



LICENCE No. PS-DTPS [Licence Number]

OFFICE OF COMMUNICATIONS PUBLIC SERVICE DIGITAL TELEVISION
PROGRAMME SERVICE LICENCE

LICENCE GRANTED TO [Name of Licensee] – (THE PROVIDER OF [Service]) TO
PROVIDE PUBLIC SERVICE DIGITAL TELEVISION PROGRAMME SERVICES UNDER
PART I OF THE BROADCASTING ACT 1996 AS AMENDED ON AN APPLICATION
COMPLYING WITH SECTION 18 OF THE BROADCASTING ACT 1996 AS MODIFIED BY
THE TELEVISION MULTIPLEX SERVICES (RESERVATION OF DIGITAL CAPACITY)
ORDER 2008

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 and as modified by the Television Multiplex Services (Reservation of Digital Capacity) Order 2008, hereby grants to [Name of Licensee] (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule (the "Conditions"), to provide the public service digital television programme service(s) specified in the Annex (the "Licensed Service(s)").
2. This Licence is granted on the basis that the Licensee is a Relevant Public Service Broadcaster as defined in Section 243 (7) of the Communications Act and; on the basis that the information and statements set out in the Licensee's application to Ofcom on [application date] are true and accurate to the best of the Licensee's knowledge and belief as the Licensee has declared.
3. This Licence was granted by Ofcom, and came into force, on [grant date] and, subject to the Conditions, shall remain in force (the "Licensing Period") until it is surrendered by the Licensee or, if sooner, until:
 - (a) the expiry or other termination of the Multiplex B licence (as defined in the Schedule to this Licence) or;
 - (b) in a case where the Licensee also holds a Channel 3 licence or a licence to provide Channel 5 the Licensee ceases, to have digital capacity on Multiplex B reserved for it, under the provisions of the Multiplex B licence the service is carried on; or
 - (c) otherwise revoked by Ofcom in accordance with the Conditions of this Licence.
4. 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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PART 1

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

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

“700 MHz DTT Clearance Programme” means the clearance of Digital Terrestrial Television services from the frequencies 694 MHz to 790 MHz and the associated reassignment of Digital Terrestrial Television services within the frequency range 470 MHz to 694 MHz. This policy is set out in Ofcom’s *Decision to make the 700 MHz band available for mobile data* statement published on 19 November 2014 and *Maximising the benefits of 700 MHz clearance* statement published on 17 October 2016.

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

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

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

the **“2008 Order”** means The Television Multiplex Services (Reservation of Digital Capacity) Order 2008, S.I. 2008/1420;

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 2018/1808/EU, which repeals and codifies Directive 2010/13/EU, as amended and renamed by Directive 2007/65/EC;

“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 (and in the event that such code has not been drawn up by Ofcom or is not yet in force, “Code on Electronic Programme Guides” shall be interpreted to mean the Code of Conduct on Electronic Programme Guides drawn up by the Independent Television Commission and in force immediately before the commencement of Section 310 of the Communications Act, which code shall continue to have effect (notwithstanding the substitutions made by that section)):

- (a) until the code drawn up by Ofcom under that section comes into force; but
- (b) in relation to times before the coming into force of Ofcom’s code, as if references in the code to the Independent Television Commission were references to Ofcom);

“Code on Sports and other Listed and Designated Events” means the code giving guidance as to the broadcasting of sports and other listed events as drawn up and from time to time revised by Ofcom in accordance with Section 104 of the 1996 Act (and in the event that such code has not been drawn up by Ofcom or is not yet in force, “Code on Sports and other Listed and Designated Events” shall be interpreted in accordance with paragraph 51 of Schedule 18 to the Communications Act);

“Code on Subtitling, Signing and Audio-Description” means the code giving guidance as to:

- (a) the extent to which digital television programme services but not electronic programme guides should promote the understanding and enjoyment by persons who are deaf or hard of hearing and by persons who are blind or partially sighted and by persons with a dual sensory impairment of the programmes to be included in those services; and
- (b) the means by which such understanding and enjoyment should be promoted;

as drawn up and from time to time revised by Ofcom in accordance with Section 303 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 programme service” has the meaning given to “digital programme service” in Section 1(4) 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 programme service; 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;

“High Capacity Transmission Mode” means those parameters in relation to the Licensed Service that are defined as such in the Ofcom Reference Parameters;

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

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

“listed event” means a sporting or other event of national interest which is for the time being included in the list drawn up and published by the Secretary of State for the purposes of Part IV of the 1996 Act and a **“Group A event”** is a listed event that is for the time being allocated to Group A of that list and a **“Group B event”** is a listed event that is for the time being allocated to Group B of that list;

“Licensing Period” means the period for which the reservation of capacity under the 2008 order to the licensee is in force;

“Licensed Service” means each of the public service digital television programme service(s) specified in the Annex A;

“Multiplex B” means the television multiplex service which, on the day this Licence is granted, BBC Free To View Limited is authorised to provide by virtue of the licence to that effect granted under Part 1 of the 1996 Act by the Independent Television Commission on 16th August 2002;

“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(s);

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

“**PSDTPS licence**” means a public service digital television programme service licence granted under Part I of the broadcasting Act 1996;

“**public service digital television programme service**” has the meaning given to it in article 5 of the 2008 Order;

“**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(1) 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 17;

“**Relevant Public Service Broadcaster**” has the meaning given in Section 243 (7) of the Communications Act.

“Reserved Capacity” means any capacity reserved for the Licensee on Multiplex B under the terms of the 2008 Order

“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, the Communications Act or the 2008 Order, as the case may be.
- (4) For the purposes of interpreting this Licence headings and titles shall be disregarded.
- (5) The statutory references in the margins 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 public service digital television programme service by the Licensee

- Section 18 of the 1996 Act
- (1) The Licensee shall supply the Licensed Service(s) as described in paragraph 1 of Annex A to this licence to the holder of the Multiplex B licence for broadcast during the Licensing Period using the Reserved Capacity as from Relevant High Capacity Date (or such other date(s) as may be agreed in writing between the holder of the Multiplex B licence and Ofcom) in relation to the corresponding High Capacity Coverage Area.
 - (2) For the purposes of Condition 2(2), “**High Capacity Coverage Area**” and “**Relevant High Capacity Date**” have the meanings given to them in the Schedule to the Multiplex B licence.
 - (3) The Licensee is authorised to provide the Licensed Service(s) as described in paragraph 2 of Annex A to this licence to the holder of the Multiplex B licence for broadcast during the Licensing Period using the Reserved Capacity in relation to the corresponding High Capacity Coverage Area.
 - (4) The Licensee is not, by virtue of this Licence, authorised to provide services other than the Licensed Service.

Section 4(1) of the Broadcasting Act 1990, Article 6 of the European Convention on Transfrontier Television

Article 5 of the Audio Visual Media Services Directive

- (5) In providing the Licensed Service, the Licensee shall publish or provide recipients of the service with the following information, upon request:
 - (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 and the name of any EU or EEA country whose jurisdiction the service falls under;
 - (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;
 - (f) The composition of the Licensee’s capital; and
 - (g) The nature, purpose and mode of financing of the programming service the broadcaster is providing or intends to provide.

3. Quotas for independent programmes

- Section 309 of the Communications Act
- (1) The Licensee shall ensure that in each year not less than 10 per cent. (or other such percentage as the Secretary of State may, from time to time, by order specify pursuant to Section 309(3) of the Communications Act) of the total amount of time allocated to the broadcasting of qualifying programmes included in each service in the Licensed Service is allocated to the broadcasting of

a range and diversity of independent productions. For these purposes the reference to a range of independent productions shall be interpreted in accordance with Section 309(2)(c) of the Communications Act.

- (2) For the purposes of Condition 3(1):
 - (a) “programme” does not include an advertisement; and
 - (b) “year” means each calendar year commencing on 1 January and ending on 31 December save that:
 - (i) where the Commencement Date does not fall on 1 January, the aggregate of the period preceding the first complete calendar year shall be taken to be a “year”; and
 - (ii) if the Licence is surrendered or revoked and the date of surrender or revocation does not fall on 31 December, the period following the last complete calendar year up to such date shall be taken to be a “year”

3(A).

Prohibition on the imposition of charges

Section 19(3A) of the 1996 Act

The Licensee shall supply the Licensed Service to the holder of the Multiplex B licence for broadcast on a free to air basis and they shall not impose any charges, whether directly or indirectly, on persons in respect of their reception in the United Kingdom of:

- (a) the Licensed Service;
- (b) any service consisting in the provision of assistance for disabled people in relation to programmes included in the Licensed Service;
- (c) any service (other than one mentioned in Condition 4(b) above) which is an ancillary service (as defined in Section 24(2) of the 1996 Act) in relation to the Licensed Service.

4.

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 4(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 4(1) above.

5. 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 5(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 5 “**V.A.T.**” means value added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to or replacement of that Act, and/or any similar tax.

6. General standards and requirements

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

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

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

- (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 subparagraph 3(b)(i)) and the reviews of individual programmes (as specified under subparagraph 3(b)(ii)).

- (vii) The Licensee shall publish annually a statement signed by the designated Director confirming that they are 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).

6(B).

Co-operation with Multiplex B licence holder on certain obligations

Section 19(3A) of the 1996 Act

- (1) The Licensee shall use all reasonable endeavours to enable the holder of the Multiplex B licence to comply with the licence obligations and commitments contained in the Multiplex B licence insofar as they relate to the adoption and implementation of the High Capacity Transmission Mode.
- (2) At any time when there is Reserved Capacity for the Licensee:
 - (a) the holder of the Multiplex B Licence, or
 - (b) the Licensee,

or both of them, may refer to Ofcom for determination any question arising as to the amount of digital capacity which is sufficient for the broadcasting of one high definition television service, as calculated and determined in accordance with the provisions of the 2008 Order.

6(C).

ECTT Standards

Regulation 7 of SI 2019/224

- (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.

Section 335 of the Communications Act

(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.

~~(3) 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.~~

7.

Listed events

Section 101(1) of the 1996 Act (see also Section 300(2) of the Communications Act)

- (1) The Licensee shall comply in all respects with the listed events provisions of the 1996 Act and, for the avoidance of doubt, provisions contained in this Condition 7 that derive from amendments made to the 1996 Act by the Communications Act shall apply only from such time as the relevant Sections of that Act are commenced.
- (2) The Licensee shall not include within the Licensed Service (the “**first service**”) live coverage of the whole or any part of a listed event unless:
 - (a) (i) another person who is providing a service falling within Section 98(1)(a) of the 1996 Act (the “**second service**”) has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event; and

- (ii) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided; or
 - (b) Ofcom has consented in advance to inclusion of that coverage in the first service; or
 - (c) the event is a Group B event for which rights to provide coverage have been acquired by one or more other persons in addition to the Licensee; and
 - (i) that additional coverage constitutes adequate alternative additional coverage of the event; and
 - (ii) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made by Ofcom in accordance with Section 104ZA of the 1996 Act.
- (3) Condition 7(2) shall not apply where:
- (a) the Licensee is exercising rights acquired before 1st October 1996; and
 - (b) the Licensee is exercising rights acquired in relation to an event listed after 1st October 1996 where such rights were acquired before the date referred to in Section 97(5)(a) of the 1996 Act.
- (4) The allocation or transfer of an event to Group A:
- (a) shall not affect the validity of rights acquired in relation to that event where such rights were acquired before the date referred to in Section 97(5A) of the 1996 Act; and
 - (b) where the Secretary of State makes a direction in accordance with Section 97(5B), will not affect the application of Condition 7(2)(c), which will continue to apply in relation to a Group B event that is transferred to Group A as if the event remained a Group B event.
- (5) Except where otherwise stated, this Condition 7 applies to the Licensed Service if and to the extent that the Licensed Service is made available (within the meaning of Part 3 of the Communications Act) for reception by members of the public in the United Kingdom or in any area of the United Kingdom.
- (6) The Licensee shall not, without the previous consent of Ofcom, exercise any rights to televise, for reception in an EEA State, the whole or part of an event:
- (a) that has been designated by that EEA State, and notified

Section 104ZA and 101(1)(C) of the 1996 Act (see Section 302(1) of the Communications Act)

Section 97(5)(a) of the 1996 Act (see also Section 299(3) of the Communications Act)

Section 97(5A) & (5B) of the 1996 Act (see Section 299(4) of the Communications Act)

Section 101(1)(b) of the 1996 Act (see also Section 300(2) of the Communications Act)

Section 101B(1) of the 1996 Act

Section 101A

of the 1996 Act

by it to the European Commission, in accordance with Article 3a of the Television Without Frontiers Directive, as being of major importance to its society; and

- (b) where a substantial proportion of the public in that State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 3a of the Television Without Frontiers Directive.

Section 101B(1A) of the 1996 Act

(6A) The Licensee shall not, without the previous consent of Ofcom, exercise any rights to televise, for reception in another ECTT Party the whole or part of an event:

- (a) that has been designated by that other ECTT Party, and published by the Standing Committee of the European Convention on Transfrontier Television, in accordance with Article 9a of that treaty, as being of major importance to its society; and
- (b) where a substantial proportion of the public in that Party is deprived of the possibility of following that event by live or deferred coverage on free television, as determined by that Party in accordance with any guidelines issued by the Standing Committee of the European Convention on Transfrontier Television.

This condition is without prejudice to the Licensee's right to broadcast short reports of events of high interest to the public pursuant to Article 9 of the European Convention on Transfrontier Television.

(7) For the purposes of this Condition 7:

Section 104ZA of the 1996 Act (see Section 302(1) of the Communications Act)

- (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of Part IV of the 1996 Act shall be determined in accordance with the regulations referred to in Condition 7(2)(c)(ii) above;
- (b) what is (whether generally or in relation to particular circumstances) to be taken to represent the provision of adequate alternative coverage shall be determined in accordance with the regulations referred to in Condition 7(2)(c)(ii) above;

Section 104(1) of the 1996 Act (see also Section 301(1) of the Communications Act)

- (c) guidance as to the matters which Ofcom will take into account in determining:
 - (i) whether to give or revoke their consent for the purposes of Condition 7(1) and 7(6); and
 - (ii) whether to take action pursuant to Condition 28(4)(a) or 28(4)(b) in circumstances where the Licensee fails to comply with Conditions 7(2) or

7(6),

shall be provided in the Code on Sports and Other Listed and Designated Events.

- (8) The Licensee shall supply to Ofcom such information as Ofcom may reasonably require to determine the Licensee's compliance with this Condition 7 and for the purposes of determination made by it pursuant to Section 102 or Section 103 of the 1996 Act;

8.

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.

Section 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 order

made by Ofcom for such purposes, are observed in the provision of the Licensed Service.

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| 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. |

9. Subtitling, signing and audio-description

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| Section 307(1) of the Communications Act | (1) The Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Licensed Service. |
| Section 303(12)(d) of the Communications Act | (2) This Condition shall not apply if the Licensed Service is an EPG or to any EPG included in the Licensed Service. |

10. Electronic Programme Guides

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| Section 311(1) of the Communications Act | 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. |
|--|--|

11. Retention and production of recordings

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| 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 in broadcast quality 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. |
| Section 334(1) of the Communications Act | (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; and (b) at the request of Ofcom forthwith produce to Ofcom any such recording 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.

12.

General provision of information to Ofcom

Section 4(1)(c)
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):

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

- (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;

Section 143(5)
of the 1996 Act and
Section 5(1)(a) of the
1996 Act

- (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 to the Communications Act;

Sections 4(1)(c) and 15 of
the 1996 Act

- (c) half-yearly 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;

Sections 4(1)(c) and 19 of
the 1996 Act

- (d) annual statements of **their** multiplex revenue in respect of each entire accounting period of **them** in such form as Ofcom shall require; and

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Section 19(3A) of the 1996 Act

- (1) The Licensee shall, on entering into any agreement with the holder of the Multiplex B licence for the provision of Licensed Service(s) to be broadcast by means of that holder's service, provide Ofcom with a certified copy of such agreement.
- (2) The Licensee shall, when any such agreement is varied so far as it relates to any of the matters mentioned in Condition 13(1) above, notify Ofcom of the variation so far as relating to those matters, including (without limitation) to provide a certified copy of such variation or, as the case may be, the agreement as varied

Section 5(5) of the 1996 Act

- (3) 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 16 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 13(3)(a) to (c) above; or
 - (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 13(3)(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

(4) 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.

(5) The Licensee shall inform Ofcom if they 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.

(6) 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.

(7) 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'.

For the purposes of Condition 13(7)(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

14.

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 Service 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 Service or of connected services; and
 - (c) comply with any direction given by Ofcom to the Licensee for that purpose.
- (2) In this Condition 14 "**Connected Services**" and "**Licensed Service**" have the meanings given to them in Section 316(4) of the Communications Act.

15.

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 15(2) 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.

16.

Transferability of the Licence

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

- (1) 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.
- (2) the Licensee shall in **their** agreement with the holder of the Multiplex B Licence ensure that:
 - (a) the Licensee's freedom to make arrangements with some other person as to the use of any of the Relevant Capacity is restricted so as to prevent such use in cases where Ofcom has not given its prior written consent to permit the use;
 - (b) where Ofcom has given its prior written consent pursuant to Condition 16(1), the Licensee undertakes to procure that **they** remain responsible under any arrangements to comply with the requirements under Condition 7A of the Multiplex B Licence and all relevant related requirements or obligations under this Licence in relation also to the broadcasting of services on that capacity by that other person or other persons.

17.

Compliance

Section 4(1)(a) and 4(2) of the 1996 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 1996 Act and Sections 321(4) and 325(1) of the

- (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

Communications Act

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:

Article 10 of the European Convention on Transfrontier Television and Section 335 of the Communications Act

(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 6(B) applies, the requirements of 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 17(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.

Section 4(1)(d) and Section 12 (1) (f) Broadcasting Act 1996 as amended by Article 11 (3) of the 2008 Order (6) Where Ofcom has conditionally given its consent to arrangements covered by Condition 16, the Licensee shall, on [31 January] of each year, provide Ofcom with a report detailing how it has complied with the conditions attached to Ofcom's prior written consent for those arrangements. In the event that Ofcom determines that those conditions have not been complied with, Ofcom may withdraw its consent.

18.

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 18(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 Her 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 18(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.

19.

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 19(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.

20.

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 **they** 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 20(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.

21.

Publicising Ofcom's functions

Section 328 of the Communications Act

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).

22.

Power of Ofcom to vary licence conditions

Section 3(4) of the 1996 Act

- (1) 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.

Section 19(3C) of the 1996 Act

- (2) Where the Licensee applies for the variation of any Condition included in this Licence by virtue of section 19(3A) of the 1996 Act, Ofcom will grant the application unless it appears to Ofcom that, if the application were granted, the capacity of the public service digital television programme services provided under it (or any digital additional services associated with it) to further the objectives mentioned in article 3(8) of the 2008 Order would be unduly diminished.

23.

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.

24.

Surrender

Section 19(1) of the 1996 Act as amended by article 7(2) of the 2008 Order

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.

25.

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 they employ 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 25(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 they consider 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 25(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 25 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 25(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.

PART 3

EXCEPTIONS AND LIMITATIONS ON LICENSEE'S OBLIGATIONS

26.

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 Queen's enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

27.

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 a 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 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 **they are** 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 23 of the 1996 Act
(see paragraph 14 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 28(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 28(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 28(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 28(3) “**multiplex provider**” has the meaning given to it in Section 14(9) of the 1996 Act.

Section 102 of the 1996 Act

- (4) (a) If Ofcom:
 - (i) is satisfied that the Licensee has failed to comply with Condition 7(2) or Condition 7(6); and
 - (ii) is not satisfied that in all the circumstances it would be unreasonable to expect the Licensee to have complied with that Condition,

it may serve on the Licensee a notice requiring **them** to pay to Ofcom, within a specified period, a specified financial penalty.
- (b) If Ofcom is satisfied that, in connection with an application for consent under Condition 7(2) or Condition 7(6), the Licensee:
 - (i) has provided Ofcom with information which is false in a material particular, or
 - (ii) has withheld any material information with the intention of causing Ofcom to be misled,

it may serve on the Licensee a notice requiring **them** to pay to Ofcom, within a specified period, a specified financial penalty.
- (c) The amount of any financial penalty imposed pursuant to Condition 28(4)(a) or Condition 28(4)(b) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.
- (d) For the purpose of Condition 28(4)(c):

- (i) the “**relevant consideration**” means an amount determined by Ofcom as representing so much of any consideration paid by the Licensee as is attributable to the acquisition of the rights to televise the event in question; and
- (ii) the “**prescribed multiplier**” means such number as the Secretary of State may from time to time by order prescribe under Section 102(4)(b) of the 1996 Act.

(e) Where any such financial penalty is imposed pursuant to Condition 28(4), Ofcom shall not impose a further financial penalty under Condition 28(3) in respect of the same circumstances.

Section 23(1)(b) of the 1996 Act

(5) (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 23(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 28(5)(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.

(6) (a) Any exercise by Ofcom of its powers under Condition 28(3) or 28(5) shall be without prejudice to Ofcom's powers under Condition 28(1) and 28(2).

(b) Any exercise by Ofcom of its powers under Condition 28(4) shall be without prejudice to Ofcom's powers under Condition 28(1), (2) and (5).

(7) Prior to exercising its powers under Condition 28(4) in respect of a failure to comply with Condition 7(6), Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

28.

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 29(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 23(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;

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| 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 public service digital television programme service for the purposes of the 1996 Act (as modified by the 2008 Order) and the Communications Act; |
| Section 4(1)(d) of the 1996 Act (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 19(1) of the 1996 Act, as modified by the 2008 Order | (h) | if the Multiplex B licence expires or is otherwise terminated; |
| | (i) | in a case where the Licensee also holds a Channel 3 licence or a licence to provide Channel 5, the Licensee ceases to have digital capacity on Multiplex B reserved for it under the provisions of the Multiplex B licence; and |
| Article 3 of the 2008 Order | (j) | if Licensee ceases to be a relevant public service broadcaster (as defined in section 243(7) of the Communications Act). |
| Section 42(8) Of the 1990 Act | (3) | Ofcom shall before serving any notice revoking the Licence under Conditions 29(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. |

The Licensee shall comply with, or procure compliance with the requirements set out in Annex B.