

SUBJECT TO CONTRACT

**Reference Offer for the provision of
Transmission Services
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

© Copyright Arqiva Ltd 2009.

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

SUBJECT TO CONTRACT

Table of Contents

1.	Introduction	3
2.	Scope & Specification	3
3.	Charges	6
4.	Engagement Process - Ordering and Processing	9
5.	Reference Offer Terms and Conditions.....	10

SUBJECT TO CONTRACT

1. Introduction

This Reference Offer is issued pursuant to paragraph 10.4.1 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 Transmission Services (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

2.1 Transmission Services

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

Managed Transmission Services

Arqiva will:

- Procure the purchase of the Antenna System and Transmitter System;
- Provide project management of the equipment installation;
- Install the Transmitter System and Antenna System;
- Maintain and monitor the Transmitter System as set out in the Reference Offer Terms and Conditions;
- Carry out an annual inspection of the Antenna System, and report to the Customer if it identifies any essential maintenance works which the Customer should carry out;
- Provide an annual maintenance report; and
- Manage the payment of utility bills.

Network Access

Arqiva will:

- Provide or procure access to the Winter Hill site (National Grid Reference SD660144), its accommodation and mast;
- Provide Station security/safety (including perimeter fencing and mast lighting), building accommodation and masts;
- Provide the electricity supply including distribution within the Station and shared accommodation;
- Provide supervision in accordance with the Arqiva Code of Practice, where access to the Station is required by the Customer.

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

SUBJECT TO CONTRACT

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

2.2 Design & Build

The Advertisement requires two different Antenna designs, the transitional arrangement design and the final arrangement design.

This Reference Offer is based upon a build which will be determined by Arqiva as appropriate for the design set out in Rows 3, 4, 5, 6, 7 and 8 of Table 2.6 (in respect of the transitional arrangements as explained in the Advertisement); and Rows 3, 4, 5, 6, 7 and 8 of Table 2.8 (in respect of the final arrangements).

Due to the length of time between the publication of this Reference Offer and the likely build date, the build details will be finalised following the site survey immediately prior to commencement of build works.

Subject to any changes required immediately prior to commencement of build works, the build will comprise:

Transitional arrangement

Antenna System

3 log periodic antennas, horizontally spaced, located at a height of 140m on a bearing of 135°.

Associated equipment

Transmitter System

200watt Transmitter (single thread, single line-in, no switching)
Bandpass Filter
Service Information Manager (SIM)
Programme Input Equipment (PIE)
Uninterruptible Power Supply (UPS)
Equipment Rack
Telemetry

Final arrangement

Antenna System

4 stacked log periodic antennas located at a mean height of 140m on a bearing of 135°.

Associated equipment

Transmitter System

200watt Transmitter (single thread, single line-in, no switching)
Bandpass Filter
Service Information Manager (SIM)
Programme Input Equipment (PIE)
Uninterruptible Power Supply (UPS)
Equipment Rack
Telemetry

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.

Accommodation and aperture 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.

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

SUBJECT TO CONTRACT

2.3 Operation

2.3.1 Following provision installation and commissioning of the Transmitter System and Antenna System, Arqiva will provide the following as set out in the Reference Offer Terms and Conditions:

- 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;
- Ensuring that the Transmitter System and Antenna System are operational and therefore are able to transmit and broadcast the Customer Signal;
- Ensuring that the Transmitter System transmits when turned on;
- An allowance of 5 man-days per annum and £100 of consumables for maintenance of the Transmitter System (Additional charges will be payable for any additional maintenance);
- Annual inspection of Antenna System;
- Next Business Day response to Breakdowns
- An annual report on maintenance and Breakdowns;
- Management of payment of pass through costs.

2.3.2 The Customer will be responsible for all other elements of ensuring that the Customer Signals are received by viewers in accordance with the Advertisement and relevant Ofcom licence.

2.3.3 It is the Customer's responsibility to assess, monitor, and (where necessary) report upon the radiation and coverage and resultant reception of the Customer Signals within the coverage area set out in the Advertisement and/or required by the Customer Licence.

2.3.4 No provision has been made in this Reference Offer for spares, access to emergency reserve facilities or equipment. Accordingly, no provision has been made for reserve Antenna or a generator.

2.3.5 In the event that the Customer wishes at any time to locate and/or use reserve equipment in 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.

SUBJECT TO CONTRACT

3. Charges

3.1 Charges for Transmission Services

Charges for provision of Transmission Service	Initial fee £	Annual fee (Transitional Arrangement) £	Annual fee (Final Arrangement) £
Application Fee	3,460	N/A	N/A
Network Access	27,011	6,000	6,245
MTS	138,837	5,075	5,075
Estimated pass-through costs	N/A	1,717	1,717
Total	169,308	12,792	13,037

Charges for reservation	Annual fee £
Reservation fee (for accommodation and 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 the 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 build. 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 Fee is payable within thirty (30) days of execution of the contract.

3.2.4 The Annual Fee is payable annually in advance.

3.3 Basis of Charges

3.3.1 Compliance with the Undertakings

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

SUBJECT TO CONTRACT

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

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

3.3.2 Basis of Charges

- i. As provided in the Reference Offer Terms & Conditions the cost of the Transmitter System and Antenna System will be payable by the Customer upon contract signature.
- ii. As provided in the Reference Offer Terms & Conditions the decommissioning of the Transmitter System and Antenna System must be carried out by Arqiva and, accordingly, the costs of the decommissioning will be payable by the Customer prior to installation of the systems.
- iii. The charges are stated at 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.
- iv. 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.
- v. The charges are based upon the specification set out in the Advertisement. There may be a significant delay between the publication of the Reference Offer and the commencement of the build project, and during such delay there may be changes in the availability and location of accommodation at the Station, and/or 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 final revalidation of the Reference Offer.
- vi. The charges are based on Transmission Service (including electricity and other utilities) being provided on a 24/7 basis, regardless of the number of hours a day the Customer transmits the Customer Signal.
- vii. The pass-through cost which has been included in respect of electricity is an indicative estimate based on current levels.
- viii. The charges are stated exclusive of VAT.
- ix. The charges are subject to the Reference Offer Terms and Conditions.

3.3.3 Applicability of the Reference Offer and additional costs

- i. The charges include provision of Transmission Services based on the specification defined by this Reference Offer, and are subject to the Reference Offer Terms and Conditions. Should a customer wish to vary the design or terms and conditions from the provision in this Reference

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

SUBJECT TO CONTRACT

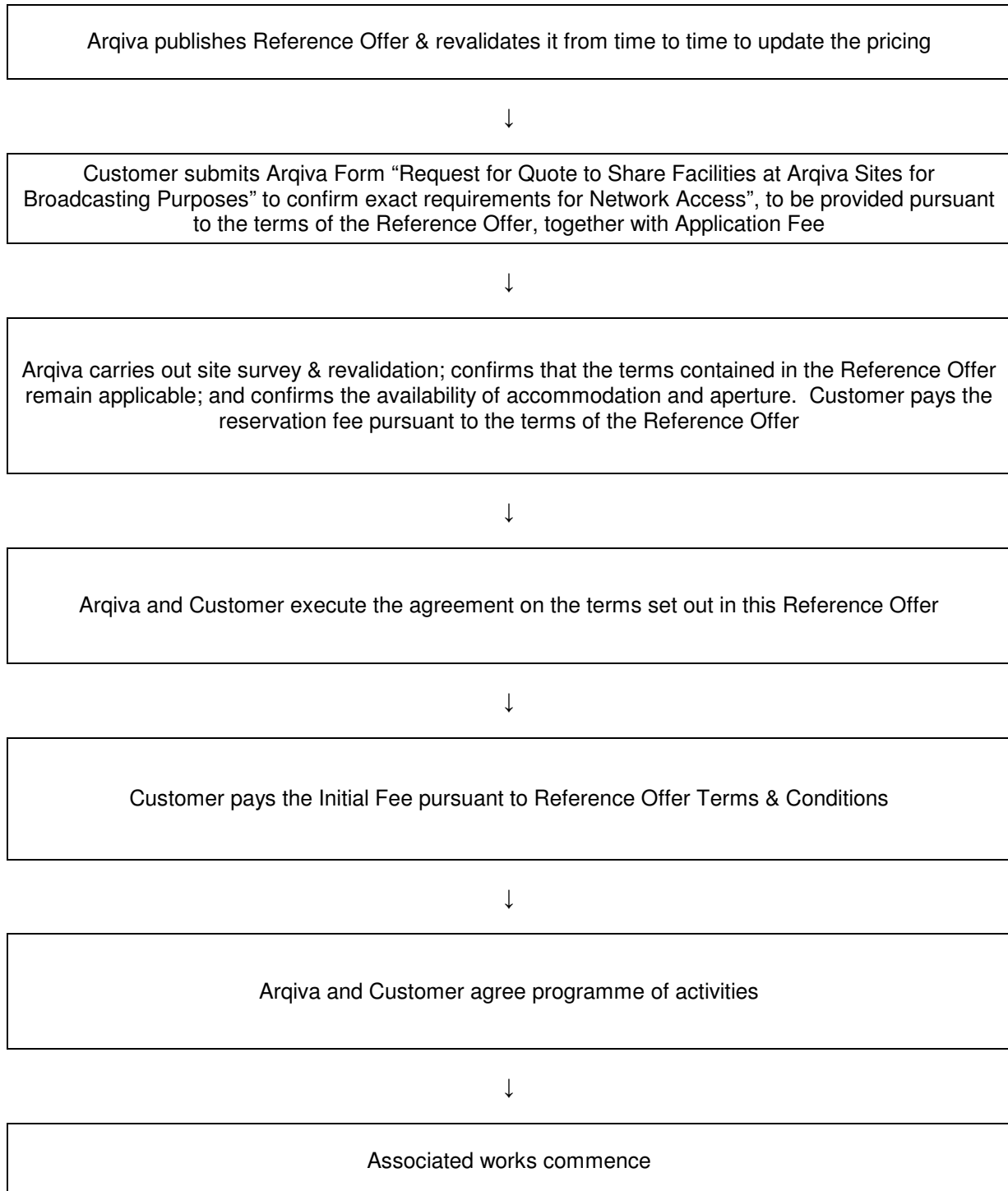
Offer, they should contact Reference Offer Manager, Terrestrial Broadcast of Arqiva as this Reference Offer will not apply.

- ii. Arqiva is able to provide various other services and equipment, including: advice, consultancy, distribution of the Customer Signal, telemetry/monitoring, additional equipment or equipment which differs from that included in this Reference Offer, or any services other than Transmission Services as set out in this Reference Offer. Should a customer require such additional services or equipment they should contact Reference Offer Manager, Terrestrial Broadcast of Arqiva as this Reference Offer will not apply and a separate quote and contractual arrangements will be provided.
- iii. Should the Customer require access to the Station, then supervision by Arqiva may be required as provided in the Arqiva Code of Practice. Charges for such supervision will apply at the rate of £542 per day.

SUBJECT TO CONTRACT

4. Engagement Process - Ordering And Processing

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



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

SUBJECT TO CONTRACT

5. Reference Offer Terms and Conditions

SUBJECT TO CONTRACT

DATED []

ARQIVA LIMITED

and

[]

TRANSMISSION 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

SUBJECT TO CONTRACT

CONTENTS

Clause	Page
1. Definitions and Interpretations.....	1
2. Procurement of Customer Equipment.....	1
3. Network Access.....	2
4. Installation Project.....	2
5. Transmission.....	2
6. Qualifications.....	3
7. Customer Obligations and Restrictions.....	3
8. Monitoring and Breakdowns.....	4
9. Maintenance.....	5
10. Charges and Payment.....	5
11. Service Credits and Super Credits.....	7
12. Suspension.....	8
13. Change Control Procedure.....	8
14. Warranties.....	8
15. Liability and Indemnities.....	9
16. Force Majeure.....	11
17. The Customer's General Obligations.....	11
18. Duration and Early Termination.....	12
19. Sub-Contracting.....	13
20. Extra Work.....	13
21. Reliance on Instructions.....	13
22. Confidentiality.....	13
23. Assignment.....	14
24. Governing Law and Dispute Resolution.....	14
25. General.....	15
Schedule	
SCHEDULE 1	
Defined Terms.....	18
SCHEDULE 2	
Commercial Details.....	23
SCHEDULE 3	
Station Details.....	26
SCHEDULE 4	
Emergency Reserve Equipment.....	27
SCHEDULE 5	
Service Level and Service Credits.....	28
SCHEDULE 6	
The Installation Project.....	29
SCHEDULE 7	
Liquidated Damages.....	30
SCHEDULE 8	
Change Control Procedure.....	31

SUBJECT TO CONTRACT

THIS AGREEMENT dated 20[] is made between:

ARQIVA LIMITED of Crawley Court, Winchester SO22 5RB with registered number 02487597 ("**Arqiva**"); and

[] ("**Customer**").

WHEREAS:

- (A) The Customer holds the Customer Licence.
- (B) The Customer wishes Arqiva and Arqiva is willing on the following terms and conditions to provide the Transmission Service (as defined below) at the Station.

TERMS AGREED:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Capitalised terms shall have the meaning ascribed to them in Schedule 1 (Defined Terms).
- 1.2 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.3 This Agreement shall comprise Clauses 1 to 25 hereof and the terms set out in Schedules 1 to 8 appended hereto.
- 1.4 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.
- 1.5 Unless otherwise stated, references to Clauses and Schedules are to clauses of and schedules to this Agreement, and references to parts and paragraphs are to parts of and paragraphs of a Schedule to this Agreement.
- 1.6 References to each party herein include references to its successors in title, permitted assigns and novatees.
- 1.7 All references to "include" and "including" shall be construed to mean "include without limitation" and "including without limitation" respectively.
- 1.8 All references to a statute or statutory provision include any consolidation or re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment, modification or replacement and any subordinate legislation in force under any of the same from time to time.
- 1.9 In the event of any inconsistency in this Agreement between any Clause and any term set out in any Schedule, the Clause shall prevail over the term in the Schedule to the extent of any inconsistency.

2. PROCUREMENT OF CUSTOMER EQUIPMENT

- 2.1 Promptly following the Effective Date of this Agreement, Arqiva shall purchase the Customer Equipment listed in Schedule 2 (Commercial Details) on behalf of the Customer.
- 2.2 The financial consideration for the Customer Equipment is included within the Initial Fee. Title to and risk in the Customer Equipment shall pass to the Customer upon the later of (i) payment in full by the Customer of the Initial Fee, and (ii) Arqiva having possession or control of all of the Customer Equipment pursuant to Clause 2.1.

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

SUBJECT TO CONTRACT

3. NETWORK ACCESS

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

4. INSTALLATION PROJECT

- 4.1 The Customer shall 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 Fee due hereunder ("**Installation Commencement Date**"), Arqiva shall commence the Installation Project. The Customer shall be entitled to select a date on which it requires the Transmission Service to commence ("**Target Service Start Date**"), such date being not less than seven (7) months after the Installation Commencement Date, and shall notify such date to Arqiva in writing within 30 days of the Installation Commencement Date.
- 4.2 Arqiva shall carry out and complete the Installation Project so that it is in a position to commence provision of the Transmission Service using the equipment to be installed by no later than the Target Service Start Date.
- 4.3 If Arqiva fails to complete the Installation Project by the Target Service Start Date, Arqiva shall pay liquidated damages to the Customer in accordance with the terms set out in Schedule 7 (Liquidated Damages). The date on which Arqiva completes the Installation Project and commences provision of the Transmission Service shall be the "**Service Start Date**".
- 4.4 Unless otherwise agreed, Arqiva shall be responsible for obtaining any planning permission needed with respect to the Installation Project.
- 4.5 Arqiva's obligations with respect to carrying out and completing the Installation Project and thereafter commencing provision of the Transmission Service are subject to all requisite planning permissions and frequency clearances having been obtained and Arqiva being in possession of all requisite Licences.

5. TRANSMISSION

- 5.1 Arqiva shall, subject to the terms of this Agreement, provide the Transmission Service on and from the Service Start Date to meet or exceed the Service Level.
- 5.2 Arqiva shall ensure that the Station complies with the technical criteria set out in Schedule 3 (Station Details).
- 5.3 Arqiva may at any time move the Antenna or other technical equipment (including Customer Equipment) at the Station or structure located on it. Where practicable Arqiva shall give reasonable prior notice to the Customer of any such movement. Arqiva shall ensure that taken as a whole the performance of the technical equipment, once moved, shall be broadly equivalent and in any event not result in a material deterioration of service.
- 5.4 Arqiva may permanently substitute the Station (after consultation with the Customer) and any equipment (except Customer Equipment) without prior consultation with the Customer. Arqiva shall ensure that taken as a whole the performance of any substitute Station or

SUBJECT TO CONTRACT

equipment shall be broadly equivalent and in any event not result in a material deterioration of service.

- 5.5 Except for the Transmission Service provided by Arqiva, the Customer shall be responsible for procuring the provision of all elements of its overall transmission solution, including without limitation the delivery of Customer Signals, multiplexing, central service information (centrally collected service information, "service information" being defined in EN300 468: DVB Specification for Service Information) and logical channel number services that may be required.

6. QUALIFICATIONS

- 6.1 Where Arqiva is only a licensee or tenant of a Station and the owner wishes to dispose of the Station or in any other way terminate Arqiva's possession of the Station, Arqiva's licence or lease may be terminated. In those circumstances, Arqiva shall seek to procure the provision of a substitute transmitting station. If Arqiva has any Station licence or tenancy terminated as contemplated by this Clause 6.1 and is unable to locate a substitute Station before such termination becomes effective, this Agreement shall terminate with respect to the Station and there shall be made an appropriate adjustment in the Annual Fee to take account of the reduced level of the Transmission Services. Where the terminated Station is the only station in respect of which the Transmission Services are being provided, the entire Agreement shall terminate.

- 6.2 Arqiva shall cease or suspend transmission or distribution of the Customer Signals for such period as it is so directed or ordered by any competent authority under any Laws or by a court of competent jurisdiction. Arqiva shall not thereby be in breach of its obligations to the Customer and the Customer shall remain liable to pay for the Transmission Services as if Arqiva were continuing to provide them without interruption.

7. CUSTOMER OBLIGATIONS AND RESTRICTIONS

- 7.1 The Customer shall not be permitted to access any Station except with Arqiva's prior consent and subject to Arqiva supervision, which shall be separately chargeable pursuant to Clause 10.10. Only Arqiva staff or sub-contractors approved by Arqiva are permitted to repair, maintain or otherwise have access to the Customer Equipment.

- 7.2 The Customer shall:

- (a) not change or substitute any Customer Equipment without Arqiva's prior written consent;
- (b) promptly replace any Customer Equipment that has become obsolete or is beyond economic repair other than as a result of Arqiva's negligence. Arqiva may separately charge the Customer for removing the old and installing the replacement Customer Equipment, such charges to be determined in accordance with Clause 10.10;
- (c) promptly repair or replace any Customer Equipment that contains a defect that could not reasonably have been detected by Arqiva as part of the Transmission Service;
- (d) observe such directions with respect to the operating environment of the Customer Equipment as Arqiva may specify from time to time;
- (e) provide Arqiva with all reasonable cooperation to facilitate Arqiva's efficient discharge of its obligations under this Agreement and, in particular, but without limitation, to provide accurate information concerning the Customer Equipment and any other matters arising that Arqiva reasonably considers pertinent to its provision of the Transmission Service from time to time;

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

SUBJECT TO CONTRACT

- (f) take up and maintain comprehensive insurance for the Customer Equipment throughout the term of this Agreement, it being understood and agreed that the Customer Equipment shall be and at all times remain at the Customer's risk;
- (g) deliver the Customer Signals to the agreed interface point in a suitable form and continuity;
- (h) indemnify Arqiva from and against any loss, damage, liability or expense suffered or incurred by Arqiva that is caused by, arises out of or results from:
 - (i) any repair of, alteration to or other interference with any Customer Equipment by any person who is not employed by or an approved sub-contractor of Arqiva;
 - (ii) the Customer Equipment or any use of the Customer Equipment;
 - (iii) any representative of the Customer who visits any Station;
 - (iv) the transmission of the Customer Signals from any Station;

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

- (i) ensure at all times that the Customer Equipment be approved for connection to other Electronic Communication Networks in accordance with the Communications Act 2003 and the Customer shall at all times comply with the conditions of such approval.

7.3 Arqiva reserves the right to disconnect any Customer Equipment if the Customer does not fulfil its obligations under Clause 7.2, or if in the reasonable opinion of Arqiva any Customer Equipment is liable to cause the death of, or personal injury to, or damage to the property of Arqiva or any person, or materially interfere or otherwise impair the quality of any service provided at or from the Station.

8. MONITORING AND BREAKDOWNS

8.1 Arqiva shall ensure that the NCSC provides limited telemetry monitoring of the Transmitter System at the Station, in order to confirm whether or not the Transmitter System is operational. Arqiva will not monitor the Customer Signals or any transmission characteristics of any Customer Signals.

8.2 Each party shall notify the other by telephone or facsimile of any Breakdown as soon as the information is available.

8.3 Arqiva shall repair a Breakdown as soon as practicable after detection. In the case of a Breakdown the time from when Arqiva first learns of the Breakdown until the time an engineer attends at the Station shall not exceed the Service Level.

8.4 Equipment faults which do not result in a Breakdown shall normally be repaired within 24 hours of having been reported to the NCSC (excluding weekends and public holidays).

8.5 The Customer shall make all service requests to the NCSC. The Customer shall ensure and confirm by use of an independent monitoring source that the failure or defect is not due to receiving or monitoring equipment and does not originate from any studio source.

8.6 Arqiva shall report any failure of electricity supply to the relevant electricity supply company and shall promptly exercise its rights to expedite its restoration.

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

SUBJECT TO CONTRACT

9. MAINTENANCE

- 9.1 Arqiva shall ensure that the Customer Equipment is satisfactorily maintained. Each Year Arqiva may schedule outages with respect to the Station in order to carry out essential planned maintenance pursuant to this Clause 9.1. If arrangements for essential planned maintenance cannot be agreed, Arqiva may make additional charges for any additional corrective maintenance that becomes necessary.
- 9.2 Where the Transmission Service is provided using equipment and facilities shared with other broadcasting services Arqiva may interrupt transmission of the Customer Signals to undertake maintenance, installation or other work in connection with those other services.
- 9.3 Where practicable and consistent with safety requirements, maintenance, installation or other work pursuant to Clauses 9.1 or 9.2 shall be carried out at times agreed between Arqiva and the Customer, normally during periods when the TV Service audience is low.
- 9.4 Where practicable, Arqiva shall inform the Customer of its planned visit to the Station to enable the Customer to accompany Arqiva on such a visit if so requested.
- 9.5 Arqiva shall provide consumable Customer Equipment spares up to a maximum aggregate value of £100 per annum within the Annual Fee. To the extent any other Customer Equipment spares are required, Arqiva shall provide the Customer with a quotation for the supply and installation of the same. Title in such spares shall remain with Arqiva until paid for in full by the Customer.

10. CHARGES AND PAYMENT

- 10.1 The Customer shall pay to Arqiva the Initial Fee within thirty (30) days of the Effective Date. In each Year the Customer shall pay the Annual Fee to Arqiva annually in advance on the first day of each month. Payment shall be effected by Banker's Direct Debit unless otherwise agreed in writing by Arqiva. These fees assume that the Transmission Service will be provided by Arqiva on a 24/7 basis, and shall not be reduced if the Customer wishes to transmit its Customer Signals on a more limited basis.
- 10.2 The Initial Fee shall be comprised of:
- (a) the Initial Network Access Fee set out in Schedule 2 (Commercial Details); and
 - (b) the Initial MTS Fee set out in Schedule 2 (Commercial Details).
- 10.3 Promptly following the completion of the Installation Project, Arqiva shall review the actual costs incurred in completing the Installation Project, and shall apply the appropriate pricing methodology to generate the fee that would have been charged for the Installation Project if the true costs had been known at the outset ("**Actual Costs**"). Arqiva shall then compare the Actual Costs with the Initial MTS Fee. If the Actual Costs are less than the Initial MTS Fee, Arqiva shall refund to the Customer 50% of the difference between the Actual Costs and the Initial MTS Fee. Where any refund is due to the Customer, Arqiva shall refund such amount within 30 days of completion of the review described in this Clause.
- 10.4 The Annual Fee shall be comprised of:
- (a) the Annual Network Access Fee (which will comprise the Charges (as such term is defined in the Network Access Agreement) which shall be applied by Arqiva at cost with no mark-up);
 - (b) the estimated Pass-Through Costs (as such term is defined in the Network Access Agreement) and any other amounts payable as per the applicable Network Access Agreement which shall be applied by Arqiva at cost with no mark-up; and

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

SUBJECT TO CONTRACT

- (c) the Annual MTS Fee set out in Schedule 2 (Commercial Details).
- 10.5 Subject to the remainder of this Clause 10, in the first Year the Annual Fee shall be the sum indicated in Schedule 2 (Commercial Details) and in each subsequent Year shall be a sum equal to the previous Year's Annual Fee adjusted by a percentage equal to the percentage increase in RPI minus 1%. Such percentage increase shall be calculated by comparing the RPI published in the April immediately preceding the Year for which the Annual Fee is being reviewed, with the RPI published twelve months before the April immediately preceding the Year for which the Annual Fee is being reviewed and expressing the difference as a percentage of the first (i.e. first published) of such RPIs and then subtracting one percentage point. If any such 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 calculate the indexation for the Annual Fee 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.)
- 10.6 With respect to each Year after the first, Arqiva shall notify the Customer of the Annual Fee for that Year as soon as reasonably practicable after it has been determined.
- 10.7 Arqiva shall be entitled to adjust the Annual Fee (including for the avoidance of doubt any capital expenditure or operating expenditure element of the Annual MTS Fee and/or Annual Network Access Fee comprising such Annual Fee) in accordance with the Change Control Procedure to take account of the occurrence of any of the following:
- (a) any change in the specification;
 - (b) any Force Majeure Event; or
 - (c) any other matter outside the reasonable control of Arqiva (including without limitation any change in Law, any failure to obtain any required Consent, any act or omission of the Customer, any guidance issued by Ofcom, the Adjudicator (as such term is defined in the Undertakings), any successor bodies or other competent bodies, and any prolonged and material deviation in long-term interest rates from levels pertaining in June 2009).
- 10.8 All fees and rates of charge referred to in this Agreement are exclusive of value added tax and any other tax or duty which shall, if and to the extent applicable, be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 10.9 Customer shall pay the Application Fee within 28 days of Arqiva's invoice. Payment of all Arqiva's charges other than the Initial Fee, the Annual Fee and the Application Fee shall be due within 28 days of the relevant invoice.
- 10.10 Arqiva's charges for any work under any provision of this Agreement which expressly refers to this Clause 10.10 and its charges for all work outside the scope of the Transmission Services shall be calculated in accordance with Arqiva's prevailing rates of charge, as current from time to time.
- 10.11 The Customer shall promptly reimburse to Arqiva the annual cost of holding and renewing any WT Act Licences or similar licences that Arqiva is required to hold.
- 10.12 If the Customer fails to pay any sum owed to Arqiva under this Agreement by the due date for payment and payment remains overdue for more than twenty-eight (28) days after Arqiva has notified the Customer of its failure to pay, without prejudice to Arqiva's other remedies:

SUBJECT TO CONTRACT

- (a) the Customer shall be liable to pay interest on the overdue amount at the rate of 4% per annum over the base rate of the Bank of England, which interest shall accrue on a daily basis from the date when payment became overdue until Arqiva has received payment of the overdue amount together with all the interest that has accrued;
 - (b) Arqiva reserves the right to suspend provision of the Transmission Services until the Customer has rectified matters. Moreover, the Customer shall not be relieved of any liability to pay fees in respect of any period during which the provision of the Services is suspended pursuant to this Clause 10.12.
- 10.13 Where any fee or charge is expressed to be payable in respect of a Year, unless otherwise indicated that means a full Year comprising twelve (12) months. Accordingly if this Agreement terminates, in whole or in part, other than at the end of a Year, the fee or charge in question shall be prorated on a daily basis to determine the actual amount due in that Year.
- 10.14 Arqiva may require that the Customer provides a parent company guarantee or other financial security in appropriate circumstances

11. SERVICE CREDITS AND SUPER CREDITS

Service Credits

- 11.1 If Arqiva fails to achieve the Service Level, Arqiva shall incur a liability to pay service credits to the Customer calculated by reference to the formula set forth in Schedule 5 (Service Level and Service Credits). Arqiva's aggregate liability under this Clause 11.1 in any Year shall not exceed 10% of the Annual Fee.
- 11.2 If, but for Clause 11.1, Arqiva's aggregate liability to pay service credits under this Agreement would have exceeded 10% of the Annual Fee for that Year, the Customer shall be entitled by twelve (12) months written notice to Arqiva, given within thirty (30) days of the end of that Year, to terminate this Agreement.
- 11.3 The Customer acknowledges that any liability of Arqiva that may arise under Clause 11.1 shall represent the Customer's sole financial remedy in respect of Arqiva's failure to meet or exceed the Service Level.
- 11.4 At the end of each Year the aggregate of any service credits incurred during that Year shall be determined. Any liability of Arqiva to pay service credits to the Customer shall be satisfied by means of an appropriate adjustment to the Customer's payments to Arqiva in the following Year or by means of a direct payment to the Customer in the case of the final Year.

Super Credits

- 11.5 If Arqiva commits a Persistent Failure:
- (a) the Customer may submit a Super Credit Notice to Arqiva; and
 - (b) Arqiva shall have one (1) month following receipt of a Super Credit Notice from the Customer within which to rectify its poor performance as set out in the Rectification Process to the Service Level.
- 11.6 Where Arqiva fails to rectify its poor performance as required under Clause 11.5, then the Customer will be given the option to receive a super credit.
- 11.7 The level of this super credit shall be set at 10% of the Annual Fees payable by the Customer (excluding Wireless Telegraphy Act fees) for the Station in the twelve (12) months preceding the date of expiry of the one (1) month period referred to in Clause 11.5(b). Payment of the

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

SUBJECT TO CONTRACT

super credit will be conditional upon the Customer waiving its right to terminate in respect of the relevant Persistent Failure.

- 11.8 Any reductions in the Annual Fees which have occurred to reflect any operational service credits shall be disregarded for the purposes of calculating the super credit under Clause 11.7.
- 11.9 Acceptance of the super credit shall be without prejudice to any contractual right to terminate which may arise in future, provided that performance issues that have occurred prior to the date on which the liability to pay the super credit arose and which contributed to that liability shall be disregarded for the purposes of measuring Arqiva's performance under the relevant contractual mechanisms after that date.
- 11.10 Any liability of Arqiva for super credits will be in addition to any liability of Arqiva for service credits pursuant to Clause 11.1 above.

12. SUSPENSION

- 12.1 Arqiva shall have the right at any time to suspend provision of the Transmission Service (in whole or in part) where:
- (a) Arqiva receives directions from any competent authority or is ordered by a court of competent jurisdiction to suspend transmission of the Customer Signals, provided that Arqiva shall give the Customer as much advance notice as it is reasonably able of such suspension to the extent that it is practicable and lawful for it so to do and shall use all reasonable endeavours to minimise its duration and impact; or
 - (b) the Customer ceases to hold the Customer Licence or any other licences required to be held by the Customer that are relevant to this Agreement; or
 - (c) the Broadcasters cease to hold any licences required to be held by the Broadcasters that are relevant to this Agreement,

in each case until the Customer has rectified such matters or until Arqiva has received appropriate directions from a competent authority or court of competent jurisdiction in respect of recommencement of the provision of the Transmission Service (as the case may be), and Arqiva shall not by reason of such suspension of the Transmission Service be in breach of its obligations to the Customer and the Customer shall remain liable to pay the full Annual Fee during such period of suspension.

- 12.2 The Customer shall indemnify and keep indemnified Arqiva from and against all claims, costs (including, without limitation, reasonable legal costs), damages and expenses awarded against Arqiva under any final judgment of a court of competent jurisdiction or agreed in any final settlement resulting directly from any failure by: (i) the Customer to comply with the Customer Licence or any other licences required to be held by the Customer that are relevant to this Agreement; or (ii) the Broadcasters to comply with any licences required to be held by the Broadcasters that are relevant to this Agreement.

13. CHANGE CONTROL PROCEDURE

If the Customer or Arqiva wishes to make any change to this Agreement, the parties shall follow the Change Control Procedure set out at Schedule 8 (Change Control Procedure).

14. WARRANTIES

- 14.1 Arqiva warrants that the Transmission Service will be provided with reasonable care and skill, and that it will have and will comply with all required licences, consents, authorities and dispensations required to perform the Transmission Services.

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

SUBJECT TO CONTRACT

- 14.2 Arqiva warrants that the provision of the Transmission Service:
- (a) will not infringe the Intellectual Property Rights of any third party;
 - (b) will not cause damage to any listener's reception device; and
 - (c) will not interfere or otherwise adversely affect the transmission or broadcast of any third party's signals.
- 14.3 Subject to the Customer's compliance in all material respects with Clause 14.4, Arqiva shall indemnify the Customer against all claims, costs (including, without limitation, reasonable legal costs) damages and expenses incurred by or awarded against the Customer in respect of any breach of the warranty in Clause 14.2.
- 14.4 The Customer shall notify Arqiva in writing as soon as reasonably practicable of any claim from a third party as referred to in Clause 14.2 (a "**Third Party Claim**") and, at Arqiva's sole cost, shall provide all information and assistance in connection with the Third Party Claim as Arqiva may reasonably require. Arqiva shall be entitled to resist, compromise or settle a Third Party Claim in the name of the Customer at Arqiva's own expense and to have the sole conduct and control of any appeal, dispute, compromise, settlement or defence of a Third Party Claim and of any incidental negotiations and the Customer shall give Arqiva, at Arqiva's cost, all reasonable cooperation, access and assistance for the purposes of considering and resisting such Third Party Claim and shall not make any admissions or statements prejudicial to Arqiva. Arqiva shall keep the Customer fully informed and consult with it as to the conduct of the Third Party Claim.

15. LIABILITY AND INDEMNITIES

Liability

- 15.1 Arqiva accepts liability to the Customer only as expressly provided or contemplated in this Clause 15, Clause 11 and Clause 4.3, and otherwise shall have no liability to the Customer under or in connection with this Agreement whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 15.2 Arqiva accepts liability to the Customer for any damage to Customer Equipment caused by Arqiva's negligence in the provision of the Transmission Service up to two hundred thousand pounds sterling (£200,000) 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.
- 15.3 Subject to Clause 15.2, Arqiva's maximum aggregate liability to the Customer arising under or in connection with this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, in respect of claims relating to any Year shall be limited to the greater of:
- (a) one hundred and twenty-five per cent (125%) of the Annual Fees payable by the Customer to Arqiva under this Agreement in respect of that Year; and
 - (b) £100,000.

For the avoidance of doubt any amounts paid by Arqiva to the Customer by way of service credits or super credits under Clause 11 or liquidated damages under Clause 4.3 shall count towards the limits set out in this Clause 15.3.

- 15.4 Arqiva shall not be liable to the Customer under or in connection with this Agreement for any loss of income, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each

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

SUBJECT TO CONTRACT

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.

- 15.5 Nothing in this Clause 15 or otherwise in this Agreement shall exclude or in any way limit Arqiva's liability to the Customer (i) for fraud, (ii) for death or personal injury caused by its negligence (including negligence as defined in s. 1 Unfair Contract Terms Act 1977), (iii) for breach of terms regarding title implied by s. 12 Sale of Goods Act 1979 and/or s. 2 Supply of Goods and Services Act 1982, or (iv) to the extent the same may not be excluded or limited as a matter of law.
- 15.6 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 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 and any failure by the Customer to comply with the Engagement Process).
- 15.7 The exclusions and limitations of liability under this Clause 15 shall have effect in relation both to any liability expressly provided for or contemplated under this Agreement and to any liability arising or incurred by reason of the invalidity or unenforceability, in whole or in part, of any term of this Agreement.
- 15.8 This Agreement sets forth the full extent of Arqiva's obligations and liabilities arising out of or in connection with this Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on Arqiva except as specifically stated in this Agreement. Any condition, warranty, representation or term which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is hereby expressly excluded.

Indemnities

- 15.9 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 or customers at the Station. As regards loss of or damage to Arqiva equipment, shared equipment, accommodation (including Customer accommodation) and any equipment owned or controlled by third parties, the Customer's liability under this indemnity shall be limited to: five million pounds sterling (£5,000,000) per Year in relation to each Station, but shall otherwise be unlimited.
- 15.10 Without prejudice to Clause 15.9, 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 Customer Signals, or the transmission in accordance with the terms of this Agreement by Arqiva, or sub-contractors of Arqiva, of any transmitted service signal relating to any Customer Signals:
- (a) is in breach of any duty of confidentiality or privacy;
 - (b) infringes or prejudices any existing or future intellectual property rights;
 - (c) is defamatory or obscene; or

SUBJECT TO CONTRACT

- (d) 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.

15.11 The indemnities in Clause 15.9 and 15.10 shall be subject to Arqiva:

- (a) promptly notifying the Customer in writing of such claim;
- (b) 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;
- (c) 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
- (d) 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).

16. FORCE MAJEURE

16.1 Neither party shall be liable for any delay in performing or failure to perform any of its obligations under this Agreement (other than a payment of money) caused by any circumstance outside its reasonable control. Any party seeking to rely on this Clause 16.1 shall promptly notify the other in writing.

16.2 If Arqiva shall seek to rely on Clause 16.1 for a continuous period exceeding thirty (30) days the Customer's obligation to pay the Annual Fee shall be suspended (or an appropriate proportion thereof, in circumstances where non-performance occurs at one or more selected Stations only) until performance is restored. If either party is prevented from performing its obligations under this Agreement for a continuous period exceeding ninety (90) days the other party may, by notice in writing to the first mentioned party, immediately terminate this Agreement.

17. THE CUSTOMER'S GENERAL OBLIGATIONS

17.1 The Customer hereby grants to Arqiva a licence solely to distribute and transmit the Customer Signals pursuant to this Agreement and certifies that it has the right to grant such licence.

17.2 The Customer shall deliver the Customer Signals to the agreed interface point in a form and continuity appropriate for distribution and transmission.

17.3 The Customer shall ensure that any of Arqiva's equipment in its possession or control is not used in any manner contrary to the provisions of this Agreement or the Licences.

17.4 The Customer shall be responsible for obtaining and maintaining all licences that it is required to hold under any of the Laws with respect to the TV Service and broadcasting of the

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

SUBJECT TO CONTRACT

Customer Signals so as to enable it lawfully to contract with Arqiva for provision of the Transmission Services.

18. DURATION AND EARLY TERMINATION

- 18.1 Subject to the remainder of this Clause 18 this Agreement shall come into force on the Effective Date and shall continue thereafter until midnight on the date specified in Schedule 2 (Commercial Details) whereupon it shall automatically and immediately terminate unless renewed by mutual written agreement. 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.
- 18.2 Without prejudice to other rights or remedies, either party shall be entitled immediately to terminate this Agreement by giving written notice to the other if:
- (a) at any time the other becomes insolvent or makes an assignment for the benefit of creditors or has a receiver or administrator of any kind appointed over the whole or any part of its assets or undertaking; or
 - (b) the other shall be in material breach of any of the provisions of this Agreement and shall not remedy the breach (if capable of remedy) within sixty (60) days of receiving written notice requiring such remedy).
- 18.3 If the Customer shall cease to hold any licence that it is required to hold under any of the Laws, Arqiva reserves the right immediately to suspend the Transmission Services if the Station is affected by the loss of such licence. Any such withdrawal shall not in any way affect either the size, or the subsequent rate of increase of, or the Customer's payment obligations in respect of, the Annual Fee provided that if Arqiva makes any demonstrable saving in variable costs as a result of any such withdrawal it shall pass on the benefit of such saving to the Customer.
- 18.4 Arqiva shall have the right (without prejudice to its other rights) to terminate this Agreement by notice in writing to the Customer in any of the following events;
- (a) the Customer becomes subject to a direction under which it is prohibited from providing or restricted in its entitlement to provide the whole or part of an Electronic Communications Network, Electronic Communications Service or Associated Facilities or the Customer is in breach of the Conditions in respect of any such Electronic Communications Network, Electronic Communications Service or Associated Facilities; or
 - (b) Arqiva becomes subject to a direction under which it is prohibited from providing or restricted in its entitlement to provide the whole or part of an Electronic Communications Network, Electronic Communications Service or Associated Facilities, in which event Arqiva shall give to the Customer the maximum period of notice of termination practicable in the circumstances.
- 18.5 Arqiva shall provide reasonable transition assistance to the Customer, upon the Customer's request and subject to payment of Arqiva's applicable fees (applying Arqiva's then-current standard supervision rates or successor rates) at any time prior to or within six (6) months after the expiry or termination of this Agreement.
- 18.6 Any termination of this Agreement shall be without prejudice to either party's right to recover any sums due to be paid or to any other rights accrued to one party in accordance with this Agreement on or prior to the effective date of such termination.

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

SUBJECT TO CONTRACT

- 18.7 Upon expiry or termination (in whole or part) of this Agreement for whatever reason, 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), and if such assets are not collected by the Customer within thirty (30) days of being made available for collection by Arqiva, Arqiva shall be entitled to dispose of such assets as it sees fit.

19. SUB-CONTRACTING

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.

20. EXTRA WORK

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

21. RELIANCE ON INSTRUCTIONS

- 21.1 Each party shall be bound by and shall be entitled to rely on any communication whether in writing or by telephone or answer back facsimile process which that party has reasonable cause for believing has been given or made for or on behalf of the other. Each party shall adopt and ratify all such communications notwithstanding any lack of actual authority and will indemnify the other from and against all liabilities, obligations, claims, actions and expenses of any kind imposed on or incurred as a result of reliance on any such communication.
- 21.2 Notwithstanding Clause 21.1, Arqiva shall not act on the instruction or request of the Customer to suspend the Transmission Service or any material element thereof unless confirmed in writing by a director or other nominated representative of the Customer.

22. CONFIDENTIALITY

- 22.1 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.
- 22.2 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 22.
- 22.3 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.

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

SUBJECT TO CONTRACT

- 22.4 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.
- 22.5 The terms of and obligations imposed by this Clause 22 shall survive the termination or expiry of this Agreement but shall not apply to any Confidential Information which:
- (a) at the time of receipt by the receiving party is in the public domain, or subsequently comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors; or
 - (b) is lawfully received by the receiving party from a third party on an unrestricted basis; or
 - (c) is already known to the receiving party before receipt hereunder; or
 - (d) is independently developed by the receiving party or its employees, agents or contractors.
- 22.6 The receiving party may disclose Confidential Information as may be required by Law, provided that, to the extent practicable in the circumstances, the disclosing party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

23. ASSIGNMENT

- 23.1 Subject to Clauses 19 and 23.2, neither party may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 23.2 Notwithstanding Clause 23.1, Arqiva may on written notice to the Customer assign all or any of its rights and/or obligations hereunder to any of its Associated Companies, or to any entity acquiring all or substantially all of the assets of Arqiva, or assign its rights to payments and revenues and any similar rights, pursuant to any fixed or floating charge required under any funding arrangements applicable to its business.

24. GOVERNING LAW AND DISPUTE RESOLUTION

- 24.1 The construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by English law and, subject to Clauses 24.2 and 24.3, the parties hereby submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them.
- 24.2 Neither party shall commence any action above until the escalation procedure set out in this Clause 24.2 has been exhausted, save that neither party shall be prevented from seeking emergency or injunctive relief from any court in relation to any damage or anticipated damage to property or proprietary rights. Without prejudice to the foregoing, any question or difference which may arise concerning the construction, meaning, effect or operation of this Agreement or any matter arising out of or in connection with this Agreement shall in the first instance be referred to the persons listed at Level 1 in the escalation table below, who shall have a period of five (5) Business Days to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 2 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 3 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter.

SUBJECT TO CONTRACT

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

- 24.3 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).

25. GENERAL

- 25.1 Arqiva shall not be liable for any loss or damage suffered or incurred by the Customer arising from Arqiva's delay in performing or failure to perform its obligations under this Agreement or to the extent that and for so long as such delay or failure results from any cause or circumstance whatsoever beyond Arqiva's reasonable control.
- 25.2 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.
- 25.3 Notices sent under this Agreement shall be validly served if delivered by hand or sent by fax or registered post to the recipient party as follows:

to Arqiva:

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

to the Customer:

[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.

- 25.4 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 does not constitute, and shall not be

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

SUBJECT TO CONTRACT

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.

- 25.5 If any term of this Agreement is found to be illegal, invalid or unenforceable under any Law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 25.6 Notwithstanding any other provision of this Agreement, neither of the parties hereto shall be:
- (a) required to do anything in contravention of any Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
 - (b) 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
 - (c) 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.
- 25.7 This Agreement 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 15.
- 25.8 Provisions of this Agreement which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.
- 25.9 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 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 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 Transmission Services to the Customer, and that no provisions in the Agreement are intended to create nor shall be treated or construed as creating the relationship of landlord and tenant between Arqiva and the Customer, which relationship shall be merely that of the provider and recipient of services and the Customer makes no claim and shall not make any claim in this respect.
- 25.10 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.
- 25.11 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.

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

SUBJECT TO CONTRACT

- 25.12 Except as expressly provided in this Agreement, no alteration to or variation of this Agreement shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative in accordance with the Change Control Procedure.
- 25.13 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

SUBJECT TO CONTRACT

SCHEDULE 1

Defined Terms

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

"**Advertisement**" means the Ofcom information memorandum published on 29 October 2008 entitled "Award of licences in the frequency bands 542 to 550 MHz and 758 to 766 MHz covering Cardiff and Manchester".

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

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

"**Annual Fee**" has the meaning given to it in Clause 10.4.

"**Annual MTS Fee**" means the relevant fee set out in Schedule 2 (Commercial Details).

"**Annual Network Access Fee**" has the meaning given to it in Clause 10.4(a).

"**Application Fee**" means the application fee set out in Schedule 2 (Commercial Details).

"**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.

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

"**Breakdown**" means (i) a total loss of transmission of the Customer Signals for a period exceeding thirty (30) seconds; or (ii) a reduction in ERP greater than nominally 6dB for a period exceeding thirty (30) minutes, in each case where caused by disruption to the Transmission Services.

"**Broadcaster**" any broadcaster benefiting from the Transmission Service during the term of this Agreement;

"**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 8.

"**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.

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

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

SUBJECT TO CONTRACT

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

"Consents" means any consent, approval, licence, authorisation or permission that Arqiva requires from any competent authority, Government Authority, landlord or other third party in order to provide the Transmission Service.

"Customer Equipment" means the equipment listed in Schedule 2 (Commercial Details).

"Customer Licence" means the licence awarded to the Customer by Ofcom for the provision of the TV Service in the frequency band 758 to 766 MHz covering the Manchester area.

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

"Effective Date" means the date specified in Schedule 2 (Commercial Details).

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

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

"Emergency Reserve Equipment" means the equipment described in Schedule 5 (Emergency Reserve Equipment), if any.

"Engagement Process" means the engagement process set out in Section 5 of the Reference Offer (or the equivalent Section in any updated Reference Offer).

"ERP" means effective radiated power.

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

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

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

SUBJECT TO CONTRACT

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

"Initial Fee" means the Initial Network Access Fee and the Initial MTS Fee.

"Initial Network Access Fee" means the relevant fee set out in Schedule 2 (Commercial Details).

"Initial MTS Fee" means the relevant fee set out in Schedule 2 (Commercial Details).

"Installation Commencement Date" has the meaning given to it in Clause 4.1.

"Installation Project" means the specification, building and/or installation works described in Schedule 6 (Installation Project).

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

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

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

"Licences" means the licences and/or authorisations required by Arqiva under the Communications Act 2003, and any other licences which Arqiva may at any time require after the Effective Date pursuant to applicable law in relation to the Transmission Service (as amended from time to time).

"Managed Transmission Services" or "MTS" means the managed transmission services listed under the subheading "Managed Transmission Services" in Schedule 2 (Commercial Details).

"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).

"NCSC" means Arqiva's National Customer Service Centre at Emley Moor contact details are by telephone (01924 508100), fax (01924 508185) or email (NCSC.Supervisor@arqiva.com).

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

"Network Access Agreement" means any agreement(s) or arrangement(s) for the provision of Network Access, which shall be based on the terms of the applicable version of Arqiva's reference offer relating to the provision of Network Access in respect of Ofcom's award of a licence in the frequency band 758 to 766 MHz covering the Manchester area.

"Ofcom" means the Office of Communications.

"Persistent Failure" means a service performance failure which gives rise to any of the following:

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

SUBJECT TO CONTRACT

- (a) a right for the Customer to terminate this Agreement for material breach; or
- (b) any other express right of the Customer to terminate this Agreement for the service performance failure, including without limitation pursuant to Clause 11.2;

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

"Rectification Process" means that when measured over the specified one month period by reference to the Station, Arqiva is able to achieve a service level equal to or better than the Service Level, provided that where any failure to achieve the Service Level is caused by a failure outside Arqiva's control, such failure shall not form part of the calculation set out above.

"Reference Offer" means the Arqiva reference offer entitled "Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a licence in the frequency band 758 to 766 MHz covering the Manchester area", version 3.0, published 8 June 2009, or any updated version of such reference offer from time to time.

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

"Service Level" means the service level set out in Schedule 5 (Service Level and Service Credits).

"Service Start Date" has the meaning given to it in Clause 4.3.

"Station" means the station listed in Schedule 3 (Station Details).

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

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

"Target Service Start Date" means the target service start date notified to Arqiva pursuant to, and in accordance with, Clause 4.1.

"Transmission Service" means the service described in Schedule 2 (Commercial Details).

"Transmitter System" means the transmitter system installed at the Station by Arqiva that complies with the specification set out in Schedule 2 (Commercial Details).

"TV Service" means the television service identified in Schedule 2 (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

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

SUBJECT TO CONTRACT

<http://www.competition-commission.org.uk/>.

"WT Act Licences" means the licences required to be held by Arqiva under the Wireless Telegraphy Acts 1949, 1967, 1998 and 2006 in relation to the Transmission Service.

"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.

SUBJECT TO CONTRACT

SCHEDULE 2

Commercial Details

THE CUSTOMER

NAME:.....

ADDRESS:.....

TEL NO:FAX NO:

TV SERVICE: [*insert details of Customer's service*]

TERM

EFFECTIVE DATE:

TERMINATION DATE: [30 October 2026]

TRANSMISSION SERVICE

The Transmission Service includes that Arqiva will:

Managed Transmission Services

- Procure the purchase of the Antenna System and Transmitter System;
- Provide project management of the equipment installation;
- Install the Transmitter System and Antenna System;
- Maintain and monitor the Transmitter System in accordance with the terms and conditions set out in Section 5 of the Reference Offer, including the provision of consumable Customer Equipment spares up to a maximum aggregate value of £100 per annum;
- Carry out an annual inspection of the Antenna System, and report to the Customer if it identifies any essential maintenance works which the Customer should carry out;
- Provide an annual maintenance report; and
- Manage the payment of utility bills.

and

Network Access

- Provide or procure access to the Winter Hill site (National Grid Reference SD660144), its accommodation and Mast;
- Provide Station security/safety (including perimeter fencing and Mast lighting), building accommodation and Masts (including private access routes);
- Provide the electricity supply including distribution within the Station and shared accommodation;
- Provide supervision in accordance with the Arqiva Code of Practice, where access to the Station is required by the Customer.

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.

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

SUBJECT TO CONTRACT

CUSTOMER EQUIPMENT

Transitional arrangement

Antenna System

3 log periodic antennas, horizontally spaced, located at a height of 140m on a bearing of 135°.

Associated equipment

Transmitter System

200watt Transmitter (single thread, single line-in, no switching)
Bandpass Filter
Service Information Manager (SIM)
Programme Input Equipment (PIE)
Uninterruptible Power Supply (UPS)
Equipment Rack
Telemetry

Final arrangement

Antenna System

4 stacked log periodic antennas located at a mean height of 140m on a bearing of 135°.

Associated equipment

Transmitter System

200watt Transmitter (single thread, single line-in, no switching)
Bandpass Filter
Service Information Manager (SIM)
Programme Input Equipment (PIE)
Uninterruptible Power Supply (UPS)
Equipment Rack
Telemetry

ACCOMMODATION

[to be inserted]

SUBJECT TO CONTRACT

CHARGES

Charges for provision of Transmission Service	Initial Fee £	Annual Fee (Transitional Arrangement) £	Annual Fee (Final Arrangement) £
Application Fee	3,460	N/A	N/A
Network Access	27,011 (Initial Network Access Fee)	6,000 (Annual Network Access Fee)	6,245 (Annual Network Access Fee)
MTS	138,837 (Initial MTS Fee)	5,075 (Annual MTS Fee)	5,075 (Annual MTS Fee)
Estimated pass-through costs	N/A	1,717	1,717
Total	169,308	12,792	13,037

SUPERVISION RATE: £542 per day

The Annual MTS Fee includes an assumed number of maintenance man-days (five (5)). If at the end of the relevant Year the assumed number of man-days has not been fully utilised by the Customer, Arqiva shall roll forward any unused days for use by the Customer in the following Year. If extra man-days are required, Arqiva shall charge the Customer for the additional days at the rate set out above.

SUBJECT TO CONTRACT

SCHEDULE 3

Station Details

Antenna for transitional arrangement

Site name	Winter Hill
National Grid Reference	SD660144
Antenna height above ground level	140m
Proposed antenna type	Three log periodic antennas, horizontally spaced; oriented at 135° ETN
Channel (frequency)	Channel 57 (758-766 MHz)
Maximum effective radiated power	1 kW
Polarisation	Horizontal
Spectral mask	As defined in Interface Requirement (IR) 2022

Antenna for final arrangement

Site name	Winter Hill
National Grid Reference	SD660144
Antenna height above ground level	140m
Proposed antenna type	Four stacked log periodic antennas with 5° beam tilt; oriented at 135° ETN
Channel (frequency)	Channel 57 (758-766 MHz)
Maximum effective radiated power	1 kW
Polarisation	Horizontal
Spectral mask	As defined in IR2022

SUBJECT TO CONTRACT

SCHEDULE 4

Emergency Reserve Equipment

None.

SUBJECT TO CONTRACT

SCHEDULE 5

Service Level and Service Credits

Service Level: Arqiva shall respond to a Breakdown by, at the latest, the next Business Day.

Service credit: If Arqiva fails to achieve the Service Level in respect of any Breakdown, and subject to the exclusions below, it shall be liable to the Customer for a service credit calculated according to the following formula for each full Business Day until Arqiva achieves the Service Level:

$$\text{Daily service credit} = \text{Annual Fee} / 365$$

Exclusions: Arqiva shall not be liable for any failure to achieve the Service Level to the extent that this is attributable to:

- any circumstances or events beyond Arqiva's reasonable control, including without limitation any Force Majeure Event;
- any breach of this Agreement by the Customer;
- any interruption to the Transmission Service requested or caused by the Customer.

SUBJECT TO CONTRACT

SCHEDULE 6

The Installation Project

The Installation Project shall include:

Such tasks and activities as Arqiva considers necessary for the purposes of installing the Customer Equipment in order to provide the Transmission Service.

SUBJECT TO CONTRACT

SCHEDULE 7

Liquidated Damages

1. The parties agree and acknowledge that the liquidated damages payable pursuant to this Schedule represent a genuine pre-estimate of loss likely to be incurred by the Customer as a direct consequence of any delay in achieving the Target Service Start Date.
2. If the Service Start Date has not occurred by the Target Service Start Date then the Customer shall, subject to the remainder of this Schedule, be entitled to receive liquidated damages from Arqiva.
3. Liquidated damages which fall to be payable pursuant to paragraph 2 above shall be calculated at a rate of one per cent (1%) of the Annual MTS Fee for every full week by which the Service Start Date is delayed, up to a maximum of 20 full weeks.
4. Arqiva shall have no liability to pay liquidated damages pursuant to paragraph 2 above where the delay in achieving the Target Service Start Date has occurred as a result of:
 - (a) any of the events listed Clause 10.7; or
 - (b) any act or omission of the Customer.
 - (c) 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.
5. Any liability of Arqiva pursuant to this Schedule and Clause 4.3 to pay liquidated damages shall represent the Customer's sole and exclusive remedy in respect of the occurrence of any delay in achieving any Target Service Start Date.

SUBJECT TO CONTRACT

SCHEDULE 8

Change Control Procedure

1. PRINCIPLES

- 1.1 Where the Customer or Arqiva wish to request a change to the provision of the Transmission Services, 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 8, 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 8, until such time as a Change Request is approved and executed by the relevant parties, in accordance with the Change Control Procedure, Arqiva shall continue to provide the Transmission Services as if the Change Request had not been made.
- 1.4 Any discussions which may take place between the Customer and Arqiva in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either party.
- 1.5 Both parties will:
 - (a) act reasonably in putting forward Change Requests, responding to Change Requests and generally in relation to the Change Control Procedure;
 - (b) not unreasonably withhold or delay approval of Change Requests;
 - (c) use reasonable endeavours to minimise costs in proposing changes to the Charges in connection with Change Requests; and
 - (d) be diligent in documenting and operating the Change Control Procedure.

2. CHANGE CONTROL PROCEDURE

- 2.1 Arqiva shall maintain during the term of this Agreement a record of all Change Requests agreed in accordance with the Change Control Procedure (the "**Change Register**"). Arqiva shall provide a copy of the Change Register to the Customer on the Customer's request.
- 2.2 In the event that either Party wish to consider a change to the Transmission Services, the relevant party shall complete a Change Request in the form below, and submit same to the other Party. Arqiva shall log the requested change on the Change Register.
- 2.3 If the Parties agree the changes in the Change Request, each Party shall execute the Change Request, and Arqiva shall update the Change Register to reflect the same.
- 2.4 Subject to paragraph 2.3 above, 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 25.12
- 2.5 Any change which Arqiva believes is necessary in order to meet the Target Service Start Date or as a result of any of the events described in Clause 10.7 shall be treated in accordance with the procedure set out in this Schedule 8, except that Arqiva shall be entitled to implement the relevant change even if a Change Request has not been signed

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

SUBJECT TO CONTRACT

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 to the Customer in respect of such change in accordance with this Schedule 8. Where the occurrence of any such event means that it is not possible to achieve the Target Service Start Date within the current charges, but it would be possible to achieve the Target Service Start Date with the investment of additional charges, Arqiva shall notify the Customer of this as soon as possible (specifying the amount of such additional charges) and it shall be the Customer's decision in its discretion whether to pay the additional charges or extend the Target Service Start Date.

SUBJECT TO CONTRACT

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>			

SUBJECT TO CONTRACT

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			