

**Draft Undertakings to the Competition Commission by Macquarie UK
Broadcast Holdings Limited, Macquarie UK Broadcast Ventures Limited and
Arqiva Limited
Dated: 25 February 2008**

Draft—Behavioural Package

1. COMMENCEMENT

- 1.1 The obligations in these Undertakings will come into force on the Commencement Date.
- 1.2 Nothing in these Undertakings shall prevent Arqiva from agreeing, at the request of a Customer or prospective customer, to supply Transmission Services on terms and conditions which are different to those set out in these Undertakings provided that Arqiva is able to demonstrate that such terms and conditions have been requested by the Customer or prospective customer and are no less favourable to the relevant Customer or prospective customer in any material respect than those provided for in these Undertakings.
- 1.3 Arqiva undertakes to ensure that the costs of ensuring compliance with these Undertakings, including the financing of the Adjudicator and Adjudication Scheme, will be borne by Arqiva.

Part A—Undertakings in relation to existing transmission agreements

2. OFFER TO AMEND EXISTING TRANSMISSION AGREEMENTS

- 2.1 Arqiva undertakes to offer each Customer an amendment to the terms of their Existing Transmission Agreement(s) on the terms set out in paragraphs 3 to 7 and the relevant Appendices to these Undertakings (as set out in paragraph 2.2 below).
- 2.2 While the same undertakings have been offered to each Customer, in order to reflect the differences between the Existing Transmission Agreements and to maintain the confidentiality of those agreements, detailed proposals for each of the Customers are set forth in Appendices 3 to 7.
- 2.3 In relation to each Existing Transmission Agreement:
 - 2.3.1 Arqiva undertakes to maintain the offer set out in paragraph 2.1 from the Commencement Date up to and including the last day of the current term of that Existing Transmission Agreement;
 - 2.3.2 subject to paragraphs 4.1, 7.1 and 7.4, the Customer may elect to accept any one or more of the amendments set out in paragraphs 3 to 7 in any combination; and
 - 2.3.3 to the extent that the Customer has not agreed to accept any part of the offer as described in paragraph 2.1 within the period provided for in paragraph 2.3.1, Arqiva shall be released from such part of the offer in relation to that Customer.

3. **CONTRACT VARIATIONS**

- 3.1 Where an Existing Transmission Agreement is varied after the Commencement Date, any additional charges payable by the Customer in relation to the variation shall be set in accordance with the change control provisions of the Existing Transmission Agreement. The amendment offered by Arqiva will operate such that, if the Existing Transmission Agreement does not contain any applicable change control provisions (or if such provisions do not set out the basis on which charges for variations are to be determined), then any additional charges shall be determined in accordance with paragraph 9 (*Terms of New Transmission Agreements*), with recovery of capital over the remaining term of the agreement.

4. **SERVICE LEVEL AVAILABILITY**

- 4.1 Arqiva shall not offer the amendment set out in this paragraph 4 in respect of any Existing Transmission Agreement where the build-out of the relevant network under that agreement has not been completed as at the Commencement Date.
- 4.2 The amendment offered by Arqiva will increase the required service availability level for broadcast transmission under an Existing Transmission Agreement¹ to a percentage level which reflects [~~5~~] % of the difference between:
- 4.2.1 the average service availability level actually achieved for the relevant contracted service over the three (3) year period immediately preceding the Commencement Date (or, if shorter, the period since completion of the build-out of the relevant network); and
- 4.2.2 the relevant level specified in the particular Existing Transmission Agreement.

5. **SUPER CREDIT ARRANGEMENTS**

- 5.1 The amendment offered by Arqiva will introduce the following service credit regime as an alternative to the exercise of termination or step-in rights:
- 5.1.1 if Arqiva commits a Persistent Failure, the Customer can request Arqiva to submit a service improvement plan to the Customer and Arqiva shall have one (1) month following receipt of the Customer's request within which to rectify its poor performance to the contracted service level;
- 5.1.2 where Arqiva fails to rectify its poor performance as required under paragraph 5.1.1, then the Customer will be given the option to receive a super credit as an alternative to exercising its right to terminate and/or step-in;
- 5.1.3 the level of this super credit shall be set at [~~5~~] % of the annual fees payable by the Customer in relation to the relevant service(s) in the twelve (12) months preceding the date of expiry of the one (1) month service improvement period referred to in paragraph 5.1.1, and payment of the super credit will be conditional upon the Customer waiving its right to terminate and/or step-in in respect of the relevant Persistent Failure;

¹For the avoidance of doubt, these increased service levels also apply to any renewal of a transmission agreement pursuant to paragraph 8.1.1 of the Undertakings.

- 5.1.4 any reductions in the annual fees which have occurred to reflect any operational service credits shall be disregarded for the purposes of calculating the super credit under paragraph 5.1.3;
- 5.1.5 acceptance of the super credit shall be without prejudice to any contractual right to terminate and/or step-in which may arise in future, provided that performance issues that have occurred prior to the date on which the liability to pay the super credit arose shall be disregarded for the purposes of measuring Arqiva's performance under the relevant contractual mechanisms after that date; and
- 5.1.6 any liability of Arqiva for super credits will be in addition to any liability of Arqiva for operational service credits.

6. SALE OF STRANDED ASSETS

- 6.1 The amendment offered by Arqiva will have the following effect:
 - 6.1.1 a Customer may at any time within twelve (12) months prior to the expiry of an Existing Transmission Agreement submit a written request to Arqiva to provide: (i) a detailed inventory of all Transmitter Equipment dedicated to that particular agreement; and (ii) a plan to facilitate transfer of ownership and control of that Transmitter Equipment to a successor transmission services provider upon expiry of that agreement;
 - 6.1.2 Arqiva shall consult with the Customer in generating the transition plan referred to in paragraph 6.1.1 and shall provide both the inventory and the transition plan referred to in paragraph 6.1.1 to the Customer within three (3) months following receipt of the Customer's written request;
 - 6.1.3 following receipt of the information referred to in paragraph 6.1.1 and in any event at least three (3) months prior to expiry of the relevant Existing Transmission Agreement, the relevant Customer may provide a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the Transmitter Equipment to the relevant Customer (or their nominee); and
 - 6.1.4 Arqiva shall implement this request upon expiry of the particular agreement, subject to payment by the Customer of the depreciated replacement cost of the Transmitter Equipment calculated in accordance with the Depreciated Replacement Cost Methodology. The detaching, decommissioning, removal and transportation of the Transmitter Equipment shall be at the Customer's expense and where any of these activities are carried out by Arqiva at the Customer's request pursuant to this paragraph 6, the Customer shall reimburse Arqiva in respect of any reasonable costs incurred by Arqiva directly, necessarily and exclusively in connection therewith.
- 6.2 For the avoidance of doubt, any dispute regarding (i) the valuation of Transmitter Equipment; (ii) the appropriate asset life to be used for valuing Transmitter Equipment; (iii) the content of a transition plan pursuant to this paragraph 6; and/or (iv) the costs incurred by Arqiva pursuant to paragraph 6.1.4 will be determined by the Adjudicator pursuant to paragraph 17 (*The Adjudicator*).

7. REDUCTION IN CHARGES UNDER EXISTING TRANSMISSION AGREEMENTS

7.1 Arqiva shall offer the amendment set out in paragraphs 7.2 and 7.3 in respect of each Existing Transmission Agreement², except for the BBC Digital Agreement, the D34 Agreement and the SDN Agreement.

7.2 The amendment to be offered by Arqiva shall provide each relevant Customer with a percentage discount applied at the commencement of each Year to the contracted annual charges for the forthcoming 12-month period, disregarding any discounts previously applied under this mechanism. For the purposes of this paragraph 7, “contracted annual charges” means the annual charges after any indexation-based adjustment, if applicable, under the relevant agreement.

7.3 The applicable percentage discount in any given Year will be:³

7.3.1 for each Analogue TV Agreement and each Low Power DTT Agreement in Year 1 and each subsequent Year, 3.25%; and

7.3.2 for each Analogue Radio Agreement and each Digital Radio Agreement (excluding the BBC Digital Agreement) in Year 1 and each subsequent Year, 17%.

7.4 Arqiva shall offer:

7.4.1 the amendments to the BBC Digital Agreement set out in Annex 3 to the BBC;

7.4.2 the amendments to the D34 Agreement set out in Annex 4 to D34; and

7.4.3 the amendments to the SDN Agreement set out in Annex 5 to SDN.

7.5 The amendments referred to in paragraph 7.4 have the effect of providing guaranteed price reductions to the BBC, SDN and D34, including an element which is equivalent, in aggregate, to a £[~~500~~] reduction in the budgeted Network Access capital expenditure set out in the Existing Television Reference Offer. For the avoidance of doubt, the budgeted capital expenditure includes both forecast capital expenditure and the uplift for contingencies.

8. RIGHT TO RENEW EXISTING RADIO AGREEMENTS

8.1 Subject to paragraph 8.2, Arqiva undertakes prior to the expiry of each Radio Agreement (including any renewal or replacement agreement entered into pursuant to this paragraph 8.1) to offer the relevant Customer the option, upon expiry of that agreement, either:

8.1.1 to renew that agreement on the same terms and conditions (as amended pursuant to these Undertakings); or

8.1.2 to enter into a New Transmission Agreement in accordance with paragraph 9 (*Terms of New Transmission Agreements*) below.

8.2 Arqiva shall make such offer pursuant to paragraph 8.1:

²For the avoidance of doubt, this is intended to apply to each Existing Transmission Agreement currently in force or as renewed pursuant to paragraph 8.1.1.

³For the avoidance of doubt, the figure expressed for each year is the total discount applicable in that year (i.e. the figures are not cumulative).

- 8.2.1 at least twelve (12) months prior to the expiry of the relevant Radio Agreement; or
- 8.2.2 where the relevant Radio Agreement is due to expire within twelve (12) months following the Commencement Date, as soon as reasonably practicable, having regard to Arqiva's obligations under paragraphs 9.6 and 14.4.

Part B—Undertakings in relation to new transmission agreements

9. TERMS OF NEW TRANSMISSION AGREEMENTS

9.1 Arqiva undertakes to provide Transmission Services under a New Transmission Agreement to:

9.1.1 a prospective customer; or

9.1.2 to a Customer in accordance with paragraph 8.1.2 or otherwise on expiry of the relevant Existing Transmission Agreement

upon reasonable request in writing, as soon as reasonably practicable after such a request.

9.2 Arqiva shall provide such Transmission Services pursuant to paragraph 9.1 on fair and reasonable terms, conditions and charges.⁴

9.3 Arqiva undertakes not to unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the provision of Transmission Services pursuant to paragraph 9.1.

9.4 Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator prior to entering into a New Transmission Agreement that:

9.4.1 each and every charge proposed or payable for Transmission Services complies with the principles set out in paragraphs 9.5 to 9.9; and

9.4.2 the Customer has been provided with sufficient transparency and information regarding the costs of provision, the corresponding proposed charges and potential alternative network designs (including in relation to Network Access⁵) to reasonably allow the Customer to understand such costs and the corresponding proposed charges separately for:

(a) each element of the service (including Network Access and MTS, unless agreed otherwise with the prospective customer); and

(b) each individual Station,

⁴The Adjudication Rules provide that in deciding whether any terms or conditions offered or provided by Arqiva are fair and reasonable, the Adjudicator shall take account of whether the terms or conditions offered or provided are any less favourable to the prospective customer than the relevant terms and conditions contained in any other Transmission Agreement for equivalent or similar services (with the exception of terms and conditions which (i) relate to credit vetting and payment terms, or (ii) are inconsistent with these Undertakings).

⁵One customer has suggested that the Undertakings should state that the purpose of identifying potential alternative network designs is to ensure that the most efficient vertically integrated MTS/NA solution is identified. Arqiva considers that this may be too narrow in scope and may limit the discretion of the Adjudicator in those cases where the customer wishes to receive alternative network designs for alternative purposes.

and, where the Customer so elects, to refer a dispute to the Adjudicator in accordance with the Adjudication Scheme.

- 9.5 To the extent required by the Ofcom Notification, Network Access charges shall be determined in accordance with the Ofcom Notification and paragraph 11 (*Provision of Network Access*) of these Undertakings and shall be passed through to the relevant Customer with no additional mark-up.
- 9.6 The charges for each Transmission Service (excluding Network Access where paragraph 9.5 applies) shall be reasonably derived from the forecast costs of provision allowing for the Return on Capital Employed and recovery (on a pass-through basis without any mark-up) of depreciation, operating costs and electricity costs where:
- 9.6.1 the forecast costs of provision shall include only those costs which Arqiva has been able to demonstrate to the satisfaction of the Adjudicator are costs that Arqiva will reasonably and efficiently incur, as a vertically integrated provider of Network Access and MTS, in order to provide the Transmission Service requested by the relevant Customer having regard to:
- (a) the standards which could reasonably be expected of a first class supplier of comparable services (including network design, equipment procurement, network build, network operation and maintenance and/or estates management, whether such services are supplied separately or as part of a bundle of services);
 - (b) the costs of provision for the same, equivalent or similar existing Transmission Services (including any efficiencies which have been achieved following the Merger); and
 - (c) such other factors as the Adjudicator may determine from time to time;
- 9.6.2 the value of existing assets and new capital expenditure shall be calculated using the Depreciated Replacement Cost Methodology;
- 9.6.3 the operating costs to be recovered through the charges will be calculated based on the Cost Allocation Methodology; and
- 9.6.4 electricity charges will be incurred by Arqiva in accordance with the strategy and methodology which is approved and/or directed by the Adjudicator from time to time pursuant to paragraphs 14.4 and/or 14.5 and will be passed through to customers on an annual basis at cost with no mark-up on the actual charges payable by Arqiva.
- 9.7 Where the actual costs of provision are less than the forecast costs of provision, the charges determined in accordance with paragraph 9.6 shall be reduced in accordance with the gain-share mechanism set out in Appendices 8 or 9 (as applicable).
- 9.8 Where the actual costs of provision are higher than the forecast costs of provision, the charges determined in accordance with paragraph 9.6 shall not be increased (except where such variation reflects changes to the service requested by the Customer through a change control process in the relevant agreement or changes in electricity charges in accordance with paragraph 9.6.4).

- 9.9 The charges determined in accordance with paragraph 9.6 shall be adjusted on an annual basis by a percentage equal to the annual percentage increase in RPI minus 1%.
- 9.10 Arqiva undertakes to provide Transmission Services under a New Transmission Agreement on the terms and conditions as set in accordance with paragraph 10 (*Reference Offers for Transmission Services*) or, where a Customer so elects:
- 9.10.1 on the terms and conditions contained in its Existing Transmission Agreement for the relevant Transmission Services (as amended pursuant to these Undertakings), excluding (in those cases where the Customer has not elected to renew under paragraph 8.1.1) the terms and conditions in relation to price, which shall be determined in accordance with this paragraph 9;⁶ or
- 9.10.2 on the terms and conditions contained in the most recent agreement for equivalent or similar Transmission Services executed by that particular Customer and Arqiva (as amended pursuant to these Undertakings), excluding the terms and conditions in relation to price, which shall be determined in accordance with this paragraph 9.

10. REFERENCE OFFERS FOR TRANSMISSION SERVICES

- 10.1 Arqiva shall publish Reference Offers for Transmission Services in accordance with the timetable and including the applicable elements specified in Appendices 8 and 9.
- 10.2 Arqiva shall promptly republish any Reference Offer for Transmission Services if at any time the Adjudicator or Ofcom requests that Arqiva modify the technical specification (including Stations) on which that Reference Offer is based.
- 10.3 Publication shall be effected by placing a copy of each applicable Reference Offer for Transmission Services on a relevant website operated or controlled by Arqiva and providing a copy to the Adjudicator and Ofcom.
- 10.4 If at any time a prospective customer requests Transmission Services pursuant to paragraph 9.1, Arqiva will provide an initial response within ten (10) working days following receipt of such written request either:
- 10.4.1 where under paragraph 9.10 the prospective customer has requested a New Transmission Agreement on terms and conditions as set under this paragraph 10 either:
- (a) confirming that the terms (including pricing) contained in the relevant Reference Offer for Transmission Services are applicable, where a prospective customer has requested Transmission Services on the basis of the technical specification contained in a Reference Offer published pursuant to paragraph 10.1 or 10.2;
- (b) confirming the date by which Arqiva will respond in writing identifying any variations to the charges, terms and conditions contained in a Reference Offer published pursuant to paragraph 10.1 or 10.2, where a prospective customer has requested Transmission Services on the basis of an

⁶This clause is intended to give the Customer the option (as an alternative to renewing on the basis of existing prices under paragraph 8.1.1) to enter into a new agreement for existing services on cost-oriented terms, but retaining the other terms and conditions of its existing agreement.

alternative specification (including Stations) as compared to the specification assumed in such published Reference Offer;

(c) confirming the date by which Arqiva will provide (subject always to paragraph 10.7) a Reference Offer (including pricing) on the basis of the customer's technical specification, where no Reference Offer has been published pursuant to paragraph 10.1 or 10.2;⁷ or

10.4.2 where the prospective customer has elected to adopt alternative terms and conditions (excluding price) under paragraphs 9.10.1 or 9.10.2, confirming the date by which Arqiva will provide a pricing proposal for the provision of such services.

10.5 Arqiva shall provide a detailed response pursuant to paragraphs 10.4.1 and 10.4.2 as soon as reasonably practicable and in any event within:

10.5.1 two (2) months in relation to a Transmission Service for a digital terrestrial television service or national radio service; or

10.5.2 two (2) weeks in relation to a Transmission Service for a sub-national radio service,

or such longer period as the prospective customer or the Adjudicator agrees is reasonably required.

10.6 Where a prospective customer has subsequent queries after provision of such detailed response, Arqiva shall provide an initial response in writing within five (5) working days of receipt, and will provide a full response within a reasonable period of time (which shall not exceed the time periods specified in paragraph 10.5).

10.7 Arqiva shall send a copy of its written response pursuant to paragraphs 10.5 and 10.6 to the Adjudicator and shall not publish such response unless directed to do so by the Adjudicator having consulted the relevant customer and having regard to the extent to which such publication may harm the legitimate business interests of any of the parties involved.

10.8 Each Reference Offer or other response to a request provided pursuant to this paragraph 10 shall comply with paragraph 9 (*Terms of New Transmission Agreements*) above, this paragraph 10 and the applicable provisions of Appendix 8 or Appendix 9 (as applicable).

10.9 For the avoidance of doubt, prospective customers shall be free to seek amendments to the Reference Offer terms and conditions pursuant to this paragraph 10 and to negotiate alternative terms and conditions with Arqiva in accordance with paragraph 1.2.

⁷For the avoidance of doubt, this is to cover the situation where a bidder for spectrum or for a licence wishes to request a Reference Offer before Arqiva is required to publish a Reference Offer.

Part C—Undertakings in relation to Network Access

11. PROVISION OF NETWORK ACCESS⁸

- 11.1 Arqiva undertakes to provide Network Access to any MTS Provider upon reasonable request in writing, as soon as reasonably practicable after such a request.
- 11.2 Arqiva shall provide such Network Access pursuant to paragraph 11.1 on fair and reasonable terms, conditions and charges.⁹
- 11.3 Arqiva undertakes not to unduly discriminate against particular persons or against a particular description of persons, in relation to matters connected with the provision of Network Access pursuant to paragraph 11.1.
- 11.4 Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator and, if relevant, Ofcom, that:
- 11.4.1 each and every charge offered, payable or proposed for Network Access covered by this paragraph 11 is reasonably derived from the costs of provision allowing for the Return on Capital Employed and recovery (on a pass-through basis without any mark-up) of depreciation (calculated using the Depreciated Replacement Cost Methodology), operating costs (calculated using the Cost Allocation Methodology) and pass through costs (with electricity charges incurred by Arqiva in accordance with the strategy and methodology which is approved and/or directed by the Adjudicator from time to time pursuant to paragraphs 14.4 and/or 14.5); and
- 11.4.2 the MTS Provider has been provided with sufficient transparency and information regarding the costs of provision, the corresponding proposed charges and potential alternative network designs in relation to Network Access to reasonably allow the MTS Provider to understand such costs and the corresponding proposed charges separately for:
- (a) each element of the service (including Network Access capital expenditure and operating expenditure unless agreed otherwise with the MTS Provider); and
- (b) each individual Station,
- and, where the MTS Provider so elects, to refer a dispute to the Adjudicator in accordance with the Adjudication Scheme.
- 11.5 Arqiva undertakes to provide Network Access pursuant to paragraph 11.1 on terms and conditions as set in accordance with paragraph 12 (*Reference Offer for Network Access*).

⁸Given the overlap with the existing regulatory regime, we have sought where possible to conform the drafting with that in the Ofcom Notification. One customer has requested that explicit provision should be made for the review of Part C of these Undertakings if the Ofcom Determination is amended. Arqiva does not object to such a provision, if this is considered appropriate by the Commission.

⁹It should be noted that the Adjudication Rules provide that in deciding whether any terms or conditions offered or provided by Arqiva are fair and reasonable, the Adjudicator shall take account of whether the terms or conditions offered or provided are any less favourable to the prospective customer than the relevant terms and conditions on which Arqiva supplies similar or equivalent Network Access to itself, its Affiliates or any other third party (with the exception of terms and conditions which relate to credit vetting and payment terms) where the dispute arises pursuant to paragraph 11.2 of the Undertakings

12. REFERENCE OFFER FOR NETWORK ACCESS

- 12.1 Except in so far as the Adjudicator may otherwise consent in writing, Arqiva shall publish Reference Offers for Network Access in accordance with the timetable and including the applicable elements specified in Appendices 8 and 9.
- 12.2 Arqiva shall promptly republish any Reference Offer for Network Access if at any time the Adjudicator or Ofcom requests that Arqiva modify the technical specification (including Stations) on which that Reference Offer is based.
- 12.3 Publication shall be effected by placing a copy of each applicable Reference Offer for Network Access on a relevant website operated or controlled by Arqiva and providing a copy to the Adjudicator and Ofcom.
- 12.4 Arqiva shall provide Network Access pursuant to paragraph 11.1 (including to itself or its Affiliates) at the charges, terms and conditions in the relevant Reference Offer.
- 12.5 Where Arqiva provides to itself Network Access that is the same, similar or equivalent to that provided to any MTS Provider or may be used for a purpose that is the same, similar or equivalent to that provided to a MTS Provider, in a manner that differs from that detailed in the relevant Reference Offer for Network Access, Arqiva shall ensure that it promptly publishes a Reference Offer in relation to the Network Access that it provides to itself. Where Arqiva modifies the terms of any agreement pursuant to which it supplies Network Access to itself or its Affiliates, Arqiva shall update the Reference Offer and offer the same or equivalent amendments under any Network Access agreements for the same or equivalent services in force at the relevant time.
- 12.6 If at any time a MTS Provider requests Network Access pursuant to paragraph 11.1, Arqiva will provide an initial response within ten (10) working days following receipt of such written request either:
 - 12.6.1 confirming that the terms (including pricing) contained in the relevant Reference Offer are applicable, where a MTS Provider has requested Network Access on the basis of the technical specification contained in a Reference Offer published pursuant to paragraph 12.1 or 12.2;
 - 12.6.2 confirming the date by which Arqiva will respond in writing identifying any variations to the charges, terms and conditions contained in the published Reference Offer pursuant to paragraph 12.1 or 12.2, where a MTS Provider has requested Network Access on the basis of an alternative specification (including Stations) as compared to the specification assumed in such published Reference Offer; or
 - 12.6.3 confirming the date by which Arqiva will provide (subject always to paragraph 12.9) a Reference Offer (including pricing) on the basis of the MTS Provider's technical specification, where no Reference Offer has been published pursuant to paragraph 12.1 or 12.2.
- 12.7 Arqiva shall provide a detailed response pursuant to paragraphs 12.6.2 and 12.6.3 as soon as reasonably practicable and in any event within:
 - 12.7.1 two (2) months in relation to Network Access for a digital terrestrial television service or national radio service; or
 - 12.7.2 two (2) weeks in relation to a Network Access for a sub-national radio service

or such longer period as the customer or the Adjudicator agrees is reasonably required.

- 12.8 Where a MTS Provider has subsequent queries after provision of such detailed response, Arqiva shall provide an initial response in writing within five (5) working days of receipt, and will provide a full response within a reasonable period of time (which shall not exceed the time periods specified in paragraph 12.7).
- 12.9 Arqiva shall send a copy of its written response pursuant to paragraphs 12.7 and 12.8 to the Adjudicator and shall not publish such response unless directed to do so by the Adjudicator having consulted the relevant customer and having regard to the extent to which such publication may harm the legitimate business interests of any of the parties involved.
- 12.10 Each Reference Offer or other response to a request provided pursuant to this paragraph 12 shall comply with paragraph 11 (*Provision of Network Access*) above, this paragraph 12 and the applicable provisions of Appendix 8 or Appendix 9 (as applicable).
- 12.11 For the avoidance of doubt, nothing in these Undertakings shall prevent a MTS Provider from seeking amendments to the Reference Offer terms and conditions pursuant to this paragraph 12 and negotiating alternative terms and conditions with Arqiva.

Part D—Undertakings in relation to all television and radio transmission services

13. AUDITOR

- 13.1 The Auditor shall be appointed by the Adjudicator within three (3) months of the Commencement Date and shall be independent of Arqiva. The Auditor shall continue to act in relation to these Undertakings unless removed by the Adjudicator, in which case a replacement shall be promptly appointed by the Adjudicator.
- 13.2 The Auditor shall be responsible for conducting the each of the audits in accordance with paragraph 14 (*Regulatory Accounting*), provided that the Adjudicator may from time to time appoint specialist consultants to assist the Auditor in relation to specified issues of a technical or operational nature.
- 13.3 The Adjudicator shall enter into a contract of appointment with the Auditor as soon as reasonably practicable following his agreement or nomination pursuant to paragraph 13.1. The contract of appointment shall include a provision that the Auditor shall:
 - 13.3.1 provide any clarification or explanation in relation to any report produced by the Auditor as the Adjudicator and, if applicable, Ofcom may reasonably require in order to resolve disputes relating to the subject matter of the report; and
 - 13.3.2 provide any clarification or explanation in relation to the Accounting Statements as the Adjudicator and, if applicable, Ofcom may reasonably require in order to resolve disputes relating to the basis of Arqiva's revenues, costs, assets, liabilities or capital expenditure.
- 13.4 Arqiva shall promptly provide to the Auditor all documents and information reasonably required by the Auditor for the purposes of any audit carried out pursuant to these Undertakings.

- 13.5 Any report prepared by the Auditor shall be considered final, save where the Adjudicator considers that the report (or a part thereof) contains, or is based on, a manifest error. In this event, the Adjudicator shall direct the Auditor to prepare a revised version of the report (or part thereof) to remove the error.

14. **REGULATORY ACCOUNTING**

- 14.1 Arqiva undertakes to prepare separate Accounting Statements in relation to the provision of MTS and Network Access.

- 14.2 The Accounting Statements shall be prepared on a consistent basis in respect of each financial year ending after the Commencement Date and shall comprise: (i) a profit and loss account setting out the revenues and costs; (ii) a balance sheet setting out the assets (including fixed asset values specifying the regulatory asset base) and liabilities; and (iii) a separate capital expenditure report detailing capital expenditure by asset category.

- 14.3 The Accounting Statements shall be audited by the Auditor and shall be provided to the Adjudicator and Ofcom as soon as reasonably practicable (but no later than one (1) month) following the end of the financial year to which they relate.

- 14.4 By [•] 2008, Arqiva shall provide to the Adjudicator its proposed:

14.4.1 Cost Allocation Methodology;

14.4.2 Depreciated Replacement Cost Methodology; and

14.4.3 strategy and methodology for procurement of electricity applicable to Transmission Services and Network Access,

each for approval by the Adjudicator. Arqiva shall make such amendments to each document as are directed by the Adjudicator. Promptly after their approval by the Adjudicator, Arqiva shall make such documents available to the Auditor, as well as to Customers and prospective customers of Transmission Services on request. Arqiva shall publish such documents on its website if directed to do so by the Adjudicator having regard to the extent to which such publication may harm the legitimate business interests of any of the parties involved. The Adjudicator shall review these documents annually and Arqiva shall promptly publish any changes thereto if directed to do by the Adjudicator.

- 14.5 Arqiva shall secure the agreement of the Adjudicator and shall notify each affected Customer at least thirty (30) days prior to:

14.5.1 any material revaluation of assets used in the provision of MTS or Network Access in accordance with the Depreciated Replacement Cost Methodology; or

14.5.2 entering into a new electricity purchasing agreement or any material amendments thereto with its electricity supply providers.

- 14.6 Without prejudice to paragraph 17, the Return on Capital Employed in relation to new agreements pursuant to paragraphs 9.6 and 11.4.1 shall be modified by a direction of the Adjudicator provided that the Adjudicator, prior to issuing such direction:

14.6.1 has conducted or, following consultation with Ofcom and Arqiva, has commissioned an independent expert to conduct, a review of the Return on

Capital Employed (such review not to be conducted more than once in any five (5) year period);

14.6.2 has provided the results of such review pursuant to paragraph 14.6.1 to Arqiva, Ofcom and the Customers and provided such parties with a reasonable opportunity to comment thereon; and

14.6.3 has taken account of such comments in determining whether and how to modify the Return on Capital Employed.

14.7 Arqiva undertakes to commission and fund an annual independent financial audit of DSO Expenditure on the basis set out in paragraph 14.8. The first such audit shall be completed within twelve (12) months of the Commencement Date, with a further audit to be completed by the end of the same calendar month each year thereafter, up to and including 2014. Each such audit shall be conducted by the Auditor.

14.8 The Auditor shall prepare a report containing the results of each annual audit. In particular, the Auditor shall identify in such report the extent to which DSO Expenditure in the twelve (12) month period covered by the audit does not properly reflect the actual costs of provision in that period.

14.9 A copy of each of the Auditor's reports shall be provided to Arqiva, the Adjudicator, Ofcom, the BBC, SDN and D34 (subject to such redactions of commercially sensitive information as the Adjudicator may consider reasonable).

14.10 Subject to paragraph 13.5 (*Auditor*), in the event that a report produced by the Auditor identifies that DSO Expenditure for the relevant period does not reflect the actual costs of provision in that period then, for the purposes of calculating (or recalculating) the applicable charges under the High Power DTT Agreements, DSO Expenditure shall be adjusted accordingly to reflect the findings of the Auditor's report. For the avoidance of doubt, this provision shall be without prejudice to the protections afforded to each of the BBC, SDN and D34 in the relevant High Power DTT Agreement regarding changes in charges (in each case as amended pursuant to these Undertakings).

15. **CONFIDENTIALITY OF INFORMATION**

15.1 Where Arqiva acquires confidential information from:

15.1.1 a prospective customer or Customer before, during or after the process of negotiating a New Transmission Agreement pursuant to paragraph 9 or a renewal pursuant to paragraph 8.1.1; or

15.1.2 a MTS Provider before, during or after the process of negotiating an agreement for Network Access pursuant to paragraph 11.1,

Arqiva shall use that information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of that information. Such information shall not be passed on to any other departments, subsidiaries or partners of Arqiva for whom such information could provide a competitive advantage. Such information shall be held in accordance with the Information Security Strategy.

15.2 By [●] 2008, Arqiva shall publish an Information Security Strategy which has been approved by the Adjudicator and shall set out the principles for access and use of the confidential information referred to in paragraph 15.1. The Information Security Strategy shall require Arqiva to implement appropriate measures:

- 15.2.1 to ensure the security of Arqiva's information storage systems and data systems (including data collection, storage and archiving), particularly where information referred to in paragraph 15.1 is stored in systems shared between business units;
 - 15.2.2 to ensure the physical security of confidential information;
 - 15.2.3 to ensure that an employee of one business unit does not disclose or use confidential information of which the employee had become aware whilst working for another business unit; and
 - 15.2.4 to ensure that staff receive adequate training in relation to the Information Security Strategy as part of the education programme pursuant to paragraph 18.5.4.
- 15.3 Arqiva shall make such modifications to the Information Security Strategy as the Adjudicator or Ofcom may direct from time to time. Any modifications to the Information Security Strategy made by Arqiva must be approved by the Adjudicator and published.
- 15.4 Arqiva shall publish the Information Security Strategy and each update thereto by:
- 15.4.1 placing a copy of the Information Security Strategy on any relevant website operated or controlled by Arqiva; and
 - 15.4.2 sending a copy of the Information Security Strategy to the Adjudicator and Ofcom.

16. **MANAGEMENT OF DIGITAL SWITCHOVER PROCESS**

- 16.1 Arqiva shall provide to each of the BBC, SDN, D34, Digital UK and the Adjudicator a monthly report on Digital Switchover which shall include information on the management of the integration of NGW in so far as it is associated with Digital Switchover. The report shall provide an update on the planning and implementation of integration activities including design, procurement and installation of equipment and telemetry systems, operations integration and corporate systems integration. Arqiva shall present each such report at a meeting of Digital UK if invited by Digital UK to do so.
- 16.2 In the event that any of the BBC, SDN, D34 or Digital UK (the "**Concerned Party**") considers that any aspect of the planning and implementation of integration activities may materially and adversely affect Arqiva's ability to meet the Switchover Timetable:
- 16.2.1 the Concerned Party may send written notice of the concern to its commercial contact at Arqiva setting out all relevant details regarding the issue identified;
 - 16.2.2 where agreement regarding the actions required to address the issue identified in 16.2.1 is not reached within fifteen (15) working days from receipt of such notice, the issue may be escalated by the Concerned Party to the Compliance Director;
 - 16.2.3 where agreement regarding the actions required to address the issue identified in 16.2.1 is not reached within a further period of fifteen (15) working days, the issue may be escalated by the Concerned Party to the Adjudicator, who shall seek to facilitate agreement between Arqiva and the Concerned Party at chief executive officer level within a further period of thirty (30) working days;

16.2.4 where agreement regarding the actions required to address the issue identified in 16.2.1 is not reached within this period, the Adjudicator may direct Arqiva to take such action as the Adjudicator considers reasonably required in order to meet the Switchover Timetable.

17. THE ADJUDICATOR

17.1 Arqiva undertakes to comply with and fulfil any obligations placed upon it under the Adjudication Scheme and the Adjudication Rules.

17.2 Arqiva will comply promptly with such decisions and written directions as the Adjudicator or, if applicable, Ofcom may from time to time give under these Undertakings, the Adjudication Scheme and Adjudication Rules. Notwithstanding any conflicting provision contained in a contract to which Arqiva is party, Arqiva shall offer such terms as are required to comply with the Adjudicator's decision.

17.3 Arqiva shall offer to:

17.3.1 any Customer or prospective customer referred to in paragraphs 2 to 10 or 16; and

17.3.2 any MTS Provider referred to in paragraphs 11 or 12

the ability to refer any dispute in respect of the relevant paragraph (including any related Appendix) to the Adjudicator for determination in accordance with the Adjudication Scheme and the Adjudication Rules.

17.4 If any Customer, prospective customer or MTS Provider referred to in paragraph 17.3 accepts this offer and to be bound by the Adjudication Scheme and the Adjudication Rules, it may refer the dispute to the Adjudicator.

17.5 The Adjudication Scheme shall operate without prejudice to the statutory rights of any person under the Competition Act 1998, the Broadcasting Act 1990, the Enterprise Act 2002, the Communications Act 2003 and the Wireless Telegraphy Act 2007 each as amended from time to time.

18. ENFORCEMENT PROVISIONS

18.1 Arqiva shall deliver an annual report to the Office of Fair Trading, copied to the Adjudicator and Ofcom, on a date to be determined by the Office of Fair Trading.¹⁰ Each such report shall include a detailed and accurate account of:

18.1.1 steps taken during the preceding year to ensure compliance with the Undertakings;

18.1.2 instances where a breach or potential breach of the Undertakings has been identified; and

18.1.3 how the report was compiled.

18.2 Arqiva will co-operate fully with the Office of Fair Trading or, if applicable, the Adjudicator and/or Ofcom when monitoring compliance with these Undertakings or investigating potential breaches of these Undertakings.

¹⁰Arqiva assumes that, for administrative simplicity, the OFT will wish to coincide the timing of Arqiva's compliance report, with the timing of the Adjudicator's Annual Report (issued under paragraph 27 of the Adjudication Scheme).

- 18.3 Arqiva will comply promptly with such written directions as the Office of Fair Trading may from time to time give:
- 18.3.1 to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these Undertakings; or
- 18.3.2 to do or refrain from doing anything so specified or described which they might be required by these Undertakings to do or to refrain from doing,
- and the Office of Fair Trading may seek such advice from Ofcom as it considers necessary for the purposes of formulating directions under this paragraph.
- 18.4 In the event of a conflict between directions, instructions or decisions issued by the Office of Fair Trading pursuant to paragraph 18.3 and the Adjudicator or Ofcom pursuant to paragraph 17.2, then Arqiva's obligations under paragraph 18.3 shall prevail.
- 18.5 Arqiva will appoint a Compliance Director who will have primary responsibility for:
- 18.5.1 monitoring compliance with these Undertakings and preparing reports pursuant to paragraph 18.1;
- 18.5.2 facilitating and responding to any requests for information from the Office of Fair Trading, the Adjudicator and/or Ofcom pursuant to paragraph 18.2;
- 18.5.3 monitoring the implementation of measures to respond to any non-compliance with these Undertakings and the implementation of any decisions or directions pursuant to paragraphs 17.2 and 18.3;
- 18.5.4 maintaining staff awareness within Arqiva of the requirements of these Undertakings, including developing and overseeing an ongoing internal education program directed towards ensuring compliance with these Undertakings; and
- 18.5.5 facilitating the resolution of any concerns raised pursuant to paragraph 16.2 of these Undertakings.

19. **INTERPRETATION**

- 19.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 19.2 Any word or expression used in these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as it has in the Enterprise Act 2002.
- 19.3 Unless the context requires otherwise, the singular shall include the plural and vice versa.
- 19.4 Any references to a "month" or a "year" in these Undertakings shall be to a calendar month or calendar year unless otherwise specified.
- 19.5 Further, in these Undertakings:
- "Accounting Statements"** means the accounting statements to be prepared in accordance with paragraph 14 of these Undertakings;

“Adjudication Rules” means the rules set out in Appendix 2, as amended from time to time;

“Adjudication Scheme” means the scheme set out in Appendix 1, as amended from time to time;

“Adjudicator” means the adjudicator appointed under these Undertakings;

an **“Affiliate”** of a person is another person who satisfies the following condition, namely that any enterprise (which in this context has the meaning given in section 129(1) of the Enterprise Act 2002) that the first person carries on from time to time and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Enterprise Act 2002;

“Analogue TV Agreement” means an agreement set out in Part A of Annex 10;

“Analogue Radio Agreement” means an agreement as described in Part D of Annex 10;

“Arqiva” means Macquarie UK Broadcast Holdings Limited, Macquarie UK Broadcast Ventures Limited, Arqiva Limited, NGW and any other subsidiary of Macquarie UK Broadcast Holdings Limited;

“Appendix” means an appendix to the Undertakings;

“Auditor” means an auditor appointed under paragraph 13 of these Undertakings;

“Base Agreement” means the agreement described in paragraph 3 of Appendix 8;

“BBC” means the British Broadcasting Corporation;

“BBC Digital Agreement” means the Digital Agreement between Arqiva and the BBC dated 15 September 2006;

“Compliance Director” means the person appointed pursuant to paragraph 18.5 of these Undertakings;

“Cost Allocation Methodology” means a methodology for the allocation of common operating costs and, where applicable, common capital costs which shall be based on the allocation principles established by Arqiva for the purposes of complying with the Ofcom Notification pursuant to which costs are allocated on a proportional basis to different services in a manner which reflects the economies of scale and scope generated by Arqiva as a vertically integrated provider of Network Access and MTS, as well as those which may be generated between different related or unrelated activities, and shall be approved by the Adjudicator pursuant to paragraph 14 of these Undertakings;

“Customer” means a customer of Arqiva pursuant to an Existing Transmission Agreement;

“Commencement Date” means [•] 2008;

“D34” means Digital 3&4 Limited;

“D34 Agreement” means the Managed Broadcast Transmission Service Agreement between Arqiva and D34 dated 7 August 2007;

“Depreciated Replacement Cost Methodology” means a depreciated replacement cost methodology approved by the Adjudicator pursuant to paragraph 14 of these Undertakings for calculating the value of existing assets and new capital expenditure based on asset lives reflecting the useful lives of those assets and depreciation calculated on a straight line basis;

“Digital Radio Agreement” means an agreement as described in Part E of Annex 10;

“Digital Switchover” means the planned cessation of the transmission of analogue terrestrial television broadcasting services and the transition to all digital terrestrial television broadcasting services in the United Kingdom in accordance with the DSO Timetable and the specifications and work programme agreed with the BBC, SDN and D34;

“Digital UK” means Digital UK Limited;

“DSO Expenditure” means the capital expenditure (including build labour costs) which Arqiva claims to have incurred in relation to the build and installation of the systems required to provide Network Access [and MTS] for the purposes of providing digital terrestrial television broadcasting services on Digital Switchover as described in the Existing Television Reference Offers [and the High Power DTT Agreements];¹¹

“DSO Timetable” means the timetable for Digital Switchover as set out in the digital terrestrial television multiplex licences granted to SDN, D34 and the BBC and as reflected in the High Power DTT Agreements (each as amended from time to time);

“Existing Television Reference Offer” means:

- (a) the Arqiva Reference Offer for the provision of TV Network Access, version 3.0, dated 29 September 2006 or any subsequently republished version thereof; and
- (b) the NGW Reference Offer for the provision of TV Network Access version 5, dated July 2007 to the extent that it remains in force after the Commencement Date;

“Existing Transmission Agreement” means an agreement set out in Annex 10;

“High Power DTT Agreement” means an agreement set out in Part C of Annex 10;

“Information Security Strategy” means the information security strategy to be published by Arqiva in accordance with paragraph 15 of these Undertakings;

“Low Power DTT Agreement” means an agreement set out in Part B of Annex 10;

“Merger” means the acquisition of NGW by Macquarie UK Broadcast Ventures Limited which completed on 3 April 2007 and the subsequent integration of NGW and Arqiva;¹²

“MTS” means the provision of a terrestrial managed transmission service for the purpose of providing analogue and/or digital terrestrial broadcasting transmission services within the United Kingdom to deliver broadcast content to end users;

¹¹Arqiva is prepared to offer an annual audit to cover both Network Access and MTS expenditure related to DSO provided that this is acceptable to the BBC, SDN and D34.

¹²For the avoidance of doubt, the integration of Arqiva and NGW will not occur until the hold separate undertakings given by Macquarie UK Broadcast Holdings Limited are lifted.

“MTS Provider” means a provider or prospective provider of MTS to a radio or television multiplex operator and/or broadcaster, where such provider or prospective provider of MTS is not also a purchaser of MTS from Arqiva;

“Network Access” means 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;

“New Transmission Agreement” means an agreement for the provision by Arqiva of Transmission Services entered into after the Commencement Date;

“NGW” means National Grid Wireless Limited and its subsidiaries;

“Ofcom” means the Office of Communications;

“Ofcom Notification” means the notification issued by Ofcom to Arqiva and NGW under section 41(1) and 79(4) of the Communications Act 2003 dated 28 April 2005 including any amendment or replacement thereof;

“Persistent Failure” means a service performance failure by Arqiva as described in the relevant Appendix;

“Radio Agreement” means an Analogue Radio Agreement or a Digital Radio Agreement;

“Reference Offer” means the terms and conditions on which Arqiva is willing to enter into a contract for the provision of the relevant service on or after the Commencement Date;

“Return on Capital Employed” means Arqiva’s weighted average cost of capital for terrestrial broadcast transmission services, which is 10.4% on a pre-tax nominal basis (equivalent to 7.71% on a pre-tax real basis) or such other weighted average cost of capital for terrestrial broadcast transmission services as:

(a) directed or determined by the Adjudicator in accordance with the Adjudication Rules or pursuant to paragraph 14.6 (*Regulatory Accounting*); or

(b) for the purposes of paragraph 11 (*Provision of Network Access*), by Ofcom pursuant to its powers under the Communications Act 2003 or the Ofcom Notification;¹³

“RPI” means the all items Retail Prices Index published by the Office for National Statistics (or equivalent index published by any successor organisation);

“SDN” means SDN Limited;

“SDN Agreement” means the Managed Broadcast Transmission Service Agreement between Arqiva and SDN dated 27 July 2007;

“Station” means a terrestrial broadcast transmission station;

¹³See, for reference, Ofcom, *Terrestrial Transmission Market Review*, 31 July 2006 at Annex 1 (Ofcom guidance note on WACC).

“Switchover Completion” means the completion of Digital Switchover in the last region as defined in the DSO Timetable;

“Transmission Services” means a service consisting of MTS and Network Access provided to a radio or television multiplex operator or broadcaster;

“Transmitter Equipment” means the transmitter and other equipment for MTS at a Station which is owned by Arqiva (including for the avoidance of doubt, NGW prior to the Merger) and is dedicated exclusively to service provision under an Existing Transmission Agreement, but excluding all masts, towers, antenna systems, feeders, combiners, filters and any other equipment provided for the purpose of Network Access or for the purposes of distribution services;

“Undertakings” means these undertakings;

“Year” means a period of one year commencing on the Commencement Date and each subsequent anniversary thereof and, in particular, **“Year 1”** will commence on the Commencement Date, **“Year 2”** will commence on the first anniversary of the Commencement Date, **“Year 3”** will commence on the second anniversary of the Commencement Date, etc.

Index of appendices

- Appendix 1 - Adjudication Scheme
- Appendix 2 - Adjudication Rules
- Appendix 3 - Proposal to the BBC [*confidential*]
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APPENDIX 1

Adjudication Scheme

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the undertakings given by Arqiva to the Competition Commission, dated [●] 2008 (the “**Undertakings**”) and the Adjudication Rules attached as Appendix 2 to those Undertakings.

Application

2. This Adjudication Scheme as amended from time to time may be incorporated by reference into any contract for the provision of terrestrial radio or television managed transmission services or network access by Arqiva and any reference to the “Adjudication Scheme” in such contract shall mean, in relation to any adjudication, the most recent edition hereof as at the date of submission of the Notice of Adjudication under the Adjudication Rules. This Adjudication Scheme may also apply in the circumstances set out in paragraph 17 of the Undertakings.

Appointment

3. [Ofcom] shall appoint one or more persons to the office of Adjudicator within one (1) month of the date of the Undertakings, after consulting with Arqiva and its customers in such manner as [Ofcom] considers reasonable.¹⁴
4. The Adjudicator shall be independent, and in particular from Arqiva, Ofcom, the BBC, any commercial television or radio broadcaster in the United Kingdom and all other parties to any dispute he is asked to decide upon. A person requested or selected to act as the Adjudicator shall have relevant experience of the broadcasting industry but shall not be an employee of or consultant to Arqiva, the BBC, any commercial television or radio broadcaster in the United Kingdom, or an employee of Ofcom for the duration of his appointment. He shall be under an obligation to declare immediately any interest, financial or otherwise, in any matter relating to any dispute he is asked to determine.
5. The Adjudicator shall be appointed for any period or periods specified by Ofcom provided that his appointment shall terminate when all the relevant provisions of the Undertakings cease to be in force. Without prejudice to paragraphs 8 and 21(b) of the Adjudication Rules and paragraphs 10 and 15 of this Adjudication Scheme, Ofcom shall appoint a substitute Adjudicator to take account of the situation arising from the death, retirement, incapacity or resignation (whether permanent or in relation to one or more particular Disputes (as defined below)) of the Adjudicator after appointment.
6. Following the termination of his appointment, the Adjudicator shall: (a) not [without Ofcom’s consent (which shall not be unreasonably withheld)]¹⁵ be employed by or

¹⁴Arqiva has requested confirmation from the OFT as to whether it is their position that the Adjudicator should be appointed by the OFT (rather than Ofcom).

¹⁵One of Arqiva’s customers has suggested that Ofcom’s power to release the Adjudicator from the cooling off period be deleted.

act as consultant or adviser to Arqiva, the BBC or any commercial television or radio broadcaster in the United Kingdom for a period which will expire on the later of (i) 31 January following the termination of the Adjudicator's appointment, and (ii) the date six (6) months after the date of such termination; and (b) not disclose to any person any confidential information or confidential document provided to him in connection with his appointment as Adjudicator.

Functions

7. The Adjudicator shall have the function of determining any dispute between (a) Arqiva and (b) any customers or prospective customers of terrestrial radio and television managed transmission services or network access, arising out of the interpretation or exercise of the rights given to, or obligations upon, such persons in relation to the matters set out in paragraph 17 of the Undertakings, the interpretation of any provision of the Adjudication Scheme or the Adjudication Rules, or his jurisdiction to determine the dispute (a "**Dispute**"). The Adjudicator shall reach his decision and deliver it in accordance with the Undertakings, the Adjudication Rules attached to the Undertakings and this Adjudication Scheme.
8. In addition the Adjudicator shall be under a duty to carry out his functions in relation to:
 - (i) review of the forecast costs of provision for new transmission agreements pursuant to paragraph 8.6 of the Undertakings;
 - (ii) the publication of reference offers pursuant to paragraphs 9 and 11 of the Undertakings;
 - (iii) the appointment of an auditor pursuant to paragraph 12 of the Undertakings;
 - (iv) approval and review of regulatory accounting documents pursuant to paragraph 13 of the Undertakings;
 - (v) approval of an information security strategy pursuant to paragraph 14 of the Undertakings;
 - (vi) facilitation of agreement and, where necessary, directing Arqiva to take action pursuant to paragraph 16 of the Undertakings; and
 - (vii) making reports to Ofcom and the Office of Fair Trading as set out in paragraph 25 of the Undertakings.
9. In carrying out any of his functions described in paragraphs 7 and 8, the Adjudicator:
 - (i) may consult with Ofcom, the Office of Fair Trading and such other parties as the Adjudicator considers appropriate;
 - (ii) shall, where relevant, take account of (but shall not be bound by) (a) Ofcom's statutory duties and (b) any relevant guidance issued by Ofcom in relation to Arqiva either prior to, on or after the Commencement Date; and
 - (iii) shall act with a view to securing that there is no inconsistency between his decision and any direction, notification, determination made by the Director General of Telecommunications or Ofcom or any decision of the Competition Appeal Tribunal or Competition Commission pursuant to their respective powers under the Communications Act 2003 which, in each case, is legally binding upon Arqiva at the time the Adjudicator takes his decision.

10. In the event that a substitute Adjudicator is appointed as a result of the original Adjudicator ceasing to be independent as described in paragraph 4 or for any other reason, any directions or decisions made by the original Adjudicator shall remain effective unless reviewed by the substitute Adjudicator in which case all time scales shall be recalculated from the date of the substitution.

Remuneration and Budget

11. There must be paid to the Adjudicator such remuneration, travelling and other allowances, pension or gratuity, or such contributions or payments towards provision for such a pension, allowance or gratuity, as Ofcom may determine.
12. The Adjudicator may incur such other costs as may be required for the fulfilment of his functions, including for office accommodation, staff, legal advice, consultancy fees and any other requirements, up to but not exceeding the amount of the Budget set in accordance with paragraph 13 below.
13. Ofcom will set a budget for the total costs of the Adjudicator and his office for each calendar year in advance, having consulted with Arqiva and its customers in such manner as Ofcom considers reasonable (the “**Budget**”). Such Budget will be for an amount sufficient in the view of Ofcom alone to enable the Adjudicator properly to discharge his functions in an effective and timely manner and will also cover the costs of recruitment of the Adjudicator (and any substitute Adjudicator) and any staff or advisers that he may appoint. Any Budget may be increased by Ofcom on one or more occasions during any year, after having consulted with Arqiva and its customers, where Ofcom considers this necessary in order to enable the Adjudicator properly to discharge his functions.
14. Ofcom shall pay all such remuneration, travelling and other allowances, pension, gratuities, contributions or payments and costs of the Adjudicator and his office as set out in paragraphs 11 to 13 inclusive in the first instance. Ofcom shall invoice Arqiva quarterly for the actual costs incurred up to the maximum of the relevant Budget. Arqiva agrees to reimburse Ofcom for all such costs on demand as directed by Ofcom without prejudice to paragraphs 32 and 34 of the Adjudication Rules.

Resignation or removal from office

15. A person may resign from office as the Adjudicator at any time by giving three (3) months’ notice in writing to [Ofcom]. [Ofcom] may remove a person from office as the Adjudicator on the grounds of incapacity or misbehaviour, or where Ofcom considers there has been unreasonable delay in the discharge of the functions of the Adjudicator. Where the Adjudicator has a conflict of interest, [Ofcom] may remove a person from office as the Adjudicator or may appoint a substitute Adjudicator in relation to a particular Dispute.¹⁶

Immunity

16. Neither the Adjudicator, nor his staff, employees and agents (including advisors) are to be liable for anything done or omitted in the discharge or purported discharge of his functions as the Adjudicator unless the act or omission is in bad faith.

¹⁶As noted above, Arqiva has requested confirmation from the OFT as to whether it is their position that the Adjudicator should be appointed by the OFT (rather than Ofcom).

Adjudicator: staff

17. The Adjudicator may appoint such staff as he may determine, subject to any restrictions contained in the terms of his appointment. The staff of the Adjudicator are to be appointed on such terms and conditions as he may determine, subject to any restrictions contained in the terms of his appointment and subject to the Budget for the relevant period set in accordance with paragraph 13.
18. Any function of the Adjudicator, other than making a final determination in relation to any Dispute, may be exercised by any member of his staff authorised for the purpose by him, whether specially or generally.

Status of decision of Adjudicator

19. The Adjudicator shall act as an expert, and neither as arbitrator, mediator, conciliator nor any similar role and shall determine the Dispute in accordance with the Undertakings, the Adjudication Rules and, insofar as relevant, this Adjudication Scheme.
20. The effects of a decision of the Adjudicator in relation to any Dispute shall be as set out in the Adjudication Rules.

Review of Adjudication Scheme and Adjudication Rules

21. The Adjudicator shall keep this Adjudication Scheme and the Adjudication Rules under review and report to Ofcom and the Office of Fair Trading on them periodically (but at least annually) in accordance with this Adjudication Scheme and his terms of appointment. The Adjudicator may in any such report recommend at any time to Ofcom and the Office of Fair Trading amendments to the Adjudication Scheme and the Adjudication Rules, taking into account any request for amendments by Arqiva or its customers. Changes to the Adjudication Scheme and Adjudication Rules may be made with the consent of Ofcom or the Office of Fair Trading.

Provision of Information

22. Arqiva shall promptly (and no later than three (3) weeks following a request by the Adjudicator) provide all information and documents about its provision of terrestrial radio and television managed transmission services and network access and such other information as is requested by the Adjudicator as deemed necessary by him to fulfil his functions, and in as much detail as he may require.
23. In order to fulfil his reporting functions, the Adjudicator may disclose any such information to Ofcom and the Office of Fair Trading.
24. Any person who agrees to be bound by this Adjudication Scheme and the Adjudication Rules agrees that Ofcom may disclose to the Adjudicator any information or documents supplied by such person to it (whether pursuant to the Undertakings or otherwise) which it considers may be relevant to, and assist the Adjudicator in, the carrying out of his duties.

Adjudicator Reports

25. The Adjudicator shall make a written report to the Office of Fair Trading, copied to Ofcom, every three (3) months or as otherwise agreed with the Office of Fair Trading (the "**Periodic Reports**"), setting out his determinations in relation to any Dispute, his

views about the operation of the Undertakings, the Adjudication Scheme and Adjudication Rules together with any recommendations, his views about the performance of Arqiva in complying with the Undertakings, the Adjudication Scheme and Adjudication Rules and any other relevant matters and information that he may think appropriate.

26. The Adjudicator shall bring to the Office of Fair Trading's immediate attention any matter that gives rise to a reasonable suspicion on his part that Arqiva is not complying with the Undertakings, the Adjudication Scheme or Adjudication Rules, and shall provide a copy of any such communication to Ofcom.
27. The amount of detail included in such Periodic Reports will be at the discretion of the Adjudicator but should be such as to inform the Office of Fair Trading adequately. After consultation with the Office of Fair Trading as to date and contents, one Periodic Report each year shall be designated the Adjudicator's Annual Report and this will consider all the matters above and any others the Adjudicator considers relevant and appropriate in greater detail.
28. The Office of Fair Trading and Ofcom may publish or disclose all or any parts of the Periodic Reports or the Adjudicator's Annual Report as either considers appropriate.

APPENDIX 2

ADJUDICATION RULES

Definitions

1. Except where the context otherwise requires or as otherwise defined herein, words and expressions used in this document shall have the same meaning as in the undertakings given by Arqiva to the Competition Commission, dated [•] 2008 (the “Undertakings”).

Application

2. The following Adjudication Rules as amended from time to time with the consent of Ofcom may be incorporated by reference into any contract for the provision of terrestrial radio or television managed transmission services or network access by Arqiva and any reference to the “Adjudication Rules” in such contract shall mean, in relation to any adjudication, the most recent edition hereof as at the date of the Notice of Adjudication. These Adjudication Rules may also apply in the circumstances set out in paragraph 17 of the Undertakings.

The Adjudicator

3. The Adjudicator shall be appointed and exercise his functions in accordance with the Undertakings, the Adjudication Scheme and the Adjudication Rules annexed to the Undertakings as each may be amended from time to time. In the case of any inconsistency or conflict between the provisions of the Adjudication Scheme and the Adjudication Rules, the provisions of the Adjudication Scheme will prevail; and, in the case of any inconsistency or conflict between the provisions of either or both of the Adjudication Scheme and the Adjudication Rules and the Undertakings, the provisions of the Undertakings shall prevail.

Notice of Adjudication

4. Any customer or prospective customer of Arqiva who has agreed to be bound by the Adjudication Scheme and the Adjudication Rules under paragraph 17 of the Undertakings (the “Referring Party”) may apply to the Adjudicator, by giving written notice (the “Notice of Adjudication”). The Notice of Adjudication shall request the Adjudicator to determine any dispute between (a) Arqiva and (b) any customers or prospective customers of terrestrial radio and television transmission services or network access, arising out of the interpretation or exercise of the rights given to, or obligations upon, such persons in relation to the matters set out in paragraph 17 of the Undertakings, the interpretation of any provision of the Adjudication Scheme or the Adjudication Rules, or his jurisdiction to determine the dispute (a “Dispute”).
5. The Notice of Adjudication and all accompanying documents shall at the same time be given by the Referring Party to every other party to the Dispute.
6. The Notice of Adjudication shall set out briefly:
 - (a) the nature and a brief description of the Dispute, details of the contract under which it arises, if any (and of any related contract) and of the parties involved, and shall be accompanied by copies of the relevant contract or contracts and

such other documents as the Referring Party intends to rely upon. Although the Referring Party must send copies of all such documents to the Adjudicator with the Notice of Adjudication, in sending the Notice of Adjudication to the other parties to the Dispute only, it may omit any such copies or redact them (and the Notice of Adjudication) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the other parties if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue. The fact that redacted copies of any documents have been served on other parties to the Dispute shall be drawn to the attention of the Adjudicator when the Notice of Adjudication is given to him, together with copies of any such redacted documents;

- (b) details of where and when the Dispute has arisen;
 - (c) the nature of the redress which is sought; and
 - (d) the names and addresses of the parties to the Dispute (including, where appropriate, the addresses which the parties have specified in any contract for the giving of notices).
7. The Adjudicator shall confirm in writing within two (2) working days of receiving a Notice of Adjudication whether or not:
- (a) he is able to act; or
 - (b) he considers the Notice of Adjudication discloses no reasonable grounds for him to act and/or it is an abuse of the Adjudication Scheme and/or the Adjudication Rules for him to proceed to determine the Dispute. If he so considers, the Adjudicator shall issue a written, reasoned decision to the parties.
8. Where in relation to a particular Dispute the Adjudicator indicates to the parties that he is unable to act, or where he resigns pursuant to paragraph 11, or fails to respond in accordance with paragraph 7, the Referring Party may request Ofcom to, or Ofcom may on its own initiative, select a person to act as substitute Adjudicator.
9. The Adjudicator may:
- (a) adjudicate at the same time on one or more Disputes under the same contract;
 - (b) with the consent of all the parties to any related Disputes, adjudicate at the same time on such related Disputes under different contracts, and shall do so where different contracts provide for joinder of Disputes.

Notice of Reply

10. Unless the Adjudicator otherwise directs, within twenty (20) working days of receiving the Notice of Adjudication, the other party or parties shall give a Notice of Reply. This shall contain their response to the Notice of Adjudication and be accompanied by copies of any documents upon which the other party or parties intend to rely. Although the other party or parties must send copies of all such documents to the Adjudicator with the Notice of Reply, in sending the Notice of Reply to the Referring Party and any other party to the Dispute, it or they may omit any such copies or redact them (and the Notice of Reply) for reasons of commercial confidentiality, subject to the right of the Adjudicator to direct disclosure of any such material to the Referring Party and any other party to the Dispute if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations

on this issue. The fact that redacted copies of any documents have been served shall be drawn to the attention of the Adjudicator when the Notice of Reply is given to him together with copies of any such redacted documents. The Notice of Reply shall be served by the relevant party on the Adjudicator, the Referring Party and any other party to the Dispute simultaneously.

11. The Adjudicator shall resign from determining any particular Dispute or Disputes as soon as:
 - (a) He becomes aware of a conflict of interest; or
 - (b) He is not competent to decide the dispute; or
 - (c) he becomes aware that a dispute varies significantly from the dispute referred to him in the Notice of Adjudication and for that reason he is not competent to decide it.

Powers of the Adjudicator

12. The Adjudicator shall act fairly and impartially in carrying out his duties and shall do so in accordance with the Adjudication Rules, the Adjudication Scheme, the Undertakings and any relevant terms of any contract, having regard to the relevant Budget, and shall reach any decision concerning a Dispute as expeditiously as possible in accordance with the applicable law in relation to the contract or Dispute.
13. The Adjudicator shall take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed. In particular he may:
 - (a) request any party to the Dispute to supply him with such documents and information as he may reasonably require (other than documents that would be privileged from production to a court) including, if he so directs, any written statement from any party to the Dispute supporting or supplementing the Notice of Adjudication or Notice of Reply and any other documents given under paragraphs 6(a) and 10, and to draw such inference as may seem proper from any imbalance in such documentation that may become apparent;
 - (b) meet and question any of the parties to the Dispute and their representatives;
 - (c) obtain and consider such representations and submissions as he requires, including from the Office of Fair Trading or Ofcom and appoint experts, assessors or legal advisers;
 - (d) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with; and
 - (e) issue other directions relating to the procedure and timetable for the adjudication and the conduct of the adjudication generally.
14. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
15. If, without showing sufficient cause, a party fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, fails to produce any document, information or written statement requested by the Adjudicator, or in

any other way fails to comply with a requirement under these provisions relating to the adjudication the Adjudicator may:

- (a) continue the adjudication in the absence of that party or of the document, information or written statement requested;
 - (b) draw such adverse inferences from that failure to comply as may, in the Adjudicator's opinion, be justified;
 - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed; and
 - (d) refuse to determine the matter or matters in dispute.
16. Subject to any agreement between the parties to the contrary, any party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as it considers appropriate.
17. The Adjudicator shall consider all documents and information submitted to him by any of the parties to the Dispute and shall make available to them any documents and information to be taken into account in reaching his decision (subject to any omissions or redactions he considers appropriate for reasons of commercial confidentiality).
18. Subject to paragraph 19, the Adjudicator and any party to the Dispute shall:
- (a) keep confidential all information related to the Dispute; and
 - (b) not disclose to any other person, including Ofcom, any information or document provided to it or him in connection with the Dispute which is confidential except to the extent that disclosure by the Adjudicator is necessary for the purposes of, or in connection with, any decisions the Adjudicator takes in relation to the Dispute (including, for the avoidance of doubt, for the purposes of paragraph 13(c)) or in order for the Adjudicator to fulfil his reporting functions set out in paragraph 22 of the Adjudication Scheme.
19. Within two working days of receiving a Notice of Adjudication, the Adjudicator shall publish a non-confidential summary of the Dispute, which has been approved by the parties to the Dispute, on an appropriate website. During the adjudication and following the Adjudicator's decision, the Adjudicator has the authority to disclose the nature of the Dispute and his determination, although he shall not disclose information which is confidential to any party or parties to the Dispute.
20. Subject to the power of the Adjudicator alone to make a direction otherwise in exceptional circumstances, the Adjudicator shall give his decision not later than:
- (a) 60 working days after the date of the Notice of Adjudication; or
 - (b) 75 working days after the date of the Notice of Adjudication, if the Referring Party consents to such an extension of time; or
 - (c) such period exceeding 75 working days after the date of the Notice of Adjudication as all the parties to the Dispute and the Adjudicator may agree; or
 - (d) in the case of joinder of Disputes, a date agreed between the Adjudicator and all the parties.

21. Where the Adjudicator fails, for any reason, to deliver his decision in accordance with paragraph 20):
 - (a) Any of the parties to the Dispute may serve a fresh Notice of Adjudication under paragraph 4 and shall request Ofcom to name a substitute Adjudicator to determine the Dispute in accordance with these Rules; and
 - (b) if requested by the substitute Adjudicator, and in so far as it is reasonably practicable, the parties shall supply him with copies of all documents and information which they had made available to the previous Adjudicator.
22. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of that decision to each of the parties.

Adjudicator's Decision

23. In the adjudication of a Dispute, the Adjudicator shall decide all the matters in dispute as identified in the Notice of Adjudication. Subject to paragraphs 24 and 25, he may take into account any other matters which the parties to the Dispute agree should be within the scope of the adjudication, or which are matters which he considers are necessarily connected with the Dispute, but only insofar as such matters relate to the subject matter of the Dispute as identified in the Notice of Adjudication.
24. In deciding any dispute, the Adjudicator shall:
 - (a) take account of (but shall not be bound by) [Ofcom's statutory duties (where relevant)] and/or any applicable guidance issued by Ofcom in relation to Arqiva either prior to or after the Commencement Date; and
 - (b) act with a view to securing that there is no inconsistency between the Adjudicator's decision and any direction, notification, determination made by the Director General of Telecommunications or Ofcom or any decision of the Competition Appeal Tribunal or Competition Commission pursuant to their respective powers under the Communications Act 2003 which, in each case, is legally binding upon Arqiva at the time the Dispute is decided.
25. In deciding any Dispute as to whether any terms or conditions offered or provided by Arqiva are reasonable, the Adjudicator may take account of:
 - (a) whether the terms or conditions offered or provided are any less favourable to the prospective customer than the relevant terms and conditions contained in any other Transmission Agreement for equivalent or similar services (with the exception of terms and conditions which (i) relate to credit vetting and payment terms (excluding pricing), or (ii) are inconsistent with these Undertakings) where the dispute arises pursuant to paragraph 8.2 of the Undertakings; and
 - (b) whether the terms or conditions offered or provided are any less favourable to the prospective customer than the relevant terms and conditions on which Arqiva supplies similar or equivalent Network Access to itself, its Affiliates or any other third party (with the exception of terms and conditions which relate to credit vetting and payment terms (excluding pricing)) where the dispute arises pursuant to paragraph 10.2 of the Undertakings.
26. In deciding the Dispute, the Adjudicator shall not place the party purchasing MTS and/or Network Access from Arqiva in a worse position than it would have been had it accepted the best offer made to it by Arqiva prior to applying to the Adjudicator.

27. In the absence of any directions by the Adjudicator relating to the time for performance of his decision, Arqiva and the other parties to the adjudication (the “**Other Parties**”) shall be required to comply with any decision of the Adjudicator immediately on delivery of the decision to the parties.
28. The Adjudicator shall provide a written decision including reasons for his decision. The decision of the Adjudicator shall be published on an appropriate website. Arqiva and the Other Parties may request that material be redacted from the decision for reasons of commercial confidentiality, subject to the right of the Adjudicator to publish any such material if he deems it appropriate, having given the party desiring confidentiality the opportunity to make further representations on this issue.

Effects of Decision

29. The decision of the Adjudicator shall be final and binding on Arqiva and the Other Parties, except in the case of fraud, or where a decision is made in bad faith or is so clearly and manifestly erroneous on its face that it would be unconscionable for it to stand.
30. An award or decision of the Adjudicator may, by leave of the court, be enforced in a summary manner.
31. Where leave is so given, judgment may be entered in terms of the award or decision.

Costs of Adjudication

32. The fees and expenses of the Adjudicator shall be paid directly and in the first instance by Ofcom, but Arqiva shall be responsible for all such fees and expenses (giving credit for any fee paid by the Referring Party) in accordance with the Adjudication Scheme and shall reimburse Ofcom for all such costs on demand as directed by Ofcom without prejudice to paragraph 34 below.
33. The Adjudicator may in his discretion direct that Arqiva shall bear all or a proportion of the legal costs and expenses of the adjudication incurred by any one or more of the parties to the adjudication other than Arqiva. Such legal costs and expenses may, without limitation, include the following, which are agreed to be genuine pre-estimates of the actual costs that the parties are likely to incur, including overheads (subject to review and variation by the Adjudicator in his discretion):
 - (a) costs of in-house personnel:
 - commercial director or equivalent: [•] per hour;
 - commercial associate or equivalent: [•] per hour;
 - commercial analyst or equivalent: [•] per hour;
 - (b) costs of in-house legal counsel:
 - senior internal legal counsel (of more than 7 years PQE): [•] per hour;
 - junior internal legal counsel (of less than 7 years PQE): [•] per hour;
 - (c) consultancy fees and disbursements on an indemnity basis;
 - (d) external legal fees and disbursements on an indemnity basis; and

(e) other disbursements and costs.

34. The Adjudicator may in his discretion decide that in exceptional circumstances, it is appropriate for any one or more of the parties to the adjudication other than Arqiva to bear the costs of the adjudication, or for such party or parties to bear a proportion of such costs. Such costs shall include the fees and expenses of the Adjudicator and the fees and expenses of any witnesses in relation to the Dispute, and the legal costs and expenses properly incurred by the parties relating to the adjudication.

Immunity

35. The Adjudicator and his staff, employees and agents (including any advisers appointed by him) shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as the Adjudicator unless the act or omission is in bad faith.

APPENDIX 3

PROPOSAL TO THE BBC - CONFIDENTIAL

[X]

APPENDIX 4

PROPOSAL TO D34 - CONFIDENTIAL

[X]

APPENDIX 5

PROPOSAL TO SDN - CONFIDENTIAL

[X]

APPENDIX 6

PROPOSAL TO AMEND ANALOGUE TV AGREEMENTS - CONFIDENTIAL

[X]

APPENDIX 7

PROPOSAL TO COMMERCIAL RADIO CUSTOMERS - CONFIDENTIAL

Arqiva (previously known as National Transcommunications Limited) proposes to amend each of the Radio Agreements as follows:

Contract Variations (Paragraph 3)

Service Level Availability (Paragraph 4)

Super Credit Arrangements (Paragraph 5)

As regards paragraph 5 (Super Credit Arrangements):

1. “persistent failure” shall mean a service performance failure by Arqiva which gives rise to any of the following:
 - 1.1 a right for the Customer to terminate for material breach (or equivalent);
 - 1.2 any other express right of the Customer to terminate the whole agreement for poor performance; or
 - 1.3 where the Customer has no express right to terminate for poor performance other than a general right to terminate for material breach or equivalent, a situation where in any year, Arqiva is 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 10% of the charges for transmission services for that year, provided that for the purposes of ascertaining whether a Persistent Failure has occurred under a Radio Agreement, any right to terminate for material breach (or equivalent) or poor performance or obligation to pay liquidated damages (or similar payments) that is attributable to any failure in relation to build services, shall be disregarded.
2. Rectification of poor performance shall mean that, when measured over the specified one month period, and when calculated by reference to all the stations within the Customer’s network, Arqiva is able to achieve a “network” availability level equal to or better than the contractual service availability level. The steps to measure this will be as follows:
 - 2.1 For each station, the number of actual minutes of non-availability over the one month period will be divided by the number of permitted minutes of non-availability at the station (the latter being calculated by reference to the contractual service levels - e.g. the availability service level may be 99.8% during specified hours for a particular station). For the avoidance of doubt, any minutes of non-availability for which Arqiva is not accountable (pursuant to the terms of the contract) will be disregarded from this calculation.
 - 2.2 Each of the stations within the Customer’s network will be given a station weighting, reflecting the relative importance to the Customer of the stations. The sum of the weightings for all stations will equal 1. The station weightings will be 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.

- 2.3 For each station, the availability ratio derived as set out above will be multiplied by the relevant station weighting as described above. The scores for each station will be aggregated. If the aggregate score is greater than 1, Arqiva will be liable to pay the super credit. If the aggregate score is 1 or less, Arqiva will have rectified its poor performance.
- 2.4 For the avoidance of doubt, where any network failure is caused by a service failure outside Arqiva's control, a distribution or multiplexing failure or a failure of electricity supply at a station for which there is no permanent back-up generator on site, any resulting non-availability shall not form part of the calculation set out above.
3. No more than one (1) super credit shall be payable by Arqiva in any consecutive 12 month period.
4. For the purpose of calculation of any super credit "relevant service" shall mean the transmission service (but not multiplexing or distribution) - i.e. 10% of the transmission fee for the relevant period shall be payable.

Sale of Stranded Assets (Paragraph 6)

Reduction in Charges under Existing Transmission Agreements (Paragraph 7)

Paragraph 7.3.2 applies.

Right to Renew Existing Radio Agreements (Paragraph 8) / Terms of New Transmission Agreements (Paragraph 9)

Adjudication (Paragraph 17)

The Adjudication Scheme and Adjudication Rules will be incorporated by reference.

Adjudication will not replace any dispute resolution procedure under a Radio Agreement, but as regards any particular dispute, if a customer refers that dispute to the Adjudicator it cannot then refer that same dispute to any form of expert determination or third party adjudication under the dispute resolution procedure currently provided for in the relevant Radio Agreement and vice versa.

APPENDIX 8

PRINCIPLES FOR DIGITAL TERRESTRIAL TELEVISION REFERENCE OFFERS

DTT Transmission Services Reference Offer

1. Following the receipt of written notice from Ofcom that it intends to hold a Relevant Spectrum Auction, Arqiva undertakes to publish a Reference Offer for bundled digital terrestrial television Transmission Services within six (6) months of the receipt of such notice on the basis of a technical specification assumed by Arqiva or such other technical specification (including Stations) as Ofcom may specify in its notice.
2. The Reference Offer published in accordance with paragraph 1 shall be subject to paragraphs 9 and 10 of the Undertakings.
3. The Reference Offer published in accordance with paragraph 1 shall be based on an agreement for digital terrestrial television Transmission Services which was entered into prior to the Merger for the provision of a cost oriented transmission service which bundles MTS and network access services by Arqiva to a third party DTT multiplex customer. The main terms that will be included in the Reference Offer are as follows:
 - 3.1 Scope: The agreement concluded pursuant to the Reference Offer will concern the design, build and operation of the system and the provision of Transmission Services in respect of a 7th COM multiplex by Arqiva.
 - 3.2 Building the system:
 - Acceptance testing: The Reference Offer will contain provisions dealing with acceptance of the system to be used by Arqiva in the provision of the service.
 - Liquidated damages: Arqiva will pay liquidated damages on any station that is delivered late.
 - Dependencies: Arqiva will not be liable for any failure to complete installation of the system by the applicable in-service date to the extent that such failure results directly from matters outside the control of Arqiva.
 - Transparency: Arqiva will provide the customer with appropriate transparency of costs and pricing relating to the build project, including in respect of all procurement and chargeable labour fees. The customer shall have audit rights over the actual costs of the build project.
 - 3.3 Charges: The charges for digital terrestrial television Transmission Services will reflect the applicable terms set out in paragraphs 9 and 10 of the Undertakings. The charges will also reflect the following additional principles:

Network Access

- For the purposes of the Network Access charges contemplated by paragraph 9.5 of the Undertakings, where the actual capital expenditure is less than the forecast capital expenditure, the saving in capital expenditure against the forecast shall be shared in accordance with the gainshare mechanism set out in the table below. The sum of the actual capital expenditure incurred plus Arqiva's share of any saving shall be utilised in the pricing methodology set out in the Reference Offer (i.e. application of IRR etc) to derive the Network Access charges.

Network Access Capital Expenditure Costs Gainshare Bands:

Equivalent cost/saving against forecast capital expenditure(%)	Customer share	Arqiva share
95.95% - 99.99%	100%	0%
91.90% - 95.94%	90%	10%
87.85% - 91.89%	80%	20%
83.80% - 87.84%	70%	30%
79.75% - 83.79%	60%	40%
75.70% - 79.74%	50%	50%
Less than 75.70%	40%	60%

- The gainshare bands will be applied sequentially.
- Where the actual capital expenditure of the Network Access build project exceeds the forecast capital expenditure, a cap (including an appropriate contingency) will apply to limit the Network Access charges in relation to the new Network Access capital expenditure costs.

Transmission services

- For the purposes of paragraph 9.7 of the Undertakings, in respect of the charges for the transmission service where the actual capital expenditure is less than the forecast capital expenditure, the saving in capital expenditure against the forecast shall be shared in accordance with the gainshare mechanism set out in the table below. The sum of the actual capital expenditure incurred plus Arqiva's share of any saving shall be utilised in the pricing methodology set out in the Reference Offer (i.e. application of IRR etc) to derive the charge for the transmission service.

Transmission Capital Expenditure Costs Gainshare Bands:

Equivalent cost/saving against forecast capital expenditure(%)	Customer share	Arqiva share
96.66% - 99.99%	80%	20%
93.32% - 96.65%	75%	25%
90% - 93.31%	70%	30%
Less than 90%	60%	40%

- The gainshare bands will be applied sequentially.
- Where the actual capital expenditure of the MTS build project exceeds the forecast capital expenditure, a cap (including an appropriate contingency) will apply to limit the charges associated with the MTS build costs.

- The customer shall bear the risk of any foreign exchange fluctuations relating to key third party suppliers, and in particular in respect of such fluctuations occurring between the date of publication of the Reference Offer and entry into the agreement with the Customer and/or settling quotes, in respect of key third party suppliers;
 - Arqiva will be entitled to pass through to the customer (with no mark-up) any expiry fee that becomes payable under a network access agreement.
 - Arqiva will be entitled to adjust the charges in the circumstances specified in the Base Agreement (including without limitation any change in the specification, any change in the number or mix of sharers of the common infrastructure, or any force majeure event) and for other matters outside the reasonable control of Arqiva. Arqiva may also adjust the charges in accordance with paragraph 9 of the Undertakings.
- 3.4 Service credits: Arqiva's provision of the Transmission Services will be assessed against specified operational service levels concerning the total time of service availability. The operational service credits will be subject to a cap and, subject to the super credit regime described below, will be the customer's sole financial remedy for failure to achieve the service levels. If the service credit cap is exceeded, the customer will also be entitled to terminate for Arqiva's material/persistent breach.
- 3.5 Super credits: In addition to the operational service credit regime described above, the Reference Offer will include the super credit regime described in paragraph 5 of the Undertakings. For the avoidance of doubt, any failure to achieve any part of any build project on time shall not constitute a Performance Failure for the purposes of the super credit regime.
- 3.6 Suspension: Each party will have a right to suspend the Transmission Service in certain specified circumstances as set out in the Base Agreement.
- 3.7 Customer responsibilities: The customer will have to fulfil certain responsibilities in order to enable Arqiva to provide the Transmission Service. These responsibilities will be set out in the Reference Offer. The customer will be required to indemnify Arqiva for losses attributable to the customer's or a broadcaster's failure to comply with their licences.
- 3.8 Maintenance and planned works: The Transmission Services will include the provision by Arqiva of certain monitoring, maintenance and breakdown repair services and planned works, and the Reference Offer will set out the limited circumstances when Arqiva can interrupt the service.
- 3.9 Breakdowns: The Reference Offer will include terms concerning the categorisation, notification and remediation of breakdowns by Arqiva within specified response times.
- 3.10 Liability: The parties respective limitations and exclusions of liability will be based on the relevant terms set out in the Base Agreement including without limitation that the general cap on liability will be 125% of aggregate charges payable in the year in which the claim arose. Except in the circumstance of wilful default, Arqiva will not be liable for the customer's loss of revenue or indirect or consequential loss or damage if the customer terminates for Arqiva's default. "Wilful default" shall be defined by reference to Arqiva failing to provide the Transmission Service at stations accounting for 40% or more of the UK population coverage for more than 7 consecutive days (subject to certain requirements and exclusions set out in the Base Agreement

including without limitation an exclusion if the customer does not purchase disaster recovery services from the Croydon facility).

- 3.11 Force majeure: Arqiva will not be liable for any failure to perform any of its obligations to the extent this is caused by any force majeure event. If Arqiva is unable to restore service at stations accounting for 40% or more of the UK population coverage for a continuous period of 60 days the customer will have the right to terminate the entire agreement or the affected Stations. This will be subject to the customer purchasing disaster recovery services from the Croydon facilities. If it does not, then the 40% and 60 days shall be replaced by 60% and 120 days. During any period of force majeure the customer will pay 50% of the charges for the affected station or stations.
- 3.12 Change control: The Reference Offer will include a change control procedure which must be used for all changes to the agreement terms or the services.
- 3.13 Parent guarantee: Arqiva may require that the Customer provides a parent company guarantee in appropriate circumstances.
- 3.14 Warranties: The Reference Offer will include appropriate Arqiva warranties including: (i) that the Transmission Services will be provided with reasonable care and skill; (ii) that Arqiva will have and will comply with all required licences, consents, authorities and dispensations required to perform the Transmission Services; and (iii) that the provision of the Transmission Service will not infringe third party intellectual property rights, damage reception devices or interfere with third party signals.
- 3.15 Intellectual property and indemnity: The Reference Offer will include standard terms relating to the ownership and licensing of intellectual property rights. The Reference Offer will include appropriate mutual indemnification obligations in line with those in the Base Agreement.
- 3.16 Term: The term will be agreed on a case by case basis.
- 3.17 Termination: The termination rights will be based upon the relevant terms set out in the Base Agreement and will include without limitation that the customer will be entitled to terminate in the event of Arqiva's material breach or persistent breach, Arqiva's insolvency event (or similar), a change of control of Arqiva, and any breach of the service credit cap. The customer may also terminate the entire agreement at any time on 12 months' notice, subject to payment of a termination fee. The agreement will automatically terminate if the customer's multiplex licence is revoked or surrendered.
- 3.18 Arrangements on termination/expiry: The arrangements on termination will be based on the relevant terms set out in the Base Agreement and will include exit assistance on termination by the customer for certain events and payment of a termination fee by the customer in certain circumstances (to be specified in the Reference Offer). On expiry, the customer will have rights in relation to stranded assets as set out in paragraph 6 of the Undertakings.
- 3.19 Step-in rights: The Reference Offer will include the right for the customer to step-in to perform Arqiva's obligations in certain circumstances (including that Arqiva is in material or persistent breach or is affected by a force majeure event). The customer will not be entitled to take over the performance of Network Access services. The customer will be required to indemnify Arqiva in respect of disruption of service to Arqiva's other customers.
- 3.20 Dispute resolution: The Reference Offer will incorporate the Adjudication Scheme and Adjudication Rules by reference. The Reference Offer will include mechanisms

for factual or financial disputes to be referred to an expert. Adjudication will not replace the ability to refer a dispute to an independent expert, but as regards any particular dispute, if the customer refers that dispute to the Adjudicator it cannot then refer that same dispute to the independent expert and vice versa. Outside of these dispute resolution mechanisms, exclusive jurisdiction of the English courts shall apply.

- 3.21 Subcontracting and assignment: The Reference Offer will include terms that permit each party to subcontract following consultation with the other party. Subcontracting by Arqiva of a major part of its functions and obligations is subject to customer approval (not to be unreasonably withheld or delayed). Neither party will be entitled to assign the transmission agreement without the consent of the other party (not to be unreasonably withheld or delayed).
- 3.22 Governing law: English.
- 3.23 Boilerplate terms: The Reference Offer will include standard boilerplate terms addressing, without limitation, confidentiality, variations, notices, waiver, entire agreement, rights of third parties, interest on late payment and severability.

DTT Network Access Reference Offer

4. Arqiva shall continue to publish and to update the Existing Television Reference Offer in accordance with these Undertakings and the Ofcom Notification.
5. Following the receipt of written notice from Ofcom that it intends to hold a Relevant Spectrum Auction, Arqiva undertakes to publish a Reference Offer for Network Access within six (6) months of the receipt of such notice. The Reference Offer shall be available for customers who require Network Access only and not DTT transmission services. This will be a separate reference offer, not forming a part of the Reference Offer for Transmission Services referred to in paragraph 3 of this Appendix 8.
6. The Reference Offer published in accordance with paragraph 5 shall be subject to paragraphs 11 and 12 of the Undertakings.
7. The Reference Offer published in accordance with paragraph 5 shall be based on the terms of the Existing Television Reference Offer, but incorporating the following key amendments and principles:
- 7.1 Specification: Unless otherwise specified in Ofcom's notice described in paragraph 5, the assumed specification for the Reference Offer will be the provision of digital terrestrial television Network Access to a 7th multiplex at all the COM stations. The specification will assume that the 7th multiplex will be rolled-out after the completion of DSO.
- 7.2 References to DSO: The references in the Existing Television Reference Offer to DSO, including references to the antenna design process, will be removed or amended to reflect the fact that the Reference Offer will be for post-DSO digital terrestrial television Network Access.
- 7.3 Charges: The charges will reflect the applicable terms set out in paragraphs 11 and 12 of the Undertakings. The charges (including levels of capital expenditure and contingency) will be set in accordance with the Ofcom Notification and relevant guidance from Ofcom.

Arqiva will be entitled to adjust the charges if this becomes necessary due to the occurrence of any "exceptional risk" event. An exhaustive list of exceptional risks will

be defined in the Reference Offer. This will include all the exceptional risks identified in the Existing Television Reference Offer, although the risks that will not be relevant post-DSO will be removed. All changes to the charges due to exceptional risks will be implemented in accordance with the change control procedure.

The charges may be subject to change in the event of any increase or decrease in the number of sharers of the digital terrestrial television platform.

- 7.4 Roll-Out Plan, Target Completion Dates and Engagement Process: Since the target completion dates for each station will not be dictated by the DSO roll-out timetable, the roll-out plan and target completion dates will instead be determined by a revised engagement process. The revised engagement process will provide timescales within which digital terrestrial television Network Access will be provided at each station, based on the dates on which digital terrestrial television Network Access at the station is requested, the dates on which the required customer information is provided for each station, and the dates on which Arqiva is able to provide digital terrestrial television Network Access in the context of an overall roll-out of all stations at which the customer requires digital terrestrial television Network Access.
- 7.5 Liquidated Damages: Liquidated damages will be payable by Arqiva in the event that digital terrestrial television Network Access is not provided at a station by the applicable target access date.
- 7.6 Adjudication: The Reference Offer will incorporate the Adjudication Scheme and Adjudication Rules by reference. Adjudication will not replace the ability to refer a dispute to an independent expert under the relevant terms of the Reference Offer, but as regards any particular dispute, if the customer refers that dispute to the Adjudicator it cannot then refer that same dispute to the independent expert and vice versa.
- 7.7 Transparency: Arqiva will provide the customer with appropriate transparency of costs and pricing relating to the build project, including in respect of all procurement and chargeable labour fees. The customer shall have audit rights over the actual costs of the build project.
8. For the purposes of this Appendix 8, “**Relevant Spectrum Auction**” means an auction conducted by Ofcom on or after the Commencement Date of radio frequencies which Ofcom considers to be capable of use for digital terrestrial television for reception at fixed locations provided that such auction has been notified to Arqiva in accordance with paragraph 5.

APPENDIX 9

PRINCIPLES FOR RADIO REFERENCE OFFERS

Radio Transmission Services Reference Offer

1. Arqiva undertakes to publish a Reference Offer for bundled radio Transmission Services on the basis of a technical specification assumed by Arqiva or such other technical specification (including Stations) as Ofcom may specify:
 - by no later than one (1) week following the Commencement Date in relation to any new radio licences which have been advertised by Ofcom prior to the Commencement Date and in relation to which the application period has not yet closed; and
 - within one (1) month following the advertisement of a new radio licence by Ofcom on or after the Commencement Date.
2. The Reference Offer published in accordance with paragraph 1 shall be subject to paragraphs 9 and 10 of the Undertakings.
3. The Reference Offer published in accordance with paragraph 1 shall be based on the Base Agreement (with appropriate modifications for radio services) in order to seek to establish consistent terms of supply applicable to both the DTT and broadcast radio industries and reflecting principles of open book and transparent service provision. This is without prejudice to the rights of the customer to request, and for Arqiva and the customer to agree, different terms and conditions of supply as contemplated by paragraph 1.2 of the Undertakings. The Reference Offer will reflect the following key principles:
 - 3.1 Scope: The Reference Offer will concern the design, build and operation of the system and the provision of Transmission Services in respect of analogue and digital radio services.
 - 3.2 Building the system:
 - Acceptance testing: The Reference Offer will contain provisions dealing with acceptance of the system to be used by Arqiva in the provision of the service.
 - Liquidated damages: Arqiva will pay liquidated damages on any station that is delivered late.
 - Dependencies: Arqiva will not be liable for any failure to complete installation of the system by the applicable in-service date to the extent that such failure results directly from matters outside the control of Arqiva.
 - Transparency: Arqiva will provide the customer with appropriate transparency of costs and pricing relating to the build project and service, including in respect of all procurement and chargeable labour fees. The customer shall have audit rights over the actual costs of the build project.
 - 3.3 Charges: The charges for radio Transmission Services will reflect the applicable terms set out in paragraphs 9 and 10 of the Undertakings. The charges will also reflect the following additional principles:

Network Access

- For the purposes of the Network Access charges contemplated by paragraph 9.5 of the Undertakings, where the actual capital expenditure is less than the forecast capital expenditure, the saving in capital expenditure against the forecast shall be shared in accordance with the gainshare mechanism set out in the table below. The sum of the actual capital expenditure incurred plus Arqiva's share of any saving shall be utilised in the pricing methodology set out in the Reference Offer (i.e. application of IRR etc) to derive the Network Access charges.

Network Access Capital Expenditure Costs Gainshare Bands:

Equivalent cost/saving against forecast capital expenditure(%)	Customer share	Arqiva share
95.95% - 99.99%	100%	0%
91.90% - 95.94%	90%	10%
87.85% - 91.89%	80%	20%
83.80% - 87.84%	70%	30%
79.75% - 83.79%	60%	40%
75.70% - 79.74%	50%	50%
Less than 75.70%	40%	60%

- The gainshare bands will be applied sequentially.
- Where the actual capital expenditure of the Network Access build project exceeds the forecast capital expenditure, a cap (including an appropriate contingency) will apply to limit the Network Access charges in relation to the new Network Access capital expenditure costs.

Transmission services

- For the purposes of paragraph 9.7 of the Undertakings, in respect of the charges for the transmission service where the actual capital expenditure is less than the forecast capital expenditure, the saving in capital expenditure against the forecast shall be shared in accordance with the gainshare mechanism set out in the table below. The sum of the actual capital expenditure incurred plus Arqiva's share of any saving shall be utilised in the pricing methodology set out in the Reference Offer (i.e. application of IRR etc) to derive the charge for the transmission service.

Transmission Costs Gainshare Bands:

Equivalent cost/saving against forecast capital expenditure(%)	customer share	Arqiva share
96.66% - 99.99%	80%	20%
93.32% - 96.65%	75%	25%
90% - 93.31%	70%	30%
Less than 90%	60%	40%

- The gainshare bands will be applied sequentially.
 - Where the actual capital expenditure of the MTS build project exceeds the forecast capital expenditure, a cap (including an appropriate contingency) will apply to limit the charges associated with the MTS build costs.
 - The customer shall bear the risk of any foreign exchange fluctuations relating to key third party suppliers, and in particular in respect of such fluctuations occurring between the date of publication of the Reference Offer and entry into the agreement with the Customer and/or settling quotes, in respect of key third party suppliers;
 - Arqiva will be entitled to pass through to the customer (with no mark-up) any expiry fee that becomes payable under a network access agreement.
 - Arqiva will be entitled to adjust the charges in the circumstances specified in the Base Agreement (including without limitation any change in the specification, any change in the number or mix of the sharers of the common infrastructure, or any force majeure event) and for other matters outside the reasonable control of Arqiva. Arqiva may also adjust the charges in accordance with paragraph 9 of the Undertakings.
- 3.4 Service credits: Arqiva's provision of the Transmission Services will be assessed against specified operational service levels concerning the total time of service availability. The operational service levels will be based on the infrastructure solution for each particular customer and will be benchmarked against similar services provided to other customers. The operational service credits will be subject to a cap and, subject to the super credit regime described below, will be the customer's sole financial remedy for failure to achieve the service levels. If the service credit cap is exceeded, the customer will also be entitled to terminate for Arqiva's material/persistent breach.
- 3.5 Super credits: In addition to the operational service credit regime described above, the Reference Offer will include the super credit regime described in paragraph 5 of the Undertakings. For the avoidance of doubt, any failure to achieve any part of any build project on time shall not constitute a Performance Failure for the purposes of the super credit regime.
- 3.6 Suspension: Each party will have a right to suspend the Transmission Service in certain specified circumstances as set out in the Base Agreement.

- 3.7 Customer responsibilities: The customer will have to fulfil certain responsibilities in order to enable Arqiva to provide the Transmission Service. These responsibilities will be set out in the Reference Offer. The customer will be required to indemnify Arqiva for losses attributable to the customer's or a broadcaster's failure to comply with their licences.
- 3.8 Maintenance and planned works: The Transmission Services will include the provision by Arqiva of certain monitoring, maintenance and breakdown repair services and planned works and the Reference Offer will set out the limited circumstances when Arqiva can interrupt the service.
- 3.9 Breakdowns: The Reference Offer will include terms concerning the categorisation, notification and remediation of breakdowns by Arqiva within specified response times.
- 3.10 Liability: The parties respective limitations and exclusions of liability will be based on the relevant terms set out in the Base Agreement including without limitation that the general cap on liability will be 125% of aggregate charges payable in the year in which the claim arose, and certain heads of loss or damage including but not limited to indirect or consequential loss or damage will be excluded.
- 3.11 Force majeure: Arqiva will not be liable for any failure to perform any of its obligations to the extent this is caused by any force majeure event. During any period of force majeure the customer will pay 50% of the charges for the affected station or stations.
- 3.12 Change control: The Reference Offer will include a change control procedure which must be used for all changes to the agreement terms or the services.
- 3.13 Parent guarantee: Arqiva may require that the Customer provides a parent company guarantee in appropriate circumstances.
- 3.14 Warranties: The Reference Offer will include appropriate Arqiva warranties including: (i) that the Transmission Services will be provided with reasonable care and skill; (ii) that Arqiva will have and will comply with all required licences, consents, authorities and dispensations required to perform the Transmission Services; and (iii) that the provision of the Transmission Service will not infringe third party intellectual property rights, damage reception devices or interfere with third party signals.
- 3.15 Intellectual property and indemnity: The Reference Offer will include standard terms relating to the ownership and licensing of intellectual property rights. The Reference Offer will include appropriate mutual indemnification obligations in line with those in the Base Agreement.
- 3.16 Term: The term will be agreed on a case by case basis.
- 3.17 Termination: The termination rights will be based upon the relevant terms set out in the Base Agreement and will include without limitation that the customer will be entitled to terminate in the event of Arqiva's material breach or persistent breach, Arqiva's insolvency event (or similar), a change of control of Arqiva, and any breach of the service credit cap. The customer may also terminate the entire agreement at any time on 12 months' notice, subject to payment of a termination fee. The agreement will automatically terminate if the customer's multiplex licence is revoked or surrendered.
- 3.18 Arrangements on termination/expiry: The arrangements on termination will be based on the relevant terms set out in the Base Agreement and will include exit assistance on termination by the customer for certain events and payment of a termination fee

by the customer in certain circumstances (to be specified in the Reference Offer). On expiry, the customer will have rights in relation to stranded assets as set out in paragraph 6 of the Undertakings.

- 3.19 Step-in rights: The Reference Offer will include the right for the customer to step-in to perform Arqiva's obligations in certain circumstances (including that Arqiva is in material or persistent breach or is affected by a force majeure event). The customer will not be entitled to take over the performance of Network Access services. The customer will be required to indemnify Arqiva in respect of disruption of service to Arqiva's other customers.
- 3.20 Dispute resolution: The Reference Offer will incorporate the Adjudication Scheme and Adjudication Rules by reference. The Reference Offer will include mechanisms for factual or financial disputes to be referred to an expert. Adjudication will not replace the ability to refer a dispute to an independent expert, but as regards any particular dispute, if the customer refers that dispute to the Adjudicator it cannot then refer that same dispute to the independent expert and vice versa. Outside of these dispute resolution mechanisms, exclusive jurisdiction of the English courts shall apply.
- 3.21 Subcontracting and assignment: The Reference Offer will include terms that permit each party to subcontract following consultation with the other party. Subcontracting by Arqiva of a major part of its functions and obligations is subject to customer approval (not to be unreasonably withheld or delayed). Neither party will be entitled to assign the transmission agreement without the consent of the other party (not to be unreasonably withheld or delayed).
- 3.22 Governing law: English.
- 3.23 Boilerplate terms: The Reference Offer will include standard boilerplate terms addressing, without limitation, confidentiality, variations, notices, waiver, entire agreement, rights of third parties, interest on late payment and severability.

Radio Network Access Reference Offer

4. Until such time as Arqiva publishes a new Reference Offer for radio Network Access pursuant to paragraph 5, Arqiva shall continue to publish and to update the Reference Offer for radio Network Access which is in existence at the Commencement Date in accordance with these Undertakings and the Ofcom Notification.
5. By [•] 2008, Arqiva shall publish a new Reference Offer for radio Network Access which shall constitute a framework offer setting out the general terms and conditions on which Arqiva is prepared to supply radio Network Access to a MTS Provider. The Reference Offer shall be available for customers who require Network Access only and not radio transmission services. This will be a separate reference offer, not forming a part of the Reference Offer for Transmission Services referred to in paragraph 3 of this Appendix 9. Arqiva shall also publish a Reference Offer in relation to each specific radio service on the basis of a technical specification assumed by Arqiva or such other technical specification (including Stations) as Ofcom may specify as follows:
- within one (1) week of the Commencement Date in relation to any new radio licences which have been advertised by Ofcom prior to the Commencement Date and in relation to which the application period has not yet closed;
 - within one (1) month following the advertisement of a new radio licence by Ofcom on its website on or after the Commencement Date;

- at least three (3) months prior to the expiry of any Existing Transmission Agreement for radio to which Arqiva is a counterparty.
6. The Reference Offers published in accordance with paragraph 5 shall be subject to paragraphs 11 and 12 of the Undertakings.
 7. The Reference Offers published in accordance with paragraph 5 shall be based on the terms of the Existing Television Reference Offer, but incorporating the following key amendments and principles:
 - 7.1 References to DSO and DTT: The references in the Existing Television Reference Offer to DSO and DTT, including references to the antenna design process, will be removed or amended to reflect the fact that the Reference Offer will be for radio Network Access.
 - 7.2 Charges: The charges for radio Network Access will reflect the applicable terms set out in paragraphs 11 and 12 of the Undertakings. The charges (including levels of capital expenditure and contingency) will be set in accordance with the Ofcom Notification and relevant guidance from Ofcom.

Arqiva will be entitled to adjust the charges for radio Network Access if this becomes necessary due to the occurrence of any “exceptional risk” event. An exhaustive list of exceptional risks will be defined in the Reference Offer. This will include all the exceptional risks identified in the Existing Television Reference Offer, although the risks that will not be relevant and that relate to DSO and the digital terrestrial television platform will be removed. The Reference Offer will include an exceptional risk event in respect of changes in the number and mix of sharers of the common infrastructure. All changes to the charges due to exceptional risks will be implemented in accordance with the change control procedure.

- 7.3 Roll-Out Plan, Target Completion Dates and Engagement Process: The roll-out plan and target completion dates will be determined by a new radio Network Access engagement process. The engagement process will provide timescales within which radio Network Access will be provided at each station, based on the dates on which radio Network Access at the station is requested, the dates on which the required customer information is provided for each station, and the dates on which Arqiva is able to provide radio Network Access in the context of an overall roll-out of all stations at which the customer requires radio Network Access.
- 7.4 Liquidated Damages: Liquidated damages will be payable by Arqiva in the event that radio Network Access is not provided at a station by the applicable target access date.
- 7.5 Adjudication: The Reference Offer will incorporate the Adjudication Scheme and Adjudication Rules by reference. Adjudication will not replace the ability to refer a dispute to an independent expert under the relevant terms of the Reference Offer, but as regards any particular dispute, if the customer refers that dispute to the Adjudicator it cannot then refer that same dispute to the independent expert and vice versa.
- 7.6 Transparency: Arqiva will provide the customer with appropriate transparency of costs and pricing relating to the build project and service, including in respect of all procurement and chargeable labour fees. This will be subject to audit by the Auditor.

ANNEX 10

EXISTING TRANSMISSION AGREEMENTS

[REDACTED]^{17,18}

¹⁷[REDACTED]
¹⁸[REDACTED]