

## **CHANNEL 5 LICENCE**

ATTACHMENT TO VARIATION NUMBER 29 DATED 23 DECEMBER 2020

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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;

“**700 MHz DTT Clearance Programme**” means the clearance of DTT services from the frequencies 694 MHz to 790 MHz and the associated reassignment of DTT Services within the frequency range 470 MHz to 694 MHz. This policy is set out in Ofcom’s Decision to make the 700MHz 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 “**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;

“**Analogue Licence**” means the Licensee’s analogue licence in force immediately prior to the grant of this Licence;

“**Appropriate Network**” shall be interpreted in accordance with section 272(7) of the Communications Act for the purpose of interpreting Conditions (1A) to (1D) of Condition 2 of this licence.

the “**Appropriate Percentage**” means, in relation to any year (the “**relevant year**”), the percentage which corresponds to the percentage increase between:

- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the Licensing Period; and
- (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose the “**retail prices index**” means the general index of prices (for all items) published by the Office of National Statistics;

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

**“C3/C4 multiplex licence”** means the licence granted by the Independent Television Commission to Digital 3 and 4 Limited under Part 1 of the 1996 Act on 19 December 1997 and renewed by Ofcom on 3 June 2009;

**“Cash Bid”** means the amount agreed to by the Licensee under the Analogue Licence as the amount to be paid by them in accordance with the provisions set out in Condition 5 below or, if different, the amount agreed to be paid by them pursuant to this Licence, or any renewal of this Licence, in accordance with the provisions set out in Condition 5 below;

**“Channel 5 Service”** means, the Channel 5 television broadcasting service for the provision of which this licence was granted;

**“Channel 5 Services”** means services licensed by Ofcom under Part 1 of the 1990 Act;

**“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;

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

(a) the extent to which the Channel 5 service 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;

**“Distribution”** means the conveyance of the Channel 5 Service (by whatever means and whether directly or indirectly) to the broadcasting stations from which it is broadcast so as to be available for reception by members of the public;

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

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

(a) is or is included in the Channel 5 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;

**“Independent Productions”** means programmes of such description as the Secretary of State shall pursuant to Section 277(2) of the Communications Act from time to time by order specify;

**“Initial Expiry Date”** shall be interpreted in accordance with Section 224 of the Communications Act;

**“Initial Licensing Period”** means the period of ten years from and including the Commencement Date or, if shorter, the period from the Commencement Date until such date as the Licence is revoked or renewed in accordance with these Conditions;

**“Intended Audience”** shall be interpreted in accordance with sections 272(7) and 273(7) of the Communications Act for the purpose of interpreting Conditions (1A) to (1H) of Condition 2 of this licence.

**“Licensed Area”** means the United Kingdom;

**“Licensing Period”** means the Initial Licensing Period or any Subsequent Licensing Period, as the context shall require;

**“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;

the “**M25 area**” shall be interpreted in accordance with Section 362 of the Communications Act;

“**Nominated Archive Body**” means the body for the time being nominated by Ofcom for the purposes of Section 185(2) of the 1990 Act;

“**Ofcom**” means the Office of Communications as established by the Office of Communications Act 2002;

“**Peak Viewing Times**” means 6pm until 10.30pm each day or such other times as may be determined by Ofcom;

“**Prescribed Amount**” means:

(a) where:

- (i) the Licence is revoked under Section 18 of the 1990 Act; or
- (ii) the first complete accounting period of the Licensee falling within the Licensing Period has not yet ended,

seven per cent. of the amount which Ofcom estimate would have been the Licensee's qualifying revenue for that accounting period; or

(b) in any other case, seven per cent. of the Licensee's qualifying revenue for their last complete accounting period so falling;

“**Programme**” unless otherwise stated includes an advertisement and anything included in the Channel 5 Service;

“**Qualifying Programmes**” means programmes of such description as the Secretary of State shall pursuant to Section 277(2) of the Communications Act from time to time by order specify;

“**Qualifying Revenue**” has the same meaning as in Section 19 of the 1990 Act and shall be ascertained in accordance with that Section and the Ofcom Statement of Charging Principles 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;

“**Relevant Date**” means the date which Ofcom determines, in accordance with Section 216 (2) and (3) of the Communications Act, to be that by which it would need to publish a tender notice under Section 15 of the 1990 Act if it were proposing to grant, as from the date on which the Licence would expire if not renewed, a fresh licence to provide the Channel 5 Service to take effect from the end of the Licensing Period;

**“Relevant Percentage of Qualifying Revenue”** means the percentage of Qualifying Revenue payable by the Licensee under Section 19(1)(c) of the 1990 Act;

**“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 26;

**“Renewal Payment”** means such amount as Ofcom determines to be payable to it by the Licensee under Section 217(1)(a) of the Communications Act in respect of the first calendar year falling within the Renewal Period;

**“Renewal Period”** means the period for which the Licence is in force by reason of its renewal;

**“Satellite Television Service”** shall be interpreted in accordance with section 273(7) of the Communications Act for the purpose of interpreting Conditions (1E) to (1H) of Condition 2 of this licence.

**“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 Sections 319, 322 and any international obligation specified in a direction given by the Secretary of State under Section 335 of the Communications Act;

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

**“Subsequent Licensing Period”** means any period of ten years beginning with the end date of the previous Licensing Period;

**“Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences”** means the table which sets out details of the digital terrestrial broadcasting stations for Multiplex 2 as published in Version 12 on 23 May 2013 and revised from time to time by Ofcom, or any replacement to this table as may be published by Ofcom;

**“Television Technical Performance Code”** means the code governing technical standards and practice in:

- (a) programme production and acquisition;
- (b) broadcasting available for reception by members of the public; and
- (c) distribution (as defined in Section 66(2) of the 1990 Act)

in the provision of Channel 3, Channel 4 and Channel 5 services as drawn up and from time to time revised by Ofcom;



- (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 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 Channel 5 Service by the Licensee**

*Section 214 of the Communications Act (see also Section 215(4) and paragraph 47 of Schedule 18 to the Communications Act)*

- (1) The Licensee shall supply the Channel 5 Service to the holder of the C3/C4 multiplex licence for broadcast, or such other holder of a multiplex licence or other person as agreed in advance in writing by Ofcom.

*Commencement Order 2009*

- (1A) The Licensee shall ensure that the Channel 5 Service, is at all times offered as available (subject to the need to agree terms) to be broadcast or distributed by means of every appropriate network.

*Section 272 of the Communications Act 2003*

- (1B) The Licensee shall do their best to secure that arrangements are entered into, and kept in force that ensure:

- (a) that the Channel 5 Service, is broadcast or distributed on appropriate networks; and
- (b) that the broadcasting and distribution of the Channel 5 Service, in accordance with those arrangements, result in its being available for reception, by means of appropriate networks, by as many members of its intended audience as practicable.

- (1C) The Licensee shall ensure that the arrangements entered into and kept in force, pursuant to Condition (1B), above, prohibit the imposition, for or in connection with the provision of an appropriate network, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the Channel 5 Service, in an intelligible form by means of that network

- (1D) The Conditions (1A), (1B) and (1C), above, shall only apply in relation to times when the Channel 5 Service is included in the list of must-carry services in section 64 of the Communications Act.

- (1E) The Licensee shall ensure that the Channel 5 Service, is at all times offered as available (subject to the need to agree terms) to be broadcast by means of every satellite television service that is available for reception by members of the public in the whole or a part of the United Kingdom.

- (1F) The Licensee shall do their best to secure that arrangements are entered into, and kept in force that ensure:

- (a) that the Channel 5 Service is broadcast by means of satellite television services that are broadcast so as to be available for reception by members of the public in the United Kingdom; and
- (b) that the broadcasting, in accordance with those arrangements, of the Channel 5 Service by means of those satellite television services results in its being available for reception in an intelligible form and by means of those services by as many members of its intended audience as practicable.

(1G) The Licensee shall ensure that the arrangements entered into and kept in force, pursuant to Condition (1F), above, prohibit the imposition, for or in connection with the provision of a satellite television service, of any charge that is attributable (whether directly or indirectly) to the conferring of an entitlement to receive the Channel 5 Service in an intelligible form by means of that service.

(1H) The Conditions (1E), (1F) and (1G), above, shall only apply in relation to a time when the Channel 5 Service is included in the list of services that are must-provide services for the purposes of section 274 of the Communications Act.

- (2) The Licensee shall provide the Channel 5 Service for the Licensing Period and in the Licensed Area and shall procure that:
  - (a) the Channel 5 Service is broadcast from the stations and relays specified in, and otherwise in accordance with, all the requirements set out in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences,
  - (b) the programmes to be included in the Channel 5 Service are broadcast in the Licensed Area on each day of the week and for up to 24 hours a day;
- (3) Nothing in this Licence shall constitute or imply any warranty, representation or obligation on the part of Ofcom as to the size or location of the areas actually capable of receiving the programmes provided by the Licensee pursuant to the Licence or that programme services provided by the holder of any other licence shall not be capable of reception in the whole or any part of the Licensed Area.
- (4) The Licensee shall not be authorised by or under the Licence to broadcast or procure the broadcasting of anything other than the Channel 5 Service, subtitling in accordance with Condition 17, and services (other than subtitling) which are ancillary to programmes included in the Channel 5 Service and directly related to their contents or relate to the promotion or listing of such programmes.

- (5) In providing the Channel 5 Service, the Licensee shall publish or provide recipients of the service with, supply 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;
  - (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. Prohibition on the Imposition of Charges**

*Sections 214(8) and (9) of the Communications Act*

- (1) The Licensee shall not impose any charges, whether directly or indirectly, on persons in respect of their reception in the United Kingdom of:
- (a) the Channel 5 Service;
  - (b) any service consisting in the provision of assistance for disabled people in relation to programmes included in the Channel 5 Service;

*[NB contravention of this Condition will also be unlawful by virtue of Section 214(9)]*

- (c) any service (other than one mentioned in Condition 3(1)(b) above) which is an ancillary service (as defined in Section 24(2) of the 1996 Act) in relation to the Channel 5 Service.

### **4. Fees**

*Section 4(1)(b), (3) and (4) of the 1990 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 1990 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 1990 Act*

- (3) The Licensee shall within 28 days of a request therefor 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. Additional Payments and Contributions to the National Television Archive**

*Section 19 of the 1990 Act (see also Section 29 of the 1990 Act)*

- (1) The Licensee shall pay to Ofcom:
  - (a) in respect of the first complete calendar year falling within the Licensing Period, the amount of the Cash Bid, which shall be payable by equal instalments on the penultimate business day of each calendar month throughout that calendar year unless the amount of the Cash Bid is equal to or less than £100,000, in which case it shall be payable in full on the penultimate business day of the first month of that calendar year; and
  - (b) in respect of each subsequent year falling wholly or partly in the Licensing Period, the amount of the Cash Bid as increased by the Appropriate Percentage, which shall be payable by equal instalments on the penultimate business day of each calendar month throughout the relevant year or part thereof, unless the amount of the Cash Bid as increased by the Appropriate Percentage is equal to or less than £100,000 in which case it shall be payable in full on the penultimate business day of the first month of the relevant year or part thereof.
- (2) The Licensee shall pay to Ofcom in respect of each accounting period of the Licensee falling within the Licensing Period an amount representing the Relevant Percentage of Qualifying Revenue.
- (3) Ofcom may:
  - (a) before the beginning of any accounting period of the Licensee, estimate the amount representing the Relevant Percentage of Qualifying Revenue for that accounting period (and the Licensee shall pay such estimated amount (the "Estimated Amount") by instalments on the penultimate business day of each calendar month throughout that accounting period);
  - (b) at such times as it shall think fit revise the Estimated Amount and adjust the instalments payable by the Licensee to take account of any such revision; and

(c) determine that the part of the Licensee's additional payments calculated using the Relevant Percentage of Qualifying Revenue and payable monthly will be based on the preceding month's actual qualifying revenue.

(4)

(a) The Licensee shall pay to Ofcom a sum equal to the amount (if any) by which the amount of the Relevant Percentage of Qualifying Revenue in respect of any accounting period of the Licensee exceeds the Estimated Amount actually paid by the Licensee to Ofcom in respect of that period; and

(b) Ofcom shall pay or procure the payment to the Licensee of a sum equal to the amount (if any) by which the amount of the Relevant Percentage of Qualifying Revenue in respect of any accounting period of the Licensee is less than the Estimated Amount actually paid by the Licensee to Ofcom in respect of that period,

and the sum payable by the Licensee shall be paid within 14 days of the date on which Ofcom shall notify the Licensee of the amount of the Relevant Percentage of Qualifying Revenue in respect of such accounting period.

*Section 185 of the 1990 Act*

(5) The Licensee shall pay to Ofcom on the Commencement Date and on each anniversary thereof throughout the Licensing Period or on such other date in each year of the Licensing Period as Ofcom may specify such amount as Ofcom shall notify to the Licensee, being the Licensee's contribution towards the expenses incurred by the Nominated Archive Body in connection with the maintenance by it of a national television archive.

(6) Payments under this Condition 5 shall be made in such manner as Ofcom may from time to time specify.

**6. V.A.T.**

*Section 4(1)(b) and (d) of the 1990 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 6(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 6 "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.

**7. Public Service Remit and Programme Policy**

*Section 265(1) of the Communications Act*

- (1) The Licensee shall ensure that they fulfil the public service remit, in the provision of the Channel 5 Service, to provide a range of high quality and diverse programming (or such remit as may from time to time be modified by the Secretary of State pursuant to Section 271(1) of the Communications Act).

*Section 266 of the Communications Act*

- (2) The Licensee shall prepare a statement of programme policy (in accordance with the requirements of Condition 7(4) below) as soon as practicable after the commencement of Section 266 and subsequently at annual intervals:
  - (a) setting out their proposals for securing that, during the following year,
    - (i) the public service remit for the Channel 5 Service will be fulfilled; and
    - (ii) the duties imposed on them under Conditions 8 to 11 and Condition 13 below and by virtue of Sections 277 to 294 of the Communications Act (as applicable to the Channel 5 Service) will be performed; and
  - (b) containing a report on their performance in carrying out, during the period since the previous statement, the proposals contained in that statement.
- (3) The Licensee shall monitor their own performance in the carrying out of the proposals contained in the statements made in pursuance of Condition 7(2) above.
- (4) Each statement of programme policy must be:
  - (a) prepared having regard to guidance drawn up and from time to time revised by Ofcom in accordance with Section 266(5) and (6) of the Communications Act;
  - (b) prepared taking account of the reports previously published by Ofcom under Sections 264 and 358 of the Communications Act and in particular take special account of the most recent such reports;
  - (c) published by the Licensee as soon as practicable after its preparation is complete; and
  - (d) published in such manner as the Licensee considers appropriate having regard to the guidance referred to in Condition 7(4)(a) above.

*Section 267 of the Communications Act*

- (5) If the Licensee's statement of programme policy contains proposals for a significant change (which shall be determined in accordance with sections 267 (4) and (5) of the Communications Act including any guidance issued and from time to time revised by Ofcom), the Licensee shall:
  - (a) consult Ofcom before preparing the statement; and
  - (b) take account, in the preparation of the statement, of any opinions expressed to them by Ofcom.

- (6) (If it appears to Ofcom that a statement of programme policy has been prepared by the Licensee in contravention of Condition 7(5) above, the Licensee shall, in accordance with any directions given to them by Ofcom:
- (a) revise such statement; and
  - (b) publish a revision of such statement after it has been approved by Ofcom.

*Section 266(7) and (8) of the Communications Act*

- (7) Without prejudice to the requirement in Condition 7(2) above as to the time at which the Licensee is required to make the first statement of programme policy, the Licensee's statement of policy that is in force on the date of commencement of Section 266 of the Communications Act shall be treated as if it were a statement for the time being in force until the statement required by Condition 7(2) has been prepared and published in accordance with the requirements of this Condition 7.

**8. Regional Programme-Making**

*Section 286(1) and (6) of the Communications Act*

- (1) The Licensee shall include in the Channel 5 Service programmes made in the United Kingdom outside the M25 area:
- (a) in the proportions specified in paragraph 6 of Part 1 of the Annex; and
  - (b) which, taken together, constitute a range of programmes as specified in paragraph 6 of Part 1 of the Annex.
- (2) The Licensee shall ensure that the proportion of expenditure specified in Part 1 of the Annex (determined by reference to the expenditure of the holders of Channel 5 licences on programmes made in the United Kingdom) is referable to programme production at what appears to Ofcom to constitute a suitable range of different production centres outside the M25.
- (3) In complying with this Condition 8, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (4) In this Condition 8, "**programme**" does not include an advertisement, and "**expenditure**", in relation to a programme, has the meaning given to it in Section 286(7) of the Communications Act.

**9. Commissioning of Independent Productions**

*Section 285 of the Communications Act*



- (1) The Licensee shall draw up and from time to time revise a code of practice setting out the principles they will apply when agreeing terms for the commissioning of independent productions, such code in particular to secure in the manner described in guidance issued by Ofcom that:
  - (a) a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
  - (b) there is what appears to Ofcom to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production, that are being disposed of;
  - (c) there is what appears to Ofcom to be sufficient transparency about the amounts to be paid in respect of each category of rights;
  - (d) what appears to Ofcom to be satisfactory arrangements are made about the duration and exclusivity of those rights;
  - (e) procedures exist for reviewing the arrangements adopted in accordance with the code and for demonstrating compliance with it, such procedures to include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;
  - (f) provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate.
- (2) The Licensee shall ensure that the drawing up or revision of a code made pursuant Condition 9(1) above is in accordance with guidance issued by Ofcom as to:
  - (a) the times when it is to be drawn up or reviewed with a view to revision;
  - (b) the consultation to be undertaken before it is drawn up or revised; and
  - (c) its publication and publication of any revision or replacement of it,and such code and any revision to it shall be submitted to Ofcom for approval and have effect subject to that approval and such modifications as Ofcom may require.
- (3) The Licensee shall from time to time make any revisions that are necessary to take account of revisions of the guidance issued by Ofcom referred to in Condition 9(2) above.
- (4) The Licensee shall ensure that they comply at all times with any code drawn up and for the time being in force pursuant to this Condition 9.

## **10. Broadcasting of Independent Productions**

### *Section 277 of the Communications Act*

- (1) The Licensee shall ensure that in each calendar year of the Licensing Period not less than the percentage amount specified in Part 1 of the Annex (or such other percentage that the Secretary of State may from time to time by order specify pursuant to Section 277(3) of the Communications Act) of the total amount of time allocated to the broadcasting of qualifying programmes in the Channel 5 Service is allocated to the broadcasting of a range and diversity of Independent Productions.
- (2) For the purposes of Condition 10(1) above, the reference to a range of Independent Productions is a reference to a range of such productions in terms of cost of acquisition and the types of programmes involved.
- (3) The Licensee shall comply with any further requirements that Ofcom may from time to time impose pursuant to Section 277(4) of the Communications Act in relation to the percentage of programming budget that is applied in the acquisition (which includes commissioning and acquisition of a right to include a programme in the Channel 5 Service or to have it broadcast) of Independent Productions (determined in accordance with an order made under Section 277(9) of the Communications Act).
- (4) The Licensee shall comply with any direction of Ofcom for the purpose of carrying forward to one or more subsequent years any shortfall for any year in their compliance with the requirements of Condition 10(1) and (3) above and thereby increasing the percentage applicable for the purposes of those Conditions to the subsequent year or years.
- (5) In complying with this Condition 10, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (6) In this Condition 10 “**programme**” does not include an advertisement.

## **11. Original Productions**

### *Section 278 of the Communications Act*

- (1) The Licensee shall ensure that in each calendar year of the Licensing Period:
  - (a) not less than the percentage amount specified in Part 1 of the Annex by time of the programmes included in the Channel 5 Service are original productions or commissions for any or all of the Channel 5 Service; and
  - (b) the time allocated to the broadcasting of original productions is split between Peak Viewing Times and other times in the manner specified in Part 1 of the Annex.

- (2) In determining the programmes of which a proportion is to consist of original programmes, there may be excluded such descriptions of programmes as may be specified in guidance prepared, and from time to time, revised by Ofcom pursuant to Section 278(3) of the Communications Act.
- (3) For the purposes of this Condition 11 “**programme**” does not include an advertisement; and “**original productions**” shall be determined in accordance with an order made under Section 278(6) of the Communications Act.

## **12. 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 Channel 5 Service.

### **12A. Requirements for the handling of communication 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 Channel 5 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 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).

### **12B. ECTT Standards**

- (1) This Condition applies if, and throughout the period during which, the Channel 5 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 12B 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.

### **13. News and Current Affairs**

#### *Section 279 of the Communications Act*

- (1) The Licensee shall include news programmes and current affairs programmes in the Channel 5 Service that:
  - (a) are of high quality and deal with both national and international matters; and
  - (b) (in relation to news programmes only) are broadcast for viewing at intervals (including those stipulated in Part 1 of the Annex) throughout the period for which the Channel 5 Service is provided.
- (2) The Licensee shall ensure that the time allocated to news programmes included in the Channel 5 Service and current affairs programmes included in the Channel 5 Service:
  - (a) constitutes in each case no less than the total amount of time specified in Part 1 in the Annex (such time being an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the Channel 5 Service); and
  - (b) is, in each case, split between Peak Viewing Times and other times in the manner specified in Part 1 in the Annex.
- (3) In complying with this Condition 13, the Licensee shall have regard to any guidance that may be issued by Ofcom.

#### **14. Party Political Broadcasts**

*Section 333 of the Communications Act*

- (1) The Licensee shall include in the Channel 5 Service party political broadcasts and referendum campaign broadcasts (as defined in the Political Parties, Elections and Referendums Act 2000) in accordance with such rules as are referred to in paragraph 38 of Schedule 18 to the Communications Act or as from time to time may be made by Ofcom pursuant to Section 333(1)(b) of the Communications Act with respect to such matters.
- (2) Such rules may include, without limitation, provision with regard to: the political parties on whose behalf political broadcasts may be made, the length and frequency of such broadcasts, and the length and frequency of referendum campaign broadcasts that are required to be broadcast on behalf of each designated organisation (as defined in Section 333(6) of the Communications Act).

#### **15. 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 15 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.

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

- (2) The Licensee shall not include within the Channel 5 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

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

- (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.

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

(3) Condition 15(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.

*Section 97(5A) & (5B) of the 1996 Act (see Section 299(4) of the Communications 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 15(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.

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

- (5) Except where otherwise stated, this Condition 15 applies to the Channel 5 Service if and to the extent that the Channel 5 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.

*Section 101B(1) of the 1996 Act*

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

*Section 101A of the 1996 Act*

- (a) that has been designated by that other EEA State, and notified by it to the European Commission, in accordance with Article 14 of the Audiovisual Media Services Directive, as being of major importance to its society; and
- (b) in such a way that 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 14 of the Audiovisual Media Services Directive

This Condition is without prejudice to the Licensee's right of access to events of high interest to the public for the purpose of short news reports pursuant to Article 15 of the Audiovisual Media Services 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.
  - (c) 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 15:

*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 15(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 15(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 15(1) and 15(5); and
  - (ii) whether to take action pursuant to Condition 36(4)(a) or 36(4)(b) in circumstances where the Licensee fails to comply with Conditions 15(2) or 15(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 15 and for the purposes of determination made by it pursuant to Section 102 or Section 103 of the 1996 Act;

## **16. 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 Channel 5 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 Channel 5 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 Channel 5 Service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the Channel 5 Service (whether generally or in particular circumstances).

### *Sections 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 Channel 5 Service.

### *Sections 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 Channel 5 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.

**17. Subtitling, Signing and Audio-Description**

*Section 307(1) of the Communications Act*

The Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Channel 5 Service and the Licensee shall provide subtitling, signing and audio-description in the amounts set out in Part 1 of the Annex.

**18. Transmission Arrangements and Technical Standards and Requirements for the Channel 5 Service**

*Section 4(1)(d) of the 1990 Act*

- (1) The Licensee shall:

*Television Multiplex Services Reservation of Capacity Order*

- (a) procure that the Channel 5 Service is broadcast so as to be available for reception by members of the public in the Licensed Area by the holder of the C3/4 Multiplex licence in accordance with the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences;
- (b) make such payments to the holder of the C3/4 multiplex licence in respect of the broadcasting for reception by members of the public of the Channel 5 Service in digital form as are from time to time agreed between the Licensee and the holder of the C3/4 multiplex licence or (in default of agreement) determined by Ofcom; and
- (c) do all that they can to ensure that the relevant provisions of the Television Technical Performance Code are observed in all the operations under their direct control, in the Distribution of the programmes included in the Channel 5 Service, and by any third parties involved in the provision of programmes included in the Channel 5 Service.
- (2) In this Condition 18 and within definitions that are used in this Condition “**available for reception by members of the public**” shall be construed in accordance with Section 361 of the Communications Act.

## **19. 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 Channel 5 Service's broadcast output in sound and vision. If the Channel 5 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 Channel 5 Service for a period of 90 days from the date of its inclusion therein. If the Channel 5 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 Channel 5 Service which they are able to produce to it.

## **20. General provision of Information to Ofcom**

### *Section 4(1)(c) of the 1990 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 and the Communications Act and in particular (but without prejudice to the generality of the foregoing):

### *Section 4(1)(c) of the 1990 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 1990 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;

*Section 4(1)(c) of the 1990 Act and Section 15 of the 1996 Act*

- (c) annual income and expenditure returns and supplementary annexes in such form and at such times as Ofcom shall require; and

*Section 4(1)(c) and 19 of the 1990 Act*

- (d) statements of their qualifying revenue at monthly intervals also in respect of each entire accounting period of theirs in such form as Ofcom shall require;

*Section 5(5) of the 1990 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 25 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 his assets; or
  - (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with his 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 his 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 20(2)(a) to (c) above; or
  - (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 20(2)(a) to (d) above occurs under the laws of any applicable jurisdiction.

*Sections 3(6) and (7) and 4(1)(c) of the 1990 Act*

- (3) The Licensee shall inform Ofcom when final judgment is awarded against him in any court proceedings brought against him in respect of the inclusion in the Channel 5 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 him 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.

**21. Notifications to Ofcom**

- (1) 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 25 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 21(1)(a) to (c) above; or
  - (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 21(1)(a) to (d) above occurs under the laws of any applicable jurisdiction.

*Sections 3(6) and (7) and 4(1)(c) of the 1990 Act*

- (2) 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 Channel 5 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.
- (3) 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.

*Section 5(2) of the 1990 Act (see also paragraph 3(3) of Part 1 of Schedule 15 to the Communications Act and Section 353(1) of the Communications Act*

- (4) Where the Licensee is a body corporate, the Licensee shall notify Ofcom:
- (a) of proposals that may give rise to a relevant change of control within the meaning of Section 353(7) of the Communications Act and of any proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition 21(5) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable where such proposals would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act; and
  - (b) of changes, transactions or events affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of the Licensee becoming aware of any such change, transaction or event and where such change, transaction or event would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.

*Section 353(1)(b) of the Communications Act*

and the Licensee shall provide Ofcom, in such manner and at such times as it may reasonably require, with such information as Ofcom considers necessary for the purposes of exercising its functions under Sections 353 and 354 of the Communications Act

*Paragraph 1(3) (b), (c) and (3A) of Part 1 to Schedule 2 to the 1990 Act (see also Section 357 of the Communications Act)*

- (5)
- (a) The Licensee shall notify Ofcom within 28 days if any person:
    - (i) holding or being beneficially entitled to 50 per cent. of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or
    - (ii) possessing 50 per cent. of the voting power in the Licensee or any body corporate which controls the Licensee

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

- (b) For the purposes of Condition 21(5)(a):

- (i) **“arrangement”** includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable;
- (ii) a person shall be treated as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which they control or to which such a body corporate is beneficially entitled, and as possessing any voting power possessed by such a body corporate; and
- (iii) **“participant”**, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

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

## **22. Renewal of the Licence**

### *Section 216 of the Communications Act*

- (1) Subject to the provisions of Section 228(6) and (7) of the Communications Act the Licence may be renewed for a period of ten years from the end of the Initial Licensing Period and each Subsequent Licensing Period current at the time of the application.
- (2) The Licensee may apply to Ofcom for renewal of the Licence not earlier than four years before the date on which it would otherwise cease to be in force and not later than three months before the Relevant Date.
- (3) Subject to the provisions of Section 216(11) of the Communications Act, Ofcom may decide not to renew the Licence if:
  - (a) it is not satisfied that the Licensee would, if the Licence were renewed, provide the Channel 5 Service in compliance with Conditions 7, 8, 9 10, 11, and 13;
  - (b) it proposes to grant a fresh Channel 5 licence for the provision of a service replacing the Channel 5 Service which would differ from the Channel 5 Service in:
    - (i) the area for which it would be provided; or
    - (ii) the times of the day, or days of the week, between or on which it would be provided;
  - (c) it appears to Ofcom that there are grounds for suspecting that any source of funds to which the Licensee might (directly or indirectly) have recourse for the purpose of:
    - (i) paying the amount of the Renewal Payment;

- (ii) paying the amount of the Renewal Payment as increased by the Appropriate Percentage in respect of each subsequent year falling wholly or partly within the Renewal Period;
- (iii) paying an amount, determined under Section 217(1)(b) of the Communications Act, representing a specified percentage of qualifying revenue in respect of each accounting period of the Licensee falling within the Renewal Period;
- (iv) otherwise financing the provision of the Channel 5 Service,

is such that it would not be in the public interest for the Licence to be renewed; and Ofcom having referred the Licensee's renewal application to the Secretary of State together with a copy of all documents submitted to it by the Licensee and a summary of its deliberations on the application, the Secretary of State has refused to consent to the renewal on the grounds that the source of funds is such that it would not be in the public interest for the Licence to be so renewed.

*Section 217 of the Communications Act*

- (4) On the grant of any such application Ofcom shall determine:
  - (a) the amount of the Renewal Payment; and
  - (b) a percentage of qualifying revenue for each accounting period falling within the Renewal Period which the Licensee will be required to pay to Ofcom.
- (5) For the purposes of Condition 22(4) above:
  - (a) the amount of the Renewal Payment shall be determined (as necessary) in accordance with Section 217(2) of the Communications Act; and
  - (b) the percentage of qualifying revenue shall be determined in accordance with Section 217(3) of the Communications Act.
- (6) Where the Licensee accepts Ofcom's determination under Condition 22(4) above, they shall notify Ofcom of their acceptance and, subject to Condition 22(3) above, Ofcom shall grant a renewal of the Licence as soon as reasonably practicable thereafter but Ofcom shall not grant a renewal more than eighteen months before the end of the Licensing Period.
- (7) If the Licence is renewed pursuant to this Condition, it shall continue in full force and effect and Conditions 5 and 31 shall have effect during the Renewal Period as if:
  - (a) in respect of the first complete calendar year falling within the Renewal Period, references to the amount of the Cash Bid were to the amount of the Renewal Payment;
  - (b) in respect of each subsequent year falling wholly or partly within the Renewal Period, references to the amount of the Cash Bid as increased by the Appropriate



Percentage were to the amount of the Renewal Payment as increased by the Appropriate Percentage; and

- (c) in respect of each accounting period of the Licensee falling within the Renewal Period references to the Relevant Percentage of Qualifying Revenue were to the percentage of qualifying revenue determined by Ofcom under Condition 22(4) above;

provided that, notwithstanding renewal, the Licensee shall continue to pay the amount of the Cash Bid (or, where the Licence has already been renewed, the existing Renewal Payment) as increased by the Appropriate Percentage for the year in question by equal instalments.

### **23. 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 23 “**connected services**” and “**licensed service**” have the meanings given to them in Section 316(4) of the Communications Act.

### **24. Compliance with Ownership Restrictions**

*Section 5(1) and (2) of the 1990 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 24(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 of Schedule 14 to the Communications Act immediately upon becoming aware of such circumstances or events.

## **25. Transferability of the Licence**

*Sections 3(6) and (7) of the 1990 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 whilst it remains in force.

## **26. Compliance**

*Sections 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 on Transfrontier Television*

- (2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Channel 5 Service for the purposes of ensuring that programmes included in the Channel 5 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 Channel 5 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 12B 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 Channel 5 Service for the purposes of Condition 26(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 1990 Act*

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

*Section 4(1)(c) of the 1990 Act*

- (6) The Licensee shall supply to Ofcom such technical performance data as Ofcom shall from time to time require, and at such intervals and in such form as Ofcom shall specify.

*Section 4(1)(d) of the 1990 Act*

- (7) The Licensee if so requested by Ofcom shall at such intervals and at such times as Ofcom shall require attend meetings with Ofcom for the purpose of enabling Ofcom to conduct periodic reviews of the performance by the Licensee of their obligations under the Licence.

**27. 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 Channel 5 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 Channel 5 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 Channel 5 Service in accordance with Condition 27(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 27(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 Channel 5 Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

## **28. Standards Complaints**

*Sections 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 Channel 5 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 28(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.

## **29. 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 Channel 5 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 Channel 5 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 29(2) 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 Channel 5 Service and in relation to the programmes included in the Channel 5 Service

**30. 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 Channel 5 Service,

are brought to the attention of the public (whether by means of broadcasts or otherwise).

**31. Power of Ofcom to Vary Licence Conditions**

*Section 3(4) and (5) of the 1990 Act*

Ofcom may by a notice served on the Licensee:

- (a) vary the Licensing Period provided that the Licensee consents to such variation (without prejudice to the powers and duties of Ofcom under Section 41 of the 1990 Act);

*Section 354 of the Communications Act*

- (b) vary the Licence pursuant to Section 352(10) of the Communications Act provided that the Licensee has been given a reasonable opportunity of making representations to Ofcom concerning the proposed variation;
- (c) vary the Licence in any respect not mentioned in paragraphs (a) and (b) above provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation,

provided always that paragraphs (a) and (b) above shall not authorise the variation of Condition 5 to the extent that that Condition requires the payment by the Licensee to Ofcom of:

- (i) (in respect of the first complete calendar year falling within the Licensing Period) the amount of the Cash Bid;
- (ii) (in respect of each subsequent year falling wholly or partly in the Licensing Period) the amount of the Cash Bid as increased by the Appropriate Percentage; and
- (iii) (in respect of each accounting period of the Licensee) the Relevant Percentage of Qualifying Revenue.

### **32. 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.

### **33. 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 Channel 5 Service or the making of programmes for inclusion in the Channel 5 Service.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 33(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 33(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 33 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Channel 5 Service.
- (6) Ofcom will treat the Licensee's obligations under Conditions 33(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.

**34. 700MHz DTT Clearance Programme**

The Licensee shall comply with, or procure compliance with the 700MHz DTT Clearance Programme requirements set out in Annex: Part 2.



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

### **35. Force Majeure**

*Section 4(1)(d) of the 1990 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.

## PART 4 CONDITIONS RELATING TO ENFORCEMENT OF THE LICENCE

### 36. *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 Channel 5 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 Channel 5 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 Channel 5 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 Channel 5 Service on any future occasion any programme whose inclusion in the Channel 5 Service Ofcom is satisfied has involved a failure by the Licensee to comply with any Condition of this Licence.

*Section 41 of the 1990 Act (see also paragraph 3 of Part 1 of Schedule 13 to the Communications Act)*

- (3)
  - (a) If Ofcom is satisfied that the Licensee has failed to comply with a 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 36(3)(a) shall not exceed 5 per cent. of the Licensee's qualifying revenue for its last complete accounting period (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) falling within the period for which the Licensee's licence has been in force (the "**relevant period**").
  - (c) Where any such penalty is imposed when the Licensee's first complete accounting period falling within the relevant period has not yet ended when the penalty is imposed, such financial penalty shall not exceed 5 per cent. of the amount which Ofcom estimates to be the Licensee's qualifying revenue for that accounting period.

*Section 102 of the 1996 Act*

- (4)
  - (a) If Ofcom:

(i) is satisfied that the Licensee has failed to comply with Condition 15(2) or Condition 15(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 15(2) or Condition 15(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 36(4)(a) or Condition 36(4)(b) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

(d) For the purpose of Condition 36(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 36(4), Ofcom shall not impose a further financial penalty under Condition 36(3) in respect of the same circumstances.

*Section 41(1)(b) and (3) of the 1990 Act*

(5) 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 reducing the Licensing Period by a specified period not exceeding two years.

*Section 41(4) of the 1990 Act*

(6) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 36(5), 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 it is satisfied that such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the Channel 5 Service since the date of the earlier notice.

- (7) Any exercise by Ofcom of its powers under Condition 36(3), (5) and (6) shall be without prejudice to Ofcom's powers under Condition 36(1) and 36(2).
- (8) Any exercise by Ofcom of its powers under Condition 36(4) shall be without prejudice to Ofcom's powers under Condition 36(1), (2), (5) and (6).
- (9) Prior to exercising its powers under Condition 36(4) in respect of a failure to comply with Condition 15(6), Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

### **37. Revocation**

#### *Section 42 of the 1990 Act*

- (1)
  - (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction 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 37(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 1990 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 otherwise fails to comply with any requirement imposed on them by or under Schedule 14 to the Communications Act;

*Sections 4(5)(b) and 42(5) of the 1990 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
  - (ii) in connection with their application for the Analogue licence, and by reason of which Ofcom has granted this Licence, provided the Independent Television Commission with information which was false in a material particular or withheld any material information with the intention of causing the Independent Television Commission to be misled.

*Section 5(5) and 5(7) of the 1990 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 1990 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 1990 Act*

- (e) if the Licensee provides the Channel 5 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 Channel 5 Service imposed by or under Chapter 1 of Part 2 of the Communications Act; and

*Section 42(4) of the 1990 Act*

- (f) if the Licensee ceases to provide the Channel 5 Service before the end of the Licensing Period and Ofcom considers that it is appropriate to revoke the Licence.

*Section 4(1)(d) of the 1990 Act*

- (g) if Ofcom shall revoke the assignment of frequency on which the Channel 5 Service is for the time being provided for the purpose of:

- (i) fulfilling its functions under the enactments relating to the management of the radio spectrum as defined in Section 405(1) of the Communications Act; or
- (ii) complying with an order under Section 156(1) of the Communications Act.

*Section 42(8) of the 1990 Act*

- (3) Ofcom shall before serving any notice revoking the Licence under Conditions 37(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 18(3) of the 1990 Act (see also paragraph 2 of Part 1 of Schedule 13 to the Communications Act)*

- (4)
- (a) Where the Licence is revoked pursuant to any provision of Part I of the 1990 Act, or is treated as being revoked under Section 145 of the 1996 Act, the Licensee shall:
    - (i) within such period as Ofcom shall notify to them, pay to Ofcom a specified financial penalty; and
    - (ii) pay the then outstanding portion, if any, of the Cash Bid (or of the Cash Bid as increased by the Appropriate Percentage) for the calendar year in question.

The Licensee's liability to pay such amounts shall not be affected by the Licence ceasing (for any reason) to be in force.

- (b) Where any such penalty is imposed before the end of the first complete accounting period of the Licensee to fall within the period for which the Licence is in force, the maximum penalty imposed shall be whichever is the greater of:
  - (i) £500,000 (or such other sum as the Secretary of State may by order specify under paragraph 9 of Part 1 of Schedule 13 to the Communications Act; and
  - (ii) 7 per cent. of the amount which Ofcom estimates would have been the qualifying revenue (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) for the Licensee's first complete accounting period falling within the period for which the Licence would have been in force.
- (c) Save where Condition 37(4)(b) above applies, where the Licence is revoked or treated as being revoked in any other case set out in Condition 37(4)(a), the maximum penalty shall be whichever is the greater of:
  - (i) £500,000 (or such other sum as the Secretary of State may by order specify under paragraph 9 of Part 1 of Schedule 13 to the Communications Act); and

- (ii) 7 per cent. of the qualifying revenue (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) for the Licensee's last complete accounting period falling within the period for which their licence has been in force.

*Section 145 of the 1996 Act*

- (5) 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: The Channel 5 Service

### ANNEX PART 1: Requirements for the provision and content of the Channel 5 Service

#### **1. Definitions and Interpretation**

In the following paragraphs unless the context otherwise requires:

**“hours/minutes”** refers to the number of hours/minutes per calendar year or per week averaged over a calendar year that would be broadcast, measured in **“slot times”** (that is, including advertising breaks, programme trailers and presentation material during and at the end of programmes).

#### **2. Independent Productions**

The Licensee shall ensure that in each calendar year not less than 25 per cent (or such other percentage which the Secretary of State may from time to time by order specify) of the total amount of time allocated to the broadcasting of Qualifying Programmes in the Channel 5 Service is allocated to the broadcasting of a range and diversity of independent productions. The range must be in terms of the cost and types of programmes. For these purposes, the reference to a range of independent productions shall be interpreted in accordance with Section 277 of the Communications Act.

#### **3. Original Productions**

The Licensee shall ensure that at least 50 per cent by time of the programmes included in the Licensed Service in each calendar year shall be originally produced or commissioned for the Channel 5 Service. At least 45 per cent by time of programmes in Peak Viewing Times shall be originally produced or commissioned for the Channel 5 Service.

#### **4. News**

Not less than 280 hours in each calendar year of the Licensing Period of news programmes shall be included in the Channel 5 Service between 6 am and midnight and 120 hours in each calendar year in Peak Time Viewing Times. Such news programmes shall be of high quality and deal with both national and international matters. News programmes shall be provided in weekdays at intervals during the day – at least one programme at lunchtimes, one in the early evening, one in the mid-evening and headlines at other times. One programme shall be provided in the early evening on Saturdays and Sundays.

#### **5. Current Affairs**

Not less than 130 hours in each calendar year of the Licensing Period of current affairs programmes which are of high quality and deal with national and international matters shall be included in the Channel 5 service of which 10 hours in each calendar year shall be in Peak Viewing Times.

#### **6. Regional production**

At least 10 per cent of the expenditure on programmes made in the UK for viewing on Channel 5 shall be allocated to the production of programmes produced outside the M25 area and must be



referable to a suitable range of production centres outside the M25 area. At least 10 per cent of the hours of programmes made in the UK for viewing on Channel 5 shall be produced outside the M25 area and will constitute a range of different types of programmes.

### ***7. Subtitling, Sign Language and Audio Description***

In relation to programmes included in the Channel 5 Service, at least 80 per cent of programme hours that are not excluded must be subtitled from the beginning of 2008; at least 10 per cent must be audio described; and at least 5 per cent must have sign language from the beginning of 2008. The Licensee must achieve such interim targets for subtitling, sign language and audio description as are notified to him in writing by Ofcom or set out in the Code on Subtitling, Sign Language and Audio Description.

## ANNEX PART 2: Requirements Relating to the 700MHz DTT Clearance Programme

### ***Cooperation and Coordination with Other Parties***

The Licensee shall use reasonable endeavours to cooperate in all respects, including promptly and in good faith, with:

- (a) other Ofcom licensees (in particular the holder of the television Multiplex Licence which carries the Licensed Service/s), the BBC and S4C;
- (b) Government;
- (c) Digital UK; and
- (d) with such other parties, as necessary, or as notified to them by Ofcom, in the administration, organisation or implementation of the 700MHz DTT Clearance Programme.