



Call for Applications leading to the grant of the rights of use of radio frequencies in the 800 MHz band in Malta

Call for Applications

MCA/O/16-2711

Publication Date:

21TH NOVEMBER 2016

Closing Date for Submissions:

23RD JANUARY 2017

Malta Communications Authority
Valletta Waterfront,
Pinto Wharf, Floriana,
FRN 1913, Malta

T + 356 2133 6840
F + 356 2133 6846

E info@mca.org.mt
W www.mca.org.mt

DOCUMENT REVISION HISTORY			
Date	Revision	Comments	Authors & Contributors
21/11/2016	1.0	Call for Applications	MCA

DISTRIBUTION		
Date	Revision	Comments
21/11/2016	1.0	Parties who have expressed an interest in acquiring spectrum in the 800 MHz band

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1. Introduction

A number of potential candidates have expressed their interest in order to obtain access to the rights of use of radio frequencies in the 800 MHz band. Given that the amount of spectrum requested in a specific lot category exceeds the available spectrum, the Malta Communications Authority ('MCA' or 'Authority') will proceed with the assignment of the 800 MHz spectrum to the parties who have expressed an interest (also referred to as *applicants* in the document) by issuing a Call for Applications. The interested parties shall now submit a duly filled in application form so that the MCA will be able to assess the suitability for assignment of spectrum to the individual candidates. In case where the interested parties do not submit the requested information on time or fail to pass the Qualification Phase assessment, the relevant expression of interest will be discarded and eventually the respective candidate will be unable to acquire spectrum rights in the 800 MHz band during this procedure.

In submitting an application form, the applicant accepts in full and in its entirety, the content, terms and conditions, of this document and all its appendices, including any subsequent clarifications issued by the Authority, whatever its own corresponding conditions may be. The applicant is expected to examine carefully and comply with all instructions, forms, provisions and specifications however so described contained in this document, or those that may be requested by the Authority on the basis of this document.

By accepting any rights of use that it may be offered, the applicant agrees that, as the holder of the rights of use, it is responsible for all costs, liabilities and losses derived from the operation or non-operation of the rights of use or authorised service for whatever cause.

The Authority, whilst providing adequate notice, reserves the right to alter any of the deadlines or conditions outlined in this document during the assignment process. Under no circumstances will the Authority, or its advisers, be liable for damages, whatever their nature (in particular, but not limited to, damages for loss of profits) in relation to any such alterations, even if the Authority would have been advised of the possibility of damages. No information contained in this document shall form the basis for any warranty or representation however so described by or term of any contract with the MCA. In case any part of the text represented in this document is in contradiction to the text in the Decision MCA/D/14-1933 issued by the MCA, the text in that Decision will prevail.

This assignment of rights of use of radio frequencies is governed solely by Maltese Law and is subject to the exclusive jurisdiction of the competent Maltese Courts and, or Tribunals however so described.

2. Implementation Timeframes

The envisaged implementation timeframes for the Assignment Process are as follows:-



* should an auction not be required

Note:

The above timeframes are indicative and are not binding on the Authority. The Authority shall, in no way, be held liable for any changes in the above-mentioned timeframes. The interested parties will not be able to withdraw from the process if the timeframes change. Such a withdrawal will result in the immediate forfeiture of the bank guarantee.

The Authority shall use its powers at Law to ensure that the successful candidates are able to use the frequencies assigned to them following the Grant of Rights of Use, within a reasonable timeframe. The effective date of the Rights of Use will commence from the grant date or the date when the band becomes available for terrestrial mobile systems capable of providing electronic communication services, whichever comes latest as will be communicated by the MCA.

3. Spectrum Band being assigned

The 800 MHz (790 – 862 MHz) band (the “Band”) provides 60 MHz of paired spectrum. The Authority has adopted the harmonised channelling arrangement as established in 2010/276/EU which results in a total of six (6) paired 5 MHz channels. The channelling plan is per Figure 1 below.

800 MHz band - Channelling Arrangement

Ch 60	GB	Ch 1 D/L	Ch 2 D/L	Ch 3 D/L	Ch 4 D/L	Ch 5 D/L	Ch 6 D/L	Duplex Gap	Ch 1 U/L	Ch 2 U/L	Ch 3 U/L	Ch 4 U/L	Ch 5 U/L	Ch 6 U/L		
782	790	791	796	801	806	811	816	821		832	837	842	847	852	857	862

Figure 1: Channelling Plan for the 800 MHz Band

A paired 5 MHz channel is considered to be a single lot (‘Lot’) resulting in a total of six (6) Lots in the 800 MHz band. However, due to the distinct imposed power characteristics across the channels in the band, the MCA, as per the said Decision (MCA/D/14-1933) had decided to divide the total number of lots into two distinct lot categories. For ease of reference, the lot categories are being identified as the “Low Power Lot Category” and the “High Power Lot Category”. The Low Power Lot Category includes Channel 1 with the in-block EIRP set at 56dBm/5 MHz whilst the High Power Lot Category includes Channels 2, 3, 4, 5, and 6 with the in-block EIRP set at 60dBm/5 MHz. Further details can be found in Appendix B.

Interested parties should not apply for specific frequencies in the Band but are to submit an Application for any number of Lots in the Spectrum Band and Lot categories subject to the applicable Spectrum Caps.

The applicant will need to state:

- the maximum number of Lots that it may apply for throughout the course of the Award (‘Maximum Interest’). The Applicant needs to ensure that the Maximum Interest registered will cover the interest it might register in all stages of the Award process including a possible auction.
- its preferred assignment of Lots (‘Preferred Option’).
- alternative (less preferred) assignment options that would still meet its needs. These options will form the basis for discussion in the eventuality that brokered meetings take place.

An applicant must not apply for spectrum in excess of the established Spectrum Cap¹ and, or its declared Maximum Interest.

The overall demand for Lots in the Band will be determined by the Authority on the basis of the Preferred Option submitted by all the Qualified Applicants.

As part of its Application, the applicant should also identify its specific paired 5 MHz channels of first choice, giving reasons for such a preference. This shall not detract in any way from the Authority's sole discretion to assign to the successful applicants the paired frequency channels in the way it deems fit as outlined in Section 9.1.

Successful applicants will be bound by the conditions in the Licence that will be awarded to it, a sample of which is attached to this Call for Applications (Appendix C).²

This Call for Applications will not in any way preclude or influence future assignment processes for the grant of rights of use of frequencies in any spectrum band, including the 800 MHz band.

¹ The Spectrum Cap is established as an overall cap of two (2) Lots over the 800 MHz band. Should there be unassigned spectrum and there is no excess demand for the 800 MHz band, the respective spectrum cap will be set to three (3) Lots.

² The Authority reserves the right to amend the sample Licence at any point prior to the issue of the Licence, if the Authority considers this necessary to:

- i) further clarify the said contents;
- ii) comply with any requirements at national / European law; and to
- iii) reflect any further obligations that the Licensee assumes as a result of the process for the grant of rights of use of the radio frequency spectrum
- iv) reflect any further obligations that the Licensee assumes as a result of the process for the grant of rights of use of the radio frequency spectrum

4. Participation Rules for the Qualification Phase

4.1. Ownership Rules

The following definitions shall apply:-

A “Connected Person” is a legal or natural person that is an authorised representative, owner or officer within the applicant who can influence and control the legal or natural person (the “Relevant Person”) of any other applicants.

For the purpose of the establishment of Connected Persons, “Control” shall mean the holding by a person of 25% of the shares or the right to appoint the majority of directors in a legal entity.

The application form is to be submitted by a natural person or a legal person being a properly constituted legal entity.

Applicants that are connected or associated with any other applicants, in any of the ways mentioned hereunder, will be disqualified.

No applicant or Connected Person in relation to such applicant may be a Connected Person in relation to another applicant or to a Connected Person of such latter applicant.

Any changes to the status of an applicant must be notified to the Authority in line with Section 5.4. Any changes to the status of an applicant that will result in a breach of these Ownership Rules will be treated by the Authority in accordance with this section.

If the Authority finds that one of the relations referred to above exists between the applicants, the Authority shall in writing notify this to the parties affected, giving a deadline by when either one of the parties may withdraw from participation in the Qualification Process preceding the assignment of spectrum, so that it is not necessary for the Authority to exclude both parties. In this case, the withdrawing party will not forfeit its bank guarantee.

If none of the applicants affected refrains from participation in the Qualification Process by the indicated deadline, the Authority will disqualify all the parties affected and exclude them from further participation in the current Assignment Process. In this case, the disqualified applicants will forfeit the bank guarantee.

4.2 Behaviour Rules

The applicant shall ensure that all persons who are in possession of confidential information relating in any way to its submission shall treat such information with utmost confidentiality and shall not disclose such information except to persons who are employed with or otherwise engaged by the same party and who are bound by strict confidentiality obligations.

An applicant and, or its Connected Persons should refrain from obtaining or attempting to obtain confidential information in relation to any other applicant.

Any collusive practices and other forms of agreement between applicants and, or their Connected Persons, as well as between an applicant and, or its Connected Persons and any other person, in relation to the Assignment Process is strictly prohibited and will lead to the annulment by the Authority of the outcome of the Assignment Process with respect to the parties involved, this in addition to the penalties that are prescribed within this document and, or by Law. For avoidance of doubt, and without prejudice to any laws that regulate this matter, mergers or takeovers between the parties involved in the Qualification Phase which have the purpose or effect of impacting this Assignment Process and, or the eventual grant of the rights of use or the exercise of such rights of use, shall be prohibited for the purposes of this Assignment Process.

In addition to the above an applicant must comply with the following rules:

- a) Without prejudice to any laws, an applicant and, or its Connected Persons may not enter into any agreement or establish any understanding with a provider of equipment or software, which:
 - (i) regulates the provider's ability to supply equipment or software to another applicant or to the latter's Connected Persons regarding the planning, establishment or operation of a network in Malta involving the frequencies dealt with by this Assignment Process; or
 - (ii) regulates the prices or other terms and conditions that the provider can offer another applicant or its Connected Persons regarding the planning, establishment or operation of a network in Malta involving the frequencies dealt with by this Assignment Process.
- b) An applicant, and, or its Connected Persons, may not enter into any agreement or establish any understanding with a third party to the effect that this third party does not participate in the Assignment Process, or which restricts the ability of this third party to participate in the Assignment Process.
- c) Both prior to and after the submission of their information and until the Licences have been issued, an applicant, its Connected Persons and the officers and, or employees of the applicant or any of the Connected Persons shall refrain from any action that could have an adverse effect on the Assignment Process.

- d) Prior to submitting an application form for the Call for Applications, the applicants shall take all reasonable measures with a view to identifying its Connected Persons.
- e) After submitting an application form, the applicant and its Connected Persons must refrain from actions or omissions that would establish a relationship with other applicants resulting in applicants falling within the exclusionary rules under Section 4.1.

4.3. Breach of Rules

a) If at any stage of the process, the Authority discovers that any applicant is in breach, or has breached, any of the rules, as established in this document, including but not limited to:

- Submission of false or misleading information to the Authority;
- Breach of the Ownership Rules outlined in Section 4.1 above; and
- Breach of the Behaviour Rules outlined in Section 4.2 above,

the Authority may exclude the relevant party from the Qualification Phase and eventually from the Assignment Process. The candidate may also be subject to penalties as prescribed in this document and, or Law, including but not limited to, the forfeiture of its bank guarantee.

b) If an applicant has been granted a Licence and is later found to have breached any of these rules, the Licence may, at the discretion of the Authority, be revoked. The relevant applicant may also be subject to penalties as prescribed in this document and, or by Law, including but not limited to the forfeiture of its bank guarantee and of any payments made till that date.

5. Call for Applications – Submissions Procedure

5.1. Submission of Questions

Interested parties may submit requests for clarification concerning this Call for Applications. Such questions must be in writing and should be addressed to:

Ing. Antoine Sciberras
Acting Chief of Spectrum Management and Technology
Malta Communications Authority
Valletta Waterfront, Pinto Wharf
Floriana, FRN 1913, Malta.
E-mail: spectrum.mca@mca.org.mt

Enquiries are to be labelled "**Enquiry: Call for Applications – 800 MHz Band**" in the subject field and must be received by the Authority by no later than the 5th of December 2016.

All questions received and answers provided will be made publicly available on the Authority's website.

The MCA, if deemed necessary, may call a meeting with all the interested parties with the purpose of answering questions or providing clarification to any aspect of this Call for Applications. If the meeting will eventually be held, the details about the meeting schedule and venue will be communicated accordingly.

Minutes will be taken during the meeting, and these shall be circulated amongst the parties present for the meeting.

Meetings concerning the Call for Applications being requested with individual prospective applicants during the submission period other than the meeting for all prospective applicants will not be held.

5.2. Submission of the Requested Information

Completed Forms (to be found in Appendix A) along with accompanying documentation, as may be necessary, must be received by the Authority by no later than 16:00 hrs CET on the 23rd January 2017 ("Application Deadline").

The Authority may, at its own discretion, and as necessary, extend the deadline for submission of the application forms to give the interested candidates sufficient time to take any clarifications provided by the Authority into account when preparing their submissions. Any such extension will be notified via the Authority's website and a revised Application Deadline will be set. In such cases, all rights and

obligations of the Authority and the interested candidate regarding the original Application Deadline specified in this document will be subject to the new date. Requests by the interested candidates for a further extension of the revised Application Deadline will not be considered.

All submissions will remain sealed until the Application Deadline. Any submissions received after the Application Deadline will not be considered and will be returned to the interested party.

Submissions should be clearly labelled "**Application - 800 MHz Band** ", and the name and address of the applicant should be clearly visible on the outside of an appropriately sealed envelope/package.

The applicant is to submit one hard copy together with a soft copy (using the portable document format) of the information being requested. In addition, a supplementary soft copy of the Application is to be provided void of all confidential information, in line with Section 5.9.

Any pages on which entries or corrections to an application have been made must be initialled by the person or persons signing the submission. All pages must be numbered consecutively.

In the case of any conflict between the submitted copies, the hard copy will prevail.

The submissions and all correspondence and documents related to this Call for Application exchanged by the applicants and the Authority must be written in English.

Supporting documents and printed literature furnished by the applicant may be in another language, provided they are accompanied by an official translation in English. For the purposes of interpretation of the application, the English language will prevail. All supporting documentation should be typewritten.

Applications should be presented at the Authority either by recorded delivery (postal/courier service) or hand delivered to:

The Chairman
Malta Communications Authority
Valletta Waterfront, Pinto Wharf
Floriana, FRN 1913, Malta.

All submissions will be stamped with the date and time and signed by an Authority official.

An application submitted to the Authority will be binding on the applicant until such time as the rights of use are assigned.

All costs incurred in connection with the preparation, production and submission of the application form will be borne by the participating party. Regardless of the outcome of the Assignment Process, participating parties may, under no circumstance, claim reimbursement from the Authority of any cost related, directly or indirectly, to the Assignment process.

5.3. Changes to the Application

The participating party may amend, replace or withdraw its application until the Application Deadline. Amendments and replacements to the application must be in the same method as specified in Section 5.2 above and clearly marked as such. The applicant is to ensure that amendments clearly identify the section/s of its application that is/are being amended. Withdrawals must be in the form of a written statement confirming the desire to remove an application from further consideration.

All submissions will be stamped with the date and time and signed by an Authority official.

In the case of amendments or replacements, the documents received last by the Authority at the Application Deadline will be considered to be the final and only binding application.

The participating party cannot amend or withdraw the application after the Application Deadline. Amendments to an application made after the Application Deadline will constitute a withdrawal of the submission for the purposes of this Call. An applicant who withdraws its submission after the Application Deadline will forfeit the Bank Guarantee.

5.4. Changes to the Status of the Candidate

In the event that, during the assignment process, an applicant merges its enterprise with another applicant, or enters into any form of cooperation that will have a bearing on the submission and the exercise of the eventual rights of use of the spectrum being assigned through the assignment process, the applicant in question must inform the Authority of this immediately. Any changes to other circumstances that are relevant to the submission are also to be reported immediately.

5.5. Opening of the Applications

The submitted applications will be opened at the premises of the MCA upon the expiration of the Application Deadline. The names of the Applicants will subsequently be published on the Authority's website (www.mca.org.mt).

5.6. Application Fee

An Application is subject to a non-refundable fee of fifteen thousand Euro (€ 15,000).

The Application Fee is to be in the form of a bank draft made out to the Malta Communications Authority and is to be enclosed together with the Application.

An Application that is not accompanied by the Application Fee submitted in the prescribed form will be disqualified. In this case the Bank Guarantee will not be forfeited.

An Applicant will not be entitled to claim reimbursement of the Application Fee for any reason whatsoever.

5.7. Bank Guarantee

An applicant is also required to submit a bid bond/performance guarantee in the form of a bank guarantee. This bank guarantee has to be payable on demand in favour of the Authority, and in a form acceptable by it. The bank guarantee must be in conformity with the conditions as laid out in Appendix D of this document.

The MCA has established the bank guarantee to be of €150,000 for each Lot and must be computed on the basis of the total Maximum Interest registered by the participant in its application (Part I.A.3).

The bank guarantee is intended to ensure the applicant's commitment to the Assignment Process. In the case of unsuccessful applicants, the bank guarantee will be released either once the successful applicants have been announced or earlier in the case of unqualified applicants. In the case of successful applicants, the bank guarantee will be retained as a performance guarantee.

This bank guarantee will act as evidence of good faith, to ensure that:

- The applicant will abide by the rules laid out for the Qualification Phase;
- The applicant will submit correct and full documentation and information required by and/or pursuant to, this Call for Applications;
- The applicant will not withdraw or amend its submission after the Application Deadline (see Section 5.2);
- The applicant will not decline an assignment of rights of use resulting from this Call;
- The applicant will cooperate and take part in meetings the Authority deems necessary for the Qualification Phase, brokered meeting and auction stage of the spectrum assignment;

- The applicant will accept the rights of use assigned to it by the Authority in line with the agreement reached during the brokered meetings and, or the outcome of the auction should there be no way to easily reconcile the preferences as indicated in the submissions received;
- The applicant will, in the event that it is granted the rights of use, unreservedly accept the Licence and all conditions therein;
- In the event that the applicant is awarded a Licence, the said applicant will honour its Licence obligations, in particular, but without limitation, its rollout and interference mitigation obligations, and abide by any decision and directive issued by the Authority in relation to the rights of use; and
- The bank guarantee will be kept operative for the period required hereunder.

Save where stated otherwise, disqualification from the process will result in the forfeiture of the bank guarantee.

The bank guarantee will have to remain valid and effective until 24 months following the commencement date of the Licence. If the qualified applicant fails to comply with such a request it will be deemed to have breached one of its application conditions and the Authority will be entitled to disqualify the relevant party from further participation and call upon the bank guarantee.

The bank guarantee must be issued by a bank, investment bank, financial institution, insurance company or similar, which neither controls, nor is controlled by, the candidate, nor is controlled by a person who controls the relevant party, and which is registered in the European Economic Area and has a minimum long-term debt A rating from Standard & Poors or A2 from Moody's Investors Service Limited or is otherwise acknowledged in writing by the Authority as being adequate.

A bank guarantee issued by a bank, other financial institution or insurance company as mentioned above and which is issued for periods of one year or more, will be accepted by the Authority. This is without prejudice to the obligation of the successful candidate to retain the bank guarantee in place for the period specified above and in accordance with the conditions specified in this document. Failure by the successful applicant to issue a new bank guarantee at least one week prior to the date of lapse of the bank guarantee will in itself give rise to the right of the Authority to call upon the bank guarantee which at that point in time is in its possession.

The successful applicant will, at all times, ensure that the bank guarantee remains in place subject to the conditions described above and that the Authority is informed within three working days if the guarantor loses the credit rating specified.

If the bank guarantee is for any reason discontinued, the Authority must be informed immediately in writing, provided that the Authority may, at its sole discretion, concede the opportunity to substitute the previous bank guarantee with another bank guarantee acceptable to the Authority and this within such reasonable period as the Authority may determine. If, notwithstanding such a concession, such new bank guarantee is not provided within the period so established by the Authority, this will

constitute a material breach of the application or Licence and the Authority may then take those measures that it deems appropriate in accordance with its powers resulting from this Call for Applications, or the Licence, and, or from Law.

The relevant institution issuing the bank guarantee will be bound to effect the required payment on a simple demand by the Authority.

In the case of successful applicants, upon the passage of 24 months from the commencement date of the Licence, or earlier if notified by a relevant party of its compliance, the Authority will assess the compliance of the relevant party with the obligations stipulated in the Licence, in particular, but not limited to, the rollout and interference obligations. If these are satisfactorily met, such compliance will be confirmed in writing by the Authority to the relevant party and the bank guarantee will be released.

5.8 Deposit

An applicant is also required to submit an appropriate deposit which is equivalent to the first year spectrum fees for the maximum number of lots identified.

The deposit is to be in the form of a bank draft made out to the Malta Communications Authority and is to be enclosed together with the Application.

An Application that is not accompanied by the deposit submitted in the prescribed form will be disqualified. In this case the Bank Guarantee will not be forfeited.

5.9. Minimum Requirements

All applications must meet the minimum requirements set out below in order to be considered.

1. The Application Form in Appendix A is to be correctly completed in accordance with the instructions provided;
2. All declaration forms included in the Application Form are to be signed by the candidate or the candidate's authorised representative or as otherwise directed in the Application Form;
3. The Application Form is to be received by the Application Deadline;
4. The submission is to be accompanied by a non-refundable application fee, as set in Section 5.6;
5. The submission is to be accompanied by a bank guarantee that satisfies all the criteria set in Section 5.7;

6. The submission is to be accompanied by a deposit that satisfies all the criteria set in Section 5.8; and

7. The spectrum requirements listed in the Application Form shall be in line with the criteria established therein including the specified spectrum caps.

If a submission fails to meet any one of the above requirements, such an application may be disqualified. The Authority, however, reserves the right to, at its sole discretion, contact an interested party to request rectifications in respect of incomplete/non-submitted information pertinent to the documentation outlined in points 1 to 6 above. In such a case, the Authority will publish on its website a notice stating that a request for further information has been made.

Such rectification/s must be submitted within two (2) working days from notification. Failure to comply shall result in the submission not being considered any further, in which case the Authority will publish a notice to this effect.

If an application does not meet the minimum requirements set forth in this Call for Applications, such a submission will not be considered further. In this case the bank guarantee will not be forfeited and will be returned.

If no applications that satisfy the minimum requirements set forth in this Call for Applications are received, the Authority reserves the right to cancel this Assignment Process and consequently not to grant the right of use of frequency within this specific process launched by this Call for Application.

All submissions that satisfy the minimum requirements will be evaluated in terms of the criteria detailed in Section 6.

5.10. Right of Refusal to Consider an Application

The Authority will have the right to refuse to consider any submissions if the applicants supply incorrect information or is in breach of any rules set out in this Call or fails to comply with any request made by the Authority to produce any information that the Authority deems pertinent.

No account will be taken of any reservation made in the application, and any reservation will result in the rejection of the submission without further evaluation by the Authority. Any disagreement, contradiction, alteration or deviation in the application shall lead to the submission not being considered any further.

Any attempt by an applicant to obtain confidential information or influence the Authority, or any persons acting for or on behalf of the Authority, during any stage of this Assignment Process will lead to the rejection of the relevant submission and the disqualification of the relevant applicant from this Assignment Process, together with the forfeiture of the bank guarantee in the Authority's favour.

5.11. Confidentiality, Data Protection and Freedom of Information

All information submitted as part of the Call for Applications, will be treated in line with the Authority's Internal Guidelines on Confidentiality³.

In order to ensure the confidentiality of sensitive information provided by the candidate, the latter is required to mark all data regarded as sensitive company or business information accordingly in its submission. In addition, as stated in Section 5.2, a soft copy of the submission is to be provided void of all that information marked as sensitive in the other copies. All the omissions of the sensitive information in the said copy of the submission must be clearly evidenced.

This notwithstanding, the Authority reserves the right to determine which information forming part of the submission is to be disclosed if deemed necessary.

For the sake of clarity, it is noted that all information related to all applications may be made available by the Authority to any advisers or consultants that may be contracted by the Authority to provide expert advice during the analysis of the applications received. These shall, however, be bound by an appropriate non-disclosure agreement stipulated by the Authority.

Any personal data submitted in the framework of the Assignment Process and, or subsequently included in the rights of use shall be processed pursuant to the Data Protection Act (Cap. 440 of the Laws of Malta). It shall be processed solely for the purposes of the performance, management and follow-up of the Assignment Process and, or subsequent rights of use by the Authority, without prejudice to possible transmission to the bodies charged with a monitoring or inspection task in conformity with National and, or European Union law.

It should also be noted that the rules of the Freedom of Information Act (Cap. 496 of the Laws of Malta) on access to documents will be applicable to information and documents submitted in connection with this Assignment Process.

³ <https://www.mca.org.mt/sites/default/files/attachments/faqs-and-guidelines/2012/confidentialityguidelinesfinal-0.pdf>

6. Qualification Stage

Only applications that fulfil the minimum requirements established in Section 5.9 will be eligible for consideration in the Qualification Stage.

Only information presented as part of the application will be used in the qualification assessment. A candidate will not be allowed to introduce additional information after the Application Deadline.

Without prejudice to the above, in assessing the submission in order to determine whether a particular candidate qualifies for the assignment of spectrum in the 800 MHz band, the Authority will, at its sole discretion and with full regard to reasons of fairness, be entitled to request, in writing, additional documents or information to enable a more thorough evaluation and analysis of the application.

Any communication between the Authority and the candidates will be made strictly in writing. The submission of additional documents following the Application Deadline will be made solely upon request of the Authority and solely for the purposes of clarification. Such further submissions shall not, in any way, modify the original application made by the candidate. Additional information submitted in accordance with the procedure mentioned herein shall be treated as an integral part of the original submission.

If a candidate fails to provide any additional information upon the request of, and within the deadline established by, the Authority, the latter will be entitled to disqualify the candidate from further participation in this process without further warning.

The Authority will attach great emphasis to the credibility of the submitted information and may disregard information or plans that are not deemed to be sufficiently substantiated, consistent or documented.

It is not the scope of this qualification assessment to rank applicants but rather to determine which applicants have the necessary standing to fulfil the obligations arising from the rights of use should they be successful in acquiring the spectrum rights. Therefore the outcome of the Authority's evaluation will be simply a pass/fail result.

The applicant is required to pass all the qualification criteria in order to be eligible to be assigned with the rights of use for such spectrum.

6.1. Qualification Criteria

In order to pass the Qualification Phase, an applicant must provide evidence that it meets or exceeds minimum qualification criteria in the following areas:

- The applicant's credentials;
- The applicant's experience in establishment, operation and commercialisation of electronic communications networks;
- The applicant's business plan; and
- Access to adequate financing for the venture.

These criteria are detailed further in the subsequent sub-sections.

6.1.1 Applicant's Credentials

The information provided should give a clear indication of the applicant's good standing.

The applicant is required to answer the questions in parts I.B.1, I.B.2 and I.B.3 of the Application Form and provide the relevant information requested therein as well as the following documentation:

- The names, occupations and signatures, of all the persons who are empowered to sign for and, or bind the candidate in any respect in relation to the Assignment Process together with supporting documentation, including a Board Resolution empowering such person(s) to represent the candidate in this context;
- An organigram of the Group of Companies of which the applicant forms part (where applicable) including its ultimate beneficiaries; and
- In the case of consortia or joint ventures, the type of relationship among the members, as well as detailed information on the following will be necessary:
 - o Syndicate agreements, consortia agreements;
 - o Joint venture agreements;
 - o Declarations of intent;
 - o Stakeholder agreements.

In the case of a Joint Venture, one partner must be appointed lead partner, and that appointment confirmed by submission of powers of attorney signed by legally empowered signatories representing all the individual partners. The submission must include a preliminary agreement or letter of intent stating

that all partners assume joint and several liability for the execution of the Licence and fulfilment of the Licence obligations, that the lead partner is authorised to bind, and receive instructions for and on behalf of, all partners, individually and collectively.

Details are required of the involvement by the applicant, its board of directors and any other company connected to the applicant in terms of Section 4.1 above ("Connected Person") in other interests / activities. Details should include a brief description of the involvements and activities of any Connected Person.

The Authority will establish if the applicant is a fit and proper person to hold a Licence for the use of spectrum on the basis of the information provided in its submission.

In particular, but without limitation, the applicant will not qualify to participate in this Assignment Process if the applicant and / or its board members or the company connected to the applicant as described above:

- i) was convicted of a criminal offence relating to its business or profession, or against public trust;
- ii) has been adjudged bankrupt or administrative procedures were instituted against it, or is being wound up, or is passing through bankruptcy or administrative procedures or is incapable of trading;
- iii) was the subject of disciplinary proceedings in relation to its business and, or profession and was found to have breached its code of ethics;
- iv) has failed to satisfy a judgment debt under a Court order, or an executive title, however so described, in relation to a debt, within a year from the Court order or obtainment of the executive title;
- v) has been found to have breached its fiscal obligations and not to have paid its contributions in a timely manner.

Without prejudice to the above, the Authority may also prohibit an applicant from participating further in this Assignment Process on grounds of public security.

The information provided in this section will also be used to ensure that the applicant does not violate the ownership rules outlined in Section 4.1.

6.1.2 Competence and Experience

The information provided should give a clear indication of the competence and experience of the applicant in the setting up, operation and commercialisation of an electronic communications network comparable to the network which would be established in Malta if the applicant is awarded these rights of use.

6.1.2.1 Managerial Competence

The applicant is required to submit:

- Details of its organisational structure (organigram), clearly identifying executive or senior staff positions, relevant disciplines and levels of expertise.
- Detailed information on the top management tier. This information should at least include:
 - o Name;
 - o Date and place of Birth;
 - o ID Card Number (or Passport Number in case of non-holders of a Maltese ID Card);
 - o Nationality;
 - o Principal Residential Address;
 - o Bank Reference;
 - o Recent Police good conduct certificate; and
 - o Curriculum Vitae, highlighting relevant experience.

Where an applicant is supplementing its competence through association with another entity, it must, in that case, prove to the Authority that it will have, at its disposal, the resources necessary for the execution of the obligations of the rights of use, for example, by producing a written legally binding commitment / guarantee by those entities to place the necessary resources at the disposal of the applicant.

6.1.2.2 Experience

The applicant should clearly demonstrate its knowledge and experience with regard to the establishment, operation and commercialisation of a public electronic communication network for at least, a 5 year-period prior to the submission.

In particular, for any networks referred to in the submission, details of the identity of the location, the licensing authority, date of licence award and launch date of service provision should be provided.

In cases of joint ventures or newly formed subsidiary companies, the information mentioned in this section must be provided in relation to the individual parties of the joint ventures and the parent companies respectively.

6.1.3 Business Plan

The applicant is required to provide the detailed business plan clearly depicting the financial and technical analysis, including amongst other things:

- A market analysis with an industry description and outlook, as well as an evaluation of both existing and future competition and any possible entry barriers.
- A demand analysis with an outline of the target market including its demographics, size and needs.
- A marketing analysis including the product range, lead times involved, pricing/tariff structure including gross margin targets and the growth strategy. This should include a justification of the ability of the product/service in question to meet the customer needs, leading to an identification of the forecasted market share.
- Plans in order to comply with the obligations arising from the rights of use and the relevant legislations.

The applicant should outline the grounds on which any estimates are based and include any relevant market research data and market test results. In particular when assumptions are made in areas that are material and are subject to a high degree of uncertainty, then this uncertainty and the resulting sensitivity of results needs to be clearly indicated.

6.1.4 Project Financing

The applicant will be required to prove that it has at its disposal the financial resources necessary in support of its proposed business plan. For this purpose, the applicant is required to provide a comprehensive financing plan for the development of the electronic communications network and the company's operations, including the market introduction of the service. Such a plan shall cover documentation of the access to equity and borrowed capital. The documentation must include all aspects relating to the financing of both the development and operation (the amount of existing equity, owners' guarantees for additional injection of equity, credit lines / commitments from creditors, etc.).

In particular, the applicant should expand on how it is to be funded to implement the proposed project:

- a) Explain the bank sources and provide letters from financial institutions confirming negotiations, if any, including full details of security to be provided, if any;
- b) Explain shareholder funding and sources of shareholding funds, including if sourced by way of loan, full details of lenders to shareholders and full details of security interests, if any;
- c) Explain third party funding arrangements and full details of security interests, if any.

Detailed proof of such funding should be included in the submission. In particular, the applicant should provide full names and addresses of lenders and contact persons who may be contacted by the Authority for verification.

Any constraints relating to equity and borrowed capital such as the need to maintain certain financial key ratios, restrictions on dividend payments, etc., shall be fully described.

The applicant should submit evidence of its financial standing and, where applicable, that of its parent company and of the latter's parent company, and so forth up to the ultimate beneficiary. Audited financial statements for the previous three years must be included. In the case of a quoted company, market capitalisation performance over the same period should also be included. The same applies to parent companies, or other companies on which the applicant has based any financial qualifications. These financial statements should be verified by an independent certified auditor. Where an applicant relies upon the financial performance of any parent company or Connected Persons in order to evidence its financial standing, then such parent company or Connected Persons will be required to submit a company guarantee guaranteeing the obligations of the applicant.

The Authority requires that the data presented in this section is:

- Consistent with the assumptions presented in the business and financial plans; and
- Adequately supported by official documentation.

6.2. Results of Qualification Stage

Following the assessment on the basis of the qualification criteria outlined in Section 6.1, the Authority will proceed to identify the qualified applicants for the assignment of rights of use.

If no submissions satisfy the qualification requirements set forth in this Call for Applications, the Authority reserves the right to cancel this Assignment Process and consequently not to grant the rights of use of frequencies within this specific process launched by the Call for Expression of Interest for the assignment of spectrum in the 800 MHz band.

6.3. Assessment of Demand

The Authority will consider the demand for spectrum from the Qualified Applicants as expressed in their Preferred Option in Part I.A.3 of the Application Form. If demand does not exceed supply, the Authority will proceed with the granting of the rights of use of radio frequencies as outlined in Section 9. If, on the other hand, there is excess demand in the Band in question, the Authority will determine whether to proceed to the Brokered Meetings Stage or directly to the auction.

6.4. Notification to Candidates

At this stage the Authority will notify in writing all the candidates of the outcome of the Qualification Stage. In addition the Authority, on the basis of the assessment of demand, will inform the qualified candidates of the next stages in the process, as outlined in the subsequent sections.

The bank guarantee and the deposit of the unqualified applicants will be released at this stage.

7. Brokered Meetings

In the event that demand (based on the Applicants' Preferred Options) exceeds the availability of spectrum in any of the available Lot categories, the Authority reserves the right, at its own discretion and without binding itself to do so, to carry out a set of brokered meetings with the Qualified Applicants. The objective of these meetings will be to reach an agreement on an assignment plan that is accepted by all the Qualified Applicants.

In order to protect commercial interests, the meetings will be held separately with each Qualified Applicant and all information will be kept confidential.

In developing the proposals, cognisance will be taken of the spectrum requests put forward by the Applicant, the preferences indicated (i.e. its Preferred and Alternative Options), its business and technical plans and the outcome of the discussions during the meetings.

If all the Applicants accept the proposal developed for them, the Authority will proceed with the granting of rights of use in accordance with the agreement reached.

In the absence of a full agreement being reached at the end of the brokered meetings, an attempt will be made to reach agreement to assign parts of the spectrum, whereby only the remaining Lots would be auctioned.

Any proposed solution reached between the Authority and each of the Qualified Applicants will be binding on the individual Applicants but not on the Authority in view of the fact that the Authority must ensure that the proposed solution is acceptable to all the Qualified Applicants.

In the event that no agreement (whether full or partial) is reached between the Qualified Applicants and the Authority, or should the Authority decide not to hold brokered meetings, all the 800 MHz band spectrum in case of no agreement is reached or part of the 800 MHz spectrum in case of partial agreement will be auctioned accordingly.

8. Auction Stage

In the event that an auction is required, all qualified applicants, as determined in Section 6 of the Call for Applications, automatically become bidders in the auction. No parties other than the Qualified Applicants will be permitted to bid in the auction.

Any available spectrum in the 800 MHz band will be auctioned simultaneously. The Auction Stage will establish the number of Lots each one of the Qualified Applicants is to be awarded in the 800 MHz band, as well as the Prices that they have to pay as Initial Payment for these Lots.

Details of the Auction Rules are to be provided prior to the brokered meetings or the auction process. In the case where a qualified applicant does not agree in part or in total with the established auction rules, the relevant qualified applicant will have the right to withdraw from the auction stage without forfeiting the bank guarantee and the deposit. Qualifying applicants who at that stage do not withdraw their application will be obliged to take part in at least the first round of any eventual auction. Failure to do so will result in a forfeit of the bank guarantee.

9. Grant Stage

During the Grant Stage, the Authority will determine the specific channels that will be awarded to the Successful Applicants in line with the number and type of Lots awarded to each Applicant. This stage will be concluded with the issuance of the Licence documents.

9.1. Assignment of Specific Lots

The Authority will proceed with the assignment of the specific channels to each successful candidate taking due account of the candidate's preferences and justifications as submitted in the Submission Form (Part I.A.5). The Authority will not be bound in any way to assign the frequencies in accordance with the candidate's expressed preferences. The Authority will have the sole and unlimited discretion to award the particular channels in the way it deems best in the interest on how spectrum is used effectively.

Should there be no reasonable justification for the Authority to assign the frequencies in a manner that does not reflect the candidates' preference, the Authority reserves the right, at its own discretion and without binding itself to do so, to carry out a set of brokered meetings with the qualified candidates separately. The objective of these meetings will be to reach an agreement on an assignment plan that is accepted by all the qualified candidates.

If all the qualified candidates accept the proposal developed for them, the Authority will proceed with the granting of rights of use in accordance with the agreement reached.

In the absence of a full agreement being reached at the end of the brokered meetings, then a lottery will be held in the presence of the qualified candidates (at a date, time and location that will be announced in due course) to determine the specific spectrum assigned to each successful candidate.

Any assignment made by the Authority will be final and binding and the successful candidate will have no right to object to, or reject such an assignment without becoming subject to the sanctions as prescribed in this Call for Applications and or Law, including but not limited to, the forfeiting of its bank guarantee and the deposit.

9.2. Payment of Fees

Following the completion of the Assignment Stage, and the identification by the Authority of the specific channels to be assigned to each successful candidate, the Authority will inform each successful candidate in writing of:

- The specific channels assigned to the candidate; and
- The Initial Payment due, including a date by when the payment must be made.

The Initial Payment by the Successful Applicants will consist of the following:

- For Lots assigned outside the auction process: the spectrum fee for the first licence year of €224,000 per 5 MHz paired channel as described under the 8th Schedule of the Electronic Communications Networks and Services (General) Regulations (S.L. 399.28 of the Laws of Malta).
- For Lots assigned through an auction: the initial payment will be the difference in price between the spectrum fees as described under the 8th Schedule of the Electronic Communications Networks and Services (General) Regulations (S.L. 399.28 of the Laws of Malta) and the final bid price immediately upon conclusion of the auction.

Should, for any reason, a successful candidate fail to make the necessary payments by the established timeframe, the candidate will be considered to have withdrawn its submission. The bank guarantee and the deposit made by that candidate will be forfeited.

9.3. Amendment of Bank Guarantee

Prior to the grant of rights of use, the Authority will notify the successful applicants whether pursuant to Section 5.7 of this Call for Applications, the successful applicant needs to extend its bank guarantee beyond the current established date.

If the bank guarantee is issued for periods of one year or more, the successful applicant needs to provide a written commitment that it will retain the bank guarantee in place for the period specified above.

Should, for any reason, a successful applicant fail to effect the necessary changes by the established timeframe, the applicant will be considered to have withdrawn its submission. The bank guarantee made by the candidate will be forfeited.

9.4. Grant of Right of Use of Frequency

Once the Initial Payment has been affected and, where applicable, an extended bank guarantee submitted, the Licence document, based on the sample document that is attached to this Call for Applications in Appendix C, will be issued to successful candidates.

Should, for any reason, the successful applicant not accept the grant, the successful applicant will be considered to have withdrawn its submission. The bank guarantee and the deposit made by the successful applicant will be forfeited.

In the event that a successful applicant withdraws its submission at this stage, the Authority reserves the right to:

- Re-assess the preferred option for the remaining qualified candidates; or
- Carry out any process that it deems fit in order to ensure an efficient outcome and efficient spectrum usage.

In this eventuality, the Authority reserves the right to revise the number of Lots that had been assigned to the remaining successful applicants, if necessary, but only in so far as the said remaining successful applicants are not prejudiced by this revision in relation to the original assignment.

9.5. Establishment of an Interference Mitigation Fund

As established in the MCA's Decision "Assignment Process for Additional Spectrum for Wireless Broadband" published in July 2014⁴, each successful applicant shall contribute a fee towards the establishment of an interference mitigation fund which is capped at €4.5 million. The contribution made by each of the successful applicants shall be in proportion with the number of assigned channels in the 800 MHz band. The successful applicants are not required to deposit the full fund instalment immediately and contributions may be settled through periodic instalments as agreed amongst the successful applicants. Such contributions, shall in their totality, not exceed the Interference Mitigation Fund cap.

The successful applicants shall be responsible to establish and present to the MCA a fund management plan within three months from the date of the granting of the right of use for the 800 MHz spectrum. Failure to establish such a fund management plan would forfeit the bank guarantee of all successful applicants. Further details with regard to the Fund can be found in Appendix E.

⁴ MCA Decision No. MCA/D/14-1933.

9.6. Announcement of Results

Upon conclusion of the Grant Stage, the Authority will publicly announce:

- the number and identity of candidates that participated in the Assignment Process;
- the identity of the successful applicants; and
- the frequencies awarded to each successful applicant.

Appendix A - Application Form

The Application Form is in three parts:

Part I should be completed in type or block letters by the applicant.

Part II is a declaration, which must be signed:

- In the case of an individual, by the person in whose name the submission is made;
- In the case of a legal person, by the person or persons duly authorised to act for, and on behalf of, the said legal person. In this case the supporting documentation empowering such person(s) to represent the candidate in this context must be presented with the declaration⁵.

Part III is a declaration of consent to the disclosure of information (to be executed by the authorised candidate representatives, on behalf of the candidate, by each director individually and by each shareholder in respect of which information is submitted herein).

An overseas application from a registered company will be accepted with the proviso that a Maltese address is also provided and that there will be a definite commitment in writing to register a company in Malta should the candidate eventually be successful.

The soft copy of the application form may either be in compact disc form and appended to the hard copy or sent via email to spectrum.mca@mca.org.mt. However, as specified in Section 5.2 of this document, the original copy of the duly filled in application form together with the supporting documentation, must be submitted to the MCA in an envelope clearly marked **"Call for Applications – 800 MHz Band"** which is to be addressed to:

The Chairman
Malta Communications Authority
Valletta Waterfront
Pinto Wharf
Floriana FRN 1913
Malta

⁵ If the candidate has already produced this information before to the Authority, the candidate need not reproduce it here. An indication in full of the document wherein the information was produced and the relevant part of that document will suffice. However, if any of the information produced in the said document is no longer applicable, then the candidate must provide full information relating to that part of the document that is no longer applicable

Part I: Information Required from the Applicant

A. General Information

1. Details of the Applicant

1.1	Applicant's Name	
1.2	Business postal address of the applicant	
1.3	Company Registration Number (if any)	
1.4	Telephone Number	
1.5	Fax Number	
1.6	E-mail & website address	
1.7	Postal address of registered office ⁶	

⁶ In the case of registered companies whose business address differs from that of the address of their registered office.

2. Principal Contact Details

The person listed below is nominated by the applicant as his/its Authorised Representative. Registration information and all other documentation and information regarding this Assignment will be forwarded to the Authorised Representative.

2.1	Name of primary contact person	
2.2	Designation	
2.3	Postal address	
2.4	Telephone Number	
2.5	Mobile Number	
2.6	E-mail Address	

3. Preferred Options

Kindly indicate your preferences, with respect to the available spectrum Lots within the 2 lot categories as defined in Annex B that would suit your needs in line with the amount of spectrum requested as indicated in the 800 MHz band Expression of Interest.

Note 1: The number of Lots requested in the 800MHz Band is subject to a Spectrum Cap (an overall cap of two (2) Lots will be applied over the 800 MHz Band, subject to be extended to three (3) Lots in case of lack of demand).

Note 2: The maximum number of lots listed below will be considered as the **Maximum Interest** as expressed by the candidate

Lot Category	800 MHz Band (Number of Lots)	Preference (1 – best)
		1 st
		2 nd
		3 rd

4. Channel Preference

Kindly indicate your preference for specific channels in the 800 MHz band. For definition of the band frequencies reference should be made to Appendix B.

Channels will be considered in the sequence listed.

Preferred Channels (Channel Number)	Preference (1 – best)
	1 st
	2 nd
	3 rd
	4 th
	5 th
	6 th

5. Spectrum Requirements & Channel Preference - Justification

(List **technical** reasons to justify why the candidate should be assigned rights of use in accordance with the stated preferences)

B. Applicant's Credentials

1. Information on the Applicant

The following information is being requested from the applicant⁷:

- (i) Confirmation that none of the shareholders are acting as fiduciaries or trustees for any other person; if they are, then full disclosure of the names, addresses and ID card numbers of all principals or beneficiaries as the case may be, and the same declarations/information from them as is requested from direct shareholders is required;
- (ii) The information in this section must be provided in relation to each and every parent company of the applicant, and of the applicant's parent company, leading up to the ultimate beneficiary stakeholders of the applicant;
- (iii) Confirmation that there exists no agreement, written or verbal, relating to the sale of the shares in the candidate; if there are any, full disclosure of the agreement and the persons entitled thereto is required. This refers to both issued shares involving existing shareholders and new shares to be issued by the applicant.

The following questions must be answered by the applicant and the declaration below signed by the authorised representative thereof⁸:

If the answer to any of the questions below is yes, please give full particulars on a separate sheet making clear reference to the question in relation to which the information is being provided.

⁷ If the applicant has already produced this information before to the MCA, the applicant need not reproduce it here. A clear indication in full of the document wherein the information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, then the applicant must provide full information relating to that part of the document that is no longer applicable.

⁸ If the applicant has already answered these questions in relation to another application or submission, a clear indication in full of the document in which these questions were answered, and of the relevant part of that document would suffice. However, if any answers given previously need to be modified, whether in part or in full, the applicant must reply to these questions in full. In any case, the declaration must be signed by the authorised representative of the applicant.

	YES / NO
(a) Has the applicant or any related company ever applied for and been refused a licence or an equivalent authorisation or registration – however so described - to conduct business in Malta or elsewhere?	
(b) Has the applicant or any related company failed to satisfy a judgement debt under a court order in Malta or elsewhere within a year of the making of the order?	
(c) Has the applicant or any related company made any compromise or arrangement with its creditors or otherwise failed to satisfy creditors in full?	
(d) Has the applicant or any related company ever had an official receiver or provisional administrator or liquidator appointed over any of its property in Malta, or has the substantial equivalent of any such person been appointed in any other jurisdiction? If so, give full particulars.	
(e) Has the applicant or any related company ever had a garnishee order or warrant of seizure or the substantial equivalent of such warrants served on it in any jurisdiction?	
(f) Has the applicant or any related company ever had a notice of resolution for dissolution and consequential winding up in Malta, or had the substantial equivalent of such a notice given in any other jurisdiction?	
(g) Has a petition ever been served in Malta for the compulsory liquidation of the applicant or any related company or has the substantial equivalent of such a petition ever been served in any other jurisdiction?	
(h) Has an inspector or other authorised officer however so described of any government department, public authority or agency, professional association or other regulatory body appointed under any Maltese Law or equivalent overseas enactment, ever investigated the affairs of the applicant or any related company?	
(i) Has the applicant or any related company ever been censured, prosecuted, warned as to future conduct, disciplined or publicly criticised by, or made the subject of a court order at the instigation of any supervisory or regulatory authority?	
(j) Has the applicant or any related company ever been refused entry in Malta or elsewhere to any professional body or trade association?	
(k) Is the applicant or any related company engaged or does it expect to be engaged in Malta or elsewhere in any litigation which may have a material effect on the resources of the undertaking?	
(l) Has the applicant or any related company ever been found non-compliant with the obligations relating to the payment of social security and taxes in accordance with the legal provisions of Malta or the country in which it is established?	

(m) Has the applicant or any related company at any time been convicted of any offence by any court, in Malta or elsewhere? If so, when giving particulars, state the court by which you were convicted, the offence, the penalty imposed and the date of conviction.	
(n) Has the applicant or any related company, in Malta or elsewhere, been censured, disciplined or criticized for grave professional misconduct?	
(o) Has the applicant or any related company ever been subject of conviction by final judgement of participation in a criminal organisation (as defined in Article 2(1) of Council Joint Action 98/733/JHA), corruption (as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/733/JHA respectively), fraud (within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities) or money laundering (as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering)?	
(p) Has any interest or share in the profits ever been pledged or hypothecated as a security for a debt, or deposited as a security for the performance of an act, or to secure the performance of a contract?	

Declaration:

This declaration must be completed by the authorised representative/s of the applicant in block capitals or typed.

I, _____ declare that the particulars supplied above are true to the best of my knowledge and belief.

Signature/s:

Position in undertaking:

Date:

2. Information on the Directors of the Applicant

The following information is being requested from the Directors of the applicant⁹:

- (i) A list of all directorships currently held in other companies by each of the directors of the applicant;
- (ii) Name, address, nationality, place and date of birth, occupation and brief curriculum vitae (with relevant experience) of each director;
- (iii) A certified copy of the (Maltese) ID card or passport (in the case of non-holders of Maltese ID cards) of each director;
- (iv) A recent bank reference on each director from a bank licensed to operate in a reputable jurisdiction
- (v) A recent police conduct certificate from the authorities in the place of residence of the directors.

The following questions must be answered by the applicant's directors and the accompanying declaration below duly signed by them¹⁰:

Please answer Yes or No to the following questions. If the answer to any of the questions below is yes, please give full particulars on a separate sheet making clear reference to the question in relation to which the information is being provided.

⁹ If the applicant has already produced this information before to the Authority, the applicant need not reproduce it here. A mere indication in full of the document wherein this information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, the applicant must provide full information relating to that part of the document that is no longer applicable. Certificates and documentation required must be updated to the date of this submission.

¹⁰ If the applicant's directors have already answered these questions in relation to another application or submission, a mere indication in full of the document in which these questions were answered, and of the relevant part of that document would suffice. However, if any answers given previously need to be modified, whether in part or in full, the applicant's directors must reply to these questions in full. In any case, the declaration must be signed by the directors.

	YES / NO
(a) Have you at any time been a director or managing director of any undertaking whose licence or authorisation in relation to its commercial activity to operate has, during the period of your involvement or within 12 months thereafter, been revoked, cancelled, restricted, suspended or surrendered under any law?	
(b) Have you at any time been a director or senior executive of any undertaking whose application for a licence to conduct any business in Malta or elsewhere has, during the period of your involvement or within 12 months thereafter, been refused or withdrawn?	
(c) Have you at any time been convicted of any offence by any court, in Malta or elsewhere? If so, when giving particulars, state the court by which you were convicted, the offence, the penalty imposed and the date of conviction.	
(d) Have you, in Malta or elsewhere, been censured, disciplined or criticized by any professional body to which you belong or have belonged or made the subject of a court order at the instigation of any regulatory authority or have you ever held a practising certificate subject to conditions?	
(e) Have you, or has any company, with which you are, or have been associated as a director or managing director, by reason of any matters relating to it at a time when you were so associated, been the subject of an investigation, in Malta or elsewhere, by a governmental, professional or other regulatory body?	
(f) Have you incurred a judgement debt under a court order in Malta or elsewhere or made any compromise arrangement with your creditors within the last ten (10) years?	
(g) Have you in Malta or elsewhere, been dismissed from any office or employment or barred from entry to any profession or occupation?	
(h) Has any company with which you were associated as a director or managing director in Malta or elsewhere been wound up or otherwise made any compromise or arrangement with its creditors or ceased trading, either when you were associated with it or within 12 months after you ceased to be associated with it? Has anything analogous to any of these events occurred under the laws of any other jurisdiction?	
(i) Have you been concerned with the management or conduct of affairs of any undertaking which, by reason of any matter relating to it at a time when you were so concerned, has been censured, warned as to future conduct, disciplined or made subject to a court order at the instigation of any regulatory authority in Malta or elsewhere?	
(j) Have you, in conjunction with the formation or management of anybody	

corporate, partnership or unincorporated undertaking, been adjudged by a court in Malta or elsewhere to have civil liability for any fraud, misfeasance or other misconduct by you towards such a body or company or towards any members thereof?	
(k) Has anybody corporate, partnership, firm or unincorporated undertaking with which you are associated as a director, executive or manager been compulsorily wound up or dissolved either by order of any court or because it was adjudged bankrupt or made any compromise or arrangement with its creditors or ceased trading in circumstances where its creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within five years after you ceased to be associated with it? If so, give full particulars.	
(l) Are you presently or do you expect to be engaged in any litigation in Malta or elsewhere, other than in a professional capacity?	
(m) Have you ever become bankrupt or availed yourself of the laws relating to bankruptcy or insolvency?	
(n) Have you ever been subject of conviction by final judgement of participation in a criminal organisation (as defined in Article 2(1) of Council Joint Action 98/733/JHA), corruption (as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/733/JHA respectively), fraud (within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities) or money laundering (as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering)?	
(o) Have you ever been found non-compliant with the obligations relating to the payment of social security and taxes in accordance with the legal provisions of Malta or of any other country?	

CERTIFICATION

I certify that the above information is complete and correct to the best of my knowledge and belief.

Date:

Signature:

Name of Director:

3. Information on the Shareholders of the Applicant

The following information is being requested from the applicant¹¹:

- (i) Overview of the applicant, mainly including details of its date of formation, a highlight of significant developments since and its current legal status;
- (ii) A detailed description of the applicant's ownership structure including all direct and indirect ownership interests, together with a summary of any agreements which have a determinative influence on the applicant's decision making power. The information should include any foreseeable changes in this respect;
- (iii) For each stakeholder, shareholder, bearer of options, of certificates of entitlement, of preferred stock, of debt capital or of other securities issued by the applicant, the following information is to be submitted:
 - The stakeholder's relationship to the applicant (e.g., number and type of capital shares or securities held, nominal value of capital shares as well as voting and dividend rights associated with any and all types of shares), syndicate / consortium agreements;
 - In the case of natural persons:
 - a. Name, nationality, place and date of birth and occupation of each Shareholder; and
 - b. Certified copies of ID cards or passports (in the case of non-holders of Maltese ID cards), where not already submitted under Part I.B.2 above.
 - In the case of legal entities:
 - a. Name (company), postal address of registered office, telephone number, fax number, date and place of establishment, website address, company registration number;
 - b. Parent company of the group; and
 - c. Certified copy of memorandum and articles of association in case of shareholding companies together with a recent good standing certificate.

In cases where the applicant has a large number of stakeholders (shareholders), the information indicated is to be provided on all shareholders or group of shareholders (where shareholders are

¹¹ If the applicant has already produced this information before to the Authority, the applicant need not reproduce it here. A clear indication in full of the document wherein this information was produced and the relevant part of that document would suffice. However, if any of the information produced in the said document is no longer applicable, whether in full or in part, the applicant must provide full information relating to that part of the document that is no longer applicable. Certificates and documentation required must be updated to the date of this submission.

members of the same Group of Companies or are otherwise linked together) that hold shares with voting rights in excess of 25% in the applicant.

Where any of the applicant's shareholders that fall beyond the above threshold are regulated companies under the relevant financial services legislation, the applicant must provide information as to the place of incorporation of the companies, their regulatory status and the nature of the fund. Apart from this information, where the said shareholders are collective investment schemes, all the information related to the shareholders listed in paragraphs (i), (ii) and (iii) above must be provided in relation to the Manager of the scheme.

In cases where the applicant is a company quoted on a stock exchange, it must provide information in relation to the said listing and must provide the above mentioned information in relation to those shareholders or group of shareholders (where shareholders are members of the same Group of Companies or are otherwise linked together) that hold shares in excess of 25%.

In cases where capital shares or other securities issued by the applicant are administered on behalf of their owner by third parties (for example trustees), such facts are to be noted in the submission and the aforementioned information should refer to the actual owner, or principal beneficiary of the shares/securities.

The Authority reserves the right to request further information in relation to the above.

The following questions must be answered by those applicant's shareholders that satisfy the criteria mentioned above:

- (1) I declare that I am the beneficial owner of the shares indicated by my name in the documents forming part of the submission to the Authority and that the personal details set out above are correct.
- (2) I declare that the remittance of all and any funds which have been or which at any time in the future may be remitted for the account of the company as payment of allotment monies for the shares is not and will not be the proceeds of an offence and consequently does not and will not constitute a money laundering offence in the Prevention of Money Laundering Act, 1994.

Date:

Signature:

Name of Shareholder:

C. Competence and Experience

Managerial Competence:

The applicant should provide details of the managerial staff of the organisation applying for the rights of use of radio frequencies. Further details of the required information can be found in Section 6.1.2.1.

Experience:

The applicant should provide details of the organisation applying for the rights of use of radio frequencies. Further details of the required information can be found in Section 6.1.2.2.

If necessary use additional sheets. These should be appended to this page.

For MCA Internal Use Only

D. Business Plan

The applicant should provide the Business Plan together with the supplementary information, as requested in Section 6.1.3

<p>If necessary use additional sheets. These should be appended to this page.</p>	<p>For MCA Internal Use Only</p>

E. Project Financing and Applicant's Financial Standing

The applicant should provide details on the financial resources and its financial standing as requested in Section 6.1.4.

If necessary use additional sheets. These should be appended to this page.	For MCA Internal Use Only

Part II: Declaration

I / we have read all the documentation associated with this Call for Applications and hereby declare that I / we agree to abide with the terms and conditions therein.

The Authority will endeavour to minimise the potential of interference. I / we accept that the Authority will not be liable for any interference received and that I / we will comply with whatever the Authority requests in preventing interference being caused by this system to other licensed users of the radio spectrum.

I / we hereby declare that the information provided is accurate and complete in all respects.

I / we confirm that all the information submitted in support of this submission is complete and true and that I / we understand that knowingly making false statements for this purpose is tantamount to a criminal offence.

I / we understand that misrepresentation or failure to submit any information requested by the Authority shall be deemed as a good and sufficient cause to disqualify the submission or for an eventual revocation of the rights of use if such misrepresentation or failure is discovered at a later stage.

I / we understand that should the information provided in relation to this submission cease to be correct, or if there are any changes in the information provided in the submission between the date the submission was made and the date it is determined, it is my responsibility to advise the Authority immediately. Failure to do so could result in any rights of use subsequently issued being reviewed and possibly suspended or revoked.

The Authority may request confirmation or further information from any appropriate third parties in respect of evidence or documentation I / we have provided in support of this submission. I / we agree to authorise the Authority to request and receive information about us from such third parties.

I / we accept that a right of use does not confer any right of ownership of the radio frequency spectrum. It allows the assigned radio frequency channels to be used during the term of the rights of use in accordance with the conditions of the rights of use.

I / we accept to provide a bank guarantee in the appropriate form as indicated in Section 5.7 and Appendix D of this Call for Applications, issued by a bank or other financial institution as described in Section 5.6 of this Call for Applications, which will be effective from date of submission and will remain so effective up to the 24 months following the commencement date of the Licence.

I / we accept that if I / we withdraw or amend the submission after the expiry of the Application Deadline mentioned in the Call for Applications, the bank guarantee will be forfeited.

I / we hereby accept that any possible dispute between the Authority, and an applicant or a Licensee shall be governed solely by Maltese law and shall be subject to the exclusive jurisdiction of the competent Maltese courts and, or tribunals however so described.

I / we hereby certify that I / we have not entered into and will not enter into any agreements or arrangements of any kind with any competitor/ applicant regarding this Assignment Process. I / we understand that if this certification is found not to be true and complete in every respect, then:

- I / we will be disqualified from the Assignment Process; and
- Any rights of use that may have already been issued to me / us as a result of this assignment may be revoked.

I / we hereby certify that no member identified in the submission, is or was subject to criminal investigations or proceedings in Malta or abroad which might reasonably adversely affect their business or materially affect my / our ability to participate in the Assignment Process or to satisfy the terms of any rights of use assigned, and there is no reason to believe that any such investigation or proceeding might occur during the Assignment Process.

I / we hereby certify that no member identified in the submission is party to any civil litigation or proceedings which may be expected to have a material adverse impact on my / our ability to participate in the Assignment Process or to satisfy the terms of any rights of use assigned pursuant to this Call for Applications.

I / we further declare that in the event that we are assigned the right of use of radio frequency spectrum pursuant to this Call for Applications

- I / we will, at all times, comply in every respect with the conditions attached to the grant of rights of use;
- I / we will, at all times, comply with lawful decisions and directives of the Malta Communications Authority and with the obligations at Law.

Name	Signature	Position
Full name(s) of Signatory/Signatories:		Position held (as applicable if Applicant is a company, co-operative or other body corporate):

Date:

Part III: Declaration of Consent to Disclosure of Information

(To be executed by the authorised applicant representatives, on behalf of the candidate, by each director individually and by each shareholder in respect of which information is submitted herein)

I, the undersigned, _____ (name and surname) residing at: _____
_____ (address) and holding the Maltese identity card numbered _____
(in the case of Maltese ID card holders) or _____ (nationality) passport numbered _____
(in the case of non-Maltese ID card holders):

Understand that the Authority reserves the right to investigate all relevant data and facts to its satisfaction;

Authorise the Authority to conduct a complete and comprehensive investigation to determine the accuracy of all information gathered and I hereby release, waive, discharge and agree not to hold the Authority responsible for the receipt and use of such data, other than for unlawful processing of such information, acquired during investigations and inquiries;

Do hereby expressly consent, for the purposes of the Professional Secrecy Act (Cap. 377 of the Laws of Malta) to the disclosure of all information you may have relating to the undersigned, including confidential information and that information which may constitute personal information in the terms of the Data Protection Act (Cap. 440 of the Laws of Malta) in so far as it relates to financial, security or public order matters.

When executed by an individual, nothing in this consent permits disclosure of any personal information relating to my personal health of any type or sensitive personal data as defined by the Data Protection Act.

This consent is given to you to provide information only to the Malta Communications Authority to enable it to verify statements and other facts in relation to the consideration of an Application I / we have made to such Authority.

This consent is given to:

- a) any credit institution, insurance company, investment service licensee or any trustee authorised to do business in Malta or within the European Union;
- b) the Government of Malta and any authority established by law in Malta or in the European Union; and
- c) any law enforcement agency or authority in Malta or in the European Union.

Signature

(Name in Block Letters)

Appendix B - Further Spectrum Band Information

The available frequencies are being assigned in alignment with the following plan:

800 MHz band - Channelling Arrangement

Ch 60	GB	Ch 1 D/L	Ch 2 D/L	Ch 3 D/L	Ch 4 D/L	Ch 5 D/L	Ch 6 D/L	Duplex Gap	Ch 1 U/L	Ch 2 U/L	Ch 3 U/L	Ch 4 U/L	Ch 5 U/L	Ch 6 U/L	
782	790	791	796	801	806	811	816	821	832	837	842	847	852	857	862

This channelling plan has been devised on the channelling arrangement as established in the European Commission Decision 2010/267/EU. The channel numbers listed in the tables below are to be used when identifying your preference.

800 MHz Band:

Lot Category	Lot Number	Channel Number	Downlink Carrier Frequency (MHz)	Uplink Carrier Frequency (MHz)	Maximum mean in-block power / 5 MHz
Low Power	1	1	791	832	56 dBm
High Power	2	2	796	837	60 dBm
High Power	3	3	801	842	60 dBm
High Power	4	4	806	847	60 dBm
High Power	5	5	811	852	60 dBm
High Power	6	6	816	857	60 dBm

The baseline requirements for the base station BEM out-of-block EIRP limits over frequencies below 790 MHz will be those established under Case A in Table 4 of the European Commission Decision 2010/267/EU¹².

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1475152098583&uri=CELEX:32010D0267>.

Appendix C - Sample Licence

SAMPLE LICENCE¹³

GRANT OF RIGHTS OF USE OF RADIO FREQUENCY SPECTRUM FOR THE ESTABLISHMENT AND OPERATION OF A TERRESTRIAL MOBILE SYSTEM CAPABLE OF PROVIDING ELECTRONIC COMMUNICATION SERVICES

Licence Reference No.

Date of Issue:	
Date of Expiry:	
Name of Licensee:	
Registered Address:	
Company Registration Number:	

Article 1. Definitions

1.1 Any reference in this Licence to the "ECRA" is a reference to the Electronic Communications (Regulation) Act (Cap. 399 of the Laws of Malta), and subject to Article 1.2 of this Licence, the provisions of the said Law shall apply to this Licence.

1.2 In this Licence, unless the context otherwise requires:

"800 MHz band" means the frequency range between 790 MHz and 862 MHz;

"Authority" means the Malta Communications Authority;

¹³ This is a specimen Licence.

Prior to the issue of a Licence to an undertaking, the Authority reserves the right to amend any of the contents of this specimen Licence if it considers this to be necessary to:

- i. further clarify the said contents;
- ii. comply with any requirements at national / European law; and to
- iii. reflect any further obligations that the Licensee assumes as a result of the process for the grant of rights of use of the radio frequency spectrum.

“the Commencement Date” means **:[enter date]**

“coverage territory” means all the islands of the Maltese Archipelago, excluding the territorial waters and airspace thereof, within which access by users to the services being provided over the relevant network is possible;

“the Expiry Date” means **:[enter date]**

“Interference Mitigation Fund” means a fund established to cover costs related to the implementation of mitigation measures that may be required to solve interference issues to the reception of local digital terrestrial television signals resulting from the deployment of outdoor base stations capable of providing mobile electronic communications services operating in the band between 790 and 862 MHz;

“the Licensee” means **:[enter name of licensee including company details, if applicable];**

“MCA Decision” means Decision No. MCA/D/14-1933 published by the Authority on 31 July 2014 concerning the *Assignment Process for Additional Spectrum for Wireless Broadband*;

“Programme Making or Special Events” or “PMSE” means radio equipment used for transmission of analogue or digital audio signals between a limited number of transmitters and receivers, such as radio microphones, in-ear systems or audio links, used mainly for the production of broadcast programmes or private or public social or cultural events;

“the Radio Frequency Spectrum” means that defined in Annex I to this Licence;

“terrestrial mobile system” means a terrestrial system compliant with the technical parameters laid down in Annex I to this Licence which is capable of providing mobile electronic communications services.

Article 2. Grant of Licence

- 2.1 By virtue of this Licence, the Authority hereby assigns to the Licensee the right of use of the Radio Frequency Spectrum for the purpose of establishing and operating a terrestrial mobile system capable of providing electronic communication services according to the conditions listed hereunder.

Article 3. Licence Duration

- 3.1 This Licence shall commence on the Commencement Date and shall remain in force until the Expiry Date, unless otherwise lawfully terminated in accordance with the Act and/or this Licence.
- 3.2 This Licence shall cease to have effect immediately on the Expiry Date.

- 3.3 Irrespective of whether the Licensee is still using the Radio Frequency Spectrum, the right of use of which is granted to it by virtue of this Licence, the Authority shall, at any time prior to the expiry of this Licence, have the right to commence any procedures necessary for the re-assignment of the rights of use of the Radio Frequency Spectrum upon the expiry of this Licence.

Article 4. Use of Radio Frequency Spectrum

- 4.1 The Radio Frequency Spectrum shall be used by the Licensee only to establish and operate a terrestrial mobile system and subject to the terms, conditions and limitations stated in this Licence, unless otherwise previously authorised in writing by the Authority.
- 4.2 The Licensee shall at all times ensure that the Radio Frequency Spectrum is used efficiently and in accordance with the Authority's directions.
- 4.3 The Licensee shall only commence using the Radio Frequency Spectrum on a commercial basis following the establishment of the Interference Mitigation Fund in accordance with Clause 6.7 of this Licence.
- 4.4 The Radio Frequency Spectrum shall only be used by the Licensee. The right of use of the Radio Frequency Spectrum may not be assigned or transferred to third parties, unless otherwise previously authorised in writing by the Authority.

Provided that a change in any way whatsoever in the ownership of shares with voting rights of the Licensee shall be considered to constitute an assignment or transfer of the Radio Frequency Spectrum.

Article 5. Fee for Right of Use of Radio Frequency Spectrum

- 5.1 The Licensee shall immediately prior to the Commencement Date and thereafter annually, in advance, for the duration of this Licence, pay to the Authority the fees stipulated in the relevant legislation:

Provided that the Licensee shall effect such payments punctually and that any late payments shall be subject to the maximum interest rate applicable at law:

Provided further that any non-payment or late payment of dues under this Article shall also constitute a breach of this Licence and entitle the Authority to terminate the same Licence.

- 5.2 All payments effected by the Licensee in accordance with Article 5.1 of this Licence are **not** refundable by the Authority and/or the Government of Malta.

Article 6. Non-Interference

- 6.1 The Licensee shall comply with any decisions, however so described, issued by the Authority in relation to harmful interference.
- 6.2 The Licensee shall ensure that the terrestrial mobile system at all times complies with the technical and performance standards generally accepted by the industry, or as may be prescribed by the Authority, or accepted by the Authority as being adequate to ensure that such system does not cause harmful interference with, seriously reduce the quality of, or repeatedly disrupt the lawful use or operation of any other electronic communications networks and, or services.
- 6.3 The Licensee shall ensure that its terrestrial mobile system does not cause harmful interference with, seriously reduce the quality of, or disrupt the lawful use or operation of, any other electronic communications networks and, or services.
- 6.4 The Licensee, in line with clause 6.3 shall refrain to deploy indoor cells operating in the 800 MHz band in buildings where the use of PMSE equipment operating in the 800 MHz duplex band is essential for the fulfilment of the said buildings function.
- 6.5 The Licensee, in line with clause 6.3 shall set the in-block EIRP for Channel 1 of the said 800 MHz band at 56dBm/5MHz, whilst for the other 800 MHz band channels will be set at 60dBm/5MHz in order to avoid any interference with the current broadcasting service.
- Provided that the Authority reserves the right to reduce these power limits in order to address cases of harmful interference with current terrestrial broadcasting services;
- Provided further that the Authority reserves the right to relax these technical conditions at any point throughout the term of the License.
- 6.6 The Licensee, in line with clause 6.3 shall set the base station BEM out-of-block EIRP limits over frequencies below 790 MHz to the levels as established under Case A in Table 4 of the European Commission Decision 2010/267/EU.
- 6.7 The Licensee shall contribute fees towards the establishment of the Interference Mitigation Fund which is capped at €4.5 million in accordance with MCA Decision.
- 6.8 Neither the Authority, nor the Government of Malta, shall be held responsible in any manner whatsoever by the Licensee for any harmful interference that may hinder the use or operation of its terrestrial mobile system.

Article 7. Exposure to Electromagnetic Fields

- 7.1 The Licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP), any mandatory

standards set by the competent authority responsible for the adoption of any such standards and any other relevant standards as may be specified by law.

- 7.2 The Licensee shall comply with any decisions however so described issued by the Authority in relation to electromagnetic radiation, and shall ensure that its terrestrial mobile systems at all times comply with the technical and performance standards generally accepted by the industry, or as may be prescribed by the Authority in line with national and European Union Law, or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.
- 7.3 The Licensee shall ensure that its Radiocommunications Apparatus is not installed or operated at a location and in a manner such as to be the cause of the aggregate non-ionising radiation emissions exceeding the limits published by the ICNIRP, any mandatory standards set by the competent authority responsible for the adoption of any such standards and any other relevant standards as may be specified by law.

Article 8. Rollout and Coverage Requirements

- 8.1 In consideration of Article 6 above, during the first months from the Commencement Date of this Licence the Licensee shall rollout its terrestrial mobile system in a staggered and managed manner as required by the Authority:

Provided that the Licensee shall provide to the Authority detailed rollout plans on how it intends to make its terrestrial mobile system available to users in the Coverage Territory;

Provided further that the detailed rollout plans to be submitted to the Authority may be incorporated in the reporting and notification requirements established under the General Authorisations (Radiocommunications Apparatus) Regulations (S.L.399.40 of the Laws of Malta) prior to installing or using radiocommunications apparatus comprised in the terrestrial mobile system.

- 8.2 The Licensee shall ensure that access to its terrestrial mobile system is made available to users in the Coverage Territory in accordance with the coverage requirements and timeframes set out in Annex II of this Licence such that users can adequately access its terrestrial mobile system:

Provided that the Licensee's obligations under this article shall not apply if subsequent to a request in writing by the Licensee, the Authority agrees in writing that it is not practicable for the Licensee to carry out its obligations under this article.

Article 9. Information

- 9.1 The Licensee shall facilitate and ensure access to any information that the Authority may, in accordance with its functions at law, request.

- 9.2 The Licensee shall promptly provide the Authority, in such a manner and at such times as the Authority may reasonably request, any information related to the use of the Radio Frequency Spectrum assigned to the Licensee, the terrestrial mobile system operated by the Licensee or any other information that the Authority considers necessary to ensure compliance with this Licence and, or with any law, or for statistical purposes.
- 9.3 The Licensee shall immediately in writing inform the Authority of any changes effected to its corporate structure, including, but not limited to, any changes in shareholding, and to its registered address.

Article 10. Further Compliance

10.1 The Licensee shall comply with:

- a) all laws;
- b) any decisions, however so described, of the Authority; and
- c) all the articles of this Licence.

10.2 Nothing in this Licence shall absolve the Licensee from any legal requirement to obtain any other permissions, authorisations or licences, however so described, as may be necessary for the provision of the service and for the exercise of its rights and the discharge of its obligations under this Licence:

Provided that failure on the part of the Licensee to comply with any other requirements shall not exempt the Licensee from any failure to discharge its obligations under this Licence:

Provided further that the Licensee shall be solely responsible for all costs, expenses and other commitments, however so described, whether financial or otherwise, in respect of the Licence and the provision of the service, and the Authority shall bear no responsibility for any such costs, expenses or commitments.

Article 11. Termination

11.1 Without prejudice to any other measures, including the imposition of penalties however so described, that may be taken at law for the non-observance of the conditions of this Licence, this Licence may be withdrawn at any time by the Authority if any of the conditions laid down at law or in any part of this Licence are not observed.

11.2 The Authority shall be entitled to automatically terminate this Licence giving no less than two (2) weeks prior written notice and request the Licensee to return the Licensee to the Authority, in any of the following cases:

- a. upon the expiration of the term of the Licence;
- b. upon the Licence being handed back in accordance with Article 12 of this Licence;
- c. upon renunciation by the Licensee;

- d. upon revocation of this Licence in accordance with the articles of this Licence and, or of law;
- e. upon insolvency, liquidation or bankruptcy of the Licensee; or
- f. upon the winding up or dissolution of the Licensee.

11.3 Termination of the Licence in terms of Article 11.2 shall take place with immediate effect from the date specified in the written notification and the Licensee shall have no claim against the Authority in respect of such termination.

11.4 In addition to the above, if the Authority is of the view that the spectrum, the rights of use of which are awarded by virtue of this Licence, is not being used, or is not being utilised efficiently, it will communicate its view in writing to the Licensee and the Licensee will have within such periods as the Authority may consider appropriate in the circumstances, which period shall in no case exceed three months, to rectify the situation, failing which the Authority will be entitled to terminate without further warning the rights of use being granted herein.

11.5 The termination of this Licence on any of the grounds mentioned in paragraphs (c) to (f) of Article 11.2 and Article 11.4 of this Licence will be without prejudice to the obligation of the Licensee to pay with immediate effect upon termination, the fees due for the right of use of Radio Frequency Spectrum laid down in Article 5.1 of this Licence until the Licence expiry date and fulfil any obligation arising prior to the said termination.

11.6 The termination of this Licence on any of the grounds mentioned in paragraphs (b) to (f) of Article 11.2 and Article 11.4 above will be without prejudice to any measures that may be taken by the Authority with respect to the Licensee's failure to comply with its rollout and coverage obligations as mentioned in Article 8 of this Licence.

11.7 The termination of this Licence in relation to the Rights of Use of Spectrum will entitle the Authority to automatically re-assign the spectrum in question to third parties.

Article 12. Hand back¹⁴

12.1 Without prejudice to Article 11.5 of this Licence, in the event that the Authority so authorises, on the grounds that the overall demand for any number of the radio frequencies in the 800 MHz bands, or part thereof, never exceeded the available number of radio frequencies in that band, the Licensee may choose to hand back to the Authority all or part of their spectrum assignment in the 800 MHz band.

12.2 The right of the Licensee to hand back the Licence in accordance with Article 12.1 of this Licence will be without prejudice to its obligation to effect any payments due to the Authority at the time of the hand back in accordance with Article 5.1:

¹⁴ The inclusion of this Article in the Licence will depend on the demand for spectrum registered throughout the process. This Article, if included in the Licence, will be reworded accordingly.

Provided that any payments that would have already been duly effected by the Licensee to the Authority in accordance with Article 5.1 will not be reimbursed by the Authority or the Government of Malta upon hand back:

Provided further that the balance due to the Authority for the payment of the fee between the date of the hand back and the fourteenth anniversary date, shall no longer be due to the Authority.

- 12.3 Without prejudice to Article 11.5 of this Licence, in the event that the Authority so authorises, on the grounds that the overall demand for any number of the radio frequencies in the 800 MHz bands, or part thereof, exceeded the available number of radio frequencies in that band, the Licensee will be bound to pay the equivalent of three (3) annual fees in addition to any fees already due.

Article 13. Rights and Remedies of the Authority

- 13.1 In addition to its power to terminate this Licence in accordance with Article 10 above, the Authority shall, in accordance with its powers at law, have the power to impose administrative fines on the Licensee for any non-compliance with the conditions of this Licence and, or call upon any bank guarantees issued by the Licensee in favour of the Authority where the conditions for such an action occur.

- 13.2 The Authority may add to, or amend or revoke any of the terms and conditions of this Licence, including the Radio Frequency Spectrum, the right of use of which is being granted by this Licence, when such additions or amendments are necessary as a result of any international obligations entered into by the Authority or by the Government of Malta, or by the need to ensure compliance with the Act or any other law, or by the need to ensure efficient frequency planning:

Provided that the Authority shall not be held responsible in any manner whatsoever for any damages suffered or expenses incurred by the Licensee as a result of any amendment of the terms or conditions of this Licence:

Provided further that the Authority shall in writing inform the Licensee in advance and take into account its views if relevant impact is foreseeable on the Licensee's terrestrial mobile system and if circumstances so permit, grant a reasonable timeframe for the implementation of the relevant additions and, or amendments to the conditions of this Licence.

- 13.3 If any article of this Licence is declared to be unenforceable by any court of law or tribunal however so described, such declaration shall have no effect on the enforceability of the remaining articles of this Licence, all of which will remain in force until the termination of this Licence.
- 13.4 The Authority and any persons duly authorised by the Authority to act on its behalf, shall have the right to carry out inspections and measurements on any site and equipment, being operated by the Licensee at any reasonable time, for the purpose of ensuring that the Licensee is abiding with the articles of this Licence and, or with any legal requirements:

Provided that in cases of urgency the Authority may carry out any such inspections outside normal business hours.

- 13.5 All the articles under this Licence shall for the purpose of law be considered as decisions imposed by the Authority and any failure to abide with any such articles may, without prejudice to any other measures that the Authority may in accordance with law take, be sanctioned by the imposition of the appropriate fines in accordance with law.
- 13.6 The Act, any other national laws, directives and decisions however so described of the Authority shall apply to the Licensee for all purposes and shall form an integral part of this Licence.

(signature)
Malta Communications Authority

SAMPLE

Annex I - Description of Radio Frequency Spectrum and Technical Parameters

Radio Frequency Spectrum:

Spectrum bands assigned - To be completed on Assignment

List of Terrestrial Systems that can operate in these Bands:

In line with the principles established in the Framework Directive (2002/21/EC as amended by 2009/140/EC) the spectrum will be assigned on a technology neutral basis. The licensee shall however, whilst making use of such a spectrum band comply with the MCA Decision in line with the EU spectrum harmonisation decision 2010/267/EU which sets out the general operating parameters and technical conditions for the said 800 MHz band. The following is an extract of the Commission Decision (2010/267/EU) general technical operating parameters within the 800 MHz band

A. General parameters

1. Within the band 790-862 MHz the frequency arrangement shall be as follows:
 - (a) the assigned block sizes shall be in multiples of 5 MHz;
 - (b) the duplex mode of operation shall be FDD with the following arrangements. The duplex spacing shall be 41 MHz with base station transmission (down link) located in the lower part of the band starting at 791 MHz and finishing at 821 MHz and terminal station transmission (up link) located in the upper part of the band starting at 832 MHz and finishing at 862 MHz.
2. Notwithstanding Part A(1), but provided the technical conditions of Part B and Part C of this Annex are applied, Member States may implement alternative frequency arrangements with the aim of (a) achieving general interest objectives, (b) ensuring greater efficiency through market-based spectrum management, (c) ensuring greater efficiency when sharing with existing rights of use during a coexistence period, or (d) avoiding interference.

B. Technical conditions for FDD or TDD base stations (BS)

1. In-block limits:

An in-block EIRP limit for base stations is not obligatory. However, Member States may set limits and, unless otherwise justified, such limits would normally lie within the range 56 dBm/5 MHz to 64 dBm/5 MHz.

2. Out-of-block limits:

Table 1

Baseline requirements — BS BEM out-of-block EIRP limits

Frequency range of out-of-block emissions	Maximum mean out-of-block EIRP	Measurement bandwidth
Frequencies used for FDD uplink	−49,5 dBm	5 MHz
Frequencies used for TDD	−49,5 dBm	5 MHz

Table 2

Transition requirements — BS BEM out-of-block EIRP limits per antenna ⁽³⁾ over frequencies of FDD downlink and TDD

Frequency range of out-of-block emissions	Maximum mean out-of-block EIRP	Measurement bandwidth
– 10 to – 5 MHz from lower block edge	18 dBm	5 MHz
– 5 to 0 MHz from lower block edge	22 dBm	5 MHz
0 to + 5 MHz from upper block edge	22 dBm	5 MHz
+ 5 to + 10 MHz from upper block edge	18 dBm	5 MHz
Remaining FDD downlink frequencies	11 dBm	1 MHz

Table 3

Transition requirements — BS BEM out-of-block EIRP limits per antenna ⁽⁴⁾ over frequencies used as guard band

Frequency range of out-of-block emissions	Maximum mean out-of-block EIRP	Measurement Bandwidth
Guard band between broadcasting band edge at 790 MHz and FDD downlink band edge ⁽⁵⁾	17,4 dBm	1 MHz
Guard band between broadcasting band edge at 790 MHz and TDD band edge	15 dBm	1 MHz
Guard band between FDD downlink band edge and FDD uplink band edge (duplex gap) ⁽⁶⁾	15 dBm	1 MHz
Guard band between FDD downlink band edge and TDD band edge	15 dBm	1 MHz
Guard band between FDD uplink band edge and TDD band edge	15 dBm	1 MHz

Table 4

Baseline requirements — BS BEM out-of-block EIRP limits over frequencies below 790 MHz

Case		Condition on base station in-block EIRP, P dBm/10 MHz	Maximum mean out-of-block EIRP	Measurement bandwidth
A	For TV channels where broadcasting is protected	$P \geq 59$	0 dBm	8 MHz
		$36 \leq P < 59$	$(P - 59)$ dBm	8 MHz
		$P < 36$	-23 dBm	8 MHz
B	For TV channels where broadcasting is subject to an intermediate level of protection	$P \geq 59$	10 dBm	8 MHz
		$36 \leq P < 59$	$(P - 49)$ dBm	8 MHz
		$P < 36$	-13 dBm	8 MHz
C	For TV channels where broadcasting is not protected	No conditions	22 dBm	8 MHz

Cases A, B, and C listed in Table 4 can be applied per broadcasting channel and/or per region so that the same broadcasting channel may have different levels of protection in different geographic areas and different broadcasting channels may have different levels of protection in the same geographic area. Member States shall apply the baseline requirement in case A in circumstances where digital terrestrial broadcasting channels are in use at the time of deployment of terrestrial systems capable of providing electronic communications services. Member States may apply the baseline requirements in cases A, B or C in circumstances where the relevant broadcasting channels are not in use at the time of deployment of terrestrial systems capable of providing electronic communications services. They shall take into account that cases A and B reserve the option of bringing relevant broadcasting channels into use for digital terrestrial broadcasting at a future date, while case C is appropriate where there are no plans to bring the relevant broadcasting channels into use.

C. Technical conditions for FDD or TDD terminal stations (TS)

Table 5

In-block requirements — TS BEM in-block emission limit over frequencies of FDD uplink and TDD

Maximum mean in-block power	23 dBm ⁽⁷⁾
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Member States may relax the limit in Table 5 for specific deployments, e.g. fixed terminal stations in rural areas, provided that protection of other services, networks and applications is not compromised and cross-border obligations are fulfilled.

⁽¹⁾ TRP is a measure of how much power the antenna actually radiates. The TRP is defined as the integral of the power transmitted in different directions over the entire radiation sphere.

⁽²⁾ The actual measurement bandwidth of the measurement equipment used for purposes of compliance testing may be smaller than the measurement bandwidth provided in the tables.

⁽³⁾ For one to four antennas.

⁽⁴⁾ See footnote 3.

⁽⁵⁾ 790 MHz to 791 MHz for the frequency arrangement described in Part A(1).

⁽⁶⁾ 821 MHz to 832 MHz for the frequency arrangement described in Part A(1).

⁽⁷⁾ This power limit is specified as EIRP for terminal stations designed to be fixed or installed and as TRP for terminal stations designed to be mobile or nomadic. EIRP and TRP are equivalent for isotropic antennas. It is recognised that this value is subject to a tolerance of up to + 2 dB, to take account of operation under extreme environmental conditions and production spread.

Annex III – Coverage Requirements and Timeframes

The following indicates the percentage of access in coverage territory of the Licensee's services that shall be ensured by the Licensee within the timeframes set hereunder in accordance with Article 8 of this Licence:

Coverage Territory	Timeframe (From Commencement Date of Licence)
99 %	Within 24 months

SAMPLE

Appendix D - Bank Guarantee

Malta Communications Authority Form of Bank Guarantee

The Chairman, Malta Communications Authority,

Our Letter of Guarantee No: for _____ Euro (€ _____) by order of:

Name of Applicant

Reference is made to the application (hereinafter referred to as the 'Application') for the grant of rights of use of radio frequencies in the 800 MHz bands (hereinafter referred to as the 'Licence') made by

Name and Address of Applicant

hereinafter referred to as 'the Applicant', whereby the applicant *inter alia* undertakes:

- to abide by the conditions laid down in the Call for Applications MCA/O/16-2711 relating to the assignment of rights of use of radio frequencies in the 800 MHz bands issued by the Malta Communications Authority (hereinafter referred to as the Authority);
- to correctly submit an Application and accompanying documentation that may be required for participation in this procedure;
- not to withdraw or amend its Submission for the Licence at any point in time prior to the assignment of the Licence by the Authority;
- in the event that the Authority carries out brokered meetings to attempt to achieve a solution between all Applicants for the assignment of the rights of use of the spectrum, to actively participate in these brokered meetings;
- to accept the rights of use assigned to it by the Authority as a result of this Call;
- in the event that it will be assigned the Licence, to unreservedly accept the Licence and all conditions therein;
- in the event that it will be assigned the Licence by the Authority, to fulfil its Licence obligations, in particular, but without limitation, its 'Rollout' and 'Coverage' obligations, and abide by any decision and directive however so described issued by the Authority in relation to the rights of use;

- in the event that it will be assigned the Licence by the Authority, to make the necessary payments stipulated in the Call for Applications; and
- in the event that it will be assigned the Licence, to renew or maintain an effective bank guarantee in favour of the Authority guaranteeing the conditions contained herein for the duration of 24 months following the commencement date of the licence.

At the request of the Applicant, we _____
(insert name of bank / financial institution) hereby guarantee to pay you on demand a maximum sum of _____ Euro (€ _____), in the event that the obligations in the Application and, or the Licence are not duly performed by the Applicant.

It is understood that this Guarantee will become payable on your first written demand which must be sent to _____, (insert address of bank / financial institution) accompanied by this document. It shall not be incumbent upon us to verify whether such a demand is justified.

For avoidance of doubt and for all intents and purposes of law, it is hereby specifically declared that although this instrument gives rise to legal relations between the Guarantor and the Beneficiary, this Guarantee does not exempt the Applicant from any obligations, acts of performance or undertakings assumed under the Submission, Licence and, or law.

This Guarantee expires on the ***insert date as stipulated above***, whether this document is returned to us or not, and unless it is extended by us, or returned to us for cancellation before the date, any demand made by you for payment must be received in writing not later than the aforementioned expiry date. On such expiry date all our obligations hereunder shall be automatically terminated.

This document shall be returned to us for cancellation, on utilisation or expiry, or in the event of the Guarantee being no longer required

This Guarantee is personal to yourselves and is not transferable or assignable.

Authorised Signatories

I accept in their entirety the conditions set out above.

The Applicant

Appendix E – Interference Mitigation Fund

Aim of the Fund

The aim of the Interference Mitigation Fund is to cover costs that are related to the mitigation measures that may be required to solve harmful interference issues to the reception of local digital terrestrial television transmissions resulting from the deployment of outdoor base stations operating in the 800 MHz band.

Fund Management

The Licensees having a right to use spectrum in the 800 MHz band are responsible to set up and administer the fund. The fund administrator may be a joint venture amongst the Licensees or a third party fund manager. In case an adequate fund management plan is not presented to the MCA within three (3) months from the date of grant of rights of use, the MCA reserves the right to setup the fund management plan on their behalf. Any costs borne by the MCA in the setting up or administration of the fund will be borne by the Licensees in addition to the fund cap and the licence fee. The fund administrator may also set up and be responsible for a committee in order to assess that all requests for funds are based on fair, objective and non-discriminatory criteria. Any costs incurred for the setup and running of the committee shall be borne by the Licensees in addition to the fund cap and the licence fee.

Funds Available

The Interference Mitigation Fund is set to €4.5 million. All licensees shall contribute a fee towards the establishment of the fund, where the contribution shall be in proportion with the number of assigned channels in the 800 MHz band. The licensees in question will not be required to deposit the fund contribution immediately but may pay the contribution by instalments as long as the payment terms of the periodic fund tranches are established apriori. Such a fund shall be operative for a definite time period of six months following the achievement of national coverage on all six channels in the band or up to such time that the fund is exhausted. The fund administrator may decide to establish grant phases distributed over specific periods of time. Note that the MCA may decide to terminate the fund earlier in case where there are any developments which render the fund redundant.

Eligibility

Organisations (such as public or private entities, educational organisations) and individuals are eligible to apply for funding. Requests for funding will only be considered in case the assessment criteria are met.

Funding of applications by the Interference Mitigation Fund

The fund administrator shall consider and fund applications in these broad categories, but not limited to:

- Provision of equipment, however so described, for the mitigation of temporary inconvenience created by harmful interference to the reception of local aerial television transmissions by TV installations that were already in place by the commencement date of the 800 MHz licences.
- The migration of affected installations to an alternative TV platform, in case the equipment installation fails to solve the inconvenience created by the harmful interference.
- Educational campaigns in order to inform the general public with any issues that they may encounter and how to resolve such issues.
- Setting up of a consumer complaint handling centre, including the establishment of the necessary procedures, procurement of the necessary front and back end tools, and necessary personnel that are required with regard to complaint handling and necessary remedial actions.
- Setting up of a fund information and application system, including the establishment of the necessary procedures, procurement of the necessary front and back end tools, and necessary personnel required to run the relevant operations.
- Audit measures to ensure the proper administration of the fund.

Application for funds will not be considered for:

- Mitigation of inconvenience created by harmful interference to the reception of aerial television transmissions by TV installations that are installed following the commencement date of the 800 MHz licences.
- Mitigation of inconvenience created by harmful interference to the reception of cable television signals.
- Mitigation of inconvenience created by harmful interference to the reception of aerial television transmissions by TV installations that are meant to receive non local terrestrial television transmissions.
- Applications cannot duplicate activities, programs or benefits that are being provided by or are similar to other mitigation measure already in place.

Fund Application Process

The fund administrator shall define a clear and simple application process through which the applicant can submit his claim. The application process shall primarily cater for the following submission mechanism: online and a front office help desk. The application process may define different claim categories (monetary or interference suppression equipment) for which specific details will be required to accompany the submissions.

Assessment Criteria

The fund administrator or any representative (committee, delegated trusted 3rd parties) as established by the same fund administrator, shall assess the relevant applications against the non exclusive list of criteria identified below as well as considering how such applications will fit within the priorities of such mitigation measures. Assessments shall be made based on the information provided by the applicants.

- The local TV service suffering from any inconvenience caused
- The nature of the inconvenience suffered by the end users
- Addressing a significant need
- Extent of community need addressed
- Feasibility of the program/project to be completed as proposed, on time and within budget
- Good standing on previously awarded grants
- Fund administrator decisions are final

Responsibilities for the successful applicants

In the case where the request for funding is substantial, successful applicants will be required to sign a contract agreeing to any conditions set by the fund administrator. For accountability and audit purposes, a grant report detailing the project outcomes, evaluation against objectives and all expenditure will be required upon completion of the project by the successful applicant. The fund administrator may also stipulate a requirement for one or more interim progress reports, depending on the nature and term of the request. Should the successful applicant breach the terms, the fund administrator will have the right to have the funds returned. The fund administrator shall predefine in advance any applicable payment terms and conditions.

Termination of the fund

Once the fund is terminated, any residual funds will be redistributed amongst the contributing licensees, pro-rata on the basis of their contribution.