

Annex 5

Draft Wireless Telegraphy Act licence

WIRELESS TELEGRAPHY ACT 2006

LICENCE FOR THE TRANSMISSION OF TRIAL SMALL SCALE RADIO MULTIPLEX
SERVICE

Fee Nil

Licensee

Address of Licensee

Licence Number

Commencement date

Termination date

Fee payment date not applicable

Issue date:

1. General Terms and Conditions of the Licence

- 1.1. This Licence is granted under section 8 of the Wireless Telegraphy Act 2006 ("the Act") by the Office of Communications ("Ofcom") and authorises the Licensee to establish, install and use wireless telegraphy stations and/or wireless telegraphy apparatus described in the Schedule (hereinafter together called the "Radio Equipment") subject to the terms set out below and in Schedules 1, 2 and 3.
- 1.2. This Licence is issued to the Licensee for providing the trial small scale radio multiplex service described in this Licence and its Schedules.

2. Licence Term

- 2.1. This Licence shall enter into force on the Commencement Date and, subject to earlier revocation by Ofcom in accordance with condition 3 below, shall continue in force only until the Termination Date.

3. Licence Variation & Revocation

- 3.1. Pursuant to Schedule 1, paragraph 8 of the Act, Ofcom may not revoke this Licence before the termination date above under Schedule 1, paragraph 6 of the Act except:
 - a) at the request of, or with the consent of, the Licensee;
 - b) in accordance with condition 5 of this Licence;
 - c) if there has been a breach of any of the conditions of this Licence;
 - d) in accordance with Schedule 1, paragraph 8(5) of the Act;
 - e) if it appears to Ofcom to be necessary or expedient to revoke this Licence for the purposes of complying with a direction by the Secretary of State given to Ofcom under section 5 of the Act or under section 5 of the Communications Act 2003; or
 - f) for reasons related to the management of the radio spectrum, provided that in such case the power to revoke may only be exercised after one (1) month's notice is given in writing to the Licensee.
- 3.2. Where Ofcom exercise their power to revoke or vary the Licence in accordance with Schedule 1, paragraphs 6 and 7 of the Act, the Licensee shall be notified in writing or by a general notice. Any general notices will be posted on the Ofcom website¹.

4. Changes

- 4.1. This Licence may not be transferred.
- 4.2. The Licensee must give prior notice to Ofcom in writing of any proposed change of the Licensee's name or address from that recorded in the Licence.

5. Licence Fees

- 5.1. The Licensee shall pay to Ofcom such sum(s) as may be provided for in regulations made by Ofcom under section 12 and 13(2) of the Act:
 - a) on or before the date of issue of the Licence; and

¹ www.ofcom.org.uk

- b) on or before the payment date indicated in the table on the first page of this Licence for subsequent payments or such other date or dates as shall be notified in writing to the Licensee,

in accordance with those regulations and any relevant terms, provisions and limitations of the Licence, failing which Ofcom may revoke this Licence.

5.2. Any licence fee in respect of this Licence is, for the avoidance of doubt, exclusive of any VAT which may be payable.

5.3. The Licensee shall pay interest to Ofcom on any amount which is due under the terms of this Licence or provided for in any regulations made by Ofcom under sections 12 and 13(2) of the Act from the date such amount falls due until the date of payment, calculated with reference to the Bank of England base rate from time to time. In accordance with section 15 of the Act, any such amount and any such interest is recoverable by Ofcom.

5.4. If the Licence is surrendered or revoked, no refund, whether in whole or in part, of any amount which is due under the terms of this Licence or provided for in any regulations made by Ofcom under sections 12 and 13(2) of the Act will be made, except at the absolute discretion of Ofcom in accordance with any regulations made under the Act.

6. Radio Equipment Use

6.1. The Licensee must ensure that the Radio Equipment is constructed, established, installed and used only in accordance with the provisions specified in Schedule 1. Any proposal to amend any detail specified in Schedule 1 must be agreed with Ofcom in advance and implemented only after that Licence has been varied or reissued accordingly.

6.2. The Licensee must construct, establish and install the Radio Equipment and commence providing the radio multiplex service in accordance with the terms of this Licence and Schedules within 12 (twelve) weeks of the Commencement Date.

6.3. The Licensee must ensure that the Radio Equipment is operated in compliance with the terms of this Licence and used only by persons who have been authorised in writing by the Licensee to do so, and that such persons are made aware of, and of the requirement to comply with, the terms of the Licence.

6.4. The Licensee must include in the radio multiplex service the digital sound programme services and digital additional services set out in Schedule 3.

6.5. The Licensee must comply with:

- a) the restrictions and requirements set out in Schedule 1, which contains specific parameters for each transmission site;
- b) the restrictions and requirements set out in Schedule 2; and

- c) the Ofcom Digital Engineering Code, which contains general rules on site engineering, to be applied in the installation, testing and measurement of radio broadcast transmission systems.

7. Access and Inspection

7.1. The Licensee shall permit a person authorised by Ofcom:-

- a) to have access to the Radio Equipment; and
- b) to inspect this Licence and the Radio Equipment

at any and all reasonable times or, when in the opinion of that person an urgent situation exists, at any time, to ensure that the Radio Equipment is being used in accordance with the terms of this Licence.

8. Modification, Restriction and Closedown

8.1. A person authorised by Ofcom may require the Radio Equipment, or any part thereof, to be modified or restricted in use, or temporarily or permanently closed down immediately if in the opinion of the person authorised by Ofcom:

- a) a breach of a term of the Licence has occurred; and/or
- b) the use of the Radio Equipment is causing or contributing to undue interference to the authorised use of other radio equipment.

8.2. Ofcom may require the Radio Equipment, or any part thereof, to be modified or restricted in use, or temporarily closed down either immediately or on the expiry of such period as may be specified in the event of a national or local state of emergency being declared. Ofcom may only exercise this power after a written notice is served on the Licensee or a general notice applicable to holders of a named class of Licence is published.

9. Interpretation

9.1. In this Licence (including the Schedules);

- i. the establishment, installation and use of the Radio Equipment shall be interpreted as establishment and use of stations and installation and use of apparatus for wireless telegraphy as specified in section 8(1) of the Act;
- ii. the "Commencement Date" shall mean the date indicated in the table on the first page of this Licence;
- iii. the expression "digital sound programme service" has the meaning given in section 60 of the Broadcasting Act 1996 ("the 1996 Act");
- iv. the expression "digital additional service" has the meaning given in section 64 of the 1996 Act;
- v. the expression "frequencies" shall mean the frequencies specified in the range block 11A, 216.160-217.696 MHz and blocks 10B to 12D (210.880 to 230.000 MHz) , and a "frequency" shall mean any of the frequencies;

- vi. the term "interference" shall have the meaning given in section 115 of the Act;
- vii. the expression "inspect" shall include examine and test;
- viii. the expression "radio multiplex service" shall have the meaning given in section 258(2) of the Act;
- ix. the "Termination Date" shall mean the date indicated in the table on the first page of this Licence;
- x. the term "trial small scale radio multiplex service" shall mean a digital radio multiplex service established for the purpose of carrying out a technical trial adopting the parameters set out in Schedule 1; and
- xi. the expression "wireless telegraphy apparatus" and "wireless telegraphy station" shall have the meanings given in section 117 of the Act.

9.2. The Schedule to this Licence shall form part of this Licence together with any subsequent schedules which Ofcom may issue as a variation to this Licence at a later date.

9.3. The Interpretation Act 1978 shall apply to the Licence as it applies to an Act of Parliament.

SCHEDULE 1

TO WIRELESS TELEGRAPHY LICENCE NUMBER

Licence Category: Spectrum Access Licence [REDACTED]

1. Description of the Radio Equipment licensed

In this Licence, the Radio Equipment means any radio transmitting and receiving stations and/or any radio apparatus that transmits in accordance with the requirements of the Schedules to the Licence.

2. Co-ordination at Frequency and Geographical Boundries

The Licensee shall ensure that the Radio Equipment is operated in compliance with such co-ordination and sharing procedures as may be notified to the Licensee by Ofcom from time to time.

3. Cross-border co-ordination

The Licensee shall ensure that the Radio Equipment is operated in compliance with such cross-border co-ordination agreements and sharing procedures as may be notified to the Licensee by Ofcom from time to time.

4. Purpose of Use

The Licensee shall use the Radio Equipment and the frequencies for emitting wireless telegraphy messages for the purpose of providing the trial radio multiplex service described in this Licence and its Schedules.

5. Technical Requirements

The Licensee shall, in relation to the Radio Equipment, comply with the following technical requirements as Ofcom may direct:

- a) The Radio Equipment may only be used for wireless telegraphy from the transmitter(s) specified in Box A of Table 1 in the locations(s) specified in Box B of Table 1 below.
- b) The transmitters may operate on the frequency shown in Box C of Table 1 below.
- c) The class of emissions shall be as specified in Box D of Table 1 below. This is the symbol used to designate the permitted class of emission, having the meaning assigned to it in the International Telecommunication Convention and Radio Regulations.
- d) The radiating elements of the aerial used in connection with the Radio Equipment shall be at the height specified in Box E of Table 1 below.
- e) The polarisation shall be within that specified in Box F of Table 1 below. The maximum permitted radiated power in the azimuthal direction of greatest strength

shall not exceed that specified in Box G of Table 1 below.

- f) The horizontal radiation pattern of the antenna shall comply with the template specified in Box H of Table 1 below.
- g) All VHF (Band III) transmissions are required to meet minimum suppression levels in the aeronautical bands, as specified in the Radio Regulations of the International Telecommunication Union (Appendix 8-2). Further to this, the Licensee shall ensure that the output of the licensed transmitter complies with any additional suppression levels set out in Box I of Table 1, at the aeronautical frequencies specified there. Also shown in Box I of Table 1 are any other broadcast frequencies at the site that may contribute towards the subject interference mechanism and also require to meet the additional suppression requirements. The Licensee must liaise with the operators of those frequencies at the start of transmissions, or following any modifications to their equipment that might affect the radiated output on the aeronautical frequency(s) concerned.

6. Provision of information

During the period that this Licence is in force, unless consent has otherwise been given by Ofcom, the Licensee shall compile and maintain accurate records of the following details relating to the Radio Equipment:

- a) Progress reports during establishment of the trial service, including procurement of equipment and services, installation and site access;
- b) Event logs detailing all events relating to transmission and reception, including cause (if known), remedy and any breaks in transmission;
- c) Regular reports in the format and within the timeframe specified by Ofcom including such details as Ofcom may specify; and
- d) A final report on the functioning of the trial small scale radio multiplex service in such format as Ofcom may specify no later than six (6) weeks after DATE (the original termination date of this licence).
- e) Without prejudice to any information which Ofcom is required by law to publish or disclose, Ofcom may, from time to time, publish such extracts of the information set out in paragraphs 6(a) – 6(d) above as it sees fit.

NOTES TO SCHEDULE 1

- (A) Is the recognised site name from which the assignment is to be radiated. There may be more than one site name describing the same location, also one site name may describe more than one mast.
- (B) Is the permitted location, given in Ordnance Survey coordinates, containing the mast from which the assignment is to be radiated.

- (E) Is the permitted height of the radiating elements of the antenna above local ground level and ignores the height of any buildings upon which masts may be mounted.
- (G) Radiated power is specified here as the effective radiated power (erp), as the sum of the maxima permitted in each plane of polarisation, in respect of VHF transmissions.

Table 1: Table of broadcasting station/s for a trial small scale radio multiplex service

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)
Transmitter station name	Co-ordinates	Frequency (MHz)	Emission class	Aerial height (metres)	Polarisation	Maximum effective radiated power (watts)	Horizontal pattern template	Additional suppression requirements

SCHEDULE 2

TO WIRELESS TELEGRAPHY LICENCE NUMBER **XXX**

The restrictions and requirements set out in this Schedule 2 apply pursuant to conditions 6.3(b) of the Licence.

1. Local authorities and political bodies

- (1) Subject to sub-paragraph (2), the following persons are not permitted to provide a trial small scale radio multiplex service under this Licence:
- (a) a local authority;
 - (b) a body whose objects are wholly or mainly of a political nature;
 - (c) a body affiliated to a body falling within paragraph (b);
 - (d) an individual who is an officer of a body falling within paragraph (b) or (c);
 - (e) a body corporate which is an associate of a body corporate falling within paragraph (b) or (c);
 - (f) a body corporate in which a body falling within any of paragraphs (a) to (c) and (e) is a participant with more than a 5 per cent interest;
 - (g) a body corporate which is controlled by a body corporate falling within paragraph (f);
 - (h) a body which is controlled by a person falling within any of paragraphs (a) to (e) or by two or more such persons taken together; and
 - (i) a body corporate in which a body falling within paragraph (h), other than one which is controlled:
 - (i) by a person falling within paragraph (d), or
 - (ii) by two or more such persons taken together, is a participant with more than a 5 per cent interest.
- (2) Where a service is provided exclusively for the purposes of carrying out the functions of a local authority under section 142 of the Local Government Act 1972 (provision by local authorities of information relating to their activities), a person is not permitted to provide a radio multiplex service by virtue of sub-paragraph (1) in relation to a licence to provide that service only if he would not be permitted to do so disregarding paragraph (a) of that sub-paragraph.

2. Religious bodies

- (1) The following persons are not permitted to provide a radio multiplex service:
- (a) a body whose objects are wholly or mainly of a religious nature;
 - (b) a body which is controlled by a body falling within paragraph (a) or by two or more such bodies taken together;
 - (c) a body which controls a body falling within paragraph (a);
 - (d) a body corporate which is an associate of a body corporate falling

- within paragraph (a), (b) or (c);
- (e) a body corporate in which a body falling within any of paragraphs (a) to (d) is a participant with more than a 5 per cent interest;
- (f) an individual who is an officer of a body falling within paragraph (a); and
- (g) a body which is controlled by an individual falling within paragraph (f) or by two or more such individuals taken together.

3. Undue influence

- (1) A person is not permitted to provide a radio multiplex service if in the opinion of Ofcom:
 - (a) any relevant body is, by the giving of financial assistance or otherwise, exerting influence over the activities of that person, and
 - (b) that influence has led, is leading or is likely to lead to results which are adverse to the public interest.
- (2) In sub-paragraph (1) "relevant body" means a person falling within paragraph 1(1)(a) to (f) or (i) above or a body which is controlled:
 - (i) by a person falling within paragraph 1(1)(a) to (e) above, or
 - (ii) by two or more such persons taken together.

4. Broadcasting bodies

- (1) The following persons are not permitted to provide a radio multiplex service under this Licence:
 - (a) The BBC; and
 - (b) S4C.

5. General provision of information to Ofcom

- (1) The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it under the Act (but without prejudice to the generality of the foregoing):
 - (a) a declaration as to its corporate structure in such form and at such times as Ofcom shall specify; and
 - (b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground not permitted to provide a radio multiplex service by virtue of any of the provisions within paragraphs 1, 2 and 3 of this Schedule 2.

6. Changes

- (1) Where the Licensee is a body corporate, the Licensee shall notify Ofcom:
 - (a) of proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in

paragraph 5(2) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable where such proposals would constitute a change in the persons having control over the Licensee within the meaning of paragraph 8 below; and

- (b) of changes, transactions or events affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of the Licensee becoming aware of any such change, transaction or event and where such change, transaction or event would constitute a change in the persons having control over the Licensee within the meaning of paragraph 8 below.

(2) The Licensee shall

- (a) notify Ofcom within 28 days if any person:
 - (i) holding or being beneficially entitled to 50 per cent. of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or
 - (ii) possessing 50 per cent. of the voting power in the Licensee or any body corporate which controls the Licensee,

enters into any arrangement with any other participant in the Licensee or in any such body corporate which controls the Licensee as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

(b) For the purposes of paragraph 5(2)(a):

- (i) "arrangement" includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable;
- (ii) a person shall be treated as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and as possessing any voting power possessed by such a body corporate.

7. Prohibition on conveyance of unlicensed services

(1) The Licensee shall ensure that:

- (a) All digital sound programme services broadcast under this Licence are provided by the holder of a local digital sound programme service licence under section 60 of the 1996 Act or by the BBC;
- (b) All digital additional services broadcast under this Licence are provided by the holder of a licence under section 64 of the 1996 Act or by the BBC.

8. Interpretation

(1) In this Schedule 2:

"control"

- (a) in relation to a body corporate, shall be construed in accordance with subparagraph (4), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by whatever means and whether directly or indirectly, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

"equity share capital" has the same meaning given in section 548 of the Companies Act 2006;

"local authority"

- (a) in relation to England, means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;
- (b) in relation to Wales, means a county council or county borough council;
- (c) in relation to Scotland, means a council constituted under section 2 of the Local Government etc (Scotland) Act 1994; and
- (d) in relation to Northern Ireland, means a district council;

"participant", in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body;

(2) For the purpose of determining the persons who are the associates of a body corporate for the purposes of this Schedule 2:

- (a) an individual shall be regarded as an associate of a body corporate if he is a director of that body corporate, and
- (b) a body corporate and another body corporate shall be regarded as associates of each other if one controls the other or if the same person controls both.

(3) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule 2, the following persons shall be regarded as associates of each other, namely:

- (a) any individual and that individual's husband or wife or civil partner and any relative, or husband or wife or civil partner of a relative, of that individual or of that individual's husband or wife or civil partner;
- (b) any individual and any body corporate of which that individual is a director;
- (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;

- (d) persons carrying on business in partnership and the husband or wife or civil partner and relatives of any of them;
- (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband and references to a civil partner shall include a former civil partner and a reputed civil partner.

- (4) For the purposes of this Schedule 2 a person controls a body corporate if:
 - (a) he holds, or is beneficially entitled to, more than 50 per cent of the equity share capital in the body, or possesses more than 50 per cent of the voting power in it; or
 - (b) although he does not have such an interest in the body, it is reasonable, having regard to all the circumstances, to expect that he would (if he chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with his wishes; or
 - (c) he holds, or is beneficially entitled to, 50 per cent of the equity share capital in that body, or possesses 50 per cent of the voting power in it, and an arrangement exists between him and any other participant in the body as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.
- (5) For the purposes of sub-paragraph 7(4)(c):
 - (a) "arrangement" includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable, and
 - (b) a person shall be treated:
 - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and
 - (ii) as possessing any voting power possessed by such a body corporate.
- (6) For the purposes of any provision of this Schedule 2 which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph 7(4) unless they are acting together in concert.

- (7) In this Schedule 2 any reference to a participant with more than a 5 per cent interest in a body corporate is a reference to a person who:
- (a) holds or is beneficially entitled to more than 5 per cent of the shares in that body, or
 - (b) possesses more than 5 per cent of the voting power in that body.
- (8) Sub-paragraph 7(7) shall have effect subject to the necessary modifications in relation to other references in this Schedule:
- (a) to an interest of more than a specified percentage in a body corporate, or
 - (b) to an interest of a specified percentage or more in a body corporate.

8.

- (1) Subject to sub-paragraph 7(2) any reference in paragraph 7(1) above to a person:
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
 - (b) possessing voting power, or any amount of the voting power, in a body corporate,
- is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (2) For the purposes of this Schedule, a person's holding of shares, or possession of voting power, in a body corporate shall be disregarded if, or to the extent that:
- (a) he holds the shares concerned
 - (i) as a nominee,
 - (ii) as a custodian (whether under a trust or by a contract), or
 - (iii) under an arrangement pursuant to which he has issued, or is to issue, depositary receipts, in respect of the shares concerned, and
 - (b) he is not entitled to exercise or control the exercise of voting rights in respect of the shares concerned.
- (3) For the purposes of sub-paragraph 7(2)(b):
- (a) a person is not entitled to exercise or control the exercise of voting rights in respect of shares if he is bound (whether by contract or otherwise) not to exercise the voting rights, or not to exercise them otherwise than in accordance with the instructions of another, and
 - (b) voting rights which a person is entitled to exercise or of which he is entitled to control the exercise only in certain circumstances shall be taken into account only when those circumstances have arisen and for as long as they continue to obtain.

9.

- (1) For the purposes of this Schedule the following persons shall be treated as connected with a particular person:
- (a) a person who controls that person,
 - (b) an associate of that person or of a person falling within paragraph (a), and

(c) a body which is controlled by that person or by an associate of that person.

SCHEDULE 3

TO WIRELESS TELEGRAPHY LICENCE NUMBER

[APPLICATION.AP_NAME] CONDITIONS RELATING TO DIGITAL SOUND PROGRAMME SERVICES OR DIGITAL ADDITIONAL SERVICES

The Licensee shall ensure that the following digital sound programme services or digital additional services are broadcast on the trial small scale radio multiplex service with effect from the Commencement Date, or such other date as may be agreed between the Licensee and Ofcom and throughout the Licence Period during the hours stated below. The identity of the digital sound programme service provider or digital additional service provider forms part of the description of the licensed trial small scale radio multiplex service under this Licence.

DSPS/DAS Provider	Name of service	Hours of broadcast