

Undertakings to the Competition Commission by Macquarie UK Broadcast Holdings Limited, Macquarie MCG International Limited, Macquarie European Infrastructure Fund II, Macquarie European Infrastructure Fund III and Macquarie Capital Funds (Europe) Limited

- (A) On 8 August 2007, the Office of Fair Trading, in exercise of its duty under section 22 Enterprise Act 2002 (the **Act**), referred the completed acquisition by Macquarie UK Broadcast Ventures Limited (**MUKBV**), a subsidiary of Macquarie UK Broadcast Holdings Limited (**MUKBH**), of National Grid Telecoms Investment Limited, Lattice Telecommunications Asset Development Company Limited and National Grid Wireless No. 2 Limited (together the **National Grid Wireless Group**) to the Competition Commission (**CC**). Macquarie MCG International Limited (**MCG**), Macquarie European Infrastructure Fund II (**MEIF II**) and Macquarie European Infrastructure Fund III (**MEIF III**) (each a **Macquarie Fund**) indirectly have legal ownership of the majority of the shares in MUKBH. Macquarie Capital Funds (Europe) Limited (**MCFEL**) is the manager of MEIF II and MEIF III.
- (B) The CC published its report entitled *Macquarie UK Broadcast Ventures Limited/ National Grid Wireless Group: Completed Acquisition* on 11 March 2008 (the **Report**). In the Report, the CC concluded that:
- (i) the acquisition in question had resulted in the creation of a relevant merger situation and that the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) in relation to the markets for the provision of Managed Transmission Services and Network Access to television broadcasters and certain radio broadcasters within the UK and that the SLC may be expected to result in the adverse effects specified in paragraph 9.2 of the Report;
 - (ii) the CC should take action to remedy, mitigate or prevent the SLC and any adverse effects flowing from it and to that end undertakings should be given to give effect to the CC's decision on remedies specified in the Report.
- (C) Now therefore, Arqiva and the Macquarie Funds each gives the following Undertakings pursuant to section 82 of the Act.

1. Commencement

- 1.1 The obligations in these Undertakings will come into force on the Commencement Date.
- 1.2 Each Macquarie Fund undertakes that it will not (whether individually or jointly with another Macquarie Fund) without the prior written consent of the Office of Fair Trading transfer control of a company that is a member of the Arqiva group carrying on activities that are or may be material in relation to the Relevant Business Activities to a person that is not a member of a Macquarie Fund. For the purposes of this paragraph 1.2 control of a company shall mean having a controlling interest in that company or otherwise having the ability directly or indirectly to control or materially to influence the policy of that company for the purposes of section 26 of the Act.
- 1.3 Paragraph 1.2 shall not apply to any transfer where on completion of the relevant transfer the Macquarie Funds (whether directly or indirectly through members of a Macquarie Fund) will continue to have: (i) legal ownership of shares carrying more

than 50 per cent of the voting rights capable of being cast on a resolution before a general meeting of that company; (ii) the right to appoint or remove a majority of its board of directors of that company; and (iii) the ability to control the policy of that company for the purposes of section 26 of the Act.

- 1.4 Each Macquarie Fund undertakes that it will not (whether individually or jointly with another Macquarie Fund) exercise any voting rights attaching to shares in any member of the Arqiva group held by, or any rights to affect the governance or policy of any member of the Arqiva group vested in, such Macquarie Fund (whether directly or indirectly), or otherwise knowingly take any step, in a manner which will:
 - 1.4.1 prevent Arqiva from carrying into effect or complying with the Undertakings;
 - 1.4.2 cause Arqiva to fail to comply with the Undertakings; or
 - 1.4.3 otherwise undermine the implementation of the remedies described in the Report and given effect to by the Undertakings.
- 1.5 Macquarie MCG International Limited shall procure that each member of the MCG group shall comply with paragraphs 1.2, 1.3 and 1.4 of these Undertakings in so far as relevant as if such subsidiaries had given them.
- 1.6 Macquarie European Infrastructure Fund II shall procure that each member of the MEIF II group shall comply with paragraphs 1.2, 1.3 and 1.4 of these Undertakings in so far as relevant as if such subsidiaries had given them.
- 1.7 Macquarie European Infrastructure Fund III shall procure that each member of the MEIF III group shall comply with paragraphs 1.2, 1.3 and 1.4 of these Undertakings in so far as relevant as if such subsidiaries had given them.
- 1.8 MCFEL undertakes that it will not exercise its rights and obligations as manager of MEIF II and MEIF III or otherwise knowingly take any step in a manner which will prevent MEIF II or MEIF III from carrying into effect or complying with, or cause MEIF II or MEIF III to fail to comply with, paragraphs 1.2, 1.3 and 1.4 of these Undertakings.
- 1.9 MUKBH shall procure that each member of the Arqiva group shall comply with these Undertakings in so far as relevant as if such subsidiaries had given them.
- 1.10 Arqiva shall not without the prior written consent of the Office of Fair Trading transfer any activities that are or may be material in relation to the carrying on of the Relevant Business Activities to a person that is not a member of the Arqiva group.
- 1.11 Paragraph 1.9 shall not apply to any sale of Transmission Equipment as provided for in paragraph 6 of these Undertakings or in the Existing Transmission Agreements listed in Appendix 9 of these Undertakings.
- 1.12 Arqiva shall not without the prior written consent of the Office of Fair Trading transfer control of a company that is a member of the Arqiva group carrying on activities that are or may be material in relation to the Relevant Business Activities to a person that is not a member of the Arqiva group.
- 1.13 Where a request for consent is sought pursuant to paragraphs 1.2, 1.10 or 1.12, the Office of Fair Trading will consider any such request in light of the Report and will respond in writing as soon as is reasonably practicable having regard to the nature of the request.

- 1.14 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 changes to the terms of their Existing Transmission Agreement(s) as set out in paragraphs 3 to 7.
- 2.2 While similar proposals have been offered to each Customer, in order to reflect differences between the Existing Transmission Agreements and to maintain the confidentiality of those agreements, Arqiva undertakes to offer specific changes to:
 - 2.2.1 the BBC's Existing Transmission Agreements as set out in Appendix 3;
 - 2.2.2 D34's Existing Transmission Agreements as set out in Appendix 4;
 - 2.2.3 SDN's Existing Transmission Agreements as set out in Appendix 5; and
 - 2.2.4 the Analogue TV Agreements (save where covered by paragraph 2.2.1) as set out in Appendix 6.
- 2.3 In relation to each Existing Transmission Agreement:
 - 2.3.1 Arqiva undertakes to maintain the offer set out in this paragraph 2 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 3.1, 4.1, 6.1, 6.2, 7.1 and 7.3, the Customer may elect to accept any one or more of the changes set out in paragraphs 3 to 7 (as amended by the applicable Customer Appendix, if any) in any combination, in any sequence and at any time during the period provided for in paragraph 2.3.1; and
 - 2.3.3 to the extent that the Customer has not agreed to accept any part of the offer as described in this paragraph 2.3 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 Other than in relation to the Existing Transmission Agreements listed in Appendix 7 Arqiva will offer an amendment to the Existing Transmission Agreement to the effect that, where the Customer requests a change to or under the agreement (including termination of a particular service or Station), Arqiva shall promptly enter into good faith negotiations with the Customer in relation to the requested change. Any revision to the charges payable by the Customer under the relevant agreement shall be determined in accordance with paragraph 9 (*Charges for New Transmission Agreements*). Where the request relates to termination of a particular service or Station the revision to the charges payable by the Customer may include an element in respect of revenue lost by Arqiva (taking into account pre-existing contractual terms) as a result of the termination of the particular service or Station. In conducting negotiations with the Customer, including the calculation of any revised charges,

Arqiva shall respond as soon as reasonably practicable to each communication from the Customer.

- 3.2 Changes to or under the Existing Transmission Agreements listed in Appendix 7 shall be dealt with in accordance with the existing contractual provisions.

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 listed in Appendix 8, as the build 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 contracted service availability level for Transmission Services under an Existing Transmission Agreement to a percentage level which reflects 50 per cent 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 1 May 2008 (or where 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:

(a) the Customer may submit a Super Credit Notice to Arqiva;

(b) Arqiva shall have one (1) month following receipt of a Super Credit Notice from the Customer within which to rectify its poor performance as set out in the Rectification Process to the relevant service level (as amended pursuant to paragraph 4 (*Service Level Availability*), where applicable);

5.1.2 where Arqiva fails to rectify its poor performance as required under paragraph 5.1.1(b), then the Customer will be given the option to receive a super credit;

5.1.3 the level of this super credit shall be set at ten per cent (10%) of the fees payable by the Customer (excluding Wireless Telegraphy Act licence fees and, for those Existing Transmission Agreements listed in Appendix 10, excluding electricity charges) in relation to Transmission Services for all Stations in the Customer's network for the relevant licensed service in the twelve (12) months preceding the date of expiry of the one (1) month period referred to in paragraph 5.1.1(b). 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;

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 and which contributed to that liability shall be disregarded for the purposes of measuring Arqiva's performance under the relevant contractual mechanisms after that date; 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 transmitter equipment

- 6.1 Other than in relation to the Existing Transmission Agreements listed in Part A of Appendix 9, Arqiva will offer an amendment to the Existing Transmission Agreement to the effect that:
- 6.1.1 a Customer may at any time between six (6) months and eighteen (18) months prior to the date of expiry of an Existing Transmission Agreement submit a written request to Arqiva to provide:
- (a) a detailed inventory of all Transmitter Equipment dedicated to that particular agreement, which shall include an indication of the cost of the Transmitter Equipment calculated in accordance with paragraph 6.1.4:
 - (b) a plan to facilitate transfer of ownership and control of that Transmitter Equipment to the Customer or its nominee upon expiry of that agreement;
- 6.1.2 Arqiva shall consult with the Customer in generating the transition plan and shall provide both the inventory and the transition plan referred to in 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 two (2) 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 cost of the Transmitter Equipment calculated in accordance with any applicable direction issued by the Adjudicator pursuant to paragraph 13.4 and having regard to any applicable guidance issued pursuant to paragraphs 13.2 or 13.3.
- 6.2 Other than in relation to the Existing Transmission Agreements listed in Part B of Appendix 9, Arqiva will offer an amendment to the Existing Transmission Agreement to the effect that a Customer may exercise the rights described in paragraph 6.1 where it has served a notice to terminate an Existing Transmission Agreement as a result of Arqiva's default. In this event, the provisions of paragraphs 6.1.1 to 6.1.4 shall apply subject to the following amendments:
- 6.2.1 within five (5) working days following the date of the Customer's notice to terminate the agreement, the Customer shall submit a written request to Arqiva to provide the inventory of Transmitter Equipment referred to in paragraph 6.1.1(a) and the transition plan referred to in paragraph 6.1.1(b), receipt of which shall be acknowledged by Arqiva;

- 6.2.2 Arqiva shall provide the inventory and the transition plan to the Customer within one (1) month following receipt of the Customer's written request pursuant to paragraph 6.2.1;
- 6.2.3 the Customer shall submit a written request to Arqiva to: (i) implement the transition plan; and (ii) transfer all of the Transmitter Equipment to the relevant Customer (or their nominee) no later than six (6) months following receipt of the information pursuant to paragraph 6.2.2;
- 6.2.4 Arqiva shall have one (1) month following receipt of this request in which to implement it subject to the conditions set out in paragraph 6.1.4;
- 6.2.5 until such time as the transition plan is implemented and all of the Transmitter Equipment is transferred, the relevant Existing Transmission Agreement shall continue in full force and effect (save that no liability to pay supercredits will accrue following a notice to terminate) with Arqiva continuing to service the contract and the Customer continuing to pay the contracted charges; and
- 6.2.6 in the event that the Customer does not submit a written request to Arqiva within the timescale set out in either paragraph 6.2.1 or 6.2.3, then the Customer's right to purchase the Transmitter Equipment shall lapse and the provisions of paragraph 6.2.5 shall not apply.

7. Reduction in charges under existing transmission agreements

- 7.1 Arqiva shall offer the amendment set out in paragraph 7.2 in respect of each Existing Transmission Agreement, 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 on the contract price for Transmission Services. The discount shall not apply to Wireless Telegraphy Act licence fees and for the Existing Transmission Agreements listed in Appendix 10, the discount shall not apply to electricity charges, as electricity is charged separately under those agreements. The applicable discounts are as follows:
 - 7.2.1 for each Analogue TV Agreement and each Low Power DTT Agreement, the applicable percentage discount shall be 3.25 per cent; and
 - 7.2.2 for each Analogue Radio Agreement and each Digital Radio Agreement, the applicable percentage discount shall be 17 per cent.
- 7.3 Arqiva shall offer:
 - 7.3.1 the changes to the BBC Digital Agreement set out in Appendix 3, Parts C and D, paragraph 2 to the BBC;
 - 7.3.2 the change to the D34 Agreement set out in Appendix 4, Part B, paragraph 3 to D34; and
 - 7.3.3 the change to the SDN Agreement set out in Appendix 5, Part B, paragraph 2 to SDN,

which will have the effect of providing guaranteed price reductions to the BBC, SDN and D34, including an element which is equivalent, in aggregate, to a £50 million reduction in the budgeted total Network Access capital expenditure (including both

forecast capital expenditure and the uplift for contingencies) for Digital Switchover as set out in the Existing Television Reference Offer.

8. Right to renew existing radio agreements

- 8.1 Subject to paragraph 8.2, Arqiva undertakes in respect of each Radio Agreement (including any renewal or replacement agreement entered into pursuant to this paragraph 8.1) to maintain an offer up to the date of expiry of that agreement that the relevant Customer may, on expiry of that agreement, either:
- 8.1.1 renew that agreement insofar as it relates to Transmission Services on the same terms and conditions (as amended pursuant to these Undertakings); or
 - 8.1.2 enter into a New Transmission Agreement in accordance with paragraphs 9 (*Charges for New Transmission Agreements*) and 10 (*Terms and Conditions for New Transmission Agreements*) below.
- 8.2 Arqiva shall notify Customers in writing of the offer pursuant to paragraph 8.1:
- 8.2.1 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.

Part B—Undertakings in relation to New Transmission Agreements

9. Charges for new transmission agreements

- 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:
- 9.1.1 occur as soon as reasonably practicable after such a request;
 - 9.1.2 be on fair and reasonable terms, conditions and charges; and
 - 9.1.3 be in accordance with paragraph 10 (*Terms and Conditions for New Transmission Agreements*).
- 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.
- 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:
- 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;
 - 9.3.2 has been calculated:

- (a) having regard to any relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable;
- (b) in compliance with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4;
- (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
- (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.

9.4 Network Access charges shall be determined in accordance with the Ofcom Notification (or any direction issued by Ofcom thereunder) and paragraph 11 (*Charges for Network Access*) of these Undertakings and shall be passed through to customers with no additional mark-up.

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:

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

9.5.2 each individual Station,

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

10. Terms and conditions for new transmission agreements

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.

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.

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.

New radio licences/relevant spectrum auctions

- 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:
- 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;
- 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;
- 10.4.3 for sub-national radio Transmission Services, Arqiva undertakes to prepare a Reference Offer:
- (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.
- 10.9 Arqiva shall send a copy of its written response pursuant to paragraphs 10.7 and 10.8 to the Adjudicator and shall publish such response or any part of it if directed to do so by the Adjudicator.
- 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:
- 10.10.1 comply with paragraph 9 (*Charges for New Transmission Agreements*);
 - 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;
 - 10.10.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and
 - 10.10.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.
- 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:
- 10.11.1 to publish an additional or replacement Reference Offer for Transmission Services; and

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.

In issuing any such direction, the Adjudicator shall consult with Ofcom where appropriate.

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:

10.12.1 to publish an additional or replacement Reference Offer for Transmission Services; and

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.

New contracts for existing services

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.

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.

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.

10.16 In preparing any offer under paragraph 10.13 or written response under paragraph 10.14 Arqiva shall:

10.16.1 comply with paragraph 9 (*Charges for New Transmission Agreements*);

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;

10.16.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and

10.16.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.

Alternative arrangements

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:

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

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.

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 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.

Part C—Undertakings in relation to Network Access

11. Charges for network access

11.1 Arqiva undertakes to provide, upon reasonable request in writing, Network Access to any MTS Provider. The provision of such Network Access shall:

11.1.1 occur as soon as reasonably practicable after such a request;

11.1.2 be on fair and reasonable terms, conditions and charges;

11.1.3 be in accordance with paragraph 12 (*Terms and Conditions for Network Access*).

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.

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:

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

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.

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:

11.4.1 each element of the service (including Network Access capital expenditure and operating expenditure unless agreed otherwise with the MTS Provider); and

11.4.2 each individual Station,

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

12. Terms and conditions for network access

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.

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.

Framework radio Reference Offer

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.

New radio licences/relevant spectrum auctions

- 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:
- 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;
- 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;
- 12.4.3 for sub-national radio Network Access, Arqiva undertakes to prepare a Reference Offer in relation to the specific radio service:
- (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.

12.9 Arqiva shall send a copy of its written response pursuant to paragraphs 12.7 and 12.8 to the Adjudicator and shall publish such response or any part of it if directed to do so by the Adjudicator.

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:

12.10.1 comply with paragraph 11 (*Charges for Network Access*);

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;

12.10.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and

12.10.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.

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:

12.11.1 to publish an additional or replacement Reference Offer for Network Access; and

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.

In issuing any such direction, the Adjudicator shall consult with Ofcom where appropriate.

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:

12.12.1 to publish an additional or replacement Reference Offer for Network Access; and

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.

New contracts for existing services

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.

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.

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.

12.16 In preparing any offer under paragraph 12.13 or written response under paragraph 12.14 Arqiva shall:

12.16.1 comply with paragraph 11 (*Charges for Network Access*);

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;

12.16.3 have regard to the relevant guidance issued pursuant to paragraphs 13.2 and/or 13.3 as applicable; and

12.16.4 comply with any relevant direction issued by the Adjudicator pursuant to paragraph 13.4.

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

13. The adjudicator

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

- 13.2 Arqiva undertakes to have regard to any guidance issued by the Adjudicator from time to time under paragraph 8 of the Adjudication Scheme.
- 13.3 Arqiva shall have regard to such guidance as is provided by Ofcom to the Adjudicator for the preparation of guidance under paragraph 8 of the Adjudication Scheme until such guidance is specifically superseded by guidance issued by the Adjudicator under paragraph 8 of the Adjudication Scheme. As soon as reasonably practicable after the Commencement Date Ofcom will, following consultation, issue guidance to the Adjudicator (with a copy to Arqiva) in relation to the matters set out in paragraph 8 of the Adjudication Scheme.
- 13.4 Arqiva will comply 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 or direction.
- 13.5 Arqiva shall create, maintain and provide to the Adjudicator (including his staff, employees or agents) such information as he considers is required for the proper discharge of his functions. Arqiva shall provide this information in such form and within such time periods as the Adjudicator considers reasonable.
- 13.6 Arqiva shall at all times maintain an offer for the following disputes to be referred to the Adjudicator for determination in accordance with the Adjudication Scheme and the Adjudication Rules:
- 13.6.1 a dispute with a Customer regarding Arqiva's obligations under paragraph 3;
 - 13.6.2 a dispute with a Customer regarding Arqiva's obligations under paragraph 6;
 - 13.6.3 a dispute with a Customer regarding Arqiva's obligations under paragraph 8;
 - 13.6.4 a dispute with a Customer or potential customer regarding Arqiva's obligations under paragraph 9 or 10;
 - 13.6.5 a dispute with an MTS Provider regarding Arqiva's obligations under paragraph 11 or 12.
- 13.7 If any Customer, prospective customer or MTS Provider referred to in paragraphs 13.6.1 to 13.6.5:
- 13.7.1 accepts the offer set out in paragraph 13.6; and
 - 13.7.2 agrees to be bound by the Adjudication Scheme and the Adjudication Rules and any relevant guidance under paragraph 8 of the Adjudication Scheme,
- then it may refer the dispute to the Adjudicator.
- 13.8 Where a Dispute is referred to the Adjudicator pursuant to paragraph 13.6.2, 13.6.4 or 13.6.5, any relevant time limits set out in paragraph 6, 10 or 12, respectively, shall be suspended until such time as the Adjudicator: (a) decides not to determine the Dispute pursuant to paragraph 7(b) of the Adjudication Rules; or (b) issues a decision in determination of the Dispute pursuant to paragraph 21 of the Adjudication Rules.
- 13.9 If at any stage during the lifetime of these Undertakings the Office of Fair Trading considers that a change to the Adjudication Scheme or the Adjudication Rules is

necessary to ensure the effective operation of these Undertakings and/or for the effective discharge of the Adjudicator's functions the Office of Fair Trading having regard to any representations made to it by the Adjudicator or by Ofcom or by any Customer or prospective customer of Arqiva:

13.9.1 shall advise Arqiva in writing of the proposed change to the Adjudication Scheme or the Adjudication Rules;

13.9.2 shall allow Arqiva 14 days to raise objections to the change proposed;

13.9.3 shall take account of any objections raised by Arqiva before directing any change to the Adjudication Scheme or the Adjudication Rules

and Arqiva undertakes that it shall then make such changes to the Adjudication Scheme or the Adjudication Rules as the Office of Fair Trading shall direct.

13.10 These Undertakings, including the Adjudication Scheme and the Adjudication Rules shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998, the Broadcasting Acts 1990 and 1996, the Communications Act 2003 (including the dispute resolution provisions at sections 185 to 191) and the Wireless Telegraphy Act 2006 each as amended from time to time.

14. Audit of DSO expenditure

14.1 Arqiva undertakes to commission and fund an annual independent financial audit of DSO Expenditure in accordance with this paragraph 14. The first such audit shall relate to DSO Expenditure in respect of the period from the commencement of the Digital Switchover process to 30 June 2009 and each financial year until Digital Switchover is completed. Each such audit shall be conducted by the DSO Auditor.

14.2 Arqiva shall prepare a record of DSO Expenditure during the period to be covered by the audit, which shall be approved by the Arqiva Board of Directors and provided to the DSO Auditor and Adjudicator together with evidence of such approval (which may be in the form of an extract from the minutes of the relevant meeting, a copy of a written resolution, a letter from the chairman of the Arqiva Board of Directors, or such other form as the DSO Auditor deems acceptable) within four (4) months following the end of the financial year to which the record relates. The record of DSO Expenditure shall include a breakdown of expenditure into appropriate categories and shall be prepared on a consistent basis from one financial year to the next.

14.3 The DSO Auditor shall audit the record of DSO Expenditure referred to in paragraph 14.2 and prepare a report containing the results of each annual audit. In particular, the DSO Auditor shall identify in such report the extent to which the record of DSO Expenditure in the period covered by the audit does not properly reflect the actual costs incurred in that period.

14.4 A copy of each of the DSO Auditor's reports shall be provided to Arqiva, the Adjudicator, the Office of Fair Trading, and Ofcom within two (2) months following receipt by the DSO Auditor of the record of DSO Expenditure referred to in paragraph 14.2, or such longer period as the Adjudicator may agree is appropriate. The Adjudicator will disclose each report of the DSO Auditor (or part thereof) to the BBC, SDN and D34, having had regard to his obligations under paragraphs 28 to 34 of the Adjudication Scheme.

14.5 Subject to paragraph 14.9, in the event that a report produced by the DSO Auditor identifies that the record of DSO Expenditure referred to in paragraph 14.2 for the

relevant period does not reflect the actual costs incurred in that period then, for the purposes of calculating (or recalculating) the applicable charges under the High Power DTT Agreements, the amount of DSO Expenditure shall be adjusted accordingly to reflect the findings of the DSO Auditor's report.

- 14.6 The provisions of this paragraph 14 shall be without prejudice to the contractual rights 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).
- 14.7 The DSO Auditor shall be appointed by the Adjudicator for the purposes of the audit carried out pursuant this paragraph 14 and shall be independent of Arqiva. The Adjudicator shall determine the terms and conditions of the DSO Auditor's appointment. Those terms and conditions shall include a prohibition on the disclosure of any information obtained by the DSO Auditor in his capacity pursuant to the Undertakings, except disclosure to the Adjudicator, the Office of Fair Trading, Ofcom and Arqiva. The DSO 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.
- 14.8 Arqiva shall create, maintain and provide to the DSO Auditor all documents and information reasonably required by the DSO Auditor for the purposes of the audit carried out pursuant to this paragraph 14. Arqiva shall provide information in such form and within such time periods as the DSO Auditor considers reasonable.
- 14.9 Any report prepared by the DSO 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 DSO Auditor to prepare a revised version of the report (or part thereof) to correct the error.

15. Regulatory accounting

- 15.1 Arqiva undertakes to maintain appropriate accounting records to enable it to prepare annual statements of revenues, costs and assets employed for each of MTS and Network Access, on the basis of the accounting principles, methodologies and rules generated pursuant to paragraph 15.5, and that fairly represent the state of the businesses' affairs to which they relate. Unless otherwise directed by the Adjudicator the statements shall reflect the format set out in Appendix 14.
- 15.2 The statements shall be prepared by Arqiva for the period from the Commencement Date to 30 June 2009 and each financial year thereafter. Arqiva shall also provide a reconciliation to its audited statutory accounts, and ensure that the summary statements are prepared on a consistent basis from one financial year to the next.
- 15.3 Each statement shall be approved by the Arqiva Board of Directors on the basis that:
- 15.3.1 the information has been properly extracted from Arqiva's accounting records;
- 15.3.2 the accounting principles, methodologies and rules referred to in paragraph 15.5 have been applied appropriately.
- 15.4 Arqiva shall engage an auditor (which may be its statutory auditor) to audit the statements prepared by Arqiva pursuant to paragraph 15.1. Arqiva's letter of engagement appointing the auditor shall include provisions acknowledging the acceptance by the auditor of duties and responsibilities to the Adjudicator in respect

of its audit work. Any audit opinion issued pursuant to paragraph 15.6 shall be addressed to both Arqiva and the Adjudicator.

- 15.5 With effect from the first working day of the fourth full calendar month following the Commencement Date, Arqiva shall maintain documentation of the accounting principles, methodologies and rules to be used in preparing these summary statements and provide these to the Adjudicator. These principles, methodologies and rules shall be consistent with those used for cost oriented pricing of contracts and contain an adequate level of detail to enable the Adjudicator to understand the basis on which the statements will be prepared, and will take into account all relevant guidance issued by the Adjudicator pursuant to paragraph 13.2.
- 15.6 The auditor shall opine, in respect of each summary statement, on:
- 15.6.1 whether the information has been properly extracted from Arqiva's accounting records;
- 15.6.2 whether the accounting principles, methodologies and rules referred to in paragraph 15.5 have been applied appropriately;
- 15.6.3 whether the statements are a fair representation of the state of the business affairs as at the balance sheet date and their profit (or loss) for the year ended on balance sheet date accepting the accounting principles, methodologies and rules used in preparing the financial statements which are applicable at the time pursuant to paragraph 15.5 of these Undertakings.
- 15.7 Arqiva shall provide the Adjudicator with each statement, evidence of board approval (which may be in the form of an extract from the minutes of the relevant meeting, a copy of a written resolution, a letter from the chairman of the Arqiva Board of Directors, or such other form as the Adjudicator deems acceptable) and a copy of the corresponding audit opinion, Arqiva's statutory accounts and the reconciliation of each statement to the relevant statutory accounts as soon as reasonably practicable, but no later than four (4) months following the end of the financial year to which they relate.
- 15.8 In the event that the auditor is unable to give an unqualified opinion, the Adjudicator may direct Arqiva to provide such further information as would enable the auditor to give an unqualified opinion.
- 15.9 Arqiva shall use all reasonable endeavours to obtain from the auditor any further explanation and clarification of any audit opinion provided pursuant to paragraph 15.6 and any other information in respect of the matters which are the subject of that audit opinion as the Adjudicator requires.
- 15.10 The Adjudicator may from time to time:
- 15.10.1 direct Arqiva to provide such financial information in addition to, or instead of, that specified in paragraph 15.1 as he considers reasonably necessary for the proper discharge of his functions;
- 15.10.2 direct Arqiva to amend the principles, methodologies and rules generated pursuant to paragraph 15.5 (and in so doing, the Adjudicator may take into account the views of the auditor);
- 15.10.3 direct that Arqiva is not required to comply with the provisions of paragraphs 15.1 to 15.9 (or any part thereof).

16. Confidentiality of information

16.1 Where Arqiva holds confidential information from:

16.1.1 a Customer in relation to an Existing Transmission Agreement;

16.1.2 a prospective customer or Customer before, during or after the process of negotiating a New Transmission Agreement pursuant to paragraph 9 and 10 or a renewal pursuant to paragraph 8.1.1; or

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

Arqiva shall use that confidential information solely for the purpose for which it was supplied and shall respect at all times the confidentiality of that information. The confidential information referred to in this paragraph 16.1 shall not be passed on to any other business units, departments, subsidiaries or partners of Arqiva for whom such confidential information could provide a competitive advantage. Nothing in this paragraph 16 shall prevent Arqiva from providing confidential information to the Adjudicator, the DSO Auditor, Ofcom or the Office of Fair Trading.

16.2 Within one (1) month of the Commencement Date, Arqiva shall publish an Information Security Strategy which shall set out the principles for access and use of the confidential information referred to in paragraph 16.1 in the form of a protocol which identifies the different categories of information held by Arqiva and how these will be treated to ensure compliance with paragraph 16.1. The Information Security Strategy shall also require Arqiva to implement appropriate measures:

16.2.1 to ensure the security of Arqiva's information storage systems and data systems (including data collection, storage and archiving), particularly where confidential information referred to in paragraph 16.1 is stored in systems shared between business units;

16.2.2 to ensure the physical security of confidential information referred to in paragraph 16.1;

16.2.3 to ensure that an employee of one business unit does not disclose or use the confidential information referred to in paragraph 16.1 of which the employee had become aware whilst working for another business unit;

16.2.4 to ensure the security of the confidential information referred to in paragraph 16.1 in the event that Arqiva is a bidder in a spectrum auction in competition with a Customer or prospective customer; and

16.2.5 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.

16.3 Arqiva undertakes to hold the confidential information referred to in paragraph 16.1 in accordance with the Information Security Strategy.

16.4 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 notified to the Adjudicator and published.

- 16.5 Arqiva shall publish the Information Security Strategy and each update thereto by:
- 16.5.1 placing a copy of the Information Security Strategy on any relevant website operated or controlled by Arqiva; and
 - 16.5.2 sending a copy of the Information Security Strategy to the Adjudicator and Ofcom.
- 16.6 Arqiva undertakes not to enforce any contractual terms regarding the protection of confidential information in order to prevent a Customer, prospective customer or MTS Provider from providing such information to the Adjudicator, the DSO Auditor, Ofcom or the Office of Fair Trading.
- 16.7 Arqiva shall not seek to rely on any contractual terms regarding the protection of confidential information in order to withhold any information from the Adjudicator, the DSO Auditor, Ofcom or the Office of Fair Trading.

17. Management of Digital Switchover process

- 17.1 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. The last such report shall be provided one month following the completion of Digital Switchover.

18. Compliance

- 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. Each such report shall have been approved by the Arqiva Board of Directors and 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 the steps taken to rectify it; and
 - 18.1.3 how the report was compiled.
- 18.2 Arqiva shall promptly provide to the Office of Fair Trading such information as it may require for the purpose of monitoring or enforcing compliance with the Undertakings, and shall promptly provide Ofcom and the Adjudicator with such information as either may require in order to assist the Office of Fair Trading in monitoring such compliance.
- 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 and the Adjudicator 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 13.4, then Arqiva's obligations under paragraph 18.3 shall prevail.

18.5 Arqiva will appoint a Compliance Director who will be a member of the Arqiva Operational Board and 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 any decisions, directions and guidance issued pursuant to these Undertakings;

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.

18.6 Arqiva undertakes that should it at any time become aware of any breach of any provision of these Undertakings it will inform the Office of Fair Trading of the breach and the circumstances in which it arose in writing within seven (7) days following the date on which it becomes aware of the breach.

18.7 Any communication between Arqiva and the Office of Fair Trading under these Undertakings shall be addressed to Director of Mergers, Office of Fair Trading, Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JY or such other address as the Office of Fair Trading may direct in writing.

19. Acceptance of service

19.1 Each Macquarie Fund hereby authorizes MUKBH to accept on behalf of such Macquarie Fund services at MUKBH's registered office of all documents, orders, requests, notifications or other communications connected with the Undertakings (including any such document which falls to be served on or sent to such Macquarie Fund in connection with any proceedings in courts in the United Kingdom).

19.2 Any document, order, request, notification or other communication connected with the Undertakings shall be deemed to have been validly served on a Macquarie Fund if it is served on MUKBH at its registered office; and service or receipt shall be deemed to be acknowledged by such Macquarie Fund if it is acknowledged by MUKBH.

19.3 Paragraph 19.2 has effect irrespective of whether, as between MUKBH and the relevant Macquarie Fund, MUKBH has or continues to have, any authority to accept

and acknowledge service on such Macquarie Fund's behalf; and no failure or mistake by MUKBH (including a failure to notify such Macquarie Fund of the service of any document, order, request, notification or other communication) shall invalidate any action taken in respect of the Undertakings, including any proceeding or judgment pursuant to the Undertakings.

20. Termination

- 20.1 These Undertakings shall be in force until such time as they are varied, released or superseded under the Act.
- 20.2 The variation, release or supersession of these Undertakings shall not affect the validity and enforceability of any rights or obligations that arose prior to such variation, release or supersession.

21. Interpretation

- 21.1 The Interpretation Act 1978 shall apply to these Undertakings as it does to Acts of Parliament.
- 21.2 The Appendices form part of these Undertakings.
- 21.3 The purpose of these Undertakings is to give effect to the Report and they shall be construed accordingly.
- 21.4 Any word or expression used in these Undertakings shall, unless otherwise defined herein and/or the context otherwise requires, have the same meaning as in the Act or the Report.
- 21.5 Unless the context requires otherwise, the singular shall include the plural and vice versa.
- 21.6 A reference to a 'working day' means a day other than a Saturday or Sunday or a public holiday in England and Wales.
- 21.7 Further, in these Undertakings:

Act means the Enterprise Act 2002;

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 Act) 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 Act;

Analogue TV Agreement means an agreement set out in Part A of Appendix 13;

Analogue Radio Agreement means an agreement as described in Part D of Appendix 13;

Arqiva means:

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

(b) MUKBH;

(c) MUKBV;

(d) NGW; and

(e) any other subsidiary of MUKBH from time to time;

and **member of the Arqiva group** means MUKBH or a subsidiary of MUKBH from time to time;

Arqiva Board of Directors means the board of directors of Arqiva Limited;

Arqiva Operational Board means the operational board of Arqiva Limited;

Appendix means an appendix to the Undertakings;

BBC means the British Broadcasting Corporation;

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

CC means the Competition Commission;

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

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

Commencement Date means the date on which these Undertakings are accepted by the CC;

Community Radio Licence shall have the meaning ascribed to that term in article 2(1) of the Community Radio Order 2004;

D34 means Digital 3&4 Limited;

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

Digital Radio Agreement means an agreement as described in Part E of Appendix 13;

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 Auditor means an auditor appointed under paragraph 14.7 of these Undertakings;

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 High Power DTT Agreements;

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);

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 as amended or renewed from time to time (including pursuant to these Undertakings);

High Power DTT Agreement means an agreement set out in Part C of Appendix 13;

Information Security Strategy means the information security strategy to be published by Arqiva in accordance with paragraph 16 of these Undertakings;

Low Power DTT Agreement means an agreement set out in Part B of Appendix 13;

Macquarie Fund means each of MCG, MEIF II and MEIF III; and a **member of a Macquarie Fund** means a member of the MCG group, a member of the MEIF II group or a member of the MEIF III group;

MCFEL means Macquarie Capital Funds (Europe) Limited, a company incorporated in England and Wales (registered no. 3976881), whose registered office is at Level 35, 1 Ropemaker Street, London, EC2Y 9HD;

MCG means Macquarie MCG International Limited, a company incorporated in Bermuda (ARBN 112 652 490 / EC 35258), whose registered office is at 35 Crow Lane, East Broadway Paget HM 20 Bermuda and any subsidiary of MCG which from time to time has any interest directly or indirectly in Arqiva (excluding for the purposes of paragraph 1 of these Undertakings any subsidiary of MCG which is a member of the Arqiva group); and **member of the MCG group** shall be construed accordingly;

MEIF II means Macquarie European Infrastructure Fund II, an English limited partnership incorporated under the UK Limited Partnerships Act 1907 with its business address at Carinthia House, 9–12 The Grange, St Peter Port, Guernsey, GY1 4BF, and registered in the UK under registered number LP011265, its general partner, MEIF II Guernsey GP Ltd, a company incorporated in Guernsey (registered number 44333), whose registered office is Carinthia House, 9–12 The Grange, St Peter Port, Guernsey GY1 4BF and any subsidiary of MEIFII which from time to time has any interest directly or indirectly in Arqiva (excluding for the purposes of paragraph 1 of these Undertakings any subsidiary of MEIF II which is a member of the Arqiva group); and **member of the MEIF II group** shall be construed accordingly;

MEIF III means Macquarie European Infrastructure Fund III, a English limited partnership incorporated under the UK Limited Partnerships Act 1907 with its business address at Carinthia House, 9–12 The Grange, St Peter Port, Guernsey, GY1 4BF, and registered in the UK under registered number LP012752, its general partner, MEIF III Guernsey GP Ltd, a company incorporated in Guernsey (registered number 48440), whose registered office is Carinthia House, 9–12 The Grange, St Peter Port, Guernsey GY1 4BF and any subsidiary of MEIF III which from time to time has any interest directly or indirectly in Arqiva (excluding for the purposes of paragraph 1 of these Undertakings any subsidiary of MEIF III which is a member of the Arqiva group); and **member of the MEIF III group** shall be construed accordingly;

MUKBH means Macquarie UK Broadcast Holdings Limited, a company incorporated in England and Wales (registered no. 05254001), whose registered office is at Crawley Court, Winchester, Hampshire, SO21 2QA, England;

MUKBV means Macquarie UK Broadcast Ventures Limited, a company incorporated in England and Wales (registered no. 06137924), whose registered office is at Crawley Court, Winchester, Hampshire, SO21 2QA, England;

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;

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 as described in the Report (other than in relation to Community Radio Licences, in respect of which no SLC was found);

MTS Provider means a provider or prospective provider of MTS;

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 as described in the Report (other than in relation to Community Radio Licences, in respect of which no SLC was found);

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;

NGW means National Grid Wireless Limited, a company incorporated in England and Wales (registered no. 03196207), whose registered office is at Wireless House, Warwick Technology Park, Heathcote Lane, Warwick, Warwickshire, CV34 6DD, England, and its subsidiaries as at the Commencement Date;

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, unless otherwise defined in the relevant Customer Appendix, 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—eg 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;

Rectification Process means, unless otherwise defined in the relevant Customer Appendix, that when measured over the specified one month period, and when calculated by reference to all the Stations within the Customer's network for the relevant licensed service, Arqiva is able to achieve a 'network' availability level equal to or better than the relevant TTSA (Total Time of Service Availability) (as amended pursuant to paragraph 4 of the Undertakings). The steps to measure this will be as follows:

- (a) for each Station within the Customer's network for the relevant licensed service, the number of actual minutes of weighted accountable non-availability (as per the relevant Existing Transmission Agreement) 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 relevant TTSA—eg the TTSA may be 99.8 per cent during specified hours for a particular Station);
- (b) each of the Stations within the Customer's network for the relevant licensed service will be given a Station weighting, reflecting the relative importance to the Customer of the Stations. The sum of the weightings for all Stations will equal 1. The Station weightings will be calculated by reference to the applicable per

Station charges where these are stated in the agreement. Where per Station charges are not stated, the weighting will be derived from the best available proxy in the agreement 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;

(c) for each Station for the relevant licensed service, 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;

(d) 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;

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;

Relevant Business Activities means the business activities conducted by Arqiva in relation to the provision of MTS and Network Access and associated assets that are the subject of these Undertakings;

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;

Report means the report of the CC entitled Macquarie UK Broadcast Ventures Limited/National Grid Wireless Group: Completed Acquisition, issued on 11 March 2008;

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

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;

subsidiary has the meaning given in the Act;

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;

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

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 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 and the Appendices (each as amended from time to time).

The common seal of MACQUARIE MCG INTERNATIONAL LIMITED was affixed to this document in the presence of:

(signed)
Thomas H Davis
DIRECTOR

(signed)
Lynniece Robinson
COMPANY SECRETARY

FOR AND ON BEHALF OF MACQUARIE EUROPEAN INFRASTRUCTURE FUND II, acting by its General Partner, MEIF II Guernsey GP Limited

(signed)
Kerry-Anne Morley
DIRECTOR

(signed)
Rhea Gordon
COMPANY SECRETARY

FOR AND ON BEHALF OF MACQUARIE EUROPEAN INFRASTRUCTURE FUND II, acting by its Manager, Macquarie Capital Funds (Europe) Limited

(signed)
Peter Shore
ATTORNEY

(signed)
Annabelle Helps
ATTORNEY

FOR AND ON BEHALF OF MACQUARIE EUROPEAN INFRASTRUCTURE FUND II, acting by its General Partner, MEIF II Guernsey GP Limited

(signed)
Kerry-Anne Morley
DIRECTOR

(signed)
Rhea Gordon
COMPANY SECRETARY

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II, acting by its Manager, Macquarie Capital Funds (Europe) Limited

(signed)
Peter Shore
ATTORNEY

(signed)
Annabelle Helps
ATTORNEY

FOR AND ON BEHALF OF MACQUARIE CAPITAL FUNDS (EUROPE) LIMITED

(signed)
Peter Shore
ATTORNEY

(signed)
Annabelle Helps
ATTORNEY

FOR AND ON BEHALF OF MACQUARIE UK BROADCAST HOLDINGS LIMITED

(signed)
Christian Seymour
DIRECTOR

(signed)
L.P. Shore
DIRECTOR

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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 main body of these Undertakings given by Arqiva to the CC.

Application

2. This Adjudication Scheme shall apply in the circumstances set out in paragraph 13 of the Undertakings.

Appointment

3. Ofcom shall appoint one or more persons to the office of Adjudicator within two (2) months of the Commencement Date, after consulting with Arqiva and its customers in such manner as Ofcom considers reasonable.
4. The Adjudicator shall be independent, and in particular from Arqiva, Ofcom, Digital UK, the BBC, any commercial television or radio broadcaster in the United Kingdom or any body representing such broadcasters 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, Digital UK, the BBC, any commercial television or radio broadcaster in the United Kingdom or any body representing such broadcasters, 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 10 and 22(b) of the Adjudication Rules and paragraphs 13 and 19 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 be employed by or act as consultant or adviser to Arqiva, Digital UK, the BBC, any commercial television or radio broadcaster in the United Kingdom or any body representing such broadcasters for a period which will expire on the date which is six (6) months after the date of termination of the Adjudicator's appointment, 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, prospective customers or MTS Providers, 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 13.6 of the Undertakings 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. The Adjudicator shall have the function of issuing the following:
 - (i) guidance on the application of paragraphs 9 to 12 of the Undertakings. The guidance may relate to such matters as the Adjudicator considers are reasonably required, which may include (without limitation) the cost allocation methodology, the appropriate return on capital employed, the inflation adjustment mechanism, the asset valuation methodology and the depreciation methodology to be employed by Arqiva pursuant to paragraphs 9 and/or 11 of the Undertakings;
 - (ii) guidance on the application of paragraph 3 of the Undertakings;
 - (iii) guidance on the principles for valuing Transmitter Equipment in accordance with paragraph 6 of the Undertakings, which may include elements of the guidance issued pursuant to paragraph 8(i), above;
 - (iv) guidance and information on such other matters as the Adjudicator considers appropriate, which may include trends in pricing and costs, matters of process, dispute procedures and the process for reaching a determination,

(the **Guidance**). The Adjudicator shall publish such Guidance as soon as practicable following the Commencement Date and shall update the Guidance from time to time as he considers appropriate. In issuing or updating any Guidance, the Adjudicator shall consult with Arqiva, Ofcom, the Office of Fair Trading, purchasers of Transmission Services and Network Access and such other persons as the Adjudicator considers appropriate, and shall provide such persons with a reasonable opportunity to make representations.
9. The Adjudicator shall have the function of promoting transparency in relation to information on pricing and costs, where he considers this is in the interests of the industry.
10. The Adjudicator shall have the power to issue written directions in relation to any matter falling within the scope of his functions.
11. In addition the Adjudicator shall be under a duty to carry out such other functions as are provided for in the Undertakings.
12. In carrying out any of his functions the Adjudicator:
 - (i) shall have regard to the Report
 - (ii) shall, where relevant, take account of (but shall not be bound by) (a) Ofcom's statutory duties and (b) any relevant guidance or specific advice issued by Ofcom either prior to, on or after the Commencement Date;
 - (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 CC 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; and

- (iv) may take into account such other information as he considers relevant.
13. 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.
 14. The Adjudicator may from time to time issue non-binding advice and information to any party in relation to the performance of any of his functions.
 15. The Adjudicator shall maintain an appropriate website where it will publish a non-confidential version of these Undertakings including the Adjudication Scheme and the Adjudication Rules (as amended from time to time) and any other material required to be published under these Undertakings.

Remuneration and Budget

16. 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.
17. The budget for the total costs of the Adjudicator and his office shall be set by Ofcom as follows:
 - (a) the initial budget for the period from the Commencement Date until 31 March 2009 shall be set by Ofcom having consulted with Arqiva in such manner as Ofcom considers reasonable;
 - (b) the budget for each year commencing 1 April thereafter (annual period beginning 1 April and ending 31 March of the following year), shall be set by Ofcom in advance of the annual period having consulted with the Adjudicator, Arqiva and its customers in such manner as Ofcom considers reasonable,

(together 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 or engagement of any staff or advisers that the Adjudicator may appoint (and the appointment of any substitute Adjudicator). Ofcom shall review the initial Budget set pursuant to paragraph (a) on a quarterly basis having consulted with the Adjudicator and Arqiva in such manner as Ofcom considers reasonable. Following such review, Ofcom may revise that Budget where Ofcom considers this is necessary in order to enable the Adjudicator properly to discharge his functions. Any Budget set pursuant to paragraph (b) may be revised by Ofcom on one or more occasions during the period covered by the Budget, after having consulted with the Adjudicator, Arqiva and its customers, where Ofcom considers this necessary in order to enable the Adjudicator properly to discharge his functions.
18. 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 16 and 17 in the first instance. Ofcom shall invoice Arqiva for the actual costs incurred up to the maximum of the relevant Budget. In accordance with paragraph 1.14 of the Undertakings, Arqiva agrees to reimburse Ofcom for all

such costs on demand as directed by Ofcom without prejudice to paragraphs 31 and 33 of the Adjudication Rules. In this paragraph 18, the term 'Ofcom' shall also include any company wholly owned by Ofcom.

Resignation or removal from office

19. 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 gross misconduct, incapacity or serious or repeated breach of the terms of the Adjudication Scheme, the Adjudication Rules or the Adjudicator's terms of appointment 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.

Immunity

20. 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.

Adjudicator: staff

21. 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 17.
22. Any function of the Adjudicator, other than issuing Guidance or making a final determination in relation to any Dispute, may be exercised by any member of his staff authorized for the purpose by him, whether specially or generally.

Status of decision of Adjudicator

23. The Adjudicator shall act as an expert, and neither as arbitrator, mediator, conciliator nor any similar role and shall determine any Dispute in accordance with the Undertakings, the Adjudication Rules and, insofar as relevant, this Adjudication Scheme.
24. 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

25. The Adjudicator shall keep this Adjudication Scheme and the Adjudication Rules under review and report on them in accordance with this Adjudication Scheme. The Adjudicator may in any such report recommend at any time to 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.

Disclosure of Information

26. The Adjudicator may disclose any information received by it to Ofcom and the Office of Fair Trading.
27. Each of Arqiva, Ofcom and the Office of Fair Trading may disclose to the Adjudicator any information or document which it holds (whether pursuant to the Undertakings or otherwise) which it considers may be relevant to, and assist the Adjudicator in, the carrying out of his functions.
28. For the purposes of paragraphs 29 to 34 of this Adjudication Scheme:
 - (a) **specified information** is information which comes to the Adjudicator in connection with the exercise of any function it has under or by virtue of the Undertakings; and
 - (b) **required consent** shall be construed in accordance with sections 239(2) to (5) of the Act.
29. Where specified information relates to the affairs of an individual or the business of an undertaking, such information must not be disclosed during the lifetime of the individual, or while the undertaking continues in existence, unless the disclosure is permitted under paragraph 30. However, this paragraph does not prevent the disclosure of any information which has on an earlier occasion been disclosed to the public in circumstances that do not contravene this paragraph or any other enactment or rule of law prohibiting or restricting the disclosure of the information.
30. The Adjudicator may disclose specified information to which paragraph 28 relates in the following circumstances:
 - (a) if the Adjudicator obtains each required consent;
 - (b) if the disclosure is made for the purpose of facilitating the exercise by the Adjudicator of any function he has under or by virtue of the Undertakings;
 - (c) if the information is disclosed to another person for the purpose of facilitating the exercise by that person of any function he has under or by virtue of the Act, the Undertakings or the Communications Act 2003.
31. If information is disclosed in the circumstance described in paragraph 30(b) so that it is not made available to the public, it must not be further disclosed by a person to whom it is disclosed other than with the agreement of the Adjudicator for the purpose of facilitating the functions of the Adjudicator under the Undertakings.
32. Information disclosed in the circumstance described in paragraph 30(c) must not be used by the person to whom it is disclosed for any purpose other than a purpose relating to a function of that person under or by virtue of the Act, the Undertakings or the Communications Act 2003.
33. Before disclosing, or directing Arqiva to disclose, any specified information, the Adjudicator is required to have regard to the following three considerations:
 - (a) the need to exclude from disclosure (so far as practicable) any information whose disclosure the Adjudicator thinks is contrary to the public interest;
 - (b) the need to exclude from disclosure (so far as practicable):

- (i) commercial information whose disclosure the Adjudicator thinks might significantly harm the legitimate business interests of the undertaking to which it relates; or
 - (ii) information relating to the private affairs of an individual whose disclosure the Adjudicator thinks might significantly harm the individual's interests.
- (c) the extent to which the disclosure of the information mentioned in paragraphs 33(b)(i) or (ii) is necessary for the purpose for which the Adjudicator is permitted to make disclosure.
34. Where a party provides information to the Adjudicator, he (or any other party to which the information relates) may make known to the Adjudicator if he considers that all or any part of that information should not be disclosed having regard to paragraphs 33(a) and (b). The Adjudicator shall allow that party (and any other party to which the information relates) an opportunity to make representations prior to disclosing, or directing Arqiva to disclose, any such information.

Adjudicator Reports

35. 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 any Guidance issued, 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 for amendments, 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.
36. 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.
37. 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.
38. After consultation with the Office of Fair Trading as to date and contents, the Adjudicator shall publish an Annual Report covering all the matters above and any others the Adjudicator considers relevant and appropriate in greater detail.

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 main body of these Undertakings given by Arqiva to the CC.

Application

2. These Adjudication Rules shall apply in the circumstances set out in paragraph 13 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 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, prospective customer or MTS Provider referred to in paragraph 13.6 of the Undertakings who:
 - (a) accepts the offer set out in paragraph 13.6 of the Undertakings; and
 - (b) agrees to be bound by the Adjudication Scheme and the Adjudication Rules and any relevant guidance issued by the Adjudicator under paragraph 8 of the Adjudication Scheme,

(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) the Referring Party, 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 13.6 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**). Where a Referring Party has requested the Adjudicator to determine a Dispute, it cannot refer that same Dispute to any form of expert determination or third party adjudication under any dispute resolution procedure provided for in an Existing Transmission Agreement, and vice versa save that these Adjudication Rules shall operate without prejudice to the statutory rights of any person under the Act, the Competition Act 1998, the Broadcasting Acts 1990 and 1996, the Communications Act 2003 (including the dispute resolution provisions at sections 185 to 191) and the Wireless Telegraphy Act 2006 each as amended from time to time.

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;
 - (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); and
 - (e) the steps which the Referring Party has taken to engage in commercial negotiations with Arqiva on the subject matter of the Dispute, which shall be accompanied by evidence of any commercial negotiations which have been conducted or, where no such evidence exists due to a refusal or constructive refusal by Arqiva to negotiate, evidence of refusal or constructive refusal.
7. The Adjudicator shall confirm in writing within three (3) 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 the Notice of Adjudication is incomplete in a material respect and/or the Referring Party has not taken reasonable steps to engage in commercial negotiations with Arqiva with a view to resolving a dispute bilaterally 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. If all or part of the subject matter of a Dispute is or becomes the subject matter of a dispute which Ofcom has decided it is appropriate to handle under section 186 of the Communications Act 2003 the Adjudicator shall not act or continue to act in relation to such Dispute until Ofcom has made a determination on the relevant subject matter pursuant to section 190 of the Communications Act 2003.
9. The Adjudicator shall send copies of each Notice of Adjudication to Ofcom within two (2) working days of receipt.

10. 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 becomes aware that he is not competent to decide the Dispute.
11. 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 10, 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.
12. 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.
13. The Adjudicator shall within seven (7) working days following receipt of a Notice of Adjudication publish a statement determining the scope of the Dispute. The Adjudicator shall consult with the parties prior to publishing such statement and will have regard to any representations made about confidentiality.

Notice of Reply

14. Unless the Adjudicator otherwise directs, within ten (10) working days of publication of a statement under paragraph 13 above, 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. 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.

Powers of the Adjudicator

15. 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.
16. 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 further comments from either of the parties on the Notice of Adjudication or Notice of Reply;

- (b) request any party to the Dispute to create and 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 14, 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, submissions and other external information 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.
17. The parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.
18. 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.
19. 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.
20. The Adjudicator shall consider all documents and information submitted to him by any of the parties to the Dispute and such other information as he considers relevant 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).
21. Unless the Adjudicator considers that there are special reasons why it cannot do so, or the Adjudicator and all parties to the dispute agree an alternative time period, the Adjudicator shall give his decision not later than:

- (a) 20 working days after the date of the Notice of Reply; or
 - (b) 60 working days after the date of the Notice of Reply where the Adjudicator considers that the nature and complexity of the Dispute warrants a longer time frame.
22. Where the Adjudicator fails, for any reason, to deliver his decision in accordance with paragraph 21):
- (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.
23. 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

24. Pursuant to paragraph 21, the Adjudicator shall decide in such manner as he sees fit on all the matters which he has determined to be within the scope of the Dispute. Subject to paragraph 25, the Adjudicator 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.
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 relevant customer than the relevant terms and conditions contained in any other agreement for equivalent or similar Transmission 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 9.1 of the Undertakings; and
 - (b) whether the terms or conditions offered or provided are any less favourable to the relevant 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 11.1 of the Undertakings.
26. 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.
27. The Adjudicator shall provide a written decision including reasons for his decision. The decision of the Adjudicator shall be published on its website.

Effects of Decision

28. 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.
29. An award or decision of the Adjudicator may, by leave of the court, be enforced in a summary manner.
30. Where leave is so given, judgment may be entered in terms of the award or decision.

Costs of Adjudication

31. The fees and expenses of the Adjudicator shall be paid directly and in the first instance by Ofcom (or a company wholly owned 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 paragraph 1.14 of the Undertakings and the Adjudication Scheme and shall reimburse Ofcom (or a company wholly owned by Ofcom) for all such costs on demand as directed by Ofcom without prejudice to paragraph 33 below.
32. 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 Other Parties. Such legal costs and expenses may, without limitation, include the following, which are agreed to be genuine pre-estimates of the actual costs that these parties are likely to incur, including overheads (subject to review and variation by the Adjudicator in his discretion):
 - (a) costs of in-house commercial and technical personnel:
 - (i) commercial director or equivalent: £111 per hour;
 - (ii) commercial associate or equivalent: £55 per hour;
 - (iii) commercial analyst or equivalent: £30 per hour;
 - (iv) technical director or equivalent: £66 per hour;
 - (v) technical manager or equivalent: £44 per hour;
 - (b) costs of in-house legal counsel:
 - (i) senior internal legal counsel (of more than seven years PQE): £55 per hour;
 - (ii) junior internal legal counsel (of less than seven years PQE): £37 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.
33. The Adjudicator may in his discretion decide that in exceptional circumstances, it is appropriate for any one or more of the Other Parties 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.

Offer to the BBC—confidential



Offer to D34—confidential



Offer to SDN—confidential



Offer to amend analogue TV agreements—confidential



**List of agreements excluded from the scope of paragraph 3 of the
undertakings—confidential**

[✂]

**List of agreements excluded from the scope of paragraph 4 of the
undertakings—confidential**

[✂]

List of agreements excluded from the scope of paragraph 6 of the undertakings—confidential

Part A—List of agreements excluded from the scope of paragraph 6.1 (right to purchase transmitter assets upon expiry)

[✂]

Part B—List of agreements excluded from the scope of paragraph 6.2 (right to purchase transmitter assets upon early termination)

[✂]

**List of agreements where electricity charges are charged separately—
confidential**

[✂]

Principles for Digital Terrestrial Television Reference Offers

DTT Transmission Services Reference Offer

The Reference Offer published in accordance with paragraph 10.4.1 of the Undertakings shall include provisions which cover the following (where applicable):

- 1 Scope: the design, build and operation of the system and the provision of Transmission Services in respect of a DTT multiplex by Arqiva.
- 2 System Build:
 - Acceptance testing
 - Liquidated damages payable by Arqiva for any Station that is delivered late (subject to appropriate carve-outs).
 - Customer Dependencies.
- 3 Charges:
 - in accordance with paragraphs 9 and 10 of the Undertakings.
 - 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:
 - 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;
 - 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;
 - 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%;
 - where the actual costs of provision are less than the forecast costs of provision, an appropriate gainshare mechanism will be applied;
 - 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.
- 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.
 - 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).
 - 6 Suspension: rights for each of Arqiva and the Customer to suspend the Transmission Service in certain specified circumstances.
 - 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.
 - 8 Maintenance and planned works: monitoring, maintenance and breakdown repair services and planned works, and the limited circumstances when Arqiva can interrupt the service.
 - 9 Breakdowns: categorization, notification and remediation of breakdowns by Arqiva within specified response times.
 - 10 Liability: customary limitations and exclusions of liability.
 - 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
 - 12 Change control procedure: to be used for all changes to the services.
 - 13 Parent guarantee: Arqiva may require that the Customer provides a parent company guarantee or other financial security in appropriate circumstances.
 - 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.
 - 15 Content indemnity: from the Customer in favour of Arqiva in respect of any liability relating to content.
 - 16 Term: to be agreed on a case by case basis having regard to relevant licence periods.
 - 17 Termination: Arqiva and Customer rights of termination.
 - 18 Arrangements on termination/expiry:

- transition assistance from Arqiva on termination where termination is for Arqiva default
- transition assistance from Arqiva prior to expiry
- termination payment by the Customer in the event of early termination or expiry if applicable
- right to buy Transmitter Equipment as described in paragraph 6 of the Undertakings

19 Dispute resolution: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.

DTT Network Access Reference Offer

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):

- 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.
- 22 Charges: in accordance with paragraphs 11 and 12 of the Undertakings.
- 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.
- 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).
- 25 Adjudication: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.

Principles for radio reference offers

Radio Transmission Services Reference Offer

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):

- 1 Scope: the design, build and operation of the system and the provision of Transmission Services in respect of analogue / digital radio services.
- 2 System Build:
 - Acceptance testing
 - Liquidated damages payable by Arqiva for any Station that is delivered late (subject to appropriate carve-outs).
 - Customer Dependencies.
- 3 Charges:
 - in accordance with paragraphs 9 and 10 of the Undertakings.
 - 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:
 - 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;
 - 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;
 - 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%;
 - where the actual costs of provision are less than the forecast costs of provision an appropriate gainshare mechanism will be applied;
 - 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.
- 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 benchmarked against similar services provided to other customers subject to a cap and subject to the super credit regime described below.
- 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).
- 6 Suspension: rights for each of Arqiva and the Customer to suspend the Transmission Service in certain specified circumstances.
- 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.
- 8 Maintenance and planned works: monitoring, maintenance and breakdown repair services and planned works and the limited circumstances when Arqiva can interrupt the service.
- 9 Breakdowns: categorization, notification and remediation of breakdowns by Arqiva within specified response times.
- 10 Liability: customary limitations and exclusions of liability
- 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.
- 12 Change control procedure: to be used for all changes to the services.
- 13 Parent guarantee: Arqiva may require that the Customer provides a parent company guarantee or other financial security in appropriate circumstances.
- 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.
- 15 Content indemnity: from the Customer in favour of Arqiva in respect of any liability relating to content.
- 16 Term: to be agreed on a case by case basis having regard to relevant licence periods.
- 17 Termination: Arqiva and Customer rights of termination.
- 18 Arrangements on termination/expiry:

- transition assistance from Arqiva on termination where termination is for Arqiva default
- transition assistance from Arqiva prior to expiry
- termination payment by the Customer in the event of early termination or expiry if applicable
- right to buy Transmitter Equipment as described in paragraph 6 of the Undertakings

19 Dispute resolution: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.

Radio Network Access Reference Offer

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):

- 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.
- 22 Charges: in accordance with paragraphs 11 and 12 of the Undertakings.
- 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.
- 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).
- 25 Adjudication: incorporating the Adjudication Scheme and Adjudication Rules as required by the Undertakings.

Existing transmission agreements

Part A—Analogue TV Agreements

[✂]

Part B—Low Power DTT Agreements

[✂]

Part C—High Power DTT Agreements

[✂]

Part D—Analogue Radio Agreements

Any agreement (or part of an agreement) for the provision by Arqiva of a Transmission Service for the purpose of providing analogue radio broadcasting services in the AM or FM band in the United Kingdom and which is in force on the Commencement Date.

Part E—Digital Radio Agreements

Any agreement (or part of an agreement) for the provision by Arqiva of a Transmission Service for the purpose of providing digital radio broadcasting services using digital audio broadcasting technology in the United Kingdom and which is in force on the Commencement Date.

Form of Regulatory Accounting Statement



Illustrative Summary Financial Statement (Re Paragraph 14 of Draft Undertakings)

Note: data used here is illustrative only

	<u>2009</u>			Prior year comparatives (except for the first year)		
Summary P&L	MTS	NA	Total	MTS	NA	Total
Cost Orientated (Regulated) Revenue						
TV High power DTT	5,000	3,000	8,000			
TV Analogue and low power DTT	2,000	7,000	9,000			
Radio	3,000	5,000	8,000			
Total	10,000	15,000	25,000			
Other Non-Regulated Revenue						
TV High power DTT	4,000	2,000	6,000			
TV Analogue and low power DTT	1,000	6,000	7,000			
Radio	3,000	4,000	7,000			
Total	8,000	12,000	20,000			
Total Revenue	<u>18,000</u>	<u>27,000</u>	<u>45,000</u>			
Direct Costs	(7,500)	(8,500)	(16,000)			
Indirect Operating Costs	(7,000)	(9,000)	(16,000)			
Depreciation	(3,000)	(2,000)	(5,000)			
Gain/loss on fixed asset disposal	200	300	500			
Fixed asset holding gain	1,000	2,545	3,545			
Total Profit Before Interest and Tax	<u>1,700</u>	<u>10,345</u>	<u>12,045</u>			
Breakdown of Revenue						
TV Customer A	List all TV customers	X	X	X		
TV Customer B		Y	Y	Y		
TV customer C etc		X	X	X		
Other TV Customers		Y	Y	Y		
Radio Customer 1	List Top 10 radio customers	X	X	X		
Radio Customer 2		Y	Y	Y		
Radio Customer 3		X	X	X		
Radio Customer etc		Y	Y	Y		
Radio Customer 10		X	X	X		
Other radio customers		Y	Y	Y		

Breakdown of Operating Costs

Electricity	4,000	6,000	10,000
Rent & Rates	2,000	500	2,500
Other Direct Costs 1 (specify where >20% of total direct costs)			
Other Direct Costs 2 (specify where >20% of total direct costs)			
Other Direct Costs 3 (specify where >20% of total direct costs)	1,500	2,000	3,500
Other Direct costs (all< 20% of total direct costs)			
Total Direct Costs	<u>7,500</u>	<u>8,500</u>	<u>16,000</u>
Staff Costs	5,000	5,500	10,500
Equipment / Third Party Services	1,500	3,000	4,500
Other Indirect Costs 1 (specify where >20% of total indirect costs)			
Other Indirect Costs 1 (specify where >20% of total indirect costs)			
Other Indirect Costs 1 (specify where >20% of total indirect costs)			
Other Indirect costs (all< 20% of total indirect costs)	500	500	1,000
Total Indirect Costs	<u>7,000</u>	<u>9,000</u>	<u>16,000</u>
Total Operating Costs	<u>14,500</u>	<u>17,500</u>	<u>32,000</u>

Prior year comparatives (except for the first year)

Summary Balance Sheet

	MTS	NA	Total
Fixed Assets	18,650	83,545	102,195
Stock	450	600	1,050
Trade debtors	600	1,000	1,600
Other current assets (significant categories (>10% of capital and retained earnings) specified & shown separately)	50	10	60
Current liabilities (significant categories (>10% of capital and retained earnings) specified & shown separately)	(1,000)	(1,500)	(2,500)
Intercompany balances (other than capital account)	-	-	-
Other liabilities	(250)	(300)	(550)
Capital and retained earnings	<u>18,500</u>	<u>83,355</u>	<u>101,855</u>

MTS **NA** **Total**

Breakdown of Fixed Assets

	MTS					NA					Total
	Asset class 1	Asset Class 2	Asset Class 3	Asset Class etc	Total MTS	Asset class A	Asset class A	Asset class A	Asset Class etc	Total NA	
Opening replacement cost	50,000	450	8,000	190	58,640	35,000	500	60,000	1,000	96,500	155,140
Revaluation of existing assets	200	-	-	800	1,000	1,000	25	1,500	20	2,545	3,545
Additions	-	50	120	5,000	5,170	-	200	6,000	900	7,100	12,270
Disposals	(2,500)	-	(60)	(150)	(2,710)	-	(350)	(20)	-	(370)	(3,080)
Closing replacement cost	47,700	500	8,060	5,840	62,100	36,000	375	67,480	1,920	105,775	167,875
Opening accumulated depreciation	40,000	100	600	20	40,720	10,000	100	10,000	250	20,350	61,070
Charge for year	2,000	50	100	850	3,000	1,000	100	850	50	2,000	5,000
Disposals	(200)	-	(20)	(50)	(270)	-	(100)	(20)	-	(120)	(390)
Closing accumulated depreciation	41,800	150	680	820	43,450	11,000	100	10,830	300	22,230	65,680
Opening depreciated replacement cost	10,000	350	7,400	170	17,920	25,000	400	50,000	750	76,150	94,070
Closing depreciated replacement cost	5,900	350	7,380	5,020	18,650	25,000	275	56,650	1,620	83,545	102,195
<i>Memo</i>											
Opening historical cost	45,000	450	700	4,500	50,650	15,000	50	1,500	750	17,300	67,950
Closing historical cost	42,500	500	760	9,350	53,110	15,000	(100)	7,480	1,650	24,030	77,140

Breakdown of Capital and Retained Earnings

	MTS	NA	Total
Opening capital and retained earnings	12,500	50,000	62,500
Additional capital invested/(withdrawn)	4,300	23,010	27,310
Profit for the year	1,700	10,345	12,045
Closing Capital and retained earnings	18,500	83,355	101,855
<i>Check</i>	TRUE	TRUE	TRUE
Return on capital employed	9.2%	12.4%	11.8%
Return on fixed assets	9.1%	12.4%	11.8%

Prior year comparatives (except for the first year)

	MTS	NA	Total