

**AN AGREEMENT** made this SECOND day of JULY 1998

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRADE AND INDUSTRY** acting through the Radiocommunications Agency situated at New King's Beam House, 22 Upper Ground, London SE1 9SA ('the Secretary of State'); and
- (2) **THE BRITISH BROADCASTING CORPORATION** of Broadcasting House, London W1A 1AA ('the BBC')

**WHEREAS:**

- A. The Radiocommunications Agency has responsibility for regulating spectrum use.
- B. The BBC, pursuant to clause 2.6 of its Agreement with the Department of Culture, Media and Sport, wishes that complaints from householders of interference to radio and television broadcasts are investigated, and that remedial advice, assistance or action is taken.
- C. The Secretary of State has agreed to provide such a service upon the terms and conditions hereinafter contained.

NOW the parties hereby agree as follows:

## **1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall bear the following meanings:

Agency	the Radiocommunications Agency (an executive agency of the Department of Trade and Industry)
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Agreement with the  
Department of Culture,  
Media and Sport

The Agreement dated 25 day of  
January 1996 between Her Majesty's  
Secretary of State for National  
Heritage and the British Broadcasting  
Corporation

Form A and Form B

the forms contained in RA 179 which  
householders use to report known  
and unknown sources of interference

Outturn Costs

gross cost of providing the Service

Net Costs

Outturn Costs less all retained  
payments due from the public and/or  
others in respect of any Paid Cases in  
relation to which the Outturn Costs have  
been incurred.

Paid Cases

an unknown source of interference,  
described in Schedule B, which the  
Agency will investigate for a fee

RA 179

the Agency's information sheet RA 179  
(Rev 12) attached as Annex A to  
Schedule B (as may be amended from  
time to time)

Service

the document annexed hereto marked  
Schedule A setting out the service  
which the Agency is to provide under  
this Agreement

Unpaid Cases

a known source of interference,  
described in Schedule B, which the  
Agency will investigate without  
charge.

1.2 Any reference to a clause or sub-clause shall be interpreted as a reference to the clause or sub-clause bearing that number in this Agreement.

1.3 Any reference to a statutory provision shall be interpreted as including a reference to any statutory modification or re-enactment thereof (whether before or after the date hereof) for the time being in force.

1.4 Unless the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing the masculine gender shall import the feminine and neuter genders.

1.5 The expression 'parties' shall mean the parties to this Agreement.

1.6 Clause headings are for ease of reference only and do not affect interpretation.

## **2. THE SERVICE**

2.1 The Agency shall perform the Service (and such other additional services as may be agreed in accordance with clause 11), in response to complaints received in accordance with Schedule B, to the reasonable satisfaction of the BBC acting on behalf of television licence holders.

2.2 The BBC undertakes to provide the Agency with such detailed information on broadcast coverage reasonably needed by the Agency to perform the Service.

## **3. QUALITY OF SERVICE TARGETS**

The Agency, in performing the Service, will use all reasonable endeavours to investigate:

- (a) 98% of all domestic complaints within one month of receiving a properly completed Form A or B; and
- (b) the remaining domestic complaints within two months.

## 4. REPORTING

### 4.1 The Agency shall provide to the BBC:

- (a) a written report with respect to each month of this Agreement such report to be provided within the following month and to include:
  - (i) its performance against the quality of service targets set out in clause 3(a) and 3(b);
  - (ii) the number of cases referred to the Agency;
  - (iii) the number of Paid Cases investigated on a regional and national basis; and
  - (iv) the number of Unpaid Cases investigated on a regional and national basis;
- (b) a quarterly report in respect of each quarter of this Agreement commencing on 1 April, 1 July, 1 October and 1 January such report to be submitted to the BBC by 31 July, 31 October, 31 January and 30 June respectively on the number of Unpaid Cases and Paid Cases investigated, the number of investigations conducted and the man-hours involved on a regional basis, a summary of the outcome of those investigations in terms of the source of interference found, the remedial action taken, the success or otherwise of such action, charges made, charges refunded, an analysis of significant interference trends and the Outturn Costs.
- 4(c) The Agency shall not be liable for any failure to fulfil its obligations under this Clause 4 to the extent that any such failure is beyond its reasonable control.

## **5. DURATION**

The date hereof notwithstanding, all rights, duties and obligations hereunder shall be deemed to have had effect from 1 April 1998 and, subject to the provisions for earlier termination under clause 10, shall continue in force until 31 March 1999 (or such later date as may be agreed between the parties in accordance with clause 11).

## **6. APPOINTMENT OF REPRESENTATIVES**

Each party shall appoint a representative by notifying the other of his/her name. At the commencement of this Agreement, the Agency's representative shall be Neil Marr and the BBC's shall be Mick Gleave. The representatives shall meet to review or otherwise participate in discussions relating to the performance of the Service as often as either may require.

## **7. FUNDING**

7.1 The Agency's charge for the Service during the period 1 April 1998 to 31 March 1999 (*"the Agreed Amount"*) shall be £2,000,000 or the Net Cost of providing the Service during the period, whichever is the lesser.

7.2 The BBC will meet the charge by making four payments in arrears to the Agency in respect of each quarter of the period 1 April to 31 March (*"the Accounting Period"*).

7.3 Following the end of the first, second and third quarter, the Agency shall submit an invoice to the BBC equal to the net costs incurred in that quarter.

7.4 As soon as practicable following the end of the Accounting Period the Agency shall deduct the amount invoiced and paid pursuant to clause 7.3 from the Net Costs of providing the Service during the Accounting Period and shall invoice the BBC for an amount equal to the difference between the amount paid and the Net Costs or between the amount paid and the Agreed Amount (whichever is the lesser).

7.5 The BBC shall remit payment due within one month of receipt of the invoice.

7.6 Not less than three months before the end of the Accounting Period the Agency shall notify the BBC of its estimate of the Net Costs of providing the Service in the forthcoming year (were the Agreement to be extended pursuant to clauses 5 and 11). Such estimate shall take into account any increase or decrease in the Agency's Net Costs of providing the service in the current Accounting Period (as compared to the preceding year) caused by an increase or decrease in demand for the Service during the Period and any planned efficiency savings. The parties shall discuss the estimate in good faith with a view to arriving at an Agreed Amount for the forthcoming year.

## **8. CONFIDENTIALITY**

8.1 Both parties agree that the terms of this Agreement are confidential. Neither party shall disclose the contents of this Agreement to a third party unless the contents are already in the public domain other than through a breach of this clause PROVIDED THAT a party may make disclosure thereof:

- (a) to its professional advisors and auditors;
- (b) to a third party with the prior consent of the other party;
- (c) to a regulatory authority (whether governmental or otherwise) where such disclosure is requested;
- (d) pursuant to a subpoena or other legal process or in connection with any proceedings relating to this Agreement;
- (e) pursuant to any law or regulation having the force of law; and
- (f) in the case of the Secretary of State, pursuant to her need to satisfy her accountability to Parliament.

8.2 The provisions of this clause shall survive the termination of this Agreement.

## **9. WAIVER**

The failure of either party at any time to enforce any provision of this Agreement shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any such provision or be a waiver of the provision.

## **10. TERMINATION**

10.1 Either party may at any time by notice in writing terminate this Agreement forthwith if the other party commits a serious or persistent breach of any of its obligations hereunder and, if such breach is capable of remedy, shall have failed to remedy the same within one month of being required to do so by the non-defaulting party.

10.2 Either party shall be entitled to terminate this Agreement by giving to the other party not less than 9 months notice in writing to that effect and without prejudice to any rights of the parties accrued to the date of the termination of this Agreement.

10.3 If this Agreement is terminated and the BBC appoint a successor contractor, the Agency shall use its reasonable endeavours to assist the BBC in effecting a transition to a successor or successors in such a manner as to reduce to a minimum any interruption of the provision of the Service by the successor(s).

## **11. VARIATION**

No variation of this Agreement shall be of any effect unless it is agreed in writing between the Secretary of State and the BBC.

## **12. NOTICES**

12.1 Except as otherwise stated herein, all notices hereunder to be given by one party to the other party shall be made by hand-delivered or registered first class letter or by facsimile (followed by a hard copy sent by first class letter) to the address and facsimile number set out below or to such other address or facsimile number as a party may specify to the other party for such purpose by notice:

- (a) The Secretary of State  
c/o the Agency at the address aforesaid

Tel: 0171 211 0461

Fax: 0171 211 0035

For the attention of Neil Marr

- (b) The BBC  
at the address aforesaid

Tel: 0171 765 5617

Fax: 0171 765 5607

For the attention of Mick Gleave

12.2 A notice shall be deemed to be duly given or made in the case of a hand-delivered letter on delivery, in the case of a letter sent by registered first class mail the next working day after posting, and in the case of facsimile on the day of receipt if transmitted during normal business hours or on the next working day if transmitted after normal business hours.

## **13. DISPUTE RESOLUTION**

Both parties shall make all reasonable endeavours in good faith to resolve any dispute which may arise in connection with this Agreement. If the parties' representatives shall have failed to do so within 2 weeks of such a dispute arising, the matter shall be referred to the Chief Executive of the Agency and the



Director General of the BBC who shall negotiate in good faith to resolve the dispute. If the matter cannot be resolved in this way both parties recognise their right to recourse to appropriate Ministers. Provision of the Service under this Agreement shall not cease or be delayed by the dispute resolution procedures set out in this clause 13.

#### **14     FORCE MAJEURE**

Neither party shall be liable for any failure to fulfil its obligations under this Agreement resulting from causes beyond its reasonable control including but not by way of limitation Act of God, strikes, lockout, regulatory order or act of Government, fire, lightning, explosion, flooding, riot, civil commotion or act of war, such occurrence being an event of force majeure. If either party is prevented or delayed from or in performing any of its obligations under this Agreement by an event of force majeure then the parties shall discuss the implications in good faith including exercise of a right to terminate in the event of a continuing failure to perform.

#### **15.    ENTIRE AGREEMENT**

This Agreement shall constitute the entire agreement between the parties and supersedes all or any prior negotiations, representations or agreements whether written or oral.

#### **16.    LAW**

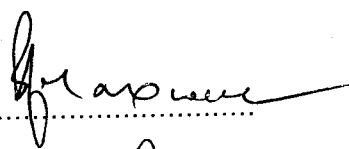
This Agreement shall be considered as a contract made in England and shall be governed by, and construed in accordance with, the provisions of English Law.

IN WITNESS WHEREOF the parties have caused this Agreement to be duly executed the day and year first above written.

SIGNED by B. A. MAXWELL)

an official of the Radiocommunications)

Agency acting on behalf of THE )

SECRETARY OF STATE FOR ) Signature 

TRADE AND INDUSTRY in the )

presence of: C. H. Riddell

SIGNED by Patricia Hodges)

duly authorised for and on behalf of )

THE BRITISH BROADCASTING ) Signature 

CORPORATION )

in the presence of: Ian Jenkins

## THE SERVICE

1 To investigate and provide appropriate remedial advice or action following receipt of complaints of interference to domestic television and radio reception by members of the public and/or the BBC.

2 The Service will cover all complaints of electromagnetic interference to the reception of terrestrial broadcasts **(including for the avoidance of doubt digital broadcasts)** or satellite broadcasts in the broadcasting bands, but excludes:

- non-domestic satellite services (as defined in section 43 of the Broadcasting Act 1990); and
- interference which results from the transmission of Channel 5, and which comes under the provision of section 30 of the Broadcasting Act 1990.

3 The range of activities involved in supporting the Service will include where appropriate:

### (1) HQ STAFF

- a Reviewing policy, including the level of charge for visits and the fee to be paid by the BBC.
- b Interpreting policy on complex cases.
- c Issuing guidance to Regional staff (Guidelines and stock letters).
- d Replying to Ministers and Chief Executive cases.
- e Answering telephone enquiries on the policy.
- f Answering general written enquiries and Treat Official Letters.
- g Producing an information sheet (Advice on TV and Radio Reception RA 179) in conjunction with the BBC/ITC.
- h Arranging for the printing of the information sheet RA 179.
- i Distribution of the information sheet RA179 in response to enquiries from the public.
- j Providing technical input to international standards work.
- k Overseeing any testing requirements at RTCG (Whyteleafe).

### (2) REGIONAL STAFF

- a Evaluating work of Regions and providing input into interference policy reviews.

- b Staff training and guidance.
- c Handling ad-hoc large scale problems or sensitive issues.
- d Attending policy meetings at HQ.
- e Acknowledging receipt of forms.
- f Acknowledging receipt of any monies submitted with paid cases.
- g Recording all details of all money received and forwarded to CSL Newport, and making any necessary refunds.
- h Recording details on the Regional case recording system, including producing a summary of action taken and man-hours worked.
- i Replying in writing to complainants on specific matters relating to the investigation of their complaint.
- j Maintaining records of all complaints.
- k Producing work and man-hour statistics.

**(3) INVESTIGATION OF REPORTS BY FIELD STAFF, WHICH INCLUDES:**

- a Assessing and checking information supplied by complainants. (This may involve determining whether a stated source in the area concerned is licensed.)
- b For paid cases, visiting complainants (up to three visits are permitted) and diagnosing the problem and offering a solution. In exceptional cases visits may be permitted for unpaid (enforcement) cases.
- c Paid cases - to fit free of charge any necessary filters to reduce interference.
- d Unpaid (enforcement) cases - if circumstances permit, monitoring, tracing and identifying source of interference and rectifying as necessary.

**(4) MOBILE MONITORING TEAM - BALDOCK**

Investigation and measurement to Statutory Instruments/British Standards of radio and non-radio equipment causing interference to broadcasting reception equipment.

## PROCEDURE FOR MAKING COMPLAINTS

Except in cases initiated or referred by the BBC, complainants will normally be required to complete Form A or B and to pay any requisite fee before the complaint will be investigated. RA 179 information sheets will be sent to complainants by first class post. Complaints will not normally be discussed over the telephone.

### **Unpaid Cases**

The Agency will investigate (a visit will not necessarily be made) without charging the complainant any fee on receipt of a completed Form A which identifies a suspected source. In such cases, the costs of the investigation will be covered entirely by the sum paid by the BBC as part of the charge for the Service, except for all cases where the source of interference is identified by the Agency as one that is licensable under the Wireless Telegraphy Act 1949 ('the WT Act'). In such cases the cost will be allocated to the appropriate licence category.

Where the source of interference is not indicated, the Agency will not be obliged to investigate unless there are complaints from several households in the area.

### **Paid Cases**

Reception problems often arise from shortcomings in the complainant's installation. Such problems should be dealt with primarily by commercial service engineers, aerial contractors, rental companies, radio and television engineers etc., as appropriate. The Agency will provide complainants with tactful encouragement to use such sources of advice. However, in the cases where the complainant can offer written confirmation by an appropriately qualified person that such an approach has been properly explored, and that it has failed to produce a satisfactory result, the Agency will, as part of this Agreement, inspect

domestic installations in accordance with the conditions set out in RA 179, and on payment of the requisite fee accompanied by a completed form B.

There are cases where a fee is initially paid, but a subsequent refund is made. The fee will be refunded if, at any stage in the inspection of the complainant's installation, the Agency identify that the interference is caused by the illegal use of radio or other apparatus that is regulated under the legislation for which the Agency is responsible.

If the preliminary inspection cannot identify the source of the problem, and there is consequently no initial basis for offering advice on remedial action, further visits may be made providing the AGENCY has reasonable grounds to believe that such action is likely to lead to the identification of the source. If it is not possible to identify the source of the problem, the fee will be refunded.

If an investigation, on whatever basis it was instigated, reveals that the source of interference is a licensable transmitter, the expense of the investigation from that point will be charged to the appropriate licence category and any fee paid will be refunded.

The level and conditions relating to any fee charged to the public, and any additional charging mechanisms which may be deemed appropriate from the public or other sources, will be reviewed on an annual basis by the BBC and the Agency prior to discussions with any other relevant party and any decision being made by the Secretary of State.

Copy of RA 179 (Rev 12)