

GRANT OF RIGHTS OF USE OF RADIO FREQUENCY SPECTRUM FOR THE ESTABLISHMENT AND OPERATION OF A BROADBAND WIRELESS ACCESS NETWORK

This Licence is being granted by the Malta Communications Authority in exercise of the powers conferred by the Electronic Communications (Regulation) Act, (Cap. 399 of the Laws of Malta).

Date of Issue:	21 st October 2005
Term of Grant:	15 years
Date of Expiry:	21 st October 2020
Name of Licensee:	Vodafone (Malta) Limited
Registered Address:	Vodafone House, Msida Road, Birkirkara, BKR14, Malta
Company Registration Number:	C 10865

PART I – BACKGROUND, DEFINITIONS AND ASSIGNMENT

Article 1 - Background

This Licence awards to the Licensee the right to use the radio frequency spectrum defined in this Licence for the purposes of implementing and operating a broadband wireless access (hereinafter referred to as 'BWA') Network according to the conditions listed hereunder.

In accordance with the Government Policy¹ published on the 23rd February 2005, this Licence awards the Licensee the right of use of a paired twenty-four and a half megahertz (24.5 MHz) frequency band. The said right of use is being granted for a period of fifteen (15) years.

Article 2 - Definitions

2.1 Any reference in this Licence to the "Act" is a reference to the Electronic Communications (Regulation) Act (Cap. 399 of the Laws of Malta) and subject to article 2.2 of this Licence, the provisions of the said Act shall apply to this Licence.

2.2 In this Licence, unless the context otherwise requires:

"Authority" means the Malta Communications Authority;

"Broadband Wireless Access (hereinafter referred to as "BWA") Network" means a network that is capable of providing bi-directional high-speed data services via a radio frequency access network;

"BWA service" means a public electronic communications service which is provided over a BWA network;

"Coverage territory" means all the islands of the Maltese Archipelago, excluding the territorial waters thereof, within which access by users to the services being provided over the relevant network is possible.

Article 3 – Grant of Licence

3.1 By virtue of this Licence, the Authority hereby assigns to Vodafone (Malta) Limited (hereinafter referred to as the "Licensee"), the right of use of the radio frequency spectrum mentioned in article 4 of this Licence, for the period and subject to the terms, conditions and limitations stated in this Licence.

¹ Policy and Implementation Strategy re Digital Terrestrial Television (DTTV), 3rd Generation Mobile Telephony (3G), Broadband Wireless Access (BWA)
(<http://www.mca.org.mt/library/show.asp?id=565&lc=4>)

Article 4 - Description of the Radio Frequency Spectrum

- 4.1** The radio frequency spectrum, the right of use of which is being granted to the Licensee by virtue of this Licence, is that described in Annex I to this Licence.

PART II – TERMS, CONDITIONS AND LIMITATIONS

Article 5 - Term of Licence

- 5.1** This Licence shall be valid for a term of fifteen (15) years, which shall commence from the date on which this Licence is issued, unless otherwise lawfully terminated in accordance with the Act and, or this Licence.
- 5.2** This Licence shall cease to have effect on the date of its expiry.
- 5.3** Irrespective of whether the Licensee is still using the radio frequency spectrum, the right of use of which is granted to him 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 said radio frequency spectrum upon the expiry of this Licence.

Article 6 - Use of Radio Frequency Spectrum

- 6.1** The radio frequency spectrum mentioned in article 4 of this Licence shall be used by the Licensee only to establish and operate a BWA Network, subject to the terms, conditions and limitations stated in this licence, unless otherwise previously authorised in writing by the Authority.
- 6.2** The radio frequency spectrum mentioned in article 4 of this Licence, shall only be used by the Licensee. The right of use of the said frequency spectrum and this Licence 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 will be considered to constitute an assignment or transfer of frequency spectrum.

- 6.3** 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 registered address.

Article 7 - Fee for Right of Use of Radio Frequency Spectrum

- 7.1** The Licensee shall, in consideration of the right of use of the radio frequency spectrum being granted by virtue of this Licence, immediately upon the grant of the right of use of the radio frequency spectrum mentioned in article 4 of this Licence and, for the duration of this Licence, by not later than each anniversary of this Licence, pay the Authority the sum of twenty thousand Maltese Liri (Lm 20,000) *per annum* by such means and on such terms as the Authority may determine:

Provided that the Licensee shall effect such periodic payments punctually and any late payments shall be subject to such interest rates as are applicable at law:

Provided further that any non-payment or late payment of any dues under this article shall constitute a breach of this Licence.

- 7.2** All payments effected by the Licensee in accordance with article 7.1 of this Licence are not refundable.

Article 8 - Non-Interference

- 8.1** The Licensee shall comply with any directives and, or decisions, however so described, issued by the Authority in relation to harmful interference.
- 8.2** The Licensee shall ensure that its BWA Network 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.
- 8.3** The Licensee shall ensure that its BWA Network 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.
- 8.4** 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 BWA Network.

Article 9 - Exposure to Electromagnetic Fields

- 9.1** The Licensee shall comply with any radiation emission standards adopted and published by the International Commission for Non-Ionising Radiation Protection (ICNIRP) and any other appropriate standards as may be specified by law or by the Authority.

- 9.2** The Licensee shall comply with any decisions issued by the Authority in relation to electromagnetic radiation and ensure that its BWA Network 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 Community Law, or accepted by the Authority as being adequate to ensure the limitation of exposure of the general public to electromagnetic fields.
- 9.3** The Licensee shall ensure that its BWA Network 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 or any other appropriate standards as may be specified by law or by the Authority.

Article 10 - Roll-out and Coverage Requirements

- 10.1** The Licensee shall ensure that access to its BWA network 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 and the conditions listed in this Licence such that users can adequately access its BWA network:

Provided that the Licensee's obligation 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 11 - Information

- 11.1** The Licensee shall facilitate and ensure access to any information that the Authority may, in accordance with its functions at law, request.
- 11.2** The Licensee shall promptly provide to 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, or any other information that the Authority considers necessary to ensure compliance with this Licence and with the provisions of any law, or for statistical purposes.

Article 12 - Further Compliance

12.1 The Licensee shall comply with:

- (i) all laws;
- (ii) any orders, decisions or other directives, however so described, of the Authority;
- (iii) all the articles of this Licence; and
- (iv) all the commitments contained within Annex III of this Licence, which forms an integral part of this Licence, made by the Licensee in the course of the comparative evaluation selection procedure leading to the award of this Licence.

12.2 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.

Part III - Licence Termination and Variation

Article 13 - Termination

13.1 This Licence shall be automatically terminated and returned by the Licensee to the Authority, and the rights of the Licensee over the use of the frequency shall terminate immediately in any of the following cases:

- (a) upon the expiration of the term of the Licence;
- (b) upon renunciation by the Licensee;
- (c) upon revocation of this Licence in accordance with the articles of this Licence and, or of law;
- (d) upon insolvency, liquidation or bankruptcy of the Licensee; or
- (e) upon the winding up or dissolution of the Licensee.

- 13.2** The termination of this Licence on any of the grounds mentioned in paragraphs (b) to (e) of article 13.1 of this Licence will be without prejudice to the obligation of the Licensee to pay the full amount of the fee for the right of use of spectrum frequency that would have been paid by the Licensee throughout the whole duration of this Licence and fulfil any obligation arising prior to the said termination.
- 13.3** The termination of this Licence on any of the grounds mentioned in paragraphs (b) to (e) of article 13.1 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 roll-out and coverage obligations as mentioned in article 10 of this Licence.

Article 14 - Rights and Remedies of the Authority

- 14.1** The Authority shall, in accordance with its powers at law, have the power to, *inter alia*:
- (a) impose administrative fines on the Licensee for any non-compliance with the conditions of this Licence; and
 - (b) suspend or revoke this Licence for serious and repeated breaches of the conditions of this Licence.
- 14.2** The Authority may add to, or amend any of the terms and conditions of this Licence, including the 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, or when the need is felt to incorporate any commitments made by the Licensee in the course of the comparative evaluation selection procedure leading to the award of this Licence:

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 should inform the Licensee in advance and take into account its views if relevant impact is foreseeable on the Licensee's BWA network and circumstances so permit, granting a reasonable timeframe for the implementation of the relevant additions and, or amendments to the conditions.

14.3 If any article of this Licence is declared to be unenforceable by any court of law or tribunal however so described, such declaration will 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.

14.4 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 conditions of this Licence and, or with any legal requirements:

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

14.5 All the conditions under this Licence shall for the purposes of law be considered as decisions imposed by the Authority and any failure to abide with any such conditions, may, without prejudice to any other measures that the Authority may in accordance with law take, be sanctioned by the imposition of the appropriate administrative fines in accordance with law.

14.6 The Act, any other national laws and decisions of the Authority shall apply to the Licensee for all purposes and shall form an integral part of this Licence.



Signature



Name



Date

Annex I - Description of Radio Frequency Spectrum

The following is the radio frequency spectrum, the right of use of which is granted to the Licensee by virtue, and in accordance with, this Licence:

3467.75 MHz – 3488.75 MHz / 3567.75 MHz – 3588.75 MHz

Annex II – Coverage Requirements and Timeframes

The following indicates the percentage of access in coverage territory of the Licensee's network that shall be ensured by the Licensee within the timeframes set hereunder in accordance with article 10 of this Licence:

Coverage Territory	Timeframe (From Date of Issue of Licence)
50%	Within 12 months
99%	Within 24 months

**Annex III – Further Commitments made in the course of a comparative
evaluation selection procedure**

1. The Licensee shall make its BWA Network and Service available to other authorised providers of publicly available electronic communications services requesting access to such network and services on a wholesale basis upon fair and reasonable terms.