

LICENCE No. [X]

## OFFICE OF COMMUNICATIONS - RESTRICTED SERVICE LICENCE (LIMITED COVERAGE FM RADIO TRIAL)

LICENCE GRANTED TO [NAME OF LICENCE HOLDER] TO PROVIDE A RESTRICTED SERVICE UNDER PART III OF THE BROADCASTING ACT 1990 ON AN APPLICATION COMPLYING WITH SECTION 104 OF THE BROADCASTING ACT 1990

### THE LICENCE

1. The Office of Communications ("Ofcom") in exercise of the powers conferred upon it by Part III of the Broadcasting Act 1990 as amended by the Broadcasting Act 1996 and the Communications Act 2003 hereby grants to [Name of Licence Holder] (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule (the "Conditions"), to provide the restricted service specified in the Annex (the "Licensed Service").
2. This Licence is granted on the basis of the Licensee's representation that the statements set out in the declaration as to their affairs made by the Licensee on [Declaration date] are true to the best of the Licensee's knowledge and belief.
3. The Licensee must not operate the Licensed Service unless and until they are complying with any requirement to hold or have held on their behalf a licence under Section 8 of the Wireless Telegraphy Act 2006, any requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003 or the Technical Code to the extent that it applies to them.
4. This Licence shall come into force on [commencement date], upon which this Licence is granted by Ofcom (the "Commencement Date") and, subject to the Conditions, shall be for a term of twelve months. At the end of this period, on [Insert date], this Licence will automatically expire.
5. The Schedule and the Annex to this Licence form part of it.

**SIGNED FOR AND ON BEHALF OF OFCOM BY**

[DATE]

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## SCHEDULE

### Part 1: DEFINITIONS AND INTERPRETATIONS RELATING TO THE LICENCE

#### 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);

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

“**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 licensed 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;

“**licensed area**” means [*the area designed to be served by the transmitter or transmitters, short particulars of which will be inserted based on the proposals put forward by the Licensee in its application*];

“**licence period**” means the period of twelve months from the Commencement Date until [*Expiry Date*];

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

“**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 licensed services, as drawn up and from time to time revised by Ofcom in accordance with Section 319 of the Communications Act (and to the extent that such code or codes has not or have not been drawn up by Ofcom or is not or are not yet in force, “Standards Code” shall be interpreted in accordance with paragraphs 42 and 43 of Schedule 18 to the Communications Act);

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

“**Technical Code**” means the Ofcom Site Engineering Code for Analogue Radio Broadcast Transmission Systems (as may be revised from time to time);

(2) The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it were an Act of Parliament.

- (3) Any word or expression used in this Licence shall unless otherwise defined herein and/or the context otherwise requires have 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 of this Licence are for the 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 restricted service by Licensee**

Section 86 and 87(1)(b) of the 1990 Act

- (1) During the licence period and in respect of the licensed area only, the Licensee shall provide the Licensed Service specified in the Annex for a minimum of four (4) hours per day on any five (5) days per week.<sup>1</sup>
- (2) The Licensee shall ensure that the provisions of the Technical Code are observed in the provision of the Licensed Service to the extent such provisions apply to it.

### **3. Fees**

Sections 87(1)(c), 87(3) and 87(4) of the 1990 Act

On or before the Commencement Date, the Licensee shall pay to Ofcom a one-off fee of £140. Payment of such fee shall be made in such manner as Ofcom shall specify.

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

Section 87(1)(c) and (f) 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 V.A.T. invoice.
- (2) Without limitation to Condition 4(1) above, all sums payable by the Licensee are exclusive of V.A.T. which shall be paid by the Licensee in addition to such sums.
- (3) In this Condition 4, "V.A.T." means value-added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to or replacement of that Act, and/or any similar tax.

### **5. General standards and requirements**

Sections 319 and 325 (1) of the Communications Act

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

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<sup>1</sup> **Note for potential applicants:** To the extent that, in its application form, a trial participant proposes to broadcast in excess of the minimum set out above in Condition 2(1) (i.e., four hours per day on any five days per week), we will reflect this in that trial participant's licence.

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

- (1) The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee’s contractors or agents (together here described as “the Licensee”) where such communication is publicised in programmes. ‘Communication’ includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee.
- (2) (a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:
  - (i) reasonable skill and care is exercised by the Licensee in the selection of the means of communication and in the handling of communications received;
  - (ii) voting, competitions, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries; and
  - (iii) publicity in programmes for voting, competitions, games or similar schemes is not materially misleading.
- (b) In addition to the requirements in sub-paragraph 2(a), the Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.
- (3) 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.

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

Sections 120 to 122, 321(1), 321(4), 325(4) and 325(5) of the Communications Act

- (1) The Licensee shall comply with all directions given to them by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:
  - (a) the exclusion from the Licensed Service of a particular advertisement, or its exclusion in particular circumstances;
  - (b) the descriptions of advertisements and methods of advertising to be excluded from the Licensed Service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the Licensed Service (whether generally or in particular circumstances); and
  - (d) the content and scheduling of advertising of alcoholic beverages.
- (2) The Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.
- (3) 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) relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Licensed Service and in particular but without limitation shall ensure that advertising is readily recognisable as such and kept separate from other parts of the Licensed Service.
- (4) 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.

### ***7. Provision of additional services***

Section 115(8) of the 1990 Act

The Licensee is hereby authorised to provide, or to authorise another person to provide, additional services on the frequency on which the Licensed Service is provided as set out in the Annex.

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

Section 334 of the Communications Act

- (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of the Licensed Service's broadcast output.



- (2) In particular, the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks;
  - (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and
  - (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which they are able to produce to it.

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

Sections 87(1)(d) and 88(1)(a) of the 1990 Act and Section 143 of the 1996 Act

The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular (but without prejudice to the generality of the foregoing):

- (1) a declaration as to the Licensee's corporate structure in such form and at such times as Ofcom shall specify; and
- (2) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground 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 whether the requirements imposed by or under Schedule 14 to the Communications Act are contravened in relation to the Licensee's holding of the Licence.

### ***10. Notifications to Ofcom***

Sections 88 (5), 87(1)(d) and (f), 88(5) and 87(1)(d) of the 1990 Act

- (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 amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom in accordance with Condition 14 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; or
  - (c) the Licensee shall permit an execution to be levied against their assets and/or chattels and allows such execution to remain outstanding for more than 14 days; or
  - (d) the Licensee becomes aware that any person having control of the Licensee does or is subject to any of the events specified in Condition 10(1)(a) to (c) above; or
  - (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 10(1)(a) to (d) above occurs under the laws of any applicable jurisdiction.
- (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 Licensed Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secrets Act 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.
- (4) The Licensee shall notify Ofcom if there is a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.

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

- (a) of any changes to persons that hold a 'majority interest' in the Licensee;
  - (b) of any changes to persons who exercise 'de facto' control over the Licensee; and
  - (c) if any person in control of the Licensee enters into a 'control arrangement'.
- (5) For the purposes of Condition 10(4)(a) to (c):
- (a) a person holds a 'majority interest' where they hold, or are beneficially entitled to, more than 50 per cent of the equity share capital, or possess more than 50 per cent of the voting power in the company;
  - (b) a person can exercise 'de facto control' where they do not have a majority interest, but are regarded as controlling a company where it is reasonable, having regard to all the

circumstances, to expect that they would (if they chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with their wishes;

- (c) person in control of the Licensee enters into a 'control arrangement' where they hold, or are beneficially entitled to, 50 per cent of the company's equity share capital, or possess 50 per cent of the voting power in the company, and have an arrangement with any other participant in the company as to how any voting power possessed by either of them is to be exercised or not. 'Arrangement' includes any agreement or arrangement whether or not it is, or is intended to be, legally enforceable; and
- (d) a person shall be treated -
  - (i) as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which they control or to which such a body corporate is beneficially entitled, and
  - (ii) as possessing any voting power possessed by such a body corporate.

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

Section 316 of the Communications Act

(1) The Licensee shall:

- (a) not enter into or maintain any arrangement, or engage in any practice, which is prejudicial to fair and effective competition in the provision of licensed services or of connected services;
- (b) comply with any code or guidance for the time being approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or of connected services; and
- (c) comply with any direction given by Ofcom to the Licensee for that purpose.

(2) In this Condition 11 "connected services" and "licensed service" have the meaning given to them in Section 316 (4) of the Communications Act.

### ***12. Disqualified persons under Section 89 of the 1990 Act***

Section 89 of the 1990 Act

The Licensee shall do all that it can to ensure that no person who is disqualified from holding a licence by virtue of Section 89 of the 1990 Act is concerned in the provision of the Licensed Service or the making of programmes included in it or in the operation of any station for wireless telegraphy used for broadcasting the Licensed Service.

### **13. Compliance with ownership restrictions**

Sections 88(1) and (2) of the 1990 Act

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on or in relation to 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 13 (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 the requirements imposed by or under Schedule 14 to the Communications Act being contravened in relation to their holding of the Licence immediately upon becoming aware of such circumstances or events.

### **14. Transferability of the Licence**

Sections 86(7) and (8) 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 to whom it is proposed to transfer the Licence [DETAILS] and would be in a position to comply with all of the Conditions throughout the remainder of the licence period.

### **15. Compliance**

Sections 87(1)(a), (d), (f) and 87(2)(a) of the 1990 Act and Sections 321 (4) and 325 (1) 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 or the Communications Act.
- (2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Licensed Service for the purposes of ensuring that programmes included in the Licensed Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act and the Communications Act.
- (3) The Licensee shall, without prejudice to the generality of the foregoing, ensure that:
  - (a) there are sufficient persons involved in providing the Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act and the Communications Act and all relevant codes and guidelines as may

be drawn up and from time to time revised by Ofcom 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; and
  - (c) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine.
- (4) The Licensee shall supply Ofcom with details of such procedures (and any revisions of such procedures) adopted by them and required to be observed by those involved in providing the Licensed Service for the purposes of Condition 15(2) above.

### ***16. Government directions and representations***

#### Section 336 of the Communications Act

- (1) The Licensee shall if so directed by Ofcom:
- (a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice given pursuant to Section 336(1) of the Communications Act; or
  - (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336(5) of the Communications Act.
- (2) The Licensee may when including an announcement in the Licensed Service in accordance with Condition 16(1)(a) above indicate that the announcement is made in pursuance of a direction by Ofcom.
- (3) Where Ofcom:
- (a) has given the Licensee a direction to the effect referred to in Condition 16(1)(b) above; or
  - (b) in consequence of the revocation by the Secretary of State of the notice giving rise to the issuing of such a direction, has revoked that direction, or where such a notice has expired the Licensee may include in the Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

### **17. Powers of inspection**

Section 87(2)(b) of the 1990 Act

The Licensee shall permit any employee of, or person authorised in writing by Ofcom to enter any premises used in connection with the broadcasting or delivery of the Licensed Service and to inspect, examine, operate or test any equipment on the premises which is used in that connection.

### **18. 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 Licensed Service are established and maintained and shall ensure that such procedures are duly observed.
- (2) The Licensee shall for a period of 12 months keep a written record of any complaints referred to in Condition 18(1) above and of any response given by the Licensee in relation to any such complaint and shall make such record available to Ofcom at such times as Ofcom may reasonably require.

### **19. Fairness complaints**

Sections 115, 119 and 120 of the 1996 Act and Sections 326 and 327 of the Communications Act

- (1) The Licensee shall comply with such directions and requests for information as may be given to them by Ofcom following receipt by them from Ofcom of a copy of a fairness complaint that relates to the provision of the Licensed Service, and in particular the Licensee shall, if so requested:
  - (a) provide Ofcom with a recording of the programme, or of 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 hear 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 the programme, or of any specified part of it, to which the complaint relates 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 complaint;
  - (g) attend Ofcom and assist Ofcom in its consideration of the complaint; and
  - (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.
- (2) The Licensee shall comply with such directions as may be given to them by Ofcom to publish, in such manner, and within such period as may be specified by Ofcom, in any direction given pursuant to Section 119(1) of the 1996 Act, a summary of any fairness complaint with regard to a programme included in the Licensed Service, together with Ofcom's findings on the fairness complaint or a summary of such findings. The form and content of any such summary shall be such as may be approved by Ofcom.
- (3) References in Condition 19(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.
- (5) The Licensee shall ensure that the provisions of the Fairness Code are observed in connection with the provision of the Licensed Service and in relation to the programmes included in the Licensed Service.

## ***20. 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:

- (1) 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

(2) Ofcom's functions under Part V of the 1996 Act in relation to the Licensed Service are brought to the attention of the public (whether by means of broadcasts or otherwise).

### **21. Power of Ofcom to vary Licence Conditions**

Section 86 (5) of the 1990 Act

Ofcom may by a notice served on the Licensee:

- (1) vary the licence period provided that the Licensee consents to such variation (without prejudice to Ofcom's rights under Condition 28(3)(a) in Part 4); or
- (2) vary the Licence in any respect provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation.

### **22. Notices and service**

Section 394, 395 and 396 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 posted, at 10.00 am 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 pre-paid first-class letter or was left at the proper address, as the case may be.
- (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.

### **[23. Equal opportunities and training<sup>2</sup>**

*Section 337 of the Communications Act*

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<sup>2</sup> **Note for applicants:** This clause will only be required for those trial participants that satisfy the requirements in section 337(7) of the Communications Act 2003. Broadly speaking, these will be satisfied if the trial participant



- (1) *The Licensee shall make, and from time to time shall review, arrangements for:*
  - (a) *promoting, in relation to employment with the Licensee:*
    - (i) *equality of opportunity between men and women and between persons of different racial groups; and*
    - (ii) *the equalisation of opportunities for disabled persons; and*
  - (b) *training and retraining persons whom they employ in or in connection with the provision of the Licensed Service or the making of programmes for inclusion in the Licensed Service.*
- (2) *The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 23(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 23(1), have regard to any relevant guidance published by Ofcom as revised from time to time.*
- (5) *This Condition 23 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Licensed Service.*
- (6) *Ofcom will treat the Licensee's obligations under Conditions 23(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.]*

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employs (or is likely to employ) 20 or fewer individuals in connection with the provision of licensed services. In determining whether this condition is applicable to a perspective trial participant, Ofcom is able to aggregate the number of staff employed across a group of companies in connection with the provision of licensed services.

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

#### ***24. Force majeure***

Section 87(1)(f) 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.

#### ***25. Miscellaneous***

Nothing in this Licence shall imply any warranty representation or obligation on the part of Ofcom as to the population or size or location of the areas actually capable of receiving the programmes provided and broadcast by the Licensee pursuant to the Licence or that programmes broadcast from any other station or stations shall not be capable of reception in the whole or any part of the area covered by the Licensed Service.

## PART 4: CONDITIONS RELATING TO ENFORCEMENT OF LICENCES

### **26. Notice of non-compliance**

Sections 109(1) and (2) of the 1990 Act

- (1) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence it may serve on them a notice which shall state:
  - (a) that Ofcom is so satisfied that the Licensee has failed to comply with any such Condition or direction; and
  - (b) the effect as set out in Condition 26(2) below of a failure to comply within the licence period with any such Condition or direction whether specified in the notice or otherwise.
  
- (2) If at any time during the period specified in the notice issued under Condition 26(1) above Ofcom is satisfied that the Licensee has again failed to comply with the Condition or direction specified in the notice or any other Condition of the Licence or direction given by Ofcom then it may direct the Licensee for a specified period not exceeding six months:
  - (a) to provide Ofcom in advance with such scripts and particulars of the programmes to be included in the Licensed Service as are specified in the direction; and
  - (b) in relation to such of those programmes as will consist of or include recorded matter, to produce to Ofcom in advance for examination or reproduction such recordings of that matter as are so specified.

### **27. Sanctions for breach of Condition**

Sections 87(1)(e), 109(3), 110 (1)(a) and (b), 110(3) of the 1990 Act

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

- (3) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and it has given them a reasonable opportunity to make representations to it about the matters complained of, it may serve on them a notice requiring them to pay to Ofcom, within a specified period, a specified financial penalty.
- (4) The amount of any financial penalty imposed pursuant to Condition 27(3) shall not exceed £250,000 or such other sum as the Secretary of State shall pursuant to paragraph 9 of Part 1 of Schedule 13 to the Communications Act from time to time by order specify.
- (5) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given under the Licence and it has given them a reasonable opportunity to make representations to it about the matters complained of, it may serve on them a notice reducing the licence period by a specified period not exceeding twelve months.
- (6) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 27(5) above, 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 Licensed Service since the date of the earlier notice.
- (7) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any directions given under the Licence and it has given them a reasonable opportunity to make representations to it about the matters complained of, it may serve on them a notice suspending the Licence for a specified period not exceeding six months
- (8) The issue of a notice under Condition 27(3) or (5) above in respect of any failure to comply with any Condition or direction shall not preclude Ofcom from issuing a notice under Condition 26 or Condition 27(1) of this Licence in respect of that failure.
- (9) The Licensee shall reimburse to Ofcom any costs reasonably incurred by Ofcom in connection with or resulting from a breach of any Condition in the Licence that:
  - (a) requires Ofcom at its sole discretion to arrange for the translation from one language into another any broadcast made by the Licensee; or
  - (b) requires Ofcom at its sole discretion to make arrangements for the verification of the technical performance or the signal strength of the transmission of the Licensee.

Any amounts payable under this Condition 27(9) shall be payable by the Licensee in such manner and at such time or times as Ofcom shall determine.

## **28. Revocation**

Section 86(4)(b), 86(9), 87(5), 88(7), 111 and 111B of the 1990 Act, and Section 145 of the 1996 Act

- (1) (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and that 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 28(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:
- (a) if the Licensee becomes a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act or a requirement imposed by or under Schedule 14 to the Communications Act is contravened in relation to their holding of the Licence;
  - (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 Licence, provided Ofcom with information which was false in a material particular or withheld any material information with the intention of causing Ofcom to be misled;
  - (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 in relation to their holding of the Licence 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;

- (d) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;
  - (e) if the Licensee fails to comply with any requirement to hold or have held on their behalf a licence under Section 8 of the Wireless Telegraphy Act 2006 or if the Licensee ceases to comply with requirements imposed by or under Chapter 1 of Part 2 of the Communications Act.
- (3) Ofcom shall before serving a notice revoking the Licence under Condition 28(1) or Condition 28(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.
- (4) If the Licensee is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying them from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.
- (5) (a) If Ofcom is satisfied that the Licensee has included in the Licensed Service one or more programmes containing material likely to encourage or incite to crime or to lead to disorder such that the Licensee has thereby failed to comply with Condition 5 and that the failure is such as to justify the revocation of the Licence, Ofcom 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 has failed to comply with Condition 5;
  - (iii) stating that Ofcom may revoke the Licence after the end of the period of twenty-one days beginning with the date on which the notice is served on the Licensee;

- (iv) informing the Licensee of their right to make representations to Ofcom within that period about the matters complained of; and
- (v) suspending the Licence as from the time when the notice is served on the Licensee until the revocation takes effect or Ofcom decide not to revoke the Licence.

If Ofcom, having considered any representations about the matters complained of made to it within the time period above in Condition 28(5)(a)(iii), is satisfied that it is necessary in the public interest to revoke the Licence in question, they shall service on the Licensee a notice revoking the Licence. However such a revocation notice shall not take effect until the end of the period of twenty-eight days beginning with the day on which the revocation notice was served on the Licensee.

**ANNEX TO [LICENCE NO. X]**

**Part I: Description of the Licensed Service**

*[Description of service based on the description provided by the trial participant in its application form]*

**Part II: Technical specification**

[See Schedule to the associated Wireless Telegraphy Act Licence]