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## ANNEX 1

### 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 13(6) of the 1996 Act and the Statement of Principles on multiplex revenue;

“**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);<sup>1</sup>

“**the 2012 Order**” means the Local Digital Television Programme Services Order 2012;

“**Code of Practice on Changes to Existing Transmission and Reception Arrangements**” means the code governing the standards and requirements relating to changes and modifications to transmission and reception arrangements for existing terrestrial television services required as a result of the transmission of local television services as drawn up by Ofcom and revised from time to time;

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

References to a person “**connected with**” the Licensee or any other person shall be interpreted in accordance with paragraph 3 of Part I of Schedule 2 to the 1990 Act;

“**Digital Sound Programme Service**” shall be interpreted in accordance with section 12(1)(da) of the 1996 Act;

“**Digital Television Additional Service**” has the meaning given to “digital additional service” in Section 24 of the 1996 Act;

“**Digital Television Programme Service**” has the meaning given to “digital programme service” in Section 1(4) of the 1996 Act;

“**EPG Service**” means an information service which may include visual images relating to the promotion, listing or selection of television programmes or programme services or other services;

“**Guidance Note on Test Transmissions**” means the guidance note issued by Ofcom;

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

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<sup>1</sup> The 2012 Order sets out the statutory framework for licensing local digital television services using radio spectrum reserved under the Wireless Telegraphy Act 2006 (Directions to OFCOM) Order 2012.

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

**“Local Digital Television Programme Service”** has the meaning given in the 2012 Order;

**“Local television service”** means the local digital television programme service provided by the holder of an L-DTPS licence;

References to **“multiplex revenue”** in relation to the Licensee 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 to the 1996 Act;

**“Ofcom”** means the Office of Communications;

**“Relevant International Obligations”** means international obligations of the United Kingdom that are notified to Ofcom by the Secretary of State;

**“Relevant Percentage of multiplex revenue”** means such percentage of the multiplex revenue in relation to each accounting period of the Licensee during the term of this Licence as Ofcom may specify pursuant to Section 7(1)(f) of the 1996 Act which percentage may be different for different accounting periods and may be a nil percentage;

**“Technical Plan”** means the technical plan published by Ofcom on 29 July 2013 and revised from time to time as set out in the Table of Digital Broadcasting Stations for Multiplex L and available on the Ofcom website;

- (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 immediately preceding the Conditions in 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) The Annexes to this Licence form part of it.
- (7) This Licence shall be governed by English law.

## PART 2: LICENCE TERM

### ***2. Duration of this Licence***

*Section 16(1) of the 1996 Act*

- (1) This Licence enters into force on 26 November 2013.
- (2) This Licence shall continue in force until 25 November 2026, unless earlier revoked in accordance with the Conditions of this Licence.

## PART 3: THE MULTIPLEX BROADCAST NETWORK

### 3. Network

*Section 12(1)(a) and (b) of the 1996 Act*

- (1) In order to provide the multiplex service, the Licensee shall establish, operate and maintain a transmission network for the multiplex broadcast of the local television services at the locations listed in Column A of the Technical Plan.
- (2) In particular, the Licensee shall establish, operate and maintain broadcast facilities on the television transmitter stations and relays listed in Column B of the Technical Plan.
- (3) The Licensee shall:
  - (a) Only use the named transmitter stations listed in Column B (for which grid references are given in column D) of the Technical Plan;
  - (b) Operate on the radio frequencies which relate to the channel numbers indicated for those transmitter stations in Column E of the Technical Plan which have the centre frequency indicated in Column F of the Technical Plan;
  - (c) Ensure that the transmitting antennas are placed at the aerial height listed in column G of the Technical Plan;
  - (d) Operate at the polarisation and effective radiated power levels (relative to a half wave dipole) indicated in columns H and I of the Technical Plan;
  - (e) Ensure the power radiated by the transmitting antennas does not result in the template patterns indicated in column J of the Technical Plan being exceeded; and
  - (f) Meet all other commitments which it made in its Technical Plan.
- (4) The transmission network shall be ready for operational use at each transmitter station no later than the date indicated for that station in Column C of the Technical Plan.
- (5) The locations listed in the Technical Plan are named after the largest settlement in that place which would be served by the transmission arrangements. The actual radiated pattern of transmission may not cover the entire settlement. Nothing in this Licence shall constitute or imply any warranty, representation or obligation on the part of Ofcom as to the size or location of the areas actually capable of receiving the programmes in the local television services broadcast.

#### **4. Changes to broadcast network required by Ofcom**

*Section 3(4), 12(2) and 12(3) of the 1996 Act*

- (1) Ofcom may change the network requirements for build out or transmissions locations and other aspects of transmission or operation, in accordance with the licence variation process described in Condition 25 below.

#### **5. Changes to Broadcast Network requested by an L-DTPS Licensee**

*Section 12(1)(m) and (n) of the 1996 Act*

- (1) The Licensee shall use its reasonable endeavours to facilitate the objective of a holder of an L-DTPS licence which has a local television service carried on its multiplex, by increasing the coverage area at locations required under Condition 3 or by expanding the coverage beyond the locations required under Condition 3.
- (2) In doing so, the Licensee shall establish, operate and maintain an extension to its broadcast transmission network for the transmission of the local television service, if the holder of the L-DTPS licence pays for the costs reasonably incurred.
- (3) If an increase in coverage area is agreed, the proposed increase shall be referred to Ofcom who may consent to the change by means of a variation to this Licence. If Ofcom consent, the changes shall be reflected in amendments to the Technical Plan.
- (4) For the avoidance of doubt the Licensee will not be in breach of this Condition if, through no fault of its own and despite having used reasonable endeavours to do so, the Licensee has been unable to obtain the necessary permissions under the Wireless Telegraphy Act 2006 to use radio frequencies in an area to which an extension of coverage is proposed under this Condition.

## PART 4: THE MULTIPLEX SERVICE

### **6. Provision of local multiplex service by the Licensee**

*Section 12(1)(h) and (i) of the 1996 Act*

- (1) At each location, from the date indicated in Column C of the Technical Plan, the Licensee shall make capacity available on its multiplex (and all necessary transmission facilities) for the multiplex broadcast of the local television service, and it shall broadcast that service when that service is made available for broadcasting.
- (2) The local television service is made available for broadcasting when a holder of an L-DTPS licence has entered into an agreement with the Licensee for broadcast, and makes the television service available for multiplex transmission. (Making the television service available includes making available video, audio and any ancillary services such as access services and programme schedule information in an agreed format and at an agreed interface point.)
- (3) The local television service which must be broadcast by the Licensee in each location is that provided by the person which holds the L-DTPS licence in that location. (The list of locations for which an L-DTPS licence is to be granted is set out in the Technical Plan.)

### **7. Prohibition on conveyance of unlicensed services**

*Section 12(1)(c),(d),(da) of the 1996 Act*

- (1) The Licensee shall ensure that:
  - (a) All digital television programme services broadcast under this Licence are provided by the holder of a digital television programme licence under Section 18 of the 1996 Act or by the BBC;
  - (b) All digital television additional services broadcast under this Licence are provided by the holder of a licence under Section 25 of the 1996 Act or by the BBC; and
  - (c) The only digital sound programme services broadcast under the Licence are services provided by the holder of a national digital sound programme service licence (within the meaning of Section 60 of the 1996 Act) or by the BBC.
- (2) This Condition shall not apply to the provision of a digital television programme service or a digital television additional service by a person established and licensed (if required) to provide such a service in another EEA member state.

## **8. Radio frequency assignment**

- (1) The Licensee must broadcast only on radio frequencies (which together comprise the broadcasting channel) which are part of the radio frequency bands in each location which are assigned for that purpose and authorised under a licence granted to the Licensee under the Wireless Telegraphy Act 2006.
- (2) The radio frequencies assigned to the Licensee and the part of those frequencies which must be used at each location for the local television service are set out in the Technical Plan.

## **9. Use of multiplex capacity**

### *Section 12(1)(h) and (i) of the 1996 Act*

- (1) Sufficient capacity in the multiplex operated by the Licensee for one standard definition television service shall be made available and dedicated to the broadcast of the local television service at each location.
- (2) In addition, sufficient further capacity in the multiplex operated by the Licensee for any ancillary services which are required by a L-DTPS Licensee at a particular location shall also be made available and dedicated to the local television service.
- (3) The remaining capacity may be used for other services, including but not limited to broadcast of other digital television programme services, digital television additional services or digital sound programme services.

## **10. Charges for the carriage of the local television service**

### *Section 12(1)(j) of the 1996 Act*

- (1) The Licensee may not charge an amount for the carrying of a local television service at each location which exceeds such sum as is sufficient to recover the net operating costs.
- (2) For this purpose “net operating costs” means the operating costs reasonably incurred by the Licensee for the broadcast of that service, so far as those costs are not met by funding made available to the Licensee by the BBC for the support of the provision of local digital television programme services.
- (3) If, in the event of dispute between the Licensee and the local television provider as to the sum which may be charged, Ofcom receives notice requesting it to resolve the dispute, Ofcom may determine the sum which may be charged.

## PART 5: MULTIPLEX NETWORK OPERATION

### **11. Duration of Transmission**

- (1) At each location, from the date indicated in the Technical Plan, the multiplex must be made available by the Licensee for broadcast of local television services for twenty four hours per day, each day. Standards of reliability measured in terms of service availability to viewers must be maintained to levels that are as high as reasonably practicable.

### **12. Transmission arrangements, technical standards requirements**

*Section 12(1)(g) of the 1996 Act*

- (1) The Licensee shall do all it can to ensure that the signals carrying the local television service attain high standards in terms of technical quality and reliability at each location as is for the time being reasonably practicable. In particular, (but without prejudice to the generality of the foregoing) the Licensee shall do all that it can to ensure that the relevant provisions of the Technical Plan are observed and its signals comply with the applicable transmission standards described in the Reference Parameters for Digital Terrestrial Television Transmissions.
- (2) The Licensee shall at all times comply with the Code of Practice on Changes to Existing Transmission and Reception Arrangements and without prejudice to the generality of the foregoing the Licensee shall:
  - (a) Do all that it can to secure that all work required in accordance with the Code of Practice on Changes to Existing Transmission and Reception Arrangements in connection with the equipment used for the transmission of existing terrestrial television services in order to accommodate the transmission of the local television services is carried out in a proper manner before the commencement of transmissions of the local television services from each of the stations specified in the licence are brought into full operation;
  - (b) Not commence transmissions of the local television services from any of the stations specified in the licence until the work referred to in paragraph 2(a) of this Condition in connection with such transmissions from such stations has been completed.
- (3) The Licensee shall comply with the Guidance Note on Test Transmissions, governing any test transmissions made by the Licensee from any of the stations specified in the Licence before and after the commencement of the local television services from such stations.
- (4) If final international clearances have not been obtained for the provision of the local television services in accordance with the Licence, the Licensee acknowledges that, if it chooses to commence broadcasting from one or more stations in advance of obtaining international clearances, it may (at its own cost and expense) at any time be required by

Ofcom to make any change in its transmission arrangements which may be necessary in order to give effect to the international obligations of the United Kingdom (which may, without limitation, include modifying, supplementing or replacing any equipment used in the transmission of the local television services). Without prejudice to any other provision of this Licence, Ofcom shall have no liability for any cost, expense or consequential loss incurred by the Licensee and resulting directly or indirectly from actions required to be taken by the Licensee in order to comply with such international obligations of the United Kingdom.

(5) The Licensee shall ensure that:

- (a) Any EPG Service included with the local television service is provided using published technical standards which are freely available and have been standardised either by a recognised European Standardisation body or such other industry body as is recognised by Ofcom; and
- (b) Details of the broadcast datastream formats to be used in the provision of such EPG Service are made freely available to receiver manufacturers and channel suppliers.

(6) The Licensee shall ensure that a TV re-tune advice telephone line that provides re-tune support for the most commonly used DTT sets and set top boxes is maintained to help viewers who may experience difficulties in locating their local television service.

## PART 6: CO-OPERATION

### ***13. Duty to cooperate with third parties***

*Section 121(1)(k) of the 1996 Act*

- (1) The Licensee shall use all reasonable endeavours to cooperate in all respects, including promptly and in good faith with all persons notified by Ofcom, in order to facilitate, promote, develop and extend the provision of local television services in the United Kingdom.
- (2) In particular, the Licensee shall proactively co-operate and take all necessary steps to assist local television service providers with the transmission of their local television service in their location.

### ***14. Formation of a local television industry body to promote local television***

*Section 12(1)(l) of the 1996 Act*

- (1) The Licensee shall take any necessary steps indicated by Ofcom to facilitate the formation and establishment of a legal entity which is intended to facilitate the provision of local television services.
- (2) The Licensee must undertake regular discussions with L-DTPS Licensees and with such legal entity in order to create a forum in which participants can identify key strategic priorities for promoting and extending local television in order to achieve these goals.
- (3) The Licensee shall undertake its commitments to promote local digital television services as set out in Annex 2.

## PART 7: GENERAL CONDITIONS

### **15. Fee**

*Sections 4(1)(b), 4(1)(c), 4(3) and 4(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) 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 15(1) above.
- (3) Payment of the fees referred to in Condition 15(1) shall be made in such manner and at such times as Ofcom shall specify.

### **16. Additional Payments**

*Section 13 of the 1996 Act*

- (1) The Licensee shall pay to Ofcom in respect of each accounting period of the Licensee falling within the term of this licence an amount representing the Relevant Percentage of multiplex revenue.
- (2) Ofcom may:
  - (a) before the beginning of any accounting period of the Licensee, estimate the amount representing the Relevant Percentage of multiplex revenue for that accounting period (and the Licensee shall pay such estimated amount (the "Estimated Amount") by instalments on the penultimate business day of each calendar month throughout that accounting period); and
  - (b) at such times as it shall think fit revise the Estimated Amount and adjust the instalments payable by the Licensee to take account of any such revision; provided that in setting or revising the Estimated Amount Ofcom may determine that the part of the Licensee's additional payments calculated using the Relevant Percentage of multiplex revenue and payable monthly will be based on the preceding month's actual multiplex revenue.
- (3) The Licensee shall pay to Ofcom a sum equal to the amount (if any) by which the amount of the Relevant Percentage of multiplex revenue in respect of any accounting period of their exceeds the Estimated Amount actually paid by them to Ofcom in respect of that period; and

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

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

- (5) Payments under this Condition 16 shall be made in such manner as Ofcom shall specify.

### **17. 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 17(1) above, all sums payable by the Licensee are exclusive of any V.A.T. which shall be paid by the Licensee in addition to such sums.
- (3) In this Condition 17, “**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.

### **18. Provision of Information to Ofcom**

*Section 4(1)(c), 5(2), 5(5), 15 and 143(2) 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):
- (a) A declaration as to its corporate structure in such form and at such times as Ofcom shall specify;
- (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 contravenes requirements imposed by or under Schedule 14 to the Communications Act;

- (c) Annual 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;
- (d) Statements of multiplex revenue at monthly intervals and also in respect of each entire accounting period in such form as Ofcom shall require;
- (e) Such information as Ofcom may require for the purposes of determining whether the Licensee has complied and is complying with the Conditions of this Licence;
- (f) Such technical performance data as Ofcom shall from time to time require at such intervals and in such form as Ofcom shall specify; and
- (g) An annual report detailing multiplex network build out and such other related data as Ofcom may require.

### **19. Notifications to Ofcom**

*Section 5(5) of the 1996 Act (see also Section 78(3) of Part 2 of Schedule 15 to the Communications Act)*

- (1) The Licensee shall inform Ofcom forthwith in writing if:
  - (a) the Licensee becomes aware that any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom) 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 its assets; or
  - (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with its 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 its 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 Conditions 19(1)(a) to (c) above; or

- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 19(1)(a) to (d) above occurs under the laws of any applicable jurisdiction.
- (2) The Licensee shall inform Ofcom if it or any individual having control over it 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.
- (3) The Licensee shall notify Ofcom if there is a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.
- (4) In particular (but without prejudice to the generality of the foregoing) the Licensee shall notify Ofcom as soon as reasonably practicable:
  - (a) Of any changes to persons that hold a 'majority interest' in the Licensee;
  - (b) Of any changes to persons who exercise 'de facto' control over the Licensee; and
  - (c) If any person in control of the Licensee enters into a 'control arrangement'.
- (5) For the purposes of Condition 19(4)(a) to (c):
  - (a) A person holds a 'majority interest' where they hold, or are beneficially entitled to, more than 50 per cent of the equity share capital, or possess more than 50 per cent of the voting power in the company;
  - (b) A person can exercise 'de facto control' where they do not have a majority interest, but are regarded as controlling a company where it is reasonable, having regard to all the circumstances, to expect that they would (if they chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with their wishes;
  - (c) A person in control of the Licensee enters into a 'control arrangement' where they hold, or are beneficially entitled to, 50 per cent of the company's equity share capital, or possess 50 per cent of the voting power in the company, and have an arrangement with any other participant in the company as to how any voting power possessed by either of them is to be exercised or not. 'Arrangement' includes any agreement or arrangement whether or not it is, or is intended to be, legally enforceable; and
  - (d) A person shall be treated -

- (i) As holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which they control or to which such a body corporate is beneficially entitled, and
- (ii) As possessing any voting power possessed by such a body corporate.

## **20. Fair and Effective Competition**

### *Section 316 of the Communications Act 2003*

(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.

For the purposes of this Condition 20, “**connected services**” and “**licensed service**” have the meanings given to them under Section 316(4) of the Communications Act.

- (2) In the terms on which the Licensee contracts, or offers to contract, for the broadcasting of local television services, digital television programme services, digital sound programme services or digital television additional services, the Licensee shall not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons.
- (3) The Licensee shall not enter into any agreement with a person providing a digital television programme service, a digital sound programme service or digital television additional service (the “**service provider**”) which entitles the service provider to use a specified amount of digital capacity on the assigned radio frequencies and contains a restriction of the nature referred to in Condition 20(4), save to the extent that the restriction is reasonably required for the purpose of ensuring the technical quality of the broadcasts or for the purpose of securing compliance with any other Condition in the Licence.
- (4) The restriction referred to in Condition 20(3) is such that it restricts the service provider's freedom to make arrangements with some other person as to the use of any of the digital capacity on the assigned radio frequencies or any other frequencies which the service provider is entitled to use.

## **21. Compliance with ownership restrictions**

*Sections 5(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 them by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that they apply to them.
- (2) The Licensee shall comply with any direction of Ofcom requiring them to take, or arrange for the taking of, any steps specified by Ofcom for the purposes of complying with the requirements referred to in Condition 21(1) above.
- (3) The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee's obligations imposed on them by or under Schedule 2 of 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.

## **22. Transferability of the Licence**

*Section 3(6) and (7) of the 1996 Act*

- (1) 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 thereof throughout the remainder of the period in which this Licence is in force.

## **23. Compliance**

*Sections 4(1)(a) and 4(2)(a) of the 1996 Act*

- (1) The Licensee shall comply with any direction given to them by Ofcom in respect of any matter, subject or thing which direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee, by or under the 1990 Act, the 1996 Act or the Communications Act or any Relevant International Obligations.

## **24. 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 television services, 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 television services 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 television services in accordance with Condition 24(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 24(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 direction, has revoked that direction, or where such a notice has expired,the Licensee may include in the television services an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.
- (4) The Licensee shall comply with all relevant Conditions of this Licence and any directions given to it 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.

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

*Sections 3(4) and 12(2) of the 1996 Act*

- (1) Ofcom may by a notice served on the Licensee:
  - (a) vary the licence term provided that the Licensee consents to such variation (and without prejudice to Ofcom's powers and duties under Section 17 of the 1996 Act);
  - (b) vary any Conditions imposed in pursuance of Section 12(1)(a) or (b) of the 1996 Act with the consent of the Licensee; and
  - (c) vary the Licence in any respect not mentioned in Conditions 25(1)(a) and (b) above provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation,provided always that Condition 25(1)(a) is without prejudice to Ofcom's power under Section 17(1)(b) of the 1996 Act and Condition 28(1) to reduce the period for which the licence is in force.

## **26. Equal opportunities and training**

### *Section 337 of the Communications Act*

- (1) Where section 337 of the Communications Act applies, the Licensee shall make, and from time to time shall review, arrangements for:
  - (a) Promoting, in relation to employment with the Licensee:
    - (i) equality of opportunity between men and women and between persons of different racial groups; and
    - (ii) The equalisation of opportunities for disabled persons; and
  - (b) training and retraining persons whom they employ in or in connection with the provision of the local television services or the making of programmes for inclusion in these services.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 26(1) aware of them including publishing the arrangements in such manner as Ofcom may require.
- (3) In particular (but without limiting the generality of the foregoing) the Licensee shall from time to time (and at least annually) publish, in such manner as they consider appropriate, their observations on the current operation and effectiveness of the arrangements required by virtue of this Condition.
- (4) The Licensee shall, in making and reviewing the arrangements made in accordance with Condition 26(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) Ofcom will treat the Licensee's obligations under Condition 26(1) to (4) 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 8: CONDITIONS RELATING TO THE ENFORCEMENT OF THE LICENCE

### **27. Force majeure**

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

- (1) 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 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.

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

*Section 17 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 and it has given the Licensee a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice requiring them to pay to Ofcom, within a specified period, a specified financial penalty, or a notice reducing the term of this licence by a specified period not exceeding two years.
- (2) Subject to Condition 28(4), the amount of any financial penalty imposed pursuant to Condition 28(1) on the holder of a local multiplex licence 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 36 of the 1996 Act) and five percent of the aggregate amount of the share of multiplex revenue attributable to the Licensee for their last complete accounting period (as determined in accordance with Section 15 of the 1996 Act) falling within a period for which the Licence has been in force (the "relevant period").
- (3) Subject to Condition 28(4), where any such penalty is imposed when the Licensee's first complete accounting period falling within the relevant period has not yet ended, the amount referred to in Condition 28(2) shall not exceed five percent of the amount which Ofcom estimates to be the share of multiplex revenue attributable to the Licensee for that accounting period (as determined in accordance with Section 15 of the 1996 Act).
- (4) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 28(1), Ofcom may, on the application of the Licensee, by a further notice served on them at any time before that date, revoke that notice if it is satisfied that such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the local television services since the date of the earlier notice.

## **29. Revocation**

*Section 42 of the 1990 Act and Section 17(6) 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, Ofcom shall serve on the Licensee a notice:
    - (i) Stating that Ofcom is so satisfied;
    - (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee 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 under Condition 29(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 ceases to provide the local television services before the end of the term of this Licence and Ofcom are satisfied that it is appropriate to revoke the Licence;
  - (b) If the Licensee agrees in writing with Ofcom that the Licence should be revoked;

*Sections 5(1) and 143(2) of the 1996 Act*

- (c) if the Licensee becomes a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act or otherwise fails to comply with any requirement imposed on or in relation to the holders of multiplex licences by or under that Schedule or Schedule 14 to the Communications Act;

*Section 4(5) of the 1996 Act*

- (d) If Ofcom is satisfied that the Licensee:

- (i) in purporting to comply with any of the Conditions of the Licence has provided information which is false in a material particular or has withheld any material information with the intention of causing Ofcom to be misled; or
- (ii) in connection with its 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 5 of the 1996 Act*

- (e) 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 takes place (whether before or after the commencement of the licence term), which change is such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances of the case, it would be induced by the change to refrain from awarding the Licence to the Licensee;

*Section 3(3) of the 1996 Act*

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

*Section 3(8) of the 1996 Act*

- (g) if the Licensee provides the local television services in whole or in part whilst failing to comply with any requirement to hold or have held on their behalf a licence under the Wireless Telegraphy Act 2006 or if the Licensee ceases to comply with requirements applicable to the local television imposed by or under Chapter 1 of Part 2 of the Communications Act;

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

- (h) if Ofcom shall revoke the assignment, in the licence granted under the Wireless Telegraphy Act 2006, of the radio frequencies set out in the Technical Plan.

*Section 5(6) of the 1996 Act*

- (3) Ofcom shall before serving a notice revoking the Licence or a notice under Condition 29(2)(b) notify the Licensee of and give the Licensee a reasonable opportunity to make representations to it about the matters constituting its grounds for revoking the Licence.

*Section 11(5) of the 1996 Act*

- (4)
  - (a) Where the Licence is revoked pursuant to any provision of Part I of the 1996 Act or is treated as being revoked under Section 145 of the 1996 Act, the Licensee shall within

such period as Ofcom shall notify to them, pay to Ofcom a specified financial penalty not exceeding whichever is the greater of £500,000 (or such other sum as the Secretary of State may by order specify under Section 36 of the 1996 Act) or the prescribed amount.

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

(5) For the purposes of Condition 29(4):

**“Prescribed amount”** means:

(a) Where:

(i) The Licence is revoked under Section 11 of the 1996 Act; or

(ii) The first complete accounting period of the Licensee falling within the term of this Licence has not yet ended;

Seven percent of the amount which Ofcom estimates would have been the Licensee's multiplex revenue for that accounting period (as determined in accordance with Section 14 of the 1996 Act); or

(b) In any other case, seven percent of the Licensee's multiplex revenue for the last complete accounting period of the Licensee so falling (as determined in accordance with Section 14 of the 1996 Act).

#### *Sections 144 and 145 of the 1996 Act*

(6) If the Licensee is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying them from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act, in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.

## ANNEX 2

### **1. L-DTPS Promotional Plan**

(1) The Licensee shall use its best endeavours to implement and procure the implementation of its proposals in relation to the promotion of local digital television programme services, as derived from the Licensee's proposals provided in its application and additional information under Selection Criterion 2 of the local television multiplex licence ITA, published 10 May 2012 and updated 15 May 2012 and 29 June 2012. The Promotional Plan may be modified by the parties thereto subject to the prior written consent of Ofcom, such consent not to be unreasonably withheld.

(2) The Licensee shall:

- (a) if called upon to do so by the L-DTPS licensees and the legal entity develop and establish an audience measurement system. This requirement may be discharged through a third party provider;
- (b) ensure that for the duration of the Licence the services as described in the Licensee's application are offered and, where requested by any L-DTPS licensee, those services are provided to that licensee;
- (c) ensure the establishment and maintenance of an online and telephone help and information service for viewers. This requirement may be discharged through a third party provider;
- (d) establish as soon as possible and maintain the Local Television Charitable Trust. The Charitable Trust, to be registered with the Charities Commission, is to be funded by contributions from the profits derived from the two national channels and other commercial activities. The purposes of the Trust should be linked to the promotion of local television and its wider community benefits and include, but not be limited to the following:
  - (i) promoting training and education initiatives for people from disadvantaged backgrounds or those following relevant career paths in educational establishments; and
  - (ii) providing work experience opportunities with the Licensee and encouraging L-DTPS licensees to provide local work experience and training opportunities.

Once established, the purpose of the Trust may only be **changed** with consent of all trustees and members and with all the L-DTPS licensees.

- (e) If called upon to do so by the L-DTPS licensee and the legal entity, use its best endeavours to:
- (i) Lobby and negotiate with other platform providers to ensure that as many L-DTPS licensees as possible achieve wide distribution;
  - (ii) Ensure that the highest possible position on the EPG is realised on each platform for L-DTPSs; and
  - (iii) Encourage other platform providers to promote L-DTPSs to their viewers.
- (f) if called upon to do so by the L-DTPS licensees and/or the legal entity, use its best endeavours to develop marketing strategies for L-DTPS licensees in their respective locations, through a focused marketing plan, to include launch and other activities in relation to the on-going roll-out of local television services, as well as multi-platform campaigns.
- (g) with the exception of sub-paragraphs (a) to (f) above, and subject to any service level agreements, ensure that all profits derived from the two national channels and other commercial activities are used exclusively for the purposes of operating and promoting local television services.