

LCN Allocation Terms and Conditions

(3rd April 2017)

1. Application for Allocation

- 1.1 Digital UK Limited, a company incorporated in England and Wales (registered no. 5422613), whose registered office is at 2nd Floor, 27 Mortimer Street, London, W1T 3JF ("**Digital UK**"), manages the digital terrestrial television platform in the United Kingdom (the "**Platform**").
- 1.2 These terms and conditions ("**Terms**") set out the terms upon which content providers wishing to maintain a channel on the Platform may apply for and be allocated a logical channel number ("**LCN**") within the electronic programme guide ("**EPG**") for the Platform by Digital UK and which will apply to the management of the Platform. References in these Terms to the "**parties**" are to you and Digital UK.
- 1.3 By making an application to Digital UK for allocation of an LCN in respect of a particular channel (the "**Channel**"), confirming your wish for the Channel to be included in the EPG for the Platform, or broadcasting the Channel using an LCN, you agree to be bound by these Terms in relation to such Channel. Digital UK agrees to consider your application and, if the preconditions are met and such allocation is appropriate, to allocate an LCN on the Platform for the Channel (the "**Channel LCN**"), and to continue to allocate the Channel LCN subject to your compliance with these Terms. These Terms shall apply equally to all persons with a Channel having a Channel LCN allocated.
- 1.4 You hereby warrant that the information set out in your application for allocation is correct, accurate, and complete in all respects.

2. Preconditions for Allocation

- 2.1 In order to be allocated a Channel LCN, you must first:
- (a) have made an application for a Channel LCN in the format reasonably specified by Digital UK, this will generally be by completing an application form;
 - (b) have an agreement in place with a multiplex operator to secure the necessary capacity to make the Channel available on the Platform (a "**Carriage Agreement**");
 - (c) hold a broadcasting licence (or equivalent authorisation) permitting the broadcast of the Channel on the Platform (a "**Broadcast Licence**");
 - (d) provide documentary evidence of points (b) and (c) above if requested to do so; and
 - (e) provide all such information as Digital UK reasonably requests, in order for Digital UK to properly consider the allocation of a Channel LCN.

3. LCN Policy

- 3.1 Under the terms of its licence, Digital UK is obliged to comply with Ofcom's code of practice on electronic programme guides and has therefore published its own policy on the allocation of LCNs on the Platform, which it may vary from time to time (the "**LCN Policy**"). You hereby acknowledge and agree that you have read and understand Digital UK's LCN Policy which is found at

www.digitaluk.co.uk/lcnpolicy. References in the LCN Policy to the 'Digital UK LCN Agreement' are references to the agreement formed by these Terms.

- 3.2 You acknowledge and agree that you have no right or entitlement to any particular LCN and that the initial allocation, continued allocation, and cessation of allocation ("vacation") of LCNs shall be in line with the LCN Policy.

4. Your Principal Obligations

- 4.1 You shall maintain in place, and comply with the conditions of, all consents, clearances and licences required from third parties, including owners and licensees of intellectual property rights in any work incorporated in the Channel, governmental authorities and regulatory bodies and authorities, in each case in respect of the Channel or otherwise required for the purpose of the performance by you of your obligations hereunder (including all necessary music, mechanical transfer and performing rights clearances).
- 4.2 You further agree that you shall continue to maintain in place and comply with your Carriage Agreement and your Broadcast Licence, and promptly notify Digital UK in the event that either expires (without simultaneous renewal) or terminates.
- 4.3 You agree to pay the annual fee within thirty (30) days of the date of invoice by Digital UK. The annual fee is one pound sterling (£1.00) if demanded by Digital UK.
- 4.4 You agree to provide such information regarding the Channel as Digital UK may reasonably require from time to time, which shall be used for the purposes of Channel LCN allocation.
- 4.5 You agree at all times to maintain legal liability and errors and omissions insurance with a reputable insurer on a claims made basis in an amount adequate to meet your potential liability pursuant to these Terms (and in any event not less than £1 million per claim or series of related claims). You agree to provide documentary evidence of such insurance upon request.
- 4.6 You agree to notify Digital UK as soon as reasonably practicable if you intend permanently to cease transmission of the Channel on the Platform.

5. Allocation of Replacement LCNs

- 5.1 You shall give written notice to Digital UK of any intended changes to the characteristics of the Channel as set out in the Broadcast Licence or your original allocation application for the Channel LCN not less than six (6) weeks before the intended implementation of any such changes. This will allow Digital UK to determine whether the changes require a replacement Channel LCN to be allocated, and allow time for the necessary application process should a replacement Channel LCN be so required.
- 5.2 In the event a replacement Channel LCN (whether in the same or a different genre) is required to be allocated pursuant to Clause 5.1, Digital UK will use reasonable endeavours to notify you within fifteen (15) days of receipt of your notice. You may be required to submit further information in relation to changes to the Channel, which may include the completion of an application where a replacement Channel LCN is required.
- 5.3 In the event that Digital UK considers that the Channel has evolved into a new channel (except as permitted in paragraphs 6.7-6.9 of the LCN Policy), it may notify you in writing and you must
- (a) respond within four (4) weeks after the date of the notice; and

(b) restore the Channel to the extent necessary to Digital UK's satisfaction within twenty-four (24) weeks of the written notice,

otherwise Digital UK may vacate the Channel LCN, in which case a replacement LCN will be required.

6. Channel Content

6.1 You shall ensure that the content on the Channel (including any metadata):

- (a) is appropriate for viewing on the Platform at the time and in the manner that it is available for viewing;
- (b) complies with all laws, regulations, rules, and codes of practice in relation to the Channel content, and your Broadcast Licence;
- (c) does not infringe the rights of any person, including (but not limited to) rights of privacy or confidentiality, or intellectual property rights; and
- (d) does not constitute a criminal offence, contempt of court, or breach of parliamentary privilege.

6.2 You acknowledge and agree that Digital UK exercises no control over the content or metadata (see Clause 8 below) of your Channel. You therefore hereby indemnify Digital UK against any and all loss, damage and/or expense (including legal costs) suffered or incurred by Digital UK arising out of or in connection with the content or metadata of the Channel, with the exception of losses, damage, or expenses to the extent they arise directly from Digital UK's wilful misconduct. Digital UK shall use its reasonable endeavours to avoid and mitigate such loss, damage, and/or expense.

6.3 In the event that any loss, damage and/or expense referred to in Clause 6.2 arises out of or in connection with a claim brought by a third party, Digital UK agrees to:

- (a) promptly notify you once it has become aware of the claim;
- (b) not make any admission or offer of settlement without your prior consent;
- (c) grant you control of the defence of the claim upon request provided that you:
 - (i) act efficiently and without undue delay; and
 - (ii) do not settle or in any way compromise the defence of the claim without Digital UK's prior consent (not to be unreasonably withheld or delayed); and
- (d) provide you with reasonable assistance (at your cost) in defending or settling the claim.

7. Geography

7.1 You acknowledge that where your Channel is specified to be restricted to a particular geographical region, Digital UK may allocate the same LCN to other channels in other regions.

8. Metadata

8.1 You shall ensure that all service information and/or programme service data associated with the Channel which is provided to Digital UK (by you or on your behalf) for identification and/or decoding purposes ("**Metadata**"):

8.1.1 is "**Editorially Compliant**" which means that it:

- (a) is correct and constantly updated where necessary to allow for schedule or content changes;
- (b) changes accurately at programme boundaries;
- (c) is comprehensive without any blank or null fields;
- (d) is provided in English (or the relevant local broadcast language) without spelling and/or grammatical errors; and
- (e) contains no reference to any other television platforms (for the avoidance of doubt, this does not apply to the internet);

8.1.2 meets the minimum technical requirements by being:

- (a) presented in a technical format specified in the schedule interface specification and interface control document provided by Digital UK (as updated from time to time), or otherwise by Digital UK in its reasonable advance written instructions;
- (b) delivered using a system which is constantly available to support any updates required to ensure it is Editorially Compliant;
- (c) provided not less than ten (10) days prior to the initial transmission of the related programme (unless otherwise agreed);
- (d) presented to the input interface point identified by Digital UK from time to time in its reasonable advance written instructions; and
- (e) free from viruses, worms, 'Trojan horses' or any other destructive or contaminating elements; and

8.1.3 is provided in accordance with Digital UK's reasonable instructions giving reasonable advance notice.

8.2 You hereby grant to Digital UK a royalty free sub-licensable licence to use the Metadata to the extent necessary for the purposes of these Terms. You also consent to Digital UK passing standard metadata to YouView TV Limited and Freesat (UK) Limited for non-broadcast delivery to televisions, set-top boxes, and online devices (such as mobile applications). Any intellectual property rights in the Metadata shall at all times remain your property.

9. Temporary Suspension

By you:

9.1 Digital UK understands that from time to time you may need to temporarily suspend the broadcast of your Channel for up to twelve (12) weeks without wishing the Channel LCN to be vacated. You

may do this provided that you notify Digital UK in writing before broadcast of the Channel is suspended and comply with paragraph 2.4 of the LCN Policy. For the avoidance of doubt (and without limitation), the broadcast of an information screen (without access to content) or a 'slate' shall be deemed to constitute a suspension.

- 9.2 In the event your suspension exceeds twelve (12) weeks then Digital UK may vacate the Channel LCN and reallocate it to another channel. Alternatively, if requested to do so, Digital UK may extend your permitted suspension period at its sole discretion.

By Digital UK:

- 9.3 Digital UK may temporarily suspend the Channel LCN if:
- (a) a claim to which the indemnity at Clause 6.2 relates is made and Digital UK considers that suspension is appropriate to mitigate the claim, until such time as the claim is settled, waived or otherwise dismissed;
 - (b) you are in material breach of these Terms and such breach is capable of remedy, until such time as the breach is remedied or the Channel LCN has been vacated; or
 - (c) it is unable reasonably to continue to allocate the Channel LCN due to any circumstance or event beyond its reasonable control ("**force majeure**").

10. LCN Vacation

- 10.1 In the event that:
- (a) your Carriage Agreement expires or terminates and does not coincide with the commencement of a replacement Carriage Agreement, and you have not notified Digital UK that the Channel is to be suspended under Clause 9.1 above;
 - (b) your Broadcast Licence is withdrawn or expires and is not renewed;
 - (c) Digital UK is advised by a competent regulatory or governmental body that vacation is required or Digital UK reasonably believes that the continued allocation of the Channel LCN may be inconsistent with any of the regulatory obligations imposed on Digital UK;
 - (d) you are in irremediable material breach of these Terms;
 - (e) you are in material breach of these Terms and fail to remedy such breach within fourteen (14) days of receipt of written notice of such breach; or
 - (f) you suffer an Insolvency Event (as defined below),

Digital UK may vacate the Channel LCN immediately, and shall notify you as soon as reasonably practicable of the reason for such vacation. Persistent breaches may be considered to be a material breach.

"Insolvency Event" means (i) passing a resolution for your winding up or a court of competent jurisdiction making an order for your winding up (other than for the purposes of a bona fide internal amalgamation or reorganisation); (ii) the making of an administrative order in relation to you or the appointment of a receiver over, or an encumbrancer taking possession of or selling, all or any

- material part of your assets; or (iii) your making an arrangement or composition with your creditors or making an application to a court of competent jurisdiction for protection from your creditors.
- 10.2 In the event that Digital UK is no longer reasonably able to continue allocation of the Channel LCN (for example, due to an event of force majeure), then it may vacate the Channel LCN by giving you not less than three (3) months written notice provided always that Digital UK shall only exercise this right in a fair, reasonable and non-discriminatory manner.
- 10.3 You may require Digital UK to vacate the Channel LCN at any time by giving not less than one (1) month advance written notice.
- 10.4 If a replacement LCN is required for the Channel (such as under Clause 5 above), then Digital UK may vacate the Channel LCN and allocate another LCN. You must make a new application in such circumstances.
- 10.5 Vacation of the Channel LCN, however it occurs, shall have the effect of terminating the agreement between the parties made upon these Terms in respect of the Channel, and the Channel will be removed from the EPG for the Platform.
- 10.6 Notwithstanding vacation of the Channel LCN, you agree that the following obligations will continue for a period of six (6) years from such vacation:
- (a) Clause 4.5 (your obligation to maintain adequate insurance);
 - (b) Clause 6.2 (your indemnity in relation to Channel content);
 - (c) Clause 11 (the limitations of liability under these Terms);
 - (d) Clause 14 (our mutual obligations of confidentiality); and
 - (e) Clause 16 (the miscellaneous provisions).

11. Liability

- 11.1 Each party's obligations and liabilities to the other arising out of or in connection with these Terms shall be only those expressly set out in these Terms together with those obligations which are implied by law to the extent that they cannot by law be restricted, limited or excluded.
- 11.2 Neither party excludes or limits liability to the other for fraud, fraudulent misrepresentation, death or personal injury resulting from its own negligence, or given by way of indemnity in these Terms.
- 11.3 Subject to Clause 11.2, neither party shall be liable to the other or any other person arising out of or in connection with these Terms for:
- (a) loss or damage which as a matter of English law is considered indirect or consequential loss or damage, howsoever caused or arising, unless such loss or damage is specifically set out in these Terms; or
 - (b) loss of profits, loss of business, loss of goodwill or anticipated savings.
- 11.4 Subject to Clause 11.2, the liability of either party to the other for matters arising out of or in connection with these Terms, whether arising from tort (including negligence), breach of contract, misrepresentation or otherwise is limited to ten thousand pounds sterling (£10,000).

12. Amendments

- 12.1 Digital UK reserves the right to prepare and publish amended terms ("**Replacement Terms**") on its website, and notify you of the same. For the avoidance of doubt, the Replacement Terms will apply equally to all persons that have LCNs in the EPG for the Platform.
- 12.2 You acknowledge and agree that the Replacement Terms shall apply and replace these Terms effective from the date one (1) month following their publication on Digital UK's website.
- 12.3 You are entitled to require that the Channel LCN is vacated if, having reviewed the Replacement Terms, you do not wish to accept them. You must do this by giving advance notice in writing in accordance with Clause 10.3 within the one (1) month period before the Replacement Terms become effective. Provided that the notice given in accordance with Clause 10.3 is not less than one (1) month and not greater than two (2) months, the previous Terms (not the Replacement Terms) shall continue to apply in relation to the Channel LCN until it is vacated.

13. Assignment

- 13.1 The agreement incorporating these Terms is personal to you, and you may not assign, subcontract, novate, or otherwise dispose of any right, obligation or liability under these Terms. Any purported disposal shall be void.
- 13.2 Digital UK may assign, subcontract, novate, or otherwise dispose of its rights and obligations under these Terms without your prior consent where it is legally possible to do so.
- 13.3 In the event that you wish to transfer ownership of your Channel to another person, you may request that Digital UK continues to allocate the Channel LCN to the Channel following such transfer and provided that:
- (a) there is no break in service on the Channel;
 - (b) the recipient of the Channel complies with the pre-conditions listed at Clause 2; and
 - (c) Digital UK gives its prior written consent (not to be unreasonably withheld),

Digital UK will continue to so allocate the Channel LCN. Where Digital UK agrees to continue to allocate the Channel LCN, on the date the Channel is transferred your rights and obligations in relation to the Channel LCN under these Terms shall fall away, and the transferee of the Channel shall be bound by these Terms.

- 13.4 For the avoidance of doubt, the Channel LCN is not your asset and you agree not to represent it as such. LCNs are not transferable. Continuing to allocate the Channel LCN to a Channel which is transferred shall not be considered to be a transfer of an LCN.

14. Confidentiality

- 14.1 "**Confidential Information**" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") at any time, other than information which is in (or comes into) the public domain other than as a result of the Receiving Party's breach of an obligation of confidentiality.
- 14.2 Subject to Clauses 14.3 and 14.4, the Receiving Party shall:

- (a) not at any time use Confidential Information other than in connection with performing its obligations under these Terms;
 - (b) not at any time disclose Confidential Information to any person without prior the written consent of the Disclosing Party; and
 - (c) at all times use all reasonable endeavours to prevent the unauthorised use or disclosure of Confidential Information.
- 14.3 The Receiving Party may disclose Confidential Information to any of its directors, other officers, employees, contractors, professional advisers and relevant subcontractors (each a "**Recipient**") to the extent that disclosure is necessary for the Receiving Party to perform its obligations under these Terms provided that the Receiving Party shall ensure that each Recipient is subject to an enforceable obligation to keep Confidential Information confidential.
- 14.4 Clause 14.2 shall not apply to Confidential Information which:
- (a) can be shown to have been known to the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
 - (b) is required to be disclosed by law to Ofcom or is prudent to disclose to them or which they require to be disclosed to them; or
 - (c) is required to be disclosed by law or any competent regulatory body, taxation authority, governmental department or pursuant to the rules of any stock exchange on which the shares of the Receiving Party are listed.
- 14.5 In order to allocate a Channel LCN, it will be necessary for Digital UK to share certain information with relevant third parties (such as multiplex operators and Freeview), and you consent to such disclosure by Digital UK as it deems appropriate (acting reasonably).
- 15. Governance**
- 15.1 You agree to appoint an operational contact for all operational issues relating to the Channel LCN and to notify their contact details to Digital UK as appropriate. In the event your operational contact is to change, you agree to notify Digital UK in advance.
- 15.2 Digital UK's contact for both operational and non-operational issues is the 'Channel Relationship Executive' whom may be contacted at:
- LCN@digitaluk.co.uk***
- 15.3 Digital UK agrees to notify you as soon as reasonably practicable in the event that it becomes aware that the Channel LCN does not appear, or appears incorrectly, on the EPG, and shall use reasonable endeavours to rectify any fault as soon as reasonably practicable. Likewise, you shall notify Digital UK as soon as reasonably practicable if you become aware of such fault.
- 15.4 A notice under or in connection with these Terms shall only be valid if it is in writing, in the English language, and (i) delivered personally; or (ii) sent by first class post pre-paid recorded delivery (and air mail if overseas), to the party's operational contact at the registered office address for the parties as set out above or the e-mail specified by the parties from time to time.

15.5 In the absence of evidence of earlier receipt, a notice delivered in accordance with Clause 15.4 is deemed given: (i) if delivered personally, when left at the address for the parties set out above; or (ii) if sent by mail, two days after posting it.

16. Miscellaneous Provisions

16.1 These Terms and any dispute arising out of or in connection with them shall be governed by and construed in accordance with English law. Each party hereby irrevocably submits to the exclusive jurisdiction of the English courts to settle any such dispute.

16.2 The agreement between the parties upon these Terms is not intended for the benefit of and shall not be enforceable by any other person.

16.3 The invalidity, illegality or unenforceability of any Term does not affect or impair the continuation in force of the remainder of the other Terms.

16.4 The failure to exercise or delay in exercising a right or remedy provided by these Terms or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these Terms or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

16.5 To assist in ensuring that LCNs are allocated on a fair, reasonable, and non-discriminatory basis, there shall be no variation to these Terms other than pursuant to Clause 12.

16.6 Once you have accepted these Terms by making your application or otherwise indicating your wish for allocation or continued allocation of an LCN, they shall constitute the entire agreement between the parties and shall supersede and extinguish any prior agreement, statement, representation, or understanding between the parties relating to the subject matter hereof.