

MEMORANDUM OF UNDERSTANDING ON LOCAL DAB FUNDING
FOR RADIO SWITCHOVER

PARTIES

This Memorandum of Understanding ("the MoU") is agreed between:

- (1) The Department for Culture, Media and Sport ("**DCMS**") of 2-4 Cockspur Street, London SW1Y 5DH;
- (2) The British Broadcasting Corporation ("**the BBC**") whose chief office is at Broadcasting House, Portland Place, London W1A 1AA;
- (3) The Office of Communications ("**Ofcom**") whose head office is at Riverside House, 2a Southwark Bridge Road, London SE1 9HA;
- (4) Arqiva Limited (company number 02487597) ("**Arqiva**") whose registered office is at Crawley Court, Winchester, Hampshire SO21 2QA;
- (5) The holders of Local Radio Multiplex Licences set out in Schedules 1 and 2 to this MoU ("**the Multiplex Operators**"); and
- (6) The Adjudicator for Broadcast Transmission Services of Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA ("**the Adjudicator**")

Collectively referred to as "**the Parties**".

RECITALS

- A. The Broadcasting Act 1996, amended by the Digital Economy Act 2010, created the framework for the licensing of DAB (Digital Audio Broadcasting) which provided for the carriage of BBC and commercial services on local DAB multiplexes. This recognised both the need for the continued provision of BBC services for licence fee payers and that a mixed ecology of public and commercial funding is necessary to sustain the local DAB layer for the foreseeable future.
- B. In July 2010 DCMS published the first version of the Digital Radio Action Plan with the purpose of detailing a path to radio switchover if particular criteria are met. The high level criteria for radio switchover ("the Switchover Criteria") are:
 - When 50% of all listening is to digital;
 - When national DAB coverage is comparable to FM; and local DAB reaches 90% of the population and all major roads.

- C. The dates of the commencement and completion of radio switchover, which may take place on a region by region basis, will be announced at least two years in advance, after the Switchover Criteria have been met. On radio switchover in each region, all services nominated by the Secretary of State pursuant to section 97A of the Broadcasting Act 1990 (as inserted by section 30(2) of the Digital Economy Act 2010) will cease to be available in analogue form.
- D. Ofcom's principal duty pursuant to the Communications Act 2003 is to further the interests of citizens and consumers in relation to communications matters, and to further the interests of consumers in relevant markets. In so doing, it must have regard, inter alia, to the need to secure optimal use for wireless telegraphy of the electromagnetic spectrum, the need to secure the availability throughout the UK of a wide range of high quality radio services, the desirability of promoting competition, and the desirability of promoting investment and innovation.
- E. There are three planned phases of DAB coverage improvements between the signing of this MoU and any future radio switchover:
- Phase 1 covers the necessary actions required to support and inform a government decision on radio switchover in 2013. These include the DAB coverage and technical planning required to achieve FM equivalence, costing of the proposed network and the launch of five of the licensed but as yet un-launched local DAB multiplexes.
 - Phase 2 covers the build-out of local DAB coverage to at least 90% of the population. This MoU sets out the funding mechanisms for that build-out and the instances where Arqiva, as a transmission provider, shall fund the costs of frequency changes and the implementation of service-linking.
 - Phase 3 covers the build-out of coverage from 90% to FM equivalence. This MoU sets out the funding of any build-out of this coverage before March 2017 and the process for how costs will be apportioned beyond March 2017 up to the end of the existing or renewed multiplex licences.

1. PURPOSE AND STATUS OF THE MOU

1.1. The purpose of the MoU is:

- 1.1.1. to minimise the cost to the radio industry as a whole (including broadcasters) of increasing the coverage of local DAB (referred to in this MoU as "build-out") with a view to radio switchover, recognising that additional funding from both

public and commercial sources will be required in order to facilitate a managed radio switchover;

- 1.1.2. to set out the principles and processes for the build-out of local DAB coverage;
 - 1.1.3. to identify the funding principles and mechanisms for the build-out of local DAB coverage and to apportion the costs fairly between Government, the BBC and the Multiplex Operators. In the build-out of local DAB coverage to enable a potential radio switchover it will be desirable to reduce overall distribution costs which would also deliver increased value for money for licence fee payers; and
 - 1.1.4. to set out what is expected of the parties to the MoU.
- 1.2. The Parties to the MoU agree that the provisions contained in the MoU do not create legal obligations between them. However, the Parties acknowledge that they will work together constructively in the interests of achieving the purpose of the MoU.
 - 1.3. From January 2013 the Parties shall work towards agreeing the terms of a legally binding agreement ("the Framework Agreement") which requires the relevant 'Funding Partners'¹ to work to deliver phases 2 and 3 of the MoU. The Parties shall seek to ensure that the Framework Agreement details all necessary measures (such as the establishment of the Funding Advisory Panel, the issuing of Invitations to Apply, the submission of licence variation requests and the process of identifying and securing funding after 31 March 2017) to enable funding applications to be submitted and agreed, as set out from paragraph 2.2 onwards. In agreeing the terms of any legally binding agreement all Funding Partners will work constructively towards addressing the issue of the funding of local DAB after 31 March 2017 until radio switchover. In doing so DCMS recognises that government funding is a necessary factor in the lead-up to and delivery of radio switchover.
 - 1.4. The Framework Agreement will only become binding following a positive in principle announcement about radio switchover in 2013 as set out in paragraph 2.1.17. All Parties will have been given an opportunity to present their views about any radio switchover decision and its implications for the Framework Agreement before such a decision is made. Before signing any legally binding agreement all Funding Partners will have certainty over the funding split in the event of radio switchover being completed after March 2017. For the avoidance of doubt nothing in this MoU requires any of the Funding Partners to enter into a legally binding document.

¹ Funding Partners differs from Parties to the MoU as it does not include Ofcom and the Adjudicator.

1.5. Any such Framework Agreement shall be in addition to subsequent individual funding agreements for each multiplex between the relevant parties as required in Phases 2 and 3.

2. RESPONSIBILITIES OF THE PARTIES TO THE MOU

2.1. PHASE 1 – Action prior to the 2013 radio switchover decision

- 2.1.1. Within one month of the Parties signing this MoU, each Party except the Adjudicator shall nominate one representative to represent it on the steering board of a planning group (Joint Planning for Radio Group ("the JPRG")), the principles of operation of which are set out in Schedule 3 to this MoU.
- 2.1.2. The Parties except the Adjudicator shall nominate representatives to sit on sub-groups of the JPRG as requested by Ofcom.
- 2.1.3. Within two months of the signing of this MoU Ofcom shall:
 - 2.1.3.1. establish the JPRG, which Ofcom will chair, whose membership shall consist of those persons nominated pursuant to paragraph 2.1.1; and
 - 2.1.3.2. publish terms of reference for the JPRG and such other guidelines for the JPRG as it considers appropriate.
- 2.1.4. Ofcom may amend or add to the terms of reference and guidelines referred to in paragraph 2.1.3.2 after the JPRG is established as it considers appropriate.
- 2.1.5. DigitalOne (as represented for the purposes of the MoU by Arqiva) and the BBC shall provide:
 - 2.1.5.1. provisional national DAB roll-out plans to satisfy the Switchover Criteria (pertaining to national DAB coverage) to Ofcom as an input to the JPRG within 6 months of this MoU being signed; and
 - 2.1.5.2. substantially final national DAB roll-out plans to satisfy the Switchover Criteria (pertaining to national DAB coverage) to Ofcom as an input to the JPRG by 31 March 2013.
- 2.1.6. The Parties shall each use best endeavours to ensure that the JPRG makes timely recommendations to Ofcom so as to ensure that Ofcom is able to present to DCMS, within 12 months of this MoU being signed:
 - 2.1.6.1. a provisional Technical Switchover Plan; and
 - 2.1.6.2. a provisional Switchover Implementation Plan,the purpose, content and arrangements for which are summarised in Schedule 3 to this MoU. Amongst other things these plans will identify locations where

Government should give consideration to the appropriateness of full local DAB build-out to FM equivalence, consistent with delivering value for money.²

- 2.1.7. If the decision referred to in paragraph 2.1.17 is that a radio switchover programme should be implemented, the JPRG will continue to exist for the period required to complete radio switchover as set out in the Switchover Implementation Plan, and will advise Ofcom as required on proposed modifications to the provisional Technical Switchover Plan and the provisional Switchover Implementation Plan, and in particular as to whether such modifications support the satisfaction of the Switchover Criteria and whether they represent an improvement in relation to technical efficiency and value for money.
- 2.1.8. Those Multiplex Operators whose names, licences and multiplex licensed areas are set out in Part A of Schedule 2 to this MoU shall, as soon as reasonably practicable and in any event within 18 months of this MoU being signed, commence broadcasting via the multiplexes referred to in Part A (or alternative multiplexes referred to in Part B as agreed by the JPRG and approved by Ofcom):
- 2.1.8.1. in accordance with the technical plan provided to Ofcom with the original licence application; or
 - 2.1.8.2. (if Ofcom has approved modifications to the technical plan pursuant to sections 54 or 54A of the Broadcasting Act 1996), in accordance with the technical plan as so modified.
- 2.1.9. Those Multiplex Operators whose names, licences and multiplex licensed areas are set out in Part B of Schedule 2 to this MoU shall, in accordance with the timetable in the Switchover Implementation Plan, commence broadcasting via the multiplexes referred to in Part B:
- 2.1.9.1. in accordance with the technical plan provided to Ofcom with the original licence application; or
 - 2.1.9.2. (if Ofcom has approved modifications to the technical plan pursuant to sections 54 or 54A of the Broadcasting Act 1996), in accordance with the technical plan as so modified.
- 2.1.10. The BBC shall (subject to any Ofcom determination and commercial negotiations with the relevant multiplex operator with a view to promoting the purpose of this MoU) ensure that the relevant BBC Local and/or Nations

² For the purposes of the MoU FM Equivalence is deemed to be the level of DAB build-out determined by Government, having considered recommendations by the JPRG and having consulted with the BBC Trust, necessary to deliver radio switchover.

services are carried on such multiplexes referred to in Parts A and B of Schedule 2 as are relevant to the areas in which the multiplexes are licensed.

- 2.1.11. In respect of the multiplexes referred to in Parts A and B of Schedule 2, the relevant Multiplex Operator shall not be eligible for funding under Phase 2 or Phase 3 in this MoU in respect of DAB build-out to satisfy commitments contained in the technical plan that accompanied the original application for the multiplex licence or, if Ofcom has approved modifications to the technical plan pursuant to sections 54 or 54A of the Broadcasting Act 1996, in accordance with the technical plan so modified.
- 2.1.12. Arqiva shall, within such period after publication of the Technical Switchover Plan and the Switchover Implementation Plan as Ofcom considers reasonable (and in any event within 3 months of Ofcom's delivery of the provisional Technical Switchover Plan and provisional Switchover Implementation Plan to DCMS), provide to the JPRG the terms and conditions on which Arqiva is willing to enter into contracts for the provision of transmission services ("a Reference Offer") in respect of the build-out of each new local DAB transmitter and modification to each existing local DAB transmitter as required by the Technical Switchover Plan and the Switchover Implementation Plan. Such a Reference Offer may need to be updated in the light of the final Technical Switchover Plan and final Switchover Implementation Plan.
- 2.1.13. Arqiva shall, in preparing and providing the Reference Offer and in carrying out the works set out in the provisional Technical Switchover Plan and the provisional Switchover Implementation Plan, comply with the undertakings given by Arqiva on 1 September 2008 pursuant to section 82 of the Enterprise Act 2002 as part of the acquisition of National Grid Wireless Group ("the Arqiva Undertakings") in the same way as if the provisions in Part B of the Arqiva Undertakings dealing with New Transmission Agreements (as defined in the Arqiva Undertakings) applied to the works set out in the Technical Switchover Plan and the Switchover Implementation Plan (as amended from time to time).
- 2.1.14. DCMS and the Adjudicator shall, within six weeks of receipt of the Reference Offer:
- 2.1.14.1. commission an independent audit of the Reference Offer, the ambit of which audit will be set out in advance, that will verify compliance with the requirements of the Arqiva Undertakings, in particular, but not limited to, the requirements of paragraphs 9, 10, 11, 12 of the Arqiva Undertakings; and

- 2.1.14.2. publish the results of such audit.
- 2.1.15. Provided that the other Parties have taken the steps set out in paragraphs 2.1.1 to 2.1.13 DCMS shall, within 18 months of the signing of this MoU, make and announce a decision in principle about whether or not to implement a radio switchover programme.
- 2.1.16. In making such a decision DCMS shall (among other things) have regard to the following:
- 2.1.16.1. the Government's Impact Assessment, including a cost benefit analysis;
 - 2.1.16.2. the state of consumer preparations in respect of current and projected take-up of digital radio by households;
 - 2.1.16.3. the current and projected percentage of listening to digital radio (including the percentage of in-car listening); and
 - 2.1.16.4. any advice provided by Ofcom as to the future use of the FM spectrum and implications for the switchover programme.
- 2.1.17. If the decision in principle is that radio switchover should be implemented, the announcement shall:
- 2.1.17.1. state the Government's intention to instigate radio switchover; and
 - 2.1.17.2. set out a range of dates by which it is expected (having regard to the Technical Switchover Plan and the Switchover Implementation Plan) that switchover will commence, such dates to be based on projections of the dates when the Switchover Criteria are likely to be met.
- 2.1.18. If the decision in principle is not that a radio switchover programme should be implemented and paragraph 2.1.17 has not been satisfied, DCMS shall set out, and consult on, its proposals for any appropriate amendments to the existing legislative frameworks (which is likely to include provisions relating to continuation, renewal and award of licences for national and local radio services).
- 2.1.19. The Parties acknowledge that Government policy following a radio switchover is that national and large local stations will only be available on digital platforms, in all locations where a switchover has been implemented.

2.2. PHASE 2 – Post 2013 radio switchover decision to 90% local coverage

- 2.2.1. Following any announcement by DCMS under paragraph 2.1.17 about implementation of radio switchover, the process set out in Schedule 4 shall be adopted for the funding of local DAB build-out in Phase 2. Phase 2 shall commence immediately following such announcement.
- 2.2.2. As soon as reasonably practicable after the commencement of Phase 2, DCMS shall establish a Local DAB Funding Advisory Panel ("the Funding Advisory Panel") and shall publish the Funding Advisory Panel's terms of reference. The purpose of the Funding Advisory Panel is to consider and process applications for funding rather than to provide funding itself.
- 2.2.3. Within two months of the establishment of the Funding Advisory Panel, the Funding Advisory Panel shall write to all relevant Multiplex Operators providing the information as set out in paragraph 12 of Schedule 4 and inviting Multiplex Operators to apply for funding ("the Invitation to Apply").
- 2.2.4. As soon as reasonably practicable after its receipt of the Invitation to Apply (and in any event, prior to the submission of the Funding Application Form referred to in paragraph 2.2.5), each Multiplex Operator shall, to the extent required by the Switchover Implementation Plan and in accordance with section 54A of the Broadcasting Act 1996, apply to Ofcom to vary:
 - 2.2.4.1. the frequency on which the licensed local radio multiplex service is required to be broadcast;
 - 2.2.4.2. the area or locality in which the licensed local radio multiplex service is required to be available; and
 - 2.2.4.3. the technical plan included in the licence, including all new transmitters required for phase 2 in accordance with the Switchover Implementation Plan (detailed in schedule 3).
- 2.2.5. Within such period as is required in the Invitation to Apply, the relevant Multiplex Operator shall (i) (if not already in place) enter into conditional transmission service agreements as are required for such an application to comply with this MoU and (ii) submit to DCMS and the BBC, via the Funding Advisory Panel, its completed Funding Application Form for funding in respect of the build-out and/or modification works required to satisfy the Switchover Implementation Plan.
- 2.2.6. As soon as reasonably practicable after an application has been approved via the Funding Advisory Panel, DCMS, the BBC and the Multiplex Operator shall enter into a binding Funding Agreement, further reference to which is made in paragraphs 20 and 21 of Schedule 4.

2.2.7. Where a Multiplex Operator has been granted a licence renewal pursuant to section 58 of the Broadcasting Act 1996 in respect of a relevant local DAB multiplex and Arqiva has entered into an agreement with that Multiplex Operator for the provision of multiplexing services for the duration of the renewed licence, Arqiva (in addition to any obligations as a Multiplex Operator):

2.2.7.1. shall pay for the costs incurred in respect of changes to frequencies at transmitters relating to local DAB multiplexes (as set out in Schedule 5 and notes to that Schedule of the MoU) for which Arqiva is contracted to provide transmission services. Such costs should be limited to those purely in respect of the frequency change and not those with regard to an intentional increase in coverage (for example by increasing antenna height, changing aerial patterns or increases in power to increase coverage); and

2.2.7.2. shall agree to fund the upgrade of equipment to support service linking where Arqiva is also contracted to provide multiplexing services.

2.2.8. Except as provided in paragraph 2.2.7.1, the cost of frequency changes made following a licence variation referred to in paragraph 2.2.4.1 shall not be funded pursuant to the MoU but shall be borne by the relevant Multiplex Operator.

2.3. PHASE 3 – Extending Local DAB Coverage from 90% to full FM equivalence

2.3.1. If:

2.3.1.1. the Switchover Criteria are satisfied; and

2.3.1.2. the Secretary of State decides that it is appropriate to exercise the powers contained in section 97A of the Broadcasting Act 1990³ (as inserted by section 30 of the Digital Economy Act 2010),

DCMS shall give notice to Ofcom nominating a date or dates for radio switchover in respect of the service or services specified in the notice.

2.3.2. Without fettering the Secretary of State's decision as to whether and when to give notice to Ofcom pursuant to section 97A of the Broadcasting Act 1990, DCMS, by the time of the giving of such notice, shall:

³ Section 97A (2) provides that, when nominating a date or considering whether to nominate a date for digital switchover, the Secretary of State must have regard to any report submitted by Ofcom or the BBC under section 67 (1) (b) of the Broadcasting Act 1996.

- 2.3.2.1. identify and secure such funding as is necessary to support the ongoing cost of transmission resulting from the build-out of any local DAB infrastructure, in respect of Phase 3, beyond 31 March 2017 to the end of the relevant multiplex licence period as extended or renewed. In securing such funding the Government shall not require that any funding is borne by the commercial radio sector (Multiplex Operators and broadcasters); and
- 2.3.2.2. ensure that funding has been allocated to support the delivery of the radio switchover programme.
- 2.3.3. The process set out in Schedule 4 shall be adopted for the funding of local DAB build-out in Phase 3.
- 2.3.4. As soon as reasonably practicable after giving the notice referred to in paragraph 2.3.1 to Ofcom, DCMS shall invite each of the relevant Multiplex Operators to nominate a representative to join the Funding Advisory Panel.
- 2.3.5. Within the timetable and terms set out in Schedule 4 the Funding Advisory Panel shall write to the relevant contracting body⁴ inviting applications for funding ("the Invitation to Apply").
- 2.3.6. As soon as reasonably practicable after the Invitation to Apply has been issued the Multiplex Operator shall, in liaison with the BBC and the relevant contracting body, to the extent required by the Switchover Implementation Plan and in accordance with section 54A of the Broadcasting Act 1996, apply to Ofcom to vary:
 - 2.3.6.1. the frequency on which the licensed local radio multiplex service is required to be broadcast;
 - 2.3.6.2. the area or locality in which the licensed local radio multiplex service is required to be available; and
 - 2.3.6.3. the technical plan included in the licence, including all new transmitters required for phase 3 in accordance with the Switchover Implementation Plan (detailed in Schedule 3).
- 2.3.7. Within such period as is required in the Invitation to Apply, the contracting body shall submit to the Funding Advisory Panel an application for funding in respect of the build-out and/or modification works required to satisfy the Switchover Implementation Plan.
- 2.3.8. As soon as reasonably practicable after an application has been approved via the Funding Advisory Panel, DCMS, the BBC, the Multiplex Operator and if

⁴The contracting body is deemed to be the organisation which enters into the contract for the provision of transmission services for the build-out within Phase 3.

appropriate the contracting body shall enter into a binding Funding Agreement, further reference to which is made in paragraphs 20 and 21 of Schedule 4.

3. BBC LOCAL DAB SERVICES

3.1. In the event of a positive radio switchover decision the BBC will continue to broadcast its services on local multiplexes, subject to any Ofcom determination and commercial negotiations, for the full term of those multiplex licences as renewed or extended under section 58 of the Broadcasting Act 1996.

4. FUNDING PROPORTIONS AND LIMITATIONS

4.1. Funding will not be made available in respect of any works commissioned or carried out prior to any announcement made by DCMS about radio switchover pursuant to paragraph 2.1.17.

4.2. In respect of the period up to 31 March 2017, the funding to be provided in accordance with Phase 2 in respect of:

4.2.1. the cost of build-out of DAB transmitters in accordance with the Technical Switchover Plan and the Switchover Implementation Plan in order to satisfy the Switchover Criteria; and

4.2.2. the cost of technical modifications to existing transmitters identified in the Technical Switchover Plan and the Switchover Implementation Plan (not including modifications which relate to frequency changes),

shall, in respect of each individual local DAB multiplex, be borne in equal shares by:

4.2.2.1. DCMS;

4.2.2.2. the BBC; and

4.2.2.3. the relevant Multiplex Operator.

4.3. In respect of the period after radio switchover up to the end of the relevant transmission contract, the funding to be provided in accordance with Phase 2 in respect of additional ongoing costs consequent on the build-out of DAB transmitters in accordance with the Technical Switchover Plan and the Switchover Implementation Plan in order to satisfy the Switchover Criteria shall, in respect of each individual local DAB multiplex be borne as follows:

4.3.1. one third by the BBC; and

4.3.2. two thirds by the relevant Multiplex Operator.

4.4. In such an event as radio switchover is delayed beyond 31 March 2017 the Government acknowledges that the funding set out in the MoU would not address the cost of achieving switchover. In this context the government further acknowledges that funding is a necessary factor in the lead-up to and delivery of radio switchover, and specifically that any delay to radio switchover beyond 2017 would significantly increase the cost burden of dual-transmission. Therefore, DCMS shall, subject to the outcome of the constructive discussions outlined in paragraph 1.3, if a) the powers under section 97A of the Broadcasting Act 1996 have not been exercised by 31 March 2017 or b) in exercising such powers the Secretary of State has nominated a date or dates which commence after 31 March 2017, make such payments to relevant multiplex operators as necessary to provide a contribution to the ongoing cost of Phase 2 until switchover. Such payments shall:

- be based upon the individual cost borne by relevant multiplex operators in the period to switchover;
- but shall not exceed the limit of £7m specified in paragraph 4.8 minus any funding already committed; and
- have the effect of front-loading the Government's contribution and back-loading the commercial sector's contribution.

In addition, in the event that such a payment is less than a third of the total cost of Phase 2 until switchover, the Government commits to give due consideration to providing additional funding to compensate for any shortfall. Such a determination shall be made prior to 31 March 2017.

4.5. In respect of the period up to 31 March 2017, the funding to be provided in accordance with Phase 3 in respect of the cost of further build-out of local DAB multiplexes to full FM equivalence shall, in respect of each individual local DAB multiplex, be borne in equal shares by:

- 4.5.1. DCMS;
- 4.5.2. the BBC; and
- 4.5.3. the relevant Multiplex Operator.

4.6. In respect of the period after 31 March 2017 up to the end of the relevant multiplex licence period, the funding to be provided in accordance with Phase 3 in respect of the transmission cost of further build-out of local DAB multiplexes to full FM equivalence shall be identified as set out in paragraph 2.3.2.1.

4.7. In assessing the costs and shares of costs to be borne in accordance with this MoU:

4.7.1. regard shall only be had to the cost of any BBC DAB services for which digital capacity has been reserved by Ofcom pursuant to section 49 of the Broadcasting Act 1996; and

4.7.2. Multiplex Operators shall not seek to pass on their share of the costs to the BBC.

4.8. Under this MoU the total amount required by way of funding under Phases 2 and 3 from:

4.8.1. DCMS;

4.8.2. the BBC; and

4.8.3. the Multiplex Operators (calculated collectively)

in respect of the period up to 31 March 2017 shall not exceed £7 million each.

5. MONITORING OF FUNDING

5.1. DCMS shall provide an annual statement to all signatories of this MoU by 31 May of each year setting out the amount of funding provided during the year ending on the preceding 31 March by DCMS, the BBC and Multiplex Operators collectively. The statement will show the amount of funding provided by individual Multiplex Operators.

5.2. The Adjudicator will commission an independent annual audit of expenditure following the principles and procedures set out in Paragraph 14 of the Arqiva Undertakings. The first audit period will be from the commencement of expenditure for Phase 2, until 30 June of that year and then annually until completion of expenditure. The results of this audit will be published.

6. VAT

6.1. All sums referred to in this MoU, and all references to costs (or a proportion of such costs), are to be calculated exclusive of VAT.

7. NOTICES AND ESCALATION

7.1. Schedule 6 shows a list with the name, job title, business address, telephone number and e-mail address of the individual nominated by each of the Parties as the first point of contact in relation to matters referred to in this MoU. Parties shall use best endeavours to resolve any issues concerning this MoU at this level. If

escalation becomes necessary, the Parties shall use best endeavours to minimise the level of escalation so far as reasonably practicable.

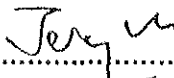
7.2. Schedule 6 also shows a list with the name, job title, business address, telephone number and e-mail address of the senior (board level) individual nominated by each of the Parties to act as an escalation point in the event of issues that cannot be resolved at a lower level.

8. AMENDMENT OR VARIATION OF THE MOU

8.1. Save as provided for in the MoU, any amendment or variation of the MoU must be agreed in advance and in writing by all the Parties.

DATED THIS [] DAY OF [] 2012

SIGNED


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On behalf of DCMS

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On behalf of the BBC

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On behalf of Ofcom

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On behalf of Arqiva Limited

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On behalf of Switch Digital (London) Limited

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On behalf of DCMS

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On behalf of the BBC

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On behalf of Ofcom

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On behalf of Switch Digital (London) Limited

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On behalf of DCMS

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On behalf of the BBC

Crista BOWE
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On behalf of Ofcom

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On behalf of Arqiva Limited

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On behalf of Switch Digital (London) Limited

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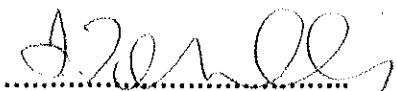
On behalf of Ofcom

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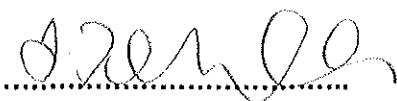
On behalf of Arqiva Limited



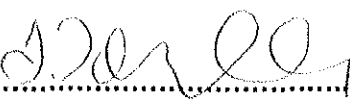
On behalf of Switch Digital (London) Limited



On behalf of Switch Digital (Scotland) Limited



On behalf of UTV-Bauer Digital Limited



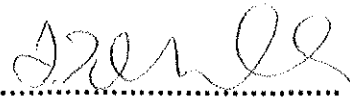
On behalf of UTV-Bauer Digital (B&H) Limited

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On behalf of C.E. Digital Limited

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On behalf of Bauer Digital Radio Limited



On behalf of UTV Media Limited (GB)

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On behalf of MuxCo North Yorkshire Limited

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On behalf of MuxCo North East Wales and West Cheshire Limited

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On behalf of MuxCo Wales Limited

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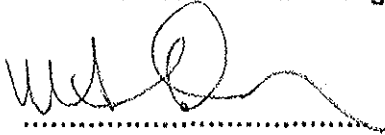
On behalf of Switch Digital (Scotland) Limited

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On behalf of UTV-Bauer Digital Limited

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On behalf of UTV-Bauer Digital (B&H) Limited

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On behalf of C.E. Digital Limited

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On behalf of Bauer Digital Radio Limited

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On behalf of UTV Media Limited (GB)

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On behalf of MuxCo North Yorkshire Limited

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On behalf of MuxCo North East Wales and West Cheshire Limited

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On behalf of MuxCo Wales Limited

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On behalf of Switch Digital (Scotland) Limited

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On behalf of UTV-Bauer Digital Limited

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On behalf of UTV-Bauer Digital (B&H) Limited

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On behalf of C.E. Digital Limited

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On behalf of Bauer Digital Radio Limited

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On behalf of UTV Media Limited (GB)

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On behalf of MuxCo North Yorkshire Limited

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On behalf of MuxCo North East Wales and West Cheshire Limited

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On behalf of MuxCo Wales Limited

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On behalf of Switch Digital (Scotland) Limited

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On behalf of UTV-Bauer Digital Limited

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On behalf of UTV-Bauer Digital (B&H) Limited

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On behalf of C.E. Digital Limited

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On behalf of Bauer Digital Radio Limited

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On behalf of UTV Media Limited (GB)

C. H. Walsby
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On behalf of MuxCo North Yorkshire Limited

C. H. Walsby
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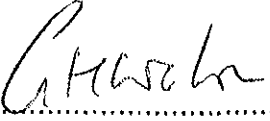
On behalf of MuxCo North East Wales and West Cheshire Limited

C. H. Walsby
.....

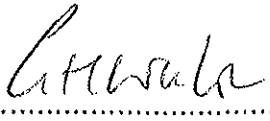
On behalf of MuxCo Wales Limited

C. H. Walsby
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On behalf of MuxCo Lincolnshire Limited


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On behalf of MuxCo Gloucestershire Limited


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On behalf of MuxCo South Midlands Limited


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On behalf of MuxCo Surrey and North Sussex Limited


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On behalf of MuxCo Somerset Limited

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On behalf of Now Digital Limited

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On behalf of Now Digital (Southern) Limited

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On behalf of Now Digital (East Midlands) Limited

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On behalf of Now Digital (Oxford) Limited

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On behalf of MuxCo Lincolnshire Limited

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On behalf of MuxCo Gloucestershire Limited

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On behalf of MuxCo South Midlands Limited

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On behalf of MuxCo Surrey and North Sussex Limited

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On behalf of MuxCo Somerset Limited

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On behalf of Now Digital Limited

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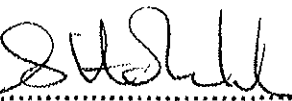

On behalf of Now Digital (Southern) Limited

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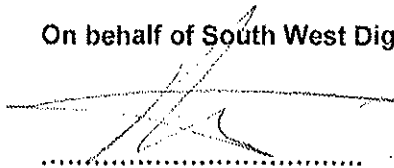

On behalf of Now Digital (East Midlands) Limited

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On behalf of Now Digital (Oxford) Limited

.....


On behalf of South West Digital Radio Limited

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On behalf of the Office of the Adjudicator

SCHEDULE 1

Local Multiplex Licence Holder	Multiplex Licence Number	Multiplex Licensed Area
C.E Digital Limited	DL 001 DL 002	Birmingham Manchester
Bauer Digital Radio Limited	DL 004 DL 005 DL 006 DL 009 DL 010 DL 012 DL 013 DL 016 DL 017 DL 019 DL 029 DL 037i	Glasgow South Yorkshire Tyne and Wear Liverpool Edinburgh Leeds Teeside Central Lancashire Northern Ireland Humberside Dundee and Perth Inverness
Now Digital Limited	DL 007 DL 014 DL 015 DL 025 DL 028 DL 030 DL 032 DL 033 DL 038 DL 044 DL 045	Wolverhampton Bristol and Bath Coventry Southend and Chelmsford Bournemouth Exeter and Torbay Peterborough Swindon and West Wiltshire Norwich Reading and Basingstoke Cambridge
Now Digital (Southern) Limited	DL 008 DL 035 DL 040 DL 042	Cardiff and Newport South Hampshire Sussex Coast Kent
Now Digital (East Midlands) Limited	DL 034 DL 043	Leicester Nottingham
Switch Digital (London) Limited	DL 011	Greater London 2
Switch Digital (Scotland) Limited	DL 024	Aberdeen
Argiva Limited	DL 027	Ayr
UTV-Bauer Digital (B&H) Limited	DL 031	Bradford and Huddersfield
UTV-Bauer Digital Limited	DL 039 DL 041	Swansea Stoke on Trent
South West Digital Radio Limited	DL 045	Plymouth/Cornwall

SCHEDULE 2

Part A – Local multiplexes agreed to be made operational within 18 months of the signing of this MoU

Multiplex Licensed Area	Multiplex Operator/Licensee
Gloucestershire	MuxCo (Gloucestershire) Limited
Hereford and Worcester	MuxCo (South Midlands) Limited
Northamptonshire	Now Digital Limited
North East Wales and West Cheshire	MuxCo North East Wales and West Cheshire Limited
Oxfordshire	Now Digital (Oxford) Limited

Part B – Local multiplexes agreed to be made operational in accordance with the Switchover Implementation Plan

Multiplex Licensed Area	Multiplex Operator/Licensee
North Wales	MuxCo Wales Limited
Derbyshire	Now Digital (East Midlands) Limited
Lincolnshire	MuxCo Lincolnshire Limited
Hertfordshire, Bedfordshire and Buckinghamshire	Now Digital Limited
Somerset	MuxCo Somerset Limited
Surrey and North Sussex	MuxCo Surrey and North Sussex Limited
North Yorkshire	MuxCo North Yorkshire Limited
West and Mid Wales	MuxCo Wales Limited

SCHEDULE 3

Draft Joint Planning for Radio Group (JPRG) principles of operation

Establishment of the JPRG

1. As part of a Memorandum of Understanding on local DAB funding for radio switchover (the MoU), Ofcom will be obligated to establish, and take the role as Chair of, the Joint Planning for Radio Group (JPRG).
2. Within two months of the signing of the MoU, each party to that MoU (except the Adjudicator) or their parent companies shall nominate one representative to represent it on the JPRG Steering Board.
3. For the avoidance of doubt, at present this comprises:
 - Ofcom
 - DCMS
 - the BBC
 - Arqiva
 - Bauer Media
 - Global Radio
 - UTV Media (GB)
 - Folder Media
4. The parties to the MoU except the Adjudicator will also agree to nominate representatives to sit on sub-groups of the JPRG (the JPRG Technical Committee and the JPRG Area Working Groups) as requested by Ofcom.
5. Within two months of the signing of the MoU, Ofcom shall publish terms of reference for the JPRG and such other guidelines for the JPRG as it considers appropriate.
6. Ofcom may amend or add to the terms of reference and guidelines from the establishment of the JPRG as it considers appropriate.
7. Within one month of the signing of the MoU, DCMS will write to Ofcom (as Chair of the JPRG Steering Board) setting out the expected delivery and contents of the Technical Switchover Plan and Switchover Implementation Plan, including that these plans clearly identify locations where Government should give consideration to the appropriateness of full local DAB build-out to FM equivalence, consistent with delivering value for money.

Structure and responsibilities

8. The JPRG Steering Board will be responsible for advising Ofcom on directing and commissioning work from the JPRG Technical Committee to produce two planning documents – the Technical Switchover Plan (TSP) and the Switchover Implementation Plan (SIP) – to meet DAB coverage targets. It will also be responsible for advising Ofcom on directing and commissioning work from the JPRG Area Working Groups on the sequencing of the area-specific transmitter roll-out plans. The JPRG Area Working groups will provide area plans for review by the JPRG Steering Board.
9. The JPRG Steering Board will make recommendations to Ofcom on provisional and final versions of the TSP, SIP and area-specific transmitter roll-out plans.
10. Such recommendations will be made, where feasible, based on consensus. Where consensus cannot be reached, the JPRG Steering Board may make recommendations based on a majority with any minority position(s) noted in its recommendation.
11. Final approval of the provisional and final TSP, SIP and area-specific transmitter roll-out plans will rest with Ofcom, who will confirm their compatibility with meeting DAB coverage targets and the switchover timetable, and any other relevant policy issues impacting citizens and consumers.
12. The JPRG Steering Board may, on an ad hoc basis, refer other specific issues to Ofcom (for example, the inclusion or otherwise of a certain transmitter) if it feels there is a policy decision to be made balancing commercial desires with the interests of citizens and consumers.
13. The JPRG Technical Committee will consist of representatives from Ofcom, the BBC and Arqiva, and one representative from the commercial multiplex operators and will:
 - develop, under direction from Ofcom, a draft TSP and SIP for consideration by the JPRG Steering Board and Ofcom;
 - conduct frequency planning work and coverage validation tests to support the development of these plans;
 - establish and maintain the technical planning transmission and receiver parameter assumptions used to determine DAB coverage; and
 - support international negotiations for frequency use at appropriate points of the planning process.

14. A JPRG Area Working Group will be established for each multiplex area, comprising of representatives from Ofcom, the BBC, Digital One, Arqiva (and any other transmission provider which has entered into an agreement for the provision of transmission services for the relevant multiplex area), the relevant multiplex operator and, where appropriate, the relevant regional multiplex operator.
15. Each JPRG Area Working Group will develop a transmitter roll-out plan for the relevant multiplex area, based on the initial high-level SIP. Each such plan will be consistent with the criteria for the SIP laid out below.

The Technical Switchover Plan

16. The TSP will advise Government on the appropriate planning targets for ensuring DAB coverage is equivalent to existing FM coverage, while maximising value for money.
17. Coverage levels will be determined at a local level by the composite of the local BBC service and the largest commercial local station in each multiplex area (i.e. the approach set out in Ofcom's consultation 'An approach to DAB coverage planning' published in July 2011, subject to any changes in the final statement).
18. Coverage levels will be determined on a national basis through consideration of the plans submitted by the BBC and Digital One as set out in paragraph 2.1.5 of the MoU.
19. The TSP will include a list of DAB transmitter sites and modifications which, taken together with their technical transmission characteristics will, in the view of the JPRG Technical Committee, provide coverage equivalent to FM.
20. The provisional TSP will identify those areas where there is only a BBC service on FM to be matched. In those areas, it will identify the number of DAB transmitters required for each of phases 2 and 3 and compare that to the number of FM transmitters currently used to deliver the relevant local or Nations BBC service in that area. This information will help Government to determine whether switchover in parts of that area represents value for money.
21. The JPRG Steering Board will make its recommendation to Ofcom on the TSP so as to enable Ofcom to present a provisional plan to DCMS by within 12 months of the signing of the MoU.

The Switchover Implementation Plan

22. The SIP will include a timetable detailing the transmitter build-out and modifications to existing transmitters necessary for both the local and national DAB multiplexes which will:
- extend coverage in line with the phases outlined in the MoU, including the completion of phase 2 by the end of 2015, followed by phase 3;
 - consider the most technically efficient means of achieving a switchover; and
 - secure the greatest value for money (through consideration of, for example, cost per listener, timing and site sharing).
23. The SIP will be generated in two parts. The JPRG Technical Committee (following direction from Ofcom) will conduct appropriate technical planning work to develop an initial high level plan with backstop dates on an area-by-area and national basis.
24. Ofcom will then direct the JPRG Technical Committee and Area Working Groups to develop and propose more detailed area-specific transmitter roll-out plans that are consistent with the criteria laid out above.
25. These plans will be reviewed by the JPRG Steering Board, with final recommendations on a provisional plan being made to Ofcom.
26. To conduct this work the interactions between the roll out of the national DAB networks and the local DAB networks will need to be taken into account. This will require the national Multiplex Operators to share their provisional build-out plans with the JPRG Technical Committee within 6 months of the signing of this MoU.
27. The JPRG Steering Board will make timely recommendations on a provisional SIP (incorporating area-specific transmitter roll-out plans) so as to enable Ofcom to present it to Government within 12 months of the signing of this MoU.

Operation of the JPRG

28. Ofcom will be responsible for scheduling required meetings of the JPRG Steering Board and sub-groups. Where other parties wish a meeting to be called, they will notify Ofcom of this request.
29. If, as set out in the MoU, the decision is that a radio switchover programme should be implemented, the JPRG will continue to exist for the period required to complete digital switchover.

Process following submission to Government

30. Ofcom will present the provisional TSP and SIP to Government within 12 months of the signing of this MoU, noting that this timescale is dependent on best endeavours of JPRG members to ensure timely recommendations are made to Ofcom.
31. The BBC and Digital One shall submit substantially final build out plans for their national networks by 31 March 2013, as set out in paragraph 2.1.5.2.
32. Following submission and consideration of the provisional TSP and the provisional SIP, and consultation with the BBC Trust, DCMS will notify Ofcom (as Chair of the JPRG) indicating the extent of DAB build-out in each area deemed to be appropriate for the purposes of radio switchover.
33. Following this notification, the JPRG will amend the TSP and SIP accordingly.
34. Any subsequent proposed changes to the TSP or the SIP should be notified to Ofcom. If appropriate, Ofcom will then direct and commission further work from the JPRG Technical Committee and / or JPRG Area Working Groups in relation to these proposed changes. The JPRG will review this work and will advise Ofcom as required on the proposed modifications to the TSP or the SIP, and in particular as to whether they support the satisfaction of the Switchover Criteria are met and whether they represent an improvement in relation to technical efficiency and value for money.
35. Ofcom will notify Government of any agreed changes to the TSP or the SIP.

Interaction with other stakeholders and groups

36. The JPRG will establish a stakeholder liaison group including, but not restricted to, broadcasters, multiplex providers, equipment providers, car manufacturers and consumer representative groups who are not members of JPRG. The key outputs of the JPRG will be periodically shared with the JPRG stakeholder liaison group.

Costs

37. All relevant organisations will bear their own costs associated with participating in the JPRG Steering Board, sub-groups and the liaison group.
38. Ofcom will cover the costs for all planning work required to produce the provisional TSP and the provisional SIP within 12 months following the signing of this MoU.
39. Thereafter, the costs of any planning work undertaken for proposed changes to the TSP or the SIP will be covered by the party who requests the change. Any such

costs are not to be included in the limit of funding set out in paragraph 4.8 of the MoU.

SCHEDULE 4

Draft Funding Advisory Panel: Funding Mechanisms and Principles of Operation

Summary

1. This Schedule sets out how the funding of local DAB build-out shall operate. It details the establishing of the Funding Advisory Panel (FAP) and the manner in which it will make its consideration of applications for funding.

The Funding Advisory Panel

2. The FAP will comprise representatives from DCMS, the BBC, Ofcom and the Office of the Adjudicator during the operation of Phase 2 of the MoU. In respect of considering funding applications made as part of Phase 3 of the MoU the relevant multiplex operator, that is the multiplex licence holder in respect of whom any additional transmitters or modification to existing transmitters are required in the Switchover Implementation Plan (SIP), shall join the FAP.
3. The purpose of the FAP in Phase 2 shall be to advise DCMS and the BBC about funding applications submitted to the FAP by multiplex operators. In Phase 3 the FAP will advise DCMS and the relevant multiplex operator regarding funding applications made by the relevant funding body. The FAP will also act as the body responsible for processing applications, including communicating the decision of the FAP to applicants. The FAP is not a funding body. Funding will be administered by the individual parties subject to their own internal financial procedures. These will be set out in the Funding Agreements.
4. The role of DCMS, as a member of the FAP, shall be to consider the extent to which applications submitted satisfy the terms of the MoU and, where application conditions have been met, to agree in the period to 31 March 2017 to fund a third of the costs of the work set out in the application (subject to the limit in paragraph 4.8 of the MoU). For the avoidance of doubt, the other two thirds of the cost need not be incurred before 31 March 2017.
5. The role of the BBC, as a member of the FAP, shall be to consider the extent to which applications submitted as part of Phase 2 satisfy the terms of the MoU and, where application conditions have been met, to agree to fund a third of the costs of

the work set out in the application for the period to the end of the relevant contract (subject to the limit in paragraph 4.8 of the MoU).

6. The role of the relevant multiplex operator, as a member of the FAP, shall be to consider the extent to which applications submitted as part of Phase 3 satisfy the terms of the MoU and, where application conditions have been met, to agree to fund a third of the costs of the work set out in the application in the period to 31 March 2017 (subject to the limit in paragraph 4.8 of the MoU).
7. The role of Ofcom, as a member of the FAP, shall be to advise the other members of the FAP of the compatibility of an application with the Switchover Implementation Plan and to provide advice on the status of multiplex licence technical plans and any pending applications to vary multiplex licences.
8. The role of the Office of the Adjudicator, as a member of the FAP, is to advise other members of the FAP as to whether funding applications reflect the costs as set out in the Reference Offer and the extent to which any variations are reasonable.
9. The FAP shall meet as often as necessary, and otherwise at the request of a FAP member, to consider funding applications.

Invitation to Apply

10. The FAP shall invite applications for funding in the first instance within two months after the FAP is established and by the 31st January and 31st July of each year thereafter. This shall constitute "the Invitation to Apply".
11. Applicants shall be invited to submit an application for any new local DAB transmitter and/or modifications to existing local DAB transmitters, set out in the Switchover Implementation Plan, which should be completed by 31st March of the next year (in respect of applications made by 31st January of the previous year) and by 31st October of the next year (in respect of applications made by 31st July of the previous year).
12. The Invitation to Apply will provide:
 - The Terms of Reference for the Funding Advisory Panel;
 - a Funding Application Form and Guidance Notes;

- details of a) any new local DAB transmitters and/or b) modifications to existing local DAB transmitters necessary to satisfy the SIP;
- details of the costs which the FAP expect to be incurred to achieve the build-out of new DAB transmitters, or modification to existing local DAB transmitters, by reference to the Reference Offer; and
- a sample Funding Agreement in an agreed draft form.

13. The Invitation to Apply shall set out the date by which the applicant must submit its application to the FAP.

Applications Process

14. Before submitting an application to the FAP, the applicant must assure themselves of the following:

- a) that any new local DAB transmitter and/or modification to each existing local DAB transmitter for which funding is to be requested is reflected in the SIP;
- b) that funding applications reflect the costs published in the Reference Offer, or that any deviation from the costs is fully explained; and
- c) that an application to vary the multiplex licence, to reflect all changes set out in the application, has been submitted to, or approved by, Ofcom.

15. When applying for funding via the FAP, the applicant will be required to provide the following information:

- a) Full details of each new local DAB transmitter and/or modification to each existing local DAB transmitter which will be completed between the following 1 April to 31 March;
- b) The proposed costs for each new local DAB transmitter and modification to each existing local DAB transmitter;
- c) A contract for the provision of transmission services, conditional on approval of the application for funding;
- d) Evidence that a variation to the multiplex licence, which includes the changes for which the applicant is applying for funding, has either been applied for or already approved; and
- e) A quarterly funding profile for all transmitters and modifications to existing transmitters for which an application is being made from the date the work is completed to 31 March 2017.

Application Consideration Criteria

16. Funding applications submitted to the FAP will be agreed subject to the following criteria being met:
- a) that each new local DAB transmitter and/or modification to each existing local DAB transmitter replicates the requirements in the SIP;
 - b) that the timetable for build out of each new local DAB transmitter and/or modification to each existing local DAB transmitter is as set out in the SIP;
 - c) that the cost of each new local DAB transmitter and modification to each existing local DAB transmitter is not greater, at an individual transmitter level, than the Reference Offer;
 - d) that each new local DAB transmitter and modification to each existing local DAB transmitter matches those set out in the applicant's multiplex licence (or is reflected in a request for variation to the multiplex licence being considered by Ofcom); and
 - e) that the applicant has provided evidence of a transmission contract which is for the period until the end of the multiplex licence applicable at the date of the application.
17. Following advice from Ofcom and the Adjudicator, the BBC and DCMS shall, in the case of an application submitted in Phase 2, agree whether to approve the application. In respect of Phase 3, DCMS and the relevant multiplex operator, following advice from Ofcom and the Adjudicator, shall agree whether to approve the application.
18. Where the funding application is approved, the FAP shall write to the applicant setting out the decision and the conditions under which funding will be granted. The letter of approval shall include the final Funding Agreement, which shall then be signed by the relevant Funding Partners.
19. Where the application is not approved, the FAP shall write to the relevant multiplex operator or in the case of Phase 3 the relevant contracting body, setting out the reason why the application has been rejected. In such an instance DCMS, the BBC,

the relevant multiplex operator and, where appropriate, the relevant contracting body, shall use best endeavours to resolve the issues identified by the FAP so that a revised application can be submitted for consideration.

Funding Agreements

20. A Funding Agreement shall set out the contract of funding between the three parties; DCMS, the BBC and the relevant multiplex licence holder. This will include the provision and terms of the funding by both the BBC and DCMS or, in respect of the elements of Phase 3 set out in paragraph 4.4 of the MoU, DCMS and the relevant multiplex operator.
21. The Funding Agreement will include (among other things) further conditions which will need to be satisfied before the funding by the parties will be released. These are:
- a) that multiplex licence variations for all of the new infrastructure and modifications required in the relevant phase have been approved by Ofcom; and
 - b) that certification that the relevant work has been completed has been provided to DCMS and the BBC or, in the case of Phase 3, DCMS and the relevant multiplex operator.

SCHEDULE 5

List of Multiplexes and Transmitters requiring frequency changes funded by Arqiva

Multiplex	Transmitters
Manchester	1. Winter Hill 2. City Tower (3. Sutton Common – online by end 2013)
Liverpool	1. Bilinge 2. Hope Mountain 3. St Johns Beacon
Humberside	1. Cave Wold 2. Bridlington 3. Grimsby (4. Scunthorpe if online by 31 st July 2013)
Plymouth	1. Plymton
Ayr	1. Brown Carrick Hill 2. Darvel 3. West Kilbride
Inverness	1. Mounteagle
Leicestershire	1. Copt Oak 2. Houghton-on-the-Hill
Peterborough	1. Peterborough 2. Hinchinbrooke

Transmitters contained in brackets are those proposed in the original technical plan multiplex licence applications and are required to be built as a condition of renewal. However, the multiplex operator may propose a suitable alternative site, subject to approval by Ofcom.

SCHEDULE 6

[Names and addresses of contacts for notices/escalation]