

SUBJECT TO CONTRACT

**Reference Offer for the provision of
Transmission Services**

in respect of

**Advertisement of Local Radio Multiplex
Licence(s): Morecambe Bay, North and West
Cumbria and Southwest Scotland**



Version 1-0

Publication Date: 11th July 2019

© Copyright Arqiva Ltd 2019.

SUBJECT TO CONTRACT

Table of Contents

1. Introduction.....3

2. Scope & Specification3

3. Charges9

4. Engagement Process - Ordering and Processing.....11

5. Reference Offer Terms and Conditions.....12

SUBJECT TO CONTRACT

1. Introduction

This Reference Offer is issued pursuant to paragraph 10.4.3 of the Undertakings in respect of Ofcom's recent advertisement of a DAB Local Commercial Radio licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland. Ofcom has published an invitation for applications dated 11th June 2019 entitled "Advertisement of Local Radio Multiplex Licence(s): Morecambe Bay, North and West Cumbria and Southwest Scotland"

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 eight services from seven sites to create a launch network.

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

The specification and prices in this Reference Offer are current at 11th July 2019 and valid for 90 days, after which time they will be revalidated by Arqiva. A copy of this Reference Offer, as updated from time to time, will be placed on Arqiva's website: www.arqiva.com (or any replacement or successor website).

2. Scope & Specification

2.1 Transmission Services

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

The reference network comprises the eight services from seven sites detailed below only, which are the offered launch sites for the Morecambe Bay, North and West Cumbria and Southwest Scotland multiplex(es).

In the advert, Ofcom have allowed licence bidders to apply for one or multiple areas and to structure the licence application to match. In this Reference Offer Arqiva has provided details of representative services in line with the spectrum planning frequency restrictions in the Ofcom advert.

Bidders must determine which sites and which frequencies they wish to apply for.

SUBJECT TO CONTRACT

Managed Transmission Services

Arqiva will:

- Design, build, maintain and monitor the Transmitter System as set out in the Reference Offer Terms and Conditions;
- Report to the Customer if it identifies any essential maintenance works which are required that will affect the Customer's service; and
- Manage the payment of utility bills

In respect of the following sites:

Morecambe Bay Licence – (Block 12D) 229.072 MHz

- Kendal
- Morecambe Bay
- Lancaster

North and West Cumbria Licence – (Block 11B) 218.640 MHz

- Penrith
- Sandale
- Broughton Moor

Southwest Scotland Licence – (Block 10D) 215.072 MHz

- Sandale
- Dumfries South

Network Access

Arqiva will:

- Provide access to the stations listed below:
 - Kendal: NGR SD 54040 91230; Tenure: Freehold, Site Height m aod 180
 - Morecambe Bay: NGR SD 23980 79170; Tenure: Freehold, Site Height m aod 260
 - Lancaster: NGR SD 49001 66201; Tenure: Freehold, Site Height m aod 89
 - Penrith: NGR NY 53016 31261; Tenure: Leasehold, Site Height m aod 263
 - Sandale: NGR NY 26601 39800; Tenure: Freehold, Site Height m aod 371
 - Broughton Moor: NGR NY 05791 33001; Tenure: Third Party, Site Height m aod 122
 - Dumfries South: NGR NX 97000 74100; Tenure: Freehold, Site Height m aod 12

Note that at Sandale access is provided for use by two licences, North and West Cumbria and Southwest Scotland.

- Provide access to the antenna systems as specified in "Design & Build" below;
- Provide station security/safety (including perimeter fencing);
- Provide the electricity supply including power distribution within the site and shared accommodation;
- Include an allowance for supervision by Arqiva of Customer access to the Station, in accordance with the Arqiva Code of Practice.

In respect of the following sites:

- Kendal
- Morecambe Bay
- Lancaster

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SUBJECT TO CONTRACT

- Penrith
- Sandale
- Broughton Moor
- Dumfries South

Other services and equipment – not regulated by the Undertakings

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 allows the service to cover the Morecambe Bay[†], North and West Cumbria[‡] and Southwest Scotland[•] DAB Multiplex Licence areas. The Advertisement refers to the use of Frequency Blocks 12D (centre frequency of 229.072 MHz)[†], 11B (centre frequency of 218.640 MHz)[‡] and 10D (centre frequency of 215.072 MHz)[•] to provide the service. It is the responsibility of the new licensee to determine whether it can meet the requirements of the Advertisement and to put in place any remedial measures necessary if it cannot meet the requirements of the Advertisement.

The reference design is defined as:

Morecambe Bay Licence

Kendal

Antenna System

The Transmit antenna comprises of a single tier of a DAB log periodic on 280° ETN, mean height 40 m agl.

Transmitter System

Tryo Communications 600 W dual drive transmitter. Output power is 501 W, ERP 1000 W. TX. Telemetry by Arqiva

Morecambe Bay Antenna System

The Transmit antenna comprises of two tiers of DAB yagis on 120° ETN, mean height 70 m agl.

Transmitter System

Tryo Communications 300 W dual drive transmitter. Output power is 234 W, ERP 1000 W. TX. Telemetry by Arqiva

Lancaster

Antenna System

The Transmit antenna comprises of two tiers of 3 DAB panels on 1°, 91° and 181° ETN, mean height 81 m agl.

Transmitter System

Tryo Communications 600 W dual drive transmitter. Output power is 442 W, ERP 1000 W. TX. Telemetry by Arqiva

SUBJECT TO CONTRACT

North and West Cumbria Licence

Penrith

Antenna System

The Transmit antenna comprises of four tiers of DAB dipoles on 220° ETN, mean height 48.5 m agl.

Transmitter System

Tryo Communications 300 W dual drive transmitter. Output power is 219 W, ERP 1000 W. TX. Telemetry by Arqiva

Sandale

Antenna System

The Transmit antenna comprises of four tiers of 4 DAB panels on 25°, 115°, 205° and 295° ETN, mean height 104 m agl.

Transmitter System

Tryo Communications 1800 W dual drive transmitter. Output power is 1690 W, ERP 5000 W. TX. Telemetry by Arqiva

Broughton Moor

Antenna System

The Transmit antenna comprises of two tiers of DAB dipoles on 240° ETN, mean height 26.8 m agl.

Transmitter System

Tryo Communications 600 W dual drive transmitter. Output power is 437 W, ERP 1000 W. TX. Telemetry by Arqiva

Southwest Scotland Licence

Sandale

Antenna System

The Transmit antenna comprises of four tiers of 4 DAB panels on 25°, 115°, 205° and 295° ETN, mean height 104 m agl.

Transmitter System

Tryo Communications 1800 W dual drive transmitter. Output power is 1690 W, ERP 5000 W. TX. Telemetry by Arqiva

Dumfries South

Antenna System

The Transmit antenna comprises of four tiers of DAB dipoles on 350° ETN, mean height 32.4 m agl.

Transmitter System

Tryo Communications 300 W dual drive transmitter. Output power is 263 W, ERP 1000 W. TX. Telemetry by Arqiva

SUBJECT TO CONTRACT

Distribution and Multiplexing

If required by the Customer, Arqiva will provide or procure multiplexing facilities and programme distribution services to the transmitter system.

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

The Reference Offer transmission parameters are as follows:

Morecambe Bay Licence

Location	Kendal
National Grid Reference	SD 54040 91230
Total Maximum ERP	1000 W
Frequency Block	12D (centre frequency of 229.072 MHz)

Location	Morecambe Bay
National Grid Reference	SD 23980 79170
Total Maximum ERP	1000 W
Frequency Block	12D (centre frequency of 229.072 MHz)

Location	Lancaster
National Grid Reference	SD 49001 66201
Total Maximum ERP	1000 W
Frequency Block	12D (centre frequency of 229.072 MHz)

North and West Cumbria Licence

Location	Penrith
National Grid Reference	NY 53016 31261
Total Maximum ERP	1000 W
Frequency Block	11B (centre frequency of 218.640 MHz)

Location	Sandale
National Grid Reference	NY 26601 39800
Total Maximum ERP	5000 W
Frequency Block	11B (centre frequency of 218.640 MHz)

SUBJECT TO CONTRACT

Location	Broughton Moor
National Grid Reference	NY 05791 33001
Total Maximum ERP	1000 W
Frequency Block	11B (centre frequency of 218.640 MHz)

Southwest Scotland Licence

Location	Sandale
National Grid Reference	NY 26601 39800
Total Maximum ERP	5000 W
Frequency Block	10D (centre frequency of 215.072 MHz)

Location	Dumfries South
National Grid Reference	NX 97000 74100
Total Maximum ERP	1000 W
Frequency Block	10D (centre frequency of 215.072 MHz)

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

2.3 Operation

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

- Maintenance of the Stations, including maintenance of access, perimeter fencing;
- Security of the Stations;
- Maintenance of the accommodation on the grounds;
- Maintenance of the towers;
- Ensuring that the Transmitter Systems and Antenna Systems are operational and therefore are able to transmit and broadcast the Customer Signal;
- Maintenance of the Antenna Systems;
- Response to Breakdowns as defined in Schedule 5, Table 1;
- An annual report on maintenance and Breakdowns;
- Management of payment of pass through costs.

2.3.2 The Customer will be responsible for all other elements of ensuring that the Customer Signals are delivered to an agreed interface point, in accordance with Arqiva's standards for Customer Signal presentation.

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

SUBJECT TO CONTRACT

3. Charges

3.1 Charges for Transmission Services

Location	KEEP ID	Annual Transmission Fee £k	Indicative Rent and Rates Cost £k per annum	Indicative Electricity Costs £k per annum	Pass-through Cost £k per annum	Indicative Annual Charge £k per annum
Kendal	140955	23.3	0.1	2.0	2.1	25.4
Morecambe Bay	141195	28.1	1.4	0.9	2.3	30.4
Lancaster	10335	35.1	1.2	1.5	2.7	37.8
Penrith	20069	21.3	0.3	0.9	1.2	22.5
Sandale	141567	55.0	0.9	4.7	5.6	60.6
Broughton Moor	20072	24.2	2.1	1.5	3.6	27.8
Sandale	141567	55.0	0.9	4.7	5.6	60.6
Dumfries South	13730	29.6	1.5	1.0	2.5	32.1

3.2 Payment Terms

3.2.1 The Annual Fee is payable monthly in advance for the Term.

3.3 Basis of Charges

3.3.1 Compliance with the Undertakings

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

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

3.3.2 Basis of Charges

- i. As provided in the Reference Offer Terms & Conditions the Annual Fee is payable monthly in advance.
- ii. The charges are stated at 11th July 2019 prices and are subject to change in accordance with the Reference Offer Terms and Conditions, including (but not limited to): following survey (as

SUBJECT TO CONTRACT

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.

- iii. The charges in this Reference Offer and valid for 90 days from the date of publication, after which time they will be revalidated by Arqiva.
- iv. The charges are based upon the specification set out in the Advertisement. There may be a significant delay between the publication of the Reference Offer and the commencement of the build project, and during such delay there may be changes in the availability and location of accommodation at the Station, and/or Antenna System and/or the number of sharers using the Antenna System and at the Station. Accordingly, it is necessary for Arqiva to carry out a site inspection immediately prior to acceptance by a Customer of the Reference Offer in order to provide final revalidation of the Reference Offer.
- v. 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.
- vi. The pass-through cost element which has been included in respect of electricity is an indicative estimate based on current levels.
- vii. The charges are stated exclusive of VAT.
- viii. The charges are subject to the Reference Offer Terms and Conditions.

3.3.3 Applicability of the Reference Offer and additional costs

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

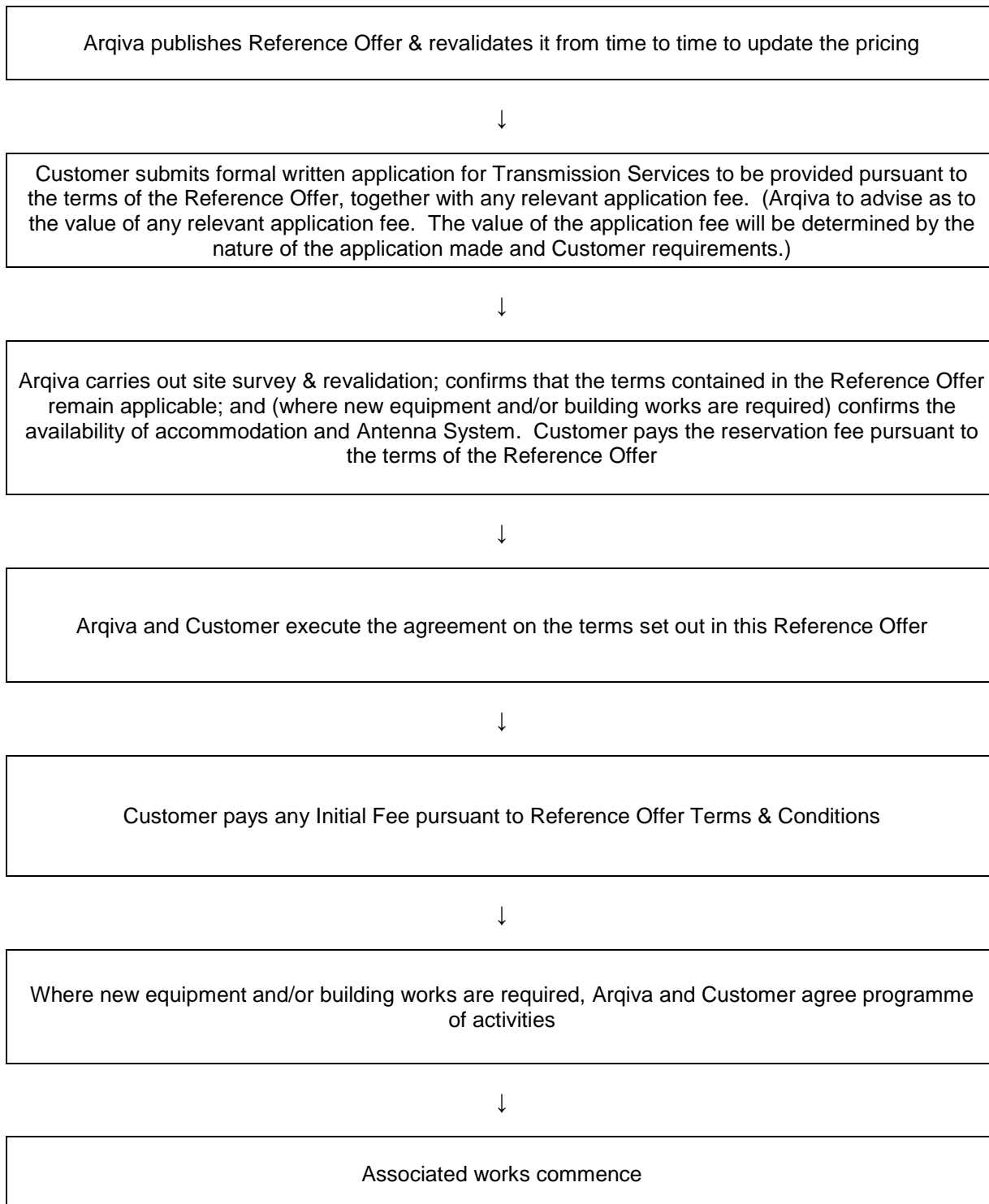
3.4 Parent Company Guarantee

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

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:



SUBJECT TO CONTRACT

5. Reference Offer Terms and Conditions

SUBJECT TO CONTRACT

Dated _____

ARQIVA LIMITED

and

[insert name of Customer]

**AGREEMENT FOR THE PROVISION OF
DAB TRANSMISSION SERVICES**

The Arqiva logo is displayed in a bold, red, lowercase sans-serif font. The letter 'q' is stylized with a long, horizontal tail that extends to the right and then curves downwards.

Legal
Arqiva Limited
Crawley Court
Winchester
SO21 2QA

SUBJECT TO CONTRACT

DATE:

PARTIES:

- (1) **ARQIVA LIMITED** a company incorporated under the Laws of England and Wales with registered number 02487597 and having its registered office at Crawley Court, Winchester, Hampshire, SO21 2QA ("**Arqiva**"); and
- (2) [**insert name of Customer**] a company with registered number [insert number] and having its registered office at [insert address] ("**Customer**").

RECITALS:

(A)

IT IS AGREED as follows

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract the following expressions shall have the meanings ascribed to them below:

" ACI Filler "	means Adjacent Channel Interference Filler
" ACI Filler Fee "	means the fee charged by Arqiva each year for the ACI Filler.
" Act "	the Broadcasting Act 1996;
" Adjudication Rules ", " Adjudication Scheme " and " Adjudicator "	have the meanings given to them in the Undertakings;
" Aggregate Fee "	the aggregate fee, payable by the Customer to Arqiva in each Year, of the Transmission Service Fee, Distribution Service Fee and ACI Filler Fee (where applicable);
" Antenna "	means any antenna, dish or other item of equipment, apparatus, appliance or instrument installed on or affixed to any structure or building at any Station for the reception, transmission or relay of radio or electromagnetic waves and used in the provision of Services.
" Antenna System " .	means the assembly of Antenna(s) specified in Schedule 2, and the supporting fixtures and feeders for that assembly.

SUBJECT TO CONTRACT

"Breakdown"	a Fault which exceeds a total continuous time of three minutes or aggregate Faults which exceed a total time of three minutes in any period of sixty (60) minutes;
"Business Day"	any day which is not a Saturday, Sunday or a public holiday in the United Kingdom;
"Community Radio Licence"	shall have the meaning ascribed to that term in article 2(1) of the Community Radio Order 2004;
"Competent Authority"	means Ofcom or H.M. Government and for the avoidance of doubt shall include DCMS.
"Composite Content Signal"	the single signal combining all of the relevant individual Content Signals, provided by the Customer to Arqiva at the Standard Interface, which Arqiva shall (i) carry by the Distribution Service and (ii) broadcast by the Transmission Service;
"Consents"	means any consent, approval, licence (including the Licences), authorisation or permission that Arqiva requires from any Competent Authority, Government Authority, landlord or other third party in order to provide the Service.
"Content"	any programming, advertisements, data or other material, free to air or otherwise which the Customer wishes to have broadcast as part of the Licensed Service;
"Content Provider"	any provider of Content;
"Content Signals"	signals comprising Content to be delivered by the relevant Content Provider to the Standard Interface;
"Customer Licences"	the Multiplex Licence and the WTA Licences;
"Due Date"	the date on or, as the case may be, by reference to which payment of any amount owed to Arqiva or the Customer, as the case may be, is to be made under any provision of this Contract;
"Distribution Service"	in respect of each Multiplex Licence Region, a distribution service using the System, comprising the distribution of the Composite Content Signal from the Multiplex Centre to each of the relevant Stations from which the Transmission Service is being provided, as more particularly described in Schedule 2;
"Distribution Service Fee"	the distribution service fee as set out in the relevant part of Schedule 1 for the relevant Multiplex Licence Region;
"Equipment"	any equipment used by Arqiva in the provision of the Services;
"Eureka 147 Guidelines"	The Guidelines for Implementation and Operation published by the Joint Eureka 147 DAB Working Group 1 and European Broadcasting Union Task Force on System Standardisation (including such replacement, updated or otherwise amended version of such guidelines from time to time);

SUBJECT TO CONTRACT

"Fault Notice"	a written notice (including by email) of a Fault;
"Fault"	any impairment or loss of redundancy of any of the Services (or any part of them) as described in Column 1 of Table 1 and more particularly defined in Table 2 in the section entitled 'Availability and response times' in Schedule 5;
"Force Majeure Event(s)"	has the meaning assigned to it in Clause 9.1;
"Good Practice"	exercising, in accordance with any and all applicable industry standards, the same skill, expertise and judgement and using personnel and other resources of a similar or superior quality as would be expected from a person who (a) is highly skilled and experienced in providing the services in question and (b) takes all proper and necessary care and is diligent in performing his obligations;
"Group Company"	in relation to any company, any subsidiary undertaking of that company, that company's ultimate parent undertaking or any subsidiary undertaking of such ultimate parent undertaking from time to time (the terms "subsidiary undertaking" and "parent undertaking" being construed in accordance with s1162 of the Companies Act 2006) and in relation to any other person, any company who with respect to that person (a) holds a majority of the voting rights in it or its parent undertaking; or (b) is a member of it or its parent undertaking and has the right to approve or remove a majority of the board of directors; or (c) is a member of it or its parent undertaking and controls alone a majority of the voting rights in it or its parent undertaking;
"Guidance"	<p>the document published by Ofcom entitled "Technical Policy Guidelines for DAB Multiplex Licensees" (including such replacement, updated or otherwise amended version of such document from time to time). A copy of the current document is available at:</p> <p>https://webarchive.nationalarchives.gov.uk/20150106182036/http://stakeholders.ofcom.org.uk/broadcasting/guidance/tech-guidance/digital/</p>
"Initial Indexation Date"	1 April 2020;
"Installation Project"	means the works described in Clause 2 together with the Technical Performance Specification, building and/or installation works described in Schedule 4 (Installation Project).
"Intellectual Property Rights"	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 and whether now known or hereafter invented, throughout the world;
"Licences"	the licences required to be held by Arqiva (if any) under the Telecommunications Act 1984 or the Communications Act 2003 and any other licences which may at any time be required to be held by Arqiva after the Start Date under the Statutes (or otherwise) in relation

SUBJECT TO CONTRACT

	to the Services;
"Licensed Service"	the radio multiplex service (as defined in Section 40(1) of the Act) which the Customer will have the right and duty to provide pursuant to the Multiplex Licence;
"Location"	the relevant Stations and other relevant locations where Equipment is to be located for the Multiplex Licence Region;
"MTS"	the provision of a managed terrestrial transmission service (comprising a package of services including some or all of network design, procurement and installation of transmitters, network monitoring, quality assurance of the signal and/or maintenance of Transmitter Equipment) for the purpose of providing analogue and/or digital terrestrial broadcasting transmission services within the United Kingdom to deliver broadcast content to end users as described in the Report (other than in relation to Community Radio Licences, in respect of which no substantial lessening of competition was found);
"Multiplex Centre"	the Multiplex Centre, being the multiplex operations centre more particularly identified in Schedule 3;
"Multiplex Licence"	the digital terrestrial radio multiplex licence awarded to the Customer by Ofcom pursuant to Part II of the Act (as amended and renewed from time to time) for the relevant Multiplex Licence Region;
"Multiplex Licence Region"	the Ofcom licence area covered by the relevant Multiplex Licence, as listed in Schedule 2;
"Network Access"	the provision of access to the mast and site network and shared or shareable antenna systems acquired, constructed or installed by Arqiva for the purposes of providing analogue and/or digital terrestrial broadcasting transmission services within the United Kingdom to deliver broadcast content to end users as described in the Report (other than in relation to Community Radio Licences, in respect of which no substantial lessening of competition was found);
"Ofcom"	the Office of Communications, its predecessor(s) and any successor body;
"Ofcom Requirements"	the provisions and stipulations of, and contained within, each of the Multiplex Licence, the Technical Code and the Guidance;
"Persistent Failure"	a service performance failure by Arqiva in respect of the Transmission services which gives rise to any of the following: <ul style="list-style-type: none">(a) a right for the customer to terminate this Contract for material breach (or equivalent);(b) any other express right of the customer to terminate this Contract for the service performance failure; or(c) a situation where in any year, Arqiva is (or would be but for any contractual cap) liable to pay service credits (or equivalent payments, e.g. liquidated damages) to the Customer for service non-availability in an amount equal to or greater than fifteen per cent

SUBJECT TO CONTRACT

(15%) of the Transmission Service Fee for the relevant licensed Service for that year;

"Rectification Process"

that, when measured over the (1) one month period specified in the Super Credit Notice, and when calculated by reference to all the Stations within the Customer's network for the relevant Licensed Service, Arqiva is able to achieve a network availability level equal to or better than the Total Time of Service Availability (being, for the avoidance of doubt, 99.8% of Regular Hours in that one (1) month period). The steps to measure this will be as follows:

- (a) For each Station within the Customer's network for the relevant Licensed Service, the number of actual minutes of weighted accountable non-availability (as per the Contract) over the one (1) month period will be divided by the number of permitted minutes of non-availability at the Station (the latter being calculated by reference to the **Total Time Of Service Availability**).
- (b) Each of the Stations within the Customer's network for the relevant Licensed Service will be given a Station weighting, reflecting the relative importance to the Customer of the Stations. The sum of the weightings for all Stations will equal one (1). The Station weightings will be calculated by reference to the applicable per Station charges where these are stated in the Contract. Where per Station charges are not stated, the weighting will be derived from the best available proxy in the Contract for deriving a per Station value. This may include using the value ascribed to each Station for the purposes of termination payments or the Service Credit weightings for "standard" Service Credits, or ERP or population coverage.
- (c) For each Station within the Customer's network for the relevant Licensed Service, the availability ratio derived as set out in paragraph (a) above will be multiplied by the relevant Station weighting as described in paragraph (b) above. The scores for each Station will be aggregated. If the aggregate score is greater than one (1), Arqiva will be liable to pay the Super Credit. If the aggregate score is one (1) or less, Arqiva will have rectified its poor performance.
- (d) For the avoidance of doubt, where any network failure is caused by a service failure outside Arqiva's reasonable control, a distribution or multiplexing failure or a failure of electricity supply at a Station for which there is no permanent alternative power source on site (and such failure is not caused by or on behalf of Arqiva), any resulting non-availability shall not form part of the calculation set out above;

SUBJECT TO CONTRACT

"Regular Hours"	24 hours a day, 365 days a Year or, in the case of a Year which is a leap year, 366 days a Year;
"Report"	the report of the Competition Commission entitled <i>Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group: Completed Acquisition</i> , issued on 11 March 2008;
"RPI"	The Retail Prices Index (All Items) published by the Office for National Statistics (or equivalent index published by any successor organisation);
"Service Credits"	service credits (which do not include, and are separate and distinct from, any Super Credit(s)) payable as a direct result of failure to transmit the Content Signals from the Stations, free from Breakdowns, for the Total Time of Service Availability, which shall be calculated by reference to Schedule 6 and payable in accordance with Clause 7.3;
"Service Linking"	the required feature of the same name as referred to in the Technical Code;
"Services"	in respect of each Multiplex Licence Region, the Transmission Service;
"SI"	"Service Information" data as prescribed in the Eureka 147 Guidelines relating to the Content to be broadcast as part of the Licensed Service;
"Site"	in respect of the Multiplex Licence Region, the site of any Station(s) listed in the relevant part of Schedule 2;
"Site Owner"	any person (other than a party to this Contract) who is occupier of and/or who has a freehold or leasehold interest superior to that of Arqiva in a Site and with whom Arqiva has a contract or arrangement so as to enable Arqiva to provide transmission services from the Site, and all such Sites (if any) are identified in Schedule 2;
"SMC"	Arqiva's national service management centre at Emley Moor or such other customer service centre as Arqiva shall notify to the Customer in writing from time to time;
"Standard Interface"	the specification(s) of the relevant interface(s) between (i) the Multiplex Centre and (ii) the Distribution Service as may be further described and detailed in Schedule 2;
"Start Date"	means for the relevant Multiplex Licence Region, the date that Arqiva commences provision of the Services at the relevant Station, as described in Clause 2.12
"Station"	in respect of the Multiplex Licence Region, the relevant station listed in the relevant part of Schedule 2;
"Statutes"	the WTA, the Telecommunications Act 1984, the Communications Act 2003, the Act and any other statutes or regulations relating to broadcasting, wireless telegraphy or telecommunications as are for the time being in force;

SUBJECT TO CONTRACT

"Super Credit"	an amount equal to ten per cent (10%) of the fees payable by the Customer in relation to Transmission Services for all Stations in the Customer's network for the relevant Licensed Service in the twelve (12) months preceding the date of expiry of the one (1) month period following the Super Credit Notice. For the purpose of calculating the Super Credit: (i) any reductions in the annual fees which have occurred to reflect any Service Credits or liquidated damages shall be disregarded and (ii) fees in respect of distribution shall be excluded;
"Super Credit Claim"	a written notice from the Customer to Arqiva which notifies Arqiva that: <ul style="list-style-type: none">(a) Arqiva has failed to rectify its performance as measured under the Rectification Process;(b) the Customer is claiming a Super Credit; and(c) on receipt of the Super Credit, the Customer waives its right to terminate and/or step-in in respect of the relevant Persistent Failure;
"Super Credit Notice"	a written notice from the Customer to Arqiva which notifies Arqiva that: <ul style="list-style-type: none">(a) 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 Total Time of Service Availability in the relevant one (1) month period referred to under the Rectification Process;
"System"	for each Multiplex Licence Region, the system, more particularly described in Schedules 2 and 3, to be used by Arqiva in its provision of the Services incorporating the Equipment which shall meet the Ofcom Requirements and the Technical Performance Specification;
"Target Start Date"	means the target start date for the Services for each Station which is [TBA] unless agreed otherwise between the parties;
"Technical Code"	the document published by Ofcom entitled "Digital Technical Code" (including such replacement, updated or otherwise amended version of such document from time to time). A copy of the current document is available at: http://stakeholders.ofcom.org.uk/binaries/broadcast/guidance/tech-guidance/digi_tech_code.pdf
"Technical Performance Specification"	The technical details set out in Schedule 2 inclusive together with the technical parts of the Eureka 147 Guidelines and the Ofcom Requirements as current from time to time. The Schedules to this Contract shall take precedence over the Eureka 147 Guidelines and the Ofcom Requirements in the event of any inconsistency except to the

SUBJECT TO CONTRACT

extent that, if at all, the Schedules contradict any prescriptive requirement of, or set a minimum specification below that required by the Eureka 147 Guidelines or the Ofcom Requirements in which circumstances the terms of the Eureka 147 Guidelines or the Ofcom Requirements shall to such extent prevail;

"Total Time of Service Availability"	in respect of each Multiplex Licence Region, the time for which Arqiva is contracted to transmit the Composite Content Signal from each of the relevant the Stations and/or across each separate part of the System (each separate part meaning that part used to provide the Transmission Service), free from Breakdowns, calculated as specified in Schedule 5;
"Transmission Service"	in respect of each Multiplex Licence Region, a transmission service using the System, comprising the transmission of the Composite Content Signal from each of the relevant Stations, for a minimum of the Total Time of Service Availability;
"Transmission Service Fee"	the transmission service fee as set out in the relevant part of Schedule 1 for the relevant Multiplex Licence Region;
"Transmitter Equipment"	transmitter and other equipment for MTS at any Station, which is owned by Arqiva and is dedicated exclusively to the Transmission Services, but excluding all masts, towers, antenna systems, feeders, combiners, filters and any other equipment provided for the purpose of Network Access or for the purposes of distribution services;
"Undertakings"	<p>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:</p> <p>https://assets.publishing.service.gov.uk/media/551949e7e5274a142b000238/notice_undertakings.pdf</p> <p>;</p>
"WTA"	the Wireless Telegraphy Acts, 1967 and 2006;
"WTA Licences"	the licence(s) the Customer is required to hold under the WTA in order to make use of the Transmission Service; and
"Year"	for each Multiplex Licence Region, the period from the Start Date to the first date indexation takes place pursuant to Clause 6.2, and thereafter each subsequent period of twelve (12) consecutive months or to the date of termination or expiry of the Contract if shorter.

1.2 Any reference in this Contract, express or implied, to an enactment includes references to:

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SUBJECT TO CONTRACT

- a) that enactment as amended, extended or applied by or under any other enactment before or after this Contract;
 - b) any enactment which that enactment re-enacts (with or without modification); and
 - c) any subordinate legislation made (before or after the Start Date) under that enactment, as amended, extended or applied as described in Clause 1.2(a) or 1.2(b).
- 1.3 References to Clauses and Schedules are references to clauses and schedules of this Contract as amended from time to time by prior written agreement between the parties. All Schedules shall, as so amended, be construed as and form part of this Contract and shall be subject to the other terms of this Contract. Without prejudice to the generality of the foregoing, statements in any Schedule which explain or qualify any of the Services shall have binding effect and be fully enforceable as part of this Contract. However, in the event of any conflict or inconsistency between any Schedule and the provisions contained in any Clause of this Contract, the provisions in the said Clause shall prevail.
- 1.4 Words in the singular shall include the plural and vice versa where the context requires or admits.
- 1.5 Clauses 1.1 to 1.4 apply unless the contrary intention appears.
- 1.6 The headings in this Contract do not affect its interpretation.
- 1.7 In this Contract any reference to a "**party**" is to a party to this Contract and also includes a reference to that party's, successors, transferees and permitted assigns; and any reference to "**include**" or "**including**" (or any similar term) is not to be construed as implying any limitation and general words introduced by the word "**other**" (or any similar term) shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things.
2. INSTALLATION PROJECT
- 2.1 The Customer and Arqiva have agreed the terms of the Installation Project described in Schedule 4, and have agreed that the Target Start Date for each Station. The Customer shall provide all the information and submit all documents required by Arqiva as part of the Installation Project.
- 2.2 Arqiva shall perform the Installation Project with all reasonable care and skill and to the standards reasonably expected of experienced builders of broadcasting systems.
- 2.3 Installation of the System at any Location shall be treated as having been completed once the Location and relevant Equipment is capable of operating in all material respects in accordance with the standards required under this Contract, and Arqiva has notified the Customer accordingly.
- 2.4 Arqiva shall carry out installation testing on the System once it has been installed at a Location to ensure that the System and every part of it operates in all material respects in

SUBJECT TO CONTRACT

accordance with the Technical Performance Specification. For the avoidance of doubt, Arqiva shall not be at risk of paying any service credits or super credits until after the installation testing has been successfully completed at the relevant Station.

- 2.5 Without prejudice to the remainder of this Clause 2, to the extent that the Customer is required to give its approval of or agreement to any element of the Installation Project or work performed or to be performed under it, the Customer shall respond as soon as reasonably possible and Arqiva shall not be held responsible for any failure to complete installation of the System by any Target Start Date to the extent such failure arises from the Customer's delay in giving such approval or agreement. Arqiva shall notify the Customer in writing as soon as it considers that the Customer's delay in giving such approval or agreement is likely to prevent Arqiva from being able to complete installation of the System by any Target Start Date.
- 2.6 Arqiva shall use reasonable endeavours to obtain all the Consents that are required to complete installation and operation of the System as contemplated by this Clause 2 other than the Multiplex Licence however Arqiva shall not be held responsible for any failure to complete installation of the System by any Target Start Date to the extent such failure arises from any third party delay or failure to give such approval or agreement. Arqiva shall notify the Customer in writing as soon as it considers that any third party delay or failure in giving such approval or agreement is likely to prevent Arqiva from being able to complete installation of the System by any Target Start Date.
- 2.7 The Target Start Dates for the Services are subject to input by DCMS and Ofcom and as such are subject to variation. In the event that variation to the Target Start Dates is required as a result of DCMS or Ofcom input, the Customer shall be deemed to agree such changes as are reasonably necessary to implement the variations to the Target Start Dates.
- 2.8 The Customer shall be responsible for obtaining, maintaining and complying with the Multiplex Licence.
- 2.9 Each party shall appoint an appropriate member of its staff as principal contact with respect to the Installation Project. The party's respective appointees shall meet on a regular basis as reasonably requested by the Customer, to monitor progress and Arqiva's representative shall provide to the Customer's representative at each such meeting an update detailing progress of the Installation Project since the previous meeting. Each party may replace its appointee at any time on prior written notice to the other party.
- 2.10 In the event that either:
- (i) there is a change to the Installation Project and/or Target Start Date by any Competent Authority or requested by the Customer;
 - (ii) Arqiva is prevented from completing installation of the System by the Target Start Date to the extent such failure arises from circumstances described in Clause 2.5 and/or Clause 2.6; and/or
 - (iii) there is a substitution of a Site for a replacement site due to refusal of planning consent by the relevant Local Authority;

then Arqiva shall be given reasonable time to comply (where applicable) and shall be remunerated by the Customer as provided for in Clause 6.18 of this Contract. Any alteration under this Clause shall not comprise a breach by Arqiva of this Contract and shall not result in liquidated damages becoming due to the Customer.

- 2.11 Subject to Clause 2.10 and the terms set out in Schedule 7 (Liquidated Damages), if Arqiva fails to complete the Installation Project at any Station by the relevant Target Start Date,

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SUBJECT TO CONTRACT

Arqiva shall pay liquidated damages to the Customer in accordance with the terms set out in Schedule 7.

- 2.12 The date on which Arqiva completes the Installation Project, shall be the date when Arqiva informs the Customer the relevant Services can be provided on the System at the relevant Station, shall be the "**Start Date**" for that Station.
- 2.13 Unless otherwise agreed in writing, in respect of each Station Arqiva shall commence provision of the Services and shall commence charging in accordance with Clause 6.18 on and from the relevant Start Date.
- 2.14 Arqiva's obligations with respect to carrying out and completing the Installation Project and thereafter commencing provision of the Services are subject to all Consents including all requisite planning permissions and frequency clearances having been obtained and Arqiva being in possession of all requisite Licences; and the Customer being in possession of the relevant Multiplex Licence.
- 2.15 Arqiva reserves the right to make amendments to the System, Technical Performance Specification, Sites and/or the Aggregate Fees and consent from the Customer shall not be unreasonably withheld. Such changes shall not be deemed to be a breach of this Contract by Arqiva and Arqiva shall be given reasonable time to comply (where applicable) and shall be remunerated by the Customer as provided for in Clause 6.18.

3. THE SERVICES

3.1 Not Used.

3.2 Not used.

3.3 Subject to the terms and conditions of this Contract, on and from the Start Date, Arqiva shall provide to the Customer the Transmission Service.

3.4 Arqiva shall:

- (a) provide the Services and operate and maintain the System in accordance with Good Practice and any and all applicable laws;
- (b) use all reasonable endeavours to ensure that the Services and the System at all times meet, exceed, observe and/or otherwise comply with, as applicable, the provisions, conditions, standards or other requirements of the Ofcom Requirements (and Arqiva shall notify the Customer of any failure (or potential failure) to meet the Ofcom Requirements as soon as it is aware of the same or ought reasonably to be aware of the same);
- (c) do or refrain from doing anything to enable the Customer and/or any Content Provider to remain in compliance with the Ofcom Requirements insofar as this relates to the distribution or transmission of the Composite Content Signal; and

SUBJECT TO CONTRACT

- (d) without prejudice to any of the foregoing and in order to enable the Customer to fulfil its obligations under the Multiplex Licence, use all reasonable endeavours to ensure that the Composite Content Signal carrying the Licensed Service attains high and professional standards in terms of technical quality and reliability throughout the Multiplex Licence Region.
- 3.5 Without prejudice to the generality of Clause 3.4, Arqiva shall ensure that the System complies with the Technical Performance Specification and any other relevant technical standards notified by any Competent Authority under the Statutes to Arqiva or to the Customer from time to time provided that if there is a change in any such standards after the Start Date, Arqiva is given reasonable time to comply and is remunerated as provided in Clauses 6.9 or 6.12 (as applicable).
- 3.6 Arqiva's obligations to provide the Services as provided in this Clause 3 shall, subject to Clause 3.14 below, apply only if the Content Signals received conform to the standards laid down in Schedule 2 ALWAYS PROVIDED that, if non-conforming Content Signals are delivered which are nonetheless in a form capable of being conveyed by means of the System, Arqiva shall not cease provision of any of the Services by reason of the delivery of non-conforming Content Signals as aforesaid unless such conveyance would be unlawful or may adversely affect to a material extent any services provided by Arqiva to any third party, in which event Arqiva shall give prompt written notice of any such cessation to the Customer and Arqiva shall use all reasonable endeavours to ensure that any such cessation is no more than is necessary and that it shall resume the due transmission of the Composite Content Signal as soon as practicable thereafter. Without prejudice to the foregoing, Arqiva shall carry the Composite Content Signal received from the Standard Interface and provide the Composite Content Signal without delay, alteration, deletion or addition (except as may occur in the normal operation of the System up to a maximum delay of five (5) seconds).
- 3.7 Subject at all times to the obligations and requirements set out in Clause 3.4 above, Arqiva may substitute any Equipment after consultation with the Customer (save where, in the case of Equipment, the substitution forms part of standard first-line corrective maintenance practice to exchange a faulty unit with a replacement of identical or equivalent functionality).
- 3.8 The Customer acknowledges that Arqiva is only a licensee of some Sites and that if the owner of any Site wishes to dispose of it Arqiva's licence to occupy such Site may be terminated. In those circumstances, Arqiva shall within ten (10) Business Days after it has become aware that its licence shall be so terminated, notify the Customer of such proposed termination and within thirty (30) days after such notification put forward proposals under which it might upon termination be able to provide or procure the provision of a suitable substitute for any Station or Equipment used from or on the relevant Site, with effect from the date of termination of such licence or, if that is not reasonably practicable, then as soon as is reasonably practicable thereafter. Arqiva shall ensure that any substitute Station and/or Equipment is approved and agreed in advance by Ofcom, and such approval/agreement (including any details relating thereto) evidenced to the Customer upon request. For the avoidance of doubt, the Customer shall be liable for any additional costs arising pursuant to or that are otherwise related to this Clause ALWAYS PROVIDED that any such additional costs are reasonable and properly incurred, compliant with the Undertakings and, as a condition of Arqiva being able to recover the same, Arqiva has used reasonable endeavours to minimise the amount of any such additional costs and has obtained the Customer's prior approval of the proposed additional costs.

SUBJECT TO CONTRACT

- 3.9 Where Arqiva receives directions from Ofcom or any other competent authority under the Licences, or is ordered by a court of competent jurisdiction, to cease or suspend transmission of the Composite Content Signal or any of the Content Signals, Arqiva shall cease or suspend such transmission for such period as it is so directed or ordered. Arqiva shall not by reason of such suspension or cessation of transmission be in breach of its obligations to the Customer, and therefore any such suspension or cessation shall constitute a Force Majeure Event (in which case Clause 9 shall apply) unless such suspension or cessation occurs as a result of Arqiva's breach of this Contract (in which case, for the avoidance of doubt, the Customer shall not be liable to pay the Aggregate Fee during any period of cessation or suspension). Arqiva shall give the Customer as much advance notice as it is reasonably able of such suspensions and cessations to the extent that it is practicable and lawful for it so to do.
- 3.10 If the Customer should be directed by Ofcom or any other competent authority to suspend broadcasting of the Composite Content Signal or any of the Content Signals for any reason then, upon receipt of written notification to that effect signed by an authorised representative of the Customer, Arqiva shall suspend the Services (or relevant part of them) for the period notified by the Customer and such suspension or cessation shall constitute a Force Majeure Event (in which case Clause 9 shall apply save only that in the case that such suspension or cessation has been a direct consequence of the Customer's breach of the Multiplex Licence or any other statutory obligation, the Customer shall remain liable to pay the Aggregate Fee during any period of cessation or suspension of transmission).
- 3.11 As between Arqiva and the Customer, the Equipment shall, at all times be and remain the exclusive property of Arqiva. All Equipment shall be and remain Arqiva's insurable risk throughout the duration of this Contract.
- 3.12 Arqiva shall use all necessary skill and care in its provision of the Services and shall at all times comply with the Licences in all material respects.
- 3.13 Arqiva shall conduct itself in a manner which is consistent with, and which enables the Customer to observe, such non-technical elements of the Multiplex Licence (or draft Multiplex Licence), ALWAYS PROVIDED that:
- (i) the Customer shall reimburse any resultant reasonable increase in Arqiva's costs provided that the same shall have been approved by the Customer in advance or otherwise resolved pursuant to Clause 6.9 or 6.12 (as applicable), such approval not to be unreasonably withheld or delayed; and
 - (ii) any conflict or inconsistency between Arqiva behaving in the manner contemplated by this Clause 3.13 and any other statutory obligation of Arqiva, shall constitute a Force Majeure Event and the Customer shall liaise with Ofcom to resolve the problem.
- 3.14 Each party shall promptly provide the other party with all information the other party reasonably requires from time to time to facilitate the proper and timely discharge of the other party's obligations under this Contract.

SUBJECT TO CONTRACT

3.15 The Customer shall use all reasonable endeavours to ensure that its other suppliers including, all Content Providers, cooperate with Arqiva as Arqiva may reasonably require and notify to the Customer and thereafter operates reasonable and commercially practicable protocols to facilitate its provision of the Services and the Customer's provision of the Licensed Service. Arqiva shall at all times cooperate with the Customer and all Content Providers and shall use all reasonable endeavours to ensure that it can provide the Services with the Content Signals delivered to the Standard Interface by or on behalf of the Content Providers.

3.16 Arqiva will take out and maintain in respect of all periods during which this Contract is in force and for a period of 12 months after its expiry or earlier termination insurance as would be maintained by a reasonably prudent person, including to cover public liability and damage to equipment caused by third party, fire or theft under this Contract. Arqiva shall on request provide evidence of such insurance to the Customer.

4. OPERATION AND MAINTENANCE

4.1 In accordance with Good Practice and in order to ensure compliance with the Ofcom Requirements, Arqiva shall provide transmitter system status monitoring, fault diagnosis and remote control of the Equipment.

4.2 Without prejudice to the generality of the foregoing (or any other provision of this Contract) and notwithstanding Clause 7.1, Arqiva shall provide to the Customer (and the Customer shall be entitled to provide the same to the relevant Content Providers) a monthly report on the provision of its Services which shall include a report (together with reasonable supporting information and other information reasonably requested by the Customer) on the status and performance (including Faults, Breakdowns and Total Time of Service Availability) of the System. Arqiva shall use all reasonable endeavours to ensure the accuracy of the report and shall provide such further evidence or documentation as the Customer reasonably requires in respect of any matters covered by the report. The report will be provided in the form currently agreed between the parties.

4.3 Subject to the remainder of this Clause 4 Arqiva shall:

- a) ensure that on and from the Start Date and during the period of this Contract it has or it shall procure the provision of such Equipment together with such other facilities, spares and maintenance services as is necessary, to enable Arqiva to provide the Services on the terms and conditions set out in this Contract; and
- b) plan and carry out maintenance as is necessary.

4.4 Arqiva may at any time (and where practicable, on giving reasonable prior notice to the Customer) interrupt the Services to carry out maintenance of or other work on (collectively "work") any Equipment that it reasonably regards as essential PROVIDED THAT:

- a) if there is no reasonable likelihood that the failure to carry out any such work will affect services provided to any third parties, such work will be performed only at times and for estimated durations approved by the Customer. If the Customer does not approve any Arqiva request to interrupt the Services to perform such work, Arqiva reserves the right to carry out

SUBJECT TO CONTRACT

and make additional reasonable charges (such charges to be calculated on the basis set forth in Clause 6.13) for any corrective maintenance that subsequently becomes necessary as a result thereof;

- b) in any other circumstances such work shall be carried out on the basis set forth in Clause 4.5; and
- c) where Arqiva exercises its right to interrupt the Services or carry out maintenance work pursuant to this Clause 4, Arqiva shall use all reasonable endeavours to ensure that any such interruption or work causes the minimum of disruption and Arqiva shall give reasonable prior written notice to the Customer (and third parties, which might be affected) of such work or interruption, and the estimated duration thereof.

4.5 To the extent that the Services are provided:

- a) using Equipment or facilities which are also used for the benefit of third parties (whether by Arqiva or another person) Arqiva may interrupt, or permit the interruption of, the Services for such work to be performed as is required either to ensure that the said Equipment and facilities are maintained in reasonable repair and condition or to enable new or replacement equipment safely to be installed. Where practicable, Arqiva shall consult with and give the Customer reasonable advance notice of such maintenance (usually not less than seven (7) days), agree estimated timing and duration and perform the work during periods when the transmission priority is low, paying due regard to equivalent obligations owed by Arqiva to other users of the equipment and facilities. Where not practicable, Arqiva shall give notice to the Customer as soon as practicable after such interruption; or
- b) from a Site other than an Arqiva owned Site, the Customer acknowledges and accepts that Arqiva may be required by the Site Owner to interrupt the Services provided at and from such Site, on reasonable prior notice in the case of planned access or forthwith in case of emergency, so that safe access may be gained to any mast or the Equipment at such Site. That said, it is acknowledged by both parties that the Site Owner may interrupt, or require Arqiva to interrupt, such Services only:
 - (i) in the event of any life or property threatening emergency;
 - (ii) where any interference caused by the Equipment is creating significant degradation to the services of the users of the Site and the degradation still exists after the Site Owner has taken all reasonable measures to contact and inform Arqiva of such degradation and, where practicable to do so, the Site Owner has allowed Arqiva a reasonable period to remedy any such interference. In these circumstances, Arqiva shall use all reasonable endeavours to rectify the interference within the period allowed;
 - (iii) if it is required to do so by any Government department or regulatory authority of competent jurisdiction; or
 - (iv) with the agreement and at the request of Arqiva (which shall not be forthcoming without the Customer's prior consent, such consent not to be unreasonably withheld or delayed),

SUBJECT TO CONTRACT

and Arqiva shall in any event under either (a) or (b) above ensure that, where practicable, interruptions are minimised, occur at an estimated time and for a duration agreed with the Customer beforehand and during periods when transmission priority is low and that any work is carried out causes the minimum of disruption.

- 4.6 At the reasonable written request of the Customer, from time to time, giving reasonable prior notice, Arqiva shall permit the Customer's authorised representative to visit a Site for the purpose of inspecting the part of the System located there ALWAYS PROVIDED that such representative shall at all times be accompanied by an Arqiva representative, such visits shall be free of charge if timed to coincide with an Arqiva visit to the Site in question subject to discretionary reasonable charges calculated by reference to Arqiva's prevailing rates if outside of such times and any such access shall be subject to the rules of the Site Owner (if applicable) which shall be observed by the Customer's representative at all times.

5. BREAKDOWNS

- 5.1 Arqiva shall notify the Customer's nominated representative of any Fault in a Fault Notice in each case as soon as reasonably practicable after the occurrence of the relevant event. Arqiva shall use all reasonable endeavours (including by the exercise of its rights against any sub-contractor and otherwise in accordance with Good Practice) to minimise any interruption to the provision of its Services under this Agreement.

- 5.2 The Customer shall notify the SMC by telephone or email of any Breakdown or Fault at any Content Provider's facility or at any point of the System of which it becomes aware and as soon as reasonably practicable after the information is available to the Customer and Arqiva shall confirm this as soon as reasonably practicable by issuing a Fault Notice.

- 5.3 Arqiva shall ensure that any Breakdown or Fault is repaired as soon as reasonably practicable after the time from detection by the SMC or receipt by the SMC of notification of the Breakdown or Fault. Arqiva shall use reasonable endeavours to repair those impairments which result only in a loss of redundancy as soon as is reasonably practicable for a provider of Services in those circumstances and in accordance with Good Practice.

- 5.4 The restoration of the Composite Content Signals at a reduced level so as to bring a Breakdown to an end shall not relieve Arqiva of its obligation fully to restore the Composite Content Signals as soon as practicable thereafter.

6. FEES AND PAYMENT

- 6.1 Subject to the remainder of this Clause 6, as consideration for Arqiva's provision of the Services the Customer shall pay to Arqiva the relevant Aggregate Fee for this Contract as specified in Schedule 1. The charges per Station in respect of the Installation Project and in respect of the subsequent provision of the Services commencing on the Start Date shall be as follows:

SUBJECT TO CONTRACT

- (i) Transmission Services Fee; and
- (ii) ACI Filler Fee (where applicable);

together the Aggregate Fee for the relevant Station, as set out in Schedule 1.

- 6.2 From the Start Date and annually thereafter for the duration of this Contract the Aggregate Fee for each Station shall be increased by the percentage increase equal to the percentage increase (if any) in the RPI-1 during the preceding 12 months. If RPI-1 decreases during the relevant period, the Aggregate Fee for each Station (as previously increased in accordance with this Clause, if applicable) shall be unchanged
- 6.3 Payment of the Aggregate Fee shall commence on the Start Date.
- 6.4 Not Used.
- 6.5 The Customer shall pay the Aggregate Fee to Arqiva each Year in twelve (12) equal monthly instalments on the first day of the month, or first Business Day thereafter, which shall constitute the Due Date. Payment of the Aggregate Fee shall be effected by Banker's Direct Debit.
- 6.6 Subject to Clause 6.5, all other charges of Arqiva hereunder shall be payable within thirty (30) days of the date of the relevant invoice.
- 6.7 All fees and charges referred to in this Contract are exclusive of Value Added Tax which shall, if applicable, be payable, unless expressly indicated otherwise in this Contract, by the Customer to Arqiva, or by Arqiva to the Customer where applicable, in addition.
- 6.8 If the Customer requests Arqiva in writing to do work which falls outside the scope of this Contract and Arqiva agrees to perform such work, Arqiva's charges shall be calculated in accordance with Clause 6.13.
- 6.9 If the Customer requests Arqiva in writing to carry out any further work as a result of alterations to the technical parameters which the Customer is required to meet under the Eureka 147 Guidelines or the Ofcom Requirements after the Start Date, Arqiva reserves the right to make separate additional charges in respect of such work (which charges Arqiva shall substantiate and which Arqiva shall agree with the Customer before being incurred) and Arqiva shall use all reasonable endeavours to minimise such charges and if the same service is provided by Arqiva to third parties, the Customer shall only be charged the applicable pro rata allocation. Any dispute as to the charges due to Arqiva under this Clause 6.9 shall be resolved by an independent expert appointed pursuant to Clause 6.16. Where such work is at the instigation of Arqiva, it shall give the Customer as much advance notice of such work, and Arqiva's likely charges, as it is reasonably able so as to enable the Customer to make such observations, and raise such objections as it thinks fit and Arqiva shall not commence such work until the Customer has given its written approval, albeit that any adverse consequence resulting from the Customer's failure promptly to give such approval shall constitute a Force Majeure Event.

SUBJECT TO CONTRACT

- 6.10 If either party ("the first party") fails to pay any amount payable (being sums properly due and not in dispute) by it under this Contract within thirty (30) days from the relevant Due Date, without prejudice to the other party's other remedies the first party shall become liable for and, on the other party's demand from time to time, it shall pay interest on such overdue amount from the Due Date up to the date of actual payment whether before or after judgement at the rate of 3 % per annum over the base rate of Bank of Scotland plc. Such interest shall accrue from day to day and shall be computed on the basis of a year of 365 days for the number of days elapsed.
- 6.11 If the Customer is more than sixty (60) days overdue with payment of any instalment of the Aggregate Fee (which is properly due and not in dispute) Arqiva reserves the right, provided that it has given no less than seven (7) days written notice of its intention to suspend for such overdue payment, to suspend provision of the Services until the Customer has rectified matters. Moreover, the Customer shall not be relieved of any liability to pay fees under this Contract in respect of any period during which Arqiva's provision of the Services has been suspended pursuant to this Clause 6.11.
- 6.12 If the cost to Arqiva of performing its obligations under this Contract shall be increased by reason of any amendment, extension, enactment or re-enactment of any Statute after the Start Date or if Arqiva is required to carry out any further work in order to be in compliance, in all material respects, with any change to the Licences or other changes to its legal obligations directly applicable to this Contract, the applicable amount of any such increase shall be notified to the Customer, together with documentary substantiation of any such increase, and shall be added to the Aggregate Fee ALWAYS PROVIDED that any such increase in the Aggregate Fee is reasonable and properly incurred, compliant with the Undertakings and, as a condition of Arqiva being able to recover the same, Arqiva shall use reasonable endeavours to minimise the amount of any such increase and has obtained the Customer's prior written approval of the proposed increase. Arqiva shall give the Customer as much advance notice of any work required under this Clause 6.12, and Arqiva's likely charges, as is practicable. Notwithstanding the foregoing, Arqiva may carry out such further work as it believes is necessary in the circumstances. Any dispute as to whether any work under this Clause 6.12 is necessary shall be resolved by an independent expert appointed pursuant to Clause 6.16.
- 6.13 Subject to Clause 6.17, Arqiva's charges in respect of any work to be performed under any other provision of this Contract which cross-refers to this Clause 6.13 shall be calculated by reference to Arqiva's reasonable prevailing standard rates of charge ALWAYS PROVIDED that any such charges are reasonable and properly incurred, compliant with the Undertakings and, as a condition of Arqiva being able to recover the same, Arqiva shall use reasonable endeavours to minimise the amount of any such charges and has obtained the Customer's prior written approval of the proposed charges.
- 6.14 Any percentage increase in RPI that is required to be calculated pursuant to this Clause 6 shall be calculated to at least eight decimal places.
- 6.15 Subject to Clause 6.17, if any royalties, licence fees or other charges additional to those in force as at the Start Date are determined by the Eureka 147 DAB Project which materially

SUBJECT TO CONTRACT

increase the cost to Arqiva of providing the Services, the applicable amount of such increase shall be notified to the Customer, together with documentary substantiation of such increase, and shall be payable by the Customer in addition to the Aggregate Fee provided that Arqiva has used reasonable endeavours to minimise the amount of any such increase.

- 6.16 If a dispute arises in relation to any factual matter under any provision of this Contract which cross refers to this Clause 6.16, then either party shall be entitled, by notice in writing to the other, to refer the matter in the first instance to the Transmission Adjudicator. In the event of the matter not being within the remit of the Transmission Adjudicator, then either party shall be entitled, by notice in writing to the other, to then refer the matter to an independent expert. In the absence of agreement between the parties as to the identity of the expert within thirty (30) days of either party's aforesaid notice, the expert shall be appointed by a nominee of the President of the Institution of Engineering and Technology. Arqiva and the Customer shall cooperate in providing to the expert such information as the expert reasonably requests to assist in his deliberations. Where relevant, pending the expert's decision the Aggregate Fee shall not be changed. In addition the following provisions shall apply:
- a) the terms of appointment of the expert shall include a commitment by the parties to supply the expert with the assistance, documents and information he requires for the purpose of the determination;
 - b) the expert shall have the power to appoint other professional advisers for the purpose of the relevant determination;
 - c) the expert shall be instructed to observe the same obligations of confidentiality in relation to information or material disclosed by each party to him as that party is subject to itself pursuant to Clause 14;
 - d) a requirement on the expert to (i) give his determination within twenty-one (21) days or such longer period as he certifies is necessary and (ii) hold professional indemnity insurance both then and for three (3) years following the date of determination; and
 - e) each party shall bear its own costs, and the cost of the expert and any such other professional advisers appointed pursuant to this Clause shall be borne between the parties as determined by the expert (or, if he declines to make a determination, equally).
- 6.17 Without prejudice to Clause 16.3, where the Customer requests a change to or under this Contract, Arqiva shall promptly enter into good faith negotiations with the Customer in relation to the requested change. Any revision to the charges payable by the Customer under this Contract shall be determined in accordance with paragraph 9 (Charges for New Transmission Agreements) of the Undertakings. In conducting negotiations with the Customer, including the calculation of any revised charges, Arqiva shall respond promptly to each communication from the Customer.
- 6.18 Where Arqiva is entitled to increase the Aggregate Fee in accordance with this Clause, as provided in this Contract, then Arqiva shall acting reasonably:
- (a) Calculate the relevant increase in the Aggregate Fee, with reference to the circumstances leading to the increase as set out in Clause 2.10, Clause 2.15 and Schedule 1 Paragraph 4(a)(ii);

SUBJECT TO CONTRACT

- (b) Arqiva shall notify the Customer of the amount and date of commencement of any such increase together with documentary evidence and will give the Customer as much notice of any increases to the Aggregate Fee as is practicable; and
- (c) Any dispute as to the increase in fees due to Arqiva under this Clause shall be resolved by an independent expert in accordance with Clause 6.16.

Arqiva shall use reasonable endeavours to minimise such increases to the Aggregate Fee.

7. SERVICE CREDITS and Super Credit Arrangements

- 7.1 If at the end of any Year after the Start Date Arqiva has failed to achieve the Total Time of Service Availability at any Station and/or across any part of the System as divided up between the separate parts of the System used to provide the Transmission Service, Arqiva shall incur a liability to pay Service Credits to the Customer which shall be calculated by reference to Schedule 6 and payable in accordance with Clause 7.3.
- 7.2 Arqiva's aggregate liability to the Customer under Clause 7.1 shall not exceed, in respect of any Year, fifteen per cent (15%) of the aggregate of the total sums payable by the Customer to Arqiva in respect of the relevant Licensed Service under this Contract in that Year (excluding interest payable under Clause 6.10 or otherwise) (the "Annual Service Credit Cap").
- 7.3 At the end of each Year, the aggregate of all Service Credits during that Year shall be calculated by Arqiva and agreed by the Customer. Arqiva shall provide such substantiation of its calculations as the Customer reasonably requests. Any liability of Arqiva to pay Service Credits to the Customer shall be satisfied by Arqiva paying to the Customer the amount due within twenty-eight (28) days of the end of the Year in question, the end of such Year being the "Due Date". If the Customer disputes such calculation and such dispute is not resolved within sixty (60) days after the end of the relevant Year, either party may refer the matter for determination by an expert pursuant to Clause 6.16.
- 7.4 Not Used
- 7.5 Not Used
- 7.6 If Arqiva commits a Persistent Failure the Customer may submit a Super Credit Notice to Arqiva.
- 7.7 Arqiva shall have one (1) month following receipt of a valid Super Credit Notice within which to rectify its poor performance, such rectification to be as required by the Rectification Process, and achieve a level of network availability equal to or better than the Total Time of Service Availability (being 99.8%) for that one (1) month period.

SUBJECT TO CONTRACT

- 7.8 Where Arqiva fails to rectify its poor performance as required under Clause 7.7 above, then the Customer shall be entitled to claim a Super Credit by issuing a Super Credit Claim.
- 7.9 If the Customer issues a valid Super Credit Claim, Arqiva shall pay the applicable Super Credit within thirty (30) days of receipt of the Super Credit Claim.
- 7.10 Acceptance of the Super Credit by the Customer shall be conditional upon the Customer waiving its right to terminate and/or step-in in respect of the relevant Persistent Failure but without prejudice to any right to terminate and/or step-in which may arise thereafter under this Contract, provided that the performance issues that 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.
- 7.11 Any liability of Arqiva to pay Super Credits will be in addition to any other liability of Arqiva for Service Credits or liquidated damages or otherwise under this Contract (and accordingly, the amount of Super Credits paid to the Customer shall not be included in the calculation of the aggregate amount of the Service Credits when being applied against the Annual Service Credit Cap).

8. LIABILITY

- 8.1 Each party's obligations and liabilities to the other arising out of or in connection with the provision of the Services and any other services provided hereunder shall be only those expressly set out in this Contract together with those obligations which are implied by law to the extent, but to that extent only, that by law they cannot be restricted, limited or excluded provided always that in carrying out their respective obligations under this Contract both parties shall use appropriately qualified personnel and shall exercise all reasonable skill and care.
- 8.2 Subject to Clause 8.1, no collateral contract and no representation, warranty, condition, stipulation or obligation whatsoever without limitation, whether arising (i) in contract, tort including negligence or otherwise; or (ii) expressly, impliedly, at common law, by statute, custom, usage or course of dealing or otherwise is given, made or undertaken by either party or its officers, employees, sub-contractors or agents in relation to their Services or any other services provided hereunder (without limitation, whether in relation to its description, state, quality, performance, fitness for any particular purpose or other characteristic on delivery or at any other time) all of which are hereby excluded.
- 8.3 Neither party shall be liable for any costs, claims, damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty which are calculated by reference to profits, advertising revenue, subscription revenue or accruals or for any indirect or consequential loss suffered by the other party.

SUBJECT TO CONTRACT

- 8.4 NOT USED.
- 8.5 Without prejudice to Clauses 10 and 12, and subject to Clause 8.3, either party's aggregate liability in contract, tort or otherwise for breaches of its duties to the other party arising by reason of or in connection with this Contract shall be limited in any Year to one hundred and twenty-five per cent (125%) of the Aggregate Fee payable by the Customer to Arqiva under this Contract in respect of that Year.
- 8.6 For the avoidance of doubt nothing in this Contract shall exclude or restrict either party's liability for fraud or other criminal act or for death or personal injury resulting from its own negligence or other tort.
- 8.7 Subject to Clause 8.3, Arqiva shall indemnify the Customer and keep the Customer fully and effectively indemnified against any loss, liability, cost, action, claim, fine, penalty or expense (including reasonable legal costs) sustained or incurred by or awarded against the Customer by reason of the Services provided by Arqiva (or on its behalf) or without limitation pursuant to any claim (a "Claim") by any third party (including Ofcom or any Content Provider) arising by reason of:
- (a) any effect on or alteration of the Content Signals due to the defective operation of the System (including the Stations) or the Equipment caused by Arqiva's breach of contract, negligence or deliberate act; and/or
 - (b) any failure by Arqiva to comply with the Ofcom Requirements (or any of them) insofar as they relate to the Services; and/or
 - (c) any tampering, alteration or misuse of any Content Signal after delivery thereof to the Standard Interface or any Composite Content Signal due to Arqiva's wilful, negligent or deliberate act; and/or
 - (d) any material breach by Arqiva of its obligations under this Agreement.
- 8.8 The parties shall follow the process set out below in relation to any Claim under Clause 8.7:
- a) the Customer shall notify Arqiva as soon as reasonably practicable of any such Claim or threatened or potential Claim and, at Arqiva's sole cost, shall provide reasonable assistance in connection with such Claim;
 - (a) subject to (c) below, the Customer shall not admit or settle such Claim without the prior consent of Arqiva (such consent not to be unreasonably withheld or delayed) and the Customer shall give Arqiva, at Arqiva's cost, all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim and shall not wilfully make any admissions or statements prejudicial to Arqiva; and
 - (b) above shall not apply unless:
 - (i) Arqiva has been advised by specialist solicitors or counsel that it is reasonable to resist, compromise or settle such Claim in the manner proposed by Arqiva and has produced evidence of such independent advice (including a copy of any written advice) to the Customer; and

SUBJECT TO CONTRACT

- (ii) Arqiva shall keep the Customer fully informed and consult with it on the conduct of such Claim and shall hold the Customer harmless from any award of costs against or other liability suffered or incurred by the Customer as a consequence of Arqiva taking any of the actions contemplated by (b) above.

9. FORCE MAJEURE

9.1 Neither party shall be liable for its failure to perform its obligations for any period or for resulting loss, injury or damage to the extent only that such performance is prevented or directly adversely affected to a material degree by any of the following events (collectively "Force Majeure Events"):

- a) any Act of God, insurrection or civil disorder, war or military operations, national or local emergency, acts or omissions of Government, highway authority or other competent authority, industrial disputes of third parties, fire, flood, severe inclement weather, loss of mains electricity other than where alternative backup power including UPS is provided (and where such loss of mains electricity is not caused directly or indirectly by Arqiva), national epidemic; or
- b) any other cause whether similar or dissimilar outside either party's reasonable control;

PROVIDED THAT either party shall in any event continue to perform such of its obligations as are not affected to the extent in question.

9.2 The period of excused non-performance shall be limited to the duration of such events provided that should any Force Majeure Event affecting Arqiva last for a period of more than ninety (90) days, the Customer shall be entitled to terminate this Contract in relation only to the Station or Stations affected forthwith upon written notice to Arqiva, in which event the Aggregate Fee shall be reduced, from that date, by such amount (if any) as is equitable, paying due regard to the extent to which the Services are reduced as a consequence of the Station or Stations affected no longer being part of this Contract.

9.3 Arqiva shall give written notice within three (3) days to the Customer of any claim that the performance of its obligations is prevented or adversely affected by any of the Force Majeure Events referred to in Clause 9.1 as aforesaid giving details so far as practicable of the cause and consequence of the event and the likely duration of the period of non-performance and shall give notice in like manner to the Customer when its performance is no longer adversely affected.

9.4 In the event of the failure by either party to perform any of its obligations by reason of a Force Majeure Event as provided in Clause 9.1 it shall recommence performance as soon as reasonably practicable and shall use reasonable endeavours to mitigate the effect of the Force Majeure Event.

SUBJECT TO CONTRACT

- 9.5 During any period during which Arqiva is excused performance under Clause 9.1, the Customer shall remain liable to pay the Aggregate Fee (apportioned on a daily basis over a Year) at the full rate for the first thirty days which would otherwise have been payable in respect of the Station or Stations affected.
- 9.6 Where a Force Majeure Event occurs which causes the total suspension of the Transmission Services from any Station, the Customer shall be entitled to serve notice upon Arqiva requiring that unless the Services are resumed within a period of fourteen (14) days from the deemed date of delivery of the notice, the Customer shall be entitled to receive a pro-rata reduction of the Aggregate Fee for that Station from the start of the suspension of the provision of the Service until either the Transmission Services are resumed or a temporary service has been provided.
- 9.7 Any dispute as to the charges due to Arqiva under this Clause 9 shall be resolved by an independent expert appointed pursuant to Clause 6.16.

10. INTELLECTUAL PROPERTY

- 10.1 The Customer hereby represents that it has or will have all requisite authority to enable it to grant the licence to Arqiva under Clause 10.2.
- 10.2 The Customer hereby grants to Arqiva for the period of distribution and transmission of the relevant Content Signals as part of the relevant Composite Content Signal a personal, non-transferable, non-exclusive and royalty-free licence to transmit the Content Signals as part of the Composite Content Signal for the sole purpose of providing the Services. Such licence shall be revocable by the Customer provided that the only effective revocation shall be revocation in writing served on Arqiva at a time which affords Arqiva reasonable opportunity to prevent transmission of the Content Signal in question and, Clause 20.2 notwithstanding, shall be deemed served upon receipt by Arqiva. For the avoidance of doubt, Arqiva shall cease and transmitting any Composite Content Signal as soon as practicable upon written notice to Arqiva by the Customer.
- 10.3 Subject to Arqiva's compliance in all material respects with Clauses 10.2, 10.4, 10.5 and 10.7, the Customer agrees during this Contract and thereafter to indemnify and keep indemnified Arqiva from and against all claims, costs (including, without limitation, reasonable legal costs), damages and expenses incurred by or awarded against Arqiva under any final judgement of a court of competent jurisdiction or agreed by the Customer in settlement resulting directly from any claims by third parties that any of the Content contained in any of the Content Signals or the distribution or transmission in accordance with the terms of this Contract by Arqiva, or sub-contractors of Arqiva, of such Content:
- is in breach of any duty of confidentiality or privacy;
 - infringes or prejudices any existing or future Intellectual Property Rights;
 - is defamatory or obscene; or

SUBJECT TO CONTRACT

- infringes the Act or any voluntary codes of conduct in relation to the broadcasting of programmes;

save in respect of any Content Signals or Composite Content Signal for which an effective revocation has been served pursuant to Clause 10.2.

- 10.4 Arqiva shall notify the Customer within five (5) days of any claim from a third party as referred to in Clause 10.3 (a "Third Party Claim") and, at the Customer's sole cost, shall provide reasonable assistance in connection with the Third Party Claim.
- 10.5 Subject to Clause 10.6, the Customer shall be entitled to resist, compromise or settle a Third Party Claim in the name of Arqiva at the Customer'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 Arqiva shall give the Customer, at the Customer's cost, all reasonable cooperation, access and assistance for the purposes of considering and resisting such Third Party Claim and shall not wilfully or negligently make any admissions or statements prejudicial to the Customer.
- 10.6 Clause 10.5 above shall not apply unless:
- a) the Customer has been advised by a specialist solicitor or counsel that it is reasonable to resist, compromise or settle the Third Party Claim in the manner proposed by the Customer and has produced evidence of such independent advice (including a copy of any written advice) to Arqiva; and
 - b) the Customer shall keep Arqiva fully informed and consult with it on the conduct of the Third Party Claim and shall hold Arqiva harmless from any award of costs against or other liability suffered or incurred by Arqiva as a consequence of the Customer taking any of the actions contemplated by Clause 10.5.
- 10.7 The Customer's liability under Clause 10.3 shall be unlimited.
- 10.8 Subject to the next sentence, the Customer agrees that any original document, hardware or prototype produced by Arqiva in its performance of the Services and all Intellectual Property Rights developed or created by Arqiva in the performance of the Services or any other services hereunder shall vest in and be owned by Arqiva provided that Arqiva shall grant (and hereby does grant) the Customer free of charge a licence of such Intellectual Property Rights as are required for the exercise of the Customer's rights under this Contract. With respect to any work performed by Arqiva pursuant to Clause 6.13, the parties may specifically agree their respective shares in the ownership of any original document, hardware or prototype produced and Intellectual Property Rights to be developed or created by Arqiva in the performance of such work ALWAYS PROVIDED that all such ownership shall be and remain vested in Arqiva unless the parties specifically agree to the contrary.
- 10.9 Nothing in this Contract shall operate to vest in or transfer to Arqiva broadcasting copyright or any other Intellectual Property Rights under the Copyright, Designs and Patents Act 1988 in the Content Signals or any equivalent rights anywhere in the world transmitted by Arqiva

SUBJECT TO CONTRACT

pursuant to this Contract or copyright in any Content and any such rights shall, as between Arqiva and the Customer, vest solely in the Customer.

10.10 Arqiva hereby warrants that:

- a) Arqiva owns or has a valid licence to use all Intellectual Property Rights necessary for the provision of the Services, including as part of the System and its component parts;
- b) each of the Intellectual Property Rights owned by Arqiva and/or licensed and used by Arqiva in the provision of the Services:
 - (i) is valid, subsisting and enforceable and nothing has been done or omitted which may provide grounds for a claim that it may cease to subsist, be valid or enforceable;
 - (ii) do not infringe any third party rights; and
 - (iii) is not the subject of a claim, challenge or opposition from any person including (without limitation) any employee of Arqiva as to title, ownership, validity, enforceability, compensation or otherwise.

10.11 Arqiva shall indemnify the Customer and keep the Customer fully and effectively indemnified against any loss, liability, cost, action, claim, fine, penalty or expense (including reasonable legal costs) sustained or incurred by or awarded against the Customer by reason of the Services provided by Arqiva (or on its behalf) or without limitation pursuant to any claim (a "Claim") by any third party (including Ofcom or any Content Provider) arising by reason of the System (and the Customer and/or the Content Provider's use of it) and/or the provision of the Services infringing the rights, including Intellectual Property Rights, of any third party.

10.12 The parties shall follow the process set out below in relation to any Claim under Clause 10.11:

- a) the Customer shall notify Arqiva as soon as reasonably practicable of any such Claim or threatened or potential Claim and, at Arqiva's sole cost, shall provide reasonable assistance in connection with such Claim;
 - (a) b) subject (c) below, the Customer shall not admit or settle such Claim without the prior consent of Arqiva (such consent not to be unreasonably withheld or delayed) and the Customer shall give Arqiva, at Arqiva's cost, all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim and shall not wilfully make any admissions or statements prejudicial to Arqiva; and
 - (b) c) (b) above shall not apply unless:
 - (i) Arqiva has been advised by specialist solicitors or counsel that it is reasonable to resist, compromise or settle such Claim in the manner proposed by Arqiva and has produced evidence of such independent advice (including a copy of any written advice) to the Customer; and

SUBJECT TO CONTRACT

- (ii) Arqiva shall keep the Customer fully informed and consult with it on the conduct of such Claim and shall hold the Customer harmless from any award of costs against or other liability suffered or incurred by the Customer as a consequence of Arqiva taking any of the actions contemplated by (b) above.

10.13 If a Claim described in Clause 10.11 is made or, in the reasonable opinion of Arqiva is likely to be made or brought, Arqiva may at its own expense either:

- a) modify any or all of the System without reducing the performance and functionality of the same, or substitute alternative services of equivalent performance and functionality for any or all of the System, so as to avoid the infringement or the alleged infringement, provided that the terms herein shall apply *mutatis mutandis* to such modified or substituted services and such modified or substituted services shall be acceptable to the Customer, such acceptance not to be unreasonably withheld; and/or
- b) procure any necessary licence which may be required for the System or in connection with the provision of the Services on terms which are acceptable to the Customer.

10.14 Arqiva's liability under Clause 10.11 shall be unlimited.

11. DURATION AND EARLY TERMINATION

11.1 Subject to the remainder of this Clause 11 the Contract shall come into force on the Start Date and shall continue thereafter for a fixed term of 12 years.

11.2 Arqiva shall be entitled forthwith on serving a written notice on the Customer to terminate this Contract on any of the following events occurring:

- a) if the Customer shall be in serious breach or persistent material breach of any of the provisions of this Contract and shall not remedy or otherwise satisfactorily compensate Arqiva in respect of such breach within fifteen (15) days of Arqiva notifying the Customer in writing of the breach in question;
- b) if there is (otherwise than for the purpose of reconstruction or amalgamation made whilst the Customer is solvent) made any order or any resolution is passed for the dissolution, termination of existence, liquidation (whether compulsory or voluntary), or winding-up of the Customer or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed, and the appointment is not discharged within fourteen (14) days, in respect of the Customer or in respect of all or any material part of its assets;
- c) if the Customer enters into any scheme of compromise or arrangement with its creditors; or
- d) if the Customer shall suffer an execution to be levied against its assets and/or chattels and allows such execution to remain outstanding for more than twenty-eight (28) days.

11.3 The Customer shall be entitled forthwith on serving a written notice on Arqiva to terminate this Contract (but in the case of Clause 11.3(e) or (f) only with respect to the relevant part of this Contract in accordance with Clause 9.2) in which event the Customer shall have no

SUBJECT TO CONTRACT

liability to pay Arqiva any further sums pursuant to this Contract (or with respect to the relevant part of the Contract in the case of Clause 11.3(e) or (f)) other than sums outstanding prior to termination and for provision of the Services up until the date of termination on any of the following events occurring:

- (a) if Arqiva shall be in serious breach or persistent material breach of any provision of this Contract and shall not remedy the breach or otherwise satisfactorily compensate the Customer in respect of such breach within fifteen (15) days (or such shorter period as may reasonably be required to avoid any sanction being imposed by Ofcom resulting directly in the revocation of the Multiplex Licence) of the Customer notifying Arqiva in writing of the breach in question;
- (b) if there is (otherwise than for the purpose of reconstruction or amalgamation made whilst Arqiva is solvent) made any order or any resolution is passed for the liquidation (whether compulsory or voluntary) or winding up of Arqiva or a liquidator, trustee, receiver, administrative receiver, administrator, manager or similar officer is appointed, and the appointment is not discharged within fourteen (14) days, in respect of Arqiva or in respect of all or any material part of its assets;
- (c) if Arqiva enters into any scheme of compromise or arrangement with its creditors;
- (d) if Arqiva ceases to hold any of the Licences;
- (e) the Customer electing to terminate this Contract (or part of it) pursuant to Clause 9.2; or
- (f) either party electing to terminate this Contract (or part of it) pursuant to Clause 7.5.

11.4 If the Multiplex Licence shall be revoked for any reason except in the context of the grant by Ofcom to the Customer or to the Customer's successor of a replacement licence, this Contract shall automatically and immediately terminate.

12. EFFECTS OF TERMINATION

12.1 Upon termination of this Contract for whatever reason, the Customer shall, at Arqiva's request, as soon as reasonably practicable, make available for collection by Arqiva, all of Arqiva's or its agents' or sub-contractors' documents or equipment as are in the Customer's possession or under its control and vice versa that are relevant solely to the provision of the Services under the Contract.

12.2 Any termination of this Contract shall be without prejudice to either party's rights to recover any sums paid or due by the other or to any rights accrued by one party to the other in accordance with this Contract on or prior to the date of such termination.

12.3 This Clause 12 and Clauses 1, 2, 6.13, 6.17, 7, 8, 10.3 - 10.7 inclusive, 10.10 – 10.14 inclusive, 14, 19, 20, 21, 22 and 27 shall continue in full force and effect notwithstanding the termination of this Contract.

SUBJECT TO CONTRACT

- 12.4 Notwithstanding the circumstances of any termination of this Contract, Arqiva confirms that it shall observe its obligations under the Licences, the Statutes and the Ofcom Requirements with respect to the Customer in a non-discriminatory manner.
- 12.5 If this Contract terminates pursuant to Clause 11.4, save as provided in Clause 12.6 and subject to the following provisions of this Clause 12.5, the Customer shall, within twenty-eight (28) days of such termination, pay to Arqiva such amount as is notified in writing to it by Arqiva, being an amount equal to the aggregate of the Aggregate Fee that would but for such termination have been payable over the remaining term of this Contract reduced by such amount as is appropriate to reflect Arqiva's accelerated receipt provided that Arqiva shall use all reasonable endeavours itself to re-use or to enter into arrangements with third parties for the re-use of the System and/or the Equipment and generally to mitigate its loss arising out of such termination and further reduce such amount accordingly. Arqiva shall also exercise its rights to terminate any contract with a third party used to provide the Services to the extent that such termination will reduce costs.
- 12.6 Arqiva shall not be entitled to any payment under Clause 12.5 if revocation of the Multiplex Licence was caused by Arqiva's breach of this Contract, by an event of Force Majeure, revocation in accordance with Clause 11.4 or following the Customer correctly serving 12 months' notice in accordance with Clause 11.3.

13. LICENCES

- 13.1 Arqiva warrants that from the Start Date and for the duration of this Contract it shall have and shall maintain the Licences and all other licences, consents, authorities or dispensations which Arqiva may require to provide the Services.
- 13.2 The Customer warrants that from the Start Date and for the duration of this Contract it shall have and shall maintain the Customer Licences and all other licences, consents, authorities or dispensations which the Customer may require to receive and use the Services.

14. CONFIDENTIALITY

- 14.1 Each of Arqiva and the Customer shall:
- a) preserve the secrecy of all confidential information of the other which it receives;
 - b) keep such information secure and protected against theft, damage, loss or unauthorised access;
 - c) not use such information for any purpose except as contemplated by this Contract; and
 - d) ensure that the aforesaid obligations are observed by its employees, officers, agents and contractors.

SUBJECT TO CONTRACT

14.2 The obligations imposed by this Clause 14 shall survive the variation, renewal or termination of this Contract, but shall not apply to information which:

- a) already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors; or
- b) is lawfully received by the recipient from a third party on an unrestricted basis; or
- c) is legally required to be disclosed.

14.3 The specific terms of this Contract shall constitute confidential information of both parties for the purposes of this Clause 14.

15. SUB-CONTRACTING OF WORK

Either party reserves the right to sub-contract all or part of any of its obligations or functions under this Contract following consultation with the other providing that it obtains written consent, such consent not to be unreasonably withheld, from the other party and that the sub-contracting party shall be liable for the acts or omissions of its subcontractors in breach of this Contract.

16. VARIATIONS

16.1 Any variation of this Contract shall be in writing executed by or on behalf of both parties.

16.2 Notwithstanding Clause 16.3 below, where the Customer requests a termination of a particular service or Station, Arqiva shall promptly enter into good faith negotiations with the Customer in relation to the requested change. Any revision to the Aggregate Fee payable by the Customer under the Contract shall be determined in accordance with the Undertakings, including in particular paragraph 9 (Charges for New Transmission Agreements) of the Undertakings. Where the request relates to termination of a particular service or Station, the revision to the Aggregate Fee payable by the Customer may include an element in respect of revenue lost by Arqiva (taking into account pre-existing contractual terms) as a result of the termination of the particular service or Station. In conducting negotiations with the Customer, including the calculation of any revised Aggregate Fee, Arqiva shall respond as soon as reasonably practicable to each communication from the Customer.

16.3 Change Control

16.3.1 Either party may at any time request or recommend (as the case may be) a change to the System or the Services by written notice to the other party. Where any such change requires approval of Ofcom or any other necessary clearances or other third party consents or approvals, the requesting party will ensure that the request is made within sufficient time that would be reasonably expected to be required to obtain such consents or approvals.

16.3.2 On receipt of a request pursuant to Clause 16.3.1, the receiving party will within a reasonable period advise the requesting party of the estimated time reasonably required to consider the request and to provide its response.

SUBJECT TO CONTRACT

- 16.3.3 In the event that a change request has been approved by the receiving party but such change requires the approval of Ofcom, the parties agree that such change will not take effect until after the relevant approval is granted by Ofcom and subject always to any necessary clearances or other third party consents, approvals or authorisations being validly obtained.
- 16.3.4 Notwithstanding the other provisions of this Clause 16.3, where a party has made a request for or recommended a change in accordance with Clause 16.3.1, that party agrees and acknowledges that it will, subject to the terms of this Contract (including in the Customer's case, Clause 6.13 (construed accordingly) and Clause 16.3.5) be solely responsible for any costs and expenses relating to such changes including, such costs and expenses:
- a) related to any changes required to the System to implement the requested changes; and
 - b) related to obtaining any relevant Ofcom approval and any other necessary clearances or other third party consents, approvals or authorisations.
- 16.3.5 Either party shall not unreasonably refuse or delay its agreement to any change requested by the requesting party, or the implementation of such change; nor shall either party impose any unreasonable condition (having regard to the terms of this Contract) in relation to any changes requested by the Customer. Unless the context otherwise requires, all charges and costs for or relating to the implementation of any change shall be calculated (*mutatis mutandis*) in accordance and consistent with, and on the same basis using the same methodology as, the fees and charges set out in Schedule 1 and compliant with in any event the Undertakings.
- 16.3.6 Until such time as a change is made in accordance with this Clause 16.3, the parties shall, unless otherwise agreed in writing, continue to perform this Contract in compliance with its terms prior to such change.
- 16.3.7 Any discussions which may take place between the parties (or their representatives) in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either party.
- 16.3.8 Any work undertaken by or on behalf of Arqiva which has not been authorised in advance by the Customer as a change, shall be undertaken entirely at Arqiva's expense and liability.

17. ASSIGNMENT

- 17.1 Subject to Clause 17.2, neither party shall assign this Contract or their respective rights under it in whole or in part without the prior written consent of the other.
- 17.2 Either party may assign the benefit of this Contract on a transfer of the whole or the relevant part of its business or undertaking or, in the case of the Customer, any assignee or successor to the Multiplex Licence, provided that the assignor procures that the assignee enters into a direct covenant with the other party to be jointly and severally liable with the assignor to observe all the terms of this Contract in place of the assignor.

18. RELIANCE ON INSTRUCTIONS

- 18.1 For communications other than those covered by Clause 19, each party shall be bound by and shall be entitled to rely on any communication whether in writing (including email) 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

SUBJECT TO CONTRACT

indemnify the other from and against all liabilities, obligations, claims, actions and expenses of any kind imposed on or incurred as a result of reliance on any such communication.

- 18.2 Notwithstanding Clause 18.1, Arqiva shall not act on the instruction or request of the Customer to suspend the Services or any material element thereof unless confirmed in writing by a director of the Customer.

19. NOTICES

- 19.1 Any notice, consent, request or other communication required to be given under any provision of this Contract shall, unless otherwise indicated in that provision, be in writing and be served under this Contract by being hand delivered or sent by first class recorded delivery post to the party to be served at its address appearing in this Contract or at such other address as it may have notified to the other party in accordance with this Clause 19.

- 19.2 Any notice or document shall be deemed to have been served:

- a) if hand delivered, at the time of delivery; or
- b) if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

- 19.3 In proving service of a notice or document it shall be sufficient to prove that delivery was made or that the envelope containing the notice or document was properly addressed and posted as a prepaid first class recorded delivery letter.

20. NO WAIVER

Neither party's rights under this Contract shall be prejudiced or restricted by any concession, indulgence or forbearance it extends to the other and no waiver by either party in respect of any breach by the other shall operate as a waiver in respect of any subsequent breach.

21. ENTIRE AGREEMENT

- 21.1 This Contract, and the documents referred to herein constitute the entire agreement between the parties relating to the transactions contemplated by this Contract and supersedes all previous agreements between the parties relating to these transactions.

- 21.2 Each of the parties acknowledges that in agreeing to enter into this Contract it has not relied on any representation, warranty or other assurance given or made by or on behalf of the other party prior to this Contract (except those set out in this Contract and the documents referred to herein) and each of the parties waives all remedies which, but for this Clause 21.2, might otherwise be available to it in respect of any such representation, warranty or other assurance (unless such representation, warranty or other assurance was made fraudulently).

SUBJECT TO CONTRACT

22. SEVERABILITY

The invalidity or unenforceability of any term of or any right arising pursuant to this Contract shall not affect the validity or enforceability of any of the remaining terms or rights.

23. DIALOGUE

During the term of this Contract, Arqiva and the Customer shall maintain a dialogue with respect to the services provided by Arqiva under this Contract and potential provision of augmentations, improvements or additions to such services on such terms as may be agreed.

24. Sale of Transmitter Equipment

24.1 The Customer may at any time between six (6) months and eighteen (18) months prior to the date of expiry of the Contract submit a written request to Arqiva to provide:

- a) a detailed inventory of all Transmitter Equipment dedicated to this Contract, which shall include an indication of the cost of the Transmitter Equipment calculated in accordance with Clause 24.4; and
- b) a plan to facilitate transfer of ownership and control of that Transmitter Equipment to a successor Transmission Services provider upon expiry of the Contract.

24.2 Arqiva shall consult with the Customer in generating the transition plan and shall provide both the inventory and the transition plan referred to in Clause 24.1 to the Customer within three (3) months following receipt of the Customer's written request.

24.3 Following receipt of the information referred to in Clause 24.1 and in any event at least two (2) months prior to expiry of the Contract, the Customer may provide a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the Transmitter Equipment to the Customer (or their nominee).

24.4 Arqiva shall implement the request referred to in Clause 24.3 upon expiry of the Contract, subject to payment by the Customer of the cost of the Transmitter Equipment calculated in accordance with any applicable direction issued by the Adjudicator pursuant to paragraph 13.4 of the Undertakings and having regard to any applicable guidance issued pursuant to paragraphs 13.2 or 13.3 of the Undertakings.

24.5 The Customer may also exercise the rights described in Clauses 24.1 to 24.4 where it has served a notice to terminate the Contract as a result of Arqiva's default. In this event, the provisions of Clauses 24.1 to 24.4 inclusive shall apply subject to the following amendments:

- a) within five (5) working days following the date of the Customer's notice to terminate the Contract, the Customer shall submit a written request to Arqiva to provide the inventory of Transmitter Equipment referred to in Clause 24.1(a) and the transition plan referred to in Clause 24.1(b), receipt of which shall be acknowledged by Arqiva;

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SUBJECT TO CONTRACT

- b) Arqiva shall provide the inventory and the transition plan to the Customer within one (1) month following receipt of the Customer's written request pursuant to Clause 24.5(a);
- c) the Customer shall submit a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the Transmitter Equipment to the Customer (or their nominee), no later than six (6) months following receipt of the information pursuant to Clause 24.5(b);
- d) Arqiva shall have one (1) month following receipt of the request referred to in Clause 24.5(c) in which to implement the request subject to the conditions set out in Clause 24.4;
- e) until such time as the transition plan is implemented and all of the Transmitter Equipment is transferred, the Contract shall continue in full force and effect (save that no liability to pay Super Credits will accrue following a notice to terminate) with Arqiva continuing to provide the services under this Contract and the Customer continuing to pay the Charges under this Contract; and
- f) in the event that the Customer does not submit a written request to Arqiva within the timescale set out in either Clause 24.5(a) or 24.5(c), then the Customer's right to purchase the Transmitter Equipment shall lapse and the provisions of Clause 24.5(e) shall not apply.

25. Adjudication

The Customer may refer a dispute regarding Arqiva's obligations under Clause 16 (Contract Variations) and Clause 24 (Sale of Transmitter Equipment) to the Adjudicator provided it agrees to be bound by the Adjudication Scheme and the Adjudication Rules and any guidance issued by the Adjudicator under paragraph 8 of the Adjudication Scheme. The Adjudication Scheme and the Adjudication Rules shall apply to any such dispute so referred.

26. Counterparts

This Contract may be executed in any number of counterparts and by the parties to it on separate counterparts and each such counterpart shall constitute an original of this Contract but all of which together constitute one and the same instrument.

27. Governing Law and Jurisdiction

27.1 Governing Law

The construction, validity and performance of this Contract and all non-contractual obligations arising from or connected with this Contract shall be governed by the laws of England.

27.2 Jurisdiction

Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Contract.

SUBJECT TO CONTRACT

SIGNED for and on behalf of **ARQIVA LIMITED** by an authorised representative:

Signature: _____

Print Name: _____

Date: _____

SIGNED for and on behalf of **ARQIVA LIMITED** by an authorised representative:

Signature: _____

Print Name: _____

Date: _____

SIGNED for and on behalf of

[Insert Customer Name]

by an authorised representative:

Signature: _____

Print Name: _____

Date: _____

SCHEDULE 1

FEES

1. Arqiva shall be entitled, acting reasonably and in good faith, to adjust the cost component elements set out in the table below for, respectively: (i) Transmission Service, (ii) rent and rates ("R&R") and/or (iii) Electricity (and, accordingly, shall be entitled to adjust the relevant fee of which such cost component elements form part), to take account of the occurrence of:
 - (a) any change in the number of users of a shared Antenna or Site;
 - (b) any change in the number of users of other broadcast radio platforms (for example, but without limitation, upon the cessation or partial cessation of any terrestrial radio platform); or
 - (c) any changes in the cost to Arqiva of Rent & Rates and/or Electricity,

PROVIDED THAT the same necessarily affects the provision of the Transmission Service to the Customer under this Contract.

2. Any dispute as to the proposed adjustments to be made to the relevant fee under the provisions set out here in this Schedule 1 shall be resolved by the Adjudicator.
3. Arqiva's ability to adjust the fee pursuant to paragraph 1 above is subject to the following:
 - (a) Arqiva shall notify the Customer in writing as soon as it is aware of any of the events referred to in paragraph 1(a), 1(b) or 1(c) which are reasonably likely to require an adjustment (upwards or downwards) to a cost component of the relevant fee;
 - (b) Arqiva shall use reasonable endeavours to minimise any proposed increases in the cost components of the relevant fee (and ensure in any event that any such increases are reasonable);
 - (c) where substantially the same service is provided by Arqiva to third parties, Arqiva shall only be entitled to adjust the cost components of the relevant fee by way of reflecting a fair pro rata allocation of the impact of the relevant event as it affects Arqiva in order that Arqiva does not recover twice for occurrence of the same event; and
 - (d) without prejudice to the generality of the foregoing and as a condition of Arqiva being able to make such adjustment to the relevant fee, Arqiva shall:
 - (i) only be entitled to adjust the Aggregate Fee in each Multiplex Licence Region once in any Year and;
 - (ii) ensure that any such proposed adjustment be compliant with the Undertakings.

* Arqiva will charge the estimates in the Electricity column below, until such time that Arqiva has installed dedicated metering equipment. From the point at which Arqiva has dedicated metering, the Electricity will be charged on an actual basis. For any period that the Customer has pre-paid for Electricity based on the estimated figures below for which Arqiva subsequently has actual consumption data available based on dedicated metering which is less than that previously estimated and paid for, Arqiva will make an appropriate adjustment.

4. ACI Filler

The Customer shall be informed by Ofcom whether they will require an Adjacent Channel Interference Filler (“**ACI Filler**”) in relation to each Station. In the event that an ACI Filler is required then the Aggregate Fee for the relevant Station will be increased by the ACI Filler Fee as set out below.

ACI Filler Fee at £4,300 per annum per transmitter

5. Pricing Assumptions

This Agreement is based upon a programme of works scheduled to deliver the Services from [TBA].

Schedule 1 Table 1

Location	KEEP ID	Annual Transmission Fee £k	Indicative Rent and Rates Cost £k per annum	Indicative Electricity Costs £k per annum	Pass-through Cost £k per annum	Indicative Annual Charge £k per annum
Kendal	140955	23.3	0.1	2.0	2.1	25.4
Morecambe Bay	141195	28.1	1.4	0.9	2.3	30.4
Lancaster	10335	35.1	1.2	1.5	2.7	37.8
Penrith	20069	21.3	0.3	0.9	1.2	22.5
Sandale	141567	55.0	0.9	4.7	5.6	60.6
Broughton Moor	20072	24.2	2.1	1.5	3.6	27.8
Sandale	141567	55.0	0.9	4.7	5.6	60.6
Dumfries South	13730	29.6	1.5	1.0	2.5	32.1

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SCHEDULE 2
SYSTEM INFORMATION

Multiplex Licence Region	Site Location	Arqiva Site number	Antenna Type	No of Tiers	Mean Height AGL m	Bearing deg ETN	Feeder Type	Feeder Quantity	ERP (W)	Station Weighting
Morecambe Bay	Kendal	140955	Log Periodic	1	40	280	CF-7/8	1	1000	Not defined
Morecambe Bay	Morecambe Bay	141195	Yagi	2	70	120	CF-7/8	2	1000	Not defined
Morecambe Bay	Lancaster	10335	Panels	2	85	1, 91,181	CF 1 ¼	2	1000	Not defined
North and West Cumbria	Penrith	20069	Dipoles on a Pole	4	48.5	220	CF 1 ¼	2	1000	Not defined
North and West Cumbria	Sandale	141567	Panels	4	104	25, 115, 205, 295	CF 3 1/8	2	5000	Not defined
North and West Cumbria	Broughton Moor	20072	Dipoles on a Pole	2	26.8	240	CF-7/8	2	1000	Not defined
Southwest Scotland	Sandale	141567	Panels	4	104	25, 115, 205, 295	CF 3 1/8	2	5000	Not defined
Southwest Scotland	Dumfries South	13730	Dipoles on a Pole	4	32.4	350	CF-7/8	2	1000	Not defined

Reference Offer for the provision of Transmission Services in respect of Ofcom's proposed award of a Local Radio Multiplex Licence(s) for Morecambe Bay, North and West Cumbria and Southwest Scotland

SCHEDULE 3 Intentionally left blank

SCHEDULE 4

Installation Project

1. The Installation Project shall comprise the commissioning by Arqiva of the Sites to provide the following:

Network Access:

- a. structures;
- b. Antenna Systems including feeders and combining units (where required);
- c. site access, security and accommodation;
- d. power systems;

Managed Transmission Elements:

- a. Transmitter Systems;
- b. Programme Input Equipment;
- c. Telemetry Systems (covering both Network Access and Managed Transmission Elements);

2. Specification

The provision of the Transmission Service will include access to network access facilities at the Stations, the provision of managed transmission elements and on-going operational, control and maintenance services. The transmitter systems will be sized to provide the nominal operational ERPs (+/-1dB) as limited by the capabilities of the Antenna Systems. The nominal operational ERPs are shown on a site-by-site basis in Schedule 2. The network access facilities provided under the terms of this Contract are based directly upon the performance of the Antenna Systems.

3. Spectrum Planning Issues

- 3.1 Future Development of the Plan

Any changes to the Technical Performance Specification are not covered by this Agreement and will be subject to a further variation agreed between the Parties. Modifications to characteristics of the Stations such as ERP and Antenna patterns that will have a direct effect on the Antennas and transmitter systems could also potentially impact the requirements for structures. Again this is not covered by this Agreement and is subject to a variation agreed between the Parties.

- 3.2 International Co-ordination

There may need to be changes as a result of the international co-ordination process. Arqiva cannot fully determine the outcome of this process. The following issues will need to be considered:

- coverage may be reduced in some areas because the terms of an agreement lead to modified transmitter characteristics and/or increased interference;
- the Antenna pattern template (and thus the Antenna design) may be altered as part of the terms of a co-ordination agreement;
- additional restrictions in the Antenna template may be required; and
- other characteristics such as ERP and channel may be altered as part of the terms of an agreement.

The resolution of international co-ordination issues may require modification to the Technical Performance Specification.

4. Antenna Systems

Where Antenna System modifications are required due to a change in the Technical Performance Specification this shall be subject to a further variation agreed between the Parties. Any such modifications shall be chargeable to the Customer and Arqiva will confirm any changes to the Target Start Date.

4.1 Existing Antenna Systems

Where appropriate Antenna Systems exist on a Site, then Arqiva will provide the Transmission Service via existing Antenna Systems which have been installed for radio requirements with other customers.

4.2 New Antenna Infrastructure

Split antennas are provided as detailed in Schedule 2 for all sites with an ERP of greater than 250W unless site specific conditions prevent this in which case single fed systems will be specified. For systems below 250W single fed systems have been specified unless potential sharing initiatives require split systems.

4.3 Combiner Units

Where connecting into an existing Antenna, a combining unit will be installed.

5. Transmitters Systems

All proposed transmitter systems will be Arqiva standard build and be based around the following standard principles:

Transmitters 1800W

Multiple amplifier and PSU architecture

Dual Drive (COFDM)

Transmitters 600W – 900W

Multiple amplifier and PSU architecture

Dual Drive (COFDM)

Transmitters below 300W

Single amplifier and PSU architecture

Multiple PSU as an option

Dual Drive (COFDM)

6. Telemetry

Telemetry of transmitters, associated equipment and NA infrastructure monitored from the Arqiva SMC is included.

7. Power

A metered single LV power supply will be provided to the transmission equipment. A generator socket will be provided but there is no provision for the use of a generator at times of REC power outage. Where a customer requests their service to be supported by a generator maintained supply they shall be charged an annual fee in accordance with the current radio rate-card. Where a customer has no choice in taking a maintained supply, there shall be no additional charge levied. The generator supply shall be considered to be a second DNO supply.

The number of phases required for the power supply to each new installation shall be determined by the requirements of the transmitter selected.

Where new accommodation is required it is assumed that a new metered DNO supply shall be required as part of the power infrastructure costs.

8. ACI Filler

The requirement for Adjacent Channel Fillers has yet to be fully agreed. Arqiva have therefore included a standard design for a single ACI filler transmitter as an addition to the main transmitter (installed at the same time as the main transmitter) as an “add-on” element to the project for each site finally identified as requiring one or more ACI filler transmitters. An ACI Filler Fee will be payable to Arqiva where ACI Fillers are necessary.

Arqiva's generic ACI filler offering is as follows;

Transmitter (up to a maximum of 50W)

Monitoring

Distribution (see caveat)

Combining equipment

Feeders as required

Electricity and pass-through (estimate)

Please note the following caveats apply in relation to ACI Fillers;

- The provision of Distribution Services assumes that the required programme feed for the filler is readily available on-site or requires the provision of minimal satellite based infrastructure.
- If dedicated BT circuits are required for distribution this will incur an additional charge.
- The ACI Filler is planned for, acquired and built at the same time as the main transmitter.
- The Antenna and associated Network Access infrastructure is technically capable of accommodating the additional filler service.

9. Exclusions and Caveats

For the avoidance of doubt the following are **not** within the scope of this Agreement:

- a) programme contribution up to the Standard Interface;
- b) compression systems;
- c) Multiplexing and Distribution Services

Furthermore Arqiva gives no warranty as to population coverage. Should any Site need to be substituted then Arqiva will advise the Customer of the associated costs and any change to the Aggregate Fees in writing.

SCHEDULE 5

Total Time of Service Availability

- (a) The Total Time of Service Availability calculated over the preceding twelve (12) calendar months (or the period since the Services first commenced if calculation is performed within twelve (12) months of the Start Date) shall be no less than 99.8% of Regular Hours for each Station listed in Schedule 2 and/or no less than 99.8% for the Transmission Service (being measured separately between the entry and exit points of that part of the System attributable to provision of the relevant Service) subject to the provisions of Table 1 of this Schedule 5.
- (b) For the purpose of calculating whether the Target Total Time of Service Availability has been achieved at any Station, failures, interruptions or defects in the Services due to any of the following shall not count as a Breakdown:-
- (i) a failure or interruption resulting from the Customer's refusal to permit such work on any Equipment as Arqiva reasonably regards as essential;
 - (ii) a reduction in ERP (Effective Radiated Power) where resulting from Arqiva's due compliance with safe working practices stipulated by the Health Protection Agency or any other health safety environmental or other law or generally recognised protocol or standard (whether or not having the force of law);
 - (iii) any Force Majeure Event;
 - (iv) impairment of the quality of the Content Signal due to abnormal propagation conditions;
 - (v) any fault requiring mast ascent during the hours of darkness or severe inclement weather where, in the reasonable judgement of Arqiva, a potential safety hazard exists provided that when darkness ceases or the weather improves sufficiently to permit mast ascent then the time from when the conditions improve shall count for the purposes of calculating the Total Time of Service Availability;
 - (vi) any breach of this Contract by the Customer;
 - (vii) any interruption (other than as a result of breach by Arqiva) as a result of
 - (a) Arqiva complying with a direction from any competent authority under the Licences, or from any court of competent jurisdiction requiring Arqiva to cease or suspend transmission, or;
 - (b) the Customer complying with a direction from Ofcom to suspend broadcasting;
 - (viii) any interruption as a result of an engineering test transmission made at the request of the Customer where Arqiva has advised the Customer of the risk of interruption arising from the proposed tests;
 - (ix) notwithstanding Arqiva's obligations to ensure that the system complies with the Technical Performance Specification, any failure to deliver the Content Signals to the Interface;
 - (x) any loss of Services resulting directly from any of the matters for which the Customer has responsibility;

- (xi) any Fault requiring attendance at a Site during any period where such attendance is not permitted or is otherwise prevented as a consequence of a security alert or any other Force Majeure Event;
- (xii) any interruption in Services for the purposes of carrying out maintenance work pursuant to Clause 4.4 or Clause 4.5; or
- (xiii) any breakdown, fault or non-provision of Content Signals by any Content Provider.

Availability and response times

Table 1

The Total Time of Service Availability (TTSA) is based on the table below which defines weighting factors for calculation of TTSA for each Station.

Arqiva reserves the right to change the response times for the Sites once the site surveys have been completed. Such changes will be made in accordance with the change control procedure under this Contract.

1 Fault	2 Time to respond 0600 to 19.00	3 Time to respond 0000 to 0600 & 19.00 to 0000	4 Time after Fault occurs before measurement of TTSA starts	5 Weighting factor if not repaired within time in column 4	Notes
Transmitter power below -2dB but at or greater than -4dB	6 hours	8 hours	48 hours	0.25	
Transmitter power below -4dB but at or greater than -7dB	6 hours	8 hours	24 hours	0.5	.
If power is re-established at or above -4dB but below -2dB then the 48 hour time in column 4 above applies					
Transmitter power below -7dB	4 hours	4 hours	No delay	1	
If power is re-established at or above -4dB but below -2dB then the 48 hour time in column 4 above applies. If power is re-established at or above -7dB but below -4dB then the 24 hour time in column 4 above applies.					
Sub-channel BER greater than 1 part in 10,000	4 hours	4 hours	No delay	1	
Transmission of the wrong programme content with the wrong SI	4 hours	4 hours	No delay	0.5	
Loss of SFN lock by one transmitter	4 hours	6 hours	3 hours	0.5	
Loss of SFN lock by two or more transmitters	4 hours	6 hours	No delay	1	

The events listed as a Fault in Column 1 of Table 1 above are more particularly described in Table 2

Table 2

Fault	Definition
Transmitter power below -2dB but at or greater than -4dB	The power measured on the output of the transmitter with respect to its nominal rating is between the limits for more than 10 seconds
Transmitter power below -4dB but at or greater than -7dB	The power measured on the output of the transmitter with respect to its nominal rating is between the limits for more than 10 seconds
Transmitter power below -7dB	The power measured on the output of the transmitter with respect to its nominal rating below the limit for more than 10 seconds

CCIR Recommendation 562-3

Subjective Assessment of Sound Quality

Level	Quality	Impairment
5	Excellent	Imperceptible
4	Good	Perceptible, but not annoying
3	Fair	Slightly annoying
2	Poor	Annoying
1	Bad	Very annoying

SCHEDULE 6

Service Credits

- (a) Arqiva shall notify the Customer of the period, nature and timing of all Breakdowns at each Station as set out in the Contract. At each anniversary of the Start Date, Arqiva shall calculate the Total Time of Service Availability at each of the Stations in accordance with Schedule 5, over the preceding 12 months.
- (b) If the Total Time of Service Availability over the relevant period is below the minimum level of hours stipulated in Schedule 5 in respect of any Station, Arqiva shall incur a liability to pay Service Credits to the Customer in respect of such Station in accordance with paragraph (c).
- (c) The method of calculating Service Credits with respect to each Station is as follows:
- (i) for each Breakdown, discount the "Time after Fault occurs before measurement of TTSA starts" in column 4 of Table 1 in Schedule 5 (if applicable to the type of Breakdown)
- (ii) calculate the weighted breakdown duration (expressed in minutes) in respect of each breakdown by applying the following formula:
Weighted breakdown duration $M(wtd) = M \times V$ Where:-
 M = the period of Breakdown expressed in minutes and increments of 30 seconds
 V = the weighting factor applicable to the Breakdown as stated in column 5 of Table 1 of Schedule 5
- (iii) counting forward chronologically from the commencement of the relevant period, discount that period of weighted Breakdown which equates to the permitted period of Breakdown ("Target TTSA"). For these purposes, the permitted period of Breakdowns is the difference between the actual Total Time of Service Availability and 100%;
- (iv) for each Breakdown (or balance thereof) during the relevant period which has not been discounted under sub-paragraphs (i) and (iii), the following formula shall be applied:
Service Credits = $M(wtd) \times X \times W \times 1.25$ Where:-
 $M(wtd)$ = the period of weighted Breakdown expressed in minutes and increments of 30 seconds;
 X = the sum equal to the then current Aggregate Fee divided by 525,960 (the number of minutes in an average year)
 W = the relevant Station weighting (expressed as a percentage) as set forth in Schedule 2;
- (v) Arqiva's aggregate liability to pay Service Credits in respect of the relevant calendar year equals the sum of figures calculated for each minute of Breakdown to which the formula set forth in sub-paragraph (iv) is to be applied.

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 any Target Start Date.
2. If the Start Date has not occurred by the relevant Target Start Date and if a suitable alternative station has not been agreed and delivered, 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 Aggregate Fee for the relevant Station every full week by which the Start Date is delayed, up to a maximum of 12 full weeks.
4. Arqiva shall have no liability to pay liquidated damages pursuant to paragraph 2 above where the delay in achieving the Target Start Date has occurred as a result of:
 - (a) any of the events listed in Schedule 1 (Fees) paragraph 1(a) to (c) or Clause 2.10 of this Agreement; or
 - (b) the failure to obtain a necessary Consent in sufficient time to complete the Installation Project; or
 - (c) any breach of this Agreement, delay, act or omission of the Customer.
5. In the event that Arqiva is delayed in achieving the Target Start Date as a result of a Customer act or omission then Arqiva may charge the Customer for any reasonable costs incurred by Arqiva as a result of such delay.
6. Any liability of Arqiva pursuant to this Schedule and Clause 2.11 to pay liquidated damages shall represent the Customer's sole and exclusive remedy in respect of the occurrence of any delay in achieving the relevant Target Start Date.