



# The Office of the Adjudicator – BTS Reference Offer Guidance

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## Definitions

The following definitions contained in the Undertakings (as defined below) are used in this Guidance:

**Adjudicator** means the Office of The Adjudicator for Broadcast Transmission Services appointed under the Undertakings, Alan Watson;

**Arqiva** means: Arqiva Limited, a company incorporated in England and Wales registered no. 02487597, whose registered office is at Crawley Court, Winchester, Hampshire, SO21 2QA, England;

**Commencement Date** means 1 September 2008;

**Digital Switchover or DSO** means the cessation of the transmission of analogue terrestrial television broadcasting services and the transition to all digital terrestrial television broadcasting services in the United Kingdom which was completed in 2012;

**DTT** means digital terrestrial television;

**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 Appendix 13 of the Undertakings as amended or renewed from time to time (including pursuant to the Undertakings);

**MTS** means the provision of a managed terrestrial transmission service (comprising a package of services including some or all of network design, procurement and installation of transmitters, network monitoring, quality assurance of the signal and/or maintenance of Transmitter Equipment) for the purpose of providing analogue and/or digital terrestrial broadcasting transmission services within the United Kingdom to deliver broadcast content to end users (other than in relation to Community Radio Licences);

**MTS Provider** means a provider or prospective provider of MTS;

**Network Access (or NA)** 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 (other than in relation to Community Radio Licences);

**New Transmission Agreement** means an agreement for the provision by Arqiva of Transmission Services entered into after the Commencement Date, excluding any Radio Agreement renewed pursuant to paragraph 8.1.1 of the Undertakings;

**Ofcom** means the Office of Communications;

**Persistent Failure** means, unless otherwise agreed, a service performance failure by Arqiva in respect of Transmission Services which gives rise to any of the following:

- (a) a right for the Customer to terminate the whole agreement in respect of a licensed service for material breach (or equivalent);
- (b) any other express right of the Customer to terminate the whole agreement in respect of a licensed service for the service performance failure; or
- (c) where the Customer has no express right to terminate the whole agreement in respect of a licensed service for poor performance other than a general right to terminate for material breach or equivalent, a situation where in any year, Arqiva is (or would be but for any contractual cap) liable to pay service credits (or equivalent payments—e.g. liquidated damages) to the Customer for service non-availability in an amount equal to or greater than ten per cent (10%) of the charges for Transmission Services for the relevant licensed service for that year,

provided that, in each case, for the purposes of ascertaining whether a Persistent Failure has occurred, 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;

**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;

**Relevant Spectrum Auction** means an auction conducted by Ofcom of radio frequencies which Ofcom considers to be capable of use for digital terrestrial television for reception at fixed locations;

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

**Station** means a terrestrial broadcast transmission station;

**Super Credit Notice** means a written notice from a customer to Arqiva which notifies Arqiva that:

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

**Transmission Service** 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 and is dedicated exclusively to MTS provision, 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 the undertakings to the Competition Commission given by the Arqiva Group and accepted by the Competition Commission on the Commencement Date.

## 1. Document Purpose:

The Undertakings regulate the charges, terms and conditions for the production of DTT and radio Reference Offers for New Transmission Agreements and Network Access.

The Adjudicator holds a series of documents commissioned or produced by Ofcom which contain detailed guidance for the production of Reference Offers. Some of this is specific to the now historic high power DTT Reference Offer and so the Adjudicator has produced this summary document to summarise the aspects which constitute current guidance.

This document also includes and summarises those parts of the Undertakings relevant to the production of Reference Offers, as shown in Table 1 below;

Table 1: Section of the Undertakings	Information Provided
Part B - New Transmission Agreements	Section 3: Summary of Part B and Part C Appendix A Table 1: Part B and Part C side by side
Part C - Network Access	
Appendix 11 - Principles for DTT Reference Offers	Appendix A Table 2: Principles for DTT and radio Reference Offers, side by side.
Appendix 12 - Principles for radio reference offers	

This document provides guidance on the broad principles to be applied by Arqiva when the production of Reference Offers is requested. Specific guidance may also be issued at the time of a Reference Offer request.

## 2. Introduction:

Arqiva is under an obligation to produce Reference Offers in relation to its activities in broadcast transmission as a result of the Undertakings<sup>1</sup>. Arqiva's compliance with the Undertakings is monitored by the Adjudicator.

Reference Offers may be requested for the provision of **Network Access** or **Transmission Services**. Reference Offers set out indicative prices and commercial terms for potential customers of Network Access or Transmission Services.

- **Network Access** refers to access to the Arqiva sites and facilities such as buildings, power and antenna systems. Network Access prices are relevant to organisations that wish to provide MTS in competition with Arqiva. These provisions are also applicable when Arqiva Services Ltd is the prospective customer.
- **Transmission Services** refers to both Network Access and MTS which together enable the multiplex service(s) to be broadcast.

Organisations that intend to rely upon information contained in the Reference Offers should seek independent legal and commercial advice, and engage with Arqiva to discuss specific terms. There are situations where actual prices for providing the services could justifiably vary from those quoted in Reference Offers.

Reference Offers provide benchmark prices for the services offered against a notional specification. Organisations are not obliged to accept the arrangements set out in the Reference Offers and are free to negotiate alternative technical and commercial arrangements with Arqiva.

Organisations can deal with other MTS Providers who may offer many of the services that Arqiva has set out in the Reference Offers. Arqiva is obliged to provide Network Access to such MTS Providers on fair, reasonable and non-discriminatory terms that are reflective of the cost involved in providing that access.

Arqiva is required to maintain strict procedures concerning the flow of information between certain of its business units to ensure that it does not gain any unfair commercial advantage and that customer confidentiality is respected. Therefore, organisations wishing to contact Arqiva should ensure that they contact only people in the appropriate part of the organisation. Arqiva has published on its website<sup>2</sup> details of the relevant contacts in the relevant business units.

Part B of the Undertakings relates to New Transmission Agreements and part C relates to Network Access. Each part includes provisions relating to:

- i) Charges,
- ii) Terms and Conditions,
- iii) New radio licences/relevant spectrum auctions, and

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<sup>1</sup> <http://www.adjudicator-bts.org.uk/documents/Undertakings%20-%20Non-confidential%20version.pdf>

<sup>2</sup> <http://www.arqiva.com/>

iv) New contracts for existing services

The Undertakings also include the principles for DTT and radio Reference Offers in Appendices 11 and 12.

This document summarises Part B and Part C of the Undertakings. Full extracts are contained in Appendix A.

The extracts in Appendix A are shown as two tables. Table 1 shows Part B and Part C of the Undertakings side by side and Table 2 shows Appendix 11 and 12 side by side. This helps to show the differences between the Undertakings for New Transmission Agreements and Network Access, and the differences between the principles for DTT Reference Offers and radio Reference Offers.



### **3. Summary of Part B and Part C of the Undertakings**

The summary excludes the full detail of the Undertakings and is intended as a narrative. Readers are advised to refer to the Undertakings in full for any clarification. The Undertakings take precedence over this summary.

#### **3.1. Charges (paragraphs 9 & 11 of the Undertakings):**

These are based on the Reference Offer and shall be provided by Arqiva upon request. Arqiva shall not unduly discriminate against particular persons and shall be able to demonstrate that each and every charge is:

- i) reasonably derived from the costs of provision allowing an appropriate mark up for the recovery of common costs and including, in relation to Network Access, an appropriate return on capital employed;
- ii) calculated having regard to any relevant guidance or direction;
- iii) for New Transmission Agreements, having regard to the principles for DTT and radio Reference Offers (Appendices 11 and 12) and in accordance with the standards which could reasonably be expected of an efficient supplier of comparable services; and
- iv) provided to the customer or MTS Provider with sufficient transparency and information regarding the basis of the calculation of charges in respect of each element of the service and for each individual Station.

#### **3.2. Terms and Conditions (paras 10&12):**

These are set out in the relevant Reference Offer. Customers and MTS Providers are free to seek amendments and negotiate alternative terms and conditions with Arqiva.

#### **3.3. New radio licences/relevant spectrum auctions (paras 10.4-10.12 and 12.4-12.12):**

Arqiva is required to prepare Reference Offers for Transmission Services and Network Access following written notice from Ofcom that it intends to hold a Relevant Spectrum Auction (DTT) or following the advertisement of a new radio licence.

The Reference Offer shall set out in full the technical specification (including Stations) of the services proposed.

Arqiva shall prepare an additional or replacement Reference Offer or modify the technical specification (including Stations) of an existing Reference Offer if directed by the Adjudicator or Ofcom.

Arqiva shall respond to reasonable requests for alternative specifications (including Stations) with a detailed response which identifies any variations to the charges, terms and conditions contained in

the published Reference Offer. Arqiva's responses shall be copied to the Adjudicator and published if requested by the Adjudicator.

In preparing any Reference Offer, Arqiva shall comply with and/or have regard to:

- i) Paragraphs 9 and 11 of the Undertakings in relation to charges and the principles for Reference Offers contained in Appendices 11 and 12;
- ii) any relevant guidance or direction; and
- iii) where Arqiva proposes to provide another Arqiva entity with services, or modifies the terms upon which it provides itself with Network Access in a manner which materially differs from that detailed in the Reference Offer then Arqiva shall provide a copy of the proposal to the Adjudicator. Arqiva shall comply with any direction by the Adjudicator:
  - a) to publish an additional or replacement Reference Offer; and
  - b) to offer the same or equivalent amendments under any agreement for the same or equivalent service in force with a third party at the relevant time.

#### **3.4. New Contracts for existing services (paras 10.13-10.16 and 12.13-12.16):**

In relation to Existing Transmission Agreements which are nearing expiry, Arqiva shall provide an offer for an existing service upon request of the customer or MTS Provider (in regard of Network Access) and respond in writing to any subsequent queries from them.

Arqiva shall send a copy of its offer and written responses to the Adjudicator and shall publish these documents if directed to do so by the Adjudicator.

In preparing any offer, Arqiva shall comply with and/or have regard to:

- i) Paragraphs 9 and 11 of the Undertakings in relation to charges and the principles for Reference Offers contained in Appendices 11 and 12; and
- ii) any relevant guidance or direction.

As an alternative to entering into a New Transmission Agreement, following publication of a Reference Offer or expiry of an Existing Transmission Agreement, where a customer so elects Arqiva undertakes to provide Transmission Services under a New Transmission Agreement:

- i) on the terms and conditions contained in the customer's Existing Transmission Agreement for the relevant Transmission Services (excluding the terms and conditions relating to pricing principles and cost recovery which shall be determined in accordance with the Undertakings); or
- ii) on the terms and conditions contained in the customer's most recent Transmission Agreement for equivalent or similar Transmission Services excluding the terms and

conditions relating to pricing principles and cost recovery which shall be determined in accordance with the Undertakings.

In either case, the Customer may reasonably request alternative terms and conditions and Arqiva shall produce an alternative pricing proposal.

#### **4. The principles for Reference Offers (Appendices 11 and 12 of the Undertakings).**

Reference Offers shall include (where applicable) the provisions described in Appendices 11 and 12 of the Undertakings. Appendix 11 relates to Digital Terrestrial Television and Appendix 12 relates to radio. These are attached as Appendix A (Part 2).

## 5. Reference Offer Charges

For the supply of Network Access, a Reference Offer may contain charges for the use of existing assets, one-off capital costs, ongoing operational costs and pass-through costs. Arqiva may recover the one-off capital costs through an annual charge calculated using a pre-determined WACC to account for return and depreciation, or, as an initial fee.

Charges are required to be reasonable and non-discriminatory and in accordance with the requirements of the Undertakings. Charges can be considered in regard to new and existing assets, and new and existing operating costs.

- **Charges on existing assets**

Existing assets may include the regulated asset base (RAB) and DSO related assets. WACC based return and depreciation may be charged on existing assets to determine charges. If a new service utilises existing assets then a share of this charge may be allocated to the new service.

Use of mast or tower space may be charged utilising a windloading calculation determined by the characteristics of the new antenna system and its location on the mast.

- **Charges on new assets**

New assets relate to the capital expenditure which is exclusively for the provision of the new service. These charges may be as an initial fee or an annual charge using a WACC based return and depreciation method.

- **Existing Operating expenditure**

A share of the common operating expenditure may be allocated to the new service. This may relate to costs such as general site maintenance or site security.

- **New Operating expenditure**

New Operating expenditure relating exclusively to the provision of the new service. This may include pass-through costs, such as electricity.

The Reference Offer shall detail any additional charges which may be incurred. For example, site supervision fees which may be applicable were the customer to use the services of an organisation other than Arqiva in the provision of non-NA systems

## 6. General Guidance for the preparation of Reference Offers

This section provides a summary of general guidance issued to Arqiva since the Commencement Date. This guidance may be superseded by subsequent guidance or directions issued pursuant to the Undertakings. The guidance is supplemental to the Undertakings and, where appropriate, a reference to the relevant paragraphs of the Undertakings is noted.

### 6.1. Capital Costs as on-going charges

Capital costs associated with the system build or existing assets may either be stated as an initial fee or as an on-going charge.

An initial fee shall be broken down in a manner which provides adequate detail of the nature of all costs making up the initial fee.

On-going charges may be WACC based, the nominal pre-tax WACC for Network Access should be 10.4%. The Reference Offer should be calculated using real prices and a real pre-tax rate of 7.71% should be used to calculate the return on assets.

The charge should be stated in current prices and should be calculated on this basis. The annual charges should be subject to an uplift based on the RPI.

The annual charges should be calculated on the basis of a contract of specified duration, where the term is either set at the time of the Reference Offer or determined by negotiation. Analysis showing how the total costs have been converted into an annual charge should be included, including a full explanation of any adjustments and a demonstration that they net off to zero. This may include the valuation of existing assets by category and calculations showing the basis of any depreciation charge and return on assets.

### 6.2. Operating expenditure

Operating costs should be broken down into an appropriate level of detail (categories that should include each of the key maintenance categories (structures, equipment etc), and presented to distinguish between direct costs and allocated costs.

Future operating costs should include no uplift for real inflation in any category of costs, including:

- labour costs
- power costs
- mast maintenance

Wherever it is possible to estimate costs directly (for example by reference to costs incurred maintaining TV antennas), rather than through allocation of business or activity level costs (e.g. TV's share of antenna maintenance), this approach should be followed.

The Undertakings require that the charges determined in accordance with paragraph [9.3] of the Undertakings shall be adjusted on an annual basis by a percentage equal to the annual percentage increase in RPI-1%.

### **6.3. Pass-through costs**

Pass-through costs may include, for example, charges for electricity, site rental, site rates and license fees. A margin shall not be added to pass-through costs but it may be appropriate for an administration charge to be added. The Reference Offer shall detail any administration charge and provide an estimate of the anticipated pass-through charge broken down by cost type.

### **6.4. Risk and Contingency**

No amount should be included in the Reference Offer in respect of any uplift for specific risk. A note of the expected cost of any specific risks should be included to provide the basis for further discussion. Any uplift for specific risks shall be supported by sufficient detail to understand the nature and likelihood of that risk and any value associated with that risk.

The Reference Offer shall be supported with a list of standard risks and exceptional risks and the approach to risk management and control. Standard risks are Arqiva's responsibility and the cost of any risk mitigation is borne by Arqiva. Exceptional risks are not Arqiva's responsibility and the cost of any mitigation is outside of the Reference Offer price.

The Reference Offer can include a contingency amount, or "uplift" to reflect the difference between the "reasonable best case" capital expenditure and the "expected" case. This uplift or contingency amount shall be stated separately from the overall charge. Arqiva and customers are free to agree alternative ways to deal with the treatment of this uncertainty in their final contracts. Any estimation allowance or contingency shall contain adequate detail to enable comparison to the technical specification and the basis for the calculation shall be presented.

### **6.5. Presentation of charges**

Where costs are estimated (as opposed to relying upon 3rd party supplier quotations or framework agreements), the estimation methodology and approach shall be detailed noting any benchmarking or source data. These notes need not be contained within the Reference Offer but may be requested by the Adjudicator.

If the Reference Offer provides details of charges to more than one prospective customer then the method of any costs and charges allocation shall be detailed.

Notes to the Reference Offer shall be provided to detail key assumptions used in the calculation of the Reference Offer. These shall include:

- 1) A list of activities deemed to be within Network Access. Particular attention should be given to areas where the distinction between NA and MTS is potentially unclear and a table provided to set out whether these costs fall within NA or MTS.
- 2) The Technical Specification of the Reference Offer including any technical assumptions relating to plant, equipment or labour, site details, availability and operational performance.
- 3) Systems performance information which may include, but is not limited to, systems availability, response times, operational performance.

## 6.6. Existing Assets

This guidance considers three main issues: what assets should be included, how should they be valued and how should they be allocated to NA.

Only assets that will be used for the provision of services covered by the Reference Offer should be included within existing assets, assets that will be replaced or not used (e.g. stranded assets) should be excluded.

For the purpose of determining the appropriate level of depreciation and return on existing assets, the asset value should be based on Depreciated Replacement Cost (DRC).

Where DRC has been calculated by reference to the replacement cost, the calculation of the DRC for each asset should be calculated using the following formula:

Replacement cost \* (useful life of asset — age of asset)/ useful life of asset where the useful life of the asset is capped at the lower of

- The useful life proposed in the calculations provided by Arqiva; and
- The useful life, as set out in Table 2 below

The useful lives of the assets should not exceed the lives set out in Table 2 below:

Table 2: Category of asset	Life (years)
Freehold land	n/a
Accommodation (brick or similar)	100
Accommodation (cabins)	35
Power — REC	100
Power - equipment	40
Structures/ Masts & Towers	70
Antennas	50

The annual depreciation charge should be calculated on the same basis.

## 6.7. Future Capital expenditure

The Reference Offer charges should be calculated excluding any amount in respect of future capital expenditure, to give a pre-capex Reference Offer. The estimate of the annualised capex charge should then be stated separately (as a cost in future years) and contain a list of assets. This schedule shall contain sufficient detail to enable comparison to the specification and to allow determination of whether the technical specification is consistent with requirements.

No allowance for real wage inflation should be included. This reflects an expectation for increased efficiency and the fact that much of the labour rate is costs other than wage or wage related costs

The calculation of the annual labour costs should be based on an appropriate utilisation rate.

The hourly labour rate should exclude any contribution to overheads. Some uplift for the incremental cost of employing these individuals would potentially be reasonable, but the implicit

assumption in the current calculations that overheads will increase in a linear manner with headcount will overstate the incremental cost.

### **6.8. Gain Share & Review**

This guidance does not set out specific Gain Share or review processes as these may vary depending on the nature of the systems being provided. Where appropriate, the Reference Offer shall set out details of any gain share and any future review of actual charges. The appropriateness of any process may be considered by the Adjudicator on a case by case basis. Any review mechanism shall be to determine future charges and shall not adjust charges retrospectively.

In addition to introducing a Gain Share incentive structure, Arqiva shall commit to an efficiency target being applied to their Network Access charges on the basis of an RPI - 1% indexation of all Transmission Services charges.

### **6.9. Termination**

Termination Charges or an expiry fee may be included in a Reference Offer provided it is calculated on an appropriate basis. Any charges shall be stated separately and the basis for calculation shall be detailed. Any charges shall be reasonable and may be negotiated with the customer. Any expiry fee shall exclude costs that are not incremental to accepting the contract, those which are avoidable and those which are mitigated against (for example, by gaining a replacement customer).

### **6.10. Reallocation of costs, loss of other services, platforms or site business**

Only if an entire platform ceases (e.g. AM radio) can reallocation of NA costs across other platforms or users be considered. Any reallocation of costs should only be in respect of those costs which are deemed to be relevant to the site access of the business contained in the Reference Offer, and not costs for which it would be more appropriate to allocate to a different business.

### **6.11. Commencement of charges**

The point when charges start to be incurred can be considered once the service has been provided. The service may be provided by Station, region or by platform and the Reference Offer shall provide adequate detail of when charges start to be incurred.

### **6.12. Liquidated Damages**

Calculation of the cost of providing liquidated damages is a potentially complex matter requiring an assessment of the probabilities that some or all of the damages will become payable. The Reference Offer shall only include provision for liquidated damages as required by Appendices 11 and 12 of The Undertakings and any additional provision shall be determined outside of the Reference Offer. Arqiva should offer liquidated damages on reasonable terms to customers on request and by negotiation.



### **6.13. Terms & Conditions**

The Reference Offer must be capable of acceptance. The terms must be comprehensive. They cannot be conditional on Arqiva board approval.

### **6.14. Delivery Schedule**

A detailed schedule in relation to the delivery of the project should be provided to customers under the terms of the Reference Offer. This should include information on both physical delivery against the roll-out plan and financial information against forecast expenditure. Progress relating to the physical delivery of the project should be reported at least quarterly. Financial information should be reported at least bi-annually.

### **6.15. Change Control**

Change control procedures shall be included in the Reference Offers. These should not be viewed as a mechanism for allowing fundamental changes to the service specification to be made.

### **6.16. Reference Offer Withdrawal**

Reference Offers can only be withdrawn and replaced after a minimum notice period of three months. The revised Reference Offer must be made available for review at the same time as publication of the withdrawal notice. No period should elapse where no valid Reference Offer is available for acceptance.

### **6.17. Service Credits**

The Reference Offer may include service credits payable by Arqiva in the event of interruptions or service outages. The calculation methodology, conditions and excluded events shall be noted.

### **6.18. Support Services**

The Reference Offer may include details of support services, fault response times, contacts details, customer responsibilities, supervision details and an operations manual.

### **6.19. The provision of Network Access**

In relation to the provision of Network Access, the Reference Offer shall also include;

- 6.19.1. the technical standards for Network Access (including any usage restrictions and other security issues);
- 6.19.2. the conditions for access to ancillary, supplementary and advanced services (including operational support systems, information systems or databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing);

- 6.19.3. specific time scales for the acceptance or refusal of a request for supply and for completion, testing and hand-over or delivery of services and facilities, for provision of support services (such as fault handling and repair);
- 6.19.4. provisions regarding confidentiality of non-public parts of the agreements;
- 6.19.5. rules of allocation between the parties when supply is limited (for example, for the purpose of co-location or location of masts)

## Appendix A: Part 1, extract from The Undertakings Part B and Part C

<b>Part B—Undertakings in relation to New Transmission Agreements</b>	<b>Part C—Undertakings in relation to Network Access</b>
<p><b>9. Charges for new transmission agreements</b></p> <p>9.1 Arqiva undertakes to provide, upon reasonable request in writing, Transmission Services under a New Transmission Agreement (and any variation thereto) to a Customer (in accordance with paragraph 8.1.2 or otherwise on expiry of the relevant Existing Transmission Agreement or in relation to a new service) or to a prospective customer. The provision of such Transmission Services shall:</p> <p>9.1.1 occur as soon as reasonably practicable after such a request;</p> <p>9.1.2 be on fair and reasonable terms, conditions and charges; and</p> <p>9.1.3 be in accordance with paragraph 10 (Terms and Conditions for New Transmission Agreements).</p> <p>9.2 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.</p> <p>9.3 Subject to paragraph 9.4, Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator, that each and every charge offered, payable or proposed for Transmission Services under a New Transmission Agreement:</p> <p>9.3.1 is reasonably derived from the costs of provision allowing an appropriate mark up for the recovery of common costs and including an appropriate return;</p> <p>9.3.2 has been calculated</p> <p>(a) having regard to any relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable;</p> <p>(b) in compliance with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4;</p> <p>(c) having regard to the principles contained in Appendices 11 and 12, as applicable, until the relevant content of Appendices 11 and 12 is specifically superseded by the Adjudicator issuing a direction pursuant to paragraph 13.4 or guidance pursuant to paragraph 13.2 or paragraph 13.3; and</p> <p>(d) in accordance with the standards which could reasonably be expected of an efficient 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) supplying in accordance with good technical and operational practices.</p> <p>9.4 Network Access charges shall be determined in accordance with the Ofcom Notification (or any direction issued by Ofcom thereunder) and paragraph 11 (<i>Charges for Network Access</i>) of these Undertakings and shall be passed through to</p>	<p><b>11. Charges for network access</b></p> <p>11.1 Arqiva undertakes to provide, upon reasonable request in writing, Network Access to any MTS Provider. The provision of such Network Access shall:</p> <p>11.1.1 occur as soon as reasonably practicable after such a request;</p> <p>11.1.2 be on fair and reasonable terms, conditions and charges;</p> <p>11.1.3 be in accordance with paragraph 12 (Terms and Conditions for Network Access).</p> <p>11.2 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.</p> <p>11.3 Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator and, if relevant, Ofcom, that each and every charge offered, payable or proposed for Network Access covered by this paragraph 11:</p> <p>11.3.1 is reasonably derived from the costs of provision allowing an appropriate mark up for the recovery of common costs including an appropriate return on capital employed; and</p> <p>11.3.2 has been calculated in compliance with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4 and having regard to any applicable guidance issued pursuant to paragraphs 13.2 and/or 13.3.</p>

<p>customers with no additional mark-up.</p> <p>9.5 Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator, that each Customer or prospective customer under paragraph 9.1 has been provided with sufficient transparency and information regarding the basis for the calculation by Arqiva of charges proposed pursuant to the obligations in this paragraph 9, including the costs of provision and potential alternative network designs (including in relation to Network Access) to allow the Customer or prospective customer a reasonable understanding of the basis of the calculation of the proposed charges separately for:</p> <p>9.5.1 each element of the service (including Network Access and MTS, unless agreed otherwise with the Customer or prospective customer); and</p> <p>9.5.2 each individual Station,</p> <p>and, where the Customer or prospective customer so elects, to refer a dispute to the Adjudicator in accordance with the Adjudication Scheme.</p>	<p>11.4 Arqiva shall secure, and shall be able to demonstrate to the satisfaction of the Adjudicator and, if relevant, Ofcom, that the MTS Provider has been provided with sufficient transparency and information regarding the basis for the calculation by Arqiva of charges proposed pursuant to the obligations in this paragraph 11, including the costs of provision and potential alternative network designs in relation to Network Access to allow the MTS Provider a reasonable understanding of the basis of the calculation of the proposed charges separately for:</p> <p>11.4.1 each element of the service (including Network Access capital expenditure and operating expenditure unless agreed otherwise with the MTS Provider); and</p> <p>11.4.2 each individual Station,</p> <p>and, where the MTS Provider so elects, to refer a dispute to the Adjudicator in accordance with the Adjudication Scheme.</p>
<p><b>10. Terms and conditions for new transmission agreements</b></p> <p>10.1 Arqiva undertakes to provide Transmission Services under a New Transmission Agreement on terms and conditions as set in accordance with this paragraph 10.</p> <p>10.2 Subject to paragraphs 10.12 and 10.17, Arqiva shall provide Transmission Services under a New Transmission Agreement (including to itself or its Affiliates) at the charges, terms and conditions in the relevant Reference Offer. Customers and 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.</p> <p>10.3 Unless the Customer or prospective customer consents otherwise, Arqiva shall enter into a New Transmission Agreement within thirty (30) working days of receiving written notice of an acceptance by the Customer or prospective customer of terms and conditions offered by Arqiva pursuant to this paragraph 10.</p>	<p><b>12. Terms and conditions for network access</b></p> <p>12.1 Subject to paragraphs 10 and 12.12, Arqiva shall provide Network Access to MTS Providers (including to itself or its Affiliates) at the charges, terms and conditions in the relevant Reference Offer. An MTS Provider shall be free to seek amendments to the Reference Offer terms and conditions pursuant to this paragraph 12 and to negotiate alternative terms and conditions with Arqiva.</p> <p>12.2 Unless the MTS Provider consents otherwise, Arqiva shall enter into a Network Access agreement within thirty (30) working days of receiving written notice of an acceptance by an MTS Provider of terms and conditions offered by Arqiva pursuant to this paragraph 12.</p>
<p><b>New radio licences/relevant spectrum auctions</b></p> <p>10.4 Arqiva shall prepare Reference Offers for Transmission Services. The Reference Offers shall set out in full the technical specification (including Stations) of the services. Arqiva shall prepare the Reference Offer in accordance with the following timetable:</p> <p>10.4.1 for digital terrestrial television Transmission Services, following the receipt of written notice from Ofcom that it intends to hold a Relevant Spectrum Auction, Arqiva undertakes to prepare a Reference Offer within such period as Ofcom reasonably directs;</p> <p>10.4.2 for national radio Transmission Services, following the advertisement of a new national radio licence by Ofcom on or after the Commencement Date, Arqiva undertakes to prepare a Reference Offer within such period as Ofcom reasonably directs;</p> <p>10.4.3 for sub-national radio Transmission Services, Arqiva undertakes to prepare a Reference Offer:</p>	<p><b>New radio licences/relevant spectrum auctions</b></p> <p>12.4 Arqiva shall prepare Reference Offers for Network Access. The Reference Offers shall set out in full the technical specification (including Stations) of the services proposed. Arqiva shall prepare the Reference Offer in accordance with the following timetable:</p> <p>12.4.1 for digital terrestrial television Network Access, following the receipt of written notice from Ofcom that it intends to hold a Relevant Spectrum Auction, Arqiva undertakes to prepare a Reference Offer within such period as Ofcom reasonably directs;</p> <p>12.4.2 for national radio Network Access, following the advertisement of a new national radio licence by Ofcom on or after the Commencement Date, Arqiva undertakes to prepare a Reference Offer in relation to the specific radio service within such period as Ofcom reasonably directs;</p> <p>12.4.3 for sub-national radio Network Access, Arqiva undertakes to prepare a Reference Offer in relation to the specific radio service:</p>

(a) within one (1) month following the receipt by Arqiva of guidance from Ofcom pursuant to paragraph 13.3, in relation to any new sub-national 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

(b) within one (1) month following (i) the advertisement of a new sub-national radio licence by Ofcom on or after the Commencement Date, or (ii) the receipt by Arqiva of guidance from Ofcom pursuant to paragraph 13.3 (whichever is later).

10.5 Arqiva shall promptly prepare an additional or replacement Reference Offer for Transmission Services if at any time:

10.5.1 the Adjudicator directs Arqiva to do so pursuant to paragraph 13.4; or

10.5.2 the Adjudicator or Ofcom directs Arqiva to modify the technical specification (including Stations) on which an existing Reference Offer is based.

10.6 Arqiva shall publish each Reference Offer for Transmission Services prepared pursuant to paragraphs 10.4 and 10.5 within the time periods for preparation specified in those paragraphs. Publication shall be effected by Arqiva placing a copy on a relevant website operated or controlled by it and providing a copy to the Adjudicator and Ofcom.

10.7 Following publication of any such Reference Offer for Transmission Services:

10.7.1 where a Customer or prospective customer submits a request in writing for Transmission Services on the basis of the technical specification (including Stations) contained in the published Reference Offer, Arqiva will respond within ten (10) working days following receipt confirming that the terms (including pricing) contained in the relevant Reference Offer are applicable;

10.7.2 where a Customer or prospective customer submits a reasonable request in writing for Transmission Services on the basis of an alternative specification (including Stations) as compared to the specification assumed in the published Reference Offer, Arqiva will provide an initial response within ten (10) working days following receipt confirming the date by which a detailed response will be provided. Arqiva shall provide such a detailed response, which identifies any variations to the charges, terms and conditions contained in the published Reference Offer, as soon as reasonably practicable and in any event within:

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

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

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

10.8 Where a Customer or prospective customer has subsequent queries after provision of such detailed response, Arqiva shall respond fully in writing within ten (10) working days of receipt, or such longer period as the Customer, prospective customer or the Adjudicator agrees is reasonably required.

(a) within one (1) month following the receipt by Arqiva of guidance from Ofcom pursuant to paragraph 13.3, in relation to any new sub-national 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

(b) within one (1) month following (i) the advertisement of a new sub-national radio licence by Ofcom on or after the Commencement Date, or (ii) the receipt by Arqiva of guidance from Ofcom pursuant to paragraph 13.3 (whichever is later).

12.5 Arqiva shall promptly prepare an additional or replacement Reference Offer for Network Access if at any time:

12.5.1 the Adjudicator directs Arqiva to do so pursuant to paragraph 13.4; or

12.5.2 the Adjudicator or Ofcom directs Arqiva to modify the technical specification (including Stations) on which an existing Reference Offer is based.

12.6 Arqiva shall publish each Reference Offer for Network Access prepared pursuant to paragraphs 12.4 and 12.5 within the time periods for preparation specified in those paragraphs. Publication shall be effected by Arqiva placing a copy on a relevant website operated or controlled by it and providing a copy to the Adjudicator and Ofcom.

12.7 Following publication of any such Reference Offer for Network Access:

12.7.1 where an MTS Provider submits a request in writing for Network Access on the basis of the technical specification (including Stations) contained in the published Reference Offer, Arqiva will respond within ten (10) working days following receipt confirming that the terms (including pricing) contained in the relevant Reference Offer are applicable;

12.7.2 where an MTS Provider submits a reasonable request in writing for Network Access on the basis of an alternative specification (including Stations) as compared to the specification assumed in the published Reference Offer, Arqiva will provide an initial response within ten (10) working days following receipt confirming the date by which a detailed response will be provided. Arqiva shall provide such a detailed response, which identifies any variations to the charges, terms and conditions contained in the published Reference Offer, as soon as reasonably practicable and in any event within:

(a) two (2) months in relation to Network Access for a digital terrestrial television service or national radio service; or

(b) two (2) weeks in relation to Network Access for a sub-national radio service,

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

12.8 Where an MTS Provider has subsequent queries after provision of such detailed response, Arqiva shall respond fully in writing within ten (10) working days of receipt, or such longer period as the MTS Provider or the Adjudicator agrees is reasonably required.

<p>10.9 Arqiva shall send a copy of its written response pursuant to paragraphs 10.7 and</p> <p>10.8 to the Adjudicator and shall publish such response or any part of it if directed to do so by the Adjudicator.</p> <p>10.10 In preparing any Reference Offer for Transmission Services pursuant to paragraphs 10.4 and 10.5, or any written response pursuant to paragraphs 10.7 and 10.8, Arqiva shall:</p> <p>10.10.1 comply with paragraph 9 (Charges for New Transmission Agreements);</p> <p>10.10.2 have regard to the principles in Appendices 11 and 12 as applicable, until the relevant content of Appendices 11 and 12 is specifically superseded by the Adjudicator issuing a direction pursuant to paragraph 13.4 or guidance pursuant to paragraph 13.2;</p> <p>10.10.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and</p> <p>10.10.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.</p> <p>10.11 Where Arqiva proposes to provide to itself, as a multiplex operator or broadcaster, Transmission Services under a New Transmission Agreement in a manner that materially differs from that detailed in the relevant published Reference Offer for Transmission Services, Arqiva shall provide a copy of the proposal to the Adjudicator. Arqiva shall comply with any direction by the Adjudicator:</p> <p>10.11.1 to publish an additional or replacement Reference Offer for Transmission Services; and</p> <p>10.11.2 to offer the same or equivalent amendments under any relevant New Transmission Agreement for the same or equivalent services in force with a third party customer at the relevant time.</p> <p>In issuing any such direction, the Adjudicator shall consult with Ofcom where appropriate.</p> <p>10.12 Where Arqiva enters into or modifies the terms of any New Transmission Agreement pursuant to which it supplies Transmission Services to itself, as a multiplex operator or broadcaster, in a manner that materially differs from that detailed in the relevant published Reference Offer for Transmission Services, Arqiva shall provide a copy of the agreement or variation to the Adjudicator. Arqiva shall comply with any direction by the Adjudicator:</p> <p>10.12.1 to publish an additional or replacement Reference Offer for Transmission Services; and</p> <p>10.12.2 to offer the same or equivalent amendments under any relevant New Transmission Agreement for the same or equivalent services in force with a third party customer at the relevant time.</p>	<p>12.9 Arqiva shall send a copy of its written response pursuant to paragraphs 12.7 and</p> <p>12.8 to the Adjudicator and shall publish such response or any part of it if directed to do so by the Adjudicator.</p> <p>12.10 In preparing any Reference Offer for Network Access pursuant to paragraphs 12.3, 12.4 and 12.5 or any written response pursuant to paragraphs 12.7 and 12.8, Arqiva shall:</p> <p>12.10.1 comply with paragraph 11 (Charges for Network Access);</p> <p>12.10.2 have regard to the principles in Appendices 11 and 12 as applicable, until the relevant content of Appendices 11 and 12 is specifically superseded by the Adjudicator issuing a direction pursuant to paragraph 13.4 or guidance pursuant to paragraph 13.2;</p> <p>12.10.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and</p> <p>12.10.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.</p> <p>12.11 Where Arqiva proposes to provide to itself, as an MTS Provider, Network Access in a manner that materially differs from that detailed in the relevant published Reference Offer for Network Access, Arqiva shall provide a copy of the proposal to the Adjudicator. Arqiva shall comply with any direction by the Adjudicator:</p> <p>12.11.1 to publish an additional or replacement Reference Offer for Network Access; and</p> <p>12.11.2 to offer the same or equivalent amendments under any relevant Network Access agreement for the same or equivalent services in force with a third party MTS Provider at the relevant time.</p> <p>In issuing any such direction, the Adjudicator shall consult with Ofcom where appropriate.</p> <p>12.12 Where Arqiva enters into or modifies the terms of any Network Access Agreement pursuant to which it supplies Network Access to itself, as an MTS Provider, in a manner that materially differs from that detailed in the relevant published Reference Offer for Network Access, Arqiva shall provide a copy of the agreement or variation to the Adjudicator. Arqiva shall comply with any direction by the Adjudicator:</p> <p>12.12.1 to publish an additional or replacement Reference Offer for Network Access; and</p> <p>12.12.2 to offer the same or equivalent amendments under any relevant Network Access Agreement for the same or equivalent services in force with a third party MTS Provider at the relevant time.</p>
	<p><b>Framework radio Reference Offer</b></p> <p>12.3 Within one (1) month following the receipt by Arqiva of guidance from Ofcom pursuant to paragraph 13.3, 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 an MTS Provider. Publication shall be effected by Arqiva placing a copy of the Reference Offer and any update thereto on a relevant website operated or controlled by it and providing a copy to the Adjudicator and Ofcom</p>

<p><b>New contracts for existing services</b></p> <p>10.13 Where a Customer wishes to enter into a New Transmission Agreement upon expiry of its Existing Transmission Agreement and submits a reasonable request in writing for Transmission Services on this basis, Arqiva shall provide an offer to the Customer within one (1) month following receipt of the request, or such longer period as the Customer or the Adjudicator agrees is reasonably required, based on the technical specification contained in the Customer's Existing Transmission Agreement.</p> <p>10.14 Where the Customer has subsequent queries after provision of this offer, Arqiva shall respond fully in writing within ten (10) working days of receipt, or such longer period as the Customer or the Adjudicator agrees is reasonably required.</p> <p>10.15 Arqiva shall send a copy of its offer and written responses pursuant to paragraphs 10.13 and 10.14 to the Adjudicator and shall publish these documents or any part of them if directed to do so by the Adjudicator.</p> <p>10.16 In preparing any offer under paragraph 10.13 or written response under paragraph 10.14 Arqiva shall:</p> <p>10.16.1 comply with paragraph 9 (Charges for New Transmission Agreements);</p> <p>10.16.2 have regard to the principles in Appendices 11 and 12 as applicable, until the relevant content of Appendices 11 and 12 is specifically superseded by the Adjudicator issuing a direction pursuant to paragraph 13.4 or guidance pursuant to paragraph 13.2;</p> <p>10.16.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and</p> <p>10.16.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4</p>	<p><b>New contracts for existing services</b></p> <p>12.13 Six (6) months prior to the expiry of any Existing Transmission Agreement to which Arqiva is a counterparty (except for any Analogue TV Agreement or Low Power DTT Agreement), the relevant Customer may request Arqiva to prepare a Network Access offer specific to that agreement. Arqiva shall provide the offer to the Customer and/or a third party MTS Provider nominated by the Customer within one (1) month following receipt of the Customer's request, or such longer period as the Customer or the Adjudicator agrees is reasonably required.</p> <p>12.14 Where the Customer or third party MTS Provider has subsequent queries after provision of this offer, Arqiva shall respond fully in writing within ten (10) working days of receipt, or such longer period as the Customer or MTS Provider (as applicable) or the Adjudicator agrees is reasonably required.</p> <p>12.15 Arqiva shall send a copy of its offer and written responses pursuant to paragraphs 12.13 and 12.14 to the Adjudicator and shall publish these documents or any part of them if directed to do so by the Adjudicator.</p> <p>12.16 In preparing any offer under paragraph 12.13 or written response under paragraph 12.14 Arqiva shall:</p> <p>12.16.1 comply with paragraph 11 (Charges for Network Access);</p> <p>12.16.2 have regard to the principles in Appendices 11 and 12 as applicable, until the relevant content of Appendices 11 and 12 is specifically superseded by the Adjudicator issuing a direction pursuant to paragraph 13.4 or guidance pursuant to paragraph 13.2;</p> <p>12.16.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and</p> <p>12.16.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.</p>
<p><b>Alternative arrangements</b></p> <p>10.17 As an alternative to entering into a New Transmission Agreement on the basis of paragraph 10.7 or paragraph 10.13, where a Customer so elects Arqiva undertakes to provide Transmission Services under a New Transmission Agreement:</p> <p>10.17.1 on the terms and conditions contained in the Customer's 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 pricing principles and cost recovery, which shall be determined in accordance with paragraph 9; or</p> <p>10.17.2 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 pricing principles and cost recovery, which shall be determined in accordance with paragraph 9.</p> <p>10.18 Where the Customer submits a reasonable request in writing for alternative terms and conditions (excluding price) under paragraphs 10.17.1 or 10.17.2, Arqiva will provide an initial response within ten (10) working days following receipt of such written request</p>	

confirming the date by which Arqiva will provide a pricing proposal for the provision of such services. Arqiva shall provide such a pricing proposal as soon as reasonably practicable and in any event within:

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

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

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



## Appendix A: Part 2, extract from The Undertakings Appendices 11 and 12

<b>Appendix 11: Principles for Digital Terrestrial Television Reference Offers</b>	<b>Appendix 12: Principles for radio reference offers</b>
<p>DTT Transmission Services Reference Offer</p> <p>The Reference Offer published in accordance with paragraph 10.4.1 of the Undertakings shall include provisions which cover the following (where applicable):</p> <p>1 Scope: the design, build and operation of the system and the provision of Transmission Services in respect of a DTT multiplex by Arqiva.</p> <p>2 System Build:</p> <ul style="list-style-type: none"> <li>• Acceptance testing</li> <li>• Liquidated damages payable by Arqiva for any Station that is delivered late (subject to appropriate carve-outs).</li> <li>• Customer Dependencies.</li> </ul> <p>3 Charges:</p> <ul style="list-style-type: none"> <li>• in accordance with paragraphs 9 and 10 of the Undertakings.</li> <li>• Arqiva shall have regard to the following principles until such time as any principle is specifically superseded by guidance issued under paragraph 13.2 or 13.3 of the Undertakings: <ul style="list-style-type: none"> <li>- the forecast costs of provision shall include only those 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 Customer;</li> <li>- electricity charges will be passed through to the Customer on an annual basis at cost with no mark-up on the actual charges payable by Arqiva;</li> <li>- the charges determined in accordance with paragraph 9.3 of the Undertakings shall be adjusted on an annual basis by a percentage equal to the annual percentage increase in RPI-1%;</li> <li>- where the actual costs of provision are less than the forecast costs of provision, an appropriate gainshare mechanism will be applied;</li> <li>- where the actual costs of provision are higher than the forecast costs of provision, the charges determined in accordance with paragraph 9.3 of the Undertakings (including an appropriate contingency) shall not be increased, provided that Arqiva will be entitled to adjust the charges, to reflect any change in the specification, any change in the number or mix of sharers of the common infrastructure, any force majeure event or for other matters outside the reasonable control of Arqiva, through the change control procedure; - (prior to execution of any agreement) forecast costs in any published Reference Offer may be revalidated by Arqiva periodically to ensure they remain current.</li> </ul> </li> </ul>	<p>Radio Transmission Services Reference Offer</p> <p>The Reference Offers published in accordance with paragraphs 10.4.2 or 10.4.3 of the Undertakings will include provisions which cover the following (where applicable):</p> <p>1 Scope: the design, build and operation of the system and the provision of Transmission Services in respect of analogue / digital radio services.</p> <p>2 System Build:</p> <ul style="list-style-type: none"> <li>• Acceptance testing</li> <li>• Liquidated damages payable by Arqiva for any Station that is delivered late (subject to appropriate carve-outs).</li> <li>• Customer Dependencies.</li> </ul> <p>3 Charges:</p> <ul style="list-style-type: none"> <li>• in accordance with paragraphs 9 and 10 of the Undertakings.</li> <li>• Arqiva shall have regard to the following principles until such time as any principle is specifically superseded by guidance issued under paragraph 13.2 or 13.3 of the Undertakings: <ul style="list-style-type: none"> <li>- the forecast costs of provision shall include only those 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 Customer;</li> <li>- electricity charges will be passed through to the Customer on an annual basis at cost with no mark-up on the actual charges payable by Arqiva;</li> <li>- the charges determined in accordance with paragraph 9.3 of the Undertakings shall be adjusted on an annual basis by a percentage equal to the annual percentage increase in RPI-1%;</li> <li>- where the actual costs of provision are less than the forecast costs of provision an appropriate gainshare mechanism will be applied;</li> <li>- where the actual costs of provision are higher than the forecast costs of provision, the charges determined in accordance with paragraph 9.3 of the Undertakings (including an appropriate contingency) shall not be increased, provided that Arqiva will be entitled to adjust the charges, to reflect any change in the specification, any change in the number or mix of sharers of the common infrastructure, any force majeure event or for other matters outside the reasonable control of Arqiva, through the change control procedure; - (prior to execution of any agreement) forecast costs in any published Reference Offer may be revalidated by Arqiva periodically to ensure they remain current.</li> </ul> </li> </ul>

<p>4 Service credits: based on operational service levels (including, for example total time of service availability or response times) subject to a cap and subject to the super credit regime described below.</p> <p>5 Super credits: as described in paragraph 5 of the Undertakings (any failure to achieve any part of any build project on time shall not constitute a Persistent Failure for the purposes of the super credit regime).</p> <p>6 Suspension: rights for each of Arqiva and the Customer to suspend the Transmission Service in certain specified circumstances.</p> <p>7 Customer responsibilities: as reasonably required to enable Arqiva to provide the Transmission Service. The Customer will be required to indemnify Arqiva for losses attributable to the Customer's or any of its broadcasters' failures to comply with their licences.</p> <p>8 Maintenance and planned works: monitoring, maintenance and breakdown repair services and planned works, and the limited circumstances when Arqiva can interrupt the service.</p> <p>9 Breakdowns: categorization, notification and remediation of breakdowns by Arqiva within specified response times.</p> <p>10 Liability: customary limitations and exclusions of liability.</p> <p>11 Force majeure: circumstances in which Arqiva will not be liable for any failure to perform any of its obligations to the extent caused by circumstances beyond Arqiva's reasonable control</p> <p>12 Change control procedure: to be used for all changes to the services.</p> <p>13 Parent guarantee: Arqiva may require that the Customer provides a parent company guarantee or other financial security in appropriate circumstances.</p> <p>14 Warranties: from Arqiva that: (i) the Transmission Services will be provided with reasonable care and skill; (ii) Arqiva will have and will comply with all required licences, consents, authorities and dispensations required to perform the Transmission Services; and (iii) the provision of the Transmission Service will not infringe third party intellectual property rights, damage reception devices or interfere with third party signals.</p> <p>15 Content indemnity: from the Customer in favour of Arqiva in respect of any liability relating to content.</p> <p>16 Term: to be agreed on a case by case basis having regard to relevant licence periods.</p> <p>17 Termination: Arqiva and Customer rights of termination.</p> <p>18 Arrangements on termination/expiry: • transition assistance from Arqiva on termination where termination is for Arqiva default</p> <ul style="list-style-type: none"> <li>• transition assistance from Arqiva prior to expiry</li> <li>• termination payment by the Customer in the event of early termination or expiry if applicable</li> </ul>	<p>4 Service credits: based on operational service levels (including, for example total time of service availability or response times) based on the infrastructure solution for each particular Customer and e [sic] benchmarked against similar services provided to other customers subject to a cap and subject to the super credit regime described below.</p> <p>5 Super credits: as described in paragraph 5 of the Undertakings (any failure to achieve any part of any build project on time shall not constitute a Persistent Failure for the purposes of the super credit regime).</p> <p>6 Suspension: rights for each of Arqiva and the Customer to suspend the Transmission Service in certain specified circumstances.</p> <p>7 Customer responsibilities: as reasonably required to enable Arqiva to provide the Transmission Service. 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<ul style="list-style-type: none"> <li>• right to buy Transmitter Equipment as described in paragraph 6 of the Undertakings</li> </ul> <p>19 Dispute resolution: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.</p> <p>DTT Network Access Reference Offer</p> <p>The Reference Offer published in accordance with paragraph 12.4.1 of the Undertakings shall be based on the terms of the Existing Television Reference Offer but incorporating the following key principles (where applicable):</p> <p>21 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 assumed to be for post- DSO digital terrestrial television Network Access.</p> <p>22 Charges: in accordance with paragraphs 11 and 12 of the Undertakings.</p> <p>23 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.</p> <p>24 Liquidated Damages: payable by Arqiva if digital terrestrial television Network Access is not provided at a Station by the applicable target access date (subject to appropriate carve-outs).</p> <p>25 Adjudication: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings</p>	<ul style="list-style-type: none"> <li>• right to buy Transmitter Equipment as described in paragraph 6 of the Undertakings</li> </ul> <p>19 Dispute resolution: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.</p> <p>Radio Network Access Reference Offer</p> <p>The Reference Offers published in accordance with paragraphs 12.4.2 or 12.4.3 shall be based on the terms of the Existing Television Reference Offer but incorporating the following key principles (where applicable):</p> <p>21 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.</p> <p>22 Charges: in accordance with paragraphs 11 and 12 of the Undertakings.</p> <p>23 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.</p> <p>24 Liquidated Damages: payable by Arqiva if radio Network Access is not provided at a Station by the applicable target access date (subject to appropriate carve-outs).</p> <p>25 Adjudication: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.</p>
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