

LICENCE No. [number]

**OFFICE OF COMMUNICATIONS DIGITAL TELEVISION ADDITIONAL SERVICES LICENCE**

**LICENCE GRANTED TO [NAME OF LICENCE HOLDER] TO PROVIDE DIGITAL TELEVISION ADDITIONAL SERVICES UNDER PART I OF THE BROADCASTING ACT 1996 ON AN APPLICATION COMPLYING WITH SECTION 25 OF THE BROADCASTING ACT 1996**

## THE LICENCE

1. The Office of Communications ("Ofcom") in exercise of the powers conferred upon it by Part I of the Broadcasting Act 1996, as amended by the Communications Act 2003, hereby grants [Licensee] (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule (the "Conditions"), to provide the digital television additional services specified in the Annex (the "Licensed Services").
2. This Licence is granted on the basis of the Licensee's representations that the statements set out in the declaration as to his affairs made by the Licensee on [date] are true to the best of the Licensee's knowledge and belief.
3. The grant date of this licence is [date] and is the day this licence is first granted.
4. The commencement date of this Licence is [date] (the "Commencement Date"), and is the day this Licence comes into force. Subject to the Conditions, this Licence shall remain in force until it is surrendered by the Licensee or revoked by Ofcom in accordance with the Conditions of this Licence.
5. The Schedule and the Annex to this Licence form part of it.

SIGNED FOR AND ON BEHALF OF OFCOM BY

[Authorised signature]

[Position]

[date]

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## SCHEDULE

### Part 1: DEFINITIONS AND INTERPRETATION

#### **1. Definitions and interpretation**

(1) In this Licence unless the context otherwise requires:

the “**1990 Act**” means the Broadcasting Act 1990 (as amended);

the “**1996 Act**” means the Broadcasting Act 1996 (as amended);

references to any “**accounting period**” of the Licensee shall be interpreted in accordance with Section 19(9) of the 1990 Act;

references to “**all relevant codes and guidance**” means all codes and guidance referred to in this Licence, the 1990 Act, the 1996 Act or the Communications Act

the “**Audiovisual Media Services Directive**”, means Directive 2010/13/EU, as amended by Directive 2018/1808/EU;

“**Code on Electronic Programme Guides**” means the code giving guidance as to the practices to be followed in the provision of electronic programme guides as drawn up and from time to time revised by Ofcom in accordance with Section 310 of the Communications Act;

“**Commencement Date**” means the date referred to in Clause 3 of the Licence;

the “**Communications Act**” means the Communications Act 2003;

“**digital television additional service**” has the meaning given to “digital additional service” in Section 24(1) of the 1996 Act;

“**ECTT Party**” means a state that has signed and ratified the European Convention on Transfrontier Television;

“**electronic programme guide**” and “**EPG**” mean a service which:

(a) is or is included in a digital television additional services; and

(b) consists of:

(i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and

(ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

the “**European Convention on Transfrontier Television**” means the Council of Europe Convention on Transfrontier Television which was opened for signature at Strasbourg on 5th

May 1989, as amended by the Protocol which was opened for signature at Strasbourg on 1st October 1998;

“**Fairness Code**” means the code giving guidance as to principles to be observed and practices to be followed in connection with the avoidance of unjust or unfair treatment and unwarranted infringement of privacy in the provision of television and radio services as drawn up and from time to time revised by Ofcom in accordance with Section 107 of the 1996 Act and paragraph 53 of Schedule 18 to the Communications Act;

“**fairness complaint**” shall be interpreted in accordance with Section 110(4) of the 1996 Act;

“**international obligation of the United Kingdom**” has the meaning given to it in Section 405 of the Communications Act;

“**Ofcom**” means the Office of Communications as defined in the Office of Communications Act 2002;

“**programme**” unless otherwise stated includes an advertisement and anything included in the Licensed Service;

“**PRS**” means premium rate services;

“**qualifying programmes**” means programmes of such description as the Secretary of State may pursuant to Section 309(2)(a) of the Communications Act from time to time by order specify as describing the programmes that are to be qualifying programmes for the purposes of Section 309(1) of the Communications Act;

“**qualifying revenue**” means, in relation to any accounting period of the Licensee, the aggregate of:

- (a) all payments received or to be received by them or by any connected person:
  - (i) in consideration of the inclusion in the Licensed Service in that period of advertisements or other programmes, or
  - (ii) in respect of charges made by them in that period for the reception of programmes included in the Licensed Service; and
- (b) the amount of any direct or indirect financial benefit derived by the Licensee or any connected person from payments made by any person by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with any programme included in the Licensed Service,

ascertained in accordance with Section 19(2) to (6) of the 1990 Act and the Ofcom statement of principles (in force pursuant to paragraph 37 of Schedule 18 to the Communications Act) as from time to time revised by Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule 7 thereto;

“**regulated EPG**” means an electronic programme guide which:

- (a) is provided, under this Licence, by a person who was providing an electronic programme guide under this Licence immediately before exit day,
- (b) is provided by a person designated by the Secretary of State by regulations or by a person having a prescribed connection with a person so designated, or
- (c) falls within a prescribed description;

**“relevant international obligations”** means international obligations of the United Kingdom that are notified to Ofcom by the Secretary of State for the purposes of securing compliance under Condition 14;

**“Standards Code”** means the code or codes governing standards for the content of programmes, including standards and practice in advertising and in the sponsoring of programmes included in television and radio services as drawn up and from time to time revised by Ofcom in accordance with Section 319, 322 and any international obligation specified in a direction given by the Secretary of State under section 335 of the Communications Act (and in the event that such code or codes has not or have not been drawn up by Ofcom or is not or are not yet in force , “Standards Code” shall be interpreted in accordance with paragraphs 41 and 43 of Schedule 18 to the Communications Act);

**“Standards Complaint”** means a complaint about the observance of standards set under Section 319, 322 and/or 335 of the Communications Act;

- (2) The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it was an Act of Parliament.
- (3) Any word or expression used in this Licence shall unless otherwise defined herein and/or the context otherwise requires has the same meaning as it has in the 1990 Act, the 1996 Act or the Communications Act, as the case may be.
- (4) For the purposes of interpreting this Licence headings and titles to any Condition shall be disregarded.
- (5) The statutory references immediately preceding the conditions are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) This Licence shall be governed by English law.

## PART 2: GENERAL CONDITIONS

### **2. Provision of digital television additional services by the Licensee**

#### *Section 25 of the 1996 Act*

- (1) The Licensee is hereby authorised to provide the Licensed Service specified in the Annex from the Commencement Date for so long as the Licence remains in force.
- (2) In providing the Licensed Service, the Licensee shall supply the following information to the users of the Licensed Service:
  - (a) the name of the Licensee;
  - (b) the address of the Licensee;
  - (c) the Licensee's electronic address;
  - (d) confirmation that the service falls under the UK's jurisdiction;
  - (e) the name, address and electronic address of Ofcom as well as the name, address and electronic address of any appropriate co-regulator of Ofcom for any purpose in relation to the Licensee or the Licensed Service, as appropriate; and
  - (f) Only if the Licensed Service is a programme service that is receivable in an ECTT Party other than the United Kingdom:
    - (i) The composition of the Licensee's capital; and
    - (ii) The nature, purpose and mode of financing of the programming service the broadcaster is providing or intends to provide.

### **3. Fees**

#### *Section 4 (1)(b), (3) and (4) of the 1996 Act*

- (1) The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 4(3) of the 1996 Act, details of which, and of any revision thereof, Ofcom shall from time to time publish in such manner as it considers appropriate.
- (2) Payment of the fees referred to in Condition 3(1) shall be made in such manner and at such times as Ofcom shall specify.

*Section 4(1)(c) of the 1996 Act*

- (3) The Licensee shall within 28 days of a request therefore provide Ofcom with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 3(1) above.

**4. V.A.T.**

*Section 4(1)(b) and (d) of the 1996 Act*

- (1) The Licensee shall pay any V.A.T. on any supply for V.A.T. purposes by Ofcom under this Licence on presentation of a valid VAT invoice.
- (2) Without limitation to Condition 4(1) above, all sums payable by the Licensee are exclusive of V.A.T. which shall be paid by the Licensee in addition to such sums.
- (3) In this Condition 4 “V.A.T.” means value added tax chargeable under the Value Added Tax Act 1994, including any amendment to or replacement of that Act, and/or any similar tax.

**5. General standards and requirements**

*Sections 319, 320 and 325(1) of the Communications Act*

**5(A). Requirements for the handling of communications from viewers**

The Licensee shall ensure that the provisions of the Standards Code are observed in the provision of the Licensed Service.

- (1) The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee’s contractors or agents (together here described as “the Licensee”) where such communication is publicised in programmes. “Communication” includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee.

(2)

- (a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:
- (i) reasonable skill and care is exercised by the Licensee in the selection of the means of communication and in the handling of communications received;
  - (ii) voting, competitions, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries; and
  - (iii) publicity in programmes for voting, competitions, games or similar schemes is not materially misleading.
- (b) In addition to the requirements in sub-paragraph 2(a), the Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.

(3)

- (a) The Licensee shall implement and maintain appropriate compliance procedures to ensure arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee fulfil all the requirements set out in paragraph 2 above.
- (b) Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures include a system of verification by an appropriate independent third party („the third party“), in accordance with the following requirements:
- (i) Verification shall include confirmation by the third party that an end-to-end analysis of the technical and administrative systems to be used for the receipt and processing of votes and competition entries from members of the public has been conducted and that such systems fulfil all the requirements set out in paragraph 2 above. All such systems and the analysis of such systems must be fully documented.

- (ii) Verification shall include appropriately regular reviews by the third party of individual programmes. Such reviews must track all votes or competition entries through all stages from receipt, and the results of each review must be fully documented.
- (iii) The Licensee shall ensure that a Director of the Board (or, where there is no Board, an appropriate equivalent) („the designated Director) has specific responsibility for verification.
- (iv) The Licensee shall ensure that the third party provides reports regarding analyses of processes (as specified under sub-paragraph 3(b)(i)) and reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)) to the designated Director. If significant irregularities or other problems are discovered, the Licensee shall ensure that these are reported forthwith to Ofcom.
- (v) The Licensee shall provide forthwith and in an appropriate form any information requested by Ofcom regarding verification.
- (vi) The Licensee shall retain for at least two years all relevant data regarding votes and competition entries from callers by means of Controlled Premium Rate Services and all documentation regarding the verification of its systems (as specified under sub-paragraph 3(b)(i)) and the reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)).
- (vii) The Licensee shall publish annually a statement signed by the designated Director confirming that he is satisfied that the Licensee has in place suitable procedures to fulfil the requirements of paragraph 3(b) and confirming the name of the third party engaged by the Licensee to fulfil the requirements of paragraph 3(b).

#### **5(B). ECTT Standards**

- (1) This condition applies if, and throughout the period during which, the Licensed Service:
  - (a) can be received by the general public in all parts of another ECTT Party using standard consumer equipment; and
  - (b) can be accessed in the relevant Party by means of an electronic programme guide which—
    - (i) is licensed or otherwise regulated under the law of the relevant Party, or
    - (ii) if the relevant Party is a Party other than the United Kingdom whose law does not regulate the provision of electronic programme guides, is provided by a person whose head office is in the relevant Party.

- (2) If this condition applies, the Licensee shall not broadcast advertising and tele-shopping which are specifically and with some frequency directed to audiences in a single ECTT Party other than the UK, in a way which that other ECTT Party has determined contravenes the rules of that ECTT Party, unless the rules concerned establish a discrimination between advertising and teleshopping transmitted by broadcasters within and outside the jurisdiction of that ECTT Party.

## **6. Advertising and sponsorship standards and requirements**

### *Section 322 of the Communications Act*

- (1) The Licensee shall comply with all directions, whether general or specific and/or qualified or unqualified, given to them by Ofcom, with respect to:
- (a) the maximum amount of time to be given over to advertisements in any hour or other period;
  - (b) the minimum interval which must elapse between any two periods given over to advertisements;
  - (c) the number of such periods to be allowed in any programme or in any hour or day; and
  - (d) the exclusion of advertisements from a specified part of the Licensed Service, which directions may make different provision for different parts of the day, different parts of the week, different types of programmes or for other differing circumstances.

### *Sections 325(4) and (5) and 321(4) of the Communications Act*

- (2) The Licensee shall comply with all directions given to them by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:
- (a) the exclusion from the Licensed Service of a particular advertisement, or its exclusion in particular circumstances;
  - (b) the descriptions of advertisements and methods of advertising to be excluded from the Licensed Service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the Licensed Service (whether generally or in particular circumstances).

### *Section 121 to 123 and 321(4) of the Communications Act*

- (3) The Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any such order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.

*Section 321(1) and 321(4) of the Communications Act*

- (4) The Licensee shall ensure that the provisions of the Standards Code set to secure the objectives in Section 319(2)(a) and (g) to (j) of the Communications Act and relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Licensed Service.

*Section 321(4) of the Communications Act*

- (5) The Licensee shall supply to Ofcom details, in whatever form and within such period as Ofcom may reasonably require, of any particular advertisement or any class of advertisement specified by Ofcom or any sponsored programme which Ofcom shall from time to time request.
- (6) This Condition shall only apply to the Licensed Service to the extent that it is available for reception by members of the public.

**7. Electronic Programme Guides**

*Section 311(1) of the Communications Act*

- (1) To the extent that the Licensed Service consists in or includes an EPG the Licensee shall ensure that the provisions of the Code on Electronic Programme Guides are observed in the provision of the Licensed Service.
- (2) To the extent that the Licensed Service consists in or includes a Regulated EPG, the Licensee shall secure that the only television programme services that are listed or promoted by, or which can be accessed through, the guide are television programme services that:
  - (a) are provided by or under a broadcasting licence granted by Ofcom; or
  - (b) do not fall, in pursuance of section 211(1) of the Communications Act, to be regulated by Ofcom.

## **8. Retention and production of recordings**

*Section 325(1) and (2) of the Communications Act*

- (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of the Licensed Service's broadcast output in sound and vision. If the Licensed Service is an EPG, it may instead adopt procedures acceptable to Ofcom for the retention and production of the information contained in the EPG in human-readable form. The EPG data should be clearly visible as well as the relevant channel, time, date and region.
- (2) In particular, the Licensee shall:
  - (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 90 days from the date of its inclusion therein. If the Licensed Service is an EPG, it may instead make and retain or arrange for the retention of the information contained in the EPG in human-readable form for the same period;
  - (b) at the request of Ofcom forthwith produce to Ofcom any such recording or information for examination or reproduction; and
  - (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which they are able to produce to it.

## **9. General provision of information to Ofcom**

*Section 4(1)(c), 5(1)(a) and 19 of the 1990 Act Section 143(5) of the 1996 Act*

- (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 by or under the 1990 Act, the 1996 Act, or the Communications Act and in particular (but without prejudice to the generality of the foregoing):
  - (a) a declaration as to its corporate structure (or the equivalent if the Licensee is not a body corporate) in such form and at such times as Ofcom shall specify;
  - (b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee on any ground is a disqualified person by virtue of any of the provisions in Section 143(5) of the 1996 Act and/or Schedule 2 to the 1990 Act or contravenes requirements imposed by or under Schedule 14 of the Communications Act;
  - (c) income and expenditure returns and supplementary annexes (including, without limitation, such information as Ofcom shall require from time to time in relation to

the shares of multiplex revenue attributable to the Licensee (as determined in accordance with Section 15 of the 1996 Act) in relation to such accounting periods as Ofcom may specify;

- (d) annual statements of their multiplex revenue in respect of each entire accounting period of theirs in such form as Ofcom shall require.

## **10. Notifications to Ofcom**

*Section 26(2) of the 1996 Act (see also paragraph 95 of Part 2, Schedule 15 to the Communications Act)*

(1) The Licensee shall:

- (a) on entering into any agreement with the provider of a television multiplex service or general multiplex service for the provision of digital television additional services provided under this Licence to be broadcast by means of that provider's service, notify Ofcom in such form and manner as Ofcom may from time to time require:
  - (i) of the identity of the service by means of which it will be broadcast;
  - (ii) of the characteristics of the digital television additional services to which the agreement relates;
  - (iii) of the period during which the digital television additional services will be provided; and
  - (iv) where under the agreement the Licensee will be entitled to the use of a specified amount of digital capacity, of that amount;
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in Condition 10(1)(a) above, notify Ofcom of the variation so far as relating to those matters; and
- (c) where the Licensee is providing a digital television additional services under this Licence to the provider of a television multiplex or general multiplex service in accordance with such an agreement as is mentioned in Condition 10(1)(a) above but intends to cease doing so, notify Ofcom of that fact and of the date on which he intends to cease doing so.

*Section 5(5) of the 1996 Act*

(2) The Licensee shall inform Ofcom forthwith in writing if:

- (a) the Licensee becomes aware that any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of reconstruction or amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom) in accordance with Condition 13 below) or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed in respect of the Licensee, or in respect of all or any part of their assets; or
- (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with their creditors; save for the purposes of amalgamation or reconstruction whilst the Licensee is solvent; or
- (c) the Licensee permits an execution to be levied against their assets and/or chattels and allows such execution to remain outstanding for more than 14 days; or
- (d) the Licensee becomes aware that any person having control of the Licensee does or is subject to any of the events specified in Condition 10(2)(a) to (c) above; or
- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 10(2)(a) to (d) above occurs under the laws of any applicable jurisdiction.

*Sections 3(6) and (7) and 4(1)(c) of the 1996 Act*

- (3) The Licensee shall inform Ofcom when final judgment is awarded against them in any court proceedings brought against them in respect of the inclusion in the Licensed Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secret Acts or of any statutory enactment or regulation for the time being in force or a criminal offence or contempt of Court or breach of Parliamentary privilege.
- (4) The Licensee shall inform Ofcom if he or any individual having control over them within the meaning of paragraph 1(3), Part I of Schedule 2 to the 1990 Act, is sentenced to a term of imprisonment (including a suspended term) on conviction of a criminal offence.

*Article 1(3)(b) of the Audiovisual Media Services Directive*

- (5) The Licensee shall notify Ofcom of any change that may affect the criteria under which the Licensed Service falls under the jurisdiction of the UK as soon as reasonably practicable.

(6) The Licensee shall notify Ofcom if there is a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.

In particular (but without prejudice to the generality of the foregoing) the Licensee shall notify Ofcom as soon as reasonably practicable:

- (a) of any changes to persons that hold a 'majority interest' in the Licensee;
- (b) of any changes to persons who exercise 'de facto' control over the Licensee; and
- (c) if any person in control of the Licensee enters into a 'control arrangement'.

(7) For the purposes of Condition 13(6)(a) to (c):

- (a) a person holds a 'majority interest' where they hold, or are beneficially entitled to, more than 50 per cent of the equity share capital, or possess more than 50 per cent of the voting power in the company;
- (b) a person can exercise 'de facto control' where they do not have a majority interest, but are regarded as controlling a company where it is reasonable, having regard to all the circumstances, to expect that they would (if they 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 their wishes;
- (c) a person in control of the Licensee enters into a 'control arrangement' where they hold, or are beneficially entitled to, 50 per cent of the company's equity share capital, or possess 50 per cent of the voting power in the company, and have an arrangement with any other participant in the company as to how any voting power possessed by either of them is to be exercised or not. 'Arrangement' includes any agreement or arrangement whether or not it is, or is intended to be, legally enforceable; and
- (d) 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 they control or to which such a body corporate is beneficially entitled, and
  - (ii) as possessing any voting power possessed by such a body corporate.

## **11. Fair and effective competition**

### *Section 316 of the Communications Act*

- (1) The Licensee shall:
  - (a) not enter into or maintain any arrangement, or engage in any practice, which is prejudicial to fair and effective competition in the provision of licensed services or of connected services; and
  - (b) comply with any code or guidance for the time being approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or of connected services; and
  - (c) comply with any direction given by Ofcom to the Licensee for that purpose.
  
- (2) In this Condition 11 “connected services” and “licensed service” have the meanings given to them in Section 316(4) of the Communications Act.

## **12. Compliance with ownership restrictions**

### *Section 5(1) and (2) of the 1996 Act*

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on them by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that such requirements apply to them.
  
- (2) The Licensee shall comply with any direction of Ofcom requiring them to take, or arrange for the taking of, any steps specified by Ofcom for the purposes of complying with the requirements referred to in Condition 12(1) above.
  
- (3) The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee’s obligations imposed on them by or under Schedule 2 to the 1990 Act or a contravention of the requirements imposed by or under Schedule 14 to the Communications Act immediately upon becoming aware of such circumstances or events.

## **13. Transferability of the Licence**

### *Sections 3(6) & (7) of the 1996 Act*

This Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person or persons to whom it is proposed to transfer the Licence would be in a position to comply with all of the Conditions.

## **14. Compliance**

*Section 4(1)(a) and 4(2) of the 1990 Act and Sections 335 and 336 of the Communications Act*

- (1) The Licensee shall comply with any direction given to them by Ofcom in respect of any matter, subject or thing which direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee by or under the 1990 Act, the 1996 Act, the Communications Act or any relevant international obligations and all relevant codes and guidance.

*Section 4(1)(a), (c) and (d) of the 1990 Act and Sections 321(4), 325(1) and 335 of the Communications Act and Article 10 of the European Convention of Transfrontier Television*

- (2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Licensed Service for the purposes of ensuring that programmes included in the Licensed Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance. The Licensee shall, without prejudice to the generality of the foregoing, ensure that:
  - (a) there are sufficient persons involved in providing the Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance and that such persons are able to ensure compliance with such requirements on a day to day basis;
  - (b) adequate arrangements exist for the immediate implementation of such general and specific directions as may from time to time be given to the Licensee by Ofcom;
  - (c) if Condition 5(B) applies, the requirements of the European Convention on Transfrontier Television are complied with where practicable, having regard to the provisions set out in Article 10 of the Treaty and any guidance issued and from time to time revised by Ofcom for the purpose of giving effect to those provisions;
  - (cc) the quotas set out in Articles 16(1) and (2), 17 and 18 of the Audiovisual Media Services Directive are complied with where practicable;
  - (d) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine;
  - (e) that in each department of the Licensee where any of the procedures referred to in this Condition are to be implemented the member of staff responsible is of sufficient seniority to ensure immediate action and that issues relating to compliance may be brought where necessary directly before senior management for consideration.

- (3) The Licensee shall supply Ofcom with details of the procedures (and of any revision of such procedures) adopted by them and required to be observed by those involved in providing the Licensed Service for the purposes of Condition 14(2) above.

*Section 335(4) of the Communications Act*

- (4) For the purposes of this Condition and Section 335 of the Communications Act, all Conditions of this Licence that are included by virtue of Part 3, Chapter 4 (Regulatory provisions) of the Communications Act are in addition to and have effect subject to any Conditions included by virtue of Section 335 of the Communications Act (Conditions securing compliance with international obligations).

*Section 4(1)(c) of the 1996 Act*

- (5) The Licensee shall supply to Ofcom post-transmission data in relation to the programmes included in the Licensed Service covering such information and in such form as Ofcom shall specify, to be delivered to Ofcom as soon after transmission of the programmes to which they relate as Ofcom may require.

**15. Government directions and representations**

*Sections 335 and 336 of the Communications Act*

- (1) The Licensee shall if so directed by Ofcom:
  - (a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice given pursuant to Section 336(1) of the Communications Act; or
  - (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336(5) of the Communications Act.
- (2) The Licensee may when including an announcement in the Licensed Service in accordance with Condition 15(1)(a) above indicate that the announcement is made in pursuance of a direction by Ofcom.
- (3) The Licensee shall comply with all relevant Conditions of this Licence and any directions given to them by Ofcom pursuant to a notification to Ofcom by the Secretary of State for the purpose of enabling His Majesty's Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (4) Where Ofcom:

- (a) has given the Licensee a direction to the effect referred to in Condition 15(1)(b) above;  
or
  - (b) in consequence of the revocation by the Secretary of State of the notice giving rise to the issuing of such a direction, has revoked that direction or where such a notice has expired, the Licensee may include in the Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (5) Paragraphs (1), (2) and (4) of this Condition 15 shall only apply to the Licensed Service to the extent that it is available for reception by members of the public.

### **16. Standards complaints**

*Section 325(1)(b) and 328(1) of the Communications Act*

- (1) The Licensee shall ensure that procedures acceptable to Ofcom for the handling and resolution of Standards Complaints in respect of programmes included in the Licensed Service are established and maintained and shall ensure that such procedures are duly observed.
- (2) The Licensee shall for a period of at least 12 months keep a written record of any complaints referred to in Condition 16(1) above, and a written record of any response given by the Licensee in relation to any such complaint and shall make such records available to Ofcom at such times as Ofcom may reasonably require.

### **17. Fairness and privacy complaints**

*Sections 115 and 119 of the 1996 Act (see also Section 327 of the Communications Act)*

- (1) The Licensee shall comply with such directions and requests for information as may be given to them by Ofcom following receipt by them from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:
  - (a) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in their possession;
  - (b) make suitable arrangements for enabling the complainant to view any such recording, or any specified part of it, to which the complaint relates if and so far as such a recording is in their possession;

- (c) provide Ofcom and the complainant with a transcript of so much of the programme, or any specified part of it, to which the complaint relates, as consisted of speech, if and so far as the Licensee is able to do so;
- (d) provide Ofcom and the complainant with copies of any documents in the possession of the Licensee that are originals or copies of any correspondence between the Licensee and the person affected or the complainant in connection with the complaint;
- (e) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and to be in the possession of the Licensee;
- (f) furnish to Ofcom and the complainant a written statement in answer to the complainant;
- (g) attend Ofcom and assist it in its consideration of the complaint;
- (h) take such steps as he reasonably can to ensure compliance with any request made by Ofcom to any other person under Section 115(7) of the 1996 Act.

*Sections 119 and 120 of the 1996 Act (see also Section 327 of the Communications Act)*

- (2) The Licensee shall comply with such directions as may be given to them by Ofcom to publish, in such manner, and within such period as may be specified by Ofcom, in any direction given pursuant to Section 119(1) of the 1996 Act, a summary of any fairness complaint with regard to a programme included in the Licensed Service, together with Ofcom's findings on the fairness complaint or a summary of such findings. The form and content of any such summary shall be such as may be approved by Ofcom.
- (3) References in Condition 17(1) to the publication of any matter shall be references to the publication of that matter without its being accompanied by any observations made by a person other than Ofcom and relating to the fairness complaint.
- (4) Where Ofcom has given a direction under Section 119(1) in relation to a fairness complaint and either the Licensee and/or any other person responsible for the making or the provision of the relevant programme has or have taken any supplementary action (interpreted in accordance with Section 120(5) of the 1996 Act) the Licensee shall promptly send to Ofcom a report of that action.

*Section 326 of the Communications Act*

- (5) The Licensee shall ensure that the provisions of the Fairness Code are observed in the provision of the Licensed Service and in relation to the programmes included in the Licensed Service.

## **18. Publicising Ofcom's functions**

*Section 328 of the Communications Act*

- (1) The Licensee shall comply with such directions as may be given to them by Ofcom to secure that:
  - (a) the procedures which are established and maintained for handling and resolving complaints about the observance of standards as set out in Section 319 of the Communications Act; and
  - (b) Ofcom's functions under Part V of the 1996 Act in relation to the Licensed Service are brought to the attention of the public (whether by means of broadcasts or otherwise).

### **19. Power of Ofcom to vary licence conditions**

#### *Section 3(4) of the 1996 Act*

Ofcom may by a notice served on the Licensee vary the Licence in any respect provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation.

### **20. Notices and service**

#### *Section 394 of the Communications Act*

- (1) Any notification or document (as defined in Section 394(9) of the Communications Act) to be served, given or sent under or in relation to this Licence may be delivered to the party to be served or sent by first class post to them at their proper address (as defined in Section 394(7) of the Communications Act) or left at that address.
- (2) Any such notification or document shall be deemed to have been served:
  - (a) if so delivered or left, at the time of delivery or leaving; or
  - (b) if so posted, at 10.00 a.m. on the second business day after it was put into the post.
- (3) In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notification or document was properly addressed and posted as a prepaid first class letter or was left at the proper address, as the case may be.

#### *Section 395 of the Communications Act*

- (4) Notices and documents may also be served or given by Ofcom on or to the Licensee and by the Licensee on or to Ofcom in electronic form subject to the requirements set out in Sections 395 and 396 of the Communications Act.

## **21. Surrender**

*Section 26(1) of the Broadcasting Act 1996*

The Licensee may by notice served on Ofcom and taking effect either from the time of service or on a date specified in the notice, surrender the Licence.

## **22. Equal opportunities and training**

*Section 337 of the Communications Act*

- (1) The Licensee shall make and from time to time shall review arrangements for:
  - (a) promoting, in relation to employment with the Licensee:
    - (i) equality of opportunity between men and women and between persons of different racial groups; and
    - (ii) the equalisation of opportunities for disabled persons; and
  - (b) training and retraining persons whom he employs in or in connection with the provision of the Licensed Service or the making of programmes for inclusion in the Licensed Service.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 22(1) aware of them including publishing the arrangements in such manner as Ofcom may require.
- (3) In particular (but without limiting the generality of the foregoing), the Licensee shall from time to time (and at least annually) publish, in such manner as he considers appropriate, their observations on the current operation and effectiveness of the arrangements required by virtue of this Condition.
- (4) The Licensee shall, in making and reviewing the arrangements made in accordance with Condition 22(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 22 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Licensed Service.
- (6) Ofcom will treat the Licensee's obligations under Conditions 22(1) to (5) above as discharged where a member of a group of companies to which the Licensee belongs has discharged those obligations in relation to employment with the Licensee.

## **22A. Third party content services**

- (1) The Licensee shall not enter into an agreement with any person who is providing access, either directly or indirectly, to a content service which contains material equivalent to the British Board of Film Classification's R-18 rating, material constituting "adult sex material" as defined in the Standards Code or material advertising telecommunications-based sexual entertainment services as defined in the UK Code of Broadcast Advertising ("adult sex chat"), save as provided in paragraphs (2) and (3) below.
- (2) The Licensee may only enter into an agreement with a person providing access, either directly or indirectly, to a linear content service containing "adult sex material", where that service is licensed by Ofcom or a Member State of the European Economic Area ("EEA").
- (3) The Licensee may only enter into an agreement with a person providing access, either directly or indirectly, to a linear content service containing "adult sex chat", where that service is licensed by Ofcom or an EEA Member State.
- (4) The material in paragraphs (2) and (3) shall be referred to as the "regulated adult material".
- (5) The Licensee shall not enable access, either directly or indirectly, to a content service which contains material that has the potential to cause serious harm, or is likely to encourage or incite the commission of crime or lead to disorder.
- (6) If the Licensee becomes aware that a content service which contains (a) material equivalent to the British Board of Film Classification's R-18 rating or otherwise constitutes "adult sex material" or "adult sex chat", which is not regulated adult material, or (b) material that has the potential to cause serious harm, or is likely to encourage or incite the commission of crime or lead to disorder, is accessible through the Licensed Service, it shall do all it can to ensure that the content service ceases to be accessible through the Licensed Service as a matter of urgency.
- (7) Subject to Condition 22A(1), where the Licensee has an agreement with a content provider or providers to enable their content service(s) to be accessed through the Licensed Service, the Licensee shall display, prominently and for a minimum duration of five seconds, a warning screen before each occasion that the viewer accesses the content service(s) specified in (8) below. This warning screen must notify the viewer that they are about to view material delivered over the internet, which may not be regulated in the same way as television content, and advise the viewer to exercise caution. A screenshot of the warning text on-screen must be provided to Ofcom for approval at least 10 working days prior to its first use. Ofcom may require the warning text to be varied, including so that it gives details

of a website address for further information, which shall be notified to the Licensee from time to time.

(8) Condition 22A(7) applies when the content service which can be accessed through the Licensed Service (or at least one of the content services which can be accessed, where a provider provides more than one) is:

(a) not licensed by Ofcom, and is outside the jurisdiction of an EEA Member State for the purposes of the Audiovisual Media Services Directive and is therefore not regulated by any such Member State; or

(b) an on-demand programme service, as defined in the Communications Act, which has not been notified to Ofcom.

***22B. Content services proscribed by the Secretary of State***

(1) The Licensee shall not enter into an agreement with any person who is providing access, either directly or indirectly, to a content service which has been proscribed by the Secretary of State.

(2) If the Licensee becomes aware that a content service which is proscribed by the Secretary of State is accessible through the Licensed Service, it shall do all it can to ensure that the content service ceases to be accessible through the Licensed Service as a matter of urgency.

## PART 3: EXCEPTIONS AND LIMITATIONS ON LICENSEE'S OBLIGATIONS

### **23. Force majeure**

*Section 4(1)(d) of the 1996 Act*

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the reasonable control of the Licensee including (without limitation) war, damage by the King's enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

## PART 4: CONDITIONS RELATING TO ENFORCEMENT OF THE LICENCE

### **24. Sanctions for breach of condition**

*Section 40 of the 1990 Act (see also Section 344 of the Communications Act)*

(1)

- (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence and that failure can be appropriately remedied by the inclusion in the Licensed Service of a correction or statement of findings (or both) and Ofcom has given the Licensee a reasonable opportunity to make representations to it about the matters complained of, Ofcom may direct the Licensee to include in the Licensed Service a correction or a statement of findings (or both) in such form, and at such time or times as Ofcom may determine.
- (b) The Licensee may, when including a correction or statement of findings (or both) in the Licensed Service in pursuance of a direction from Ofcom, announce that he is doing so in pursuance of such a direction.

- (2) The Licensee shall comply with any direction from Ofcom not to include in the Licensed Service on any future occasion any programme whose inclusion in the Licensed Service Ofcom is satisfied has involved a failure by the Licensee to comply with any Condition of this Licence.

*Section 27 of the 1996 Act (see paragraph 15 of Part 2, Schedule 13 to the Communications Act)*

(3)

- (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or has failed to comply with any direction given by Ofcom under the Licence and it has given them a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice requiring them to pay to Ofcom, within a specified period, a specified financial penalty.
- (b) The amount of any financial penalty imposed pursuant to Condition 24(3)(a) shall not exceed whichever is the greater of:
  - (i) £250,000 (or such other sum as the Secretary of State may by order specify under Section 36 of the 1996 Act); and
  - (ii) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to the Licensee in relation to multiplex services in respect of the relevant accounting periods.

- (c) For the purposes of Condition 24(3)(b) “relevant accounting period” in relation to a television multiplex service or general multiplex service, means the last accounting period of the multiplex provider.
- (d) Where in the case of any television multiplex service or general multiplex service, the first accounting period of the multiplex provider throughout which the Licensee provides the Licensed Service for broadcasting by means of the multiplex service (the “first period”) has not ended when the penalty is imposed, then for the purposes of this Condition 24(3)(b), the share of multiplex revenue attributable to the Licensee in relation to that multiplex service for the relevant accounting period shall be taken to be the amount which Ofcom estimates to be the share of multiplex revenue attributable to them for the first period.
- (e) For the purposes of this Condition 24(3) “multiplex provider” has the meaning given to it in Section 11(9) of the 1996 Act.

*Section 27(1)(b) of the 1996 Act*

- (4)
  - (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of this Licence or with any direction given to them hereunder and it has given them a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice providing that the Licence is to expire on a specified date at least one year from the date on which the notice is served on the Licensee.

*Section 27(7) of the 1996 Act*

- (b) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 24(4)(a), Ofcom may, on the application of the Licensee, by a further notice served on them at any time before that date, revoke that notice if such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the Licensed Service since the date of the earlier notice.
- (5) Any exercise by Ofcom of its powers under Condition 24(3) and 24(4) shall be without prejudice to Ofcom's powers under Condition 24(1) and 24(2).

**25. Revocation**

*Section 42 of the 1990 Act (see Section 23(9) of the 1996 Act)*

- (1)
  - (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and that failure is such

that, if not remedied, it would justify the revocation of the Licence, it shall serve on the Licensee a notice:

- (i) stating that Ofcom is so satisfied;
- (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee is failing to comply with any such Condition or direction; and
- (iii) stating that, unless the Licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, Ofcom will revoke the Licence.

(b) If at the end of the period specified in any notice served under Condition 25(1)(a) above Ofcom is satisfied that the Licensee has failed to take the steps specified in the notice and that it is necessary in the public interest to revoke the Licence, Ofcom shall serve on the Licensee a notice revoking the Licence.

(2) Ofcom may revoke the Licence by notice in writing served on the Licensee and taking effect either from the time of service or on a date specified in the notice, in any of the following circumstances:

*Section 5(1)(a), (5) and (7) of the 1996 Act*

- (a) if the Licensee becomes a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act or a requirement imposed by or under Schedule 14 to the Communications Act is contravened in relation to their holding of the Licence; or

*Section 4(5)(b) of the 1996 Act*

- (b) if Ofcom is satisfied that the Licensee:
  - (i) in purporting to comply with any of the Conditions of this Licence has provided information which is false in a material particular or has withheld any material information with the intention of causing Ofcom to be misled; or

*Section 42(5) of the 1990 Act (see also Section 27(8) and (9) of the 1996 Act)*

- (ii) in connection with their application for the Licence, provided Ofcom with information which was false in a material particular or withheld any material information with the intention of causing Ofcom to be misled.

*Section 5(5) and 5(7) of the 1996 Act*

- (c) if, where the Licensee is a body, a change in the nature or characteristics of the Licensee, or any change in the persons having control over or interests in the Licensee, or any change giving rise to a disqualification under Part II of Schedule 2 to the 1990 Act or a

contravention of a requirement imposed by or under Schedule 14 to the Communications Act takes place (whether before or after the Commencement Date), which change is such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances of the case, it would be induced by the change to refrain from awarding the Licence to the Licensee;

*Section 3(3)(b) of the 1996 Act*

- (d) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;

*Section 3(8) of the 1996 Act*

- (e) if the Licensee provides the Licensed Service in whole or in part whilst failing to comply with any requirement to hold or have held on their behalf a licence under Section 1 of the Wireless Telegraphy Act 1949 (as amended) or if the Licensee ceases to comply with requirements applicable to the Licensed Service imposed by or under Chapter 1 of Part 2 of the Communications Act;
- (f) if, for any reason, the service provided by the Licensee does not constitute a digital television additional services for the purposes of the 1996 Act and the Communications Act; and

*Section 4(1)(d) (and see also Section 12(3A)) of the 1996 Act*

- (g) if Ofcom is satisfied that the Licensee is established in a country other than the United Kingdom.

*Section 42(8) of the 1990 Act*

- (3) Ofcom shall before serving any notice revoking the Licence under Conditions 25(1) and (2) notify the Licensee of the matters constituting its grounds for revoking the Licence and give the Licensee a reasonable opportunity to make representations to it about those matters.

*Section 145 of the 1996 Act*

- (4) If the Licensee is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying them from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.

ANNEX TO LICENCE No. [Licence number]

Section 25 of the 1996 Act	1. Name of Service:	[Name]
	2. Type of service:	[Type]
	3. Description of service:	[Description]
	4. Hours of the day and days of the week during which the service will be broadcast:	[hours a day], [days a week]
	5. Multiplex Service Name	[mux service name]
	6. Multiplex Licensee	[mux licensee]