

DRAFT

LICENCE NO. DA [Number]

**OFFICE OF COMMUNICATIONS DIGITAL ADDITIONAL SOUND SERVICE
LICENCE**

**LICENCE GRANTED TO *.....* TO PROVIDE DIGITAL ADDITIONAL
SOUND SERVICES UNDER PART II OF THE BROADCASTING ACT 1996 ON
AN APPLICATION COMPLYING WITH SECTION 64 OF THE
BROADCASTING ACT 1996**

THE LICENCE

1. The Office of Communications ("Ofcom") in exercise of the powers conferred upon it by Part II of the Broadcasting Act 1996 as amended by the Communications Act 2003 hereby grants to *.....* (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule (the "Conditions"), to provide the digital additional sound services specified in the Annex (the "Licensed Service").
2. This Licence is granted on the basis of the Licensee's representation that the statements set out in the declaration as to his affairs made by the Licensee on [DATE] are true.
3. The Licensee must not operate the Licensed Service unless and until he is complying with any requirement to hold or have held on his behalf a licence under Section 1 of the Wireless Telegraphy Act 1949 (as amended by Part VIII of the Broadcasting Act 1990 and by Part I of Schedule 18 thereto and by the Communications Act 2003) and any requirements imposed by or under Chapter 1 of Part 2 of the Communications Act 2003.
4. This Licence shall come into force on the date appearing below, upon which this Licence is granted by Ofcom (the "Commencement Date") and, subject to the Conditions, shall remain in force until it is surrendered by the Licensee or revoked by Ofcom in accordance with the Conditions of this Licence.
5. The Schedule and the Annex to this Licence form part of it.

SIGNED FOR AND
ON BEHALF OF
OFCOM BY

[POSITION OF SIGNATORY]

DD...MMM...YYYY

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THE SCHEDULE

PART 1

DEFINITIONS AND INTERPRETATION RELATING TO THE LICENCE

1.

Definitions and interpretation

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

"the 1990 Act" means the Broadcasting Act 1990 (as amended);

"the 1996 Act" means the Broadcasting Act 1996 (as amended);

"the Communications Act" means the Communications Act 2003;

"digital additional sound service" means a digital additional service within the meaning given by section 63 of the 1996 Act;

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

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

"programme" unless otherwise stated, includes an advertisement and anything included in the Licensed Service;

"Standards Code" means the code or codes governing standards for the content of programmes, including standards and practice in advertising and in the sponsoring of programmes included in licensed services, as drawn up and from time to time revised by Ofcom in accordance with Section 319 of the Communications Act (and to the extent that such code or codes has not or have not been drawn up by Ofcom or is not or are not yet in force, "Standards Code" shall be interpreted in accordance with paragraphs 42 and 43 of Schedule 18 to the Communications Act); and

"Standards Complaint" means a complaint to Ofcom in respect of the observance of standards set under

Section 319 of the Communications Act.

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

PART 2**GENERAL CONDITIONS****2. Provision of digital additional sound service by Licensee**

Section 64 of the 1996 Act The Licensee is hereby authorised to provide the Licensed Service specified in the Annex from the Commencement Date for so long as the Licence remains in force.

3. Fees

- Sections 43 (1) (c), 43 (1) (d), 43 (3) and 43 (4) of the 1996 Act
- (1) The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 43 (3) of the 1996 Act as Ofcom shall from time to time publish in such manner as it considers appropriate.
 - (2) Payment of the fees referred to in Condition [3 (1)] above 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 [3 (1)] above.

4. V.A.T.

- Section 43 (1) (c) and (f) of the 1996 Act
- (1) The Licensee shall pay any V.A.T. on any supply for V.A.T. purposes by Ofcom under this Licence.
 - (2) Without limitation to Condition [4 (1)] above, all sums payable by the Licensee are exclusive of V.A.T. which shall be paid by the Licensee in addition to such sums.
 - (3) In this Condition [4] "V.A.T." means value-added tax chargeable under or pursuant to the Value Added Tax Act 1994, including any amendment to or replacement of that Act, and/or any similar tax.

5. General standards and requirements

- Sections 319 and 320 of the Communications Act
- (1) The Licensee shall ensure that the Licensed Service complies with the requirements of Part 3 of the Communications Act and in particular the standards objectives contained in Section 319 of that Part to ensure that:
 - (a) persons under the age of eighteen are protected;
 - (b) programmes do not include material likely to encourage or to incite the commission of

crime or to lead to disorder;

*Section 320 (1) (a) of
the Communications
Act*

- (c) any news given (in whatever form) in the programmes is presented with due impartiality and is reported with due accuracy;
- (d) with respect to matters of political or industrial controversy and matters relating to current public policy in the programmes all expressions of the views or opinions of the Licensee are excluded (other than on matters relating to the provision of programme services);
- (e) the proper degree of responsibility is exercised with respect to the content of programmes which are religious programmes and that in particular any such programmes do not involve:
 - (i) any improper exploitation of any susceptibilities of the audience for such a programme; or
 - (ii) any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination;
- (f) generally accepted standards are applied to the contents of programmes so as to provide adequate protection for members of the public from the inclusion of offensive and harmful material;
- (g) advertising that contravenes the prohibition on political advertising set out in Section 321 (2) of the Communications Act is not included (see Condition [6 (1)] below);
- (h) the inclusion of advertising which may be misleading, harmful or offensive is prevented;
- (i) the international obligations of the United Kingdom with respect to advertising included in radio services are complied with;
- (j) the inclusion of unsuitable sponsorship of programmes is prevented;
- (k) there is no undue discrimination between advertisers who seek to have advertisements

included; and

- (l) there is no use of techniques which exploit the possibility of conveying a message to listeners, or of otherwise influencing their minds, without their being aware, or fully aware, of what has occurred.

Section 325 (1) of the
Communications Act

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

6. Advertising and sponsorship standards and requirements

Sections 319 and 321 of
the Communications
Act

- (1) The Licensee shall ensure that the Licensed Service does not include:

- (a) an advertisement which is inserted by or on behalf of any body whose objects are wholly or mainly of a political nature;
- (b) an advertisement which is directed towards a political end; or
- (c) an advertisement which has a connection with an industrial dispute.

*Section 321 (7) of the
Communications Act*

- (2) Nothing in Condition [6 (1)] above shall prevent the Licensee from including in the Licensed Service an advertisement of a public service nature inserted by, or on behalf of, a government department.

*Section 321 (3) of the
Communications Act*

- (3) For the purposes of this Condition [6], objects of a political nature and political ends includes:

- (a) influencing the outcome of elections or referendums, whether in the United Kingdom or elsewhere;
- (b) bringing about changes of the law in the whole or a part of the United Kingdom or elsewhere, or otherwise influencing the legislative process in any country or territory;
- (c) influencing the policies or decisions of local, regional or national governments, whether in the United Kingdom or elsewhere;

- (d) influencing the policies or decisions of persons on whom public functions are conferred by or under the law of the United Kingdom or of a country or territory outside the United Kingdom;
- (e) influencing the policies or decisions of persons on whom functions are conferred by or under international agreements;
- (f) influencing public opinion on a matter which, in the United Kingdom, is a matter of public controversy;
- (g) promoting the interests of a party or other group of persons organised, in the United Kingdom or elsewhere, for political ends.

Sections 321 (4) and (4)
(5) of the
Communications Act

The Licensee shall comply with all directions given to him by Ofcom with regard to advertisements or methods of advertising or sponsorship, including without limitation directions with respect to:

- (a) the exclusion from the Licensed Service of a particular advertisement, or its exclusion in particular circumstances;
- (b) the descriptions of advertisements and methods of advertising to be excluded from the Licensed Service (whether generally or in particular circumstances);
- (c) the forms and methods of sponsorship to be excluded from the Licensed Service (whether generally or in particular circumstances); and
- (d) the content and scheduling of advertising of alcoholic beverages.

Sections 120 and 122 (5)
and 321 (4) of the
Communications Act

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.

- Section 321 (1) of the Communications Act (6) The Licensee shall ensure that the provisions of the Standards Code relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Licensed Service and in particular but without limitation shall ensure that advertising is readily recognisable as such and kept separate from other parts of the Licensed Service.
- Section 321 (4) of the Communications Act (7) The Licensee shall supply to Ofcom details, in whatever form and within such period as Ofcom may reasonably require, of any particular advertisement or any class of advertisement specified by Ofcom or any sponsored programme which Ofcom shall from time to time request.

7. Retention and production of recordings

- Section 334 of the Communications Act (1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings of any programme which is the subject 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 [18] below.
- (2) In particular, the Licensee shall:
- (a) make and retain, for a period of 42 days from the date of its inclusion therein, a recording of every programme included in the Licensed Service together with regular time reference checks;
 - (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and
 - (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.

8. General provision of information to Ofcom

- | | | |
|---|-----|--|
| Section 43 (1) (d) of the 1996 Act | (1) | The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular (but without prejudice to the generality of the foregoing): |
| Sections 44 (1) (a) and 143 (4) of the 1996 Act | (a) | a declaration as to its affairs/corporate structure in such form and at such times as Ofcom shall specify; and |
| | (b) | such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee is on any ground a disqualified person by virtue of any of the provisions in Section 143 (5) of the 1996 Act and/or Schedule 2 to the 1990 Act or whether the requirements imposed by or under Schedule 14 to the Communications Act are contravened in relation to his holding of the Licence. |
| Section 44 (5) of the 1996 Act | (2) | The Licensee shall inform Ofcom forthwith in writing if: |
| | (a) | any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of amalgamation made whilst the Licensee is solvent on terms previously approved in writing by Ofcom) 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; |
| | (b) | the Licensee makes or proposes to enter into any scheme of compromise or arrangement with his creditors; |
| | (c) | the Licensee shall permit an execution to be levied against his assets and/or chattels and allows such execution to remain outstanding for more than 14 days; |
| | (d) | any person having control of the Licensee shall do or be subject to any of the events specified in Condition 8 (2) (a) to (c) above; or |

- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 8 (2) (a) to (d) above shall occur under the laws of any applicable jurisdiction.

Section 43 (1) (d) of the 1996 Act (3)

The Licensee shall inform Ofcom when judgment is awarded against him in any court proceedings brought against him in respect of the inclusion in the Licensed Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secrets Act or of any statutory enactment or regulation for the time being in force or a criminal offence or contempt of Court or breach of Parliamentary privilege.

Sections 44 (5) and 43 (1) (d) of the 1996 Act (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.

9.

Provision of information to Ofcom relating to agreements with providers of multiplex services

Section 65 (2) of the 1996 Act

(1) The Licensee shall:

- (a) on entering into any agreement with the provider of a radio multiplex service or of a general multiplex service for the provision of a digital additional sound service provided under this Licence to be broadcast by means of the multiplex service, notify Ofcom in such form and manner as Ofcom may from time to time require:
 - (i) of the identity of the multiplex service;
 - (ii) of the period during which the digital additional sound service to which the agreement relates will be provided; and
 - (iii) where under the agreement the Licensee will be entitled to the use of a specified amount of digital capacity, of that amount;
- (b) when any such agreement is varied so far as it relates to any of the matters mentioned in

Condition [9 (1) (a)] above, notify Ofcom of the variation so far as relating to those matters; and

- (c) where the Licensee is providing a digital additional sound service under this Licence to the provider of a radio multiplex service or of a general multiplex service in accordance with such an agreement as is mentioned in Condition [9 (1) (a)] above but intends to cease doing so, notify Ofcom of that fact and of the date on which he intends to cease doing so.

10. Provision of information to Ofcom relating to a change of control

Sections 43 (1) (d) and 44 (2) of the 1996 Act (see also Paragraph 104 (3) of Part 2 of Schedule 15 to the Communications Act)

- (1) Where the Licensee is a body corporate, the Licensee shall notify Ofcom:

- (a) of any proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition [10 (2)] below, by giving advance notice of such proposals where they are known to the Licensee forthwith; and
- (b) of any changes, transactions or events affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of any such change, transaction or event.

Section 43 (1) (d) of the 1996 Act and Paragraph 1 (3) (c) and (3A) of Part I to Schedule 2 to the 1990 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.

- (b) For the purposes of Condition [10 (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 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.

11. Fair and effective competition

Section 316 of
the Communications Act

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

Section 316 (4) of
the Communications Act

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

12. Compliance with ownership restrictions

- Section 44 (1) and (2) of the 1996 Act
- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on or in relation to 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 [12 (1)] above.
 - (3) The Licensee shall inform Ofcom of any circumstances or events which may give rise to a breach of the Licensee's obligations imposed on him by or under Schedule 2 to the 1990 Act or the requirements imposed by or under Schedule 14 to the Communications Act being contravened in relation to his holding of the Licence immediately upon becoming aware of such circumstances or events.

13.**Transferability of the Licence**

- Section 42 (5) and (6) of the 1996 Act
- The Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person to whom it is proposed to transfer the Licence would be in a position to comply with all of the Conditions whilst it remains in force.

14.**Compliance**

- Section 43 (2) (a) of the 1996 Act
- (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 or the Communications Act.
- Section 43 (1) (a), (d) and (f) of the 1990 Act; 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 Licensed Service for the purposes of ensuring that programmes included in the Licensed Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act and the Communications Act.

The Licensee shall, without prejudice to the generality of the foregoing, ensure that:

- (a) there are sufficient persons involved in providing the Licensed Service who are

adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act and the Communications Act and all relevant codes and guidelines as may be drawn up and from time to time revised by Ofcom and that such persons are able to ensure compliance with such requirements on a day-to-day basis;

- (b) adequate arrangements exist for the immediate implementation of such general and specific directions as may from time to time be given to the Licensee by Ofcom; and
 - (c) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine.
- (3) The Licensee shall supply Ofcom with details of such procedures (and any revisions of such procedures) adopted by him and required to be observed by those involved in providing the Licensed Service for the purposes of Condition [14 (2)] above.

15.

Government directions and representations

Section 336 of
the Communications Act

- (1) The Licensee shall if so directed by Ofcom:
 - (a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice given pursuant to Section 336 (1) of the Communications Act; or
 - (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336 (5) of the Communications Act.
- (2) The Licensee may when publishing an announcement in the Licensed Service in accordance with Condition [15 (1) (a)] above indicate that the announcement is made in pursuance of a direction by Ofcom.
- (3) Where Ofcom:
 - (a) has given the Licensee a direction to the effect referred to in [Condition 15 (1) (b)] above; or
 - (b) in consequence of the revocation by the Secretary of State of the notice giving rise to the issuing of such a direction, has revoked that

direction, or where such a notice has expired

the Licensee may include in the Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

16. Powers of inspection

Section 43 (2) (b) of the 1996 Act

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

17. Standards Complaints

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

- (1) The Licensee shall ensure that procedures acceptable to Ofcom for the handling and resolution of Standards Complaints in respect of programmes included in the Licensed Service are established and maintained and shall ensure that such procedures are duly observed.
- (2) The Licensee shall for a period of 12 months keep a written record of any complaints referred to in Condition [17 (1)] above and of any response given by the Licensee in relation to any such complaint and shall make such record available to Ofcom at such times as Ofcom may reasonably require.

18. Fairness 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 Licensed Service, and in particular the Licensee shall, if so requested:
 - (a) provide Ofcom with a recording of the programme, or of any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
 - (b) make suitable arrangements for enabling the complainant to hear any such recording, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
 - (c) provide Ofcom and the complainant with a transcript of the programme, or of any specified part of it, to which the complaint relates if and

so far as the Licensee is able to do so;

- (d) provide Ofcom and the complainant with copies of any documents in the possession of the Licensee that are originals or copies of any correspondence between the Licensee and the person affected or the complainant in connection with the complaint;
- (e) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and to be in the possession of the Licensee;
- (f) furnish to Ofcom and the complainant a written statement in answer to the complaint;
- (g) attend Ofcom and assist Ofcom in its consideration of the complaint; and
- (h) take such steps as 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 (2)
the 1996 Act

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 Licensed Service, together with Ofcom's findings on the fairness complaint or a summary of such findings. The form and content of any such summary shall be such as may be approved by Ofcom.

- (3) References in Condition [18 (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

- (5) The Licensee shall ensure that the provisions of the

the Communications Act Fairness Code are observed in connection with the provision of the Licensed Service and in relation to the programmes included in the Licensed Service.

19. 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:

- (1) the procedures which are established and maintained for handling and resolving complaints about the observance of standards as set out in Section 319 of the Communications Act; and
- (2) Ofcom's functions under Part V of the 1996 Act in relation to the Licensed Service

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

20. Power of Ofcom to vary Licence Conditions

Section 42 (3) of the 1996 Act Ofcom may by a notice served on the Licensee vary the Licence in any respect provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation.

21. 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 pre-paid first-class letter or was left at the proper address, as the case may be.

Sections 395 and 396 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 in accordance with Sections 395 and 396 of the Communications Act.

22. Surrender

Section 65 of the 1996 Act The Licensee may by notice served on Ofcom and taking effect either from the time of service or on a date specified in the notice surrender the Licence.

23. Equal opportunities and training

- Section 337 of the Communications Act
- (1) The Licensee shall make, and from time to time shall review, arrangements for:
 - (a) promoting, in relation to employment with the Licensee:
 - (i) equality of opportunity between men and women and between persons of different racial groups; and
 - (ii) the equalisation of opportunities for disabled persons; and
 - (b) training and retraining persons whom he employs in or in connection with the provision of the Licensed Service or the making of programmes for inclusion in the Licensed Service.
 - (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition [23 (1)] aware of them including publishing the arrangements in such manner as Ofcom may require.
 - (3) In particular (but without limiting the generality of the foregoing) the Licensee shall from time to time (and at least annually) publish, in such manner as 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 [23 (1)], have regard to any relevant guidance published by Ofcom as revised from time to time.

- (5) This Condition [23] shall apply if the requirements of Sections 337 (7) and (8) of the Communications Act are satisfied in the case of the Licensed Service.
- (6) Ofcom will treat the Licensee's obligations under Conditions [23 (1) to (5)] above as discharged where a member of a group of companies to which the Licensee belongs has discharged those obligations in relation to employment with the Licensee.

PART 3**EXCEPTIONS AND LIMITATIONS ON LICENSEE'S OBLIGATIONS****24.****Force majeure**

Section 43 (1) (f) of the
1996 Act

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the 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) force majeure, war, damage by the Queen's enemies, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

PART 4**CONDITIONS RELATING TO ENFORCEMENT OF LICENCES****25.****Interest on late payments**

Section 43 (1) (c) and (f) of the 1996 Act

- (1) Any payment due from the Licensee under or in respect of the Licence shall carry interest at three per cent. per annum over the base rate for the time being of Lloyds TSB 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 [25 (1)] above 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.

26.**Notice of non-compliance**

Section 109 (1) of the 1990 Act and Section 66 (10) of the 1996 Act

- (1) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence it may serve on him a notice which shall state:
 - (a) that Ofcom is so satisfied that the Licensee has failed to comply with any such Condition or direction; and
 - (b) the effect as set out in Condition [26 (2)] below of a failure to comply within a specified period not exceeding twelve months with any such Condition or direction whether specified in the notice or otherwise.

Section 109 (2) of the 1990 Act

- (2) If at any time during the period specified in the notice issued under Condition [26 (1)] above Ofcom is satisfied that the Licensee has again failed to comply with the Condition or direction specified in the notice or any other Condition of the Licence or direction given by Ofcom then it may direct the Licensee for a specified period not exceeding six months:
 - (a) to provide Ofcom in advance with such scripts and particulars of the programmes to be included in the Licensed Service as are specified in the direction; and
 - (b) in relation to such of those programmes as will consist of or include recorded matter, to

produce to Ofcom in advance for examination or reproduction such recordings of that matter as are so specified.

27.

Sanctions for breach of Condition

Section 109 (3) of the 1990 Act

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

Section 66 (1) (a) of the 1996 Act

- (2) (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and it has given him a reasonable opportunity to make representations to it about the matters complained of, it may serve on him a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty.

Section 66 (2) of the 1996 Act

- (b) Subject to Condition [27 (2) (e)] below, the amount of any financial penalty imposed pursuant to Condition [27 (2) (a)] shall not exceed whichever is the greater of £250,000 (or such other sum as the Secretary of State may by order specify under section 69 of the 1996 Act) and 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to the Licensee in relation to relevant multiplex services in respect of relevant accounting periods (as determined in accordance with Section 57 (2) and (3) of the 1996 Act in relation to national radio multiplex services and Section 15 (2) and (3) of the 1996 Act in relation to general multiplex services).

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| Section 66 (5)
of the 1996 Act | (c) | For the purposes of Condition [27 (2) (b)] "relevant accounting period" in relation to a relevant multiplex service means the last accounting period of the holder of the multiplex provider. |
| Section 66 (6) of the
1996 Act | (d) | Where in the case of any relevant multiplex service, the first accounting period of the multiplex provider throughout which the Licensee provides the Licensed Service for broadcasting by means of that relevant multiplex service (the "first period") has not ended when the penalty is imposed, then for the purpose of this Condition, the share of multiplex revenue attributable to the Licensee in relation to that relevant multiplex service for the relevant accounting period shall be taken to be the amount which Ofcom estimates to be the share of multiplex revenue attributable to him for the first period. |
| Section 66 (4) of the
1996 Act | (e) | Where the Licensee has not provided any digital additional sound services for broadcasting by means of a relevant multiplex service, the amount of any financial penalty imposed pursuant to Condition [27 (2) (a)] shall not exceed £250,000. |
| | (f) | <p>For the purposes of Condition [27 (2)]:</p> <p>(i) a service is a "relevant multiplex service" if it is a national radio multiplex service or a general multiplex service; and</p> <p>(ii) a "multiplex provider" in relation to a national radio multiplex service means the multiplex provider within the meaning of Section 56 of the 1996 Act and in relation to a general multiplex service means the multiplex provider within the meaning of Section 14 of the 1996 Act.</p> |
| Section 66 (1) (b)
of the 1996 Act | (3) (a) | If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given under the Licence and it has given him a reasonable opportunity to make representations to it about the matters complained of, it may serve on him a notice providing that the Licence is to expire on a specified date at least one year from the date on which the notice is served on |

the Licensee.

Section 66 (8) of the
1996 Act

- (b) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition [27 (3) (a)], 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 Licensed Service since the date of the earlier notice.

- (4) Any exercise by Ofcom of its powers under Condition [27 (3)] shall be without prejudice to Ofcom's powers under Condition [27 (1), (2) and (4)] and Condition [28].

Section 66 (1) (c)
of the 1996 Act

- (5) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given under the Licence and it has given him a reasonable opportunity to make representations to it about the matters complained of, it may serve on him a notice suspending the Licence for a specified period not exceeding six months.

Section 43 (1) (e) of
the 1996 Act

- (6) The Licensee shall reimburse to Ofcom any costs reasonably incurred by Ofcom in connection with or resulting from a breach of any Condition in the Licence that requires Ofcom at its sole discretion to arrange for the translation from one language into another any broadcast made by the Licensee. Any amounts payable under this Condition [27 (6)] shall be payable by the Licensee in such manner and at such time or times as Ofcom shall determine.

28.

Revocation

Section 111 of the 1990
Act and Section 66 (10)
of the 1996 Act

- (1) (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and that that failure is such that, if not remedied, it would justify the revocation of the Licence it shall serve on the Licensee a notice:
- (i) stating that Ofcom is so satisfied;
 - (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee is failing to comply with any such

Condition or direction; and

(iii) stating that, unless the Licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, Ofcom will revoke the Licence.

(b) If at the end of the period specified in any notice served under Condition [28 (1) (a)] above Ofcom is satisfied that the Licensee has failed to take the steps specified in the notice and that it is necessary in the public interest to revoke the Licence Ofcom shall serve on the Licensee a notice revoking the Licence.

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

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

Section 43 (5) of
the 1996 Act

(b) if Ofcom is satisfied that the Licensee:

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

Section 111 (5) of
the 1990 Act

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

Section 44 of
the 1996 Act

(c) if, where the Licensee is a body, a change in the nature or characteristics of the Licensee or any change in the persons having control over or interests in the Licensee, or any change giving rise to a disqualification under Part II of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act in relation to his holding of the Licence takes place (whether

before or after the Commencement Date), which change is such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances of the case, it would be induced by the change to refrain from awarding the Licence to the Licensee;

Section 42 (2) of
the 1996 Act

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

Section 42 (7) of
the 1996 Act

(e) if the Licensee fails 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 imposed by or under Chapter 1 of Part 2 of the Communications Act.

(3) Ofcom shall before serving a notice revoking the Licence under Condition [28 (1)] or Condition [28 (2)] notify the Licensee of the matters constituting its grounds for revoking the Licence and give the Licensee a reasonable opportunity to make representations to it about those matters.

Sections 144 and 145 of
the 1996 Act

(4) If the Licensee is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying 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 LICENCE NO [Number]	LICENSED SERVICE
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	[NAME AND DESCRIPTION OF SERVICE]
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