



## **ANNEX A**

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## THE SCHEDULE

### PART 1

### DEFINITIONS AND INTERPRETATION RELATING TO THE LICENCE

#### 1. Definitions and interpretation

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

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);

“**the 2008 Order**” means The Television Multiplex Services (Reservation of Digital Capacity) Order 2008, S.I. 2008/1420;

“**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 4 of confidential Annex B of this Licence furnished to the Independent Television Commission by the Licensee pursuant to Section 7(6) of the 1996 Act;

“**Authorised Service(s)**” means services licensed by Ofcom under Part I of the 1996 Act as modified by the Television Multiplex Services (Reservation of Digital Capacity) Order 2008;

“**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 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 by the Independent Television Commission and from time to time revised by Ofcom or any replacement to it as may be published by Ofcom;

**“Commencement Date”** means three months after the date on which the Licence was granted to the Licensee by the Independent Television Commission;

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

References to a **“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 all holders of 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;

**“dB”** means decibel

**“the Determination”** means the determination dated 13 November 2008 made by Ofcom under Article 3 of the 2008 Order;

**“digital sound programme service”** has the meaning given to it in Section 12(1)(da) of the 1996 Act;

**“Digital Switchover”** means the cessation of broadcasting to any significant extent in analogue form of the television services as listed in Section 264(11) of the Communications Act and of the Licensed Service from the transmission sites listed in Part 4 of Annex A, using the relevant frequencies and transmission parameters set out in that Part 4 of Annex A;

**“Digital Switchover Date”** means the date set out in paragraph 19 of Part 9 of Annex A by which transmissions of all analogue television services licensed under Part 1 of the 1990 Act, as listed in the Digital Switchover Timetable, must have ceased;

**“Digital Switchover Pilot Scheme Date”** means 14 November 2007 in respect of the dependent relays of Whitehaven, Gosforth and Eskdale Green;

**“Digital Switchover Timetable”** means the document which sets out the regional timetable for Digital Switchover as published and revised from time to time by Ofcom, or any replacement to this document as may be published by Ofcom;

**“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;

**“DTT”** means digital terrestrial television;

**“DTT Clearance Date”** means the date set out in or fixed in accordance with paragraph 28 of Part 13 of Annex A, by which the DTT Clearance Programme must be completed;

**“DTT Clearance Integration Programme”** means the mechanism by which those frequencies that were originally allocated to the Licensee for Digital Switchover are replaced by new frequencies as set out in Part 14 of Annex A, and which are adopted at the Relevant Digital Switchover Dates as set out in paragraph 20 in Part 9 of Annex A and the Digital Switchover Timetable, or such other dates as may be agreed between the Licensee and Ofcom;

**“DTT Clearance Programme”** means the clearance of DTT services from the frequencies between 790MHz and 806MHz (which are known as channels 61 and 62). This policy is set out in Ofcom’s *Digital Dividend: Clearing the 800 MHz band* statement published on 30 June 2009, and by the Government in its *Digital Britain – Final Report* published on 16 June 2009. DTT services cleared from channels 61 and 62 as a result of this programme will be reallocated to alternative frequencies which are set out in Part 14 of Annex A, as may be varied by Ofcom from time to time. This programme is defined by two distinct phases of work, which may run in parallel – the DTT Clearance Integration Programme

and DTT Clearance Retrofit Programme;

**“DTT Clearance Retrofit Programme”** means the mechanism by which those frequencies which are adopted by the Licensee at Digital Switchover are cleared and reallocated as part of the DTT Clearance Programme (as set out in Part 14 of Annex A) and for which new frequencies are adopted at the Relevant DTT Clearance Retrofit Dates set out in paragraph 29 and Table 5 in Part 13 of Annex A, or such other dates as may be agreed between the Licensee and Ofcom;

**“DTT Marketing Plan”** means the document referred to in Part 6 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 Independent Television Commission’s Note for Applicants on Coverage for Digital Television dated 25 April 2002, subject to such modifications as are consented to in writing by Ofcom, such consent not to be unreasonably withheld;

**“Frequencies”** means the frequencies specified in Parts 4, 10, 12 and 14 of Annex A and a **“Frequency”** means any of the Frequencies;

**“Guidance Note on Test Transmissions”** means the guidance note issued by the Independent Television Commission as revised from time to time by Ofcom;

**“High Capacity Coverage Area”** means each region specified in paragraph 21 of Part 9 of Annex A and the Digital Switchover Timetable and each main station detailed in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences for which the High Capacity Transmission Mode shall be adopted by the Licensee from the Relevant High Capacity Date or Relevant Service Launch Date;

**“High Capacity Transmission Mode”** means those parameters in relation to the Licensed Service that are defined as such in the Ofcom Reference Parameters;

**“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;

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

**“Invitation to Apply”** means the Invitation to Apply for multiplex licences issued by the Independent Television 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 Service(s) and the qualifying services of the Relevant Public Service Broadcaster included in the Licensed Service are transmitted by wireless telegraphy in accordance with Condition 2(2) of the Schedule prior to the Relevant Digital Switchover Dates, and otherwise in accordance with Condition 2(3), Condition 2(4), Condition 2(4A) and Condition 2(4B) of the Schedule;

**“the Licensed Service”** means the television multiplex service specified in Annex A;

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

**“the Multiplex B Service”** means the multiplex licence granted in respect of the multiplex designated as “B” by the Independent Television Commission;

**“the Multiplex C Service”** means the multiplex licence granted in respect of the multiplex designated as “C” by the Independent Television Commission;

**“the Multiplex D Service”** means the multiplex licence granted in respect of the multiplex designated as “D” by the Independent Television 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;

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

**“Ofcom Reference Parameters”** means the document (as varied from time to time by Ofcom) describing the currently applicable transmission standards in relation to the provision of a television multiplex service, as referred to by the Television Technical Performance Code;

**“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 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);

**“programme”** unless otherwise stated, includes an advertisement and anything broadcast by means of the multiplex;

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

**“public service digital television programme service”** means a service provided under a public service digital programme licence (as defined in article 5 of the 2008 Order).

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

**“Questions”** refer to the numbered questions in the Independent Television Commission’s document, “Information Required from Applicants” Annex I to the Independent Television Commission’s Notes of Guidance for Applicants – Television Multiplex Service Licence;

**“Relevant Date”** means the date which Ofcom 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 as from the end of the Initial Licence Period;

**“Relevant Digital Switchover Dates”** means the dates by which terrestrial transmission in analogue form of the qualifying services broadcast in the Licensed Service (under the relevant replacement licences issued pursuant to Sections 214 and 215 of the Communications Act) must have ceased, which dates are set out in paragraph 20 in Part 9 of Annex A and the

Digital Switchover Timetable, or such earlier dates as may be agreed between the relevant licensee/s and Ofcom;

**“Relevant DTT Clearance Retrofit Dates”** means the dates by which transmissions of the Licensed Service on the frequencies between 790MHz and 806MHz (which are known as channels 61 and 62) must have ceased, which dates are set out in paragraph 29 and Table 5 in Part 13 of Annex A, or such other dates as may be agreed between the relevant licensee/s and Ofcom;

**“Relevant Frequency Termination Date”** means the date on which the Licensed Service using the High Capacity Transmission Mode will cease broadcasting at the relevant station as set out in Table 4 of Part 12 of Annex A;

**“Relevant High Capacity Date”** means the date(s) from which the High Capacity Transmission Mode shall be adopted by the Licensee, which date(s) is set out in the Digital Switchover Timetable or is such other date(s) as may be agreed in writing between the Licensee and Ofcom;

**“relevant international obligations”** means international obligations of the United Kingdom that are notified to Ofcom by the Secretary of State for the purposes of securing compliance under Condition 16;

**“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 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 as applied to this Licence by the IAB Order;

**“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;

**“Relevant Public Service Broadcaster”** means a relevant public service broadcaster (as defined in Section 243(7) of the Communications Act) for whom Ofcom has determined to reserve certain digital capacity under article 3 of the 2008 Order as specified in Part 11 of Annex A;

**“Relevant Service Launch Date”** means the date on which the Licensed Service using the High Capacity Transmission Mode will commence broadcasting at the relevant station as set out in Table 4 of Part 12 of Annex

A;

**“Reserved Capacity”** has the meaning given to it in Condition 7A in Part 2 of this Schedule;

**“ServicesCo”** means the company established pursuant to the Shareholders Agreement or any successor 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 Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule I 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 10 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;

**“Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences”** means the table which sets out details of the digital terrestrial broadcasting stations for multiplex B as published and revised from time to time by Ofcom, or any replacement to this table as may be published by Ofcom;

**“Technical Plan”** means the technical plan relating to the Licensed Service which accompanied the Application for the Licence pursuant to Section 7(4)(b) of the 1996 Act;

**“technical service”** shall be interpreted in accordance with Section 24(3) of the 1996 Act and **“relevant technical service”** shall be interpreted in accordance with Section 12(4)(c) of the 1996 Act.

**“television multiplex service”** has the meaning given by Section 241(1) of the Communications Act to a multiplex service within the meaning of Part I of the 1996 Act;

**“Television Technical Performance Code”** means the code governing technical standards and practice in the provision of the Licensed Service, Authorised Service(s) and qualifying services as drawn up and from time to time revised by Ofcom (and, in the event that such Code has not been drawn up by Ofcom **“Television Technical Performance Code”** shall be interpreted to mean the Technical Performance Code drawn up by the

Independent Television Commission);

references to “**to implement 3dB power increase**” 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 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, the Communications Act or the 2008 Order, as the case may be.
- (4) For the purposes of interpreting this Licence, headings and titles shall be disregarded.
- (5) The statutory references in the margins of this Licence are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an Order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) The Schedule and Annexes to this Licence form part of it.
- (8) This Licence shall be governed by English law.

## PART 2

## GENERAL CONDITIONS

### 2. Provision of television 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.
- Section 12(2) of the 1996 Act
- (2) Up to the Relevant Digital Switchover Dates as set out in paragraph 20 in Part 9 of Annex A and the Digital Switchover Timetable, and subject to the Conditions set out in the Annexes, the Licensee shall ensure that the Authorised Service(s) and any qualifying services broadcast in the Licensed Service are transmitted from the stations specified in, and otherwise in accordance with Part 4 of Annex A and on each day of the week.
- (3) As from the Relevant Digital Switchover Dates as set out in paragraph 20 in Part 9 of Annex A and the Digital Switchover Timetable, and subject to the Conditions set out in the Annexes, the Licensee shall ensure that the Authorised Service(s) and any qualifying services broadcast in the Licensed Service are transmitted from the relevant stations specified in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences in accordance with Part 10 of Annex A on each day of the week.
- (4) As from the Relevant High Capacity Date as set out in paragraph 21 in Part 9 of Annex A and the Digital Switchover Timetable, and subject to the Conditions set out in the Annexes, the Licensee shall adopt the High Capacity Transmission Mode and ensure that the Authorised Service(s) and any qualifying services broadcast in the Licensed Service are transmitted from the relevant stations specified in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences on each day of the week.
- (4A) As from the Relevant Service Launch Date and subject to the Conditions set out in the Annexes, the Licensee shall adopt the High Capacity Transmission Mode and ensure that any Authorised Service(s) (as set out in Annex A, Part 2, Paragraph 4) and any qualifying services which are included in the Licensed Service are transmitted from the relevant stations specified in Part 12 of Annex A on each day of the week until the Relevant Frequency Termination Date.

- (4B) As from the Relevant DTT Clearance Retrofit Dates as set out in paragraph 29 and Table 5 in Part 13 of Annex A, and subject to the Conditions set out in the Annexes, the Licensee shall ensure that the Authorised Service(s) and any qualifying services broadcast in the Licensed Service are transmitted from the relevant stations specified in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences in accordance with Part 10 of Annex A on each day of the week.
- (5) 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 broadcast by means of the Authorised Service(s) and the qualifying services broadcast by means of the Licensed Service provided by the Licensee pursuant to the Licence or that Authorised Service(s) and qualifying services provided by the holder of any other licence (including a television multiplex service licence) shall not be capable of reception in the whole or any part of the Licensed Area.
- (6) 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.
- (7) 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 4 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 4 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.
- (8) 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.
- (9) 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**

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) Payment of the fees referred to in Condition 3(1) shall be made in such manner and at such times as Ofcom shall specify provided that Ofcom 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.
  - (c) For the purposes of this Condition 3, the "Designated Amount" means the sum of £25,000 or such other sum as Ofcom may from time to time specify.
- (3) The Licensee shall within 28 days of a request therefore provide Ofcom with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 3(1) above.

#### 4. Additional Payments

- Section 13(1) of the 1996 Act (1) The Licensee shall pay to Ofcom in respect of each accounting period of the Licensee falling within the Licence Period an amount representing the Relevant Percentage of multiplex revenue.
- Section 13(4) of the 1996 Act (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.
- Section 13(5) of the 1996 Act (3) (a) 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 his exceeds the Estimated Amount actually paid by him to Ofcom in respect of that period; and
- (b) Ofcom shall pay or procure the payment to the Licensee of a sum equal to the amount (if any) by which the amount of the Relevant Percentage of 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.
- (4) Payments under this Condition 4 shall be made in such manner as Ofcom shall specify.

- Section 16(9) of the 1996 Act (5) This Condition 4 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, Ofcom specify (with the consent of the Secretary of the State) that no relevant percentage of multiplex revenue is payable for that period.

**5. 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 VAT invoice.
- (2) Without limitation to Condition 5(1) above, all sums payable by the Licensee are exclusive of V.A.T which shall be paid by the Licensee in addition to such sums.
- (3) In this Condition 5(3) "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.

**6. Transmission arrangements, technical standards requirements**

- Section 12(1) of the 1996 Act (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. 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 Television Technical Performance Code and the Technical Plan and Parts 4, 9 and 10 of Annex A to the Licence are observed in all operations under his direct control and by any third parties involved in the provision of programmes in the Authorised Service(s) 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.
- Section 4(1)(a) of the 1996 Act (2) The Licensee shall at all times comply with the Code of Practice on Changes to Existing Transmission and Reception Arrangements adopted by the Independent Television Commission and published by Ofcom or any replacement to it as may be published by Ofcom, 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 10 of Annex A are brought into full operation;
  - (b) not commence transmissions of the Licensed Service from any of the stations specified in Part 4 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) shall use his reasonable endeavours to 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 the television services as listed in Section 264(11) of the Communications Act by viewers affected by the changes to the transmission arrangements for those services described in the said Code; and
  - (d) shall use his reasonable endeavours promptly to 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 the television services as listed in Section 264(11) of the Communications Act by viewers affected by interference caused by the transmission of the Licensed Service in the cases identified in the said Code.
- (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 Parts 4, 9 and 10 of Annex A before and after the commencement of the Licensed Service from such stations, as drawn up by the Independent Television Commission and from time to time revised by Ofcom.
- (4) As all final international clearances have not been obtained for the provision of the Licensed Service in accordance with Annex A, the Licensee acknowledges that, if it chooses, pursuant to Annex A, Part 4, 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 Licensed Service). 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:
- (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 Ofcom; 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.
- (6) 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) The Licensee shall ensure that the Licensed Service is broadcast from the Relevant High Capacity Date using the High Capacity Transmission Mode in the High Capacity Coverage Area. For the purposes of this Condition 6(7), the Licensed Service is that set out in Annex A part 2 paragraph 4 and does not include the Licensed Service set out in Annex A Part 2 paragraph 2.
- (8) Nothing in this Condition 6 is to be construed as preventing the Licensee from entering into arrangements for the protection of intellectual property rights in High Definition television services where such arrangements have been approved by Ofcom in writing.

## **7. Availability of capacity on the Frequencies**

Section 12 of the 1996 Act; Section 242 of the Communications Act

- (1) The Licensee shall ensure that, during the Licence Period, at least 90 percent (or such other percentage as Ofcom may from time to time specify pursuant to Section 12(5) of the 1996 Act) of digital capacity on the Frequencies is used or left available to be used for the broadcasting of digital television programme services licensed under Part I of the 1996 Act or provided by the BBC, public service digital television programme services, digital sound programme services provided by the BBC, qualifying services, programme-related services and 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.
- (3) The Licensee shall supply to Ofcom in relation to such periods, in such form and at such times as Ofcom shall require, information as to the percentage of digital capacity available on the Frequencies for the broadcasting of digital television programme services licensed under Part I of the 1996 Act or provided by the BBC, public service digital television programme services, digital sound programme services, qualifying services, programme-related services, digital television additional services or relevant technical services together with the name of each person providing one or more such services and the percentage of digital capacity available on the Frequencies to him in relation to each such service provided by him.

## **7A.**

### **Use of Reserved Capacity under the 2008 Order**

Section 4(1)(a) of the 1996 Act and the 2008 Order

- (1) Subject to Condition 7 and to the other provisions of this Condition, the Licensee shall, in consideration for the making of such payments by the Relevant Public Service Broadcaster, as are from time to time:
  - (a) agreed between the Relevant Public Service Broadcaster and the Licensee; or
  - (b) in default of agreement, determined by Ofcom, use the Reserved Capacity for the broadcasting of services provided by the Relevant Public Service Broadcaster prescribed in Condition 7A(5).

- (2) For the purpose of Condition 7A(1), “**Reserved Capacity**” means, in relation to each tranche, such digital capacity that is available on the frequencies operated in the High Capacity Transmission Mode which is sufficient for the broadcasting of one high definition television service for each day throughout the High Capacity Coverage Area so as to be available for reception by members of the public on a free to air basis, the amount of which capacity is specified in Part 11 of Annex A by Ofcom from time to time as calculated and determined in accordance with the provisions of the 2008 Order.
- (3) References in this Condition:
- (a) to “**each day**” are references to any period consisting of twenty-four consecutive hours counted from midnight to midnight;
  - (b) to “**high definition television service**” are references to a television service (as defined in article 2 of the 2008 Order) which is broadcast in a format designed to display the images comprising a television programme by employing either 720 or 1080 lines of pixels per frame;
  - (c) to “**tranche**” are references to:
    - (i) during any period in respect of which Ofcom is satisfied there is total capacity on frequencies using the High Capacity Transmission Mode for the broadcasting of three high definition television services, digital capacity sufficient for the broadcasting of one of such three high definition television services;
    - (ii) during any period in respect of which Ofcom is satisfied there is total capacity on frequencies using the High Capacity Transmission Mode for the broadcasting of at least four high definition television services, digital capacity sufficient for the broadcasting of one of such four high definition television services.
- (4) At any time when there is Reserved Capacity for any Relevant Public Service Broadcaster:
- (a) that Relevant Public Service Broadcaster, or
  - (b) the Licensee,
- or both of them, may refer to Ofcom for determination any question arising as to the amount of digital capacity which, relation to each tranche, is sufficient for the broadcasting of one high definition television service, as calculated and determined in accordance with the provisions of the 2008 Order.
- (5) The Licensee must, and must only, use the Reserved

Capacity specified for the purposes of Condition 7A(1) for the broadcasting of:

- (a) services referred to under paragraph 25 of Part 11 of Annex A which Ofcom has required the Relevant Public Service Broadcaster to provide pursuant to his application to a notice published by Ofcom under article 3 of the 2008 Order for the Reserved Capacity; and
- (b) such other services as the Relevant Public Service Broadcaster is authorised to provide from time to time with Ofcom's prior written consent, and subject to such Conditions as Ofcom considers appropriate, namely either:
  - (i) services referred to under paragraph 25 of Part 11 of Annex A as amended by Ofcom from time to time; or
  - (ii) services in relation to which the Relevant Public Service Broadcaster is free to make arrangements with some other person as to the use of the Reserved Capacity pursuant to Condition 11(5).

Section 12(1)(f)  
Broadcasting Act 1996 as  
amended by Article 11(3)  
of the 2008 Order

- (6) Where Ofcom has given its consent to arrangements covered by Condition 7A(5)(b)(ii), the Relevant Public Service Broadcaster shall, on [31 January] of each year, provide Ofcom with a report detailing how it has complied with the Conditions attached to Ofcom's prior written consent for those arrangements. In the event that Ofcom determines that those Conditions have not been complied with, Ofcom may withdraw its consent, whereupon the Licensee will no longer be authorised to broadcast the services in relation to which that consent was given.
- (7) The requirement on the Licensee in Condition 7A(1) shall not apply with respect to a Relevant Public Service Broadcaster upon Ofcom serving a notice on the Licensee that Ofcom has terminated the Reserved Capacity in relation to that Relevant Public Service Broadcaster in any of the following circumstances:
  - (a) if Ofcom is satisfied that the Relevant Public Service Broadcaster has failed to provide any service prescribed by Condition 7A(5)(a);
  - (b) subject to paragraph (6)(c) below, if the Relevant Public Service Broadcaster ceases to remain a relevant public service broadcaster;

- (c) where the Relevant Public Service Broadcaster is a holder of a Channel 3 licence, if it appears to Ofcom that the service or services authorised to be broadcast by means of the Reserved Capacity are no longer being provided on behalf of at least 13 holders of regional Channel 3 licences and, as a result, Ofcom decides to terminate the Reserved Capacity having first given each holder of a Channel 3 licence on whose behalf the service or services is or are being provided and the Licensee a reasonable opportunity to make representations about the matter; or
- (d) if Ofcom is satisfied that the Relevant Public Service Broadcaster in connection with his application to a notice published by Ofcom under article 3 of the 2008 Order for the Reserved Capacity has provided information which was false in any material particular or that he has withheld any material information knowingly or recklessly.

The service of a notice under Condition 7(7) shall not affect the obligations of the Licensee under Condition 7A(1) in relation to any other Relevant Public Service Broadcaster to which the notice of termination does not relate.

- (8) The requirement on the Licensee in Condition 7A(1) is without prejudice to the use by the Licensee of digital capacity that is not subject to the provisions of this Condition for the broadcasting of any other services permitted by or under this Licence.

## 8.

### General Provision of information to Ofcom

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

- (1) The Licensee shall furnish to Ofcom in such manner and at such times as Ofcom may reasonably require such documents, accounts, returns, estimates, reports, notices or other information as Ofcom may (require for the purpose of exercising the functions assigned to it by or under the 1990 Act, the 1996 Act or the Communications Act and in particular (but without prejudice to the generality of the foregoing):

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

- (a) a declaration as to its corporate structure in such form and at such times as Ofcom shall specify; and

Section 5(2) of the Communications Act	(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;
Sections 4(1)(c) and 15 of the 1996 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; and
Sections 4(1)(c) and 19 of the 1996 Act	(d) statements of his multiplex revenue at monthly intervals and also in respect of each entire accounting period of his in such form as Ofcom shall require;
Section 4(1)(c) of the 1996 Act	(e) Such information as Ofcom may require for the purposes of determining whether the Licensee has complied and is complying with Condition 11 including, without limitation, Condition 11(2) and the Conditions set out in the Annexes.  (f) such technical performance data as Ofcom shall from time to time require at such intervals and in such form as Ofcom shall specify.
Section 5(5) of the 1996 Act	(2) The Licensee shall inform Ofcom forthwith in writing if:
(see also Section 78(3) of Part 2 of Schedule 15 to the Communications Act)	(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 in accordance with Condition 13 below) or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed in respect of the Licensee, or in respect of all or any part of his assets; or  (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with his creditors, save for the purposes of amalgamation or reconstruction whilst the Licence is solvent; or

- (c) the Licensee permits an execution to be levied against his assets and/or chattels and allows such execution to remain outstanding for more than 14 days; or
- (d) the Licensee becomes aware that any person having control of the Licensee does or is subject to any of the events specified in Conditions 8(2)(a) to (c) above; or
- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 8(2)(a) to (d) above occurs under the laws of any applicable jurisdiction.

Sections 5(5) and 4(1)(c) of the 1996 Act

- (3) The Licensee shall inform Ofcom if he or any individual having control over him within the meaning of paragraph 1(3), Part I of Schedule 2 to the 1990 Act is sentenced to a term of imprisonment (including a suspended term) on conviction of a criminal offence.

**9. Provision of information to Ofcom relating to a change of control**

Sections 4(1)(c) and 5(2) of the 1996 Act

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

(see also Paragraph 78(3) of Part 2 of Schedule 15 to the Communications Act)

- (a) of proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition 9(2) below, by giving advance notice of such proposals where they are known to the Licensee as soon as reasonably practicable where such proposals would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act; and
- (b) of changes, transactions or events affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee (irrespective of whether proposals for them have fallen to be notified) within 28 days of the Licensee becoming aware of any such change, transaction or event and where such change, transaction or event would constitute a change in the persons having control over the Licensee within the meaning of Schedule 2, Part I paragraph 1(3) of the 1990 Act.

Section 4(1)(c) of the 1996 Act and Paragraph 1(3)(c) and (3A) of Part I to Schedule 2 to the 1990 Act.

- (2) (a) The Licensee shall notify Ofcom within 28 days if any person:
- (i) holding or being beneficially entitled to 50 percent of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or
  - (ii) possessing 50 percent of the voting power in the Licensee or any body corporate which controls the Licensee, enters into any arrangement with any other participant in the Licensee or in any such body corporate which controls the Licensee as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.
- (b) For the purposes of Condition 9(2)(a):
- (i) "**arrangement**" includes any agreement or arrangement, whether or not it is, or is intended to be, legally enforceable;
  - (ii) a person shall be treated as holding, or being beneficially entitled to, any equity share capital which is held by a body corporate which he controls or to which such a body corporate is beneficially entitled, and as possessing any voting power possessed by such a body corporate; and
  - (iii) "**participant**", in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

## 10. Renewal of the Licence

Section 16(3) of the 1996 Act Paragraph 50, Schedule 18 of the Communications Act

- (1) The Licensee may apply to Ofcom for renewal of the Licence not earlier than four years before the end of the Initial Licence Period and, subject to paragraph 50, Schedule 18 of the Communications Act, not later than the day falling three months before the Relevant Date.

Section 16(6) of the 1996 Act

- (2) If the Licensee makes an application, Ofcom may postpone consideration of it for as long as Ofcom thinks appropriate, having regard to Section 16(10) of the 1996 Act.

- Section 16(4) of the 1996 Act (3) If the Licensee makes an application, Ofcom may:
- (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 10(3)(a)(i) or the supplementary proposals referred to in Condition 10(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.
- Section 16(7) of the 1996 Act (4) Ofcom 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 Ofcom 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 10(3)(a)(i) fails to meet the requirements notified to the Licensee under Condition 10(3)(b); or
  - (c) any of the supplementary proposals submitted by the Licensee under Condition 10(3)(a)(ii) fails to meet the requirements notified to the Licensee under Condition 10(3)(b); or
  - (d) Ofcom 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) Ofcom shall include in the Licence, as renewed, such further Conditions as appear to Ofcom to be appropriate for securing the implementation of any supplementary technical plan and any supplementary proposals submitted under Condition 10(3);

Section 16(8) and (9) of the 1996 Act

- (b) subject to Section 16(9) of the 1996 Act, Ofcom may, with the consent of the Secretary of State, and shall, if so required by him:
  - (i) specify a percentage of multiplex revenue different from the Relevant Percentage of multiplex revenue as the percentage of multiplex revenue for each accounting period of the Licensee that will be payable by him during the period for which the Licence is to be renewed; and
  - (ii) specify a percentage of multiplex revenue as the percentage of multiplex revenue 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 Ofcom may specify under Condition 10(5)(b)(i) or (ii) either of the things mentioned in Section 7(2)(b) of the 1996 Act.

Section 16(10) of the 1996 Act

- (6) Where Ofcom 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 10(5) and he has, within such period as Ofcom 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 and Conditions 4 and 17 shall have effect during such period as if references to the Relevant Percentage of multiplex revenue were to the percentage of multiplex revenue specified by Ofcom under Condition 11(5).

## 11.

### Fair and effective competition

Section 316 of The Communications Act

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

- (c) comply with any direction given by Ofcom to the Licensee for that purpose.

For the purposes of this Condition 11(1), "**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 digital television programme services, digital sound programme services or digital television additional services, the Licensee shall, except in relation to Reserved Capacity under Condition 7A, not show undue discrimination either against or in favour of a particular person providing such a service or a class of such persons.
- Section 12(1) of the 1996 Act (3) The Licensee shall not enter into any agreement with a person providing a digital television programme service, a digital sound programmed service or digital television additional service (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 11(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.
- Section 54(1) of the 1996 Act (4) The restriction referred to in Condition 11(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 11(3) shall be without prejudice to the Licensee's obligations to satisfy the Conditions set out in the Annexes. The restriction referred to in Condition 11(3) shall also apply in relation to the broadcasting of services by means of Reserved Capacity under Condition 7A (and the expression service provider in Condition 11(3) shall for this purpose be treated as referring to the Relevant Public Service Broadcaster) where Ofcom has given its prior written consent to the Relevant Public Service Broadcaster pursuant to Condition 7A(5)(b)(i) that he is free to make arrangements with some other person as to the use of any of the Reserved Capacity. However, the Licensee shall in his agreement with the Relevant Public Service Broadcaster ensure that:

- (a) the Relevant Public Service Broadcaster's freedom to make arrangements with some other person as to the use of any of the Relevant Capacity is restricted so as to prevent such use in cases where Ofcom has not given its prior written consent to permit the use;
  - (b) where Ofcom has given its prior written consent referred to in sub-paragraph (a), the Relevant Public Service Broadcaster undertakes to procure that he remains responsible under any arrangements to comply with the requirements under Condition 7A of this Licence and all relevant related requirements or obligations under his Broadcasting Act licence (within the meaning given in section 405(1) of the Communications Act) in relation also to the broadcasting of services on that capacity by that other person or other persons.
- (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 broadcast by means 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 Ofcom (such approval not to be unreasonably withheld) to impose Conditions concerning security of transactions undertaken by using that implementation. For the purposes 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 Condition 11(6) 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 Ofcom.
- (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 television programme services and digital television additional services licences issued under the 1996 Act receive information concerning ServicesCo's activities.
- (10) Without prejudice to Condition 11(2) and to the fulfilment of the Conditions set out in Annex A, Parts 2, 3 and 5 and Annex B, Part 2 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 Ofcom enter into any agreement or agreements or give effect to any agreement or agreements (whenever made) which would result in either: digital television 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 11(10), a person shall be treated as providing a digital television programme service if such service is provided by a person connected with him; or any digital television programme service being broadcast by means of the Licensed Service by any Relevant Person.

- (12) Other than BBC Digital Programme Services Limited no person connected with any digital television programme service provider or digital television 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.

**12.**

**Compliance with Ownership Restrictions**

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

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on or in relation to him by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that they apply to him.
- (2) The Licensee shall comply with any direction of Ofcom requiring him to take, or arrange for the taking of, any steps specified by Ofcom for the purposes of complying with the requirements referred to in Condition 12(1) above.
- (3) The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee's obligations imposed on him 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.

**13.**

**Transferability of the Licence**

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

- (1) The Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person 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 Licence Period.
- (2) The Licensee shall not transfer the licence to any Relevant Person.

**14.**

**Compliance**

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

The Licensee shall comply with any direction given to him by Ofcom in respect of any matter, subject or thing which direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee, by or under the 1990 Act, the 1996 Act or the Communications Act or any relevant international obligations.

**15.**

**Prohibition on Conveyance of unlicensed services**

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

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.
- (c) The only digital sound programme services broadcast under the Licence are services provided by the holder of a national digital sound programme licence (within the meaning of Section 60 of the 1996 Act) or by the BBC.
- (d) 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.
- (e) All services broadcast by means of Reserved Capacity under Condition 7A are either provided by the holder of a Broadcasting Act licence (within the meaning given in section 405(1) of the Communications Act), including (without limitation) a public service digital programme licence under the 2008 Order where applicable, or are qualifying services.

## 16.

### Government directions and representations

Sections 335 and 336 of  
the Communications Act

- (1) The Licensee shall if so directed by Ofcom:
  - (a) include in the Licensed Service, at such times as may be specified to Ofcom by the Secretary of State or any other Minister of the Crown, such announcement as may be specified by a notice given pursuant to Section 336(1) of the Communications Act; or
  - (b) refrain from including in the programmes included in the Licensed Service any matter or description of matter specified to Ofcom by the Secretary of State by a notice given pursuant to Section 336(5) of the Communications Act.
- (2) The Licensee may when including an announcement in the Licensed Service in accordance with Condition 16(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 16(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 Licensed Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

Section 335 of the Communications Act

- (4) The Licensee shall comply with all relevant Conditions of this Licence and any directions given to him by Ofcom pursuant to a notification to Ofcom by the Secretary of State for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any international obligations of the United Kingdom.

**17.**

**Power of Ofcom to vary Licence Conditions**

- (1) Ofcom may by a notice served on the Licensee:

Section 17(3A) of the 1996 Act

- (a) vary the Licence Period provided that the Licensee consents to such variation (and without prejudice to Ofcom's powers and duties under Section 17 of the 1996 Act);

Section 12(2) of the 1996 Act

- (b) vary any Conditions set out in Conditions 2(4), 2(5), 6(6) and Parts 1, 2 and 5 of Annex A and in Part 1 of Annex B provided that the Licensee consents to such variation; and

Section 17(3B) of the 1996 Act

- (c) vary the Licence in any respect not mentioned in Conditions 17(1)(a) and (b) above provided that the Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variation,

Section 17(1)(b) of the 1996 Act

provided always that Condition 17(1)(a) above is without prejudice to Ofcom's power under Section 17(1)(b) of the 1996 Act to reduce the Licence Period as set out in Condition 23(1) and that Conditions 17(1)(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 Ofcom of, in respect of each accounting period of the Licensee, an amount representing the Relevant Percentage of multiplex revenue.

Section 12(3) of the 1996 Act  
Section 9(2)(c) of the 1996 Act

- (2) If the Licensee applies to Ofcom for the variation of Conditions in the Annexes which relate to the characteristics of the digital television programme services to be broadcast in the Licensed Service, Ofcom shall permit the variation requested unless it appears to Ofcom that, if the application were granted, the capacity of so much of what is broadcast under the Licence as consists of digital television programme services or of such services together with digital sound programme services, to appeal to a variety of tastes and interests would be unacceptably diminished provided that in deciding whether or not to permit such variation, Ofcom may have regard to the digital television programme services broadcast in all the television 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 television 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.

### Notices and service

Section 394 of the Communications Act

- (1) Any notification or document (as defined in Section 394(9) of the Communications Act) to be served, given or sent under or in relation to this Licence may be delivered to the party to be served or sent by first-class post to him at his proper address (as defined in Section 394(7) of the Communications Act) or left at that address.
- (2) Any such notification or document shall be deemed to have been served:
- (a) if so delivered or left, at the time of delivery or leaving; or
  - (b) if so posted, at 10.00 a.m. on the second business day after it was put into the post.
- (3) In proving such service it shall be sufficient to prove that delivery was made or that the envelope containing such notification or document was properly addressed and posted as a pre-paid first-class letter or was left at the proper address, as the case may be.

Section 395 of the Communications Act

- (4) Notices and documents may also be served or given by Ofcom on or to the Licensee and by the Licensee on or to Ofcom in electronic form subject to the requirements set out in Sections 394 and 395 of the Communications Act.

**19.****Equal opportunities and training**

Section 337 of the  
Communications Act

- (1) The Licensee shall make, and from time to time shall review, arrangements for:
  - (a) promoting, in relation to employment with the Licensee:
    - (i) equality of opportunity between men and women and between persons of different racial groups; and
    - (ii) the equalisation of opportunities for disabled persons; and
  - (b) training and retraining persons whom he employs in or in connection with the provision of the Licensed Service or the making of programmes for inclusion in the Licensed Service.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 19(1) aware of them including publishing the arrangements in such manner as Ofcom may require.
- (3) In particular (but without limiting the generality of the foregoing) the Licensee shall from time to time (and at least annually) publish, in such manner as he considers appropriate, his observations on the current operation and effectiveness of the arrangements required by virtue of this Condition.
- (4) The Licensee shall, in making and reviewing the arrangements made in accordance with Condition 19(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 19 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Television Multiplex Service.
- (6) Ofcom will treat the Licensee's obligations under Condition 19(1) to (5) above as discharged where a member of a group of companies to which the Licensee belongs has discharged those obligations in relation to employment with the Licensee.

**20.****Digital Switchover**

The Licensee shall comply with, or procure compliance with, the Digital Switchover requirements set out in Parts 8, 9 and 10 of Annex A.

**20A.**

**DTT Clearance Programme**

The Licensee shall comply with, or procure compliance with, the DTT Clearance Programme requirements set out in Parts 8 and 13 and as described in Part 14 of Annex A.

**PART 3**

**EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS**

**21.**

**Force majeure**

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

The Licensee shall not be in any way responsible for any failure to comply with any Conditions of this Licence directly or indirectly caused by or arising from any circumstances beyond the control of the Licensee including (without limitation) accident or breakdown of any equipment or apparatus (caused otherwise than by the wrongful act neglect or default of the Licensee his servants or agents) war, damage by the Queen's enemies, terrorism, riot, rebellion, civil commotion, interference by strike, lockout, sit-in, picket or other industrial dispute or action.

## **PART 4**

### **CONDITIONS RELATING TO THE ENFORCEMENT OF THE LICENCES**

#### **22.**

#### **Interest on late payments**

- (1) Any payment due from the Licensee under or in respect of the Licence shall carry interest at three percent per annum over the base rate for the time being of Lloyds TSB Bank plc (or if unavailable then the rate published by another clearing bank as selected by Ofcom) from the date such payment was due until the date of actual payment.
- (2) The Licensee's liability to pay to Ofcom the amounts payable by him under Condition 22(1) above shall accrue from day to day and shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

#### **23.**

#### **Sanctions for breach of Condition**

Section 17 of the 1996 Act (see also paragraph 13 of Part 2 of Schedule 13 to the Communications 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 him a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty, or a notice reducing the Licence Period by a specified period not exceeding two years.
- (2) Subject to Condition 23(4), the amount of any financial penalty imposed pursuant to Condition 23(1) on the holder of a television 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 his 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 23(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 23(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 financial penalty imposed pursuant to Condition 23(1) relates to a failure to comply with a Condition or direction occurring before the commencement of paragraph 13(3) of Part II, Schedule 13 to the Communications Act and such a penalty has not previously been so imposed on the Licensee during any period for which the Licence has been in force, Conditions 23(2) and (3) shall be read as if the reference to five percent was a reference to three percent.
- (5) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 23(1), Ofcom may, on the application of the Licensee, by a further notice served on him at any time before that date, revoke that notice if it is satisfied that such revocation is justified by virtue of the conduct of the Licensee in relation to the operation of the Licensed Service since the date of the earlier notice.

## 24.

### 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 24(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 Licensed Service before the end of the Licence Period 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;
  - (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;
  - (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 his application for the Licence, provided the Independent Television Commission with information which was false in a material particular or withheld any material information with the intention of causing the Commission to be misled;
  - (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 or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act takes place (whether before or after the Commencement Date), which change is such that, if it fell to Ofcom to determine whether to award the Licence to the Licensee in the new circumstances of the case, it would be induced by the change to refrain from awarding the Licence to the Licensee;
  - (f) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;
- Sections 5(1) and 143(2) of the 1996 Act
- Section 4(5) of the 1996 Act
- Section 5 of the 1996 Act
- Section 3(3) of the 1996 Act

Section 3(8) of the 1996 Act	(g)	if the Licensee provides the Licensed Service in whole or in part whilst failing to comply with any requirement to hold or have held on his behalf a licence under Section 1 of the Wireless Telegraphy Act 1949 (as amended) or if the Licensee ceases to comply with requirements applicable to the Licensed Service imposed by or under Chapter 1 of Part 2 of the Communications Act.
Section 4(1)(d) of the 1990 Act	(h)	if Ofcom shall revoke the assignment of the Frequencies on which the Licensed Service is for the time being provided for the purpose of: <ul style="list-style-type: none"> <li>(i) fulfilling its functions under the enactments relating to the management of the radio spectrum as defined in Section 405(1) of the Communications Act; or</li> <li>(ii) complying with an order made under Section 156(1) of the Communications Act.</li> </ul>
Section 5(6) of the 1996 Act	(3)	Ofcom shall before serving a notice revoking the Licence or a notice under Condition 24(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)	<p>(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 him, 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.</p> <p>(b) The Licensee's liability to pay such penalty shall not be affected by the Licence ceasing (for any reason) to be in force.</p>
Sections 144 and 145 of the 1996 Act	(5)	If the Licensee is convicted of an offence under Section 144 of the 1996 Act and the court by which the Licensee is convicted makes an order disqualifying him from holding a licence during a period specified in the order, or if the Licensee is disqualified from holding a licence pursuant to Section 145(3) of the 1996 Act, in consequence of an order disqualifying an individual from holding a licence, this Licence shall be treated as being revoked with effect from the time when the order takes effect.

## ANNEX A: PART 1 – MULTIPLEX B LICENCE

### THE LICENSED SERVICE

#### CONDITIONS RELATING TO THE PROVISION AND CONTENT OF THE LICENSED SERVICE

##### 1. Definitions and interpretation

(1) In these Conditions, unless the context otherwise requires it:

“**Core Proposals**” means the proposals as to the number and characteristics of digital television programme services and digital television 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, such range of services the provision of which is funded by licence fees paid to the BBC, as is capable, in the opinion of Ofcom, 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 Ofcom.

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 5 of this Annex and/or Part 2 of Annex B.

(2) 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.

## **ANNEX A: PART 2**

### **CONDITIONS RELATING TO DIGITAL TELEVISION PROGRAMME SERVICES**

2. 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 Ofcom in accordance with Condition 17.
- 2(A) The Licensee's obligation to implement the Core Proposals does not limit the Licensee's ability to transmit further Authorised services or qualifying services.
3. The Licensee shall provide subtitling for the digital television programme services provided under this Licence.
- 4, The Authorised Service to be carried in the High Capacity Mode includes the services provided by a Relevant Public Service Broadcaster on any Reserved Capacity together with any service provided by the BBC. Any BBC service so carried will be subject to agreement between the BBC Executive and the BBC Trust and will not have to conform to the Core Proposals. The BBC Executive will issue Ofcom with a notice in writing regarding the nature of the service.

**ANNEX A: PART 3**

**CONDITIONS RELATING TO DIGITAL TELEVISION  
ADDITIONAL SERVICES**

5. 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 Ofcom in accordance with Condition 17.

Table 1: Details of Broadcasting Stations

Station Name	Grid Reference	UHF Channel	Aerial Height	ERP Watts
Aberdare	SO034013	26	333	100
Angus	NO394407	62	549	4,000
Beacon Hill	SX857619	54	249	2,000
Belmont	TF218836	66	347	10,000
Bilsdale	SE553962	24	690	6,000
Black Hill	NS828647	51	539	20,000
Blaenplwyf	SN569757	32	325	2,000
Bluebell Hill	TQ757613	45	236	3,000
Bressay	HU503387	31	299	1,000
Brierley Hill	SO916856	59	180	200
Bristol Ilchester Crescent	ST57707005	44	99	40
Bristol Kings Weston	ST547775	32	144	20
Bromsgrove	SO948730	23	199	25
Brougher Mountain	IH350527	26	370	500
Caldbeck	NY299425	39	578	3,200
Caradon Hill	SX273707	21	563	4,000
Carmel	SN576153	62	412	2,500
Chatton	NU105264	46	348	6,000
Chesterfield	SK382764	46	231	40
Craigkelly	NT233872	26	310	4,000
Crystal Palace	TQ339712	28	303	20,000
Darvel	NS557341	28	395	4,000
Divis	IJ287750	26	505	2,300
Dover	TR274397	58	328	2,000
Durris	NO763899	51	608	10,000
Eitshal	NB305303	25	366	800
Emley Moor	SE222128	46	578	10,000
Fenham	NZ216648	28	170	40
Fenton	SJ903451	25	241	100
Ferryside	SN371105	23	74	1
Guildford	SU975486	51	173	200
Hannington	SU527568	46	352	20,000
Hastings	TQ806100	24	126	200
Heathfield	TQ566220	47	256	1,000
Hemel Hempstead	TL088045	59	210	400
Huntshaw Cross	SS527220	64	359	4,000
Idle	SE163374	56	270	6
Keelylang Hill	HY378102	44	270	630
Keighley	SE069444	53	354	100
Kilvey Hill	SS672940	32	232	600
Knock More	NJ321497	57	418	1,000
Lancaster	SD490662	32	184	200
Lark Stoke	SP187426	27	277	25
Limavady	IC711296	57	374	800
Llandona	SH583810	61	258	1,000

Station Name	Grid Reference	UHF Channel	Aerial Height	ERP Watts
Malvern	SO774464	44	207	200
Mendip	ST564488	65	601	10,000
Midhurst	SU912250	59	300	2,000
Moel y Parc	SJ123701	64	552	1,000
Nottingham	SK503435	63	181	40
Olivers Mount	TA040869	58	188	100
Oxford	SP567105	52	289	6,000
Pendle Forest	SD825384	31	326	100
Plympton	SX531555	60	164	200
Pontop Pike	NZ148526	62	450	10,000
Pontypool	ST284990	45	295	20
Presely	SN172306	42	529	2,000
Redruth	SW690395	49	404	1,600
Reigate	TQ256521	27	291	200
Ridge Hill	SO630333	63	333	2,000
Rosemarkie	NH762623	44	323	10,000
Rosneath VP	NS258811	60	218	200
Rowridge	SZ447865	32	259	20,000
Rumster Forest	ND197385	32	455	1,000
Saddleworth	SD987050	51	398	40
Salisbury	SU136285	62	156	1,000
Sandy Heath	TL204494	67	279	20,000
Selkirk	NT500294	63	518	3,000
Sheffield	SK324870	60	292	100
Stockland Hill	ST222014	32	419	5,000
Storeton	SJ314841	26	109	56
Sudbury	TL913377	39	176	7,500
Sutton Coldfield	SK113003	51	395	8,000
Tacolneston	TM131958	58	215	5,000
The Wrekin	SJ628082	27	432	2,000
The Wrekin B (East)	SJ628082	45	434	2,000
Torosay	NM703358	33	478	125
Tunbridge Wells	TQ607440	45	172	100
Waltham	SK809233	33	413	8,000
Wenvoe	ST110742	50	311	5,000
Whitehawk Hill	TQ330045	48	172	1,000
Winter Hill	SD660144	67	748	10,000

**BORDERS AND ISLE OF MAN**

Whitehaven	NX99211238	46	182.8	2000
Gosforth	NY06950120	58	91.2	100
Eskdale Green	SD13549973	22	82	2

**Note:** 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.

**ANNEX A: PART 5****ADDITIONAL INFORMATION**

6. Letter of 19 June 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
7. Letter of 25 June 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee.
8. Letter of 26 June 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
9. Letter of 27 June 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee (redacted version).
10. Letter of 2 July 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee.
11. Letter of 2 July 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee, with attached comments (redacted version).
12. 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 Independent Television Commission.

13. 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 Independent Television Commission referred to in Part 5 of this Annex and in Parts 1 and 2 of Confidential Annex B including, in particular, the letters from the BBC to the Independent Television 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 Ofcom, such consent not to be unreasonably withheld.
14. 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 Ofcom 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 Ofcom on the take-up of digital television and digital terrestrial television receivers.

**ANNEX A: PART 7**

**CONDITIONS COMING INTO FORCE ON THE DATE OF GRANT**

**15.**

- (1) Condition 1 (Definitions and Interpretation)
- (2) Condition 2(4), (5) and (6)
- (3) Condition 3 (Fees)
- (4) Condition 5 (V.A.T.)
- (5) Condition 6(2) and (3) (Transmission arrangements, technical standards and requirements)
- (6) Condition 8(1), (2), (Provision of Information to Ofcom)
- (7) Condition 9 (Provision of Information to Ofcom relating to a change of control)
- (8) Condition 11 (Fair and Effective Competition)
- (9) Condition 12 (Compliance with Ownership Restrictions)
- (10) Condition 13 (Transferability of the Licence)
- (11) Condition 14 (Compliance)
- (12) Condition 17 (Power of Ofcom to vary Licence Conditions)
- (13) Condition 18 (Notices and Services)
- (14) Condition 19 (Equal opportunities)
- (15) Condition 21 (Exception and limitation on the Licensee's obligations)
- (16) Condition 22 (Interest on late Payments)
- (17) Condition 23 (Sanctions for breaches of control)
- (18) Condition 24 (Revocation)
- (19) Annex A, Part 6
- (20) Annex B, Part 1

**REQUIREMENTS RELATING TO DIGITAL SWITCHOVER AND THE DTT CLEARANCE PROGRAMME****16. Cooperation and coordination with other parties**

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

- (a) other Ofcom licensees, the BBC and S4C;
- (b) Government;
- (c) Digital UK; and
- (d) with such other parties, as necessary, or as notified to him by Ofcom,

in the administration, organisation or implementation of Digital Switchover and the DTT Clearance Programme in the United Kingdom.

**16A.** The Licensee shall, in conjunction with the BBC and other holders of a multiplex licence, manage and coordinate the delivery of the DTT Clearance Programme. The Licensee shall submit to Ofcom for Ofcom's agreement a plan setting out how this Condition shall be implemented no later than 12 months after this Condition comes into force. The plan shall include appropriate governance arrangements.

In the event agreement on a plan is not reached, Ofcom shall determine an appropriate plan following further consultation with the Licensee. Following agreement or determination as the case may be, the Licensee shall comply with this plan. This plan may be amended as may reasonably be required, such changes to be agreed with Ofcom.

This obligation may be discharged jointly with the BBC and other holders of a multiplex licence, or by a third party on behalf of the Licensee. For the purposes of this Part, "multiplex licence" has the meaning given to it by section 39 of the 1996 Act.

**17. Annual report and information relating to Digital Switchover**

Without prejudice to the requirements of Conditions 8 and 9 of the Schedule in respect of the provision of information to Ofcom, the Licensee shall prepare and submit to Ofcom an annual written report giving details of his compliance with Condition 2 of the Schedule (in respect of the provision of the Licensed Service in the Licensed Area) and Condition 20 of the Schedule requiring compliance with Parts 8, 9 and 10 of Annex A, and where relevant of his plans (including budgets and expenditure) in the following year to fund the rolling-out of equipment and/or infrastructure relating to Digital Switchover. Subject to prior written approval of Ofcom, this obligation may be discharged by means of consolidated or joint reports prepared in liaison with other Ofcom licensees with relevant duties.

The Licensee shall provide the first such report to Ofcom by the 31 December 2007 and shall provide a subsequent report annually thereafter on or by the anniversary of that date until the Digital Switchover Date or until such earlier date as Ofcom may notify to the Licensee for submission of the last such annual report.

The Licensee shall also supply to Ofcom such further interim reports in respect of any aspect of progress towards Digital Switchover as Ofcom may from time to time reasonably require.

**17A.**

**Annual report and information relating to the DTT Clearance Programme**

- (1) Without prejudice to the requirements of Conditions 8 and 9 of the Schedule in respect of the provision of information to Ofcom, the Licensee shall prepare and submit to Ofcom an annual written report giving details of his compliance with the following:
  - (a) Condition 20A of the Schedule in respect of the DTT Clearance Programme requirements;
  - (b) Paragraphs 16 and 16A of this Part of Annex A (in respect of management and coordination of the DTT Clearance Programme with other multiplex operators); and
  - (c) Paragraph 18(2A) of this Part of Annex A (in respect of plans to communicate with and support viewers affected by the DTT Clearance Programme).
- (2) The Licensee shall provide the first such report to Ofcom by 31 December 2010 and shall provide a subsequent report annually thereafter on or by the anniversary of that date until one year after the DTT Clearance Date or until such earlier date as Ofcom may notify to the Licensee for submission of the last such annual report. The Licensee shall also supply to Ofcom such further interim reports in respect of any aspect of progress of the DTT Clearance Programme as Ofcom may from time to time reasonably require.
- (3) This obligation may be discharged by means of consolidated or joint reports prepared in liaison with the BBC and other holders of a multiplex licence, or by another third party on behalf of the Licensee, and does not preclude consolidation with other reports required for Digital Switchover under this Part.

**18.**

**Communications with viewers**

- (1) The Licensee shall use his reasonable endeavours to ensure that all viewers of the Licensed Service are informed about:

- (a) changes in frequencies associated with Digital Switchover and/or the DTT Clearance Programme which necessitate a rescan of set top boxes and how a rescan can be completed; and
  - (b) other viewer actions required by Digital Switchover and/or the DTT Clearance Programme which related to obligations contained in this Licence which are notified to the Licensee by Ofcom.
- (2) The Licensee shall agree in writing with Ofcom, at least eighteen months before the Relevant Digital Switchover Date, a plan to fulfil the Digital Switchover obligations required under paragraph 18(1) above.
- (2A) The Licensee shall agree in writing with Ofcom, a plan to fulfil the DTT Clearance Programme obligations required under paragraph 18(1) above. The plan shall be submitted to Ofcom for Ofcom's agreement no later than 12 months after the date of this Condition coming into force. Where Ofcom has notified the Licensee of the level of viewer communications and support that Ofcom reasonably considers to be necessary, this plan must include the means by which the Licensee shall provide such communications and support.

In the event agreement on the plan is not reached, Ofcom shall determine an appropriate plan following further consultation with the Licensee.

Following agreement or determination as the case may be, the Licensee shall comply with this plan. The plan may be amended as may reasonably be required, such changes to be agreed with Ofcom.

- (3) For the avoidance of doubt, the duties under this paragraph may be discharged by the Licensee itself, jointly with the BBC and other holders of a multiplex licence, or by Digital UK and/or another third party on behalf of the Licensee.

## ANNEX A: PART 9

### DIGITAL SWITCHOVER DATE AND SEQUENCE FOR REGIONAL DIGITAL SWITCHOVER AND ADOPTION OF HIGH CAPACITY TRANSMISSION MODE

#### 19. Digital Switchover Date

The Digital Switchover Date shall be 31 December 2012, or such other date as may be fixed for Digital Switchover by the Secretary of State or as may be agreed between Ofcom and the Licensee.

#### 20. Region by region sequence for Digital Switchover, and Relevant Digital Switchover Dates

Digital Switchover shall take place in a sequence based upon the cessation of broadcasting of the Licensed Service from the transmission sites listed in Part 4 of Annex A and the broadcasting of the Licensed Service from the transmission sites listed in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences using the relevant frequencies and transmission parameters set out therein, and in accordance with the order set out for main stations across all of the UK in the Digital Switchover Timetable.

#### 21. Region by Region sequence for adoption of High Capacity Transmission Mode on the Relevant High Capacity Date

The Licensee shall adopt the High Capacity Transmission Mode from the Relevant High Capacity Date (or such other date(s) as may be agreed in writing between the Licensee and Ofcom) according to the sequence for provision of the Licensed Service in the regions and related main stations (together with their dependent relays as specified in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences) specified in the Digital Switchover Timetable (the “**High Capacity Coverage Area**”).

**Table 2:** [Deleted]

**ANNEX A: PART 10**

**DETAILS OF DIGITAL TERRESTRIAL BROADCASTING STATIONS (MAIN STATIONS AND DEPENDENT RELAYS)**

**22.**

As from the Digital Switchover Pilot Scheme Date, the Relevant Digital Switchover Dates and the Relevant High Capacity Dates as set out in the Digital Switchover Timetable, and the Relevant DTT Clearance Retrofit Dates as set out in Table 5 in Part 13 of Annex A, the Licensed Service shall be broadcast from the main stations and dependent relays using the UHF channels, powers and aerial heights as detailed in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences, unless other dates are agreed for the adoption of the relays between the Licensee and Ofcom.

The Licensee is on notice that the information contained in the Table of Digital Terrestrial Broadcasting Stations for Multiplex Licences will be subject to revision as the planning and international co-ordination process for Digital Switchover and the DTT Clearance Programme progresses. Where revisions are made as a consequence of the DTT Clearance programme, such changes will be reflected in Tables 5 and 6 of Part 14 of Annex A.

**Table 3:** [Deleted]

**DETAILS OF THE RELEVANT PUBLIC SERVICE BROADCASTER, THE RESERVED CAPACITY AND SERVICES TO BE PROVIDED FOR BROADCASTING BY MEANS OF RESERVED CAPACITY**

**23. Specification of the Relevant Public Service Broadcaster(s)**

For the purposes of Condition 7A in Part 2 of the Licence, Ofcom has determined to reserve the amount of such digital capacity as is specified in paragraph 24 of this Part 11 to the following persons according to the regions set out in the tables:

**Reservation 1 (under the terms of Condition 7A in Part 2)**

<b>Company</b>	<b>Region(s)</b>
Channel Television Limited	Channel
ITV Broadcasting Limited	Anglia , Carlton London, Granada, Border, Central, Meridian, HTV West, LWT, Tyne Tees, Westcountry, Yorkshire
STV Central Limited	Scottish
STV North Limited	Grampian
UTV Limited	Ulster

**Reservation 2 (under the terms of Condition 7A in Part 2)**

<b>Company</b>	<b>Region (s)</b>
Channel Four Television Corporation	Border, Westcountry, Granada, HTV West, Grampian, Scottish, Central, Yorkshire, Anglia, Meridian, Carlton London and LWT, Tyne Tees, Ulster, Channel
S4C	HTV Wales

For the purposes of this paragraph 23, the region specified is defined by reference to the main stations set out in Table 2 of Annex A Part 9.

**24. The specified amount of the Reserved Capacity**

The amount of capacity specified in relation to each tranche for the purpose of Condition 7A in Part 2 of the Licence is, in relation to the Relevant Public Service Broadcaster specified in paragraph 23 above, the capacity in respect of each of Reservation 1 and Reservation 2 is that set out in the Determination.

25.

**Services to be provided by the Relevant Public Service Broadcaster(s) for broadcasting by means of Reserved Capacity pursuant to his commitments given to Ofcom**

The services for which the Licensee must, and must only, use the Reserved Capacity for broadcasting on the Licensed Service under Condition 7A(5)(a) pursuant to his commitments given to Ofcom are, in relation to the Relevant Public Service Broadcaster specified in paragraph 23 above:

**Reservation 1: Service 1**

(i) Name of the service: **ITV1-HD**

(ii) Nature and characteristics (news, etc.), including genre (HD/SD), of the service:

**The service between the hours of 19:00 and 24:00 (with the exception of late regional news slots) will consist of a simulcast in HD of the ITV1 London service. This is mixed genre service which is provided in SD under the ITV London digital replacement licence. There may be regional variations to the programming. In Scotland and Northern Ireland the service between the hours of 19:00 and 24:00 (with the exception of late regional news slots which may contain news or other regional programming) will consist of a simulcast in HD of the STV and UTV services respectively.**

**The period between 18:00 and 18:30 will comprise of the broadcasting of up-converted broadcasts of a range of ITV regional programmes in England and Wales with a range of local programmes from STV and UTV in Scotland and Northern Ireland respectively.**

**The late regional news slot (typically between the hours of 22:30 to 22:40) will consist of short alternative programming (or local news).**

*“The ITV1 HD Evening Hours service, as a simulcast of the mixed genre ITV1 service, will provide a wide range of programmes which will increasingly be in native HD. In particular, as we set out above, whilst in the early years the service will focus on sport and drama content, over time we expect the majority of other genres to convert to native HD.”* (p31 of the Channel 3 application)

(iii) Hours of the day and days of the week that the service will broadcast:

**The service will operate from 19:00 to 24:00 seven days a week.**

(iv) if HD, the proportion of native HD content to be provided (including timetable, if appropriate):

**The service will include at least 35% of native HD content from 2 April 2010, rising to at least 60% at the start of 2012 and at least 70% at the start of 2014.**

*“We set out below an indication of the levels of the Evening content we expect to deliver in native HD from our service launch; this is*

based on the genre mix in 2008.”

	2010	2011	2012	2013	2014
% original peak content* hrs in native HD	40-50%	50-60%	60-65%	65-70%	>70%
% original peak content cost in native HD	c55%	c70%	c80%	c85%	c90

\*non repeats

(p.21 of Channel 3 application)

“The application also included details of how this HD native content would be provided by genre, this is reproduced below.” (Figure 6)

**Reservation 2: Service 1**

(i) Name of the service: **Channel 4 HD**

(ii) Nature and characteristics (news, etc.), including genre (HD/SD), of the service:

**The service will consist of a HD simulcast of the Channel 4 service to be broadcast in England, Scotland and Northern Ireland.**

*The Channel 4 HD simulcast service in England, Scotland and Northern Ireland”. (Sect 1.1 of the Channel 4 application)*

*“The programming commitments would mirror those currently captured in the licence obligations of Channel 4.” (Sect 5.2 of the Channel 4 application)*

(iii) Hours of the day and days of the week that the service will be broadcast:

**The service will be broadcast 24 hours a day 7 days a week.**

*“We propose to broadcast our 24 hour Channel 4 public service channel in HD simulcast.” (Sect 5.2 of the Channel 4 application)*

(iv) if HD, the proportion of native HD content to be provided (including timetable, if appropriate):

**All new commissioned and acquired content will be delivered in native HD format by the start of 2012.**

*“Both Channel 4 and S4C are committed to originating all new content in HD by 2012.” (Sect. 1.5 of the Channel 4 application)*

By the end of 2012, it is our intention to take delivery of all commissioned and acquired content in HD. Similarly by 2012, we anticipate that all but the oldest of our feature films will be available in HD. (Sect. 8.11 of the Channel 4 application)

**Reservation 2: Service 2**

(i) Name of the service: **S4C HD (English Title)**

(ii) Nature and characteristics (news, etc.), including genre (HD/SD), of the service:

**The service will consist of a HD simulcast of the S4C Digital service to be broadcast in Wales.**

*“An S4C HD simulcast service in Wales.” (Sect 1.1 of the Channel*

4 application)

*“The programming commitments would mirror those currently captured in its remit defined in the Communications Act 2003.”*  
(Sect 5.2 of the Channel 4 application)

(iii) Hours of the day and days of the week that the service will be broadcast:

**The same hours and days as S4C Digital.**

(iv) if HD, the proportion of native HD content to be provided (including timetable, if appropriate):

**S4C to take delivery of all new commissioned and acquired content in native HD format by the end of 2012.**

*“Both Channel 4 and S4C are committed to originating all new content in HD by 2012.”* (Sect. 1.5 of the Channel 4 application)

By the end of 2012, it is our intention to take delivery of all commissioned and acquired content in HD. Similarly by 2012, we anticipate that all but the oldest of our feature films will be available in HD. (Sect. 8.11 of the Channel 4 application)

26.

**Services that may be provided by the Relevant Public Service Broadcaster(s) for broadcasting by means of Reserved Capacity with Ofcom’s prior written consent**

The services for which the Licensee must, and must only, use the Reserved Capacity for broadcasting on the Licensed Service under Condition 7A(5)(b)(i) from time to time with Ofcom’s prior written consent are:

(a) in relation to the Relevant Public Service Broadcaster specified in paragraph 23 above:

**Service 1**

(i) Name of the service: **ITV1-HD**

(ii) Nature and characteristics (news, etc.), including genre (HD/SD), of the service:

**This is a mixed genre service which is provided in SD under the ITV London digital replacement licences, this includes a mixture of up-converted SD content with some native HD content including live sports some of which may be in HD. There may be regional variations to the programming. In Scotland and Northern Ireland the service (with the exception of late regional news slots which may contain news or other regional programming) will consist of a simulcast in HD of the STV and UTV services respectively.**

(iii) Hours of day and days of the week that the service will be broadcast: **09:26 to 18:59 and 00:01 to 05:59 Monday to Friday and at weekends.**

(iv) if HD, the proportion of native HD content to be provided

(including timetable, if appropriate): **SD service with the exception of some content including live sports which may be in HD.**

**Service 2**

(i) Name of the service: **GMTV-HD**

(ii) Nature and characteristics (news, etc.), including genre (HD/SD), of the service:

**This is a mixed genre service which is provided in SD under GMTV digital replacement licence, this includes a mixture of up-converted SD content and potentially in due course some native HD content.**

(iii) Hours of day and days of the week that the service will be broadcast: **06:00 to 09:25 Monday to Friday and at weekends.**

(iv) if HD, the proportion of native HD content to be provided (including timetable, if appropriate): **SD service with the exception of some material which may be in HD.**

## DETAILS OF THE TEMPORARY ADOPTION OF THE HIGH CAPACITY TRANSMISSION MODE ON ADDITIONAL FREQUENCIES

27. As from the Relevant Service Launch Date (or such other date as may be agreed in writing between the Licensee and Ofcom), the Licensee shall adopt the High Capacity Transmission Mode for broadcasting the Licensed Service using the relevant UHF channels, powers and aerial heights as set out in Table 4 below.

Transmission of the High Capacity Transmission Mode will continue until the Relevant Frequency Transmission Date unless the Licensee and Ofcom otherwise agree.

The stations set out in Table 4 below may be varied by formal request, provided the Licensee has provided three months notice to Ofcom.

**Table 4 – Details of main stations adopted the High Capacity Transmission Mode on additional frequencies.**

Station Name	Grid Reference	UHF Channel	Aerial Height (in metres above ordnance datum - sea level)	Power (ERP kW)	Relevant Service Launch Date	Relevant Frequency Termination Date
Pontop Pike	NZ 147 527	63	446	10	4 March 2010	31 December 2012
Black Hill	NS 828 647	59	531	10	4 March 2010	31 March 2011
Crystal Palace	TQ 339 712	31	301	10	30 November 2009	30 June 2012
Emley Moor	SE 222 128	39	541	4	31 March 2010	30 September 2011
Lichfield	SK 164 043	34	400	4	31 March 2010	30 September 2011

**DTT CLEARANCE DATE AND SEQUENCE FOR COMPLETING THE DTT CLEARANCE RETROFIT PROGRAMME**

**28. DTT Clearance Date**

The DTT Clearance Date shall be [X date], or such other date as may be notified by Ofcom following consultation with the Licensee.

The DTT Clearance Date shall be determined by Ofcom following consultation with the Licensee.

**29. Sequence for the DTT Clearance Retrofit Programme and Relevant DTT Clearance Retrofit Dates**

After the Relevant Digital Switchover Date, the DTT Clearance Retrofit Programme shall take place in a sequence based on and in accordance with the order set out in Table 5 below for the relevant stations affected by the DTT Clearance Retrofit Programme (as further set out in paragraph 31 and Table 7 of Part 14 of Annex A). Dependent relays will have the same Relevant DTT Clearance Retrofit Date as their associated main station, unless otherwise stated in Table 5 below.

**Table 5: DTT Clearance Retrofit Programme Sequence dated [ ]**

<b>Relevant DTT Clearance Retrofit Date</b>	<b>Region</b>	<b>Station name</b>
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**DETAILS OF DIGITAL TERRESTRIAL BROADCASTING STATIONS AFFECTED BY THE DTT CLEARANCE PROGRAMME**

**30. DTT Clearance Integration Programme**

In relation to the DTT Clearance Integration Programme for each station listed below, Table 6 sets out the frequencies originally assigned to the Licensee for Digital Switchover and the replacement frequencies that are assigned in order for the Licensee to implement the changes required by the DTT Clearance Programme.

**31. DTT Clearance Retrofit Programme**

In relation to the DTT Clearance Retrofit Programme for each station listed below, Table 7 sets out the frequencies originally assigned to the Licensee for Digital Switchover and the replacement frequencies that are assigned in order for the Licensee to implement the changes required by the DTT Clearance Programme following Digital Switchover.

**32.** These Tables are included for the purpose of describing frequency changes that are required under the DTT Clearance Programme and in part in order to enable comparison of the changes effected by the DTT Clearance Programme with the agreed Digital Switchover assignments.

**33.** The inclusion of affected main stations and/or relays within either Table 6 (if part of the DTT Clearance Integration Programme) or Table 7 (if part of the DTT Clearance Retrofit Programme) may be subject to variation, where and only to the extent necessary as a result of one of those programmes of work.

This provision does not preclude variation of Tables 6 and 7 in this Part to include new main stations or relays which are affected by the DTT Clearance Programme, provided Ofcom agree their inclusion is required to address coverage or other technical issues that reasonably arise as a result of the DTT Clearance Programme.

**Table 6: Stations affected by the DTT Clearance Integration Programme dated [ ]**

Station Name	Grid Reference	Aerial Height (in metres above ordination datum - sea level)	Digital Switchover		DTT Clearance Integration Programme	
			UHF Channel	Power (Watts)	UHF Channel	Power (Watts)

**Table 7: Stations affected by the DTT Clearance Retrofit Programme dated [ ]**

Station Name	Grid Reference	Aerial Height (in metres above ordnance datum - sea level)	Digital Switchover		DTT Clearance Retrofit Programme	
			UHF Channel	Power (Watts)	UHF Channel	Power (Watts)