

SUBJECT TO CONTRACT

**Reference Offer for the provision of
Network Access
in respect of
Ofcom's recent award of a licence in the
frequency band 758 to 766 MHz covering
Manchester**



Version 3

Publication Date: 8 June 2009

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1. Introduction

This Reference Offer is issued pursuant to paragraph 12.4.1 of the Undertakings in respect of Ofcom's recent award of a licence in the frequency band 758 to 766 MHz covering Manchester advertised by Ofcom in the information memorandum dated 29 October 2008 entitled "Award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester" ("Advertisement").

This Reference Offer sets out the terms and conditions and charges on which Arqiva is willing to provide Network Access (as such term is defined in the Undertakings) in respect of the digital television licence for Manchester 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 at Schedule 1 of the Reference Offer Terms and Conditions.

The specification and prices in this Reference Offer are current at 8 June 2009 and valid until 31 December 2009, 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

The scope and specification of Network Access 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.

This Reference Offer is for the provision to the Customer of Network Access. Network Access comprises:

- Provision of access to the Winter Hill site (National Grid Reference SD660144), its accommodation and mast;
- Provision of station security/safety (including perimeter fencing and mast lighting), building accommodation and masts;
- The electricity supply including distribution within the site and shared accommodation;
- An allowance for supervision by Arqiva of Customer access to the Station, in accordance with the Arqiva Code of Practice.

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 including, but not limited to, any Managed Transmission Services ("MTS").

2.1 Design

The Advertisement requires two different Antenna designs, the transitional arrangement design and the final arrangement design. Provision of the necessary Network Access in respect of each will be provided by Arqiva as indicated in this Reference Offer.

The Network Access which will be granted pursuant to this Reference Offer is suitable for the Antenna System set out in row 4 of Table 2.6 in respect of the transitional arrangement and row 4 of Table 2.8 in respect of the final arrangement (each row entitled "Indicative Antenna Type") of the Advertisement.

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It is a requirement of this Reference Offer that the Customer's design of the MTS elements (which include the Transmitter System and Antenna System) will be compliant with the specification set out in Table 2.6 and Table 2.8 of the Advertisement; will comply with the Arqiva Code of Practice; and within the size, type and location of accommodation provided for in this Reference Offer.

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

2.2 Build

2.2.1 Arqiva will be responsible for the design and build of the following Network Access:

- The access to and layout of the Station;
- The accommodation on the ground for the Transmitter System;
- The mast and the aperture allocated to the Antenna System on the mast;
- The provision of utilities to, and within, the Station.

2.2.2 Accommodation will be provided using the existing facilities on the Station. No provision has been made for construction of new buildings, major refurbishment of existing buildings, or changes to the existing mast.

2.2.3 A suitable low voltage electricity supply, derived from the Station electricity supply will be made available to the Customer.

2.2.4 Arqiva will install separate electricity sub-metering for the Customer Equipment.

2.2.5 The Customer will be responsible for all other elements including MTS and, therefore, the build of the Transmitter System and Antenna System.

2.2.6 This Reference Offer in respect of Network Access requires that the Customer's MTS build will be compliant with the Advertisement, will comply with the Arqiva Code of Practice, and will fit in the mast aperture and within the size, type and location of accommodation provided for in this Reference Offer.

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2.2.7 Subject to any changes required immediately prior to commencement of build works, the build for Network Access for this Reference Offer will comprise:

Access to the Station	Accommodation on the ground*	Aperture on the mast*
Access to the Station is via a public road and is such that it is suitable for all standard sized vehicles.	The accommodation is 6 square meters including an access area around the equipment.	The aperture and structural capacity provided on the mast will be suitable for the Antenna System specified in the Advertisement*, and will be dependent on the size and nature of the facilities at the Station at the time of the build. It is anticipated by Arqiva that the following aperture will be available: Mean height of aperture: 140 m Size of aperture: 4 m

- * Accommodation and aperture may only be used for the Antenna System specified in the Advertisement and must be reserved if the Customer wishes to ensure that the accommodation and aperture specified above will be available at the time of installation. The reservation charges are set out in Section 3 below, and the pro-rated monthly amount shall be payable monthly in advance until contract execution.

2.3 Operation

2.3.1 Following provision of Network Access to the Customer, Arqiva will be responsible for:

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

2.3.2 The Customer will be responsible for all other elements of ensuring that the Customer Output Signal is received by viewers in accordance with the Advertisement and relevant Ofcom licence, including maintenance of the Transmitter System and Antenna System.

2.3.3 The Customer's design of the Transmitter System and Antenna System will be subject to approval by Arqiva prior to installation; charges in respect of same are included in the charges set out at Section 3 of this Reference Offer.

2.3.4 The Customer will be required to comply with the requirements of Arqiva's "Code of Practice for Site Sharers at Arqiva's Sites" (currently document number BOH325.19 which is available at <http://www.arqiva.com/media/dContent/mediaCentre/boh325-internet.pdf>), as updated and amended from time to time.

2.3.5 Prior to being given access to the Station, the Customer will be required to execute a Station Licence in addition to the Reference Offer Terms and Conditions.

2.3.6 Certain access to the Station and works must be supervised by Arqiva as set out in the Code of Practice. An allowance for charges in respect of supervision of the installation of the Transmitter System and Antenna System is included in charges set out at Section 3 of this Reference Offer.

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- 2.3.7 No provision has been made in this Reference Offer for spares or access to emergency reserve facilities or equipment. Accordingly, no provision has been made for reserve antenna or a generator.
- 2.3.8 In the event that the Customer wishes at any time to locate and/or use reserve equipment respect of the Station, it will be subject to availability of aperture and/or accommodation as appropriate and Arqiva's specific permission will be required in advance. Any generator must be supplied, installed, and maintained by Arqiva and will be subject to Arqiva's standard charges in respect of same.

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3. Charges

3.1 Charges for Network Access

Charges for provision of Network Access	Initial fee £	Annual fee (Transitional arrangement) £	Annual fee (Final arrangement) £
Application Fee	3,460	N/A	N/A
Network Access	31,347	6,000	6,245
Estimated Pass-Through Costs	N/A	1,717	1,717
Total	34,807	7,717	7,962

Charges for reservation	Annual fee £
Reservation fee (in respect of ground accommodation & mast aperture)	1,500

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 of the Application Fee does not guarantee that any specific accommodation or aperture will be available to the Customer. If the Customer wishes to reserve any accommodation or aperture it must pay the reservation fee set out below in this Section 3.
- 3.2.2 The reservation fee is payable in order to reserve the ground accommodation and aperture on the mast as set out in this Reference Offer. It is payable on a monthly basis until contract execution. Failure to pay the reservation fee will mean that the accommodation and/or aperture may be allocated by Arqiva to a third party and therefore will not be available at the time of contract execution. In this event the Customer will then have to reapply as set out above, and the specification and charges set out in this Reference Offer may not be available. Should a Customer fail to pay the reservation fee, Arqiva is not responsible for non-availability of either accommodation and/or aperture and any consequent inability of the Customer to fulfil their licence obligations. The maximum reservation period is 5 years.
- 3.2.3 The Initial Network Access Fee is payable within 30 days of execution of the contract;
- 3.2.4 The Annual Network Access Fee is payable annually in advance.

3.3 Basis of Charges

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3.3.1 Compliance with the Undertakings

Charges for Network Access 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 markup on the actual charges paid by Arqiva.

3.3.2 Basis of charges

- (i) The charges are stated at 8 June 2009 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.
- (ii) The charges in this Reference Offer are valid until 31 December 2009, from the date of their publication and will accordingly be revalidated by Arqiva as required.
- (iii) 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 aperture on the mast. 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 a final revalidation of the Reference Offer.
- (iv) The charges are based on Network Access (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 Output Signal.
- (v) The Pass-Through Cost which has been included in respect of electricity is an indicative estimate based on current levels.
- (vi) The charges are stated exclusive of VAT.
- (vii) 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 an allowance for up to 8 days' supervision of Customer installation of the Customer Equipment both in relation to the equipment required for the transitional arrangement, and in relation to the replacement of such equipment with the equipment required for the final arrangement. Additional charges at the rate of £542 per day will be applicable in respect of supervision of Customer access to the Station which is in addition to the

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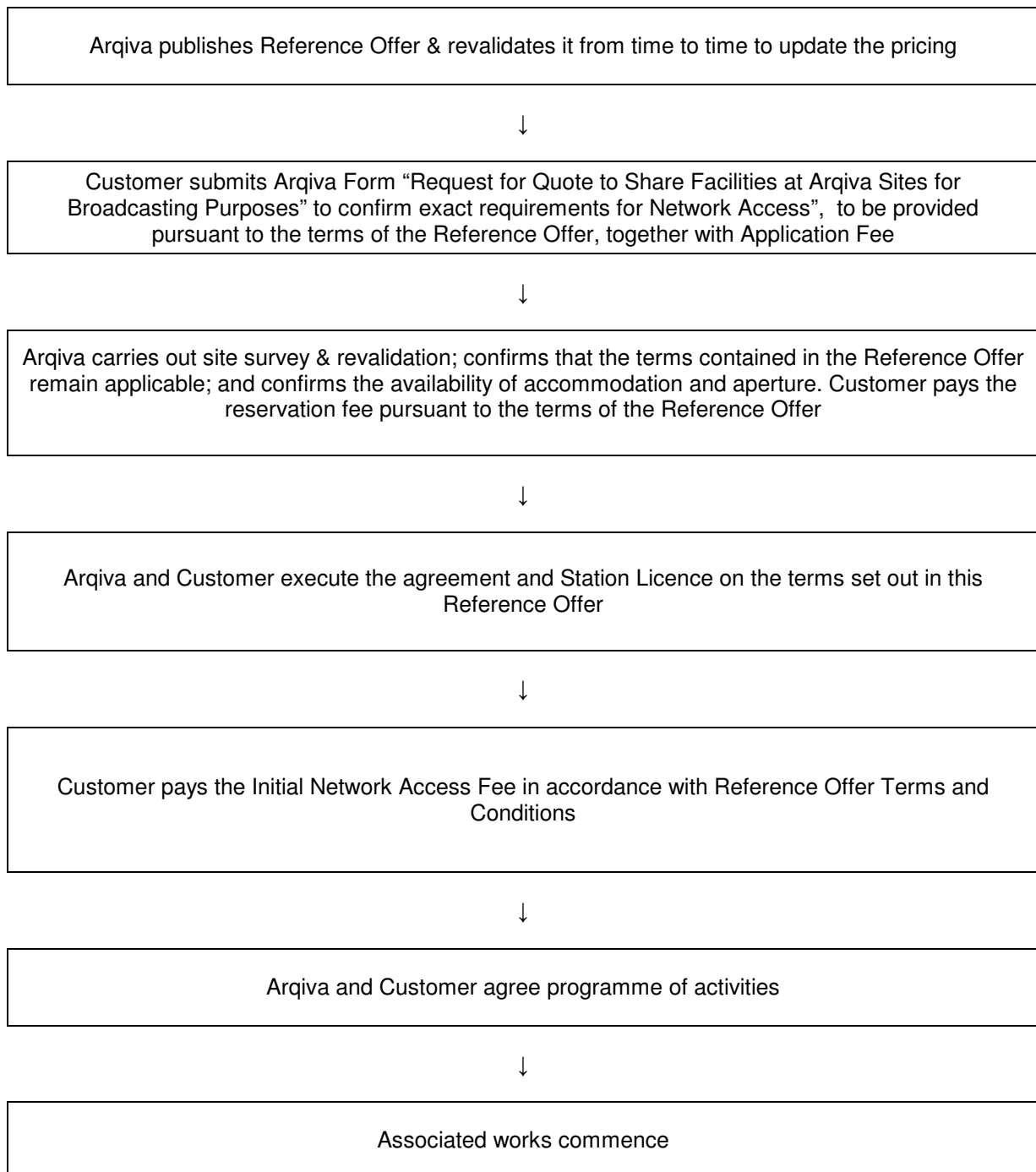
allowance.

- (ii) The Customer is required to carry out an annual inspection of the Antenna System and provide a report in relation to the same to Arqiva. In the event that this is not done, Arqiva reserves the right to carry out the inspection and render an additional invoice to the Customer in respect of the same.
- (iii) The charges include provision of Network Access based on the specification defined by the Advertisement, 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 the Reference Offer Manager, Terrestrial Broadcast of Arqiva as this Reference Offer will not apply.
- (iv) Arqiva is able to provide various other services and equipment, including: advice, consultancy, distribution of the Customer Output Signal, telemetry/monitoring, additional equipment or equipment which differs from that included in this Reference Offer, or any services other than Network Access as set out in this Reference Offer. Should a customer require such additional services or equipment they should contact the Reference Offer Manager, Terrestrial Broadcast of Arqiva as this Reference Offer will not apply and a separate quote and contractual arrangements will be provided.

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4. Engagement Process - Ordering and Processing

It will be a pre-requisite to any Network Access being provided under this Reference Offer that the Customer first enters into an agreement and a Station Licence 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 Network Access. The Engagement Process shall be as follows:



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5. Reference Offer Terms and Conditions

Reference Offer for the provision of Network Access in respect of Ofcom's proposed award of a licence in the frequency band 758 to 766 MHz covering Manchester.

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DATED []

ARQIVA LIMITED

and

[]

NETWORK ACCESS AGREEMENT

**for the use of site-sharing facilities for digital
terrestrial television in the frequency band 758 to
766 MHz covering the Manchester area**



Legal Affairs
Arqiva Limited
Crawley Court
Winchester
Hampshire
SO21 2QA

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This Agreement is entered into on [] ("**Effective Date**")

PARTIES:

ARQIVA LIMITED, a company incorporated under the laws of England and Wales with registered number 2487597 and having its registered office at Crawley Court, Crawley, Winchester, Hants SO21 2QA ("**Arqiva**"); and

[] ("**Customer**")

WHEREAS:

- (A) The Customer wishes to purchase and Arqiva wishes to supply, Network Access.
- (B) This Agreement sets out the agreed terms upon which Arqiva will supply Network Access to the Customer in respect of the provision of local DTT services in the Manchester area (pursuant to Ofcom Information Memorandum dated 29 October 2008 entitled "Award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester").

TERMS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Capitalised terms shall have the meaning ascribed to them in Schedule 1 (Network Access Agreement Definitions).
- 1.2 All the following rights and conditions shall be observed by the parties in relation to any Station Licence issued subject to this Agreement and all of these Standard Terms and the matters contained in Schedules 1 to 6 of this Agreement will be deemed incorporated into each Station Licence unless any part or parts are expressly excluded or replaced by any Special Conditions set out in the relevant Station Licence.
- 1.3 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.
- 1.4 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.
- 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 the provisions of the Standard Terms, the provisions of any of the Schedules, any Station Licence and/or the Code of Practice:

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- 1.9.1 any provisions described as "Special Conditions" contained in the relevant Station Licence;
- 1.9.2 the Standard Terms;
- 1.9.3 the Schedules;
- 1.9.4 the Station Licence (other than its "Special Conditions"); and
- 1.9.5 the Code of Practice.

2. OBLIGATIONS OF ARQIVA PRIOR TO THE ACCESS DATE

- 2.1 Subject to the terms of this Agreement, Arqiva shall, prior to the Access Date:
 - 2.1.1 undertake and complete such tasks and activities as may be necessary in order to allow Arqiva to offer Network Access in accordance with the terms of this Agreement. It will be the responsibility of Arqiva to procure and manage any and all civil works required at any Station, including the provision of electricity, ventilation openings, heat exchanger bases, underground ducts and cable entries;
 - 2.1.2 for each Station, execute a Station Licence;
 - 2.1.3 prepare to make sufficient Accommodation available to the Customer at each applicable Station necessary to enable the installation of the Customer Equipment; and
 - 2.1.4 provide such access to each Station as the Customer may reasonably require for the purpose of conducting site surveys as part of a bona fide Network Access application.
- 2.2 If the Access Date has not occurred by Target Access Date at any Station, Arqiva shall:
 - 2.2.1 continue to comply with its obligations set out in Clauses 2.1.1 to 2.1.4 inclusive until the Access Date is achieved, unless otherwise agreed with the Customer; and
 - 2.2.2 pay liquidated damages to the Customer in accordance with the terms set out in Schedule 6 (Commercial Details).

3. OBLIGATIONS OF THE CUSTOMER PRIOR TO THE ACCESS DATE

- 3.1 Subject to the terms of this Agreement, the Customer shall, prior to the Access Date:
 - 3.1.1 provide all the information and submit all documents required pursuant to the Engagement Process. Upon the first date that (i) all such information and documentation has been provided and submitted by the Customer, and (ii) the Customer has paid the full amount of the Initial Network Access Fee due hereunder (as set out in Schedule 6 (Commercial Details) ("**Installation Commencement Date**")), the Customer shall be entitled to select a date on which it requires the Network Access to be made available at each station ("**Target Access Date**"), such date being not less than six (6) months after the Installation Commencement Date, unless otherwise agreed with the customer and shall notify such date or dates to Arqiva in writing within thirty days of the Installation Commencement Date.
 - 3.1.2 for each Station execute a Station Licence;

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- 3.1.3 subject to Clause 3.1.2 above, not access any Station until the Access Date and until the applicable Station Licence (in the form of the template Station Licence set out at Schedule 5) has been executed by both parties; and
- 3.1.4 promptly provide all information, co-operation and assistance as may be reasonably requested by Arqiva in connection with the performance of either party's obligations pursuant to this Agreement, which may include (but shall not be limited to) providing information, co-operation and assistance in relation to the conduct of any site surveys, and co-operating and sharing of information with MTS Providers where reasonably requested by Arqiva.

4. RIGHTS AND OBLIGATIONS OF ARQIVA FOLLOWING THE ACCESS DATE

On and from the applicable Access Date:

- 4.1 Arqiva shall make and keep the Accommodation described in Clause 2.1.3 available to the Customer at the relevant Station(s) for installation of the Customer Equipment by the Customer.
- 4.2 Arqiva shall, as soon as reasonably practicable following the Customer having made the Customer Equipment available for testing pursuant to Clause 6.1.5(a) below, carry out such tests as may be reasonably required to ensure that the Customer Equipment provided or installed by the Customer interoperates properly with the relevant Common Equipment, Arqiva Equipment and third party Equipment and does not cause interference to any Equipment.
- 4.3 Subject to obtaining all necessary Consents, and to facilitate or accommodate the installation, use and operation of the Customer Equipment and subject to the continued performance of the Customer of its obligations under this Agreement, Arqiva will permit the Customer such shared use of the Station and its Facilities as shall enable the installation by the Customer in the locations on the Station specified by Arqiva, of the Customer Equipment and the subsequent maintenance and use thereof for the Permitted Use and/or the exercise of the Rights granted in this Agreement and/or under the Station Licence.
- 4.4 Arqiva shall provide the Customer with an electricity supply to the Customer Accommodation or (where there is no Customer Accommodation) to a point reasonably proximate to the agreed location of the Customer Equipment in any Common Accommodation.
- 4.5 Arqiva shall maintain:
 - 4.5.1 the Common Accommodation and Common Equipment; and
 - 4.5.2 the exterior and structure of any Customer Accommodation, on the Stations during the Licence Term in reasonable repair and condition.
- 4.6 Arqiva shall, in respect of each Station, have the right to:
 - 4.6.1 exercise any of its rights under this Agreement, including the right to switch off Customer Equipment;
 - 4.6.2 be the sole and exclusive provider of Customer Accommodation (unless expressly agreed otherwise in writing), and the sole and exclusive provider and maintainer of all Common Accommodation, Common Equipment and Arqiva Equipment;
 - 4.6.3 be the sole and exclusive supplier of electricity (including any temporary or permanent generator supply facilities) to the Station;

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- 4.6.4 install meters, sub-meters and other equipment in any Customer Accommodation to permit Arqiva to measure the Customer's consumption of electricity;
- 4.6.5 where the Customer, Customer Broadcast Operator, any Approved Contractor or any other third party requires access to any Station for any reason, require that such access is supervised by Arqiva or its nominee in accordance with the Code of Practice and in such circumstances Arqiva shall also be entitled to levy a reasonable charge in accordance with the Code of Practice;
- 4.6.6 refuse entry to the Station to any person who does not produce suitable documentary identification and authorisation to Arqiva's representative at the Station;
- 4.6.7 refuse admittance to or require removal from the Station of any person whose presence is considered undesirable or who fails to comply with any reasonable requests of Arqiva's representatives at the Station;
- 4.6.8 use the Station and permit others to do so as it may in its absolute discretion permit but shall use reasonable endeavours not to cause any damage or significant interference to Customer Equipment, Customer Accommodation or the Broadcast Services of the Customer and/or Other Broadcast Operators. For the avoidance of doubt, Arqiva shall be entitled and the Customer shall not seek to restrain Arqiva from using any Station (other than Customer Equipment), including any Common Equipment or Arqiva Equipment, for the purpose of providing Network Access to Other Broadcast Operators, MTS Providers and other Arqiva site sharing customers, and to grant access to the Station including the Common Equipment and the Arqiva Equipment (but not Customer Equipment) for the provision of such other services to any party or for such other purposes as Arqiva may in its discretion decide to support from time to time, provided the provision of Network Access to the Customer pursuant to and in accordance with this Agreement shall not be materially adversely affected by such use. For the avoidance of doubt, planned works as described in paragraph 3 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits) of this Agreement shall not constitute an adverse effect; and
- 4.6.9 require the Customer to relocate (other than for the purposes of a temporary relocation which shall be governed by Clause 9.9 of this Agreement) any Customer Equipment at any Station to an alternative station, or, in default of the Customer's compliance with such request after such reasonable period as Arqiva may specify, relocate any such Customer Equipment from its location within Common Accommodation and/or enter any Customer Accommodation in order to relocate any Customer Equipment therein, to the alternative station (and in such scenario the Customer shall pay to Arqiva on demand the costs, charges and expenses properly incurred by Arqiva in so entering and relocating), provided that Arqiva shall, in exercising such right, act reasonably and seek the lowest cost solution that allows Arqiva to meet its obligations under this Agreement in respect of the provision of Network Access. In such circumstances the relevant Station Licence shall, following the removal of the last of the Customer Equipment from the original Station, immediately terminate, and be replaced with a new Station Licence for the new station (which shall become a Station) on the same terms as the original Station Licence, but the relevant Station Licence shall be updated to reflect the new Station details.
- 4.7 For the avoidance of doubt, Arqiva shall have no liability to the Customer in respect of any loss or damage suffered by the Customer as a result of Arqiva's exercise of any of its rights set out in this Clause 4, and the exercise by Arqiva of any such rights shall be without prejudice to the Customer's obligation to pay the Charges, Pass-Through Costs and other amounts payable hereunder.
- 4.8 On and from the relevant Station Service Date (and without prejudice to the other provisions of this Clause 4), Arqiva shall, for the relevant Station:
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- 4.8.1 ensure that Network Access Availability at the relevant Station meets or exceeds the applicable Network Access Level. In the event that Arqiva fails to achieve the applicable Network Access Level in respect of the relevant Station, then Arqiva shall pay Network Access Credits to the Customer for that Station in accordance with the terms set out in Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits) of this Agreement. The Customer agrees that any liability of Arqiva to pay Network Access Credits shall represent the Customer's sole and exclusive remedy in respect of Arqiva's failure to achieve the applicable Network Access Level at the Station in question; and
- 4.8.2 provide support services in accordance with the terms set out in Schedule 3 (Support Services) of this Agreement.

5. RIGHTS GRANTED BY ARQIVA TO THE CUSTOMER FOLLOWING THE ACCESS DATE

- 5.1 Arqiva grants to the Customer in respect of each relevant Station the right:
 - 5.1.1 for the Customer to share (in common with others, including Arqiva, as Arqiva may in its discretion from time to time approve) such of the Common Accommodation and such of the Common Equipment at the relevant Station necessary in order to obtain Network Access for the Permitted Use;
 - 5.1.2 for any Approved Contractor to install, inspect, service, maintain, repair, renew, replace, dismantle and remove as necessary Customer Equipment at the Customer's own expense in such locations on the Station as Arqiva may direct and from time to time approve in writing;
 - 5.1.3 to house Customer Equipment in:
 - (a) the Common Accommodation identified in the relevant Station Licence in common with others permitted by Arqiva; and/or
 - (b) any Customer Accommodation identified in the relevant Station Licence;
 - 5.1.4 subject to the terms of this Agreement, to use the Customer Equipment named in the relevant Station Licence for the Permitted Use for the duration of the Licence Term;
 - 5.1.5 subject to giving prior notice to Arqiva, and with effect from the Access Date, for Approved Contractors to have access to and egress from the relevant Stations as necessary for the Customer to exercise the Rights for the Permitted Use to the extent that Arqiva is able to grant the same (but otherwise subject to and in accordance with the provisions of the Code of Practice and the Customer's other obligations set out in Clause 6);
 - 5.1.6 without prejudice to Clause 5.1.5 above, and subject to such reasonable regulations and instructions from time to time imposed by Arqiva for the better security, safety and management of a Station the right, subject to giving prior notice to Arqiva in accordance with the Code of Practice, for Approved Contractors to obtain admittance to the relevant Station over and along any private way leading to the Station boundary which is under the control of Arqiva (either with or without motor vehicles as Arqiva shall decide) at all reasonable times and as often as the Customer shall reasonably require to exercise the Rights; and
 - 5.1.7 subject to obtaining Arqiva's prior consent in accordance with the Code of Practice, such consent not to be unreasonably withheld or delayed, on an ad hoc basis to permit Arqiva-approved third parties to access a Station from time to time, provided:
 - (a) such access shall be requested and granted only when reasonably required and only for the purposes of the Permitted Use;

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- (b) the Customer shall ensure such access is subject to and in accordance with this Agreement and any Special Conditions contained in the relevant Station Licence (including but not limited to Arqiva's right to require that any Station access is supervised and meets with the relevant obligations contained in the Code of Practice); and
- (c) the Customer shall ensure that any such third party does not reside at the Station or remain at the Station for any undue period.

6. OBLIGATIONS OF THE CUSTOMER FOLLOWING THE ACCESS DATE

6.1 The Customer shall, from the Access Date:

- 6.1.1 meet its obligations under Clause 7 and those contained in any Station Licences;
- 6.1.2 at the Station(s), install the Customer Equipment and carry out all such tests (or, at Arqiva's reasonable request, permit Arqiva to carry out such tests) as are necessary and/or requested by Arqiva to ensure that it interoperates properly with the Common Equipment and/or Arqiva equipment, and does not cause any interference to Equipment and thereafter make the Customer Equipment available to Arqiva to verify such tests prior the Station Service Date;
- 6.1.3 comply, and procure that its employees, agents and/or subcontractors comply, with the terms of this Agreement (including any Special Conditions contained in the Station Licence and the relevant obligations contained in the Code of Practice);
- 6.1.4 pay Arqiva's charges for providing supervision in respect of any Customer, Approved Contractor (other than Arqiva), Broadcast Operator, or other third party acting through the Customer seeking access to a Station;
- 6.1.5 not commence testing and subsequently commence the operational broadcast use of the Customer Equipment at a Station until:
 - (a) authorised to do so by Arqiva in writing; and
 - (b) the Customer has secured or is otherwise able to confirm that any and all Customer Licences and any consent, approval, other licence, authorisation or permission required from any Government Authority or other third party for the Permitted Use have been obtained;
- 6.1.6 without prejudice to any of its other obligations under this Agreement, also indemnify and hold harmless Arqiva on demand against Pass-Through Costs and any reasonable additional costs (by way of additional rent, licence or other fees or payments) charges and expenses (or a due and proper proportion thereof) which Arqiva may reasonably incur or pay (including planning, legal, agents/surveyors, management or other professional fees or costs of any Landlord or other third party whose licence, consent, permission or approval shall be required) as a result of the Customer's access to the Station(s), and/or Arqiva's efforts to negotiate any associated licence, consent, permission or approval and/or any amendment or variation to any covenant, condition, term, restriction or stipulation in any lease, licence, deed or document or otherwise, relating to or affecting the title (whether belonging to Arqiva or any Landlord or third party) to any such Station and/or the access rights to any such Station that may be necessary or requisite to facilitate or accommodate the installation, use and operation of the Customer Equipment and/or the sharing of the use and/or occupation of the Station and/or to allow the Customer to use and/or share the Station and/or the Customer Equipment and/or the Common Equipment for the Permitted Use;

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- 6.1.7 during the relevant Licence Term obtain, maintain and comply with all applicable Laws and any consent, approval, licence, authorisation or permission that the Customer requires from any Government Authority or other third party, including any Customer Licence, and, to the extent the same are applicable to Arqiva, shall not do or permit anything to be done which might cause or otherwise result in a breach by Arqiva of the same or of any Arqiva Licence; and
- 6.1.8 without prejudice to any of its other obligations under this Agreement, promptly and in relation to each Station Licence, provide all information, co-operation and assistance as may be reasonably requested by Arqiva in connection with the performance of either party's obligations pursuant to this Agreement throughout the Licence Term, which may include (but shall not be limited to) co-operating and sharing information with MTS Providers where reasonably requested by Arqiva.
- 6.2 The Customer agrees that:
- 6.2.1 it shall pay any amounts due under the Station Licence which are not covered by the payment arrangements for Charges and Pass-Through Costs set out in Clause 7 below, and which are otherwise payable under this Agreement, within thirty (30) days of receipt of Arqiva's invoice or other written demand for the same;
- 6.2.2 it shall not carry out any installation, inspection, servicing, maintenance, repair, renewal, replacement, dismantling or removal of any Customer Equipment at any Station otherwise than by an Approved Contractor;
- 6.2.3 it shall not exercise any of the Rights until:
- (a) on or after the Access Date;
 - (b) Arqiva's prior approval in writing to provide the Facilities required by the Customer has been given; and
 - (c) Arqiva has confirmed in writing that any planning consents, statutory local authority or regulatory clearances and any other licence, consent, permission or approval of any Landlord or other third party whose licence, consent, permission or approval shall be required to facilitate or accommodate:
 - (i) the installation, use and operation of Customer Equipment, and/or
 - (ii) the Customer's use and/or sharing of the Accommodation and/or the Common Equipment, and/or
 - (iii) the exercise of the Rights granted by the Station Licence;have been obtained.
- 6.3 Where entry to the Station named in the Station Licence is not via a public highway but via an access way owned or controlled by a third party and the Customer has been notified that Arqiva cannot grant rights of access over such access way, the Customer agrees that it shall not in the first instance seek to negotiate such rights for Approved Contractors directly with such third party, and shall, if it requires such rights, request that Arqiva negotiates such rights on the Customer's behalf (the Customer bearing any costs reasonably incurred by Arqiva in negotiating and maintaining such rights) prior to exercising any Rights hereunder, but otherwise access to the Station boundary shall be at no extra charge (save only as herein provided) and the Customer shall procure that such rights are exercised by Approved Contractors strictly in accordance with the terms of such rights and otherwise as reasonably directed from time to time by Arqiva. Arqiva may in its discretion accept or reject any request under this Clause 6.3. In the event that Arqiva rejects any such request or Arqiva notifies the

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Customer that it has failed to secure the requested rights, Arqiva shall be entitled to seek to negotiate the required rights directly with the third party.

- 6.4 Where Arqiva permits access to or egress from a Station involving the use of any road, path or other land which is not a highway maintainable at public expense the Customer accepts that it shall be required to:
- 6.4.1 observe or cause to be observed all regulations relating to the weight, type and specification of vehicles to be used on such road path or other land as Arqiva shall reasonably direct; and
- 6.4.2 pay to Arqiva in addition to any other charges herein, a due and proper proportion of any cost, charges and expenses incurred by Arqiva in and towards maintenance, repair, resurfacing and renewal of any such road, path, barrier, boundary or other land and the whole cost of making good any damage (fair wear and tear excepted) caused by the Customer or any Approved Contractor to such road, path, barrier, boundary or other land to Arqiva's reasonable satisfaction.
- 6.5 Where any Customer Equipment is to be placed on, above or below ground outside the Station boundary and where Arqiva is not otherwise able to grant any such rights of installation and/or use over the same, the Customer shall obtain, at its sole expense, the agreement of any other party or parties having an interest in such area(s) prior to installation or use and shall indemnify Arqiva fully in this respect.
- 6.6 Save to the extent that Arqiva notifies the Customer in writing that it is willing to waive (in whole or in part) its rights under this Clause 6.6 in respect of any Approved Contractor(s), the Customer agrees that Approved Contractor(s) shall only visit and obtain admittance to a Station in accordance with the Code of Practice.
- 6.7 Other than as expressly permitted by Clauses 5.1.5, 5.1.6, 5.1.7 and 6.6 above, the Customer shall not permit or allow any other persons to visit the Station or operate the Customer Equipment.
- 6.8 The Customer shall ensure that, whilst at the Station, its employees and other Approved Contractors shall behave in a responsible manner and comply with all Arqiva's reasonable security and/or safety requirements, so as to cause no damage, disturbance, interference, nuisance, annoyance or inconvenience to Arqiva, any MTS Provider or any other third party and/or the installation, use or operation of any Equipment, and in the event of any loss or damage being caused to the Station, the Accommodation or to any property or items of Equipment thereon whether in consequence of the exercise by any of its employees or any Approved Contractor of the Rights granted under the relevant Station Licence or otherwise (but not as the result of any negligent act or omission of Arqiva or its employees, agents or sub-contractors) forthwith to reinstate the same to Arqiva's reasonable satisfaction (or, where Arqiva requires, reimbursement to Arqiva of the full costs and expenses properly incurred by it in carrying out such reinstatement on the Customer's behalf).
- 6.9 In exercising the Rights, the Customer shall procure that the Station is kept secure and shall provide Arqiva with a set of keys or code access to the Customer Accommodation in accordance with such operating procedures as are notified by Arqiva to the Customer in writing from time to time.
- 6.10 The Customer shall comply with the directions of Arqiva from time to time (which will include requiring the Customer to comply with the Code of Practice) and any operating procedures as are notified by Arqiva to the Customer in writing from time to time.
- 6.11 The Customer shall use all reasonable endeavours not at any time electrically or physically to impede, degrade, impair, disrupt, interfere with or interrupt the reception, transmission or relay of any Broadcast Services or any other services, signals or transmissions to or from the Station, and forthwith will use all reasonable endeavours to ensure the repair of any defects

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or faults in any Customer Equipment and/or in the use or operation of it which causes or may cause any such interference, and to otherwise terminate, cease or prevent such interference, and shall indemnify Arqiva against any costs properly incurred by Arqiva or any third party in remedying any such defects or faults and against any claims brought against Arqiva by any third party arising from any such interference.

- 6.12 The Customer shall keep Customer Equipment located on the Station properly maintained in good safe working order, repair and condition to Arqiva's satisfaction (which shall include the carrying out by the Customer of regular and prudent safety inspections not less than annually, and providing Arqiva with evidence that such inspections have been carried out). In the event that Arqiva does not receive such evidence, Arqiva may (at its discretion) carry out its own tests and the Customer shall indemnify Arqiva against any costs properly incurred in carrying out the tests.
- 6.13 In respect of all Customer Equipment, the Customer shall in addition:
- 6.13.1 procure that Customer Equipment is labelled and identifiable as the Customer's, and identifies the frequencies used by the Customer Equipment;
 - 6.13.2 ensure that Customer Output Signals from the Customer Equipment comply with the requirements set out in the relevant industry standard nominated by Ofcom from time to time and the Customer acknowledges that Arqiva shall have no obligation to carry over Common Equipment and/or Arqiva Equipment any Customer Output Signals which do not so comply;
 - 6.13.3 ensure that Customer Output Signals from the Transmitter System at the Interface Point are within the parameters set out in this Agreement and/or the Station Licence;
 - 6.13.4 comply with all applicable Laws regarding health and safety relating to the installation, use and operation of the Customer Equipment including all guidelines from time to time issued by the HPA applicable to the use and operation of the Customer Equipment;
 - 6.13.5 provide Arqiva on request (but normally not more often than once a year unless the Customer proposes to make a material change to the Customer Equipment, its size or weight, in which case a report will be required detailing the change prior to such change taking place) with a compliance report relating to the Agreed ERP of the Customer Equipment in relation to the ICNIRP public guidelines or other HPA guidelines and in the event that the radio-frequency radiation levels from the Customer Equipment exceed the Agreed ERP causing the Station (or any Customer Equipment or aggregated Common Equipment or Arqiva Equipment located on the Station) to fail to meet such guidelines, the Customer shall pay for any applicable testing and other associated costs, charges and expenses incurred by Arqiva, and Arqiva may additionally require the Customer to switch off the Customer Equipment (without liability or compensation to the Customer) until remedial action has been undertaken so that the HPA guidelines are met. In the event that Arqiva does not receive such a report, Arqiva may (at its discretion) carry out its own tests and the Customer shall indemnify Arqiva against any costs properly incurred in carrying out the tests; and
 - 6.13.6 provide Arqiva forthwith on request and from time to time with current details of power output of the Customer Equipment to enable Arqiva to undertake periodic Station power output audits in order to demonstrate the Station's compliance with the ICNIRP public guidelines and any other HPA guidelines or regulatory or UK industry best practice audit requirements.
- 6.14 In the event that Arqiva has reasonable grounds to believe that Customer Equipment or its use or operation is the source or cause of any interference or degradation to the reception, transmission or relay of any Broadcast Services or any other services, signals or Reference Offer for the provision of Network Access in respect of Ofcom's proposed award of a licence in the frequency band 758 to 766 MHz covering Manchester.

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transmissions to or from the Station, the Customer shall forthwith either eliminate the interference or degradation or, where there is significant interference or degradation which cannot be remedied in such time as Arqiva shall reasonably require, switch off Customer Equipment until such time as the interference or degradation has been eliminated, the cost of such measures to be borne by the Customer in any event (subject also to the provisions of Clause 6.16).

- 6.15 Where requested by Arqiva on reasonable prior notice (or forthwith in the case of an emergency), the Customer shall, or shall permit Arqiva to temporarily reduce power or switch off Customer Equipment where Arqiva considers the radiation level of any Customer Equipment is unsafe for access to the Mast or to any Equipment or Accommodation by Arqiva, its employees, agents, sub-contractors or other persons authorised by Arqiva. In such circumstances the Customer will be required to keep the relevant Customer Equipment on reduced power or switched off until all such persons and their equipment have completed the relevant tasks and left the Mast, Equipment or Accommodation. Arqiva will use reasonable endeavours to minimise the disruption to the Customer Output Signal when making such requests.
- 6.16 The Customer shall provide a switch on all Customer Equipment to enable it to be switched off by Arqiva and shall provide Arqiva with an agreed method of switching off Customer Equipment provided that it is agreed that Arqiva shall only switch off Customer Equipment:
- 6.16.1 in the event of any life or property threatening emergency;
 - 6.16.2 where Arqiva has reasonable grounds to believe that the source or cause of any interference or degradation to the reception, transmission or relay of any Broadcast Service or other services, signals or transmissions to or from a Station is the Customer Equipment or its operation or use and after taking all reasonable measures to contact and inform the Customer that such interference or degradation exists and where practicable to do so Arqiva has allowed the Customer a reasonable period forthwith to remedy any such interference or degradation caused by the Customer Equipment but the interference or degradation still exists;
 - 6.16.3 if required to do so by any Government Authority, provided that Arqiva shall (where reasonably practicable) use its reasonable endeavours to inform the Customer of such requirement before the Customer Equipment is switched off;
 - 6.16.4 with the agreement of, or at the request of, the Customer;
 - 6.16.5 where the Customer's Station Licence has expired or been terminated under the terms contained in this Agreement but the Customer has failed to switch-off the Customer Equipment;
 - 6.16.6 where the Customer is in material breach of this Agreement as applied to the relevant Station Licence, including the Customer's obligation to pay the Charges, Pass-Through Costs or any other amounts due hereunder;
 - 6.16.7 where Arqiva reasonably considers that, if it were to permit or allow to continue the transmission of certain Transmitted Service Signals from the Station, it would cause Arqiva to be in breach of any obligation in any contract with a third party (such as for example but without limitation any covenant or restriction in any relevant lease, licence or other document affecting the use of the relevant Station or access rights to it);
 - 6.16.8 in order for Arqiva to conduct any maintenance or other works or for other purposes as contemplated by Clause 6.15;

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- 6.16.9 otherwise in accordance with any specific provisions herein contained or (if applicable) as contained in the Code of Practice or any other Arqiva operating procedures notified from time to time; or
- 6.16.10 where Arqiva reasonably considers it necessary in the event of any unauthorised access, use or occupation of the Station, any Accommodation or any Equipment;
- and in the event that any Customer Equipment is switched off or disconnected pursuant to this Clause 6.16, Arqiva shall notify the Customer of this as soon as reasonably practicable.
- 6.17 The Customer shall not, without Arqiva's prior written consent, carry out any activity within or outside the Station that may result in any change to:
- 6.17.1 the Permitted Use;
- 6.17.2 the size or weight of Customer Equipment;
- 6.17.3 the Agreed ERP for the Customer Equipment; or
- 6.17.4 the agreed technical operating specifications of the Customer Equipment or any other specifications set out in this Agreement and/or the relevant Station Licence.
- 6.18 The Customer shall keep any Common Accommodation used by the Customer and all Customer Accommodation clean and tidy and free from its own rubbish and shall not obstruct or cause to be obstructed any passages, paths, access ways and fire escapes (and in respect of fire doors, not keep or block any such doors open) on or serving the Station. The Customer shall be responsible for keeping the interior of any Customer Accommodation in reasonable repair and condition. The Customer shall also prepare and maintain an up-to-date as built drawing of any Customer Accommodation showing the location of all Customer Equipment at each Customer Accommodation, and promptly make the same available to Arqiva on request.
- 6.19 Unless there is a Special Condition to the contrary in the Station Licence, Arqiva shall own all Customer Accommodation, whether provided by Arqiva, or free issued by the Customer, such ownership vesting in Arqiva upon completion of its construction and/or installation.
- 6.20 Where the structure used to accommodate Customer Equipment consists of one or more movable equipment cabins provided by the Customer solely for the Customer's exclusive use and it has been confirmed in a Special Condition in the Station Licence that such equipment housing shall be treated as belonging to the Customer, it shall be deemed to form part of the Customer Equipment for the purpose of interpreting these Standard Terms.
- 6.21 The Customer shall not tamper with or otherwise cause any damage to the Station, any Accommodation (including any Mast), or any Equipment (including any Antenna) which is located at the Station, provided that the Customer shall be entitled to exercise the Rights expressly permitted herein and under the relevant Station Licence in respect of the Customer Equipment and Customer Accommodation.
- 6.22 The Customer shall not erect or cause to be erected any building or structure or other erection at a Station, save as may be expressly specified in the relevant Station Licence.
- 6.23 Save as provided in Clause 6.24, neither the Customer, nor its Approved Contractors, shall make any alterations or additions to any part of any Station, any Equipment, or to any Accommodation unless expressly permitted to do so by Arqiva in writing, such permission to be entirely in Arqiva's discretion.
- 6.24 The Customer, or its Approved Contractors, may be permitted to make alterations or additions to Customer Accommodation or to Customer Equipment subject to obtaining the prior written consent of Arqiva, such consent not to be unreasonably withheld or delayed. Any such
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consents as aforesaid shall also be subject to Arqiva obtaining any Consent necessary, and at the Customer's expense.

- 6.25 The Customer shall not make any application for or appeal regarding planning permission (including any full planning permission, applications under general development orders, or by licence notification) in relation to any part of the Station, any Equipment (including the Customer Equipment) or any Accommodation (including the Customer Accommodation).
- 6.26 The Customer shall not erect or permit or suffer or allow to be erected any sign, notice or advertisement on the Station (save as herein expressly provided or permitted in writing by Arqiva).
- 6.27 The Customer shall satisfy Arqiva prior to installing any permitted Customer Equipment that all proper precautions will be taken to prevent fire damage and that the provisions of the Health and Safety at Work Act 1974 and any regulations made there under and all other applicable Laws (and any reasonable additional precautions laid down by Arqiva for the protection of the Station and the Facilities and the safety of personnel and equipment) will be complied with regardless of whether or not such installation shall be supervised by Arqiva. This will include, without prejudice to the generality of the foregoing, a requirement for the Customer to provide at its own cost all necessary fire fighting equipment and safety clothing for use in respect of Customer Accommodation (if any) and Customer Equipment.
- 6.28 The Customer shall not light or permit or suffer or allow to be lit any fire on the Station or on any access thereto nor block or obstruct nor permit or suffer or allow to be blocked or obstructed any fire exits or access for fire fighting equipment thereon.
- 6.29 The Customer shall under no circumstances permit any of its employees or its Approved Contractors or any third party to reside at the Station.
- 6.30 The Customer shall in exercising the Rights comply and procure that all Approved Contractors comply with the terms and conditions of this Agreement (including any relevant obligations contained in Special Conditions in the Station Licence) and do not cause any nuisance or annoyance or undue noise to Arqiva or any neighbouring owners or occupiers and do not drive or walk over any private land or property adjoining the Station over which rights have not been granted under the Station Licence, or otherwise, and that they shall secure any doors and gates after use.
- 6.31 The Customer shall not install nor suffer the installation of any alternative facilities for the supply of electricity, or any other facilities including communication links, other than with Arqiva's prior written consent.
- 6.32 Subject to Clause 6.31 above, the Customer agrees that if it requires any third party services at the Station (including telephony services), including any services which may need to pass in, on, over or under the Station and any adjacent land or premises in which Arqiva has a relevant proprietary interest, the Customer shall not in the first instance negotiate such services directly with any such third party, and shall, if it requires such services, request that Arqiva negotiates the provision on reasonable terms of any such services (the Customer bearing any reasonable costs incurred by Arqiva in negotiating and providing such services). In the event that Arqiva rejects any such request or notifies Arqiva that it has failed to secure the requested services, Arqiva shall be entitled to seek to negotiate the required services directly with the third party.
- 6.33 Any Approved Contractors shall install, inspect, maintain, repair, renew and remove as necessary Customer Equipment at the Customer's sole risk.
- 6.34 The Customer shall bear the properly incurred expenses of Arqiva in making good any damage, loss or injury to the Accommodation and/or the Equipment in consequence of the exercise of or failure to exercise any of the Rights granted under the Station Licence by the

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Customer or any Approved Contractor, other than in consequence of any negligent act or omission on the part of Arqiva.

- 6.35 The Customer shall not grant any assignment, sub-letting or sub-licence of all or any parts of the Rights granted under a Station Licence.
- 6.36 Upon termination or expiry of any Station Licence, the Customer shall immediately terminate the use of the Customer Accommodation, the Common Accommodation, the Customer Equipment and the Common Equipment, and the terms set out in Clause 10.4 shall apply.
- 6.37 Where it has any rights of enlargement of its interest under the Station Licence or otherwise by virtue of code powers under the Telecommunications Act 1984 and/or the Communications Act 2003, the Customer shall not exercise such code power rights (insofar as it is able to contract out of the same hereunder or otherwise) so as to cause financial loss or liability to Arqiva, any Landlord or any other third party, and without prejudice to the generality of the foregoing the Customer also agrees that if it exercises any such powers of enlargement or otherwise in relation to the Station and as a result remains in situ at the Station it shall also accept and shall be responsible for and indemnify Arqiva and any Landlord or third party against any damages or loss and all costs charges and expenses incurred by or claimed against Arqiva and any Landlord or third party in relation to the Station, provided that Arqiva will not (and will use its reasonable endeavours to procure its Landlord does not) settle or compromise any such claim without prior notice to and the consent of the Customer (such consent not to be unreasonably withheld or delayed).
- 6.38 The Customer shall during the Licence Term obtain, maintain and comply with all applicable Laws, and any consent, approval, licence, authorisation or permission that the Customer requires from any Government Authority, national or international regulatory agency or other third party and, to the extent the same are applicable to Arqiva, shall not do or permit anything to be done which might cause or otherwise result in a breach by Arqiva of the same or of any Arqiva Licence.

7. CHARGES AND PAYMENT

- 7.1 Subject to the remainder of this Clause 7, the Customer shall pay to Arqiva calculated in respect of each Station, the Charges, the Pass-Through Costs and any other amounts expressly referred to in this Agreement and the Station Licence.
- 7.2 The Charges have been calculated in accordance with methodology described in the Undertakings and are comprised of the Initial Network Access Fee and the Annual Network Access Fee as set out in Schedule 6 (Commercial Details). The Charges assume that Network Access will be provided by Arqiva on a 24/7 basis, and shall not be reduced if the Customer wishes to transmit its Customer Output Signal on a more limited basis.
- 7.3 The Customer shall pay the Initial Network Access Fee to Arqiva within thirty (30) days of the Effective Date of this Agreement. Subject to the remainder of this Clause 7, the Annual Network Access Fee and the forecast Pass-Through Costs shall become payable on and from the applicable Access Date, and shall be payable in advance at the start of each Year.
- 7.4 The Annual Network Access Fee (excluding Pass-Through Costs which are subject to variation in accordance with market conditions), will be subject to annual indexation without taking into account Network Access Credits, by a percentage increase in RPI. Such percentage increase shall be calculated by comparing the RPI published in the April immediately preceding the Year for which charges are being reviewed, with the RPI published twelve (12) months before the April immediately preceding the Year for which charges are being reviewed and expressing the difference as a percentage of the first (i.e. first published) of such RPIs. If any such resulting number is a negative number, it shall be treated as zero for the purposes of the indexation mechanism set out in this Clause. Any percentage increase in RPI that is required to be calculated under this Agreement shall be calculated to two decimal places and conventional rounding shall apply. (By way of illustration only, to

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calculate the indexation for the Charges for the Year commencing 1 July 2010, the relevant increase in RPI is obtained by comparing the RPI for April 2009 and the RPI for April 2010 and expressing the increase between these two values as a percentage increase of the RPI for April 2009.)

- 7.5 In the event that any Exceptional Risk occurs, Arqiva shall be entitled to review the Charges in accordance with the Change Control Procedure.
- 7.6 Except as otherwise provided for under this Agreement, all amounts payable by the Customer shall be payable within thirty (30) days of the date of the relevant invoice, the invoice date being the Due Date for such amounts.
- 7.7 The Customer shall make payments for the Charges and Pass-Through Costs by direct debit.
- 7.8 At the end of each Year Arqiva shall calculate any Network Access Credits due to the Customer pursuant to Clause 4.8.1 in respect of the previous Year, and shall make the applicable payment to the Customer in respect thereof within ninety (90) days of the end of applicable Year.
- 7.9 All Charges, Pass-Through Costs and other amounts 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.
- 7.10 All invoices hereunder shall be raised in, and all debts due hereunder shall be settled in, GB pounds sterling. If the United Kingdom becomes a participating member state for the purposes of European Monetary Union and the Euro accordingly becomes the lawful currency of the United Kingdom:
- 7.10.1 such occurrence that shall not affect the validity of this Agreement or the rights and obligations contained in this Agreement or any individual Station Licences nor shall it give either party the right to alter or terminate the Agreement unilaterally; and
- 7.10.2 with effect from the date on which it occurs, any amount referred to in this Agreement or in any individual Station Licence in GB pounds sterling shall be redenominated in Euros at the rate and in the manner determined by the relevant legislation.
- 7.11 If the Customer fails to pay any amount payable by it under this Agreement (including any amount due under any Station Licence) within thirty (30) days from the Due Date, without prejudice to Arqiva's other remedies, the Customer shall become liable for and, on Arqiva's demand from time to time, shall pay interest on such overdue amount from the Due Date up to the date of actual payment whether before or after judgement at the rate of four per cent (4%) per annum over the base rate of the Bank of England. Such interest shall accrue from day to day and shall be computed on the basis of a year of three hundred and sixty five (365) days for the number of days elapsed.
- 7.12 If the Customer is more than thirty (30) days overdue with payment of any amount payable hereunder, Arqiva may serve the Customer with not less than thirty (30) days written notice of its intention to suspend provision of Network Access for non-payment. Following the expiry of such notice period, Arqiva reserves the right to suspend provision of Network Access until the Customer has rectified matters. Moreover, the Customer shall not be relieved of any liability to pay Charges or any other amounts due under this Agreement in respect of any period during which Arqiva's provision of Network Access has been suspended pursuant to this Clause.
- 7.13 In addition to the Charges, Arqiva will charge for supervision in accordance with the rates set out in Schedule 6 (Commercial Details).

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- 7.14 If the Customer disputes any invoice issued by Arqiva hereunder, it shall nevertheless be obliged to pay that invoice. In the event that the outcome of any dispute resolution process provided for in this Agreement is that an overpayment has been made by the Customer, Arqiva shall be liable to repay to the Customer an amount equal to the overpayment together with interest on such amount calculated at the rate specified in Clause 7.11 such interest to be calculated for the period from the date of payment of the original invoice to the date of repayment by Arqiva of the overpayment.
- 7.15 Arqiva may elect to set off any liability to pay any amounts payable by it under this Agreement against any amounts payable by the Customer to Arqiva under this Agreement or the Station Licences or any liability of the Customer to Arqiva howsoever arising.
- 7.16 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.
- 7.17 Commencing with the first Year in which the Customer is expected to be invoiced for the Annual Network Access Fee, and for each Station Licence then issued under this Agreement, Arqiva shall forecast the Pass-Through Costs likely to be payable by the Customer during that Year ("**Forecast Pass-Through Costs**") on a Station by Station basis. Arqiva shall conduct such forecast and notify the Customer of the Forecast Pass-Through Costs by, at the latest, the end of April prior to the start of the relevant Year.
- 7.17.1 The Forecast Pass-Through Costs shall be payable by the Customer in accordance with Clause 7.3.
- 7.17.2 The Customer's share shall be calculated on a Station-by-Station basis, using the following methodology:
- (a) Arqiva shall first calculate the total amount of Pass-Through Costs (except for any directly attributable Pass-Through Costs) incurred by Arqiva at each Station in respect of the provision of Network Access to all other customers at that Arqiva Station;
 - (b) Arqiva shall then determine each customer's share of the total Pass-Through Costs (including the Customer's share) at each Station on a fair and reasonable basis that is reflective of the attributes/criteria that incur/drive these Pass-Through Costs. The Customer's share shall be this amount, plus
 - (i) any directly attributable Pass-Through Costs, and
 - (ii) the total cost of electricity for its Customer Equipment in the relevant period.
- In procuring electricity required for the operation of the Equipment, Arqiva shall use all reasonable endeavours to ensure best value for itself and in turn for the Customer
- 7.17.3 As soon as reasonably practical and no later than four (4) months after the end of the relevant Year, or as soon as possible following the end of the Licence Term, the Customer's share of actual Pass-Through Costs for the relevant Year ("**Actual Pass-Through Costs**"), determined in accordance with Clause 7.17.2 above, will be compared to the Forecast Pass-Through Costs for the relevant Year. Any overpayment or underpayment by the Customer shall be notified in writing by Arqiva. In the event of any overpayment by the Customer, Arqiva shall issue the Customer with a credit note to the value of any overpayment within thirty (30) days, save where no more Charges are due from the Customer to Arqiva, in which case Arqiva shall pay the amount within thirty (30) days. In the event of any underpayment, Arqiva shall issue an invoice to the Customer for this amount, such invoice being payable in accordance with the terms of this Agreement

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7.17.4 Arqiva shall, on the Customer's written request and subject to payment by the Customer of Arqiva's reasonable incurred costs, provide copies of all documentation evidencing and/or supporting the calculation of the Actual Pass-Through Costs for any Year. Arqiva shall not however, be required to provide copies of such documentation to the Customer where by so doing Arqiva would be in breach of or otherwise contravene confidentiality or contractual commitments with other customers or users of Station Facilities. Under these circumstances Arqiva will ensure that a reputable third party independently validates that the Customer's Pass-Through Costs have been derived and/or calculated in accordance with the methodology agreed between Arqiva and the Customer, and provide confirmation of such independent validation to the Customer on request. The Customer shall not be entitled to request this information more frequently than once per annum. Arqiva shall provide such information promptly and in any event within thirty (30) days, of the Customer's written request.

7.18 It is agreed by Arqiva and the Customer that the consideration for the Rights granted in each Station Licence is included within the Charges and Pass-Through Costs payable by the Customer pursuant to this Agreement.

8. CHANGE

If the Customer or Arqiva wishes to make any change to this Agreement or the provisions in any individual Station Licence, the parties shall follow the Change Control Procedure set out at Schedule 4 (Change Control Procedure).

9. TERM AND TERMINATION

9.1 Subject to the remainder of this Clause 9, and unless otherwise agreed in writing, this Agreement shall come into force on the Effective Date and shall continue until 30 October 2026 (the "**Expiry Date**"). After the Effective Date the Agreement shall be in force for a minimum term of twelve (12) calendar months. At any time after twelve (12) calendar months after the Effective Date, the Customer is entitled to serve not less than twelve (12) calendar months written notice to terminate the Agreement, and upon the expiry of such notice period, this Agreement shall terminate.

9.2 Each party shall be entitled forthwith on serving a written notice to the other party to terminate this Agreement, in whole or as to the affected part, if the other party shall be in material breach (in the case of breaches capable of remediation) of any of the provisions of this Agreement and shall not remedy or otherwise satisfactorily compensate the non-defaulting party in respect of any such breach(es) within thirty (30) days of the non-defaulting party notifying the other party in writing of the breach in question.

9.3 Each party shall be entitled forthwith on serving a written notice to the other party to terminate this Agreement (and the Station Licences) on any of the following events occurring in respect of the other party:

9.3.1 a petition is presented or resolution passed for its winding up, provided that this Clause 9.3.1 shall not apply to a bona fide re-organisation or re-construction of that party whilst solvent;

9.3.2 it enters into any composition with its creditors generally, or suffers any similar action in consequence of default by it in its obligations in respect of any indebtedness provided that this Clause 9.3.2 shall not apply to a bona fide re-organisation or re-construction of that party whilst solvent;

9.3.3 an administration application is made in respect of it or it suffers a notice of appointment of administration to be filed at court in respect of it;

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- 9.3.4 it has stopped or threatens to stop generally payment of its debts or it if ceases or threatens to cease to carry on its business or any substantial part of it, provided that this Clause 9.3.4 shall not apply to a bona fide re-organisation or re-construction of that party whilst still solvent;
- 9.3.5 it has a receiver, administrative receiver or other similar official appointed over all or any substantial part of its property, undertakings or assets;
- 9.3.6 it suffers a creditor taking possession of all or any part of its business or assets or suffers any execution or other legal process being enforced against its business or any of its substantial assets, which execution or legal process is not discharged within thirty (30) days;
- 9.3.7 it is deemed for the purpose of Section 123 of the Insolvency Act 1986 to be unable to pay its debts; or
- 9.3.8 an event or circumstance analogous to any of those referred to in Clauses 9.3.1 to 9.3.7 above occurs in any jurisdiction outside England and Wales under the laws of any competent jurisdiction.
- 9.4 Either party may terminate this Agreement and the relevant Station Licences as to the affected Station or Stations pursuant to Clause 12.2.
- 9.5 Where this Agreement is terminated in part only pursuant to provision of this Clause 9 it shall continue in full force as to the remaining part.
- 9.6 The Station Licence:
- 9.6.1 may be terminated pursuant to any of the provisions of Clause 9.7;
- 9.6.2 may be terminated by Arqiva by giving to the Customer not less than five (5) months' prior written notice provided that:
- (a) if Arqiva has served such notice because its rights to continue to grant the Rights are determined by reasons beyond its reasonable control (such as for example but without limitation where Arqiva is unable to renew its rights to occupy any land or buildings comprised in the Station and/or where renewal is only available on unreasonable terms), Arqiva shall use its reasonable endeavours to secure an alternative site which is as close (geographically) as reasonably practicable to the Station, and if Arqiva successfully secures such a site the Customer shall relocate to such site in accordance with Clause 4.6.9 of this Agreement, and all costs, charges and expenses incurred by the Customer in relation to or in connection with such relocation shall be borne by the Customer; and
- (b) if Arqiva has served such notice for reasons other than those specified in Clause 9.6.2(a), Arqiva shall use its reasonable endeavours to secure an alternative site which is as close (geographically) as reasonably practicable to the Station, and if Arqiva successfully secures such a site the Customer shall relocate to such site in accordance with Clause 4.6.9, and all the Customer costs, charges and expenses properly, reasonably and directly incurred by or on behalf of the Customer in relation to or in connection with such relocation shall be borne by Arqiva;
- 9.6.3 shall expire at the end of the relevant Licence Term in respect of each Station Licence;
- 9.6.4 may be terminated by a party forthwith by notice in writing to the other if the other shall be in material breach of any of the obligations on its part to be performed or

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observed thereunder and shall not remedy and, in the case of a breach capable of remediation or otherwise satisfactorily compensate the non-defaulting party in respect of any such breach(es) within thirty (30) days of the non-defaulting party notifying the other party in writing of the breach in question; and

- 9.6.5 shall terminate forthwith on termination or expiry of this Agreement for whatever reason, (or the relevant part of this Agreement if it is terminated in part).
- 9.7 Arqiva may notwithstanding and without prejudice to its rights under Clause 9.3 and 9.6 above, switch off Customer Equipment and determine the relevant Station Licence forthwith without incurring any liability to the Customer or any other party for the results of such an act if any of the following events should occur in respect of the Customer:
- 9.7.1 the Customer fails to make any payment to be made under this Agreement or any Station Licence which is in arrears and unpaid following the Due Date (as defined herein or in the relevant Station Licence) within fourteen (14) days of receiving notice from Arqiva, that Customer Equipment will be switched off unless Arqiva receives the outstanding payment together with the interest due thereon (such notice to be served not earlier than the said Due Date); or
- 9.7.2 the Customer fails or neglects to initiate steps to remedy within thirty (30) days after notice is given by Arqiva requiring such remedy or if the Customer fails to continue thereafter with all reasonable speed to complete such remedying of a material breach of any of the covenants, agreements or conditions of this Agreement in relation to any the Station Licence and on the part of the Customer to be performed and observed
- 9.8 Any termination of a Station Licence pursuant to Clause 9.6 or Clause 9.7 shall be without prejudice to any antecedent claims arising under the relevant Station Licence prior to the date of termination.
- 9.9 The Customer shall where requested by Arqiva in writing temporarily relocate any Customer Equipment, and in default of the Customer's compliance with such request after a reasonable period (where practicable) Arqiva may relocate any Customer Equipment and where applicable enter any Customer Accommodation in order to relocate any Customer Equipment (and in such scenario the Customer shall pay to Arqiva on demand the costs, charges and expenses properly incurred by Arqiva in so entering and relocating) where it has become necessary to temporarily move some or all of the Customer Equipment at the Station (for example but without limitation for the purposes of essential maintenance or in an emergency), which may involve moving the affected Customer Equipment to another area of the Station (in respect of which the Customer may or may not have exclusive access), to another area adjacent to the Station or to a different site, and in this scenario Arqiva shall use its reasonable endeavours to ensure that the terms of the Customer's access to and use of such Customer Equipment are equivalent to the terms set out in the Station Licence during such temporary periods, although Arqiva cannot guarantee that any Antenna coverage patterns will be the same.

10. CONSEQUENCES OF TERMINATION

- 10.1 Upon termination (in whole or part) of this Agreement for whatever reason or upon its expiry, all Station Licences granted hereunder (or, in the event of a partial termination, all of such Station Licences in respect of Stations at which Network Access will no longer be provided) shall immediately terminate and the Customer shall comply with its relevant obligations pursuant to such Station Licences.
- 10.2 Any termination of this Agreement shall be without prejudice to either party's rights to recover any sums payable or due by the other or to any rights accrued by one party to the other in accordance with this Agreement on or prior to the date of such termination. Each Party shall use reasonable endeavours to mitigate any losses or expenses that may arise by virtue of the expiry or termination of part or all of this Agreement.

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- 10.3 This Clause 10 and Clauses 4, 7, 11, 13, 15 and 16 shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.
- 10.4 Upon termination (in whole or part) of this Agreement for whatever reason, or an individual Station Licence, or upon their respective expiry, Arqiva shall be responsible for the removal of the Customer Equipment. Upon such expiry or termination 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 or the relevant Station Licence). 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.

11. LIABILITY, INDEMNITIES AND INSURANCE

Liability

- 11.1 Arqiva accepts liability to the Customer only as expressly provided or contemplated in this Clause 11 and Clauses 2.2.2 and 4.8, and otherwise shall have no liability to the Customer under or in connection with this Agreement or any Station Licence whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 11.2 Arqiva accepts liability to the Customer for any damage to Customer Equipment caused by Arqiva's negligence in the provision of Network Access up to one hundred thousand pounds sterling (£100,000) per Station per Year. For the avoidance of doubt, neither damage to nor loss or corruption of data shall constitute loss of or damage to physical property.
- 11.3 Subject to Clause 11.2, Arqiva's maximum aggregate liability to the Customer arising under or in connection with this Agreement and all Station Licences, 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 shall be limited to the greater of:
- 11.3.1 one hundred and twenty-five per cent (125%) of the Charges payable by the Customer to Arqiva under this Agreement in respect of that Year; and
- 11.3.2 £50,000.
- For the avoidance of doubt any amounts paid by Arqiva to the Customer by way of Network Access Credits under Clause 4.8.1 and liquidated damages under Clause 2.2.2 shall count towards the limits set out in this Clause 11.3.
- 11.4 Arqiva shall not be liable to the Customer under or in connection with this Agreement or any Station Licence 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.
- 11.5 Nothing in this Clause 11 or otherwise in this Agreement or any Station Licence 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.
- 11.6 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 or any Station Licence

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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 or any Station Licence and any failure by the Customer to comply with the Engagement Process).

- 11.7 The exclusions and limitations of liability under this Clause 11 shall have effect in relation both to any liability expressly provided for or contemplated under this Agreement or any Station Licence 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 or of any Station Licence.
- 11.8 This Agreement and the Station Licences entered into pursuant to it set forth the full extent of Arqiva's obligations and liabilities arising out of or in connection with this Agreement and the Station Licences, and there are no conditions, warranties, representations or terms, express or implied, that are binding on Arqiva except as specifically stated in this Agreement and the Station Licences. Any condition, warranty, representation or term which might otherwise be implied into or incorporated in this Agreement or the Station Licences, whether by statute, common law or otherwise, is hereby expressly excluded.

Indemnities

- 11.9 The Customer shall be liable for and shall indemnify Arqiva 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 Equipment; or (ii) any activity undertaken by the Customer or its employees, agents, contractors (including Approved Contractors) or customers at any Station. As regards loss of or damage to Arqiva Equipment, Common Equipment, Accommodation (including Customer Accommodation) and any Equipment owned or controlled by MTS Providers, the Customer's liability under this indemnity shall be limited to: five million pounds sterling (£5,000,000) per Year in relation to each Station, but shall otherwise be unlimited.
- 11.10 Without prejudice to Clause 11.9, the Customer agrees during this Agreement and thereafter to indemnify and keep indemnified Arqiva from and against claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by Arqiva resulting directly or indirectly from any claims by third parties that any Programme, 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 Customer Output Signal:
- 11.10.1 is in breach of any duty of confidentiality or privacy;
- 11.10.2 infringes or prejudices any existing or future Intellectual Property Rights;
- 11.10.3 is defamatory or obscene; or
- 11.10.4 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.,

- 11.11 The indemnity in Clause 11.10 shall be subject to Arqiva:
- 11.11.1 promptly notifying the Customer in writing of such claim;
- 11.11.2 not making any admission as to liability or agreeing to any settlement or compromise of the claim without the Customer's prior written consent, not to be unreasonably withheld or delayed;

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11.11.3 at the Customer's request and expense, giving the Customer express authority to conduct all negotiations and litigation, and to settle all litigation, arising from such claim; and

11.11.4 providing the Customer at the Customer's expense with all available information and assistance as the Customer may reasonably require. If within ninety (90) days after Arqiva's receipt of notice of any claim, the Customer fails to take action to defend the same, Arqiva may at the Customer's expense undertake the defence, compromise or settlement of the claim. Upon the assumption of the defence of the claim, Arqiva may defend, compromise or settle the claim as it sees fit provided that Arqiva shall take reasonable steps to monitor and mitigate the fees and costs associated with the same and shall keep the Customer informed of any reasonable settlement proposals made by the claimant and shall not agree any settlement without the Customer's prior written consent (not to be unreasonably withheld or delayed).

Insurance

11.12 Without prejudice to its obligations and liabilities under this Agreement (including under any indemnity), the Customer agrees that during the term of this Agreement it will maintain appropriate insurance policies in relation to the following types of cover with a reputable insurance company in respect of its liabilities under or relating to this Agreement, providing for the payment of a sum up to the amount stated for any claim or series of claims arising out of a single event:

11.12.1 public and products liability for all risks arising from this Agreement of not less than five million pounds Sterling (£5,000,000); and

11.12.2 employers liability insurance to include a principals clause of not less than the statutory requirement.

11.13 The Customer shall on request produce evidence satisfactory to Arqiva that it is complying with its obligations under Clause 11.14, and shall promptly notify Arqiva in writing in the event that the nature or coverage of the insurances described in Clause 11.14 is materially changed.

11.14 Where the Customer engages any sub-contractor, the Customer shall ensure that the relevant sub-contractor holds such insurance cover as is reasonable taking into account the extent of the services to be provided by that sub-contractor.

12. FORCE MAJEURE

12.1 After the Access Date, Arqiva shall not be liable for its failure to provide Network Access in respect of any Station for any period or for any resulting loss, injury or damage to the extent only that such provision is prevented or directly adversely affected to a material degree by any Force Majeure Event, provided that Arqiva shall in any event continue to provide Network Access at that Station to the extent reasonably practical.

12.2 The period of excused non-provision shall be limited to the duration of such events provided that should any such suspension last for a period of more than one hundred and twenty (120) days, either party shall be entitled to terminate the relevant Station Licence(s) affected upon written notice to the other party, in which event the Charges shall be reduced by an amount equal to the aggregate of the Charges which would otherwise be payable in respect of the Station or Stations affected.

12.3 Arqiva shall give prompt notice to the Customer of any claim that the provision of Network Access is prevented or adversely affected by any Force Majeure Event giving details so far as practicable of the cause and consequence of the event, the Station(s) affected and the likely duration of the period of non-provision and shall give notice in like manner to the Customer when the provision is no longer adversely affected.

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- 12.4 In the event of the failure by Arqiva to provide Network Access at any Station by reason of a Force Majeure Event it shall use all reasonable endeavours to recommence provision as soon as is practicable. Arqiva shall also use all reasonable endeavours to mitigate and/or eliminate the consequences of any Force Majeure Event or Events and inform the Customer of the steps which it is taking or proposing to take to do so.
- 12.5 During any period during which Arqiva is excused provision under Clause 12.1, the Customer shall remain liable to pay:
- 12.5.1 in respect of the first sixty (60) days of such period, one hundred per cent (100%) of the Charges;
- 12.5.2 in respect of days sixty-one (61) to ninety (90) inclusive of such period, the Charges apportioned on a daily basis over a Year at seventy-five per cent (75%) of the rate which would otherwise have been payable in respect of the Station or Stations affected;
- 12.5.3 in respect of any days thereafter of such period, the Charges apportioned on a daily basis over a Year at fifty per cent (50%) of the rate which would otherwise have been payable in respect of the Station or Stations affected; and
- 12.5.4 all Pass-Through Costs (for the avoidance of doubt only to the extent actually incurred).

13. CONFIDENTIALITY

- 13.1 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.
- 13.2 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 13.
- 13.3 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.
- 13.4 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.
- 13.5 The terms of and obligations imposed by this Clause 13 shall survive the termination or expiry of this Agreement but shall not apply to any Confidential Information which:
- 13.5.1 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; or
- 13.5.2 is lawfully received by the receiving party from a third party on an unrestricted basis;
or

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13.5.3 is already known to the receiving party before receipt hereunder; or

13.5.4 is independently developed by the receiving party or its employees, agents or contractors.

13.6 The receiving party may disclose Confidential Information as may be required by law, regulation or order of a Competent Authority, 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.

14. ASSIGNMENT AND SUBCONTRACTING

14.1 Subject to Clauses 14.2 and 14.3, neither party may assign, sub-contract or sub-license this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

14.2 Notwithstanding Clause 14.1, Arqiva may on written notice to the Customer assign, sub-contract or sub-license 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.

14.3 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.

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Save as provided under Clauses 15.3 and 15.4, 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 Clause 15.2, the parties hereby submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them.

15.2 Neither party shall commence any action above until the escalation procedure set out in this Clause 15.2 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 or any Station Licence 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.

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Arqiva	The Customer
First Level: Commercial Director, Terrestrial Broadcast	First Level: [To be advised]
Second Level: Managing Director, Terrestrial Broadcast	Second Level: [To be advised]
Third Level: Either Chief Executive Officer or Chief Operating Officer.	Third Level: [To be advised]

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.

- 15.3 In relation to individual Station Licences: any Station Licences relating to Stations located in England and Wales shall be interpreted in accordance with English law, any Station Licences relating to Stations in Scotland shall be interpreted in accordance with the law of Scotland, and any Station Licences relating to Stations in Northern Ireland shall be interpreted in accordance with the law of Northern Ireland.
- 15.4 The Customer may refer any dispute to the Adjudicator in accordance with the Adjudication Scheme and Adjudication Rules (as such terms are defined in the Undertakings).

16. GENERAL

- 16.1 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.
- 16.2 Individual Station Licences may be updated and reissued by Arqiva from time to time:
- 16.2.1 to account for any Change in Law or any other mandatory requirements imposed on Arqiva, the Customer or any third party by any Government Authority, in which event Arqiva shall be entitled to update and reissue the affected Station Licences unilaterally; and otherwise
- 16.2.2 where agreed between the parties in writing in accordance with the Change Control Procedure (Schedule 4).
- 16.3 Notices sent under any Station Licence and otherwise 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

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to the Customer:

[To be advised]

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.

- 16.4 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 or any Station Licence 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.
- 16.5 If any term of this Agreement or any Station Licence is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement or Station Licence (as appropriate) and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 16.6 Notwithstanding any other provision of this Agreement or any Station Licence, neither of the parties hereto shall be:
- 16.6.1 required to do anything in contravention of any Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
- 16.6.2 required to refrain from doing anything the party is required to do under such Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
- 16.6.3 liable to the other party for failing to do anything which if done would be in contravention of any such Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority.
- 16.7 This Agreement (including any Station Licences which reference this Agreement from time to time) contains 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 11.
- 16.8 Provisions of this Agreement or any Station Licence 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.
- 16.9 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 (or any individual Station Licence) shall constitute the parties as partners, joint venturers 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

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other, and neither party shall hold itself out as having authority to do the same. The Customer acknowledges that this Agreement is intended to provide only Network Access to the Customer, and that no provisions in the Agreement (or any individual Station Licence) 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.

- 16.10 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.
- 16.11 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.
- 16.12 Except as expressly provided in this Agreement or any Station Licence, no alteration to or variation of this Agreement or any Station Licence 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.
- 16.13 This Agreement (and any Station Licences) 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.

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SCHEDULE 1

Network Access Agreement Definitions

"Access Date"	means in respect of the relevant Station the date access is actually provided to the Customer to enable commencement of the installation of any Customer Equipment.
"Accommodation"	means any land, existing or new building, structure, erection, installation, cabin, cabinet, kiosk or equipment housing structure (including any Mast) of Arqiva used to house or bear Equipment situated at or adjacent to and serving a Station (including private access ways, paths and private roads in or leading to a Station).
"Agreed ERP"	means the ERP of any Customer Equipment that Arqiva has confirmed to the Customer does not (on the date such confirmation is made), when taken in conjunction with existing apparatus (including that of other users) located at the relevant Station at that date, result in that Customer Equipment causing the Station's aggregate ERP to exceed the ICNIRP public guidelines.
"this Agreement"	means this agreement executed by the parties, for the provision by Arqiva to the Customer of Network Access, comprising the Standard Terms and Schedules 1 to 6 hereto and shall also be deemed to incorporate the Code of Practice published from time to time and any Station Licences issued pursuant to the terms contained in this Agreement and any other documents which are referred to in any of the foregoing.
"Annual Network Access Fee"	means the annual network access fee as set out in Schedule 6 (Commercial Details), paragraph 5.
"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 and used in the provision of Broadcast Services.
"Antenna System"	means the assembly of Antenna(s) specified in Schedule 6 (Commercial Details), and the supporting fixtures and feeders for that assembly.
"Application Fee"	means the application fee set out at Schedule 6, paragraph 5 that forms part of the Initial Network Access Fee.
"Approved Contractor"	means a person or team of persons approved by Arqiva, in accordance with the Code of Practice, as being properly trained, qualified and experienced to carry out the kinds of activities permitted by the Station Licence.
"Arqiva"	means Arqiva Limited, a company incorporated under the laws of England and Wales with registered number 2487597 and having its registered office at Crawley Court, Crawley, Winchester, Hants SO21 2QA
"Arqiva Equipment"	means Equipment (other than Customer Equipment and Common Equipment) used by Arqiva or any third party in relation to the provision of Broadcast Services, and any transmission equipment, combining equipment, antennas, transmitters, plant, machinery, Services Media, apparatus, appliances, instruments or any other equipment at any Station which are used by Arqiva or any third party for any purposes which do not relate to the provision of Broadcast Services.

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- "Arqiva Licence" means (i) any radio spectrum licence granted to Arqiva under Part I of the Wireless Telegraphy Act 1949; and/or (ii) any conditions imposed on Arqiva under the General Authorisation; as applicable
- "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 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.
- "Broadcast Operator" means the holder of a licence granted under Part II of the Broadcasting Act 1996 or Part III of the Broadcasting Act 1990 to provide a Broadcast Service"
- "Broadcast Service" means a broadcasting transmission service within the United Kingdom, to deliver broadcast content to end users on a National, Regional or Metropolitan basis (as such term is defined in the Notification).
- "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 4 (Change Control Procedure).
- "Change in Broadcasting Law" means any of the following:
- (i) 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 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");
 - (ii) any extension, enactment or re-enactment of any of the Statutes;
 - (iii) 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
 - (iv) any relevant technical standards notified by any Competent Authority to Arqiva from time to time.
- "Change in Law" means any of the following (i) a change in the judicial interpretation or application by any Government Authority of any Law in the United Kingdom; (ii) the enactment or introduction of any new Law in the United Kingdom; (iii) the modification or repeal of any Law in the United Kingdom; (iv) the termination, amendment or revocation of any Consent; or (v) the introduction of new or amendment of existing non-binding guidelines, rules and guidance issued by any Government Authority or (vi) any Change in Broadcasting Law
- "Change Request" has the meaning given to it in Schedule 4 (Change Control Procedure).
- "Charges" has the meaning given to it in Clause 7.2.

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- "Code of Practice" means Arqiva's "Code of Practice for Site Sharers at Arqiva's Sites" (currently document number BOH325.19 which is available at:
<http://www.arqiva.com/media/dContent/mediaCentre/boh325-internet.pdf>)
as updated and amended from time to time.
- "Common Accommodation" means Accommodation which is shared or available for shared use (but not occupation) by Arqiva, the Customer, MTS Providers, and/or any other party authorised by Arqiva from time to time.
- "Common Equipment" means the Equipment which is wholly or partly used to provide Network Access and which is shared or available for shared use by Arqiva, the Customer, MTS Providers and/or any other party authorised by Arqiva from time to time.
- "Competent Authority" means Ofcom or H.M. Government.
- "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.
- "Consent" means any consent, approval, licence, authorisation or permission that Arqiva requires from any Competent Authority, Government Authority, Landlord or other third party in order to provide Network Access, including any Arqiva Licence.
- "Customer Accommodation" means any Accommodation used (but not occupied) exclusively by the Customer at any Station.
- "Customer Broadcast Operator" means any Broadcast Operator with whom the Customer has a contract or other arrangement to enable such Broadcast Operator to provide Broadcast Services.
- "Customer Equipment" means any Equipment agreed in advance with Arqiva and used exclusively by the Customer or otherwise under the Customer's exclusive control as specified in Schedule 6 (Commercial Details), including the Antenna System, Transmitter System and any Accommodation that is treated as Customer Equipment pursuant to Clause 6.20.
- "Customer Licence" means the broadcasting licence granted under the Broadcasting Acts 1990 and 1996 and any radio spectrum licence granted under Part I of the Wireless Telegraphy Act 1949 for the Permitted Use; or any of them.
- "Customer Output Signal" means the radio frequency signals produced by Customer Equipment.

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"Due Date"	means the date on or, as the case may be, by reference to which payment of any amount owed to Arqiva is to be made under any provision of this Agreement.
"Effective Date"	means the date at the top of this Agreement.
"Engagement Process"	means the engagement process set out in Section 4 of the Reference Offer (or the equivalent Section in any updated Reference Offer).
"Equipment"	means any transmission equipment, combining equipment, Antenna, other antenna, aerial, dish, transmitter, telemetry, plant, machinery, Services Media, apparatus, appliance, instrument or any other item of equipment which is used to provide Broadcast Services or any other services at any Station.
"ERP"	means effective radiated power, which for the purpose of this Agreement shall mean the maximum power which the relevant Customer Licence permits Customer Output Signals to be transmitted from any Antenna at the Station.
"Exceptional Risk"	means any change in the specification, any Force Majeure Event or 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 and any prolonged and material deviation in long-term interest rates from levels pertaining in June 2009).
"Excluded Event"	has the meaning given to it in paragraph 2 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Expiry Date"	has the meaning given to it in Clause 9.1.
"Facilities"	means such of: <ul style="list-style-type: none">(i) the Equipment at any Station, the use (but not occupation) of which is shared by the Customer; and(ii) such of the Accommodation which is the subject of the shared or exclusive use (but not occupation) by the Customer as may be detailed in the applicable Station Licence from time to time for the provision of Network Access at the relevant Station for the Permitted Use.
"Feasibility Report"	has the meaning given to it in Schedule 4 (Change Control Procedure).
"Force Majeure Event"	means any of the following events: <ul style="list-style-type: none">(i) 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;(ii) any Change in Law;(iii) 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;(iv) any act or omission of any utility provider which is beyond the reasonable control of Arqiva; or

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- (v) 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.

"General Authorisation" means the General Authorisation regime applicable to Arqiva introduced by Ofcom in 2003 to replace the licence granted to Arqiva as a provider of a broadcast communications network under the Telecommunications Act 1984, including the general conditions applicable to that regime known as the "General Conditions of Entitlement" and any significant market power (SMP) conditions as determined by Ofcom and contained in the Notification, as such General Conditions of Entitlement and SMP conditions are published from time to time by Ofcom on its website.

"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 or any individual Station Licences; either or both of the parties; and/or any persons employed, engaged or contracted by either of the parties

"HPA" means the Health Protection Agency or any replacement or successor body, being the body responsible for setting UK industry accepted guidelines for maximum permitted power density of non-ionising radiation for public exposure, and which at the date of this Agreement established such guidelines by reference to guidelines published by ICNIRP.

"ICNIRP" means the International Commission for Non-Ionising Radiation Protection or any replacement or successor body.

"Initial Network Access Fee" means the initial network access fee as set out in Schedule 6 (Commercial Details), paragraph 5.

"Installation Commencement Date" has the meaning given to it in Clause 3.1.1.

"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.

"Interface Point" means, at any Station, the point where the Customer Equipment meets the Common Equipment, and being at such location as is specified by Arqiva in the applicable Station Licence from time to time.

"Landlord" means any person or body corporate holding an interest in any Station or in any land over which access to any Station is required including a reversionary interest as Arqiva's landlord, licensor or grantor, or as Station owner where Arqiva is the nominated Station manager, or the beneficiary of any covenants or restrictions relating to or affecting Arqiva's rights of access to any Station.

"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.

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- "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.
- "Licence Expiry Date" means the expiry date specified in the relevant Station Licence.
- "Licence Term" means, in respect of each Station Licence, the period from the relevant Access Date to the relevant Licence Expiry Date, unless the relevant Station Licence is terminated prior to such Licence Expiry Date in accordance with this Agreement.
- "Managed Transmission Services or "MTS)" means the managed services that may be provided by the Customer to the Broadcast Operator or by an MTS Provider to any Other Broadcast Operator in respect of the provision of Broadcast Services.
- "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).
- "Minutes Lost" has the meaning set out in paragraph 4.1 of Schedule 2.
- "MTS Provider" means any provider of Managed Transmission Services other than the Customer.
- "NCSC" means Arqiva's National Customer Service Centre at Emley Moor. Contact number 01924 508100. Fax 01924 508185. email NCSC.supervisors@arqiva.com.
- "Network Access" has the meaning given to such term in the Undertakings in relation to, and to the extent required for, the Permitted Use.
- "Network Access Availability" means the availability of Network Access calculated as per the formula referred to in paragraph 4 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
- "Network Access Credits" means the credits payable by Arqiva as referred to in paragraph 5 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
- "Network Access Level" means the target availability level of Network Access for the Station referred to in the relevant Station Licence.
- "Notification" means the Notification issued by Ofcom under Sections 48(1) and 79(4) of the Communications Act 2003 contained in the document "Broadcasting Transmission Services: a review of the market, Final statement" issued by Ofcom on 28 April 2005.
- "Ofcom" means the Office of Communications or any successor.
- "Other Broadcast Operator" means any Operator of any Broadcast Service, other than the Customer Broadcast Operator.
- "Pass-Through Costs" means the Customer's share (as further detailed below) of the following categories of costs on a pass-through basis:
- (a) rent and similar recurring and non-recurring licence fees or other ancillary payments made to site and site access providers;

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- (b) rates, assessments and outgoings and any taxes or environmental levies whether similar or of a wholly new or novel nature;
 - (c) electricity for Common Equipment;
 - (d) electricity for Customer Equipment;
 - (e) charges payable under any Arqiva Licence for spectrum required to be held by Arqiva in order to provide any Common Equipment for Network Access and where the relevant spectrum is not otherwise licensed to the Customer;
 - (f) any other costs, charges and fees (including fees for legal, planning, surveyor, engineering and other professional services) which may be required to be paid to a Landlord or other third party under the terms of the relevant lease/licence or otherwise as a result of or in connection with the provision of Network Access to the Customer at a particular Station; and
 - (g) reasonable administration costs incurred by Arqiva in arranging for the provision of any Pass-Through Cost item,
- (together, the "**Pass-Through Costs**").

"Permitted Use"	means use (in accordance with the terms of the applicable Station Licence) by the Customer, or an Approved Contractor, of Customer Equipment located at the Station for the provision of the Broadcast Service specified at Schedule 6 (Commercial Details) only.
"Programme"	means any programme or other content produced by or for any Customer Broadcast Operator.
"Reference Offer"	means the Arqiva reference offer entitled "Reference Offer for the provision of Network Access in respect of Ofcom's proposed award of a licence in the frequency band 758 to 766 MHz covering Manchester", version 3.0, published 8 June 2009, or any updated version of such reference offer from time to time.
"Rights"	means rights granted to the Customer by Arqiva including but not limited to those contained in Clause 5 of this Agreement (and in each individual Station Licence).
"RPI"	means the all items Retail Prices Index published by the Office for National Statistics (or equivalent index published by any successor organisation).
"Service Credit Value"	has the meaning given to it in paragraph 5.1 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits)
"Services Media"	means any communications, telecommunications, electricity and/or other services supply or feeder cable, pipe, wire, earthwire, waveguide, conduit, duct or other service conducting media.
"Special Condition"	means any site specific obligations (including any provisions denoted as "Special Conditions") contained in the Station Licence.
"Station"	means the Arqiva Station named in Schedule 6 (Commercial Details), including all the Accommodation, Common Equipment and Customer Equipment installed or located at it.

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- "Station Licence" means the Station-specific licence terms agreed between the Customer and Arqiva for each Station in respect of which the Customer has been granted Network Access, setting out any Special Conditions relating to the relevant Station and being substantially in the form of the template set out at Schedule 5 (Station Licence Template), as may be updated from time to time pursuant to Clause 8 of this Agreement.
- "Station Service Date" means the date on which the Customer commences operational broadcasting use from the relevant Station.
- "Standard Terms" means Clauses 1 to 16 of this Agreement.
- "Target Access Date" means the date selected by the Customer in accordance with Clause 3.1.1.
- "Transmitted Service Signal" means the radio frequency signals transmitted from the Antenna System at any Station.
- "Transmitter System" means the transmitter system specified in Schedule 6 (Commercial Details).
- "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/>.
- "Year" means the period from the Effective Date of this Agreement until the next following 30 June and any subsequent period of twelve (12) consecutive months, or part thereof where the context requires, and "Yearly" shall be construed accordingly.

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Any references in this Agreement to "Clauses" are to the clauses in the Standard Terms of this Agreement unless otherwise stated. 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. Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement. References to each party herein include references to its successors in title, permitted assigns and permitted novatees. All references to "include" and "including" shall be construed to mean "include without limitation" and "including without limitation" respectively. 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.

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SCHEDULE 2

Network Access Availability, Network Access Levels and Network Access Credits

References in this Schedule to paragraphs are to paragraphs of this Schedule.

1. GENERAL

- 1.1 If in respect of any Year Arqiva fails to achieve the Network Access Level as calculated using the formula set out in paragraph 4.1, Arqiva shall incur a liability to pay Network Access Credits to the Customer which shall be calculated in accordance with the provisions of paragraph 5.
- 1.2 For the purposes of calculating Network Access Availability, Minutes Lost shall be accumulated from the time of notification of the relevant Network Access fault to the NCSC.
- 1.3 At the end of each Year, Arqiva shall provide the Customer with a copy of its calculations of any Network Access Credits payable in respect of that Year. Network Access Credits shall be payable in accordance with Clause 7.8 of the Agreement.
- 1.4 In respect of any Station or Stations for which, at the time of calculation less than a year has elapsed since the Station Service Date, the calculation shall be made assuming Network Access Availability of 100% for any part of the year prior to the Station Service Date.

2. EXCLUDED EVENTS

- 2.1 For the purpose of calculating Network Access Availability, the period of any interruption in provision of Network Access due to any of the following events shall not count as Minutes Lost:
 - 2.1.1 a failure or interruption resulting from the Customer's refusal to grant or delay in granting permission for Arqiva to carry out planned or emergency essential maintenance;
 - 2.1.2 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);
 - 2.1.3 any Force Majeure Event;
 - 2.1.4 a lightning strike directly on the Station or very close to it;
 - 2.1.5 inclement weather conditions affecting travelling to any Station;
 - 2.1.6 a delay of no more than 30 seconds in re-establishing Network Access when switching to alternative power supplies;
 - 2.1.7 any fault requiring Mast ascent during the hours of darkness or inclement weather where, in the reasonable judgement of Arqiva, a potential safety hazard exists;
 - 2.1.8 any breach of this Agreement by the Customer;
 - 2.1.9 any interruption as a result of Arqiva complying with directions issued to it by a Government Authority (including Ofcom);

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- 2.1.10 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);
- 2.1.11 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;
- 2.1.12 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;
- 2.1.13 any interruption due to causes listed in this Schedule 2 at paragraph 3 as "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;
- 2.1.14 any compliance with any request or instruction of the Customer, where the interruption would not have occurred but for such compliance;
- 2.1.15 additional time spent waiting for or travelling via ferries or flights required for access to island Stations;
- 2.1.16 any other occurrence that the parties mutually agree not to treat as Minutes Lost.
- 2.1.17 a failure by the customer to deliver the Programme feed to Arqiva.

3. PLANNED WORKS

- 3.1 For the purpose of calculating Network Access Availability, the period of any interruption in provision of Network Access due to causes including any of the following events shall be counted as planned works and accordingly shall not count as Minutes Lost pursuant to paragraph 2.1.13 above:
 - 3.1.1 maintenance or replacement of aircraft warning lights;
 - 3.1.2 painting of the Antenna support structure;
 - 3.1.3 replacement, strengthening or maintenance of the Antenna support structure, including greasing of stays;
 - 3.1.4 periodic inspections of the Antenna support structure, statutory or otherwise;
 - 3.1.5 periodic inspections of Antenna Systems carrying the transmitted service signal;
 - 3.1.6 periodic inspections of equipment related to the permanent electricity supply, statutory or otherwise; and
 - 3.1.7 electricity meter changes.

4. NETWORK ACCESS AVAILABILITY

- 4.1 Network Access Availability shall be calculated annually as a percentage for the immediately preceding 12 months by applying the following formula:

$$\text{Network Access Availability} = \frac{A - B}{A} \times 100\%$$

Where:

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A = Total Minutes: Total number of minutes in the relevant 12 month period.

B = Minutes Lost: Total number of minutes in the relevant twelve (12) month period during which the customer was unable to transmit the Customer Output Signal from the station within the agreed technical parameters due to a loss of Network Access , other than where this was attributable to an Excluded Event.

4.2 If the Network Access Availability for any Station as calculated in paragraph 4.1 above for the relevant 12 month period is less than the Network Access Level specified in the relevant Station Licence, Network Access Credits shall be payable calculated in accordance with the formula in paragraph 5 below.

5. NETWORK ACCESS CREDITS

5.1 Subject to paragraph 5.2 below, the value of the Network Access Credit shall be calculated according to the following formula:

$$\text{Network Access Credit} = (\text{NAL} - \text{NAA}) \times \text{Annual Network Access Fee}$$

Where:

NAL = Network Access Level for the relevant Station, expressed as an absolute value

NAA = Network Access Availability for the relevant Station expressed as an absolute value

For the avoidance of doubt, the values of NAL and NAA to be used in the above formula shall given by taking the percentage values and dividing by 100, such that, for example, a value of 99.9% would be entered as 0.999.

5.2 The total Network Access Credits payable in respect of any 12 month period shall not exceed one per cent (1%) of the Annual Network Access Fee payable by the Customer to Arqiva under this Agreement in respect of that 12 month period excluding Pass-Through Costs.

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SCHEDULE 3

Support Services

Support services available to the Customer include the following:

1. CALL HANDLING

- 1.1 Service calls will be answered 24 hours a day, 365 days a year by a suitably trained and competent operator, who will deal with the call directly or redirect it to an appropriate Arqiva specialist. Calls relating to faults will be dealt with and progressed on an immediate basis, 24 hours a day, 365 days a year.
- 1.2 The Customer shall ensure that all calls concerning faults are made to the telephone number(s) notified to the Customer by Arqiva from time to time in writing.

2. RESPONSE

- 2.1 Where Arqiva needs to physically attend any Station, it will arrange for this as soon as is reasonably practicable, normally within the same Business Day (or within the next Business Day if the fault is reported outside office hours (being 8am to 5pm on Business Days)), and depending upon the particular specialisation required.

3. ABORTIVE VISITS

- 3.1 Before reporting a fault to Arqiva, the Customer shall seek to determine the nature of the fault by using its own monitoring arrangements and report this information to the NCSC. The Customer shall ensure and confirm by use of the independent monitoring source that the failure or defect does not originate from any Arqiva Equipment or Common Equipment.
- 3.2 In the event that Arqiva attends a Station, or incurs costs, to rectify a fault and find that the fault does not originate from any Arqiva Equipment or Common Equipment, then Arqiva may make separate additional charges, for attendance and/or work carried out by Arqiva as a result of the incorrect or inadequate information provided by the Customer regarding the fault or any breach of this Agreement by the Customer.

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SCHEDULE 4

Change Control Procedure

1. PRINCIPLES

- 1.1 Where the Customer or Arqiva wish to request a change to the provision of Network Access facilities, 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 4, 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 4, until such time as a Change Request Form is approved and executed by the relevant parties, in accordance with the Change Control Procedure, Arqiva shall continue to provide Network Access 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:
 - 1.5.1 act reasonably in putting forward Change Requests, responding to Change Requests and generally in relation to the Change Control Procedure;
 - 1.5.2 not unreasonably withhold or delay approval of Change Requests;
 - 1.5.3 use reasonable endeavours to minimise costs in proposing changes to the Charges in connection with Change Requests; and
 - 1.5.4 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 Network Access, 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 same.
- 2.4 Subject to paragraph 2.3 above, Arqiva shall issue a replacement Station Licence which shall be executed by both parties to reflect the changes to any relevant Station Licence in consequence. In relation to any other changes to this Agreement (which do not necessitate a change to any terms set out in the Station Licence), 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 16.12.

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- 2.5 Any change which Arqiva believes is necessary in order to meet the Target Access Date or as a result of an Exceptional Risk shall be treated in accordance with the procedure set out in this Schedule 4, 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 Schedule 4. Where the occurrence of any Exceptional Risk means that it is not possible to achieve the Target Access Date within the Charges, but it would be possible to achieve the Target Access 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 Access 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	

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SCHEDULE 6

Commercial Details

1. STATION

Winter Hill (National Grid Reference SD660144)

2. PERMITTED USE

Use of the Station, Common Equipment and Customer Equipment for the purpose of broadcasting the Customer Output Signal as part of a local digital terrestrial television service in the Manchester area in the 758 to 766 MHz frequency band subject to and in accordance with the relevant licence granted to the Customer by Ofcom (following the auction envisaged by the publication by Ofcom of the Advertisement entitled "Award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester").

3. CUSTOMER EQUIPMENT

3.1 Antenna System: *[insert details]*

3.2 Transmitter System: *[insert details]*

4. ACCOMMODATION

4.1 Accommodation on the ground: 6 square metres including an access area around the Transmitter System.

4.2 Aperture on the Mast:

4.2.1 Mean height of aperture - 140m.

4.2.2 Size of aperture - 4m.

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5. CHARGES

5.1 The Initial Network Access Fee and Annual Network Access Fee shall be as follows:

Charges for provision of Network Access	Initial Network Access Fee £	Annual Network Access Fee (Transitional arrangement) £	Annual Network Access Fee (Final arrangement) £
Application Fee	3,460	N/A	N/A
Network Access	31,347	6,000	6,245
Estimated Pass-Through Costs	N/A	1,717	1,717
Total	34,807	7,717	7,962

5.2 The Annual Network Access Fee shall be adjusted to the relevant fee set out in the table above upon transition to the final arrangement.

5.3 The supervision rate shall be £542 per day.

6. LIQUIDATED DAMAGES

6.1 The parties agree and acknowledge that the liquidated damages payable pursuant to paragraph 6.3 below represent a genuine pre-estimate of loss likely to be incurred by the Customer as a direct consequence of any delay in achieving the Target Access Date.

6.2 If the Access Date has not occurred by the Target Access Date then the Customer shall, subject to the remainder of this paragraph 6, be entitled to receive liquidated damages from Arqiva.

6.3 Liquidated damages which fall to be payable pursuant to paragraph 6.2 above shall be calculated at a rate of 1% of the Annual Network Access Fee for every full week by which commencement is delayed, up to a maximum of 20 full weeks.

6.4 Arqiva shall have no liability to pay liquidated damages pursuant to paragraph 6.2 above where the delay in achieving the Target Access Date has occurred as a result of:

6.4.1 an Exceptional Risk;

6.4.2 a Force Majeure Event; or

6.4.3 any breach by the Customer of this Agreement or any Station Licence, or any failure by the Customer to fully comply with the Engagement Process.

6.5 Any liability of Arqiva pursuant to this paragraph 6 to pay liquidated damages shall represent the Customer's sole and exclusive remedy in respect of the occurrence of any delay in achieving the Target Access Date.

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