

RTE

**STANDARD
GENERAL PURCHASING**

TERMS AND CONDITIONS

December 2018

(Revised Dec 2018)

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THESE GENERAL PURCHASING TERMS AND CONDITIONS are entered into BETWEEN

- (1) RAIDIÓ TEILIFÍS ÉIREANN, a statutory corporation regulated pursuant to the Broadcasting Act, 2009 whose headquarters is located at Montrose, Donnybrook, Dublin 4 (hereinafter called “RTÉ”), such expression to include its Subsidiaries; and
- (2) _____ **[insert name]**, a **[insert description e.g. limited liability company]** having its office at _____ **[insert address]** (hereinafter called “the Supplier”) and shall be deemed: (a) in the case of a single Supplier to include his executors, administrators and permitted assigns; (b) in the case of several Suppliers to include jointly and severally the partnership or firm (if any) and each of the Suppliers and their respective executors, administrators and permitted assigns; and (c) in the case of a company to include its successors and permitted assigns.

WHEREAS:

1. RTÉ is the owner and occupier of a complex of buildings and premises situated at Donnybrook, Dublin 4 ("the Site") and operates a public service media service in accordance with the Broadcasting Act 2009 from the Site.
2. Following a public tendering process carried out by RTÉ commencing on _____ **[insert date]**, the Supplier has been selected by RTÉ to provide the Products and/or Services (as defined below).
3. In reliance upon the Supplier's skill, knowledge and expertise, RTÉ wishes to engage the Supplier upon the terms and conditions set out below.

1 DEFINITIONS

- 1.1 In these General Purchasing Terms and Conditions, unless the context otherwise requires:-

“**Business Day**” means any day other than Saturday or Sunday or a bank or public holiday in Ireland.

“**Background IPR**” means Intellectual Property Rights owned by the Supplier or any third party, the use of which is necessary or incidental to the provisions of the Services or for RTÉ to receive the benefit of the Services, but excluding Foreground IPR.

“**Change Variation Procedure**” means the procedure outlined in Schedule 2 hereto.

“**Contract Price**” means the price payable for the Products and/or Services as set out in the attached Statement of Work;

“**Effective Date**” means the date of signature of these Conditions.

“**Exceptions List**” means all errors, defects and issues relating to the Products and/or Services which result from the Supplier's failure to adhere to the Specification which may be identified by RTÉ during the Warranty Period and without prejudice to RTÉ's other rights under these Conditions.

“**Final Acceptance Date**” means the relevant date set out and/or referred to in the Statement of Work when the Products and/or Services shall have been delivered and made Ready for Use by the Supplier.

“**Final Acceptance Certificate**” is a notice signed and issued by the RTÉ Project Manager when the Products and/or Services have passed all of the final Testing

Procedures. The date of signing the Final Acceptance Certificate is the “Final Acceptance Certificate Date.”

“**Foreground IPR**” means Intellectual Property Rights created by the Supplier or its Personnel in carrying out, as part of, or for the purposes of, the Services.

“**Intellectual Property Rights or IPR**” means all intellectual property rights including without limitation applications, patents, trade marks, design rights, copyright, database rights (whether or not any of these is registered and including any applications for registration of any such rights), know-how, inventions, confidential information and trade secrets and all rights or forms for the protection of a similar nature or having similar effect to any of these which may exist anywhere in the world.

“**Invitation to Tender**” means **[insert date and details of Tender]**.

“**Order**” means RTÉ’s written instructions to supply the Products and/or Services and incorporates these Conditions.

“**Personnel**” means the Supplier’s employees, agents and subcontractors and any other person who provides or are involved in the provisions of the Services.

“**Product(s)**” means any goods agreed to be supplied by the Supplier to RTÉ.

“**Project Manager**” means, in the case of RTÉ, the person appointed by RTÉ for liaising with the Supplier in the provision of the Products and/or Services in accordance with these Conditions and for the purposes of communication and resolution of issues with the Supplier, and in the case of the Supplier, means the project manager that the Supplier appoints and the expressions “the RTÉ Project Manager” and “the Supplier’s Project Manager” shall be construed accordingly.

“**Proposal**” means the response to the Tender submitted by the Supplier.

“**Ready for Use**” means when the Products and/or Services are fully supplied, installed, implemented, tested, accepted and operating in accordance with the provisions of these Conditions and as more particularly described in the Specification and Statement of Work.

“**RTÉ Content**” means all content owned or licensed by RTÉ and supplied by RTÉ to the Supplier including without limitation, polls, graphics, text, reports, branding, video streams, videos, images, audio streams, audio and sound recording. **[Review and amend to reflect the contract being tendered for]**

“**RTÉ Data**” means all (a) business rules, logic, configurations, processes and data including, without limitation, personal data owned by RTÉ and supplied by RTÉ to the Supplier in order to enable the Supplier develop the System(s), Products and/or Services and (b) all data generated as a result of the operation of the System(s), Products and/or Services including without limitation data and personal data submitted and/or created by RTÉ customers or users (“**Customer Generated Data**”).

“**Services**” means all work to be carried out under these Conditions and as specified in the Statement of Work including but not limited to any maintenance services.

“**Specification**” means the technical description of the Products and/or Services to be supplied by the Supplier as set out in the Statement of Work and the Tender Documentation.

“**Statement of Work (SOW)**” means the statement of work attached as Schedule 1 hereto and including Specification, Testing Procedures and Payment Schedule.

“**Subsidiary**” shall have the meaning given to it under Article 7 of the Companies Act 2014

“Tender Documentation” means the Invitation to Tender and the Supplier’s Proposal.

“Testing Procedures” means the test procedures for acceptance of the Products and/or Services as set out in the Statement of Work. As a minimum the Testing Procedures must demonstrate that the Products and/or Services comply in every capacity with the SOW. If the Testing Procedures are not identified in detail in the SOW they shall be agreed by both Parties at least two weeks prior to the commencement of any testing.

“Term” shall have the meaning set out in condition 4 below.

“these Conditions” means these General Purchasing Terms and Conditions and Schedules 1 and 2 attached hereto entered into by RTÉ or its duly authorised representative and the Supplier and Tender Documentation. These Conditions shall apply to the supply of the Products and/or Services.

“Warranty Period” shall mean a period detailed in the SOW. In the event that no period is detailed in the SOW the “Warranty Period” shall mean a period of twelve (12) months which shall commence on the Final Acceptance Certificate Date.

1.2 In these Conditions:

- 1.2.1 Save as otherwise provided herein, any references in these Conditions to conditions or paragraphs are references to the conditions or paragraphs of these Conditions unless the context otherwise admits or so requires.
- 1.2.2 Words such as hereunder, hereof and herein and other words commencing with here shall unless the context clearly indicates to the contrary, refer to the whole of these Conditions and not to any particular condition hereof.
- 1.2.3 References to the singular shall include the plural and vice versa and reference to any gender shall include other genders.
- 1.2.4 The headings to the conditions in these Conditions are for reference only and shall not affect the interpretation of these Conditions.
- 1.2.5 References to “liability”, unless the context otherwise requires includes claims, demands, proceedings, damages, losses, costs and expenses.
- 1.2.6 These Conditions may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when executed and delivered shall constitute an original, all such counterparts together constituting as one and the same instrument.
- 1.2.7 Amendments to or modifications of these Conditions may be made only by mutual agreement of all parties in writing, and shall be subject to whatever approvals or appropriate authorities as may be required by law.
- 1.2.8 These Conditions and all rights and obligations hereunder shall for all purposes be treated and construed as being separate and apart from any other agreement or agreements or any rights or obligations thereunder save only insofar as the express provision requires to the contrary.
- 1.2.9 The parties hereto enter these Conditions as principals for and on their own behalf.

1.2.10 In the event of any ambiguity or conflict between the Conditions and Tender Documentation, the order of precedence shall be as follows:

- 1.2.10.1 these General Purchasing Terms and Conditions;
- 1.2.10.2 the Schedules 1 and 2 to these General Purchasing Terms and Conditions;
- 1.2.10.3 the Invitation to Tender; and
- 1.2.10.4 the Supplier's Proposal.

2 APPLICATION OF TERMS

- 2.1 These Conditions are the only conditions upon which RTÉ is prepared to deal with the Supplier and they shall govern the relationship between the parties to the entire exclusion of all other terms and conditions. The Supplier confirms that it has not relied upon, and has no rights and remedies in respect of any terms and conditions, representations or statements other than them expressly set out in these Conditions.
- 2.2 These Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in any documentation provided or relied upon by the Supplier, the Schedules, and all or any conditions or stipulations contrary hereto are hereby excluded and extinguished and the Supplier expressly confirms the acceptance of this condition and of these Conditions in full.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's Proposal will form part of the Conditions, and the Supplier waives any right it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all RTÉ purchases and any variation of these Conditions shall have no effect unless expressly agreed in writing and signed by RTÉ and the Supplier.

3 COMPLIANCE WITH LAW

- 3.1 The Supplier shall comply with all relevant requirements of any statute, statutory rule or order or other instrument or regulation having the force of law concerning the supply of the Products and/or performance of the Services and performance of the Conditions including but not limited to compliance with all relevant employment, equality, disability, health and safety, environmental, data protection, child protection and taxation legislation.

4 TERM

Select Option A, B or C and delete non-applicable options.

Option A – Conditions for Fixed Term:

- 4.1 The Conditions shall commence on the Effective Date and shall remain in force for a period of **[insert period of time]** ("Term"). **OR**

Option B – Conditions for Initial Term of 1 year with RTÉ option to renew for a further period:

- [4.1 The Conditions shall commence on the Effective Date and shall continue in force for an initial term of one (1) year ("Initial Term").
- 4.2 On expiry of the Initial Term, RTÉ shall have the right to renew the Conditions for a further period of [XXX] (XX) years **[insert period of time]** ("Additional Term") in

accordance with this condition 4.2. RTÉ shall notify the Supplier in writing sixty (60) days prior to expiry of the Initial Term of its intention to renew the Conditions. Any renewal of the Conditions shall be on the same terms as set out in the Conditions. Unless the Supplier receives written notification from RTÉ of its intention to renew the Conditions under this condition 4, the Conditions shall expire on expiry of the Initial Term.] **OR**

Option C – Conditions for Initial Term of 1 year with RTÉ option to renew Conditions for 2 subsequent terms of 1 year each:

- [4.1 These Conditions shall commence on the Effective Date and shall continue in force for an initial term of one (1) year (“Initial Term”).
- 4.2 On expiry of the Initial Term, RTÉ shall have the option to renew the Conditions for an additional one (1) year term (“First Additional Contract Term”). RTÉ shall notify the Supplier in writing of its intention to renew the Conditions for the First Additional Contract Term sixty (60) days prior to expiry of the Initial Term. Any renewal of the Conditions shall be on the same terms as set out in the Conditions. Unless the Supplier receives written notification from RTÉ of its intention to renew the Conditions under this condition 4, the Conditions shall expire on expiry of the Initial Term.
- 4.3 On expiry of the First Additional Contract Term, RTÉ shall have the option to renew the Conditions for a further additional one (1) year term (“Second Additional Contract Term”) in accordance with the provisions of condition 4.2. For the avoidance of doubt, these Conditions shall not be renewed beyond the Second Additional Contract Term.]

5 AGREEMENT

- 5.1 Subject to and in accordance with the provisions of these Conditions and in consideration of the payment of the Contract Price, the Supplier hereby agrees with RTÉ:
- 5.1.1 to design, install, implement, make Ready for Use and provide the Products in accordance with the Specification and these Conditions and the Supplier agrees with RTÉ that the Products shall be free from any charge and/or encumbrance upon the making Ready for Use of the Products. [The legal and beneficial ownership of the Products shall pass to RTÉ on delivery];
- 5.1.2 to design, install, implement, make Ready for Use and provide the Services and to correct and repair promptly all faults reported to the Supplier in accordance with the Specification and these Conditions;
- 5.1.3 to transfer ownership of the Foreground Intellectual Property Rights and Customer Generated Data to RTÉ in accordance with Condition 14;
- 5.1.4 to ensure that the Products and/or Services shall upon the Final Acceptance Date provide the facilities and functions set out in the Specification and Statement of Work and to ensure that any operating manuals supplied provide adequate instruction to enable RTÉ and its personnel make proper use of such facilities and functions;
- 5.1.5 to use appropriately experienced, qualified, skilled and trained Personnel in performing any Services and to provide the Products and/or Services with all due skill, care and diligence and in a timely manner;
- 5.1.6 to remove any person engaged in the supply of the Products and/or Services whose removal is requested in writing by the RTÉ Project Manager who, acting reasonably, considers such person to be unsatisfactory;
- 5.1.7 to prioritise the supply of the Products and/or Services in relation to the other business activities of the Supplier in such a manner that will ensure that the Products and/or Services are delivered and made Ready for Use in accordance with these Conditions; and

- 5.1.8 to provide such other co-operation and assistance as might be generally and reasonably required for the provision of the Products and/or Services.
- 5.2 Subject to the provisions of these Conditions, and in consideration of the Supplier supplying the Products and/or Services, RTÉ hereby undertakes and agrees with the Supplier:
 - 5.2.1 to ensure that the specific duties and obligations allocated to RTÉ as set out in the Statement of Work are performed by RTÉ in a timely manner in accordance with the Statement of Work;
 - 5.2.2 to provide access to the Site as is necessary for the carrying out by the Supplier of its responsibilities in accordance with these Conditions;
 - 5.2.3 to provide the Supplier and its Personnel with adequate work space and other facilities as the Supplier may reasonably require to provide the Products and/or Services;
 - 5.2.4 to ensure that the RTÉ Project Manager participates in regular review meetings at a reasonable time at the RTÉ Site with the relevant Supplier personnel to evaluate and discuss reports on progress in accordance with Condition 10. **[Delete if not applicable]**
 - 5.2.5 to and hereby does grant to the Supplier a non-exclusive, royalty free licence for the Term to use the RTÉ Data [and RTÉ Content] [and Foreground IPR] in connection with the creation and provision of the Product(s) and the Services to RTÉ only. **[Delete if not applicable]**
- 5.3 **Licence Grant:** The Supplier hereby grants to RTÉ the following:
 - 5.3.1 a perpetual, non-exclusive, transferrable, irrevocable, worldwide, paid up, royalty-free licence to use, adapt and maintain the Supplier's Background IPR for the business purposes of RTÉ both during and after the Term of these Conditions, including the right for RTÉ to sub-licence use of this Background IPR to any other member of the RTÉ group or to any third party who requires the use of the Background IPR to provide service to RTÉ.
 - 5.3.2 If third party Background IPR (including third party software and related documentation) is required by RTÉ to receive the Services, the Supplier will use all reasonable endeavours to procure the grant to RTÉ of a perpetual non-exclusive, transferable, irrevocable, worldwide, paid up, royalty-free licence (whether by way of licence, sub-licence or otherwise) to use, adapt and maintain the third party Background IPR for the business purposes of RTÉ, both during and after the Term of these Conditions, including the right for RTÉ to sub-licence use of third party Background IPR to any other member of the RTÉ group or to any third party who requires the use of the Intellectual Property Rights in connection with the Services.
 - 5.3.3 a perpetual, non-exclusive, transferrable, irrevocable, worldwide, paid up, royalty-free licence to use, adapt and maintain the Supplier Data to provide service to RTÉ.

6 DELIVERY DATES

- 6.1 The Supplier shall deliver and make Ready for Use the Products and/or Services in accordance with the delivery dates set out in the Statement of Work.

7 INSPECTION AND ACCEPTANCE TESTING

7.1 Inspection of Products and/or Services prior to delivery to RTÉ:

- 7.1.1 The Supplier shall complete all relevant inspections and testing of the Products and/or Services prior to delivery to RTÉ.
- 7.1.2 The whole of the Products and/or Services or any part thereof shall be available for inspection and testing by RTÉ or its representatives at any time prior to delivery. The Supplier shall provide RTÉ with all facilities reasonably required for inspection and testing. Any such right of inspection shall not in any way prejudice or limit the statutory, legal or equitable rights of RTÉ.
- 7.1.3 If the results of any inspection or testing causes RTÉ to be of the opinion that the Products and/or Services do not conform or are unlikely to conform with the Statement of Work, RTÉ shall inform the Supplier and the Supplier shall immediately at its own expense take such action as is necessary to ensure conformity and in addition RTÉ shall have the right to require and witness further testing and inspection. If any expense in connection with rejected articles or material or unsatisfactory work is incurred by RTÉ, the amount of such expense shall be deducted from any payment to be made to the Supplier.
- 7.1.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Products and/or Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under these Conditions.

7.2 Testing of Products and/or Services after delivery to RTÉ:

- 7.2.1 Without prejudice to the inspection procedures outlined above, on completion of delivery and making the Products and/or Services Ready for Use in accordance with the Statement of Work delivery dates, the Supplier shall conduct the Testing Procedures prior to RTÉ conducting the Testing Procedures and when fully satisfied that the Products and/or Services pass the Testing Procedures, the Supplier shall formally invite RTÉ to conduct the Testing Procedures. RTÉ may appoint third party independent quality assurance advisors at any stage during the Testing Procedures.
- 7.2.2 If the RTÉ Testing Procedures in respect of the Products and/or Services have not been recorded as successful following completion of the Testing Procedures by RTÉ, then, RTÉ shall have the right, at its sole option, to:
 - 7.2.2.1 accept such part of the Products and/or Services as RTÉ may, at its sole discretion, decide and pay a pro rated fee therefore, calculated based on reasonable and objective criteria; and/or
 - 7.2.2.2 without prejudice to its other rights and remedies, extend the acceptance test period for a period, which shall not exceed twenty (20) Business Days, during which period, the Supplier shall (at the Supplier's sole expense) correct the fault(s) which caused the Testing Procedures to be recorded as unsuccessful; or
 - 7.2.2.3 where RTÉ is not satisfied with the outcomes of options set out in conditions 7.2.2.1 and/or 7.2.2.2 above, RTÉ shall reject the Products and/or Services and terminate these Conditions.
- 7.2.3 In the event that RTÉ extends the period for Testing Procedures, pursuant to condition 7.2.2.2 and the Testing Procedures by RTÉ have not been recorded as successful by the end of the relevant period, then, RTÉ shall have the right, at its sole option, to:

- 7.2.3.1 accept such part of the Products and/or Services as RTÉ may, at its sole discretion, decide and pay a pro rated fee therefore, calculated based on reasonable and objective criteria; and/or
- 7.2.3.2 without prejudice to its other rights and remedies, extend the Testing Procedures period for an additional period, which shall not exceed ten (10) Business Days, during which period, the Supplier shall (at the Supplier's sole expense) correct the fault which caused the repeat Testing Procedures by RTÉ to be recorded as unsuccessful; or
- 7.2.3.3 where RTÉ is not satisfied with the outcomes of options set out in conditions 7.2.3.1 and/or 7.2.3.2 above, RTÉ shall reject the Products and/or Services and terminate these Conditions.
- 7.2.4 The period, or periods, set out in sub-condition 7.2.2.2 and/or 7.2.3.2 shall operate to reset all subsequent delivery dates by the relevant period or periods, or such lesser period or periods agreed between the parties, including all dependent dates for issuing invoices as set out in the Statement of Work.
- 7.3 If the Products and/or Services pass all the final Testing Procedures, RTÉ's Project Manager shall sign and issue the Final Acceptance Certificate. This is without prejudice to RTÉ's right to draw up an Exceptions List at any time during the Warranty Period which the Supplier shall be obliged to deal with to RTÉ's reasonable satisfaction.

8 REJECTION OF PRODUCTS AND/OR SERVICES

- 8.1 Without prejudice to any rights that RTÉ may have under these Conditions, RTÉ may by notice in writing to the Supplier:
 - 8.1.1 reject any Products and/or Services in whole or in part which are not found to be in accordance with these Conditions or in any way differing from any Specification whether as a result of conducting the inspections and/or Testing Procedures outlined in condition 7 above or otherwise. RTÉ shall when giving notice of rejection, specify the reason therefore and such rejected Products and/or Services shall be removed from RTÉ's Site where applicable by the Supplier within ten (10) Business Days at the Supplier's risk and expense. Where applicable, the Supplier shall replace such rejected Products and/or Services with Products and/or Services which are in all respects in accordance with these Conditions within fifteen (15) Business Days from the date of RTÉ's notice of rejection;
 - 8.1.2 at RTÉ's option give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Products and/or Services as set out in the Exceptions List or to supply replacement Products and/or Services and carry out any other necessary work to ensure that the terms of the Conditions are fulfilled within fifteen (15) Business Days of being requested to do so;
 - 8.1.3 refuse to accept any further deliveries of the Products and/or Services but without any liability to the Supplier;
 - 8.1.4 carry out at the Supplier's expense any work necessary to make the Products and/or Services comply with the Conditions; and/or
 - 8.1.5 claim any such damages as may have been sustained in consequence of the Supplier's breaches of the Conditions.
- 8.2 Any money or expense incurred by RTÉ in respect of any rejected Products and/or Services not replaced by the Supplier within the time specified, together with any

additional expenditure over and above the Contract Price reasonably incurred by RTÉ in obtaining other Products and/or Services in replacement, shall be paid by the Supplier to RTÉ.

9 DELAYS

- 9.1 If the Supplier shall fail to supply the Products and/or Services to RTÉ by the Final Acceptance Date and where such delay is attributable to the Supplier or a third party engaged by the Supplier, the Supplier shall pay RTÉ, as and by way of liquidated damages, for any loss or damage sustained by RTÉ resulting from the delay during the period from the Final Acceptance Date two percent (2%) of the total Contract Price payable under these Conditions every week of delay, subject to a maximum amount of twelve percent (12%) of the total Contract Price payable under these Conditions.
- 9.2 The payment of the liquidated damages herein shall not relieve the Supplier from its obligations to provide the Products and/or Services or from any other liability or obligation under these Conditions.
- 9.3 RTÉ shall be entitled to deduct any amount of liquidated damages as set out in condition 9.1 hereof from any amount due and payable to the Supplier under these Conditions which shall be treated as a debt due to RTÉ.
- 9.4 If the Supplier shall fail to provide the Products and/or Services within six (6) weeks from the Final Acceptance Date, then provided that such delay is attributable to the Supplier or a third party engaged by the Supplier and notwithstanding anything else contained in these Conditions, RTÉ shall be entitled at any time thereafter to terminate these Conditions with immediate effect and without prejudice to any rights that RTÉ may have under these Conditions.
- 9.5 The Supplier acknowledges that the amount of liquidated damages provided herein is fair and reasonable and represents on the basis of the information communicated by RTÉ to the Supplier a fair and genuine pre-estimate of any resulting loss or expense of RTÉ.
- 9.6 Each party shall advise the other of any actual or potential delays and shall in no way be held responsible for any Force Majeure or delay caused by any act or omission, or delay in response by, the other party.
- 9.7 All delivery dates and dates set out in the Statement of Work by which work is to be completed by the Supplier shall be extended if any delay or stoppage is caused by any act or omission of RTÉ, its employees, agents or sub-contractors and the length of such extension shall be equivalent to the length of the delay caused by said act or omission of RTÉ, its employees, agents or sub-contractors. Similarly, all delivery dates and dates by which work is to be completed will be extended in accordance with condition 26 (Force Majeure) if any delay or stoppage is caused as a result of Force Majeure events. In the event that a delay or stoppage is caused by any act or omission of RTÉ, its employees, agents or sub-contractors, the Supplier, acting reasonably, reserves the right to initiate the Change Variation Procedure as it deems appropriate.

10 RTÉ PROJECT MANAGER

- 10.1 The RTÉ Project Manager has been appointed by RTÉ for the purpose of these Conditions to ensure that due and proper compliance by the Supplier of its obligations herein and to act on RTÉ's behalf in relation to certain matters in connection with these Conditions.

- 10.2 The Supplier shall comply with the reasonable requirements and recommendations of the RTÉ Project Manager providing that the requirements and recommendations of the RTÉ Project Manager are consistent with these Conditions.
- 10.3 The RTÉ Project Manager shall at all reasonable times be available and liaise with the Supplier and RTÉ and shall have full responsibility for reviewing workmanship and progress of the supply, installation, application and making Ready for Use the Products and/or Services, for the satisfactory completion of any inspection and all the Testing Procedures including the final Acceptance Test and for the supervision of the Supplier's provision of the Services.
- 10.4 The RTÉ Project Manager need not necessarily be solely one person and given the nature of the tasks and the skills and expertise required may be more than one person but at all times acting jointly. The Supplier shall be informed in writing if and when the duties of the RTÉ Project Manager might be undertaken jointly by more than one person and the procedures, including reporting procedures, which shall operate in such instances.

11 WARRANTIES AND UNDERTAKINGS OF SUPPLIER

- 11.1 The Supplier hereby undertakes and agrees with RTÉ as follows:
- 11.1.1 that it has the full capacity and authority and all necessary licences, permits and consents to provide the Products and/or Services under and in a manner contemplated by these Conditions;
 - 11.1.2 that the Supplier has the right to licence all the rights, interest, copyright and other proprietary and Intellectual Property Rights in the Background IPR and Supplier Data to RTÉ in accordance with Condition 5; and
 - 11.1.3 that the Supplier has the right to assign all rights and ownership in the Customer Generated Data and Foreground IPR to RTÉ in accordance with Condition 14.
- 11.2 The Supplier hereby undertakes and agrees with RTÉ that [during the Warranty Period] the Products and/or Services shall:
- 11.2.1 correspond, operate and comply with the Specification and the Statement of Work;
 - 11.2.2 be free from defects, other than such non-conformities which do not in any way affect the functionality or performance of the Products and/or Services, in materials, workmanship, components, installation and operation; and
 - 11.2.3 that all Products and/or Services shall be delivered in a timely manner in accordance with all delivery dates set out in the Statement of Work.
- 11.3 The Supplier hereby undertakes and agrees with RTÉ that it shall and that its servants, agents, contractors and sub-contractors shall provide the Services in a good, proper, efficient and workmanlike manner and in compliance with the terms of these Conditions.
- 11.4 The Supplier hereby undertakes and agrees with RTÉ that the provision of the Products and/or Services and RTÉ's use of the Products and/or Services shall not infringe the Intellectual Property Rights of any third party;
- 11.5 The Supplier hereby undertakes and agrees with RTÉ that all the representations and statements contained in the Statement of Work are true and accurate as of the date of submission of the Supplier's Proposal to RTÉ and that material changes which

have occurred to any of said statements and representations since the submission date thereof have been brought to the attention of RTÉ.

- 11.6 The Supplier hereby undertakes and agrees with RTÉ that the Products and/or Services shall comply with all relevant European Union or national standards, statutory or otherwise.
- 11.7 The Supplier hereby undertakes and agrees with RTÉ that its Personnel, shall at all times take full account of and abide by RTÉ's Site and security rules which have been notified to the Supplier and at all times comply with RTÉ's reasonable instructions whilst on the Site.

12 CHANGE VARIATION PROCEDURE

- 12.1 Either Party shall be entitled at any time to submit a written request in accordance with the Change Variation Procedure in Schedule 2 to request a change to the Products and/or Services.
- 12.2 No extra work, products and/or services, or addition to, alteration or modification of, or deduction from the Products and/or Services specified in the Statement of Work, shall be carried out under these Conditions at the expense of RTÉ unless a change request has been submitted in accordance with the Change Variation Procedure, approved by both Parties and an order in writing has been received by the Supplier from RTÉ in respect of such approved change. The extra cost involved or saving effected by such order as aforesaid shall subject to the terms hereof be added to or deducted from the Contract Price, as the case may be. Where the Conditions do not contain appropriate prices in respect of such extras, additions, alterations or deductions, the prices for such deviations, together with any necessary modification of the time for completion, shall be stated in writing by the Supplier, before the change request is agreed and approved by both Parties and the order specified in this condition is given, and in any case in which this is not possible, any dispute as to the fairness or otherwise of the charges and demands subsequently made by the Supplier in respect of such extras, additions, alterations or deduction shall be referred to dispute resolution as provided in condition 40 hereof.

13 CONTRACT PRICE

- 13.1 The Contract Price for the provision of the Products and/or Services is set out in the Statement of Work and shall be:
 - 13.1.1 exclusive of any applicable value added tax (which shall be payable by RTÉ subject to receipt of a VAT invoice); and
 - 13.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and any duties, imposts or levies other than value added tax.
- 13.2 No increase in the Contract Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior consent in writing of RTÉ.
- 13.3 The Contract Price shall be paid by RTÉ in accordance with the payment terms set out in the Statement of Work.
- 13.4 The provisions of the Prompt Payment of Accounts Act, 1997 as amended or revised and the Late Payment in Commercial Transactions Regulations, 2012 as amended or revised, shall apply to all interest on late payment of fees. RTÉ shall have thirty (30) days from the date of receipt of an undisputed invoice from the Supplier to discharge this invoice.

- 13.5 Any invoice (or part thereof) disputed by RTÉ must be notified to the Supplier (hereinafter called "Dispute Notice") within ten (10) Business Days of the date of receipt and state the reasons for withholding payment. Upon receipt of the Dispute Notice, the Supplier and RTÉ will work together in good faith to resolve such disputes in a prompt and mutually acceptable manner in accordance with the provisions of condition 41. RTÉ agrees to pay any disputed amounts within ten (10) Business Days once the issues raised in the Dispute Notice have been resolved.

14 INTELLECTUAL PROPERTY

- 14.1. The sole and exclusive ownership of all Background IPR, RTÉ Data [and RTÉ Content] **[delete if not applicable]** and all Intellectual Property Rights therein furnished by RTÉ to the Supplier in order to enable the creation and/or provision of the Product(s) or the provision of the Services shall remain vested/vest in RTÉ as the owner thereof. The Supplier shall not unless authorised to do so in writing by RTÉ, disclose to any third party or use any such Background IPR, RTÉ Data [and RTÉ Content] **[delete if not applicable]** except as required for the purposes hereof.
- 14.2 The sole and exclusive ownership of any Customer Generated Data and Foreground IPR developed by or on behalf of the Supplier during or in connection with the provision of the Services or in connection with the provisions of the Product(s) and all Intellectual Property Rights therein shall vest in RTÉ as the owner thereof, and, to the extent that such ownership does not vest in RTÉ upon creation, the Supplier hereby assigns, conveys and sets over unto RTÉ by present assignment of future rights absolutely all Intellectual Property Rights and assignments required in order to transfer ownership of the Customer Generated Data and Foreground IPR to RTÉ . The Supplier shall not unless authorised to do so in writing by RTÉ, disclose to any third party or use any such Customer Generated Data and/or Foreground IPR except as required for the purposes hereof. RTÉ shall grant the Supplier a non-exclusive royalty-free licence to use the Customer Generated Data and/or Foreground IPR to provide the Services to RTÉ during the Term.
- 14.3 Subject to Condition 5.3 (Licence Grant), the sole and exclusive ownership of any Background IPR and/or Supplier Data used by the Supplier in the provision of the Services and/or Product(s) and all Intellectual Property Rights therein shall vest in the Supplier as the owner thereof.
- 14.4 Except as expressly stated in these Conditions, nothing in these Conditions shall grant or be deemed to grant either party any right, title or interest in any Intellectual Property Rights owned by the other party and nothing in these Conditions shall entitle either party to use the other party's logos or trade marks or any other Intellectual Property Rights in any way whatsoever without the prior written consent of the other party.

15 HINDRANCES AND SUSPENSION OF ANY PRODUCTS AND/OR SERVICES

- 15.1 The Supplier shall have no claim for damage arising out of delay on the part of RTÉ, either prior to commencement or during the progress of any Products and/or Services, in furnishing any article or in obtaining any consent for the Products and/or Services from any Local Authority or other body or person, or in giving or securing access to the Site; or owing to the necessity for removing, avoiding or changing the position of any obstruction; or on account of the Products and/or Services being suspended by any Local Authority, body or person, or by RTÉ itself.
- 15.2 If the whole or major portion of the Products and/or Services should be suspended for a period exceeding two (2) Business Days by order of RTÉ, or by order of any Local

Authority, body or person in whose order RTÉ is constrained to acquiesce, provided that such suspension is not due to any default of the Supplier and provided also that such suspension shall necessitate the cessation of the Products and/or Services of all or the greater part of the Supplier's workmen engaged upon the Products and/or Services, then RTÉ shall pay to the Supplier such reasonable expenses incident to the suspension of the supply of the Products and/or Services as RTÉ may in its sole discretion determine to pay. Such allowance of expenses shall be made only in respect of suspension authorised in writing by RTÉ and the Supplier shall on its part afford RTÉ all necessary facilities to enable RTÉ to determine the amount of the expenses that should properly be granted under the terms of this condition 15.2.

16 RTÉ PROPERTY

- 16.1 The Supplier shall be responsible for the safety of all materials, tools and equipment deposited with it by RTÉ in connection with these Conditions, and shall be liable for any loss of, or damage to, such materials and tools whilst they are in his custody. Such materials and tools shall at all times be and remain the exclusive property of RTÉ and shall not be disposed of other than in accordance with RTÉ's written instructions nor shall such items be used other than as authorised by RTÉ in writing. The Supplier shall keep such records of the materials so deposited as will enable RTÉ from time to time to check the quantities used in hand against those delivered to the Supplier's charge.

17 SUB-CONTRACTORS

- 17.1 The Supplier shall be responsible for the performance of the entire of its obligations under these Conditions. Any sub-contractor selected shall be subject to the prior approval in writing of RTÉ. The Supplier shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any part or the whole of these Conditions without the prior written approval of RTÉ. Sub-contractors will be required to comply with these Conditions and in particular the terms relating to compliance with all relevant legislation including without limitation, data protection, child protection, employment and Health and Safety legislation. The Supplier is responsible for the acts and omissions of its sub-contractors and the engagement by the Supplier of, or approval by RTÉ of a subcontractor does not in any way limit or affect the Supplier's responsibility and liability under these Conditions.

18 NOTICES

- 18.1 Any notice or other communication to be given hereunder shall either be delivered personally or sent by registered post [or facsimile transmission]. The address for service of the parties shall be:

- 18.1.1 in the case of RTÉ:

Contact: Head of Procurement,
Address: Raidió Teilifís Éireann, Dublin 4, Ireland.
Phone: 00 353 1 2082276
Email: purchasing@rte.ie

And

- 18.1.2 in the case of the Supplier:

Contact: **[insert Supplier contact details above]**
Address: **[insert Supplier contact details above]**
Phone: **[insert Supplier contact details above]**
Email: **[insert Supplier contact details above]**

18.2 All notices shall be deemed to have been served as follows:-

18.2.1 if personally delivered, at the time of delivery;

18.2.2 if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and

[18.2.3 if communicated by facsimile transmission at the time of transmission;]

PROVIDED that where, in the case of delivery by hand or [transmission by facsimile, such delivery [or transmission] occurs after 6 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 10 am on the next following Business Day.

18.3 In providing such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid registered letter [or that the facsimile transmission] was made after obtaining in person or by telephone appropriate evidence of the capacity of the addressees to receive the same, as the case may be.

19 TAX CLEARANCE CERTIFICATES

19.1 RTÉ is obliged to request companies to provide a current tax clearance certificate TC2 Certificate where appropriate. This applies to suppliers with whom RTÉ spend over €10,000 in any twelve (12) month period. All current suppliers are monitored by Purchasing to ensure compliance. RTÉ will require proof that a Supplier has fulfilled his obligations relating to payments of tax and social welfare contributions before a contract can be awarded and each payment under such contract is made.

20 HEALTH & SAFETY

20.1 The Supplier shall when on RTÉ premises and/or on RTÉ business comply with the highest standards for health and safety. All employees, visitors and contractors must comply with the RTÉ health and safety statement as directed by the Safety Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (General Application) Regulations, 2007, the Safety, Health and Welfare at Work (Construction) Regulations, 2013 and any subsequent amendments, legislation applicable to the services being provided or work being undertaken or products being provided.

21 INDEMNITIES

21.1 The Supplier shall indemnify RTÉ and keep RTÉ indemnified in full on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the Products and/or Services, infringe the Intellectual Property Rights of any unaffiliated third party subject to the following:

21.1.1 RTÉ shall promptly notify the Supplier in writing of any allegations of infringement of which it has notice and will not make any admissions without

the Supplier's prior written consent nor take any step (or omit to take any step) which would prejudice the Supplier's defence of the claim.

21.1.2 RTÉ, at Supplier's request and expense, shall allow the Supplier subject to condition 21.1.3 to conduct and/or settle all negotiations and litigation relating from any such claims under this condition 21.1.

21.1.3 The conduct by the Supplier of any such negotiations or litigation shall be conditional upon the Supplier:

- (a) giving to RTÉ such reasonable financial or equivalent security as shall from time to time be reasonably required by RTÉ to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which RTÉ may become liable, and
- (b) taking over such conduct within a reasonable time after being notified of the claim in question.

21.1.4 RTÉ shall, at the request of the Supplier, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Supplier for any reasonable out of pocket expenses, incurred in so doing.

21.1.5 If RTÉ's normal use of Products and/or Services is held by a Court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or if the Supplier is advised by legal counsel that such use or possession is likely to constitute such an infringement, then the Supplier shall promptly and at its own expense,

- (a) procure for RTÉ the right to continue using and possessing the Products and/or Services; or
- (b) modify or replace the Products and/or Services (without detracting from their overall performance) so as to avoid the infringement in which event the Supplier shall compensate RTÉ for the amount of any loss and/or damage sustained or incurred by RTÉ by reason of such modification or replacement; or
- (c) if conditions 21.1.5(a) or 21.1.5(b) cannot be accomplished on reasonable terms refund the portion of the Contract Price paid to date by RTÉ to the Supplier back to RTÉ.

21.1.6 For the avoidance of doubt, the indemnities contained in this condition 21.1 shall not apply where any infringement of third party property rights is solely attributable to:

- (a) modifications to the Products and/or Services requested solely by RTÉ; or
- (b) from any use of the Products and/or Services not in compliance with the terms of these Conditions; or
- (c) from modification of the Products and/or Services by RTÉ without the prior written authorisation of the Supplier.

21.2 The Supplier shall indemnify RTÉ in full and hold RTÉ harmless in respect of any loss, damages, proceedings, suits, third party claims, judgements, awards, expenses and costs (including legal costs) incurred by or taken against RTÉ as a result of the negligence, fault, error, omission, act or breach of the Supplier or of its employees, staff, contractors, agents or representatives or for any breach of these Conditions whatsoever by the Supplier.¹

¹ The scope of the indemnities may be amended, where appropriate, at RTÉ's sole discretion.

22 LIMITATION OF LIABILITY

- 22.1 Neither party excludes or restricts in any way its liability for death or personal injury caused by negligence or for fraudulent misrepresentation.
- 22.2 Except for the provisions of condition 22.1, in no event shall RTÉ, its officers, employees, contractors and agents be liable for indirect, special, incidental, punitive or consequential loss or damages including but not limited to whether occasioned by the act, breach, omission, default or negligence of its personnel. For the avoidance of doubt, such consequential loss shall include without limitation, loss of profits, loss of revenue, loss of use of data, loss of sales, loss of turnover, loss of savings or anticipated savings, loss of investments, loss of or damage to goodwill, loss of or damage to business, interruption to business, loss of or damage to reputation, loss of contracts, loss of, or loss of use of any (i) software or (ii) data, loss of use of any computer or other equipment or plant; cost of capital, losses or liabilities under or in relation to any other contract whether or not foreseeable, arising out of or in connection with these Conditions whether based on contract, tort or any other legal theory, even if RTÉ has been advised of the possibility of such damages and for the purposes of this condition 22.2, the term “loss” includes a partial loss or reduction in value as a complete or total loss.
- 22.3 Except for the provisions of condition 22.1, if RTÉ is in breach of any obligations under these Conditions (or any part of them) then, subject to condition 22.1, RTÉ’s liability to the Supplier in respect of direct loss or damage of whatsoever nature, howsoever arising, including without limitation, costs, charges, expenses, suits, claims, liquidated damages, or proceedings brought against the Supplier, flowing from any one event or series of connected events arising out of or in connection with these Conditions shall be limited to the total amount of the Contract Price payable under these Conditions for all events whether connected or unconnected arising. For the avoidance of doubt, RTÉ’s liability under condition 22.1 only shall be unlimited.
- 22.4 If the Supplier is in breach of any obligations under these Conditions (or any part of them) then the Supplier’s liability to RTÉ in respect of loss or damage of whatsoever nature, howsoever arising, including without limitation, costs, charges, expenses, suits, claims, liquidated damages, or proceedings brought against RTÉ, flowing from any one event or series of connected events arising out of or in connection with these Conditions shall be unlimited.²
- 22.5 Each party hereby expressly acknowledges and agrees that the forgoing limitations of liability are essential elements of the basis of the bargain between the parties and in the absence of such limitations, the material and economic terms of these Conditions would be substantially different.

23 RISK AND INSURANCE

- 23.1 The Supplier undertakes for the benefit of RTÉ to effect and maintain during the Term with a reputable insurance company the following policies of insurance in respect of liability in damages arising from the negligent act, omission or default on the part of the Supplier, its Personnel, agents, licensees, subcontractors or invitees in the exercise of these Conditions or any activities or actions ancillary to or consequential to the exercise of these Conditions by the Supplier:
- 23.1.1 public liability insurance in the sum of **€6.5 million** in respect of any claim arising out of a single incident;

² (a) Exclusion of Supplier’s liability for consequential loss may be included where appropriate at RTÉ’s sole discretion; (b) a limitation of Supplier’s liability may be included at RTÉ’s sole discretion.

- 23.1.2 product liability insurance in the sum of **€6.5 million** in respect of any claim arising out of a single incident; [where a Product or Products are being supplied]
- 23.1.3 employer's liability insurance in the sum of **€13 million** in respect of any claim arising out of a single incident; and;
- 23.1.4 professional indemnity insurance in the sum of **[€1 million)** in respect of any claim arising out of a single incident; [where a professional service is being provided in whole or part of the supply]

and

upon request shall produce (from time to time) to RTÉ evidence of the current policy of such insurances and receipt for the premiums payable thereof.

These limits apply unless an alternative limit is notified in writing by the RTÉ Head of Procurement specifically for the purchase made pursuant to these Conditions.

24 TERMINATION

- 24.1 RTÉ may at any time by notice in writing terminate the Conditions, as from the date of service of such notice whereupon RTÉ shall have no liability under the Conditions in any of the following events:
 - 24.1.1 if the Supplier shall commit any breach of the Conditions and such breach has not been remedied within thirty (30) days of notification to the Supplier by RTÉ of such breach;
 - 24.1.2 if the Supplier shall become bankrupt or have a receiving order or order for the administration of his estate made against him or shall take any procedure for liquidation of composition under any of the Bankruptcy Acts for the time being in force, or make any conveyance, assignment or arrangement for the benefit of creditors;
 - 24.1.3 if the Supplier shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or shall present a petition or have a petition presented for its winding up or shall enter into any liquidation (other than for the purposes of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver and/or a receiver and manager or an examiner of all or any of its undertakings or assets appointed, shall be deemed by Section 570 of the Companies Act, 2014) to be unable to pay its debts or shall cease to carry on business, or an examiner or interim examiner is appointed to the Supplier.
 - 24.1.4 if the Supplier shall be declared by a Court of competent jurisdiction to be of unsound mind or shall be declared by such Court to be incapable from any other cause whatever of controlling or managing his affairs;
 - 24.1.5 if time is of the essence and the Supplier fails to deliver on the completion date/delivery date; or
 - 24.1.6 if RTÉ reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly;

Providing always that such termination as aforesaid shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to RTÉ under the Conditions.

25 CONSEQUENCES OF TERMINATION

- 25.1 In the event that these Conditions are terminated by RTÉ under condition 24, RTÉ shall have no further liability to the Supplier and shall not be obliged to discharge any outstanding portion(s) of the Contract Price, save that RTÉ shall discharge any invoice(s) outstanding at the date of termination of the Conditions in accordance with the Payment Schedule, provided that such invoice(s) are not in dispute between RTÉ and the Supplier.
- 25.2 In the event of termination or expiry of these Conditions, the Supplier shall return all RTÉ Data, [RTÉ Content,] Customer Generated Data and/or Foreground IPR and any copies thereof to RTÉ within ten (10) Business Days from the date of termination or expiry of these Conditions. The Supplier shall certify in writing that all copies of the RTÉ Data, [RTÉ Content,] Customer Generated Data and/or Foreground IPR have been returned to RTÉ and that all RTÉ Data [RTÉ Content], Customer Generated Data and/or Foreground IPR has been expunged from the Supplier's records, including but not limited to all computers and computer databases owned and/or operated by the Supplier.
- 25.3 In the event of termination of these Conditions and on request by RTÉ, the Supplier shall continue to provide the Services during any notice period subject to the terms of these Conditions and for a reasonable time thereafter and shall provide such assistance as is reasonably requested in order to facilitate the transfer of the provision of the Services, Products, [RTÉ Content], Customer Generated Data and/or Foreground IPR to any other service provider (if appropriate), at the Supplier's rates as agreed with RTÉ and if rates are not agreed, then at the rates in force as of the date of notice of termination.
- 25.4 Both parties hereby confirm that the following conditions shall survive termination and/or expiry of these Conditions: conditions 11 (Warranties), 14 (Intellectual Property Rights), 20 (Health and Safety), 21 (Indemnities), 22 (Limitation of Liability), 23 (Risk and Insurance) 36 (Non-Assignment), 37 (Confidentiality and Freedom of Information), 38 (Data Protection) and 42 (Proper Law and Jurisdiction).

26 FORCE MAJEURE

- 26.1 RTÉ reserves the right to defer the date of delivery of the Products and/or Services or payment or to cancel the Conditions or reduce the scope of the Products and/or Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of RTÉ including, without limitation, acts of God, governmental actions, war, threat of war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), interruption or failure of utility service, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 26.2 The Supplier may defer the date of delivery of the Products and/or Services if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier due to acts of God, governmental actions, war, threat of war or national emergency, acts of terrorism, riot, civil commotion, fire, explosion, flood and epidemic.

27 FORBEARANCE

- 27.1 RTÉ's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver by RTÉ in respect of any breach shall operate as a waiver in respect of any subsequent breach.

28 EXPENSES RECOVERABLE BY RTÉ

- 28.1 All expenses that may be incurred by RTÉ on account of damage to property, of accident, or of any act, neglect, omission or failure on the part of the Supplier or his workmen, shall be deemed to be a debt due from the Supplier to RTÉ, and may be deducted from any sums due or that may become due to the Supplier under these Conditions and/or any contract with RTÉ, and may be recovered by RTÉ from the Supplier by legal action or otherwise.

29 BRIBERY

- 29.1 Any bribe, commission, gift, loan or advantage given, promised or offered by or on behalf of the Supplier, or any agent or servant of the Supplier in relation to the obtaining or to the execution of these Conditions or any other contract for RTÉ or given, promised, or offered by or on behalf of the Supplier or any agent or servant of the Supplier to any officer or person in the service or employment of RTÉ, who shall be in any way connected with the execution of any such contract shall subject the Supplier to cancellation of all contracts which the Supplier may hold for RTÉ and also to payment of any loss resulting from any such cancellation. Any question or dispute as to a breach of this condition, or the sums to be paid, shall be settled by RTÉ in such manner and on such evidence or information as it thinks fit and its decision shall be final.

30 SURETIES

- 30.1 The Supplier shall (if required) produce two sufficient sureties the acceptance of whose security has been authorised by RTÉ, to enter into a bond for the due performance of these Conditions.

31 DISABILITY

- 31.1 No Minister of State (Senior and Junior), member of the RTÉ Board or employee of RTÉ shall be admitted to or share part of these Conditions, or any benefit to so arise there from.

32 TRAINING OF STAFF

- 32.1 All training requirements are set out in the Statement of Work.

33 STORAGE AND ACCOMMODATION

- 33.1 The Supplier shall provide on or at a convenient distance from the Site, suitable storage accommodation for all materials in connection with these Conditions.

34 REMOVAL OF ARTICLES, MATERIALS, RUBBISH, ETC. FROM THE SITE

- 34.1 The Supplier shall remove all articles and materials, resulting from the provision of the Products and/or Services and shall leave the Site neat and tidy.

35 CORRESPONDENCE

- 35.1 All correspondence, letters and schedules dealing with these Conditions shall be in the English language and shall be furnished in duplicate by the Supplier and marked for the attention of the RTÉ Head of Procurement and the RTÉ Project Manager.

36 NON-ASSIGNMENT

- 36.1 The Supplier shall not without the consent in writing of RTÉ assign or transfer the Conditions or any part of it to any other company, person or firm.

37 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 37.1 Subject to condition 37.5, “Confidential Information” means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the “Disclosing Party”) to the other Party/another Party (the “Receiving Party”) whether before or after the date of these Conditions including, without limitation, information relating to the negotiation, provisions and subject matter of these Conditions or the Disclosing Party’s operations, processes, plans or intentions, RTÉ Data, [RTÉ Content], Supplier Data, Customer Generated Data and Intellectual Property Rights, trade secrets or business affairs.

- 37.2 Subject to conditions 37.3 and 37.5, during these Conditions and if these Conditions should have expired or have been terminated for whatever reason, for a period of five (5) years from the date of receipt of the Confidential Information, the Receiving Party:

37.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations under these Conditions;

37.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with conditions 37.3 and/or 37.5; and

37.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

At the written request of the Disclosing Party, the Receiving Party shall return within ten (10) Business Days all originals and copies of Confidential Information received from the Disclosing Party.

- 37.3 Subject to condition 37.5, the Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

37.3.1 it is required by law;

37.3.2 the information has come into the public domain, otherwise than through a breach of this condition by the Receiving Party;

37.3.3 it is required by existing contractual obligations of which the Disclosing Party is aware;

37.3.4 it is required by any securities exchange or regulatory or governmental body to which it is subject; or

37.3.5 the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a “Recipient”) to the extent that disclosure is reasonably necessary for the purposes of these Conditions.

- 37.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under these Conditions as if the Recipient was a party to these Conditions.

- 37.5 The Supplier acknowledges that it is aware that RTÉ is a public sector body designated under the provisions of the Freedom of Information Act, 2014. The Supplier acknowledges that it has been notified prior to the execution hereof that these Conditions may therefore be liable to public disclosure on request made under this Act, subject to RTÉ's entitlement to refuse to disclose certain information on the grounds set out in The Act. RTÉ and the Supplier acknowledge that these Conditions are commercially sensitive.
- 37.6 The Supplier shall not promote, advertise or /publicise its relationship with RTÉ nor use RTÉ as a referee without the prior written consent of RTÉ.

38 DATA PROTECTION³

- 38.1 Terms and expressions used in this Condition 38 have the same meaning as in the Data Protection Act 2018 General Data Protection Regulation (Regulation (EU) 2016/679).
- 38.2 The Supplier acknowledges and agrees that RTÉ is the [data controller] and the Supplier is the [data processor] in respect of all personal data [processed by the Supplier on behalf of RTÉ in providing the System(s), Product(s) and/or Services in accordance with the Data Processing Schedule at Schedule 5.]. **[NOTE: RTÉ MAY NOT BE THE DATA CONTROLLER. THE SUPPLIER MAY NOT BE THE DATA PROCESSOR. THE RELATIONSHIP REGARDING DATA PROCESSING IS TO BE ACCURATELY REFLECTED IN ANY CONTRACT BETWEEN RTÉ AND THE SUPPLIER.]**
Information on data subject rights is available at RTÉ Data Protection Individual Rights Guide (<https://hub.rtegroup.ie/resources/rte-data-protection-individual-rights-guide/>).
- 38.3 RTÉ processes personal data of the Supplier and/or Supplier Personnel as reasonably required by RTÉ for the purposes of:
- 38.3.1 exercising its rights and fulfilling its obligations under these conditions; for
- 38.3.2 Performing its statutory functions under the Broadcasting Act 2009 and such other legislation that is applicable to RTÉ.

39 SEVERANCE

- 39.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

40 NO EMPLOYMENT AND NO PARTNERSHIP

- 40.1 For the avoidance of doubt, it is acknowledged that the Supplier is a company and not an employee of RTÉ and has no entitlements to employment protections or benefits under statute, contract, common law or otherwise and the Supplier undertakes not to make any employment related claim of any nature against RTÉ during or after these Conditions, under statute, contract, common law or otherwise.

³ Data Protection condition will be included where required at RTÉ's sole discretion

- 40.2 The Supplier is solely responsible for engaging all Supplier personnel required for the provision of the Products and/or Services and for ensuring that all Supplier personnel have the appropriate experience and training. The Supplier is solely responsible for the discharge of all payments due to Supplier Personnel and RTÉ has no liability whatsoever or howsoever arising for any failure on the part of the Supplier to discharge its obligations to Supplier Personnel.
- 40.3 These Conditions do not give rise to any relationship of partnerships or agency or joint ventures.

41 DISPUTE RESOLUTION

- 41.1 All disputes between the parties arising out of or in any way relating to these Conditions shall in the first instance be referred by either party to the following nominated representatives for the time being: **[insert name]** for RTÉ; and **[insert name]** for the Supplier to the dispute being resolved by the respective nominated representatives. Each party shall endeavour to resolve the dispute in all good faith.
- 41.2 If the procedure referred to in condition 41.1 above does not achieve a resolution of the dispute within ten (10) Business Days from the referral of the dispute to the respective nominated representatives, the dispute may be referred by any party to a court having competent jurisdiction in accordance with condition 42 below.

42 PROPER LAW AND JURISDICTION

- 42.1 These Conditions shall be governed by and construed in all respects (including the formation thereof and the performance thereunder) by the laws of Ireland and RTÉ and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the Irish Courts.

43 SCHEDULE 1

STATEMENT OF WORK

[attach copy of Statement of Work]

Particularly identifying

1. *The Final Acceptance Date*
2. *The Contract Price*
3. *The Payment Terms*
4. *The Project Plan*
5. *The Specification [and Requirements]*
6. *The Testing Procedures (if available at this time)*
7. *The Warranty Period*

44 SCHEDULE 2

CHANGE VARIATION PROCEDURE

1. Either Party may at any time request a change to the Products and/or Services in accordance with the Change Variation Procedure set out below, provided such change requested under this Change Variation Procedure does not materially alter the Specification for the Products and/or Services.
2. If the Change Variation Procedure results in changes to the Contract Price, such changes shall be consistent with the Contract Price specified in the Statement of Work.
3. Until such time as a Change Variation Notice (CVN) has been approved and signed by both parties, the Supplier shall, unless otherwise expressly agreed in writing, continue to provide the Products and/or Services in accordance with these Conditions and RTÉ shall be obliged to make payments in respect of that work in the manner set out in the Statement of Work.
4. Any work undertaken in connection with any proposed change to these Conditions or any part or parts thereof by the Supplier (other than that which has previously been agreed in accordance with the Conditions or a signed CVN and which does not subsequently become the subject of an CVN) shall be undertaken entirely at the expense and liability of the Supplier.
5. Any discussions, negotiations or other communications which may take place between the parties' Project Managers or personnel in connection with any proposed change to these Conditions or any part or parts thereof, including but not limited to the submission of any written communications, prior to the approval and signing by both parties of the relevant CVN, shall be without prejudice to the rights of either party.
6. Discussions between RTÉ and the Supplier concerning a change to the Products and/or Services or any part or parts thereof, shall result in one of the following:
 - a) no further action being taken; or
 - b) a request to change the Products and/or Services by either Party.
7. Where a written request for a change is received, the requester shall, unless otherwise agreed, submit two copies of a CVN in the form set out at the end of this Schedule signed by the requester to the receiving Party within a period agreed at the time.
8. For each Change Variation Notice submitted, RTÉ shall, within the period of the validity of the Change Variation Notice:
 - a) allocate a sequential number to the Change Variation Notice;
 - b) evaluate the Change Variation Notice and, as appropriate;
 - c) log all Change Variation Notices.
9. The Party receiving the Change Variation Notice shall review the Change Variation Notice and either sign or reject the Notice.
10. A Change Variation Notice signed by both Parties shall constitute an amendment to these Conditions and Statement of Work.
11. In the event of an emergency, where there is not sufficient time available for the parties to carry out their respective obligations set out in the Change Variation Procedure, the Supplier shall use reasonable endeavours to meet RTÉ's request for variation. As soon as is reasonably practicable, the parties shall complete the Change Variation Procedure. In the event of a dispute for such variation, the parties shall meet as soon as is reasonably practicable to resolve such dispute in accordance with the provisions of condition 41.

12. Each Party agrees to carry out its respective obligations in relation to this CVN procedure in good faith and acting reasonably.
13. Each Change Variation Notice shall contain:
 - a) the title of the change;
 - b) description of the requirement;
 - c) the identity of the originator and date of the request or recommendation for the change;
 - d) the justification for the change;
 - e) full details of the change including any specifications;
 - f) additional charges, if any, of the change;
 - g) a timetable for implementation together with any proposals for acceptance of the change;
 - h) a schedule of payments if appropriate;
 - i) details of the likely impact, if any, of the change on other aspects of the Products and/or Services including but not limited to:
 - i. the personnel to be provided;
 - ii. the charges if applicable;
 - iii. the payment profile;
 - iv. the documentation to be provided;
 - v. the training to be provided;
 - vi. service levels;
 - vii. working arrangements;
 - viii. any resultant variations to the Statement of Work;
 - ix. the period of validity of the Change Variation Notice (if any) being not less than twenty (20) Business Days; and
 - x. provision for signature by RTE and the Supplier.

Change Variation Notice	
By and Between:	The Supplier
and:	RTÉ

Change Variation Notice Details	Agreement Details
Date:	Title or Reference No:
Reference No.:	
Raised by:	Date:

Reason for the Change:
Description of the Change:
Timetable for the Change and Commencement Date:
Price: Validity of price:
Impact on other work under the Statement of Work:
Impact on timescales under the Statement of Work:

The parties hereby agree to change the Statement of Work and Conditions in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Variation Notice the terms and conditions of the Conditions shall remain in full force and effect.

Agreed for and on behalf of the Supplier	Agreed for and on behalf of RTÉ
Signed: _____	Signed: _____
Title: _____	Title: _____
Date: _____	Date: _____

45 SCHEDULE 3

DATA PROCESSING SCHEDULE

- 1 From the Effective Date, this Data Processing Agreement (the “Agreement”) applies to and governs the services provided by [●] (the “Data Processor”) on behalf of RTÉ (the “Data Controller”) which involve the processing of Personal Data as described in Appendix 1 (the “Services”). The purpose of this Annex is to deal with the effects of the Data Protection Legislation on the processing of Personal Data by the Data Processor on behalf of the Data Controller, and to ensure compliance with the Data Protection Legislation and to address related matters only.

2 DEFINITIONS

- 2.1 Definitions for the purposes of this Schedule are set out in Appendix 2 hereto.
- 2.2 Headings contained in this Annex are for reference purposes only and shall not be incorporated into this Schedule and shall not be deemed to be any indication of the meaning of the clauses or sub-clauses to which they relate.

3 CONDITIONS OF PROCESSING

- 3.1 The Data Processor agrees to process all and any Personal Data provided to it by the Data Controller, or otherwise obtained by the Data Processor, in connection with the Agreement and the Services at all times in accordance with such written instructions as may be provided by the Data Controller to the Data Processor from time to time, including as set out in this Agreement.
- 3.2 The Data Processor shall ensure that no processing of Personal Data takes place outside of the European Economic Area without the prior written consent of the Data Controller (and subject then, in the event of any transfer outside the European Economic Area, to the execution of any document or agreement, which, in the reasonable opinion of the Data Controller, is required in order to lawfully effect any such transfer of Personal Data). In the case of processing of Personal Data taking place outside of Ireland, the Data Processor shall comply with all applicable Irish data protection laws and regulations.

4 DATA PROCESSOR’S OBLIGATIONS

- 4.1 In respect of the Processing of Personal Data by the Data Processor, or Data Processor Personnel, under or in connection with the Agreement or the Services, the Data Processor warrants that it shall, and shall procure that the Data Processor Personnel shall:
 - (a) only Process the Personal Data on behalf of the Data Controller in accordance with, and for the purposes set out in the Agreement, or otherwise in accordance with any written instructions received from the Data Controller from time to time. Under no circumstances shall the Data Processor use or process Personal Data for any purpose without the prior written agreement or instructions of the Data Controller;
 - (b) permit the Data Controller, or the Data Controller's nominees to time inspect the premises, systems, equipment, and other materials and facilities of the Data Processor (or any sub-processors) for the purposes of monitoring compliance with the Data Protection Legislation. Such inspection shall not relieve the Data Processor of any of its obligations under the Agreement.

- (c) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised to do so in writing by the Data Controller;
 - (d) implement appropriate technical and organisational measures to:
 - (i) protect the Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, destruction, damage, alteration, or disclosure,
 - (ii) comply with the Data Protection Legislation, and
 - (ii) ensure the protection of the rights of the Data Subject, in particular the rights contained in Articles 12 to 23 of the GDPR;
 - (e) Process the Personal Data in accordance with the Data Protection Legislation (as applicable) and not permit anything to be done which might cause the Data Controller in any way to be in breach of the Data Protection Legislation;
 - (f) co-operate and assist, as requested by the Data Controller, and put appropriate technical and organisational measures in place to enable the Data Controller to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data Processed by the Data Processor under the Agreement (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data);
 - (g) cease Processing the Personal Data upon the termination or expiry of the Agreement or, if sooner, the Services to which it relates and as soon as possible thereafter, at the Data Controller's option, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains.
- 4.2 The Data Processor shall notify the Data Controller as soon as reasonably practicable and in any event within twenty-four (24) hours of:
- (a) any legally binding request for disclosure of Personal Data by a law enforcement regulatory body or other competent authority unless prohibited by law from doing so;
 - (b) receiving any correspondence, notice or other communication whether orally or in writing from the relevant data protection regulator or any other regulator or person, relating to the Personal Data.
- 4.3 Where a Data Subject exercises his or her right under the Data Protection Legislation in respect of Personal Data Processed by the Data Processor on behalf of the Data Controller or where the Data Controller is required to deal or comply with any assessment, enquiry, notice or investigation by the Data Protection Commissioner, then the Data Processor will co-operate as requested by the Data Controller to enable the Data Controller to comply with all obligations of the Data Controller which arise as a result of the exercise of such rights or as a result of such assessment, enquiry, notice or investigation.
- 4.4 Where the Data Processor receives a legally binding request for access to Personal Data by a law enforcement agency regulatory body or other competent authority, the Data Processor will inform the Data Controller except where such disclosure is itself legally prohibited. The Data Processor will reject any such request which is non-legally binding.
- 4.5 Without prejudice to the other provisions of this clause 4, if the Data Processor or any member of the Data Processor Personnel becomes aware

of any Data Breach then the Data Processor shall promptly notify the Data Controller by both telephone and by email. The Data Processor shall, provide the Data Controller with all resources, assistance and cooperation as are required by the Data Controller for the Data Controller to notify the relevant data protection regulator (or analogous body in any other relevant jurisdiction and any bodies which may succeed or replace them from time to time) of a Data Breach and for the Data Controller to provide such reports or information as may be requested by it in relation to such Data Breach and/or for the Data Controller to notify the relevant Data Subjects of such Data Protection Breach, as applicable.

4.6 For the purposes of clause 4.5, the relevant contact details of the Data Controller are as follows:

(a) Email: ●

(b) Telephone: ●

4.7 The Data Processor shall assist the Data Controller to discharge its duties pursuant to Articles 35 and 36 of the GDPR including, but not limited to, promptly at the request of the Data Controller providing information in respect of any data protection impact assessment which the Data Controller conducts.

5 SUB-CONTRACTING

5.1 The Data Processor shall not sub-contract to any third party any of its obligations to Process Personal Data on behalf of the Data Controller unless all of the following provisions of this clause have first been complied with:-

(a) the Data Processor and the sub-Processor enter into a written agreement which imposes the same obligations on the sub-Processor as are imposed on the Data Processor under the Agreement; and

(b) the Data Processor has obtained the prior written consent of the Data Controller.

5.2 In any event, the Data Processor shall be liable for the acts and omissions of its agents, Personnel and sub-Processors as if they were its own acts and omissions.

6 CONFIDENTIALITY

6.1 The Data Controller undertakes to keep confidential any confidential information of the Data Processor of which the Data Controller may become aware when carrying out the inspections under the provisions of clause 4.1(b) above.

6.2 The Data Processor shall treat all Personal Data proposed on behalf of the Data Controller as the confidential information of the Data Controller.

6.3 The Data Processor shall ensure that all Data Processor Personnel engaged in the provision of the Services under the Agreement have entered into a confidentiality agreement or non-disclosure agreement with the Data Processor and shall further ensure that such Data Processor Personnel are made aware of and observe the Data Processor's obligations under the Agreement with regard to the security and protection of Personal Data.

6.4 The Data Processor shall ensure that only authorised individuals have access to the Personal Data and that a record of such individuals be maintained by the Data Processor.

7 TERMINATION

- 7.1 This Agreement shall remain in force for the duration of the Services being provided by the Data processor on behalf of the Data Controller.
- 7.2 Upon termination of this Agreement the terms of clause 6 (Confidentiality) shall survive indefinitely.

8 COUNTERPARTS

- 8.1 This Annex may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 8.2 Transmission of an executed counterpart of this agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement.

9 LAW AND JURISDICTION

- 9.1 This Agreement is governed by, and shall be construed in accordance with, the laws of Ireland. The courts of Ireland have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Annex and, for these purposes, each party irrevocably submits to the exclusive jurisdiction of the courts of Ireland.

10 AMENDMENTS

- 10.1 In the event that the Data Protection Legislation is amended or replaced by subsequent legislation or regulations or in the event that case law or findings of the Data Protection Commissioner pursuant to the Data Protection Legislation and/or regulations enacted under it require amendments to the Agreement in the reasonable opinion of the Data Controller, then the Data Processor will agree in good faith to such amendments to the Agreement and will enter into an agreement or deed (as appropriate) of variation to effect such amendments.

DATA PROCESSING AGREEMENT - APPENDIX 1

1. Subject Matter	
2. Duration of processing	
3. The nature and purpose of the processing	
4. The type of data	
5. The categories of the data subjects.	

Contract Signature Page

IN WITNESS whereof the parties hereto have executed these Conditions on the _____ day
of _____, 20_____.

SIGNED for and on behalf of)
RAIDIÓ TEILIFÍS ÉIREANN)

In the presence of

Witness:

Name:

Address:

SIGNED for and on behalf of)
[Name of Supplier]_____)

In the presence of

Witness:

Name:

Address: