

Annex L

Deed for Regulation of Broadcast Advertising

between

Office of Communications
as Ofcom

The Advertising Standards Authority (Broadcast) Limited
as ASAB

The Broadcast Committee of Advertising Practice Limited
as BCAP

and

**The Broadcast Advertising Standards Board of Finance
Limited**
as BASBOF

relating to

the self-regulatory system for broadcast advertising
content

Simmons & Simmons

CityPoint One Ropemaker Street London EC2Y 9SS
T +44 (0)20 7628 2020 F +44 (0)20 7628 2070 DX Box No 12

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THIS DEED is dated 31 October 2004 and made

BETWEEN:

- (1) **OFFICE OF COMMUNICATIONS**, ("Ofcom"), having its principal offices at Riverside House, 2a Southwark Bridge Road, London SE1 9HA;
- (2) **THE ADVERTISING STANDARDS AUTHORITY (BROADCAST) LIMITED**, ("ASAB"), a company limited by guarantee incorporated under the Companies Act 1985 registered in England with number 05130991 whose registered office is at Brook House, 2 Torrington Place, London WC1E 7HW;
- (3) **THE BROADCAST COMMITTEE OF ADVERTISING PRACTICE LIMITED**, ("BCAP"), a company limited by guarantee incorporated under the Companies Act 1985 registered in England with number 05126412 whose registered office is at Brook House, 2 Torrington Place, London WC1E 7HW; and
- (4) **THE BROADCAST ADVERTISING STANDARDS BOARD OF FINANCE LIMITED**, ("BASBOF"), a company limited by guarantee incorporated under the Companies Act 1985 registered in England with number 05017678 whose registered office is at Bloomsbury House, 74/77 Great Russell Street, London WC1B 3DA (parties (2) to (4) above together hereinafter referred to as the "Co-regulatory Parties").

Background:

- (A) Ofcom intends to contract out the regulation of broadcast advertising content under certain sections and regulations (as detailed in the Authorisation (as defined below)) of the Communications Act 2003 (the "Act"), the Control of Misleading Advertisements Regulations 1998 and the Medicines (Monitoring of Advertising) Regulations 1994 to certain persons and has been given the power to do so pursuant to Sections 69 and 77 of the Deregulation and Contracting Out Act 1994 (the "DCOA").
- (B) Ofcom has given the Authorisation to ASAB and BCAP setting out the statutory functions to be exercised and the limitations to, and the conditions on, the exercise of such functions by ASAB and BCAP.
- (C) Under a memorandum of understanding dated May 2004 between Ofcom and the Co-regulatory Parties (the "MOU") Ofcom and the Co-regulatory Parties set out (in non-legally binding terms) their understanding and agreement as to the manner in which the Co-regulatory Parties would assume responsibility for, and undertake certain functions in relation to, the regulation of broadcast advertising content.
- (D) The MOU remains in place (still in non-legally binding terms) and is not superseded or replaced by this Deed, save to the extent expressly set out herein. Ofcom, ASAB, BCAP and BASBOF recognised in the "Foreword" section of the MOU that certain duties or obligations which are to have legally binding effect would be set out in separate legally binding contracts and the purpose of this Deed is to set out such legally binding duties and obligations.
- (E) It is intended that the System (as defined below) should be funded by means of a voluntary levy on broadcast advertising to be collected by BASBOF as contemplated in the MOU.

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- (F) This Deed sets out the terms and conditions upon which the Co-regulatory Parties have agreed to operate the System.

IT IS AGREED as follows:-

1. **Definitions and Interpretation**

- 1.1 In this Deed, unless the context otherwise requires, the following expressions shall have the meanings identified below:

"Activities" means those functions carried on by Ofcom which are from the Start Date to be provided by the Co-regulatory Parties in operation of the System;

"ASA" means The Advertising Standards Authority Limited, a company limited by guarantee incorporated under the Companies Act 1948 registered in England with number 733214 whose registered office is at 2 Torrington Place, London, WC1E 7HW;

"Associate" means an associated company (within the meaning of section 416(1) Income and Corporation Taxes Act 1988) of ASAB or any Co-regulatory Party;

"Authorisation" means the authorisation taking effect on 1 November 2004 granted by Ofcom to ASAB and BCAP pursuant to the DCOA Order and as amended from time to time;

"BSC" means the Broadcasting Standards Commission;

"Codes" means the Existing Codes, the New Ofcom Rules and the New CRP Rules;

"Confidential Information" means, in respect of any party, all information (whether commercial, technical, financial, operational or otherwise and in any form) which is made available by any party to any other party (and whether or not designated as "confidential information" by the disclosing party);

"Contractor's Employees" means the employees (whether of the Co-regulatory Parties or otherwise) who are wholly or mainly assigned to the provision of the System immediately prior to the cessation of the provision of the System by the Co-regulatory Parties;

"Contracted Out Ofcom Rights" means the functions which Ofcom has authorised ASAB and BCAP to perform pursuant to the Authorisation;

"Co-regulatory Party" means any one of the Co-regulatory Parties;

"Costs" means all losses, liabilities, obligations, costs (including legal costs), expenses (including taxation), actions, proceedings, claims, demands and awards including without limitation, arrears of salary, any payments in lieu of notice, holiday pay, redundancy payments, protective awards, compensation for wrongful or unfair dismissal or discrimination;

"Database" means the Existing Database, the New Ofcom Database and the New CRP Database and (for the avoidance of doubt) all Personal Data contained therein;

"Data Protection Act" means the Data Protection Act 1998;

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"Data Protection Legislation" means the Data Protection Act, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the EU Data Protection Directive, the Freedom of Information Act 2000, the Regulation of Investigatory Powers Act 2000 and all other applicable laws, codes and regulations whatsoever relating to the processing of personal data and privacy as amended from time to time;

"Deed" means this deed and its schedules, as amended from time to time;

"DCOA Order" means the Contracting Out (Functions relating to Broadcast Advertising) and Specification of Relevant Functions Order 2004;

"Deficit" means (whenever the calculation is undertaken for the purposes of this Deed) the amount (if any) by which the total aggregate cumulative Revenues (as at the date of the calculation) are less than the total aggregate cumulative amount (as at the date of the calculation) of (i) the Initial Cost Outlay and (ii) the Operating Costs and (iii) the Torrington Place Costs, but shall exclude:-

(a) the Premises Termination Costs which shall be dealt with in accordance with Part 3 of Schedule 3;

(b) any costs suffered or incurred by a Co-Regulatory Party and reimbursed by Ofcom as a result of clause 5.4;

(c) the cost of any remedial action which a Co-Regulatory Party is required to carry out in accordance with clause 9.8;

(d) any cost suffered or incurred by a Co-Regulatory Party under paragraph 1(D) of part 1 of schedule 3; and

(e) any amount which is actually paid by Ofcom to BASBOF (on behalf of the Co-regulatory Parties) under clause 2.4;

"Effective Date" means the date of execution of this Deed;

"Existing Codes" means the ITC Advertising Standards Codes (September 2002); the ITC Advertising Guidance Notes 1 to 5; Section 4 ITC Rules on the Amount and Scheduling of Advertising; Part C of the ITC Code for Text Services; the Guidance for Broadcasters on the Regulation of Interactive Television Services; the RA Advertising and Sponsorship Code (excluding paragraphs 2 and 3 of Section One) and any successors to the same as at the Start Date;

"Existing Database" means the Ofcom database at the Start Date as described at schedule 1;

"Existing Materials" means any documented research, decisions and/or adjudications (whether of Ofcom or the ITC or the Radio Authority, or the BSC), guidance notes, publicity materials, methodologies or processes, documentation or other materials in whatever form, including any reports, specifications, business rules or requirements, operations manuals, training materials and instructions (excluding the Existing Database and the Existing Codes) at the Start Date to the extent that they relate to the matters and/or functions which are described in the Authorisation as being the responsibility of ASAB and BCAP;

"Functions" means:

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- (A) the functions which are to be exercised by ASAB and BCAP under the Authorisation; and
- (B) the functions which will be carried out by BASBOF in connection with the System as set out in the MOU;

"Handback" means the orderly transition of responsibility for operation of the System from the Co-regulatory Parties to Ofcom or a Successor System Provider in the event of termination or expiry of this Deed;

"Handback Period" means:

- (A) the period from the date of any notice given to terminate this Deed to the Termination Date or, if longer, a period of six months from the date of such notice; or
- (B) If no such notice is given, the period from the date falling six months prior to the expiry of the Term to the Termination Date; or
- (C) if this Deed terminates automatically pursuant to clauses 4.2(A) or 4.2(B), the period from such date to the date the Handback obligations set out in part 2 of schedule 3 are fulfilled which shall be no more than six months,

during which Handback shall take place;

"Handback Plan" means the handback plan to be prepared and agreed as contemplated in part 2 of schedule 3;

"Historical Data" means all Personal Data contained within the Existing Database as at the Start Date that is not WIP Data;

"ITC" means the Independent Television Commission;

"Initial Cost Outlay" means the aggregate amount of costs and liabilities reasonably and properly suffered or incurred by the Co-regulatory Parties and/or the ASA from 27 April 2004 up to the Start Date in connection with and for the purpose of setting up the System including all expenses costs and fees (and Stamp Duty Land Tax and VAT) whatsoever relating to the acquisition and fitting-out of the Premises but less the capital payments received from the landlord of the Premises by the ASA and ASAB;

"Initial Term" means the two year period beginning on the Start Date;

"Intellectual Property Rights" or "IPR" means all intellectual property rights at any time protected by statute or common law, including but not limited to:

- (a) patents, copyright, design rights, rights in databases, rights in know how and any right to have confidential information kept confidential; and
- (b) any application or right to apply for any of the rights referred to in paragraph (a),

but (except in the case of the indemnities given in clauses 14.1(A) and 15.1(A)) excluding trade marks, trading names, styles and logos;

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"Lease" means together the first underlease of the Premises dated 29th September 2004 for a term beginning 9th September 2004 and ending 7th September 2009 ("First Lease") and the second underlease for a term beginning 8th September 2009 and ending 7th September 2014 ("Second Lease") each granted or to be granted to the ASA and ASAB pursuant to agreements dated 9th September 2004 and 29th September 2004 between (1) Towers Perrin Forster & Crosby Inc and (2) the ASA and ASAB (together "Lease Agreement");

"Materials" means the Existing Materials, the New Ofcom Materials and the New CRP Materials;

"MOU" means the memorandum of understanding as referred to in Recital (C), as amended from time to time;

"New CRP Database" means any replacement, addition, amendment, modification or alteration to the Existing Database by any Co-regulatory Party during the Term in the operation of the System;

"New CRP Materials" means any replacement, addition, amendment, modification or alteration to the Existing Materials by or new material of a similar nature created by any Co-regulatory Party during the Term in the operation of the System, excluding any materials produced for any of the Co-regulatory Parties for their internal requirements;

"New CRP Rules" means any replacement, addition, amendment, modification or alteration to the Existing Codes by any Co-regulatory Party during the Term in the operation of the System;

"New Data" means all Personal Data that is contained within or which is added to the Database that is not Historical Data or WIP Data;

"New Ofcom Database" means any replacement, addition, amendment, modification or alteration to the Existing Database by Ofcom during the Term pursuant to the exercise of the Contracted Out Ofcom Rights in relation to matters and functions which are described in the Authorisation as being the responsibility of ASAB and BCAP;

"New Ofcom Materials" means any replacement, addition, amendment, modification or alteration to the Existing Materials by or new material of a similar nature created by Ofcom during the Term pursuant to the exercise of the Contracted Out Ofcom Rights to the extent they relate to matters and functions which are described in the Authorisation as being the responsibility of ASAB and BCAP, excluding any materials produced for Ofcom for its internal requirements;

"New Ofcom Rules" means any replacement, addition, amendment, modification or alteration to the Existing Codes by Ofcom during the Term pursuant to the exercise of the Contracted Out Ofcom Rights in relation to matters and functions which are described in the Authorisation as being the responsibility of ASAB and BCAP;

"Ofcom Personal Data" means: (A) any Personal Data contained within the Historical Data and/or the WIP Data and/or (B) any Personal Data contained within New Data which is added to the Database by Ofcom;

"Ofcom Work in Progress" means the unresolved complaints and adjudications being handled by Ofcom immediately prior to the Start Date and relating to any of the functions to be discharged by the Co-regulatory Parties in accordance with the Authorisation;

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“Operating Costs” means the total aggregate amount of the costs reasonably and properly suffered or incurred by the Co-regulatory Parties from the Start Date in connection with the operation and running of the System including a proper proportion (taking account of the part of the Premises which is used in connection with the System) of rent, service charge, rates, insurance premiums, maintenance costs and other expenses and outgoings relating to the Premises but excluding for the avoidance of doubt the Initial Cost Outlay;

“Personal Data” shall have the meaning given to that phrase in the Data Protection Act;

“Personnel Information” means the information in respect of the Transferring Employees and the Re-Transferring Employees set out in schedule 5;

“Premises” means the premises occupied by the ASA and ASAB at First Floor, Mid City Place, High Holborn, London WC1 pursuant to the Lease;

“Premises Termination Costs” means the costs and expenses determined in accordance with Part 3 of Schedule 3;

“Political Rules” means codes or rules relating to political advertising created by Ofcom from time to time pursuant to section 319(2)(g) of the Act (which for the avoidance of doubt are not described in the Authorisation as being the responsibility of ASAB and BCAP);

“Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981;

“Re-transfer Employees” means those employees of ASAB or any of the other Co-regulatory Parties or any of its or their Associates who are wholly or mainly engaged in providing the System on the Termination Date save that no more than 20 employees shall be Re-transfer Employees and that no employee with a period of continuous employment (as defined in the Employment Rights Act 1996 or amending legislation) of less than one year shall be a Re-transfer Employee;

“Revenues” means all levy income collected by BASBOF from advertisers in order to fund the operation of the System (as contemplated in the MOU), excluding any VAT payable thereon;

“Secretary of State” means the Secretary of State for Culture, Media and Sport and/or the Secretary of State for Trade and Industry;

“Seconded Employees” means those employees listed in schedule 6;

“Start Date” means 1 November 2004 or such other date as the parties may agree in writing;

“Successor Start Date” means a date on or after termination or expiration of this Deed when the System is provided by the Successor System Provider;

“Successor System Provider” means any successor to the Co-regulatory Parties in relation to the provision of a system or, in each case, any part or parts thereof which are equivalent or identifiably similar to the System and/or the Functions after termination or expiration of this Deed;

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"System" means the exercise of the Functions by the Co-regulatory Parties in relation to the new self-regulatory system in respect of broadcast advertising content as authorised by the Authorisation and as contemplated by the MOU;

"Term" means the term of this Deed as set out in clause 4;

"Termination Date" means the date on which any notice to terminate this Deed takes effect or the last day of the Term;

"Transferring Employees" means those persons employed by Ofcom at the Effective Date listed in schedule 4 and who it is intended will transfer to the employment of ASAB on the Start Date and (for the purposes of clauses 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, 7.11, 7.12 and 7.13 only) who additionally remain wholly or mainly engaged in the Activities on the Start Date and who have not objected to the transfer pursuant to Regulation 5(4A) of the Regulations;

"Transitional Arrangements" means the arrangements set out in schedule 2;

"Torrington Place Costs" means all rents, rates, service charges and all other costs and fees whatsoever (including VAT where applicable) reasonably and properly incurred by ASA in connection with the holding or disposing (including capital inducements or contributions) of its existing leasehold premises at 2 Torrington Place, London, WC1E 7HW with effect from such date as the ASA shall vacate such premises until such date that the ASA shall dispose of such premises and shall include a reasonable and proper estimate of any such costs and fees which at the Termination Date are unascertained or yet to be incurred;

"WIP Data" means all Personal Data contained within the Database that relates to Ofcom Work in Progress; and

"Working Day" means a day (other than Saturday or Sunday) on which banks are open for ordinary banking business in London.

1.2 In interpreting this Deed:

- (A) headings are for ease of reference only and shall not affect the construction of this Deed;
- (B) words importing one gender include any other and the singular includes the plural and vice versa and references to a person include any individual, firm or body corporate, joint venture, government, state or agency of a state or any partnership or association (whether or not having a separate legal personality);
- (C) "including" means including without limitation;
- (D) except where otherwise specifically provided, obligations and/or commitments assumed jointly or by more than one party shall be several (and not joint and several) obligations and/or commitments of the parties concerned;
- (E) where reference is made to a statutory provision this includes all subsequent enactments, amendments and modifications relating to that provision and any subordinate legislation made from time to time under it;

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- (F) except where otherwise specifically provided if there is any conflict or inconsistency between the clauses, the schedules and the terms of any documents referred to in and any other documents generated in accordance with this Deed, then the order of priority shall be:
- (1) DCOA Order;
 - (2) Authorisation;
 - (3) the clauses; and
 - (4) the schedules;
- (G) words and phrases the definitions of which are contained or referred to in Part XXVI Companies Act 1985 shall be construed as having the meanings thereby attributed to them; and
- (H) references to clauses and schedules are references to clauses of and schedules to, this Deed, references to paragraphs are, unless otherwise stated, references to paragraphs of the schedule in which the reference appears, and references to this Deed includes the schedules.

1.3 Each of the schedules shall have effect as if set out herein.

2. **Authorisation and Functions**

- 2.1 Pursuant to the DCOA Order, Ofcom has authorised the Co-regulatory Parties to operate the System in accordance with the terms of the Authorisation but it is acknowledged by all parties that, notwithstanding any other provision of this Deed, Ofcom nevertheless retains the statutory right to revoke such Authorisation and/or exercise the functions set out in such Authorisation.
- 2.2 Each of the Co-regulatory Parties undertakes and agrees to carry out those Functions which are authorised or (in the case of BASBOF) proposed to be carried out by each of them respectively with reasonable care and skill and within a reasonable period of time (or as otherwise agreed by the parties).
- 2.3 The parties intend to launch the System on 1 November 2004.
- 2.4 Without prejudice to the rights of the Co-regulatory Parties under clause 16.2(A), if the System is not launched by 07 January 2005 due to a default by Ofcom of any of its obligations in respect of the Transitional Arrangements (otherwise than as a result of any act or omission of any of the Co-regulatory Parties), then Ofcom shall pay to BASBOF (on behalf of the Co-regulatory Parties) liquidated damages equivalent to one thirtieth of the monthly Operating Costs for each day by which the launch is delayed due to Ofcom's default. The parties consider that such payment represents a genuine pre-estimate of the likely amount of the losses which would be incurred by the Co-regulatory Parties in such circumstances. The liquidated damages shall be the sole and exclusive remedy of the Co-regulatory Parties in respect of such default.
- 2.5 Without prejudice to the rights of Ofcom under clause 16.1(A), if the System is not launched by 07 January 2005 due to a default by a Co-regulatory Party of any of its obligations under this Deed (otherwise than as a result of any act or omission of Ofcom),

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Ofcom shall have the right to terminate this Deed. Such right of termination shall be the sole and exclusive remedy of Ofcom in respect of such default.

3. Governance and Information

3.1 As soon as reasonably practicable (and in any event on or before 7 January 2005) and throughout the Term Ofcom and the Co-regulatory Parties shall:

- (A) appoint such representatives;
- (B) establish and conduct all such meetings; and
- (C) provide such reports, information and documentation,

in relation to the operation of the System as are set out in the Authorisation and contemplated in the MOU.

3.2 The Co-regulatory Parties shall provide to Ofcom, within 40 Working Days of the end of any Co-regulatory Party's financial year, a copy of the draft annual accounts of that Co-regulatory Party (which shall include, for the avoidance of doubt, the profit and loss statement, balance sheet and cash flow statement) in respect of such financial year.

3.3 The Co-regulatory Parties shall as soon as reasonably practicable provide Ofcom with all such information as it may reasonably require in light of any of the information provided under clause 3.2.

4. Term

4.1 This Deed shall commence on the Effective Date and will continue until 01 November 2014 unless:

- (A) terminated earlier pursuant to its terms; or
- (B) any party gives to the other parties not less than six months' prior written notice, such notice to expire on a date falling on or after the last day of the Initial Term (but no later than 01 November 2014).

4.2 This Deed shall automatically terminate on:

- (A) revocation of the DCOA Order;
- (B) revocation of the Authorisation; or
- (C) expiry of the Authorisation.

4.3 The parties agree that at least eighteen months prior to 01 November 2014 (unless this Deed has previously been terminated in accordance with its terms), they will meet to discuss in good faith the basis and terms on which the Authorisation might be renewed and negotiate in good faith with a view to entering into any documents that are necessary to give effect to any such renewal.

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5. Transitional Arrangements and Work in Progress

- 5.1 The parties agree that, from the Effective Date, the Transitional Arrangements set out in schedule 2 shall apply and each of the parties undertakes and agrees to perform their respective obligations set out therein.
- 5.2 Ofcom and each of the Co-regulatory Parties shall co-operate with each other to ensure a smooth implementation of the Transitional Arrangements and the commencement of the System by the Start Date.
- 5.3 Subject to completion of the Transitional Arrangements to the reasonable satisfaction of all of the parties:
- (A) ASAB shall assume responsibility for the Ofcom Work in Progress; and
 - (B) the Co-regulatory Parties shall assume responsibility for the operation of the System,
- on the Start Date for the duration of the Term.
- 5.4 Ofcom shall indemnify and hold harmless ASAB from and against all reasonable costs, claims, liabilities and expenses suffered or incurred by ASAB as a result of third party claims in relation to the handling by Ofcom of Ofcom Work in Progress prior to the Start Date.
- 5.5 The Co-regulatory Parties shall procure that ASA promptly (and, in any event, within 10 Working Days) provides Ofcom with written notice of the date on which it vacates the premises at Torrington Place.
- 5.6 From the Effective Date, each of the Co-Regulatory Parties shall (and shall procure that the ASA shall) use all reasonable endeavours at the cost of Ofcom to mitigate the liability of Ofcom under this Deed in respect of the Torrington Place Costs including, without limitation, by seeking to procure the surrender, assignment or sub-letting of the premises at Torrington Place.
- 5.7 The Co-regulatory Parties shall procure that ASA shall promptly (and, in any event, within 10 Working Days) provide Ofcom with written notice of the surrender, assignment or sub-letting of the premises at Torrington Place.

6. Contracted Out Ofcom Rights

- 6.1 The Co-regulatory Parties acknowledge and agree that, notwithstanding any other provision of this Deed, Ofcom shall pursuant to Section 69(5)(c) of the DCOA retain and shall be entitled to exercise all of the Contracted Out Ofcom Rights set out in the Authorisation.
- 6.2 Ofcom agrees in accordance with paragraph 34 of the MOU that decisions of the ASAB council will be sovereign under the System and Ofcom will not overturn, reverse or overrule any adjudications of ASAB.
- 6.3 Any breach of clause 6.2 shall be deemed a material breach not capable of remedy.

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7. Transferring Employees

7.1 Ofcom warrants to each Co-regulatory Party that:

- (A) all material terms and conditions of employment and details of all benefits applicable to the Transferring Employees have been disclosed to ASAB (including but not limited to all collective agreements and recognition agreements); and
- (B) as far as Ofcom is aware, Ofcom has in relation to the employment of the Transferring Employees complied in full with all its requirements (whether statutory, contractual or otherwise) up to the Effective Date.

7.2 Ofcom confirms that it has provided the Personnel Information to ASAB and undertakes to indemnify ASAB (which for the remainder of this clause shall mean ASAB, ASA and any other Co-regulatory Party) against any Costs which ASAB incurs and which are attributable to:

- (A) the provision of materially inaccurate or materially incomplete Personnel Information in relation to the Transferring Employees; and
- (B) the failure by Ofcom to inform ASAB of any material change to the Personnel Information in relation to the Transferring Employees before the Start Date.

7.3 In the period commencing on the Effective Date and continuing up to the Start Date Ofcom agrees that it shall not:

- (A) save for any variations which are required by the terms of any contract of employment, collective agreement or otherwise by law and/or any variations in respect of annual pay rises which fall due (and Ofcom shall provide ASAB with full details of any such variations as soon as reasonably practicable after they are agreed), vary (or propose or promise to vary) any of the material terms and conditions of employment of any Transferring Employee;
- (B) make any material changes to the duties of an Transferring Employee (including, but not limited to, materially reducing or varying the involvement of any Transferring Employee in the Activities);
- (C) replace or redeploy any Transferring Employee or transfer any Existing Employee away from the Activities;
- (D) terminate (or serve notice to terminate) the employment of any Transferring Employee (other than in response to the employee's gross misconduct, gross incompetence or material breach of contract),

without the prior written agreement of ASAB, such agreement not to be unreasonably withheld or delayed.

7.4 In the period commencing on the Effective Date and continuing up to the Start Date Ofcom agrees that in relation to the Activities it shall:

- (A) promptly notify ASAB in writing of any notice of resignation received from any Transferring Employee after the Effective Date;

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- (B) enable and give reasonable assistance to enable ASAB and such other person as they may determine to communicate with and meet the Transferring Employees and their trade unions, work councils or other appointed employee representatives.
- 7.5 The parties acknowledge and agree that the transfer of the Transferring Employees from Ofcom to ASAB will be deemed to be a 'relevant transfer' for the purposes of the Regulations. The parties agree that the contract of employment of each Transferring Employee will have effect from the start of business on the Start Date as if originally made between ASAB and the Transferring Employee.
- 7.6 Ofcom undertakes that all amounts payable to or in relation to the Transferring Employees by Ofcom, including salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the Transferring Employees for the period up to and including the close of business on the day before the Start Date (whether or not due for payment) will be borne and discharged by Ofcom. All necessary apportionments will be made to give effect to this clause.
- 7.7 Subject to paragraph 4 of schedule 2, ASAB undertakes that all amounts payable to or in relation to the Transferring Employees by ASAB or any relevant Associate, including salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the periods from the start of business on the Start Date (whether or not due for payment) will be borne and discharged by ASAB. All necessary apportionments will be made to give effect to this clause.
- 7.8 ASAB warrants to Ofcom that it has complied with its obligations to provide Ofcom with such information as is required pursuant to Regulation 10(3) of the Regulations in respect of the Transferring Employees.
- 7.9 Ofcom shall comply with its obligations to consult with the appropriate representatives of the Transferring Employees and the Seconded Employees in accordance with Regulation 10 of the Regulations.
- 7.10 Ofcom will fully and promptly indemnify the Co-regulatory Parties:
- (A) against any Costs arising from or relating to any action or claim by an appropriate representative (as defined by Regulation 10 of the Regulations) or the Transferring Employees or the Seconded Employees arising out of the failure of Ofcom to inform and consult with any appropriate representative or the Transferring Employees or the Seconded Employees with regard to the transfer except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by any of the Co-regulatory Parties to give Ofcom the information required under Regulation 10(3) of the Regulations;
- (B) against all Costs which are attributable to any act or omission of Ofcom prior to the close of business on the day before the Start Date in respect of any of its obligations or duties (in either case whether arising under common law, statute, custom or otherwise) to or relating to any of the Transferring Employees or any current or former employees of Ofcom who are or were employed in the Activities (including any liability arising out of the termination or dismissal of any Transferring Employees or any other current or former employees of Ofcom who are or were employed in the Activities) and which ASAB, ASA or any Co-regulatory Party incurs as a result of succeeding to Ofcom in relation to the contracts of employment of the

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Transferring Employees or the current or former employees employed in relation to the Activities whether pursuant to the Regulations or otherwise;

- (C) against all Costs arising out of or relating to any failure of Ofcom to comply with its obligations under clause 7.6.

7.11 The Co-regulatory Parties will jointly and severally fully and promptly indemnify Ofcom against:

- (A) any Costs arising from or relating to any action or claim by any appropriate representative (as defined by Regulation 10 of the Regulations) or the Transferring Employees or the Seconded Employees arising out of the failure of the Co-regulatory Parties to give Ofcom the information required under Regulation 10(3) of the Regulations;
- (B) against all Costs which are attributable to any act or omission of any Co-regulatory Party from the start of business on the Start Date in respect of any of its or their obligations or duties (in either case, whether arising under common law, statute, custom or otherwise) to or in relation to any of the Transferring Employees (including but not limited to any liability arising out of the termination or dismissal of any Transferring Employee); and
- (C) against all Costs arising out of or relating to any failure of ASAB to comply with its obligations under clause 7.7.

7.12 If despite the parties agreement the Regulations are found by any court or tribunal not to apply to effect the transfer of all or any of the Transferring Employees, then:

- (A) within 14 days of Ofcom becoming aware of such decision, Ofcom will notify ASAB ("Notification"). ASAB will then have a period of 28 days from the date of such Notification ("Offer Period") in which to offer employment to such Transferring Employee and for such Transferring Employee to accept such offer of employment and to resign from his/her employment with Ofcom;
- (B) if ASAB makes such an offer of employment, Ofcom shall give to it all reasonable assistance to procure that such Transferring Employee accepts such offer of employment;
- (C) if, on the expiry on the Offer Period, such Transferring Employee has not accepted such offer of employment or if such Transferring Employee has accepted such offer of employment but has not served notice of resignation on Ofcom, Ofcom may terminate the employment of such person within seven days from the expiry of the Offer Period; and
- (D) the Co-regulatory Parties shall jointly and severally indemnify Ofcom against all Costs which arise out of or relate to such termination and from and against any sums payable to such Transferring Employee in relation to his employment from the Start Date to the date of such termination. For the avoidance of doubt, if Ofcom does not terminate the employment of such person in accordance with this clause, such person shall be deemed to be and at all times to have been an employee of Ofcom.

7.13 If any court or tribunal finds that the employment of a person who is not a Transferring Employee transfers to ASAB (which in this clause shall mean ASAB, ASA and/or any

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other Co-regulatory Party) in accordance with the Regulations or otherwise as a result of Ofcom and the Co-regulatory Parties entering this Agreement or otherwise:

- (A) within 14 days of becoming aware of such decision, ASAB will notify Ofcom ("Notice"). Ofcom will then have a period of 28 days from the date of Notice ("Acceptance Period") in which to offer employment to such person and for such person to accept such offer of employment and resign from his/her employment with ASAB;
- (B) if Ofcom makes such an offer of employment, ASAB shall give to it all reasonable assistance to procure that such person accepts such offer of employment;
- (C) if, on the expiry on the Acceptance Period, such person has not accepted such offer of employment or if such person has accepted such offer of employment but has not served notice of resignation on ASAB, ASAB may terminate the employment of such person within seven days from the expiry of the Acceptance Period; and
- (D) Ofcom shall indemnify ASAB against all Costs which arise out of or relate to such termination and from and against any sums payable to such person in relation to his employment prior to such termination. For the avoidance of doubt, if ASAB does not terminate the employment of such person in accordance with this clause, such person shall be deemed to be and at all times to have been a Transferring Employee.

7.14 Where one party is obliged to indemnify the other under this Clause 7 in respect of a claim ("Indemnifying Party"), the parties will co-operate fully with each other in the determination of the claim and no party is to settle a claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.

8. Pensions

8.1 Subject to the consent of the Inland Revenue, Ofcom shall (at the cost of the Co-Regulatory Parties) use best endeavours to procure that ASAB shall be permitted to participate in such of the Ofcom final salary pension plans (by entering into deeds of participation in agreed form) as are necessary for the purposes of ensuring that the Transferring Employees may continue on and from the Start Date to be active members in the respective Ofcom final salary pension plans of which they are presently active members ("Ofcom Plans"), subject to the trust deed and rules of the relevant Ofcom Plans from time to time and the terms of the relevant deed of participation.

8.2 On receipt of the consent as set out in clause 8.1, ASAB shall:

- (A) (together with Ofcom if required) enter into the agreed form deeds of participation mentioned in clause 8.1; and
- (B) comply with its obligations under those deeds and in relation to each Ofcom Plan.

8.3 If the consent of the Inland Revenue referred to in clause 8.1 is refused, then the Co-Regulatory Parties shall procure that ASAB (as the new employer of the Transferring Employees) shall (unless and until the Transferring Employees are readmitted to the relevant Ofcom Plans under clause 8.4 below) ensure that the Transferring Employees are offered membership of a retirement benefits scheme ("ASAB Plan") which is "broadly comparable" to the Ofcom Plan of which they are presently members ("Membership").

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"Broadly comparable" for these purposes means a defined contribution scheme where the rate of employer contributions payable on behalf of the Transferring Employees in respect of their future service under that scheme shall be what is reasonably likely to be sufficient to provide "actuarially equivalent" benefits to those which the Transferring Employees would have accrued for future service if they had remained members of their respective Ofcom Plans, subject to any overriding Inland Revenue limits or rules which may restrict the level of contributions that can be paid in respect of any particular Transferring Employee.

"Actuarially equivalent" benefits and the level of contribution likely to be sufficient to provide such benefits shall mean as agreed between an actuary appointed by Ofcom and an actuary appointed by ASAB for this purpose, and ASAB shall procure that its actuary shall in the first instance provide his views on these matters to Ofcom's actuary. Ofcom and ASAB shall each bear their own actuarial costs.

Any dispute between Ofcom and ASA, or between their respective actuaries, concerning these matters shall, in the absence of agreement between them, within one month of either party having notified the other in writing of the dispute be referred by Ofcom and ASAB to mediation or such other form of dispute resolution process as they shall, using all reasonable endeavours, agree.

- 8.4 If the consent of the Inland Revenue referred to in clause 8.1 is given but only for a temporary or limited period (**Participation Period**), then clause 8.1 and clause 8.2 shall apply for the purposes of ensuring that the Transferring Employees may continue on and from the Start Date, and for as long as the Inland Revenue has allowed, to be active members in the respective Ofcom Plan of which they are presently active members. If the Inland Revenue requires the Participation Period to end prior to 6 April 2006, the provisions of clause 8.3 shall apply from the end of such Participation Period.
- 8.5 If the provisions of clauses 8.3 and 8.4 apply, Ofcom shall use best endeavours to procure that with effect from and including 6 April 2006 (subject to the consent of the Inland Revenue if necessary and any requirements of law and the trust deed and rules of the relevant Ofcom Plans) ASAB shall be permitted to participate in such of the Ofcom Plans (by entering into deeds of participation in the agreed form referred to in clause 8.1, subject to any agreed changes) to the extent necessary for the purposes of ensuring that those Transferring Employees who are still employed by ASAB may continue to be or are readmitted as active members in the respective Ofcom Plans of which they were active members immediately prior to the Start Date (with Ofcom and the ASAB sharing equally the costs of so procuring) subject to ASAB:
- (A) (together with Ofcom if required) entering into the agreed form deeds of participation mentioned above; and
 - (B) complying with its obligations under those deeds and in relation to each Ofcom Plans.
- 8.6 For the avoidance of doubt, if for any other reason not contemplated by this clause 8 it should transpire that ASAB cannot participate in or is no longer able to continue to participate in any of the relevant Ofcom Plans, ASAB shall not be obliged to provide any greater pension provision for the Transferring Members (such pension provision to commence no earlier than the Start Date or the date of cessation of participation under

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clause 8.4, as appropriate) than that contemplated by clause 8.3 or as otherwise required by overriding law.

8.7 Clauses 8.1 to 8.6 above are subject to the overriding principle that Membership (as defined in clause 8.3 above) shall be offered or continue to be offered (as appropriate) to the Transferring Employees during the course of their employment with ASAB or any of the other Co-Regulatory Parties:

(A) only for as long as Ofcom continues to provide the relevant Ofcom Plans to its employees; and

(B) only provided that this is consistent with Inland Revenue rules or requirements.

In the event that all or any of the Ofcom Plans should be terminated or closed to future accrual then any obligation under this Deed to provide Membership in respect of those terminated/closed Ofcom Plans (whether current at that time or a future obligation) shall no longer apply.

9. **Database**

9.1 Subject to clause 9.2, Ofcom shall assign to ASAB all of its Intellectual Property Rights in:

(A) the Existing Database, on the Start Date; and

(B) the New Ofcom Database, from their creation,

for the duration of the Term.

9.2 In consideration of the assignment by Ofcom in clause 9.1, ASAB agrees that it shall:

(A) only use the Database in connection with the operation of the System and the carrying out of its Functions, as described further in the MOU subject to any restrictions set out in this Deed, including, without limitation, clause 10;

(B) not grant a licence of the same to any person other than as set out in clause 9.4.

9.3 The parties acknowledge and agree that all Intellectual Property Rights in the New CRP Database shall, on their creation, vest in ASAB for the duration of the Term.

9.4 ASAB grants on the Start Date:

(A) to Ofcom a royalty free, perpetual, non-exclusive, irrevocable licence to use the Database and all Intellectual Property Rights therein,

(B) to BCAP a royalty free, non-transferable, non-exclusive licence to use the Database during the Term subject to clause 9.5; and

(C) to the extent permitted by law and subject to clause 10, to ASA and to the Committee of Advertising Practice a royalty free, non-transferable, non-exclusive licence to access and/or use the Database to the extent permitted by law.

9.5 Subject to clause 10:

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- (A) ASAB shall only use the Database in connection with the operation of the System and the carrying out of its Functions, as described further in the MOU; and
- (B) BCAP shall only use the Database in connection with the operation of the System and the carrying out of its Functions, as described further in the MOU,

during the Term.

- 9.6 The Co-regulatory Parties shall not disclose the Database to any third party (other than ASA and the Committee of Advertising Practice as set out in this clause 9) without the prior written consent of Ofcom (such consent not to be unreasonably withheld or delayed) except where required to do so by law. Without limiting the above, the Co-regulatory Parties shall not (and shall procure that ASA and the Committee of Advertising Practice shall not) use Personal Data contained within the Database to solicit any business or services.
- 9.7 If any part of the Ofcom Personal Data contained within the Database ceases to be required by any of the Co-regulatory Parties for the performance of its obligations under this Deed and in any event on termination of this Deed, such Co-regulatory Party will (subject to clause 10 and to any other restrictions in or provisions of this Deed, including paragraph 2.1 of Part 2 of Schedule 3) return to Ofcom such part of the Database in that Co-regulatory Party's possession or control.
- 9.8 If any part of the Database is corrupted, lost or sufficiently degraded as to be unusable as a result of any Co-regulatory Party's breach of its obligations under this Deed or the negligence of such Co-regulatory Party, that Co-regulatory Party will, at its own cost and so far as it is reasonably capable, carry out remedial action to restore the Database as Ofcom may reasonably require (without prejudice to Ofcom's other rights or remedies in respect of such breach).

10. Data Protection

- 10.1 Ofcom warrants that it has the ability to make the Historical Data and WIP Data available to ASAB for use in accordance with this Deed in accordance with clause 9 and schedule 1 and that any such disclosure of such data to ASAB will be compliant with Data Protection Legislation and that it has taken all steps necessary to ensure such compliance.
- 10.2 Ofcom and ASAB shall, at all times, comply with their respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed by either of them in the course of performing their obligations under this Deed. Neither Ofcom nor ASAB shall do, nor cause or permit to be done, anything which may result in a breach of the Data Protection Legislation by the other.
- 10.3 Ofcom and ASAB shall assist each other and each shall provide all reasonable assistance to the other to assist the other in complying with the Data Protection Legislation that may be applicable to the other party.
- 10.4 The parties hereby acknowledge and agree that:
- (A) in respect of Historical Data, Ofcom shall remain as Data Controller at all times;
 - (B) in respect of WIP Data and New Data, ASAB shall act as Data Controller from the Start Date throughout the Term; and

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- (C) in respect of WIP Data and New Data, Ofcom shall act as Data Controller throughout the Term and thereafter.
- 10.5 Where ASAB processes WIP Data and New Data in a jurisdiction outside the European Economic Area ("EEA"), or transfers Personal Data to another party or to a third party outside the EEA, it shall ensure that the provisions of:
- (A) the Commission Decision of 27 December 2001 on standard contractual clauses for the transfer of Personal Data to processors established in third countries; and
 - (B) the Commission Decision of 15 June 2001 on standard contractual clauses for the transfer of Personal Data to third countries,
- are at all times complied with in connection with such processing and/or transfer.
- 10.6 In relation to the Historical Data, ASAB shall:
- (A) act only on the instructions of Ofcom in relation to the processing of Historical Data;
 - (B) only use the Historical Data for research, statistical or historical purposes connected with the operation of the System and the carrying out of the Functions;
 - (C) not process the Historical Data in order to support measures or decisions with respect to particular individuals to whom the Historical Data relates; and
 - (D) bring into effect and maintain all appropriate technical and organisational security measures (and shall implement and guarantee all such future technical and organisational security measures) so as to prevent unauthorised or unlawful processing of or access to Historical Data and accidental loss or destruction of, or damage to, Historical Data, including but not limited to taking reasonable steps to ensure:
 - (1) the reliability of employees having access to the Historical Data; and
 - (2) a level of security appropriate to the harm that might result from any such unauthorised or unlawful processing or accidental loss or destruction of, or damage to, Historical Data, and the nature of the Historical Data being processed.
- 10.7 ASAB and Ofcom shall each promptly inform the other if either of them becomes aware that any applicable Data Protection Legislation has been breached and if either one of them informs the other of a breach of any applicable Data Protection Legislation in accordance with this clause 10.7, it shall also promptly provide such details of the nature and extent of such breach as the other may reasonably request.
- 10.8 In relation to the collection of New Data, ASAB shall provide to Ofcom for its prior written approval (such approval not to be unreasonably withheld or delayed) drafts of any privacy policies, data protection statements or scripts of any such statements to be made to third parties. ASAB shall promptly update and amend such policies, statements or scripts following notice of any amendments reasonably requested by Ofcom.
- 10.9 ASAB shall promptly amend, update, delete or supplement any Ofcom Personal Data, and implement any changes to the technical and organisational security measures that it

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employs to protect the Ofcom Personal Data, forthwith if Ofcom so requests in order to comply with the provisions of this Deed or Data Protection Legislation.

10.10 During the Handback Period (and in any event by the Termination Date), ASAB shall transfer to Ofcom the Database.

10.11 In the event that ASAB retains any Personal Data which comprises part of the Database after the Termination Date, ASAB shall continue to be bound by the provisions of this Deed relating to the processing of such Personal Data until all such Personal Data has been returned to Ofcom or transferred to a third party nominated by Ofcom, or destroyed in accordance with schedule 3.

11. Intellectual Property Rights

11.1 Subject to clause 11.2, Ofcom:

(A) shall assign on the Start Date:

(1) to BCAP all of its Intellectual Property Rights in the Existing Codes (excluding any Political Rules contained therein), including without limitation, the right to recover damages and other remedies in respect of any infringement save that any damages recovered in respect of infringements prior to the Start Date shall (if recovered by BCAP) be held in trust for Ofcom;

(2) to BCAP and to ASAB to hold jointly all of its Intellectual Property Rights in the Existing Materials including without limitation the right to recover damages and other remedies in respect of any infringement save that any damages recovered in respect of infringements prior to the Start Date shall (if recovered by BCAP or ASAB) be held in trust for Ofcom;

(B) shall grant on the Start Date to BCAP a royalty free, non-transferable, non-exclusive licence to use the Political Rules for the sole purpose of including the same in the Codes;

(C) shall assign on their creation:

(1) to BCAP all of its Intellectual Property Rights in the New Ofcom Rules;

(2) to BCAP and to ASAB to hold jointly all of its Intellectual Property Rights in the New Ofcom Materials,

for the duration of the Term and Ofcom will execute such documents and do such things as ASAB and/or BCAP may consider reasonably necessary to give effect to this clause 11.1.

11.2 In consideration of the assignment/licence by Ofcom in clause 11.1, BCAP and ASAB agree:

(A) only to use the Codes and the Materials in connection with the operation of the System and the carrying out of the Functions as described further in the MOU subject to any restrictions set out in this Deed; and

(B) not to grant a licence of the same to any person other than as set out in clauses 11.5 and 11.6.

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- 11.3 The parties acknowledge and agree that all Intellectual Property Rights in the Political Rules shall vest in Ofcom.
- 11.4 The parties acknowledge and agree that for the duration of the Term all Intellectual Property Rights in the New CRP Rules shall vest in BCAP and in the New CRP Materials shall vest in BCAP and ASAB jointly.
- 11.5 BCAP grants on the Start Date:
- (A) to Ofcom a royalty free, non-exclusive, perpetual, irrevocable licence to use:
 - (1) the Existing Codes (excluding the Political Rules);
 - (2) the New Ofcom Rules;
 - (3) the New CRP Rules;and all Intellectual Property Rights therein,
 - (B) to ASAB a royalty free, non-transferable, non-exclusive licence to use the Codes in connection with the operation of the System and carrying out the Functions as further described in the MOU; and
 - (C) to the extent permitted by law, to ASA and to the Committee of Advertising Practice a royalty free, non-transferable, non-exclusive licence to use the Codes to the extent permitted by law.
- 11.6 BCAP and ASAB grant on the Start Date:
- (A) to Ofcom a royalty free, perpetual, irrevocable, non-exclusive licence to use the Existing Materials, New Ofcom Materials and the New CRP Materials, and all Intellectual Property Rights therein; and
 - (B) to the extent permitted by law, to ASA and to the Committee of Advertising Practice a royalty free, non-transferable, non-exclusive licence to use the Existing Materials, New Ofcom Materials and the New CRP Materials, and all Intellectual Property Rights therein, to the extent permitted by law.
- 11.7 Ofcom shall execute such documents and do such things as BCAP and ASAB may consider reasonably necessary to enable BCAP and ASAB to defend and enforce their rights in the Existing Materials, New Ofcom Materials, Existing Codes and New Ofcom Rules assigned under clause 11.1.
- 11.8 On termination of this Deed for any reason, each of the Co-regulatory Parties shall immediately assign to Ofcom all of their Intellectual Property Rights in the Database, Materials and Codes, including, without limitation, the right to recover damages and other remedies in respect of any infringement save that any damages recovered in respect of infringements after the Start Date but prior to the Termination Date shall (if recovered by Ofcom) be held in trust for the Co-regulatory Parties. Each of the Co-regulatory Parties will execute such documents and do such things as Ofcom may consider reasonably necessary to give effect to this clause 11:8.

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12. **Trade Marks**

- 12.1 Each Co-regulatory Party undertakes that it will not, during the Term or thereafter, use any of Ofcom's names (other than for the purposes of referring to them in pursuance of its obligations under this Deed) or trade marks without the prior written consent of Ofcom.
- 12.2 Ofcom undertakes that it will not, during the Term or thereafter, use any of the Co-regulatory Parties' names (other than for the purposes of referring to them in pursuance of its obligations under this Deed) or trade marks without the prior written consent of the relevant Co-regulatory Party.

13. **Confidentiality**

- 13.1 Each party shall treat as confidential all Confidential Information obtained from another party pursuant to this Deed and shall not, without the prior written consent of such other party, divulge such Confidential Information to any person except:
- (A) the receiving party's own employees and then only to those who need to know the same; or
 - (B) the receiving party's auditors, legal advisers, HM Inspector of Taxes, HM Customs & Excise or to any other persons or bodies to whom the relevant party is required by applicable law or regulation to disclose that Confidential Information and then only in pursuance of such obligation; or
 - (C) to the extent permitted by law, in the case of the Co-regulatory Parties, to their respective members from time to time, the ASA and/or the Committee of Advertising Practice and to the extent permitted by law,

provided that this clause shall not extend to any Confidential Information which was rightfully in the possession of any receiving party prior to the commencement of negotiations leading to this Deed, or which is already public knowledge or which becomes so at a future date (otherwise than as a result of breach of this clause 13.1).

- 13.2 Each party undertakes to use its reasonable endeavours to ensure that the persons and bodies mentioned in clauses 13.1(A), 13.1(B) and 13.1(C) are made aware, prior to the disclosure of any part of the Confidential Information of any other party, that the same is confidential and agree to keep it confidential.
- 13.3 No party shall (i) disclose any of the terms of this Deed or (ii) make any formal announcement or publish any statement relating to existence of this Deed (except, to the extent permitted by law, in the case of the Co-regulatory Parties, to their respective members from time to time, ASA and/or to the Committee of Advertising Practice), without the prior written consent of the other parties. For the avoidance of doubt no party shall, as part of any formal announcement or otherwise, disclose any Confidential Information regarding the commercial terms of this Deed.
- 13.4 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination or expiry of this Deed.

14. **Ofcom Indemnity**

- 14.1 Ofcom will indemnify the Co-regulatory Parties and keep each of them fully Indemnified on written demand against the amount of damages awarded by a court of competent

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jurisdiction, including all reasonable legal and other professional costs incurred by or awarded against any Co-regulatory Party, in connection with:

- (A) any claim by any third party that the use of any of the Existing Codes, Existing Materials, Existing Database, New Ofcom Rules, New Ofcom Materials, New Ofcom Database infringes the Intellectual Property Rights of any third party save to the extent that any infringement has arisen from any use of the same in combination with any other materials, software, equipment or systems not supplied by Ofcom ("Claim Against CRP"); and
- (B) any claim by any third party which is the direct result only of the inclusion in the Codes of the Political Rules

except to the extent that such infringement or third party claims arise as a result of any act or omission of any Co-regulatory Party not in accordance with this Deed, the MOU, the Authorisation or the DCOA Order.

14.2 If any Co-regulatory Party becomes aware of any Claim Against CRP or potential Claim Against CRP, that Co-regulatory Party shall give or procure that notice of such Claim Against CRP is given to Ofcom as soon as is reasonably practicable and, in any event, within twenty Working Days.

14.3 Save as set out in clause 14.4, the Co-regulatory Parties will have sole responsibility for the conduct (and sole control) of any Claim Against CRP which is (or to the extent that it is) made against any Co-regulatory Party PROVIDED THAT, in connection with the conduct of any Claim Against CRP:

- (A) the Co-regulatory Parties will provide Ofcom with all reasonable co-operation, access and assistance for the purpose of resisting such Claim Against CRP;
- (B) Ofcom shall be kept fully and promptly informed of all matters relating to the Claim Against CRP and shall on request be entitled to see copies of all correspondence and related documentation;
- (C) the appointments of barristers or other professional advisers by the Co-regulatory Parties shall be discussed with Ofcom and if Ofcom and the Co-regulatory Parties, acting reasonably, consider that joint representation is desirable, then such joint representation shall be arranged;
- (D) the Co-regulatory Parties will use all reasonable endeavours to mitigate any Claim Against CRP with a view to reducing (as far as reasonably possible) the amount of any claim for indemnity made by the Co-regulatory Parties under clause 14.1;
- (E) any material communication with the party making the Claim Against CRP (or its advisers) whether written or otherwise shall be first submitted to Ofcom for consideration and shall not be transmitted until Ofcom has had a reasonable opportunity to consider the same and to make representations to the Co-regulatory Parties and the Co-regulatory Parties (acting reasonably) will give due and proper consideration to any such representations; and
- (F) the Co-regulatory Parties shall not settle or compromise any Claim Against CRP nor agree any matter in the conduct of the Claim Against CRP which, in the reasonable opinion of Ofcom, would adversely affect the amount of the Claim Against CRP or any liability of Ofcom without prior consultation with Ofcom.

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- 14.4 In the circumstances set out in clause 14.1(B), Ofcom shall have sole responsibility for the conduct and sole control of any such claim which is (or to the extent that it is) made against any Co-regulatory Party PROVIDED THAT, in connection with the conduct of such claim, the provisions of clause 15.3(A) to 15.3(F) shall apply.
- 14.5 If the Co-regulatory Parties' use of any of the Existing Codes, Existing Materials, Existing Database, New Ofcom Rules, New Ofcom Materials or New Ofcom Database is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or it is likely to constitute such an infringement then Ofcom shall use its reasonable endeavours to:
- (A) procure for the Co-regulatory Parties the right to continue using such Existing Codes, Existing Materials, Existing Database, New Ofcom Rules, New Ofcom Materials or New Ofcom Database; or
 - (B) modify or replace such Existing Codes, Existing Materials, Existing Database, New Ofcom Rules, New Ofcom Materials or New Ofcom Database (without detracting from their substance or overall performance) so as to avoid such infringement.

15. Co-regulatory Parties Indemnity

- 15.1 BCAP and ASAB shall indemnify and shall keep Ofcom fully indemnified on written demand against the amount of damages awarded by a court of competent jurisdiction and all reasonable legal and other professional costs incurred by or awarded against Ofcom, in each case in connection with:
- (A) any claim by any third party that the use of any of the New CRP Rules, New CRP Database or New CRP Materials infringes the Intellectual Property Rights of any third party save to the extent that any infringement has arisen from any use of the same in combination with any other materials, software, equipment or systems not supplied by any of the Co-regulatory Parties; and
 - (B) any third party claims in relation to the System which arise because actions of BCAP and/or ASAB have been determined by a court of competent jurisdiction to be unlawful (except where such third party claims arise in relation to any actions carried out by (or omissions of) any of the Co-regulatory Parties with the approval and/or at the written request or direction of Ofcom); and
 - (C) any claim made by any third party against Ofcom as a direct result of any act or omission by ASA or the Committee of Advertising Practice,
- (collectively, "Claims Against Ofcom") except to the extent that such infringement or third party claims arise as a result of any act or omission of Ofcom not in accordance with this Deed, the MOU, the Authorisation or the DCOA Order.
- 15.2 If Ofcom becomes aware of any Claims Against Ofcom or potential Claims Against Ofcom, Ofcom shall give or procure that notice of such Claim Against Ofcom is given to BCAP and to ASAB as soon as is reasonably practicable and, in any event, within twenty Working Days.
- 15.3 Ofcom will have sole responsibility for the conduct (and sole control) of any Claim Against Ofcom which is (or to the extent that it is) made against Ofcom PROVIDED THAT, in connection with the conduct of any Claim Against Ofcom:

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- (A) Ofcom will provide the Co-regulatory Parties with all reasonable co-operation, access and assistance for the purpose of resisting such Claim Against Ofcom;
 - (B) the Co-regulatory Parties shall be kept fully and promptly informed of all matters relating to the Claim Against Ofcom and shall on request be entitled to see copies of all correspondence and related documentation;
 - (C) the appointments of barristers or other professional advisers by Ofcom shall be discussed with the Co-regulatory Parties and if they and Ofcom, acting reasonably, consider that joint representation is desirable, then such joint representation shall be arranged;
 - (D) Ofcom will use all reasonable endeavours to mitigate any Claim Against Ofcom with a view to reducing (as far as reasonably possible) the amount of any claim for indemnity made by Ofcom under clause 15.1;
 - (E) any material communication with the party making the Claim Against Ofcom (or its advisers) whether written or otherwise shall be first submitted to the Co-regulatory Parties for consideration and shall not be transmitted until the Co-regulatory Parties have had a reasonable opportunity to consider the same and to make representations to Ofcom and Ofcom (acting reasonably) will give due and proper consideration to any such representations; and
 - (F) Ofcom shall not settle or compromise any Claim Against Ofcom nor agree any matter in the conduct of the Claim Against Ofcom which, in the reasonable opinion of the Co-regulatory Parties, would adversely affect the amount of the Claim Against Ofcom or any liability of the Co-regulatory Parties without prior consultation with the Co-regulatory Parties.
- 15.4 If Ofcom's use of any of New CRP Rules, New CRP Database or New CRP Materials is held by a court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or it is likely to constitute such an infringement then such Co-regulatory Party shall use its reasonable endeavours to:
- (A) procure for Ofcom the right to continue using such New CRP Rules, New CRP Database, New CRP Materials; or
 - (B) modify or replace such New CRP Rules, New CRP Database, New CRP Materials (without detracting from their substance or overall performance) so as to avoid such infringement.

16. **Termination**

- 16.1 This Deed may be terminated by Ofcom at any time on written notice to the other parties (or from a date specified in the notice):
- (A) if any Co-regulatory Party commits a material breach of this Deed, the Authorisation or the MOU which in the case of a breach capable of remedy is not remedied within thirty days of service upon such Co-regulatory Party (copied to each of the other Co-regulatory Parties) of a notice specifying the breach and requiring it to be remedied;
 - (B) in the event of material incompetence by a Co-regulatory Party in relation to its obligations under this Deed or the Authorisation or (whether legally binding or

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made in good faith) under the MOU, which in the case of material incompetence which is capable of remedy is not remedied within thirty days of service upon such Co-regulatory Party (copied to each of the other Co-regulatory Parties) of a notice specifying the material incompetence and requiring it to be remedied;

- (C) in accordance with clause 4.2, if the DCOA Order is revoked by the Secretary of State;
- (D) in accordance with clause 4.2, if Ofcom revokes the Authorisation or is directed to revoke the Authorisation by the Secretary of State;
- (E) if any Co-regulatory Party ceases or threatens to cease to carry on business;
- (F) if any Co-regulatory Party holds any meeting with or makes a composition or arrangement with its creditors or puts a proposal to its creditors for a voluntary arrangement for a composition of its debts or a scheme of arrangement;
- (G) if any Co-regulatory Party has a supervisor, receiver, administrator, administrative receiver or other encumbrancer take possession of or appointed over or has any distress, execution or other process levied or enforced (and not discharged within seven days) upon the whole or any substantial part of its assets; or
- (H) if any Co-regulatory Party is the subject of a petition validly presented for its winding up (which is not discharged within seven days of its presentation).

16.2 This Deed may be terminated jointly by the Co-regulatory Parties at any time on written notice to Ofcom (or from a date specified in the notice) if:

- (A) Ofcom materially breaches this Deed or the MOU, which in the case of a breach capable of remedy is not remedied within thirty days of service upon Ofcom of a notice specifying the breach and requiring it to be remedied; or
- (B) Ofcom is deemed to be in material breach by reason of the operation of clauses 6.3 or 16.5.

16.3 For the purposes of clauses 16.1(A) and (B) and clause 16.2(A) a breach shall be capable of remedy if the party in breach can comply with the provisions in question in all material respects other than as to the time of performance.

16.4 The rights of any of the parties under this clause 16 may be exercised successively in respect of any one or more failure by another party and are in addition and without prejudice to any other right which the party not in breach may have and the termination of this Deed for whatever cause shall not affect any provision of this Deed which is intended to survive termination of this Deed.

16.5 Neither the DCOA Order nor the Authorisation shall be amended so as to affect any element of the Functions or of the scope of operations of the Co-regulatory Parties without prior written consent of the Co-regulatory Parties, such consent not to be unreasonably withheld or delayed. Any amendment of the DCOA Order or Authorisation contrary to this clause 16.5 shall be deemed a material breach not capable of remedy.

16.6 For the avoidance of doubt, the parties confirm and agree that, with effect from the Effective Date, the indemnity dated 11 August 2004 (as amended) given by Ofcom to the ASA in respect of the Premises shall terminate and cease to be of effect.

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16.7 If this Deed terminates or is terminated for any reason whatsoever and/or is otherwise brought to an end by any means or for any reason whatsoever, the provisions of schedule 3 shall apply.

17. **Audit Rights**

17.1 Each of the Co-regulatory Parties undertakes and agrees to provide Ofcom with all such information as it may reasonably require from time to time, and provide all reasonable assistance requested by Ofcom so as to enable Ofcom to fulfil any of its statutory duties.

18. **Force Majeure**

18.1 For the purposes of this Deed the expression "**Force Majeure**" shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental regulations, fire, flood, act of war or terrorism, military operations, insurrection or civil disorder, national or local emergency, disease or epidemic or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available. Any act, event, omission, happening or non-happening will only be considered an event of Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees.

18.2 No party shall in any circumstances be liable to any other for any delay or failure in performing any of its obligations under this Deed to the extent that such delay or failure is the result of any event of Force Majeure.

18.3 If any of the parties shall become aware of any event of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the others by the most expeditious method then available and shall inform the others of the period which it is estimated that such failure or delay shall continue.

18.4 If performance of the Functions is not resumed within twenty weeks after the occurrence of an event of Force Majeure affecting any one of the Co-regulatory Parties, Ofcom may terminate this Deed forthwith on written notice to the Co-regulatory Parties.

19. **Waiver of Remedies and Invalidity**

19.1 No forbearance, delay or indulgence by a party in enforcing the provisions of this Deed shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver in whole or in part of any subsequent breach. No right, power or remedy herein conferred upon or reserved for a party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

19.2 If any provision of this Deed shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Deed in that jurisdiction shall not be affected, and the legality, validity and enforceability of the whole of this Deed in any other jurisdiction shall not be affected.

20. **Entire Agreement and Variations**

20.1 This Deed together with the Authorisation constitutes the entire legally binding agreement between the parties relating to the subject matter of this Deed.

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- 20.2 Each party acknowledges that it has not been induced to enter into this Deed by, and that it does not in connection with this Deed or its subject matter rely on, any representation, warranty, promise or assurance by any other person save for those contained in this Deed and the MOU. Each party agrees that it shall have no right or remedy in respect of, and shall not in connection with any claim arising in relation to this Deed or its subject matter plead or assert the making or existence of, any representation, warranty, promise or assurance by any other party save for those therein contained (save in the case of fraud).
- 20.3 No addition to or modification of any provision of this Deed shall be binding upon the parties unless made in writing signed by a duly authorised representative of each of the parties.
- 20.4 The consent of the ASA shall not be required for the variation or termination of any provision of this Deed.

21. **Assignment**

No Co-regulatory Party shall assign, transfer, subcontract, deal with or dispose of any of its rights and obligations under this Deed in whole or in part, in law or in equity, without the prior written consent of Ofcom.

22. **Notices**

Any notice or other communication required to be given under this Deed shall, except where otherwise specifically provided, be in writing and may be delivered to the relevant party or sent by recorded delivery to the registered address or the principal office of that party specified below.

Ofcom: Riverside House, 2A Southwark Bridge Road, London SE1 9HA

F.A.O: Senior Partner (Kip Meek), with a copy to Ian Blair

ASAB: First Floor, Mid City Place, High Holborn, London WC1

F.A.O: Director General (Christopher Graham), with a copy to the Company Secretary (Phillip Griffiths)

BCAP: First Floor, Mid City Place, High Holborn, London WC1

F.A.O: Secretary of BCAP (Roger Wisbey) with a copy to the Company Secretary (Phillip Griffiths)

Basbof: Bloomsbury House, 74/77 Great Russell Street, London WC1B 3DA

F.A.O: Chairman (Winston Fletcher) with a copy to the Company Secretary (Stephen Hemsted).

Unless proved otherwise, any such notice shall be deemed to have been given, if sent by recorded delivery, two Working Days after the date of posting, and if personally delivered, upon delivery at the relevant address.

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23. **Counterparts**

This Deed may be executed in any number of counterparts, which shall together constitute one Deed. Any party may enter into this Deed by signing any such counterpart.

24. **No Partnership or Agency**

Nothing in this Deed shall constitute or be deemed to constitute a partnership between the parties nor, save as expressly set out herein, constitute any one or more parties the agent of any other party for any purpose.

25. **Costs**

Save as provided to the contrary in this Deed, each party to this Deed shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Deed.

26. **Governing Law and Jurisdiction**

26.1 This Deed shall be governed by and construed in all respects in accordance with English law.

26.2 Any dispute between the parties arising under or in connection with this Deed shall first be referred to the senior partner/director general of the respective parties for resolution in accordance with the MOU, and who shall enter into good faith discussions within 20 Working Days of receiving notice of any such dispute.

26.3 In relation to any legal action or proceedings to enforce this Deed or arising out of or in connection with this Deed each of the parties irrevocably submits to the exclusive jurisdiction of the English courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inappropriate forum.

27. **Third Party Rights**

27.1 ASA shall, pursuant to the Contracts (Rights of Third Parties) Act 1999, be entitled directly to enforce the rights conferred on it by part 3 of schedule 3 although it is not a party to this Deed.

27.2 Elfed Owens, Ian Parkes, Simon Lane and Nevean Raffle shall, pursuant to the Contracts (Rights of Third Parties) Act 1999, be entitled directly to enforce the rights conferred on him/her by clause 8 although he/she is not a party to this Deed.

27.3 Except as provided in clause 27.1 and clause 27.2, this Deed does not, by virtue of the Contracts (Rights of Third parties) Act 1999 or otherwise, confer any rights or benefits on any person or class of persons existing now or in the future, who is not a party to this Deed.

27.4 ASA shall not be entitled to assign the benefits conferred upon it by part 3 of schedule 3 without the prior written consent of Ofcom.

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SCHEDULE 1: EXISTING DATABASE

The Existing Database comprises:

- (A) the ITC advertising (legacy) data contained on Tracker IT system and all corresponding electronic files (e.g. copies of advertisements, Microsoft Word documents and PDF files);
- (B) the Radio Authority advertising (legacy) data;
- (C) all closed advertising cases files dealt with by Ofcom since its formation, including data transfer from the Ofcom Touchpaper system to the Tracker System;
- (D) all Ofcom Work in Progress advertising case files, including data transferred from the Ofcom Touchpaper system to the Tracker System;
- (E) all Ofcom Work In Progress Microsoft Word files; and
- (F) all related paper files,

relating to the matters and/or functions which are described in the Authorisation as being the responsibility of ASAB and BCAP.

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SCHEDULE 2: TRANSITIONAL ARRANGEMENTS**1. General**

- 1.1 Ofcom and the Co-regulatory Parties undertake and agree to comply with their respective obligations set out in this schedule in relation to the Transitional Arrangements.
- 1.2 Ofcom and the Co-regulatory Parties undertake and agree to provide each other with all such assistance as any other may reasonably require in relation to the Transitional Arrangements.

2. Notifications

From the Effective Date, Ofcom shall (at its own cost) use all reasonable endeavours to notify any third parties involved in the Ofcom Work in Progress that responsibility for handling complaints in relation to the content of broadcast advertising will transfer to ASAB on the Start Date and that such Ofcom Work in Progress will be undertaken by ASAB following the Start Date.

3. Milestones for Transitional Arrangements

- 3.1 Ofcom shall use all reasonable endeavours to deliver the following to ASAB (in such form as is agreed between Ofcom and ASAB) by the dates set out below:

27 October 2004	final transfer of data from Ofcom Touchpaper system to Tracker System and any attendant hard copy paper files
27 October 2004	a list of all Ofcom Work in Progress advertising case files together with a short summary and status report in respect of each case
27 October 2004	a copy of all Ofcom Work in Progress advertising case files
27 October 2004	a copy of all closed advertising cases files dealt with by Ofcom since its formation (including the transfer of all relevant data held on the Ofcom Touchpaper system in respect of such files to the Tracker System)
27 October 2004	all Ofcom Work in Progress Microsoft Word files relating to any Ofcom Work in Progress
31 October 2004	both electronic and hard copies of all relevant market research reports undertaken by the ITC, the Radio Authority, the BSC and Ofcom relating to advertising complaints.

- 3.2 ASAB may request that Ofcom provides:

- (A) updates to details of television and radio licences such as station names and contact details; and
- (B) reasonable access to complementary material Ofcom may hold, such as copies of television or radio programmes,

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and Ofcom shall use its reasonable endeavours to provide such items or access to ASAB.

4. **Staff Costs**

4.1 Ofcom shall, in recognition of the work involved in completing the Ofcom Work in Progress on cases, code policy and code review, continue (as agent for ASAB but subject to this paragraph 4.1) to bear the cost of salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the Transferring Employees and/or the Seconded Employees ("Staff Liability") from the Start Date to 31 January 2005 up to a maximum total cost of £100,000 provided that:

- (A) if such total aggregate Staff Liability costs are less than £100,000, the balance of £100,000 less the actual aggregate Staff Liability costs borne by Ofcom under this paragraph 4.1 shall be used to offset the contributions ASAB is required to pay to Ofcom in respect of the Transferring Employees' continued membership of the Ofcom Pension Scheme as set out in clause 8 of the Deed; or
- (B) if such total aggregate Staff Liability costs are greater than £100,000 for the period referred to above, the difference shall be borne or reimbursed by the Co-regulatory Parties.

4.2 BASBOF shall reimburse to Ofcom any amount due in respect of the Staff Liability on 31 March 2006.

5. **Registers**

5.1 On or before the Start Date, Ofcom shall provide to the Co-regulatory Parties a schedule of all the material provided to them as part of the Transitional Arrangements.

5.2 Each of the Co-regulatory Parties shall, on or before the Start Date, provide to Ofcom a comprehensive schedule of all the material received by each Co-regulatory Party as part of the Transitional Arrangements.

6. **IT**

6.1 ASAB shall be responsible for obtaining and paying for all relevant subscriptions and licences for all software and services provided by any third party including, but not limited to, services provided by Kynelle Media Services and the Broadcast Advertising Clearance Centre.

6.2 Ofcom's responsibility to pay TAH for the migration and conversion of data from the Ofcom Touchpaper system to such ASAB computer systems incorporating the Tracker System shall be subject to a maximum aggregate liability of £24,000.

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SCHEDULE 3 : CONSEQUENCES OF TERMINATION**PART 1 : TERMINATION COMPENSATION**

- 1.1 If this Deed terminates or is terminated for any reason whatsoever (including under or pursuant to clause 4 and including, for the avoidance of doubt, by any of the Co-regulatory Parties properly exercising their rights of termination under or pursuant to clause 4.1 or 16.2), and/or is otherwise brought to an end by any means or for any reason whatsoever EXCEPT ONLY by reason of Ofcom properly exercising its rights of termination under clause 16.1(A) or (B) then (without prejudice to any other rights or remedies available to any of the parties) all of the following provisions shall apply:
- (A) BASBOF shall calculate the amount of the Deficit as at the Termination Date;
 - (B) within 30 Working Days after the Termination Date, BASBOF shall (on behalf of the Co-regulatory Parties) send a written calculation (the "Calculation") of the amount of the Deficit as at the Termination Date to Ofcom and BASBOF shall thereafter promptly provide Ofcom with all such information as it may reasonably request in order to verify the Calculation;
 - (C) within 20 Working Days after receiving such Calculation, Ofcom shall notify BASBOF in writing whether or not it agrees with the Calculation and (if it does not) shall specify the reasons for such disagreement. If Ofcom notifies BASBOF that it agrees with the Calculation or fails to notify BASBOF whether or not it agrees with the Calculation within such period, the Calculation shall be deemed to have been agreed and shall be binding upon all parties for the purposes of this schedule;
 - (D) if BASBOF and Ofcom are unable to agree the Calculation within 40 Working Days after it has been sent to Ofcom (having sought in good faith to do so), the matter may be referred by any party hereto to an independent firm of chartered accountants agreed upon between them or (failing agreement) to be selected (at the instance of either party) by the President for the time being of the Institute of Chartered Accountants in England and Wales (the "President") with the request that such firm of chartered accountants determine the matter within 28 days of the referral to such firm. Such firm of chartered accountants shall act as experts and not as arbitrators and their decision as to the amount of the Deficit as at the Termination Date and as to who shall bear the costs of the reference to them shall be final and binding on Ofcom and on the Co-regulatory Parties (save only in the case of manifest error which shall be rectified forthwith). In the absence of any direction as to costs, Ofcom shall bear 50% of such costs and the Co-regulatory Parties shall bear 50% thereof. Ofcom and BASBOF shall disclose to each other and/or to the independent accountants referred to in this paragraph all relevant facts and information for the purposes of or in connection with the matter in question.
 - (E) BASBOF shall, on agreement of the Calculation or on determination aforesaid, promptly send to Ofcom a valid invoice for the amount of the agreed or determined Deficit as at the Termination Date.
 - (F) Ofcom will pay to BASBOF (on behalf of the Co-Regulatory Parties) a sum equal to the Deficit at the Termination Date (agreed or determined as aforesaid) and the amount of the Deficit at the Termination Date required to be paid by Ofcom to BASBOF (on behalf of the Co-Regulatory Parties) under this Part 1 of this schedule 3 shall be paid within 20 Working Days of receipt of a valid invoice by

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Ofcom for the amount of the Deficit at the Termination Date agreed or determined as aforesaid together with interest at the rate of 1% per annum above the base rate of National Westminster Bank plc from time to time from the Termination Date to the date of actual payment; and

- (G) The provisions of Parts 2 (Transfer of System) and 3 (Premises) of this schedule 3 shall apply.

1.2 The aggregate liability of Ofcom to pay the Deficit and the Premises Termination Costs under this schedule 3 shall be limited as follows:-

- (A) if the effective date of termination or other ending of this Deed is a date on or before 31 December 2004, to £3,200,000;
- (B) if the effective date of termination or other ending of this Deed is a date after 31 December 2004 but on or before 31 December 2005, to £2,900,000;
- (C) if the effective date of termination or other ending of this Deed is a date after 31 December 2005 but on or before 31 December 2006, to £2,500,000;
- (D) if the effective date of termination or other ending of this Deed is a date after 31 December 2006 but on or before 31 December 2007 to £2,250,000;
- (E) if the effective date of termination or other ending of this Deed is a date after 31 December 2007 but on or before 31 December 2008, to £1,950,000;
- (F) if the effective date of termination or other ending of this Deed is a date after 31 December 2008 but on or before 31 December 2009, to £1,600,000;
- (G) if the effective date of termination or other ending of this Deed is a date after 31 December 2009 but on or before 31 December 2010, to £1,250,000;
- (H) if the effective date of termination or other ending of this Deed is a date after 31 December 2010 but on or before 31 December 2011, to £1,250,000;
- (I) if the effective date of termination or other ending of this Deed is a date after 31 December 2011 but on or before 31 December 2012, to £1,250,000;
- (J) if the effective date of termination or other ending of this Deed is a date after 31 December 2012 but on or before 31 December 2013, to £800,000;
- (K) if the effective date of termination or other ending of this Deed is a date after 31 December 2013, to £0 (nil).

1.3 If this Deed is properly terminated by Ofcom under clauses 16.1(A) or (B), the provisions of Part 2 (Transfer of System) of this schedule 3 shall apply and, for the avoidance of doubt, Part 3 (Premises) shall not apply.

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PART 2 : TRANSFER OF SYSTEM**1. Handback**

- 1.1 The Co-regulatory Parties shall, as soon as reasonably practicable (and in any event within three months of the Start Date), prepare a draft Handback Plan and submit such plan to Ofcom for approval. The Handback Plan shall address all such issues concerning the expiration or termination of this Deed or any part of the Functions as the parties may agree and including, without limitation, details of any activities necessary to facilitate a smooth Handback, together with the timetable for and a description of how these activities are to be performed.
- 1.2 Ofcom shall provide its comments on the draft Handback Plan to the Co-regulatory Parties as soon as reasonably practicable. If necessary the parties will discuss Ofcom's comments in good faith and the Co-regulatory Parties will then promptly prepare a revised Handback Plan and submit it to Ofcom for approval. This process shall be repeated until the Handback Plan has been approved with the aim of the Handback Plan being approved within three months of the date of initial submission by the Co-regulatory Parties. Once all parties have approved the draft Handback Plan in writing it will form part of this Deed. Any failure to approve the draft Handback Plan by any party within the time frames set out shall be escalated to the senior partner/director general of the respective parties.
- 1.3 The Co-regulatory Parties shall update the Handback Plan every 12 months and within 20 Working Days of the date of any notice given by any party to terminate this Deed and, following such update, shall submit the revised Handback Plan to Ofcom for its approval in accordance with paragraph 1.2.
- 1.4 Each of the Co-regulatory Parties shall perform its obligations under the last approved Handback Plan from the date on which any notice of termination is served until the later of:
- (A) the Termination Date; or
- (B) the date upon which all of the Co-regulatory Parties' obligations under the Handback Plan have been performed.
- 1.5 During the Handback Period the Co-regulatory Parties and Ofcom shall co-operate with each other to ensure a smooth Handback of the System.
- 1.6 The Co-regulatory Parties shall provide all reasonable assistance requested by Ofcom and may not withhold such assistance for any reason, including any dispute arising from the termination of the Deed or any part of the Functions.

2. Transfer of Assets and Rights

- 2.1 During the Handback Period and in any event by the Termination Date:
- (A) Ofcom shall grant to ASAB and to BCAP a royalty free, non-transferable, non-exclusive licence to use the Database subject to clause 10 for the purposes of accounting for stewardship of the System during the Term and for education and historical purposes;
- (B) Ofcom shall grant to BCAP and to ASAB a royalty free, non-transferable, non-exclusive licence to use the Materials and the Codes for the purposes of

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accounting for stewardship of the System during the Term and for education and historical purposes;

- (C) Ofcom and the Co-regulatory Parties may agree to the transfer or rental of certain assets;
- (D) each of the parties will return to the others all Confidential Information relating to any other party and will certify that it does not retain any other party's Confidential Information;
- (E) from the Termination Date ASAB shall cease to collect WIP Data and New Data and shall cease to act as Data Controller in respect thereof; and
- (F) the Co-regulatory Parties will, subject to the provisions of clause 10, transfer to Ofcom, the Database, Materials, Codes, and information held on or derived from the Database which is (in each case) in their custody, possession or control.

2.2 On the Termination Date, Ofcom shall assume responsibility for any work in progress relating to unresolved complaints and adjudications immediately prior to the Termination Date; and ASAB shall indemnify and hold harmless Ofcom from and against all reasonable costs, claims, liabilities and expenses suffered or incurred by Ofcom as a result of third party claims in relation to the handling by ASAB of such work in progress prior to the Termination Date.

3. **Re-transfer Employees**

3.1 During the Handback Period ASAB for itself and on behalf of the relevant Co-regulatory Party undertakes to Ofcom:

- (A) to disclose to Ofcom and/or any Successor System Provider a list of the Re-transfer Employees showing their employer and date of commencement of employment and all material terms and conditions of employment and details of all benefits applicable to the Re-transfer Employees (including but not limited to all collective agreements and recognition agreements);
- (B) in relation to the employment of the Re-transfer Employees, to comply in full with all its or their requirements (whether statutory, contractual or otherwise) up to the Termination Date;
- (C) to provide the Personnel Information to Ofcom and/or any Successor System Provider and to indemnify Ofcom and any Successor System Provider against any Costs which it or they incur and which are attributable to:
 - (i) the provision of materially inaccurate or materially incomplete Personnel Information in relation to the Re-transfer Employees; and
 - (ii) the failure of any of the Co-regulatory Parties to inform Ofcom of any material change to the Personnel Information in relation to the Re-transfer Employees before the relevant Termination Date;
- (D) promptly to notify Ofcom in writing of any notice of resignation received from any Re-transfer Employee;
- (E) to enable and give reasonable assistance to enable Ofcom, any Successor System Provider and such other person as they may determine to communicate with and

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meet the Re-transfer Employees and their trade unions, work councils or other appointed employee representatives;

- (F) that all amounts payable to or in relation to the Re-transfer Employees by their employer, including salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the Re-transfer Employees for the Handback Period (whether or not due for payment) will be borne and discharged by the relevant Co-regulatory Party. All necessary apportionments will be made to give effect to this clause;
- (G) to comply with its obligations to consult with the appropriate representatives of the Re-transfer Employees in accordance with Regulation 10 of the Regulations; and
- (H) to take all such steps as may be necessary to remove from the provision of the System with effect before the Re-transfer Date all employees who are not Re-transfer Employees.

3.2 During the Handback Period the Co-Regulatory Parties jointly and severally undertake to Ofcom not to:

- (A) save for any variations which are required by the terms of any contract of employment, collective agreement or otherwise by law and/or any variations in respect of annual pay rises which fall due (and ASAB shall provide Ofcom with full details of any such variations as soon as reasonably practicable after they are agreed), vary (or propose or promise to vary) any of the material terms and conditions of employment of any Re-transfer Employee;
- (B) make any material changes to the duties of an Re-transfer Employee (including, but not limited to, materially reducing or varying the involvement of any Re-transfer Employee in the System);
- (C) replace or redeploy any Re-transfer Employee or transfer any Re-transfer Employee away from the System;
- (D) terminate (or serve notice to terminate) the employment of any Re-transfer Employee (other than in response to the employee's gross misconduct, gross incompetence or material breach of contract)

without the prior written agreement of Ofcom, such agreement not to be unreasonably withheld or delayed.

3.3 The parties acknowledge and agree that the transfer of the Re-transfer Employees to Ofcom or any Successor System Provider will be deemed to be a 'relevant transfer' for the purposes of the Regulations. The parties agree that the contract of employment of each Re-transfer Employee will have effect from the close of business on the relevant Termination Date as it originally made between Ofcom or any Successor System Provider and the Re-transfer Employee.

3.4 Ofcom undertakes for itself and on behalf of any Successor System Provider:

- (A) that all amounts payable to or in relation to the Re-transfer Employees by Ofcom or any Successor System Provider, including salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the periods after the close of business on the relevant Termination Date (whether or not due for payment) will be borne

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and discharged by Ofcom or any Successor System Provider (as the case may be). All necessary apportionments will be made to give effect to this paragraph 3.4 (A);

(B) to comply with its or their obligations to provide ASAB or any relevant employer with such information as it requires pursuant to Regulation 10(3) of the Regulations in respect of the Re-transfer Employees.

3.5 Ofcom for itself and on behalf of any Successor System Provider will fully and promptly indemnify the Co-regulatory Parties:

(A) against Costs arising from or relating to any action or claim by any appropriate representative (as defined by Regulation 10 of the Regulations) or the Re-transfer Employees arising out of the failure of Ofcom or any Successor System Provider to give ASAB or the relevant Co-regulatory Party the information required under Regulation 10(3) of the Regulations;

(B) against all Costs which are attributable to any act or omission of Ofcom or any Successor System Provider after the close of business on the relevant Termination Date in respect of any of its or their obligations or duties (in either case, whether arising under common law, statute, custom or otherwise) to or in relation to any of the Re-transfer Employees (including any liability arising out of the termination or dismissal of any Re-transfer Employee); and

(C) against all Costs arising out of or relating to any failure of Ofcom or any Successor System Provider to comply with its obligations under paragraph (3.4).

3.6 On termination for any reason or expiry of this Deed (or any part thereof) the Co-regulatory Parties jointly and severally will fully and promptly indemnify Ofcom or any Successor System Provider:

(A) against any Costs arising from or relating to any action or claim by an appropriate representative (as defined by Regulation 10 of the Regulations) or arising out of the failure of ASAB or the relevant Co-regulatory Party to inform and consult with any appropriate representative or the Re-transfer Employees with regard to the Handback except to the extent that any such action or claim (or any part of such action or claim) arises from any failure by Ofcom or any Successor System Provider to give ASAB or the relevant Co-regulatory Party the information required under Regulation 10(3) of the Regulations;

(B) against all Costs which are attributable to any act or omission of ASAB or any of the other Co-regulatory Parties prior to the close of business on the Termination Date in respect of any of its or their obligations or duties (in either case whether arising under common law, statute, custom or otherwise) to or relating to any of the Re-transfer Employees or any current or former employees of ASAB or any other Co-regulatory Party who are or were employed in the System (including any liability arising out of the termination or dismissal of any Re-transfer Employees or any other current or former employees of ASAB who are or were employed on the System) and which Ofcom or any Successor System Provider incurs as a result of succeeding to ASAB or the relevant Co-regulatory Party in relation to the contracts of employment of the Re-Transfer Employees or the current or former employees of ASAB or any other Co-regulatory Party employed in relation to the System whether pursuant to the Regulations or otherwise; and

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- (C) against all Costs arising out of or relating to any failure of ASAB or any of the Co-regulatory parties to comply with its or their obligations under paragraph 3.1(F).
- 3.7 If despite the parties agreement the Regulations are found by any court or tribunal not to apply to effect the transfer of all or any of the Re-transfer Employees, then:
- (D) within 14 days of ASAB or any other Co-regulatory Party becoming aware of such decision, the relevant Co-regulatory Party will notify Ofcom ("Notification"). Ofcom will then have a period of 28 days from the date of such Notification ("Offer Period") in which to offer employment or to procure that the relevant Successor System Provider offers employment to such Re-transfer Employee and for such Re-transfer Employee to accept such offer of employment and to resign from his/her employment with ASAB or the Co-regulatory Party;
- (E) if Ofcom or the relevant Successor System Provider makes an offer of employment, ASAB or the relevant Co-regulatory Party shall give to it all reasonable assistance to procure that such Re-transfer Employee accepts such offer of employment;
- (F) If, on the expiry of the Offer Period, such Re-transfer Employee has not accepted such offer of employment or if such Re-transfer Employee has accepted such offer of employment but has not served notice of resignation on ASAB or the relevant Co-regulatory, ASAB or the relevant Co-regulatory Party may terminate the employment of such person within seven days from the expiry of the Offer Period; and
- (G) Ofcom for itself and on behalf of any Successor System Provider shall indemnify ASAB or any Co-regulatory Party against all Costs which arise out of or relate to such termination and from and against any sums payable to such Re-transfer Employee in relation to his employment from the relevant Termination Date to the date of such termination. For the avoidance of doubt, if ASAB or any relevant Co-regulatory Party does not terminate the employment of such person in accordance with this clause, such person shall be deemed to be and at all times to have been an employee of ASAB or any relevant Co-regulatory Party.
- 3.8 If any court or tribunal finds that the employment of a person who is not a Re-transfer Employee transfers to Ofcom (which in this clause shall mean Ofcom and/or any other Successor System Provider) in accordance with the Regulations or otherwise:
- (H) Within 14 days of becoming aware of such decision, Ofcom will notify ASAB or the relevant Co-regulatory Party ("Notice"). ASAB or the relevant Co-regulatory Party will then have a period of 28 days from the date of Notice ("Acceptance Period") in which to offer employment to such person and for such person to accept such offer of employment and resign from his/her employment with Ofcom;
- (I) If ASAB or the relevant Co-regulatory Party makes such an offer of employment, Ofcom shall give to it all reasonable assistance to procure that such person accepts such offer of employment;
- (J) If, on the expiry on the Acceptance Period, such person has not accepted such offer of employment or if such person has accepted such offer of employment but has not served notice of resignation on ASAB or the relevant Co-regulatory Party, Ofcom may terminate the employment of such person within seven days from the expiry of the Acceptance Period; and

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- (K) ASAB or the relevant Co-regulatory Party shall indemnify Ofcom against all Costs which arise out of or relate to such termination and from and against any sums payable to such person in relation to his employment prior to such termination. For the avoidance of doubt, if Ofcom does not terminate the employment of such person in accordance with this clause, such person shall be deemed to be and at all times to have been a Re-transfer Employee.
- 3.9 If, notwithstanding the definition of Re-transfer Employees, more than 20 employees of ASAB or any Co-regulatory Party transfer to Ofcom or any Successor System Provider by operation of the Regulations on the termination for any reason or expiry of this Deed ("Transferred Employees"), ASAB shall in its sole discretion decide which of the Transferred Employees are Re-transfer Employees for the purpose of this Deed. For the avoidance of doubt, the number of employees classified as Re-transfer Employees by ASAB shall not exceed 20. The provisions in paragraph 3.8(A) to (D) shall be applicable to Ofcom or any Successor System Provider in respect of:
- (A) those employees who are not classified as Re-transfer Employees by ASAB; and
- (B) any employees of ASAB or any Co-regulatory Party whose employment transfers to Ofcom or any Successor System Provider in accordance with the Regulations or otherwise and who immediately before the relevant date of transfer do not have a period of continuous employment (as defined in the Employment Rights Act 1996 or amending legislation) with ASAB or the relevant Co-regulatory Party of at least one year.
- 3.10 For the purposes of paragraphs 3.1, 3.2, 3.6, 3.7, 3.8 and 3.9 the word 'ASAB' shall mean ASAB and any Associate of ASAB and 'Co-regulatory Party' shall mean any Co-regulatory Party and any Associate of any such Co-regulatory Party.
- 3.11 Where one party is obliged to indemnify the other under this paragraph 3 in respect of a claim ("Indemnifying Party"), the parties will co-operate fully with each other in the determination of the claim and no party is to settle a claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.
- 3.12 If this Deed terminates automatically pursuant to clauses 4.2(A) or 4.2(B) of this Deed, there is no Handback Period but the obligations of ASAB for itself and on behalf of the relevant Co-regulatory Party as set out in paragraphs 3.1 and 3.2 shall apply and be varied as follows:
- (A) ASAB will disclose the list referred to in paragraph 3.1(A) and the Personnel Information referred to in paragraph 3.1(C);
- (B) in respect of paragraph 3.1(B) and paragraph 3.1(H), ASAB will give a warranty to Ofcom that all requirements were complied with in the period up to the Termination Date;
- (C) paragraph 3.1(C)(ii), paragraph 3.1(E), paragraph 3.1(H) and paragraph 3.2 will be deleted;
- (D) in respect of paragraph 3.1(D), ASAB will notify Ofcom of any notice of resignation received in the period of 6 months prior to the Termination Date from any person wholly or mainly engaged in providing the System; and

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- (E) paragraph 3.1(F) shall be deleted and replaced with the words "that all amounts payable to or in relation to the Re-transfer Employees by their employer, including salaries, wages, bonuses and other emoluments, all statutory contributions and all income tax deductible under PAYE and all other employment costs in respect of the Re-transfer Employees for the period up to the Termination Date (whether or not due for payment) have been borne and discharged by the relevant Co-regulatory Party. All necessary apportionments have been or will be made to give effect to this clause;

ASAB will comply with its obligations under paragraph 3.12(A), (B), (D) and (E) within 14 days from the Termination Date."

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PART 3: PREMISES

1. Definitions

In this Part, unless the context otherwise requires, the following expressions shall have the meanings identified below:

“Capital Repayment” means the sum payable by the ASA and/or ASAB by the terms of the Lease Agreement in the event that the Second Lease is not granted;

“Disposal” means any one or more disposals of the Premises including by way of assignment, subletting or surrender;

“Disposal Costs” means all fees, costs and expenses reasonably and properly incurred by the ASA and/or ASAB in procuring Disposal including marketing and estate agency and legal fees and the cost of (or cash equivalent of) any Incentives and the cost of works to the Premises reasonably required in connection with any Disposal and, if the Second Lease is not granted, shall include the Capital Repayment;

“Holding Costs” means all sums payable by the ASA and/or ASAB in respect of Premises during the Holding Period including (as appropriate) the rent and service charges payable under the Lease and the whole or a proper proportion of all uniform business rates and insurance premiums together with all liabilities, costs and expenses reasonably and properly incurred by ASAB and/or the ASA in connection with the Premises including maintenance costs, SDLT and other costs and fees in respect of the Second Lease and the costs of reinstating alterations (if incurred) Provided that a fair proportion only of such costs shall be taken into account for any part of the Holding Period during which part of the Premises is occupied by the ASA;

“Holding Period” means the period from the Termination Date until the date of termination of the Lease (including the Second Lease if applicable);

“Incentives” means capital payments, rent free periods or financial incentives or inducements reasonably and properly incurred in connection with a Disposal;

“Mitigation Costs” means the costs reasonably and properly incurred by the ASA and/or the Co-regulatory Parties in endeavouring to mitigate the liability of Ofcom under the Premises Indemnity including all legal costs of defending and dealing with claims under paragraph 5 below;

“Premises Indemnity” means the indemnity provided for in this Part;

“Premises Termination Costs” means the costs comprising the Premises Indemnity;

“Receipts” means all sub-rents and other sums received by the ASA and/or ASAB from any sub-tenant or licensee of the Premises; and

“Relocation Costs” means costs payments and expenses reasonably and properly incurred (and for the avoidance of doubt not being limited to removal costs) by the ASA in relocating its business to alternative Premises.

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2. **Scope**

- 2.1 The following provisions of this Part 3 apply to the Premises if at the Termination Date the Premises or part thereof are occupied by persons who are employed or engaged by any of the Co-regulatory Parties in connection with the System.
- 2.2 Ofcom shall have no liability under the Premises Indemnity in respect of the following:
- (A) any internal costs incurred by any of the Co-regulatory Parties or by the ASA (including, without limitation, any management time);
 - (B) any costs incurred by the Co-regulatory Parties or by the ASA as a result of any breach by the ASA and/or by ASAB of any covenants in the Lease which are negative in substance (including any restrictions therein on the activities of any of the Co-regulatory Parties or of the ASA); or
 - (C) any costs incurred by the Co-regulatory Parties or by the ASA as a result of any material breach by the ASA and/or by ASAB of any covenants in the Lease which are positive in substance if and to the extent that such breach is not remedied (whether by the ASA and/or by ASAB) within a reasonable time (and, in any event, within 40 Working Days) following receipt by the ASA or by ASAB of any written communication from the landlord of the Premises notifying the ASA and/or the ASAB of the breach and requiring it to be remedied Provided that this paragraph 2.2 shall not negate nor reduce the Premises Indemnity in its application to the cost of compliance with positive covenants relating to the repair, condition and decoration of the Premises.

3. **Indemnity**

- 3.1 With effect from the Termination Date (and subject to the other provisions of this Deed) Ofcom shall be responsible for and shall indemnify the ASA and ASAB in respect of all Holding Costs, Disposal Costs, Relocation Costs and Mitigation Costs reasonably and properly incurred by the ASA and/or by ASAB but less any Receipts to the extent (in each case) that any such costs or receipts relate to any time or to any event which occurs after the Termination Date (the "Premises Indemnity").
- 3.2 Sums due under paragraph 3.1 shall be paid within 5 Working Days of demand in writing made by the ASA and/or ASAB together with interest at 1% above the base rate of the National Westminster Bank Plc calculated from the date of payment by the ASA or ASAB until the date of payment by Ofcom.

4. **Agreed Mitigation Procedure following Termination**

- 4.1 Following the Termination Date, each of the Co-regulatory Parties undertakes to use (and undertakes to procure that the ASA shall use) all reasonable efforts to mitigate the liability of Ofcom under the Premises Indemnity including, without limitation, by following the procedure set out in this paragraph.
- 4.2 Following the Termination Date Ofcom and the Co-regulatory Parties shall co-operate in good faith by following the procedure set out in this paragraph save to the extent that they may agree some alternative procedure.

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- 4.3 Ofcom agrees that the mitigation procedure will (unless the parties agree otherwise) involve vacation of the Premises, ASA relocating to alternative premises and a Disposal or Disposals.
- 4.4 The Co-regulatory Parties and Ofcom shall jointly appoint independent professional property agents ("Property Agents") to advise Ofcom and the Co-regulatory Parties jointly upon any Disposal and to undertake marketing and other usual steps in connection with a Disposal.
- 4.5 Ofcom and the Co-regulatory Parties shall act in accordance with the advice of the Property Agents in relation to the marketing strategy.
- 4.6 Ofcom and the Co-regulatory Parties shall co-operate in good faith and without delay with a view to achieving a Disposal and in particular in the event of receipt of any offer by any third party to accept a Disposal ("Disposal Offer") shall within 7 Working Days of being given written details of the same consider and comment upon such Disposal Offer confirming in writing whether or not Ofcom and/or (as appropriate) the Co-regulatory Parties agree to acceptance of the Disposal Offer.
- 4.7 The Co-regulatory Parties shall notify Ofcom in writing from time to time of the proposed mitigation strategy and Ofcom shall not unreasonably withhold or delay its approval to such strategy and Ofcom shall notify the Co-regulatory Parties from time to time and without delay if Ofcom considers that any alternative strategy should be adopted and what that alternative strategy should be.
- 4.8 Neither the ASA nor any Co-regulatory Party shall be required to undertake any act which is unlawful or which would, in the reasonable opinion of the relevant Co-regulatory Party or the ASA (as the case may be) be likely to materially and adversely prejudice its commercial interests.
- 4.9 Each of the Co-regulatory Parties undertakes to provide (and to procure that the ASA shall provide) Ofcom with such information as it may reasonably require in relation to any actions taken by that Co-regulatory Party or by the ASA pursuant to this paragraph 4.

5. **Conduct of claims**

5.1 **Effect**

This following provisions of this paragraph 5 apply in respect of any claim (whether current, pending or threatened) by any person against any of the Co-regulatory Parties or the ASA in respect of which Ofcom may have any liability under the Premises Indemnity (a "Relevant Matter").

5.2 **Notification and information**

As soon as reasonably practicable, and in any event within five Working Days after becoming aware of a Relevant Matter, the relevant Co-regulatory Party shall give notice of the same to Ofcom, together with such particulars of the Relevant Matter as are then available to the Co-regulatory Parties. The Co-regulatory Parties and the ASA shall thereafter provide Ofcom with all information which Ofcom may reasonably require concerning the Relevant Matter.

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5.3 Conduct of claims

The Co-regulatory Parties undertake and agree to (and undertake and agree to procure that the ASA shall):

- (A) keep Ofcom informed of all material developments in relation to any Relevant Matter by producing written reports containing such information as Ofcom shall reasonably require;
- (B) not make any admission of liability, agreement, settlement or compromise with any third party in respect of such Relevant Matter (and undertake and agree to procure that the ASA shall not do so) without the prior written consent of Ofcom which consent is not to be unreasonably withheld or delayed; and
- (C) (subject to paragraph 4.8 above and paragraph 5.4 below) take all actions (and procure that the ASA shall take all such actions) which Ofcom may reasonably request to avoid, dispute, resist, defend or appeal the Relevant Matter.

5.4 Lease obligations

The ASA and ASAB shall be entitled (without obtaining any consent of Ofcom nor giving any notification to Ofcom) to pay rents and comply with their respective obligations under the Lease notwithstanding the provisions of this Deed.

6. Dispute resolution

- 6.1 In the event that Ofcom and the Co-regulatory Parties do not agree upon the identity and appointment of the Property Agents within 10 Working Days then the Property Agents shall be appointed on the application of any party or the ASA by the President of the Royal Institution of Chartered Surveyors. The Property Agents shall be a selling and letting agent having not less than ten years experience of selling and letting commercial property in the City of London (including Holborn) and the costs of the President or his nominee shall be borne equally between Ofcom on the one hand and the Co-regulatory Parties on the other.
- 6.2 In the event that Ofcom and the Co-regulatory Parties do not agree within 10 Working Days whether to accept a Disposal Offer the parties shall forthwith refer the matter to an independent expert ("Expert") agreed between them or failing agreement to be appointed (on the application of any party or the ASA) by the President of the Royal Institution of Chartered Surveyors and to be a selling and letting agent having not less than ten years experience of selling and letting commercial property in the City of London (including Holborn).
- 6.3 The Expert shall determine in his absolute discretion whether it is desirable to accept a Disposal Offer taking into account its terms, terms otherwise available in the market and all other circumstances including all submissions of Ofcom and the Co-regulatory Parties and the ASA and such determination shall be completed within one month of the Expert's appointment and the Expert's decision shall be final in all respects and the costs of the determination shall be in his award.
- 6.4 The Co-regulatory Parties shall procure that the ASA shall join in and agree to be bound by any expert determination commenced pursuant to this clause.

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7. **Terms of the Lease**

7.1 **Current terms**

Each of the Co-regulatory Parties warrants and represents to Ofcom that a true and complete copy of the Lease has been supplied to Ofcom on 21 October 2004.

7.2 **Amendment of terms**

The Co-regulatory Parties undertake not to agree (and undertake and agree to procure that the ASA does not agree) any amendment to the terms of the Lease without the prior written consent of Ofcom, such consent not to be unreasonably withheld or delayed.

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SCHEDULE 4: TRANSFERRING EMPLOYEES

Simon Lane

Elfed Owens

Ian Parkes

Andrea McLamon

Nevean Raffle

Colin Lambert

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SCHEDULE 5: PERSONNEL INFORMATION

The Personnel Information means the following information in respect of the Transferring Employees and Re-transferring Employees:

- 1.1 the total number;
- 1.2 details of the pay and any benefits (including pensions) and any proposed or agreed variations in respect of the said pay and benefits;
- 1.3 details of age, length of service, notice periods and all other terms and conditions of employment and any proposed or agreed variations in respect of the said terms and conditions;
- 1.4 the location of place of work;
- 1.5 applicable recognition and collective agreements; and
- 1.6 details of any disputes which have arisen or are pending between Ofcom and any of the Transferring Employees, and/or between ASAB and any of the Re-transferring Employees as the case may be.

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SCHEDULE 6: SECONDED EMPLOYEES

There are no Seconded Employees.


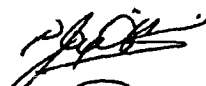
Annex L

IN WITNESS WHEREOF this Deed has been executed by the parties the day and year first before written

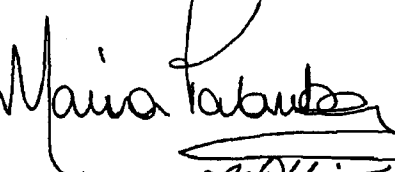
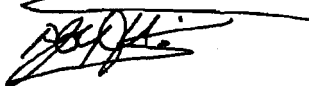
SIGNED by D. CURRIE
and S. CARTER
and thereby executed by
the Office of Communications
as its Deed

)
)
) X
Chairman 
)
) X
Chief Executive 


SIGNED by S. GADHIA
and P. GRIFFITHS
and thereby executed by
The Advertising Standards Authority
(Broadcast) Limited
as its Deed

)
)
)
) Director 
)
) Director/Secretary 

SIGNED by M. ALUMBA
and P. GRIFFITHS
and thereby executed by
The Broadcast Committee of Advertising
Practice Limited
as its Deed

)
)
) Director 
)
) Director/Secretary 

SIGNED by W. FLETCHER
and S. HEMSTED
and thereby executed by
The Broadcast Advertising Standards Board of
Finance Limited
as its Deed

)
)
) Director 
)
) Director/Secretary 