3.6 GHz assignment stage bids**

**70.**—(1) In order to bid for a 3.6 GHz assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the total 3.6 GHz base price for that bidder's winning principal stage bids for 3.6 GHz lots, for a licence that authorises the use of the frequencies corresponding to the block of numbered 3.6 GHz lots that is the 3.6 GHz assignment stage option.

(2) A bidder may make no more than one 3.6 GHz assignment stage bid for each 3.6 GHz assignment stage option.

(3) A bidder is not required to make a 3.6 GHz assignment stage bid.

(4) A 3.6 GHz assignment stage bid is a valid 3.6 GHz assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum of the required assignment stage deposit by the deadline specified by OFCOM.

(5) Where a bidder does not make a valid 3.6 GHz assignment stage bid for a 3.6 GHz assignment stage option that bidder will be deemed to have made a valid 3.6 GHz assignment stage bid with a value of zero pounds for that 3.6 GHz assignment stage option.

## **CHAPTER 6**

### **700 MHz individual frequency lot assignment stage bidding**

#### **Bidding for numbered 700 MHz individual frequency lots in the assignment stage**

**71.**—(1) A 700 MHz individual frequency lot assignment stage bid shall be a bid for a licence that authorises the use of frequencies corresponding to the particular numbered 700 MHz individual frequency lots comprised in a block of numbered 700 MHz individual frequency lots.

(2) OFCOM shall determine which blocks of numbered 700 MHz individual frequency lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks of numbered 700 MHz individual frequency lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “700 MHz individual frequency lot assignment stage option list” and each block of 700 MHz individual frequency lots in that list shall be known as a “700 MHz individual frequency lot assignment stage option”.

#### **Preparing a 700 MHz individual frequency lot assignment stage option list for each bidder**

**72.**—(1) OFCOM shall determine which 700 MHz individual frequency lot assignment stage options shall be included in the 700 MHz individual frequency lot assignment stage option list for each bidder which is eligible to bid.

(2) A bidder's 700 MHz individual frequency lot assignment stage options shall be each of those blocks of numbered 700 MHz individual frequency lots which satisfy the following conditions—

- (a) the number of 700 MHz individual frequency lots contained in the block is equal to the number of that bidder's winning principal stage bids for 700 MHz individual frequency lots; and

- (b) if that bidder were assigned the 700 MHz individual frequency lots contained in the block the following conditions would be satisfied—
  - (i) each other bidder could be assigned 700 MHz individual frequency lots contained in a block that, in respect of that other bidder's winning principal stage bids for 700 MHz individual frequency lots, satisfies the condition in sub-paragraph (a); and
  - (ii) the 700 MHz individual frequency lots not assigned to that bidder or any other bidder would form a single block of numbered 700 MHz individual frequency lots.

### **700 MHz individual frequency lot assignment stage bids**

73.—(1) In order to bid for a 700 MHz individual frequency lot assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the total 700 MHz individual frequency lot base price for that bidder's winning principal stage bids for 700 MHz individual frequency lots, for a licence that authorises the use of the frequencies corresponding to the block of numbered 700 MHz individual frequency lots that is the 700 MHz individual frequency lot assignment stage option.

(2) A bidder may make no more than one 700 MHz individual frequency lot assignment stage bid for each 700 MHz individual frequency lot assignment stage option.

(3) A bidder is not required to make a 700 MHz individual frequency lot assignment stage bid.

(4) A 700 MHz individual frequency lot assignment stage bid is a valid 700 MHz individual frequency lot assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum of the required assignment stage deposit by the deadline specified by OFCOM.

(5) Where a bidder does not make a valid 700 MHz individual frequency lot assignment stage bid for a 700 MHz individual frequency lot assignment stage option that bidder will be deemed to have made a valid 700 MHz individual frequency lot assignment stage bid with a value of zero pounds for that 700 MHz individual frequency lot assignment stage option.

## **CHAPTER 7**

### **700 MHz paired frequency lot assignment stage bidding**

#### **Bidding for numbered 700 MHz paired frequency lots in the assignment stage**

74.—(1) A 700 MHz paired frequency lot assignment stage bid shall be a bid for a licence that authorises the use of frequencies corresponding to the particular numbered 700 MHz paired frequency lots comprised in a block of numbered 700 MHz paired frequency lots.

(2) OFCOM shall determine which blocks of numbered 700 MHz paired frequency lots a bidder may bid for, and notify that bidder of its determination.

(3) The list of possible blocks of numbered 700 MHz paired frequency lots provided to each bidder may be different for each bidder.

(4) The list shall be known as the “700 MHz paired frequency lot assignment stage option list” and each block of 700 MHz paired frequency lots in that list shall be known as a “700 MHz paired frequency lot assignment stage option”.

#### **Preparing a 700 MHz paired frequency lot assignment stage option list for each bidder**

75.—(1) OFCOM shall determine which 700 MHz paired frequency lot assignment stage options shall be included in the 700 MHz paired frequency lot assignment stage option list for each bidder which is eligible to bid.

(2) A bidder's 700 MHz paired frequency lot assignment stage options shall be each of those blocks of numbered 700 MHz paired frequency lots which satisfy the following conditions—

- (a) the number of 700 MHz paired frequency lots contained in the block is equal to the number of that bidder's winning principal stage bids for 700 MHz paired frequency lots; and
- (b) if that bidder were assigned the 700 MHz paired frequency lots contained in the block the following conditions would be satisfied—
  - (i) each other bidder could be assigned 700 MHz paired frequency lots contained in a block that, in respect of that other bidder's winning principal stage bids for 700 MHz paired frequency lots, satisfies the condition in sub-paragraph (a); and
  - (ii) the 700 MHz paired frequency lots not assigned to that bidder or any other bidder would form a single block of numbered 700 MHz paired frequency lots.

### **700 MHz paired frequency lot assignment stage bids**

**76.**—(1) In order to bid for a 700 MHz paired frequency lot assignment stage option, a bidder must, on the assignment stage form, specify an amount in whole thousands of pounds that it is willing to pay, in addition to the total 700 MHz paired frequency lot base price for that bidder's winning principal stage bids for 700 MHz paired frequency lots, for a licence that authorises the use of the frequencies corresponding to the block of numbered 700 MHz paired frequency lots that is the 700 MHz paired frequency lot assignment stage option.

(2) A bidder may make no more than one 700 MHz paired frequency lot assignment stage bid for each 700 MHz paired frequency lot assignment stage option.

(3) A bidder is not required to make a 700 MHz paired frequency lot assignment stage bid.

(4) A 700 MHz paired frequency lot assignment stage bid is a valid 700 MHz paired frequency lot assignment stage bid if—

- (a) the bid is specified on a valid assignment stage form; and
- (b) the bidder has paid the full sum of the required assignment stage deposit by the deadline specified by OFCOM.

(5) Where a bidder does not make a valid 700 MHz paired frequency lot assignment stage bid for a 700 MHz paired frequency lot assignment stage option that bidder will be deemed to have made a valid 700 MHz paired frequency lot assignment stage bid with a value of zero pounds for that 700 MHz paired frequency lot assignment stage option.

## **CHAPTER 8**

### **Procedure for bidding in the assignment stage**

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

**77.** Before the start of the assignment stage round, OFCOM shall notify each bidder that may make an assignment stage bid in the assignment stage round of—

- (a) the 3.6 GHz assignment stage options, 700 MHz individual frequency lot assignment stage options and the 700 MHz paired frequency lot assignment stage options, that are available to that bidder in the assignment stage round; and
- (b) the date on which, and the times on that date within which, the assignment stage round will take place.

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

**78.**—(1) A bidder must submit the completed assignment stage form to OFCOM by using the electronic auction system, except as provided for in regulation 79.

(2) The completed assignment stage form must be received by OFCOM by the time notified to bidders under regulation 77 as the end of the assignment stage round.

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

79.—(1) Where OFCOM are satisfied that a bidder is unable to submit an assignment stage 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 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 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 assignment stage form**

80.—(1) Where, due to the manner of completion, an assignment stage 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 deadline specified by OFCOM 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 deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, the assignment stage form in its entirety shall be accepted by OFCOM on that basis.

(3) Where the bidder does not give such confirmation, the assignment stage form in its entirety shall be rejected by OFCOM and none of the assignment stage bids made on that assignment stage form shall be valid, and regulations 70(5), 73(5) and 76(5) shall apply.

### **Required assignment stage deposit**

81.—(1) A further sum in pounds must be paid into OFCOM's bank account, with accompanying information which identifies the bidder, by a deadline specified by OFCOM (the "required assignment stage deposit").

(2) The required assignment stage deposit shall be an amount such that the total amount that the bidder has on deposit is not less than the amount which is the sum of—

- (a) the amount which is the bidder's total base price for its winning principal stage bids;
- (b) the amount which is the bidder's highest 700 MHz individual frequency lot assignment stage bid for a 700 MHz individual assignment stage option;
- (c) the amount which is the bidder's highest 700 MHz paired frequency lot assignment stage bid for a 700 MHz paired frequency lot assignment stage option; and
- (d) the amount which is the bidder's highest 3.6 GHz assignment stage bid for a 3.6 GHz assignment stage option.

## **PART 7**

### **Negotiation period for the assignment of 3.6 GHz lots**

#### **CHAPTER 1**

##### **Adjacency agreements**

### **Full adjacency agreement**

82. A full adjacency agreement is an agreement between all of the winning bidders for 3.6 GHz lots, in which they agree—

- (a) the particular numbered 3.6 GHz lots to be assigned to each winning bidder for 3.6 GHz lots (such that each winning bidder for 3.6 GHz lots is assigned a single block which

contains a number of lots equal to the number of each such bidder's winning principal stage bids for 3.6 GHz lots); and

- (b) in a situation in which one (or more) of the 3.6 GHz lots which are available in the award process was not won by any bidder in the principal stage of the award, the particular numbered 3.6 GHz lots which are not to be assigned to any bidder (such that any such 3.6 GHz lots not won by any bidder in the principal stage of the award must form a single block).

### **Partial adjacency agreement**

**83.** A partial adjacency agreement is an agreement between two or more winning bidders for 3.6 GHz lots (the "partial agreement parties"), but not all winning bidders for 3.6 GHz lots, in which the parties agree—

- (a) to be assigned blocks of 3.6 GHz lots which, when considered together with the 3.6 GHz lots to be assigned to the other partial agreement parties, form a single block (such that the quantity of 3.6 GHz lots contained in the block which is to be assigned to each partial agreement party is equal to the number of that bidder's winning principal stage bids for 3.6 GHz lots); and
- (b) without reference to particular numbered 3.6 GHz lots, which of the partial agreement parties will be assigned the lowest frequency block of 3.6 GHz lots, which party will be assigned the highest frequency block and the order of any parties to be assigned blocks in between the lowest and highest block.

## **CHAPTER 2**

### **Procedure for the negotiation period**

#### **Notice to bidders before the negotiation period**

**84.—**(1) Only a winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) shall have the opportunity to participate in the negotiation period.

(2) If there is more than one winning bidder for 3.6 GHz lots, after the deadline for paying the required assignment stage deposit under regulation 81 has passed, OFCOM shall notify each winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) that it has the opportunity to participate in a negotiation period, during which time it would have the opportunity (but is not required) to negotiate and agree—

- (a) a full adjacency agreement with all of the winning bidders for 3.6 GHz lots; or
- (b) a partial adjacency agreement with one or more of the other winning bidders for 3.6 GHz lots.

(3) In the notification OFCOM shall give a deadline by which each such winning bidder must respond to OFCOM confirming that it wishes to participate in the negotiation period if that is the case.

#### **Notice to OFCOM of bidders' consent to participate in the negotiation period**

**85.—**(1) After the deadline specified by OFCOM, if two or more winning bidders for 3.6 GHz lots have responded to OFCOM's notification and have indicated that they wish to participate in a negotiation period to pursue an adjacency agreement—

- (a) OFCOM shall notify each winning bidder for 3.6 GHz lots of—
  - (i) the names of each other winning bidder for 3.6 GHz lots which wishes to participate in the negotiation period;
  - (ii) the start day (and time on that day) of the first phase of the negotiation period, and the end day (and time on that day) of the first phase negotiation period;
  - (iii) if a second phase of the negotiation period were to take place (because no valid full adjacent agreement resulted from the first phase), the proposed start day and time on

that day of the second phase, and the proposed end day (and time on that day) of the second phase of the negotiation period; and

- (iv) the method for submission to OFCOM of any full adjacency agreement forms and any partial adjacency agreement forms;
  - (b) each winning bidder for 3.6 GHz lots which has paid the required assignment stage deposit (if any) may participate in the negotiation period to enter an adjacency agreement irrespective of whether or not that bidder indicated to OFCOM that it wished to participate; and
  - (c) OFCOM shall publish on their website the days and times described in paragraph (a)(ii) and (iii).
- (2) Where fewer than two winning bidders for 3.6 GHz lots have indicated to OFCOM that they wish to participate in a negotiation period, following receipt of notices, OFCOM shall—
- (a) notify each winning bidder for 3.6 GHz lots that there shall not be a negotiation period, and
  - (b) proceed to determine the winning 3.6 GHz assignment stage bids in accordance with regulation 98.

## CHAPTER 3

### Valid full adjacency agreement and valid partial adjacency agreement

#### Valid full adjacency agreement

**86.**—(1) There is a valid full adjacency agreement if either the first situation in paragraph (2) or the second situation in paragraph (3) has occurred.

- (2) The first situation is where—
- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
  - (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
  - (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the first phase of the negotiation period and in accordance with the prescribed method for submission.
- (3) The second situation is where—
- (a) each winning bidder for 3.6 GHz lots has submitted a full adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
  - (b) the content of the table on each full adjacency agreement form (outlining the essential aspects of the full adjacency agreement described in regulation 82) is the same on each form received; and
  - (c) each winning bidder for 3.6 GHz lots submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission.

#### Valid partial adjacency agreement

**87.** There is a valid partial adjacency agreement if—

- (a) two or more winning bidders for 3.6 GHz lots submitted a partial adjacency agreement form (signed on its behalf by two authorised persons) to OFCOM;
- (b) each winning bidder which is indicated on the form as being a party to the agreement, submitted the form to OFCOM;
- (c) the content of the table on each partial adjacency agreement form (outlining the essential aspects of the partial adjacency agreement described in regulation 83) is the same on each form received;

- (d) each winning bidder which is indicated on the form as being a party to the agreement submitted the form to OFCOM during the second phase of the negotiation period and in accordance with the prescribed method for submission; and
- (e) each winning bidder which is indicated on the form as being a party to the agreement who submitted the form to OFCOM has also made the additional required bids.

#### **Additional required bids in the case of a partial adjacency agreement**

**88.**—(1) The additional required bids referred to in regulation 87(e) are those described in paragraph (2).

(2) The bids to be made by the winning bidder are an additional 3.6 GHz assignment stage bid of zero pounds for every possible block of numbered 3.6 GHz lots in which the number of 3.6 GHz lots contained in the block is equal to the number of that bidder's winning principal stage bids for 3.6 GHz lots.

(3) The additional required bids are made by completion of the partial agreement form and its submission to OFCOM.

#### **Consequence of additional required bids**

**89.** If there is a valid partial adjacency agreement, when OFCOM is determining the winning 3.6 GHz assignment stage bids under regulation 97—

- (a) each 3.6 GHz assignment stage bid already submitted by that bidder under regulation 78 or 79, if any, shall be deemed invalid; and
- (b) OFCOM must instead take into account the additional required bids as if they were the valid assignment stage bids made by the bidder concerned.

#### **Rejection of full adjacency agreement forms delivered to OFCOM at a time outside the first phase and second phase of the negotiation period**

**90.**—(1) If a full adjacency agreement form is delivered to OFCOM at a time other than during the permitted times described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted times are—

- (a) after the start time of the first phase of the negotiation period and before the first phase of the negotiation period has ended in accordance with regulation 95; and
- (b) after the start and before the end of the second phase of the negotiation period.

#### **Rejection of partial adjacency agreement forms delivered to OFCOM at a time outside the second phase of the negotiation period**

**91.**—(1) If a partial adjacency agreement form is delivered to OFCOM at a time other than during the permitted time described in paragraph (2) that form (and the agreement which the form purports to describe) shall be rejected by OFCOM.

(2) The permitted time is after the start and before the end of the second phase of the negotiation period.

#### **Only one valid adjacency agreement**

**92.** — Each winning bidder for 3.6 GHz lots may only be party to one valid adjacency agreement.

### **First form delivered within a negotiation phase by a winning bidder for 3.6 GHz lots to be used by OFCOM**

**93.**—(1) If a winning bidder for 3.6 GHz lots delivers more than one full adjacency agreement form to OFCOM during the first phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determination under regulations 86 and 95 as to whether or not there is a valid full adjacency agreement.

(2) If a winning bidder for 3.6 GHz lots delivers more than one adjacency agreement form (whether a partial adjacency agreement form or a full adjacency agreement form) to OFCOM during the second phase of the negotiation period, the first of those forms delivered shall be the only form used by OFCOM for the purposes of the determinations under regulations 86 and 87 as to whether or not there is a valid full adjacency agreement or a valid partial adjacency agreement.

### **Incomplete or defective adjacency agreement forms**

**94.**—(1) Where, due to the manner of completion, an adjacency agreement form is incomplete or defective but OFCOM believe that they can ascertain the bidder's intention in relation to the content and the essential aspects of the agreement, OFCOM shall ask the bidder to confirm in a notice to OFCOM by a deadline specified by OFCOM that OFCOM have correctly ascertained the bidder's intention in relation to the making of adjacency agreements.

(2) Where the bidder confirms in a notice given to OFCOM by the deadline which is signed by two authorised persons that OFCOM have correctly ascertained the bidder's intention, OFCOM will consider whether there is a valid full adjacency agreement or a valid partial adjacency agreement (as the case may be) under regulations 86 or 87 taking account of the form on that basis.

(3) Where the bidder does not give such confirmation, the adjacency agreement form and the agreement it purports to describe in its entirety shall be rejected by OFCOM.

### **The end of the first phase of the negotiation period**

**95.**—(1) The first phase of the negotiation period shall end on the earlier of—

- (a) the time notified by OFCOM under regulation 85(1)(a)(ii) as being the end of the first phase; or
- (b) the receipt by OFCOM (after the commencement of the first phase) of a full adjacency agreement form from each winning bidder for 3.6 GHz lots.

(2) After the end of the first phase of the negotiation period OFCOM shall determine if there is a valid full adjacency agreement.

(3) If OFCOM determines that there is a valid full adjacency agreement there shall not be a second phase of the negotiation period and OFCOM shall notify all of the winning bidders of that fact.

(4) If OFCOM determines that there is not a valid full adjacency agreement there shall be a second phase of the negotiation period and OFCOM shall—

- (a) notify all of the winning bidders of that fact;
- (b) notify the winning bidders for 3.6 GHz lots of the reason why it has made that determination; and
- (c) publish on OFCOM's website and notify the winning bidders for 3.6 GHz lots of the start day and time on that day of the second phase, and the end day (and time on that day) of the second phase of the negotiation period (which may be the same or different from proposed the days and times notified under regulation 85(1)(a)(iii)).

## PART 8

Ofcom's determination of the assignment of numbered lots and the additional prices

### CHAPTER 1

Assignment of numbered 3.6 GHz lots where there is either a valid full adjacency agreement or one or more valid partial adjacency agreements

#### **Determination of assignment of 3.6 GHz frequency lots where there is a valid full adjacency agreement**

96. If there is a valid full adjacency agreement, OFCOM shall determine the assignment of the particular numbered 3.6 GHz frequency lots in accordance with the valid full adjacency agreement after the deadline for paying the required assignment stage deposit under regulation 81 (and after any negotiation period has ended) and notify those assignments to each winning bidder for 3.6 GHz lots in accordance with regulation 106.

#### **Determination of the winning 3.6 GHz assignment stage bids where there is one or more valid partial adjacency agreement**

97.—(1) If there are one or more valid partial adjacency agreements, OFCOM shall determine the winning 3.6 GHz assignment stage bids in accordance with this regulation after the deadline for paying the required assignment stage deposit under regulation 81 (and after any negotiation period has ended).

(2) The winning 3.6 GHz assignment stage bids shall be those valid 3.6 GHz assignment stage bids that comprise the winning combination of valid 3.6 GHz assignment stage bids.

(3) The winning combination of valid 3.6 GHz assignment stage bids shall be the valid combination of 3.6 GHz assignment stage bids having the highest total value of amounts bid.

(4) A combination of valid 3.6 GHz assignment stage bids is a valid combination of 3.6 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.6 GHz assignment stage bid from each winning bidder for 3.6 GHz lots;
- (b) for a bidder that is a partial agreement party, each of those 3.6 GHz assignment stage bids is a valid bid made in accordance with regulation 88;
- (c) for a bidder that is not a partial agreement party, each of those 3.6 GHz assignment stage bids is a valid bid made in accordance with regulation 70;
- (d) no numbered 3.6 GHz lot is included in more than one of the 3.6 GHz assignment stage bids included in the combination of valid 3.6 GHz assignment stage bids;
- (e) the numbered 3.6 GHz lots not included in that combination of valid 3.6 GHz assignment stage bids (the “leftover 3.6 GHz lots”), taken together, form a single block of numbered 3.6 GHz lots;
- (f) the 3.6 GHz lots allocated to parties in a partial adjacency agreement, taken together, form a single block of numbered 3.6 GHz lots;
- (g) the 3.6 GHz lots allocated to parties in a partial adjacency agreement are allocated in the order shown in the table in the partial adjacency agreement forms submitted to OFCOM; and
- (h) valid bids from each bidder which made winning principal stage bids for fewer than five 3.6 GHz lots, and which is not an adjacency agreement party, are for 3.6 GHz lots which form a block which would satisfy one or more of the following conditions:
  - (i) the block includes either 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
  - (ii) the block is adjacent to a block of fewer than five 3.6 GHz lots which includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24, but which would not be assigned to partial agreement parties;

- (iii) the block is adjacent to the block of leftover 3.6 GHz lots which includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
- (iv) the block is adjacent to a block of fewer than five 3.6 GHz lots which is itself adjacent to a block in a series of other contiguous blocks of fewer than five 3.6 GHz frequency lots, provided that—
  - (aa) at least one block in this series includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24; and
  - (bb) the series does not include 3.6 GHz lots which would be allocated to partial agreement parties; or
- (v) the block is adjacent to a block in a series of contiguous blocks (which comprises the block of leftover 3.6 GHz lots and blocks of fewer than five 3.6 GHz lots) provided that—
  - (aa) at least one block in this series includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24, and
  - (bb) the series does not include 3.6 GHz lots which would be allocated to partial agreement parties.

(5) Where there is more than one valid combination of 3.6 GHz 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 3.6 GHz assignment stage bids for which the value is equal highest to determine the winning combination of valid 3.6 GHz assignment stage bids.

## CHAPTER 2

Ofcom's determination of assignment of numbered 3.6 GHz lots and additional prices where there is no valid full adjacency agreement and no valid partial adjacency agreement

### **Determination of the winning 3.6 GHz assignment stage bids where there is no valid full adjacency agreement and no valid partial adjacency agreement**

**98.**—(1) After the deadline for paying the required assignment stage deposit under regulation 81 has passed (and after any negotiation period has ended), except where regulation 96 or regulation 97 apply, OFCOM shall determine the winning 3.6 GHz assignment stage bids in accordance with this regulation.

(2) The winning 3.6 GHz assignment stage bids shall be those valid 3.6 GHz assignment stage bids that comprise the winning combination of valid 3.6 GHz assignment stage bids.

(3) The winning combination of valid 3.6 GHz assignment stage bids shall be the valid combination of 3.6 GHz assignment stage bids having the highest total value of amounts bid.

(4) A combination of valid 3.6 GHz assignment stage bids is a valid combination of 3.6 GHz assignment stage bids if—

- (a) within that combination there is one valid 3.6 GHz assignment stage bid from each winning bidder for 3.6 GHz lots;
- (b) each of those valid 3.6 GHz assignment stage bids is for a 3.6 GHz assignment stage option as determined by OFCOM for the bidder;
- (c) no numbered 3.6 GHz lot is included in more than one of the 3.6 GHz assignment stage bids included in the combination of valid 3.6 GHz assignment stage bids;
- (d) the numbered 3.6 GHz lots not included in that combination of valid 3.6 GHz assignment stage bids (the “leftover 3.6 GHz lots”), taken together, form a single block of numbered 3.6 GHz lots; and
- (e) valid bids from each bidder which made winning principal stage bids for fewer than five 3.6 GHz lots are for 3.6 GHz lots which form a block which—
  - (i) includes either 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;

- (ii) is adjacent to a block of fewer than five 3.6 GHz lots which includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
- (iii) is adjacent to the block of leftover 3.6 GHz lots which includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24;
- (iv) is adjacent to a block of fewer than five 3.6 GHz lots which is itself adjacent to a block in a series of other blocks of fewer than five 3.6 GHz frequency lots, provided that at least one block in this series includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24; or
- (v) is adjacent to a block in a series of contiguous blocks (which comprises the block of leftover 3.6 GHz lots and blocks of fewer than five 3.6 GHz lots) provided that at least one block in this series includes 3.6 GHz frequency lot 1 or 3.6 GHz frequency lot 24.

(5) Where there is more than one valid combination of 3.6 GHz 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 3.6 GHz assignment stage bids for which the value is equal highest to determine the winning combination of valid 3.6 GHz assignment stage bids.

## CHAPTER 3

### Determination of 3.6 GHz lot additional prices

#### **Determination of 3.6 GHz lot additional prices where there is a valid full adjacency agreement**

**99.** Where OFCOM determined the assignment of 3.6 GHz lots under regulation 96, there is no additional price to be paid by each winning bidder for 3.6 GHz lots, in respect of 3.6 GHz lots.

#### **Determination of 3.6 GHz lot additional prices where there is one or more valid partial adjacency agreements**

**100.** Where OFCOM determined the assignment of 3.6 GHz lots under regulation 97—

- (a) there is no additional price to be paid by each winning bidder for 3.6 GHz lots which is party to a valid partial adjacency agreement, in respect of 3.6 GHz lots; and
- (b) in respect of each winning 3.6 GHz assignment stage bid made by a bidder which is not party to a valid partial adjacency agreement, OFCOM shall determine an amount in whole pounds (the “3.6 GHz lot additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 4.

#### **Determination of 3.6 GHz lot additional prices where there is no adjacency agreement**

**101.** Where OFCOM determined the assignment of 3.6 GHz lots under regulation 98, in respect of each winning 3.6 GHz assignment stage bid OFCOM shall determine an amount in whole pounds (the “3.6 GHz lot additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 4.

## CHAPTER 4

### Determination of assignment of numbered 700 MHz individual frequency lots and 700 MHz individual frequency lot additional prices

#### **Determination of the winning 700 MHz individual frequency lot assignment stage bids**

**102.—**(1) After the deadline for paying the required assignment stage deposit under regulation 81 has passed (and after any negotiation period has ended), OFCOM shall determine the winning 700 MHz individual frequency lot assignment stage bids in accordance with this regulation.

(2) The winning 700 MHz individual frequency lot assignment stage bids shall be those valid 700 MHz individual frequency lot assignment stage bids that comprise the winning combination of valid 700 MHz individual frequency lot assignment stage bids.

(3) The winning combination of valid 700 MHz individual frequency lot assignment stage bids shall be the valid combination of 700 MHz individual frequency lot assignment stage bids having the highest total value of amounts bid.

(4) A combination of valid 700 MHz individual frequency lot assignment stage bids is a valid combination of 700 MHz individual frequency lot assignment stage bids if—

- (a) within that combination there is one valid 700 MHz individual frequency lot assignment stage bid from each winning bidder for 700 MHz individual frequency lots;
- (b) each of those valid 700 MHz individual frequency lot assignment stage bids is for a 700 MHz individual frequency lot assignment stage option as determined by OFCOM for the bidder;
- (c) no numbered 700 MHz individual frequency lot is included in more than one of the 700 MHz individual frequency lot assignment stage bids included in the combination of valid 700 MHz individual frequency lot assignment stage bids; and
- (d) the numbered 700 MHz individual frequency lots not included in that combination of valid 700 MHz individual frequency lot assignment stage bids, taken together, form a single block of numbered 700 MHz individual frequency lots.

(5) Where there is more than one valid combination of 700 MHz individual frequency lot 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 700 MHz individual frequency lot assignment stage bids for which the value is equal highest to determine the winning combination of valid 700 MHz individual frequency lot assignment stage bids.

#### **Determination of 700 MHz individual frequency lot additional prices**

**103.** In respect of each winning 700 MHz individual frequency lot assignment stage bid, OFCOM shall determine an amount in whole pounds (“700 MHz individual frequency lot additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 5.

### CHAPTER 5

#### Determination of assignment of numbered 700 MHz paired frequency lots and 700 MHz paired frequency lot additional prices

#### **Determination of the winning 700 MHz paired frequency lot assignment stage bids**

**104.**—(1) After the deadline for paying the required assignment stage deposit under regulation 81 has passed (and after any negotiation period has ended), OFCOM shall determine the winning 700 MHz paired frequency lot assignment stage bids in accordance with this regulation.

(2) The winning 700 MHz paired frequency lot assignment stage bids shall be those valid 700 MHz paired frequency lot assignment stage bids that comprise the winning combination of valid 700 MHz paired frequency lot assignment stage bids.

(3) The winning combination of valid 700 MHz paired frequency lot assignment stage bids shall be the valid combination of 700 MHz paired frequency lot assignment stage bids having the highest total value of amounts bid.

(4) A combination of valid 700 MHz paired frequency lot assignment stage bids is a valid combination of 700 MHz paired frequency lot assignment stage bids if—

- (a) within that combination there is one valid 700 MHz paired frequency lot assignment stage bid from each winning bidder for 700 MHz paired frequency lots;
- (b) each of those valid 700 MHz paired frequency lot assignment stage bids is for a 700 MHz paired frequency lot assignment stage option as determined by OFCOM for the bidder;

- (c) no numbered 700 MHz paired frequency lot is included in more than one of the 700 MHz paired frequency lot assignment stage bids included in the combination of valid 700 MHz paired frequency lot assignment stage bids; and
- (d) the numbered 700 MHz paired frequency lots not included in that combination of valid 700 MHz paired frequency lot assignment stage bids, taken together, form a single block of numbered 700 MHz paired frequency lots.

(5) Where there is more than one valid combination of 700 MHz paired frequency lot 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 700 MHz paired frequency lot assignment stage bids for which the value is equal highest to determine the winning combination of valid 700 MHz paired frequency lot assignment stage bids.

#### **Determination of 700 MHz paired frequency lot additional prices**

**105.** In respect of each winning 700 MHz paired frequency lot assignment stage bid, OFCOM shall determine an amount in whole pounds (“700 MHz paired frequency lot additional price”) which shall be payable by the relevant winning bidder in accordance with Schedule 6.

### CHAPTER 6

#### Notification of results of the assignment stage

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

**106.** After the determination of the assignment of the 3.6 GHz lots or the winning 3.6 GHz assignment stage bids, the winning 700 MHz individual frequency lot assignment stage bids and the winning 700 MHz paired frequency lot assignment stage bids, and the determination of the additional price for each winning 3.6 GHz lot assignment stage bid, the additional price for each winning 700 MHz individual frequency lot assignment stage bid and the additional price for each winning 700 MHz paired frequency lot assignment stage bid, OFCOM shall notify each winning bidder of—

- (a) the 700 MHz individual frequency lot assignment stage option for which the bidder made a winning assignment stage bid;
- (b) the additional price (if any) determined for the winning 700 MHz individual frequency lot assignment stage bid made by the bidder;
- (c) the 700 MHz paired frequency lot assignment stage option for which the bidder made a winning assignment stage bid;
- (d) the additional price (if any) determined for the winning 700 MHz paired frequency lot assignment stage bid;
- (e) the assignment of the 3.6 GHz frequency lots (following a valid adjacency agreement), or the winning 3.6 GHz frequency lot assignment stage option for which the bidder made a winning assignment stage bid;
- (f) the additional price (if any) for a winning 3.6 GHz assignment stage bid made by the bidder; and
- (g) whether the bidder is party to a valid adjacency agreement and, if so, who the other parties to that valid adjacency agreement are.

## PART 9

### Grant Stage

#### CHAPTER 1

Licences available, the determination of licence fees and the particular frequencies

#### **Interpretation**

**107.** In these Regulations—

- (a) a “3.6 GHz licence” is a licence that authorises the use of particular frequencies corresponding to a block of such number of 3.6 GHz lots as that bidder has been assigned in accordance with these Regulations; and
- (b) a “700 MHz licence” is a licence that authorises the use of particular frequencies corresponding to a block or pair of blocks (as the case may be) of such number of 700 MHz individual frequency lots and such number of 700 MHz paired frequency lots as that bidder has been assigned in accordance with these Regulations.

#### **Determination of licences, licence fees and frequencies associated with particular licences**

**108.** After notification of the results of the assignment stage under regulation 106 OFCOM shall determine—

- (a) the licences which may be granted; and
- (b) for each licence—
  - (i) the licence fee payable to OFCOM; and
  - (ii) the particular frequencies.

#### **Licences which may be granted under this award process**

**109.** The licences which may be granted to a bidder under this award process are—

- (a) for a bidder which won 3.6 GHz lots, a 3.6 GHz licence;
- (b) for a bidder which won—
  - (i) 700 MHz individual frequency lots;
  - (ii) 700 MHz paired frequency lots; or
  - (iii) both 700 MHz individual frequency lots and 700 MHz paired frequency lots, a 700 MHz licence.

#### **Licence fee payable by a winning bidder for a 3.6 GHz licence**

**110.** The licence fee payable by a winning bidder for a 3.6 GHz licence shall be an amount equal to the sum of—

- (a) that bidder’s total 3.6 GHz base price; and
- (b) that bidder’s 3.6 GHz lot additional price (if any).

#### **Licence fee payable by a winning bidder for a 700 MHz licence**

**111.** The licence fee payable by a winning bidder for a 700 MHz licence shall be an amount equal to the sum of—

- (a) that bidder’s total 700 MHz individual frequency lot base price;
- (b) that bidder’s total 700 MHz paired frequency lot base price;
- (c) that bidder’s 700 MHz individual frequency lot additional price (if any); and

- (d) that bidder's 700 MHz paired frequency lot additional price (if any).

**Particular frequencies to be included in 3.6 GHz licence granted to a winning bidder**

**112.**—(1) Where a winning bidder won 3.6 GHz lots in accordance with regulation 97 or 98 the 3.6 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the particular numbered 3.6 GHz frequency lots for which the bidder made the winning 3.6 GHz assignment stage bid.

(2) Where a winning bidder was assigned 3.6 GHz lots in accordance with regulation 96 the 3.6 GHz licence granted to that bidder shall authorise the use of the frequencies corresponding to the particular numbered 3.6 GHz frequency lots assigned in accordance with the valid full adjacency agreement.

**Particular frequencies to be included in 700 MHz lot licence granted to a winning bidder**

**113.** Where a winning bidder won 700 MHz individual frequency lots or 700 MHz paired frequency lots, any 700 MHz licence granted to that bidder shall authorise—

- (a) where that bidder made a winning 700 MHz individual frequency lot assignment stage bid, the frequencies corresponding to the 700 MHz individual frequency lot assignment stage option for which the bidder made that winning bid; and
- (b) where that bidder made a winning 700 MHz paired frequency lot assignment stage bid, the frequencies corresponding to the 700 MHz paired frequency lot assignment stage option for which the bidder made that winning bid.

CHAPTER 2

Total auction sum

**Determination of the total auction sum payable by winning bidders to OFCOM**

**114.**—(1) OFCOM shall determine the total auction sum payable by each winning bidder in accordance with paragraph (2).

(2) The total auction sum payable by a winning bidder shall be the sum of—

- (a) for that winning bidder's 3.6 GHz licence (if any), the licence fee determined in accordance with regulation 110; and
- (b) for that winning bidder's 700 MHz licence (if any), the licence fee determined in accordance with regulation 111.

**Notification of the total auction sum payable by winning bidders to OFCOM**

**115.** Following the determination of the total auction sum payable by each winning bidder to OFCOM, OFCOM shall notify each winning bidder of the total auction sum payable by that winning bidder to OFCOM.

**Further payment where the amount of a winning bidder's deposit is less than its total auction sum**

**116.** Where, after the notification given in accordance with regulation 115, the total amount that a winning bidder has on deposit is an amount that is less than the total auction sum payable by that bidder to OFCOM, the bidder must, by a deadline specified by OFCOM, pay into OFCOM's bank account, with accompanying information which identifies the bidder, the sum in pounds which is the difference between such amount and the amount the bidder has on deposit.

CHAPTER 3  
Grant of licences

**Entitlement to the grant of licences**

**117.**—(1) Where, following the passing of the deadline under regulation 116, the total amount that a winning bidder has on deposit is an amount that is equal to or more than the total auction sum payable by that bidder to OFCOM, OFCOM shall grant to that bidder the relevant licences referred to in regulation 118.

(2) Where, following the passing of the deadline under regulation 116, the amount of the deposit of a winning bidder remains less than the total auction sum payable by that bidder to OFCOM, that bidder—

- (a) shall not be entitled to the grant of any licences under these Regulations and shall not receive a refund of any sum which the bidder has paid as a deposit under these Regulations which shall (where not already forfeited) be forfeited, together with any interest which has accrued on that deposit; and
- (b) shall remain liable to pay the amount which is the difference (if any) between—
  - (i) the amount which is the total auction sum payable by that bidder to OFCOM; and
  - (ii) the amount the bidder has on deposit.

**Grant of licences**

**118.** The licences referred to in regulation 117(1) are—

- (a) in respect of a winning bidder of 3.6 GHz lots, a 3.6 GHz licence which authorises the use of the frequencies determined in accordance with regulation 112; and
- (b) in respect of a winning bidder of—
  - (i) 700 MHz individual frequency lots,
  - (ii) 700 MHz paired frequency lots; or
  - (iii) both 700 MHz individual frequency lots and 700 MHz paired frequency lots,

a 700 MHz licence which authorises the use of the frequencies determined in accordance with regulation 113.

CHAPTER 4  
Completion of the award process

**Refunds**

**119.** Where, following the grant of licences, the total amount a bidder has on deposit at that time is an amount that is greater than the total auction sum payable by that bidder to OFCOM, OFCOM shall refund to that bidder a sum in pounds which is the difference between—

- (a) the amount which is the total auction sum payable by that bidder to OFCOM (if any); and
- (b) the amount the bidder has on deposit.

**Notification to bidders following the grant of licences**

**120.** Following the grant of licences and the refund (if any) of deposits, OFCOM shall notify each winning bidder of the names of all of the persons to whom licences were granted, and, in relation to each of them—

- (a) the frequencies in respect of which the licences were granted; and
- (b) the licence fees paid, indicating the total base prices and the additional prices.

## **Completion of the award process**

- 121.** OFCOM shall complete the award process by publishing on OFCOM's website—
- (a) the names of the winning bidders to whom licences were granted, and, in relation to each of them—
    - (i) the frequencies in respect of which the licences were granted; and
    - (ii) the licence fees paid;
  - (b) the names of any winning bidders who, following the passing of the deadline under regulation 116, had an amount on deposit which is less than the total auction sum payable by them to OFCOM, and, in relation to each of them—
    - (i) the frequencies in respect of which, if they held on deposit an amount equal to the total auction sum, licences would have been granted; and
    - (ii) the total auction sum payable to OFCOM;
  - (c) details of all valid principal stage bids and occurrences of an eligibility event in respect of each bidder;
  - (d) details of all valid assignment stage bids for 700 MHz individual frequency lots and 700 MHz paired frequency lots; and
  - (e) details of the essential aspects of any valid full adjacency agreement or any valid partial adjacency agreement.

## **PART 10**

### **Forfeit of deposit and exclusion**

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

**122.**—(1) Subject to paragraph (2) if, in relation to an applicant which is qualified to bid or a bidder, OFCOM are satisfied that any of the events specified in regulation 124 are occurring (or have occurred) and that the occurrence would materially affect the outcome of the award process or would affect that bidder's overall bid constraint—

- (a) any sum paid as a deposit under these Regulations shall be forfeited (together with any interest which has accrued on the deposit) by, and not refunded to, the applicant or bidder concerned; and
- (b) that applicant or bidder may also be excluded from the award process by OFCOM giving that applicant or bidder notice in writing.

(2) If OFCOM are satisfied that any of the events specified in regulation 124(2)(d), 124(2)(e) or 124(2)(g)(ii) are occurring (or have occurred) only during the negotiation period OFCOM shall not require any deposit to be forfeited and shall not exclude any bidder.

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

**123.**—(1) Where a bidder is excluded from the award process under regulation 122 during the principal stage, OFCOM shall determine whether it should disregard the bids (and other bidding indications made on its principal stage form) made in any principal stage rounds prior to the exclusion, in order to have a fair and efficient outcome to the award process.

(2) Where OFCOM determine that it is appropriate to disregard the bids (and other bidding indications) made in any principal stage rounds—

- (a) OFCOM shall notify bidders of the rounds for which they have determined to disregard the bids (and other bidding indications); and
- (b) resume the award process from the start of the principal stage round after the 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 principal stage round.

(3) Where a bidder is excluded from the award process under regulation 122 during the assignment stage—

- (a) OFCOM shall determine whether it should disregard the bids (and other bidding indications) made in any principal stage round prior to the exclusion in accordance with paragraphs (1) and (2); and
- (b) any adjacency agreement to which the bidder is a party and all of the assignment stage bids made by the bidder shall not be taken into consideration for the purposes of determining—
  - (i) the lots to be assigned under these Regulations; and
  - (ii) any additional price payable by a winning bidder under these Regulations.

## Events

**124.**—(1) The events referred to in regulation 122 are the events in paragraph (2) and the events in paragraph (3).

(2) Events 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 bidding in 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; and
- (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 8(3); or

- (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.
- (3) Events in relation to a bidder (but not an applicant) are—
- (a) a change, after OFCOM have recorded that bidder's existing spectrum holdings under regulation 17, to the existing spectrum holdings of a bidder or, in relation to the bidder, any person referred to in regulation 4(3)(a)(iii) except insofar as the change is a divestment of a part of or the whole of the existing spectrum holdings; and
  - (b) any person which has existing spectrum holdings which was not at the time OFCOM recorded the bidder's existing spectrum holdings under regulation 17 a person referred to in regulation 4(3)(a)(iii) becoming such a person during the award process.

## PART 11

### Miscellaneous

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

**125.** OFCOM may, at any time, notify any applicant or bidder of its exclusion from the award process, if required to do so by any direction given by the Secretary of State to OFCOM under section 5 of the Communications Act 2003<sup>(a)</sup> or if, after OFCOM's determination under regulation 10(1) (and notwithstanding that determination), in their opinion the applicant or bidder is not a fit and proper person to hold a licence.

#### **Notification to OFCOM**

**126.** 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 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 website; or
- (b) by personal delivery to Riverside House, 2a Southwark Bridge Road, London, SE1 9HA.

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

**127.—**(1) Subject to regulations 128 and 129, 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 reasonable steps to notify applicants or bidders that—

- (a) delivery must be made on a different day or within different times on that day or at a different place; and
- (b) the action must be completed on a different day or by a different deadline.

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<sup>(a)</sup> 2003 c.21.

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

**128.**—(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 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 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 these Regulations, OFCOM shall take 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**

**129.**—(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 reasonable steps to notify bidders of their determination under paragraph (1);
- (b) disregard the bids (and other bidding indications) made in that round; and
- (c) resume the award process from the end of the most recent round.

(3) Paragraph (4) applies where OFCOM determine that it is not possible to continue the award process in accordance with the provisions 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 (and other bidding indications) made in those rounds should be disregarded in order to have a fair and efficient outcome to the award process;
- (b) take reasonable steps to notify bidders of their determinations under paragraph (3) and sub-paragraph (a); and
- (c) resume the award process from the end of the latest round for which bids (and other bidding indications) are not disregarded under sub-paragraph (a), or, where all bids (and other bidding indications) are to be disregarded under that sub-paragraph, to rerun the award process from the start of the first principal stage round.

### **Refunds**

**130.** 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.

### **Deposits**

**131.** In determining under these Regulations the amount that an applicant or bidder has on deposit OFCOM shall disregard any sum forfeited under these Regulations and any interest which may have accrued on any deposit.

[ ] 2020

[ ]  
Group Director, Spectrum Group  
For and by authority of the Office of Communications

SCHEDULE 1      Regulations 2(2), 2(3), and 2(4)

Lots

In these Regulations—

- (a) “3.6 GHz lot” means any of the twenty-four 3.6 GHz lots listed in Column (1) of Table 1 comprising the frequencies listed in the corresponding entry in Column (2) of the same table;
- (b) “700 MHz individual frequency lot” means any of the four numbered 700 MHz lots listed in Column (1) of Table 2 comprising the frequencies listed in the corresponding entry in Column (2) of the same table;
- (c) “700 MHz paired frequency lot” means any of the six numbered 700 MHz pairs of lots listed in Column (1) of Table 3 comprising the frequencies listed in the corresponding entry in Column (2) of the same table;
- (d) “lot” means a 3.6 GHz lot, a 700 MHz individual frequency lot or a 700 MHz paired frequency lot;
- (e) a reference to “lot type” shall be construed as a reference to any of the three different lot types in paragraphs (a), (b) and (c);
- (f) a reference to a numbered 3.6 GHz lot, a numbered 700 MHz individual frequency lot, or a 700 MHz paired frequency lot means the lot with that number in Column (1) of Table 1, Table 2, or Table 3 (as the case may be); and
- (g) a reference to a “block” of 700 MHz paired frequency lots, a 700 MHz individual frequency lot or a 3.6 GHz lot is to be construed as a reference to a block of contiguous and sequentially numbered lots.

**Table 1**

<i>3.6 GHz frequency lots</i>	<i>Frequencies</i>
3.6 GHz frequency lot 1	3680-3685 MHz
3.6 GHz frequency lot 2	3685-3690 MHz
3.6 GHz frequency lot 3	3690-3695 MHz
3.6 GHz frequency lot 4	3695-3700 MHz
3.6 GHz frequency lot 5	3700-3705 MHz
3.6 GHz frequency lot 6	3705-3710 MHz
3.6 GHz frequency lot 7	3710-3715 MHz
3.6 GHz frequency lot 8	3715-3720 MHz
3.6 GHz frequency lot 9	3720-3725 MHz
3.6 GHz frequency lot 10	3725-3730 MHz
3.6 GHz frequency lot 11	3730-3735 MHz
3.6 GHz frequency lot 12	3735-3740 MHz
3.6 GHz frequency lot 13	3740-3745 MHz
3.6 GHz frequency lot 14	3745-3750 MHz
3.6 GHz frequency lot 15	3750-3755 MHz
3.6 GHz frequency lot 16	3755-3760 MHz
3.6 GHz frequency lot 17	3760-3765 MHz
3.6 GHz frequency lot 18	3765-3770 MHz
3.6 GHz frequency lot 19	3770-3775 MHz
3.6 GHz frequency lot 20	3775-3780 MHz
3.6 GHz frequency lot 21	3780-3785 MHz
3.6 GHz frequency lot 22	3785-3790 MHz
3.6 GHz frequency lot 23	3790-3795 MHz
3.6 GHz frequency lot 24	3795-3800 MHz

**Table 2**

<i>700 MHz individual frequency lots</i>	<i>Frequencies</i>
700 MHz individual frequency lot 1	738-743 MHz
700 MHz individual frequency lot 2	743-748 MHz
700 MHz individual frequency lot 3	748-753 MHz
700 MHz individual frequency lot 4	753-758 MHz

**Table 3**

<i>700 MHz paired frequency lots</i>	<i>Frequencies</i>
700 MHz paired frequency lot 1	703-708 MHz and 758-763 MHz
700 MHz paired frequency lot 2	708-713 MHz and 763-768 MHz
700 MHz paired frequency lot 3	713-718 MHz and 768-773 MHz
700 MHz paired frequency lot 4	718-723 MHz and 773-778 MHz
700 MHz paired frequency lot 5	723-728 MHz and 778-783 MHz
700 MHz paired frequency lot 6	728-733 MHz and 783-788 MHz

DRAFT

## SCHEDULE 2

Regulation 4

### Application form and warranty

#### 1. Details of the applicant

Provide the following details for the applicant—

Applicant's full name

Registered number of company

Registered office of company

Bank sort code and account number

Name of individual contact within applicant

Contact address (if different from registered office)

Contact telephone number

Contact mobile telephone number

Contact electronic mail address

#### 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. Applicant group

Provide the names of the applicant's associates (as defined in the Wireless Telegraphy (Licence Award) Regulations 2020 ("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 applicant group (as defined in the Regulations) in respect of which the applicant has completed a document in the form set out in Schedule 3 to the Regulations in accordance with regulation 4(3)(a)(ii) of the Regulations.

#### 5. Qualification to bid

In relation to the determination by the Office of Communications ("OFCOM") under regulation 10 of the Regulations—

- (h) provide details of any reason why the applicant may not be a fit and proper person to hold a licence;
- (i) state whether any member of the applicant's applicant 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;
- (j) state whether any member of the applicant's applicant 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;
- (k) state whether any member of the applicant's applicant 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, and provide a description of the circumstances of any disclosure and the information disclosed, except where the disclosure—

- (i) is or was to a member of the applicant's applicant group;
  - (ii) is or was to OFCOM;
  - (iii) is or was to a provider of finance for the purpose of raising finance for the applicant's application; or
  - (iv) is or was to a person for the purpose of enabling that person to decide whether to participate as a member of the applicant's bidder group;
- (l) state whether any member of the applicant's applicant group has obtained or is obtaining or attempting to obtain confidential information relating to another applicant and provide a description of any such circumstances;
- (m) state whether any member of the applicant's applicant 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 provide a description of the services concerned; and
- (n) state whether (and provide a description of any circumstances in which) any person who is a member or a director or employee of a member of the applicant's applicant group and also a director or employee of a member of another applicant group is—
- (i) taking part in the preparation of both applicant groups for participation in the award process; or
  - (ii) receiving confidential information relating to both applicant groups.

## **6. Other information**

Provide a brief description of the substance of—

- (o) agreements (if any) relating to the management of the applicant; and
- (p) any criminal investigations or proceedings in the United Kingdom or overseas of which the applicant is aware relating to the applicant or any member of its applicant group or its directors or officers.

## **7. Existing spectrum holdings**

Confirm that the applicant has provided the details of existing spectrum holdings required under regulation 4(3)(a)(iii) of the Regulations.

## **8. Warranty**

Provide the following warranty—

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

- (q) the persons authorised in section 2 of this application have read and understood the Regulations, the terms of the licences to be granted under the Regulations, and the Wireless Telegraphy Act 2006;
- (r) 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;
- (s) 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
- (t) the applicant is aware of the provisions in regulations 122 and 124 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.”

**Document for member of applicant's applicant group or 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 applicant or bidder group who is not an associate] as a member of the applicant/bidder's applicant or bidder group as defined in the Wireless Telegraphy (Licence Award) Regulations 2020 ("the Regulations") for the purpose of the award process under the Regulations.

Under regulation 11 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 122 and 124 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.

**Applicant/bidder**

In relation to regulations 11, 122 and 124 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 applicant or bidder group who is not an associate] is not a member of any other applicant's or bidder's applicant or bidder group.

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

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

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

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

- (x) consents to be a member of the applicant/bidder's applicant or bidder group;
- (y) is not a member of any other applicant's or bidder's applicant or bidder group; and
- (z) is aware of the provisions in regulations 10, 122 and 124 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 applicant or bidder group who is not an associate] undertakes to OFCOM that it will immediately inform OFCOM and the applicant/bidder—

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

## Determination of 3.6 GHz lot additional prices

### Additional price

1.—(1) OFCOM shall determine an additional price for each winning 3.6 GHz 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 whole pound.

### First requirement

2. The additional price for each winning 3.6 GHz assignment stage bid shall be no less than zero and no more than the amount of that winning 3.6 GHz assignment stage bid.

### Second requirement

3.—(1) Taking the additional prices for the winning 3.6 GHz assignment stage bids together, the additional prices shall be such that if—

- (a) the amount bid by each winning bidder for the 3.6 GHz assignment stage option selected in its winning 3.6 GHz assignment stage bid had been the additional price rather than the amount of its winning 3.6 GHz assignment stage bid (“reduced winning 3.6 GHz assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid 3.6 GHz assignment stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning 3.6 GHz assignment stage bid and the additional price for that relevant winning 3.6 GHz assignment stage bid,

the combination of the reduced winning 3.6 GHz assignment stage bids submitted by the winning bidders would have been the valid combination of 3.6 GHz assignment stage bids or one of the valid combinations of 3.6 GHz assignment stage bids (as the case may be) 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-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid 3.6 GHz assignment stage bids for the purposes of this paragraph.

### Third requirement

4. Taking the additional prices for the winning 3.6 GHz assignment stage bids together, the total of those additional prices shall be no greater than the total of any other prices for the winning 3.6 GHz assignment stage bids that satisfy the requirements set out in paragraphs 2 and 3.

### Fourth requirement

5.—(1) Taking the additional prices for the winning 3.6 GHz assignment stage bids together, the opportunity cost variance of those additional 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 3.6 GHz assignment stage bids that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“OCVA”) of prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula  $OCVA = \sum (p_A - c_A)^2$  where—

- (a) “ $p_A$ ” is the price for a winning 3.6 GHz assignment stage bid; and
- (b) “ $c_A$ ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning 3.6 GHz assignment stage bid.

(3) The formula is  $c_A = u_A - t_A + b_A$  where—

- (a) “ $u_A$ ” is the amount calculated in accordance with sub-paragraph (4);
- (b) “ $t_A$ ” is the total amount of the winning 3.6 GHz assignment stage bids; and
- (c) “ $b_A$ ” is the amount of the winning 3.6 GHz 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 3.6 GHz assignment stage bids or one of the valid combinations of 3.6 GHz assignment stage bids (as the case may be) having the highest total value of amounts bid where, for each 3.6 GHz assignment stage bid made by the winning bidder that submitted the winning 3.6 GHz assignment stage bid for which  $p_A$  is the price, the amount of that 3.6 GHz assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.

(5) Where the amount of a 3.6 GHz assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that 3.6 GHz assignment stage bid shall be treated as a valid 3.6 GHz lot assignment stage bid for the purposes of that sub-paragraph.

### **Interpretation**

6. In this Schedule “valid combination of 3.6 GHz assignment stage bids” shall be construed in accordance with regulation 97 or 98 as the context requires.

## Determination of 700 MHz individual frequency lot additional prices

### Additional price

1.—(1) OFCOM shall determine an additional price for each winning 700 MHz individual frequency lot 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 whole pound.

### First requirement

2. The additional price for each winning 700 MHz individual frequency lot assignment stage bid shall be no less than zero and no more than the amount of that winning 700 MHz individual frequency lot assignment stage bid.

### Second requirement

3.—(1) Taking the additional prices for the winning 700 MHz individual frequency lot assignment stage bids together, the additional prices shall be such that if—

- (a) the amount bid by each winning bidder for the 700 MHz individual frequency lot assignment stage option selected in its winning 700 MHz individual frequency lot assignment stage bid had been the additional price rather than the amount of its winning 700 MHz individual frequency lot assignment stage bid (“reduced winning 700 MHz individual frequency lot assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid 700 MHz individual frequency lot assignment stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning 700 MHz individual frequency lot assignment stage bid and the additional price for that relevant winning 700 MHz individual frequency lot assignment stage bid,

the combination of the reduced winning 700 MHz individual frequency lot assignment stage bids submitted by the winning bidders would have been the valid combination of 700 MHz individual frequency lot assignment stage bids or one of the valid combinations of 700 MHz individual frequency lot assignment stage bids (as the case may be) 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-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid 700 MHz individual frequency lot assignment stage bids for the purposes of this paragraph.

### Third requirement

4. Taking the additional prices for the winning 700 MHz individual frequency lot assignment stage bids together, the total of those additional prices shall be no greater than the total of any other prices for the winning 700 MHz individual frequency lot assignment stage bids that satisfy the requirements set out in paragraphs 2 and 3.

### Fourth requirement

5.—(1) Taking the additional prices for the winning 700 MHz individual frequency lot assignment stage bids together, the opportunity cost variance of those additional 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 700 MHz individual frequency lot assignment stage bids that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“OCVA”) of prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula  $OCVA = \sum (p_A - c_A)^2$  where—

- (a) “ $p_A$ ” is the price for a winning 700 MHz individual frequency lot assignment stage bid; and
- (b) “ $c_A$ ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning 700 MHz individual frequency lot assignment stage bid.

(3) The formula is  $c_A = u_A - t_A + b_A$  where—

- (a) “ $u_A$ ” is the amount calculated in accordance with sub-paragraph (4);
- (b) “ $t_A$ ” is the total amount of the winning 700 MHz individual frequency lot assignment stage bids; and
- (c) “ $b_A$ ” is the amount of the winning 700 MHz individual frequency lot 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 700 MHz individual frequency lot assignment stage bids or one of the valid combinations of 700 MHz individual frequency lot assignment stage bids (as the case may be) having the highest total value of amounts bid where, for each 700 MHz individual frequency lot assignment stage bid made by the winning bidder that submitted the winning 700 MHz individual frequency lot assignment stage bid for which  $p_A$  is the price, the amount of that 700 MHz individual frequency lot assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.

(5) Where the amount of a 700 MHz individual frequency lot assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that 700 MHz individual frequency lot assignment stage bid shall be treated as a valid 700 MHz individual frequency lot assignment stage bid for the purposes of that sub-paragraph.

### **Interpretation**

6. In this Schedule “valid combination of 700 MHz individual frequency lot assignment stage bids” shall be construed in accordance with regulation 102.

## Determination of 700 MHz paired frequency lot additional prices

### Additional price

1.—(1) OFCOM shall determine an additional price for each winning 700 MHz paired frequency lot 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 whole pound.

### First requirement

2. The additional price for each winning 700 MHz paired frequency lot assignment stage bid shall be no less than zero and no more than the amount of that winning 700 MHz paired frequency lot assignment stage bid.

### Second requirement

3.—(1) Taking the additional prices for the winning 700 MHz paired frequency lot assignment stage bids together, the additional prices shall be such that if—

- (a) the amount bid by each winning bidder for the 700 MHz paired frequency lot assignment stage option selected in its winning 700 MHz paired frequency lot assignment stage bid had been the additional price rather than the amount of its winning 700 MHz paired frequency lot assignment stage bid (“reduced winning 700 MHz paired frequency lot assignment stage bid”), and
- (b) subject to sub-paragraph (2), the amount bid by each winning bidder in respect of each other valid 700 MHz paired frequency lot assignment stage bid made by that bidder had been reduced by an amount equal to the difference between the amount of its winning 700 MHz paired frequency lot assignment stage bid and the additional price for that relevant winning 700 MHz paired frequency lot assignment stage bid,

the combination of the reduced winning 700 MHz paired frequency lot assignment stage bids submitted by the winning bidders would have been the valid combination of 700 MHz paired frequency lot assignment stage

(2) Where the amount of a bid bids or one of the valid combinations of 700 MHz paired frequency lot assignment stage bids (as the case may be) having the highest total value of amounts 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-paragraphs (1)(a) and (1)(b) shall, after reduction of the amount of those bids in accordance with those paragraphs, be treated as valid 700 MHz paired frequency lot assignment stage bids for the purposes of this paragraph.

### Third requirement

4. Taking the additional prices for the winning 700 MHz paired frequency lot assignment stage bids together, the total of those additional prices shall be no greater than the total of any other prices for the winning assignment stage bids that satisfy the requirements set out in paragraphs 2 and 3.

### Fourth requirement

5.—(1) Taking the additional prices for the winning 700 MHz paired frequency lot assignment stage bids together, the opportunity cost variance of those additional 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 700 MHz paired frequency lot assignment stage bids that satisfy the requirements set out in paragraphs 2 to 4.

(2) The opportunity cost variance (“OCVA”) of prices mentioned in sub-paragraph (1) is the amount calculated in accordance with the formula  $OCVA = \sum(p_A - c_A)^2$  where—

- (a) “ $p_A$ ” is the price for a winning 700 MHz paired frequency lot assignment stage bid; and
- (b) “ $c_A$ ” is the amount calculated in accordance with the formula set out in sub-paragraph (3) in respect of that winning 700 MHz paired frequency lot assignment stage bid.

(3) The formula is  $c_A = u_A - t_A + b_A$  where—

- (a) “ $u_A$ ” is the amount calculated in accordance with sub-paragraph (4);
- (b) “ $t_A$ ” is the total amount of the winning 700 MHz paired frequency lot assignment stage bids; and
- (c) “ $b_A$ ” is the amount of the winning 700 MHz paired frequency lot 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 700 MHz paired frequency lot assignment stage bids or one of the valid combinations of 700 MHz paired frequency lot assignment stage bids (as the case may be) having the highest total value of amounts bid where, for each 700 MHz paired frequency lot assignment stage bid made by the winning bidder that submitted the winning 700 MHz paired frequency lot assignment stage bid for which  $p_A$  is the price, the amount of that 700 MHz paired frequency lot assignment stage bid is treated as if it were zero for the purposes of this sub-paragraph.

(5) Where the amount of a 700 MHz paired frequency lot assignment stage bid is treated as if it were zero in accordance with sub-paragraph (4), that 700 MHz paired frequency lot assignment stage bid shall be treated as a valid 700 MHz paired frequency lot assignment stage bid for the purposes of that sub-paragraph.

### **Interpretation**

6. In this Schedule “valid combination of 700 MHz paired frequency lot assignment stage bids” shall be construed in accordance with regulation 104.

## SCHEDULE 7

Regulation 5

### Frequency bands for existing spectrum holdings

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*Frequency bands*

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703 to 733 MHz

738 to 788 MHz

791 to 821 MHz

832 to 862 MHz

880.1 to 914.9 MHz

925.1 to 959.9 MHz

1452 to 1492 MHz

1710.1 to 1781.7 MHz

1805.1 to 1876.7 MHz

1920.0 to 1979.7 MHz

2110.3 to 2169.7 MHz

2350 to 2390 MHz

2500 to 2570 MHz

2575 to 2595 MHz

2600 to 2615 MHz

2620 to 2690 MHz

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3410 to 3800 MHz

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DRAFT

## SCHEDULE 8

Regulation 2

### Partial adjacency agreement form

[Insert name of bidder] is party to a partial adjacency agreement as construed in accordance with regulation 83 of the Wireless Telegraphy (Licence Award) Regulations 2020 (“the Regulations”).

The parties to the agreement are [Insert names of each of the parties to the agreement.]

[Insert name of bidder] has agreed with the other parties to the agreement that each party should be assigned wireless telegraphy licences for blocks of 3.6 GHz lots to be awarded under the Regulations which, when considered together form a single block (such that the quantity of 3.6 GHz lots contained in the block which is to be assigned to each party is equal to the number of that party’s winning principal stage bids of 3.6 GHz lots).

The bidders that are party to the partial adjacency agreement are listed below in the order (from lower to higher frequencies) in which they wish to be assigned blocks of 3.6 GHz lots.

The party to be assigned the lowest frequency block of 3.6 GHz lots is named in row number 1.

The party to be assigned the highest block of 3.6 GHz lots in the highest numbered row used.

The order of any parties to be assigned frequency blocks which lie in between the lowest frequency block and highest block are set out in the numbered rows in between row number 1 and the highest numbered row used.

#### Table

<i>Bidder name</i>
1
2
3
4
5
6
7
8
9
10

[Insert name of bidder] hereby makes the additional required bids referred to in regulation 87 and 88 of the Regulations. These bids are a bid of zero pounds for every possible block (as defined in the Regulations) of numbered 3.6 GHz lots (as defined in the Regulations) in which the number of 3.6 GHz lots contained in the block is equal to the number of that bidder’s winning principal stage bids for 3.6 GHz lots (as defined in the Regulations).

[Signed by two authorised persons]

## SCHEDULE 9

Regulation 2

### Full adjacency agreement form

[Insert name of bidder] is party to a full adjacency agreement as construed in accordance with regulation 82 of the Wireless Telegraphy (Licence Award) Regulations 2020 (“the Regulations”).

The parties to the agreement are [Insert names of each of the parties to the agreement.]

[Insert name of bidder] has agreed with the other parties to the agreement (which are named in the table below) that the party named in column 3 of each row of the table should be assigned the numbered 3.6 GHz frequency lots specified in column 1 of the same row of the table, in respect of the frequencies specified in the same row in column 2.

Where in any row in the table the box provided for a name in column 3 is left blank the parties agree that the relevant frequency lot in column 1 is not to be assigned to any bidder.

**Table**

<i>3.6 GHz frequency lot</i>	<i>Frequencies</i>	<i>Name of bidder</i>
3.6 GHz frequency lot 1	3680-3685 MHz	
3.6 GHz frequency lot 2	3685-3690 MHz	
3.6 GHz frequency lot 3	3690-3695 MHz	
3.6 GHz frequency lot 4	3695-3700 MHz	
3.6 GHz frequency lot 5	3700-3705 MHz	
3.6 GHz frequency lot 6	3705-3710 MHz	
3.6 GHz frequency lot 7	3710-3715 MHz	
3.6 GHz frequency lot 8	3715-3720 MHz	
3.6 GHz frequency lot 9	3720-3725 MHz	
3.6 GHz frequency lot 10	3725-3730 MHz	
3.6 GHz frequency lot 11	3730-3735 MHz	
3.6 GHz frequency lot 12	3735-3740 MHz	
3.6 GHz frequency lot 13	3740-3745 MHz	
3.6 GHz frequency lot 14	3745-3750 MHz	
3.6 GHz frequency lot 15	3750-3755 MHz	
3.6 GHz frequency lot 16	3755-3760 MHz	
3.6 GHz frequency lot 17	3760-3765 MHz	
3.6 GHz frequency lot 18	3765-3770 MHz	
3.6 GHz frequency lot 19	3770-3775 MHz	
3.6 GHz frequency lot 20	3775-3780 MHz	
3.6 GHz frequency lot 21	3780-3785 MHz	
3.6 GHz frequency lot 22	3785-3790 MHz	
3.6 GHz frequency lot 23	3790-3795 MHz	
3.6 GHz frequency lot 24	3795-3800 MHz	

[Signed by two authorised persons]

## 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 which are set out in Schedule 1.

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. The documents must give details of the existing spectrum holdings of the applicant and others listed in regulations 4(3)(a)(iii). An initial deposit of one hundred thousand pounds must be paid to OFCOM (regulation 4(3)(b)).

OFCOM will determine which applicants are fit to hold a licence, taking into account the matters set out in regulation 10(2). If not disqualified, and if there is no member of its bidder group which is also a member of another bidder group, an applicant shall be qualified to participate (regulation 11(1)).

After giving applicants an opportunity to withdraw, OFCOM will determine the number of bidders (regulation 14), an additional deposit may be paid (regulation 15) and OFCOM will determine an eligibility limit (a term defined in the Regulations) by reference to sums paid on deposit. This limits the bids that can be made.

A further limitation on bids which can be made will also apply to a bidder in the form of an overall bid constraint (this term is defined in the Regulations). The constraint may be different for each bidder and they are to be determined by reference to existing spectrum holdings (regulations 18).

The first stage, called the principal stage, involves one or more rounds of bidding. The round prices for the first round are set out in regulation 24 and OFCOM will determine the round prices for each subsequent round (regulations 25, 26, 27 and 28).

The winning principal stage bids are determined by OFCOM in accordance with regulation 33 by reference to bids which are determined to have standing high bid status (this is a defined term).

The second stage, called the assignment stage, is set out in Parts 6, 7 and 8. This procedure determines the frequencies which will be assigned to each winning bidder. This is determined through a further round of bidding and there is also an opportunity for winning bidders of 3.6 GHz lots to agree during a fixed negotiation period which blocks of the particular frequency lots will be assigned to each of these bidders.

The third stage, called the grant stage, is the procedure set out in Part 9. OFCOM will grant licences to winning bidders and refund any sums due to winning bidders (regulations 117 to 119).

If, in relation to an applicant which is qualified to bid or a bidder, OFCOM is 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 122).

A full regulatory impact assessment of the effect of these Regulations has been prepared. Copies of the impact assessment and guidance 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 website at [www.ofcom.org.uk](http://www.ofcom.org.uk). Copies of the impact assessment and guidance have also been placed in the libraries of the Houses of Parliament.