

NOTICE OF VARIATION

VARIATION NUMBER 1, HAVING EFFECT FROM 29 DECEMBER 2003

TO LICENCE GRANTED TO BBC FREE TO VIEW LIMITED (“THE LICENSEE”) TO PROVIDE A MULTIPLEX SERVICE UNDER PART 1 OF THE BROADCASTING ACT 1996 AND DATED 16 AUGUST 2002 (“THE LICENCE”)

WHEREAS

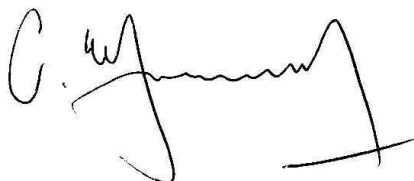
- A. As a result of the enactment of the Communications Act 2003 the Licence requires to be varied to conform with the requirements of that Act.
- B. The Licensee has been given a reasonable opportunity to make representations to Ofcom concerning the proposed variations to the Licence.

NOW THEREFORE the Licence shall be varied with effect from 29 December 2003 in the following manner:

- 1. By deleting the Index, the Schedule and Annex A and replacing them with the Index, the Schedule and Annex A attached in the Appendix to this Notice of Variation.

This document shall be construed as if it formed part of the Licence and shall be governed by English law.

SIGNED 17 DECEMBER 2003 FOR OFCOM BY

A handwritten signature in black ink, appearing to be 'C. [unclear]', written over a horizontal line.

Secretary to the Corporation

22. Sanctions for breach of Condition
23. Revocation

ANNEX A

DEFINITIONS AND INTERPRETATION

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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 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;

“**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 series 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 their holders of all multiplex licences, including the Licensee, to ensure the extension, in a co-ordinated manner as between such persons, of the coverage of their respective multiplex services;

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

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

“dB” means decibel

“digital sound programme service” has the

meaning given to it in s12(1)(da) of the 1996 Act;

“digital television additional service” has the meaning given to “digital additional service” in Section 24 of the 1996 Act;

“digital television programme service” has the meaning given to “digital programme service” in Section 1 (4) of the 1996 Act;

“DTT Marketing Plan” means the document referred to in Part 5 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 Part 3 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;

“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 services and the qualifying services included in the Licensed Service are transmitted by wireless telegraphy from the stations specified in Part 3 of Annex A (as varied from time to time under Condition 17) subject to such stations being operated in accordance with the Television Technical Performance Code and otherwise in accordance with the details set out in Part 3 of Annex A;

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

“licensed services” means services licensed by Ofcom under Part I of the 1996 Act;

“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 drawn up and revised from time to time by Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part II of Schedule 1 to the 1996 Act;

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

“**Prescribed Amount**” means:

(a) where:

- (i) the Licence is revoked under Section 11 of the 1996 Act; or
- (ii) the first complete accounting period of the Licensee falling within the Licence Period has not yet ended;

seven per cent of the amount which 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 per cent. 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 included in the Licensed Service;

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

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

“**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 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;

“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;

“Technical Plan” means the technical plan relating to the Licensed Service which accompanied the Licensee’s 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 to it by Section 238 (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 licensed services 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 or the Communications Act, as the case may be.

- (4) For the purposes of interpreting this Licence, headings and titles shall be disregarded.
- (5) The statutory references in the margins of this Licence are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an Order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) The Schedule and Annex 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

Section 12 (2) of the
1996 Act

- (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 Annex.
- (2) Subject to the Conditions set out in the Annex, the Licensee shall ensure that the Licensed services and the qualifying services broadcast in the Licensed Service are transmitted from the stations specified in, and otherwise in accordance with Part 3 of Annex A and on each day of the week.
- (3) Nothing in this Licence shall constitute or imply any warranty, representation or obligation on the part of Ofcom as to the size or location of the areas actually capable of receiving the programmes in the licensed services and the qualifying services broadcast in the Licensed Service provided by the Licensee pursuant to the Licence or that licensed services and qualifying services provided by the holder of any other licence (including a television multiplex service licence) shall not be capable of reception in the whole or any part of the Licensed Area.
- (4) The Licensee shall use its reasonable endeavours to:
 - (a) extend, where reasonably practicable, the Coverage of the Licensed Service; and
 - (b) ensure that the Coverage extension referred to in paragraph (a) above forms part of a Co-ordinated Coverage Improvement Programme.
- (5) Without prejudice to the generality of the foregoing, the Licensee shall:
 - (a) use its best endeavours to implement 3dB power increases:

- (i) within three months of the Commencement Date at least 20 of the broadcasting stations listed in Part 3 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 3 of Annex A
- (b) use all reasonable endeavours to procure agreement to the Equalisation Proposals as part of a Co-ordinated Coverage Improvement Programme; and
 - (c) as soon as is reasonably practicable after agreement is reached, shall implement such Equalisation Proposals in so far as they relate to the Licensed Service.
- (6) For the avoidance of doubt the Licensee will not be in breach of this Condition if, through no fault of his own and despite having used best endeavours to do so, the Licensee has been unable to obtain the necessary permissions under the Wireless Telegraphy Act 1949.
- (7) The Licensee shall not be authorised by or under the Licence to broadcast or procure the broadcasting of anything other than the Licensed Service.

3.

Fees

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.

- 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 Part 3 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 licensed services and qualifying services broadcast in the Licensed Service or in the provision and operation of a system for the distribution and transmission of the Licensed Service.
- Section 4 (1)(a) 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 licensed by Ofcom or any replacement to is 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 3 of Annex A;
- (b) not commence transmissions of the Licensed Service from any of the stations specified in Part 3 of Annex A until the work referred to in paragraph 2(a) of this Condition in connection with such transmissions from such stations has been completed;
- (c) promptly and in a proper manner carry out all work required in accordance with the Code of Practice on Changes to Existing Transmission and Reception Arrangements in order to maintain the reception of existing terrestrial television services by viewers affected by the changes to the transmission arrangements for those services described in the said Code without any cost or expense to those viewers; and
- (d) promptly and in a proper manner carry out all the work required in accordance with the Code of Practice on Changes to Existing Transmission and Reception Arrangements in order to restore the reception of existing terrestrial television services by viewers affected by interference caused by the transmission of the Licensed Service in the cases identified in the said Code without any cost or expense to those viewers.

- (3) The Licensee shall comply with the **Guidance Note on Test Transmissions**, governing any test transmissions made by the Licensee from any of the stations specified in Part 3 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 the Annex, the Licensee acknowledges that, if it chooses, pursuant to Annex A, Part 3, paragraph 2, to commence broadcasting from one or more stations in advance of obtaining international clearances, it may (at its own cost and expense) at any time be required 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.

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 per cent. (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, 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, 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.

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

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

(2) The licensee shall inform Ofcom forthwith in writing
if:

- (a) the Licensee becomes aware that any order is made or any resolution is passed or other action is taken for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding up of the Licensee (otherwise than for the purpose of amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom 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 Licensee is solvent; or
- (c) the Licensee permits an execution to be levied against his assets and/or chattels and allows such execution to remain outstanding for more than 14 days; or
- (d) the Licensee becomes aware that any person having control of the Licensee does or is subject to any of the events specified in 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

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

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

(a) of proposals affecting shareholdings in the Licensee or any body corporate which controls the Licensee, or the directors of the Licensee or the directors of any body corporate which controls the Licensee, and of any proposals to enter into any arrangements of the type referred to in Condition 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 per cent. of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or

- (ii) possessing 50 per cent. of the voting power in the Licensee or any body corporate which controls the Licensee, enters into 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.

- 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);
 - (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 (8) and (9) 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 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.

- (6) The Licensee shall do all he reasonably can to facilitate the reception of the Licensed Service on open standard digital television sets and the Licensee shall not discriminate against any person, or a class of such persons, purchasing such a television set. In the event that any services provided as part of the Licensed Service are provided other than on a free to air basis, without prejudice to the generality of the foregoing, the Licensee will give all reasonable technical support for the purpose of the development and/or production of an implementation of the conditional access system used by the Licensee in a form appropriate for connection to an open-standard digital television set provided that the Licensee shall be entitled with the approval of 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 Conditions 11 (6) and (7) and the Conditions in the Annexes to this Licence, the Licensee shall not, and shall ensure that no person connected with the Licensee shall enter into any agreement with, or engage in any activities jointly with the holders of the Multiplex C licence and/or the Multiplex D Licence and/or BSkyB Limited or any person connected with any of them through or involving ServicesCo or otherwise, concerning access to transmission capacity or the technical specification of any receiving equipment or software, except with the prior written consent of 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 1, 2 and 4 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 (11), 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 provided within 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; and
- (b) all digital television additional services broadcast under this Licence are provided by the holder of a licence under Section 25 of the 1996 Act or by the BBC; and
- (c) the only digital sound programme services broadcast under the Licence are services provided by the holder of a national digital sound programme 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.

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 I 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 22 (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.

PART 3

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

20.

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

21.

Interest on late payments

- (1) Any payment due from the Licensee under or in respect of the Licence shall carry interest at three per cent per annum over the base rate for the time being of Lloyds TSB 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 21 (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.

22.

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 22(4), the amount of any financial penalty imposed pursuant to Condition 22 (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 per cent. 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 22 (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 22 (2) shall not exceed five per cent. 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 22 (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 22 (2) and (3) shall be read as if the reference to five per cent was a reference to three per cent.
- (5) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition 22(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.

23.

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 23 (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;

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

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

Section 4 (5) of the
1996

(d) if Ofcom is satisfied that the Licensee:

Act

(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;

Section 5 of the 1996
Act

(e) if, where the Licensee is a body, a change in the nature or characteristics of the Licensee or any change in the persons having control over or interests in the Licensee, or any change giving rise to a disqualification under Part II of Schedule 2 to the 1990 Act 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;

- Section 3 (3) of the 1996 Act
- (f) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;
- Section 3 (8) of the 1996 Act
- (g) if the Licensee provides the 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:
- (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
- (ii) complying with an order made under Section 156(1) of the Communications Act.
- Section 5 (6) of the 1996 Act
- (3) Ofcom shall before serving a notice revoking the Licence or a notice under Condition 23 (2) (b) notify the Licensee of and give the Licensee a reasonable opportunity to make representations to it about the matters constituting its grounds for revoking the Licence.
- Section 11 (5) of the 1996 Act
- (4) (a) Where the Licence is revoked pursuant to any provision of Part I of the 1996 Act or is treated as being revoked under Section 145 of the 1996 Act, the Licensee shall within such period as Ofcom shall notify to 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.

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

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.

LICENSED SERVICE

ANNEX A

CONDITIONS RELATING TO THE PROVISION AND CONTENT OF THE LICENSED SERVICE

Definitions and interpretation

In these Conditions, unless the context otherwise requires it:

- (a) “**Core Proposals**” means the proposals as to the number and characteristics of 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, The Community Channel and such range of other services the provision of which is funded by licence fees paid to the BBC, as is capable, in the opinion of 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 4 of this Annex and/or Part 2 of Annex B.

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

PART I

CONDITIONS RELATING TO DIGITAL TELEVISION PROGRAMME SERVICES

1. The Licensee shall implement the Core Proposals, in response to question A.3 in the Attachment to Part III of the Invitation to Apply and the Letter from the Licensee to the Commission dated 19 June 2002, as amended from time to time by agreement in writing between the Licensee and Ofcom in accordance with Condition 17.

2. The Licensee shall provide subtitling for the digital television programme services provided under this Licence.

PART 2

CONDITIONS RELATING TO DIGITAL TELEVISION ADDITIONAL SERVICES

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

PART 3**DETAILS OF BROADCASTING STATIONS****MULTIPLEX B**

Station Name	Grid Reference	UHF Channel	Aerial Height
Aberdare	SO034013	26	333
Angus	NO394407	62	549
Beacon Hill	SX857619	54	249
Belmont	TF218836	66	347
Bilsdale	SE553962	24	690
Black Hill	NS828647	51	539
Blaenplwyf	SN569757	32	325
Bluebell Hill	TQ757613	45	236
Bressay	HU503387	31	299
Brierley Hill	SO916856	59	180
Bristol King's Weston	ST547775	32	144
Bromsgrove	SO948730	23	199
Brougher Mountain	IH350527	26	370
Caldbeck	NY299425	39	578
Caradon Hill	SX273707	21	563
Carmel	SN576153	62	412
Chatton	NU105264	46	348
Chesterfield	SK382764	46	231
Craigkelly	NT233872	26	310
Crystal Palace	TQ339712	28	303
Darvel	NS557341	28	395
Divis	IJ287750	26	505
Dover	TR274397	58	328
Durris	NO763899	51	608
Eitshal	NB305303	25	366
Emley Moor	SE222128	46	578
Fenham	NZ216648	28	170
Fenton	SJ903451	25	241
Guildford	SU975486	51	173
Hannington	SU527568	46	352
Hastings	TQ806100	24	126
Heathfield	TQ566220	47	256
Hemel Hempstead	TL088045	59	210
Huntshaw Cross	SS527220	64	359

Station Name	Grid Reference	UHF Channel	Aerial Height
Idle	SE163374	56	270
Ilchester Crescent	ST577700	44	99
Keelylang Hill	HY378102	44	270
Keighley	SE069444	53	354
Kilvey Hill	SS672940	32	232
Knock More	NJ321497	57	418
Lancaster	SD490662	32	184
Lark Stoke	SP187426	27	277
Limavady	IC711296	57	374
Llanddona	SH583810	61	258
Malvern	SO774464	44	207
Mendip	ST564488	65	601
Midhurst	SU912250	59	300
Moel-y-Parc	SJ123701	64	552
Nottingham	SK503435	63	181
Oliver's Mount	TA040869	58	188
Oxford	SP567105	52	289
Pendle Forest	SD825384	31	326
Plympton	SX531555	60	164
Pontop Pike	NZ148526	62	450
Pontypool	ST284990	45	295
Presely	SN172306	42	529
Redruth	SW690395	49	404
Reigate	TQ257521	27	291
Ridge Hill	SO630333	63	333
Rosemarkie	NH762623	44	323
Rosneath	NS258811	60	218
Rowridge	SZ447865	32	259
Rumster Forest	ND197385	32	455
Saddleworth	SD987050	51	398
Salisbury	SU136285	62	156
Sandy Heath	TL204494	67	279
Selkirk	NT500294	63	518
Sheffield	SK324870	60	292
Stockland Hill	ST222014	32	419
Storeton	SJ314841	26	109
Sudbury	TL913377	39	176
Sutton Coldfield	SK113003	51	395
Tacolneston	TM131958	58	215
The Wrekin	SJ628082	27	432
The Wrekin B (East)	SJ628082	45	434
Torosay	NM703358	33	478

Station Name	Grid Reference	UHF Channel	Aerial Height
Tunbridge Wells	TQ607440	45	172
Waltham	SK809233	33	413
Wenvoe	ST110742	50	311
Whitehawk Hill	TQ330045	48	172
Winter Hill	SD660144	67	748

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

Note: Aerial heights given in metres above Ordinance Datum.

PART 4

ADDITIONAL INFORMATION

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).

Letter of 25 June 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee.

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).

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).

Letter of 2 July 2002 to the Secretary of the Independent Television Commission from Emma Scott of the BBC, on behalf of the Licensee.

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).

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.

PART 5

DTT MARKETING PLAN

1. The Licensee shall use its best endeavours to implement and procure the implementation of the proposals in relation to the promotion and marketing of the Licensed Service and more broadly the development of digital television broadcasting in the United Kingdom otherwise than by satellite, as set out in the DTT Marketing Plan submitted in response to Question A.2 in the Attachment to Part III of the Invitation to Apply and in additional information provided to the Independent Television Commission referred to in Part 4 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.

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

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

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

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

- (c) implement the proposals in section 7.3.4 of his Application and in particular:
 - (i) provide and procure the provision by the BBC of on-air and off-air promotion including material to educate the public about digital terrestrial television and how to get it;
 - (ii) investigate a common kitemark to be awarded to manufacturers selling digital television receivers which meet a minimum functionality specification;
 - (iii) provide a consumer information telephone call centre, with postcode information and related advice on any aerial upgrade needed; and
 - (iv) provide information to manufacturers and retailers on reception and aerial issues.
- (d) commit a minimum annual expenditure equal to the marketing budgets for the period of the licence as set out in confidential Annex B;
- (e) commit subject to the receipt of the additional minimum contributions set out in confidential Annex B, the minimum annual marketing expenditure for the period of the licence as set out in that Annex; and
- (f) provide to 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.

PART 6

CONDITIONS COMING INTO FORCE ON THE DATE OF GRANT

1. Condition 1 (Definitions and Interpretation)
2. Condition 2(4), (5) and (6)
3. Condition 3 (Fees)
4. Condition 5 (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 20 (Exception and limitation on the Licensee's obligations)
16. Condition 21 (Interest on late Payments)
17. Condition 22 (Sanctions for breaches of control)
18. Condition 23 (Revocation)

19. Annex A, Part 5
20. Annex B, Part I