

# **SOUTH WEST AND WEST OF ENGLAND REGIONAL CHANNEL 3 LICENCE ATTACHMENT TO VARIATION NUMBER 17 DATED 21 DECEMBER 2017**

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## THE SCHEDULE

### Part 1

### Definitions and interpretation

#### 1. Definitions and interpretation

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

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

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

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

“**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;

“**Appointed News Provider**” means the news provider appointed in accordance with Section 280 of the Communications Act or whose appointment has effect by virtue of paragraph 35 of Schedule 18 to the Communications Act;

“**Appropriate Network**” shall be interpreted in accordance with section 272(7) of the Communications Act for the purpose of interpreting Conditions 2(1A) to 2(1D) 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 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (OJ 2010 L 95/1)

**“C3/C4 multiplex licence”** means the licence granted 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 him in accordance with the provisions set out in Condition 5 below or, if different, the amount agreed to by the Licensee to be paid by him pursuant to this Licence, or any renewal of this Licence, in accordance with the provisions set out in Condition 5 below;

**“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 regional Channel 3 services but not electronic programme guides should promote the understanding and enjoyment by persons who are deaf or hard of hearing and by persons who are blind or partially sighted and by persons with a dual sensory impairment of the programmes to be included in those services; and
- (b) the means by which such understanding and enjoyment should be promoted;

as drawn up and from time to time revised by Ofcom in accordance with Section 303 of the Communications Act;

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

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

**“Distribution”** means the conveyance of Channel 3 services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast so as to be available for reception by members of the public;

**“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;

“**Gaelic Television Fund**” means the fund established for the purposes of Section 183 of the 1990 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 from the Commencement Date to the initial expiry 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 2(1A) to 2(1H) of this licence;

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

“**Licensed Area**” means the geographic area in which a broadcast made in accordance with Condition (2)(2)(a) of this Licence is available for reception by members of the public;

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

“**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 his last complete accounting period so falling;

**“Programme”** unless otherwise stated includes an advertisement and anything included in the Regional Channel 3 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;

**“Regional Channel 3 Service”** means, the regional television broadcasting service provided with a view to it being broadcast in digital form in the Licensed Area in accordance with the conditions of this Licence;

**“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 Regional Channel 3 Service to take effect from the end of the Licensing Period;

**“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 29;

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

**“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 2(1E) to 2(1H) 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 Section 319 of the Communications Act;

**“Standards Complaint”** means a complaint about the observance of standards set under Section 319 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 in the margins are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) This Licence shall be governed by English law.



## Part 2

## General conditions

2.

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

Provision of Regional Channel 3 Service by the Licensee

(1) The Licensee shall supply the Regional Channel 3 Service to the holder of the C3/C4 multiplex licence for broadcast.

Commencement Order 2009

(1A) The Licensee shall ensure that the Regional Channel 3 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 his best to secure that arrangements are entered into, and kept in force that ensure:

- a) that the Regional Channel 3 Service, is broadcast or distributed on appropriate networks; and
- b) that the broadcasting and distribution of the Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 Service is included in the list of must-carry services in Section 64 of the Communications Act.

(1E) The Licensee shall ensure that the Regional Channel 3 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 his best to secure that arrangements are entered into, and kept in force that ensure:

- a) that the Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 Service for the Licensing Period and in the Licensed Area and shall procure that:
  - (a) the Regional Channel 3 Service is broadcast from the stations and relays specified in Part 3 of the Annex, and otherwise in accordance with all the requirements set out for those stations and relays in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences;
  - (b) the programmes to be included in the Regional Channel 3 Service are broadcast in the Licensed Area on the days and not outside the hours specified in Part 2 of the Annex.

- (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 (including a Channel 3 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 Regional Channel 3 Service, subtitling in accordance with Condition 20, and services (other than subtitling) which are ancillary to programmes included in the Regional Channel 3 Service and directly related to their contents or relate to the promotion or listing of such programmes.

**3.**

**Prohibition on the Imposition of Charges**

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

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 Regional Channel 3 Service;
- (b) any service consisting in the provision of assistance for disabled people in relation to programmes included in the Regional Channel 3 Service;
- (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 Regional Channel 3 Service.

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

**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.
- (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.

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

5.

**Additional Payments and Contributions to the National Television Archive**

Section 19 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.

Section 4(1)(b) and (d) of the 1990 Act

### V.A.T.

- (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.

Section 265(1) of the Communications Act

### Public service Remit and Programme Policy

- (1) The Licensee shall ensure that he fulfils the public service remit, in the provision of the Regional Channel 3 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 his proposals for securing that, during the following year,
    - (i) the public service remit for the Regional Channel 3 Service will be fulfilled; and
    - (ii) the duties imposed on him under Conditions 8 to 13 and Conditions 15 and 16 below and by virtue of Sections 277 to 294 of the Communications Act (as applicable to the Regional Channel 3 Service) will be performed; and
  - (b) containing a report on his performance in carrying out, during the period since the previous statement, the proposals contained in that statement.
- (3) The Licensee shall monitor his 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 him 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 him by Ofcom:
- (a) revise such statement; and
  - (b) publish a revision of such statement after it has been approved by Ofcom.
- (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.

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

## 8.

### Networking Arrangements

Section 291(1) of the Communications Act

- (1) The Licensee shall do all he can to ensure that approved networking arrangements are in force whenever:
- (a) the Licensee is providing the Regional Channel 3 Service; and
  - (b) no networking arrangements imposed by Ofcom under Section 292 of the Communications Act are in force.

Sections 292 of the Communications Act

- (2) If:
- (a) no suitable networking arrangements exist by the date Ofcom shall determine in accordance with Section 292 of the Communications Act that such arrangements must have been entered into (the "**networking date**"); or
  - (b) any such arrangements that exist at the networking date cease to apply to all regional Channel 3 providers on or after that date,

the Licensee shall comply with the provisions of any networking arrangements imposed by Ofcom under that

Section and in accordance with paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act.

- (3) Where:
- (a) networking arrangements are imposed in accordance with Condition 8(2); and
  - (b) other networking arrangements are entered into by the holders of regional Channel 3 licences bound by the imposed arrangements; and
  - (c) the other arrangements entered into are approved by Ofcom after having taken into account the matters set out in paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act,

the arrangements referred to in Condition 8(2) shall cease to have effect on the coming into force of the arrangements referred to in paragraph (b) above as approved networking arrangements.

Paragraph 2 of Schedule 11 to the Communications Act

- (4) Where any networking arrangements have been approved by Ofcom under Condition 8(1) or 7(2), the Licensee shall not agree to any modification of those arrangements by the holders of licences to provide regional Channel 3 services unless such modification has been approved by Ofcom in accordance with Schedule 11 to the Communications Act.

Section 293(7) of the Communications Act

- (5) The Licensee shall do all he can to ensure that he gives effect to any modifications that are proposed by Ofcom (Ofcom having taken account of the matters set out in paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act) to the networking arrangements that are in force (whether approved or imposed by Ofcom) following any general review that Ofcom carries out in accordance with Section 293 of the Communications Act.

- (6) For the purposes of this Condition 8, “**approved networking arrangements**” has the meaning given to it in Section 291(2) of the Communications Act.

Section 294(2) of the Communications Act

- (7) The Licensee’s obligations under paragraphs (1), (2) and (5) of this Condition 8 are subject to the Licensee’s rights of appeal conferred by paragraphs 9 and 11 of Schedule 11 to the Communications Act.

Sections 291(1) and 292(7) of the Communications Act

- (8) The Licensee shall at all times during the Licensing Period do all he can to give effect to the networking arrangements referred to in this Condition 8.



Section 290 of the Communications Act

- (9) The Licensee shall do all he can to ensure that, except to the extent that Ofcom shall otherwise determine, the networking arrangements referred to in Condition 8(1) above comply with the proposals submitted by him to Ofcom and with the general guidance published by Ofcom pursuant to Section 290(2) of the Communications Act.

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

- (10) The Licensee shall contribute to the network programme budget. Subject to the requirements of the Communications Act, his contribution shall be determined by reference to the Licensee's share of qualifying revenue on such basis as may be agreed between all the holders of regional Channel 3 licences, and shall be an amount which is adequate, when aggregated with the contributions of all such holders of regional Channel 3 licences, to sustain the quality of the network service.

## 9.

### Regional Programme-Making

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

- (1) The Licensee shall include in the Regional Channel 3 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 3 licences on Channel 3 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 area.
- (3) In complying with this Condition 9, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (4) In this Condition 9, "**programme**" does not include an advertisement, and "**expenditure**", in relation to a programme, and "**Channel 3 programmes**" each have the meaning given to them in Section 286(7) of the Communications Act.

**10.**

Section 287 of the  
Communications Act

**Regional Programming**

- (1) Subject to Condition 10(3) below, the Licensee shall ensure, in relation to programmes included in the Regional Channel 3 Service, that:
  - (a) the amount of time set out in Part 1 of the Annex is given to programmes as specified (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;
  - (b) the regional programmes included in the Regional Channel 3 Service are of high quality;
  - (c) the proportion specified in Part 1 of the Annex of the regional programmes that are included in the Regional Channel 3 Service consists of programmes made in that area;
  - (d) the regional news programmes included in the Regional Channel 3 Service are broadcast for viewing at intervals throughout the period for which the Regional Channel 3 Service is provided and, in particular, at Peak Viewing Times;
  - (e) the proportion specified in Part 1 of the Annex of the other regional programmes that are included in the Regional Channel 3 Service consists of programmes broadcast for viewing at Peak Viewing Times and at times immediately preceding or following those times.
- (2) Where in relation to the Regional Channel 3 Service a determination has been made pursuant to Section 14(3) of the 1990 Act, the Licensee shall ensure, in relation to programmes included in the Regional Channel 3 Service, that:
  - (a) the amount of time set out in Part 1 of the Annex is given to local programmes as specified;
  - (b) in the case of each part of an area or each community for which the Regional Channel 3 Service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
  - (c) the local programmes included in the Regional Channel 3 Service are of high quality;
  - (d) a suitable proportion, as set out in Part 1 of the Annex, of the local programmes that are included

in the Regional Channel 3 Service consists of programmes made in the area for which the Regional Channel 3 Service is provided;

- (e) the local news programmes included in the Regional Channel 3 Service are broadcast for viewing at intervals throughout the period for which the Regional Channel 3 Service is provided and, in particular, at Peak Viewing Times;
  - (f) the proportion specified in Part 1 of the Annex of the other local programmes that are included in the Regional Channel 3 Service consists of programmes broadcast for viewing at Peak Viewing Times and at times immediately preceding or following those times.
- (3) Where Condition 10(2) above applies, Condition 10(1) shall be applicable to the extent only that it appears to Ofcom that the requirements of that Condition are not adequately met by Condition 10(2).
  - (4) In complying with this Condition 10, the Licensee shall have regard to any guidance that may be issued by Ofcom.
  - (5) In this Condition 10 “**programme**” does not include an advertisement and “**local programme**” and “**regional programme**” have the meanings given to them in Section 287(8) of the Communications Act.

## 11.

Section 285 of the Communications Act

### Commissioning of Independent Productions

- (1) The Licensee shall draw up and from time to time revise a code of practice setting out the principles he 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 11(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 11(2) above.
- (4) The Licensee shall ensure that he complies at all times with any code drawn up and for the time being in force pursuant to this Condition 11.

## 12.

Section 277 of the Communications Act

### **Broadcasting of Independent Productions**

- (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 Regional Channel 3 Service is allocated to the broadcasting of a range and diversity of Independent Productions.

- (2) For the purposes of Condition 12(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 Regional Channel 3 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 his compliance with the requirements of Condition 12(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 12, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (6) In this Condition 12 “**programme**” does not include an advertisement.

### 13.

Section 278 of the Communications Act

#### Original Productions

- (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 Regional Channel 3 Service are original productions or commissions for any or all of the regional Channel 3 services; 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 13 “**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.

**14.**

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

**General Standards and Requirements**

The Licensee shall ensure that the provisions of the Standards Code are observed in the provision of the Regional Channel 3 Service.

14( A)

- (1) The Licensee shall be responsible for all arrangements for the management of communication, including telephony, between members of the public and the Licensee or the Licensee's contractors or agents (together here described as "the Licensee") where such communication is publicised in programmes. 'Communication' includes, but is not limited to, methods of communication in which consideration is passed between a member of the public and the Licensee directly or indirectly and methods of communication intended to allow members of the public to register with the Licensee indications of preference or intended to allow entry to any competition, game or scheme operated by the Licensee.
- (2)(a) Arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee must ensure, in particular, that:
  - (i) reasonable skill and care is exercised by the Licensee in the selection of the means of communication and in the handling of communications received;
  - (ii) voting, competitions, games or similar schemes are conducted in such ways as to provide fair and consistent treatment of all eligible votes and entries; and
  - (iii) publicity in programmes for voting, competitions, games or similar schemes is not materially misleading.
- (b) In addition to the requirements in sub-paragraph 2(a), the Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service
- (3)(a) The Licensee shall implement and maintain appropriate compliance procedures to ensure arrangements for the management of methods of communication publicised in programmes and intended to allow communication between members of the public and the Licensee fulfil all the requirements set out in paragraph 2 above.
- (b) Where the Licensee uses a Controlled Premium Rate Service as defined under the PRS Condition in force at the time made under section 120 of the Communications Act 2003 as the method of communication for voting or competitions publicised within programme time, the Licensee shall ensure that its compliance procedures

include a system of verification by an appropriate independent third party ('the third party'), in accordance with the following requirements:

- (i) Verification shall include confirmation by the third party that an end-to-end analysis of the technical and administrative systems to be used for the receipt and processing of votes and competition entries from members of the public has been conducted and that such systems fulfil all the requirements set out in paragraph 2 above. All such systems and the analysis of such systems must be fully documented.
- (ii) Verification shall include appropriately regular reviews by the third party of individual programmes. Such reviews must track all votes or competition entries through all stages from receipt, and the results of each review must be fully documented.
- (iii) The Licensee shall ensure that a Director of the Board (or, where there is no Board, an appropriate equivalent) ('the designated Director') has specific responsibility for verification.
- (iv) The Licensee shall ensure that the third party provides reports regarding analyses of processes (as specified under sub-paragraph 3(b)(i)) and reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)) to the designated Director. If significant irregularities or other problems are discovered, the Licensee shall ensure that these are reported forthwith to Ofcom.
- (v) The Licensee shall provide forthwith and in an appropriate form any information requested by Ofcom regarding verification.
- (vi) The Licensee shall retain for at least two years all relevant data regarding votes and competition entries from callers by means of Controlled Premium Rate Services and all documentation regarding the verification of its systems (as specified under sub-paragraph 3(b)(i)) and the reviews of individual programmes (as specified under sub-paragraph 3(b)(ii)).
- (vii) The Licensee shall publish annually a statement signed by the designated Director confirming that he is satisfied that the Licensee has in place suitable procedures to fulfil the requirements of paragraph 3(b) and confirming the name of the



third party engaged by the Licensee to fulfil the requirements of paragraph 3(b).

**15.**

Sections 279 and 280 of the Communications Act

**News and Current Affairs**

- (1) The Licensee shall include news programmes and current affairs programmes in the Regional Channel 3 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 Regional Channel 3 Service is provided and (taken together with news programmes included in other regional Channel 3 services) are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.
- (2) The Licensee shall ensure that the time allocated to news programmes included in the Regional Channel 3 Service and current affairs programmes included in the Regional Channel 3 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 Regional Channel 3 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 15, the Licensee shall have regard to any guidance that may be issued by Ofcom.

**16.**

Section 280 of the Communications Act

**Appointment of News Provider**

- (1) The Licensee shall do all he can to ensure that arrangements made in accordance with Section 280(3) of the Communications Act for the appointment of a single body corporate as the Appointed News Provider are maintained between all the holders of regional Channel 3 licences and, in particular, ensure that subject to Condition 16(4) below such arrangements provide:

- (a) for the terms on which such appointment is made to include the terms appearing to Ofcom to be appropriate and in accordance with any guidance that Ofcom may issue under Section 280(7)(a) of the Communications Act for securing that, throughout the period of its appointment, the finances of the body appointed are adequate to ensure that the news obligations under Condition 15 above are capable of being met;
  - (b) for the approval of Ofcom to be required for the purposes of paragraph (a) to this Condition 16(1) to the terms on which an appointment is made; and
  - (c) for the Appointed News Provider to be subject to an obligation, enforceable by Ofcom, to provide Ofcom with all such information as it may require for the purpose of carrying out its functions.
- (2) The Licensee shall do all he can to ensure that at all times while the Licensee is providing the Regional Channel 3 Service there is in force an appointment made in accordance with the arrangements referred to in Condition 16(1) above.
- (3) The Licensee shall:
- (a) ensure that news programmes included in the Regional Channel 3 Service in compliance with Condition 16(1) and provided by the Appointed News Provider which are news programmes that are presented live and broadcast simultaneously with the broadcasting of news programmes provided in other regional Channel 3 services are in compliance with the relevant conditions imposed in their respective licences in accordance with Section 280(5) and (6) of the Communications Act; and
  - (b) give prior notice in writing to Ofcom when the appointment of the Appointed News Provider is due to expire, or is to be renewed or terminated in accordance with the terms of the appointment.
- (4) The requirements set out in paragraphs (a), (b) and (c) of Condition 16(1) above shall not apply in relation to any appointment made before the commencement of Section 280 of the Communications Act.
- (5) The Licensee shall ensure that a body is not appointed as the Appointed News Provider if:

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

Section 281 of the Communications Act

- (a) it is a disqualified person under Part II of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or
- (b) there would be a contravention of Part 1 of Schedule 14 to the Communications Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided;

and the Licensee shall ensure that the appointment of a body as Appointed News Provider shall cease to have effect if it becomes a body falling within paragraphs (a) or (b) of this Condition 16(5).

## 17.

Section 333 of the Communications Act

### Party Political Broadcasts

- (1) The Licensee shall include in the Regional Channel 3 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).

## 18.

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

### Listed Events

- (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 18 that derive from amendments made to the 1996 Act by the Communications Act shall apply only from such time as relevant Sections of that Act are commenced.
- (2) The Licensee shall not include within the Regional Channel 3 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)(b) of the 1996 Act (the “**second service**”) has acquired the right to include in the second service

- live coverage of the whole of the event or of that part of the event; and
  - (ii) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided; or
  - (b) Ofcom has consented in advance to inclusion of that coverage in the first service; or
  - (c) the event is a Group B event for which rights to provide coverage have been acquired by one or more other persons in addition to the Licensee; and
    - (i) that additional coverage constitutes adequate alternative additional coverage of the event; and
    - (ii) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made by Ofcom in accordance with Section 104ZA of the 1996 Act.
- (3) Condition 18(2) shall not apply where:
- (a) the Licensee is exercising rights acquired before 1st October 1996; and
  - (b) the Licensee is exercising rights acquired in relation to an event listed after 1st October 1996 where such rights were acquired before the date referred to in Section 97(5)(a) of the 1996 Act.
- (4) The allocation or transfer of an event to Group A:
- (a) shall not affect the validity of rights acquired in relation to that event where such rights were acquired before the date referred to in Section 97(5A) of the 1996 Act; and
  - (b) where the Secretary of State makes a direction in accordance with Section 97(5B), will not affect the application of Condition 18(2)(c) which will continue to apply in relation to a Group B event that is transferred to Group A as if the event remained a Group B event.
- (5) Except where otherwise stated, this Condition 18 applies to the Regional Channel 3 Service if and to the extent that the Regional Channel 3 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.

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

- (7) For the purposes of this Condition 18:

- (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 18(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 18(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 18(2) and 18(6); and
- (ii) whether to take action pursuant to Condition 40(4)(a) or 40(4)(b) in circumstances where the Licensee fails to comply with Conditions 18(2) or 18(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 18 and for the purposes of determination made by it pursuant to Section 102 or Section 103 of the 1996 Act.

**19.**

**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 him 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 Regional Channel 3 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 him by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:
- (a) the exclusion from the Regional Channel 3 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 Regional Channel 3 Service (whether generally or in particular circumstances); and
  - (c) the forms and methods of sponsorship to be excluded from the Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 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.

**20.**

Section 307(1) of the Communications Act

**Subtitling, Signing and Audio-Description**

The Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Regional Channel 3 Service and the Licensee shall provide subtitling, signing and audio-description in the amounts set out in Part 1 of the Annex.

**21.**

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

**Transmission Arrangements and Technical Standards and Requirements for the Regional Channel 3 Service**

- (1) The Licensee shall:
- (a) procure that the Regional Channel 3 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/C4 multiplex licence in accordance with the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences;
  - (b) contribute to the costs incurred by the holder of the C3/C4 multiplex licence in respect of the broadcasting for reception by members of the public of all Channel 3 services (taken as a whole) in digital form in such manner as may be approved by Ofcom;
  - (c) contribute to the costs incurred in respect of the Distribution of all Channel 3 services (taken as a whole) in digital form in such manner as may be approved by Ofcom; and
  - (d) do all that he can to ensure that the relevant provisions of the Television Technical Performance Code are observed in all the operations under his direct control, in the Distribution of the programmes included in the Regional Channel 3 Service, and by any third parties involved in the provision of programmes included in the Regional Channel 3 Service.
- (2) In this Condition 21 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.

**22.**

**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 in sound and vision of any programme which is the subject matter of a Standards Complaint and in relation to the production of recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition 32 below.

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 Regional Channel 3 Service for a period of 90 days from the date of its inclusion therein;
  - (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 Regional Channel 3 Service which he is able to produce to it.

**23.**

**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, or 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;
- Section 4(1)(c) and 19 of the 1990 Act
- (d) statements of his qualifying revenue at monthly intervals and also in respect of each entire accounting period of his in such form as Ofcom shall require; and
- Sections 4(1)(c) and 183 of the 1990 Act
- (e) such information as Ofcom may require for the purposes of carrying out any functions undertaken by it in relation to the Gaelic Television Fund.
- 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 28 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 23(2)(a) to (c) above; or
- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 23(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 Regional Channel 3 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.

## 24.

Section 5(2) of the 1990 Act (see also paragraph 3(3) of Part 1 of Schedule 15 to the Communications Act and Section 351(1) of the Communications Act)

### Provision of Information Relating to a Change of Control

- (1) 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 351(10) 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 24(2) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable where such proposals would constitute a change in the persons having control over the Licensee within the meaning of 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 351(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 351 and 352 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)

- (2) (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.

Paragraph 2 of Part 1 of Schedule 14 to the Communications Act

- (b) The Licensee shall notify Ofcom within 28 days of any change in circumstances which would operate against the restrictions specified in paragraph 2 of Part 1 of Schedule 14 to the Communications Act including:
- (i) in the national or local newspapers over which he or any person connected with him has an interest; and
  - (ii) of interest in a body corporate which is a relevant national newspaper proprietor (within the meaning of paragraph 2(6) of Part 1 of Schedule 14 to the Communications Act) in which he is a participant; and
  - (iii) or of any change in control of any body corporate which is a participant in the Licensee (where the Licensee is a body corporate) where such body corporate is one in which a relevant national newspaper proprietor is a participant.
- (c) For the purposes of Condition 24(2)(a):
- (i) “**arrangement**” includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable;
  - (ii) a person shall be treated as holding, or being beneficially entitled to, any equity

share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and as possessing any voting power possessed by such a body corporate; 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.

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

- (3) The Licensee shall supply to Ofcom such information as Ofcom may reasonably require from time to time as to the national or local market share of any newspaper or newspapers insofar as such national or local market shares appears to Ofcom relevant for the purposes of determining whether any of the restrictions in Part 1 of Schedule 14 to the Communications Act have been complied with or in order to determine whether, any of the circumstances described in that Part apply.

## 25.

Section 216 of the Communications Act

### Renewal of the Licence

- (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 Regional Channel 3 Service in compliance with Conditions 7, 9, 10, 11, 12, 13 and 15;
- (b) it proposes to grant a fresh regional Channel 3 licence for the provision of a service replacing the Regional Channel 3 Service which would differ from the Regional Channel 3 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 Regional Channel 3 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 25(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 25(4) above, he shall notify Ofcom of his acceptance and, subject to Condition 25(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 34 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 25(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.

## 26.

Section 316 of the Communications Act

### Fair and Effective Competition

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

**27.**

Section 5(1) and (2) of the 1990 Act

**Compliance with Ownership Restrictions**

(1) The Licensee shall comply in all respects with the restrictions and requirements imposed on him by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that such requirements apply to him.

(2) The Licensee shall comply with any direction of Ofcom requiring him 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 27(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 him 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.

**28.**

Sections 3(6) & (7) of the 1990 Act

**Transferability of the Licence**

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.

**29.**

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

**Compliance**

(1) The Licensee shall comply with any direction given to him 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.

Sections 4(1)(a), (c) and (d) of the 1990 Act and Sections 321(4) and 325(1) of the Communications Act

(2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Regional Channel 3 Service for the purposes of ensuring that programmes included in the Regional Channel 3 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 Regional Channel 3 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) the requirements of the Audiovisual Media Services Directive are complied with where practicable, having regard to the provisions set out in Articles 16, 17 and 18 of the Directive and any guidance issued and from time to time revised by Ofcom for the purpose of giving effect to those provisions;
  - (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 him and required to be observed by those involved in providing the Regional Channel 3 Service for the purposes of Condition 29(2) above.
- (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).
- (5) The Licensee shall supply to Ofcom post-transmission data in relation to all programmes included in the Regional Channel 3 Service covering such information and in such

*Articles 16, 17 and 18 of the Audiovisual Media Services Directive and Section 336 of the Communications Act*

Section 335(4) of the Communications Act

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



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 and (if Ofcom shall so require) with the holders of other regional Channel 3 licences, for the purpose of enabling Ofcom to conduct periodic reviews of the performance by the Licensee of his obligations under the Licence and of the performance by the holders of other regional Channel 3 licences of their obligations under their respective licences.

### **30.**

#### **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 Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 Service in accordance with Condition 30(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 him 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 30(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 Regional Channel 3 Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

**31.**

**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 Regional Channel 3 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 31(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.

**32.**

**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 him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Regional Channel 3 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 his 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 his 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; and
- (h) take such steps as he reasonably can to ensure compliance with any request made by Ofcom to any other person under Section 115(7) of the 1996 Act.

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

- (2) The Licensee shall comply with such directions as may be given to him 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 Regional Channel 3 Service, together with Ofcom's findings on the fairness complaint or a summary of such finding. The form and content of any such summary shall be such as may be approved by Ofcom.
- (3) References in Condition 32(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 Regional Channel 3 Service and in relation to the programmes included in the Regional Channel 3 Service

### 33.

#### Publicising Ofcom's Functions

Section 328 of the Communications Act

The Licensee shall comply with such directions as may be given to him 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 Regional Channel 3 Service,

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

**34.**

**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 352 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) where the Licensee agrees to provide the Regional Channel 3 Service temporarily for an additional area determined under Section 14(2) of the 1990 Act in accordance with Section 22 thereof, vary the Licence to authorise the provision of the Regional Channel 3 Service for the additional area in question, during such period as it may determine;

- (d) vary the Licence in any respect not mentioned in paragraphs (a), (b) and (c) 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) to (c) 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.

**35.**

**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 him at his 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.

**36.**

**Equal Opportunities and Training**

Section 337 of the Communications Act

- (1) The Licensee shall make and from time to time shall review arrangements for:
  - (a) promoting, in relation to employment with the Licensee:
    - (i) equality of opportunity between men and women and between persons of different racial groups; and
    - (ii) the equalisation of opportunities for disabled persons; and
  - (b) training and retraining persons whom he employs in or in connection with the provision of the Regional Channel 3 Service or the making of

programmes for inclusion in the Regional Channel 3 Service.

- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 36(1) aware of them including publishing the arrangements in such manner as Ofcom may require.
- (3) In particular (but without limiting the generality of the foregoing), the Licensee shall from time to time (and at least annually) publish, in such manner as he considers appropriate, his 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 36(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 36 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Regional Channel 3 Service.
- (6) Ofcom will treat the Licensee's obligations under Conditions 36(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.

**37.**

**700MHz DTT Clearance Programme**

The Licensee shall comply with, or procure compliance with the 700MHz DTT Clearance Programme requirements set out in Annex: Part 4.

## Part 3

## Exceptions and Limitations on Licensee's obligations

### 38.40.

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

### Force Majeure

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 control of the Licensee including (without limitation) accident or breakdown of any equipment or apparatus (caused otherwise than by the wrongful act neglect or default of the Licensee his servants or agents) 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

### 39.

#### Interest on Late Payments

Section 4(1)(b) and (d) of the 1990 Act

- (1) Any payment due from the Licensee under or in respect of this Licence shall carry interest at three per cent. per annum over the base rate for the time being of Lloyds TSB Bank plc (or if unavailable then the rate published by another clearing bank as selected by Ofcom) from the date such payment was due until the date of actual payment.
- (2) The Licensee's liability to pay to Ofcom the amounts payable by him under Condition 39 (1) shall accrue from day to day and shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

### 40.

#### 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 Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 Service in pursuance of a direction from Ofcom, announce that he is doing so in pursuance of such a direction.
- (2) The Licensee shall comply with any direction from Ofcom not to include in the Regional Channel 3 Service on any future occasion any programme whose inclusion in the Regional Channel 3 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 him a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice requiring him to pay to Ofcom,



within a specified period, a specified financial penalty.

- (b) The amount of any financial penalty imposed pursuant to Condition 40(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 18(2) or Condition 18(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 him 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 18(2) or Condition 18(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 him to pay to Ofcom, within a specified period, a specified financial penalty.

- (c) The amount of any financial penalty imposed pursuant to Condition 40(4)(a) or Condition 40(4)(b) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

- (d) For the purpose of Condition 40(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 40(4), Ofcom shall not impose a further financial penalty under Condition 40(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 him hereunder and it has given him 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 40(5), Ofcom may, on the application of the Licensee, by a further notice served on him 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 Regional Channel 3 Service since the date of the earlier notice.
- (7) Any exercise by Ofcom of its powers under Condition 40(3), (5) and (6) shall be without prejudice to Ofcom's powers under Condition 40(1) and 40(2).
- (8) Any exercise by Ofcom of its powers under Condition 40(4) shall be without prejudice to Ofcom's powers under Condition 40(1), (2), (5) and (6).
- (9) Prior to exercising its powers under Condition 40(4) in respect of a failure to comply with Condition 18(6), Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

**41.**

**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 41(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 or in relation to the holders of regional Channel 3 licences 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 his 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 Regional Channel 3 Service in whole or in part whilst failing to comply with any requirement to hold or have held on his 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 Regional Channel 3 Service imposed by or under Chapter 1 of Part 2 of the Communications Act;  |
| Section 42(4) of the 1990 Act         | (f)     | if the Licensee ceases to provide the Regional Channel 3 Service before the end of the Licensing Period and Ofcom considers that it is appropriate to revoke the Licence; and  |
| Section 4(1)(d) of the 1990 Act       | (g)     | if Ofcom shall revoke the assignment of frequency on which the Licensed Service is for the time being provided for the purpose of: <ul style="list-style-type: none"> <li>(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</li> <li>(ii) complying with an order under Section 156(1) of the Communications Act.</li> </ul>   |
| Section 42(8) of the 1990 Act         | (3) (a) | Ofcom shall before serving any notice revoking the Licence under Conditions 41(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.

- (b) In a case falling within Condition 41(2)(c) where the change is one falling within Section 5(6A) of the 1990 Act, before serving a notice revoking the licence, Ofcom shall also give the Licensee an opportunity of complying with Part 1 of Schedule 14 to the Communications Act within a period specified in the notice provided under Condition 41(3)(a).

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 him, 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 41(4)(b) above applies, where the Licence is revoked or treated as being revoked in any other case set out in Condition

41(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 his 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 him from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.

**Annex to Channel 3  
Regional Licence:  
South West and  
West of England**

**The Regional Channel 3 Service**

**Annex: Part 1**

**Requirements for the provision and content of the  
Regional Channel 3 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) except for material under 10 minutes in length which is measured in “running times” (that is, excluding advertising breaks, programme trailers and presentation material).

**2. Independent Productions**

The Licensee must ensure that in each calendar year not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes is allocated to a range and diversity of independent productions. The range must be in terms of the cost and types of programme.

**3. Original Productions**

The Licensee must ensure that at least 65 per cent by time of programmes broadcast are originally produced or commissioned for any or all of the regional Channel 3 services and that at least 85 per cent by time of programmes in Peak Viewing Times are originally produced or commissioned.

**4. News**

The Licensee must broadcast a total of at least 365 hours per calendar year of high quality national and international news programmes between 9.25 am and midnight of which at least 125 hours must be shown in Peak Viewing Times. Programmes must be shown at intervals throughout the day and appropriate news programmes must be shown at weekends in Peak Viewing Times and out of Peak Viewing Times and during public holiday periods.

**5. Current Affairs**

The Licensee must broadcast a total of at least 43 hours per calendar year of high quality national and international current affairs programmes between 9.25 am and midnight of which at least 35 hours must be shown in Peak Viewing Times.

**6. Production in the Nations and Regions**

At least 35 per cent of expenditure on originated network programmes in each calendar year 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 35 per cent of originated network programme hours must be made outside the M25 area and will constitute a range of different types of programmes.”

**7. Regional Programmes**

In delivering the requirements set out in Condition 10, the Licensee shall ensure that programmes included in the Regional Channel 3 Service comply with the following:

(1) The Licensee shall ensure that the Licensed Service includes the total amount specified below of first-run regional programmes for each of the South West sub-region and the West sub-region to be broadcast between 9.25am and 12.30am.

Channel 3 Regional requirements:  
Weekly Average (hours and minutes over a Calendar year excluding Bank Holidays and Christmas)

South-West sub-region

News 2:15\*  
Other 0:15\*\*  
Total 2:30

West sub-region

News 2:15\*



Other 0:15\*\*  
Total 2:30

(\*2 hours and 9 minutes when averaged over a full Calendar year which includes Bank Holidays and Christmas, during which time news schedules may alter but bulletins must continue to be included at intervals within the period between Christmas Eve and the New Year's Day holiday.

\*\*Other regional programming may be delivered within programmes that otherwise consist of news.)

- (2) In delivering the requirements set out in paragraph (7)(1) above, the Licensee shall ensure that:
  - (a) save where affected by Bank Holidays and Christmas and where early evening news patterns may be disrupted by live news or sporting events of national importance, at least 1 hour and 25 minutes of the total amount of regional news are broadcast per week, averaged over a calendar year, in Peak Viewing Times;
  - (b) during the period 5:00pm to 11:30pm, at least 14 minutes of regional programming other than news are broadcast per week averaged over a Calendar year (excluding Bank Holidays and Christmas).
- (3) In delivering the requirements set out in paragraph (7)(1) above, the Licensee:
  - (a) shall ensure, without prejudice to sub-paragraphs (b) and (c) below, that the first-run regional programmes broadcast in the South-West sub-region and the West sub-region shall comprise programmes of particular interest to persons living in the Licensed Area;
  - (b) may include regional programme material broadcast in another regional Channel 3 licensed area, provided that the aggregate amount of such programme material in a calendar year does not exceed 10 per cent of the total amounts specified in paragraph 7(1);
  - (c) may (having regard to any guidance published by Ofcom from time to time), in rare and exceptional circumstances and provided that the reason for doing so is editorially justified, broadcast the same first-run regional news programme simultaneously in both the South-West sub-region and the West sub-region; and
  - (d) shall ensure that in each calendar year at least 99 per cent of all regional programmes broadcast by time must be made within the Licensed Area.

8.

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

The Licensee must ensure that at least 90 per cent of broadcast output which is not excluded is subtitled; 10 per cent is audio described; and 5 per cent is signed. 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**

### **Days and times of broadcasting**

The Regional Channel 3 Service shall be broadcast seven days a week and throughout the day except for the time between 6.00am and 9.25am each day.

Table A: Plymouth

**BEACON HILL**

Ashburton  
Bovey Tracey  
Brixham  
Buckfastleigh  
Chudleigh  
Clennon Valley  
Coombe  
Dartmouth  
Edginswell  
Halwell  
Harbertonford  
Hele  
Kingskerswell  
Liverton  
Newton Abbot HP  
Newton Abbot VP  
Occombe Valley  
Sidmouth  
South Brent HP  
South Brent VP  
Teignmouth  
Torquay Town  
Totnes

**CARADON HILL**

Aveton Gifford  
Compton  
Croyde  
Downderry  
Fowey  
Gunnislake  
Ivybridge  
Kingsbridge  
Looe  
Lostwithiel  
Marystow  
Mevagissey

Modbury  
Newton Ferrers  
North Hessary Tor  
Okehampton  
Penaligon Down  
Plymouth North Rd  
HP  
Plymouth North Rd  
VP  
Plymouth Weston  
Mill  
Plympton  
Polperro  
Port Isaac  
Salcombe  
Slapton  
Southway  
St Neot  
Tavistock  
Widecombe In The  
Moor

Table B: Barnstaple  
Region

**HUNTS  
CROSS**

Barnstaple  
Berrynarbor  
Braunton  
Chambercombe  
Combe Martin  
Great Torrington  
Hartland  
Ilfracombe  
Muddiford  
North Bovey  
Swimbridge  
Tedburn St Mary  
Westward Ho  
Woolacombe

Table C: Truro  
Region

**REDRUTH**  
Alverton

Boscastle  
Bossiney  
Gulval  
Helston  
Isles Of Scilly  
Penryn  
Perranporth  
Porthleven  
Porthtowan  
Portreath  
Praa Sands  
St Anthony  
St Austell  
St Just  
Truro

Table D: Exeter

**STOCKLAND HILL**

Bampton  
Beaminster  
Beer  
Bincombe Hill  
Branscombe  
Bridport  
Brushford  
Budleigh Salterton\*  
Chagford  
Charmouth  
Chideock HP  
Chideock VP  
Crediton  
Culm Valley  
Dawlish  
Dunsford  
Exeter St Thomas  
Honiton  
Pennsylvania  
Preston  
Rampisham UHF  
Stokeinteignhead  
Tiverton  
Weymouth

**ANNEX: PART 4**

**REQUIREMENTS RELATING TO THE 700MHZ DTT  
CLEARANCE PROGRAMME**

9.

**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 him by Ofcom,

in the administration, organisation or implementation of the 700MHz DTT Clearance Programme.