

SUBJECT TO CONTRACT

**Reference Offer for the provision of  
Network Access  
in respect of  
Ofcom's award of a licence for  
Local Television Services**



**Version 3**

Publication Date: 1 June 2012

© Copyright Arqiva Ltd 2012

## **SUBJECT TO CONTRACT**

This Reference Offer is issued by Arqiva Limited ("Arqiva") in accordance with a request from Ofcom in respect of Local Digital Television Programme Services (the "Ofcom Direction") and supersedes the Reference Offers published by Arqiva on 9 March 2012 and 4 May 2012.

This Reference Offer sets out the terms and conditions and charges on which Arqiva is willing to provide Network Access (as such term is defined in the Undertakings) in respect of the multiplex environment described in the Ofcom Direction.

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

The specification and prices in this Reference Offer are current at 1 June 2012 and valid until 1 September 2012, after which time they will be revalidated by Arqiva. A copy of this Reference Offer, as updated from time to time, will be placed on Arqiva's website: [www.arqiva.com](http://www.arqiva.com) (or any replacement or successor website). A copy has been provided to the Adjudicator and to Ofcom.

Please note that prospective customers may request an alternative specification pursuant to paragraph 12.7 of the Undertakings subject to the process set out in that paragraph.

Please note that the Ofcom Specification does not contain details of five of the Phase 2 Locations (Bromsgrove; Middlesbrough; Reading; Scarborough; Tunbridge Wells)

The Reference Offer Terms and Conditions are drafted on the basis that twenty-one (21) Phase 1 Locations are the minimum commitment required from the Customer. There are an additional twenty-eight (28) Phase 2 Locations which are optional. The Customer may request from Arqiva the addition of Phase 2 Locations. In respect of such requests, the Customer shall provide Arqiva with twelve (12) months written notice prior to the access date for the Phase 2 Location(s) requested. A two year delivery programme has been allowed. As Arqiva do not know which of the 28 Phase 2 Locations a Customer may require, Arqiva has spread the delivery of Phase 1 Locations across a two year period. This allows for Phase 2 Locations to be delivered (as required) across this two year period. To ensure a cost efficient rollout, no more than seventeen (17) of the Phase 2 Locations can be requested by the Customer in any one (1) calendar year. The Target Access Date for all Locations shall be no later than September 2014.

Ofcom's coverage requirement is based upon serving geographic Locations and Arqiva's technical design as set out in this Reference Offer is based upon the use of existing transmission Sites and some Locations will require multiple Sites in order to provide the required coverage.

**SUBJECT TO CONTRACT**

DATED [ ]

**ARQIVA LIMITED**

and

[ ]

---

**LOCAL DIGITAL TELEVISION  
PROGRAMME SERVICES  
NETWORK ACCESS AGREEMENT**

---

**arqiva**

Legal Affairs  
Arqiva Limited  
Crawley Court  
Winchester  
Hampshire  
SO21 2QA

## SUBJECT TO CONTRACT

### CONTENTS

Clause	Page
1. DEFINITIONS AND INTERPRETATIONS.....	1
2. CONDITIONS PRECEDENT .....	2
3. OBLIGATIONS OF ARQIVA PRIOR TO THE ACCESS DATE .....	3
4. OBLIGATIONS OF THE CUSTOMER PRIOR TO THE ACCESS DATE .....	3
5. RIGHTS AND OBLIGATIONS OF ARQIVA FOLLOWING THE ACCESS DATE .....	3
6. RIGHTS GRANTED BY ARQIVA TO THE CUSTOMER FOLLOWING THE ACCESS DATE .....	6
7. OBLIGATIONS OF THE CUSTOMER FOLLOWING THE ACCESS DATE.....	7
8. RISKS.....	15
9. CHARGES AND PAYMENT.....	15
10. CHANGE.....	19
11. TERM AND TERMINATION.....	19
12. CONSEQUENCES OF TERMINATION.....	21
13. LIABILITY, INDEMNITIES AND INSURANCE .....	22
14. FORCE MAJEURE .....	24
15. CONFIDENTIALITY .....	25
16. ASSIGNMENT AND SUBCONTRACTING.....	26
17. GOVERNING LAW AND DISPUTE RESOLUTION.....	26
18. GENERAL.....	28

#### SCHEDULES:

SCHEDULE 1	
Defined Terms .....	31
SCHEDULE 2	
Network Access Availability, Network Access Levels and Network Access Credits .....	41
SCHEDULE 3	
Support Services.....	46
SCHEDULE 4	
Change Control Procedure.....	47
SCHEDULE 5	
Station Licence Template .....	51
SCHEDULE 6	
Risks .....	53
Part 1 - Standard Risks.....	53
Part 2 - Exceptional Risks .....	55
SCHEDULE 7	
Reporting and Progress Review.....	56
SCHEDULE 8	
Scope of Arqiva System and Performance.....	58
SCHEDULE 9	
Customer Responsibilities .....	63
SCHEDULE 10	
Station Details.....	64
SCHEDULE 11	
Location Dates.....	65
SCHEDULE 12	
Charges and Pass-Through Costs .....	66
SCHEDULE 13	
Locations .....	71
SCHEDULE 14	
Power and Accommodation.....	73

## **SUBJECT TO CONTRACT**

SCHEDULE 15	
Supervision .....	75
SCHEDULE 16	
Operations Manual .....	79
SCHEDULE 17	
Liquidated Damages.....	86
SCHEDULE 18	
Termination Payments .....	87
SCHEDULE 19	
Service Continuity.....	88
SCHEDULE 20	
[Form of Guarantee or Other Security].....	89

## SUBJECT TO CONTRACT

This Agreement is entered into on [ ] ("**Effective Date**")

### **PARTIES:**

**ARQIVA LIMITED**, a company incorporated under the laws of England and Wales with registered number 02487597 and having its registered office at Crawley Court, Crawley, Winchester, Hampshire SO21 2QA ("**Arqiva**"); and

[ ] ("**Customer**")

### **WHEREAS:**

- (A) The Customer wishes to purchase and Arqiva wishes to supply, Network Access.
- (B) These Reference Offer Terms and Conditions and the other documents comprising the Agreement (as defined herein) have been prepared by Arqiva in accordance with the Ofcom Direction.

### **TERMS AGREED:**

#### **1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 Capitalised terms shall have the meaning ascribed to them in Schedule 1 (Defined Terms).
- 1.2 All the following rights and conditions shall be observed by the parties in relation to any Station Licence issued subject to this Agreement and all of the terms of this Agreement and the matters contained in the Schedules to this Agreement will be deemed incorporated into each Station Licence unless any part or parts are expressly excluded or replaced by any Special Conditions set out in the relevant Station Licence.
- 1.3 Where the context so admits or requires words denoting the singular include the plural and vice versa and words denoting any gender include all genders.
- 1.4 Clause headings are purely for ease of reference and do not form part of or affect the interpretation of this Agreement.
- 1.5 Unless otherwise stated, references to Clauses and Schedules are to clauses of and schedules to this Agreement, and references to parts and paragraphs are to parts of and paragraphs of a Schedule to this Agreement.
- 1.6 References to each party herein include references to its successors in title, permitted assigns and novatees.
- 1.7 All references to "include" and "including" shall be construed to mean "include without limitation" and "including without limitation" respectively.
- 1.8 All references to a statute or statutory provision include any consolidation or re-enactment, modification or replacement of the same, any statute or statutory provision of which it is a consolidation, re-enactment, modification or replacement and any subordinate legislation in force under any of the same from time to time.
- 1.9 In the event of any inconsistency in this Agreement between the terms of this Agreement, the provisions of any of the Schedules, any Station Licence and/or the Code of Practice, the inconsistency shall be resolved in accordance with the following order of precedence:
  - 1.9.1 any provisions described as "Special Conditions" contained in the relevant Station Licence;

## **SUBJECT TO CONTRACT**

- 1.9.2 the terms of this Agreement;
- 1.9.3 the Schedules;
- 1.9.4 the Station Licence (other than its "Special Conditions"); and
- 1.9.5 the Code of Practice.

## **2. CONDITIONS PRECEDENT**

- 2.1 This Clause 2 and Clauses 1, 15 (Confidentiality), 16 (Assignment and Subcontracting), 17 (Governing Law and Dispute Resolution) and 18 (General) shall come into effect on the Effective Date.
- 2.2 Subject to Clause 2.1, the following are conditions precedent to the coming into full force and effect of this Agreement:
  - 2.2.1 the Guarantor entering into the Guarantee; and
  - 2.2.2 in relation to the Guarantee, Arqiva receiving a written legal opinion in the relevant jurisdiction for the benefit of Arqiva in terms which are satisfactory to Arqiva as to the validity and enforceability of the Guarantee.
- 2.3 These conditions precedent may be waived by Arqiva in whole or part at any time by written notice to the Customer.
- 2.4 As soon as reasonably practical following the satisfaction or waiver of the conditions precedent Arqiva shall give notice of the same to the Customer, and the date of such notice shall be the "Satisfaction Date".
- 2.5 This Agreement shall come into full force and effect on the Satisfaction Date.
- 2.6 If the conditions precedent have not been satisfied or waived by 31 December 2012, Arqiva may: (i) extend the period for satisfaction of the condition(s) precedent by giving written notice to the Customer; or (ii) terminate this Agreement by giving written notice to the Customer.
- 2.7 Subject to Clause 2.9, if this Agreement is terminated by Arqiva under Clause 2.6, neither party shall have any further obligations under this Agreement.
- 2.8 By 30 September 2012 (which may be prior to the Satisfaction Date), Arqiva will require the Customer to enter into:
  - 2.8.1 an Advance Design Agreement to cover Arqiva's costs for design work; and
  - 2.8.2 an Advance Equipment Procurement Agreement to cover Arqiva's costs for equipment orders,in each case in connection with the proposed L-DTPS Network Access Programme. If the provisions of this Clause 2.8 (or equivalent) are not complied with by the Customer, this will constitute an Exceptional Risk and Arqiva shall be entitled to set reasonable revised Target Location Service Dates and to adjust the Charges under the Change Control Procedure.
- 2.9 For the avoidance of doubt, the termination of this Agreement by Arqiva under Clause 2.6 shall not affect the validity of any Advance Design Agreement or any Advance Equipment Procurement Agreement entered into pursuant to Clause 2.8.

## **SUBJECT TO CONTRACT**

### **3. OBLIGATIONS OF ARQIVA PRIOR TO THE ACCESS DATE**

- 3.1 Subject to the terms of this Agreement, Arqiva shall, prior to the Access Date:
- 3.1.1 undertake and complete such tasks and activities as may be necessary in order to allow Arqiva to offer Network Access in accordance with the terms of this Agreement. It will be the responsibility of Arqiva to procure and manage any and all civil works required at any Station, including the provision of electricity, ventilation openings, heat exchanger bases, underground ducts and cable entries as further detailed in Schedule 8;
  - 3.1.2 for each Station, execute a Station Licence;
  - 3.1.3 prepare to make sufficient Accommodation available to the Customer at each applicable Station necessary to enable the installation of the Customer Equipment as further detailed in Schedule 8; and
  - 3.1.4 provide such access to each Station as the Customer may reasonably require for the purpose of conducting site surveys as part of a bona fide Network Access application.
- 3.2 Arqiva shall use reasonable endeavours to grant access to the Customer to each Site by the Target Access Date for the relevant Location.

### **4. OBLIGATIONS OF THE CUSTOMER PRIOR TO THE ACCESS DATE**

- 4.1 Subject to the terms of this Agreement, the Customer shall, prior to the Access Date:
- 4.1.1 provide all the information and submit all documents required and comply with all of its applicable obligations and responsibilities in Schedule 9;
  - 4.1.2 meet regularly with Arqiva and other parties as necessary at meetings convened by Arqiva to co-ordinate activities to allow the L-DTPS Network Access Programme to progress as required;
  - 4.1.3 for each Station execute a Station Licence;
  - 4.1.4 subject to Clause 4.1.3 above, not access any Station until the Access Date and until the applicable Station Licence (in the form of the template Station Licence set out at Schedule 5) has been executed by both parties; and
  - 4.1.5 promptly provide all information, co-operation and assistance as may be reasonably requested by Arqiva in connection with the performance of either party's obligations pursuant to this Agreement, which may include (but shall not be limited to) providing information, co-operation and assistance in relation to the conduct of any site surveys, and co-operating and sharing of information with MTS Providers where reasonably requested by Arqiva.

### **5. RIGHTS AND OBLIGATIONS OF ARQIVA FOLLOWING THE ACCESS DATE**

On and from the applicable Access Date:

- 5.1 Arqiva shall make and keep the Accommodation described in Clause 3.1.3 available to the Customer at the relevant Station(s) for installation of the Customer Equipment by the Customer.
- 5.2 Arqiva shall, as soon as reasonably practicable following the Customer having made the Customer Equipment available for testing pursuant to Clause 7.1.2 below, carry out such tests as may be reasonably required to ensure that the Customer Equipment provided or



## SUBJECT TO CONTRACT

installed by the Customer interoperates properly with the relevant Common Equipment, Arqiva Equipment and third party Equipment and does not cause interference to any Equipment.

- 5.3 Subject to obtaining all necessary Consents, and to facilitate or accommodate the installation, use and operation of the Customer Equipment and subject to the continued performance of the Customer of its obligations under this Agreement, Arqiva will permit the Customer such shared use of the Station and its facilities as shall enable the installation by the Customer in the locations on the Station specified by Arqiva, of the Customer Equipment and the subsequent maintenance and use thereof for the Permitted Use and/or the exercise of the Rights granted in this Agreement and/or under the Station Licence.
- 5.4 Arqiva shall provide the Customer with an electricity supply to the Customer Accommodation or (where there is no Customer Accommodation) to a point reasonably proximate to the agreed location of the Customer Equipment in any Common Accommodation.
- 5.5 Arqiva shall maintain:
- 5.5.1 the Common Accommodation and Common Equipment; and
  - 5.5.2 the exterior and structure of any Customer Accommodation, on the Stations during the Licence Term in reasonable repair and condition.
- 5.6 Arqiva shall, in respect of each Station, have the right to:
- 5.6.1 exercise any of its rights under this Agreement, including the right to switch off the Customer Equipment;
  - 5.6.2 be the sole and exclusive provider of Customer Accommodation (unless expressly agreed otherwise in writing), and the sole and exclusive provider and maintainer of all Common Accommodation, Common Equipment and Arqiva Equipment;
  - 5.6.3 be the sole and exclusive supplier of electricity (including any temporary or permanent generator supply facilities) to the Station;
  - 5.6.4 install meters, sub-meters and other equipment in any Customer Accommodation to permit Arqiva to measure the Customer's consumption of electricity;
  - 5.6.5 where the Customer, Customer Broadcast Operator, any Approved Contractor or any other third party requires access to any Station for any reason, require that such access is supervised by Arqiva or its nominee in accordance with the Code of Practice and in such circumstances Arqiva shall also be entitled to levy a reasonable charge in accordance with the Code of Practice;
  - 5.6.6 refuse entry to the Station to any person who does not produce suitable documentary identification and authorisation to Arqiva's representative at the Station;
  - 5.6.7 refuse admittance to or require removal from the Station of any person whose presence is considered undesirable or who fails to comply with any reasonable requests of Arqiva's representatives at the Station;
  - 5.6.8 use the Station and permit others to do so as it may in its absolute discretion permit but shall use reasonable endeavours not to cause any damage or significant interference to Customer Equipment, Customer Accommodation or the Broadcast Services of the Customer and/or Other Broadcast Operators. For the avoidance of doubt, Arqiva shall be entitled to use and the Customer shall not seek to restrain Arqiva from using any Station (other than Customer Equipment), including any

## SUBJECT TO CONTRACT

Common Equipment or Arqiva Equipment, for the purpose of providing Network Access to Other Broadcast Operators, MTS Providers and other Arqiva site sharing customers, and to grant access to the Station including the Common Equipment and the Arqiva Equipment (but not Customer Equipment) for the provision of such other services to any party or for such other purposes as Arqiva may in its discretion decide to support from time to time, provided the provision of Network Access to the Customer pursuant to and in accordance with this Agreement shall not be materially adversely affected by such use. For the avoidance of doubt, planned works as described in paragraph 3 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits) of this Agreement shall not constitute an adverse effect; and

- 5.6.9 require the Customer to relocate (other than for the purposes of a temporary relocation which shall be governed by Clause 11.9 of this Agreement) any Customer Equipment at any Station to an alternative station, or, in default of the Customer's compliance with such request after such reasonable period as Arqiva may specify, relocate any such Customer Equipment from its location within Common Accommodation and/or enter any Customer Accommodation in order to relocate any Customer Equipment therein, to the alternative station (and in such scenario the Customer shall pay to Arqiva on demand the costs, charges and expenses properly incurred by Arqiva in so entering and relocating), provided that Arqiva shall, in exercising such right, act reasonably and seek the lowest cost solution that allows Arqiva to meet its obligations under this Agreement in respect of the provision of Network Access. In such circumstances the relevant Station Licence shall, following the removal of the last of the Customer Equipment from the original Station, immediately terminate, and be replaced with a new Station Licence for the new station (which shall become a Station) on the same terms as the original Station Licence, but the relevant Station Licence shall be updated to reflect the new Station details.
- 5.7 For the avoidance of doubt, Arqiva shall have no liability to the Customer in respect of any loss or damage suffered by the Customer as a result of Arqiva's exercise of any of its rights set out in this Clause 5, and the exercise by Arqiva of any such rights shall be without prejudice to the Customer's obligation to pay the Charges, Pass-Through Costs and other amounts payable hereunder.
- 5.8 If the Location Service Date has not occurred by the Target Location Service Date at any Location, Arqiva shall continue to comply with its relevant obligations under this Agreement until the Location Service Date is achieved, unless otherwise agreed with the Customer.
- 5.9 If the Location Service Date has not occurred by the Target Location Service Date at any Location, Arqiva shall, subject to Clause 5.10, pay liquidated damages to the Customer in accordance with the terms set out in Schedule 17.
- 5.10 Arqiva shall have no liability to pay any liquidated damages to the extent that its failure to meet a Target Location Service Date is caused by the Customer's failure to comply with any of its obligations under Clause 4, or an Exceptional Risk. Where it is found that the Antenna System at a Station can be used operationally but it is agreed that the Antenna pattern requires modification, Arqiva shall not be liable to pay liquidated damages and shall use reasonable endeavours to rectify the situation as soon as possible.
- 5.11 The Customer acknowledges that any liability of Arqiva to pay liquidated damages under Clause 5.9 that may arise shall represent the Customer's sole and exclusive financial remedy in respect of Arqiva's failure to provide Network Access on the relevant Target Location Service Date for the applicable Location.
- 5.12 The parties agree and acknowledge that the liquidated damages payable pursuant to Clause 5.9 represent a genuine pre-estimate of the loss likely to be incurred by the Customer as a

## **SUBJECT TO CONTRACT**

direct consequence of any delay in achieving the Target Location Service Date for any Location.

- 5.13 Where Arqiva is not able to meet a Target Location Service Date as a result of any failure by the Customer to comply with any of its obligations under Clause 4 or Clause 7 or as a result of the occurrence of an Exceptional Risk, Arqiva shall be entitled to set a reasonable revised Target Location Service Date under the Change Control Procedure and to adjust the Charges.
- 5.14 On and from the relevant Location Service Date (and without prejudice to the other provisions of this Clause 5), Arqiva shall, for the relevant Location:
- 5.14.1 ensure that Network Access Availability at the relevant Station meets or exceeds the applicable Network Access Level. In the event that Arqiva fails to achieve the applicable Network Access Level in respect of the relevant Station, then Arqiva shall pay Network Access Credits to the Customer for that Station in accordance with the terms set out in Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits) of this Agreement. The Customer agrees that any liability of Arqiva to pay Network Access Credits shall represent the Customer's sole and exclusive remedy in respect of Arqiva's failure to achieve the applicable Network Access Level at the Station in question; and
- 5.14.2 provide support services in accordance with the terms set out in Schedule 3 (Support Services) of this Agreement.

## **6. RIGHTS GRANTED BY ARQIVA TO THE CUSTOMER FOLLOWING THE ACCESS DATE**

- 6.1 Arqiva grants to the Customer in respect of each relevant Station the right:
- 6.1.1 for the Customer to share (in common with others, including Arqiva, as Arqiva may in its discretion from time to time approve) such of the Common Accommodation and such of the Common Equipment at the relevant Station necessary in order to obtain Network Access for the Permitted Use;
- 6.1.2 for any Approved Contractor to install, inspect, service, maintain, repair, renew, replace, dismantle and remove as necessary Customer Equipment at the Customer's own expense in such locations on the Station as Arqiva may direct and from time to time approve in writing;
- 6.1.3 to house the Customer Equipment in:
- (a) the Common Accommodation identified in the relevant Station Licence in common with others permitted by Arqiva; and/or
- (b) any Customer Accommodation identified in the relevant Station Licence;
- 6.1.4 subject to the terms of this Agreement, to use the Customer Equipment named in the relevant Station Licence for the Permitted Use for the duration of the Licence Term;
- 6.1.5 subject to giving prior written notice to Arqiva, and with effect from the Access Date, for Approved Contractors to have access to and egress from the relevant Stations as necessary for the Customer to exercise the Rights for the Permitted Use to the extent that Arqiva is able to grant the same (but otherwise subject to and in accordance with the provisions of the Code of Practice and the Customer's other obligations set out in Clause 7);
- 6.1.6 without prejudice to Clause 6.1.5 above, and subject to such reasonable regulations and instructions from time to time imposed by Arqiva for the better security, safety

## **SUBJECT TO CONTRACT**

and management of a Station the right, subject to giving prior written notice to Arqiva in accordance with the Code of Practice, for Approved Contractors to obtain admittance to the relevant Station over and along any private way leading to the Station boundary which is under the control of Arqiva (either with or without motor vehicles as Arqiva shall decide) at all reasonable times and as often as the Customer shall reasonably require to exercise the Rights; and

- 6.1.7 subject to obtaining Arqiva's prior written consent in accordance with the Code of Practice, such consent not to be unreasonably withheld or delayed, on an ad hoc basis to permit Arqiva-approved third parties to access a Station from time to time, provided:
- (a) such access shall be requested and granted only when reasonably required and only for the purposes of the Permitted Use;
  - (b) the Customer shall ensure such access is subject to and in accordance with this Agreement and any Special Conditions contained in the relevant Station Licence (including but not limited to Arqiva's right to require that any Station access is supervised and meets with the relevant obligations contained in the Code of Practice); and
  - (c) the Customer shall ensure that any such third party does not reside at the Station or remain at the Station for any undue period.

## **7. OBLIGATIONS OF THE CUSTOMER FOLLOWING THE ACCESS DATE**

7.1 The Customer shall, from the Access Date:

- 7.1.1 meet its obligations under Clause 9 and those contained in any Station Licences;
- 7.1.2 at the Station(s), following the Access Date and by the applicable Compatibility Test Date install the Customer Equipment and carry out all such tests (or, at Arqiva's reasonable request, permit Arqiva to carry out such tests) as are necessary and/or requested by Arqiva to ensure that it interoperates properly with the Common Equipment and/or the Arqiva Equipment, and does not cause any interference to the Equipment and thereafter make the Customer Equipment available to Arqiva to verify such tests prior to the Location Service Date;
- 7.1.3 comply, and procure that its employees, agents and/or subcontractors comply, with the terms of this Agreement (including any Special Conditions contained in the Station Licence and the relevant obligations contained in the Code of Practice) and Schedule 15 (Supervision);
- 7.1.4 pay Arqiva's charges for providing supervision in respect of any Customer, Approved Contractor (other than Arqiva), Broadcast Operator, or other third party acting through the Customer seeking access to a Station;
- 7.1.5 not commence testing nor commence the operational broadcast use of the Customer Equipment at a Station until:
  - (a) authorised to do so by Arqiva in writing; and
  - (b) the Customer has secured or is able to confirm that any and all Customer Licences and any consent, approval, other licence, authorisation or permission required from any Government Authority or other third party for the Permitted Use have been obtained.

## SUBJECT TO CONTRACT

- 7.1.6 without prejudice to any of its other obligations under this Agreement, also indemnify and hold harmless Arqiva on demand against Pass-Through Costs and any reasonable additional costs (by way of additional rent, licence or other fees or payments) charges and expenses (or a due and proper proportion thereof) which Arqiva may reasonably incur or pay (including planning, legal, agents/surveyors, management or other professional fees or costs of any Landlord or other third party whose licence, consent, permission or approval shall be required) as a result of the Customer's access to the Station(s), and/or Arqiva's efforts to negotiate any associated licence, consent, permission or approval and/or any amendment or variation to any covenant, condition, term, restriction or stipulation in any lease, licence, deed or document or otherwise, relating to or affecting the title (whether belonging to Arqiva or any Landlord or third party) to any such Station and/or the access rights to any such Station that may be necessary or requisite to facilitate or accommodate the installation, use and operation of the Customer Equipment and/or the sharing of the use and/or occupation of the Station and/or to allow the Customer to use and/or share the Station and/or the Customer Equipment and/or the Common Equipment for the Permitted Use;
- 7.1.7 during the relevant Licence Term obtain, maintain and comply with all applicable Laws and any consent, approval, licence, authorisation or permission that the Customer requires from any Government Authority or other third party, including any Customer Licence, and, to the extent the same are applicable to Arqiva, shall not do or permit anything to be done which might cause or otherwise result in a breach by Arqiva of the same or of any Arqiva Licence;
- 7.1.8 without prejudice to any of its other obligations under this Agreement, promptly and in relation to each Station Licence, provide all information, co-operation and assistance as may be reasonably requested by Arqiva in connection with the performance of either party's obligations pursuant to this Agreement throughout the Licence Term, which may include (but shall not be limited to) co-operating and sharing information with MTS Providers where reasonably requested by Arqiva; and
- 7.1.9 transmit its Customer Output Signals on a 24/7 basis, unless otherwise agreed by the parties in writing.
- 7.2 The Customer agrees that:
- 7.2.1 it shall pay any amounts due under the Station Licence which are not covered by the payment arrangements for Charges and Pass-Through Costs set out in Clause 9 below, and which are otherwise payable under this Agreement, within thirty (30) days of receipt of Arqiva's invoice or other written demand for the same;
- 7.2.2 it shall not carry out any installation, inspection, servicing, maintenance, repair, renewal, replacement, dismantling or removal of any Customer Equipment at any Station otherwise than by an Approved Contractor;
- 7.2.3 it shall not exercise any of the Rights until:
- (a) on or after the Access Date;
  - (b) Arqiva's prior approval in writing to provide the facilities required by the Customer has been given; and
  - (c) Arqiva has confirmed in writing that any planning consents, statutory local authority or regulatory clearances and any other licence, consent, permission or approval of any Landlord or other third party whose licence, consent, permission or approval shall be required to facilitate or accommodate:

## SUBJECT TO CONTRACT

- (i) the installation, use and operation of the Customer Equipment, and/or
- (ii) the Customer's use and/or sharing of the Accommodation and/or the Common Equipment, and/or
- (iii) the exercise of the Rights granted by the Station Licence;

have been obtained.

- 7.3 Where entry to the Station named in the Station Licence is not via a public highway but via an access way owned or controlled by a third party and the Customer has been notified that Arqiva cannot grant rights of access over such access way, the Customer agrees that it shall not in the first instance seek to negotiate such rights for Approved Contractors directly with such third party, and shall, if it requires such rights, request that Arqiva negotiates such rights on the Customer's behalf (the Customer bearing any costs reasonably incurred by Arqiva in negotiating and maintaining such rights) prior to exercising any Rights hereunder, but otherwise access to the Station boundary shall be at no extra charge (save only as herein provided) and the Customer shall procure that such rights are exercised by Approved Contractors strictly in accordance with the terms of such rights and otherwise as reasonably directed from time to time by Arqiva. Arqiva may in its discretion accept or reject any request under this Clause 7.3. In the event that Arqiva rejects any such request or Arqiva notifies the Customer that it has failed to secure the requested rights, Arqiva shall be entitled to seek to negotiate the required rights directly with the third party.
- 7.4 Where Arqiva permits access to or egress from a Station involving the use of any road, path or other land which is not a highway maintainable at public expense the Customer accepts that it shall be required to:
- 7.4.1 observe or cause to be observed all regulations relating to the weight, type and specification of vehicles to be used on such road path or other land as Arqiva shall reasonably direct; and
  - 7.4.2 pay to Arqiva in addition to any other charges herein, a due and proper proportion of any cost, charges and expenses incurred by Arqiva in and towards maintenance, repair, resurfacing and renewal of any such road, path, barrier, boundary or other land and the whole cost of making good any damage (fair wear and tear excepted) caused by the Customer or any Approved Contractor to such road, path, barrier, boundary or other land to Arqiva's reasonable satisfaction.
- 7.5 Where any Customer Equipment is to be placed on, above or below ground outside the Station boundary and where Arqiva is not otherwise able to grant any such rights of installation and/or use over the same, the Customer shall obtain, at its sole expense, the agreement of any other party or parties having an interest in such area(s) prior to installation or use and shall indemnify Arqiva fully in this respect.
- 7.6 Save to the extent that Arqiva notifies the Customer in writing that it is willing to waive (in whole or in part) its rights under this Clause 7.6 in respect of any Approved Contractor(s), the Customer agrees that Approved Contractor(s) shall only visit and obtain admittance to a Station in accordance with the Code of Practice.
- 7.7 Other than as expressly permitted by Clauses 6.1.5, 6.1.6, 6.1.7 and 7.6 above, the Customer shall not permit or allow any other persons to visit the Station or operate the Customer Equipment.
- 7.8 The Customer shall ensure that, whilst at the Station, its employees and other Approved Contractors shall behave in a responsible manner and comply with all Arqiva's reasonable security and/or safety requirements, so as to cause no damage, disturbance, interference,

## SUBJECT TO CONTRACT

nuisance, annoyance or inconvenience to Arqiva, any MTS Provider or any other third party and/or the installation, use or operation of any Equipment, and in the event of any loss or damage being caused to the Station, the Accommodation or to any property or items of Equipment thereon whether in consequence of the exercise by any of its employees or any Approved Contractor of the Rights granted under the relevant Station Licence or otherwise (but not as the result of any negligent act or omission of Arqiva or its employees, agents or sub-contractors) forthwith to reinstate the same to Arqiva's reasonable satisfaction (or, where Arqiva requires, reimbursement to Arqiva of the full costs and expenses properly incurred by it in carrying out such reinstatement on the Customer's behalf).

- 7.9 In exercising the Rights, the Customer shall procure that the Station is kept secure and shall provide Arqiva with a set of keys or code access to the Customer Accommodation in accordance with such operating procedures as are notified by Arqiva to the Customer in writing from time to time.
- 7.10 The Customer shall comply with the directions of Arqiva from time to time (which will include requiring the Customer to comply with the Code of Practice) and any operating procedures as are notified by Arqiva to the Customer in writing from time to time.
- 7.11 The Customer shall use all reasonable endeavours not at any time electrically or physically to impede, degrade, impair, disrupt, interfere with or interrupt the reception, transmission or relay of any Broadcast Services or any other services, signals or transmissions to or from the Station, and forthwith will use all reasonable endeavours to ensure the repair of any defects or faults in any Customer Equipment and/or in the use or operation of it which causes or may cause any such interference, and to otherwise terminate, cease or prevent such interference, and shall indemnify Arqiva against any costs properly incurred by Arqiva or any third party in remedying any such defects or faults and against any claims brought against Arqiva by any third party arising from any such interference.
- 7.12 The Customer shall keep the Customer Equipment located on the Station properly maintained in good safe working order, repair and condition to Arqiva's satisfaction (which shall include the carrying out by the Customer of regular and prudent safety inspections not less than annually, and providing Arqiva with evidence that such inspections have been carried out). In the event that Arqiva does not receive such evidence, Arqiva may (at its discretion) carry out its own tests and the Customer shall indemnify Arqiva against any costs properly incurred in carrying out the tests.
- 7.13 In respect of all Customer Equipment, the Customer shall in addition:
- 7.13.1 procure that the Customer Equipment is labelled and identifiable as the Customer's, and identifies the frequencies used by the Customer Equipment;
  - 7.13.2 ensure that Customer Output Signals from the Customer Equipment comply with the requirements set out in the relevant industry standard nominated by Ofcom from time to time and the Customer acknowledges that Arqiva shall have no obligation to carry, over Common Equipment and/or Arqiva Equipment, any Customer Output Signals which do not so comply;
  - 7.13.3 ensure that Customer Output Signals from the Customer Equipment at the Interface Point are within the parameters set out in this Agreement and/or the Station Licence;
  - 7.13.4 comply with all applicable Laws regarding health and safety relating to the installation, use and operation of the Customer Equipment including all guidelines from time to time issued by the HPA applicable to the use and operation of the Customer Equipment;
  - 7.13.5 provide Arqiva on request (but normally not more often than once a year unless the Customer proposes to make a material change to the Customer Equipment, its size

## SUBJECT TO CONTRACT

or weight, in which case a report will be required detailing the change prior to such change taking place) with a compliance report relating to the Agreed ERP of the Customer Equipment in relation to the ICNIRP public guidelines or other HPA guidelines and in the event that the radio-frequency radiation levels from the Customer Equipment exceed the Agreed ERP causing the Station (or any Customer Equipment or aggregated Common Equipment or Arqiva Equipment located on the Station) to fail to meet such guidelines, the Customer shall pay for any applicable testing and other associated costs, charges and expenses incurred by Arqiva, and Arqiva may additionally require the Customer to switch off the Customer Equipment (without liability or compensation to the Customer) until remedial action has been undertaken so that the HPA guidelines are met. In the event that Arqiva does not receive such a report, Arqiva may (at its discretion) carry out its own tests and the Customer shall indemnify Arqiva against any costs properly incurred in carrying out the tests; and

- 7.13.6 provide Arqiva forthwith on request and from time to time with current details of power output of the Customer Equipment to enable Arqiva to undertake periodic Station power output audits in order to demonstrate the Station's compliance with the ICNIRP public guidelines and any other HPA guidelines or regulatory or UK industry best practice audit requirements.
- 7.14 In the event that Arqiva has reasonable grounds to believe that the Customer Equipment or its use or operation is the source or cause of any interference or degradation to the reception, transmission or relay of any Broadcast Services or any other services, signals or transmissions to or from the Station, the Customer shall forthwith either eliminate the interference or degradation or, where there is significant interference or degradation which cannot be remedied in such time as Arqiva shall reasonably require, switch off the Customer Equipment until such time as the interference or degradation has been eliminated, the cost of such measures to be borne by the Customer in any event (subject also to the provisions of Clause 7.16).
- 7.15 Where requested by Arqiva on reasonable prior notice (or forthwith in the case of an emergency), the Customer shall, or shall permit Arqiva to temporarily reduce power or switch off the Customer Equipment where Arqiva considers the radiation level of any Customer Equipment is unsafe for access to the Mast or to any Equipment or Accommodation by Arqiva, its employees, agents, sub-contractors or other persons authorised by Arqiva. In such circumstances the Customer will be required to keep the relevant Customer Equipment on reduced power or switched off until all such persons and their equipment have completed the relevant tasks and left the Mast, Equipment or Accommodation. Arqiva will use reasonable endeavours to minimise the disruption to the Customer Output Signal when making such requests.
- 7.16 The Customer shall provide a switch on all Customer Equipment to enable it to be switched off by Arqiva and shall provide Arqiva with an agreed method of switching off the Customer Equipment provided that it is agreed that Arqiva shall only switch off the Customer Equipment:
- 7.16.1 in the event of any life or property threatening emergency;
- 7.16.2 where Arqiva has reasonable grounds to believe that the source or cause of any interference or degradation to the reception, transmission or relay of any Broadcast Service or other services, signals or transmissions to or from a Station is the Customer Equipment or its operation or use and after taking all reasonable measures to contact and inform the Customer that such interference or degradation exists and where practicable to do so Arqiva has allowed the Customer a reasonable period forthwith to remedy any such interference or degradation caused by the Customer Equipment but the interference or degradation still exists;



## SUBJECT TO CONTRACT

- 7.16.3 if required to do so by any Government Authority, provided that Arqiva shall (where reasonably practicable) use its reasonable endeavours to inform the Customer of such requirement before the Customer Equipment is switched off;
- 7.16.4 with the agreement of, or at the request of, the Customer;
- 7.16.5 where the Customer's Station Licence has expired or been terminated under the terms contained in this Agreement but the Customer has failed to switch-off the Customer Equipment;
- 7.16.6 where the Customer is in material breach of this Agreement as applied to the relevant Station Licence, including the Customer's obligation to pay the Charges, Pass-Through Costs or any other amounts due hereunder;
- 7.16.7 where Arqiva reasonably considers that, if it were to permit or allow to continue the transmission of certain Transmitted Service Signals from the Station, it would cause Arqiva to be in breach of any obligation in any contract with a third party (such as for example but without limitation any covenant or restriction in any relevant lease, licence or other document affecting the use of the relevant Station or access rights to it);
- 7.16.8 in order for Arqiva to conduct any maintenance or other works or for other purposes as contemplated by Clause 7.15;
- 7.16.9 otherwise in accordance with any specific provisions herein contained or (if applicable) as contained in the Code of Practice or any other Arqiva operating procedures notified from time to time; or
- 7.16.10 where Arqiva reasonably considers it necessary in the event of any unauthorised access, use or occupation of the Station, any Accommodation or any Equipment;
- and in the event that any Customer Equipment is switched off or disconnected pursuant to this Clause 7.16, Arqiva shall notify the Customer of this as soon as reasonably practicable.
- 7.17 The Customer shall not, without Arqiva's prior written consent, carry out any activity within or outside the Station that may result in any change to:
- 7.17.1 the Permitted Use;
- 7.17.2 the size or weight of the Customer Equipment;
- 7.17.3 the Agreed ERP for the Customer Equipment; or
- 7.17.4 the agreed technical operating specifications of the Customer Equipment or any other specifications set out in this Agreement and/or the relevant Station Licence.
- 7.18 The Customer shall keep any Common Accommodation used by the Customer and all Customer Accommodation clean and tidy and free from rubbish and shall not obstruct or cause to be obstructed any passages, paths, access ways and fire escapes (and in respect of fire doors, not keep or block any such doors open) on or serving the Station. The Customer shall be responsible for keeping the interior of any Customer Accommodation in reasonable repair and condition. The Customer shall also prepare and maintain an up-to-date as built drawing of any Customer Accommodation showing the location of all Customer Equipment at each Customer Accommodation, and promptly make the same available to Arqiva on request.
- 7.19 Unless there is a Special Condition to the contrary in the Station Licence, Arqiva shall own all Customer Accommodation, whether provided by Arqiva, or free issued by the Customer, such ownership vesting in Arqiva upon completion of its construction and/or installation.

## SUBJECT TO CONTRACT

- 7.20 Where the structure used to accommodate the Customer Equipment consists of one or more movable equipment cabins provided by the Customer solely for the Customer's exclusive use and it has been confirmed in a Special Condition in the Station Licence that such equipment housing shall be treated as belonging to the Customer, it shall be deemed to form part of the Customer Equipment for the purpose of interpreting the terms of this Agreement.
- 7.21 The Customer shall not tamper with or otherwise cause any damage to the Station, any Accommodation (including any Mast), or any Equipment (including any Antenna) which is located at the Station, provided that the Customer shall be entitled to exercise the Rights expressly permitted herein and under the relevant Station Licence in respect of the Customer Equipment and Customer Accommodation.
- 7.22 The Customer shall not erect or cause to be erected any building or structure or other erection at a Station, save as may be expressly specified in the relevant Station Licence.
- 7.23 Save as provided in Clause 7.24, neither the Customer, nor its Approved Contractors, shall make any alterations or additions to any part of any Station, any Equipment, or to any Accommodation unless expressly permitted to do so by Arqiva in writing, such permission to be entirely in Arqiva's discretion.
- 7.24 The Customer, or its Approved Contractors, may be permitted to make alterations or additions to Customer Accommodation or to the Customer Equipment subject to obtaining the prior written consent of Arqiva, such consent not to be unreasonably withheld or delayed. Any such consents as aforesaid shall also be subject to Arqiva obtaining any Consent necessary, and at the Customer's expense.
- 7.25 The Customer shall not make any application for or appeal regarding planning permission (including any full planning permission, applications under general development orders, or by licence notification) in relation to any part of the Station, any Equipment (including the Customer Equipment) or any Accommodation (including the Customer Accommodation).
- 7.26 The Customer shall not erect or permit or suffer or allow to be erected any sign, notice or advertisement on the Station (save as herein expressly provided or permitted in writing by Arqiva).
- 7.27 The Customer shall satisfy Arqiva prior to installing any permitted Customer Equipment that all proper precautions will be taken to prevent fire damage and that the provisions of the Health and Safety at Work Act 1974 and any regulations made there under and all other applicable Laws (and any reasonable additional precautions laid down by Arqiva for the protection of the Station and the facilities and the safety of personnel and equipment) will be complied with regardless of whether or not such installation shall be supervised by Arqiva. This will include, without prejudice to the generality of the foregoing, a requirement for the Customer to provide at its own cost all necessary fire fighting equipment and safety clothing for use in respect of Customer Accommodation (if any) and Customer Equipment.
- 7.28 The Customer shall not light or permit or suffer or allow to be lit any fire on the Station or on any access thereto nor block or obstruct nor permit or suffer or allow to be blocked or obstructed any fire exits or access for fire fighting equipment thereon.
- 7.29 The Customer shall under no circumstances permit any of its employees or its Approved Contractors or any third party to reside at the Station.
- 7.30 The Customer shall in exercising the Rights comply and procure that all Approved Contractors comply with the terms and conditions of this Agreement (including any relevant obligations contained in Special Conditions in the Station Licence) and do not cause any nuisance or annoyance or undue noise to Arqiva or any neighbouring owners or occupiers and do not drive or walk over any private land or property adjoining the Station over which

## SUBJECT TO CONTRACT

- rights have not been granted under the Station Licence, or otherwise, and that they shall secure any doors and gates after use.
- 7.31 The Customer shall not install nor suffer the installation of any alternative facilities for the supply of electricity, or any other facilities including communication links, other than with Arqiva's prior written consent.
- 7.32 Subject to Clause 7.31 above, the Customer agrees that if it requires any third party services at the Station (including telephony services), including any services which may need to pass in, on, over or under the Station and any adjacent land or premises in which Arqiva has a relevant proprietary interest, the Customer shall not in the first instance negotiate such services directly with any such third party, and shall, if it requires such services, request that Arqiva negotiates the provision on reasonable terms of any such services (the Customer bearing any reasonable costs incurred by Arqiva in negotiating and providing such services). In the event that Arqiva rejects any such request or notifies the Customer that it has failed to secure the requested services, the Customer shall be entitled to seek to negotiate the required services directly with the third party.
- 7.33 Any Approved Contractors shall install, inspect, maintain, repair, renew and remove as necessary Customer Equipment at the Customer's sole risk.
- 7.34 The Customer shall bear the properly incurred expenses of Arqiva in making good any damage, loss or injury to the Accommodation and/or the Equipment in consequence of the exercise of or failure to exercise any of the Rights granted under the Station Licence by the Customer or any Approved Contractor, other than in consequence of any negligent act or omission on the part of Arqiva.
- 7.35 The Customer shall not grant any assignment, sub-letting or sub-licence of all or any parts of the Rights granted under a Station Licence.
- 7.36 Upon termination or expiry of any Station Licence, the Customer shall immediately terminate the use of the Customer Accommodation, the Common Accommodation, the Customer Equipment and the Common Equipment, and the terms set out in Clause 12.5 shall apply.
- 7.37 Where it has any rights of enlargement of its interest under the Station Licence or otherwise by virtue of code powers under the Telecommunications Act 1984 and/or the Communications Act 2003, the Customer shall not exercise such code power rights (insofar as it is able to contract out of the same hereunder or otherwise) so as to cause financial loss or liability to Arqiva, any Landlord or any other third party, and without prejudice to the generality of the foregoing the Customer also agrees that if it exercises any such powers of enlargement or otherwise in relation to the Station and as a result remains in situ at the Station it shall also accept and shall be responsible for and indemnify Arqiva and any Landlord or third party against any damages or loss and all costs charges and expenses incurred by or claimed against Arqiva and any Landlord or third party in relation to the Station, provided that Arqiva will not (and will use its reasonable endeavours to procure its Landlord does not) settle or compromise any such claim without prior notice to and the consent of the Customer (such consent not to be unreasonably withheld or delayed).
- 7.38 The Customer shall during the Licence Term obtain, maintain and comply with all applicable Laws, and any consent, approval, licence, authorisation or permission that the Customer requires from any Government Authority, national or international regulatory agency or other third party and, to the extent the same are applicable to Arqiva, shall not do or permit anything to be done which might cause or otherwise result in a breach by Arqiva of the same or of any Arqiva Licence.

## SUBJECT TO CONTRACT

### 8. RISKS

- 8.1 If a Standard Risk occurs, any costs, losses and expenses incurred by Arqiva shall be covered by the uplift for contingencies and there shall be no adjustment to the Charges as a result of the impact of such Standard Risk on future capital expenditure other than in accordance with the provisions contained in Schedule 12 (Charges and Pass-Through Costs). Notwithstanding the foregoing, Arqiva shall comply with the provisions of Schedule 7 (Reporting and Progress Review).
- 8.2 If an Exceptional Risk occurs prior to the Access Date, the Network Access Initial Fee shall be adjusted (pursuant to the Change Control Procedure set out in Schedule 4 (Change Control Procedure)).
- 8.3 If an Exceptional Risk occurs following the Access Date, the Network Access Annual Fee shall be adjusted (pursuant to the Change Control Procedure set out in Schedule 4 (Change Control Procedure)).
- 8.4 Any Unavoidable Pass-Through Costs incurred by Arqiva solely in relation to the performance of this Agreement (and not in relation to any other agreement) during the period between the Access Date and the Location Service Date shall become due and payable on presentation of an invoice by Arqiva for the same, which invoice Arqiva shall be entitled to present at any time on or after the Location Service Date.
- 8.5 Arqiva shall be entitled to an extension of time for the provision of Network Access at any Station if and to the extent that the provision of Network Access at that Station is delayed as a result of any Exceptional Risk. Any such extension of time, including any amendments to the relevant Target Access Date, shall be determined pursuant to the Change Control Procedure. Notwithstanding the above, if an Exceptional Risk occurs, Arqiva shall use all reasonable endeavours to avoid adjustments to the Target Access Dates as a result of such Exceptional Risk.

### 9. CHARGES AND PAYMENT

- 9.1 Subject to the remainder of this Clause 9, the Customer shall pay to Arqiva calculated in respect of each Location, the Charges, the Pass-Through Costs and any other amounts expressly referred to in this Agreement and the Station Licence.
- 9.2 The Charges assume that Network Access will be provided by Arqiva on a 24/7 basis, and shall not be reduced if the Customer wishes to transmit its Customer Output Signal on a more limited basis.
- 9.3 Subject to the remainder of this Clause 9, the Network Access Initial Fee shall become due in accordance with the following milestones. For Phase 1 Locations, twenty-five percent (25%) of the Network Access Initial Fee shall become due on the Effective Date. For Phase 2 Locations, twenty-five percent (25%) of the Network Access Initial Fee shall become due on the Request Date. For all Locations, a further twenty-five percent (25%) of the Network Access Initial Fee shall become due on the **Network Access Facilities Specification Date**. The remainder of the Network Access Initial Fee shall become due on the Access Date for that Location. Subject to the remainder of this Clause 9, the Network Access Annual Fee and the Forecast Pass-Through Costs shall become payable in respect of each Location from the relevant Access Date applicable to such Location.
- 9.4 Prior to the Access Date for the last Location, Arqiva shall invoice and the Customer shall pay any Network Access Annual Fees and the Forecast Pass-Through Costs which have become payable in accordance with Clause 9.3, annually in advance on the first Business Day of the month of the anniversary of the Access Date for the relevant Location, which shall constitute the Due Date.

## SUBJECT TO CONTRACT

- 9.5 On the Access Date for the last Location (and annually thereafter), Arqiva shall invoice and the Customer shall pay the Network Access Annual Fee and the Forecast Pass-Through Costs in respect of all Locations in advance for the following Charging Year. In respect of the first Charging Year after the Access Date for the last Location, Arqiva shall credit all payments already made by the Customer in respect of the Network Access Annual Fee and Forecast Pass-Through Costs for that Charging Year.
- 9.6 Until the Access Date for all Stations has occurred the Network Access Initial Fee shall be adjusted by a percentage equal to the percentage increase in RPI.
- 9.7 Until the Access Date for all Stations has occurred, the Network Access Annual Fee shall be adjusted by a percentage equal to the percentage increase in RPI.
- 9.8 Once the Access Date for all Stations has occurred, the Network Access Annual Fee shall be adjusted by a percentage equal to the percentage increase in RPI.
- 9.9 The percentage increase shall be calculated by comparing the RPI published in the September immediately preceding the Year for which charges are being reviewed, with the RPI published twelve (12) months before the September immediately preceding the Year for which charges are being reviewed and expressing the difference as a percentage of the first (i.e. first published) of such RPIs. If any such resulting number is a negative number, it shall be treated as zero for the purposes of the indexation mechanism set out in this Clause. Any percentage increase in RPI that is required to be calculated under this Agreement shall be calculated to two decimal places and conventional rounding shall apply. (By way of illustration only, to calculate the indexation for the Charges for the Year commencing 1 July 2011, the relevant increase in RPI is obtained by comparing the RPI for September 2010 and the RPI for September 2011 and expressing the increase between these two values as a percentage increase of the RPI for September 2010.)
- 9.10 Except as otherwise provided for under this Agreement, all amounts payable by the Customer shall be payable within thirty (30) days of the date of the relevant invoice, the invoice date being the Due Date for such amounts.
- 9.11 The Customer shall make payments for the Charges and Pass-Through Costs by direct debit.
- 9.12 At the end of each Year Arqiva shall calculate any Network Access Credits due to the Customer pursuant to Clause 5.14.1 in respect of the previous Year, and shall make the applicable payment to the Customer in respect thereof within ninety (90) days of the end of applicable Year.
- 9.13 All Charges, Pass-Through Costs and other amounts referred to in this Agreement are exclusive of value added tax and any other tax or duty which shall, if and to the extent applicable, be payable by the Customer at the rate and in the manner from time to time prescribed by law.
- 9.14 All invoices hereunder shall be raised in, and all debts due hereunder shall be settled in GB pounds sterling. If the United Kingdom becomes a participating member state for the purposes of European Monetary Union and the Euro accordingly becomes the lawful currency of the United Kingdom:
- 9.14.1 such occurrence that shall not affect the validity of this Agreement or the rights and obligations contained in this Agreement or any individual Station Licences nor shall it give either party the right to alter or terminate the Agreement unilaterally; and
- 9.14.2 with effect from the date on which it occurs, any amount referred to in this Agreement or in any individual Station Licence in GB pounds sterling shall be redenominated in Euros at the rate and in the manner determined by the relevant legislation.

## SUBJECT TO CONTRACT

- 9.15 If the Customer fails to pay any amount payable by it under this Agreement (including any amount due under any Station Licence) within thirty (30) days from the Due Date, without prejudice to Arqiva's other remedies, the Customer shall become liable for and, on Arqiva's demand from time to time, shall pay interest on such overdue amount from the Due Date up to the date of actual payment whether before or after judgement at the rate of four per cent (4%) per annum over the base rate of the Bank of England. Such interest shall accrue from day to day and shall be computed on the basis of a year of three hundred and sixty five (365) days for the number of days elapsed.
- 9.16 If the Customer is more than thirty (30) days overdue with payment of any amount payable hereunder, Arqiva may serve the Customer with not less than thirty (30) days written notice of its intention to suspend provision of Network Access for non-payment. Following the expiry of such notice period, Arqiva reserves the right to suspend provision of Network Access until the Customer has rectified matters. Moreover, the Customer shall not be relieved of any liability to pay Charges or any other amounts due under this Agreement in respect of any period during which Arqiva's provision of Network Access has been suspended pursuant to this Clause.
- 9.17 In addition to the Charges, Arqiva will charge for supervision in accordance with the rates set out in Schedule 15 (Supervision).
- 9.18 If the Customer disputes any invoice issued by Arqiva hereunder, it shall nevertheless be obliged to pay that invoice. In the event that the outcome of any dispute resolution process provided for in this Agreement is that an overpayment has been made by the Customer, Arqiva shall be liable to repay to the Customer an amount equal to the overpayment together with interest on such amount calculated at the rate specified in Clause 9.15 such interest to be calculated for the period from the date of payment of the original invoice to the date of repayment by Arqiva of the overpayment.
- 9.19 Arqiva may elect to set off any liability to pay any amounts payable by it under this Agreement against any amounts payable by the Customer to Arqiva under this Agreement or the Station Licences or any liability of the Customer to Arqiva howsoever arising.
- 9.20 If Arqiva has reasonable grounds for concern as to the creditworthiness of the Customer from time to time, it shall be entitled to require the Customer to procure a parent company guarantee in such form as Arqiva may reasonably require, or such other security or payment terms as Arqiva may reasonably require.
- 9.21 Commencing with the first Year in which the Customer is expected to be invoiced for the Annual Network Access Fee, and for each Station Licence then issued under this Agreement, Arqiva shall forecast the Pass-Through Costs likely to be payable by the Customer during that Year ("**Forecast Pass-Through Costs**") on a Location by Location basis. Arqiva shall conduct such forecast and notify the Customer of the Forecast Pass-Through Costs by, at the latest, the end of April prior to the start of the relevant Year.
- 9.21.1 The Forecast Pass-Through Costs shall be payable by the Customer in accordance with Clause 9.3.
- 9.21.2 The Customer's share shall be calculated on a Location-by-Location basis, using the following methodology:
- (a) Arqiva shall first calculate the total amount of Pass-Through Costs (except for any directly attributable Pass-Through Costs) incurred by Arqiva at each Station in respect of the provision of Network Access to all customers at that Arqiva Station;
  - (b) Arqiva shall then determine each customer's share of the total Pass-Through Costs (including the Customer's share) at each Station on a fair and

## SUBJECT TO CONTRACT

reasonable basis that is reflective of the attributes/criteria that incur/drive these Pass-Through Costs. The Customer's share shall be this amount, plus (i) any directly attributable Pass-Through Costs, and (ii) the total cost of electricity for its Customer Equipment in the relevant period.

In procuring electricity required for the operation of the Equipment, Arqiva shall use all reasonable endeavours to ensure best value for itself and in turn for the Customer.

9.21.3 As soon as reasonably practical and no later than four (4) months after the end of the relevant Year, or as soon as possible following the end of the Licence Term, the Customer's share of actual Pass-Through Costs for the relevant Year ("**Actual Pass-Through Costs**"), determined in accordance with Clause 9.21.2 above, will be compared to the Forecast Pass-Through Costs for the relevant Year. Any overpayment or underpayment by the Customer shall be notified in writing by Arqiva. In the event of any overpayment by the Customer, Arqiva shall issue the Customer with a credit note to the value of any overpayment within thirty (30) days, save where no more Charges are due from the Customer to Arqiva, in which case Arqiva shall pay the amount within thirty (30) days. In the event of any underpayment, Arqiva shall issue an invoice to the Customer for this amount, such invoice being payable in accordance with the terms of this Agreement. In this Clause 9.21.3 "Year" shall mean the Charging Year, once the first Charging Year has elapsed.

9.21.4 Arqiva shall, on the Customer's written request and subject to payment by the Customer of Arqiva's reasonable incurred costs, provide copies of all documentation evidencing and/or supporting the calculation of the Actual Pass-Through Costs for any Year. Arqiva shall not however, be required to provide copies of such documentation to the Customer where by so doing Arqiva would be in breach of or otherwise contravene confidentiality or contractual commitments with other customers or users of Station facilities. Under these circumstances Arqiva will ensure that a reputable third party independently validates that the Customer's Pass-Through Costs have been derived and/or calculated in accordance with the methodology agreed between Arqiva and the Customer, and provide confirmation of such independent validation to the Customer on request. The Customer shall not be entitled to request this information more frequently than once per annum. Arqiva shall provide such information promptly and in any event within thirty (30) days, of the Customer's written request. In this Clause 9.21.4 "Year" shall mean the Charging Year, once the first Charging Year has elapsed.

9.22 It is agreed by Arqiva and the Customer that the consideration for the Rights granted in each Station Licence is included within the Charges and Pass-Through Costs payable by the Customer pursuant to this Agreement.

9.23 Review of Charges

Arqiva shall conduct a Review in accordance with the process set out in Schedule 12 (Charges and Pass-Through Costs):

9.23.1 no more than twelve (12) months after completion of the L-DTPS Network Access Programme;

9.23.2 on such other date as is agreed between the parties and approved by Ofcom; or

9.23.3 on such other date as may be directed by Ofcom.

The parties agree and acknowledge that, following the completion of a Review under this Clause 9.23 and Schedule 12 (Charges and Pass-Through Costs), the Charges shall be amended in accordance with the mechanism set out in Schedule 12 (Charges and Pass-Through Costs).

## **SUBJECT TO CONTRACT**

### **10. CHANGE**

If the Customer or Arqiva wishes to make any change to this Agreement or the provisions in any individual Station Licence, the parties shall follow the Change Control Procedure set out at Schedule 4 (Change Control Procedure). Without limitation to the foregoing, any change to Schedule 10 (Station Details) and any change resulting from the occurrence of an Exceptional Risk shall be dealt with through the Change Control Procedure.

### **11. TERM AND TERMINATION**

11.1 Subject to the remainder of this Clause 11, and unless otherwise agreed in writing, this Agreement shall come into force on the Effective Date and shall continue until [1 October 2026].

11.2 Each party shall be entitled forthwith on serving a written notice to the other party to terminate this Agreement, in whole or as to the affected part, if the other party shall be in material breach (in the case of breaches capable of remediation) of any of the provisions of this Agreement and shall not remedy or otherwise satisfactorily compensate the non-defaulting party in respect of any such breach(es) within thirty (30) days of the non-defaulting party notifying the other party in writing of the breach in question.

11.3 Each party shall be entitled forthwith on serving a written notice to the other party to terminate this Agreement (and the Station Licences) on any of the following events occurring in respect of the other party:

11.3.1 a petition is presented or resolution passed for its winding up, provided that this Clause 11.3.1 shall not apply to a bona fide re-organisation or re-construction of that party whilst solvent;

11.3.2 it enters into any composition with its creditors generally, or suffers any similar action in consequence of default by it in its obligations in respect of any indebtedness provided that this Clause 11.3.2 shall not apply to a bona fide re-organisation or re-construction of that party whilst solvent;

11.3.3 an administration application is made in respect of it or it suffers a notice of appointment of administration to be filed at court in respect of it;

11.3.4 it has stopped or threatens to stop generally payment of its debts or it ceases or threatens to cease to carry on its business or any substantial part of it, provided that this Clause 11.3.4 shall not apply to a bona fide re-organisation or re-construction of that party whilst still solvent;

11.3.5 it has a receiver, administrative receiver or other similar official appointed over all or any substantial part of its property, undertakings or assets;

11.3.6 it suffers a creditor taking possession of all or any part of its business or assets or suffers any execution or other legal process being enforced against its business or any of its substantial assets, which execution or legal process is not discharged within thirty (30) days;

11.3.7 it is deemed for the purpose of Section 123 of the Insolvency Act 1986 to be unable to pay its debts; or

11.3.8 an event or circumstance analogous to any of those referred to in Clauses 11.3.1 to 11.3.7 above occurs in any jurisdiction outside England and Wales under the laws of any competent jurisdiction.



## SUBJECT TO CONTRACT

- 11.4 Either party may terminate this Agreement and the relevant Station Licences as to the affected Station or Stations pursuant to Clause 14.2.
- 11.5 Where this Agreement is terminated in part only pursuant to provision of this Clause 11 it shall continue in full force as to the remaining part.
- 11.6 The Station Licence:
- 11.6.1 may be terminated pursuant to any of the provisions of Clause 11.7;
- 11.6.2 may be terminated by Arqiva by giving to the Customer not less than five (5) months' prior written notice provided that:
- (a) if Arqiva has served such notice because its rights to continue to grant the Rights are determined by reasons beyond its reasonable control (such as for example but without limitation where Arqiva is unable to renew its rights to occupy any land or buildings comprised in the Station and/or where renewal is only available on unreasonable terms), Arqiva shall use its reasonable endeavours to secure an alternative site which is as close (geographically) as reasonably practicable to the Station, and if Arqiva successfully secures such a site the Customer shall relocate to such site in accordance with Clause 5.6.9 of this Agreement, and all costs, charges and expenses incurred by the Customer in relation to or in connection with such relocation shall be borne by the Customer; and
  - (b) if Arqiva has served such notice for reasons other than those specified in Clause 11.6.2(a), Arqiva shall use its reasonable endeavours to secure an alternative site which is as close (geographically) as reasonably practicable to the Station, and if Arqiva successfully secures such a site the Customer shall relocate to such site in accordance with Clause 5.6.9, and all the Customer costs, charges and expenses properly, reasonably and directly incurred by or on behalf of the Customer in relation to or in connection with such relocation shall be borne by Arqiva;
- 11.6.3 shall expire at the end of the relevant Licence Term in respect of each Station Licence;
- 11.6.4 may be terminated by a party forthwith by notice in writing to the other if the other shall be in material breach of any of the obligations on its part to be performed or observed thereunder and shall not remedy and, in the case of a breach capable of remediation or otherwise satisfactorily compensate the non-defaulting party in respect of any such breach(es) within thirty (30) days of the non-defaulting party notifying the other party in writing of the breach in question; and
- 11.6.5 shall terminate forthwith on termination or expiry of this Agreement for whatever reason (or the relevant part of this Agreement if it is terminated in part).
- 11.7 Arqiva may notwithstanding and without prejudice to its rights under Clause 11.3 and 11.6 above, switch off Customer Equipment and determine the relevant Station Licence forthwith without incurring any liability to the Customer or any other party for the results of such an act if any of the following events should occur in respect of the Customer:
- 11.7.1 the Customer fails to make any payment to be made under this Agreement or any Station Licence which is in arrears and unpaid following the Due Date (as defined herein or in the relevant Station Licence) within fourteen (14) days of receiving notice from Arqiva, that Customer Equipment will be switched off unless Arqiva receives the outstanding payment together with the interest due thereon (such notice to be served not earlier than the said Due Date); or

## **SUBJECT TO CONTRACT**

- 11.7.2 the Customer fails or neglects to initiate steps to remedy within thirty (30) days after notice is given by Arqiva requiring such remedy or if the Customer fails to continue thereafter with all reasonable speed to complete such remedying of a material breach of any of the covenants, agreements or conditions of this Agreement in relation to any Station Licence and on the part of the Customer to be performed and observed.
- 11.8 Any termination of a Station Licence pursuant to Clause 11.6 or Clause 11.7 shall be without prejudice to any antecedent claims arising under the relevant Station Licence prior to the date of termination.
- 11.9 The Customer shall where requested by Arqiva in writing temporarily relocate any Customer Equipment, and in default of the Customer's compliance with such request after a reasonable period (where practicable) Arqiva may relocate any Customer Equipment and where applicable enter any Customer Accommodation in order to relocate any Customer Equipment (and in such scenario the Customer shall pay to Arqiva on demand the costs, charges and expenses properly incurred by Arqiva in so entering and relocating) where it has become necessary to temporarily move some or all of the Customer Equipment at the Station (for example but without limitation for the purposes of essential maintenance or in an emergency), which may involve moving the affected Customer Equipment to another area of the Station (in respect of which the Customer may or may not have exclusive access), to another area adjacent to the Station or to a different site, and in this scenario Arqiva shall use its reasonable endeavours to ensure that the terms of the Customer's access to and use of such Customer Equipment are equivalent to the terms set out in the Station Licence during such temporary periods, although Arqiva cannot guarantee that any Antenna coverage patterns will be the same.

## **12. CONSEQUENCES OF TERMINATION**

- 12.1 Upon termination (in whole or part) of this Agreement for whatever reason or upon its expiry, all Station Licences granted hereunder (or, in the event of a partial termination, all of such Station Licences in respect of Stations at which Network Access will no longer be provided) shall immediately terminate and the Customer shall comply with its relevant obligations pursuant to such Station Licences.
- 12.2 If Arqiva terminates this Agreement pursuant to Clause 11.2 or Clause 11.3 or either party terminates this Agreement (or part thereof) pursuant to Clause 14.2 or 14.3, the Customer shall make a payment to Arqiva as set out in Schedule 18 (Termination Payments).
- 12.3 Any termination of this Agreement shall be without prejudice to either party's rights to recover any sums payable or due by the other or to any rights accrued by one party to the other in accordance with this Agreement on or prior to the date of such termination. Each party shall use reasonable endeavours to mitigate any losses or expenses that may arise by virtue of the expiry or termination of part or all of this Agreement.
- 12.4 This Clause 12 and Clauses 5, 9, 13, 15, 17 and 18 shall continue in full force and effect notwithstanding the termination or expiry of this Agreement.
- 12.5 Upon termination (in whole or part) of this Agreement for whatever reason, or an individual Station Licence, or upon their respective expiry, Arqiva shall be responsible for the removal of the Customer Equipment (or, in the event of a partial termination or termination of an individual Station Licence, all of such Customer Equipment located at Stations at which Network Access shall no longer be provided). Upon such expiry or termination Arqiva will make such decommissioned assets available for the Customer to collect within thirty (30) days of the Customer's written request (any such written request to be made within twelve (12) months of the expiry or termination of this Agreement or the relevant Station Licence). If such assets are not collected by the Customer within thirty (30) days of being made available for collection by Arqiva, Arqiva shall be entitled to dispose of such assets as it sees fit with no further liability to the Customer in respect of such assets.

## SUBJECT TO CONTRACT

### 13. LIABILITY, INDEMNITIES AND INSURANCE

#### Liability

- 13.1 Arqiva accepts liability to the Customer only as expressly provided or contemplated in this Clause 13 and Clauses 5.9 and 5.14, and otherwise shall have no liability to the Customer under or in connection with this Agreement or any Station Licence whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 13.2 Arqiva accepts liability to the Customer for any damage to Customer Equipment caused by Arqiva's negligence in the provision of Network Access up to two hundred and fifty thousand pounds sterling (£250,000) per Station per Year. For the avoidance of doubt, neither damage to nor loss or corruption of data shall constitute loss of or damage to physical property.
- 13.3 Subject to Clause 13.2 and Clause 13.5, Arqiva's maximum aggregate liability to the Customer arising under or in connection with this Agreement and all Station Licences, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, in respect of claims relating to any Year shall be limited to the greater of:
- 13.3.1 an amount equal to £25,000 plus one hundred and twenty-five per cent (125%) of the Network Access Annual Fee payable by the Customer to Arqiva under this Agreement in respect of that Year; and
- 13.3.2 £36,000.
- For the avoidance of doubt any amounts paid by Arqiva to the Customer by way of Network Access Credits under Clause 5.14.1 and liquidated damages under Clause 5.9 shall count towards the limits set out in this Clause 13.3.
- 13.4 Arqiva shall not be liable to the Customer under or in connection with this Agreement or any Station Licence for any loss of income, loss of actual or anticipated profits, loss of contracts, loss of goodwill or reputation, loss of business, loss of anticipated savings, loss of, damage to or corruption of data, or for any indirect or consequential loss or damage of any kind, in each case howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.
- 13.5 Nothing in this Clause 13 or otherwise in this Agreement or any Station Licence shall exclude or in any way limit Arqiva's liability to the Customer (i) for fraud, (ii) for death or personal injury caused by its negligence (including negligence as defined in s. 1 Unfair Contract Terms Act 1977), (iii) for breach of terms regarding title implied by s. 12 Sale of Goods Act 1979 and/or s. 2 Supply of Goods and Services Act 1982, or (iv) to the extent the same may not be excluded or limited as a matter of law.
- 13.6 Arqiva shall have no liability to the Customer, and the Customer shall have no right or remedy against Arqiva, for any delay by Arqiva in performing or complying with, or any failure by Arqiva to perform or comply with any obligation under this Agreement or any Station Licence to the extent that such delay or failure is attributable to any act or omission of or by the Customer or any of its employees, agents or contractors (including any breach by the Customer of any obligation under this Agreement or any Station Licence and any failure by the Customer to comply with any of its obligations under Schedule 9 (Customer Responsibilities)).
- 13.7 The exclusions and limitations of liability under this Clause 13 shall have effect in relation both to any liability expressly provided for or contemplated under this Agreement or any Station

## SUBJECT TO CONTRACT

Licence and to any liability arising or incurred by reason of the invalidity or unenforceability, in whole or in part, of any term of this Agreement or of any Station Licence.

- 13.8 This Agreement and the Station Licences entered into pursuant to it set forth the full extent of Arqiva's obligations and liabilities arising out of or in connection with this Agreement and the Station Licences, and there are no conditions, warranties, representations or terms, express or implied, that are binding on Arqiva except as specifically stated in this Agreement and the Station Licences. Any condition, warranty, representation or term which might otherwise be implied into or incorporated in this Agreement or the Station Licences, whether by statute, common law or otherwise, is hereby expressly excluded.

### **Indemnities**

- 13.9 The Customer shall be liable for and shall indemnify Arqiva against any and all claims, actions, liabilities, losses (including any loss of Arqiva revenue), damages and expenses (including any losses or expenses arising out of any third party demand) and including legal expenses incurred by Arqiva which arise out of or in connection with, directly or indirectly: (i) the operation or malfunction of any Customer Equipment; or (ii) any activity undertaken by the Customer or its employees, agents, contractors (including Approved Contractors) or customers at any Station. As regards loss of or damage to Arqiva Equipment, Common Equipment, Accommodation (including Customer Accommodation) and any Equipment owned or controlled by MTS Providers, the Customer's liability under this indemnity shall be limited to:

13.9.1 thirty million pounds sterling (£30,000,000) per Year in relation to the Station at Emley Moor; and

13.9.2 fifteen million pounds sterling (£15,000,000) per Year in relation to each other Station, but shall otherwise be unlimited.

- 13.10 Without prejudice to Clause 13.9, the Customer agrees during this Agreement and thereafter to indemnify and keep indemnified Arqiva from and against claims, actions, liabilities, losses, damages and expenses (including legal expenses) incurred by Arqiva resulting directly or indirectly from any claims by third parties that any programme, or the transmission in accordance with the terms of this Agreement by Arqiva, or sub-contractors of Arqiva, of any Transmitted Service Signal relating to any Customer Output Signal:

13.10.1 is in breach of any duty of confidentiality or privacy;

13.10.2 infringes or prejudices any existing or future Intellectual Property Rights;

13.10.3 is defamatory or obscene; or

13.10.4 infringes any applicable Law or any voluntary codes of conduct in relation to the broadcasting of programmes

For the avoidance of doubt, the Customer's liability under this indemnity is unlimited.

- 13.11 The indemnity in Clause 13.10 shall be subject to Arqiva:

13.11.1 promptly notifying the Customer in writing of such claim;

13.11.2 not making any admission as to liability or agreeing to any settlement or compromise of the claim without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed;

## SUBJECT TO CONTRACT

13.11.3 at the Customer's request and expense, giving the Customer express authority to conduct all negotiations and litigation, and to settle all litigation, arising from such claim; and

13.11.4 providing the Customer at the Customer's expense with all available information and assistance as the Customer may reasonably require. If within ninety (90) days after Arqiva's receipt of notice of any claim, the Customer fails to take action to defend the same, Arqiva may at the Customer's expense undertake the defence, compromise or settlement of the claim. Upon the assumption of the defence of the claim, Arqiva may defend, compromise or settle the claim as it sees fit provided that Arqiva shall take reasonable steps to monitor and mitigate the fees and costs associated with the same and shall keep the Customer informed of any reasonable settlement proposals made by the claimant and shall not agree any settlement without the Customer's prior written consent (such consent not to be unreasonably withheld or delayed).

### **Insurance**

13.12 Without prejudice to its obligations and liabilities under this Agreement (including under any indemnity), the Customer agrees that during the term of this Agreement it will maintain appropriate insurance policies in relation to the following types of cover with a reputable insurance company in respect of its liabilities under or relating to this Agreement, providing for the payment of a sum up to the amount stated for any claim or series of claims arising out of a single event:

13.12.1 public and products liability for all risks arising from this Agreement of not less than thirty million pounds Sterling (£30,000,000) per incident; and

13.12.2 employers liability insurance to include a principals clause of not less than the statutory requirement.

13.13 The Customer shall on request produce evidence satisfactory to Arqiva that it is complying with its obligations under Clause 13.12, and shall promptly notify Arqiva in writing in the event that the nature or coverage of the insurances described in Clause 13.12 is materially changed.

13.14 Where the Customer engages any sub-contractor, the Customer shall ensure that the relevant sub-contractor holds such insurance cover as is reasonable taking into account the extent of the services to be provided by that sub-contractor.

## **14. FORCE MAJEURE**

14.1 After the Access Date, Arqiva shall not be liable for its failure to provide Network Access in respect of any Station for any period or for any resulting loss, injury or damage to the extent only that such provision is prevented or directly adversely affected to a material degree by any Force Majeure Event, provided that Arqiva shall in any event continue to provide Network Access at that Station to the extent reasonably practical.

14.2 The period of excused non-provision shall be limited to the duration of such events provided that should any such suspension last for a period of more than one hundred and twenty (120) days, either party shall be entitled to terminate the relevant Station Licence(s) affected upon written notice to the other party, in which event the Charges shall be reduced by an amount equal to the aggregate of the Charges which would otherwise be payable in respect of the Station or Stations affected.

14.3 In the event that a Force Majeure Event prevents Arqiva from completing the build programme in respect of any Location, within six (6) months of the relevant Access Date, either party shall be entitled to terminate this Agreement in respect of that Location.

## **SUBJECT TO CONTRACT**

- 14.4 Arqiva shall give prompt notice to the Customer of any claim that the provision of Network Access is prevented or adversely affected by any Force Majeure Event giving details so far as practicable of the cause and consequence of the event, the Station(s) affected and the likely duration of the period of non-provision and shall give notice in like manner to the Customer when the provision is no longer adversely affected.
- 14.5 In the event of the failure by Arqiva to provide Network Access at any Station by reason of a Force Majeure Event it shall use all reasonable endeavours to recommence provision as soon as is practicable. Arqiva shall also use all reasonable endeavours to mitigate and/or eliminate the consequences of any Force Majeure Event or Events and inform the Customer of the steps which it is taking or proposing to take to do so.
- 14.6 During any period during which Arqiva is excused provision under Clause 14.1, the Customer shall remain liable to pay:
- 14.6.1 in respect of the first sixty (60) days of such period, one hundred per cent (100%) of the Charges apportioned on a daily basis over a Year;
- 14.6.2 in respect of days sixty-one (61) to ninety (90) inclusive of such period, the Charges apportioned on a daily basis over a Year at seventy-five per cent (75%) of the rate which would otherwise have been payable in respect of the Station or Stations affected;
- 14.6.3 in respect of any days thereafter of such period, the Charges apportioned on a daily basis over a Year at fifty per cent (50%) of the rate which would otherwise have been payable in respect of the Station or Stations affected; and
- 14.6.4 all Pass-Through Costs (for the avoidance of doubt only to the extent actually incurred).

## **15. CONFIDENTIALITY**

- 15.1 Each party undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the disclosing party, directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.
- 15.2 Each party undertakes to disclose Confidential Information only to those of its officers, employees, agents, contractors, financiers and advisers to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, agents, contractors financiers and advisers are made aware of and observe the confidentiality obligations in this Clause 15.
- 15.3 Upon the earlier of a written request from the disclosing party, or the termination or expiry of this Agreement for any reason, the receiving party shall return any and all Confidential Information of the disclosing party then in its possession or control and will not retain any copies of the same.
- 15.4 The receiving party shall immediately upon becoming aware of the same give notice to the disclosing party of any unauthorised disclosure, misuse, theft or other loss of Confidential Information, whether inadvertent or otherwise.
- 15.5 The terms of and obligations imposed by this Clause 15 shall survive the termination or expiry of this Agreement but shall not apply to any Confidential Information which:

## **SUBJECT TO CONTRACT**

- 15.5.1 at the time of receipt by the receiving party is in the public domain, or subsequently comes into the public domain through no fault of the receiving party, its officers, employees, agents or contractors; or
  - 15.5.2 is lawfully received by the receiving party from a third party on an unrestricted basis; or
  - 15.5.3 is already known to the receiving party before receipt hereunder; or
  - 15.5.4 is independently developed by the receiving party or its employees, agents or contractors.
- 15.6 The receiving party may disclose Confidential Information as may be required by law, regulation or order of a Competent Authority, provided that, to the extent practicable in the circumstances, the disclosing party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.

## **16. ASSIGNMENT AND SUBCONTRACTING**

- 16.1 Subject to Clauses 16.2 and 16.3, neither party may assign, sub-contract or sub-license this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.
- 16.2 Notwithstanding Clause 16.1, Arqiva may on written notice to the Customer assign, sub-contract or sub-license all or any of its rights and/or obligations hereunder to any of its Associated Companies, or to any entity acquiring all or substantially all of the assets of Arqiva, or assign its rights to payments and revenues and any similar rights, pursuant to any fixed or floating charge or other security arrangement required under any funding arrangements applicable to its business.
- 16.3 Arqiva may sub-contract any of its obligations under this Agreement but shall remain fully liable to the Customer for the failure of any such sub-contractor to perform satisfactorily any obligation of this Agreement which may be sub-contracted to it.

## **17. GOVERNING LAW AND DISPUTE RESOLUTION**

- 17.1 Save as provided under Clauses 17.3, 17.5 and 17.6, the construction, validity and performance of this Agreement and all non-contractual obligations arising from or connected with this Agreement shall be governed by English law and, subject to Clause 17.2, the parties hereby submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them.
- 17.2 Neither party shall commence any action above until the escalation procedure set out in this Clause 17.2 has been exhausted, save that neither party shall be prevented from seeking emergency or injunctive relief from any court in relation to any damage or anticipated damage to property or proprietary rights. Without prejudice to the foregoing, any question or difference which may arise concerning the construction, meaning, effect or operation of this Agreement or any matter arising out of or in connection with this Agreement or any Station Licence shall in the first instance be referred to the persons listed at Level 1 in the escalation table below, who shall have a period of five (5) Business Days to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 2 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter. If the matter is not resolved during such period, the matter shall be referred to the persons listed at Level 3 in the escalation table below who shall have a further period of five (5) Business Days or such other period as the parties may agree to attempt to resolve the matter.

## SUBJECT TO CONTRACT

<b>Arqiva</b>	<b>The Customer</b>
First Level:	First Level:
Customer Account Director	[To be advised]
Second Level:	Second Level:
Managing Director, Broadcast & Media	[To be advised]
Third Level:	Third Level:
Company Secretary	[To be advised]

If any of the above is unable to attend a meeting, a substitute may attend provided that such substitute has at least the same seniority or reasonably comparable managerial or directorial responsibility and is authorised to settle the unresolved matter.

17.3 Any dispute arising under this Agreement may be referred:

17.3.1 at all times by agreement between the parties; or

17.3.2 by either party in accordance with paragraph 2.5 of Schedule 4 (Change Control Procedure),

to an independent expert (the "**Expert**") in accordance with the procedure set out in this Clause 17.3 and in Clause 17.4. The Expert shall be appointed by agreement in writing between the parties or, if the parties are unable to agree on the identity of the Expert within seven (7) days after the date of the request (or joint request, as the case may be) that the dispute be determined by an Expert, or if the person appointed is unable or unwilling to act, shall be appointed by:

17.3.3 in relation to any dispute as to radio frequency, interference or other technical issues, the President of the Institution of Engineering and Technology; or

17.3.4 in relation to any dispute as to the calculation of any financial sum, the President for the time being of the Institute of Chartered Accountants in England and Wales;

on the application of either party.

17.4 The Expert appointed under Clause 17.3 shall act on the following basis:

17.4.1 the Expert shall act as an expert and not as an arbitrator;

17.4.2 each party may make representations to the Expert;

17.4.3 if the dispute has been referred to the Expert pursuant to Clause 17.3.1 above, the Expert's determination shall (in the absence of manifest error) be final and binding on the parties;

17.4.4 if the dispute has been referred to the Expert pursuant to Clause 17.3.2 above, the parties shall, in good faith, give due regard to the Expert's determination but such determination shall not be final and binding upon the parties and the parties shall have the right to pursue any other remedies available to them in respect of such dispute;

17.4.5 the Expert shall decide the procedure to be followed in the determination and shall be requested to make its determination in writing within fifteen (15) Business Days after their appointment or as soon as is practicable thereafter;



## SUBJECT TO CONTRACT

- 17.4.6 any amount payable by one party to another as a result of the Expert's determination shall be due and payable within ten (10) Business Days after the Expert's determination being notified to the parties;
- 17.4.7 the Expert may, if it thinks fit, award interest at the rate of four per cent (4%) per annum above the UK base rate for the time being of the Bank of England on any amount which is determined to be payable by either party to the other from the date of the request that the dispute be determined by an Expert; and
- 17.4.8 the Expert shall determine how the costs of the determination, including the fees and expenses of the Expert, shall be borne between the parties.
- 17.5 In relation to individual Station Licences: any Station Licences relating to Stations located in England and Wales shall be interpreted in accordance with English law, any Station Licences relating to Stations in Scotland shall be interpreted in accordance with the law of Scotland, and any Station Licences relating to Stations in Northern Ireland shall be interpreted in accordance with the law of Northern Ireland.
- 17.6 The Customer may refer any dispute to the Adjudicator in accordance with the Adjudication Scheme and Adjudication Rules (as such terms are defined in the Undertakings).

## 18. GENERAL

- 18.1 Except as otherwise expressly agreed in writing between the parties, each party shall be responsible for its own costs incurred in performing its obligations under this Agreement.
- 18.2 Individual Station Licences may be updated and reissued by Arqiva from time to time:
- 18.2.1 to account for any Change in Law or any other mandatory requirements imposed on Arqiva, the Customer or any third party by any Government Authority, in which event Arqiva shall be entitled to update and reissue the affected Station Licences unilaterally; and otherwise
- 18.2.2 where agreed between the parties in writing in accordance with the Change Control Procedure (Schedule 4).
- 18.3 Notices sent under any Station Licence and otherwise under this Agreement shall be validly served if delivered by hand or sent by fax or registered post to the recipient party as follows:

to Arqiva:

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

to the Customer:

[To be advised]

## SUBJECT TO CONTRACT

Any notice shall be treated as having been served on delivery if delivered by hand, two (2) Business Days after despatch if sent by registered post and on confirmation of transmission if sent by facsimile.

- 18.4 The failure of either party to enforce or to exercise at any time or for any period of time any term of or any right pursuant to this Agreement or any Station Licence does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.
- 18.5 If any term of this Agreement or any Station Licence is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from this Agreement or Station Licence (as appropriate) and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 18.6 Notwithstanding any other provision of this Agreement or any Station Licence, neither of the parties hereto shall be:
- 18.6.1 required to do anything in contravention of any Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
- 18.6.2 required to refrain from doing anything the party is required to do under such Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority; or
- 18.6.3 liable to the other party for failing to do anything which if done would be in contravention of any such Laws, Consents or other consents, approvals, licences, authorisations or permissions, or directions of any Government Authority.
- 18.7 This Agreement (including any Station Licences which reference this Agreement from time to time) contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to this Agreement except as expressly stated in this Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into this Agreement (unless such untrue statement was made fraudulently) and that party's only remedies shall be for breach of contract as provided in this Agreement.
- 18.8 Provisions of this Agreement or any Station Licence which either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such expiry or termination, shall remain in full force and effect notwithstanding such expiry or termination.
- 18.9 The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement (or any individual Station Licence) shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same. The Customer acknowledges that this Agreement is intended to provide only Network Access to the Customer, and that no provisions in the Agreement (or any individual Station Licence) are intended to create nor shall be treated or construed as creating the relationship of landlord and tenant between Arqiva and the Customer, which relationship shall be merely that of the provider and recipient of services and the Customer makes no claim and shall not make any claim in this respect.

## **SUBJECT TO CONTRACT**

- 18.10 The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by this Agreement.
- 18.11 No person who is not a party to this Agreement is granted or shall acquire any rights under it or be entitled to benefit from any of its terms, whether by virtue of the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 18.12 Except as expressly provided in this Agreement or any Station Licence, no alteration to or variation of this Agreement or any Station Licence shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative in accordance with the Change Control Procedure.
- 18.13 This Agreement (and any Station Licences) may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

## SUBJECT TO CONTRACT

### SCHEDULE 1

#### Defined Terms

"Access Date"	means in respect of the relevant Station the date access is actually provided to the Customer to enable commencement of the installation of any Customer Equipment.
"Accommodation"	means any land, existing or new building, structure, erection, installation, cabin, cabinet, kiosk or equipment housing structure (including any Mast) of Arqiva used to house or bear Equipment situated at or adjacent to and serving a Station (including private access ways, paths and private roads in or leading to a Station).
"Adjudicator"	means the adjudicator appointed under the Undertakings.
"Advance Design Agreement"	means an agreement of the type referred to in Clause 2.8.1 to allow Arqiva to commence the design process in October 2012 prior to the signature of this Agreement.
"Advance Equipment Procurement Agreement"	means an agreement of the type referred to in Clause 2.8.2 to allow orders to be placed for Equipment prior to the signature of this Agreement.
"Agreed ERP"	means the ERP of any Customer Equipment that Arqiva has confirmed to the Customer does not (on the date such confirmation is made), when taken in conjunction with existing apparatus (including that of other users) located at the relevant Station at that date, result in that Customer Equipment causing the Station's aggregate ERP to exceed the ICNIRP public guidelines.
"Agreement"	means these Reference Offer Terms and Conditions, all Schedules hereto, and any other documents which are referred to in any of the foregoing.
"Antenna"	means any antenna, dish or other item of equipment, apparatus, appliance or instrument installed on or affixed to any Mast at any Station for the reception, transmission or relay of radio or electromagnetic waves and used in the provision of Broadcast Services.
"Antenna ADS Approval Date"	means any date so specified in Schedule 11 (Location Dates).
"Antenna Design Proposal"	means a document prepared by Arqiva which will set out the Antenna options available to the Customer.
"Antenna Design Specification" or "ADS"	means the specification for the Antenna System which shall include the selected Antenna physical configuration, computer modelled HRP's, the computer modelled VRPs, provisional system gain calculations and provision implementation plans.

## SUBJECT TO CONTRACT

"Antenna System"	means the assembly of Antenna(s) specified in a Station Licence, and the supporting fixtures and feeders for that assembly.
"Approved Contractor"	means a person or team of persons approved by Arqiva, in accordance with the Code of Practice, as being properly trained, qualified and experienced to carry out the kinds of activities permitted by the Station Licence.
"Arqiva Equipment"	means Equipment (other than Customer Equipment and Common Equipment) used by Arqiva or any third party in relation to the provision of Broadcast Services, and any transmission equipment, combining equipment, antennas, transmitters, plant, machinery, Services Media, apparatus, appliances, instruments or any other equipment at any Station which are used by Arqiva or any third party for any purposes which do not relate to the provision of Broadcast Services.
"Arqiva Licence"	means (i) any radio spectrum licence granted to Arqiva under Part I of the Wireless Telegraphy Act 1949; and/or (ii) any conditions imposed on Arqiva under the General Authorisation; as applicable
"Associated Companies"	means, in relation to a party, any subsidiary of that party, any holding company of that party, or any subsidiary of any holding company of that party. A company or other entity shall be a "holding company" for the purposes of this definition if it falls within either the meaning attributed to that term in Sections 736 and 736A of the Companies Act 1985 or the meaning attributed to the term "parent undertaking" in Section 1162 of the Companies Act 2006, and a company or other entity shall be a "subsidiary" for the purposes of this definition if it falls within either the meaning attributed to that term in Sections 736 and 736A of the Companies Act 1985 or the meaning attributed to the term "subsidiary undertaking" in Section 1162 of the Companies Act 2006.
"Broadcast Operator"	means the holder of a licence granted under Part II of the Broadcasting Act 1996 or Part III of the Broadcasting Act 1990 to provide a Broadcast Service.
"Broadcast Service"	means a broadcasting transmission service within the United Kingdom, to deliver broadcast content to end users on a National, Regional or Metropolitan basis (as such term is defined in the Notification).
"Business Day"	means any day which is not a Saturday, Sunday or a public holiday in the relevant part of the United Kingdom.
"Change Control Procedure"	means the procedure set out at Schedule 4 (Change Control Procedure).
"Change in Broadcasting Law"	means any of the following:  (i) any change to the Wireless Telegraphy Acts 1949, 1967, 1998 and 2006, the Telecommunications Act 1984, the Broadcasting Act 1990, the Broadcasting Act 1996, the Communications Act 2003 and any other statutes or regulations relating to broadcasting, wireless telegraphy or telecommunications as are from time to time in force during the term of this Agreement (the "Statutes");

## SUBJECT TO CONTRACT

(ii) any extension, enactment or re-enactment of any of the Statutes;

(iii) any change to any licences required to be held by Arqiva pursuant to any of the Statutes which requires Arqiva to carry out further work in order to be in compliance in all material respects therewith; or

(iv) any relevant technical standards notified by any Competent Authority to Arqiva from time to time.

"Change in Law"	means any of the following (i) a change in the judicial interpretation or application by any Government Authority of any Law in the United Kingdom; (ii) the enactment or introduction of any new Law in the United Kingdom; (iii) the modification or repeal of any Law in the United Kingdom; (iv) the termination, amendment or revocation of any Consent; or (v) the introduction of new or amendment of existing non-binding guidelines, rules and guidance issued by any Government Authority or (vi) any Change in Broadcasting Law.
"Change Request"	has the meaning given to it in Schedule 4 (Change Control Procedure).
"Change Request Form"	means the change request form as is set out in Schedule 4 (Change Control Procedure).
"Charges"	has the meaning given to it in Schedule 12 (Charges and Pass-Through Costs).
"Charging Year"	means the period of 12 months from the Access Date for the last Location and any subsequent period of 12 months starting on an anniversary of the Access Date for the last Location or, where the context requires, part thereof while this Agreement remains in force.
"Code of Practice"	means Arqiva's "Code of Practice for Site Sharers at Arqiva's Sites" (currently document number BOH325.19 which is available at:  <a href="http://www.arqiva.com/corporate/pdf/documentation/boh325-internet.pdf">http://www.arqiva.com/corporate/pdf/documentation/boh325-internet.pdf</a>  as updated and amended from time to time.
"Common Accommodation"	means Accommodation which is shared or available for shared use (but not occupation) by Arqiva, the Customer, MTS Providers, and/or any other party authorised by Arqiva from time to time.
"Common Equipment"	means the Equipment which is wholly or partly used to provide Network Access and which is shared or available for shared use by Arqiva, the Customer, MTS Providers and/or any other party authorised by Arqiva from time to time.
"Compatibility Test Date"	means any date so specified in Schedule 11 (Location Dates).
"Competent Authority"	means Ofcom or H.M. Government.
"Confidential Information"	means, in relation to either party, information (in any form) belonging or relating to the disclosing party, its Associated Companies, its or their

## SUBJECT TO CONTRACT

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

"Consent"	means any consent, approval, licence, authorisation or permission that Arqiva requires from any Competent Authority, Government Authority, Landlord or other third party in order to provide Network Access, including any Arqiva Licence.
"Customer Accommodation"	means any Accommodation used (but not occupied) exclusively by the Customer at any Station.
"Customer Broadcast Operator"	means any Broadcast Operator with whom the Customer has a contract or other arrangement to enable such Broadcast Operator to provide Broadcast Services.
"Customer Equipment"	means any Equipment agreed in advance with Arqiva and used exclusively by the Customer or otherwise under the Customer's exclusive control as specified in a Station Licence.
"Customer Licence"	means the broadcasting licence granted under the Broadcasting Acts 1990 and 1996 and any radio spectrum licence granted under Part I of the Wireless Telegraphy Act 1949 for the Permitted Use; or any of them.
"Customer Output Signal"	means the radio frequency signals produced by Customer Equipment.
"DTT"	means digital terrestrial television.
"Due Date"	means the date on or, as the case may be, by reference to which payment of any amount owed to Arqiva is to be made under any provision of this Agreement.
"Effective Date"	means the date at the top of this Agreement.
"Equipment"	means any transmission equipment, combining equipment, Antenna, other antenna, aerial, dish, transmitter, telemetry, plant, machinery, Services Media, apparatus, appliance, instrument or any other item of equipment which is used to provide Broadcast Services or any other services at any Station.
"ERP"	means effective radiated power, which for the purpose of this Agreement shall mean the maximum power which the relevant Customer Licence

## SUBJECT TO CONTRACT

	permits Customer Output Signals to be transmitted from any Antenna at the Station.
"Exceptional Risk"	means any risk so identified in Schedule 6.
"Excluded Event"	has the meaning given to it in paragraph 2 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Force Majeure Event"	means any of the following events: <ul style="list-style-type: none"><li>(i) any act of God, insurrection or civil disorder, any act of terrorism or vandalism, war or military operations, national or local emergency, industrial disputes (official or unofficial) of third parties, fire, flood, a prolonged period of inclement weather, outbreak of disease or epidemic;</li><li>(ii) any Change in Law;</li><li>(iii) any act or omission of any Government Authority which is not a Change in Law, except where caused by any act or omission of Arqiva;</li><li>(iv) any act or omission of any utility provider which is beyond the reasonable control of Arqiva; or</li><li>(v) any other cause, whether similar or dissimilar, outside Arqiva's reasonable control, which for the avoidance of doubt shall not include any act or omission of Arqiva or any industrial dispute (official or unofficial) relating to Arqiva personnel.</li></ul>
"Forecast Pass-Through Costs"	has the meaning set out in Clause 9.21.
"General Authorisation"	means the General Authorisation regime applicable to Arqiva introduced by Ofcom in 2003 to replace the licence granted to Arqiva as a provider of a broadcast communications network under the Telecommunications Act 1984, including the general conditions applicable to that regime known as the "General Conditions of Entitlement" and any significant market power (SMP) conditions as determined by Ofcom and contained in the Notification, as such General Conditions of Entitlement and SMP conditions are published from time to time by Ofcom on its website.
"Government Authority"	means any supranational, state or local governmental entity or instrumentality (including any ministry, department, political subdivision, agency (including but not limited to the HPA and ICNIRP), corporation or other person exercising the delegated authority of any such person or entity) having jurisdiction (whether legislative, executive, regulatory, administrative, judicial or otherwise howsoever) over the subject matter of, or any matter pertaining to, this Agreement or any individual Station Licences; either or both of the parties; and/or any persons employed, engaged or contracted by either of the parties.
"Guarantor"	means the guarantor or other provider of security as set out in Schedule 20.



## SUBJECT TO CONTRACT

"Guarantee"	means the guarantee or other form of security in the form set in Schedule 20.
"HPA"	means the Health Protection Agency or any replacement or successor body, being the body responsible for setting UK industry accepted guidelines for maximum permitted power density of non-ionising radiation for public exposure, and which at the date of this Agreement established such guidelines by reference to guidelines published by ICNIRP.
"HRP"	means horizontal radiation pattern.
"ICNIRP"	means the International Commission for Non-Ionising Radiation Protection or any replacement or successor body.
"Intellectual Property Rights"	means all rights to copyrights, inventions, registered or unregistered designs, trade marks, patents (and all applications for trade marks or patents), trade secrets, know-how, rights of confidence, moral rights and any other intellectual or industrial property rights of any nature, whether like those described above or otherwise, throughout the world.
"Interface Point"	means, at any Station, the point where the Customer Equipment meets the Common Equipment, and being at such location as is specified by Arqiva in Schedule 8 (Scope of Arqiva System and Performance).
"Landlord"	means any person or body corporate holding an interest in any Station or in any land over which access to any Station is required including a reversionary interest as Arqiva's landlord, licensor or grantor, or as Station owner where Arqiva is the nominated Station manager, or the beneficiary of any covenants or restrictions relating to or affecting Arqiva's rights of access to any Station.
"Laws"	means all Legislation, statutes, regulations, decrees, ordinances and other laws, regulations, by-laws, regulatory requirements and codes of practice of or issued by any Government Authority.
"L-DTPS Network Access Programme"	means the implementation programme set out in Schedule 11 (Location Dates).
"Local Digital Television Programme Services" or "L-DTPS"	means the digital television programme services as referred to in the Ofcom Specification (i.e. two National Services and a series of local services).
"Location"	means the locations listed in Schedule 13, which may refer to more than one Station.
"Location Service Date"	means the date on which the Customer commences operational broadcasting use from the relevant Station(s).
"Legislation"	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of Royal Prerogative, and any enforceable community right within the

## SUBJECT TO CONTRACT

meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom.

"Licence Expiry Date"	means the expiry date specified in the relevant Station Licence.
"Licence Term"	means, in respect of each Station Licence, the period from the relevant Access Date to the relevant Licence Expiry Date, unless the relevant Station Licence is terminated prior to such Licence Expiry Date in accordance with this Agreement.
"Managed Transmission Services" (or "MTS")	means the managed services that may be provided by the Customer to the Broadcast Operator or by an MTS Provider to any Other Broadcast Operator in respect of the provision of Broadcast Services.
"Mast"	means any radio mast, tower, pole, rooftop, stub-mast, building elevation face mounting, head-frame or other aerial support pole or structure (located at height or at ground level).
"Minutes Lost"	has the meaning set out in paragraph 4.1 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"MTS Provider"	means any provider of Managed Transmission Services other than the Customer.
"Multi-Party Change"	has the meaning set out in paragraph 2.2 of Schedule 4 (Change Control Procedure).
"National Services"	means services other than those provided by a local digital television provider.
"Network Access"	has the meaning given to such term in the Undertakings in relation to, and to the extent required for, the Permitted Use.
"Network Access Annual Fee"	has the meaning given to in Schedule 12 (Charges and Pass-Through Costs).
"Network Access Availability"	means the availability of Network Access calculated as per the formula referred to in paragraph 4 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Network Access Credits"	means the credits payable by Arqiva as referred to in paragraph 5 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Network Access Facilities Specification Date"	means any date so specified in Schedule 11 (Location Dates).
"Network Access Initial Fee"	has the meaning given to it in Schedule 12 (Charges and Pass-Through Costs).

## SUBJECT TO CONTRACT

"Network Access Level"	means the target availability level of Network Access referred to in Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Notification"	means the Notification issued by Ofcom under Sections 48(1) and 79(4) of the Communications Act 2003 contained in the document "Broadcasting Transmission Services: a review of the market, Final statement" issued by Ofcom on 28 April 2005.
"Ofcom"	means the Office of Communications or any successor.
"Ofcom Specification"	means the document entitled "Draft Note for Applicants on Coverage for Local Television - Minimum Coverage Requirements and Transmission Arrangements" dated 27 January 2012. A copy of the Ofcom Specification is available at: <a href="http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/annexes/Note_on_Local_TV_coverage.pdf">http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/annexes/Note_on_Local_TV_coverage.pdf</a> .
"Other Broadcast Operator"	means any operator of any Broadcast Service, other than the Customer Broadcast Operator.
"Pass-Through Costs"	has the meaning set out in paragraph 2.2 of Schedule 12 (Charges and Pass-Through Costs).
"Permitted Use"	means use (in accordance with the terms of the applicable Station Licence) by the Customer, or an Approved Contractor, of Customer Equipment located at the Station for the provision of the applicable Broadcast Service (or applicable data service).
"Phase 1 Location"	means a Location specified as such in Schedule 13.
"Phase 2 Location"	means a Location specified as such in Schedule 13.
"Request Date"	for a Phase 2 Location is the last day of the month in which the Customer requested Arqiva to provide services under this Agreement for that Phase 2 Location.
"Review"	means the review of Charges undertaken in accordance with Clause 9.23 and Schedule 12 (Charges and Pass-Through Costs).
"Rights"	means rights granted to the Customer by Arqiva including but not limited to those contained in Clause 6 of this Agreement (and in each individual Station Licence).
"Risk"	means any Standard Risk or Exceptional Risk.
"RPI"	means the all items Retail Prices Index published by the Office for National Statistics (or equivalent index published by any successor organisation).
"Services Media"	means any communications, telecommunications, electricity, and/or other services supply or feeder cable, pipe, wire, earthwire, waveguide, conduit, duct, or other service conducting media.

## SUBJECT TO CONTRACT

"Site"	means the site of any Station as listed in Schedule 13 (Locations).
"SMC"	means Arqiva's Service Management Centre at Emley Moor. Contact number 01924 508100. Fax 01924 508185. email <a href="mailto:SMC.supervisors@arqiva.com">SMC.supervisors@arqiva.com</a> .
"Special Condition"	means any site specific obligations (including any provisions denoted as "Special Conditions") contained in the Station Licence.
"Standard Risk"	means any risk so identified in Schedule 6.
"Station"	means any station listed in Schedule 13 (Locations), including all the Accommodation, Common Equipment and Customer Equipment installed or located at it.
"Station Licence"	means the Station-specific licence terms agreed between the Customer and Arqiva for each Station in respect of which the Customer has been granted Network Access, setting out any Special Conditions relating to the relevant Station and being substantially in the form of the template set out at Schedule 5 (Station Licence Template), as may be updated from time to time.
"Station Weighting"	means the station weightings applicable to each station as set out in Table 2 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).
"Target Access Date"	means any date so specified in Schedule 11 (Location Dates).
"Target Location Service Date"	means any date so specified in Schedule 11 (Location Dates).
"Term"	means the duration of this Agreement as determined in accordance with Clause 11.1.
"Transmitted Service Signal"	means the radio frequency signals transmitted from the Antenna System at any Station.
"Unavoidable Pass-Through Costs"	means the Pass-Through Costs which Arqiva, using reasonable endeavours, is unable to avoid or mitigate.
"Undertakings"	means the undertakings accepted by the Competition Commission on 1 September 2008 from Macquarie UK Broadcast Holdings Limited, Macquarie MCG International Limited, Macquarie European Infrastructure Fund II, Macquarie European Infrastructure Fund III and Macquarie Capital Funds (Europe) Limited in respect of the completed acquisition by Macquarie UK Broadcast Ventures Limited, a subsidiary of Macquarie UK Broadcast Holdings Limited, of National Grid Telecoms Investment Limited, Lattice Telecommunications Asset Development Company Limited and National Grid Wireless No. 2 Limited. A copy of the Undertakings is available at <a href="http://www.competition-commission.org.uk/">http://www.competition-commission.org.uk/</a> .
"VRP"	means vertical radiation pattern.

## **SUBJECT TO CONTRACT**

"Year" means the period from the Effective Date of this Agreement until the next following 30 June and any subsequent period of twelve (12) consecutive months, or part thereof where the context requires, and "Yearly" shall be construed accordingly.

## SUBJECT TO CONTRACT

### SCHEDULE 2

Network Access Availability, Network Access Levels and Network Access Credits

References in this Schedule to paragraphs are to paragraphs of this Schedule.

#### 1. GENERAL

- 1.1 If in respect of any Year Arqiva fails to achieve the Network Access Level as calculated using the formula set out in paragraph 4.1, Arqiva shall incur a liability to pay Network Access Credits to the Customer which shall be calculated in accordance with the provisions of paragraph 5.
- 1.2 For the purposes of calculating Network Access Availability, Minutes Lost shall be accumulated from the time of notification of the relevant Network Access fault to the SMC.
- 1.3 At the end of each Year, Arqiva shall provide the Customer with a copy of its calculations of any Network Access Credits payable in respect of that Year. Network Access Credits shall be payable in accordance with Clause 5.14 of the Agreement.
- 1.4 In respect of any Station or Stations for which, at the time of calculation less than a year has elapsed since the Location Service Date for the relevant Station or Stations, the calculation shall be made assuming Network Access Availability of 100% for any part of the year prior to the Location Service Date for the relevant Station or Stations.

#### 2. EXCLUDED EVENTS

- 2.1 For the purpose of calculating Network Access Availability, the period of any interruption in provision of Network Access due to any of the following events shall not count as Minutes Lost:
  - 2.1.1 a failure or interruption resulting from the Customer's refusal to grant or delay in granting permission for Arqiva to carry out planned or emergency essential maintenance;
  - 2.1.2 Arqiva's due compliance with safe working practices stipulated by the HPA or any applicable Laws or any generally recognised protocol or standard (whether or not having the force of law);
  - 2.1.3 any Force Majeure Event;
  - 2.1.4 a lightning strike directly on the Station or very close to it;
  - 2.1.5 inclement weather conditions affecting travelling to any Station;
  - 2.1.6 a delay of no more than 30 seconds in re-establishing Network Access when switching to alternative power supplies or equipment;
  - 2.1.7 any fault requiring Mast ascent during the hours of darkness or inclement weather where, in the reasonable judgement of Arqiva, a potential safety hazard exists;
  - 2.1.8 any breach of this Agreement by the Customer;
  - 2.1.9 any interruption as a result of Arqiva complying with directions issued to it by a Government Authority (including Ofcom);
  - 2.1.10 any interruption resulting from defects or failures in the equipment or services provided or operated by or on behalf of the Customer (other than equipment which Arqiva is required to operate and maintain);

## **SUBJECT TO CONTRACT**

- 2.1.11 any interruption resulting from loss of mains electricity supply for any reason, except where permanent alternative electricity supply facilities, independent of the mains, are required to be provided by Arqiva under this Agreement;
- 2.1.12 any fault requiring attendance at a Station during any period where such attendance is not permitted or is otherwise prevented as a consequence of any Force Majeure Event;
- 2.1.13 any interruption due to causes listed in this Schedule 2 at paragraph 3 as "Planned Works", provided that the time and duration of such works has been notified to and agreed by the Customer in advance in accordance with the procedures notified by Arqiva to the Customer from time to time;
- 2.1.14 any compliance with any request or instruction of the Customer, where the interruption would not have occurred but for such compliance;
- 2.1.15 additional time spent waiting for or travelling via ferries or flights required for access to island Stations;
- 2.1.16 any other occurrence that the parties mutually agree not to treat as Minutes Lost;
- 2.1.17 a failure by the customer to deliver the Customer Output Signal to Arqiva; and
- 2.1.18 an Antenna System fault.

### **3. PLANNED WORKS**

- 3.1 For the purpose of calculating Network Access Availability, the period of any interruption in provision of Network Access due to causes including any of the following events shall be counted as planned works and accordingly shall not count as Minutes Lost pursuant to paragraph 2.1.13 above:
  - 3.1.1 maintenance or replacement of Antenna Systems;
  - 3.1.2 maintenance or replacement of aircraft warning lights;
  - 3.1.3 painting of the Antenna support structure;
  - 3.1.4 replacement, strengthening or maintenance of the Antenna support structure, including greasing of stays;
  - 3.1.5 periodic inspections of the Antenna support structure, statutory or otherwise;
  - 3.1.6 periodic inspections of Antenna Systems carrying the transmitted service signal;
  - 3.1.7 maintenance or replacement of Common Equipment;
  - 3.1.8 periodic inspections of equipment related to the permanent electricity supply, statutory or otherwise;
  - 3.1.9 electricity meter changes; and
  - 3.1.10 installation of infrastructure for third parties.

### **4. NETWORK ACCESS AVAILABILITY**

- 4.1 Network Access Availability shall be calculated annually as a percentage for the immediately preceding 12 months by applying the following formula:

## SUBJECT TO CONTRACT

$$\text{Network Access Availability} = \frac{A - B}{A} \times 100\%$$

Where:

**A = Total Minutes:** Total number of minutes in the relevant 12 month period.

**B = Minutes Lost:** Total number of minutes in the relevant twelve (12) month period during which the Customer was unable to transmit the Customer Output Signal from the Station within the agreed technical parameters due to a loss of Network Access, other than where this was attributable to an Excluded Event.

- 4.2 If the Network Access Availability for any Station as calculated in paragraph 4.1 above for the relevant 12 month period is less than the Network Access Level specified in Table 1 below, Network Access Credits shall be payable calculated in accordance with the formula in paragraph 5 below.

**Table 1**

Antenna Configuration	Mains Electricity Supply Configuration	Network Access Level
Split	Duplicated	99.90%
Split	Single	99.50%

## 5. NETWORK ACCESS CREDITS

- 5.1 Subject to paragraph 5.2 below, the value of the Network Access Credit shall be calculated according to the following formula:

$$\text{Network Access Credit (Station)} = SW \times (NAL - NAA) \times \text{Network Access Annual Fee} \times 10$$

Where:

**SW** = Station Weighting for the relevant Station, expressed as a percentage..

**NAL** = Network Access Level for the relevant Station, expressed as a percentage.

**NAA** = Network Access Availability for the relevant Station, expressed as a percentage.

The Station Weighting applicable to each Station shall be as shown in Table 2, below.

**Table 2 - Station Weightings**

The weightings shown in this Table 2 are based on a percentage of the total population coverage for all Stations.



## SUBJECT TO CONTRACT

Note: This table assumes that all 58 Stations offered are implemented. If a different number of Stations, or antenna solutions that provide different predicted population coverages are implemented, then this table and the respective Station Weightings shall be recalculated accordingly.

STATION	WEIGHTING
ANGUS	0.98
BARNSTAPLE	0.06
BEECROFT HILL*	0.27
BELMONT	1.95
BILSDALE (TEESSIDE)	1.57
BILSDALE (YORK)	0.52
BLACK HILL (GLASGOW)	4.85
BLUEBELL HILL	1.04
BRIERLEY HILL	0.57
BRISTOL ILCHESTER CR	0.20
BRISTOL KINGS WESTON	0.11
BROMSGROVE	0.21
CALDBECK	0.67
CARADON HILL (PLYMOUTH)	0.48
CRAIGKELLY	2.11
CRYSTAL PALACE	22.87
DARVEL	0.79
DIVIS	1.84
DURRIS	0.92
EMLEY MOOR	7.37
FENTON	0.90
GUILDFORD	0.39
HANNINGTON (BASINGSTOKE)	0.47
HANNINGTON (READING)	1.04
HUNTSHAW CROSS	0.17
KIDDERMINSTER	0.16
KILVEY HILL	0.53
LARK STOKE	0.21
LIMAVADY	0.26
LLANDDONA	0.12
LONDONDERRY	0.27
LUTON*	0.17
MADINGLEY	0.61
MALVERN	0.37
MENDIP	2.12
MOEL Y PARC	0.18
NOTTINGHAM	0.63
OLIVERS MOUNT	0.24
OXFORD	0.78
PLYMPTON	0.28
PONTOP PIKE	5.57
RIDGE HILL (HEREFORD)	0.32
ROSEMARKIE	0.36
ROWRIDGE	1.86
SALISBURY	0.22
SANDY HEATH	0.47

## SUBJECT TO CONTRACT

STATION	WEIGHTING
SHEFFIELD	0.90
STORETON	0.43
SUTTON COLDFIELD	8.15
TACOLNESTON	1.09
TAY BRIDGE*	0.12
TUNBRIDGE WELLS	0.33
WALTHAM	1.48
WENVOE	2.57
WHITEHAWK HILL	0.72
WINTER HILL (BLACKPOOL)	2.52
WINTER HILL (LIVERPOOL)	5.91
WINTER HILL (MANCHESTER)	7.70
TOTAL	100.00

Note: in the above table, Stations marked with an asterisk (\*) have a single mains supply and no fixed generator.

- 5.2 The total Network Access Credits payable in respect of any 12 month period shall not exceed twenty-five per cent (25%) of the Network Access Annual Fees payable by the Customer to Arqiva under this Agreement in respect of the relevant 12 month period excluding Pass-Through Costs.

## **SUBJECT TO CONTRACT**

### SCHEDULE 3

#### Support Services

Support services available to the Customer include the following:

#### **1. CALL HANDLING**

- 1.1 Service calls will be answered 24 hours a day, 365 days a year by a suitably trained and competent operator, who will deal with the call directly or redirect it to an appropriate Arqiva specialist. Calls relating to faults will be dealt with and progressed on an immediate basis, 24 hours a day, 365 days a year.
- 1.2 The Customer shall ensure that all calls concerning faults are made to the telephone number(s) notified to the Customer by Arqiva from time to time in writing.

#### **2. RESPONSE**

- 2.1 Where Arqiva needs to physically attend any Station, it will arrange for this as soon as is reasonably practicable, normally within the same Business Day (or within the next Business Day if the fault is reported outside office hours (being 8am to 5pm on Business Days)), and depending upon the particular specialisation required. Arqiva will provide a permanent repair, or temporary repair, or temporary replacement infrastructure, or best practical mitigation of service impact, depending upon the nature of the fault. Whilst Station visits will from time to time (where considered appropriate by Arqiva) be made outside office hours, repair works that require structural ascent will normally only be safe and practical in good light and suitable weather, and a final decision as to whether it is safe to climb will be made by Arqiva staff.

#### **3. ABORTIVE VISITS**

- 3.1 Before reporting a fault to Arqiva, the Customer shall seek to determine the nature of the fault by using its own monitoring arrangements and report this information to the SMC. The Customer shall ensure and confirm by use of the independent monitoring source that the failure or defect originates from any Arqiva Equipment or Common Equipment.
- 3.2 In the event that Arqiva attends a Station, or incurs costs, to rectify a fault and find that the fault does not originate from any Arqiva Equipment or Common Equipment, then Arqiva may make separate additional charges, for attendance and/or work carried out by Arqiva as a result of the incorrect or inadequate information provided by the Customer regarding the fault or any breach of this Agreement by the Customer.

## SUBJECT TO CONTRACT

### SCHEDULE 4

#### Change Control Procedure

#### 1. PRINCIPLES

- 1.1 Where the Customer or Arqiva wish to request a change to the provision of Network Access facilities, the Customer may at any time request, and Arqiva may at any time recommend (in each case a "Change Request"), such change in accordance with the Change Control Procedure as set out at paragraph 2 below.
- 1.2 Except in the case of a change implemented under paragraph 2.5 of this Schedule 4, no Change Request shall be binding on the parties unless the requirements of the Change Control Procedure have been satisfied in full.
- 1.3 Except in the case of a change implemented under paragraph 2.5 of this Schedule 4, until such time as a Change Request Form is approved and executed by the relevant parties, in accordance with the Change Control Procedure, Arqiva shall continue to provide Network Access as if the Change Request had not been made.
- 1.4 Any discussions which may take place between the Customer and Arqiva in connection with a request or recommendation before the authorisation of a resultant change shall be without prejudice to the rights of either party.
- 1.5 Both parties will:
  - 1.5.1 act reasonably in putting forward Change Requests, responding to Change Requests and generally in relation to the Change Control Procedure;
  - 1.5.2 not unreasonably withhold or delay approval of Change Requests;
  - 1.5.3 use reasonable endeavours to minimise costs in proposing changes to the Charges in connection with Change Requests; and
  - 1.5.4 be diligent in documenting and operating the Change Control Procedure.

#### 2. CHANGE CONTROL PROCEDURE

- 2.1 Arqiva shall maintain during the term of this Agreement a record of all Change Requests agreed in accordance with the Change Control Procedure (the "Change Register"). Arqiva shall provide a copy of the Change Register to the Customer on the Customer's request.
- 2.2 In the event that either party wishes to consider a change to Network Access, the relevant party shall complete a Change Request in the form below, and shall submit the same to the other party. Whichever party completes the form, Arqiva shall notify the Customer whether or not the Change Request is one which will require the agreement of other affected parties because for example it relates to shared infrastructure (a "Multi-Party Change"). Arqiva shall log the requested change on the Change Register.
- 2.3 If the Parties agree the changes in the Change Request, each party shall execute the Change Request, and Arqiva shall update the Change Register to reflect same. In the event of a Multi-Party Change, the parties shall approve the Change Request Form in the same manner as before, but such Change Request Form shall not be effective until Arqiva notifies the Customer in writing that all relevant parties have approved the Multi-Party Change.
- 2.4 Subject to paragraph 2.3 above, Arqiva shall issue a replacement Station Licence which shall be executed by both parties to reflect the changes to any relevant Station Licence in consequence. In relation to any other changes to this Agreement (which do not necessitate a change to any terms set out in the Station Licence), the Change Request Form signed by both parties in accordance with this procedure shall constitute a valid amendment to this Agreement for the purposes of Clause 18.12.

## **SUBJECT TO CONTRACT**

- 2.5 Any change which Arqiva believes is necessary in order to meet the Target Access Date or as a result of an Exceptional Risk shall be treated in accordance with the procedure set out in this Schedule 4, except that Arqiva shall be entitled to implement the relevant change even if a Change Request Form has not been signed by both parties. For the avoidance of doubt, any change so implemented shall constitute a valid amendment to this Agreement. Arqiva shall in any event, provide a Change Request Form to the Customer in respect of such change in accordance with this Schedule 4. Where the occurrence of any Exceptional Risk means that it is not possible to achieve the Target Access Date within the Charges, but it would be possible to achieve the Target Access Date with the investment of additional charges, Arqiva shall notify the Customer of this as soon as possible (specifying the amount of such additional charges) and it shall be the Customer's decision in its discretion whether to pay the additional charges or extend the Target Access Date. If the Customer does not agree with the impact on the Charges or on any timelines (including, but not limited to, the amendment of any Target Access Date) of any change implemented pursuant to this paragraph 2.5 and as set out in the relevant Change Request Form, the Customer may refer the matter to the Expert in accordance with Clause 17.3 of this Agreement.

## SUBJECT TO CONTRACT

### CHANGE REQUEST FORM

<b>Change Request Order</b>		CRO No.	
		Version	1
<b>SECTION 1</b>			
Project Title			
Customer Project ID	TBA	Arqiva Project ID	
Customer Contact	Name		
	Email		
	Telephone		
Arqiva Contact	Name		
	Email		
	Telephone		
Customer Cost Centre		Customer PO No.	
<b>SECTION 2</b>			
Description of Change (including whether or not a Multi-Party Change) (Y/N)			
Reason for Change/Impact of not making change			
Risk Assessment <i>Use this area to outline the perceived level of risk; any history of this sort of change; experience of making these sorts of changes; chance of failure; complexity; expertise available; testing proposals</i>			
Implementation Plan <i>Use this area to outline key milestones. Include the whole lifecycle of the change, including testing, acceptance, and post-implementation review.</i>			

## SUBJECT TO CONTRACT

Impact Assessment <i>Use this area to detail the impact on all Customer services regardless of whether directly affected by the change or not</i>	
Proposed amendments to be made to the Agreement	
Variation in costs/Charges <i>Use this area to detail the changes to be made to the Charges (if any), including the basis on which they have been calculated</i>	
Other supporting information <i>Include in this area details of any regulatory or other approvals required</i>	
<b>SECTION 3</b>	
Effective Date	Services affected
Stations/Locations affected	
<b>SECTION 4</b>	
Approved by Arqiva Project Manager	Date
Approved by Customer Project Manager	Date
Authorised signatory for Arqiva	Date
Authorised signatory for Customer	Date
<b>SECTION 5</b>	
Post-Implementation Review <i>Use this area to assess the implementation of this change and to record any learning or other notes which may be of use for future changes</i>	
Change Completed on	

**SUBJECT TO CONTRACT**

SCHEDULE 5

Station Licence Template

**STATION LICENCE**

This Station Licence is entered into subject to and pursuant to the Network Access Agreement made between Arqiva Limited (“Arqiva”) and the Customer named below, dated [ ] to which it shall be appended and it is agreed the terms and conditions of use set out in that Network Access Agreement shall be deemed to apply and be incorporated into this Station Licence.

<b>1 Arqiva</b> Name: Arqiva Limited Registered Office: Crawley Court, Crawley, Winchester, Hants SO21 2QA	<b>2 Arqiva Station</b> Name:
<b>3 Customer</b> Name: Registered Office: Address for correspondence and notices (if different from above): E-mail address: Telephone No: Fax No: Contact Name:	Grid Reference: Arqiva reference no: Customer reference: Service: Network Access Agreement Reference:
	<b>4 Antenna ADS Approval Date</b>
	<b>5 Network Access Facilities Specification Date:</b>
	<b>6 Target Access Date:</b>
	<b>7 Compatibility Test Date:</b>
	<b>8 Station Service Date (i.e. applicable Location                  Service Date):</b>
	<b>9 Station Licence Expiry Date:</b>
<b>10 Description of Station’s Accommodation/equipment housing location for Customer’s                  Equipment:</b> In accordance with attached drawing no [●]	
<b>11 Customer Equipment:</b> [ ]	
<b>12 Customer Output Signal Parameters:</b> Frequency: [ ] ERP: [ ]	
<b>13 Special Conditions:</b>	



**SUBJECT TO CONTRACT**

**This Station Licence** made between Arqiva and the Customer shall commence with effect from the Access Date for a period expiring on the Licence Expiry Date (“the Licence Term”).

The parties agree and acknowledge that this Station Licence is entered into pursuant to and incorporating the terms of the Network Access Agreement and, in the event of any inconsistency between the provisions of this Station Licence, the Special Conditions (referenced above) and the provisions of the Network Access Agreement (including the Code of Practice), the order of precedence confirmed in the Network Access Agreement shall apply.

Signed for Customer:.....

Countersigned for Arqiva:.....

PRINT NAME: .....

PRINT NAME: .....

Date of Customer Signature:.....

Date of Arqiva countersignature: .....

## SUBJECT TO CONTRACT

### SCHEDULE 6

#### Risks

##### Part 1 - Standard Risks

1. Any increase in the number of labour hours allocated to the build programme driven by internal or external risk factors including such risks as the following (but not, for the avoidance of doubt, including any risk factors which are Exceptional Risks):
  - (a) Imperfect information and assumptions relating to site structure, building conditions, hazardous materials or design parameters;
  - (b) Additional design requirements for contingency items: Re-use of buildings, building structural works, design of new facilities;
  - (c) Delays, or additional design requirements resulting from planning conditions or environmental impact assessment requirements;
  - (d) Supplier related issues resulting from complexity/technology, impact of specialist supplier resource constraints or supplier performance; or
  - (e) Industrial action by own workforce or suppliers' workforces.
2. Any changes in wages or labour rates that are not covered by RPI.
3. Any changes due to commodity price movements for raw materials and demand driven price changes for the following materials:
  - (a) Major electrical equipment, LV and HV switchgear, Diesel generators, HVAC Equipment;
  - (b) Cable, Antennas and other RF manufactured items;
  - (c) Civil and structural materials and consumables.
4. Any delays and additional costs associated with protracted planning processes, planning conditions and appeals, environmental impact assessments, landscaping and access conditions.
5. Any high winds restricting work at height or rain restricting Station access or building works (any inability to access a Site due to weather or natural disasters for a prolonged period shall be treated as a Force Majeure Event).
6. Any unanticipated soil stabilisation, slope stabilisation or reclamation works.
7. Any unacceptable static and dynamic loading characteristics requiring Antenna re-design, Mast replacement or Mast strengthening works that are not anticipated.
8. Any hazardous materials encountered during the project which will require specialist removal and disposal including contaminated soil, in-building asbestos, asbestos in Antenna shrouds, PCBs, oil, beryllium.
9. Any permanent or temporary access roads and drainage works that may be required at Stations.
10. Any unanticipated additional work to existing buildings or construction of new buildings to ensure suitability for re-use.

## **SUBJECT TO CONTRACT**

11. Any additional costs due to a compression of the work schedule resulting from one of the following events:
  - (a) Supplier and contractor performance;
  - (b) Union and workforce issues;
  - (c) Specialist resource and equipment constraints;
  - (d) Incident/accident; or
  - (e) Informal change of existing working practices driven by outside influence or change of attitudes.
12. Any changes required to existing infrastructure that no longer meets technical, maintenance or performance requirements.
13. Any measured EMF levels at site requiring changes to the work sequence, schedule, execution methodology or exposure periods.
14. Any failure of existing infrastructure e.g. Antenna fire, structural collapse that requires changes to the execution sequence, timing or method.
15. Foreign exchange fluctuations.
16. Any changes other than RPI annually to Arqiva's estimated hourly or daily labour rates used for the L-DTPS Network Access Programme.

## **SUBJECT TO CONTRACT**

### **Part 2 - Exceptional Risks**

1. Any Change in Law.
2. Any act or omission of any Government Authority which is not a Change in Law.
3. Any other Force Majeure Event.
4. Any failure to obtain any Consent (Arqiva having used reasonable endeavours to obtain such Consent, but this shall not imply any obligation on Arqiva's part to exercise any code powers under the Telecommunications Act 1984 (as amended by the Communications Act 2003)).
5. Any change to the L-DTPS Programme timetable (but not including changes to the timetable (i) arising as a direct result of a material breach of this Agreement by Arqiva or (ii) requested by Arqiva as a result of its failure to exercise reasonable care and skill).
6. Any change to the Ofcom Specification or failure to agree a revised Ofcom Specification in a timely manner.
7. Any failure to agree in a timely manner Service Continuity with any affected party or any change to any Service Continuity arrangements (as further described in Schedule 19).
8. Any failure to agree any Antenna Design Specification by the relevant Antenna ADS Approval Date.
9. Any delay, impediment or other act or omission of Customer (or any contractor employed by Customer), but only if and to the extent that such delay, impediment or other act or omission prevents or impedes the proper performance by Arqiva of its obligations under this Agreement.
10. Any cost or schedule change to the L-DTPS Network Access Programme as a result of disruption to existing services (except for disruption arising as a direct result of a material breach of this Agreement by Arqiva or by the failure of Arqiva to exercise reasonable care and skill), including any cost or schedule changes required by third party Station users in order to give their consent to relocation or reduced power working and also including where Location Service Dates do not occur on the Target Location Service Dates.
11. Loss or cessation of Station licences or leases.
12. Any health and/or safety related issues that restrict or halt works on site (except to the extent caused by Arqiva's negligence or breach of statutory duty).
13. Failure by the Customer to enter into an Advance Design Agreement and an Advance Equipment Procurement Agreement by 30 September 2012.
14. Any requirement, by the Customer to vary the number of sites, specification or deployment timetable as defined herein.
15. Any other risk which is not a Standard Risk.

## **SUBJECT TO CONTRACT**

### **SCHEDULE 7**

#### **Reporting and Progress Review**

##### **1. Reporting Process**

Project initiation/Kick-off Meeting

- 1.1 Within three months of the Effective Date, Arqiva will provide the Customer with details of the project tracking, forecasting and reporting approach that it will employ to enable it to provide the reporting set out in paragraph 2 below to the Customer at each progress review. Arqiva and the Customer will seek to agree the financial reporting approach to be employed in the period prior to the first progress review but in the absence of agreement Arqiva shall specify the reporting to be employed, acting reasonably.
- 1.2 Within three months of the Effective Date, Arqiva will hold a project initiation/kick off meeting with the Customer. The purpose of this meeting will be to:
  - 1.2.1 hold good faith discussions to determine an appropriate set of metrics (including in respect of build progress against the L-DTPS Network Access Programme, deliverables and financial performance considerations (including in respect of capital expenditure)) against which Arqiva shall subsequently provide regular, timely and appropriately detailed reports to the Customer in accordance with the rest of this Schedule 7; and
  - 1.2.2 present to and share with the Customer Arqiva's proposed plans, timescales, methodology, choice of technology, proposed major vendors, and other relevant elements of the L-DTPS Network Access Programme and also to take relevant input/responses from the Customer on the proposed plans.
- 1.3 The Customer, acting reasonably, shall have the opportunity to recommend alternative approaches to those initially proposed by Arqiva pursuant to paragraph 1.2.2 above if they are likely to minimise risk to the project, result in superior performance, or reduce costs. Arqiva shall, acting reasonably, give due consideration to such recommendations.

##### **2. Progress Reviews**

- 2.1 At intervals of six months Arqiva shall provide (by such times as may be agreed between the parties) the Customer with the following:
  - 2.1.1 An update on the progress of the L-DTPS Network Access Programme, in terms of milestones achieved and any risks or issues that may impact the L-DTPS Network Access Programme timescales; and
  - 2.1.2 A report of progress against the metrics in respect of physical delivery as established in the project initiation/kick-off meeting. Every six months, Arqiva shall also notify the Customer of any new material trends, issues or risks regarding the L-DTPS Network Access Programme.
- 2.2 At least half-yearly, Arqiva shall provide (by such times as may be mutually agreed between the parties) to the Customer the following:
  - 2.2.1 A high level report of financial expenditure and estimate to completion;
  - 2.2.2 A forecast of predicted future capital expenditure; and
  - 2.2.3 A forecast of predicted future capital expenditure through to the completion of the L-DTPS Network Access Programme and the forecast adjustment to the Initial Network Access Fee.

## **SUBJECT TO CONTRACT**

- 2.3 Arqiva will provide such reasonable supporting information and explanation for the updates, reports, forecasts and assessments described in paragraphs 2.1 and 2.2 above.

# SUBJECT TO CONTRACT

## SCHEDULE 8

### Scope of Arqiva System and Performance

#### **1 Provision of Network Access**

Arqiva will provide Network Access at all of the Stations in respect of Phase 1 Locations (and Phase 2 Locations requested in accordance with Schedule 11) as listed in Schedule 13. Schedule 13 also shows which Stations are required for each Location.

The provision of Network Access will include access to the following (subject to the terms of this Agreement and the applicable Station Licence(s)):

- a. Masts;
- b. Antenna Systems including feeders;
- c. Accommodation;
- d. Power systems including back-up power in a form of fixed generators where available;
- e. Monitoring of Network Access equipment;
- f. Telecom facilities within the Arqiva accommodation area.

The Network Access scope set out in this Schedule 8 is based on a desktop study and Site visits have not been undertaken. Therefore, changes to this Network Access scope may be required in order to allow for implementation. Any such changes will be subject to the Change Control Procedure.

It should be noted that the provision of the distribution of Customer signals to the Customer Equipment at the Stations by the Customer (and any other facilities which are not listed specifically herein) shall be outside the scope of this Agreement.

In respect of the distribution of content signals by the Customer, the use of line feeds has been assumed. Since line feeds have been assumed, the provision of off-air receive Antenna Systems (to allow the use of rebroadcast links) is outside the scope of this Agreement.

Arqiva shall provide Network Access facilities at the Stations to allow the Customer to install Customer Equipment at the Sites.

The ERPs (and associated transmitter power) are set out in Schedule 10 on a Station-by-Station basis.

The capacity requirements of the Station power system and Accommodation provision allows for an air-cooled solid state transmitter design operating at the ERP's show in Schedule 10.

Schedule 14 shows the power capacity and Accommodation available to the Customer under the terms of this Agreement. Should the Customer require any change in the power capacity and/or Accommodation as set out in Schedule 14, any such changes shall be subject to the Change Control Procedure.

In the event that any of the Customer's requirements lead to a change in the proposed Antenna Systems, this may affect all Network Access elements (including structure, Accommodation, power and Target Access Dates) as well as a possible impact of the requirements of the Customer Equipment and any such changes shall be subject to the Change Control Procedure.

#### **2 Masts**

Existing masts will be used at all Sites, with some minor strengthening required at a number of Sites.

Indicative available aperture space for each proposed Antenna has been identified, in the Locations specified in Schedule 10. It should be noted that Londonderry, Hannington (Reading petal) and

## SUBJECT TO CONTRACT

Emley Moor are identified as three Sites, where there are significant variances to the Ofcom proposed apertures. The impact on household coverage at these three Sites has not been assessed.

### 3 Antenna Systems

Schedule 10 gives details of the Antenna configurations and ERPs at each Station.

Arqiva shall provide single antennas to support the L-DTPS. A reserve facility will not be provided. Antennas shall be capable of supporting the ERP under normal operational conditions.

The Antenna Systems are designed to meet the Arqiva Antenna HRPs as set out in Schedule 10.

Where Antenna Systems modifications are requested by the customer these shall be subject to the Change Control Procedure. Any such modifications shall be chargeable to the Customer and Arqiva will confirm any changes to the Location Dates set out in Schedule 11. All Antenna designs are subject to securing Ofcom and Customer approval prior to finalisation, procurement and implementation. Further details of this approval process are provided in Schedule 9.

During periods of an Antenna System fault or planned Antenna maintenance, there will be a requirement to shut the whole Antenna down to allow safe access and allow maintenance work to proceed. Any interruption in provision of Network Access due to an Antenna System fault will not count as Minutes Lost.

During the Antenna construction period, existing services to other customers may be disrupted whilst the Antennas are being installed. Arqiva will aim to keep any such disruption to a minimum.

The process for selection of Antenna Systems is detailed in Schedule 9.

#### 3.1 Customer Equipment to Antenna System Feeders

##### 3.1.1 Feeder Type

Normal practice will be to use foam filled semi flexible feeders appropriate for the power. The highest powers may require the use of air-spaced semi-flexible feeders or rigid feeders. Customer supplied feeders on the Customer side of the Interface Point shall not rely on the Interface Point for mechanical support.

Air spaced feeders or rigid feeders will not be pressurised where the entire length is in an indoor environment of reasonably uniform temperature. However, where they are outdoors, such as passing between buildings, they will be pressurised with dry air by Arqiva.

##### 3.1.2 Interface Point

A description of the Interface Point provided by Arqiva is set out below:

Arqiva will provide an Interface Point within the Customer Equipment rack space. The Antennas Systems are implemented as two halves and the two inputs shall be fed in phase with equal power.

##### 3.1.3 Interface Connector Type

The interface connector type provided by Arqiva will be dependent on the nominal transmitter power for the multiplex, and will normally be one of the following:

DTT power	Connector
<700W	7-16



## SUBJECT TO CONTRACT

700W-2kW	7/8"
2kW-5kW	1 5/8"

### 3.1.4 Feeder Isolation

The input cable will be disconnected from the Antenna System under the control of Arqiva.

If the Customer requires its feeder cable to be isolated from the Antenna System when working on its own Customer Equipment, this service can be provided under the normal terms and charges for Arqiva attendance at the Station.

### 3.1.5 Attenuation (or Filtering)

Arqiva will install filters which achieve the level of pass band filtering for out-of-band emissions as specified in BOS014 (extract below). This level of filtering has been agreed with Ofcom for DSO. Please note that the specification does not achieve the full ETSI filter specifications.

### 3.1.6 Stopband Attenuation

The required minimum attenuation (as specified in BOS014) is in accordance with a mask indicated by the ERP.

#### Stopband Code 2A

Applies to Stations having ERP 1000W or more.

Frequency relative to channel centre frequency (MHz)	Attenuation (dB)
-12	-42.2
-6	-17.2
-4.2	0
-3.81	0
+3.81	0
+4.2	0
+6	-17.2
+12	-42.2

The mask is formed by drawing a straight line between the points in the table above.

#### Stopband Code B

Applies to Stations having an ERP of less than 1000W but equal to or more than 100W.

Also applies to band edge channels with an ERP of less than 100W.

## SUBJECT TO CONTRACT

Frequency relative to channel centre frequency (MHz)	Lower Band Edge Channels @ 100W (dB)	Lower Band Edge Channels @ 1,000W (dB)	Upper Band Edge Channels @ 100W (dB)	Upper Band Edge Channels @ 1,000W (dB)	Non Band Edge Channels @ 100W (dB)	Non band Edge Channels @ 1,000W (dB)
-12	-42.2	-42.2	-32.2*	-42.2*	-32.2*	-42.2*
-6	-17.2	-17.2	-7.2*	-17.2*	-7.2*	-17.2*
-4.2	0	0	0	0	0	0
-3.81	0	0	0	0	0	0
+3.81	0	0	0	0	0	0
+4.2	0	0	0	0	0	0
+6	-7.2*	-17.2*	-17.2	-17.2	-7.2*	-17.2*
+12	-32.2*	-42.2*	-42.2	-42.2	-32.2*	-42.2*

\* These figures are scaled proportionately to obtain attenuation figures for ERP between 1000W and 100W.

The mask is formed by drawing a straight line between the points in the table above.

Attenuation and group delay data will be provided to the Customer when the equipment is available.

The Customer remains responsible for ensuring that any applicable spectrum mask is met in respect of the radio frequency emissions from the Antenna which relate to the relevant Customer Equipment output signals.

#### 4 Accommodation

Arqiva will make use of existing buildings to provide accommodation for the Customer Equipment. The Customer will be allocated rack space as detailed in Schedule 14. This Accommodation is not for the sole use of the Customer.

Any requests for additional space requirements shall be dealt with in accordance with the Change Control Procedure.

Arqiva shall provide the following Customer Accommodation specification under the terms of this Agreement:

- A and B dual power supplies from existing Arqiva power distribution;
- ASI and CSI signal cables from the BT Telecoms area;
- 1 x Feeders from the Customer Equipment to the Antenna System;
- Escorted access to the area where the Customer Equipment shall be installed and maintained by the Customer;
- Cable management;
- Area heating (for equipment and personnel);
- Smoke detection;
- Intruder alarm;
- Room Ventilation for the shared area;
- Lighting; and
- Domestic power for test equipment.

Internal room lighting, cabling containment and ambient heating will be provided by Arqiva.

Internal cabling from power boards to the transmitter racks will be a Customer responsibility.

## **SUBJECT TO CONTRACT**

Where force-air cooled transmitters are proposed by the Customer, the Customer will be responsible for extraction of any exhaust air through Customer provided, sealed ducting connecting to a wall-mounted, external aperture provided by Arqiva.

### **5 Power Systems**

The power supply arrangements by Arqiva at the Stations are set out in Schedule 14 and are summarised as follows:

Unless otherwise stated in Schedule 14, the power system will generally comprise dual electricity supplies into the Station. These Stations will be backed up by standby diesel generators where currently available at the Station.

Power availability for the Customer Equipment is described in Schedule 14.

Operational restrictions shall apply at all Stations relating to the number of transmitter systems that can be powered at any one time. The Customer shall seek the authorisation of Arqiva before any redundant systems power tests are carried out.

### **6 Monitoring**

The Network Access equipment will be monitored and managed by Arqiva's SMC. For any given Site this may include one or more of the following:

- Site access;
- Fire;
- Environmental;
- Mains power; and/or
- Generator.

In addition Arqiva will remotely monitor station security at all Stations.

Arqiva will provide one or more of the above indications by means of pairs of contacts to the Customer in respect of the Network Access facilities.

The Customer will not be provided with controls for Network Access or any Customer Equipment.

For the avoidance of doubt, no monitoring of any equipment outside of the Network Access equipment will be provided.

### **7 Telecom Facilities**

It has been assumed that the Customer would chose at its own cost to provide signals to the Stations by terrestrial line feed. The provision of telecom facilities/distribution links to the Stations is outside the scope of this Agreement.

Distribution solutions are outside the scope of this Agreement and, in the event that the Customer requires an alternative distribution solution, any such request shall be subject to the Change Control Procedure.

## **SUBJECT TO CONTRACT**

### SCHEDULE 9

#### Customer Responsibilities

##### **Use of New Antennas**

In respect of new Antennas, Arqiva shall use all reasonable endeavours to ensure that the Antenna patterns are compliant with those as specified in Schedule 10. The Antenna System performance (i.e. system gain information) shown in Schedule 10 are indicative and will be subject to variation. Any refined Antenna patterns and associated gain information shall be provided for acceptance by the Customer to allow Arqiva to produce a detailed Antenna Design Specification which the Customer must approve in writing by the Antenna ADS Approval Date. Any refinement of the Antenna patterns may lead to variations in system gain which in turn may lead to changes in Customer Equipment. Any changes from the values shown in Schedule 10 may give rise to variations in the Charges and the Target Location Service Dates which shall be managed in accordance with the Change Control Procedure. Arqiva shall not be responsible for any changes the Customer may require to the Customer Equipment.

Since there will be an inter-dependence between coverage and system gain the Customer should be aware that if changes to the proposed Antenna details in Schedule 10 are required, the Customer Equipment required to achieve the nominal ERP may be subject to change. Whilst the Customer Equipment is outside the scope of this Agreement, any consequent implications for other Network Access facilities (as a result of the selection of an Antenna) shall be dealt with through the Change Control Procedure.

Where the Antenna System at a Station can be used operationally but it is agreed that the Antenna pattern requires modification, Arqiva shall not be liable to pay liquidated damages and shall use reasonable endeavours to rectify the situation as soon as possible.

##### **Specification of Network Access Facilities**

Schedule 10 shows the Network Access facilities to be provided by Arqiva at each Site for the use by the Customer for its Customer Equipment. The Customer shall confirm by the Network Access Facilities Specification Date that this meets their requirement for the Customer Equipment.

##### **Installation & Operation of Customer Equipment**

The Customer shall be required to ensure that the transmitter system does not exceed the Maximum Permitted Transmitter Output Power at any time.

The Customer shall ensure that, where Arqiva provide access to two separate halves to one Antenna, that the Customer Equipment provides signals as authorised by Arqiva. Arqiva shall provide notice to the Customer in the event of an operational requirement to reconfigure transmitter systems to operate in half Antenna mode.

In order to verify correct operation of the transmission and Network Access facilities, Arqiva shall require that the Customer Equipment is available for a compatibility test (for Stations where the Maximum Permissible Transmitter Power is greater than 1KW) by the Compatibility Test Date shown in Schedule 11. If the Network Access facilities perform as expected by Arqiva at the test when connected to the Customer Equipment then the Location Service Date shall be as stated in Schedule 10.

**SUBJECT TO CONTRACT**

**SCHEDULE 10**

Station Details

See attached

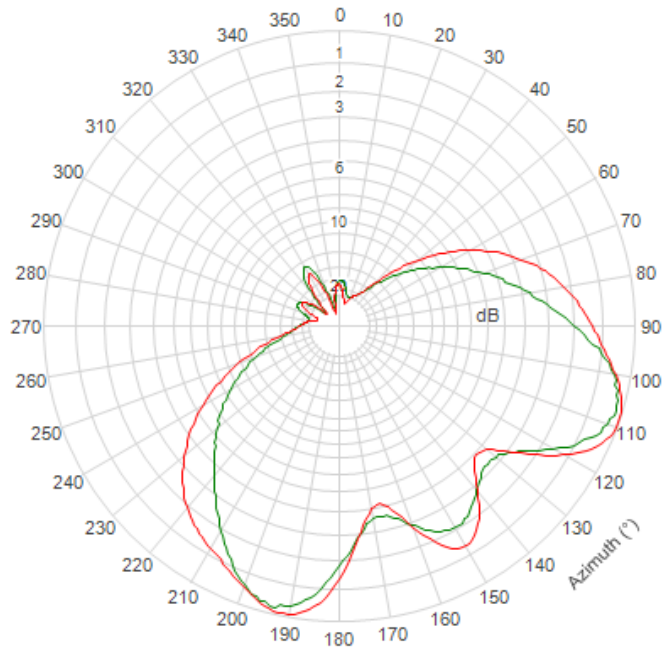
# LOCAL TV

Station	OFCOM Requirement					Arqiva Antenna System details					Available Aperture (based on initial assessment of space/aperture)
	Ch	ERP (kW)	Ant Ht (m)	Bearing	Pol	Feeder	Tx Power	Antenna Description	Location	PLT filename	
Angus	48	1	117	150	HP	1 5/8"	226	Two panels @ 90 degrees - 2 tiers	Dundee	12300_48P20110627	115.5m-18.5m
Barnstaple	49	0.001	25	260	VP	7/8"	0.27	Crossed Logs @ 90 degrees - 2 tiers	Barnstaple	13815_49C20110627	27.2m
Beecroft Hill	56	0.02	43	30	VP	7/8"	7.07	Crossed Logs @ 90 degrees - 2 tiers	Leeds	10415_56P20110622	38m
Belmont	27	10	222	0	HP	1 5/8"	971	Single Log - 6 tiers	Grimsby	12000_27P20110720	221m-223m
Bilsdale (Teesside petal)	24	5	200	20	HP	1 5/8"	261	Single Log - 4 tiers	Middlesbrough	11600_24P20110621	199m-201m
Bilsdale (York petal)	24	2	148	180	HP	1 5/8"	546	Single Log - 4 tiers	York	21600_24P20110708	147m-149m
Black Hill (Glasgow petal)	51	5	154	85 & 265	HP	1 5/8"	1695	Two Logs @ 85° & 265° - 4 tiers	Glasgow	10500_51P20110310	153m-155m
Bluebell Hill	27	1	44	30 & 190	HP	1 5/8"	142	Two Logs @ 30° & 190° - 4 tiers	Maidstone	15800_27P20110707	38.5m
Brierley Hill	29	0.2	44	70	VP	7/8"	77	Crossed Logs @ 120 degrees - 2 tiers	Birmingham	10203_29P20110624	44m
Bristol Ilchester Crescent	30	0.02	43	140	VP	7/8"	6.71	Crossed Logs @ 90 degrees - 2 tiers	Bristol	11008_30P20110624	28m-34m
Bristol Kings Weston	30	0.02	43	145	VP	7/8"	6.99	Crossed Logs @ 90 degrees - 2 tiers	Bristol	11007_30P20110624	38m-41m
Bromsgrove	29	0.04	43	205	VP	7/8"	16	Crossed Logs @ 90 degrees - 2 tiers	Bromsgrove	10206_29E20120404	43m
Caldbeck	56	5	165	45	HP	1 5/8"	2107	Two panels @ 90 degrees - 2 tiers	Carlisle	13700_56C20110620	163.3-166.8m
Caradon Hill (Plymouth petal)	30	1	182	120	HP	1 5/8"	125	Single Log - 4 tiers	Plymouth	23100_30P20110708	180.7m-182.7
Craigkelly	52	5	65	175	HP	1 5/8"	850	Two panels @ 90 degrees - 2 tiers	Edinburgh	14700_52P20110310	64m-66.5m
Crystal Palace	29	2	107	350	HP	1 5/8"	523	Two panels @ 90 degrees - 2 tiers	London	10100_29P20110310	125m-129m
Darvel	30	1	80	0, 215 & 32	HP	1 5/8"	256	3 panels - 2 tiers	Ayr	15200_30P20110622	82m-85m
Divis	30	5	93	15 & 155	HP	1 5/8"	1344	Single Panel @ 15 degrees - 2 tiers Single Log @ 155 degrees - 4 tiers	Belfast	10700_30P20110305	92m-94m
Durris	30	10	157	50	HP	1 5/8"	876	Single Log - 6 tiers	Aberdeen	11200_30P20110616	155.5m-158.5m
Emley Moor	56	5	161	340	HP	1 5/8"	1830	Two panels @ 90 degrees - 4 tiers	Leeds	10400_56P20110310	247m
Fenton	29	0.05	45	270	VP	7/8"	25	Crossed Logs @ 100 degrees - 2 tiers	Stoke on Trent	10211_29P20110615	40m mean
Guildford	51	0.1	45	45	VP	7/8"	41	Crossed Logs @ 90 degrees - 2 tiers	Guildford	10101_51P20110701	32m-34m
Hannington (Basingstoke petal)	51	2	71	120	HP	1 5/8"	200	Single Log - 4 tiers	Basingstoke	22600_29P20110621	64m-68m
Hannington (Reading Petal)	29	10	71	50	HP	1 5/8"	596	Single Log - 6 tiers	Reading	12600_29E20120412	45m
Huntshaw Cross	51	2	80	15	HP	1 5/8"	223	Single panel - 2 tiers	Barnstaple	13800_51C20010628	78.3-81.8m
Kidderminster	51	0.04	45	65	VP	7/8"	7.99	Single Log - 2 tiers	Kidderminster	10202_51C20110616	45m
Kilvey Hill	30	0.1	45	270	VP	7/8"	23	Crossed Logs @ 60 degrees - 2 tiers	Swansea	10601_30P20110624	36.5m
Lark Stoke	48	0.1	10	20	VP	7/8"	16	Single Log - 2 tiers	Stratford Upon Avon	10208_48P20110704	10m
Limavady	48	2	35	90 & 235	HP	1 5/8"	297	Two Logs @ 90° & 235° - 4 tiers	Limavady	13000_48C20120117	sub 22.4m
Llanddona	51	1	56	180	HP	1 5/8"	98	Single Log - 4 tiers	Bangor	11800_51C20110629	56m
Londonderry	51	1	59	115	VP	1 5/8"	101	Single Log - 4 tiers	Derry/Londonderry	13001_51P20110630	88m-91m
Luton	45	0.05	42	65	VP	7/8"	16	Crossed Logs @ 90 degrees - 2 tiers	Luton	12402_45C20110704	41-42m
Madingley	40	1	45	95	HP	1 5/8"	67	Single Log - 4 tiers	Cambridge	18241_40P20110613	45m-47m
Malvern	51	0.04	38	90	VP	7/8"	18	Crossed Logs @ 120 degrees - 2 tiers	Malvern	10207_51C20110624	38m
Mendip	51	10	144	10	HP	1 5/8"	873	Single Log - 6 tiers	Bristol	11000_51P20110722	146m-148m
Moel y Parc	56	2	118	180	HP	1 5/8"	741	Crossed Logs - 4 tiers	Mold	14500_56P20110708	111m-112.5m
Nottingham	50	0.1	41	100	VP	7/8"	51	Crossed Logs @ 120 degrees - 2 tiers	Nottingham	11101_50P20110624	39m-40m
Olivers Mount	56	0.2	33	340	VP	7/8"	76	Crossed Logs @ 90 degrees - 2 tiers	Scarborough	12002_56E_20120405_23bBW	33m
Oxford	51	10	80	230	HP	1 5/8"	652	Single Log - 6 tiers	Oxford	11700_51P20110616	99m-102m
Plympton	39	0.1	45	305	VP	7/8"	44	Crossed Logs @ 90 degrees - 2 tiers	Plymouth	13105_39P20110620	41m-42m
Pontop Pike	56	5	73	90	HP	1 5/8"	899	Two panels @ 90 degrees - 2 tiers	Newcastle	10900_56P20110310	77m-78m
Ridge Hill (Hereford petal)	51	1	79	310	HP	1 5/8"	109	Single Log - 4 tiers	Hereford	24900_51C20110613	81.5m-84m
Rosemarkie	52	1	61	170	HP	1 5/8"	157	Two panels @ 90 degrees - 2 tiers	Inverness	15600_52C20110629	61m
Rowridge	29	10	89	25	VP	1 5/8"	597	Two Logs (side by side) - 6 tiers	Southampton	10860_29P20110616	72m-75m
Salisbury	51	0.2	45	40	VP	7/8"	75	Crossed Logs @ 90 degrees - 2 tiers	Salisbury	10801_51C20110705	38m-39m
Sandy Heath	42	2	119	270	HP	1 5/8"	221	Single Log - 4 tiers	Bedford	12400_42C20110603	121m-123.5
Sheffield	55	0.1	43	110	VP	7/8"	28	Single Log - 2 tiers	Sheffield	10403_55P20110621	43m
Storeton	30	0.06	43	30	VP	7/8"	9.91	Single Log - 2 tiers	Liverpool	10307_30P20110622	41m-44m
Sutton Coldfield	51	10	132	230	HP	1 5/8"	1568	Single Panel - 4 tiers	Birmingham	10200_51P20110305	129m-131m
Tacolneston	57	10	100	30	HP	1 5/8"	1919	Single Log - 4 tiers	Norwich	11400_57P20110621	97m-98.5m
Tay Bridge	51	0.01	43	0	VP	7/8"	3.01	Crossed Logs @ 90 degrees - 2 tiers	Dundee	12308_51P20110630	40m-41m
Tunbridge Wells	51	0.4	45	245	VP	7/8"	154	Crossed Logs @ 90 degrees - 2 tiers	Tunbridge Wells	10104_51E_20120404_26dBW	42m
Waltham	26	5	151	40	HP	1 5/8"	1939	Crossed Logs @ 100 degrees - 4 tiers	Nottingham	11100_26P20110310	157m
Wenvoe	51	10	129	5	HP	1 5/8"	1289	Crossed Logs @ 70 degrees - 8 tiers	Cardiff	10600_51P20110613	115m-118m
Whitehawk Hill	54	0.4	39	290	VP	7/8"	45	Two Logs (side by side) - 2 tiers	Brighton & Hove	10805_54P20110624	42.5m
Winter Hill (Blackpool petal)	56	1	144	300	HP	1 5/8"	130	Single Log - 4 tiers	Preston	20301_56P20110722	144m-145.5
Winter Hill (Liverpool petal)	56	2	144	230	HP	1 5/8"	261	Single Log - 4 tiers	Liverpool	20300_56P20110722	144m-145.6
Winter Hill (Manchester petal)	56	2	144	120	HP	1 5/8"	261	Single Log - 4 tiers	Manchester	10300_56P20110726	144m-145.7

---

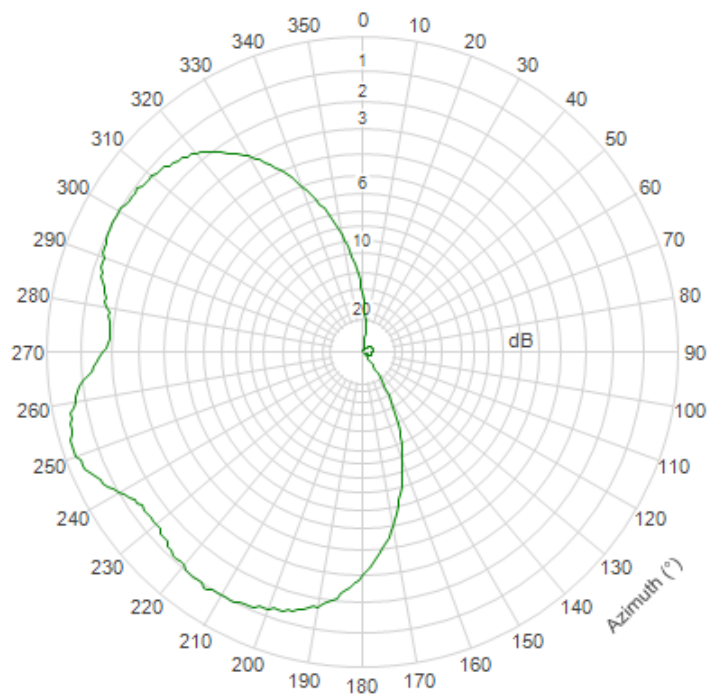
**Proposed Arqiva Antenna HRPs (Green) Overlaid with OFCOM HRPs/Templates (Red)**

Angus



12300\_48P20110627.plt  
Angus\_12300\_LocalTV1.plt

Barnstaple (Template does not show on scale 1W ERP)

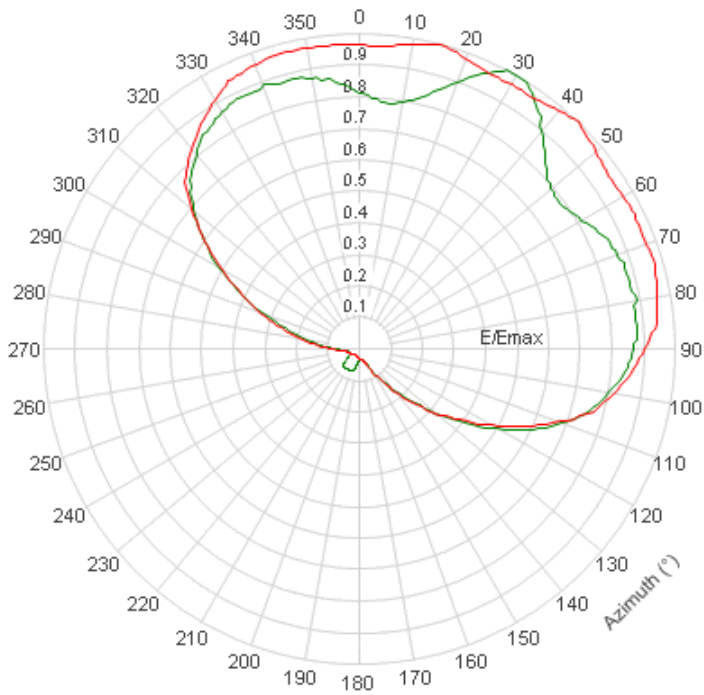


Barnstaple\_13815\_LocalTV1.plt

---

---

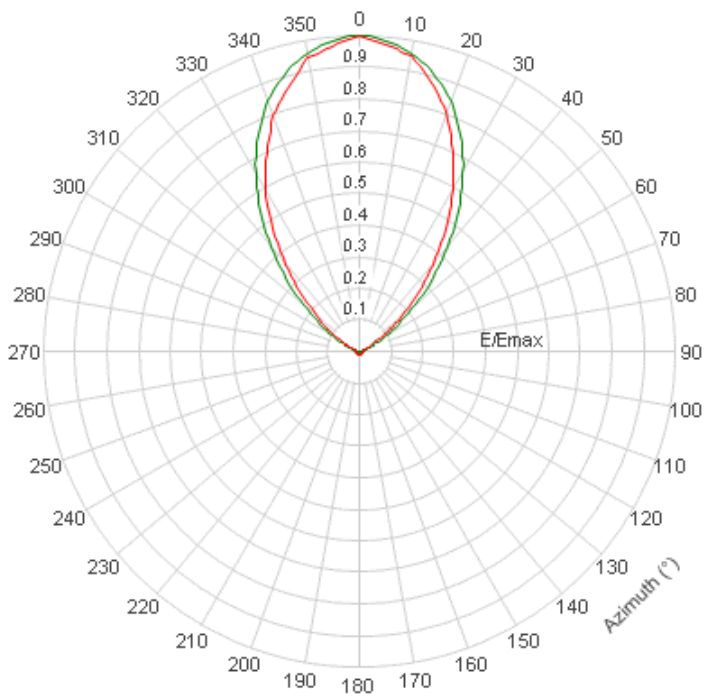
## Beecroft Hill



10415\_56P20110622.pt

452404012 ken.vickers BeecroftHILL.ant

## Belmont



12000\_27P20110720.pt

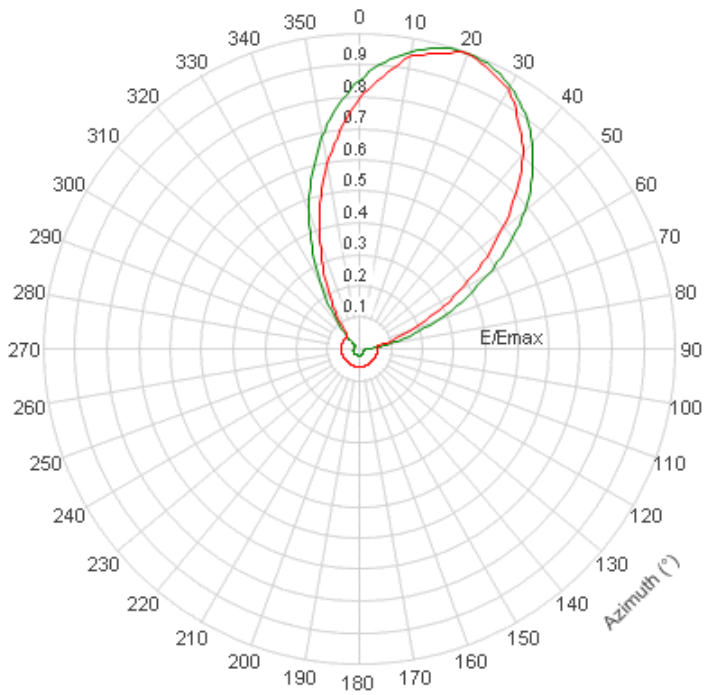
486511012 ken.vickers Belmont.ant

---



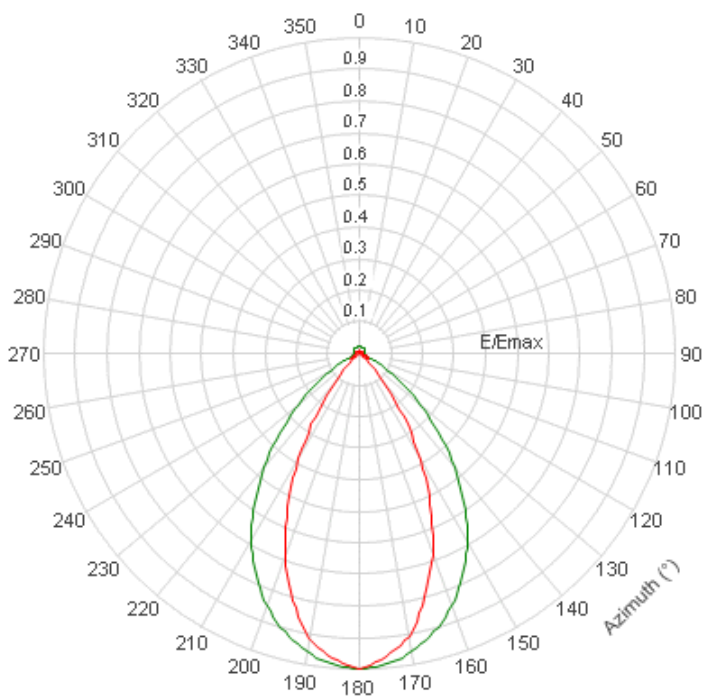
---

### Bilsdale (Teesside petal)



11600\_24P20110621.pt  
402011012 ken.vickers BilsdaleTees.ant

### Bilsdale (York petal)

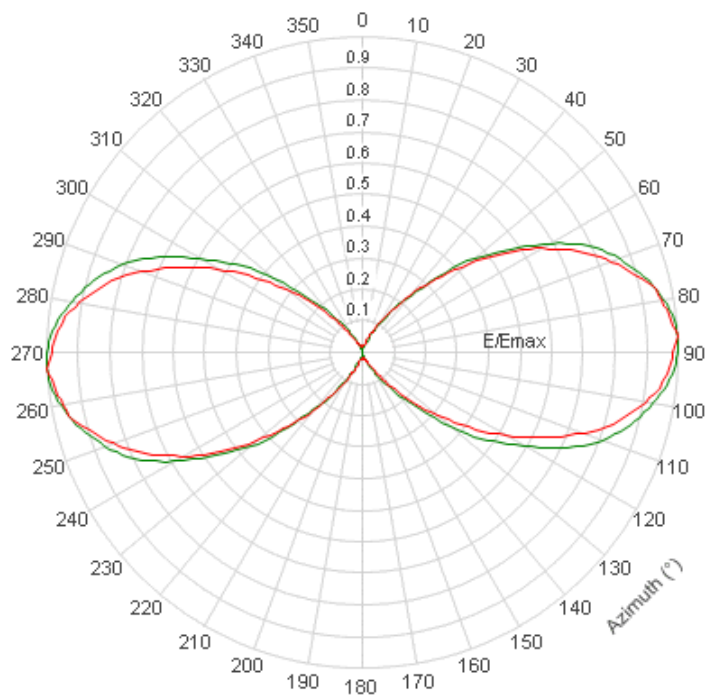


21600\_24P20110708.pt  
404211012 ken.vickers BilsdaleYork.ant

---

---

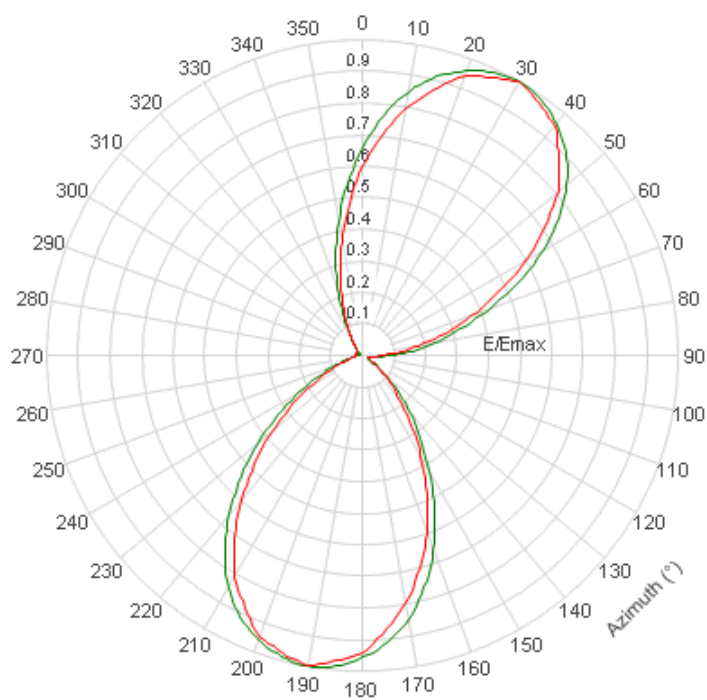
## Black Hill (Glasgow petal)



10500\_51P20110310.plt

552011012 ken.vickers BlackHill.ant

## Bluebell Hill



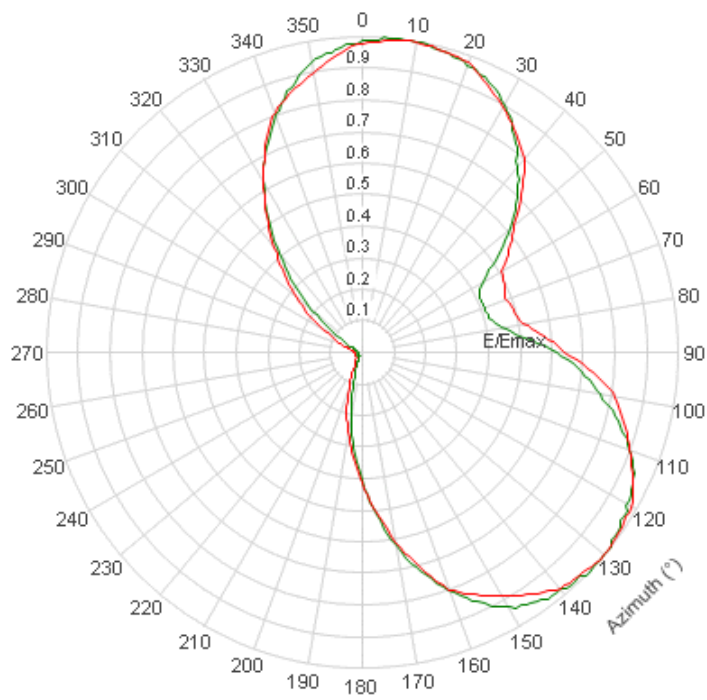
15800\_27P20110707.plt

546511012 ken.vickers Bluebell Hill.ant

---

---

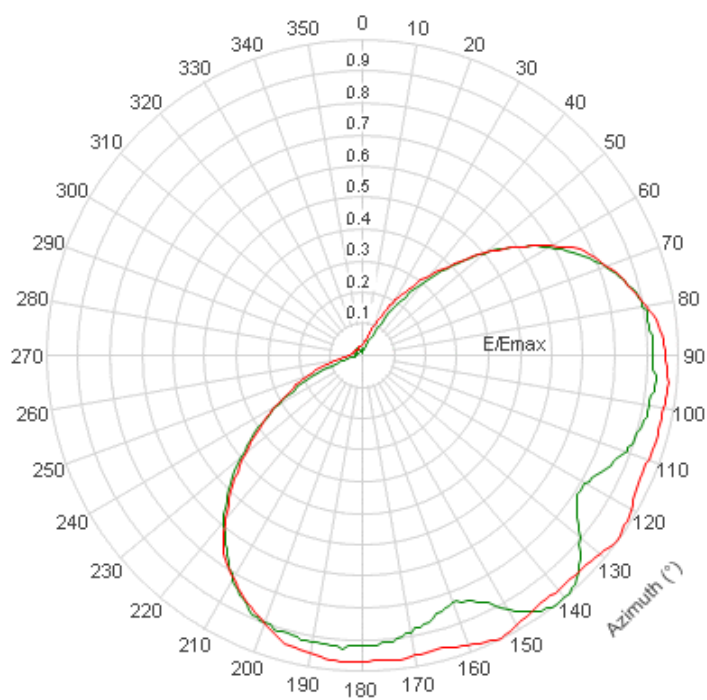
## Brierley Hill



10203\_29P20110624.PLT

414304012 ken.vickers Brierley Hill.L.ant

## Bristol Ilchester Crescent



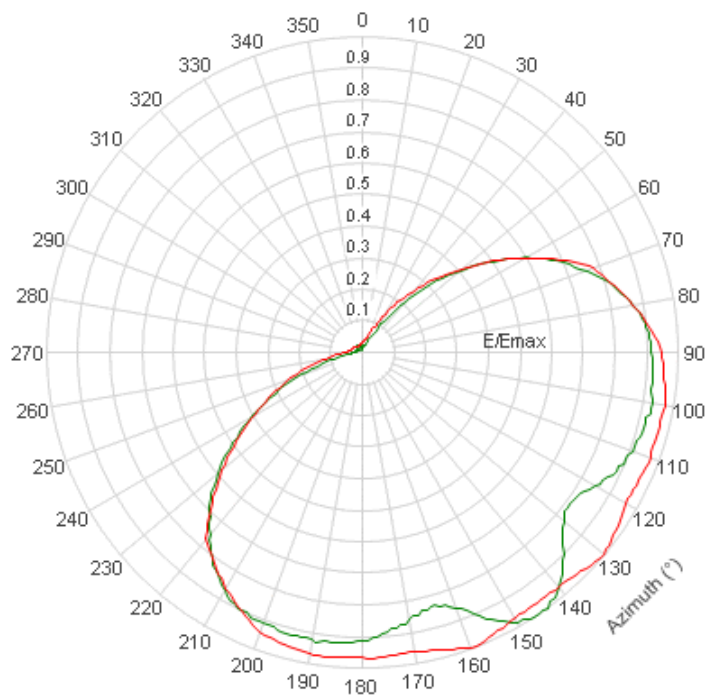
11008\_30P20110624.plt

583704012 ken.vickers Bristol\_IC\_L.ant

---

---

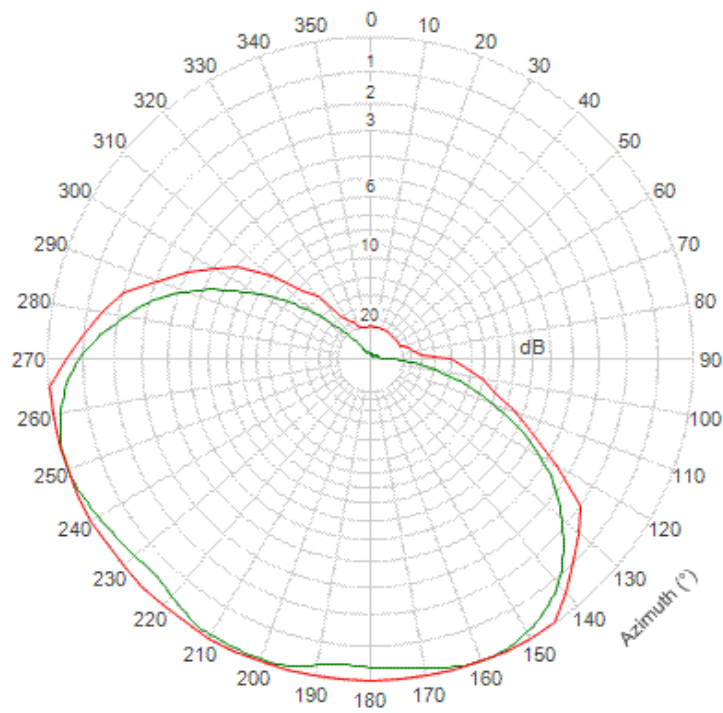
## Bristol Kings Weston



11007\_30P20110624.plt

587404012 ken.vickers Bristol\_KVWH\_L.ant

## Bromsgrove



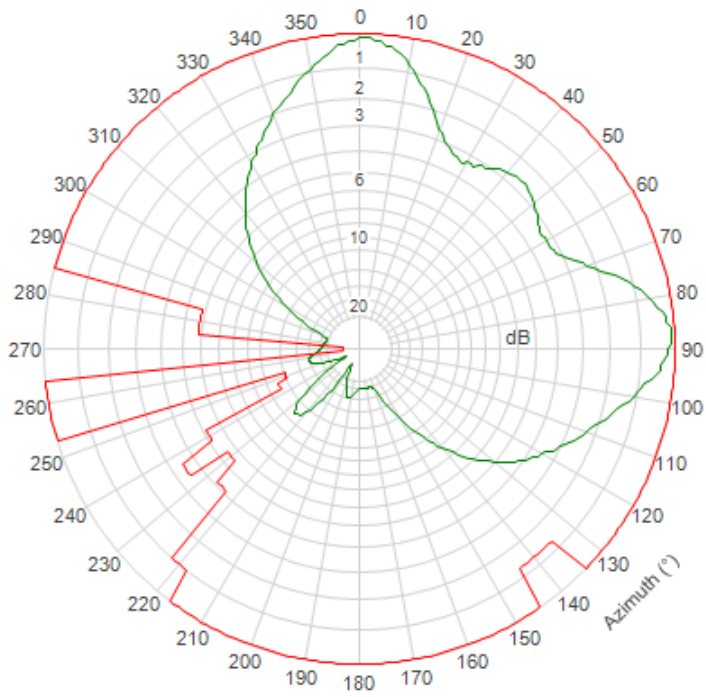
10206\_29E20120404.plt

Bromsgrove\_10206\_LocalTV1.plt

---

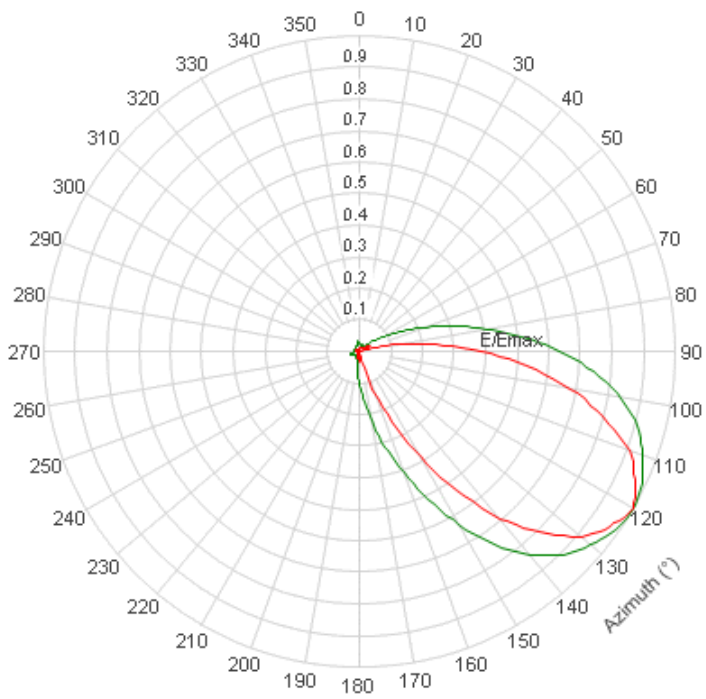
---

## Caldbeck (Template reference 5kW ERP)



Caldbeck13700\_56\_Ref37DBW.plt  
Caldbeck\_13700\_LocalTV1.plt

## Caradon Hill (Plymouth petal)

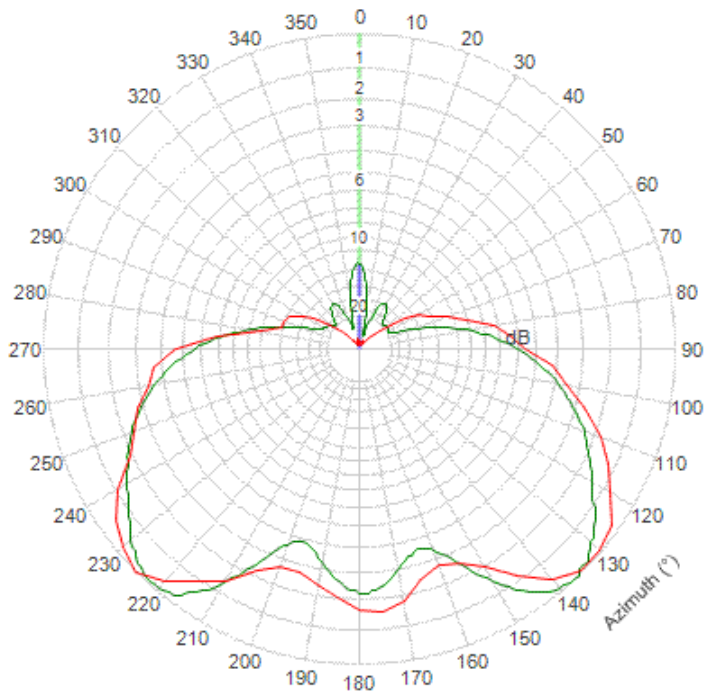


23100\_30P20110708.plt  
408011012 ken.vickers Caradon.ant

---

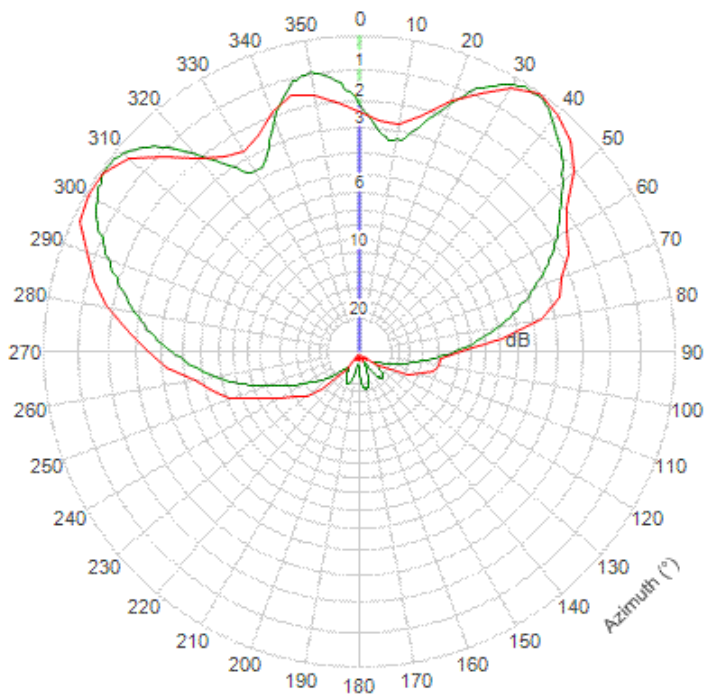
---

## Craigkelly



14700\_52P20110310.plt  
Craigkelly\_2T90\_Local TV.ant

## Crystal Palace

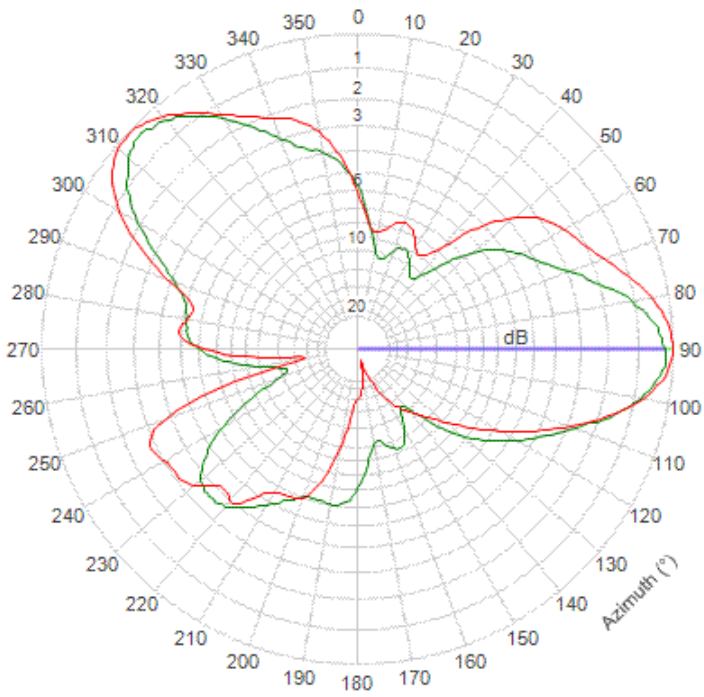


10100\_29P20110310.plt  
Crystal Palace\_2T90\_Local TV.ant

---

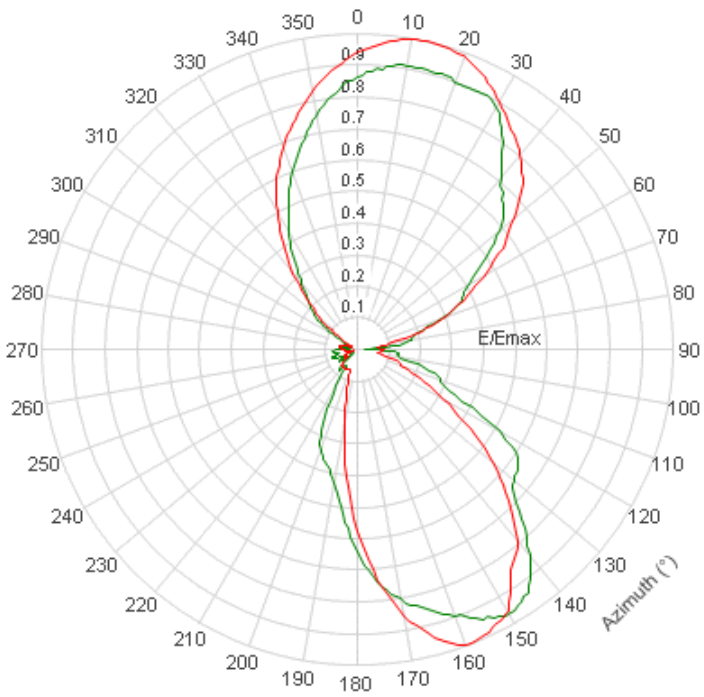
---

## Darvel



15200\_30P20110622.PLT  
Darvel\_2T\_Local TV.ant

## Divis



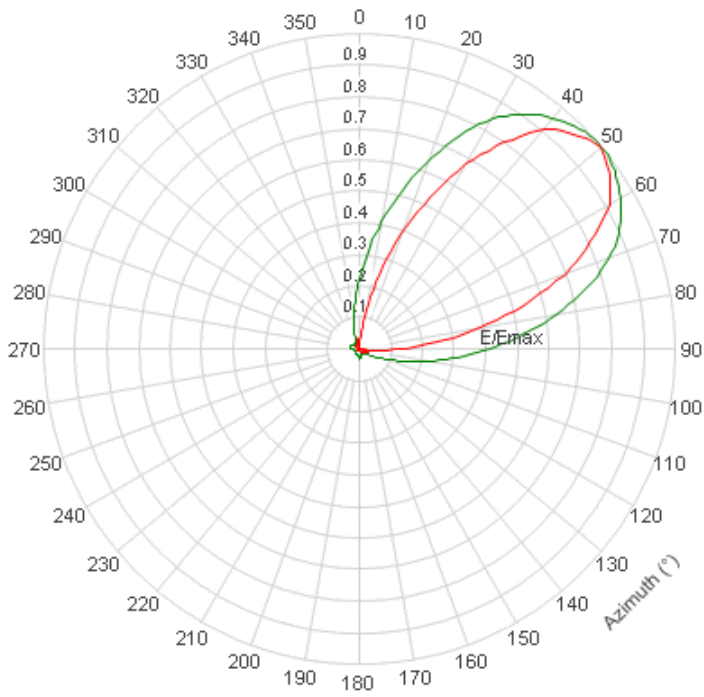
10700\_30P20110305.plt  
542511012 ken.vickers Divis.ant

---



---

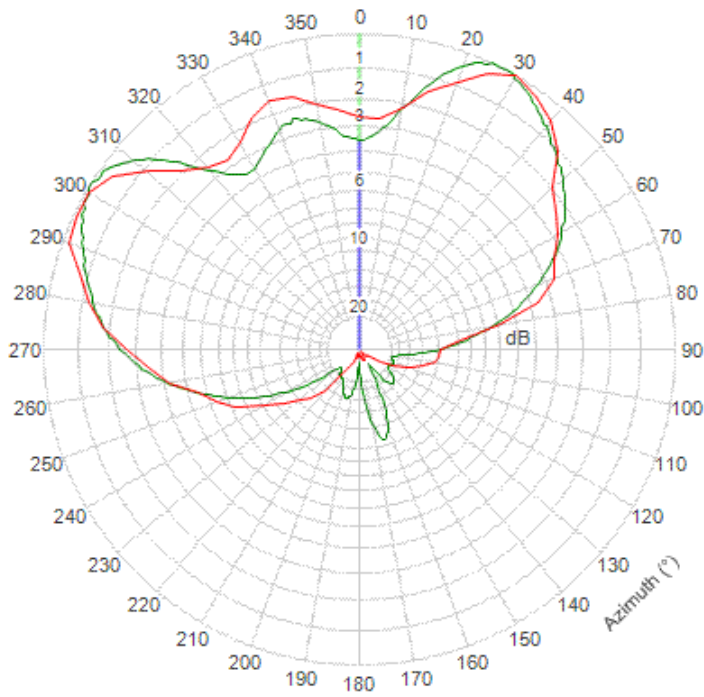
## Durris



11200\_30P20110616.plt

488711012 ken.vickers Durris.ant

## Emley Moor



10400\_56P20110310.plt

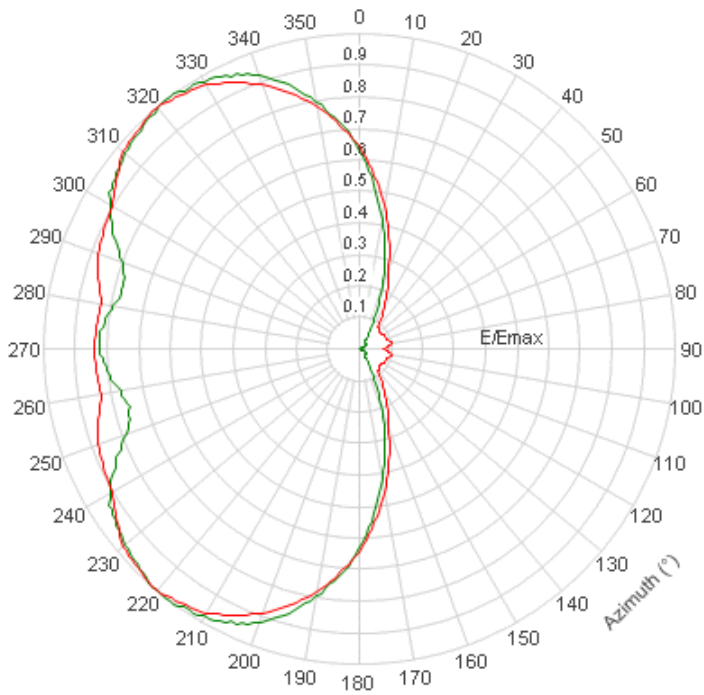
Emley Moor\_2T\_Local TV.ant

---



---

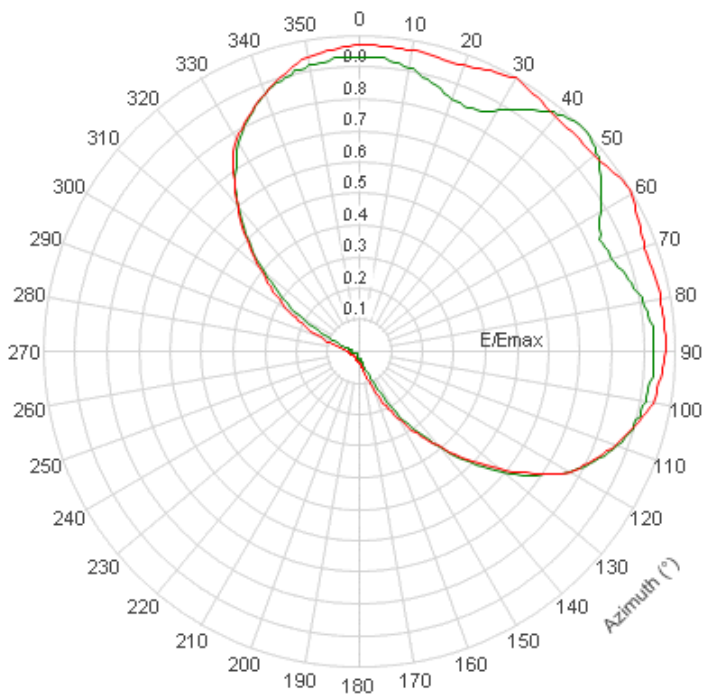
## Fenton



10211\_29P20110615.pt

408304012 ken.vickers FentonL.ant

## Guildford



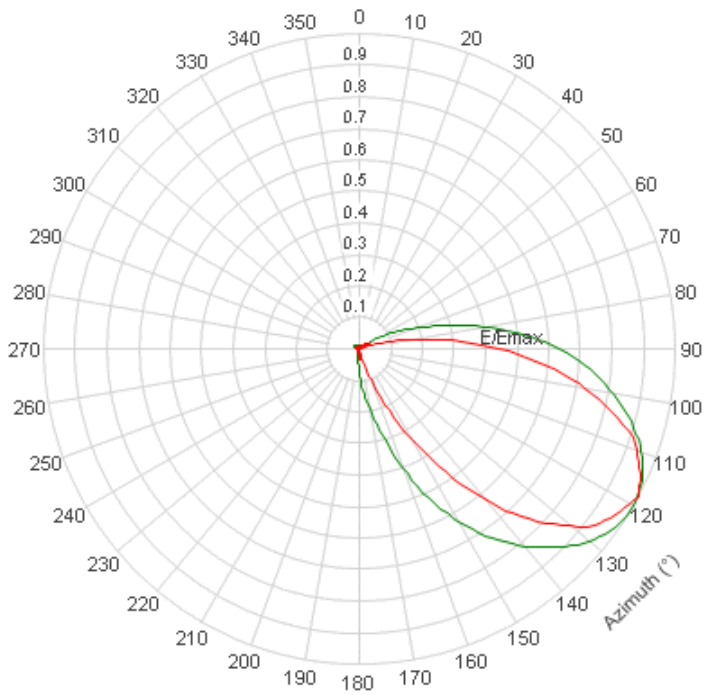
10101\_51P20110701.PLT

596704012 ken.vickers Guildford\_L.ant

---

---

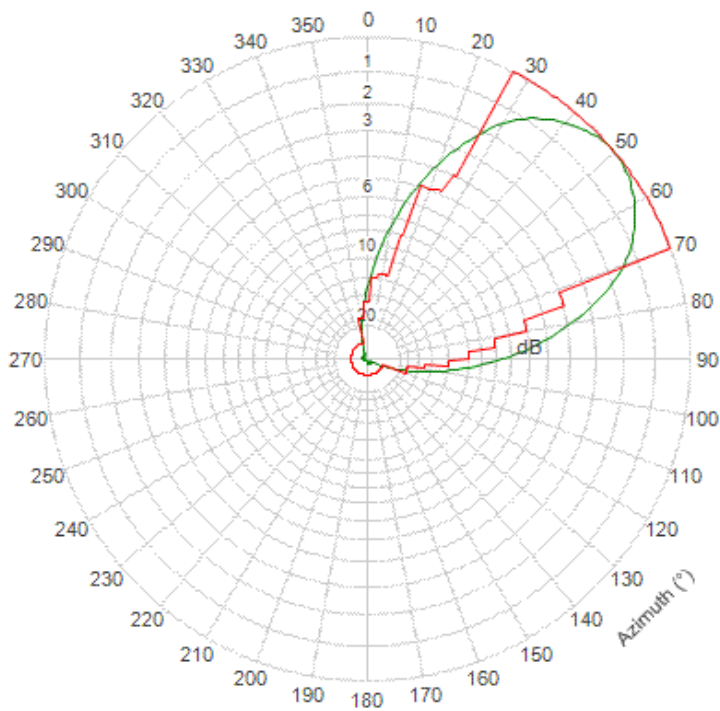
## Hannington (Basingstoke petal)



22600\_29P20110621.plt

417811012 ken.vickers Hannington.ant

## Hannington (Reading Petal)



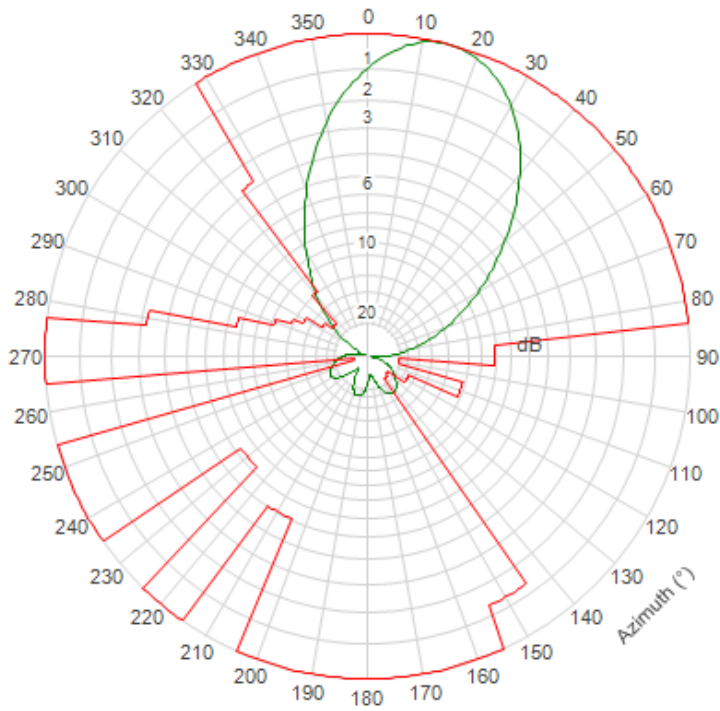
12600\_29E20120412.plt

Hannington\_(Reading\_Petal)\_12600\_LocalTV1.plt

---

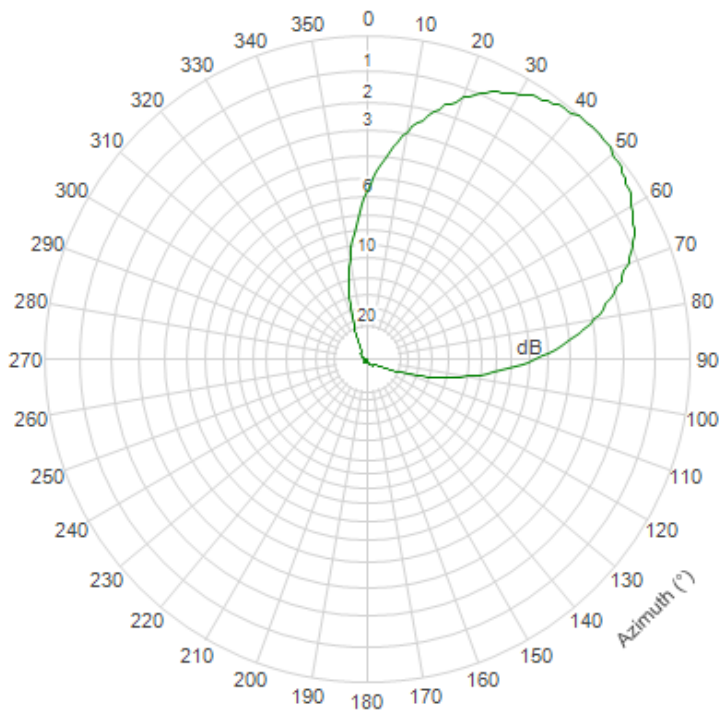
---

Huntshaw Cross (Template reference 2kW ERP)



Huntshaw13800\_Ref33DBW.plt  
HuntshawCross\_13800\_LocalTV1.plt

Kidderminster (Template does not show on scale 40W ERP)

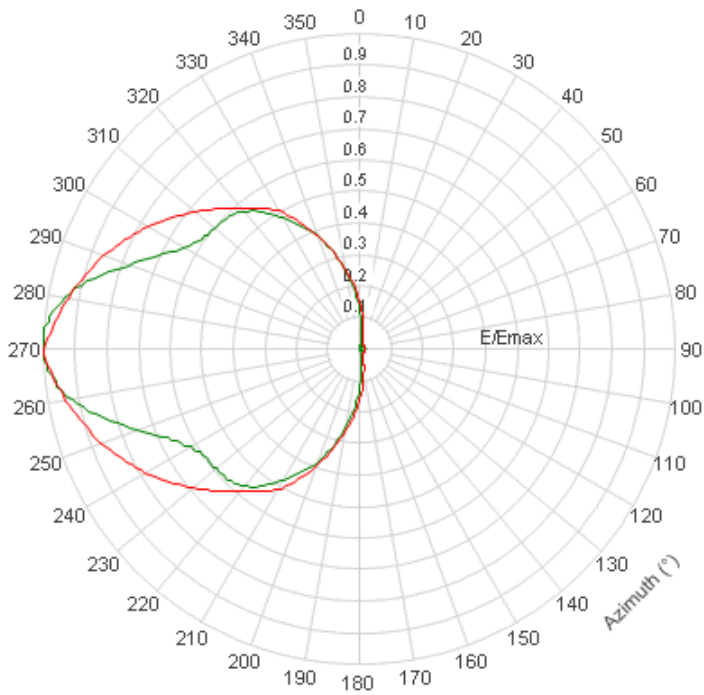


Kidderminster\_10202\_LocalTV1.plt

---

---

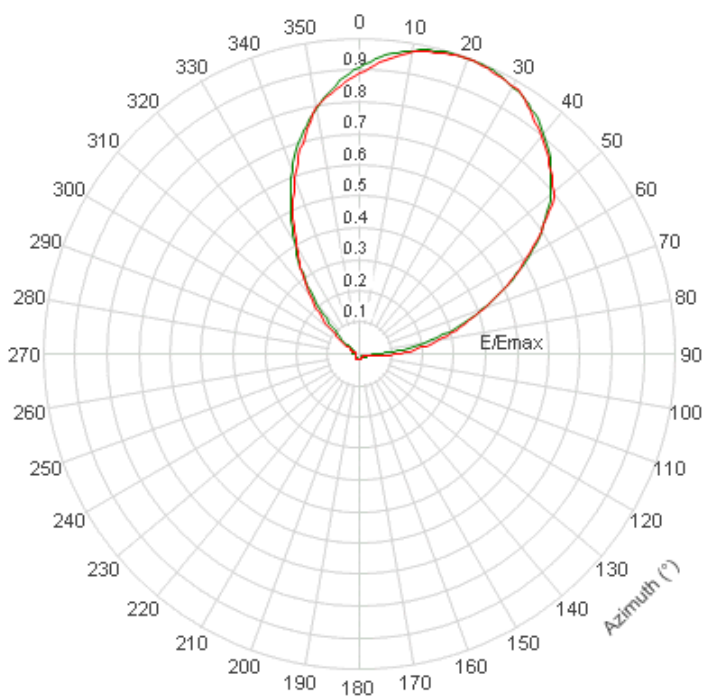
## Kilvey Hill



10601\_30P20110624.pt

447404012 ken.vickers KilveyHillL.ant

## Lark Stoke



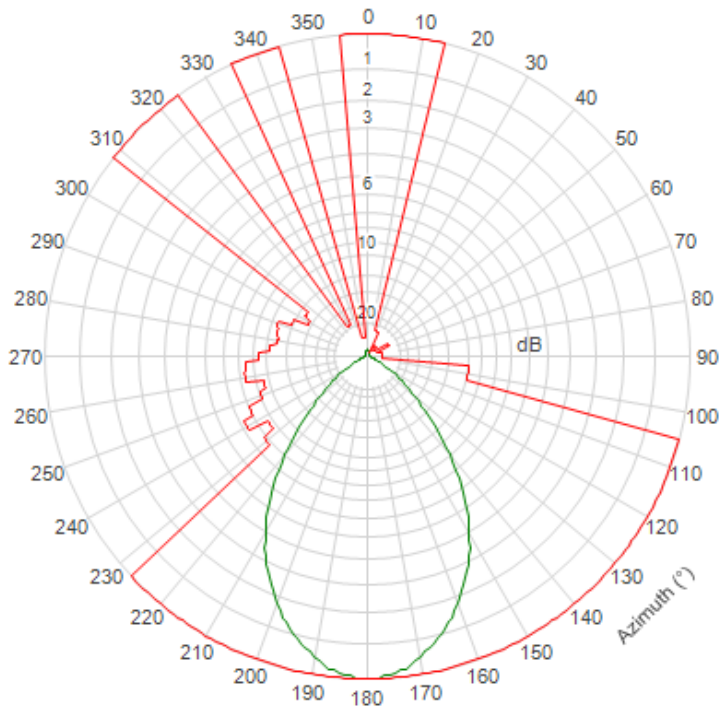
10208\_48P20110704.pt

638204012 ken.vickers Lark\_Stoke\_L.ant

---

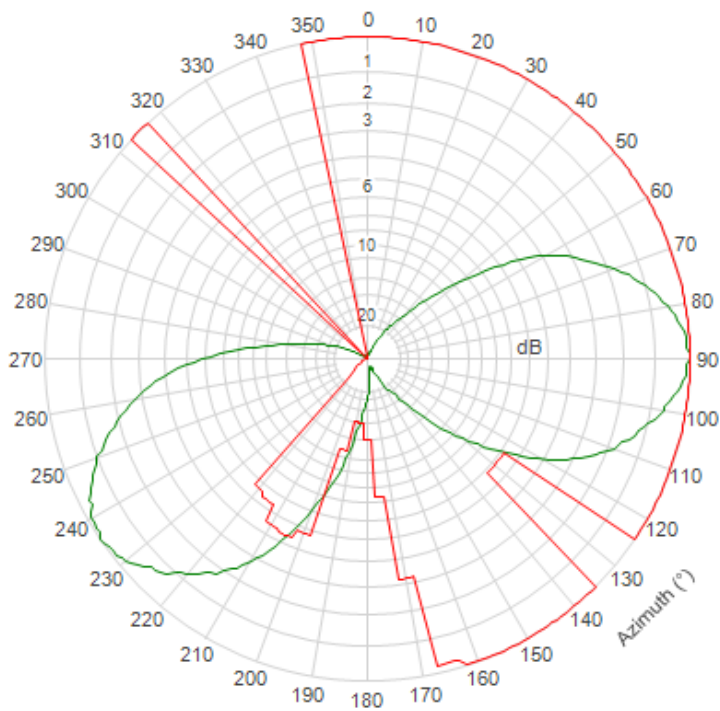
---

### Llanddona (Template reference 1kW ERP)



Llanddona11800\_Ref30DBW.plt  
Llanddona\_11800\_LocalTV1.plt

### Limavady (Template reference 2kW ERP)

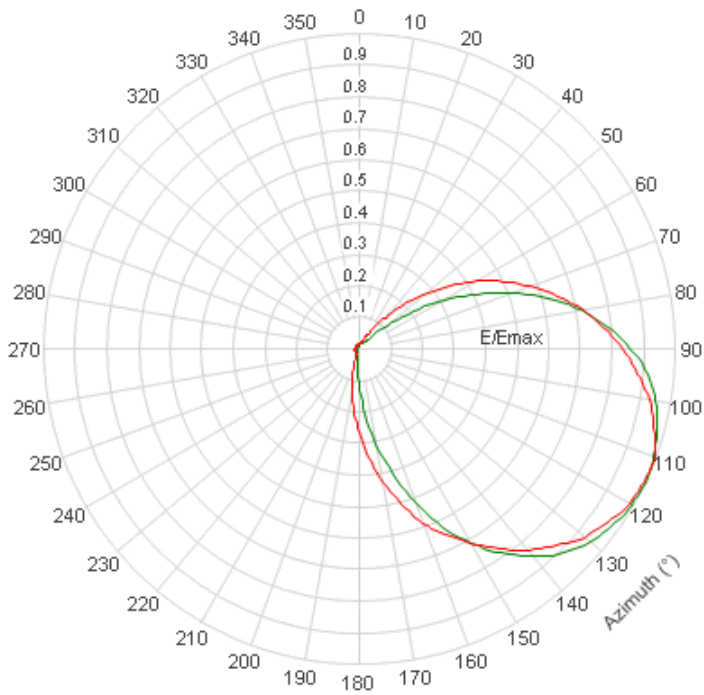


Limavady13000\_Ref33DBW.plt  
Limavady\_13000\_LocalTV1.plt

---

---

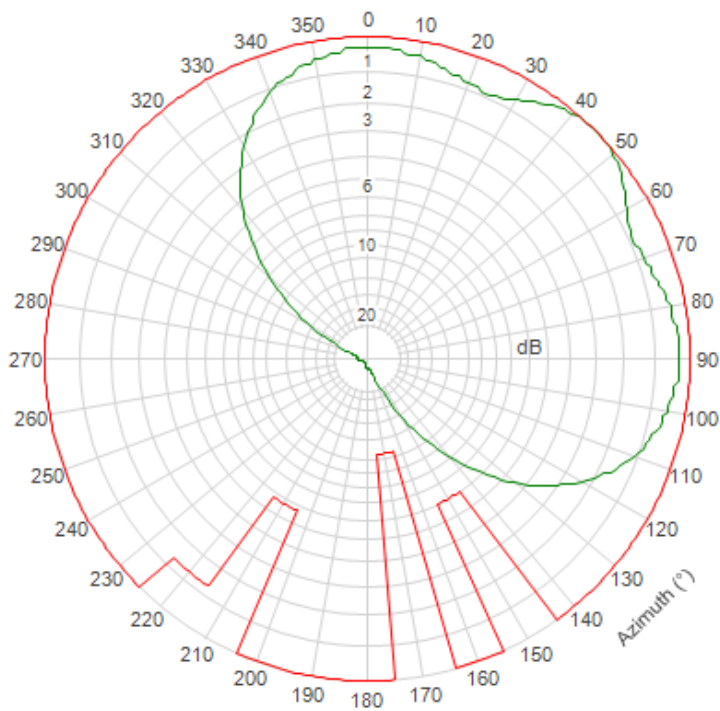
## Londonderry



13001\_51P20110630.plt

671904012 ken.vickers londonderry\_L.ant

## Luton (Template reference 50W ERP)



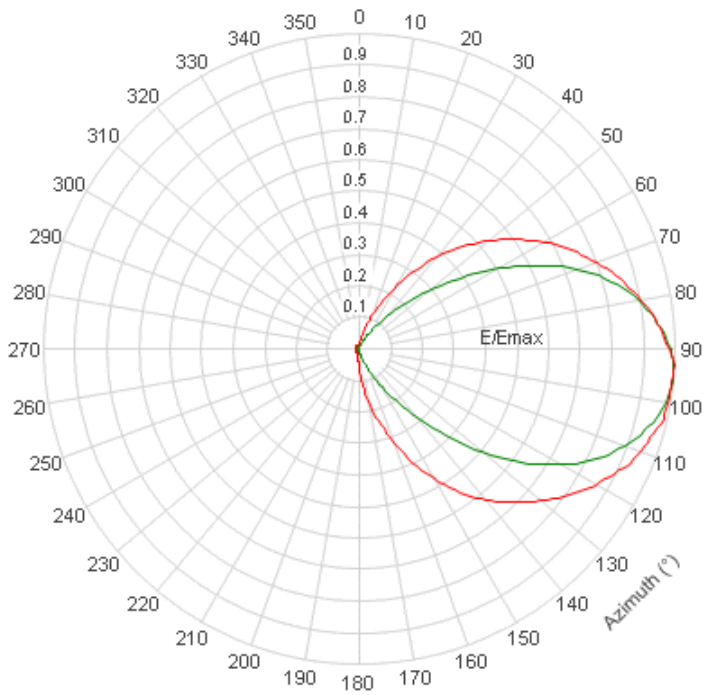
Luton12402\_Ref17DBW.plt

Luton\_12402\_LocalTV1.plt

---

---

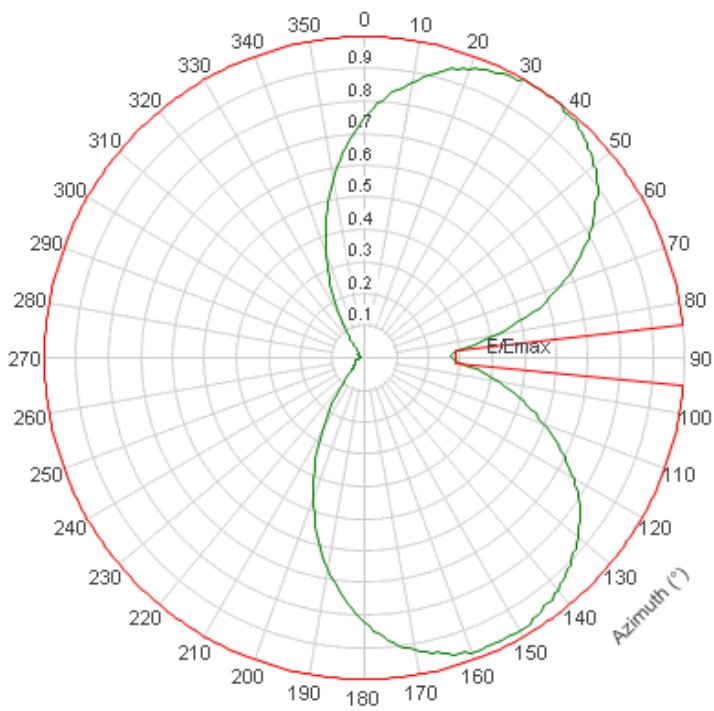
## Madingley



18241\_40P20110613.pt

415111012 ken.vickers Madingley.ant

## Malvern (Template reference 40W ERP)



10207\_51C20120130.pt

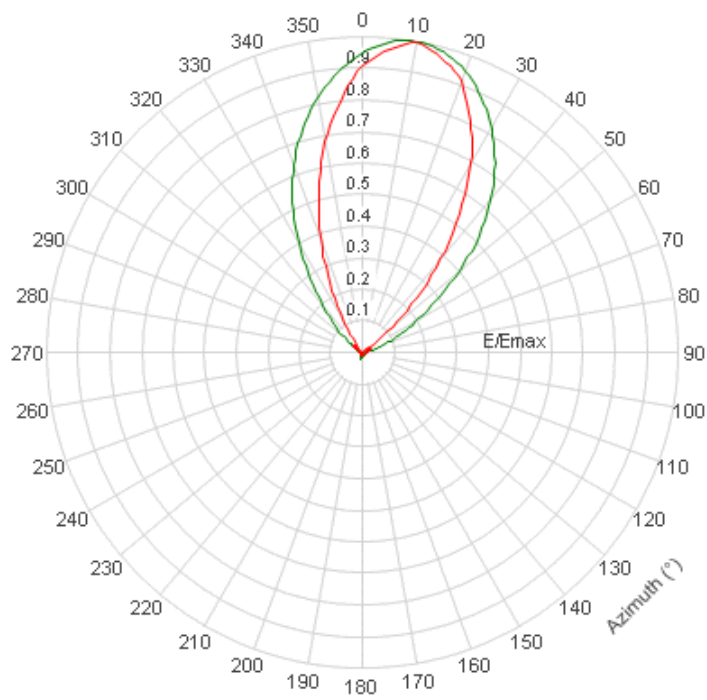
Malvern\_Local\_TV.ant

---



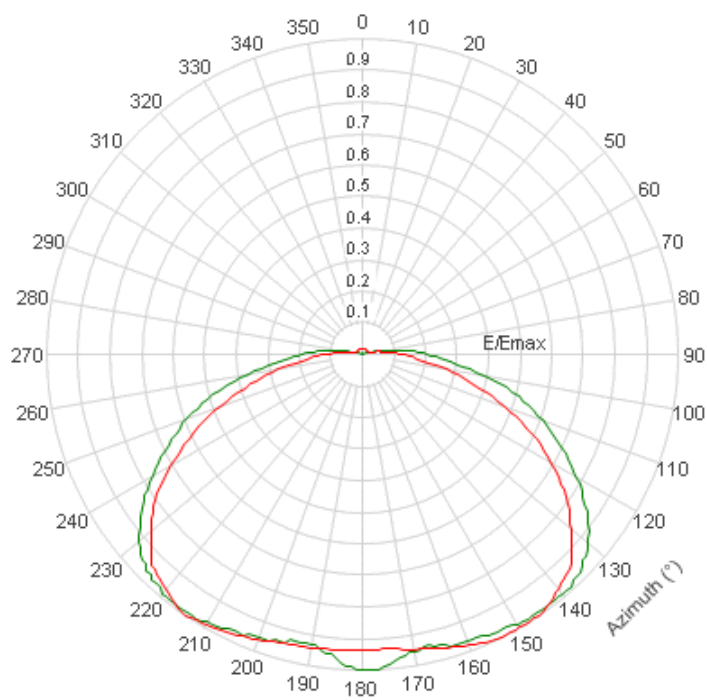
---

## Mendip



11000\_51P20110722.plt  
491711012 ken.vickers Mendip.ant

## Moel y Parc



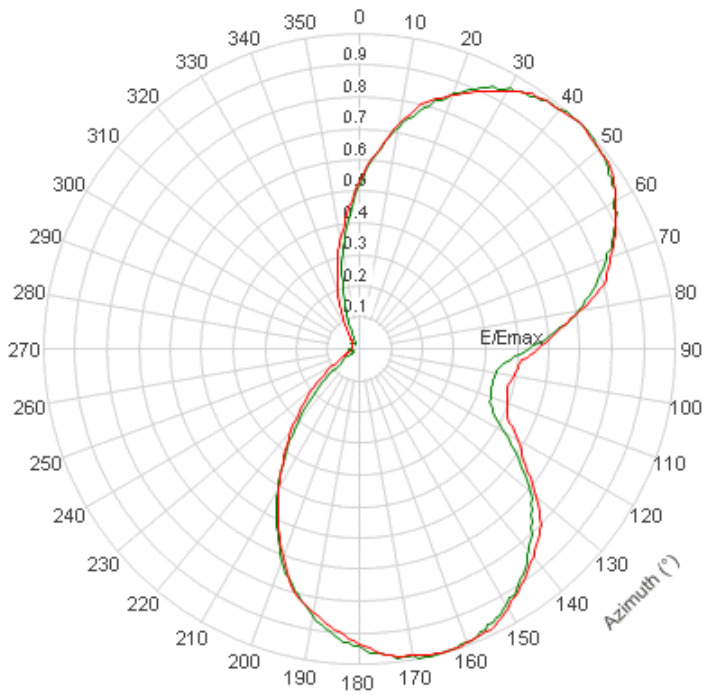
14500\_56P20110708.plt  
574511012 ken.vickers MoelYParc.ant

---



---

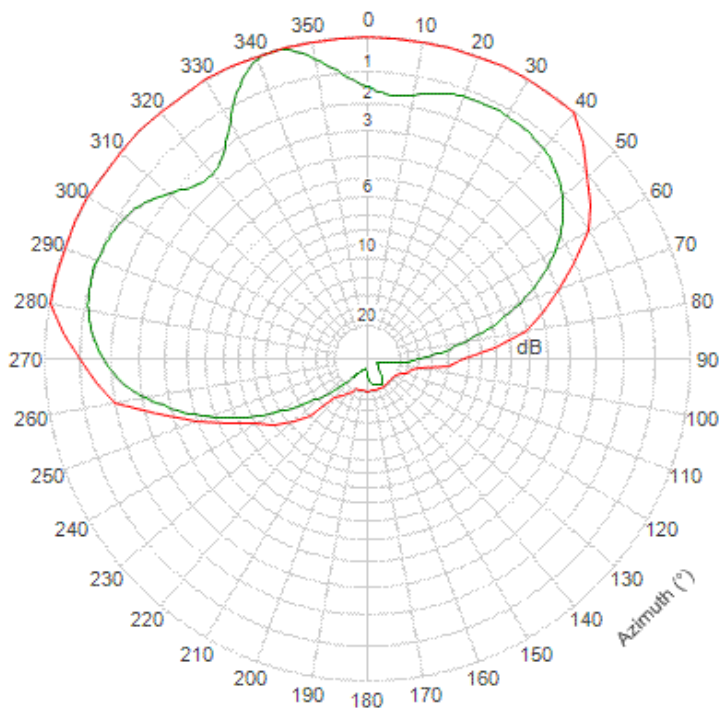
## Nottingham



11101\_50P20110624.plt

439804012 ken.vickers NottinghamL.art

## Olivers Mount (Template reference 200W ERP)



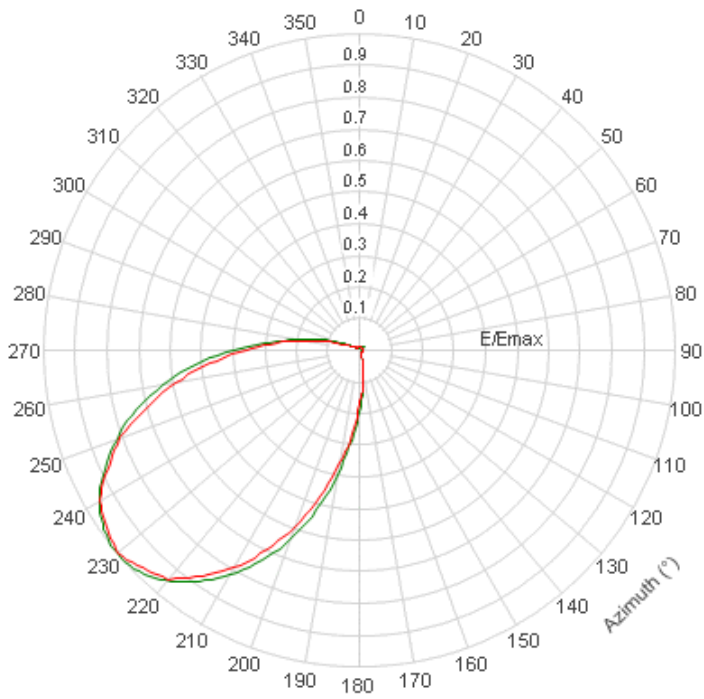
12002\_56E\_20120405\_23dBW.plt

Olivers\_Mount\_12002\_LocalTV1.plt

---

---

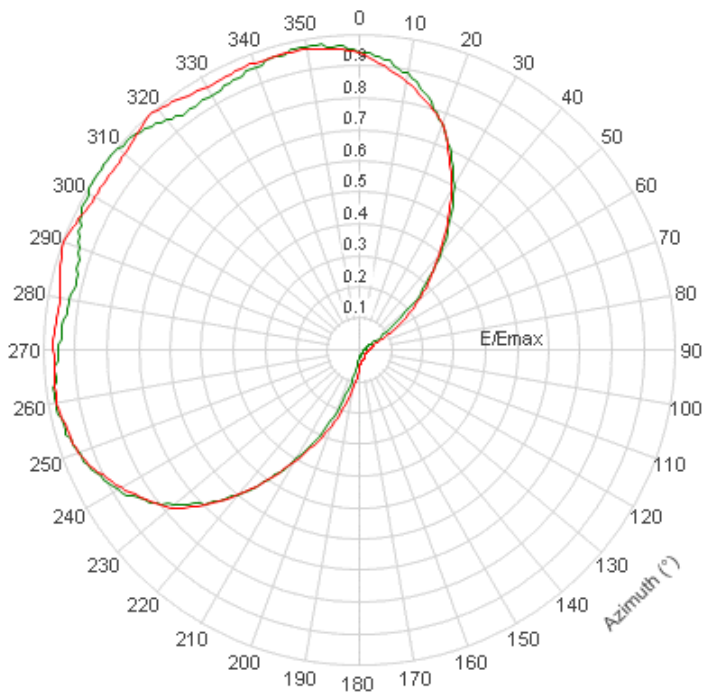
## Oxford



11700\_51P20110616.PLT

494811012 ken.vickers Oxford.ant

## Plympton



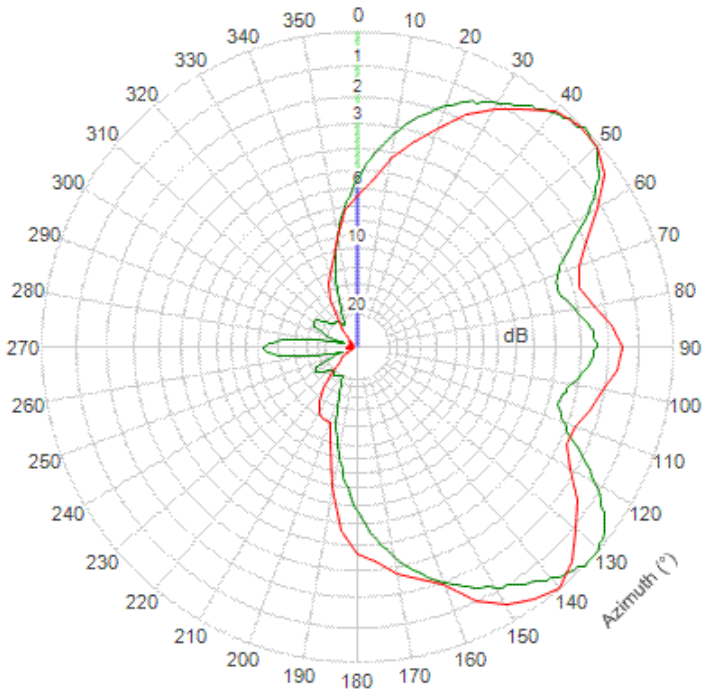
13105\_39P20110620.plt

611904012 ken.vickers Plympton\_L.ant

---

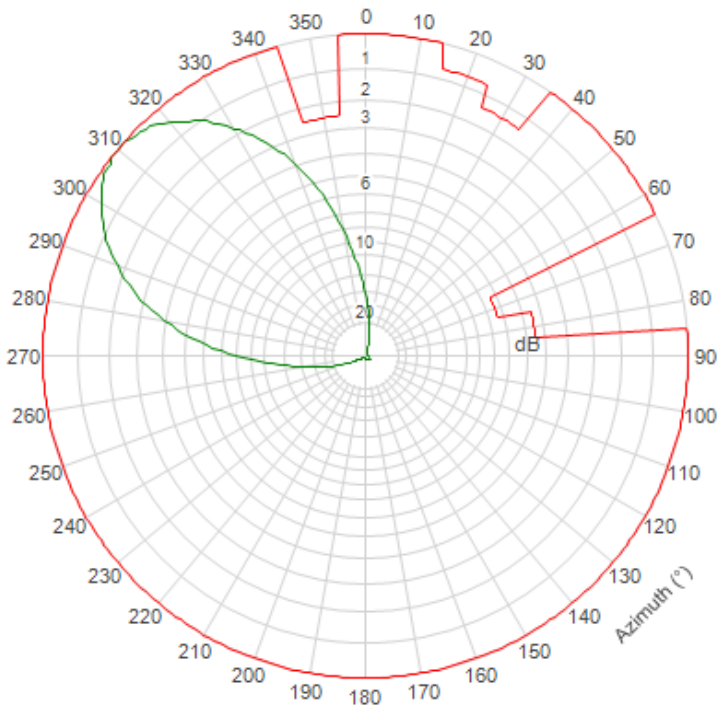
---

## Pontop Pike



10900\_56P20110310.plt  
Pontop Pike\_2T\_Local TV.art

## Ridge Hill (Template reference 1kW ERP)

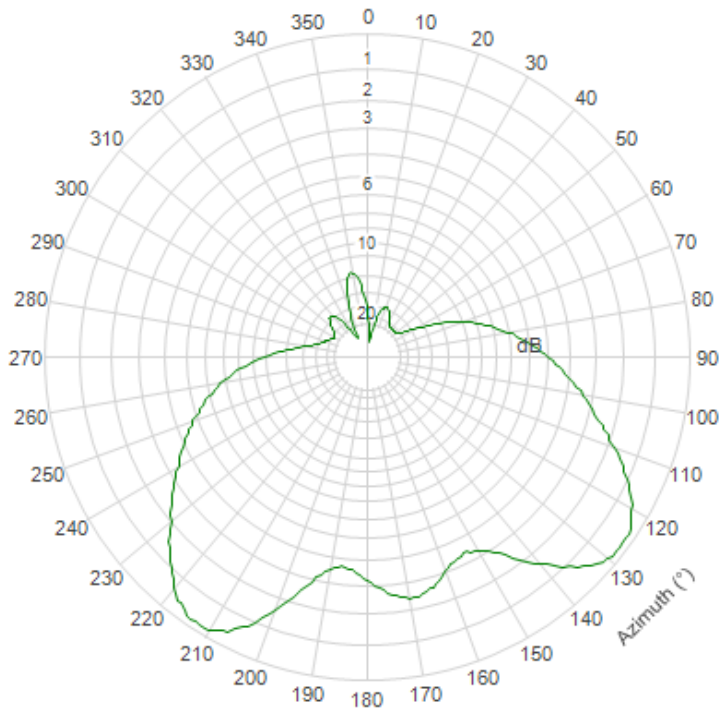


RidgeHill24900\_Ref30DBW.plt  
Ridge\_Hill\_24900\_LocalTV1.plt

---

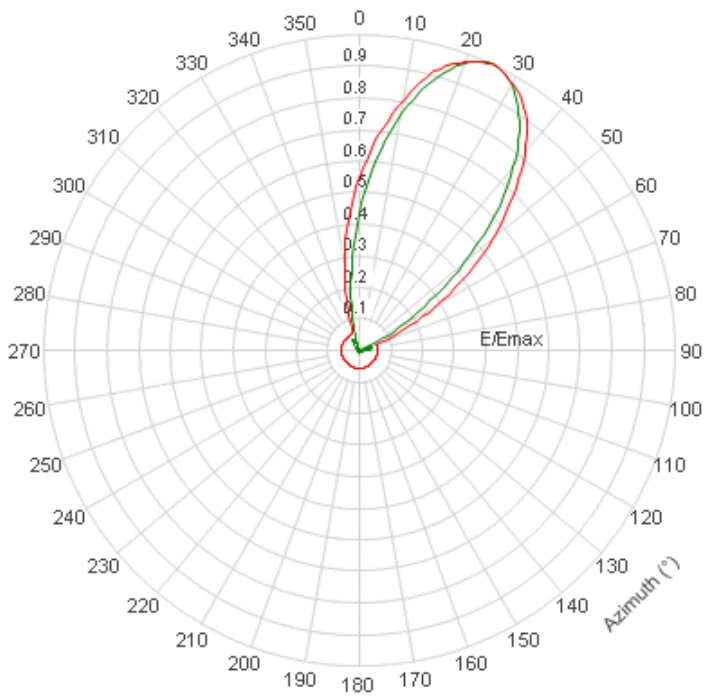
---

Rosemarkie (Template does not show on scale 1kW ERP)



Rosemarkie\_15600\_LocalTV1.plt

Rowridge



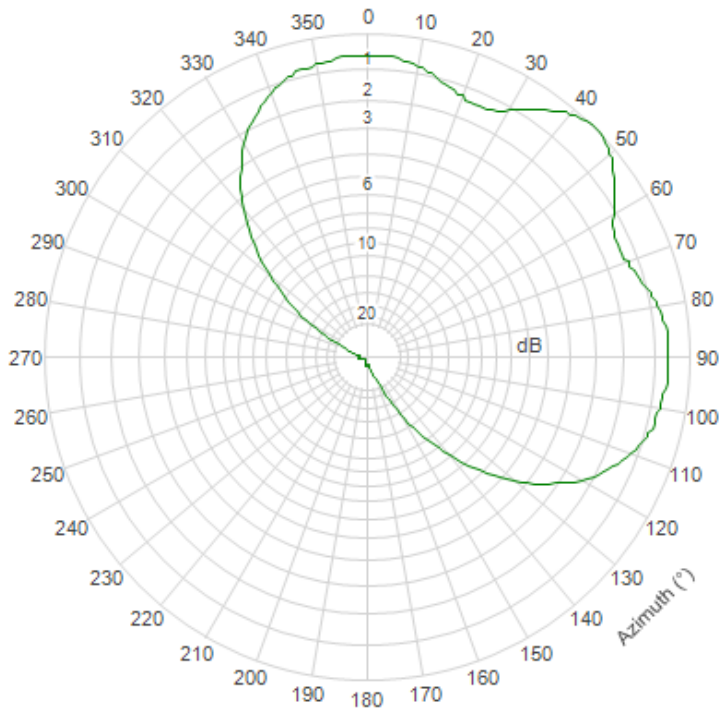
10860\_29P20110616.plt

678604012 ken.vickers Rowridge\_L.ant

---

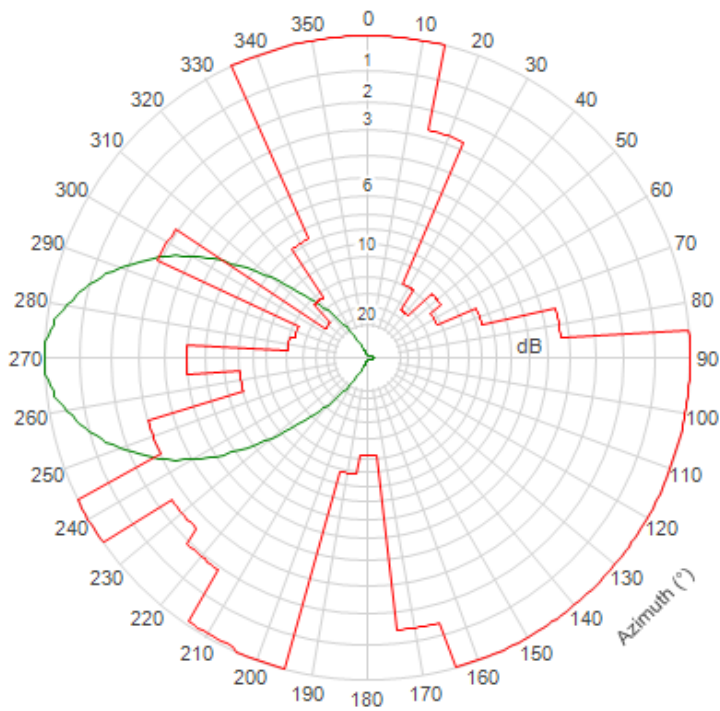
---

Salisbury (Template does not show on scale 200W ERP)



Salisbury\_10801\_LocalTV1.plt

Sandy Heath (Template reference 2kW ERP)

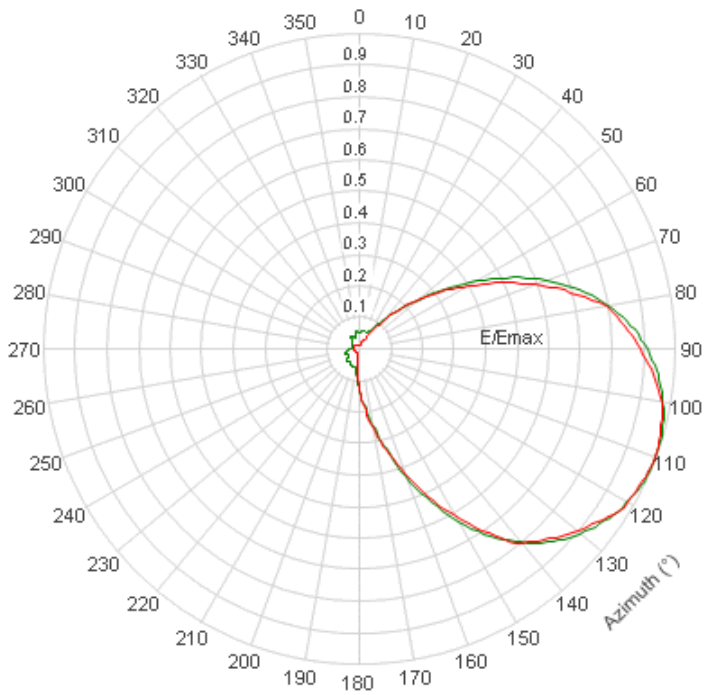


SandyHeath12400\_Ref33DBW.plt  
Sandy\_Heath\_12400\_LocalTV1.plt

---

---

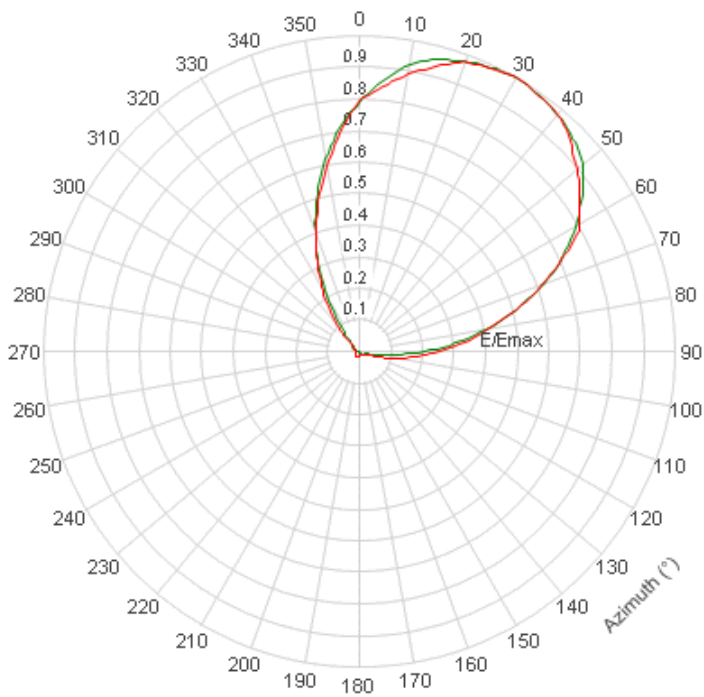
## Sheffield



10403\_55P20110621.plt

643004012 ken.vickers Sheffield\_L.ant

## Storeton



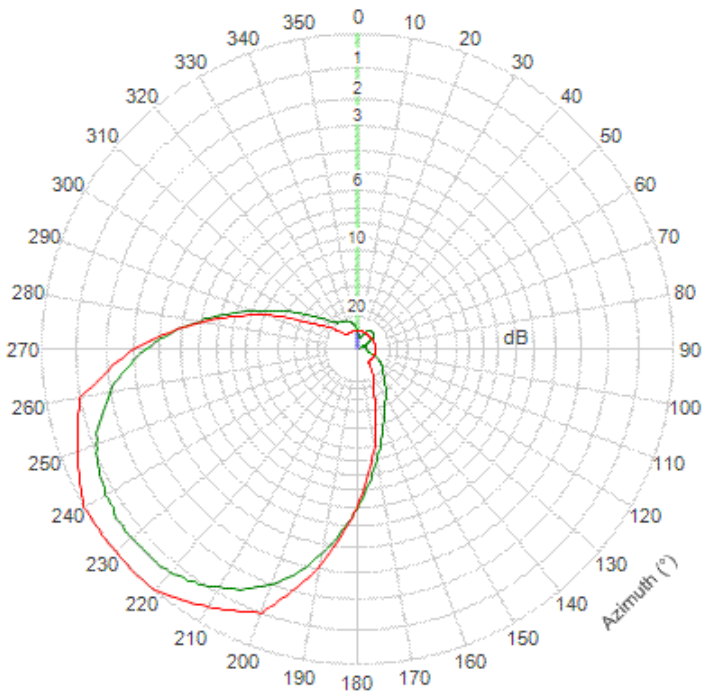
10307\_30P20110622.plt

649104012 ken.vickers Storeton\_L.ant

---

---

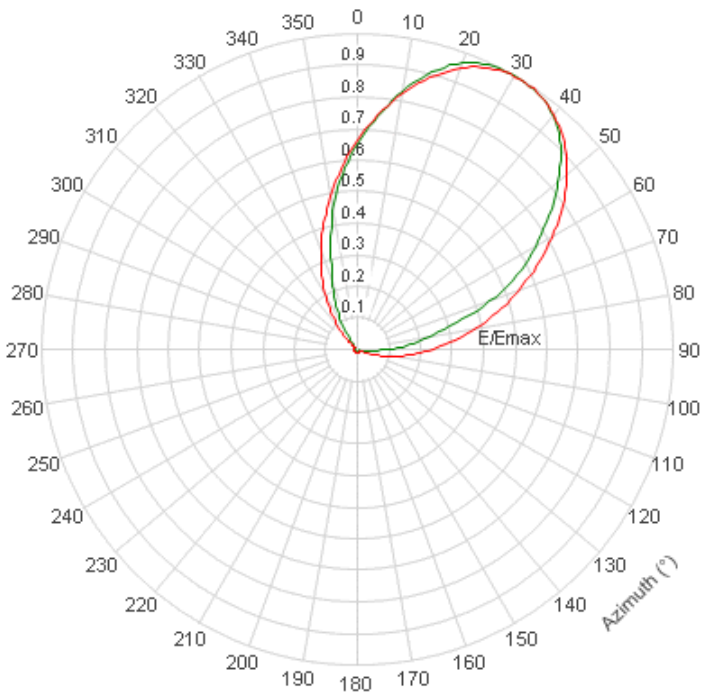
## Sutton Coldfield



10200\_51P20110305.plt

Sutton Coldfield\_4T\_Local TVant

## Tacolneston



11400\_57P20110621.PLT

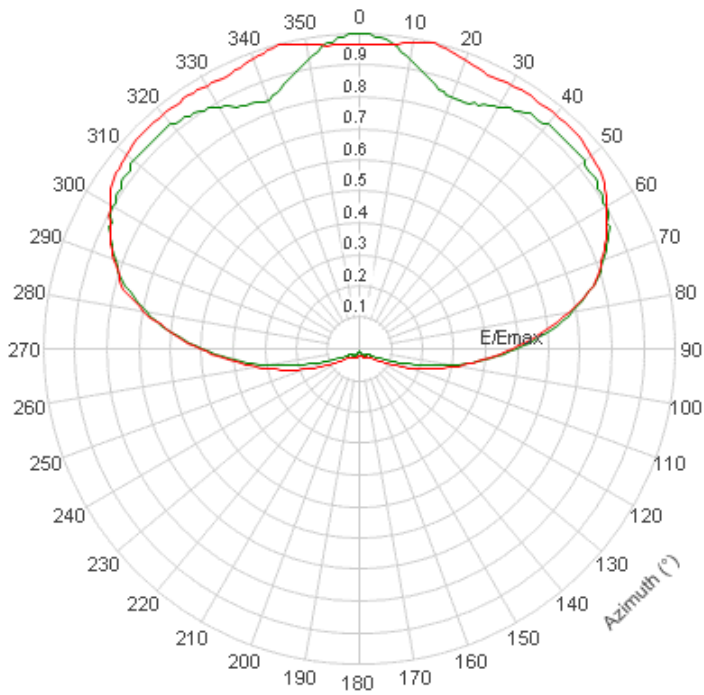
443711012 ken.vickers Tacolneston.ant

---



---

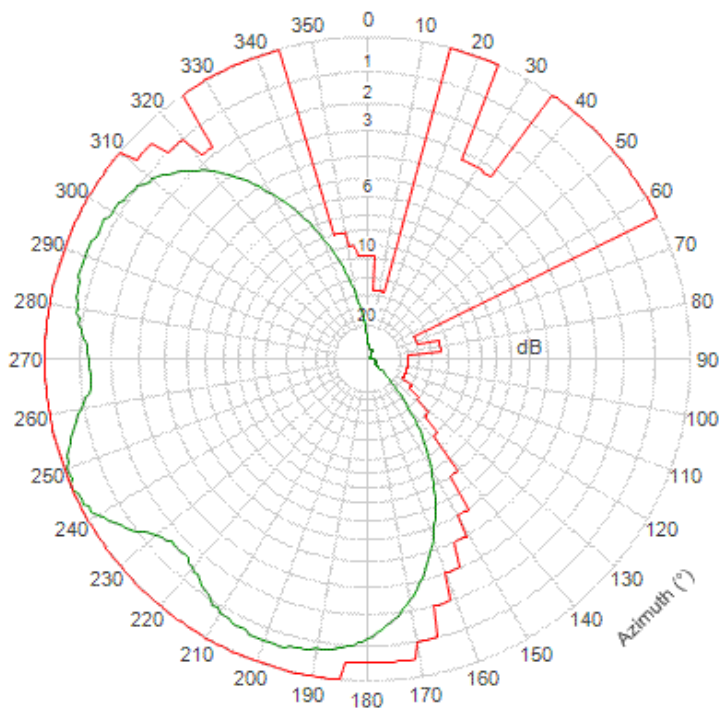
## Tay Bridge



12308\_51P20110630.pt

632804012 ken.vickers Tay\_Bridge\_L.ant

## Tunbridge Wells (Template reference 400W ERP)



10104\_51E\_20120404\_26dBW.PLT

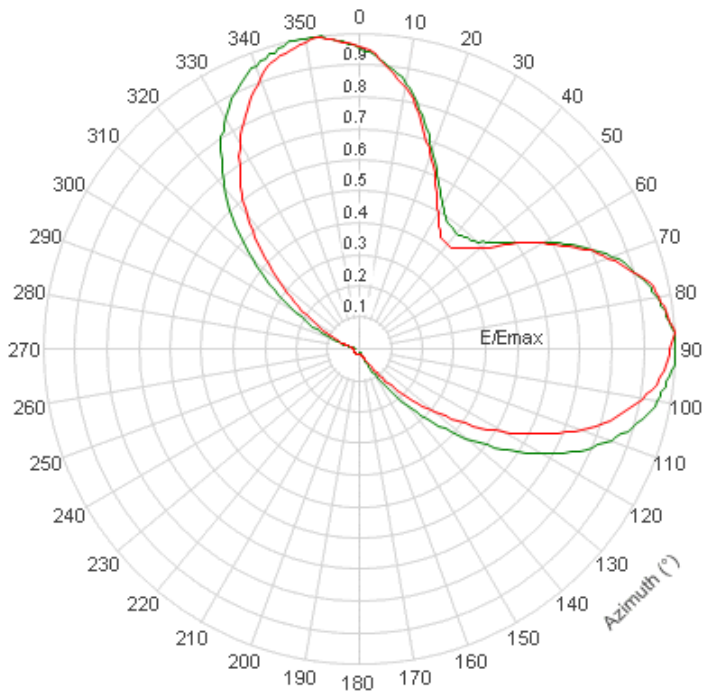
Tunbridge Wells\_10104\_LocalTV1.pt

---



---

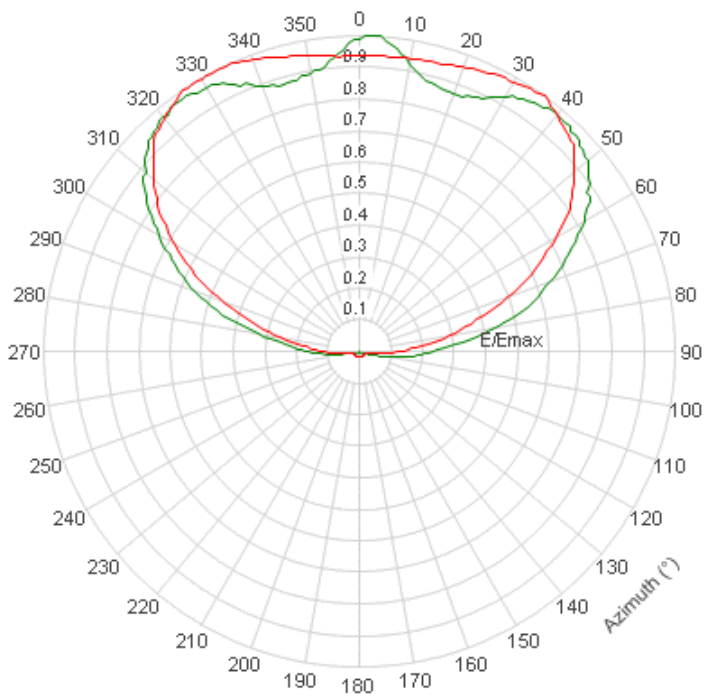
## Waltham



11100\_26P20110310.pt

570311012 ken.vickers Waltham.ant

## Wenvoe



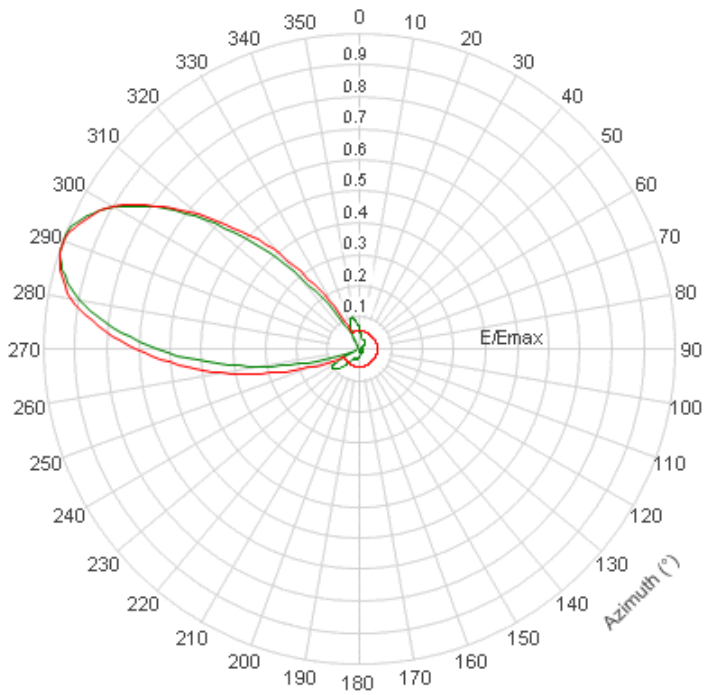
10600\_51P20110613.pt

584011012 ken.vickers Wenvoe.ant

---

---

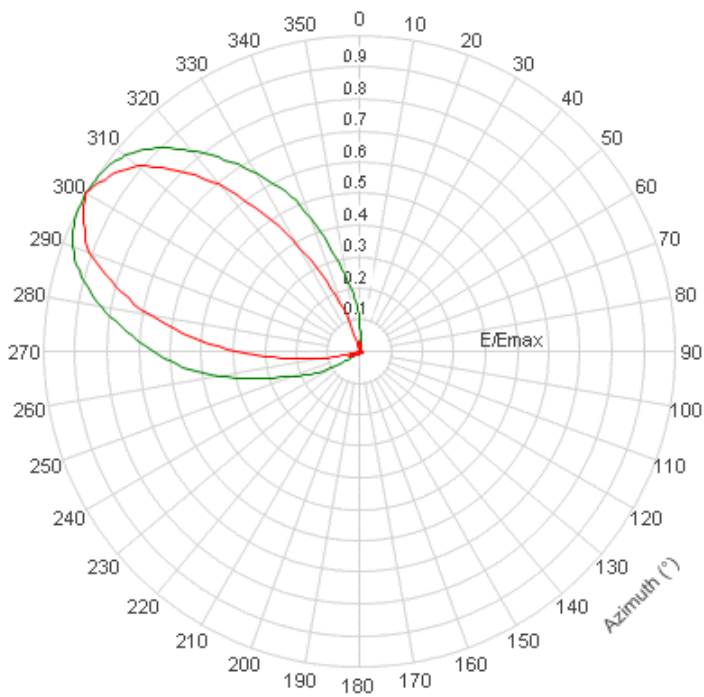
## Whitehawk Hill



10805\_54P20110624.plt

659404012 ken.vickers Whitehawk\_Hill\_L.ant

## Winter Hill (Blackpool petal)



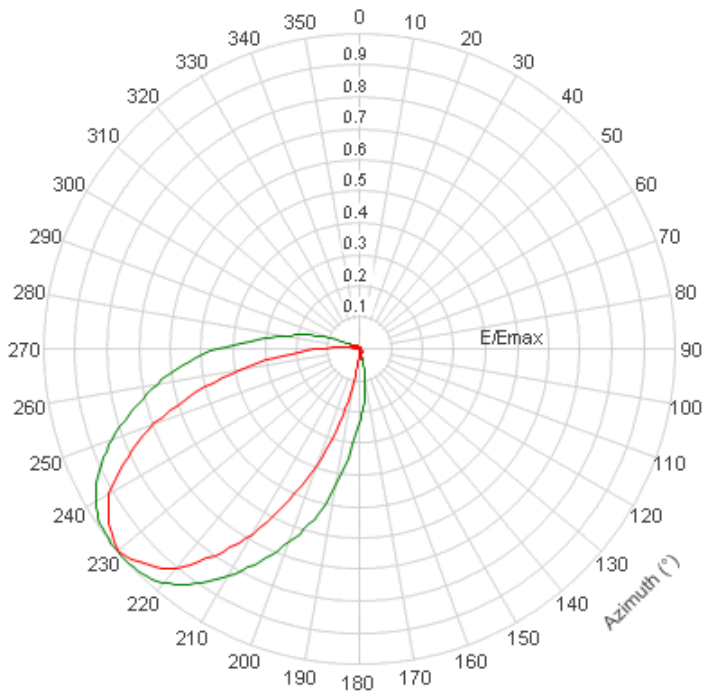
20301\_56P20110722.plt

440611012 ken.vickers WinterHill\_Blackpool.ant

---

---

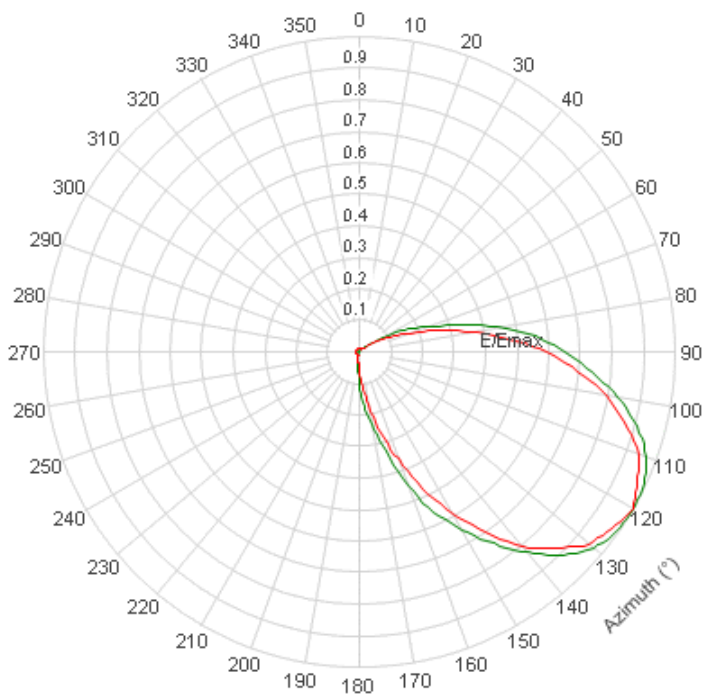
### Winter Hill (Liverpool petal)



20300\_56P20110722.pt

644016012 ken.vickers WinterHill\_Liv.ant

### Winter Hill (Manchester petal)



10300\_56P20110726.pt

646916012 ken.vickers WinterHill\_Man.ant

---

## SUBJECT TO CONTRACT

### SCHEDULE 11

#### Location Dates

The table below shows the key milestone dates and activities related to the deployment of twenty-one (21) Phase 1 Locations which are the minimum obligation requirement.

The twenty-eight (28) Phase 2 Locations are optional Locations. The Customer may request from Arqiva the addition of Phase 2 Locations. In respect of such requests, the Customer shall provide Arqiva with twelve (12) months written notice prior to the target location service date for the Phase 2 Location(s) requested. To ensure a cost efficient rollout, no more than seventeen (17) of the Phase 2 Locations can be requested by the Customer in any one (1) calendar year.

The Antenna ADS Approval Dates, Network Access Facilities Specification Dates, Target Access Dates, Compatibility Test Dates and Target Location Service Dates for any Phase 2 Locations requested shall be agreed by the parties. The Target Access Date for all Locations shall be no later than September 2014.

For the purpose of this Agreement the dates below refer the last day in the month and is subject to change within the month stated.

Location	Antenna ADS Approval Date	Network Access Facilities Specification Date	Target Access Date	Compatibility Test Date	Target Location Service Date
London	Oct-12	Dec-12	May-13	Jun-13	Jul-13
Edinburgh	Oct-12	Dec-12	May-13	Jun-13	Jul-13
Cardiff	Oct-12	Dec-12	May-13	Jun-13	Jul-13
Belfast	Oct-12	Dec-12	May-13	Jun-13	Jul-13
Birmingham	Nov-12	Jan-13	Jun-13	Jul-13	Aug-13
Swansea	Nov-12	Jan-13	Jun-13	Jul-13	Aug-13
Glasgow	Nov-12	Jan-13	Jun-13	Jul-13	Aug-13
Manchester	Dec-12	Feb-13	Jul-13	Aug-13	Sep-13
Preston	Dec-12	Feb-13	Jul-13	Aug-13	Sep-13
Liverpool	Dec-12	Feb-13	Jul-13	Aug-13	Sep-13
Leeds	Dec-12	Feb-13	Jul-13	Aug-13	Sep-13
Newcastle	Oct-13	Dec-13	May-14	Jun-14	Jul-14
Bristol	Oct-13	Dec-13	May-14	Jun-14	Jul-14
Nottingham	Oct-13	Dec-13	May-14	Jun-14	Jul-14
Grimsby	Nov-13	Jan-14	Jun-14	Jul-14	Aug-14
Southampton	Nov-13	Jan-14	Jun-14	Jul-14	Aug-14
Norwich	Nov-13	Jan-14	Jun-14	Jul-14	Aug-14
Oxford	Dec-13	Feb-14	Jul-14	Aug-14	Sep-14
Plymouth	Dec-13	Feb-14	Jul-14	Aug-14	Sep-14
Brighton & Hove	Dec-13	Feb-14	Jul-14	Aug-14	Sep-14
Sheffield	Dec-13	Feb-14	Jul-14	Aug-14	Sep-14

# SUBJECT TO CONTRACT

## SCHEDULE 12

### Charges and Pass-Through Costs

#### 1. Introduction

The following pricing principles govern the calculation of the Charges and Arqiva undertakes that it shall not depart from the application of these pricing principles in the calculation or recovery of the Charges.

#### 2. Charges And Pass-Through Costs

##### 2.1 Charges

Table 1 - Charges - Phase 1 Locations

Location	Network Access Initial Fee (£)	Network Access Annual Fee (£)	Indicative Pass-Through Costs (£)
Belfast	374,545	27,686	403
Birmingham	561,169	39,955	1,388
Brighton & Hove	113,517	11,441	665
Bristol	546,559	46,890	2,852
Cardiff	295,518	27,372	962
Edinburgh	368,304	22,895	624
Glasgow	262,132	22,581	1,384
Grimsby	254,553	17,512	1,064
Leeds	554,958	49,111	1,710
Liverpool	290,501	27,248	1,205
London	362,408	23,982	1,022
Manchester	168,093	16,338	681
Newcastle	372,592	23,445	537
Norwich	279,584	19,412	242
Nottingham	446,223	36,973	2,333
Oxford	294,247	20,780	298
Plymouth	470,303	35,281	1,608
Preston	168,093	16,344	681
Sheffield	98,256	9,572	327
Southampton	267,059	21,787	938
Swansea	132,294	12,327	675

Table 2 - Charges - Phase 2 Locations

Location	Network Access Initial Fee (£)	Network Access Annual Fee (£)	Indicative Pass-Through Costs (£)
Aberdeen	216,438	19,740	647
Ayr	310,693	24,574	583
Bangor	138,226	13,358	476

## SUBJECT TO CONTRACT

Barnstaple	421,229	29,423	1,509
Basingstoke	233,789	16,874	798
Bedford	212,888	17,359	520
Bromsgrove	97,732	10,594	348
Cambridge	132,525	13,129	676
Carlisle	312,061	24,635	611
Derry/Londonderry	141,158	14,515	348
Dundee	417,654	33,901	1,839
Guildford	89,750	9,889	194
Hereford	206,915	15,916	385
Inverness	280,781	19,615	428
Kidderminster	117,595	11,250	259
Limavady	145,532	15,351	230
Luton	100,121	9,650	1,573
Maidstone	174,385	16,078	957
Malvern	97,732	10,463	1,003
Middlesbrough	198,296	19,800	907
Mold	219,824	19,668	857
Reading	216,820	15,537	1,849
Salisbury	119,210	12,208	504
Scarborough	121,061	11,626	490
Stoke on Trent	85,760	9,851	286
Stratford Upon Avon	87,922	7,737	152
Tunbridge Wells	88,589	10,613	408
York	275,245	21,970	522

- 2.1.1 The Network Access Annual Fee does not include costs for any GPS antenna requirements that the Customer may have. These will be charged by Arqiva at the published rate.
- 2.1.2 "Pass-Through Costs" has the meaning given to it in paragraph 2.2 below.
- 2.1.3 At Main Stations as defined in Schedule 13 (Locations), the Network Access Initial Fee includes for 15 days supervision (between the hours of 08:00 and 17:00) of the Customer when they are installing and commissioning the Customer Equipment. Any additional requirement will be charged by Arqiva at the published rate.
- 2.1.4 At Large Relay Stations as defined in Schedule 13 (Locations), the Network Access Initial Fee includes for 5 days supervision (between the hours of 08:00 and 17:00) of the Customer when they are installing and commissioning the Customer Equipment. Any additional requirement will be charged by Arqiva at the published rate.
- 2.1.5 The Network Access Initial Fee includes for an uplift for contingencies which is 5% of the capital expenditure.
- 2.1.6 The Network Access Annual Fee includes for two (2) days per annum of supervision of the Customer to access the Customer Equipment. Any further requirement will be charged by Arqiva at the published rate.
- 2.1.7 The Network Access Initial Fees set out in the table above are one-off charges per Location.

## SUBJECT TO CONTRACT

2.1.8 The Network Access Annual Fee and the indicative Pass-Through Costs set out in the table above at paragraph 2.1 are stated on a per annum basis for Network Access based on the specifications set out in Schedule 10 and subject to the terms of this Agreement.

The Charges and indicative Pass-Through Costs set out in the table above are stated:

- (a) in real terms at February 2012 prices and are subject to indexation (see paragraph 2.3.6 below); and
- (b) exclusive of VAT.

2.1.9 The Table above includes an indicative estimate of Pass-Through Costs. Paragraph 2.2 below sets out the terms applicable to Pass-Through Costs.

## 2.2 Pass-Through Costs

### Categories of Cost included in Pass-Through Costs

2.2.1 In addition to the Charges, the Customer shall pay a share (as further detailed below) of the following categories of costs on a pass-through basis:

- (a) rent and similar recurring and non-recurring licence fees or other ancillary payments made to site and site access providers;
- (b) rates, assessments and outgoings and any taxes or environmental levies whether similar or of a wholly new or novel nature;
- (c) electricity for Customer Equipment;
- (d) charges payable under any Arqiva Licence for spectrum required to be held by Arqiva in order to provide any Common Equipment for Network Access and where the relevant spectrum is not otherwise licensed to the Customer;
- (e) any other costs, charges and fees (including fees for legal, planning, surveyor, engineering and other professional services) which may be required to be paid to a landlord or other third party under the terms of the relevant lease/licence or otherwise as a result of or in connection with the provision of Network Access to the Customer at a particular Station;
- (f) any Ofcom fees incurred by Arqiva in relation to regulated activity; and
- (g) reasonable administration costs incurred by Arqiva in arranging for the provision of any Pass-Through Cost item,

(together, the "**Pass-Through Costs**"). The Customer's share shall be calculated on a Location-by-Location basis, using the methodology set out in Clause 9.21.2.

2.2.2 Table 1 at paragraph 2.1 above sets out an indicative estimate of Pass-Through Costs. These indicative estimates of Pass-Through Costs:

- (a) include indicative estimates of rent and rates; and
- (b) exclude electricity for Customer Equipment as this cost is not yet known and will be determined by the specifications and characteristics including the dimensions of the Customer Equipment.

Where any leased Station as at the date of this Agreement changes to freehold, the Pass-Through Costs will for the duration of this Agreement include the last full year rental on this

## SUBJECT TO CONTRACT

Site increased annually by RPI. Where a freehold Station as at the date of this Agreement becomes a leasehold site no rent from this Station will be included in the Pass-Through Costs.

### 2.3 Explanation Of Charges And Pass-Through Costs

- 2.3.1 This paragraph 2.3 details the key parameters that underpin the calculation of the Charges. Changes in the assumptions or parameters set out in this paragraph 2.3 may also have an impact on the level of Pass-Through Costs, but any changes in such level shall be governed by paragraph 2.2 of this Schedule.
- 2.3.2 The Charges and Pass-Through Costs are based on the specifications set out in Schedule 8 and Schedule 10 and are subject to the terms of this Agreement.
- 2.3.3 The Baseline Specification is based on the assumption that Network Access will be provided to one Local Television Multiplex Service only. The level of Pass-Through Costs may also vary if the number of other users of Station Facilities at a Station should change.
- 2.3.4 The Charges and Pass-Through Costs are based on Network Access being provided in accordance with this Agreement.
- 2.3.5 The Charges and Pass-Through Costs are based upon the provision of Network Access through to [1 October 2026].
- 2.3.6 The Charges are subject to indexation as further detailed in Clause 9.2.
- 2.3.7 The Charges reflect costing and calculation methodologies that have been agreed between Arqiva and Ofcom as part of Ofcom's guidance process.
- 2.3.8 The Charges assume any Customer exclusive programme distribution and connectivity equipment will be located inside the accommodation location areas designated and set aside at each Station by Arqiva to house Customer Equipment for television broadcasting purposes. Additional Charges will be due for any Customer Equipment located at any Station.
- 2.4 For the avoidance of doubt the Network Access Annual Fee does not include Pass-Through Costs.

### 3. Network Access Initial Fee Gainshare Mechanism

The Network Access Initial Fee shall be subject to the gainshare mechanism set out below. The Network Access Initial Fee shall be based on the actual levels of capital costs incurred by Arqiva in connection with this Agreement.

Within twelve (12) months of the completion of the L-DTPS Network Access Programme, Arqiva shall carry out a review to establish the actual level of capital expenditure incurred for Network Access which will then, subject to the remainder of this Paragraph 3 of Schedule 12 be used to adjust the Network Access Initial Fee. For the avoidance of doubt, nothing in this Schedule is intended to, or shall operate so as to, limit or cap in any way Arqiva's expenditure in relation to the L-DTPS Network Access Programme.

- 3.1 Arqiva shall undertake a review of the capital expenditure and uplift for contingencies elements of the Network Access Initial Fee in accordance with the provisions of this paragraph 3 of Schedule 12 in order to compare:
- 3.1.1 the level of actual capital expenditure employed for Network Access in carrying out the L-DTPS Network Access Programme up to the date of completion of the same in respect of the Customer plus forecast decommissioning costs ("**Actual Capex**"); with
- 3.1.2 the sum of:



## SUBJECT TO CONTRACT

- (a) the initial estimated capital expenditure plus forecast decommissioning costs each as adjusted for RPI indexation used to establish the Network Access Initial Fee for all Locations ("**Revised Base Capex**"); plus
- (b) the uplift for contingencies as adjusted for RPI indexation used to establish the Network Access Initial Fee for all Locations ("**Revised Uplift for Contingencies**"),

such sum known as the "**Revised Forecast Capex**" for the purposes of this Schedule.

- 3.2 In the event that there have been any changes made pursuant to the Change Control Procedure prior to the review referred to above ("**Review**") which have either increased or decreased the Actual Capex, the net sum of any such increases or decreases shall be added onto both the Revised Base Capex and the Revised Forecast Capex figure prior to Arqiva conducting the comparative calculation set out in this paragraph 3.2.
- 3.3 If Actual Capex is more than the Revised Forecast Capex, the Network Access Initial Fee shall be adjusted such that it is based on a level of capital expenditure which is equal to:
  - 3.3.1 Actual Capex; less
  - 3.3.2 Fifty per cent. (50%) of the differential between Actual Capex and Revised Forecast Capex.
- 3.4 If Actual Capex is less than the Revised Forecast Capex, the Network Access Initial Fee shall be adjusted such that it is based on a level of capital expenditure which is equal to:
  - 3.4.1 Revised Forecast Capex; less
  - 3.4.2 Fifty per cent. (50%) of the differential between Revised Forecast Capex and Actual Capex.
- 3.5 Any adjustment to the Network Access Initial Fee under this Schedule 12 shall be effected by way of a credit against the invoice for the Network Access Annual Fee payable in respect of the second Charging Year after the Access Date of the last Location.
- 3.6 Any amendments to the Charges effected under this paragraph 3 of Schedule 12 shall reflect changes in L-DTPS Network Access Programme capital expenditure only. No other factors shall be taken into consideration when Arqiva undertakes the calculations set out in paragraph 3.1 above, other than any differences between forecast and actual timing of cash flow.

**SUBJECT TO CONTRACT**

SCHEDULE 13

Locations

**Phase 1 Locations**

Phase	Location	Station Name	Station Category	Site Number
1	Leeds	Beecroft Hill	Large Relay	10415
		Emley Moor	Main Station	10400
1	Grimsby	Belmont	Main Station	12000
1	Glasgow	Black Hill (Glasgow petal)	Main Station	10500
1	Birmingham	Brierley Hill	Large Relay	10203
		Sutton Coldfield	Main Station	10200
1	Bristol	Bristol Ilchester Crescent	Large Relay	11008
		Bristol King's Weston Hill	Large Relay	11007
		Mendip	Main Station	11000
1	Plymouth	Caradon Hill (Plymouth petal)	Main Station	13100
		Plympton	Large Relay	13105
1	Edinburgh	Craigkelly	Main Station	14700
1	London	Crystal Palace	Main Station	10100
1	Belfast	Divis	Main Station	10700
1	Swansea	Kilvey Hill	Large Relay	10601
1	Nottingham	Nottingham	Large Relay	11101
		Waltham	Main Station	11100
1	Oxford	Oxford	Main Station	11700
1	Newcastle	Pontop Pike	Main Station	10900
1	Southampton	Rowridge	Main Station	10800
1	Sheffield	Sheffield	Large Relay	10403
1	Liverpool	Winter Hill (Liverpool petal)	Main Station	10300
		Storeton	Large Relay	10307
1	Norwich	Tacolneston	Main Station	11400
1	Cardiff	Wenvoe	Main Station	10600
1	Brighton +Hove	Whitehawk Hill	Large Relay	10805
1	Preston	Winter Hill (Blackpool petal)	Main Station	10300
1	Manchester	Winter Hill (Manchester petal)	Main Station	10300

**Phase 2 Locations**

Phase	Location	Station Name	Station Category	Site Number
2	Aberdeen	Durriss	Main Station	11200
2	Ayr	Darvel	Main Station	15200
2	Bangor	Llanddona	Main Station	11800
2	Barnstable	Huntshaw Cross	Main Station	13800
		Barnstaple	Large Relay	13815
2	Basingstoke	Hannington (Basingstoke petal)	Main Station	12600
2	Bedford	Sandy Heath	Main Station	12400
2	Bromsgrove	Bromsgrove	Large Relay	10206
2	Cambridge	Madingley	Large Relay	18241
2	Carlisle	Caldbeck	Main Station	13700
2	Derry/Londonderry	Londonderry	Large Relay	13001
2	Dundee	Angus	Main Station	12300

**SUBJECT TO CONTRACT**

<b>Phase</b>	<b>Location</b>	<b>Station Name</b>	<b>Station Category</b>	<b>Site Number</b>
		Tay Bridge	Large Relay	12308
2	Guildford	Guildford	Large Relay	10101
2	Hereford	Ridge Hill (Hereford petal)	Main Station	14900
2	Inverness	Rosemarkie	Main Station	15600
2	Kidderminster	Kidderminster	Large Relay	10202
2	Limavady	Limavady	Main Station	13000
2	Luton	Luton	Large Relay	12402
2	Maidstone	Bluebell Hill	Main Station	15800
2	Malvern	Malvern	Large Relay	10207
2	Middlesbrough	Bilsdale (Teesside Petal)	Main Station	11600
2	Mold	Moel y Parc	Main Station	14500
2	Reading	Hannington (Reading Petal)	Main Station	12600
2	Salisbury	Salisbury	Large Relay	10801
2	Scarborough	Olivers Mount	Large Relay	12002
2	Stoke on Trent	Fenton	Large Relay	10211
2	Stratford Upon Avon	Larkstoke	Large Relay	10208
2	Tunbridge Wells	Tunbridge Wells	Large Relay	10104
2	York	Bilsdale (York petal)	Main Station	11600

**SUBJECT TO CONTRACT**

**SCHEDULE 14**

**Power and Accommodation**

<b>Site Number</b>	<b>Site Name</b>	<b>No of Racks</b>	<b>Power Supply</b>	<b>Maximum Transmitter Load (kW)</b>	<b>Fixed Generator</b>
12300	Angus	2	Dual	3.05	Yes
13815	Barnstaple	1	Single	0.04	No
10415	Beecroft Hill	1	Single	0.08	No
12000	Belmont	2	Dual	7.50	Yes
11600	Bilsdale (Teesside petal)	2	Single	3.27	Yes
11600	Bilsdale (York petal)	2	Single	6.58	Yes
10500	Black Hill (Glasgow petal)	2	Dual	16.67	Yes
15800	Bluebell Hill	2	Dual	1.67	Yes
10203	Brierley Hill	2	Single	0.88	Yes
11008	Bristol Ilchester Crescent	1	Single	0.08	Yes
11007	Bristol King's Weston Hill	1	Single	0.08	Yes
10206	Bromsgrove	1	Single	1.67	Yes
13700	Caldbeck	2	Dual	16.67	Yes
13100	Caradon Hill (Plymouth petal)	2	Dual	1.67	Yes
14700	Craigkelly	2	Dual	7.50	Yes
10100	Crystal Palace	2	Dual	6.58	Yes
15200	Darvel	2	Dual	3.05	Yes
10700	Divis	2	Dual	16.67	Yes
11200	Durris	2	Dual	7.50	Yes
10400	Emley Moor	2	Dual	16.67	Yes
10211	Fenton	1	Single	0.43	Yes
10101	Guildford	1	Single	0.43	Yes
12600	Hannington (Basingstoke petal)	2	Dual	1.67	Yes
12600	Hannington (Reading petal)	2	Dual	0.20	Yes
13800	Huntshaw Cross	2	Dual	3.05	Yes
10202	Kidderminster	2	Single	0.08	No
10601	Kilvey Hill	1	Single	0.20	Yes
10208	Larkstoke	1	Single	0.20	Yes
13000	Limavady	2	Dual	3.05	Yes
11800	Llandona	2	Single	0.88	Yes
13001	Londonderry	2	Single	0.88	Yes
12402	Luton	1	Single	0.20	No
18241	Madingley	2	Single	0.88	Yes
10207	Malvern	1	Single	0.20	Yes
11000	Mendip	2	Dual	7.50	Yes
14500	Moel y Parc	2	Dual	6.58	Yes
11101	Nottingham	1	Single	0.43	Yes
12002	Olivers Mount	1	Single	6.68	Yes
11700	Oxford	2	Dual	6.58	Yes

**SUBJECT TO CONTRACT**

<b>Site Number</b>	<b>Site Name</b>	<b>No of Racks</b>	<b>Power Supply</b>	<b>Maximum Transmitter Load (kW)</b>	<b>Fixed Generator</b>
13105	Plympton	1	Single	0.43	Yes
10900	Pontop Pike	2	Dual	7.50	Yes
14900	Ridge Hill (Hereford petal)	2	Dual	1.67	Yes
15600	Rosemarkie	2	Dual	1.67	Yes
10800	Rowridge	2	Dual	6.58	Yes
10801	Salisbury	2	Single	0.88	Yes
12400	Sandy Heath	2	Dual	3.05	Yes
10403	Sheffield	1	Single	0.43	Yes
10307	Storeton	1	Single	0.08	Yes
10200	Sutton Coldfield	2	Dual	16.67	Yes
11400	Tacolneston	2	Dual	16.67	Yes
12308	Tay Bridge	1	Single	0.04	No
10104	Tunbridge Wells	2	Single	0.88	Yes
11100	Waltham	2	Dual	16.67	Yes
10600	Wenvoe	2	Dual	16.67	Yes
10805	Whitehawk Hill	1	Single	0.43	Yes
10300	Winter Hill (Blackpool petal)	2	Dual	1.67	Yes
10300	Winter Hill (Liverpool petal)	2	Dual	3.05	Yes
10300	Winter Hill (Manchester petal)	2	Dual	3.05	Yes

## SUBJECT TO CONTRACT

### SCHEDULE 15

#### Supervision

##### 1. General

- 1.1 References in this Schedule to paragraphs are to paragraphs of this Schedule 15.
- 1.2 The parties agree and acknowledge that supervision of new build and project works, in relation to Customer Equipment, shall be required when necessitated by the specific nature of the Station and the proposed activities. In general this will be in those circumstances where the works may have implications for:
- 1.2.1 health and safety;
  - 1.2.2 the uninterrupted provision of services to other users of any Station; and/or
  - 1.2.3 statutory and legal requirements relating to operations on any Station.
- 1.3 Arqiva reserves the right to supervise all activities carried out by or on behalf of the Customer at any Station under this Agreement.
- 1.4 The requirements for, and the extent of, supervision shall be determined by reference to the more detailed criteria set out in paragraph 3 of this Schedule 15. The parties agree and acknowledge, however, that such detailed criteria do not represent an exhaustive list on the grounds that there may be unforeseen or exceptional or other circumstances which give rise to the requirement for supervision.
- 1.5 Nothing in this Schedule 15 implies a continuous supervisory presence during the entirety of the works by the Customer and its Approved Contractors but is intended to relate to specific activities within works carried out by the Customer in the circumstances which can reasonably be anticipated by the parties.
- 1.6 The parties agree and acknowledge that:
- 1.6.1 the extent of any supervision;
  - 1.6.2 the number of supervisory personnel required; and
  - 1.6.3 the competency of the persons undertaking such supervision.

shall be no more than is reasonably required given the specific nature of any works and the requirement for compliance with safe working practices and any statutory requirements in respect of such works. In applying the criteria detailed in paragraph 3 of this Schedule 15, in respect of the extent of supervision required, due consideration shall be given to the extent to which the Customer has competently undertaken such works on Stations in the past.

- 1.7 In the event of a disagreement between the parties as to the extent of supervision required, or who should pay for such supervision, the dispute will be resolved in accordance with the dispute resolution procedure set out at Clause 17 of this Agreement.
- 1.8 For the avoidance of doubt, all visits to Stations shall be undertaken in accordance with the terms of this Agreement (including, for the avoidance of doubt, the provisions of the Code of Practice). In the event of any conflict or inconsistency between any provisions set out in the Code of Practice and any other provision of this Agreement, then such other provision of this Agreement shall prevail to the extent of such conflict.

##### 2. Preliminary Site Meeting

- 2.1 The parties agree and acknowledge that the initial element of "supervision" will, at all Stations where the circumstances set out in paragraphs 1 and 3 of this Schedule 15 might reasonably

## SUBJECT TO CONTRACT

be anticipated by the parties to occur, comprise a preliminary site meeting prior to the commencement of works, the purpose of which shall be to:

- 2.1.1 ensure that any specific risks to health and safety have been identified and are fully understood; and that specific control and mitigation measures are put in place;
- 2.1.2 ensure that any Station-specific constraints or restrictions are understood, and appropriate measures to ensure compliance are agreed, for example, in relation to access conditions, hours of working, noise levels and conditions imposed by the Local Planning Authority;
- 2.1.3 agree the works programme, including any dependencies that might affect specific activities; and
- 2.1.4 identify those activities most likely to have a potential impact on existing services; and to agree mitigation strategies in respect of such activities.

Based on the preceding points, together with the more detailed criteria set out in paragraph 3 of this Schedule 15, the parties shall agree the activities requiring Station-supervision by Arqiva, and the likely extent of such supervision. The parties agree that the overriding principle is to ensure that the preliminary site meeting covers or agrees the supervisory and other requirements for as many Stations as possible at one meeting so as to avoid the necessity of holding a Station meeting for each separate Station, except where it is agreed between the parties that the nature of a particular Station, and the proposed works thereon, are such that a preliminary site meeting is advisable at that specific Station.

- 2.2 The Customer will not be liable for the cost of the preliminary site meeting. However, if and to the extent that the nature and extent of the works are such that additional site meetings are deemed necessary, any subsequent meetings will be regarded as "supervision" and charged accordingly.

### 3. Detailed Criteria

The parties agree and acknowledge that within the three general areas noted in paragraph 1 of this Schedule 15, the principal criteria upon which the requirement for Station supervision by Arqiva shall be determined include (but are not limited to) the following and to the circumstances set out in paragraph 4, Table A below:

- 3.1 Compliance with statutory and other consents as necessary for works to proceed, including:
  - 3.1.1 where Arqiva is obliged to ensure compliance with specific conditions relating to the works imposed by any authorised statutory body such as the Local Planning Authority, Highways department and the Health and Safety Executive; and
  - 3.1.2 where Arqiva is obliged to ensure compliance with specific conditions relating to activities on any Station arising from agreements with other interested parties, for example, superior landlords, tenants and those with a legal interest in the land, local community bodies and interest groups.
- 3.2 Potential conflict with concurrent Station works by third parties including:
  - 3.2.1 installations of Customer Equipment in Common Accommodation at the same time as another customer, entailing the use of the same elements of Common Accommodation and/or Common Equipment;
  - 3.2.2 at the request of an Arqiva sub-contractor where such sub-contractor still has possession of a Station.

The requirements and conditions set out in this paragraph 3.2 and paragraph 3.3.4 below are subject to the Customer not being liable to pay for the cost of the supervision if the event triggering the requirement for supervision was due to the actions of a third party and/or

## SUBJECT TO CONTRACT

occurred subsequently to the Customer having “booked, requested or agreed” access to the Station.

- 3.3 Specific health and safety issues including:
- 3.3.1 the delivery to any Station of heavy plant, machinery or Equipment;
  - 3.3.2 the use of Hiab or crane, or significant load handling;
  - 3.3.3 activities entailing the obstruction of any Station and access to it;
  - 3.3.4 controlled access within a zone where works are taking place overhead (and where these works were booked subsequent to the Customer’s access booking); and
  - 3.3.5 where there are significant extant or latent risks resulting from pre-planned ground or civil or electrical works by Arqiva or other third parties that affect safe access and egress.
- 3.4 Potential service disruption including:
- 3.4.1 outages and reduced power working of other customers of Arqiva, particularly where existing services are operating from within Common Accommodation;
  - 3.4.2 where necessitated by the installation activities or operations of the Customer; and
  - 3.4.3 during switching or re-configuring of Common Equipment and/or Common Accommodation.
- 3.5 Where the nature of works may affect Common Equipment and/or Common Accommodation.
- 3.6 In relation to the Customer’s work within areas of Common Accommodation, the requirement and duration of any supervision is to be determined and agreed during the course of the preliminary site meeting; and will be considered where the particular nature of the works, their complexity and the nature of any associated temporary transitional arrangements, renders supervision advisable.
- 4. Applicable Rates, Notifications and Working Practices for Supervision of Customer Works**

**Table A:**

<b>Main criteria</b>	<b>Specific activity</b>	<b>Current working practice</b>	<b>Proposed working practice</b>	<b>Applicable Rates</b>
Operational, steady state or maintenance activities	Notification before accessing Stations.	No notification to Arqiva by the Customer, with the exception of high risk Sites.	Access notification required in every case; although no permit or accompanying administration fee required for ground-based access. Permit and administration fee only required for structure climbing access. 24 hour minimum notice only required for structure climbing access.	As published on the arqiva.com website as updated from time to time.
	Supervision of the Customer in	No supervision of the Customer by	Supervision only where necessitated	



**SUBJECT TO CONTRACT**

<b>Main criteria</b>	<b>Specific activity</b>	<b>Current working practice</b>	<b>Proposed working practice</b>	<b>Applicable Rates</b>
	accessing Customer Accommodation on Stations.	Arqiva.	by specific circumstances, normal criteria as set out in paragraph 3 of this Schedule 15, but including: <ul style="list-style-type: none"> <li>• concurrent site works by others;</li> <li>• potential service disruption;</li> <li>• specific health and safety issues; and</li> <li>• outages and reduced power working.</li> </ul>	
New build or project activities.	Notification before accessing Stations.	Project plans agreed between both parties at the outset of the project would specify required access dates. The Customer would notify Arqiva of any changes to these planned dates on a by-exception basis.	Access notification required in every case; although no permit or accompanying administration fee required for ground-based access. Permit and administration fee only required for structure climbing access. 24 hour minimum notice only required for structure climbing access.	As published on the arqiva.com website as updated from time to time.
	Supervision of the Customer in accessing Common Accommodation on Sites.	No established working practices.	Supervision where necessitated by specific nature of Station and proposed activities. Principal criteria as set out in paragraph 3 of this Schedule 15, but including: <ul style="list-style-type: none"> <li>• potential conflict with concurrent site works by others;</li> <li>• potential service disruption;</li> <li>• specific health and safety issues;</li> <li>• outages and reduced power working; and</li> <li>• where the nature of works may affect common infrastructure.</li> </ul>	As published on the arqiva.com website as updated from time to time.

## SUBJECT TO CONTRACT

### SCHEDULE 16

#### Operations Manual

#### 1. Reporting

- 1.1 The Customer must contact Arqiva immediately if there is evidence that Arqiva's Antenna, power equipment, or Common Equipment has caused a shutdown or degradation of the Customer's service.
- 1.2 Arqiva will report to the Customer and record all incidents of interruption to Network Access Availability and where the cause is due to Arqiva's Antenna, power equipment, or Common Equipment, using procedures as specified in this Schedule.
- 1.3 Where the Customer becomes aware that an interruption to Network Access Availability has occurred, this will be reported to Arqiva so that remedial action can be taken and the incident recorded.
- 1.4 The normal operational interface shall be Arqiva's monitoring centre: the SMC.
- 1.5 All incidents will be reported in the first instance by telephone, followed by a confirmation by email between the SMC and the Customer.

#### 2. Recording of Incidents

- 2.1 All incidents of failures or interruptions in the provision of Network Access will be recorded in the first instance by the SMC. Without prejudice to the provisions of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits), the record shall include the actual duration of the incident, its effect on transmitted multiplexes and the cause of the incident. In addition, it shall be recorded whether or not the incident is accountable for Network Access Credits in accordance with the provisions of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits). Each incident shall be identifiable by means of a unique reference number.
- 2.2 The records shall be made freely available to the Customer on provision of reasonable notice.

#### 3. Responses

- 3.1 Incidents at a Station that affect, or are likely to affect, the Customer's service(s) shall be notified to the Customer as soon as reasonably practicable at the beginning and at end of the incident, and the events recorded as required in paragraph 2 of this Schedule. For example, incidents that are likely to affect the Customer's service(s) may include, without limitation, loss of redundancy, diesel unavailability and planned works.
- 3.2 Arqiva shall also provide regular updates concerning the resolution of the incident at intervals as reasonably requested by the Customer.
- 3.3 Such incidents are defined as follows:
  - 3.3.1 All failures and interruptions in the provision of Network Access; and
  - 3.3.2 Any incident relating to Arqiva's Antenna, power equipment, or the Common Equipment which causes the Network Access infrastructure to be unable to support the service at the ERP required by the Customer shown in Schedule 10 (for the avoidance of doubt, where the incident does not prevent the Customer from operating at their selected nominal operational ERP this shall not be regarded as a breakdown).
- 3.4 Arqiva's technical personnel shall attend the Station as soon as reasonably practicable, and in any event within the target response times set out in Appendix 1 of this Schedule 16, in the event of a report that a failure of Arqiva's Antenna, power equipment, or Common Equipment has caused a shutdown or significant degradation of the Customer's services. For the avoidance of doubt, the Customer and Arqiva agree and acknowledge that, pursuant to Clause 5.14.1, any liability of Arqiva to pay Network Access Credits shall represent the

## **SUBJECT TO CONTRACT**

Customer's sole and exclusive remedy in respect of Arqiva's failure to achieve the applicable Network Access Levels. Accordingly, any liability of Arqiva to pay Network Access Credits arising as a result of its failure to comply with the target response times set out in Appendix 1 to this Schedule 16 shall represent the Customer's sole and exclusive remedy in respect of such non-compliance.

- 3.5 Arqiva shall allow the Customer's personnel immediate, free, and unfettered access to the Customer's areas and shared areas of the Stations, subject to any requirement to notify Arqiva that such access is intended under the Code of Practice and subject also to the general provisions of such Code of Practice. The preceding notwithstanding, it is accepted that there may be exceptional circumstances in which the risk to Health and Safety of both personnel and the general public is such that immediate access may be unavoidably curtailed, irrespective of the effect on service continuity, e.g. the collapse, or imminent collapse of building or structure.

### **4. Performance of Common Equipment**

- 4.1 The Network Access Availability target for all common technical equipment at each Station (including, for the avoidance of doubt, but not limited to: the Antenna, Antenna support structure and power facilities) shall be as specified in Schedule 2.

- 4.2 Antenna and filter systems shall meet the guidelines detailed in Schedule 10 (Station Details).

### **5. Performance Reporting**

- 5.1 Arqiva shall report to the Customer on all incidents and calculate any Network Access Credits due in accordance with the provisions of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits).

- 5.2 Arqiva shall provide the Customer with reports on a quarterly basis detailing by Site and by service:

5.2.1 all failures and interruptions in the provision of Network Access;

5.2.2 all incidents relating to Common Equipment which cause the Network Access infrastructure to be unable to support the service at the ERP required by the Customer shown in Schedule 10 (for the avoidance of doubt, where the incident does not prevent the Customer from operating at their selected nominal operational ERP this shall not be regarded as a breakdown); and

5.2.3 cumulative duration of interruptions in provision of Network Access caused by planned works.

- 5.3 For the avoidance of doubt, incidents relating to Common Equipment that are not service-affecting or potentially service-affecting shall not be required to be reported under paragraph 5.2 above.

### **6. Feeder Protection Equipment (where fitted)**

- 6.1 The Customer is not permitted to carry out a reset to feeder protection equipment following a feeder trip without specific instructions from Arqiva.

- 6.2 The Customer will normally be permitted to attempt at least ONE reset (per incident) following permission from and under the guidance of Arqiva via the SMC, such permission not to be unreasonably withheld, provided that Arqiva has first attempted at least one reset remotely, and such attempt has failed.

- 6.3 In the event of failure of one half of an Antenna System, it is permissible for the Customer to operate its service via a serviceable half Antenna without awaiting the arrival of Arqiva's staff. The Customer may implement systems in which this configuration will be selected automatically and/or remotely.

## **SUBJECT TO CONTRACT**

6.4 The Customer may also implement systems that provide a higher output power to half Antennas, to maintain ERP at or closer to the nominal value, always provided that Customer does not cause the rated power handling of the Antenna to be exceeded when all services are carried or at any other time. Arqiva shall inform the Customer via a written schedule of the maximum permitted input power for each practical Antenna configuration on each Site.

### **7. Equipment Isolation**

7.1 Prior to carrying out work on Common Equipment, Arqiva shall ensure all appropriate Common Equipment is isolated, both electrically and mechanically, as necessary in order that it cannot be powered inadvertently.

7.2 The Customer shall be required to demonstrate that the Customer Equipment connected to such Common Equipment is isolated, both electrically and mechanically, as necessary in order that it cannot be powered inadvertently.

7.3 Any such isolation shall be recorded formally on-site.

### **8. Service Restoration**

8.1 If it is not possible to restore all services immediately after an interruption to Network Access Availability related to Common Equipment, Arqiva shall in its discretion, acting reasonably, decide the priority of restoration, giving equal priority to the Customer's services.

8.2 Subject to paragraph 2 of Schedule 2 (Network Access Availability, Network Access Levels and Network Access Credits), Arqiva shall carry out such tests as it believes reasonably necessary using its own equipment to demonstrate to the Customer if required the performance of any or all parts of the common technical equipment, and these tests shall be conclusive evidence of the performance of the common technical equipment.

### **9. Repairs, Planned Work, and Routine Maintenance**

9.1 Arqiva is responsible for the repair and maintenance of all Antennas, Antenna support structures, power equipment, Common Equipment, and all Common Accommodation.

9.2 All planned maintenance work affecting Antennas, Antenna support structures, power equipment, or Common Equipment shall be carried out under the planned work procedure agreed.

9.3 Full ERP and normal radiation patterns shall be maintained during routine maintenance, unless a temporary condition is agreed e.g. reduced power, temporary Antenna, etc.

9.4 In arranging any works, Arqiva shall take steps to ensure that they are arranged to maintain the maximum practical system redundancy allowed by the proposed works and the installed equipment configuration.

9.5 When redundancy is not available, the parties shall work together to develop a contingency plan to be agreed and implemented in case of failure of in-service Common Equipment.

9.6 Any planned works should be accompanied by method statements and operational risk assessments, which shall include back-out plans.

9.7 Arqiva shall maintain the Antennas, Antenna support structures, power equipment and Common Equipment in line with its experience and current best practice.

### **10. Operational Escalation Procedure**

The parties shall each maintain a current escalation procedure and escalation contact list, and keep it available for use at all times.

### **11. Emergency Power Provisions**

11.1 Emergency and standby power

## **SUBJECT TO CONTRACT**

- 11.1.1 For each Station at which a fixed standby diesel generator is provided by Arqiva, in the event of a failure of the fixed standby diesel generator set, Arqiva shall have a procedure for providing emergency standby power, in the form of a mobile or hired-in diesel alternator set, which can be connected to provide power to the Customer's services.
- 11.1.2 If the failure of the fixed standby diesel generator set occurs during a mains supply outage then Arqiva shall arrange for the emergency standby power facility to be mobilised so as to minimise the delay in restoring the service.
- 11.2 At Stations where fixed standby diesel generators are provided by Arqiva, Arqiva shall ensure that there is at all times sufficient fuel in stock at each Station to ensure at least 8 hours of on-load running.
- 12. Changes and Modifications to Facilities, Common Equipment & Exclusive Equipment once in Service**
- 12.1 All changes and/or modifications to the Antenna, Antenna support structure, power facilities, shared facilities and/or Common Equipment:
  - 12.1.1 that Arqiva may require to carry out from time to time, that affect the Customer's service(s) in any respect shall be agreed in advance via the Change Control Procedure agreed between the parties;
  - 12.1.2 that the Customer may request from time to time, shall be requested and agreed in advance via the Change Control Procedure agreed between the parties;
  - 12.1.3 shall be implemented at Arqiva's responsibility and discretion;
  - 12.1.4 shall be implemented by Arqiva's nominated personnel and/or contractors.
- 13. Spares**
- 13.1 Arqiva shall procure the availability of sufficient spares for its equipment as are reasonably necessary to re-establish services in the minimum practical time.
- 14. Security**
- 14.1 Arqiva shall use all reasonable endeavours at all Stations to ensure that that the Sites are secure from unauthorised access.
- 14.2 The Customer shall notify Arqiva immediately once it becomes aware of any unauthorised entry or interference with the Station, service infrastructure and/or the Customer's service(s) or any material attempt to do so.
- 14.3 The Customer shall cooperate fully in any investigation of any actual or suspected security breach.
- 14.4 The Customer shall comply with such reasonable access control, monitoring and/or authorisation procedures as Arqiva may implement, always provided that the requirements of such procedures do not conflict with paragraph 3.5 of this Schedule 16 (Operations Manual).

## **SUBJECT TO CONTRACT**

### **15. Telemetry and Automatic Fault Reporting**

Arqiva shall procure, at each Station, telemetry and Automatic Fault Reporting (AFR) capable of providing, at a minimum, alarms to indicate a breach of site security, loss of power supply, diesel generator failure to start (where a diesel generator is provided), and an Antenna fault (where feeder monitoring and/or protection is fitted). Such alarms to be returned to Arqiva's SMC.

### **16. Health and Safety and Policies**

- 16.1 Arqiva and the Customer shall comply with their obligations and standards arising from their accreditation to the Occupational Health and Safety assessment series (OHSAS) 18001 and the International Standards Organisation (ISO) 14001 (or any successor standard thereto).
- 16.2 Arqiva shall every three calendar months provide to the Customer a written report of all accidents and incidents relating to the Stations that Arqiva has reported to the various reporting authorities during the previous three calendar months.
- 16.3 Arqiva shall immediately provide to the Customer a written report of any accident or incident at any of the Stations in respect of which Arqiva has had any enforcement action issued against them.
- 16.4 The Customer, and its personnel, agents, and contractors, shall comply with the reasonable instructions of Arqiva in respect of access, safety, security, conduct, audit and confidentiality.

## SUBJECT TO CONTRACT

### Appendix 1 - Response Times

Site	Response Time (24 hours per day)
Angus	2.0 Hours
Barnstable	2.0 Hours
Beecroft Hill	2.0 Hours
Belmont	2.0 Hours
Bilsdale	2.0 Hours
Black Hill	1.5 Hours
Bluebell Hill	1.25 Hours
Brierley Hill	2.0 Hours
Bristol IC	2.0 Hours
Bristol KW	2.0 Hours
Bromsgrove	1.75 Hours
Caldbeck	1.75 Hours
Caradon Hill	1.75 Hours
Craigkelly	1.75 Hours
Crystal Palace	0.83 Hours
Darvel	1.75 Hours
Divis	1.50 Hours
Durris	1.75 Hours
Emley Moor	1.5 Hours
Fenton	2.0 Hours
Guildford	2.0 Hours
Hannington	2.0 Hours
Huntshaw Cross	1.75 Hours
Kidderminster	1.75 Hours
Kilvey Hill	1.5 Hours
Lark Stoke	2.0 Hours
Limavady	2.0 Hours
Llandona	2.0 Hours
Londonderry	2.5 Hours
Luton	2.0 Hours
Madingley	2.0 Hours
Malvern	2.0 Hours
Mendip	1.5 Hours
Moel-y-Parc	1.75 Hours
Nottingham	2.0 Hours
Olivers Mount	2.0 Hours
Oxford	2.0 Hours

## SUBJECT TO CONTRACT

Plympton	2.0 Hours
Pontop Pike	1.75 Hours
Ridge Hill	1.75 Hours
Rosemarkie	2.0 Hours
Rowridge	1.75 Hours
Salisbury	2.0 Hours
Sandy Heath	1.75 Hours
Sheffield	2.0 Hours
Storeton	2.0 Hours
Sutton Coldfield	1.25 Hours
Tacolneston	2.0 Hours
Tay Bridge	2.0 Hours
Tunbridge Wells	2.0 Hours
Waltham	2.0 Hours
Wenvoe	1.25 Hours
Whitehawk Hill	2.0 Hours
Winter Hill	1.5 Hours



## SUBJECT TO CONTRACT

### SCHEDULE 17

#### Liquidated Damages

1. Subject to Paragraph 2 of this Schedule 17, the liquidated damages payable by Arqiva pursuant to Clause 5.9 shall be £180 per completed week of delay after the Target Location Service Date for the relevant Location.
2. Arqiva's liability to pay liquidated damages shall be subject to the following limits:
  - (a) £3,600 per Location;
  - (b) £1,800 in aggregate per week; and
  - (c) £36,000 in aggregate.

## SUBJECT TO CONTRACT

### SCHEDULE 18

#### Termination Payments

1. In the event of this Agreement being terminated by Arqiva pursuant to Clause 11.2 or 11.3 or by either party pursuant to Clause 14.2 or 14.3 Arqiva shall have a duty to take all reasonable steps to mitigate its present and future losses arising from such termination ("Mitigation"), with the result that Arqiva shall be unable to claim or recover from the Customer any part of its losses that could have been avoided by taking such reasonable steps, such Mitigation to include using reasonable endeavours to secure, on the best available commercial terms:
  - 1.1 alternative customers and/or contracts for Network Access;
  - 1.2 alternative utilisation or exploitation of the facilities;
  - 1.3 alternative utilisation of labour.
2. The Customer acknowledges that Network Access infrastructure is shared across a number of customers and, accordingly, Arqiva's ability to mitigate costs in respect of such shared infrastructure will be limited.
3. For the avoidance of doubt, nothing in this Agreement shall be construed as reducing or limiting a party's common law duty to mitigate its losses arising from a breach of contract.
4. The Customer shall pay to Arqiva any amounts due under Clause 12.2 as follows:
  - 4.1 Where this Agreement has been terminated pursuant to Clause 11.2, 11.3 or pursuant to Clause 14.2, Arqiva in consultation with the Customer will promptly calculate the amount payable by the Customer under Clause 12.2 which shall be the Network Access Annual Fee (or 75% thereof where terminated pursuant to Clause 14.2) due for the remainder of the term of the Agreement minus an amount equal to any expenditure avoided by Arqiva and any fees payable to Arqiva for the relevant period by third parties under Mitigation arrangements.
  - 4.2 Where this Agreement has been terminated pursuant to Clause 14.3, Arqiva in consultation with the Customer will promptly calculate the amount payable by the Customer under Clause 12.2 which shall be a sum which, following the subtraction of an amount equal to any expenditure avoided by Arqiva and any fees paid to Arqiva by third parties under Mitigation, is: (i) 75% of the total capital costs incurred by Arqiva in carrying out the build programme in respect of the relevant Location as at the effective date of termination; and (ii) 75% of any decommissioning costs and redundancy costs incurred by Arqiva relating to the dismissal of employees as a result of, or in connection with, the Agreement being terminated pursuant to Clause 14.3.
  - 4.3 Once the amount of the termination payment has been calculated by Arqiva pursuant to paragraph 4.1 or 4.2 of this Schedule 18, Arqiva will notify the Customer in writing of the applicable amount and provide copies of all supporting information. In the event that there is a dispute regarding the amount of the termination payment, the matter will be determined pursuant to Clause 17.3 and the Customer will continue to pay to Arqiva the full Network Access Annual Fee due under this Agreement until such time as the dispute is resolved.
  - 4.4 Once the amount of the termination payment has been agreed by the parties or determined pursuant to Clause 17.3, the Customer shall pay the termination payment within 30 days of the date of notification by Arqiva under paragraph 4.3 above.
  - 4.5 If during the twelve months after the effective date of termination after Arqiva has received the termination payment due from the Customer, Arqiva is able to procure any further Mitigation, Arqiva will refund to the Customer such amounts as it is able to mitigate up to the amount of the termination payment.

## **SUBJECT TO CONTRACT**

### **SCHEDULE 19**

#### **Service Continuity**

The Customer agrees and acknowledges that the provision of Network Access will have an impact on current Broadcast Services and other services transmitted from the affected Stations. For each Station there are circumstances where there is likely to be a change to the radiation characteristics of the existing services. The Customer acknowledges that during an Antenna construction period, existing services (either for the Customer or other customers of Arqiva) may be disrupted whilst a new Antenna is being installed. The Customer agrees and acknowledges that to allow the Antenna construction it may be necessary for existing services to operate in certain abnormal configurations. Arqiva will need to obtain the agreement of its customers for these existing services to any abnormal configurations. Such customers may restrict the timings of these abnormal restrictions such that Arqiva cannot achieve completion of Antenna construction in accordance with the applicable dates in Schedule 11. Any delay caused by such timing restrictions shall be deemed to be an Exceptional Risk.

**SUBJECT TO CONTRACT**

SCHEDULE 20

[Form of Guarantee or Other Security]