

MULTIPLEX B

INDEPENDENT TELEVISION COMMISSION

BROADCASTING ACT 1990 AND BROADCASTING ACT 1996

LICENCE GRANTED TO **BBC FREE TO VIEW LIMITED** TO PROVIDE A
MULTIPLEX SERVICE UNDER PART I OF THE BROADCASTING ACT 1996

THE LICENCE

1. The Independent Television Commission (the "**Commission**") in exercise of the powers conferred upon it by Part I of the Broadcasting Act 1996 hereby grants to **BBC FREE TO VIEW LIMITED** (the "**Licensee**") a licence (the "**Licence**") subject to the conditions set out in the Schedule and Annexes A and B (the "**Annexes**"), (the "**Conditions**") to provide the multiplex service specified in the Annexes (the "**Licensed Service**").
2. This Licence shall come into force on the Commencement Date (as defined in the Conditions) and subject to the Conditions shall be for a term of twelve years.
3. Notwithstanding the provisions of clause 2 above, the Conditions specified in Part VI of Annex A shall come into force on the date appearing below, upon which this Licence is granted by the Commission (the "**Date of Grant**").

SIGNED FOR THE
INDEPENDENT TELEVISION
COMMISSION

Dated

BY

THE SCHEDULE

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PART 1

1. DEFINITIONS AND INTERPRETATION

(1) In these Conditions and in the Conditions in the Annex 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 by the 1996 Act;

"**the 1996 Act**" means the Broadcasting Act 1996;

"**the Application**" means the application of BBC Free to View Limited to hold the Multiplex B Licence dated 13 June 2002, together with the documents listed in Part IV of Annex A and in Part II of Confidential Annex B of this Licence furnished to the Commission by the Licensee pursuant to Section 7(6) of the 1996 Act;

"**body**" means a body of persons whether incorporated or not, and includes a partnership;

"**BSkyB**" means British Sky Broadcasting Group PLC, a company incorporated under the laws of England (registered number 2247735) whose registered office is at Grant Way, Isleworth, Middlesex TW7 5QD;

"**BSkyB Limited**" means British Sky Broadcasting Limited, a company incorporated under the laws of England (registered number 2906991) whose registered office is at Grant Way, Isleworth, Middlesex TW7 5QD;

"**Centralised Service Information System**" means a single co-ordinated facility to collate service information from all the services contained in all multiplexes broadcast as required at each transmission point and to make available the collated service information for cross-carriage and insertion by each multiplex licensee into all multiplexes at each transmission point;

"**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 the Licensed Service as drawn up and from time to time revised by the Commission;

"Commencement Date" means the date three months after the Date of Grant or such earlier date as the Licensee may notify to the Commission in writing or such later date as may be agreed in writing between the Commission and the Licensee;

references to **"connected with"** in relation to the Licensee or any other person shall be interpreted in accordance with paragraph 3 of Part I of Schedule 2 to the 1990 Act;

"Co-ordinated Coverage Improvement Programme" means a programme agreed between the BBC and the holders of all multiplex licences, including the Licensee, to ensure the extension, in a co-ordinated manner as between such persons, of the Coverage of their respective multiplex services;

"Coverage" in respect of a service means its availability for reception in terms of both the number of viewers able to receive such service and the geographic scope of the Coverage Area of such service;

"Coverage Area" shall be construed in accordance with paragraph 3(A) of Schedule 2, Part I of the 1990 Act;

"dB" means decibel;

references to **"digital additional services"** shall be interpreted in accordance with Section 24 of the 1996 Act;

references to **"digital programme services"** shall be interpreted in accordance with Section 1(4) of the 1996 Act;

"Digital Technical Performance Code" means the code governing technical standards and practice in the provision of licensed services and qualifying services as drawn up and from time to time revised by the Commission;

"disabled person" has the same meaning as in the Disability Discrimination Act 1995;

"DTT Marketing Plan" means the document referred to in Part V of Annex A;

“**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;

“**Equalisation Proposals**” means the proposals described in Annex C of the ITC Note for Applicants on Coverage for Digital Television dated 25 April 2002, subject to such modifications as are consented to in writing by the Commission, such consent not to be unreasonably withheld;

"**Frequencies**" means the frequencies designated by UHF Channel numbers in Part III of Annex A and a "**Frequency**" means any of the Frequencies;

"**Initial Licence Period**" means the period of twelve years from and including the Commencement Date or, if shorter, the period from and including the Commencement Date until such date as the Licence is revoked in accordance with these Conditions;

any reference to a person or group of persons acting together having an "**interest**" of a particular percentage (or of more than a particular percentage) in a body corporate is a reference to a person or group of persons acting together who:-

- (a) holds or is beneficially entitled to that percentage (or more than that percentage) of the shares in that body; or
- (b) possesses that percentage (or more than that percentage) of the voting power in that body;

“**Invitation to Apply**” means the Invitation to Apply for multiplex licences issued by the Commission on 1 May 2002 (as amended);

"**Licence Period**" means the Initial Licence Period or any Subsequent Licence Period, as the context shall require;

"**Licensed Area**" means the coverage area achieved when the programmes in the licensed services and the qualifying services included in the Licensed Service are transmitted by wireless telegraphy from the stations specified in Part III of Annex A (as varied from time to time pursuant to the proviso to Condition 2(2)), subject to such stations being operated in accordance with the Digital Technical Performance Code and otherwise in accordance with the details set out in Part III of Annex A;

"**licensed services**" means services licensed by the Commission under Part I of the 1996 Act;

"**Multiplex**" means any of the frequencies on which a multiplex service licensed by the Commission is provided or any other frequency allocated to the BBC for use in the provision of a multiplex service;

"**the Multiplex B Licence**" means the multiplex licence granted in respect of the Multiplex designated as "B" by the Commission;

"**the Multiplex C Licence**" means the multiplex licence granted in respect of the Multiplex designated as "C" by the Commission;

"**the Multiplex D Licence**" means the multiplex licence granted in respect of the Multiplex designated as "D" by the Commission;

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

"**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 Licence Period has not yet ended;

seven per cent. of the amount which the Commission estimate would have been the multiplex revenue for that accounting period (as determined in accordance with Section 14 of the 1996 Act); or
- (b) in any other case, seven per cent. of the multiplex revenue for the last complete accounting period of the Licensee so falling (as determined in accordance with Section 14 of the 1996 Act);

"**programme**", save where otherwise specified, includes an advertisement and any item included in the Licensed Service;

references to "**programme-related services**" shall be interpreted in accordance with Section 12(4)(b) of the 1996 Act;

references to "**qualifying services**" shall be interpreted in accordance with Section 2 of the 1996 Act;

"**racial group**" has the same meaning as in the Race Relations Act 1976;

"**Relevant Date**" means the date which the Commission determines to be that by which it would need to publish a notice under Section 7(1) of the 1996 Act if it were to grant, as from the date on which the Licence would expire if not renewed, a fresh licence to provide the Licensed Service;

"**Relevant Percentage of multiplex revenue**" means such percentage of the multiplex revenue in relation to each accounting period of the Licensee during the Licence Period as the Commission may specify pursuant to Condition 9(5), which percentage may be different for different accounting periods and may be a nil percentage;

"**Relevant Person**" means any of BSKyB, BSKyB Limited, any person connected with BSKyB or BSKyB Limited and any person in which BSKyB is, directly or indirectly, a participant with an interest of 50% or more;

"**ServicesCo**" means the company established pursuant to the Shareholders' Agreement or any successor agreement between such parties or any combination thereof with a similar purpose;

"**Shareholders' Agreement**" means the agreement dated 16 August 2002 between the Licensee, Crown Castle UK Limited and BSKyB Limited;

"**Statement of Principles**" means the Statement of Principles drawn up and revised from time to time by the Commission in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule 1 to the 1996 Act;

"**Subsequent Licence Period**" means the period of twelve years from and including the date on which the Licence is renewed in accordance with Condition 9 or, if shorter, the period from and including the date on which the Licence is renewed until such date as it is revoked in accordance with these Conditions;

"**Technical Plan**" means the technical plan relating to the Licensed Service which accompanied the Licensee's Application pursuant to Section 7(4)(b) of the 1996 Act;

references to "**technical services**" shall be interpreted in accordance with Section 24(3) of the 1996 Act and to "**relevant technical services**" shall be interpreted in accordance with Section 12(4)(c) of the 1996 Act; and

references to "**to implement 3dB power increases**" means to increase the power at which the Licensed Service is broadcast by 3dB.

- (2) The Interpretation Act 1978 shall apply for the purpose of interpreting these Conditions as if they were an Act of Parliament.
- (3) Any word or expression used in these Conditions shall unless otherwise defined herein and/or the context otherwise requires have the same meaning as it has in the 1990 Act or in the 1996 Act, as the case may be.
- (4) For the purposes of interpreting these Conditions headings and titles to any Condition shall be disregarded.
- (5) This Licence shall be governed by English law.

PART 2

2. PROVISION OF MULTIPLEX SERVICE BY THE LICENSEE

- (1) The Licensee shall provide the Licensed Service for the Licence Period in the Licensed Area and in accordance with the Conditions set out in the Annexes.
- (2) Subject to the Conditions set out in the Annexes, the Licensee shall ensure that the licensed services and the qualifying services broadcast in the Licensed Service are transmitted from the stations specified in, and otherwise in accordance with Part III of Annex A and on each day of the week. Provided that the Commission may (having first consulted the Licensee) from time to time by notice to the Licensee amend Part III of Annex A:-
 - (a) by substituting for any station or stations therein referred to, a reference to any other station or stations serving substantially the whole of the area previously served by the stations so substituted; and/or
 - (b) by adding to the stations therein referred to a reference to an additional station or stations serving an additional area, whether or not such additional area is served in whole or in part by another station from which the licensed services and the qualifying services are broadcast in the Licensed Service; and/or
 - (c) by deleting references to any station or stations where such deletion is required pursuant to the revocation by the Secretary of State, pursuant to Section 6(3) of the 1996 Act, of the assignment of any Frequency;

and any such variation shall take effect on such date or event as the Commission shall in such notice specify whereupon Part III of Annex A shall be deemed to have been amended so as to include particulars of the broadcasting stations as so varied.

- (3) Nothing in this Licence shall constitute or imply any warranty, representation or obligation on the part of the Commission as to the size or location of the areas actually capable of receiving the programmes in the licensed services and the qualifying services broadcast in the Licensed Service provided by the Licensee pursuant to the Licence or that licensed services and qualifying services provided by the holder of any other licence (including a multiplex service licence) shall not be capable of reception in the whole or any part of the Licensed Area.

- (4) The Licensee shall use its reasonable endeavours to:
 - (a) extend, where reasonably practicable, the Coverage of the Licensed Service; and
 - (b) ensure that the Coverage extension referred to in paragraph (a) above forms part of a Co-ordinated Coverage Improvement Programme.
- (5) Without prejudice to the generality of the foregoing, the Licensee shall:
 - (a) use its best endeavours to implement 3dB power increases:
 - (i) within three months of the Commencement Date at least 20 of the broadcasting stations listed in Part III of Annex A, such stations to include Crystal Palace, Oxford, Black Hill, Bilsdale and Sutton Coldfield; and
 - (ii) as soon as is reasonably practicable and where reasonably practicable at all broadcasting stations listed in Part III of Annex A;
 - (b) use all reasonable endeavours to procure agreement to the Equalisation Proposals as part of a Co-ordinated Coverage Improvement Programme; and
 - (c) as soon as is reasonably practicable after agreement is reached, shall implement such Equalisation Proposals in so far as they relate to the Licensed Service.
- (6) For the avoidance of doubt the Licensee will not be in breach of this Condition if, through no fault of his own and despite having used best endeavours to do so, the Licensee has been unable to obtain the necessary permissions under the Wireless Telegraphy Act 1949.
- (7) The Licensee shall not be authorised by or under the Licence to broadcast or procure the broadcasting of anything other than the Licensed Service.

3. FEES

- (1) The Licensee shall pay to the Commission such fees as the Commission 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 whereof, the Commission shall provide to the Licensee in writing.

- (2) Payment of the fees referred to in Condition 3(1) shall be made in such manner as the Commission shall specify provided that unless the Commission specifically otherwise requires:-
- (a) where the annual amount of the fee is less than the Designated Amount, it shall be payable on the Date of Grant and on each anniversary thereof prior to or during the Licence Period; and
 - (b) where the annual amount of the fee is equal to or more than the Designated Amount, it shall be payable in advance by equal monthly instalments commencing on the Date of Grant and continuing thereafter until the expiry of the Licence Period.
- (3) For the purposes of this Condition 3, the "**Designated Amount**" means the sum of £25,000, or such other sum as the Commission may from time to time specify.

4. ADDITIONAL PAYMENTS

- (1) The Licensee shall pay to the Commission in respect of each accounting period of the Licensee falling within the Licence Period an amount representing the Relevant Percentage of multiplex revenue.
- (2) The Commission 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 equal monthly 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 the Commission 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) (a) The Licensee shall pay to the Commission 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 his exceeds the Estimated Amount actually paid by him to the Commission in respect of that period; and
- (b) the Commission 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 the Commission in respect of that period,

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

- (4) Payments under this Condition 4 shall be made in such manner as the Commission shall specify.
- (5) This Condition shall not have effect:
 - (a) in relation to the Initial Licence Period; or
 - (b) in relation to the Subsequent Licence Period if, pursuant to Section 16(8) of the 1996 Act, the Commission specify (with the consent of the Secretary of State) that no relevant percentage of multiplex revenue is payable for that period.

5. INTEREST ON LATE PAYMENTS AND V.A.T.

- (1) Any payment due from the Licensee under or in respect of this Licence shall carry interest at three per cent. over the base rate for the time being of National Westminster Bank PLC (or if unavailable then the rate published by another clearing bank as selected by the Commission) from the date such payment was due until the date of actual payment.
- (2) The Licensee's liability to pay to the Commission the amounts payable by him under Condition 5(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.
- (3) (a) The Licensee shall pay any V.A.T. on any supply for V.A.T. purposes by the Commission under the Licence.

- (b) Without limitation to paragraph (a) above, all sums payable or other consideration to be given by the Licensee are exclusive of V.A.T. which shall be paid by the Licensee in addition to such sums or consideration.
- (c) In this Condition 5(3) V.A.T. means value added tax and any similar tax.

6. TRANSMISSION ARRANGEMENTS, TECHNICAL STANDARDS AND REQUIREMENTS

- (1) The Licensee shall do all he can to ensure that the signals carrying the Licensed Service attain high standards in terms of technical quality and reliability throughout so much of the Licensed Area as is for the time being reasonably practicable and in particular, (but without prejudice to the generality of the foregoing) the Licensee shall do all that he can to ensure that the relevant provisions of the Digital Technical Performance Code are observed in all operations under his direct control and by any third parties involved in the provision of programmes in the licensed services and qualifying services broadcast in the Licensed Service or in the provision and operation of a system for the distribution and transmission of the Licensed Service.
- (2) The Licensee shall at all times comply with the Code of Practice on Changes to Existing Transmission and Reception Arrangements adopted by the Commission from time to time and without prejudice to the generality of the foregoing the Licensee shall:-
 - (a) do all that he 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 Licensed Service is carried out in a proper manner before the commencement of transmissions of the Licensed Service from each of the stations specified in Part III of Annex A;
 - (b) not commence transmissions of the Licensed Service from any of the stations specified in Part III of Annex A until the work referred to in paragraph 2(a) of this Condition in connection with such transmissions from such stations has been completed;
 - (c) promptly and in a proper manner carry out all work required in accordance with the Code of Practice on Changes to Existing Transmission and Reception Arrangements in order to maintain the

reception of existing terrestrial television services by viewers affected by the changes to the transmission arrangements for those services described in the said Code without any cost or expense to those viewers; and

- (d) promptly and in a proper manner carry out all the work required in accordance with the Code of Practice on Changes to Existing Transmission and Reception Arrangements in order to restore the reception of existing terrestrial television services by viewers affected by interference caused by the transmission of the Licensed Service in the cases identified in the said Code without any cost or expense to those viewers.
- (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 Part III of Annex A before and after the commencement of the Licensed Service from such stations, as drawn up and from time to time revised by the Commission.
- (4) The Licensee shall ensure that the Licensed Service uses a transmission system complying with Article 2 of Council Directive 95/47/EC on the use of standards for the transmission of television signals.
- (5) Where the Commission specify a particular Community digital standard in accordance with Section 142 of the 1996 Act (the "**Community Digital Standard**") the Licensee shall ensure that the Licensed Service uses a transmission system meeting the Community Digital Standard.
- (6) The Licensee acknowledges that, if it chooses, pursuant to Annex A, Part III, paragraph 2, 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 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, including modifying, supplementing or replacing any equipment used in the transmission of the Licensed Service). Without prejudice to any other provision of this licence, the Commission 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.
- (7) The Licensee shall ensure that:

- (i) any EPG Service included in the Licensed 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 the Commission; and
 - (ii) 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.
- (8) The Licensee shall in accordance with the section of Part 3 of his Application headed "Service Information" co-operate with the holders of the Multiplex C Licence and the Multiplex D Licence to enable the reinstatement of a Centralised Service Information System for the purpose of ensuring the provision of such system on behalf of all other holders of multiplex licences issued under the 1996 Act and of the BBC.

7. AVAILABILITY OF CAPACITY ON THE FREQUENCIES

- (1) The Licensee shall ensure that, during the Licence Period, at least 90 per cent. (or such other percentage as the Secretary of State may from time to time by order specify pursuant to Section 12(5) of the 1996 Act) of digital capacity on the Frequencies is available for the broadcasting of digital programme services, qualifying services, programme-related services or relevant technical services.
- (2) For the purpose of Condition 7(1) "**qualifying services**" shall be interpreted in accordance with Section 12(4)(a) of the 1996 Act.

8. PROVISION OF INFORMATION TO THE COMMISSION

- (1) The Licensee shall furnish to the Commission in such manner and at such times as the Commission may reasonably require such documents, accounts, returns, estimates, reports or other information as the Commission may require for the purpose of exercising the functions assigned to it by or under the 1990 Act or the 1996 Act in relation to multiplex services and in particular (but without prejudice to the generality of the foregoing):-
 - (a) the Licensee will notify the Commission:-
 - (i) of any change in the persons having control over the Licensee, or in the directors of the Licensee or the directors of any body corporate which controls the Licensee, within 28 days of the occurrence of such change;

- (ii) of any change in the persons having interests in the Licensee so that a person or group of persons acting together:-
 - (A) has acquired an interest of more than twenty per cent. in the Licensee or in any body corporate which controls the Licensee; or
 - (B) having an interest of more than twenty per cent. in the Licensee or in any body corporate which controls the Licensee, has increased such interest;

within 28 days of the Licensee becoming aware of such change;

- (iii) of any change in the persons having interests in the Licensee where an interest or interests notified to the Commission in Condition 8(1)(a)(ii)(A) or (B) falls to twenty per cent or below within 28 days of the Licensee becoming aware of such change; and
 - (iv) of any change in the persons having an interest in the Licensee where such interest could cause the Licensee to be a disqualified person pursuant to Schedule 2 to the 1990 Act or cause any of the restrictions or requirements imposed on or in relation to the holders of multiplex service licences by or under Schedule 2 to the 1990 Act not to be complied with to the extent that such requirements apply to him immediately upon the Licensee becoming aware of such change;
- (b) the Licensee shall, save insofar as such matters have been notified to the Commission pursuant to paragraph (a) above, notify the Commission within 28 days of the occurrence of:-
- (i) all matters, notice of which is required to be given to the Registrar of Companies under Parts V and/or XXIII of the Companies Act 1985; or
 - (ii) (where the Licensee is not incorporated in England and Wales or Scotland) such similar or analogous matters under the laws of any applicable jurisdiction as the Commission may from time to time specify.

- (2) The Licensee shall ensure that any person authorised in writing by the Commission is permitted at reasonable times to enter any premises of the Licensee or of any person connected with the Licensee in order to:-
 - (a) inspect, examine, operate or test any equipment on the premises which is used in connection with the provision of the Licensed Service; and
 - (b) inspect and examine all statutory books and financial and other business records of the Licensee and to take such copies thereof as may in the opinion of the Commission be necessary or desirable to enable it to discharge its functions under the 1990 Act and/or the 1996 Act.
- (3) The Licensee shall within 28 days of a request therefor provide the Commission with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 3(1).
- (4) The Licensee shall as soon as reasonably practicable following a request therefor provide the Commission with such information as it may require for the purposes of determining whether the Licensee has acted and is acting in accordance with the provisions of Condition 10.
- (5) The Licensee shall as soon as reasonably practicable following a request therefor provide the Commission with such information as it may require for the purposes of determining whether the Licensee has complied and is complying with the Conditions set out in the Annexes.
- (6) The Licensee shall supply to the Commission:-
 - (a) (i) in relation to himself and any body which controls the Licensee (where a body corporate) a copy of his annual return at the same time as it is filed with the Registrar of Companies in accordance with Section 363 of the Companies Act 1985 and a copy of his annual report and accounts as soon as possible after they are circulated to the shareholders of the relevant body corporate; or
 - (ii) (where the Licensee is not incorporated in England and Wales or Scotland) any returns, reports, accounts or other information under the laws of any applicable jurisdiction which is, in the opinion of the Commission, analogous or equivalent to the above, at such times and in such forms as the Commission shall from time to time specify;

- (b) half-yearly income and expenditure returns and supplementary annexes in such form and at such times as the Commission shall require;
 - (c) statements of his multiplex revenue at such intervals as the Commission may specify and also in respect of each entire accounting period of his in such form as the Commission shall require;
 - (d) post-transmission data in relation to the programmes included in the licensed services and qualifying services which are broadcast in the Licensed Service covering such information and in such form as the Commission shall specify, such data to be delivered to the Commission as soon after transmission of the programmes to which they relate as the Commission may require;
 - (e) tapes/recordings of such parts of the Licensed Service as the Commission shall from time to time require for the purposes of monitoring the technical performance of the Licensee;
 - (f) such technical performance data as the Commission shall from time to time require, at such intervals and in such form as the Commission shall specify; and
 - (g) such information as the Commission 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.
- (7) The Licensee shall supply to the Commission in relation to such periods, in such form and at such times as the Commission shall require, information as to the percentage of digital capacity available on the Frequencies for the broadcasting of digital programme services, qualifying services, programme-related services or relevant technical services.
- (8) The Licensee shall inform the Commission when judgement is awarded against him in any court proceedings brought against him in respect of the inclusion in the Licensed Service of any defamatory, seditious, blasphemous, or obscene matter, or any matter which constitutes an injurious falsehood, or slander of title, or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent, or other similar monopoly right, or a contravention of the provisions of the Official Secrets 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.

- (9) The Licensee shall supply the Commission 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 13(2).
- (10) The Licensee, if so requested by the Commission, shall at such intervals and at such times as the Commission shall require attend meetings with the Commission for the purpose of enabling the Commission to conduct periodic reviews of the performance by the Licensee of his obligations under the Licence.

9. RENEWAL OF THE LICENCE

- (1) The Licensee may apply to the Commission for renewal of the Licence not earlier than four years before the end of the Initial Licence Period and not later than the Relevant Date.
- (2) If the Licensee makes an application before the Relevant Date, the Commission may postpone consideration of it for as long as the Commission thinks appropriate, having regard to Section 16(10) of the 1996 Act.
- (3) If the Licensee makes an application the Commission may (with the consent of the Secretary of State):
 - (a) require the Licensee to furnish:-
 - (i) a technical plan which supplements the Technical Plan; and
 - (ii) proposals which supplement any proposals submitted by the Licensee under Section 7(4)(f) of the 1996 Act; and
 - (b) notify the applicant of the requirements which must be met by the supplementary technical plan referred to in Condition 9(3)(a)(i) or the supplementary proposals referred to in Condition 9(3)(a)(ii) and which relate to the matters referred to in Section 7(4)(b)(i) and (ii) and (f) of the 1996 Act.
- (4) The Commission shall only refuse an application for renewal of the Licence by the Licensee made in accordance with the 1996 Act and this Condition if:-

- (a) it appears to the Commission that the Licensee has failed to comply with any of the Conditions in this Licence; or
 - (b) any supplementary technical plan submitted by the Licensee under Condition 9(3)(a)(i) fails to meet the requirements notified to the Licensee under Condition 9(3)(b); or
 - (c) any of the supplementary proposals submitted by the Licensee under Condition 9(3)(a)(ii) fail to meet the requirements notified to the Licensee under Condition 9(3)(b); or
 - (d) the Commission is not satisfied that the Licensee would, if the Licence were renewed, provide a service which complied with the Conditions to be included in the Licence, as renewed.
- (5) On the grant of any such application:-
- (a) the Commission shall include in the Licence, as renewed, such further conditions as appear to the Commission to be appropriate for securing the implementation of any supplementary technical plan and any supplementary proposals submitted under Condition 9(3); and
 - (b) subject to Section 16(9) of the 1996 Act, the Commission may, with the consent of the Secretary of State, and shall, if so required by him specify a percentage of multiplex revenue as the percentage for each accounting period of the Licensee that will be payable by him during the period for which the Licence is to be renewed where no relevant percentage of multiplex revenue was specified under Section 7(1)(f) of the 1996 Act;
- and the Commission may specify under Condition 9(5)(b) either of the things mentioned in Section 7(2)(b) of the 1996 Act.
- (6) Where the Commission has granted an application of the Licensee for renewal of the Licence it shall formally renew his Licence from the date on which it would otherwise expire and it shall not so renew his Licence unless it has notified him of the percentage of multiplex revenue specified by it under Condition 9(5) and he has, within such period as the Commission shall specify in the notification, notified it in writing that he consents to the Licence being renewed on those terms.
- (7) Where the Licence is renewed pursuant to this Condition, it shall continue in full force and effect.

10. FAIR AND EFFECTIVE COMPETITION

(1) The Licensee shall:-

- (a) not engage in any practice or enter into any arrangement or give effect to any arrangement (whenever made) which is prejudicial to fair and effective competition in the provision of licensed services and services connected with them; and
- (b) comply with any direction, code or guideline from time to time issued by the Commission to the Licensee for the purposes of ensuring fair and effective competition in the provision of licensed services and services connected with them.

For the purposes of this Condition 10(1), "**licensed services**" includes, in addition to services licensed under Part I of the 1996 Act, services licensed under Part I of the 1990 Act and local delivery services.

- (2) In the terms on which the Licensee contracts, or offers to contract, for the broadcasting of digital programme services or digital 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 programme service or digital additional services (the "**service provider**") which entitles the service provider to use a specified amount of digital capacity on the Frequencies or any of them and contains a restriction of the nature referred to in Condition 10(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 10(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 Frequencies or any of them which the service provider is entitled to use.
- (5) Condition 10(3) shall be without prejudice to the Licensee's obligations to satisfy the Conditions set out in the Annexes.
- (6) The Licensee shall do all he reasonably can to facilitate the reception of the Licensed Service on open-standard digital television sets and the Licensee shall not discriminate against any person, or a class of such persons, purchasing such

a television set. In the event that any services provided as part of the Licensed Service are provided other than on a free to air basis, without prejudice to the generality of the foregoing, the Licensee will give all reasonable technical support for the purpose of the development and/or production of an implementation of the conditional access system used by the Licensee in a form appropriate for connection to an open standard digital television set provided that the Licensee shall be entitled with the approval of the Commission (such approval not to be unreasonably withheld) to impose conditions concerning security of transactions undertaken by using that implementation. For the purpose of this Condition, an open-standard digital television set is a television set which:

- (a) contains an integrated digital decoder;
 - (b) does not contain an embedded conditional access system; and
 - (c) is fitted with a standardised socket which permits the connection of the conditional access system used by the Licensee for the purpose of the reception of the Licensed Service.
- (7) The Licensee shall not show undue discrimination against the development, kite-marking, sale or use of pay-upgradeable receivers. For the purpose of this Condition, a pay-upgradeable receiver is a digital television receiver which:
- (a) contains an embedded conditional access system; or
 - (b) is fitted with a standardised socket which permits the connection of a conditional access system.
- (8) Without prejudice to the Licensee's other obligations under this Licence, in particular under Conditions 10(6), 10(7) and the Conditions in the Annexes to this Licence, the Licensee shall not, and shall ensure that no person connected with the Licensee shall, enter into any agreement with, or engage in any activities jointly with the holders of the Multiplex C Licence and/or the Multiplex D Licence and/or BSkyB Limited or any person connected with any of them through or involving ServicesCo or otherwise, concerning access to transmission capacity or the technical specification of any receiving equipment or software, except with the prior written consent of the Commission.
- (9) The Licensee shall ensure that all persons licensed or authorised to provide a multiplex service or services and all persons providing three or more digital programme services and/or qualifying services, may participate in ServicesCo on a fair and reasonable basis; and the Licensee shall also ensure that all holders of digital programme services and digital additional services licences

issued under the 1996 Act receive information concerning ServicesCo's activities.

- (10) Without prejudice to Condition 10(2) and to the fulfilment of the Conditions set out in Annex A Parts I, II and IV and Annex B Part II to this Licence, the Licensee shall ensure that any allocation of capacity in respect of the Licensed Service or any refusal to allocate such capacity, made by it has complied with the Licensee's principles to ensure the fair, reasonable and non-discriminatory allocation of such capacity, as published within 7 days from the Date of Grant
- (11) The Licensee shall not without the prior written consent of the Commission enter into any agreement or agreements or give effect to any agreement or agreements (whenever made) which would result in either: digital programme services in respect of the entire capacity allocated to the Licensed Service being provided by any one person and for the purposes of this Condition 10(11) a person shall be treated as providing a digital programme service if such service is provided by a person connected with him; or any digital programme service being provided within the Licensed Service by any Relevant Person.
- (12) Other than BBC Digital Programme Services Limited no person connected with any digital programme service provider or digital additional service provider with whom the Licensee has contracted for the provision of services within the Licensed Service shall at any time also be a director of the Licensee or represented in any way on the Board of the Licensee or any committee of such Board.

11. RESTRICTIONS ON THE HOLDERS OF MULTIPLEX LICENCES

- (1) The Licensee shall comply in all respects with the restrictions or requirements imposed on or in relation to him as the holder of a multiplex licence by or under Schedule 2 to the 1990 Act to the extent that they apply to him.
- (2) The Licensee shall comply with any direction of the Commission requiring him to take, or arrange for the taking of, any steps specified by the Commission for the purposes of complying with the requirements imposed by or under Parts III to V of Schedule 2 to the 1990 Act.

12. TRANSFERABILITY OF THE LICENCE

- (1) The Licence is not transferable except with the prior consent in writing of the Commission which consent shall not be given unless the Commission 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 hereof throughout the remainder of the Licence Period.

- (2) The Licensee shall not transfer the Licence to any Relevant Person.

13. COMPLIANCE

- (1) The Licensee shall comply with any direction given to him by the Commission in respect of any matter, which direction is in the opinion of the Commission appropriate, having regard to any duties which are or may be imposed on it or on the Licensee by or under the 1990 Act or the 1996 Act.
- (2) The Licensee shall adopt procedures and procure that such procedures are observed by those involved in providing the Licensed Service for the purposes of ensuring that the provisions of this Licence, the 1990 Act, the 1996 Act, and any codes or guidelines herein or therein referred to (the "**Codes**" and "**Guidelines**" respectively) are complied with in connection with the provision of the Licensed Service. The Licensee shall, without prejudice to the generality of the foregoing, ensure:-
- (a) that there are sufficient persons amongst those involved in providing the Licensed Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act, and the Codes and Guidelines and that such persons are able to ensure compliance with such requirements on a day to day basis;
 - (b) that 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 the Commission; and
 - (c) 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.

14. PROHIBITION ON CONVEYANCE OF UNLICENSED SERVICES

- (1) The Licensee shall ensure that:-
- (a) all digital programme services broadcast under this Licence are provided by the holder of a licence under Section 18 of the 1996 Act; and
 - (b) all digital additional services broadcast under this Licence are provided by the holder of a licence under Section 25 of the 1996 Act.

- (2) This Condition shall not apply to the provision of a digital programme service or a digital additional service by a person established and licensed (if required) to provide such a service in another EEA member state.

15. GOVERNMENT DIRECTIONS

- (1) The Licensee shall, if so directed by the Commission from time to time:-
- (a) publish in the Licensed Service, at such times as may be specified to the Commission 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 10(1) of the 1990 Act (as applied by the 1996 Act), with or without visual images of any picture, scene or object mentioned in the announcement; or
 - (b) refrain from including in the programmes included in the Licensed Service any matter or classes of matter specified to the Commission by the Secretary of State pursuant to Section 10(3) of the 1990 Act (as applied by the 1996 Act).
- (2) The Licensee may when publishing an announcement in the Licensed Service in accordance with Condition 15(1)(a) indicate that the announcement is made in pursuance of a direction by the Commission.
- (3) The Licensee shall comply with all directions given to him by the Commission pursuant to a direction of 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 the Commission:-
- (a) has given the Licensee a direction to the effect referred to in Condition 15(1)(b); 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 such a direction,
- or where such a notice has expired, the Licensee may publish in the Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

16. COMPLAINTS RECEIVED FROM THE PUBLIC

- (1) (a) The Licensee shall adopt procedures acceptable to the Commission for handling complaints received from the public in respect of the Licensed Service and shall ensure that such procedures are duly observed.
- (b) Such procedures shall, inter alia, include a requirement that members of the public who complain to the Licensee about the Licensed Service are informed that they have the right to refer the matter complained of to the Commission.
- (2) The Licensee shall for a period of two years keep a written record of any complaints received from the public in respect of the Licensed Service and of any response given in relation to any such complaint by the Licensee and shall make such records available to the Commission in writing at such times as the Commission may require.

17. POWER OF THE COMMISSION TO VARY LICENCE CONDITIONS

- (1) The Commission may by a notice served on the Licensee:-
 - (a) vary the Licence Period provided that the Licensee consents to such variation (and without prejudice to the Commission's powers and duties under Section 17 of the 1996 Act);
 - (b) vary any Conditions set out in Conditions 2(4), 2(5), 6(8) and Parts I, II and V of Annex A and in Part I of Annex B provided that the Licensee consents to such variation; and
 - (c) vary the Licence in any respect not mentioned in paragraphs (a) and (b) above provided that the Licensee has been given a reasonable opportunity to make representations to the Commission concerning the proposed variation;

Provided always that paragraphs (a) and (c) above shall not authorise the variation of Condition 4 to the extent that that Condition requires the payment by the Licensee to the Commission of, in respect of each accounting period of the Licensee falling within the Licence Period, an amount representing the Relevant Percentage of multiplex revenue.

- (2) If the Licensee applies to the Commission for the variation of Conditions in the Annexes which relate to the characteristics of the digital programme services to be broadcast in the Licensed Service, the Commission shall permit the variation requested unless it appears to the Commission that, if the application is granted,

the capacity of the digital programme services broadcast in the Licensed Service to appeal to a variety of tastes and interests would be unacceptably diminished provided that in deciding whether or not to permit such variation, the Commission may have regard to the digital programme services broadcast in all the multiplex services for the time being provided by the Licensee or any person connected with the Licensee and provided further that any variation to the Conditions of the Annexes which would have the result that a digital programme service may be provided otherwise than on a free to air basis shall not be deemed to be a variation relating to the characteristics of such service.

18. PUBLICATION OF TARIFFS

In pursuance of Regulation 12 of the Advanced Television Services Regulations 1996 (SI 1996/3151), in relation to the delivery by the Licensee of any digital television services which are provided other than on a free to air basis, the Licensee shall publish a list of tariffs for the viewer which takes into account whether associated equipment is supplied or not provided that it shall be a sufficient compliance by the Licensee if he ensures that each person who provides a television programme service within Regulation 12 for broadcasting in the Licensed Service complies with this requirement in full.

19. EQUAL OPPORTUNITIES

(1) The Licensee shall:-

- (a) make arrangements for promoting, in relation to employment by the Licensee, equality of opportunity between men and women and between persons of different racial groups;
- (b) make arrangements for promoting, in relation to employment by the Licensee, the fair treatment of disabled persons; and
- (c) review those arrangements from time to time.

(2) In particular (but without limitation to the generality of paragraph 1 of this Condition) the Licensee:-

- (a) shall ensure that no job applicant or employee receives less favourable treatment on the grounds of sex, race, colour, creed, nationality, or ethnic or national origins or disability, or on such grounds is disadvantaged by conditions or requirements which cannot be shown to be justifiable;

- (b) shall review his selection criteria and procedures at regular intervals and will monitor the composition of his workforce and of job applicants and will take action to correct any inequalities or unfair treatment which come to his notice; and
- (c) if so requested by the Commission shall at such intervals as the Commission may require provide a statement to the Commission of the action he has taken to give effect to such equal opportunities and fair treatment policy, and the Commission may, at its discretion, make such statement in whole or in part public.

20. NOTICES

- (1) Any notice or notification to be served or given under or in relation to this Licence shall be in writing and may be delivered to the party to be served or sent by first class post at his proper address (as defined in Section 199(4) of the 1990 Act) or left at that address.
- (2) Any such notice or notification shall be deemed to have been served:-
 - (i) if so delivered or left, at the time of delivery or leaving; or
 - (ii) if so posted, at 10.00 a.m. on the second business day after it was put into the post.
- (3) In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notice or notification was properly addressed and posted as a prepaid first class letter or was left at the proper address, as the case may be.

PART 3**21. EXCEPTION AND LIMITATION ON THE LICENSEE'S OBLIGATIONS**

The Licensee shall not be in any way responsible for any failure to provide the Licensed Service 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, its servants or agents), force majeure, war, damage by the Queen's enemies, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

PART 4

22. SANCTIONS FOR BREACHES OF CONDITION

- (1) (a) If the Commission is satisfied that the Licensee has failed to comply with any Condition of the Licence or with any direction given by the Commission 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 the Commission, within a specified period, a specified financial penalty.
- (b) The amount of any financial penalty imposed pursuant to Condition 22(1)(a) shall not exceed whichever is the greater of £50,000 (or such other sum as the Secretary of State may by order specify under Section 36 of the 1996 Act) or the amount determined under Condition 22(1)(c).
- (c) The amount referred to in Condition 22(1)(b) is:-
- (i) three per cent. of the share of multiplex revenue attributable to the Licensee for his last complete accounting period (as determined in accordance with Section 15 of the 1996 Act) in a case where a penalty under Section 17 of the 1996 Act has not previously been imposed on the Licensee during any period for which the Licence has been in force (the "**relevant period**"); and
 - (ii) in any other case five per cent. of the share of multiplex revenue attributable to the Licensee for his last complete accounting period (as determined in accordance with Section 15 of the 1996 Act).
- (d) 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 22(1)(c) shall not exceed three, or (as the case may be) five, per cent. of the amount which the Commission 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).
- (2) (a) If the Commission is satisfied that the Licensee has failed to comply with any Condition of this Licence or with any direction given to him hereunder and it has given him a reasonable opportunity of making representations to it about the matters complained of, it may serve on the

Licensee a notice reducing the Licence Period by a specified period not exceeding two years.

- (b) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 22(2)(a), the Commission may, on the application of the Licensee, by a further notice served on him at any time before that date, revoke that notice if it is satisfied that such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the Licensed Service since the date of the earlier notice.

23. REVOCATION

- (1) (a) If the Commission is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction given by the Commission such that, if that failure were not remedied, it would justify the revocation of the Licence, the Commission shall serve on the Licensee a notice:-
 - (i) stating that the Commission is so satisfied;
 - (ii) specifying the respects in which, in the opinion of the Commission, 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, the Commission will revoke the Licence.
- (b) If at the end of the period specified in any notice under Condition 23(1)(a) the Commission 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, the Commission shall serve on the Licensee a notice revoking the Licence.
- (2) The Commission shall revoke the Licence by notice in writing served on the Licensee and taking effect as from the time of service if:-
 - (a) the Licensee indicates to the Commission before the Commencement Date that he does not intend to provide the Licensed Service; or
 - (b) the Commission for any other reason has reasonable grounds for believing that the Licensee will not provide the Licensed Service after

the Commencement Date and it has served on the Licensee a notice stating its grounds for believing that he will not provide that service after that date.

- (3) The Commission may revoke the Licence by notice served on the Licensee and taking effect either forthwith or on a date specified in the notice, in any of the following circumstances:-
- (a) if the Licensee ceases to provide the Licensed Service before the end of the Licence Period and the Commission are satisfied that it is appropriate to revoke the Licence;
 - (b) if the Licensee agrees in writing with the Commission that the Licence should be revoked;
 - (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;
 - (d) if the Commission 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 the Commission to be misled; or
 - (ii) in connection with his Application, provided the Commission with information which was false in a material particular or withheld any material information with the intention of causing the Commission to be misled;
 - (e) if, where the Licensee is a body, a change affecting the nature or characteristics of the Licensee or any change in the persons having control over or interests in the Licensee, or any other change giving rise to a failure to comply with any requirement imposed by or under Schedule 2 to the 1990 Act takes place (whether before or after the Commencement Date), which change is such that, if it fell to the Commission 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;

- (f) if the Commission ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence by virtue of the Licensee being:
 - (i) unable to pay its debts (within the meaning of section 123(1) or (2) of the Insolvency Act 1986, but subject to Conditions 23(7) and 23(8)) or has any voluntary arrangement proposed in relation to it under section 1 of that Act or enters into any scheme of arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Commission);
 - (ii) having a receiver (which expression shall include an administrative receiver within the meaning of section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed;
 - (iii) having an administration order under section 8 of the Insolvency Act 1986 made in relation to it;
 - (iv) passing any resolution for winding-up other than a resolution previously approved in writing by the Commission; or
 - (v) becoming subject to an order for winding-up by a court of competent jurisdiction;
 or for any other reason.
 - (g) if the Licensee fails to comply with any requirement to hold a licence under Section 1 of the Wireless Telegraphy Act 1949 (as amended) and/or Section 7 of the Telecommunications Act 1984;
 - (h) if the Secretary of State shall, pursuant to Section 6(3) of the 1996 Act, revoke the assignment of the Frequencies;
 - (i) if the Licensee is convicted of having committed an offence under section 43 of the Act in making its application for the Licence.
- (4) The Commission shall before serving a notice revoking the Licence or a notice under Condition 23(2)(b) notify the Licensee of the matters complained of and give the Licensee a reasonable opportunity to make representations to it about the matters complained of.

- (5) (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 the Commission shall notify to him, pay to the Commission a specified financial penalty not exceeding whichever is the greater of £50,000 (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.
- (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 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.
- (7) For the purposes of Condition 23(3)(f)(i), section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£250,000” or such higher figure as the Commission may from time to time determine by notice in writing to the Licensee.
- (8) The Licensee shall not be deemed to be unable to pay its debts for the purposes of Condition 23(3)(f)(i) if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by the Licensee with recourse to all appropriate measures and procedures or if any such demand is satisfied before the expiration of such period as may be stated in any notice given by the Commission under Condition 23(1).

ANNEX A

The Licensed Service Definitions and Interpretation

In these Conditions, unless the context otherwise requires it:

(a) “**Core Proposals**” means the proposals as to the number and characteristics of programme services and additional services to be provided on Multiplex B submitted by the Licensee in his Application in response to Questions A.3 and A.4 in the Attachment to Part III of the Invitation to Apply, such services to include for the avoidance of doubt, The Community Channel and such range of other services the provision of which is funded by licence fees paid to the BBC, as is capable, in the opinion of the Commission, of appealing to a variety of tastes and interests. All such services shall be provided on a free to air basis save with the prior written consent of the Commission.

references to a “**Question**” followed by a number, means the question of that number in the Attachment to Part III of the Invitation to Apply.

references to a “**Letter**”, followed by a date, means the letter of that date, details of which are set out in Part IV of this Annex and/or Part II of Annex B.

(b) In the event of any inconsistency between the Core Proposals and the Conditions set out in this Licence (including in the Annexes), the Conditions in the Licence shall prevail.

PART I

Conditions relating to digital programme services

1. The Licensee shall implement the Core Proposals, in response to question A.3 in the Attachment to Part III of the Invitation to Apply and the Letter from the Licensee to the Commission dated 19 June 2002, as amended from time to time by agreement in writing between the Licensee and the Commission in accordance with Condition 17.
2. The Licensee shall provide subtitling for the digital programme services provided under this Licence by 31 December 2002 at the latest.

PART II

Conditions relating to digital additional services

The Licensee shall implement the Core Proposals in response to Question A.4 in Attachment to Part III of the Invitation to Apply as amended from time to time by agreement in writing between the Licensee and the Commission in accordance with Condition 17.

PART III

Details of Broadcasting Stations

Multiplex B

Station Name	Grid Reference	UHF Channel	Aerial Height
Aberdare	SO034013	26	333
Angus	NO394407	62	549
Beacon Hill	SX857619	54	249
Belmont	TF218836	66	347
Bilsdale	SE553962	24	690
Black Hill	NS828647	51	539
Blaenplwyf	SN569757	32	325
Bluebell Hill	TQ757613	45	236
Bressay	HU503387	31	299
Brierley Hill	SO916856	59	180
Bristol King's Weston	ST547775	32	144
Bromsgrove	SO948730	23	199
Brougher Mountain	IH350527	26	370
Caldbeck	NY299425	39	578
Caradon Hill	SX273707	21	563
Carmel	SN576153	62	412
Chatton	NU105264	46	348
Chesterfield	SK382764	46	231
Craigkelly	NT233872	26	310
Crystal Palace	TQ339712	28	303
Darvel	NS557341	28	395
Divis	IJ287750	26	505
Dover	TR274397	58	328
Durris	NO763899	51	608
Eitshal	NB305303	25	366
Emley Moor	SE222128	46	578
Fenham	NZ216648	28	170
Fenton	SJ903451	25	241
Guildford	SU975486	51	173
Hannington	SU527568	46	352
Hastings	TQ806100	24	126

Station Name	Grid Reference	UHF Channel	Aerial Height
Heathfield	TQ566220	47	256
Hemel Hempstead	TL088045	59	210
Huntshaw Cross	SS527220	64	359
Idle	SE163374	56	270
Ilchester Crescent	ST577700	44	99
Keelylang Hill	HY378102	44	270
Keighley	SE069444	53	354
Kilvey Hill	SS672940	32	232
Knock More	NJ321497	57	418
Lancaster	SD490662	32	184
Lark Stoke	SP187426	27	277
Limavady	IC711296	57	374
Llanddona	SH583810	61	258
Malvern	SO774464	44	207
Mendip	ST564488	65	601
Midhurst	SU912250	59	300
Moel-y-Parc	SJ123701	64	552
Nottingham	SK503435	63	181
Oliver's Mount	TA040869	58	188
Oxford	SP567105	52	289
Pendle Forest	SD825384	31	326
Plympton	SX531555	60	164
Pontop Pike	NZ148526	62	450
Pontypool	ST284990	45	295
Presely	SN172306	42	529
Redruth	SW690395	49	404
Reigate	TQ257521	27	291
Ridge Hill	SO630333	63	333
Rosemarkie	NH762623	44	323
Rosneath	NS258811	60	218
Rowridge	SZ447865	32	259
Rumster Forest	ND197385	32	455
Saddleworth	SD987050	51	398
Salisbury	SU136285	62	156
Sandy Heath	TL204494	67	279
Selkirk	NT500294	63	518
Sheffield	SK324870	60	292
Stockland Hill	ST222014	32	419
Storeton	SJ314841	26	109

Station Name	Grid Reference	UHF Channel	Aerial Height
Sudbury	TL913377	39	176
Sutton Coldfield	SK113003	51	395
Tacolneston	TM131958	58	215
The Wrekin	SJ628082	27	432
The Wrekin B (East)	SJ628082	45	434
Torosay	NM703358	33	478
Tunbridge Wells	TQ607440	45	172
Waltham	SK809233	33	413
Wenvoe	ST110742	50	311
Whitehawk Hill	TQ330045	48	172
Winter Hill	SD660144	67	748

All necessary national and international clearances for broadcasting from these stations have not been obtained at the Date of Grant. The details given above may be subject to change and the Licensee's use of each station in connection with the Licensed Service is subject to such clearances being obtained for that station.

Note: Aerial heights given in metres above Ordinance Datum.

PART IV

Additional Information

- Letter of 19 June 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
- Letter of 25 June 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee.
- Letter of 26 June 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
- Letter of 27 June 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
- Letter of 2 July 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee.
- Letter of 2 July 2002 to the Secretary of the Commission from Emma Scott of the BBC, on behalf of the Licensee, with attached comments (redacted version).
- Letter of 3 July 2002 from Peter Aberly of Crown Castle and Carolyn Fairbairn of the BBC, on behalf of the Licensee, to Dominic Morris of the Commission.

PART V
DTT MARKETING PLAN

1. The Licensee shall use its best endeavours to implement and procure the implementation of the proposals in relation to the promotion and marketing of the Licensed Service and more broadly the development of digital television broadcasting in the United Kingdom otherwise than by satellite, as set out in the DTT Marketing Plan submitted in response to Question A.2 in the Attachment to Part III of the Invitation to Apply and in additional information provided to the Commission referred to in Part IV of this Annex and in Parts I and II of Confidential Annex B including, in particular, the letters from the BBC to the Commission dated 19 June, 26 June and 2 July 2002, as such Plan may be modified by the parties thereto subject to the prior written consent of the Commission, such consent not to be unreasonably withheld.

2. Without prejudice to the generality of the foregoing, the Licensee shall:
 - (a) establish and maintain a referral service for a national organised aerial and installation service;

 - (b) use all reasonable endeavours to strengthen existing technical collaboration between broadcasters, retailers and manufacturers of digital television receivers and shall, in particular:
 - (i) work with television manufacturers to implement a regime to test that broadcaster interactive service applications work effectively on receivers;

 - (ii) provide transmission capacity sufficient to enable manufacturers to upgrade their receiver software; and

 - (iii) provide Service Information for manufacturers' EPG services including the fuller advance programme applications needed for personal video recorder functions; and shall

 - (c) implement the proposals in section 7.3.4 of his Application and in particular:
 - (i) provide and procure the provision by the BBC of on-air and off-air promotion including material to educate the public about digital terrestrial television and how to get it;

- (ii) investigate a common kitemark to be awarded to manufacturers selling digital television receivers which meet a minimum functionality specification;
 - (iii) provide a consumer information telephone call centre, with postcode information and related advice on any aerial upgrade needed; and
 - (iv) provide information to manufacturers and retailers on reception and aerial issues.
- (d) commit a minimum annual expenditure equal to the marketing budgets for the period of the licence as set out in confidential Annex B;
- (e) commit subject to the receipt of the additional minimum contributions set out in confidential Annex B, the minimum annual marketing expenditure for the period of the licence as set out in that Annex; and
- (f) provide to the Commission an Annual Report reporting on the expenditure incurred and an assessment of the impact of that expenditure on the digital terrestrial television broadcasting market including any impact data available; and
- (g) establish an appropriate method for measuring and reporting the level of digital terrestrial television receiver take-up and provide quarterly reports to the Commission on the take-up of digital television and digital terrestrial television receivers.

PART VI

Conditions coming into force on the Date of Grant

1. Condition 1 (Definitions and Interpretation)
2. Condition 2(4), (5) and (6)
3. Condition 3 (Fees)
4. Condition 5 (Interest on late payments and V.A.T.)
5. Condition 6(2) and (3) (Transmission arrangements, technical standards and requirements)
6. Condition 8(1), (2), (3), (4), (5), (6)(a), (g), (9) (Provision of Information to the Commission)
7. Condition 10 (Fair and Effective Competition)
8. Condition 11 (Restrictions on the holders of multiplex licences)
9. Condition 12 (Transferability of the Licence)
10. Condition 13 (Compliance)
11. Condition 17 (Power of the Commission to vary licence conditions)
12. Condition 18 (Publication of Tariffs)
13. Condition 19 (Equal opportunities)
14. Condition 20 (Notices)
15. Condition 21 (Exception and limitation on the Licensee's obligations)
16. Condition 22 (Sanctions for breaches of condition)
17. Condition 23 (Revocation)
18. Annex A, Part V
19. Annex B, Part I

CONFIDENTIAL ANNEX B

REMOVED