

CHANNEL 3 REGIONAL LICENCE

LICENCE GRANTED TO BORDER TELEVISION PLC TO PROVIDE A REGIONAL CHANNEL 3 SERVICE UNDER PART I OF THE BROADCASTING ACT 1990 (AS AMENDED) AND PART 3 OF THE COMMUNICATIONS ACT 2003

THE LICENCE

1. The Office of Communications ("Ofcom") in exercise of the powers conferred upon it by Part I of the Broadcasting Act 1990 as amended by the Broadcasting Act 1996 and the Communications Act 2003 hereby grants to Border Television plc (the "Licensee") a licence (the "Licence") subject to the conditions set out in the Schedule and the Annex (the "Conditions"), to provide the Regional Channel 3 Service (as defined in Condition 1 of Part 1 of the Schedule to this Licence).
2. This Licence is granted on the basis of the Licensee's representations that the statements set out in his most recent declaration to Ofcom (or, if appropriate, the Independent Television Commission) as to his affairs made by the Licensee are true to the best of the Licensee's knowledge and belief.
3. This Licence shall come into force on the date appearing below, upon which this Licence is granted by Ofcom and, subject to the Conditions, shall remain in force for the Licensing Period, as defined in Section 214(6) of the Communications Act 2003.
4. The Schedule and the Annex to this Licence form part of it.

SIGNED FOR AND ON BEHALF OF OFCOM BY

*** [POSITION OF SIGNATORY] ***

***DD...MMM...YYYY**

REGIONAL CHANNEL 3 DRL (BORDER)

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THE SCHEDULE

PART 1

DEFINITIONS AND INTERPRETATION

1. Definitions and interpretation

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

references to any “**accounting period**” of the Licensee shall be interpreted in accordance with Section 19(9) of the 1990 Act;

the “**1990 Act**” means the Broadcasting Act 1990 (as amended);

the “**1996 Act**” means the Broadcasting Act 1996 (as amended);

references to “**all relevant codes and guidance**” means all codes and guidance referred to in this Licence, the 1990 Act, the 1996 Act or the Communications Act;

“**Analogue Licence**” means the Licensee’s analogue licence in force immediately prior to the grant of this Licence;

“**Analogue Licensed Area**” means in relation to the Analogue Regional Channel 3 Service, the coverage area that was achieved when the programmes included in the service licensed under the Analogue Licence were transmitted from the stations and at the powers specified in Part 5 of the Annex and in accordance with the Television Technical Performance Code;

“**Analogue Regional Channel 3 Service**” means the television broadcasting service in respect of which the Qualifying Regional Channel 3 Service is the corresponding digital service;

“**Appointed News Provider**” means the news provider appointed in accordance with Section 280 of the Communications Act or whose appointment has effect by virtue of paragraph 35 of Schedule 18 to the Communications Act;

the “**Appropriate Percentage**” means, in relation to any year (the “**relevant year**”), the percentage which corresponds to the percentage increase between:

- (a) the retail prices index for the month of November in the year preceding the first complete calendar year falling within the Licensing Period; and
- (b) the retail prices index for the month of November in the year preceding the relevant year;

and for this purpose the “**retail prices index**” means the general index of prices (for all items) published by the Office of National Statistics;

“**C3/C4 multiplex licence**” means the licence granted by the Independent Television Commission to Digital 3 and 4 Limited under Part 1 of the 1996 Act on 19 December 1997;

“**Cash Bid**” means the amount agreed to by the Licensee under the Analogue Licence as the amount to be paid by him in accordance with the provisions set out in Condition 5 below or, if different, the amount agreed to by the Licensee to be paid by him pursuant to this Licence, or any renewal of this Licence, in accordance with the provisions set out in Condition 5 below;

“**Code on Sports and other Listed and Designated Events**” means the code giving guidance as to the broadcasting of sports and other listed events as drawn up and from time to time revised by Ofcom in accordance with Section 104 of the 1996 Act (and in the event that such code has not been drawn up by Ofcom or is not yet in force, “Code on Sports and other Listed and Designated Events” shall be interpreted in accordance with paragraph 51 of Schedule 18 to the Communications Act);

“**Code on Subtitling, Signing and Audio-Description**” means the code giving guidance as to:

- (a) the extent to which regional Channel 3 services but not electronic programme guides should promote the understanding and enjoyment by persons who are deaf or hard of hearing and by persons who are blind or partially sighted and by persons with a dual sensory impairment of the programmes to be included in those services; and
- (b) the means by which such understanding and enjoyment should be promoted;

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

“Commencement Date” means the date referred to in Clause 3 of the Licence;

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

“Digital Licensed Area” means, in relation to the Qualifying Regional Channel 3 Service, the coverage area achieved in respect of programmes included in the Regional Channel 3 Service when broadcast in accordance with Condition 2(1) prior to the Relevant Switchover Date and otherwise in accordance with Condition 2(2)(b) below;

“Digital Switchover” means the cessation of transmission of the Analogue Regional Channel 3 Service;

“Digital Switchover Date” means the date set out in paragraph 12 of Part 3 of the Annex by which transmissions of all analogue television services licensed under Part 1 of the 1990 Act must have ceased;

“Distribution” means the conveyance of Channel 3 services (by whatever means and whether directly or indirectly) to the broadcasting stations from which they are broadcast so as to be available for reception by members of the public;

references to **“European programming”**, **“European programmes”** or matter of **“European origin”** shall be interpreted in accordance with the definition of **“European Works”**, in Article 6 of the EC Directive 89/552/EEC, as amended by 97/36/EC (the **“Television Without Frontiers Directive”**);

“Fairness Code” means the code giving guidance as to principles to be observed and practices to be followed in connection with the avoidance of unjust or unfair treatment and unwarranted infringement of privacy in the provision of television and radio services as drawn up and from time to time revised by Ofcom in accordance with Section 107 of the 1996 Act and paragraph 53 of Schedule 18 to the Communications Act;

“fairness complaint” shall be interpreted in accordance with Section 110(4) of the 1996 Act;

“**Gaelic Television Fund**” means the fund established for the purposes of Section 183 of the 1990 Act;

“**Independent Productions**” means programmes of such description as the Secretary of State shall pursuant to Section 277(2) of the Communications Act from time to time by order specify;

“**initial expiry date**” shall be interpreted in accordance with Section 224 of the Communications Act;

“**Initial Licensing Period**” means the period from the Commencement Date to the initial expiry date or, if shorter, the period from the Commencement Date until such date as the Licence is revoked or renewed in accordance with these Conditions;

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

“**Licensed Area**” means, prior to the Relevant Digital Switchover Date, the Digital Licensed Area (to the extent that the Qualifying Regional Channel 3 Service is already being provided prior to the Relevant Digital Switchover Date in accordance with Condition 2(1)) and the Analogue Licensed Area; and thereafter “**Licensed Area**” means the Digital Licensed Area;

“**Licensing Period**” means the Initial Licensing Period or any Subsequent Licensing Period, as the context shall require;

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

the “**M25 area**” shall be interpreted in accordance with Section 362 of the Communications Act;

“**Nominated Archive Body**” means the body for the time being nominated by Ofcom for the purposes of Section 185(2) of the 1990 Act;

“Ofcom” means the Office of Communications as established by the Office of Communications Act 2002;

“peak viewing times” means 6pm until 10.30pm each day or such other times as may be determined by Ofcom;

“prescribed amount” means:-

- (a) where:
 - (i) the Licence is revoked under Section 18 of the 1990 Act; or
 - (ii) the first complete accounting period of the Licensee falling within the Licensing Period has not yet ended,

seven per cent. of the amount which Ofcom estimate would have been the Licensee's qualifying revenue for that accounting period; or
- (b) in any other case, seven per cent. of the Licensee's qualifying revenue for his last complete accounting period so falling;

“programme” unless otherwise stated includes an advertisement and anything included in the Regional Channel 3 Service;

“qualifying programmes” means programmes of such description as the Secretary of State shall pursuant to Section 277(2) of the Communications Act from time to time by order specify;

“Qualifying Regional Channel 3 Service” means the regional Channel 3 television broadcasting service for the provision of which this Licence was granted with a view to its being broadcast in digital form;

“qualifying revenue” has the same meaning as in Section 19 of the 1990 Act and shall be ascertained in accordance with that Section and the Ofcom Statement of Charging Principles as from time to time revised by Ofcom in consultation with the Secretary of State and the Treasury pursuant to Part I of Schedule 7 thereto;

“Regional Channel 3 Service” means, prior to the Relevant Digital Switchover Date, both the Qualifying Regional Channel 3 Service and the Analogue Regional Channel 3 Service or either of them, as the context may require; and thereafter the Qualifying Regional Channel 3 Service;

“Relevant Date” means the date which Ofcom determines, in accordance with Section 216 (2) and (3) of the Communications Act, to be that by which it would need to publish a tender notice under Section 15 of the 1990 Act if it were proposing to grant, as from the date on which the Licence would expire if not renewed, a fresh licence to provide the Regional Channel 3 Service to take effect from the end of the Licensing Period;

“Relevant Digital Switchover Date” means the date by which transmission of the Analogue Regional Channel 3 Service from the stations listed in Part 5 of the Annex must have ceased, which date shall be fixed in accordance with the provisions and timetable set out in Part 3 of the Annex, or such earlier date as may be agreed between the Licensee and Ofcom;

“Relevant Percentage of Qualifying Revenue” means such percentage of the qualifying revenue in relation to each accounting period of the Licensee during the Licensing Period as has been specified by the Independent Television Commission pursuant to Section 19(1)(c) or Section 20(6)(b) of the 1990 Act (as the case may be) as amended by 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 31;

“Renewal Payment” means such amount as Ofcom determines to be payable to it by the Licensee under Section 217(1)(a) of the Communications Act in respect of the first calendar year falling within the Renewal Period;

“Renewal Period” means the period for which the Licence is in force by reason of its renewal;

“Standards Code” means the code or codes governing standards for the content of programmes, including standards and practice in advertising and in the sponsoring of programmes included in television and radio services as drawn up and from time to time

revised by Ofcom in accordance with Section 319 of the Communications Act (and in the event that such code or codes has not or have not been drawn up by Ofcom or is not or are not yet in force, “Standards Code” shall be interpreted in accordance with paragraphs 41 and 43 of Schedule 18 to the Communications Act);

“Standards Complaint” means a complaint about the observance of standards set under Section 319 of the Communications Act;

“Subsequent Licensing Period” means any period of ten years from the date on which the Licence has been renewed in accordance with Section 216 of the Communications Act or, if shorter, the period from the date on which the Licence is renewed until such date as it is revoked in accordance with these conditions;

“Television Technical Performance Code” means the code governing technical standards and practice in:

- (a) programme production and acquisition;
- (b) broadcasting available for reception by members of the public; and
- (c) distribution (as defined in Section 66(2) of the 1990 Act,

in the provision of Channel 3, Channel 4 and Channel 5 services as drawn up and from time to time revised by Ofcom;

“Transmission Operator” means the provider of a transmission service generally authorised under Part 2 of the Communications Act;

- (2) The Interpretation Act 1978 shall apply for the purpose of interpreting this Licence as if it was an Act of Parliament.
- (3) Any word or expression used in this Licence shall unless otherwise defined herein and/or the context otherwise requires has the same meaning as it has in the 1990 Act, the 1996 Act or the Communications Act, as the case may be.
- (4) For the purposes of interpreting this Licence headings and titles shall be disregarded.

- (5) The statutory references in the margins are for purposes purely of convenience and shall not affect the interpretation or construction of the Licence or limit the statutory basis for the inclusion of the relevant Condition in the Licence.
- (6) Where an order is made under the Deregulation and Contracting Out Act 1994 which authorises a person to exercise any functions of Ofcom, the relevant references in the Licence to Ofcom shall include a reference to that person.
- (7) This Licence shall be governed by English law.

PART 2

GENERAL CONDITIONS

2.

Provision of Regional Channel 3 Service by the Licensee

Section 214 of the Communications Act
(see also Section 215(4) and paragraph 47 of Schedule 18 to the Communications Act)

- (1) The Licensee shall supply the Qualifying Regional Channel 3 Service to the holder of the C3/C4 multiplex licence for broadcast.
- (2) The Licensee shall provide the Qualifying Regional Channel 3 Service in accordance with Section 215(4) of the Communications Act for the Licensing Period and in the Digital Licensed Area and shall procure that:
 - (a) except to such extent as Ofcom may otherwise agree in accordance with Section 215(5) and the Conditions of this Licence, the Qualifying Regional Channel 3 Service is equivalent in all material respects to the service the provision of which in analogue form was authorised by the Analogue Licence;
 - (b) the coverage area to be achieved as from the Relevant Digital Switchover Date shall be equivalent to or, if and to such extent as Ofcom thinks fit, substantially the same as the coverage area that was achieved by the Analogue Licence by broadcasting from the stations and relays specified in, and otherwise in accordance with, Part 5 of the Annex; and
 - (c) the programmes to be included in the Qualifying Regional Channel 3 Service are broadcast in the Digital Licensed Area on the days and not outside the hours specified in Part 4 of the Annex.
- (3) Subject to Condition 2(6) below, the Licensee shall provide the Analogue Regional Channel 3 Service for the Licensing Period and in the Analogue Licensed Area by procuring that the programmes to be included in the Analogue Regional Channel 3 Service are broadcast from the stations specified in, and otherwise in accordance with Part 5 of the Annex, and on the days and not outside the hours specified in Part 4

thereof.

- (4) The Licensee shall, in the provision of the Analogue Regional Channel 3 Service, include the same programmes (apart from advertisements) as are included in the Qualifying Regional Channel 3 Service and at the same times at which they are broadcast in that service.
- (5) The Licensee shall be required to provide the Analogue Regional Channel 3 Service until the Relevant Digital Switchover Date, subject to giving effect to any directions given from time to time to Ofcom by the Secretary of State about the continuance of the provision of the Analogue Regional Channel 3 Service.
- (6) 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 provided by the Licensee pursuant to the Licence or that programme services provided by the holder of any other licence (including a Channel 3 licence) shall not be capable of reception in the whole or any part of the Licensed Area.
- (7) The Licensee shall not be authorised by or under the Licence to broadcast or procure the broadcasting of anything other than the Regional Channel 3 Service, subtitling in accordance with Condition 20, and services (other than subtitling) which are ancillary to programmes included in the Regional Channel 3 Service and directly related to their contents or relate to the promotion or listing of such programmes.

3. Prohibition on the imposition of charges

Sections 214(8) and (9) of the Communications Act

The Licensee shall not impose any charges, whether directly or indirectly, on persons in respect of their reception in the United Kingdom of:

- (a) the Regional Channel 3 Service;
- (b) any service consisting in the provision of assistance for disabled people in relation to programmes included in the Regional Channel 3 Service;

[NB contravention of this Condition will also be unlawful by virtue of Section 214(9)]

- (c) any service (other than one mentioned in Condition 3(1)(b) above) which is an ancillary service (as defined in Section 24(2) of the 1996 Act) in relation to the Qualifying Regional Channel 3 Service.

4. Fees

Section 4(1)(b), (3) and (4) of the 1990 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 1990 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 4(1) shall be made in such manner and at such times as Ofcom shall specify.

Section 4(1)(c) of the 1990 Act

- (3) The Licensee shall within 28 days of a request therefor provide Ofcom with such information as it may require for the purposes of determining or revising the tariff referred to in Condition 4(1) above.

5. Additional payments and contributions to the national television archive

Section 19 of the 1990 Act

- (1) The Licensee shall pay to Ofcom:-
 - (a) in respect of the first complete calendar year falling within the Licensing Period, the amount of the Cash Bid, which shall be payable by equal instalments on the penultimate business day of each calendar month throughout that calendar year unless the amount of the Cash Bid is equal to or less than £100,000, in which case it shall be payable in full on the penultimate business day of the first month of that calendar year; and
 - (b) in respect of each subsequent year falling wholly or partly in the Licensing Period, the amount of the Cash Bid as increased by the Appropriate Percentage, which shall be payable by equal

instalments on the penultimate business day of each calendar month throughout the relevant year or part thereof, unless the amount of the Cash Bid as increased by the Appropriate Percentage is equal to or less than £100,000 in which case it shall be payable in full on the penultimate business day of the first month of the relevant year or part thereof.

- (2) The Licensee shall pay to Ofcom in respect of each accounting period of the Licensee falling within the Licensing Period an amount representing the Relevant Percentage of Qualifying Revenue.
- (3) Ofcom may:-
 - (a) before the beginning of any accounting period of the Licensee, estimate the amount representing the Relevant Percentage of Qualifying 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);
 - (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; and
 - (c) determine that the part of the Licensee’s additional payments calculated using the Relevant Percentage of qualifying revenue and payable monthly will be based on the preceding month’s actual qualifying revenue.
- (4)
 - (a) The Licensee shall pay to Ofcom a sum equal to the amount (if any) by which the amount of the Relevant Percentage of Qualifying Revenue in respect of any accounting period of the Licensee exceeds the Estimated Amount actually paid by the Licensee 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 Qualifying 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 Qualifying Revenue in respect of such accounting period.

- Section 185 of the 1990 Act
- (5) The Licensee shall pay to Ofcom on the Commencement Date and on each anniversary thereof throughout the Licensing Period or on such other date in each year of the Licensing Period as Ofcom may specify such amount as Ofcom shall notify to the Licensee, being the Licensee's contribution towards the expenses incurred by the Nominated Archive Body in connection with the maintenance by it of a national television archive.
- (6) Payments under this Condition 5 shall be made in such manner as Ofcom may from time to time specify.

6. V.A.T.

- Section 4(1)(b) and (d) of the 1990 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 6(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 6 "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.

7. Public service remit and programme policy

- Section 265(1) of the Communications Act
- (1) The Licensee shall ensure that he fulfils the public service remit, in the provision of the Regional Channel 3 Service, to provide a range of high quality and diverse programming (or such remit as may from time to time be modified by the Secretary of State pursuant to Section 271(1) of the Communications Act).

Section 266 of the
Communications Act

- (2) The Licensee shall prepare a statement of programme policy (in accordance with the requirements of Condition 7(4) below) as soon as practicable after the commencement of Section 266 and subsequently at annual intervals:
 - (a) setting out his proposals for securing that, during the following year,
 - (i) the public service remit for the Regional Channel 3 Service will be fulfilled; and
 - (ii) the duties imposed on him under Conditions 8 to 13 and Conditions 15 and 16 below and by virtue of Sections 277 to 294 of the Communications Act (as applicable to the Regional Channel 3 Service) will be performed; and
 - (b) containing a report on his performance in carrying out, during the period since the previous statement, the proposals contained in that statement.
- (3) The Licensee shall monitor his own performance in the carrying out of the proposals contained in the statements made in pursuance of Condition 7(2) above.
- (4) Each statement of programme policy must be:
 - (a) prepared having regard to guidance drawn up and from time to time revised by Ofcom in accordance with Section 266(5) and (6) of the Communications Act;
 - (b) prepared taking account of the reports previously published by Ofcom under Sections 264 and 358 of the Communications Act and in particular take special account of the most recent such reports;
 - (c) published by the Licensee as soon as practicable after its preparation is complete; and
 - (d) published in such manner as the Licensee considers appropriate having regard to the guidance referred to in Condition 7(4)(a) above.

Section 267 of the Communications Act

- (5) If the Licensee's statement of programme policy contains proposals for a significant change (which shall be determined in accordance with sections 267 (4) and (5) of the Communications Act including any guidance issued and from time to time revised by Ofcom), the Licensee shall:
- (a) consult Ofcom before preparing the statement; and
 - (b) take account, in the preparation of the statement, of any opinions expressed to him by Ofcom.
- (6) If it appears to Ofcom that a statement of programme policy has been prepared by the Licensee in contravention of Condition 7(5) above, the Licensee shall, in accordance with any directions given to him by Ofcom:
- (a) revise such statement; and
 - (b) publish a revision of such statement after it has been approved by Ofcom.

Section 266(7) and (8) of the Communications Act

- (7) Without prejudice to the requirement in Condition 7(2) above as to the time at which the Licensee is required to make the first statement of programme policy, the Licensee's statement of policy that is in force on the date of commencement of Section 266 of the Communications Act shall be treated as if it were a statement for the time being in force until the statement required by Condition 7(2) has been prepared and published in accordance with the requirements of this Condition 7.

8.

Networking arrangements

Section 291(1) of the Communications Act

- (1) The Licensee shall do all he can to ensure that approved networking arrangements are in force whenever:
- (a) the Licensee is providing the Regional Channel 3 Service; and
 - (b) no networking arrangements imposed by Ofcom under Section 292 of the Communications Act are in force.

Sections 292 of the

- (2) If:

Communications Act

- (a) no suitable networking arrangements exist by the date Ofcom shall determine in accordance with Section 292 of the Communications Act that such arrangements must have been entered into (the “**networking date**”); or
- (b) any such arrangements that exist at the networking date cease to apply to all regional Channel 3 providers on or after that date,

the Licensee shall comply with the provisions of any networking arrangements imposed by Ofcom under that Section and in accordance with paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act.

(3) Where:

- (a) networking arrangements are imposed in accordance with Condition 8(2); and
- (b) other networking arrangements are entered into by the holders of regional Channel 3 licences bound by the imposed arrangements; and
- (c) the other arrangements entered into are approved by Ofcom after having taken into account the matters set out in paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act,

the arrangements referred to in Condition 8(2) shall cease to have effect on the coming into force of the arrangements referred to in paragraph (b) above as approved networking arrangements.

Paragraph 2 of Schedule 11 to the Communications Act

- (4) Where any networking arrangements have been approved by Ofcom under Condition 8(1) or 7(2), the Licensee shall not agree to any modification of those arrangements by the holders of licences to provide regional Channel 3 services unless such modification has been approved by Ofcom in accordance with Schedule 11 to the Communications Act.

Section 293(7) of the Communications Act

- (5) The Licensee shall do all he can to ensure that he gives effect to any modifications that are proposed by Ofcom (Ofcom having taken account of the matters set out in

paragraphs 6, 7 and 8 of Schedule 11 to the Communications Act) to the networking arrangements that are in force (whether approved or imposed by Ofcom) following any general review that Ofcom carries out in accordance with Section 293 of the Communications Act.

- (6) For the purposes of this Condition 8, “**approved networking arrangements**” has the meaning given to it in Section 291(2) of the Communications Act.
- Section 294(2) of the Communications Act (7) The Licensee’s obligations under paragraphs (1), (2) and (5) of this Condition 8 are subject to the Licensee’s rights of appeal conferred by paragraphs 9 and 11 of Schedule 11 to the Communications Act.
- Sections 291(1) and 292(7) of the Communications Act (8) The Licensee shall at all times during the Licensing Period do all he can to give effect to the networking arrangements referred to in this Condition 8.
- Section 290 of the Communications Act (9) The Licensee shall do all he can to ensure that, except to the extent that Ofcom shall otherwise determine, the networking arrangements referred to in Condition 8(1) above comply with the proposals submitted by him to Ofcom and with the general guidance published by Ofcom pursuant to Section 290(2) of the Communications Act.
- Section 4(1)(d) of the 1990 Act (10) The Licensee shall contribute to the network programme budget. Subject to the requirements of the Communications Act, his contribution shall be determined by reference to the Licensee’s share of qualifying revenue on such basis as may be agreed between all the holders of regional Channel 3 licences, and shall be an amount which is adequate, when aggregated with the contributions of all such holders of regional Channel 3 licences, to sustain the quality of the network service.

9.

Regional programme-making

- Section 286(1) and (6) of the Communications Act (1) The Licensee shall include in the Regional Channel 3 Service programmes made in the United Kingdom outside the M25 area:
- (a) in the proportions specified in paragraph 6 of Part 1 of the Annex; and

- (b) which, taken together, constitute a range of programmes as specified in paragraph 6 of Part 1 of the Annex.
- (2) The Licensee shall ensure that the proportion of expenditure specified in Part 1 of the Annex (determined by reference to the expenditure of the holders of Channel 3 licences on Channel 3 programmes made in the United Kingdom) is referable to programme production at what appears to Ofcom to constitute a suitable range of different production centres outside the M25 area.
- (3) In complying with this Condition 9, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (4) In this Condition 9, “**programme**” does not include an advertisement, and “**expenditure**”, in relation to a programme, and “**Channel 3 programmes**” each have the meaning given to them in Section 286(7) of the Communications Act.

10.

Regional programming

Section 287 of the Communications Act

- (1) Subject to Condition 10(3) below, the Licensee shall ensure, in relation to programmes included in the Regional Channel 3 Service, that:
 - (a) the amount of time set out in Part 1 of the Annex is given to programmes as specified (including regional news programmes) which are of particular interest to persons living within the area for which the service is provided;
 - (b) the regional programmes included in the Regional Channel 3 Service are of high quality;
 - (c) the proportion specified in Part 1 of the Annex of the regional programmes that are included in the Regional Channel 3 Service consists of programmes made in that area;
 - (d) the regional news programmes included in the Regional Channel 3 Service are broadcast for

viewing at intervals throughout the period for which the Regional Channel 3 Service is provided and, in particular, at peak viewing times;

- (e) the proportion specified in Part 1 of the Annex of the other regional programmes that are included in the Regional Channel 3 Service consists of programmes broadcast for viewing at peak viewing times and at times immediately preceding or following those times.
- (2) Where in relation to the Regional Channel 3 Service a determination has been made pursuant to Section 14(3) of the 1990 Act, the Licensee shall ensure, in relation to programmes included in the Regional Channel 3 Service, that:
- (a) the amount of time set out in Part 1 of the Annex is given to local programmes as specified;
 - (b) in the case of each part of an area or each community for which the Regional Channel 3 Service is provided, the range of local programmes is a range of programmes (including news programmes) which are of particular interest to persons living within that part of that area or to that community;
 - (c) the local programmes included in the Regional Channel 3 Service are of high quality;
 - (d) a suitable proportion, as set out in Part 1 of the Annex, of the local programmes that are included in the Regional Channel 3 Service consists of programmes made in the area for which the Regional Channel 3 Service is provided;
 - (e) the local news programmes included in the Regional Channel 3 Service are broadcast for viewing at intervals throughout the period for which the Regional Channel 3 Service is provided and, in particular, at peak viewing times;
 - (f) the proportion specified in Part 1 of the Annex of the other local programmes that are included in the Regional Channel 3 Service consists of programmes

broadcast for viewing at peak times and at times immediately preceding or following those times.

- (3) Where Condition 10(2) above applies, Condition 10(1) shall be applicable to the extent only that it appears to Ofcom that the requirements of that Condition are not adequately met by Condition 10(2).
- (4) In complying with this Condition 10, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (5) In this Condition 10 “**programme**” does not include an advertisement and “**local programme**” and “**regional programme**” have the meanings given to them in Section 287(8) of the Communications Act.

11.

Commissioning of independent productions

Section 285 of the
Communications Act

- (1) The Licensee shall draw up and from time to time revise a code of practice setting out the principles he will apply when agreeing terms for the commissioning of independent productions, such code in particular to secure in the manner described in guidance issued by Ofcom that:
 - (a) a reasonable timetable is applied to negotiations for the commissioning of an independent production and for the conclusion of a binding agreement;
 - (b) there is what appears to Ofcom to be sufficient clarity, when an independent production is commissioned, about the different categories of rights to broadcast or otherwise to make use of or exploit the commissioned production, that are being disposed of;
 - (c) there is what appears to Ofcom to be sufficient transparency about the amounts to be paid in respect of each category of rights;
 - (d) what appears to Ofcom to be satisfactory arrangements are made about the duration and exclusivity of those rights;
 - (e) procedures exist for reviewing the arrangements

adopted in accordance with the code and for demonstrating compliance with it, such procedures to include requirements for the monitoring of the application of the code and for the making of reports to Ofcom;

- (f) provision is made for resolving disputes arising in respect of the provisions of the code (by independent arbitration or otherwise) in a manner that appears to Ofcom to be appropriate.
- (2) The Licensee shall ensure that the drawing up or revision of a code made pursuant Condition 11(1) above is in accordance with guidance issued by Ofcom as to:
- (a) the times when it is to be drawn up or reviewed with a view to revision;
 - (b) the consultation to be undertaken before it is drawn up or revised; and
 - (c) its publication and publication of any revision or replacement of it,

and such code and any revision to it shall be submitted to Ofcom for approval and have effect subject to that approval and such modifications as Ofcom may require.

- (3) The Licensee shall from time to time make any revisions that are necessary to take account of revisions of the guidance issued by Ofcom referred to in Condition 11(2) above.
- (4) The Licensee shall ensure that he complies at all times with any code drawn up and for the time being in force pursuant to this Condition 11.

12.

Broadcasting of independent productions

Section 277 of the
Communications Act

- (1) The Licensee shall ensure that in each calendar year of the Licensing Period not less than the percentage amount specified in Part 1 of the Annex (or such other percentage that the Secretary of State may from time to time by order specify pursuant to Section 277(3) of the Communications

Act) of the total amount of time allocated to the broadcasting of qualifying programmes in the Regional Channel 3 Service is allocated to the broadcasting of a range and diversity of Independent Productions.

- (2) For the purposes of Condition 12(1) above, the reference to a range of Independent Productions is a reference to a range of such productions in terms of cost of acquisition and the types of programmes involved.
- (3) The Licensee shall comply with any further requirements that Ofcom may from time to time impose pursuant to Section 277(4) of the Communications Act in relation to the percentage of programming budget that is applied in the acquisition (which includes commissioning and acquisition of a right to include a programme in the Regional Channel 3 Service or to have it broadcast) of Independent Productions (determined in accordance with an order made under Section 277(9) of the Communications Act).
- (4) The Licensee shall comply with any direction of Ofcom for the purpose of carrying forward to one or more subsequent years any shortfall for any year in his compliance with the requirements of Condition 12(1) and (3) above and thereby increasing the percentage applicable for the purposes of those Conditions to the subsequent year or years.
- (5) In complying with this Condition 12, the Licensee shall have regard to any guidance that may be issued by Ofcom.
- (6) In this Condition 12 “**programme**” does not include an advertisement.

13. Original productions

Section 278 of the Communications Act

- (1) The Licensee shall ensure that in each calendar year of the Licensing Period:
 - (a) not less than the percentage amount specified in Part 1 of the Annex by time of the programmes included in the Regional Channel 3 Service are original productions or commissions for any or all of the regional Channel 3 services; and

- (b) the time allocated to the broadcasting of original productions is split between peak viewing times and other times in the manner specified in Part 1 of the Annex.
- (2) In determining the programmes of which a proportion is to consist of original programmes, there may be excluded such descriptions of programmes as may be specified in guidance prepared, and from time to time, revised by Ofcom pursuant to Section 278(3) of the Communications Act.
- (3) For the purposes of this Condition 13 “**programme**” does not include an advertisement; and “**original productions**” shall be determined in accordance with an order made under Section 278(6) of the Communications Act.

14. General standards and requirements

Sections 319, 320 and 325(1) of the Communications Act

The Licensee shall ensure that the provisions of the Standards Code are observed in the provision of the Regional Channel 3 Service.

15. News and current affairs

Sections 279 and 280 of the Communications Act

- (1) The Licensee shall include news programmes and current affairs programmes in the Regional Channel 3 Service that:
 - (a) are of high quality and deal with both national and international matters; and
 - (b) (in relation to news programmes only) are broadcast for viewing at intervals (including those stipulated in Part 1 of the Annex) throughout the period for which the Regional Channel 3 Service is provided and (taken together with news programmes included in other regional Channel 3 services) are able to compete effectively with other television news programmes broadcast nationwide in the United Kingdom.
- (2) The Licensee shall ensure that the time allocated to news programmes included in the Regional Channel 3 Service and current affairs programmes included in the Regional

Channel 3 Service:

- (a) constitutes in each case no less than the total amount of time specified in Part 1 in the Annex (such time being an appropriate proportion of the time allocated to the broadcasting of all the programmes included in the Regional Channel 3 Service); and
 - (b) is, in each case, split between peak viewing times and other times in the manner specified in Part 1 in the Annex.
- (3) In complying with this Condition 15, the Licensee shall have regard to any guidance that may be issued by Ofcom.

16.

Appointment of news provider

Section 280 of the
Communications Act

- (1) The Licensee shall do all he can to ensure that arrangements made in accordance with Section 280(3) of the Communications Act for the appointment of a single body corporate as the Appointed News Provider are maintained between all the holders of regional Channel 3 licences and, in particular, ensure that subject to Condition 16(4) below such arrangements provide:
- (a) for the terms on which such appointment is made to include the terms appearing to Ofcom to be appropriate and in accordance with any guidance that Ofcom may issue under Section 280(7)(a) of the Communications Act for securing that, throughout the period of its appointment, the finances of the body appointed are adequate to ensure that the news obligations under Condition 15 above are capable of being met;
 - (b) for the approval of Ofcom to be required for the purposes of paragraph (a) to this Condition 16(1) to the terms on which an appointment is made; and
 - (c) for the Appointed News Provider to be subject to an obligation, enforceable by Ofcom, to provide Ofcom with all such information as it may require for the purpose of carrying out its functions.

(2) The Licensee shall do all he can to ensure that at all times while the Licensee is providing the Regional Channel 3 Service there is in force an appointment made in accordance with the arrangements referred to in Condition 16(1) above.

(3) The Licensee shall:

(a) ensure that news programmes included in the Regional Channel 3 Service in compliance with Condition 16(1) and provided by the Appointed News Provider which are news programmes that are presented live and broadcast simultaneously with the broadcasting of news programmes provided in other regional Channel 3 services are in compliance with the relevant conditions imposed in their respective licences in accordance with Section 280(5) and (6) of the Communications Act; and

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

(b) give prior notice in writing to Ofcom when the appointment of the Appointed News Provider is due to expire, or is to be renewed or terminated in accordance with the terms of the appointment.

(4) The requirements set out in paragraphs (a), (b) and (c) of Condition 16(1) above shall not apply in relation to any appointment made before the commencement of Section 280 of the Communications Act.

Section 281 of the
Communications Act

(5) The Licensee shall ensure that a body is not appointed as the Appointed News Provider if:

(a) it is a disqualified person under Part II of Schedule 2 to the 1990 Act in relation to a Channel 3 licence; or

(b) there would be a contravention of Part 1 of Schedule 14 to the Communications Act (whether by that body or by another person) if that body held a licence to provide a Channel 3 service, or held a licence to provide such a service for a particular area for which such a service is provided;

and the Licensee shall ensure that the appointment of a body as Appointed News Provider shall cease to have effect if it becomes a body falling within paragraphs (a) or (b) of this Condition 16(5).

17.

Party political broadcasts

Section 333 of the Communications Act

- (1) The Licensee shall include in the Regional Channel 3 Service party political broadcasts and referendum campaign broadcasts (as defined in the Political Parties, Elections and Referendums Act 2000) in accordance with such rules as are referred to in paragraph 38 of Schedule 18 to the Communications Act or as from time to time may be made by Ofcom pursuant to Section 333(1)(b) of the Communications Act with respect to such matters.
- (2) Such rules may include, without limitation, provision with regard to: the political parties on whose behalf political broadcasts may be made, the length and frequency of such broadcasts, and the length and frequency of referendum campaign broadcasts that are required to be broadcast on behalf of each designated organisation (as defined in Section 333(6) of the Communications Act).

18.

Listed events

Section 101(1) of the 1996 Act (see also Section 300(2) of the Communications Act)

- (1) The Licensee shall comply in all respects with the listed events provisions of the 1996 Act and, for the avoidance of doubt, provisions contained in this Condition 18 that derive from amendments made to the 1996 Act by the Communications Act shall apply only from such time as relevant Sections of that Act are commenced.
- (2) The Licensee shall not include within the Regional Channel 3 Service (the “**first service**”) live coverage of the whole or any part of a listed event unless:
 - (a) (i) another person who is providing a service falling within Section 98(1)(b) of the 1996 Act (the “**second service**”) has acquired the right to include in the second service live coverage of the whole of the event or of that part of the event; and
 - (ii) the area for which the second service is provided consists of or includes the whole, or substantially the whole, of the area for which

the first service is provided; or

- (b) Ofcom has consented in advance to inclusion of that coverage in the first service; or
- (c) the event is a Group B event for which rights to provide coverage have been acquired by one or more other persons in addition to the Licensee; and
 - (i) that additional coverage constitutes adequate alternative additional coverage of the event; and
 - (ii) the person or persons who have acquired rights to provide the additional coverage satisfy the requirements in relation to that coverage of any regulations made by Ofcom in accordance with Section 104ZA of the 1996 Act.

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

(3) Condition 18(2) shall not apply where:

Section 97(5)(a) of the 1996 Act (see also Section 299(3) of the Communications Act)

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

Section 97(5A) & (5B) of the 1996 Act (see Section 299(4) of the Communications Act)

(4) The allocation or transfer of an event to Group A:

- (a) shall not affect the validity of rights acquired in relation to that event where such rights were acquired before the date referred to in Section 97(5A) of the 1996 Act; and
- (b) where the Secretary of State makes a direction in accordance with Section 97(5B), will not affect the application of Condition 18(2)(c) which will continue to apply in relation to a Group B event that is transferred to Group A as if the event remained a Group B event.

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

(5) Except where otherwise stated, this Condition 18 applies to the Regional Channel 3 Service if and to the extent that the

also Section 300(2) of the Communications Act

Regional Channel 3 Service is made available (within the meaning of Part 3 of the Communications Act) for reception by members of the public in the United Kingdom or in any area of the United Kingdom.

Section 101B(1) of the 1996 Act

(6) The Licensee shall not, without the previous consent of Ofcom, exercise any rights to televise, for reception in another EEA State, the whole or part of an event:

Section 101A of the 1996 Act

(a) that has been designated by that other EEA State, and notified by it to the European Commission, in accordance with Article 3a of the Television Without Frontiers Directive, as being of major importance to its society; and

(b) where a substantial proportion of the public in that State is deprived of the possibility of following that event by live or deferred coverage on free television as determined by that State in accordance with Article 3a of the Television Without Frontiers Directive.

(7) For the purposes of this Condition 18:

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

(a) the circumstances in which the televising of listed events generally, or of a particular listed event, is, or is not, to be treated as live for the purposes of Part IV of the 1996 Act shall be determined in accordance with the regulations referred to in Condition 18(2)(c)(ii) above;

(b) what is (whether generally or in relation to particular circumstances) to be taken to represent the provision of adequate alternative coverage shall be determined in accordance with the regulations referred to in Condition 18(2)(c)(ii) above;

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

(c) guidance as to the matters which Ofcom will take into account in determining:

(i) whether to give or revoke their consent for the purposes of Condition 18(2) and 18(6); and

(ii) whether to take action pursuant to Condition 42(4)(a) or 42(4)(b) in circumstances where the Licensee fails to comply with Conditions

18(2) or 18(6),

shall be provided in the Code on Sports and Other Listed and Designated Events.

- (8) The Licensee shall supply to Ofcom such information as Ofcom may reasonably require to determine the Licensee's compliance with this Condition 18 and for the purposes of determination made by it pursuant to Section 102 or Section 103 of the 1996 Act.

19.

Advertising and sponsorship standards and requirements

Section 322 of the Communications Act

- (1) The Licensee shall comply with all directions, whether general or specific and/or qualified or unqualified, given to him by Ofcom, with respect to:

- (a) the maximum amount of time to be given over to advertisements in any hour or other period;
- (b) the minimum interval which must elapse between any two periods given over to advertisements;
- (c) the number of such periods to be allowed in any programme or in any hour or day; and
- (d) the exclusion of advertisements from a specified part of the Regional Channel 3 Service,

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

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

- (2) The Licensee shall comply with all directions given to him by Ofcom with regard to advertisements or methods of advertising or sponsorship, including directions with respect to:

- (a) the exclusion from the Regional Channel 3 Service of a particular advertisement, or its exclusion in particular circumstances;
- (b) the descriptions of advertisements and methods of advertising to be excluded from the Regional Channel

3 Service (whether generally or in particular circumstances); and

(c) the forms and methods of sponsorship to be excluded from the Regional Channel 3 Service (whether generally or in particular circumstances).

Sections 121 to 123 and 321(4) of the Communications Act (3) The Licensee shall ensure that the provisions of the code approved by Ofcom for regulating the provision of premium rate services, or in the absence of such a code, the terms of any order made by Ofcom for such purposes, are observed in the provision of the Regional Channel 3 Service.

Sections 321(1) and 321(4) of the Communications Act (4) The Licensee shall ensure that the provisions of the Standards Code set to secure the objectives in Section 319(2)(a) and (g) to (j) of the Communications Act and relating to standards and practice in advertising and sponsorship of programmes and any prohibitions of advertisements and forms and methods of advertising or sponsorship of programmes are observed in the provision of the Regional Channel 3 Service.

Section 321(4) of the Communications Act (5) The Licensee shall supply to Ofcom details, in whatever form and within such period as Ofcom may reasonably require, of any particular advertisement or any class of advertisement specified by Ofcom or any sponsored programme which Ofcom shall from time to time request.

20.

Subtitling, signing and audio-description

Section 307(1) of the Communications Act The Licensee shall ensure that the provisions of the Code on Subtitling, Signing and Audio-Description are observed in the provision of the Regional Channel 3 Service and the Licensee shall provide subtitling, signing and audio-description in the amounts set out in Part 1 of the Annex.

21.

Provision of Additional Services

Section 49 of the 1990 Act (1) Ofcom reserves the right to license under the 1990 Act any or all of the spare capacity within the signals carrying the Analogue Regional Channel 3 Service which Ofcom determines to be available for the provision of additional services having regard to the Licensee's rights and

obligations to provide subtitling pursuant to Condition 20 and to the need of the Licensee to be able to use part of the signals carrying the Analogue Regional Channel 3 Service for providing services which are ancillary to programmes included in the Analogue Regional Channel 3 Service and directly related to their contents or relate to the promotion or listing of such programmes.

- (2) Nothing in this Licence shall authorise the Licensee to broadcast or procure the broadcasting of any picture, sound, text or other signals on the spare capacity referred to in Condition 21(1).
- (3) The Licensee shall grant to any person who holds a licence to provide additional services on any frequency on which the Analogue Regional Channel 3 Service is provided, and to any person authorised by any such person pursuant to Section 49(8) of the 1990 Act to provide additional services on that frequency, access to facilities reasonably required by that person for the purposes of, or in connection with, the provision of any such additional services.
- (4) The Licensee shall grant to any person who holds a licence to provide the public teletext service in analogue form and to any person authorised by virtue of Section 220 of the Communications Act to provide the whole or part of such service on his behalf, access to the facilities that are reasonably required for the purposes of or in connection with the provision of that service.
- (5) The Licensee shall be entitled to require any person to whom he grants access to facilities in accordance with Condition 21(3) and/or Condition 21(4) to pay a reasonable charge in respect thereof and the Licensee shall use all reasonable endeavours to agree upon the amount of that charge with such person. Any dispute as to the amount of any such charge shall be determined by Ofcom.

*Section 276 of the
Communications Act*

22. Transmission arrangements technical standards and requirements for the Qualifying Regional Channel 3 Service

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

- (1) The Licensee shall:
 - (a) procure that the Qualifying Regional Channel 3

Service is broadcast so as to be available for reception by members of the public in the Digital Licensed Area by the holder of the C3/C4 multiplex licence in accordance with Part 5 of the Annex;

- (b) contribute to the costs incurred by the holder of the C3/C4 multiplex licence in respect of the broadcasting for reception by members of the public of all Channel 3 services (taken as a whole) in digital form in such manner as may be approved by Ofcom; and
 - (c) contribute to the costs incurred in respect of the Distribution of all Channel 3 services (taken as a whole) in digital form in such manner as may be approved by Ofcom.
- (2) In this Condition 22 and within definitions that are used in this Condition “**available for reception by members of the public**” shall be construed in accordance with Section 361 of the Communications Act.

23. Transmission arrangements technical standards and requirements for the Analogue Regional Channel 3 Service

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

- (1) The Licensee shall:
 - (a) procure that the Analogue Regional Channel 3 Service is broadcast so as to be available for reception by members of the public by a single person (the “**Relevant Transmission Operator**”) in accordance with an agreement between the Licensee and the Relevant Transmission Operator for the provision and operation of a system for the broadcasting of the Analogue Regional Channel 3 Service from the Commencement Date (the “**Television Transmission Service Agreement**”);
 - (b) contribute to the costs incurred by the Relevant Transmission Operator in respect of the broadcasting for reception by members of the public of all Channel 3 services (taken as a whole) in analogue form in such manner as may be approved by Ofcom; and

- (c) contribute to the costs incurred in respect of the Distribution of all Channel 3 services (taken as a whole) in analogue form in such manner as may be approved by Ofcom.
- (2) It shall be a condition of the Television Transmission Service Agreement and of any other agreement which the Licensee enters into with any subsequent Transmission Operator for the broadcasting to be available for reception by members of the public of the Analogue Regional Channel 3 Service, that the signals carrying the Analogue Regional Channel 3 Service attain high standards in terms of technical quality and reliability throughout the Analogue Licensed Area and in particular (but without prejudice to the generality of the foregoing) the Licensee shall do all that he can to ensure that the relevant provisions of the Television Technical Performance Code as drawn up and from time to time revised by Ofcom are observed by the Relevant Transmission Operator or, where applicable, by any other Transmission Operator in the provision of the Analogue Regional Channel 3 Service.
 - (3) The Licensee shall do all that he can to ensure that the relevant provisions of the Television Technical Performance Code are observed in all the operations under his direct control, in the Distribution of the programmes included in the Analogue Regional Channel 3 Service, and by any third parties involved in the provision of programmes included in the Analogue Regional Channel 3 Service.
 - (4) In this Condition 23 and within definitions that are used in this Condition **“available for reception by members of the public”** shall be construed in accordance with Section 361 of the Communications Act.

24.

Retention and production of recordings

Section 325(1) and (2) of the Communications Act

(1) The Licensee shall adopt procedures acceptable to Ofcom for the retention and production of recordings in sound and vision of any programme which is the subject matter of a Standards Complaint and in relation to the production of recordings of any programme which is the subject of a fairness complaint the Licensee shall also comply with the requirements of Condition 34 below.

Section 334 (1) of the Communications Act

(2) In particular, the Licensee shall:

- (a) make and retain or arrange for the retention of a recording in sound and vision of every programme included in the Regional Channel 3 Service for a period of 90 days from the date of its inclusion therein;
- (b) at the request of Ofcom forthwith produce to Ofcom any such recording for examination or reproduction; and;
- (c) at the request of Ofcom forthwith produce to Ofcom any script or transcript of a programme included in the Regional Channel 3 Service which he is able to produce to it.

25.

General provision of information to Ofcom

Section 4(1)(c) of the 1990 Act

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

Section 4(1)(c) of the 1990 Act

- (a) a declaration as to its corporate structure (or the equivalent if the Licensee is not a body corporate) in such form and at such times as Ofcom shall specify;

- Section 143(5) of the 1996 Act and Section 5(1)(a) of the 1990 Act
- (b) such information as Ofcom may reasonably require from time to time for the purposes of determining whether the Licensee on any ground is a disqualified person by virtue of any of the provisions in Section 143(5) of the 1996 Act and/or Schedule 2 to the 1990 Act or contravenes requirements imposed by or under Schedule 14 to the Communications Act;
- Section 4(1)(c) of the 1990 Act and Section 15 of the 1996 Act
- (c) annual income and expenditure returns and supplementary annexes in such form and at such times as Ofcom shall require;
- Section 4(1)(c) and 19 of the 1990 Act
- (d) statements of his qualifying revenue at monthly intervals and also in respect of each entire accounting period of his in such form as Ofcom shall require; and
- Sections 4(1)(c) and 183 of the 1990 Act
- (e) such information as Ofcom may require for the purposes of carrying out any functions undertaken by it in relation to the Gaelic Television Fund.
- Section 5(5) of the 1990 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 reconstruction or amalgamation made whilst the Licensee is solvent and previously approved in writing by Ofcom in accordance with Condition 30 below) or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed in respect of the Licensee, or in respect of all or any part of his assets; or
- (b) the Licensee makes or proposes to enter into any scheme of compromise or arrangement with his creditors, save for the purposes of amalgamation or reconstruction whilst the Licensee is solvent; or
- (c) the Licensee permits an execution to be levied against his assets and/or chattels and allows such execution to remain outstanding for more than 14 days; or
- (d) the Licensee becomes aware that any person having

control of the Licensee does or is subject to any of the events specified in Condition 25(2)(a) to (c) above; or

- (e) anything analogous to or having a substantially similar effect to any of the events specified in Condition 25(2)(a) to (d) above occurs under the laws of any applicable jurisdiction.

Sections 3(6) and (7) and 4(1)(c) of the 1990 Act

- (3) The Licensee shall inform Ofcom when final judgment is awarded against him in any court proceedings brought against him in respect of the inclusion in the Regional Channel 3 Service of any defamatory, seditious, blasphemous or obscene matter or any matter which constitutes an injurious falsehood or slander of title or any tort or an infringement of any copyright, moral right, right in a performance, design right, registered design, service mark, trademark, letters patent or other similar monopoly right or a contravention of the provisions of the Official Secret Acts or of any statutory enactment or regulation for the time being in force or a criminal offence or contempt of Court or breach of Parliamentary privilege.
- (4) 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.

26.

Provision of information relating to a change of control

Section 5(2) of the 1990 Act (see also paragraph 3(3) of Part 1 of Schedule 15 to the Communications Act and Section 351(1) of the Communications Act

- (1) Where the Licensee is a body corporate, the Licensee shall notify Ofcom:
 - (a) of proposals that may give rise to a relevant change of control within the meaning of Section 351(10) of the Communications Act and of any 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 26(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 351(1)(b) of the Communications Act

and the Licensee shall provide Ofcom, in such manner and at such times as it may reasonably require, with such information as Ofcom considers necessary for the purposes of exercising its functions under Sections 351 and 352 of the Communications Act.

Paragraph 1(3) (b), (c) and (3A) of Part 1 to Schedule 2 to the 1990 Act (see also Section 357 of the Communications Act)

- (2) (a) The Licensee shall notify Ofcom within 28 days if any person:
 - (i) holding or being beneficially entitled to 50 per cent. of the equity share capital in the Licensee or in any body corporate which controls the Licensee; or
 - (ii) possessing 50 per cent. of the voting power in the Licensee or any body corporate which controls the Licensee,

enters into an arrangement with any other participant in the Licensee or in any such body corporate which controls the Licensee as to the manner in which any voting power in the body possessed by either of them is to be exercised, or as to the omission by either of them to exercise such voting power.

Paragraph 2 of Part 1 of Schedule 14 to the Communications Act

- (b) The Licensee shall notify Ofcom within 28 days of any change in circumstances which would operate against the restrictions specified in paragraph 2 of

Part 1 of Schedule 14 to the Communications Act including:

- (i) in the national or local newspapers over which he or any person connected with him has an interest; and
 - (ii) of interest in a body corporate which is a relevant national newspaper proprietor (within the meaning of paragraph 2(6) of Part 1 of Schedule 14 to the Communications Act) in which he is a participant; and
 - (iii) or of any change in control of any body corporate which is a participant in the Licensee (where the Licensee is a body corporate) where such body corporate is one in which a relevant national newspaper proprietor is a participant.
- (c) For the purposes of Condition 26(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 4(1)(c) of the 1990 Act

- (3) The Licensee shall supply to Ofcom such information as Ofcom may reasonably require from time to time as to the national or local market share of any newspaper or newspapers insofar as such national or local market shares appears to Ofcom relevant for the purposes of determining whether any of the restrictions in Part 1 of Schedule 14 to the

Communications Act have been complied with or in order to determine whether, any of the circumstances described in that Part apply.

27.

Renewal of the Licence

Section 216 of the
Communications Act

- (1) Subject to the provisions of section 228(6) and (7) of the Communications Act the Licence may be renewed for a period of ten years from the end of the Initial Licensing Period and each Subsequent Licensing Period current at the time of the application.
- (2) The Licensee may apply to Ofcom for renewal of the Licence not earlier than four years before the date on which it would otherwise cease to be in force and not later than three months before the Relevant Date.
- (3) Subject to the provisions of Section 216(11) of the Communications Act, Ofcom may decide not to renew the Licence if:
 - (a) it is not satisfied that the Licensee would, if the Licence were renewed, provide the Regional Channel 3 Service in compliance with Conditions 7, 9, 10, 11, 12, 13 and 15;
 - (b) it proposes to grant a fresh regional Channel 3 licence for the provision of a service replacing the Regional Channel 3 Service which would differ from the Regional Channel 3 Service in:
 - (i) the area for which it would be provided; or
 - (ii) the times of the day, or days of the week, between or on which it would be provided;
 - (c) it appears to Ofcom that there are grounds for suspecting that any source of funds to which the Licensee might (directly or indirectly) have recourse for the purpose of:
 - (i) paying the amount of the Renewal Payment;
 - (ii) paying the amount of the Renewal Payment as increased by the Appropriate Percentage in

respect of each subsequent year falling wholly or partly within the Renewal Period;

- (iii) paying an amount, determined under Section 217(1)(b) of the Communications Act, representing a specified percentage of qualifying revenue in respect of each accounting period of the Licensee falling within the Renewal Period;
- (iv) otherwise financing the provision of the Regional Channel 3 Service,

is such that it would not be in the public interest for the Licence to be renewed; and Ofcom having referred the Licensee's renewal application to the Secretary of State together with a copy of all documents submitted to it by the Licensee and a summary of its deliberations on the application, the Secretary of State has refused to consent to the renewal on the grounds that the source of funds is such that it would not be in the public interest for the Licence to be so renewed.

Section 217 of the
Communications Act

- (4) On the grant of any such application Ofcom shall determine:
 - (a) the amount of the Renewal Payment; and
 - (b) a percentage of qualifying revenue for each accounting period falling within the Renewal Period which the Licensee will be required to pay to Ofcom.
- (5) For the purposes of Condition 27(4) above:
 - (a) the amount of the Renewal Payment shall be determined (as necessary) in accordance with Section 217(2) of the Communications Act; and
 - (b) the percentage of qualifying revenue shall be determined in accordance with Section 217(3) of the Communications Act.
- (6) Where the Licensee accepts Ofcom's determination under Condition 27(4) above, he shall notify Ofcom of his acceptance and, subject to Condition 27(3) above, Ofcom

shall grant a renewal of the Licence as soon as reasonably practicable thereafter but Ofcom shall not grant a renewal more than eighteen months before the end of the Licensing Period.

- (7) If the Licence is renewed pursuant to this Condition, it shall continue in full force and effect and Conditions 5 and 37 shall have effect during the Renewal Period as if:
- (a) in respect of the first complete calendar year falling within the Renewal Period, references to the amount of the Cash Bid were to the amount of the Renewal Payment;
 - (b) in respect of each subsequent year falling wholly or partly within the Renewal Period, references to the amount of the Cash Bid as increased by the Appropriate Percentage were to the amount of the Renewal Payment as increased by the Appropriate Percentage; and
 - (c) in respect of each accounting period of the Licensee falling within the Renewal Period references to the Relevant Percentage of Qualifying Revenue were to the percentage of qualifying revenue determined by Ofcom under Condition 27(4) above;

provided that, notwithstanding renewal, the Licensee shall continue to pay the amount of the Cash Bid (or, where the Licence has already been renewed, the existing Renewal Payment) as increased by the Appropriate Percentage for the year in question by equal instalments.

28.

Fair and effective competition

Section 316 of the
Communications Act

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

and effective competition in the provision of licensed services or of connected services; and

- (c) comply with any direction given by Ofcom to the Licensee for that purpose.
- (2) In this Condition 28 “**connected services**” and “**licensed service**” have the meanings given to them in Section 316(4) of the Communications Act.

29. Compliance with ownership restrictions

Section 5(1) and (2) of the 1990 Act

- (1) The Licensee shall comply in all respects with the restrictions and requirements imposed on him by or under Schedule 2 to the 1990 Act and Schedule 14 to the Communications Act to the extent that such requirements apply to him.
- (2) The Licensee shall comply with any direction of Ofcom requiring him to take, or arrange for the taking of, any steps specified by Ofcom for the purposes of complying with the requirements referred to in Condition 29(1) above.
- (3) The Licensee shall inform Ofcom of any circumstances or events which would give rise to a breach of the Licensee’s obligations imposed on him by or under Schedule 2 to the 1990 Act or a contravention of the requirements of Schedule 14 to the Communications Act immediately upon becoming aware of such circumstances or events.

30. Transferability of the Licence

Sections 3(6) & (7) of the 1990 Act

This Licence is not transferable except with the prior consent in writing of Ofcom. Without prejudice to the generality of the foregoing, such consent shall not be given unless Ofcom is satisfied that the person or persons to whom it is proposed to transfer the Licence would be in a position to comply with all of the Conditions whilst it remains in force.

31. Compliance

Sections 4(1)(a) and 4(2) of the 1990 Act and

- (1) The Licensee shall comply with any direction given to him by Ofcom in respect of any matter, subject or thing which

Section 335 of the Communications Act

direction is in the opinion of Ofcom appropriate, having regard to any duties which are or may be imposed on it, or on the Licensee by or under the 1990 Act, the 1996 Act, the Communications Act or any relevant international obligations.

Sections 4(1)(a), (c) and (d) of the 1990 Act and Sections 321(4) and 325(1) of the Communications Act

(2) The Licensee shall adopt procedures and ensure that such procedures are observed by those involved in providing the Regional Channel 3 Service for the purposes of ensuring that programmes included in the Regional Channel 3 Service comply in all respects with the provisions of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance. The Licensee shall, without prejudice to the generality of the foregoing, ensure that:

(a) there are sufficient persons involved in providing the Regional Channel 3 Service who are adequately versed in the requirements of this Licence, the 1990 Act, the 1996 Act, the Communications Act, relevant international obligations and all relevant codes and guidance and that such persons are able to ensure compliance with such requirements on a day to day basis;

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

Articles 4, 5 and 6 of the Television Without Frontiers Directive and Section 336 of the Communications Act

(c) the requirements of the Television Without Frontiers Directive are complied with where practicable, having regard to the provisions set out in Articles 4, 5 and 6 of the Directive and any guidance issued and from time to time revised by Ofcom for the purpose of giving effect to those provisions;

(d) adequate arrangements exist for the advance clearance of advertisements of such types and for such products as Ofcom shall determine;

(e) that in each department of the Licensee where any of the procedures referred to in this Condition are to be implemented the member of staff responsible is of sufficient seniority to ensure immediate action and

that issues relating to compliance may be brought where necessary directly before senior management for consideration.

- (3) The Licensee shall supply Ofcom with details of the procedures (and of any revision of such procedures) adopted by him and required to be observed by those involved in providing the Regional Channel 3 Service for the purposes of Condition 31(2) above.
- Section 335(4) of the Communications Act (4) For the purposes of this Condition and Section 335 of the Communications Act, all Conditions of this Licence that are included by virtue of Part 3, Chapter 4 (Regulatory provisions) of the Communications Act are in addition to, and have effect subject to, any Conditions included by virtue of Section 335 of the Communications Act (Conditions securing compliance with international obligations).
- Section 4(1)(c) of the 1990 Act (5) The Licensee shall supply to Ofcom post-transmission data in relation to all programmes included in the Regional Channel 3 Service covering such information and in such form as Ofcom shall specify, to be delivered to Ofcom as soon after the transmission of the programmes to which they relate as Ofcom may require.
- Section 4(1)(c) of the 1990 Act (6) The Licensee shall supply to Ofcom such technical performance data as Ofcom shall from time to time require, and at such intervals and in such form as Ofcom shall specify.
- Section 4(1)(d) of the 1990 Act (7) The Licensee if so requested by Ofcom shall at such intervals and at such times as Ofcom shall require attend meetings with Ofcom and (if Ofcom shall so require) with the holders of other regional Channel 3 licences, for the purpose of enabling Ofcom to conduct periodic reviews of the performance by the Licensee of his obligations under the Licence and of the performance by the holders of other regional Channel 3 licences of their obligations under their respective licences.

32.**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 Regional Channel 3 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 Regional Channel 3 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 Regional Channel 3 Service in accordance with Condition 32(1)(a) above indicate that the announcement is made in pursuance of a direction by Ofcom.
- (3) The Licensee shall comply with all relevant conditions of this Licence and any directions given to him by Ofcom pursuant to a notification to Ofcom by the Secretary of State for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any international obligations of the United Kingdom.
- (4) Where Ofcom:
 - (a) has given the Licensee a direction to the effect referred to in Condition 32(1)(b) above; or
 - (b) in consequence of the revocation by the Secretary of State of the notice giving rise to the issuing of such a direction, has revoked that direction or where such a notice has expired, the Licensee may include in the Regional Channel 3 Service an announcement of the giving or revocation of the direction or of the expiration of the notice, as the case may be.

33.**Standards complaints**

Sections 325(1)(b) and

- (1) The Licensee shall ensure that procedures acceptable to

328(1) of the
Communications Act

Ofcom for the handling and resolution of Standards Complaints in respect of programmes included in the Regional Channel 3 Service are established and maintained and shall ensure that such procedures are duly observed.

- (2) The Licensee shall for a period of at least 12 months keep a written record of any complaints referred to in Condition 33(1) above, and a written record of any response given by the Licensee in relation to any such complaint and shall make such records available to Ofcom at such times as Ofcom may reasonably require.

34.

Fairness and privacy complaints

Sections 115 and 119 of
the 1996 Act (see also
Section 327 of the
Communications Act

- (1) The Licensee shall comply with such directions and requests for information as may be given to him by Ofcom following receipt by him from Ofcom of a copy of a fairness complaint that relates to the provision of the Regional Channel 3 Service, and in particular the Licensee shall, if so requested:
- (a) provide Ofcom with a recording in sound and vision of the programme, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
 - (b) make suitable arrangements for enabling the complainant to view any such recording, or any specified part of it, to which the complaint relates if and so far as such a recording is in his possession;
 - (c) provide Ofcom and the complainant with a transcript of so much of the programme, or any specified part of it, to which the complaint relates, as consisted of speech, if and so far as the Licensee is able to do so;
 - (d) provide Ofcom and the complainant with copies of any documents in the possession of the Licensee that are originals or copies of any correspondence between the Licensee and the person affected or the complainant in connection with the complaint;
 - (e) provide Ofcom with such other things that Ofcom may specify or describe and that appear to Ofcom to be relevant to its consideration of the complaint and

to be in the possession of the Licensee;

- (f) furnish to Ofcom and the complainant a written statement in answer to the complainant;
- (g) attend Ofcom and assist it in its consideration of the complaint; and
- (h) take such steps as he reasonably can to ensure compliance with any request made by Ofcom to any other person under Section 115(7) of the 1996 Act.

Sections 119 and 120 of the 1996 Act (see also Section 327 of the Communications Act)

- (2) The Licensee shall comply with such directions as may be given to him by Ofcom to publish, in such manner, and within such period as may be specified by Ofcom, in any direction given pursuant to Section 119(1) of the 1996 Act, a summary of any fairness complaint with regard to a programme included in the Regional Channel 3 Service, together with Ofcom's findings on the fairness complaint or a summary of such finding. The form and content of any such summary shall be such as may be approved by Ofcom.
- (3) References in Condition 34(2) to the publication of any matter shall be references to the publication of that matter without its being accompanied by any observations made by a person other than Ofcom and relating to the fairness complaint.
- (4) Where Ofcom has given a direction under Section 119(1) in relation to a fairness complaint and either the Licensee and/or any other person responsible for the making or the provision of the relevant programme has or have taken any supplementary action (interpreted in accordance with Section 120(5) of the 1996 Act) the Licensee shall promptly send to Ofcom a report of that action.

Section 326 of the Communications Act

- (5) The Licensee shall ensure that the provisions of the Fairness Code are observed in the provision of the Regional Channel 3 Service and in relation to the programmes included in the Regional Channel 3 Service

35. Publicising Ofcom's functions

Section 328 of the

The Licensee shall comply with such directions as may be given to

Communications Act

him by Ofcom to secure that:

- (a) the procedures which are established and maintained for handling and resolving complaints about the observance of standards as set out in Section 319 of the Communications Act; and
- (b) Ofcom's functions under Part V of the 1996 Act in relation to the Regional Channel 3 Service,

are brought to the attention of the public (whether by means of broadcasts or otherwise).

36.

Digital Switchover

The Licensee shall comply with, or procure compliance with, the requirements set out in Parts 2 and 3 of the Annex.

37.

Power of Ofcom to vary licence conditions

Section 3(4) and (5)
of the 1990 Act

Ofcom may by a notice served on the Licensee:

- (a) vary the Licensing Period provided that the Licensee consents to such variation (without prejudice to the powers and duties of Ofcom under Section 41 of the 1990 Act);

*Section 352 of the
Communications Act*

- (b) vary the Licence pursuant to Section 352(10) of the Communications Act provided that the Licensee has been given a reasonable opportunity of making representations to Ofcom concerning the proposed variation;

- (c) where the Licensee agrees to provide the Regional Channel 3 Service temporarily for an additional area determined under Section 14(2) of the 1990 Act in accordance with Section 22 thereof, vary the Licence to authorise the provision of the Regional Channel 3 Service for the additional area in question, during such period as it may determine;

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

provided always that paragraphs (a) to (c) above shall not authorise the variation of Condition 5 to the extent that that Condition requires the payment by the Licensee to Ofcom of:-

- (i) (in respect of the first complete calendar year falling within the Licensing Period) the amount of the Cash Bid;
- (ii) (in respect of each subsequent year falling wholly or partly in the Licensing Period) the amount of the Cash Bid as increased by the Appropriate Percentage; and
- (iii) (in respect of each accounting period of the Licensee) the Relevant Percentage of Qualifying Revenue.

38.

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 prepaid first class letter or was left at the proper address, as the case may be.

Section 395 of the

- (4) Notices and documents may also be served or given by

Communications Act

Ofcom on or to the Licensee and by the Licensee on or to Ofcom in electronic form subject to the requirements set out in Sections 395 and 396 of the Communications Act.

39.

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 Regional Channel 3 Service or the making of programmes for inclusion in the Regional Channel 3 Service.
- (2) The Licensee shall take appropriate steps to make those affected by the arrangements to be made in accordance with Condition 39(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 39(1), have regard to any relevant guidance published by Ofcom as revised from time to time.
- (5) This Condition 39 shall apply if the requirements of Sections 337(7) and (8) of the Communications Act are satisfied in the case of the Regional Channel 3 Service.

- (6) Ofcom will treat the Licensee's obligations under Conditions 39(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 LICENSEE'S OBLIGATIONS

40.

Force majeure

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

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

PART 4

CONDITIONS RELATING TO ENFORCEMENT OF THE LICENCE

41. Interest on late payments

- Section 4(1)(b) and (d) of the 1990 Act
- (1) Any payment due from the Licensee under or in respect of this Licence shall carry interest at three per cent. per annum over the base rate for the time being of 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 41(1) shall accrue from day to day and shall be calculated on the basis of a year of 365 days and for the actual number of days elapsed.

42. Sanctions for breach of condition

- Section 40 of the 1990 Act (see also Section 344 of the Communications Act)
- (1)
 - (a) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of the Licence and that failure can be appropriately remedied by the inclusion in the Regional Channel 3 Service of a correction or a statement of findings (or both) and Ofcom has given the Licensee a reasonable opportunity to make representations to it about the matters complained of, Ofcom may direct the Licensee to include in the Regional Channel 3 Service a correction or statement of findings (or both) in such form, and at such time or times as Ofcom may determine.
 - (b) The Licensee may, when including a correction or statement of findings (or both) in the Regional Channel 3 Service in pursuance of a direction from Ofcom, announce that he is doing so in pursuance of such a direction.
 - (2) The Licensee shall comply with any direction from Ofcom not to include in the Regional Channel 3 Service on any future occasion any programme whose inclusion in the Regional Channel 3 Service Ofcom is satisfied has involved a failure by the Licensee to comply with any Condition of

this Licence.

Section 41 of the 1990 Act (see also paragraph 3 of Part 1 of Schedule 13 to the Communications Act)

- (3) (a) If Ofcom is satisfied that the Licensee has failed to comply with a Condition of the Licence or has failed to comply with any direction given by Ofcom under the Licence and it has given him a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty.
- (b) The amount of any financial penalty imposed pursuant to Condition 42(3)(a) shall not exceed 5 per cent. of the Licensee's qualifying revenue for its last complete accounting period (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) falling within the period for which the Licensee's licence has been in force (the "**relevant period**").
- (c) Where any such penalty is imposed when the Licensee's first complete accounting period falling within the relevant period has not yet ended when the penalty is imposed, such financial penalty shall not exceed 5 per cent. of the amount which Ofcom estimates to be the Licensee's qualifying revenue for that accounting period.

Section 102 of the 1996 Act

- (4) (a) If Ofcom:
- (i) is satisfied that the Licensee has failed to comply with Condition 18(2) or Condition 18(6); and
- (ii) is not satisfied that in all the circumstances it would be unreasonable to expect the Licensee to have complied with that Condition,
- it may serve on the Licensee a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty.
- (b) If Ofcom is satisfied that, in connection with an application for consent under Condition 18(2) or Condition 18(6), the Licensee:

- (i) has provided Ofcom with information which is false in a material particular, or
- (ii) has withheld any material information with the intention of causing Ofcom to be misled,

it may serve on the Licensee a notice requiring him to pay to Ofcom, within a specified period, a specified financial penalty.

- (c) The amount of any financial penalty imposed pursuant to Condition 42(4)(a) or Condition 42(4)(b) shall not exceed the amount produced by multiplying the relevant consideration by the prescribed multiplier.

- (d) For the purpose of Condition 42(4)(c):

- (i) the “**relevant consideration**” means an amount determined by Ofcom as representing so much of any consideration paid by the Licensee as is attributable to the acquisition of the rights to televise the event in question; and

- (ii) the “**prescribed multiplier**” means such number as the Secretary of State may from time to time by order prescribe under Section 102(4)(b) of the 1996 Act.

- (e) Where any such financial penalty is imposed pursuant to Condition 42(4), Ofcom shall not impose a further financial penalty under Condition 42(3) in respect of the same circumstances.

Section 41(1)(b) and (3) of the 1990 Act

- (5) If Ofcom is satisfied that the Licensee has failed to comply with any Condition of this Licence or with any direction given to him hereunder and it has given him a reasonable opportunity of making representations to it about the matters complained of, it may serve on the Licensee a notice reducing the Licensing Period by a specified period not exceeding two years.

Section 41(4) of the 1990 Act

- (6) Where the Licence is due to expire on a particular date by virtue of a notice served on the Licensee under Condition

42(5), 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 Regional Channel 3 Service since the date of the earlier notice.

- (7) Any exercise by Ofcom of its powers under Condition 42(3), (5) and (6) shall be without prejudice to Ofcom's powers under Condition 42(1) and 42(2).
- (8) Any exercise by Ofcom of its powers under Condition 42(4) shall be without prejudice to Ofcom's powers under Condition 42(1), (2), (5) and (6).
- (9) Prior to exercising its powers under Condition 42(4) in respect of a failure to comply with Condition 18(6), Ofcom shall consult such persons (who may include competent authorities in other EEA States) as appear to Ofcom to be appropriate.

43.

Revocation

Section 42
of the 1990 Act

- (1) (a) If Ofcom is satisfied that the Licensee is failing to comply with any Condition of the Licence or with any direction under the Licence and that failure is such that, if not remedied, it would justify the revocation of the Licence, it shall serve on the Licensee a notice:
 - (i) stating that Ofcom is so satisfied;
 - (ii) specifying the respects in which, in the opinion of Ofcom, the Licensee is failing to comply with any such Condition or direction; and
 - (iii) stating that, unless the Licensee takes, within such period as is specified in the notice, such steps to remedy the failure as are so specified, Ofcom will revoke the Licence.
- (b) If at the end of the period specified in any notice served under Condition 43(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:

Section 5(1)(a), (5) and (7) of the 1990 Act

- (a) if the Licensee becomes a disqualified person in relation to the Licence by virtue of Part II of Schedule 2 to the 1990 Act or otherwise fails to comply with any requirement imposed on or in relation to the holders of regional Channel 3 licences by or under Schedule 14 to the Communications Act;

Sections 4(5)(b) and 42(5) of the 1990 Act

- (b) if Ofcom is satisfied that the Licensee:
- (i) in purporting to comply with any of the Conditions of this Licence has provided information which is false in a material particular or has withheld any material information with the intention of causing Ofcom to be misled; or
 - (ii) in connection with his application for the Analogue Licence, and by reason of which Ofcom has granted this 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 Independent Television Commission to be misled.

Section 5(5) and 5(7) of the 1990 Act

- (c) if, where the Licensee is a body, a change in the nature or characteristics of the Licensee, or any change in the persons having control over or interests in the Licensee, or any change giving rise to a disqualification under Part II of Schedule 2 to the 1990 Act or a contravention of a requirement imposed by or under Schedule 14 to the Communications Act, takes place (whether before or after the 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)(b) of the 1990 Act (d) if Ofcom ceases to be satisfied that the Licensee is a fit and proper person to hold the Licence;
- Section 3(8) of the 1990 Act (e) if the Licensee provides the Regional Channel 3 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 Regional Channel 3 Service imposed by or under Chapter 1 of Part 2 of the Communications Act; and
- Section 42(4) of the 1990 Act (f) if the Licensee ceases to provide the Regional Channel 3 Service before the end of the Licensing Period and Ofcom considers that it is appropriate to revoke the Licence.
- Section 4(1)(d) of the 1990 Act (g) if Ofcom shall revoke the assignment of frequency 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 under Section 156(1) of the Communications Act.
- Section 42(8) of the 1990 Act (3) (a) Ofcom shall before serving any notice revoking the Licence under Conditions 43(1) and (2), notify the Licensee of the matters constituting its grounds for revoking the Licence and give the Licensee a reasonable opportunity to make representations to it about those matters.
- (b) In a case falling within Condition 43(2)(c) where the change is one falling within Section 5(6A) of the 1990 Act, before serving a notice revoking the licence, Ofcom shall also give the Licensee an opportunity of complying with Part 1 of Schedule 14 to the Communications Act within a period specified in the

notice provided under Condition 43(3)(a).

Section 18(3) of the 1990 Act (see also paragraph 2 of Part 1 of Schedule 13 to the Communications Act

- (4) (a) Where the Licence is revoked pursuant to any provision of Part I of the 1990 Act, or is treated as being revoked under Section 145 of the 1996 Act, the Licensee shall:
- (i) within such period as Ofcom shall notify to him, pay to Ofcom a specified financial penalty; and
 - (ii) pay the then outstanding portion, if any, of the Cash Bid (or of the Cash Bid as increased by the Appropriate Percentage) for the calendar year in question.

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

- (b) Where any such penalty is imposed before the end of the first complete accounting period of the Licensee to fall within the period for which the Licence is in force, the maximum penalty imposed shall be whichever is the greater of:
- (i) £500,000 (or such other sum as the Secretary of State may by order specify under paragraph 9 of Part 1 of Schedule 13 to the Communications Act); and
 - (ii) 7 per cent. of the amount which Ofcom estimates would have been the qualifying revenue (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) for the Licensee's first complete accounting period falling within the period for which the Licence would have been in force.
- (c) Save where Condition 43(4)(b) above applies, where the Licence is revoked or treated as being revoked in any other case set out in Condition 43(4)(a), the maximum penalty shall be whichever is the greater of:

- (i) £500,000 (or such other sum as the Secretary of State may by order specify under paragraph 9 of Part 1 of Schedule 13 to the Communications Act); and
- (ii) 7 per cent. of the qualifying revenue (as determined in accordance with Section 19(2) to (6) of the 1990 Act and Part 1 of Schedule 7 to that Act) for the Licensee's last complete accounting period falling within the period for which his licence has been in force.

Section 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 TO
CHANNEL 3
REGIONAL
LICENCE: BORDER**

THE REGIONAL CHANNEL 3 SERVICE

ANNEX: PART 1

**REQUIREMENTS FOR THE PROVISION AND CONTENT
OF THE REGIONAL CHANNEL 3 SERVICE**

1. Definitions and interpretation

In the following paragraphs unless the context otherwise requires:-

“**hours/minutes**” refers to the number of hours/minutes per calendar year or per week averaged over a calendar year that would be transmitted, measured in “slot times” (that is, including advertising breaks, programme trailers and presentation material during and at the end of programmes) except for material under 10 minutes in length which is measured in “running times” (that is, excluding advertising breaks, programme trailers and presentation material).

2. Independent productions

The Licensee must ensure that in each calendar year not less than 25 per cent of the total amount of time allocated to the broadcasting of qualifying programmes is allocated to a range and diversity of independent productions. The range must be in terms of the cost and types of programme.

3. Original productions

The Licensee must ensure that at least 65 per cent by time of programmes broadcast are originally produced or commissioned for any or all of the regional Channel 3 services and that at least 85 per cent by time of programmes in peak viewing time are originally produced or commissioned.

4. News

The Licensee must broadcast a total of at least 365 hours per calendar year of high quality national and international news

programmes between 9.25 am and midnight of which at least 125 hours must be shown in peak viewing time. Programmes must be shown at intervals throughout the day and appropriate news programmes must be shown at weekends in peak viewing time and out of peak viewing time and during public holiday periods.

5. Current affairs

The Licensee must broadcast a total of at least 78 hours per calendar year of high quality national and international current affairs programmes between 9.25 am and midnight of which at least 35 hours must be shown in peak viewing time.

6. Regional production

At least 40 per cent of expenditure on originated network programmes in each calendar year shall be allocated to the production of programmes produced outside the M25 area and must be referable to a suitable range of production centres outside the M25 area. At least 33 per cent of originated network programme hours must be made outside the M25 area and will constitute a range of different types of programmes.

7. Regional and Sub-regional programmes

- (1) The Licensee shall ensure that the Licensed Service includes the total amount specified below of first-run regional and sub-regional programmes to be transmitted between 9.25am and 12.30am.

Channel 3 Regional Requirements

Weekly Average (hours and minutes over a Calendar year)

News	4:30
Current Affairs	0:08
Other	1:00
Total	5:38

The Licensee shall include in the Licensed Service in the Selkirk, Dumfries and Galloway opt-out, and in the Caldbeck opt-out a weekly average of at least 40 minutes of news programmes of particular interest to persons living in these respective opt-outs.

- (2) In delivering the requirements set out in paragraph 7(1) above, the Licensee shall ensure that:
 - (a) save where affected by Bank Holidays and Christmas and where early evening news patterns may be disrupted by live sporting events of national importance, at least 2 hours 30 minutes of the total amount of news and at least 45 minutes of programmes other than news are transmitted per week averaged over a calendar year, in peak viewing time; and
 - (b) at least 23 minutes of regional programmes other than news are transmitted per week averaged over a calendar year, during the periods 5.00pm – 6.00pm and 10.30pm – 11.30pm.
- (3) In each calendar year at least 90 per cent of all regional programmes broadcast by time must be made within the Licensed Area.

8. Subtitling, sign language and audio description

From the beginning of 2010, the Licensee must ensure that at least 90 per cent of broadcast output which is not excluded is subtitled; 10 per cent is audio described; and 5 per cent is signed. The Licensee must achieve such interim targets for subtitling, sign language and audio description as are notified to him in writing by Ofcom or set out in the Code on Subtitling, Sign Language and Audio Description.

REQUIREMENTS RELATING TO DIGITAL SWITCHOVER

9. 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;
- (b) Government; and
- (c) with such other parties, as necessary, or as notified to him by Ofcom,

in the administration, organisation or implementation of Digital Switchover in the United Kingdom.

10. Annual report and information relating to Digital Switchover

- (1) Without prejudice to the requirements of Conditions 25 and 26 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 Qualifying Regional Channel 3 Service in the Digital Licensed Area) and Condition 36 of the Schedule requiring compliance with this Part 2 and with Part 3 of the Annex, and 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.
- (2) The Licensee shall provide the first such report to Ofcom by the 31 December 2005 and shall provide a subsequent report annually thereafter on or by the anniversary of that date until the Relevant Digital Switchover Date or until such earlier date as Ofcom may notify to the Licensee for submission of the last such annual report.
- (3) 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.

11.

Communications with viewers

- (1) The Licensee shall use his reasonable endeavours to ensure that all viewers of the Analogue Regional Channel 3 Service are:
 - (a) informed of the timetable for Digital Switchover, the regional coverage area which they are in and the Relevant Digital Switchover Date, and the Licensee shall commence providing such information to viewers as regards this date at least two years in advance of the Relevant Digital Switchover Date; and
 - (b) in the nine months leading up to the Relevant Digital Switchover Date provided with information about how they may receive the Qualifying Regional Channel 3 Service both before and after the Relevant Digital Switchover Date, including how to receive the Licensed Service in digital form.
- (2) The Licensee shall agree in writing with Ofcom, at least two years and six months before the Relevant Digital Switchover Date, a plan to fulfil the obligations required under paragraph 11(1) above and shall carry out all activities required in accordance with that plan.

ANNEX: PART 3

DIGITAL SWITCHOVER TIMETABLE

12. 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 subsequent to the Commencement Date.

13. Region by region sequence for Digital Switchover

Digital Switchover shall take place in a sequence based upon the conversion from analogue to digital television broadcasting of the main stations and dependent relays listed in Part 5 of this Annex by the dates and in the order to be set out in a table for main stations across all UK regions to be inserted in this Part 3 of the Annex.

ANNEX: PART 4

DAYS AND TIMES OF BROADCASTING

The Regional Channel 3 Service shall be broadcast seven days a week and throughout the day except for the time between 6.00am and 9.25am each day.

**ANNEX: PART 5 DETAILS OF ANALOGUE BROADCASTING STATIONS -
MAIN STATIONS AND DEPENDENT RELAYS**

<u>Station Name</u> (Main stations are listed in bold capitals with their dependent relays listed below)	<u>Grid</u> <u>Reference</u>	<u>UHF</u> <u>Channel</u>	<u>Aerial</u> <u>Height</u> (in metres above ordinance datum (sea level))	<u>Power</u> (Watts)
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**BORDERS AND
ISLE OF MAN**

CALDBECK	NY 299425	28	600	500,000
Caldbeck Scottish	NY 299425	24	499	20,000
Ainstable	NY 539466	47	235	100
Ballantrae	NX 089827	61	88	6.6
Barskeoch Hill	NX 810616	59	230	2000
Bassenthwaite	NY 206305	49	139	160
Beary Peark	SC 295832	43	326	250
Bleach Green HP	NX 984199	60	149	10
Bleach Green VP	NX 984199	60	149	12.5
Cambret Hill	NX 524578	41	414	14000
Coniston	SD 327966	24	307	90
Creetown	NX 432559	61	72	32
Crosby	NY 619152	60	237	6
Ravensworth				
Crosthwaite	SD 437900	60	97	12
Dentdale	SD 727854	60	284	52
Douglas	SC 373746	48	195	2,000
Dumfries South	NX 970741	46	41	23
Eskdale Green	SD 135997	25	82	8
Foxdale	SC 292778	23	186	8
Glenluce	NX 203569	61	134	15
Glenmaye	SC 232803	61	124	20
Glenridding	NY 395172	57	178	8
Glenridding Link (Glencoyne)	NY 386183	24	195	4

Gosforth	NY 069012	61	91	50
Grasmere	NY 339056	60	216	20
Greystoke	NY 450299	60	228	11.5
Haltwhistle	NY 674628	59	241	2,000
Hawkshead	SD 342959	23	281	61
Kendal	SD 540912	61	222	2,000
Kendal Fell	SD 509930	43	141	16
Keswick	NY 278224	24	226	120
Kimmeragh	NX 450000	60	102	40
Kirkby Stephen	NY 777082	60	209	12
Kirkcudbright	NX 686506	24	62	6
Langholm	NY 358830	60	308	20
Laxey	SC 437836	61	140	25
Lorton	NY 155278	60	219	50
Lowther Valley	NY 520199	46	259	26
Millthorp	SD 659926	56	234	15
Minnigaff	NX 406661	29	67	6
Moffat	NT 077050	42	169	6.5
New Galloway	NX 615788	23	199	100
Orton	NY 618071	43	274	31
Pinwherry	NX 183876	25	192	56
Pooley Bridge	NY 477234	46	232	13.2
Port St Mary	SC 206678	61	125	250
PortPatrick	NX 007545	61	114	6
Ravensdale	NY 733047	60	355	11
St Bees	NX 967115	61	35	12
Sedbergh	SD 607879	43	261	500
Stranraer	NX 111632	60	240	250
Thornhill	NX 855891	60	375	500
Threlkeld	NY 313256	60	259	11
Union Mills	SC 343769	52	146	12.3
Whitehaven	NX 992123	43	183	2,000
Windermere	SD 383980	41	251	500
Workington	NY 001277	61	56	10
SELKIRK	NT 500294	59	518	50,000
Berwick upon Tweed	NT 980547	24	159	38
Bonchester Bridge	NT 589114	49	200	6
Clovenfords	NT 444351	24	172	5
Eyemouth	NT 947599	23	241	2,000
Galashiels	NT 507360	41	297	100
Hawick	NT 509147	23	198	50
Innerleithen	NT 325368	61	272	80
Jedburgh	NT 661224	41	160	160

Lauder	NT 506502	25	279	11.2
Peebles	NT 228416	25	401	100
Stow	NT 448445	23	304	5.6
Yetholm	NT 836283	41	230	6