Agreement Between Her Majesty The Queen in Right of Canada as Represented by the Minister of Industry and NAV CANADA Regarding Radio Frequency Spectrum Management
Note

All persons making use of this consolidation are reminded that the document included herein is provided only for convenience of reference. This consolidation is for the guidance of those engaged in radiocommunications in Canada. The information contained in this document is subject to change without notice. While every reasonable effort has been made to ensure accuracy, no warranty is expressed or implied. For more details, please contact the Spectrum Management Operations Directorate.

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All spectrum publications are available on the Internet at http://ic.gc.ca/spectrum.
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THIS SECOND AMENDED AND RESTATED AGREEMENT is made

BETWEEN:
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
(Herein called “Her Majesty”),
represented by the Minister of Industry
(Herein called “the Minister”)

- and -

NAV CANADA,
A corporation incorporated under the provisions of Part II of the Canada Corporations Act (Canada)
(Herein called “NAV CANADA”).

WHEREAS Her Majesty has responsibility under Annex 10 of the Convention on International Civil Aviation, known as the Chicago Convention, to designate certain radio frequencies, within the spectrum, for use by aeronautical services and, to the greatest extent possible, keep those frequencies free from Harmful Interference;

AND WHEREAS pursuant to the Radiocommunication Act, R.S. 1985, c. R–2, as it may be amended from time to time, the Minister is responsible for the orderly development and efficient operation of radiocommunication in Canada;

AND WHEREAS Her Majesty, as represented by the Minister of Transport, and NAV CANADA entered into an agreement which was originally executed on the 1st day of April, 1996 for the transfer of the civil air navigation service from Her Majesty to NAV CANADA (the “Agreement to Transfer”);

AND WHEREAS pursuant to the Agreement to Transfer, Her Majesty, as represented by the Minister of Industry and NAV CANADA entered into an agreement which came into effect the 28th day of June, 2002, which was subsequently replaced by an amended and restated agreement that came into effect on the 1st day of November, 2007, setting out the roles and responsibilities of the parties with regard to the management of the radio frequency spectrum allocated for aeronautical services (the “First Amended and Restated Agreement”);

AND WHEREAS under the First Amended and Restated Agreement, Her Majesty and NAV CANADA have agreed to enter into this second amended and restated Agreement;

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the respective covenants and agreements of the parties herein contained and on the terms and subject to the conditions hereinafter set out, the parties agree as follows:
Article 1 – Definitions and acronyms

Section 1.01 – Definitions

For the purpose of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have the corresponding meanings:

**Agreement** means this Agreement and any appendix hereto, including any amendment to either the agreement or its appendices, entered into by the parties from time to time;

**Assignment** means an authorization given by the Minister for a radio station to use a radio frequency or a radio frequency channel under specified conditions;

**Business Day** means any day other than Saturday, Sunday or statutory holiday in the province of Ontario;

**FM Broadcasting Undertaking** means any distribution undertaking, programming undertaking or network operation within the 88 MHz to 108 MHz frequency band to which the *Broadcasting Act* applies;

**Frequency Selection** means the designation of a radio frequency or radio frequency channel from the specified table of radio frequencies or channels set out in Appendix A;

**Harmful Interference** means an adverse effect of electromagnetic energy from an emission, radiation or induction that:

a. endangers the use or functioning of a safety-related radiocommunication system, or

b. significantly degrades or obstructs, or repeatedly interrupts, the use or functioning of radio apparatus or radio-sensitive equipment;

**NAVCOM** means aeronautical radio-navigation and communication services;

**Operational Arrangement** has the meaning ascribed to it in section 7.01 of this Agreement;

**Proposals** has the meaning ascribed to it in section 6.02(a) of this Agreement;

**Resolve** means to take the necessary action to mitigate identified sources of Harmful Interference in such a fashion that the interference is unlikely to re–occur.
Section 1.02 – Table of acronyms

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWOS</td>
<td>Automated Weather Observation System</td>
</tr>
<tr>
<td>ILS</td>
<td>Instrument Landing System</td>
</tr>
<tr>
<td>ISED</td>
<td>Innovation, Science and Economic Development Canada</td>
</tr>
<tr>
<td>MLS</td>
<td>Microwave Landing System</td>
</tr>
<tr>
<td>RFI</td>
<td>Radio Frequency Interference</td>
</tr>
<tr>
<td>SSR</td>
<td>Secondary Surveillance Radar</td>
</tr>
<tr>
<td>TACAN</td>
<td>Tactical Air Navigation System</td>
</tr>
<tr>
<td>TCAS</td>
<td>Traffic Alert and Collision Avoidance System</td>
</tr>
<tr>
<td>VHF</td>
<td>Very High Frequency</td>
</tr>
<tr>
<td>VOR</td>
<td>VHF Omnidirectional Range</td>
</tr>
</tbody>
</table>

Section 1.03 – Other defined terms

Other terms are defined in the context in which they appear and shall have the meanings there indicated.

Article 2 – Interpretation

Section 2.01 – Subdivisions

Unless otherwise stated, a reference herein by numerical or alphabetical designation to an article, section, subsection, paragraph or subparagraph shall refer to the article, section, subsection, paragraph or subparagraph bearing that designation in this Agreement.

Section 2.02 – Number and gender

Words importing the singular shall include the plural and vice versa and words importing a particular gender shall include all genders. The use of the neuter singular pronoun to refer to NAV CANADA is deemed a proper reference. The necessary grammatical changes required to make the provisions of this Agreement apply shall in all instances be assumed as though in each case fully expressed.

Section 2.03 – Headings

The division of this Agreement into articles, sections, subsections, paragraphs and subparagraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

Section 2.04 – Day of notice

If the day on which any act or payment is required to be done or made under this Agreement is a day which is not a Business Day, then such act or payment shall be duly performed or made if done on the next following Business Day.
Section 2.05 – Currency

In this Agreement, unless otherwise specified, the word dollar and the $ sign refer to Canadian currency.

Section 2.06 – Statutes, regulations and rules

Any reference in this Agreement to all or any part of any statute, regulation or rule shall, unless otherwise stated, be a reference to that statute, regulation or rule or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

Section 2.07 – Governing law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and Canada as applicable. Nothing in this Agreement is intended to or shall be construed as limiting, waiving or derogating from any Federal Crown prerogative.

Section 2.08 – Rights or remedies of other

Nothing expressed or implied in this Agreement is intended to or shall be construed to confer on or to give any person, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 2.09 – Construed covenants

All of the provisions and each obligation or agreement of this Agreement, even though not expressed as a covenant, are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof.

Section 2.10 – No contra proferentem

There shall be no presumption that any ambiguity in this Agreement be resolved in favour of either of the parties.

Section 2.11 – No derogation or abrogation

Nothing in this Agreement shall be construed to abrogate or derogate from any of the duties, rights or responsibilities of the Minister of Industry under law.

Section 2.12 – Innovation, Science and Economic Development Canada

In this Agreement, Innovation, Science and Economic Development Canada (ISED) shall be used throughout as the common name for the Department of Industry.
Article 3 – Representations and Warranties

Section 3.01 – Representations and warranties of NAV CANADA

NAV CANADA represents that it has the capacity and authority to enter into this Agreement and to perform its duties and that it knows of no reason, fact or event, current, imminent or probable, that would materially compromise its ability to perform its duties.

Section 3.02 – Compliance with laws

NAV CANADA represents that it is in compliance with the Radiocommunication Act and regulations promulgated thereunder.

Section 3.03 – No conflict

NAV CANADA represents that to the best of its knowledge no individual, to whom the post-employment provisions of the Policy on Conflict of Interest and Post-Employment apply, will derive a direct benefit from this Agreement unless that individual is in compliance with the applicable post-employment provisions.

Section 3.04 – Reliance on representations

NAV CANADA acknowledges that the Minister has relied on the representations set out in sections 3.01, 3.02 and 3.03 and that they are deemed to be continuing for the term of this Agreement.

Article 4 – Radio Frequency Selection and Coordination

Section 4.01 – Introduction

The parties agree that, subject to the terms and conditions of this Agreement, NAV CANADA shall carry out Frequency Selection and Coordination within those radio bands apportioned for aeronautical purposes as set out in appendix A. The Minister shall retain all other radio frequency spectrum management functions not specifically assigned to NAV CANADA, including the right to issue authorizations pursuant to the Radiocommunication Act.

Section 4.02 – Duties of NAV CANADA

In carrying out the Frequency Selection of radio frequencies pursuant to section 4.01, NAV CANADA shall:

a. maintain and adhere to a manual of procedure, that meets with the satisfaction of the Minister, for its radio Frequency Selections, electromagnetic compatibility (EMC) studies and radio frequency channel co-ordinations;
b. ensure, to the Minister's satisfaction, that personnel, including back–up personnel, are available and competent to perform the duties described in (a), on all Business Days and that only those trained personnel are engaged in those duties;

c. receive and provide impartial treatment to all requests, for radio frequency coordination, originated by non-NAV CANADA entities;

d. obtain the Minister's approval of all proposed radio frequency Assignments before the facilities that are to use the radio frequencies are rendered operational;

e. maintain a NAV CANADA frequency assignment system database and provide copies to the Minister upon request. The data provided will be suitable for ISED to conduct theoretical electromagnetic compatibility predictions;

f. coordinate with the Minister, in an expeditious manner, requests by Her Majesty's Department of National Defence for temporary operation utilizing aeronautical radio frequencies or radio channels; and

g. within the overall framework of the Minister's spectrum utilization plans and allocations, select those radio frequencies required for aeronautical communications or navigational services from within bands outlined in appendix A as may from time to time be amended in accordance with the terms of the Agreement, and provided those bands remain allocated for aeronautical services.

Section 4.03 – Duties of the Minister

The Minister shall:

a. forward any and all requests for radio frequency assignments within the bands listed in appendix A to NAV CANADA immediately upon receipt in order that NAV CANADA may perform its functions under section 4.01; and

b. make reasonable efforts to render, within 50 calendar days of receipt of a completed radio licence application from NAV CANADA, his decision on whether to issue a licence and, if the decision is that a licence should be issued, issue the licence promptly thereafter.

Section 4.04 – Special Arrangements

The following special arrangements will apply for coordinating the allotment and Assignment of the aeronautical radio frequencies outlined in appendix A:
a. NAV CANADA will be responsible for coordinating proposed radio frequency Assignments and allotments with the Federal Aviation Administration of the United States pursuant to the Canada-United States Agreement Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles per Second, with Annex, as amended or superseded.

b. The Minister will provide input to NAV CANADA in developing positions for presentation to the International Civil Aviation Organization (ICAO) relating to spectrum utilization or compatibility.

c. The Minister represents Canada at World Radiocommunication Conferences sponsored by the International Telecommunication Union (ITU), as well as during other activities involving the ITU.

d. The Minister and NAV CANADA will cooperate with each other on any radio frequency spectrum arrangements, which may have a bearing or impact, either nationally or internationally, on aeronautical telecommunications and transportation.

e. The Minister will coordinate radio frequency Assignments with all countries except as set out in (a) above.

**Article 5 – Harmful Interference Investigations and Resolution**

**Section 5.01 – Introduction**

a. In order to conduct its business, NAV CANADA is required to operate safety-related radiocommunication systems.

b. Each party has access to unique resources which may be combined in order to successfully investigate and resolve cases of Harmful Interference.

c. As such, both parties agree that, where required, they will combine those resources and work together in investigating and resolving cases of Harmful Interference to NAV CANADA's aeronautical radiocommunication systems.

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Section 5.02 – Shared responsibilities

The Minister and NAV CANADA shall:

a. undertake to safeguard from Harmful Interference licensed aeronautical radiocommunication facilities whether operated by NAV CANADA or published for public use. Recognizing the inherent difficulties in protecting mobile units from interference, both parties will endeavour to provide similar protection to mobile receivers, operating on the frequencies listed in appendix B;

b. meet as necessary, upon the request of either party, to discuss Harmful Interference resolution efforts;

c. review and update points of contact periodically;

d. endeavour to resolve any problems or disagreements that may arise during the term of this Agreement;

e. each provide engineering and management support to field staff, as necessary, during an investigation;

f. each be responsible for their own operational costs, incurred during an investigation (e.g. equipment and vehicle expenses, overtime wages, cost of airborne operations, etc.); and

g. keep confidential, subject to applicable laws or mutual agreement to the contrary:

i. the data provided for the purpose of investigations, and

ii. the results of the investigations.

Section 5.03 – Equipment

The parties recognize that successful collaboration may involve the loan of equipment from one party to the other or the joint acquisition of equipment by the parties. In either case, the parties shall enter into acceptable written arrangements with respect to such loans or joint acquisitions which shall address, among other matters, ownership, costs, use, maintenance and repair, disposal and termination.

Article 6 – FM/NAVCOM Electromagnetic Compatibility Analyses

Section 6.01 – Introduction
Both parties agree to work together to prevent Harmful Interference from FM Broadcasting Undertakings operating within the 88 MHz to108 MHz frequency band to NAVCOM facilities, whether operated by NAV CANADA or published for public use.
Section 6.02 – The Minister’s responsibilities

The Minister shall:

a. analyze all Proposals for new FM Broadcasting Undertakings and all modifications to existing FM Broadcasting Undertakings for which a broadcasting certificate is required (collectively called Proposals) to determine the potential for Harmful Interference to NAV CANADA services;

b. submit analysis results to NAV CANADA in a form specified in the applicable Operational Arrangement or otherwise in a mutually acceptable form, if the analysis referred to in section 6.02 (a) shows predicted interference;

c. not give final approval for an FM Broadcasting Undertaking prior to receipt of NAV CANADA's recommendations;

d. retain the right to specify the conditions that will apply to the applicant on behalf of NAV CANADA;

e. retain the right to approve an FM Broadcasting Undertaking contrary to the recommendation of NAV CANADA, recognizing that approval of an FM Broadcasting Undertaking contrary to NAV CANADA's recommendation may interfere with the aviation industry’s ability to carry on business in Canada;

f. provide NAV CANADA with an explanation if the Minister chooses not to impose one or more of NAV CANADA’s recommendations and/or conditions and provide NAV CANADA a reasonable opportunity to respond; and

g. be the primary point of contact for broadcasters and their representatives.

Section 6.03 – NAV CANADA’s obligations

NAV CANADA shall:

a. review all Proposals, request additional information if required, and endeavor to provide a recommendation within the deadlines specified in the applicable Operational Arrangement, or prior to a deadline requested by the Minister;

b. provide the Minister with an estimated response time as soon as practicable if circumstances prevent a response within the deadlines noted in (a) above;

c. make reasonable efforts to satisfy special requests or deadlines, subject to internal resources and constraints;

d. specify conditions, with explanation where necessary, that ISED can take into consideration prior to authorizing an application; and
e. provide an explanation for Proposals that have been assessed as “not recommended.”

Section 6.04 – Shared responsibilities

The Minister and NAV CANADA shall:

a. ensure that their respective FM broadcasting and NAVCOM databases are current, reasonably accurate and readily accessible to each other by means specified in the applicable Operational Arrangement, or otherwise by mutually acceptable means;

b. ensure that the most recent versions of the FM broadcasting and NAVCOM databases are used to conduct analysis and that each analysis is performed in a manner specified in the applicable Operational Arrangement, or otherwise in a mutually acceptable manner.

Article 7 – Operational Arrangements and Technical Audits

Section 7.01 – Operational Arrangements

a. ISED and NAV CANADA shall jointly develop, share and maintain appropriate procedural documents related to carry out the functions and perform the obligations set out in articles 4, 5 and 6 of this Agreement (the “Operational Arrangements”).

b. The Operational Arrangements shall be issued by the Minister.

c. The Operational Arrangements shall address but not necessarily be limited to the following topics:
   i. radio frequency selection and coordination;
   ii. electromagnetic interference (EMI) resolution;
   iii. compatibility between stations operating in the FM Broadcasting bands and NAVCOM; and
   iv. notification within frequency bands of interest to NAV CANADA.

Section 7.02 – Her Majesty’s discretion

Operational Arrangements shall in no way limit or affect the Minister’s discretion under the Radiocommunication Act.

Section 7.03 – Enforcement of Operational Arrangements

The Minister and NAV CANADA shall comply and carry out the functions and perform their obligations under this Agreement in accordance with the related Operational Arrangements as amended from time to time.

Section 7.04 – Technical audit

a. NAV CANADA shall, at the Minister’s request and at no cost to the Minister, provide promptly
any information determined by the Minister, acting reasonably, to be necessary to enable the Minister to determine if NAV CANADA is performing its duties under this Agreement.

b. For the duration of the Agreement and any renewal thereof, NAV CANADA shall, at its own expense, ensure access by the Minister to its premises for technical audit and evaluation purposes, at all reasonable times upon reasonable notice by the Minister.

Section 7.05 – Intellectual property rights and non-disclosed information

The parties recognize that successful collaboration may involve the exchange of technical information, which is confidential and proprietary to one of the parties. Accordingly, both parties agree that, subject to the Access to Information Act (Canada), technical information that is disclosed by one party will be distributed on a need-to-know basis only and will not be disclosed to a third party without prior written consent of the disclosing party.

Licensing information and broadcasting application information that are not available publicly on ISED websites are considered non-disclosed and NAV CANADA shall treat such information as indicated above.

Article 8 – Default, recovery and remedies

Section 8.01 – Default

The following constitute events of default:

a. NAV CANADA becomes bankrupt or insolvent, goes into receivership, or takes the benefit of any statute relating to bankrupt or insolvent debtors;

b. an order is made or resolution passed for the winding up of NAV CANADA or NAV CANADA is dissolved;

c. in the Minister’s opinion, acting reasonably, NAV CANADA ceases to carry on business;

d. NAV CANADA has knowingly submitted false or misleading information or has made misrepresentations to the Minister; or

e. NAV CANADA has not met or satisfied a term or condition of this Agreement, or of an Operational Arrangement.

Section 8.02 – Notice of default

Where there is an event of default or where, in the Minister’s opinion, there is likely to be a default under this Agreement, the Minister shall give NAV CANADA at least 30 days’ notice in writing to cure the default and to notify the Minister in writing that the default has been cured, failing which the Minister may terminate this Agreement.
Section 8.03 – No arbitration

No decision by the Minister to terminate this Agreement pursuant to sections 8.01 and 8.02 may be referred to arbitration under article 12. In the event of such termination, NAV CANADA’s remedy is limited to proceedings against Her Majesty subject to the Crown Liability and Proceedings Act.

Article 9 – Term of the Agreement

Section 9.01 – Term

This Agreement shall commence on the 1st day of April 2018 and shall remain in effect unless terminated by mutual agreement of both parties or by the Minister either in accordance with article 8 or upon 180 days written notice to NAV CANADA.

Article 10 – Indemnity

Section 10.01 – Indemnity of Her Majesty

NAV CANADA shall indemnify and save harmless Her Majesty and Her servants, agents, officers and employees from any and all claims, suits, liabilities, damages, losses, judgements, costs and expenses sustained or incurred by Her Majesty as a result of any act or failure to act by NAV CANADA under the terms of this Agreement except to the extent that NAV CANADA’s act or failure to act is caused by an act or failure to act on the part of Her Majesty or the Minister. NAV CANADA will have in place and maintain public liability insurance which will provide adequate limits of insurance for the risks outlined above. NAV CANADA will also supply proof of up-to-date insurance upon request by the Minister.

Section 10.02 – Indemnity of NAV CANADA

Her Majesty shall indemnify and save harmless NAV CANADA and its servants, agents, officers and employees from any and all claims, suits, liabilities, damages, losses, judgements, costs and expenses sustained or incurred by NAV CANADA as a result of any act or failure to act by Her Majesty under the terms of this Agreement except to the extent that Her Majesty’s act or failure to act is caused by an act or failure to act on the part of NAV CANADA.

Article 11 – Payment

Section 11.01 – Payments

NAV CANADA shall perform the Frequency Management Spectrum obligations detailed in articles 4, 5 and 6 herein, at no charge to Her Majesty.

For the radio station licences provided by Her Majesty to NAV CANADA, NAV CANADA shall be responsible for paying the annual fee for each such licence as stipulated by applicable provisions of the Radiocommunication Act and the Radiocommunication Regulations. The annual fee will be based on
the number of NAV CANADA sites requiring the licence.

Section 11.02 – Invoices

Her Majesty shall submit its fees for the radio station licences on separate invoices for individual accounts to cover all of NAV CANADA sites.

All invoices for the fees for the Radio Station Licences shall be delivered to the address identified on individual accounts.

Section 11.03 – Payment of invoices

NAV CANADA shall pay the amount due on any invoice within thirty (30) days of the date of receipt thereof.

Section 11.04 – Disputed Amount

In the event that NAV CANADA believes that it has been improperly charged for any amount contained in an invoice referred to in section 11.02 above, NAV CANADA shall pay the amount of the invoice and may request the Minister to review the invoice to redetermine the amount owing, taking into account any issues raised by NAV CANADA.

Section 11.05 – Resolving disputed amount

In the event that NAV CANADA is not satisfied by the redetermination made under section 11.04, then NAV CANADA may have recourse to arbitration as envisaged by article 12, but nothing herein absolves NAV CANADA, as a condition precedent to arbitration, from the requirement that NAV CANADA pay the amount of a disputed invoice in full.

Article 12 – Arbitration

Section 12.01 – Application

Subject to section 8.03, any dispute or difference between the parties hereto arising under this Agreement shall be referred to an arbitration tribunal for an award and determination by written submission signed by or on behalf of either the Minister or NAV CANADA.

Section 12.02 – Jurisdiction of the arbitrator

The arbitrator tribunal may determine all questions of law and jurisdiction including questions as to whether the dispute is arbitrable and has the right to grant permanent and interim injunctive relief and shall have the discretion to award costs including reasonable legal fees, interest and costs of the arbitration.
Section 12.03 – Governing legislation

Each arbitration pursuant to this Agreement shall be conducted pursuant to the Commercial Arbitration Code (the Code) set out in the schedule to the Commercial Arbitration Act (Canada) and all regulations made and, from time to time, in force thereunder.

Section 12.04 – Agreement re: the Commercial Arbitration Code

The parties agree as follows with respect to the Code:

a. Article 3: Notwithstanding the provisions of Article 3 of the Code, Notices shall be given and deemed received in accordance with the provisions of section 13.07 of this Agreement.

b. Article 7: For the purposes of Article 7 of the Code, this Article 12 shall constitute the “arbitration agreement.”

c. Articles 10 and 11: For the purposes of Articles 10 and 11 of the Code, the arbitral tribunal shall be selected as follows:

i. After such notice and demand being given and deemed received in accordance with the provisions of Section 13.07 of this Agreement, the parties shall:

A. within ten (10) days, jointly select a single arbitrator, or

B. if the parties fail to select a single arbitrator within such a ten (10) day period, they shall each appoint an arbitrator within seven (7) days. If one party selects an arbitrator, and the other party neglects or refuses to do so within the time specified, the arbitral tribunal shall be the sole arbitrator selected above. If each party selects an arbitrator, the two arbitrators so selected shall, within five (5) days, select a third arbitrator as chairperson of the arbitration. If the two arbitrators selected as described above do not agree upon a third, then either party may apply to a court of competent jurisdiction to appoint the third arbitrator who shall chair the arbitral tribunal.

d. Article 20: For the purposes of Article 20 of the Code, each arbitration pursuant to this Agreement shall be conducted at Ottawa, or such other place as the parties may agree upon.

e. Article 22: Pursuant to Article 22 of the Code, the language used in all arbitral proceedings shall be English unless the parties hereto agree otherwise.

f. Article 28: For the purposes of paragraph (1) of Article 28 of the Code, the rules of law applicable to any dispute before an arbitral tribunal shall be the laws in effect in the Province of Ontario and in Canada at the time the dispute arose. For the purposes of paragraph (3) of Article 28 of the Code, the arbitral tribunal is not authorized to decide ex aequo et bono or as amiable compositeur.
g. Article 34: Reference in Article 34 of the Code to a “court” shall be references to the Federal Court Trial Division or, where applicable, any court of appeal therefrom.

h. Article 35: For the purposes of Article 35 of the Code, an arbitral award shall be final and binding and, upon application to the Federal Court in accordance with the Federal Courts Act (Canada) and its regulations, shall be enforced as a judgement or award of that Court.

Section 12.05 – Obligations during arbitration

During the progress of arbitration, the parties shall continue to perform their obligations under the Agreement.

Article 13 – General provisions

Section 13.01 – Assignment

Neither party hereto shall assign this Agreement nor any of the party’s rights, duties or obligation hereunder. Any attempt by a party hereto to assign this Agreement of any of the party’s rights, duties or obligations hereunder is void.

Section 13.02 – Entire Agreement

This Agreement supersedes and revokes all negotiations, arrangements, letters or intent, brochures, representations and information conveyed, whether oral or in writing, relating to radio frequency spectrum management, between the parties hereto or their representatives or any other person purporting to represent the Minister or NAV CANADA. NAV CANADA agrees that it has not been induced to enter into this Agreement by any representations not set forth in this Agreement.

Section 13.03 – No partnership or delegation

Her Majesty and NAV CANADA expressly disclaim any intention to create a partnership, joint venture or joint enterprise. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of Her Majesty or NAV CANADA shall constitute Her Majesty and NAV CANADA as partners, joint venturers or principal and agent in any way or for any purpose. NAV CANADA shall not represent or hold itself out to be an agent of Her Majesty. No party hereto shall have any authority to act for or to assume any obligations or responsibility on behalf of the other party hereto. For greater certainty, neither this Agreement nor any other document contemplated by this Agreement shall constitute or be construed or be deemed to constitute or be construed as a delegation by the Minister to NAV CANADA of any of his powers, duties or functions.

Section 13.04 – Amendment

No amendment, variation, addition, deletion (which term includes lining out), rider or other change to this Agreement shall have any force or effect unless it is in writing and unless it is signed by both the Minister and NAV CANADA.
Section 13.05 – Waiver

a. The failure by any party hereto to insist in any one instance upon the strict performance by the other party hereto of its obligations hereunder shall not constitute a waiver or relinquishment of any such obligations as to any other instances, and the same shall continue in full force and effect.

b. No covenant or condition of this Agreement may be waived by any party hereto except by the written consent of that party, and forbearance or indulgence by that party in any regard whatsoever and no matter how long shall not constitute a waiver of the covenant or condition, and until performed or waived in writing that party shall be entitled to invoke any remedy available to that party under this Agreement or by law, despite the forbearance of indulgence.

Section 13.06 – Severability

If, for any reason whatsoever, any provision of this Agreement is held or rendered invalid, void, illegal or unenforceable to any extent, then the particular provision shall be deemed to be independent of and severed from the remainder of this Agreement and all the other provisions of this Agreement shall nevertheless continue in full force and effect.

Section 13.07 – Notice

All notices or other communications necessary for the purposes of this Agreement (each a “Notice”) shall be in writing and shall be delivered personally or by courier, or shall be sent by registered mail or by prepaid post or sent by facsimile, addressed,

a. in the case of the Minister, to:

Director General
Spectrum Management and Operations Branch
235 Queen Street
Ottawa, Ontario
K1A 0H5

or to such other address or facsimile number or addressed to such other person as the Minister may, from time to time, designate by notice to NAV CANADA; and
b. in the case of NAV CANADA, to:

By Courier or By Post Office

NAV CANADA
280 Hunt Club Road
Ottawa, Ontario K1V 1C1

NAV CANADA
280 Hunt Club
P.O. Box 9825, Stn. T
Ottawa, Ontario K1G 6R3

or to such other address or facsimile number or addressed to such other person as NAV CANADA may, from time to time, designate by notice to the Minister.

Any notice or communication will be considered to have been received:

i in the case of facsimile, on actual receipt, and
ii in all other cases, on the date of delivery.

If the postal service is interrupted, or threatened to be interrupted, or is substantially delayed, any notice shall be delivered personally or by facsimile.

Section 13.08 – House of Commons

As required by the Parliament of Canada Act R.S.C (1985) ch. P–1 (Canada), it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

Section 13.09 – Approval

This Agreement shall not constitute approval by Her Majesty or any federal agency or the fulfilment of any requirement under the Competition Act (Canada) or successor legislation thereto.

Article 14 – Effective date

Section 14.01 – Effective date

The parties agree that this Agreement, although signed by the parties on different dates, shall have effect from the 1st day of April, 2018.
In Witness Whereof the Minister of Industry, on behalf of Her Majesty the Queen in right of Canada and NAV CANADA, have hereunto subscribed their signature by the hands of their proper officers in that behalf as of the day and year first above written.

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA, as
represented by the Minister of
Industry

Name: Susan Hart
Office: Director General,
Spectrum Management Operations Branch
for the Minister of Industry

NAV CANADA

Name: Kelly Ann Hicks,
Assistant Vice President,
Contracting, Logistics and Fleet,
NAV CANADA
Appendix A – Frequency bands relevant to frequency selection and coordination

<table>
<thead>
<tr>
<th>Frequency band</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>74.8-75.2 MHz</td>
<td>ILS, Marker Beacons</td>
</tr>
<tr>
<td>108.000-121.9875 MHz</td>
<td>VOR, ILS, ATCS, VHF Comm.</td>
</tr>
<tr>
<td>123.5875-128.8125 MHz</td>
<td>VHF Comm., AWOS</td>
</tr>
<tr>
<td>132.0125-136.4875 MHz</td>
<td>VHF Comm., AWOS</td>
</tr>
<tr>
<td>328.6-335.4 MHz</td>
<td>ILS Glide Slope</td>
</tr>
<tr>
<td>960-1215 MHz</td>
<td>DME, TACAN, TCAS, SSR</td>
</tr>
<tr>
<td>5030-5091 MHz</td>
<td>MLS</td>
</tr>
</tbody>
</table>
Appendix B – Frequency bands relevant to radio frequency interference investigation and resolution

<table>
<thead>
<tr>
<th>Frequency band</th>
<th>Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>190-535 kHz</td>
<td>Non-Directional Beacons</td>
</tr>
<tr>
<td>3-30 MHz</td>
<td>Aeronautical HF</td>
</tr>
<tr>
<td>74.8-75.2 MHz</td>
<td>ILS, Marker Beacon</td>
</tr>
<tr>
<td>108-118 MHz</td>
<td>VOR, ILS Localizer</td>
</tr>
<tr>
<td>118-137 MHz</td>
<td>VHF Comm., (defined in RBR-1(^2))</td>
</tr>
<tr>
<td>328.6-335.4 MHz</td>
<td>ILS Glide Slope</td>
</tr>
<tr>
<td>960-1215 MHz</td>
<td>DME, TACAN, TCAS</td>
</tr>
<tr>
<td>1176.45 MHz</td>
<td>GPS L5</td>
</tr>
<tr>
<td>1030 and 1090 MHz</td>
<td>Secondary Surveillance Radar</td>
</tr>
<tr>
<td>1227.6 MHz</td>
<td>GPS L2</td>
</tr>
<tr>
<td>1240-1370 MHz</td>
<td>Primary Surveillance Radar</td>
</tr>
<tr>
<td>1559-1610 MHz</td>
<td>GPS L1/GLONASS</td>
</tr>
<tr>
<td>5030-5091 MHz</td>
<td>MLS</td>
</tr>
<tr>
<td>9000-9500 MHz</td>
<td>Precision Approach Radar</td>
</tr>
<tr>
<td>15.7-16.2 GHz</td>
<td>ASDE RADAR</td>
</tr>
</tbody>
</table>

\(^2\) RBR 1 (Regulation by Reference 1) – Technical requirements for the operation of mobile stations in the Aeronautical Service in Canada.