

LICENCE No. L-DTPS000009BA/7

**OFFICE OF COMMUNICATIONS LOCAL DIGITAL TELEVISION PROGRAMME SERVICE
LICENCE**

**LICENCE GRANTED TO MADE IN BIRMINGHAM LTD TO PROVIDE A LOCAL DIGITAL
TELEVISION PROGRAMME SERVICE UNDER PART I OF THE BROADCASTING ACT 1996
ON AN APPLICATION COMPLYING WITH SECTION 18 OF THE BROADCASTING ACT 1996
(AS MODIFIED BY THE LOCAL DIGITAL TELEVISION PROGRAMME SERVICES ORDER
2012)**

THE LICENCE

1. The Office of Communications ("Ofcom") awarded a licence (the "Licence") to Made In Birmingham Ltd (the "Licensee") and in exercise of the powers conferred upon Ofcom by Part I of the Broadcasting Act 1996, as amended by the Communications Act 2003 and as modified by the Local Digital Television Programme Services Order 2012, it hereby grants to the Licensee the Licence subject to the conditions set out in the Schedule (the "Conditions"), to provide the local digital television programme service specified in the annex (the "Licensed Service") for the Birmingham area or locality as described at Column A of the Technical Plan of the local multiplex licence (the "Licensed Area").
2. This Licence is granted on the basis of the Licensee's representations that the statements set out in the declaration as to his affairs made by the Licensee on 10 December 2014 are true to the best of the Licensee's knowledge and belief.
3. This Licence is granted on 09 June 2014 (the "Grant Date") and shall come into force on 28 February 2015 (the "Commencement Date") and subject to the Conditions, shall remain in force until 25 November 2025, unless:
 - (a) it is surrendered by the Licensee, or
 - (b) revoked by Ofcom in accordance with the Conditions of this Licence, or
 - (c) the local multiplex licence held by the local multiplex service carrying the Licensed Service is terminated for whatever reason.
4. The Schedule and the Annex to this Licence form part of it.

SIGNED FOR AND ON BEHALF OF OFCOM BY



Tony Close
Director of Content Standards, Licensing & Enforcement

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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, and as modified by the 2012 Order);

the “**2012 Order**” means the Local Digital Television Programme Services Order 2012 as amended by the 2012 Amendment Order;

the “**2012 Amendment Order**” means the Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012;

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

references to “**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 and as revised from time to time;

the “**Audiovisual Media Services Directive**”, means Directive 2010/13/EU, which repeals and codifies Directive 89/552/EEC, as amended and renamed by Directive 2007/65/EC;

“**chat service**” has the meaning given in Section 19(B)(2) of the 1996 Act;

“**Code on Electronic Programme Guides**” means the code giving guidance as to the practices to be followed in the provision of electronic programme guides as drawn up and from time to time revised by Ofcom in accordance with Section 310 of the Communications Act;

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

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

the **“Communications Act”** means the Communications Act 2003 as amended, and as modified by the 2012 Order;

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

- (i) the listing or promotion, or both the listing and the promotion, of some or all of the programmes included in any one or more programme services the providers of which are or include persons other than the provider of the guide; and
- (ii) a facility for obtaining access, in whole or in part, to the programme service or services listed or promoted in the guide;

“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;

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

“L-DTPS licence” means a local digital television programme service licence granted under Section 18 of the 1996 Act;

“Licensed Service” means the local digital television programme service specified in the annex;

“local multiplex service” means a local multiplex service as defined in Section 1(4B) of the 1996 Act;

“local multiplex licence” means a local multiplex licence granted

under Section 7 of the 1996 Act;

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

References to “**multiplex revenue**” shall be interpreted in accordance with Sections 14 and 37 of the 1996 Act and the Statement of Principles drawn up and revised from time to time by Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule 1 of the 1996 Act;

“**Ofcom**” means the Office of Communications as defined in the Office of Communications Act 2002;

“**premium rate service**” means a service falling within section 120(7) of the Communications Act;

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

“**qualifying revenue**” means, in relation to any accounting period of the Licensee, the aggregate of:

- (a) all payments received or to be received by him or by any connected person:
 - (i) in consideration of the inclusion in the Licensed Service in that period of advertisements or other programmes, or
 - (ii) in respect of charges made by him in that period for the reception of programmes included in the Licensed Service, and
- (b) the amount of any direct or indirect financial benefit derived by the Licensee or any connected person from payments made by any person by way of sponsorship, for the purpose of defraying or contributing towards costs incurred or to be incurred in connection with any programme included in the Licensed Service,

ascertained in accordance with Section 19(2) to (6) of the 1990 Act and the Ofcom statement of principles (in force pursuant to paragraph 37(1) of Schedule 18 to the Communications Act) as from time to time revised by Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule 7 thereto;

“**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 22;

“**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;

- (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. Provision of local digital television programme service by the Licensee

Section 18 of the 1996 Act

- (1) The Licensee is hereby authorised to provide the Licensed Service while this Licence is in force.
- (2) In providing the Licensed Service, the Licensee shall supply the following information to the users of the Licensed Service:
 - (a) the name of the Licensee;
 - (b) the address of the Licensee;
 - (c) the Licensee's electronic address;
 - (d) the address and electronic address of Ofcom as well as the name, address and electronic address of any appropriate co-regulator of Ofcom for any purpose in relation to the Licensee or the Licensed Service, as appropriate.

3. Location and localness

Section 19(3A)(a) of the 1996 Act

- (1) The Licensee shall provide the Licensed Service in the Licensed Area .
- (2) The Licensee shall ensure that the main production base of the Licensed Service and/or studio from which the Licensed Service is broadcast shall be located within the Licensed Area for the duration of the Licence unless prior written consent has been received from Ofcom to locate elsewhere.

4. Broadcast by means of a licensed local multiplex service and in specified technical format or instructions

Section 19(3A)(d) of the 1996 Act

- (1) The Licensee shall from the Commencement Date ensure that the Licensed Service is at all times offered as available (subject to the need to agree terms) to be broadcast:
 - (a) by means of a licensed local multiplex service; and
 - (b) in such technical format or technical instructions as Ofcom may specify from time to time.
- (2) Given that day-to-day operation of a local multiplex service is not within Ofcom's control, no statement, representation, assurance or warranty is provided by Ofcom to the Licensee or any other party as to the availability or otherwise of the local multiplex service for broadcast of the Licensee's Licensed Service .
- (3) If Ofcom is satisfied that the Licensee has not commenced broadcasting the Licensed Service by <p>28 February 2015</p>, Ofcom shall revoke the Licence as set out in Condition 35, unless the failure to commence broadcasting is due to circumstances beyond the control of the Licensee and within the control of the local multiplex service provider, such as, for example, a failure to build out coverage to the Licensed Service location.

5. Character of the local digital television programme service

Section 19(3A)(c) and section 3(B)(a) to (d) of the 1996 Act

- (1) For the duration of the Licence, the Licensee shall maintain the character of the Licensed Service in accordance with the programming commitments set out in the annex.
- (2) Ofcom may, following the procedure set out in the 1996 Act, consent to a departure from the character of the Licensed Service if Ofcom is satisfied that:
 - (a) the departure would not substantially alter the character of the Licensed Service;
 - (b) the departure would not unacceptably reduce, the number of programmes made about the area or locality specified in the Licence;
 - (c) the departure would not unacceptably reduce, the number and range of programmes about the area or locality for which the Licensed Service is licensed; and
 - (d) that the Licensed Service would continue to meet the needs of the area or locality for which the Licensed Service is licensed.

6. Prohibition on charges for reception

Section 19(3A)(b) of the 1996 Act

- (1) No charges are to be levied by the Licensee or any connected person, on persons in respect of reception of the Licensed Service in the United Kingdom.
- (2) For the purposes of this Condition:

“**connected person**” has the meaning given to it in Part I, Schedule 2 of the 1990 Act.

7. Fees

Section 4 (1)(b), (3) and (4) of the 1996 Act

- (1) The Licensee shall pay to Ofcom such fees as Ofcom may determine in accordance with the tariff fixed by it and for the time being in force under Section 4(3) of the 1996 Act, details of which, and of any revision thereof, Ofcom shall from time to time publish in such manner as it considers appropriate.

- (2) Payment of the fees referred to in Condition 7(1) shall be made in such manner and at such times as Ofcom shall specify.

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

- (3) The Licensee shall within 28 days of a request therefore provide Ofcom with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 7(1) above.

8. V.A.T.

Section 4(1)(b) and (d) of the 1996 Act

- (1) The Licensee shall pay any V.A.T. on any supply for V.A.T. purposes by Ofcom under this Licence on presentation of a valid V.A.T. invoice.
- (2) Without limitation to Condition 8(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 8 “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.

9.

Sections 319, 320 and 325(1) of the Communications Act and Section 19(3A)(f) of the 1996 Act

General standards and requirements

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

- (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.
- (c) The Licensee shall ensure that the Licensed Service does not contain any advertising falling within section 19B of the 1996 Act.
- (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 premium rate service 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).

10.

Pornographic material

Sections 19(3A)(e)

- (1) In addition to the requirements in Condition 9 above, the Licensee shall

and 19(A) of the 1996 Act

ensure that the Licensed Service does not contain any pornographic material.

- (2) In this Condition, material is “pornographic” if it is of such a nature that it must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal.
- (3) Where the material forms part of a series of images and that series is such as to be capable of providing a context for the material, the question of whether the material is “pornographic” is to be determined by reference to:
 - (a) the material itself, and
 - (b) the context provided by the series of images.
- (4) However, where:
 - (a) the material forms an integral part of a narrative constituted by a series of images, and
 - (b) having regard to those images as a whole, they are not of such a nature that they must reasonably be assumed to have been produced solely or principally for the purpose of sexual arousal,

the material may, by virtue of being part of that narrative, be found not to be pornographic, even though it might have been found to be pornographic if taken by itself.

11.

Listed events

Section 101(1) of the 1996 Act

- (1) The Licensee shall comply in all respects with the listed events provisions of the 1996 Act and, for the avoidance of doubt, provisions contained in this Condition 11 that derive from amendments made to the 1996 Act by the Communications Act shall apply only from such time as the relevant Sections of that Act are commenced.
- (2) The Licensee shall not include within the Licensed Service (the “**first service**”) live coverage of the whole or any part of a listed event unless:
 - (a) (i) another person who is providing a service falling within Section 98(1)(a) of the 1996 Act (the “**second service**”) has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event; and
 - (ii) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which the first service is provided; or
 - (b) Ofcom has consented in advance to inclusion of that coverage in the first service; or
 - (c) the event is a Group B event for which rights to provide coverage have been acquired by one or more other persons in addition to the Licensee; and
 - (i) that additional coverage constitutes adequate alternative

additional coverage of the event; and

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

- (ii) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made by Ofcom in accordance with Section 104ZA of the 1996 Act.

(3) Condition 11(2) shall not apply where:

Section 97(5)(a) of the 1996 Act

- (a) the Licensee is exercising rights acquired before 1st October 1996; and
- (b) the Licensee is exercising rights acquired in relation to an event listed after 1st October 1996 where such rights were acquired before the date referred to in Section 97(5)(a) of the 1996 Act.

Section 97(5A) and (5B) 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 11(2)(c) which will continue to apply in relation to a Group B event that is transferred to Group A as if the event remained a Group B event.

Section 101(1)(b) of the 1996 Act

(5) Except where otherwise stated, this Condition 11 applies to the Licensed Service if and to the extent that the Licensed Service is made available (within the meaning of Part 3 of the Communications Act) for reception by members of the public in the United Kingdom or in any area of the United Kingdom.

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) where a substantial proportion of the public in that State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 14 of the Audiovisual Media Services Directive.

This condition is without prejudice to the Licensee's right of access to events of high interest to the public for the purpose of short news reports pursuant to Article 15 of the Audiovisual Media Services Directive.

(7) For the purposes of this Condition 11:

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

- (a) the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of Part IV of the 1996 Act shall be determined in accordance with the regulations referred to in Condition 11(2)(c)(ii) above;

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

- (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 11(2)(c) (ii) above;
- (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 11(1) and 11(6); and
 - (ii) whether to take action pursuant to Condition 34(4)(a) or 34(4)(b) in circumstances where the Licensee fails to comply with Conditions 11(2) or 11(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 11 and for the purposes of determination made by it pursuant to Section 102 or Section 103 of the 1996 Act.

12.

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 Licensed Service,

which directions may make different provision for different parts of the day, different parts of the week, different types of programmes or for other differing circumstances.

Section 325(4) and
(5) and 321(4) of the
Communications Act

- (2) The Licensee shall comply with all directions given to him by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:
 - (a) the exclusion from the Licensed Service of a particular advertisement, or its exclusion in particular circumstances;
 - (b) the descriptions of advertisements and methods of advertising to be excluded from the Licensed Service (whether generally or in particular circumstances); and
 - (c) the forms and methods of sponsorship to be excluded from the Licensed Service (whether generally or in particular circumstances).

- Section 121 to 123 and 321(4) of the Communications Act (3) The Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Licensed Service.
- Section 19(3A)(f) and 19B of the 1996 Act (4) In addition to the requirement in sub-paragraph 3, the Licensee shall ensure that the Licensed Service does not contain any advertising which is:
- (a) of a duration of at least three minutes, and
 - (b) for a chat service made available for purchase by means of a premium rate service.
- Section 321(1) and 321(4) of the Communications Act (5) The Licensee shall ensure that the provisions of the Standards Code set to secure the objectives in Section 319(2)(a) and (g) to (j) of the Communications Act and relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Licensed Service.
- Section 321(4) of the Communications Act (6) 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.

13. Party political broadcasts

- Section 333 of the Communications Act (1) The Licensee shall ensure that the Licensed Service includes party political broadcasts and referendum campaign broadcasts (within the meaning of Section 333(6) of the Communications Act).
- (2) The Licensee undertakes to observe such rules with respect to party political broadcasts and referendum campaign broadcasts as may be made by Ofcom in accordance with Section 333 of the Communications Act.

14. Subtitling, signing and audio-description

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

15. Electronic Programme Guides

Sections 311(1) and 310(4) of the Communications Act To the extent that the Licensed Service consists in or includes an EPG the Licensee shall ensure that the provisions of the Code on Electronic Programme Guides are observed in the provision of the Licensed Service, which service falls within section 310(4) of the Communications Act.

16. Retention and production of recordings

- Section 325(1) and (2) of the (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

Communications Act		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 25 (fairness and privacy complaints) below.
Section 334(1) of the Communications Act	(2)	In particular, the Licensee shall: <ul style="list-style-type: none"> (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Licensed Service for a period of 60 days from the date of its inclusion therein; and (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Licensed Service which he is able to produce to it.

17.

General provision of information to Ofcom

Section 4(1)(c) of the 1996 Act	(1)	The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act, or the Communications Act and in particular (but without prejudice to the generality of the foregoing):
Section 4(1)(c) of the 1996 Act	(a)	a declaration as to its corporate structure (or the equivalent if the Licensee is not a body corporate) in such form and at such times as Ofcom shall specify;
Section 143(5) of the 1996 Act and Section 5(1)(a) of the 1996 Act	(b)	such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee on any ground is a disqualified person by virtue of any of the provisions in Section 143(5) of the 1996 Act and/or Schedule 2 to the 1990 Act or contravenes requirements imposed by or under Schedule 14 to the Communications Act;
Sections 4(1)(c) and 15 of the 1996 Act	(c)	half-yearly income and expenditure returns and supplementary annexes including, without limitation, such information as Ofcom shall require from time to time in relation to the shares of multiplex revenue attributable to the Licensee (as determined in accordance with Section 15 of the 1996 Act) in relation to such accounting periods as Ofcom may specify;
Sections 4(1)(c) and 19 of the 1996 Act	(d)	annual statements of his multiplex revenue in respect of each entire accounting period of his in such form as Ofcom shall require;
	(e)	details of any change in the Licensee's country of establishment, such notification to be made within 28 days of the Licensee becoming aware of such change;
Sections 4(1)(c) and 15 of the 1996 Act	(f)	annual returns (including, without limitation, details of programming output during each year of the Licence) in such form and manner as Ofcom may from time to time require; and
Section 19(3A)(k) of the 1996 Act	(g)	such information as Ofcom may reasonably require for the purpose of determining whether the Licensee is an independent producer within the meaning of article 3(4) of the Broadcasting (Independent Productions) Order 1991 as amended.

Section 19(3) of the 1996 Act (see also paragraph 91 of Part 2, Schedule 15 to the Communications Act)

- (2) The Licensee shall:
- (a) on entering into any agreement with a local multiplex service provider for the provision of the Licensed Service provided under this Licence to be broadcast by means of that provider's service, notify Ofcom in such form and manner as Ofcom may from time to time require:
 - (i) of the identity of the service by means of which it will be broadcast;
 - (ii) of the characteristics of the local digital television programme service to which the agreement relates;
 - (iii) of the period during which the local digital television programme service will be provided; and
 - (iv) 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 17(2)(a) above, notify Ofcom of the variation so far as relating to those matters; and
 - (c) where the Licensee is providing a local digital television programme service under this Licence to the provider of a local multiplex service in accordance with such an agreement as is mentioned in Condition 17(2)(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.

Section 5(5) of the 1996 Act

- (3) The Licensee shall inform Ofcom forthwith in writing if:
- (a) the Licensee becomes aware that any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of reconstruction or amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom in accordance with Condition 21 (transferability of a licence) 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 17(3)(a) to (c) above; or
 - (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 17(3)(a) to (d) above

occurs under the laws of any applicable jurisdiction.

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

- (4) 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 Licensed Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secret Acts or of any statutory enactment or regulation for the time being in force or a criminal offence or contempt of Court or breach of Parliamentary privilege.
- (5) The Licensee shall inform Ofcom if 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.

18.

Provision of information to Ofcom relating to a change of control

Section 5(2) of the 1996 Act (see also paragraph 78(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 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 18(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.

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 Licenseeenters 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 18(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.

19. Fair and effective competition

Section 316 of the Communications Act

- (1) The Licensee shall:
- (a) not enter into or maintain any arrangement, or engage in any practice, which is prejudicial to fair and effective competition in the provision of licensed services or of connected services; and
 - (b) comply with any code or guidance for the time being approved by Ofcom for the purpose of ensuring fair and effective competition in the provision of licensed services or of connected services; and
 - (c) comply with any direction given by Ofcom to the Licensee for that purpose.
- (2) In this Condition 19 **"connected services"** and **"licensed service"** have the meanings given to them in Section 316(4) of the Communications Act.

20. Compliance with ownership restrictions

Section 5(1) and (2) of the 1996 Act

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on 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 20(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 imposed by or under Schedule 14 to the Communications Act immediately upon becoming aware of such circumstances or events.

21. Transferability of the Licence

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

This Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person or persons to whom it is

proposed to transfer the Licence would be in a position to comply with all of the Conditions.

22.

Compliance

Section 4(1)(a) and 4(2) of the 1996 Act and Section 335 of the Communications 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, the Communications Act or any relevant international obligations.

Section 4(1)(a), (c) and (d) of the 1996 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 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, 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 Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance and that such persons are able to ensure compliance with such requirements on a day to day basis;

(b) adequate arrangements exist for the immediate implementation of such general and specific directions as may from time to time be given to the Licensee by Ofcom;

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

(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 Licensed Service for the purposes of Condition 22(2) above.

Section 335(4) of the Communications Act

(4) For the purposes of this Condition and Section 335 of the Communications Act, all Conditions of this Licence that are included by virtue of Part 3, Chapter 4 (Regulatory provisions) of the Communications Act are in addition to and have effect subject to any Conditions included by virtue of Section 335 of the Communications Act (Conditions securing compliance with international obligations).

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

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

23.

Government directions and representations

Sections 335 and 336 of the Communications Act

- (1) The Licensee shall if so directed by Ofcom:
 - (a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice given pursuant to Section 336(1) of the Communications Act; or
 - (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336(5) of the Communications Act.
- (2) The Licensee may when including an announcement in the Licensed Service in accordance with Condition 23(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 23(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.

24.

Standards Complaints

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

- (1) The Licensee shall ensure that procedures acceptable to Ofcom for the handling and resolution of standards complaints in respect of programmes included in the Licensed Service are established and maintained and shall ensure that such procedures are duly observed.
- (2) The Licensee shall for a period of at least 12 months keep a written record of any complaints referred to in Condition 24(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.

25.

Fairness and privacy complaints

Sections 115 and 119

- (1) The Licensee shall comply with such directions and requests for

of the 1996 Act (see also Section 327 of the Communications Act)

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 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;
- (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 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 25(1) to the publication of any matter shall be references to the publication of that matter without its being accompanied by any observations made by a person other than Ofcom and relating to the fairness complaint.
- (4) Where Ofcom has given a direction under Section 119(1) in relation to a fairness complaint and either the Licensee and/or any other person responsible for the making or the provision of the relevant programme has or have taken any supplementary action (interpreted in accordance with Section 120(5) of the 1996 Act) the Licensee shall promptly send to Ofcom a report of that action.

Section 326 of the

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

Communications Act	observed in the provision of the Licensed Service and in relation to the programmes included in the Licensed Service.
26.	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: <ul style="list-style-type: none"> (a) the procedures which are established and maintained for handling and resolving complaints about the observance of standards as set out in Section 319 of the Communications Act; and (b) Ofcom's functions under Part V of the 1996 Act in relation to the Licensed Service, <p>are brought to the attention of the public (whether by means of broadcasts or otherwise).</p>
27.	Power of Ofcom to vary licence conditions
Section 3(4) 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.
28.	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. <p>(2) Any such notification or document shall be deemed to have been served:</p> <ul style="list-style-type: none"> (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. <p>(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.</p>
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.
29.	Surrender
Section 19(1) 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.
30.	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 30(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 30(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
 - (5) This Condition 30 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 30(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.

31.

Duty to co-operate with third parties

Section 19(3A)(g) to (j)
of the 1996 Act

- (1) The Licensee, if notified to do so by Ofcom, shall participate in the formation of a legal entity which is intended to facilitate the provision of local digital television programme services.
- (2) In co-operation with the legal entity, the Licensee shall seek to use reasonable endeavours to measure the number of viewers of the local digital television programme service.
- (3) The Licensee shall encourage the legal entity to apply for the local multiplex licence and/or to negotiate for the local multiplex licence if it becomes available for transfer.
- (4) The Licensee shall co-operate with other local digital television programme service licensees, with the legal entity and with local multiplex service licensees to facilitate the provision of local digital television programme services in the United Kingdom.

PART 3

EXCEPTIONS AND LIMITATIONS ON LICENSEE'S OBLIGATIONS

32.

Force majeure

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

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the 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

33.

Interest on late payments

Section 4(1)(b) and (d) of the 1996 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 Barclays 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 33(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.

34.

Sanctions for breach of condition

Section 40 of the 1990 Act (see also Section 344 of the Communications Act)

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

Section 23 of the 1996 Act (see paragraph 14 of Part 2, Schedule 13 to the Communications Act)

- (3)
 - (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence or has failed to comply with any direction given by Ofcom under the Licence and it has given 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 34(3)(a) shall not exceed whichever is the greater of:
 - (i) £250,000 (or such other sum as the Secretary of State may by order specify under Section 36 of the 1996 Act); and
 - (ii) 5 per cent. of the aggregate amount of the shares of multiplex revenue attributable to the Licensee in relation to local multiplex services in respect of the relevant accounting periods.
 - (c) For the purposes of Condition 34(3)(b) "**relevant accounting**

period” in relation to a local multiplex service, means the last accounting period of the local multiplex service provider.

- (d) Where in the case of any local multiplex service, the first accounting period of the local multiplex service provider throughout which the Licensee provides the Licensed Service for broadcasting by means of the local multiplex service (the “**first period**”) has not ended when the penalty is imposed, then for the purposes of this Condition 34(3)(b), the share of multiplex revenue attributable to the Licensee in relation to that local 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.

- (4) (a) If Ofcom:

- (i) is satisfied that the Licensee has failed to comply with Condition 11(2) or Condition 11(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 11(2) or Condition 11(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 34(4)(a) or Condition 34(4)(b) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

- (d) For the purpose of Condition 34(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 34(4), Ofcom shall not impose a further financial penalty under Condition 34(3) in respect of the same circumstances.

Section 102 of the
1996 Act

- (5) (a) If Ofcom is satisfied that the Licensee has failed to comply with

Section 23(1)(b) of the

- 1996 Act
- 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 providing that the Licence is to expire on a specified date at least one year from the date on which the notice is served on the Licensee.
- Section 23(7) of the 1996 Act
- (b) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 34(5)(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 such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the Licensed Service since the date of the earlier notice.
- (6) (a) Any exercise by Ofcom of its powers under Condition 34(3) or 34(5) shall be without prejudice to Ofcom's powers under Condition 34(1) and 34(2).
- (b) Any exercise by Ofcom of its powers under Condition 34(4) shall be without prejudice to Ofcom's powers under Condition 34(1), (2) and (5).
- (7) Prior to exercising its powers under Condition 34(4) in respect of a failure to comply with Condition 11(6), Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

35.

Revocation

- Section 42 of the 1990 Act (see Section 23(9) of the 1996 Act)
- (1) (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by Ofcom under the Licence and that failure is such that, if not remedied, it would justify the revocation of the Licence, it shall serve on the Licensee a notice:
- (i) stating that Ofcom is so satisfied;
- (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee is failing to comply with any such Condition or direction; and
- (iii) stating that, unless the Licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, Ofcom will revoke the Licence.
- (b) If at the end of the period specified in any notice served under Condition 35(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
- Section 5(1)(a), (5) and (7) of the 1996 Act

Section 4(5)(b) of the 1996 Act	<p>Communications Act is contravened in relation to his holding of the Licence; or</p> <p>(b) if Ofcom is satisfied that the Licensee:</p>
	<p>(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</p> <p>(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.</p>
Section 42(5) of the 1990 Act (see also Section 23(8) and (9) of the 1996 Act)	
Section 5(5) and 5(7) of the 1996 Act	<p>(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 Grant 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;</p>
Section 3(3)(b) of the 1996 Act	<p>(d) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;</p>
Section 3(8) of the 1996 Act	<p>(e) if the Licensee provides the Licensed Service in whole or in part whilst failing to comply with any requirement to hold or have held on his behalf a licence under Section 8 of the Wireless Telegraphy Act 2006 (as amended) or if the Licensee ceases to comply with requirements applicable to the Licensed Service imposed by or under Chapter 1 of Part 2 of the Communications Act;</p> <p>(f) if, for any reason, the service provided by the Licensee does not constitute a digital television programme service for the purposes of the 1996 Act and the Communications Act; and</p>
Section 4(1)(d) of the 1996 Act (see also Section 12(3A) of the 1996 Act)	<p>(g) if Ofcom is satisfied that the Licensee is established in a country other than the United Kingdom.</p>
Section 42(8) of the 1990 Act	<p>(3) Ofcom shall before serving any notice revoking the Licence under Conditions 35(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.</p>
Section 145 of the 1996 Act	<p>(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.</p>

36.

700MHz DTT Clearance Programme

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

DESCRIPTION OF THE LICENSED SERVICE (PROGRAMMING COMMITMENTS)

The Licensee shall meet the terms of the programming commitments set out in their application and any subsequent clarification including, in particular, the commitments which have been summarised below for convenience.

- The programming commitments set out below as “hours of local programming per day/week”, “hours of local programming per day/week in peak time” or “hours and scheduling of local news and current affairs programming” shall be delivered as a weekly average (hours and minutes over a Calendar year excluding Bank Holidays and Christmas).

- Any of the programming commitments quota set out below as “repeats” may be delivered as additional first-run programming should the licensee wish to do so, although the licensee may not deliver additional repeats in lieu of first-run programming. Where additional first-run programming has been delivered within the quota set out for “repeats” the annual return completed by the licensee must indicate how much of the “repeats” quota has been delivered in this way.

Programming Commitments for Made in Birmingham			
Programming Output	<p>The service will focus on core news and current affairs output in the initial period of operation.</p> <p>The service will be as inclusive as possible, forming partnerships with communities to deliver hyper local news coverage.</p> <p>Producers from the community will be trained to deliver content about their areas on an ongoing basis. Resource and airtime will be provided to hear the voices of these communities.</p> <p>The majority of news bulletins will be live (debate shows will be pre-recorded) with as many links to events around the Licensed Area as possible.</p> <p>The proportion of evening feature led and factual/entertainment programming will be high and repeats will be stable once the core news and current affairs schedule is established.</p> <p>The service’s programme schedule will include:</p> <ul style="list-style-type: none"> • daily sports news, business round ups within news programmes and a weekly dedicated business news programme • a minimum 60 minutes early evening news on weekdays • a minimum 60 minutes news on weekend days augmented by current affairs and debate shows • The news quota to include short news bulletins at least 10 times per day 		
Hours of local programming per day/week	Year 1	Year 2	Year 3 Onwards
First run :	41 hours per week	41.5 hours per week	35 hours per week
Repeats :	40 hours per week	40 hours per week	21 hours per week

Hours of local programming per day/week in peak time (18:00-22:30)	Year 1	Year 2	Year 3 Onwards
First run :	23 hours per week	23 hours per week	14 hours per week
Repeats :	4.5 hours per week	4.5 hours per week	7 hours per week
Hours and scheduling of local news and current affairs programming	Year 1	Year 2	Year 3 Onwards
First run :	<p>Mon-Sun:</p> <p>27 hours of news and current affairs per week. This includes 5 x 2 minute bulletins per day.</p>	<p>Mon-Sun:</p> <p>27 hours of news and current affairs per week.</p> <p>The news quota to include regular news headlines or short news bulletins at those points of the schedule where there is a discernible period of time before the next full one hour or half hour news bulletin.</p>	<p>Mon-Sun:</p> <p>20 hours of news and current affairs per week, with a minimum of 60 minutes per day</p> <p>The news quota to include news headlines or short news bulletins at least 10 times per day</p> <p>TOTAL PER WEEK: 20 hours</p>
Repeats :	<p>Mon-Sun:</p> <p>3 hours</p>	<p>Mon-Sun:</p> <p>3 hours</p>	<p>Mon-Sun:</p> <p>3 hours</p>

ANNEX B REQUIREMENTS RELATING TO THE 700 MHz DTT CLEARANCE PROGRAMME

1. Definitions and interpretation

In this Annex, and for the purposes of Condition 36 of the Licence, unless the context otherwise requires

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

2. Cooperation and coordination with other parties

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

- (a) other Ofcom licensees, 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 and implementation of the 700 MHz DTT Clearance Programme in the United Kingdom.