

**Reference Offer for the provision of
Transmission Services
in respect of
Re-advertisement of FM Local Commercial Radio
Licence for Portsmouth**



Version 1

Publication Date: 2nd October 2014

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1. Introduction

This Reference Offer is issued pursuant to paragraph 10.4.3 of the Undertakings in respect of Ofcom's recent re-advertisement of an FM Local Commercial Radio licence at the frequency of 107.4 MHz covering the Portsmouth area. Ofcom has published an information memorandum dated 2nd September entitled "Re-advertisement of FM Local Commercial Radio Licence for Portsmouth" ("Advertisement").

This Reference Offer sets out the terms and conditions and charges on which Arqiva is willing to provide Transmission Services (as such term is defined in the Undertakings) in respect of two sites and frequencies set out in the FM Local Commercial Radio Licence for Portsmouth described in the Advertisement.

This Reference Offer is subject to the Reference Offer Terms and Conditions set out in Section 5 of this Reference Offer, and the defined terms used in this Reference Offer can be found in Clause 1 of the Reference Offer Terms and Conditions.

The specification and prices in this Reference Offer are current at 2nd October 2014 and valid for 90 days, after which time they will be revalidated by Arqiva. A copy of this Reference Offer, as updated from time to time, will be placed on Arqiva's website: www.arqiva.com (or any replacement or successor website).

2. Scope & Specification

2.1 Transmission Services

Transmission Services comprise the provision by Arqiva of both Managed Transmission Services (MTS) Network Access (NA) and non-regulated services and equipment as set out in this Reference Offer. The scope and specification for the Transmission Services that will be provided by Arqiva pursuant to this Reference Offer is subject to the detailed terms in the Reference Offer Terms and Conditions, as summarised in this Section 2.

Managed Transmission Services

Arqiva will:

- Maintain and monitor the Transmitter System as set out in the Reference Offer Terms and Conditions;
- Carry out an annual inspection of the Antenna System, and report to the Customer if it identifies any essential maintenance works which are required that will affect the Customer's service;
- Provide an annual maintenance report; and
- Manage the payment of utility bills

In respect of the following site: Fort Southwick.

Network Access

Arqiva will:

- Provide access to the two stations listed below:
 - Fort Southwick - NGR SU 626 069 – Arqiva leasehold site
- Provide access to the existing combiner and antenna as specified in "Design & Build" below;
- Provide station security/safety (including perimeter fencing);
- Provide the electricity supply including distribution within the site and shared accommodation;
- Include an allowance for supervision by Arqiva of Customer access to the Station, in accordance with the Arqiva Code of Practice.

In respect of the following site: Fort Southwick.

Other services and equipment – not regulated by the Undertakings

Arqiva will:

- Provide or procure a studio to transmitter circuit from a notional location in the centre of Portsmouth to the Fort Southwick station including back-up using ISDN;

The Customer will be responsible for providing or procuring all other equipment and services required in order for it to comply with the requirements of any Ofcom licence.

2.2 Design & Build

The Advertisement requires the service to cover the Portsmouth area and immediately surrounding area. The Advertisement refers to the use of the frequency 107.4 MHz to provide the service. It is the responsibility of the new licensee to determine whether it can meet the requirements of the Advertisement and to put in place any remedial measures necessary if it cannot meet the requirements of the Advertisement.

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a licence for FM Local Commercial Radio Licence for Portsmouth.

Arqiva does not envisage any design or building works being required and, accordingly, this Reference Offer is based upon the successful licensee using the existing equipment. The current provision at Fort Southwick is as follows:

Fort Southwick

Antenna System

The Transmitter antenna comprises of Two 3 Element Yagi's at 18.2m on 125° and 235° and One Dipole at 18.2m on 180°.

Transmitter System

Eddystone XE150 150W transmitter. Output power is 92W, ERP 200 W. TX. Telemetry by Dataminer Programme Input Equipment (PIE) – more fully described below Equipment Rack

Programme Input Equipment:

Systembase 510 Codex
Guardian 2 audio change-over to MP3 Player
Audio Processor – Orban 8600
RDS Encoder Audemat FMB80

Telco Circuits

If required by the Customer, Arqiva will provide or procure a studio to transmitter circuit from a notional location in Portsmouth including back-up using ISDN;

Arqiva shall require the Customer to provide formal written application for Transmission Services to be provided pursuant to the terms of this Reference Offer by a date to be agreed, subject to the satisfactory completion of the engagement process as set out in section 4 of this Reference Offer

The Reference Offer transmission parameters for the Fort Southwick station transmitter are as follows:

Location	Fort Southwick
National Grid Reference	SU 626 069
Total Maximum ERP	200 W
Frequency	107.4 MHz

Reference Offer Antenna System Horizontal Radiation Pattern is predicted to be contained within the following restrictions. It is not proposed to change the Antenna System from the one in use by the existing Ofcom licensee at the time of writing

Bearing ETN (degrees)	0	10	20	30	40	50	60	70	80
Restriction	20	20	20	20	20	14	12	9	6
Bearing ETN (degrees)	90	100	110	120	130	140	150	160	170
Restriction	4	2	1	0.5	0	1	3	5	4
Bearing ETN (degrees)	180	190	200	210	220	230	240	250	260
Restriction	3	4	5	3	1	0	0.5	1	2
Bearing ETN (degrees)	270	280	290	300	310	320	330	340	350
Restriction	4	6	9	12	14	20	20	20	20

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a licence for FM Local Commercial Radio Licence for Portsmouth.

Should a variation from the design set out in this Reference Offer, be required, then please contact the Reference Offer Manager, Terrestrial Broadcast at Arqiva, as this Reference Offer will not apply in such circumstances.

2.3 Operation

2.3.1 Following provision and commissioning of the Transmitter System and integration into the Antenna System, Arqiva will provide the following as set out in the Reference Offer Terms and Conditions subject to the caveats previously stated:

- Maintenance of the Stations, including maintenance of access, perimeter fencing;
- Security of the Stations;
- Maintenance of the accommodation on the grounds;
- Maintenance of the towers;
- Ensuring that the Transmitter Systems and Antenna Systems are operational and therefore are able to transmit and broadcast the Customer Signal;
- Maintenance of the Antenna Systems;
- 3 hour response to Breakdowns during 08.30 – 17.00 weekdays (excluding public holidays) and 4 hours at other times;
- An annual report on maintenance and Breakdowns;
- Management of payment of pass through costs.

2.3.2 The Customer will be responsible for all other elements of ensuring that the Customer Signals are delivered to an agreed interface point at the studio premises, assumed for the purpose of this Reference Offer to be located in the centre of Portsmouth, in accordance with Arqiva's standards for Customer Signal presentation at third party premises.

2.3.3 No provision has been made in this Reference Offer for a reserve antenna or a generator at either of the Stations.

3. Charges

3.1 Charges for Transmission Services

Charges for provision of Transmission Service	Initial fee £	Annual fee £
Application Fee	None	N/A
Network Access	None	£7,472
MTS	None	£9,071
Estimated pass-through costs	None	£1,652
Telco circuits	None	£7,453
Total		£25,648

3.2 Payment Terms

3.2.1 The Application Fee is payable upon indication of an interest in entering into a contract in order to enable Arqiva to undertake a full survey and confirm availability and terms. Payment

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a licence for FM Local Commercial Radio Licence for Portsmouth.

of the Application Fee does not guarantee that any specific accommodation or Antenna System will be available to the Customer. If the Customer wishes to reserve any accommodation or Antenna System it must pay the reservation fee set out below in this Section 3.

3.2.2 The Initial Fee (if any) is payable within thirty (30) days of execution of the contract.

3.2.3 The Annual Fee is payable monthly in advance.

3.3 Basis of Charges

3.3.1 Compliance with the Undertakings

Charges for Transmission Services are calculated in accordance with the applicable sections of the Undertakings. Accordingly, charges:

- i. are reasonably derived from the costs of provision;
- ii. include an appropriate mark up for recovery of common costs;
- iii. include an appropriate return;
- iv. only include costs that Arqiva will reasonably and efficiently incur;
- v. electricity charges will be passed through with no mark-up on the actual charges paid by Arqiva;
- vi. the annual fee (excluding pass-through costs) will be adjusted on an annual basis by a percentage equal to the annual percentage increase in RPI-1%;

3.3.2 Basis of Charges

- i. As provided in the Reference Offer Terms & Conditions the cost of the Transmitter System will be payable by the Customer upon contract signature.
- ii. As provided in the Reference Offer Terms & Conditions the decommissioning of the Transmitter System must be carried out by Arqiva and, accordingly, the costs of the decommissioning will be payable by the Customer prior to installation of the systems.
- iii. The charges are stated at 2nd October 2014 prices and are subject to change in accordance with the Reference Offer Terms and Conditions, including (but not limited to): following survey (as explained below); as a result of indexation as provided in the Reference Offer Terms and Conditions; and/ or as a result of matters outside Arqiva's control.
- iv. The charges in this Reference Offer are valid until 1st February 2015 and will accordingly be revalidated by Arqiva as required.
- v. The charges are based upon the specification set out in the Advertisement. There may be a significant delay between the publication of the Reference Offer and the commencement of the build project, and during such delay there may be changes in the availability and location of accommodation at the Station, and/or Antenna System and/or the number of sharers using the Antenna System and at the Station. Accordingly, it is necessary for Arqiva to carry out a site inspection immediately prior to acceptance by a Customer of the Reference Offer in order to provide final revalidation of the Reference Offer.

- vi. The charges are based on Transmission Service (including electricity and other utilities) being provided on a 24/7 basis, regardless of the number of hours a day the Customer transmits the Customer Signal.
- vii. The pass-through cost element which has been included in respect of electricity is an indicative estimate based on current levels.
- viii. The charges are stated exclusive of VAT.
- ix. The charges are subject to the Reference Offer Terms and Conditions.

3.3.3 Applicability of the Reference Offer and additional costs

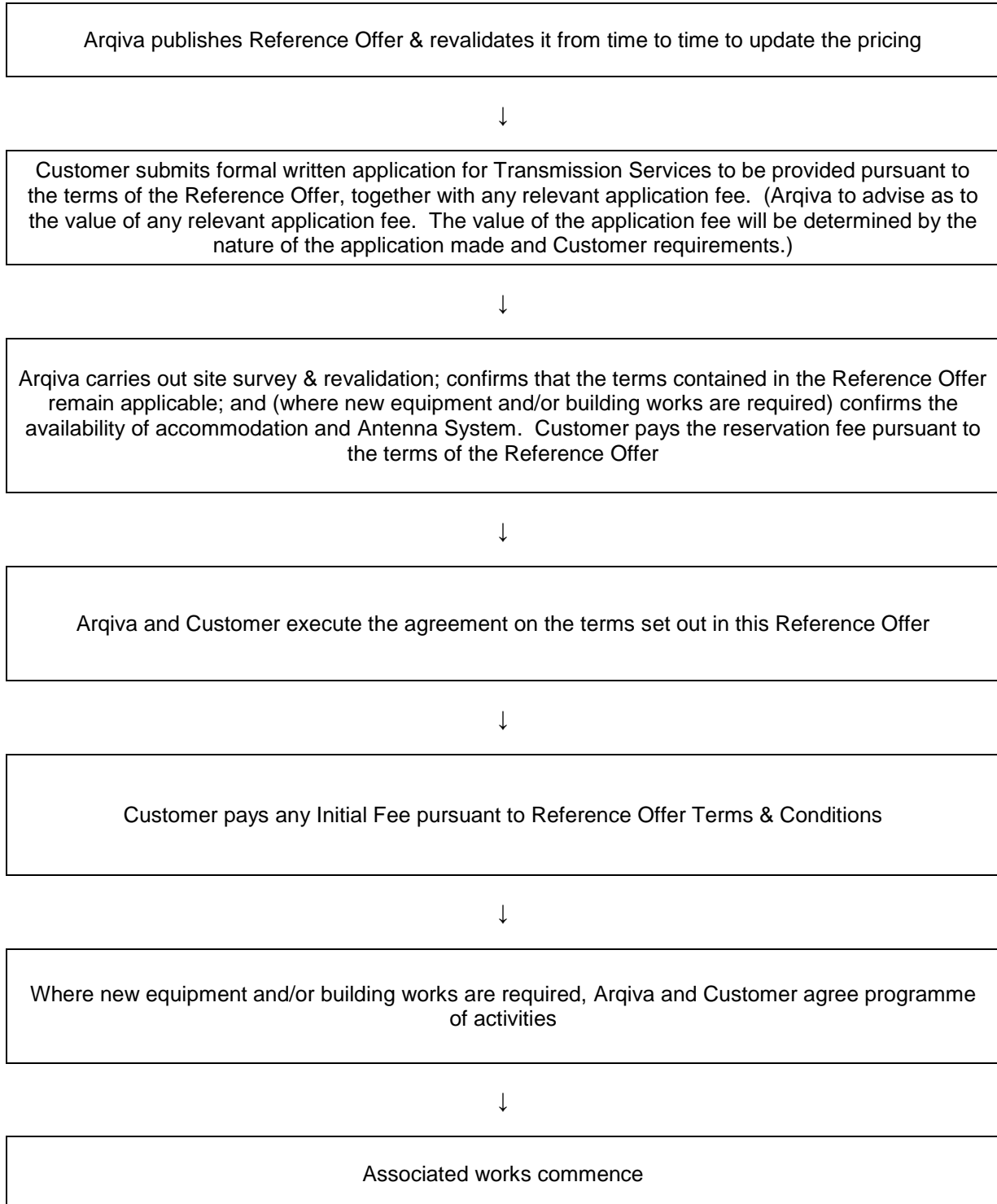
- i. The charges include provision of Transmission Services based on the specification defined by this Reference Offer, and are subject to the Reference Offer Terms and Conditions. Should a customer wish to vary the design or terms and conditions from the provision in this Reference Offer, they should contact Reference Offer Manager, Broadcast & Media of Arqiva as this Reference Offer will not apply.
- ii. Arqiva is able to provide various other services and equipment, including: advice, consultancy including assistance with the technical sections of Ofcom licence application document- additional equipment or equipment which differs from that included in this Reference Offer, or any services other than Transmission Services as set out in this Reference Offer. Should a customer require such additional services or equipment they should contact Reference Offer Manager, Broadcast and Media of Arqiva as this Reference Offer will not apply and a separate quote and contractual arrangements will be provided.
- iii. Should the Customer require access to the Stations, then supervision by Arqiva may be required as provided in the Arqiva Code of Practice. Charges for such supervision will apply per day in accordance with the applicable Arqiva rate cards .

3.4 Parent Company Guarantee

If Arqiva has reasonable grounds for concern as to the creditworthiness of the Customer from time to time, it shall be entitled to require the Customer to procure a parent company guarantee in such form as Arqiva may reasonably require, or such other security or payment terms as Arqiva may reasonably require.

4. Engagement Process - Ordering And Processing

It will be a pre-requisite to any Transmission Services being provided under this Reference Offer that the Customer first enters into an agreement with Arqiva in the form set out in Section 5 of this Reference Offer, which contains the terms and conditions that will apply to the Customer's receipt of the Transmission Services. The Engagement Process shall be as follows:



5. Reference Offer Terms and Conditions

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DATED []

ARQIVA LIMITED

and

[insert name of Customer] LIMITED

**ANALOGUE SERVICES AGREEMENT
(incorporating Distribution and
Transmission Services) in respect of the FM
Local Commercial Radio Licence for
Portsmouth**

arqiva

Legal Affairs
Arqiva Limited
Crawley Court
Winchester
Hampshire
SO21 2QA

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This Agreement is entered into on the Effective Date.

PARTIES:

ARQIVA LIMITED, a company incorporated under the laws of England and Wales with registered number 02487597 and having its registered office at Crawley Court, Winchester, Hampshire SO21 2QA ("**Arqiva**"); and

[insert name of Customer] LIMITED, a company incorporated under the laws of England and Wales with registered number [insert] and having its registered office at [insert] ("**Customer**").

WHEREAS:

- (A) The Customer holds the Broadcast Licence to provide analogue radio to Portsmouth.
- (B) The Customer wishes Arqiva, and Arqiva is willing on the following terms and conditions, to provide an integrated distribution and transmission service in compliance with the technical requirements of the Broadcast Licence.

TERMS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, capitalised terms shall have the following meaning:

"£" means pounds sterling.

"**Acceptance Certificate**" means a certificate issued by Arqiva in accordance with Clause 3.8 confirming that the Acceptance Tests have been successfully completed.

"**Acceptance Tests**" means the acceptance tests to be carried out by Arqiva to ensure that the System performs in accordance with the Specification.

"**Accountable Breakdown**" means any Breakdown other than a Non-Accountable Breakdown. An Accountable Breakdown is deemed to commence when Arqiva detects the Breakdown through telemetry or when Customer notifies Arqiva of the Breakdown in accordance with Clause 7, whichever is the earliest to occur.

"**Act**" means the Communications Act 2003, as amended from time to time.

"**Adjudicator**" means the adjudicator appointed under the Undertakings.

"**Aggregate Fee**" means the Regulated Services Fee and the Unregulated Services Fee.

"**Antenna**" means any antenna, dish or other item of equipment, apparatus, appliance or instrument installed on or affixed to any Mast at any Station for the reception, transmission or relay of radio or electromagnetic waves.

"**Antenna System**" means the Antenna system installed at any Station by Arqiva that complies with the specification set out in Schedule 2 (Station Details).

"**Annual MTS Fee**" means the relevant fee set out in Schedule 1 (Commercial Details).

"**Annual Network Access Fee**" means the relevant fee set out in Schedule 1 (Commercial Details), which will be comprised of the Charges (as such term is defined in the Network Access Agreement) for Network Access at cost with no mark-up.

"**Associated Companies**" means, in relation to a party, any subsidiary of that party, any holding company of that party, or any subsidiary of any holding company of that party. A

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company or other entity shall be a "holding company" for the purposes of this definition if it falls within either the meaning attributed to that term in Sections 736 and 736A of the Companies Act 1985 or the meaning attributed to the term "parent undertaking" in Section 1162 of the Companies Act 2006, and a company or other entity shall be a "subsidiary" for the purposes of this definition if it falls within either the meaning attributed to that term in Sections 736 and 736A of the Companies Act 1985 or the meaning attributed to the term "subsidiary undertaking" in Section 1162 of the Companies Act 2006.

"Associated Facilities" means a facility falling within Section 32(3) of the Act.

"Attributable Fee" means in relation to any Station the proportion of the Aggregate Fee attributable to that Station being, in the first Year, the amount specified as such in Schedule 2 (Station Details) and, in each subsequent Year, an amount notified to Customer in accordance with Clause 9.3 or 9.4.

"Breakdown" means (i) a total loss of transmission of the Content Signals for a period exceeding thirty (30) seconds; or (ii) a reduction in ERP greater than nominally 7.1dB for a period exceeding thirty (30) minutes, in each case where caused by disruption to the Service.

"Broadcast Licence" means the analogue terrestrial radio licence for the Licensed Service awarded to the Customer by Ofcom pursuant to Part III of the Broadcasting Act 1990;

"Business Day" means any day which is not a Saturday, Sunday or a public holiday in the relevant part of the United Kingdom.

"Change Control Procedure" means the procedure set out at Schedule 11 (Change Control Procedure).

"Change in Law" means any of the following:

- (a) a change in the judicial interpretation or application by any Government Authority of any Law in the United Kingdom;
- (b) the enactment or introduction of any new Law in the United Kingdom;
- (c) the modification or repeal of any Law in the United Kingdom;
- (d) the termination, amendment or revocation of any Consents;
- (e) the introduction of new or amendment of existing non-binding guidelines, rules and guidance issued by any Government Authority; or
- (f) any Change in Radio Law.

"Change in Radio Law" means any of the following:

- (a) any change to the Wireless Telegraphy Acts 1949, 1967, 1998 and 2006, the Telecommunications Act 1984, the Broadcasting Act 1990, the Broadcasting Act 1996, the Communications Act 2003, Digital Economy Act 2010 and any other statutes or regulations relating to broadcasting, wireless telegraphy or telecommunications as are from time to time in force during the term of this Agreement (the **"Statutes"**);
- (b) any extension, enactment or re-enactment of any of the Statutes;
- (c) any change to any licences required to be held by Arqiva pursuant to any of the Statutes which requires Arqiva to carry out further work in order to be in compliance in all material respects therewith; or

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(d) any relevant technical standards notified by any Competent Authority to Arqiva from time to time.

"Change Request" has the meaning given to it in Schedule 11 (Change Control Procedure).

"Code of Practice" means Arqiva's "Code of Practice for Site Sharers at Arqiva's Sites" as updated and amended from time to time (currently document number BOH325.19 which is available at:

<http://www.arqiva.com/media/dContent/mediaCentre/boh325-internet.pdf> or
www.arqiva.com/wireless/pdf/code-of-practice-siteshare.pdf.

"Competent Authority" means Ofcom or H.M. Government.

"Conditions" means such applicable conditions as have been set under Section 45 of the Act.

"Confidential Information" means, in relation to either party, information (in any form) belonging or relating to the disclosing party, its Associated Companies, its or their business, clients, customers, business plans, affairs or activities, which information is confidential to the disclosing party, its Associated Companies, clients or customers (as the case may be), including trade secrets, information and data relating to existing or potential customers, technical and business information relating to the disclosing party's inventions or products, research and development, production, manufacturing and engineering processes, employees or officers, customer lists or requirements, price lists or pricing structures, marketing and sales information, business plans or dealings, financial information or plans, designs, product lines, any document marked "Confidential", or any information which the receiving party has been informed is confidential or which the receiving party might reasonably expect that the disclosing party would regard as confidential, and any confidential information of clients, customers, suppliers or other third parties.

"Consents" means any consent, approval, licence (including the Licences), authorisation or permission that Arqiva requires from any Competent Authority, Government Authority, landlord or other third party in order to provide the Service.

"Content" means any programming, advertisements, data or other material, free to air or otherwise, which the Customer wishes to have broadcast as part of the Licensed Service.

"Content Service" means an individual service (comprising Content) which is to be included in the Licensed Service from time to time;

"Content Signals" means any signals comprising any audio, radio or other programming, data or other material, whether free to air or otherwise, which the Customer wishes to have broadcast as part of the Licensed Service.

"Customer Owned Equipment" means the relevant equipment owned by the Customer and listed in Schedule 1 (Commercial Details).

"Distribution Service" means the distribution service using the System, comprising the distribution of the Content Signals from the Service Insertion Point to each of the Stations from which the Transmission Service is being provided by Arqiva to the Customer, as more particularly described in Schedule 6 (Distribution Service).

"Effective Date" means the date on which this Agreement is executed.

"Electronic Communications Network" means a network falling within Section 32(1) of the Act.

"Electronic Communications Service" means a service falling within Section 32(2) of the Act.

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"**Emergency Reserve Equipment**" means the equipment described in Schedule 3 (Emergency Reserve Equipment), if any.

"**EMRP**" means effective monopole radiated power.

"**Equipment**" means any equipment used by Arqiva in the provision of the Service.

"**ERP**" means effective radiated power.

"**Force Majeure Event**" means any of the following events:

- (a) any act of God, insurrection or civil disorder, any act of terrorism or vandalism, war or military operations, national or local emergency, industrial disputes (official or unofficial) of third parties, fire, flood, a prolonged period of inclement weather, outbreak of disease or epidemic;
- (b) any Change in Law;
- (c) any act or omission of any Government Authority which is not a Change in Law, except where caused by any act or omission of Arqiva;
- (d) any act or omission of any utility provider which is beyond the reasonable control of Arqiva; or
- (e) any other cause, whether similar or dissimilar, outside Arqiva's reasonable control, which for the avoidance of doubt shall not include any act or omission of Arqiva or any industrial dispute (official or unofficial) relating to Arqiva personnel.

"**Forecast Pass-Through Costs**" means the relevant fee set out in Schedule 1 (Commercial Details), which will be comprised of the Forecast Pass-Through Costs (as such term is defined in the Network Access Agreement) and any other amounts payable pursuant to the Network Access Agreement, which shall be applied by Arqiva at cost with no mark-up.

"**Government Authority**" means any supranational, state or local governmental entity or instrumentality (including any ministry, department, political subdivision, agency (including but not limited to the HPA and ICNIRP), corporation or other person exercising the delegated authority of any such person or entity) having jurisdiction (whether legislative, executive, regulatory, administrative, judicial or otherwise howsoever) over the subject matter of, or any matter pertaining to, this Agreement; either or both of the parties; and/or any persons employed, engaged or contracted by either of the parties.

"**Installation Project**" means the specification, building and/or installation works described in Schedule 3 (Installation Project).

"**Intellectual Property Rights**" means all rights to copyrights, inventions, registered or unregistered designs, trade marks, patents (and all applications for trade marks or patents), trade secrets, know-how, rights of confidence, moral rights and any other intellectual or industrial property rights of any nature, whether like those described above or otherwise, throughout the world.

"**Laws**" means all Legislation, statutes, regulations, decrees, ordinances and other laws, regulations, by-laws, regulatory requirements and codes of practice of or issued by any Government Authority, and "**Law**" means any of them.

"**Legislation**" means any act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

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"**Licences**" means the licences and/or authorisations required by Arqiva under the Act, and any other licences which Arqiva may at any time require after the Effective Date pursuant to applicable Law in relation to the Service (as amended from time to time).

"**Licensed Service**" means the radio service (as defined in Part III of the Broadcasting Act 1990) identified in Schedule 1 (Commercial Details) which the Customer will have the right and duty to provide pursuant to the Broadcast Licence from time to time.

"**Location**" means a location where Equipment is to be located.

"**Managed Transmission Services**" or "**MTS**" means the managed transmission services described in Part I of Schedule 7 (Transmission Service).

"**Mast**" means any radio mast, tower, pole, rooftop, stub-mast, building elevation face mounting, head-frame or other aerial support pole or structure (located at height or at ground level).

"**Network Access**" means access to the mast and site network and shared or shareable antenna systems acquired, constructed or installed by Arqiva, but only to the extent required for the purpose of providing the Transmission Service.

"**Network Access Agreement**" means any agreement(s) or arrangement(s) that Arqiva may make for the provision of Network Access, which shall be based on the terms of the applicable version of Arqiva's Framework Reference Offer for Radio Network Access (or any updated version of such reference offer from time to time).

"**Non-Accountable Breakdown**" has the meaning given to it in paragraph 1.3 of Schedule 9 (Service Levels and Service Credits).

"**Ofcom**" means the Office of Communications.

"**Persistent Failure**" means a service performance failure in respect of provision of the Regulated Services which gives rise to any of the following:

- (a) a right for the Customer to terminate this Agreement for material breach; or
- (b) any other express right of the Customer to terminate this Agreement for service performance failure, including without limitation pursuant to Clause 10.2;

provided that, for the purposes of ascertaining whether a Persistent Failure has occurred, any right to terminate for material breach or poor performance or obligation to pay liquidated damages that is attributable to any failure in relation to the Installation Project or other build services, or Unregulated Services shall be disregarded.

"**Rectification Process**" means that, when measured over the specified one month period by reference to all the Stations, Arqiva is able to achieve a service level equal to or better than the Service Level, provided that where any failure to achieve the Service Level is caused by a failure outside Arqiva's control, a distribution failure, or a failure of electricity supply at a Station for which there is no permanent back-up generator on site, such failure shall not be included. The steps to measure whether there has been a failure to achieve the Service Level will be as follows:

- (a) for each Station the number of actual minutes of weighted accountable non-availability over the one month period will be divided by the number of permitted minutes of non-availability at the Station (the latter being calculated by reference to the relevant Service Level for that Station as set out at Schedule 9 (Service Level and Service Credits));
- (b) each of the Stations within the Customer's network will be given a Station weighting, reflecting the relative importance to the Customer of the Stations. The sum of the weightings for all Stations will equal 1. The Station weightings will be

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calculated by reference to the weighting table in Schedule 9 (Service Level and Service Credits);

- (c) for each Station, the availability ratio derived as set out above will be multiplied by the relevant Station weighting as described above. The scores for each Station will be aggregated. If the aggregate score is greater than 1, Arqiva will be liable to pay the super credit. If the aggregate score is 1 or less, Arqiva will have rectified its poor performance.

"Regular Hours" means 24 hours a day, 365 days a year, unless the parties shall otherwise agree in writing.

"Regulated Services" has the meaning given to it in Clause 4.1.

"Regulated Services Fee" means the fee described in Part B of Schedule 1 (Commercial Details).

"Remote Equipment" means any Equipment to be installed, operated and/or maintained at a Location which is owned or occupied by the Customer or a Customer.

"RPI" means the all items Retail Price Index published by the Office for National Statistics (or equivalent index published by any successor organisation).

"Service" has the meaning given to it in Clause 4.1.

"Service Insertion Point" means the point of output of the Customer's equipment as more particularly identified in Schedule 7 (Distribution Service).

"Service Level" means the service level set out in Schedule 9 (Service Level and Service Credits).

"Service Start Date" has the meaning given to it in Clause 3.13.

"SMC" means Arqiva's Service Management Centre identified in Clause 7.4.

"Specification" means the technical configuration and description of the System as set out in Schedules 6 and 7, as amended by the parties via the Change Control Procedure from time to time.

"Stations" means the stations listed in Schedule 2 (Station Details) and **"Station"** means any or all of them, as the context requires.

"Super Credit" means the sum payable pursuant to Clause 10.6, calculated in accordance with Clause 10.7.

"Super Credit Notice" means a written notice from the Customer to Arqiva which notifies Arqiva that:

- (a) in the Customer's opinion a Persistent Failure has occurred;
- (b) the Customer requests Arqiva to submit a service improvement plan; and
- (c) the Customer intends to claim a Super Credit if Arqiva does not rectify its poor performance to the Service Level within one (1) month.

"System" means the system more particularly described in Schedules 6 and 7 to be used by Arqiva to provide the Service, but excluding any Customer Owned Equipment.

"Target Service Start Date" means the target service start date for each Station set out in Part A of Schedule 1 (Commercial Details).

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"**Technical Code**" means the digital technical code published by Ofcom in October 2008.

"**Term**" means the term of this Agreement set out in Part A of Schedule 1 (Commercial Details).

"**Transmission Service**" means the transmission service described in Parts I and II of Schedule 7 (Transmission Service).

"**Transmitter Equipment**" means the transmitter and other Equipment for MTS at a Station which is owned by Arqiva and is dedicated exclusively to the provision of MTS to the Customer under this Agreement, but excluding all Masts, towers, Antenna systems, feeders, combiners, filters and any other Equipment provided for the purpose of Network Access or for the purposes of the Distribution Services.

"**Undertakings**" means the undertakings accepted by the Competition Commission on 1 September 2008 from Macquarie UK Broadcast Holdings Limited, Macquarie MCG International Limited, Macquarie European Infrastructure Fund II, Macquarie European Infrastructure Fund III and Macquarie Capital Funds (Europe) Limited in respect of the completed acquisition by Macquarie UK Broadcast Ventures Limited, a subsidiary of Macquarie UK Broadcast Holdings Limited, of National Grid Telecoms Investment Limited, Lattice Telecommunications Asset Development Company Limited and National Grid Wireless No. 2 Limited. A copy of the Undertakings is available at <http://www.competition-commission.org.uk/>.

"**Unregulated Services**" has the meaning given to it in Clause 4.1.

"**Unregulated Services Fee**" means the fee described in Part C of Schedule 1 (Commercial Details).

"**Virus**" means any code which is designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of any equipment or system, or any other associated hardware, software, firmware, computer system or network, or would disable the equipment or system or impair in any way its operation, or that would permit any other person to access the equipment or system to cause such disablement or impairment, or which contains any other harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

"**Wireless Telegraphy Act**" means any or all of the Wireless Telegraphy Acts 1949, 1967, 1998 and/or 2006, as required by the relevant context.

"**WT Act Licences**" means the licences required to be held by Arqiva under the Wireless Telegraphy Act 2006 solely in relation to the Transmission Service delivered under this Agreement.

"**Year**" means any period of twelve (12) consecutive calendar months commencing on the first Service Start Date or any anniversary of that date or, where the context requires, part of such period while this Agreement remains in force. For the purposes of Clauses 13.5, 13.6 and 14 only, "year" means a period of 12 consecutive calendar months commencing on the Effective Date (and then any subsequent period of 12 consecutive calendar months commencing on each anniversary of the Effective Date).

- 1.2 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.3 This Agreement shall comprise Clauses 1 to 23 hereof and the terms set out in Schedules 1 to 11 appended hereto.
- 1.4 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.

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- 1.5 Unless otherwise stated, references to Clauses and Schedules are to clauses of and schedules to this Agreement, and references to parts and paragraphs are to parts of and paragraphs of a Schedule to this Agreement.
- 1.6 References to each party herein include references to its successors in title, permitted assigns and novatees.
- 1.7 All references to "include" and "including" shall be construed to mean "include without limitation" and "including without limitation" respectively.
- 1.8 All references to a statute or statutory provision include any consolidation or re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment, modification or replacement and any subordinate legislation in force under any of the same from time to time.
- 1.9 In the event of any inconsistency in this Agreement between any Clause and any term set out in any Schedule and/or the Code of Practice, the following order shall prevail to the extent of any inconsistency:
- (a) the Clause;
 - (b) the Schedules; and
 - (c) the Code of Practice.

2. THE SYSTEM AND EQUIPMENT

- 2.1 Subject to Clause 16, as between the Customer and Arqiva, the System and all Equipment (except for Customer Owned Equipment) used to deliver the Service will be owned by Arqiva or its lessors for the duration of this Agreement (as set out in Clause 15) and after termination of this Agreement.
- 2.2 The Customer will allow Arqiva to use the Customer Owned Equipment in order to provide the Service, but the Customer Owned Equipment will be owned by the Customer or its lessors at all times. Upon the expiry or termination (in whole or part) of this Agreement for whatever reason, Arqiva shall make the Customer Owned Equipment (or, in the case of part termination, such Customer Owned Equipment as is no longer required in order to provide the Service) available for collection by the Customer in accordance with Clause 15.8.

3. THE INSTALLATION PROJECT

- 3.1 The Customer and Arqiva have agreed the terms of the Installation Project described in Schedule 3 (Installation Project), and have agreed that the Target Service Start Date for each Station shall be the date set out in Schedule 1 (Commercial Details). The Customer shall provide all the information and submit all documents required by Arqiva as part of the Installation Project.
- 3.2 Arqiva shall perform the Installation Project with all reasonable care and skill and to the standards reasonably expected of experienced builders of broadcasting systems.
- 3.3 Installation of the System at any Location shall be treated as having been completed once the Location and relevant Equipment is capable of operating in all material respects in accordance with the standards required under this Agreement, and Arqiva has notified the Customer accordingly.
- 3.4 Arqiva shall carry out installation testing on the System once it has been installed at a Location and shall make the results of such testing available to the Customer.
- 3.5 Arqiva shall carry out the Acceptance Tests to ensure that the System and every part of it operates in all material respects in accordance with the Specification.

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- 3.6 If the System or part thereof fails to pass the Acceptance Tests, these shall be carried out again within a reasonable time at the sole cost of Arqiva and in accordance with the same criteria.
- 3.7 If the System or any part of the same fails to pass the Acceptance Tests or any repeat Acceptance Tests at a Location within the required acceptance period, Arqiva shall take such steps as may be necessary to enable the System to pass the Acceptance Tests including (but not limited to) the supply of additional or replacement parts of the System.
- 3.8 Once the System and every part thereof has successfully passed the Acceptance Tests at a Location, such that Arqiva is able to provide the Service at a Station, Arqiva shall within 10 days issue the Customer with a certificate confirming the same ("**Acceptance Certificate**").
- 3.9 If the Customer requests Arqiva to provide the Service on any part of the System prior to Acceptance Tests having been carried out on such part of the System, and if Arqiva agrees in writing to provide the same, then the Customer shall be obliged to pay a pro-rata proportion of the Aggregate Fee attributable to the same. Arqiva shall not have any liability for the failure of any Service provided pursuant to this Clause to comply with the terms of this Agreement. For the avoidance of doubt, Arqiva shall not be at risk of paying any service credits or super credits until after the Acceptance Tests have been completed at the relevant Station.
- 3.10 Without prejudice to the remainder of this Clause 3:
- (a) the Customer shall ensure that Arqiva is given such access and space at any Location where Remote Equipment is to be installed together with such information as Arqiva may reasonably require in order to perform the Installation Project and to complete the installation at each Location as soon as practicable and with the minimum disruption; and
- (b) to the extent that the Customer is required to give its approval of or agreement to any element of the Installation Project or work performed or to be performed under it, the Customer shall respond as soon as reasonably possible and Arqiva shall not be held responsible for any failure to complete installation of the System by any Target Service Start Date to the extent such failure arises from the Customer's delay in giving such approval or agreement. Arqiva shall notify the Customer in writing as soon as it considers that the Customer's delay in giving such approval or agreement is likely to prevent Arqiva from being able to complete installation of the System by any Target Service Start Date.
- 3.11 Arqiva shall use reasonable endeavours to obtain all the Consents that are required to complete installation and operation of the System as contemplated by this Clause 3 other than the Broadcast Licence. The Customer shall be responsible for obtaining, maintaining and complying with the Broadcast Licence.
- 3.12 Each party shall appoint an appropriate member of its staff as principal contact with respect to the Installation Project. The party's respective appointees shall meet on a regular basis as reasonably requested by the Customer, to monitor progress and Arqiva's representative shall provide to the Customer's representative at each such meeting an update detailing progress of the Installation Project since the previous meeting. Each party may replace its appointee at any time on prior written notice to the other party.
- 3.13 Subject to the terms set out in Schedule 10 (Liquidated Damages), if Arqiva fails to complete the Installation Project at any Station by the relevant Target Service Start Date, Arqiva shall pay liquidated damages to the Customer in accordance with the terms set out in that Schedule. The date on which Arqiva completes the Installation Project, being the date described in Clause 3.8 above when the System and every part thereof has successfully passed the Acceptance Tests, shall be the "**Service Start Date**" for that Station. Unless otherwise agreed in writing, in respect of each Station Arqiva shall commence provision of the Service and shall commence charging in accordance with

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Clause 9 on and from the relevant Service Start Date. If the Service Start Date is earlier than the Target Service Start Date, charging shall only commence at that earlier date if agreed in writing between the parties and if such earlier charging is not so agreed, then charging shall commence in accordance with Clause 9 from the Target Service Start Date.

- 3.14 Arqiva's obligations with respect to carrying out and completing the Installation Project and thereafter commencing provision of the Service are subject to all requisite planning permissions and frequency clearances having been obtained and Arqiva being in possession of all requisite Licences.

4. THE SERVICE

On and from the Service Start Date (or, if the Service Start Date is earlier than the Target Service Start Date, if the agreement pursuant to 3.13 is not in place, then from the Target Service Start Date), in respect of the relevant Station:

Composition of the Service

- 4.1 Arqiva shall provide the Service on the terms of this Agreement, where the "**Service**" shall be comprised of:
- (a) the Distribution Service described in Schedule 6 (Distribution Service); and
 - (b) the Transmission Service described in Schedule 7 (Transmission Service); and

Arqiva's provision of the Transmission Service is regulated by the Undertakings, and this is therefore also termed the "**Regulated Services**". The Distribution Service are not regulated by the Undertakings, and are collectively termed the "**Unregulated Services**". The Service therefore comprises the Regulated Services and the Unregulated Services.

Service Level and Station Details

- 4.2 Arqiva shall, subject to the terms of this Agreement, provide the Service to meet or exceed the Service Level.
- 4.3 Arqiva shall ensure that the Stations comply with the technical criteria set out in Schedule 2 (Station Details).

Network Access

- 4.4 In order to provide the Transmission Service to the Customer, Arqiva shall procure the necessary and appropriate Network Access in accordance with the terms of this Agreement.
- 4.5 Arqiva undertakes to keep the Customer fully and promptly informed of any significant matters relevant to Network Access.
- 4.6 For the avoidance of doubt, nothing in this Agreement shall prevent or preclude the Customer from referring directly to Ofcom any complaint regarding the terms of any Network Access.

Specification

- 4.7 Arqiva shall ensure that the System complies in all material respects with the Specification from time to time.

Content Signals

- 4.8 Arqiva's obligations to provide the Service as provided in this Clause 4 shall apply only if and to the extent the Content Signals received by Arqiva conform to the standards laid

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down in Schedule 6 provided that, if non-conforming Content Signals are delivered which are nonetheless in a form capable of being conveyed by means of the System, Arqiva shall not cease provision of any of the Service by reason of the delivery of non-conforming Content Signals unless such conveyance would be contrary to any of the Licences, otherwise unlawful or may adversely affect any service provided by Arqiva to any third party, in which event Arqiva shall give prompt written notice of any such cessation to the Customer. Arqiva shall use all reasonable endeavours to ensure that any such cessation is no more than is necessary for the relevant purpose and shall resume the due transmission of the Service as soon as practicable thereafter.

5. QUALIFICATIONS

- 5.1 Where Arqiva is only a licensee or tenant of a Station and the owner wishes to dispose of that Station or in any other way terminate Arqiva's possession of that Station, Arqiva's licence or lease may be terminated. In those circumstances, Arqiva shall seek to procure the provision of a substitute transmitting station. If Arqiva has any Station licence or tenancy terminated as contemplated by this Clause and is unable to locate a substitute transmitting station before such termination becomes effective, this Agreement shall terminate with respect to the relevant Station and there shall be made an appropriate adjustment in the Aggregate Fee to take account of the reduced level of the Service. Where the terminated Station is the only station in respect of which the Service is being provided, the entire Agreement shall terminate.
- 5.2 Arqiva shall be entitled to cease or suspend transmission of the Content Signals for such period as it is so directed or ordered by any Competent Authority under any Laws or by a court of competent jurisdiction. Arqiva shall not thereby be in breach of its obligations to the Customer and the Customer shall remain liable to pay for the Service as if Arqiva were continuing to provide them without interruption. Arqiva shall give the Customer as much advance notice as it is reasonably able of such suspensions and cessations to the extent that it is practicable and lawful for it so to do.
- 5.3 If the Customer should be directed by any Competent Authority to suspend or cease broadcasting of the Service for any reason, the Customer shall promptly provide written notification to Arqiva of such event (such notice to be signed by a Director of the Customer) and Arqiva shall be entitled without liability to suspend or cease the Service for the period notified by the Customer.
- 5.4 If the cessation or suspension of transmission under Clause 5.3 has been implemented as a consequence of the Customer's breach of the Broadcast Licence or any other statutory obligation, the Customer shall remain fully liable to pay the Aggregate Fee during any period of cessation or suspension of transmission under Clause 5.3.
- 5.5 Arqiva may at any time move any Antenna or other technical Equipment (including Customer Owned Equipment) at any Station or structure on it. Where practicable Arqiva shall give reasonable prior notice to the Customer of any movement of Customer Owned Equipment. Arqiva shall ensure that taken as a whole the performance of the technical Equipment, once moved, shall be broadly equivalent and in any event not result in a material deterioration of the Service.
- 5.6 Arqiva may permanently substitute (at its cost) any Station, and/or any Equipment (except Customer Owned Equipment) used to provide the Service. In respect of substitutions of any Station, Arqiva shall consult with the Customer in advance and take due account of any reasonable concern of the Customer. Substitution of Equipment shall not be subject to prior consultation with the Customer. Arqiva shall ensure that, taken as a whole, the performance of any substitute Station or Equipment shall be broadly equivalent and in any event not result in a material deterioration of the Service nor contravene the terms of the Broadcast Licence.

6. CUSTOMER OBLIGATIONS AND RESTRICTIONS

Co-Operation

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- 6.1 The Customer shall provide Arqiva with all reasonable cooperation to facilitate Arqiva's efficient discharge of its obligations under this Agreement including without limitation, by providing accurate information concerning matters arising that Arqiva reasonably considers pertinent to its provision of the Service from time to time.

Delivery of Content Signals

- 6.2 The Customer hereby grants to Arqiva a licence solely to distribute and transmit the Content Signals pursuant to this Agreement and certifies that it has the right to grant such licence.
- 6.3 The Customer shall procure that the Content Signals are delivered to the Service Insertion Points in compliance with the technical standards set out in Schedule 6 to enable Arqiva to perform the Service.
- 6.4 Without limiting the generality of the foregoing Clause 6.3, the Customer shall procure the delivery of the Content Signals to the Service Insertion Points in the continuity in which they are intended to be transmitted and in accordance with such additional arrangements as may from time to time be agreed between the Customer and Arqiva in writing.
- 6.5 The Customer shall hold Arqiva harmless from any loss, damage, liability or expense which Arqiva suffers or incurs as a consequence of the Customer's failure to deliver Content Signals in accordance with this Clause 6, including without limitation any loss or expense as a consequence of any time spent by Arqiva or its sub-contractors in investigating apparent Breakdowns or other faults.

Customer Owned Equipment

- 6.6 In respect of the Customer Owned Equipment the Customer shall:
- (a) not change or substitute any Customer Owned Equipment without Arqiva's prior written consent;
 - (b) promptly replace any Customer Owned Equipment that has become obsolete or is beyond economic repair other than as a result of Arqiva's negligence. The Customer shall ensure that any substituted Customer Owned Equipment satisfies all relevant technical criteria as advised to it by Arqiva. Arqiva may separately charge the Customer for removing the old and installing the replacement Customer Owned Equipment, such charges to be determined in accordance with Clause 9.15;
 - (c) promptly repair or replace any Customer Owned Equipment that is defective;
 - (d) observe such directions with respect to the operating environment of the Customer Owned Equipment as Arqiva may specify from time to time;
 - (e) take up and maintain comprehensive insurance for the Customer Owned Equipment throughout the term of this Agreement, it being understood and agreed that the Customer Owned Equipment shall be and at all times remain at the Customer's risk;
 - (f) ensure at all times that the Customer Owned Equipment be approved for connection to other Electronic Communication Networks in accordance with the Act and the Customer shall at all times comply with the conditions of such approval.
- 6.7 Arqiva reserves the right to disconnect any Customer Owned Equipment if the Customer does not fulfil its obligations under Clause 6.6, or if in the reasonable opinion of Arqiva any Customer Owned Equipment is liable to cause the death of, or personal injury to any person, or damage to the property of Arqiva, or materially interfere or otherwise impair the quality of any service provided at or from the Stations.

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Remote Equipment

- 6.8 The Customer shall ensure that any Remote Equipment kept at the Customer's premises is kept in secure conditions and in a suitable environment for its operation and maintenance which shall include an appropriate mains electricity supply free of charge.
- 6.9 It is the Customer's responsibility to ensure that neither the Customer's personnel nor those of any other party authorised by the Customer to have access to a location other than Arqiva (or its sub-contractors) seek to operate, maintain or otherwise interfere with any Remote Equipment or modify, adjust or move any Remote Equipment except as expressly requested by Arqiva.
- 6.10 The Customer shall provide Arqiva personnel with access as soon as reasonably possible following a request by Arqiva to the premises at which any Remote Equipment is installed to enable Arqiva to perform its obligations under this Agreement in the most efficient and cost effective manner. Arqiva shall give reasonable advance notice of any visit to a location at which Remote Equipment is installed but the Customer shall seek to ensure that Arqiva shall not be denied access, despite no such notice having been given, in case of emergency. For the avoidance of doubt, Arqiva shall not be liable for any delay in connection with provision of the Service arising from any unreasonable delay in being granted access to Remote Equipment pursuant to this Clause.
- 6.11 The Customer shall take all reasonable precautions (by contract when the Customer is not the occupier) to safeguard the health and safety of Arqiva personnel (and those of its sub-contractors) whilst visiting any location at which Remote Equipment is located.
- 6.12 The Customer shall take up and maintain comprehensive insurance for the Remote Equipment for the term of this Agreement, it being understood and agreed that the Remote Equipment shall not be at Arqiva's risk.
- 6.13 The Customer shall ensure that any Remote Equipment and any other of Arqiva's equipment in its possession or control is not used in any manner contrary to the provisions of this Agreement or the Licences.
- 6.14 The Customer shall indemnify Arqiva from and against any loss, damage, liability or expense suffered or incurred by Arqiva that results from any damage to or destruction or malfunction of any Remote Equipment that results from breach of this Clause 6.

Compliance with Licences

- 6.15 The Customer shall as soon as is reasonably possible notify Arqiva of any change to the Broadcast Licence, the Technical Code or the technical plan forming part of the Broadcast Licence and in the event that the Customer is required or has the opportunity to make proposals or representations with respect to any change in connection thereto then before making such proposals or representations, the Customer shall pay due regard to any representations made by Arqiva.
- 6.16 The Customer shall be responsible for obtaining and maintaining all licences that it is required to hold under any of the Laws with respect to the Licensed Service and broadcasting of the Content Signals so as to enable it lawfully to contract with Arqiva for provision of the Service. Without prejudice to the foregoing, the Customer shall throughout the Term obtain, maintain and comply with the Broadcast Licence and any other licences required to be held by the Customer that are relevant to this Agreement. The Customer shall throughout the Term procure that the Customers obtain, maintain and comply with all licences required to be held by them that are relevant to this Agreement and/or to the Service.
- 6.17 If required, the Customer shall procure permission from Ofcom or any other relevant Competent Authority in respect of the transmission of any signals for test purposes prior to the Service Start Date as required under this Agreement.

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- 6.18 For the avoidance of doubt, the provisions of this Clause 6 are in addition to, and without prejudice to, the Customer's obligations under any other provisions of this Agreement.

No access to Stations

- 6.19 The Customer shall not be permitted to access any Station or Arqiva premises except with Arqiva's prior consent and subject to Arqiva supervision, which shall be separately chargeable pursuant to Clause 9.15. Only Arqiva staff or sub-contractors approved by Arqiva are permitted to repair, maintain or otherwise have access to the Equipment used to provide the Service.

Viruses

- 6.20 The Customer shall not introduce any Viruses into any equipment or system owned or controlled by Arqiva or any third party (including without limitation any Arqiva network or system, whether or not related to the provision of Transmission Services pursuant to this Agreement). In the event of any breach of this Clause, and without prejudice to any other remedy, the Customer shall pay to Arqiva the reasonable costs and expenses incurred in removing any Virus introduced by Customer and making good any damage done.

Compliance with this Clause

- 6.21 Arqiva shall not be liable for any failure to provide the Service in accordance with this Agreement to the extent the failure is caused by any failure by the Customer to comply with the terms of this Clause 6.

7. MONITORING AND BREAKDOWNS

- 7.1 Arqiva shall ensure that the SMC provides telemetry monitoring, fault diagnosis and remote control at those Stations where such facilities are available as indicated in Schedule 2 (Station Details).
- 7.2 Each party shall notify the other by telephone or email of any Breakdown as soon as the information is available.
- 7.3 Arqiva shall repair a Breakdown as soon as practicable after detection.
- 7.4 The Customer shall make all service requests to the Service Management Centre (the "SMC") at Emley Moor by fax (01924 508185) or email (ncsc.radio@arqiva.com). Requests may also be made by telephone (01924 808500) provided such requests are promptly confirmed in writing by fax or email. Arqiva may update any or all of these contact details by notice to the Customer at any time. Before calling for an engineer visit, the Customer shall seek to determine the nature of the fault by using its own monitoring and supervisory equipment and report this information to the SMC. The Customer shall ensure and confirm by use of an independent monitoring source that the failure or defect is not due to receiving or monitoring equipment, does not originate from any studio source, or third party service provider to the Customer.
- 7.5 Arqiva shall report any failure of electricity supply to the relevant electricity supply company (or other body that supplies such electricity to Arqiva) and shall promptly exercise any rights it may have to expedite its restoration.
- 7.6 The Service shall not include deployment of Emergency Reserve Equipment, except as specified in Schedule 8 (Emergency Reserve Equipment). Where Emergency Reserve Equipment is specified in Schedule 8 (Emergency Reserve Equipment), Arqiva shall install, commission and use such of the Emergency Reserve Equipment as is available and appropriate where, after consultation with the Customer, Arqiva reasonably considers a Breakdown to warrant such deployment.

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8. MAINTENANCE

- 8.1 Arqiva shall ensure that the equipment (including the Customer Owned Equipment) used to provide the Service is satisfactorily maintained. Where any item of Customer Owned Equipment is in Arqiva's reasonable opinion beyond repair, the Customer shall be responsible for procuring and paying for equivalent replacement equipment. Arqiva shall not be liable for any disruption or interruption to the Service caused by the Customer Owned Equipment, except to the extent that such disruption or interruption has been caused by the negligence or other default of Arqiva.
- 8.2 Arqiva may schedule outages with respect to each Station in order to carry out essential planned maintenance. If arrangements for essential planned maintenance cannot be agreed, Arqiva may make additional charges for any additional corrective maintenance that becomes necessary.
- 8.3 Where the Service is provided using equipment and facilities shared with other broadcasting services Arqiva may interrupt transmission of the Content Signals to undertake maintenance, installation or other work in connection with those other services.
- 8.4 Where the Transmission Service is provided from a Station on a site that is not owned by Arqiva, Arqiva may interrupt the Service when required to do so by the owner or lessor of the site so that maintenance, installation or other work may be undertaken. Arqiva shall give the Customer such notice as is practicable of any anticipated periods of outage. Arqiva shall not thereby be in breach of its obligations to the Customer and the Customer shall remain liable to pay for the Service as if Arqiva were continuing to provide them without interruption.
- 8.5 Where practicable and consistent with safety requirements, maintenance, installation or other work pursuant to this Clause shall be carried out at times agreed between Arqiva and the Customer, normally during periods when the Licensed Service audience is low.

9. CHARGES AND PAYMENT

Aggregate Fee and Attributable Fees

- 9.1 The Aggregate Fee shall be comprised of the Regulated Services Fee for the Regulated Services and the Unregulated Services Fee for the Unregulated Services. The Aggregate Fee shall be calculated in accordance with the terms of this Clause 9.
- 9.2 In each Year the Customer shall pay the Aggregate Fee to Arqiva in 12 equal instalments, monthly in advance on the first day of each month after the first Service Start Date. In the first and last months of this Agreement after the first Service Start Date, the Customer shall pay a pro rated amount of the applicable monthly instalment calculated using a daily rate (the then-current Aggregate Fee divided by 365). Payment shall be effected by banker's Direct Debit unless otherwise agreed in writing by Arqiva.
- 9.3 Arqiva shall allocate the Aggregate Fee across the Stations, each such amount being the Attributable Fee for the relevant Station. Where the Aggregate Fee is varied at any time, Arqiva shall make consequential adjustments to the Attributable Fees for the Stations and shall notify these changes to the Customer. The sum of the Attributable Fees for all Stations shall be equal to the Aggregate Fee at all times. For the avoidance of doubt, the Customer shall not be liable to pay the Attributable Fee for a Station until the Service Start Date for that Station has been achieved.
- 9.4 With respect to each Year after the first, Arqiva shall notify the Customer of the Aggregate Fee for that Year, and the Attributable Fee for each Station, as soon as reasonably practicable after such amounts have been determined.

Regulated Services Fee

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- 9.5 On or around execution of this Agreement, Arqiva will provide Customer with the estimated Regulated Services Fee, which will assume that the Installation Project (if any) is completed on time and the Target Service Start Dates are achieved. The estimated Regulated Services Fee will take account of the forecast capital expenditure (if any) for completion of the Installation Project ("**Forecast New Build Costs**"). The Forecast New Build Costs are set out in the relevant table in Part B of Schedule 1 (Commercial Details). Promptly following the completion of the Installation Project, Arqiva shall review the actual capital expenditure incurred in completing the Installation Project ("**Actual New Build Costs**"). Arqiva shall then compare the Actual New Build Costs with the Forecast New Build Costs. If the Actual New Build Costs exceed the Forecast New Build Costs then Arqiva shall bear the difference and no additional amounts shall be charged to the Customer in respect of the overrun. If the Actual New Build Costs are less than the Forecast New Build Costs, Arqiva shall share 50% of the difference between the Actual New Build Costs and the Forecast New Build Costs with the Customer. Where any such share is due to the Customer, Arqiva shall apply the appropriate pricing methodology to generate the Regulated Services Fee that would have been calculated had the Actual New Build Costs been known at the time the Forecast New Build Costs were estimated. Arqiva shall then notify Customer in writing of the reduced amount of the Regulated Services Fee, the corresponding reduced amount of the Aggregate Fee and the reduced amount of the monthly instalments due for the remainder of the then-current Year to reflect such reduction
- 9.6 The Regulated Services Fee is an annual fee and shall be comprised of:
- (a) the Annual Network Access Fee;
 - (b) the Forecast Pass-Through Costs; and
 - (c) the Annual MTS Fee.
- 9.7 Subject to the remainder of this Clause 9, in the first Year the Regulated Services Fee shall be the sum indicated in Part B of Schedule 1 (Commercial Details) and in each subsequent Year shall be a sum equal to the previous Year's Regulated Services Fee adjusted by the annual percentage change in RPI minus 1. The annual percentage change in RPI shall be calculated as the change in the value of RPI in the period of 12 months to the ninth calendar month of the previous Year, expressed as a percentage. By way of example, to calculate the indexation of the Regulated Services Fee for the Year commencing 1 April 2010, the annual percentage change in RPI is obtained by calculating the difference in the value of RPI in December 2008 (212.9) and December 2009 (218.0), which in this example is 5.1, and dividing this number by the RPI value for December 2008. In this example, the calculation would be 5.1 divided by 212.9 which equals 0.024. This sum is then multiplied by 100 to generate a percentage (2.4%), and one percentage point is then deducted (1.4%). In this example, the Regulated Services Fee for the Year commencing 1 April 2010 would be the previous Year's Regulated Services Fee increased by 1.4%. If the annual percentage change in RPI minus 1 is a negative number, it shall be treated as zero for the purpose of the indexation mechanism set out in this Clause, and the Regulated Services Fee would not be adjusted. The Forecast Pass-Through Costs element of the Regulated Services Fee shall not be subject to the indexation mechanism described in this Clause, as the Forecast Pass-Through Costs are subject to variation in accordance with market conditions.
- 9.8 Arqiva shall be entitled to adjust the Regulated Services Fee (including for the avoidance of doubt any capital expenditure or operating expenditure element of the Annual MTS Fee and/or Annual Network Access Fee comprising such Regulated Services Fee) and, accordingly shall be entitled to adjust the Aggregate Fee, on written notice to the Customer at any time to take account of the occurrence of any of the following:
- (a) any change in the specification;
 - (b) any Force Majeure Event;

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- (c) any change in the number of users of a shared antenna;
- (d) any change in the number of users of other broadcast radio platforms (for example, but without limitation, upon the cessation or partial cessation of any terrestrial radio platform); or
- (e) any other matter outside the reasonable control of Arqiva (including without limitation any Change in Law, any failure to obtain any required Consent, any act or omission of the Customer, any guidance issued by Ofcom, the Adjudicator (as such term is defined in the Undertakings), any successor bodies or other competent bodies and any prolonged and material deviation in long-term rates from levels pertaining in 2005 subject to any guidance issued by Ofcom or the Adjudicator).

Unregulated Services Fee

- 9.9 The Unregulated Services Fee is the annual fee for the provision by Arqiva of the Distribution Services. Subject to the remainder of this Clause 9, in the first Year the Unregulated Services Fee shall be the sum indicated in Part C of Schedule 1 (Commercial Details) and in each subsequent Year shall be a sum equal to the previous Year's Unregulated Services Fee adjusted by the annual percentage change in RPI. The annual percentage change in RPI shall be calculated as the change in the value of RPI in the period of 12 months to the ninth calendar month of the previous Year, expressed as a percentage. By way of example, to calculate the indexation of the Unregulated Services Fee for the Year commencing 1 April 2010, the annual percentage change in RPI is obtained by calculating the difference in the value of RPI in December 2008 (212.9) and December 2009 (218.0), which in this example is 5.1, and dividing this number by the RPI value for December 2008. In this example, the calculation would be 5.1 divided by 212.9 which equals 0.024. This sum is then multiplied by 100 to generate a percentage (2.4%). In this example, the Unregulated Services Fee for the Year commencing 1 April 2010 would be the previous Year's Unregulated Services Fee increased by 2.4%. If the annual percentage change in RPI is a negative number, it shall be treated as zero for the purpose of the indexation mechanism set out in this Clause, and the Unregulated Services Fee would not be adjusted.
- 9.10 Arqiva shall be entitled to adjust the Unregulated Services Fee and, accordingly shall be entitled to adjust the Aggregate Fee, on written notice to the Customer at any time to take account of the occurrence of any of the following:
- (a) any Force Majeure Event; or
 - (b) any other matter outside the reasonable control of Arqiva (including without limitation any Change in Law, any failure to obtain any required Consent, any act or omission of the Customer, any guidance issued by Ofcom, the Adjudicator (as such term is defined in the Undertakings), any successor bodies or other competent bodies, and any prolonged and material deviation in long-term rates from levels pertaining in 2005 subject to any guidance issued by Ofcom or the Adjudicator
- 9.11 Except as set out in Clauses 9.9 and 9.10 above, any amendment to the Unregulated Services Fee must be agreed in writing between the parties in order to be effective (for example, but without limitation, in relation to any change in the specification of the Distribution Services).

Other Charging and Pricing Terms

- 9.12 All fees and rates of charge referred to in this Agreement are exclusive of value added tax and any other tax or duty which shall, if and to the extent applicable, be payable by the Customer at the rate and in the manner from time to time prescribed by Law.

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- 9.13 Payment of all Arqiva's charges other than the Aggregate Fee shall be due within twenty eight (28) days of the relevant invoice. The Aggregate Fee shall be paid in accordance with Clause 9.12.
- 9.14 The Customer shall promptly reimburse to Arqiva the annual cost of holding and renewing any WT Act Licences, or similar licences that Arqiva is required to hold.
- 9.15 Arqiva's charges in respect of any work to be performed under any term of this Agreement which cross-refers to this Clause 9.15 shall be calculated by reference to Arqiva's prevailing standard rates of charge.
- 9.16 If the Customer fails to pay any sum owed to Arqiva under this Agreement by the due date for payment and payment remains overdue for more than twenty eight (28) days after Arqiva has notified the Customer of its failure to pay, without prejudice to Arqiva's other remedies:
- (a) the Customer shall be liable to pay interest on the overdue amount at the rate of 3% per annum over the base rate of the Bank of England, which interest shall accrue on a daily basis from the date when payment became overdue until Arqiva has received payment of the overdue amount together with all the interest that has accrued;
 - (b) Arqiva reserves the right to suspend provision of the Service until the Customer has rectified matters. Moreover, the Customer shall not be relieved of any liability to pay fees in respect of any period during which the provision of the Service is suspended pursuant to this Clause.
- 9.17 Where any fee or charge is expressed to be payable in respect of a Year, unless otherwise indicated that means a full Year comprising twelve (12) months. Accordingly if this Agreement terminates, in whole or in part, other than at the end of a Year, the fee or charge in question shall be prorated on a daily basis to determine the actual amount due in that Year.
- 9.18 If this Agreement expires or terminates and Customer has failed to pay any amounts due to Arqiva in accordance with the payment terms set out in this Agreement, Arqiva shall be entitled to sell any Customer Owned Equipment in its control or possession and retain such amounts as are due to it from the sale proceeds. Arqiva shall take reasonable steps to secure fair market value for any sold Customer Owned Equipment. Arqiva shall be entitled to sell to itself or to a third party. Arqiva shall account to Customer for the balance of any sale proceeds secured under this Clause after deduction of the amounts due to Arqiva.

10. SERVICE CREDITS AND SUPER CREDITS

Service Credits

- 10.1 If Arqiva fails to achieve the Service Level at any Station, Arqiva shall incur a liability to pay (pursuant to Clause 10.4) service credits to the Customer calculated by reference to the formula set forth in Schedule 9 (Service Level and Service Credits). Arqiva's aggregate liability under this Clause 10.1 in any Year shall not exceed 10% of the Aggregate Fee in aggregate for all Stations.
- 10.2 If, but for the limit set out in Clause 10.1, and excluding any service credits attributable to a Breakdown in respect of any aspect of the Service other than the Regulated Services, Arqiva's aggregate liability to pay service credits under this Agreement would have exceeded 10% of the Aggregate Fee for that Year, the Customer shall be entitled (by giving twelve (12) months written notice to Arqiva, given within thirty (30) days of the end of that Year) to terminate this Agreement.

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10.3 The Customer acknowledges that any liability of Arqiva that may arise under Clause 10.1 shall (subject to the Super Credit terms set out below) represent the Customer's sole financial remedy in respect of Arqiva's failure to achieve the Service Level.

10.4 At the end of each Year the aggregate of any service credits incurred during that Year shall be determined. Any liability of Arqiva to pay service credits to the Customer shall be satisfied by means of an appropriate adjustment to the Customer's payments to Arqiva in the following Year or by means of a direct payment to the Customer in the case of the final Year.

Super Credits

10.5 If Arqiva commits a Persistent Failure:

- (a) the Customer may submit a Super Credit Notice to Arqiva; and
- (b) Arqiva shall have one (1) month following receipt of a Super Credit Notice from the Customer within which to rectify its poor performance as set out in the Rectification Process to the Service Level.

10.6 Where Arqiva fails to rectify its poor performance as required under Clause 10.5, then the Customer will be given the option to receive a Super Credit.

10.7 The level of this Super Credit shall be 10% of the Regulated Services Fee (subject to Clause 10.8) payable by the Customer (excluding Wireless Telegraphy Act fees) for the Stations in the twelve (12) months preceding the date of expiry of the one (1) month period referred to in Clause 10.5(b). Payment of the Super Credit will be conditional upon the Customer waiving its right (pursuant to Clause 10.2) to terminate in respect of the relevant Persistent Failure.

10.8 Any reductions in the Regulated Services Fee which have occurred to reflect any operational service credits shall be disregarded for the purposes of calculating the Super Credit under Clause 10.7.

10.9 Acceptance of the Super Credit shall be without prejudice to any contractual right to terminate which may arise in future, provided that performance issues that have occurred prior to the date on which the liability to pay the Super Credit arose and which contributed to that liability shall be disregarded for the purposes of measuring Arqiva's performance under the relevant contractual mechanisms after that date and so can no longer give rise to such a right to terminate.

10.10 Any liability of Arqiva for Super Credits will be in addition to any liability of Arqiva for service credits pursuant to Clause 10.1 above.

11. SUSPENSION

Arqiva shall have the right at any time to suspend provision of the Service (in whole or in part) where:

- (a) Arqiva receives directions from any Competent Authority or is ordered by a court of competent jurisdiction to suspend transmission of the Content Signals, provided that Arqiva shall give the Customer as much advance notice as it is reasonably able of such suspension to the extent that it is practicable and lawful for it so to do and shall use all reasonable endeavours to minimise its duration and impact; or
- (b) the Customer ceases to hold the Broadcast Licence or any other licences or similar authorisations required to be held by the Customer that are relevant to this Agreement;

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Arqiva shall have the right at any time to suspend provision of the relevant part of the Service where:

- (c) a Customer ceases to hold any licences required to be held by the Customer that are relevant to this Agreement,

in each case until the Customer has rectified such matters or until Arqiva has received appropriate directions from a Competent Authority or court of competent jurisdiction in respect of recommencement of the provision of the Service (as the case may be), and Arqiva shall not by reason of such suspension of the Service be in breach of its obligations to the Customer and the Customer shall remain liable to pay the full Aggregate Fee during such period of suspension unless the order is a direct result of action by Arqiva, whereupon no fees shall be payable in relation to the affected Station.

12. CHANGE CONTROL PROCEDURE

If the Customer or Arqiva wishes to make any change to this Agreement (including without limitation the Installation Project or the Service), the parties shall follow the Change Control Procedure set out at Schedule 11 (Change Control Procedure).

13. WARRANTIES AND INDEMNITIES

- 13.1 Arqiva warrants that the Service will be provided with reasonable care and skill.
- 13.2 Arqiva warrants that, subject to Clause 3.11 in respect of the Broadcast Licence, it will have and will comply with all required licences, consents, authorities and dispensations required to provide the Service.
- 13.3 Arqiva warrants that the provision of the Service:
 - (a) will not infringe the Intellectual Property Rights of any third party;
 - (b) will not cause damage to any listener's reception device; and
 - (c) will not interfere or otherwise adversely affect the transmission or broadcast of any third party's signals.
- 13.4 Subject to the Customer's compliance in all material respects with Clause 13.8, Arqiva shall indemnify the Customer against all claims, actions, liabilities, losses (including any loss of Customer revenue), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by the Customer which arise out of or in connection with, directly or indirectly incurred by or awarded against the Customer in respect of any breach of the warranty in Clause 13.3.
- 13.5 The Customer shall be liable for and shall indemnify and keep indemnified Arqiva from and against any and all claims, actions, liabilities, losses (including any loss of Arqiva revenue), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by Arqiva which arise out of or in connection with, directly or indirectly: (i) the operation or malfunction of any Customer Owned Equipment; or (ii) any activity undertaken by the Customer or its employees, agents, contractors or customers at the Stations. As regards loss of or damage to Arqiva equipment, shared equipment, accommodation (including Customer accommodation) and any equipment owned or controlled by third parties, the Customer's liability under this indemnity shall be limited to a sum equal to one hundred and twenty-five per cent (125%) of the Aggregate Fees payable by the Customer to Arqiva under this Agreement in respect of that year (as described in the definition of "Year"); and
- 13.6 The Customer shall be liable for and shall indemnify and keep indemnified Arqiva from and against any and all claims, actions, liabilities, losses (including any loss of Arqiva revenues), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by Arqiva which arise out of or

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in connection with, directly or indirectly any failure by: (i) the Customer to comply with the Broadcast Licence or any other licences required to be held by the Customer that are relevant to this Agreement; or (ii) any Customer to comply with any licences required to be held by the Customer that are relevant to this Agreement. The Customer's liability under this indemnity shall be limited to a sum equal to one hundred and twenty-five per cent (125%) of the Aggregate Fees payable by the Customer to Arqiva under this Agreement in respect of that year (as described in the definition of "Year").

13.7 The Customer shall be liable for and shall indemnify and keep indemnified Arqiva from and against any and all claims, actions, liabilities, losses (including any loss of Arqiva revenue), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by Arqiva which arise out of or in connection with, directly or indirectly:

- (a) any repair of, alteration to or other interference with any Customer Owned Equipment by any person who is not employed by or an approved sub-contractor of Arqiva;
- (b) the Customer Owned Equipment or any use of the Customer Owned Equipment;
- (c) any representative of the Customer who visits any Station; or
- (d) the transmission of the Content Signals from any Station;

except to the extent that any such loss, damage, liability or expense has been caused by the negligence or other default of Arqiva.

13.8 Without prejudice to the foregoing provisions, the Customer agrees during this Agreement and for 12 months after its expiration, to be liable for and to indemnify and keep indemnified Arqiva from and against any and all claims, actions, liabilities, losses (including any loss of Arqiva revenue), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by Arqiva which arise out of or in connection with, any claims by third parties that any Content Signals, or the transmission in accordance with the terms of this Agreement by Arqiva, or sub-contractors of Arqiva, of any transmitted service signal relating to any Content Signals:

- (a) infringes any applicable Law or any voluntary codes of conduct in relation to the broadcasting of programmes.

For the avoidance of doubt, the Customer's liability under this indemnity is unlimited.

13.9 The indemnities in this Clause 13, Clause 6.14 and in Clause 18.1 shall be subject to the party that is indemnified under the relevant indemnity (the "**Indemnified Party**"):

- (a) promptly notifying the other party (the "**Indemnifying Party**") in writing of such claim;
- (b) not making any statement or admission prejudicial to the Indemnifying Party (including as to liability) or agreeing to any settlement or compromise of the claim without the Indemnifying Party's prior written consent, not to be unreasonably withheld or delayed;
- (c) at the Indemnifying Party's request and expense, giving the Indemnifying Party express and sole authority to conduct and control all negotiations (including incidental negotiations) and litigation (including any appeal, dispute, compromise, settlement or defence of a claim), and to settle all litigation, arising from such claim; and

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- (d) providing the Indemnifying Party at the Indemnifying Party's expense with all available information and assistance in connection with the claim as the Indemnifying Party may reasonably require.

If within thirty (30) days after the Indemnified Party's receipt of notice of any claim, the Indemnifying Party fails to take action to defend the same, the Indemnified Party may at the Indemnifying Party's expense undertake the defence, compromise or settlement of the claim. Upon the assumption of the defence of the claim, the Indemnified Party may defend, compromise or settle the claim as it sees fit provided that the Indemnified Party shall take reasonable steps to monitor and mitigate the fees and costs associated with the same and shall keep the Indemnifying Party informed of any reasonable settlement proposals made by the claimant and shall not agree any settlement without the Indemnifying Party's prior written consent (not to be unreasonably withheld or delayed).

14. LIABILITY

- 14.1 Arqiva accepts liability to the Customer only as expressly provided or contemplated in this Clause 14, Clause 3.13, Clause 10, Clause 13 and Clause 18.1, and otherwise shall have no liability to the Customer under or in connection with this Agreement whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 14.2 Arqiva accepts liability to the Customer for any damage to Customer Owned Equipment caused by Arqiva's negligence in the provision of the Service up to ten thousand pounds sterling (£10,000) per Station per year (as described in the definition of "Year"). For the avoidance of doubt, neither damage to nor loss or corruption of data shall constitute loss of or damage to physical property.
- 14.3 Subject to Clause 14.2, Arqiva's maximum aggregate liability to the Customer arising under or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, in respect of claims relating to any year (as described in the definition of "Year") shall be limited to the greater of:
 - (a) one hundred and twenty-five per cent (125%) of the Aggregate Fees payable by the Customer to Arqiva under this Agreement in respect of that year (as described in the definition of "Year"); and
 - (b) ten thousand pounds sterling (£10,000).

For the avoidance of doubt any amounts paid by Arqiva to the Customer by way of service credits or super credits under Clause 10 or liquidated damages under Clause 3.13 shall count towards the limits set out in this Clause 14.3.

- 14.4 Arqiva shall maintain (or procure the maintenance of) insurance cover adequate to cover the usual commercial and public liability risks associated with the provision of the Services. The Customer shall maintain (or procure the maintenance of) insurance cover adequate to cover the usual commercial and public liability risks associated with the provision of the Service. Each party shall, on request by the other at any time during the Term (but not more frequently than once in each calendar year (as described in the definition of "Year")), provide written evidence that such insurances are in place and remain current throughout the Term. In the event that there is a material change in the nature of any such insurance cover, the relevant party shall inform the other in writing as soon as reasonably practicable detailing the changes to such insurance cover.
- 14.5 Not used.
- 14.6 Arqiva shall indemnify the Customer against any and all claims in respect of the physical damage to or destruction of any property of the Customer or third party (up to a maximum

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of £10,000,000) to the extent that such damage or destruction arises directly as a result of the negligence of Arqiva, its sub-contractors or their respective employees.

- 14.7 Notwithstanding any other provision of this Agreement (except Clause 14.7), Arqiva shall not be liable to the Customer under or in connection with this Agreement for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 14.8 Nothing in this Clause 14 or otherwise in this Agreement shall exclude or in any way limit Arqiva's liability to the Customer (i) for fraud, (ii) for death or personal injury caused by its negligence (including negligence as defined in s. 1 Unfair Contract Terms Act 1977), (iii) for breach of terms regarding title implied by s. 12 Sale of Goods Act 1979 and/or s. 2 Supply of Goods and Services Act 1982, or (iv) to the extent the same may not be excluded or limited as a matter of law.
- 14.9 Arqiva shall have no liability to the Customer, and the Customer shall have no right or remedy against Arqiva, for any delay by Arqiva in performing or complying with, or any failure by Arqiva to perform or comply with any obligation under this Agreement to the extent that such delay or failure is attributable to any act or omission of or by the Customer or any of its employees, agents or contractors (including any breach by the Customer of any obligation under this Agreement).
- 14.10 The exclusions and limitations of liability under this Clause 14 shall have effect in relation both to any liability expressly provided for or contemplated under this Agreement and to any liability arising or incurred by reason of the invalidity or unenforceability, in whole or in part, of any term of this Agreement.
- 14.11 This Agreement sets forth the full extent of Arqiva's obligations and liabilities arising out of or in connection with this Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on Arqiva except as specifically stated in this Agreement. Any condition, warranty, representation or term which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is hereby expressly excluded.
- 14.12 Arqiva shall not be liable for any loss or damage suffered or incurred by the Customer arising from Arqiva's delay in performing or failure to perform its obligations under this Agreement or to the extent that and for so long as such delay or failure results from any cause or circumstance whatsoever beyond Arqiva's reasonable control.

15. DURATION AND EARLY TERMINATION

- 15.1 Subject to the remainder of this Clause 15 this Agreement shall come into force on the Effective Date and shall continue thereafter until the end of the Term set out in Schedule 1 (Commercial Details) whereupon it shall automatically and immediately terminate unless renewed by mutual written agreement.
- 15.2 Without prejudice to other rights or remedies, either party shall be entitled immediately to terminate this Agreement by giving written notice to the other if:
- (a) at any time the other becomes insolvent or makes an assignment for the benefit of creditors or has a receiver or administrator of any kind appointed over the whole or any part of its assets or undertaking; or
 - (b) the other shall be in material breach of any of the provisions of this Agreement and shall not remedy the breach (if capable of remedy) within sixty (60) days of receiving written notice requiring such remedy).

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- 15.3 If the Customer shall cease to hold any licence that it is required to hold under any of the Laws, Arqiva reserves the right immediately to suspend the Service if any of the Stations are affected by the loss of such licence. Any such withdrawal shall not in any way affect either the size, or the subsequent rate of increase of, or the Customer's payment obligations in respect of, the Aggregate Fee provided that if Arqiva makes any demonstrable saving in variable costs as a result of any such withdrawal it shall pass on the benefit of such saving to the Customer.
- 15.4 Arqiva shall have the right (without prejudice to its other rights) to terminate this Agreement by notice in writing to the Customer in any of the following events:
- (a) the Customer becomes subject to a direction under which it is prohibited from providing or restricted in its entitlement to provide the whole or part of an Electronic Communications Network, Electronic Communications Service or any Associated Facilities or the Customer is in breach of the Conditions in respect of any such Electronic Communications Network, Electronic Communications Service or Associated Facilities; or
 - (b) Arqiva becomes subject to a direction under which it is prohibited from providing or restricted in its entitlement to provide the whole or part of an Electronic Communications Network, Electronic Communications Service or any Associated Facilities, in which event Arqiva shall give to the Customer the maximum period of notice of termination practicable in the circumstances.
- 15.5 Arqiva shall provide reasonable transition assistance to the Customer, upon the Customer's request and subject to payment of Arqiva's applicable fees (applying Arqiva's then-current standard supervision rates or successor rates) at any time prior to or within six (6) months after the expiry or termination of this Agreement.
- 15.6 Any termination of this Agreement shall be without prejudice to either party's right to recover any sums due to be paid or to any other rights accrued to one party in accordance with this Agreement on or prior to the effective date of such termination.
- 15.7 Upon expiry or termination (in whole or part) of this Agreement for whatever reason the Customer shall, at Arqiva's request, as soon as reasonably practicable, make available for collection by Arqiva, all of Arqiva's or its agents' or sub-contractors' documents or equipment (including without limitation any Remote Equipment) as are in the Customer's possession or under its or their control.
- 15.8 Upon expiry or termination (in whole or part) of this Agreement for whatever reason Arqiva may remove the Customer Owned Equipment from its premises. For the avoidance of doubt, the Customer is not entitled to remove the Customer Owned Equipment itself. If Arqiva elects to remove the Customer Owned Equipment, Arqiva will make such decommissioned assets available for the Customer to collect within thirty (30) days of the Customer's written request (any such written request to be made within twelve (12) months of the expiry or termination of this Agreement), and if such assets are not collected by the Customer within thirty (30) days of being made available for collection by Arqiva, Arqiva shall be entitled to dispose of such assets as it sees fit. This Clause is subject to Clause 9.18.

16. TRANSFER OF EQUIPMENT ON TERMINATION

- 16.1 Customer may at any time between six (6) months and eighteen (18) months prior to the date of expiry of this Agreement submit a written request to Arqiva to provide:
- (a) a detailed inventory of all Transmitter Equipment, which shall include an indication of the cost of the equipment calculated in accordance with Clause 16.4;
 - (b) a plan to facilitate transfer of ownership and control of that Transmitter Equipment to the Customer or its nominee upon expiry of this Agreement;

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- 16.2 Arqiva shall consult with the Customer in generating the transition plan and shall provide both the inventory and the transition plan referred to in Clause 16.1 to the Customer within three (3) months following receipt of the Customer's written request.
- 16.3 Following receipt of the information referred to in Clause 16.1 and in any event at least two (2) months prior to expiry of this Agreement, the relevant Customer may provide a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the Transmitter Equipment to the relevant Customer (or their nominee); and
- 16.4 Arqiva shall implement this request upon expiry of this Agreement, subject to payment by the Customer of the cost of the Transmitter Equipment calculated in accordance with any applicable direction issued by the Adjudicator pursuant to paragraph 13.4 of the Undertakings and having regard to any applicable guidance issued pursuant to paragraphs 13.2 or 13.3 of the Undertakings.
- 16.5 Customer may also exercise the rights described in Clause 16.1 where it has served a notice to terminate this Agreement as a result of Arqiva's default. In this event, the provisions of Clauses 16.1 to 16.4 shall apply subject to the following amendments:
- (a) within five (5) working days following the date of the Customer's notice to terminate this Agreement, the Customer shall submit a written request to Arqiva to provide the inventory of Transmitter Equipment referred to in Clause 16.1(a) and the transition plan referred to in Clause 16.1(b) (reading in "upon termination" instead of "upon expiry"), receipt of which shall be acknowledged by Arqiva;
 - (b) Arqiva shall provide the inventory and the transition plan to the Customer within one (1) month following receipt of the Customer's written request pursuant to Clause 16.5(a);
 - (c) the Customer shall submit a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the equipment to the Customer (or their nominee) no later than six (6) months following receipt information pursuant to Clause 16.5(b);
 - (d) Arqiva shall have one (1) month following receipt of this request in which to implement it subject to the conditions set out in Clause 16.4;
 - (e) until such time as the transition plan is implemented and all of the Transmitter Equipment is transferred, this Agreement shall continue in full force and effect (save that no liability to pay supercredits will accrue following a notice to terminate) with Arqiva continuing to service the contract and the Customer continuing to pay the contracted charges; and
 - (f) in the event that the Customer does not submit a written request to Arqiva within the timescale set out in either Clause 16.5(a) or 16.5(c), then the Customer's right to purchase the Transmitter Equipment shall lapse and the provisions of Clause 16.5(e) shall not apply.

17. EXTRA WORK

If Arqiva incurs costs at the Customer's request and no defect is found or the costs were otherwise needlessly incurred, Arqiva is entitled to full reimbursement from the Customer. Moreover, Arqiva may make separate additional charges for work carried out by Arqiva as a result of incorrect or inadequate information provided by the Customer or any breach of this Agreement by the Customer requiring Arqiva to operate to different technical criteria.

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18. RELIANCE ON INSTRUCTIONS

- 18.1 Each party shall be bound by and shall be entitled to rely on any communication whether in writing or by telephone or answer back facsimile process which that party has reasonable cause for believing has been given or made for or on behalf of the other. Each party shall adopt and ratify all such communications notwithstanding any lack of actual authority and will indemnify the other from and against all liabilities, obligations, claims, actions and expenses of any kind imposed on or incurred as a result of reliance on any such communication.
- 18.2 Notwithstanding Clause 18.1, Arqiva shall not act on the instruction or request of the Customer to suspend the Service or any material element thereof unless confirmed in writing by a director or other nominated representative of the Customer.

19. FORCE MAJEURE

- 19.1 Neither party shall be liable for any delay in performing or failure to perform any of its obligations under this Agreement (other than a payment of money) caused by any circumstance outside its reasonable control. Any party seeking to rely on this Clause 19.1 shall promptly notify the other in writing.
- 19.2 If Arqiva shall seek to rely on Clause 19.1 for a continuous period exceeding thirty (30) days the Customer's obligation to pay the Aggregate Fee shall be suspended (or an appropriate proportion thereof, in circumstances where non-performance occurs at one or more selected Stations only) until performance is restored. If either party is prevented from performing its obligations under this Agreement for a continuous period exceeding ninety (90) days the other party may, by notice in writing to the first mentioned party, immediately terminate this Agreement.

20. CONFIDENTIALITY

- 20.1 Each party undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the disclosing party, directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.
- 20.2 Each party undertakes to disclose Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, agents and contractors are made aware of and observe the confidentiality obligations in this Clause 20.
- 20.3 Upon the earlier of a written request from the disclosing party, or the termination or expiry of this Agreement for any reason, the receiving party shall return any and all Confidential Information of the disclosing party then in its possession or control and will not retain any copies of the same.
- 20.4 The receiving party shall immediately upon becoming aware of the same give notice to the disclosing party of any unauthorised disclosure, misuse, theft or other loss of Confidential Information, whether inadvertent or otherwise.
- 20.5 The terms of and obligations imposed by this Clause 20 shall survive the termination or expiry of this Agreement but shall not apply to any Confidential Information which:
- (a) at the time of receipt by the receiving party is in the public domain, or subsequently comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors;

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- (b) is lawfully received by the receiving party from a third party on an unrestricted basis;
 - (c) is already known to the receiving party before receipt hereunder; or
 - (d) is independently developed by the receiving party or its employees, agents or contractors.
- 20.6 The receiving party may disclose Confidential Information as may be required by Law, provided that, to the extent practicable in the circumstances, the disclosing party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

21. ASSIGNMENT AND SUBCONTRACTING

- 21.1 Subject to Clauses 21.2 and 21.3, neither party may assign, novate, or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the other party.
- 21.2 Notwithstanding Clause 21.1, Arqiva may on written notice to the Customer assign all or any of its rights and/or obligations hereunder to any of its Associated Companies, or to any entity acquiring all or substantially all of the assets of Arqiva, or assign its rights to payments and revenues and any similar rights, pursuant to any fixed or floating charge required under any funding arrangements applicable to its business.
- 21.3 Arqiva may sub-contract any of its obligations under this Agreement but shall remain fully liable to the Customer for the failure of any such sub-contractor to perform satisfactorily any obligation of this Agreement which may be sub-contracted to it.

22. GOVERNING LAW AND DISPUTE RESOLUTION

- 22.1 The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by English law and, subject to Clauses 22.2 and 22.3, the parties hereby submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them.
- 22.2 Neither party shall commence any action above until the escalation procedure set out in this Clause 22.2 has been exhausted, save that neither party shall be prevented from seeking emergency or injunctive relief from any court in relation to any damage or anticipated damage to property or proprietary rights. Without prejudice to the foregoing, any question or difference which may arise concerning the construction, meaning, effect or operation of this Agreement or any matter arising out of or in connection with this Agreement shall in the first instance be referred to the persons listed at Level 1 in the escalation table below, who shall have a period of five (5) Business Days to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 2 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 3 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter.

Arqiva

First Level:

Director of Radio, Terrestrial Broadcast

Second Level:

MD Broadcast & Media

Third Level:

The Customer

First Level:

[insert]

Second Level:

[insert]

Third Level:

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Chief Executive Officer or Chief Operating [insert]
Officer

If any of the above is unable to attend a meeting, a substitute may attend provided that such substitute has at least the same seniority or reasonably comparable managerial or directorial responsibility and is authorised to settle the unresolved matter.

- 22.3 The Customer may refer any dispute in relation to the Regulated Services to the Adjudicator in accordance with the Adjudication Scheme and Adjudication Rules (as such terms are defined in the Undertakings).

23. GENERAL

- 23.1 Except as otherwise expressly agreed in writing between the parties, each party shall be responsible for its own costs incurred in performing its obligations under this Agreement.

- 23.2 Notices sent under this Agreement shall be validly served if delivered by hand or sent by fax or registered post to the recipient party as follows:

to Arqiva:

Crawley Court,
Crawley,
Winchester,
Hants SO21 2QA
Attention: Company Secretary
Fax no: 01962 822818

to the Customer:

[insert]

Any notice shall be treated as having been served on delivery if delivered by hand, two (2) Business Days after despatch if sent by registered post and on confirmation of transmission if sent by facsimile.

- 23.3 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.
- 23.4 If any term of this Agreement is found to be illegal, invalid or unenforceable under any Law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 23.5 Notwithstanding any other provision of this Agreement, neither of the parties hereto shall be:
- (a) required to do anything in contravention of any Laws, Consents, Licences or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority;

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- (b) required to refrain from doing anything the party is required to do under such Laws, Consents, Licences or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
 - (c) liable to the other party for failing to do anything which if done would be in contravention of any such Laws, Consents, Licences or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority.
- 23.6 This Agreement contains or references all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other party's ability to perform its obligations under this Agreement) and that party's only remedies shall be for breach of contract as provided in this Agreement. Liability for misrepresentations as to fundamental matters shall be subject to the maximum aggregate liability provisions contained in Clause 14.
- 23.7 Provisions of this Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.
- 23.8 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint ventures or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same. The Customer acknowledges that this Agreement is intended only for the provision of the Service to the Customer, and that no provisions in the Agreement are intended to create nor shall be treated or construed as creating the relationship of landlord and tenant between Arqiva and the Customer, which relationship shall be merely that of the provider and recipient of services and the Customer makes no claim and shall not make any claim in this respect.
- 23.9 The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.
- 23.10 No person who is not a party to this Agreement is granted or shall acquire any rights under it or be entitled to benefit from any of its terms, whether by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 23.11 Except as expressly provided in this Agreement, no alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative in accordance with the Change Control Procedure.
- 23.12 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

SIGNED by a duly authorised representative for and on behalf of each party, as set out below:

ARQIVA SIGNATURE

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Signature	Signature
Print Name	Print Name
Title	Title
Date	Date

CUSTOMER SIGNATURE

Signature

Print Name

Title

Company

Date

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SCHEDULE 1

Commercial Details

**PART A:
SERVICE DETAILS AND TERM FOR REGULATED AND UNREGULATED SERVICES**

THE CUSTOMER

Name:

Address:.....

Tel no: Fax no:.....

Email:

LICENSED SERVICE

FM Local Commercial Radio Licence for Portsmouth

TERM

Term (in years from the first Service Start Date):12 years.....

Target Service Start Dates:

Station	Target Service Start Date
Fort Southwick	TBA

CUSTOMER OWNED EQUIPMENT

None

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PART B: REGULATED SERVICES

This Part B describes the charges payable by the Customer for the Regulated Services to be provided by Arqiva under this Agreement:

REGULATED SERVICES FEE

Regulated Services	£
Network Access	£7,472
MTS	£9,071
Forecast Pass-Through Costs	£1,652
Total (the Regulated Services Fee)	£18,195

The table above sets out the first year Regulated Services Fee without any adjustment for gainshare. Gainshare will be applicable pursuant to Clause 9.5 where Forecast New Build Costs (if any) are less than Actual New Build Costs (if any):

Forecast New Build Costs (£)	Actual New Build Costs (£)	Gainshare due to Customer
£30,679	Not applicable	Not applicable

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PART C: UNREGULATED SERVICES

This Part C describes the charges payable by the Customer for the Unregulated Services to be provided by Arqiva under this Agreement:

UNREGULATED SERVICES

The Distribution Services described in Schedule 6.

UNREGULATED SERVICES FEE

The charges in respect of the Unregulated Services shall be as set out in the following table.

Unregulated Services	£
Distribution Service	£7,453
Total (the Unregulated Services Fee)	£7,453

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SCHEDULE 2

Station Details

Site name	Fort Southwick
National Grid Reference	SU 626 069
Antenna height above ground level	Approximately 18.2m
Frequency	107.4 MHz
Maximum ERP	Total 200 W Mixed Polarisation
Station has telemetry	Yes
Attributable Fee	£25,648
Service Level	99.8%

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SCHEDULE 3

The Installation Project

There is no Installation Project

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SCHEDULE 4

Not used

SUBJECT TO CONTRACT

SCHEDULE 5

Not used

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SCHEDULE 6

The Distribution Service

One 256 kb/s kilostream with Systembase C510 codecs.

One 128 kb/s ISDN back – up.

The Service Insertion Point is a nominal location in the centre of Portsmouth.

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SCHEDULE 7

The Transmission Service

TRANSMISSION SERVICE

The Transmission Service comprises Managed Transmission Services and Network Access as follows:

Managed Transmission Services

Arqiva will:

- Integrate Customer into the existing Antenna Systems;
- Maintain and monitor the Transmitter Systems;
- Manage the payment of utility bills.

Network Access

Fort Southwick

Arqiva will:

- Maintain the Station, including maintenance of access, perimeter fencing;
- Security of the Station;
- Maintenance of the accommodation on the ground;
- Maintenance of the antenna;
- Maintenance of the tower.

Antenna Systems

Fort Southwick

The Transmit antenna is a, Two 3 Element Yagi's at 18.2m on 125° and 235° and One Dipole at 18.2m on 180°.

Site name	Fort Southwick
National Grid Reference	SU 626 069
Antenna height above ground level	Approximately 18.2m
Proposed antenna type	The Transmit antenna comprises of Two 3 Element Yagi's at 18.2m on 125° and 235° and One Dipole at 18.2m on 180°
Channel (frequency)	107.4 MHz
Maximum effective radiated power	Total 200 W
Polarisation	100W Horizontal and 100W Vertical

Telemetry

- Indications to determine transmitter state
- Controls to switch transmitter off or to switch exciters

The Customer will be responsible for providing or procuring all other equipment and services required in order for it to comply with the requirements of the Broadcast Licence and any other applicable Ofcom licence.

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SCHEDULE 8

Emergency Reserve Equipment

None.

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SCHEDULE 9

Service Level and Service Credits

1. SERVICE LEVELS

1.1 The actual Total Time of Service Availability (or TTSA) in respect of:

- (a) the Transmission Services as provided at each Station; and
- (b) the Distribution Services,

shall be calculated at the end of each Year (this period being the "**Measurement Period**" for the purposes of this Schedule).

1.2 The TTSA Targets and the Permitted Breakdown Periods (which shall constitute the Service Levels for the purposes of this Agreement) shall be as shown below in Table 1:

Table 1: TTSA Targets and Permitted Breakdown Periods for each Station

Station	TTSA Target	Permitted Breakdown Period	Station Weighting (W)
Fort Southwick	99.8%	17.34 hours	1

1.3 For the purpose of calculating at the end of any Year whether, over the applicable Measurement Period, each applicable TTSA Target has been achieved then, if and to the extent that (as applicable) any Breakdown constitutes any of the following, or occurs as a direct result of any of the following (each, a "**Non-Accountable Breakdown**"), the period during which such Breakdown persists shall be excluded:-

- (a) the carrying out of any work contemplated by Clause 8 (Maintenance);
- (b) any interruption resulting from the Customer's unreasonable failure to agree arrangements for work contemplated by Clause 8;
- (c) failure or interruption in any third party facilities used to support the Service;
- (d) a reduction of less than 2.1dB in the ERP (as applicable) of any Station;
- (e) any period when the ERP (as applicable) of the Service is restored albeit at a reduced level (provided the reduction is no greater than 2.1dB) whether through the use of reserve equipment or otherwise;
- (f) any event referred to in Clause 19 (Force Majeure);
- (g) any interruption as a result of Arqiva complying with any directions as referred to in Clause 11;
- (h) impairment due to abnormal propagation conditions;
- (i) any fault requiring Mast ascent during the hours of darkness or severe inclement weather where, in the reasonable judgement of Arqiva, a potential safety hazard exists;
- (j) any breach of this Agreement by the Customer;
- (k) any Breakdown or fault caused by the Customer;

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- (l) any interruption as a result of an engineering test transmission made at the request of the Customer;
- (m) Arqiva's due compliance with safe working practices stipulated by the HPA or any applicable Laws or any generally recognised protocol or standard (whether or not having the force of law);
- (n) a lightning strike directly on the Station or very close to it;
- (o) inclement weather conditions affecting travelling to any Station;
- (p) a delay of no more than 30 seconds in re-establishing Network Access when switching to alternative power supplies;
- (q) any interruption resulting from defects or failures in the equipment or services provided or operated by or on behalf of the Customer (other than equipment which Arqiva is required to operate and maintain);
- (r) any interruption resulting from loss of mains electricity supply for any reason, except where permanent alternative electricity supply facilities, independent of the mains, are required to be provided by Arqiva under this Agreement;
- (s) any fault requiring attendance at a Station during any period where such attendance is not permitted or is otherwise prevented as a consequence of any Force Majeure Event;
- (t) any interruption due to planned works, provided that the time and duration of such works has been notified to and agreed by the Customer in advance in accordance with the procedures notified by Arqiva to the Customer from time to time;
- (u) any compliance with any request or instruction of the Customer, where the interruption would not have occurred but for such compliance;
- (v) additional time spent waiting for or travelling via ferries or flights required for access to island Stations;
- (w) any damage or interruption to the use of any third party supplied Station facilities (e.g. a Station where the Antenna support structure is owned by a third party and where response to any damage to that structure and responsibility for any interruption to the use of that structure is controlled by that third party proprietor);
- (x) any interruption (other than as a result of breach by Arqiva) as a result of:
 - (i) Arqiva complying with a direction from any Competent Authority under the Licences, or from any court of competent jurisdiction requiring Arqiva to cease or suspend transmission, or;
 - (ii) the Customer complying with a direction from OFCOM to suspend broadcasting;
- (y) any failure to deliver the Content Signals for transmission in accordance with Clause 6;
- (z) any unreasonable non co-operation with Arqiva by the Customer;
- (aa) any unreasonable delay in Arqiva being granted access to Remote Equipment for maintenance; or
- (bb) any other occurrence that the parties mutually agree not to treat as an Accountable Breakdown.

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2. SERVICE CREDITS

2.1 Tables of Weighting Factors (V)

The calculation of the Service Credits for which Arqiva is liable shall be determined in part by reference to Table 2 below, which sets out the Weighting Factors ("V") for each type of Breakdown.

Table 2: Weighting Factors for Breakdowns

Breakdown	Time after start of Breakdown before Breakdown taken into account in measurement of TTSA ("Permitted TTSA Delay Period")*	Weighting Factor (V)
Reduction in transmitter power: -2.1dB to -7.1dB	48 hours	0.25
Reduction in transmitter power to below -7.1dB	No delay	1
Breakdown resulting in loss of Content Services	No delay	1
Subtle audio degradation ¹	24 hours	0.5

- For the avoidance of doubt, where a Breakdown is resolved within the Permitted TTSA Delay Period, such a Breakdown shall not give rise to any Service Credits.
- ¹Operation of the Distribution Service on the ISDN circuit does not constitute a Subtle audio degradation.

2.2 Calculation of Service Credits

- Arqiva's liability to pay Service Credits to the Customer shall be calculated by Arqiva and reported to the Customer at the end of each Year by reference to the Aggregate Weighted Breakdown Duration in respect of the applicable Measurement Period.
- At the end of each Year, Arqiva shall calculate and report to the Customer on the TTSA for the applicable Measurement Period in respect of the Service provided at each Station (provided that such calculation shall be made pro rata for any Station with a Service Start Date which occurred after the commencement of the relevant Measurement Period).
- Arqiva shall incur a liability to pay Service Credits to the Customer in accordance with the formula set out in Paragraph (d) below, in respect of the Service at a Station if the aggregate duration of Breakdowns applicable thereto in respect of the relevant Measurement Period is greater than the applicable Permitted Breakdown Period set out in Table 1 above.
- The method of calculating Service Credits with respect to all Breakdowns is as follows:
 - if the duration of any Accountable Breakdown is less than any Permitted TTSA Delay Period in respect thereof (as set out in Table 2 above), no Service Credits shall be payable in respect of such Breakdown;

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- (ii) the Weighted Breakdown Duration (expressed in minutes) in respect of each Accountable Breakdown for which Service Credits are payable shall be calculated by Arqiva (and reported to the Customer) by applying the following formula:

$$\text{Weighted Breakdown Duration} = \mathbf{M \times V}$$

where:

M = in respect of any Accountable Breakdown which is not resolved within the Permitted TTSA Delay Period, the total duration of such Accountable Breakdown (including the Permitted TTSA Delay Period) expressed in minutes; and

V = the Weighting Factor applicable to the Accountable Breakdown, as set out in Table 2 above,

provided that where there is a combination of concurrent Breakdowns in respect of the same Station or the same Service or element thereof (as the case may be) which result in a Weighting Factor (V) greater than 1 (one), the Weighted Breakdown Duration shall only be calculated once in respect of such concurrent Breakdowns and the Weighting Factor in respect of such concurrent Breakdowns shall be treated as 1 (one).

- (e) The Aggregate Weighted Breakdown Duration in respect of each Measurement Period for the Service as provided at each Station shall be calculated by Arqiva (and reported to the Customer) by adding together the Weighted Breakdown Duration for all Accountable Breakdowns for such Station in the relevant Measurement Period (the "**Aggregate Weighted Breakdown Duration**"). Service Credits shall be payable in respect of the Service as provided at each Station to the extent that the applicable Aggregate Weighted Breakdown Duration in respect of each Measurement Period exceeds the applicable Permitted Breakdown Period for that Station in respect of such Measurement Period, and the amount of Service Credits due as at the end of the applicable Year in respect of such Measurement Period shall be calculated by Arqiva (and reported to the Customer) by applying the following formula:

$$\text{Service Credits} = \mathbf{(F - B) \times X \times W}$$

where:

F = the applicable Aggregate Weighted Breakdown Duration for the Station over the applicable Measurement Period, expressed in minutes;

B = the applicable Permitted Breakdown Period for that Station over the applicable Measurement Period, expressed in minutes;

X = a pro-rata proportion of the Attributable Fee for the Station, equal to the Attributable Fee per minute during the Measurement Period; and

W = the relevant Station Weighting as set out in Table 1 above.

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SCHEDULE 10

Liquidated Damages

1. The parties agree and acknowledge that the liquidated damages payable pursuant to this Schedule represent a genuine pre-estimate of loss likely to be incurred by the Customer as a direct consequence of any delay in achieving any Target Service Start Date.
2. If the Service Start Date has not occurred by the relevant Target Service Start Date then the Customer shall, subject to the remainder of this Schedule, be entitled to receive liquidated damages from Arqiva.
3. Liquidated damages which fall to be payable pursuant to paragraph 2 above shall be calculated at a rate of one per cent (1%) of the Attributable Fee for the relevant Station every full week by which the Service Start Date is delayed, up to a maximum of 20 full weeks.
4. Arqiva shall have no liability to pay liquidated damages pursuant to paragraph 2 above where the delay in achieving the Target Service Start Date has occurred as a result of:
 - (a) any of the events listed Clause 9.8(a) to 9.8(e); or
 - (b) the failure to obtain a necessary Consent in sufficient time to complete the Installation Project; or
 - (c) any breach of this Agreement, delay, act or omission of the Customer.
5. In the event that Arqiva is delayed in achieving the Target Service Start Date as a result of a Customer act or omission then Arqiva may charge the Customer for any reasonable costs incurred by Arqiva as a result of such delay.
6. Any liability of Arqiva pursuant to this Schedule and Clause 3.13 to pay liquidated damages shall represent the Customer's sole and exclusive remedy in respect of the occurrence of any delay in achieving the relevant Target Service Start Date.

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SCHEDULE 11

Change Control Procedure

1. PRINCIPLES

- 1.1 Where the Customer or Arqiva wish to request a change to the provision of the Service, the Customer may at any time request, and Arqiva may at any time recommend (in each case a "**Change Request**"), such change in accordance with the Change Control Procedure as set out at paragraph 2 below.
- 1.2 Except in the case of a change implemented under paragraph 2.5 of this Schedule, no Change Request shall be binding on the parties unless the requirements of the Change Control Procedure have been satisfied in full.
- 1.3 Except in the case of a change implemented under paragraph 2.5 of this Schedule, until such time as a Change Request is approved and executed by the relevant parties, in accordance with the Change Control Procedure, Arqiva shall continue to provide the Service as if the Change Request had not been made.
- 1.4 Any discussions which may take place between the Customer and Arqiva in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either party.
- 1.5 Both parties will:
 - (a) act reasonably in putting forward Change Requests, responding to Change Requests and generally in relation to the Change Control Procedure;
 - (b) not unreasonably withhold or delay approval of Change Requests;
 - (c) use reasonable endeavours to minimise costs in proposing changes to the fees in connection with Change Requests; and
 - (d) be diligent in documenting and operating the Change Control Procedure.

2. CHANGE CONTROL PROCEDURE

- 2.1 Arqiva shall maintain during the term of this Agreement a record of all Change Requests agreed in accordance with the Change Control Procedure (the "**Change Register**"). Arqiva shall provide a copy of the Change Register to the Customer on the Customer's request.
- 2.2 In the event that either Party wishes to consider a change to the Service, the relevant party shall complete a Change Request in the form below, and shall submit the same to the other Party. Arqiva shall log the requested change on the Change Register.
- 2.3 If the Parties agree the changes in the Change Request, each Party shall execute the Change Request, and Arqiva shall update the Change Register to reflect the same.
- 2.4 Subject to paragraph 2.3 above, the Change Request form signed by both parties in accordance with this procedure shall constitute a valid amendment to this Agreement for the purposes of Clause 23.11.
- 2.5 Any change which Arqiva believes is necessary in order to meet the Target Service Start Date or as a result of any of the events described in Clause 9.8(a) to 9.8(e) shall be treated in accordance with the procedure set out in this Schedule, except that Arqiva shall be entitled to implement the relevant change even if a Change Request form has not been signed by both parties. For the avoidance of doubt, any change so implemented shall constitute a valid amendment to this Agreement. Arqiva shall in any event, provide a Change Request form to the Customer in respect of such change in accordance with this

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Schedule. Where the occurrence of any such event means that it is not possible to achieve the Target Service Start Date within the current charges, but it would be possible to achieve the Target Service Start Date with the investment of additional charges, Arqiva shall notify the Customer of this as soon as possible (specifying the amount of such additional charges) and it shall be the Customer's decision in its discretion whether to pay the additional charges or extend the Target Service Start Date.

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CHANGE REQUEST FORM

Change Request Order		CRO No.	
		Version	1
SECTION 1			
Project Title			
Customer Project ID	TBA	Arqiva Project ID	
Customer Contact	Name		
	Email		
	Telephone		
Arqiva Contact	Name		
	Email		
	Telephone		
Customer Cost Centre		Customer PO No.	
SECTION 2			
Description of Change			
Reason for Change/Impact of not making Change			
Risk Assessment <i>Use this area to outline the perceived level of risk; any history of this sort of Change; experience of making these sorts of Changes; chance of failure; complexity; expertise available; testing proposals</i>			
Implementation Plan <i>Use this area to outline key milestones. Include the whole lifecycle of the Change, including testing, acceptance, and post-implementation review.</i>			

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Impact Assessment <i>Use this area to detail the impact on all Services regardless of whether directly affected by the Change or not</i>	
Proposed amendments to be made to the Agreement	
Variation in costs/Charges <i>Use this area to detail the changes to be made to the Charges (if any), including the basis on which they have been calculated</i>	
Other supporting information <i>Include in this area details of any regulatory or other approvals required</i>	
SECTION 3	
Effective Date	Services affected
Stations affected	
SECTION 4	
Approved by Arqiva Project Manager	Date
Approved by Customer Project Manager	Date
Authorised signatory for Arqiva	Date
Authorised signatory for Customer	Date
SECTION 5	
Post-Implementation Review <i>Use this area to assess the implementation of this Change and to record any learning or other notes which may be of use for future Changes</i>	
Change Completed on	