

**CONFIDENTIAL**

**Code of Fair Trading Practice**

**RADIO**

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## **CONFIDENTIAL**

### **Code of Fair Trading Practice**

#### **RADIO**

This Code of Fair Trading Practice has been drawn up by RTÉ further to section 112 of the Broadcasting Act 2009 (the “Act”) and sets out the principles that RTÉ shall apply when agreeing terms for the commissioning of radio programming material from independent producers.

In accordance with section 112 of the Act, this Code includes reference to RTÉ’s approach to multi-annual commissioning, the acquisition of rights (including the duration and exclusivity of the various categories of rights RTÉ intends to acquire), the timetable for contractual negotiations, and the arrangements for resolving disputes arising in respect of the provisions of the Code.

In accordance with section 116 of the Act, the making of an independent radio programme shall not be regarded as having been commissioned by RTÉ unless, before work on the making of the programme commences, RTÉ has incurred a legal obligation to pay at least 25% of the cost of its making.

In accordance with section 112(4) of the Act, this Code has been prepared by RTÉ having considered the Code of Fair Trading Practice: Guidance for Public Service Broadcasters published by the Broadcasting Authority of Ireland in April 2011.

#### **1. Commissioning**

- 1.1 RTÉ’s objectives throughout the commissioning process are to specify its requirements in a transparent manner, to provide independent producers with access to clear information about its commissioning requirements, and to commission independent producers openly and fairly taking into account RTÉ’s statutory obligations and objectives and the quality and price of the programme proposals.
- 1.2 Throughout the commissioning process RTÉ will conduct all discussions and negotiations with independent producers in a timely and professional manner and in good faith and will expect the independent producer to do the same.
- 1.3 The RTÉ Radio programme commissioning information website ([www.rte.ie/radio/irp](http://www.rte.ie/radio/irp)) shall contain comprehensive information about RTÉ commissioning practices and requirements, which will include the timetable for assessment and decision making by RTÉ in respect of the programme proposals submitted by producers.
- 1.4 The commissioning process will be operated on a rolling basis to facilitate the communication of commissioning priorities (via online commissioning briefs) to the independent sector where discussion, assessment and final decisions on programme submissions can be made all year round.
- 1.5 There may be exceptional situations where RTÉ may elect to invite programme submissions from a limited number of producers including situations where there are a limited number of producers with appropriate experience suitable for the relevant project or there are time constraints applicable to the production turnaround on a particular programme or a producer has exclusive rights to a particular format/project that RTE wishes to commission.

- 1.6 Following issue by RTÉ of a letter expressing interest in a proposal, then unless the project is one requiring further development (see *endnote 1* below), RTÉ and the producer will commence negotiations on editorial, financing and contractual matters with a view to concluding a programme production agreement under which the producer will be commissioned by RTÉ to produce and deliver the programme to RTÉ. Typically, and subject to both RTÉ and the independent producer acting in a prompt manner in negotiating and providing information to each other and also to other third party funders (if any) doing the same, the editorial, financial, and contractual negotiations should be completed not later than one month prior to the commencement of recording of the programme. It is recognised that in situations where the proposal arises due to an unscheduled event then the foregoing timetable might not be possible (see *endnote 2*).

## **2. Editorial matters**

- 2.1 RTÉ will have final editorial control over the programmes (including all associated online and interactive elements) commissioned from independent producers. All programmes including online and interactive elements commissioned by RTÉ from independent producers will be subject to all relevant RTÉ guidelines and published compliance procedures.
- 2.2 The producer will be responsible for producing and delivering the programme in accordance with the editorial specification agreed with RTÉ which will be included as a schedule to the commissioning agreement. The prior written approval of RTÉ will be required for any significant departure from the agreed programme editorial specification. Changes required by the RTÉ Commissioning Editor in order that the programme is made to the agreed editorial specification will be carried out by the producer, and at no extra charge to RTÉ.
- 2.3 In the event that the programme is delivered in accordance with the agreed editorial specification and the RTÉ Commissioning Editor seeks further changes and these further changes involve a substantial cost which was not foreseen in the original agreed budget, RTÉ and the independent producer shall agree additional funding to be made available by RTÉ to cover that cost, any such agreement to be subject to confirmation in writing from RTÉ.
- 2.4 Following final acceptance of delivery of the programme, RTÉ will give the producer reasonable notice of the proposed first transmission date. However, there shall be no obligation on RTÉ to broadcast the programme and should RTÉ decide not to broadcast the programme then the producer shall be fully advised of such decision and there will then be good faith discussion between RTÉ and the producer regarding any future use of the Programme.

## **3. Financial matters**

- 3.1 A producer may not use RTÉ's name for the purposes of raising finance from other sources without the prior written agreement of RTÉ.
- 3.2 RTÉ will expect that the independent producer shall submit a detailed draft production budget to RTÉ for review and negotiation and that the independent producer shall respond promptly and fully to any RTÉ queries and requests for further information and backup, it being recognised that delays in provision of information by either party will have a bearing on timeline for conclusion of negotiations between RTÉ and the producer (see *endnote 3*).
- 3.3 Budgets will include allowance for a production fee, production fees to be in line with rates to be published by RTÉ from time to time following consultation with the Association of Independent Radio Producers of Ireland ("AIRPI") in case of Radio (see *endnote 4*).

- 3.4 Budgets will include provision for an overhead, such overhead to be in line with an overhead rate to be published by RTÉ from time to time following consultation with AIRPI in case of Radio.
- 3.5 RTÉ may in some situations agree when negotiating the production budget with the independent producer that the budget may include a contingency (i.e. an agreed calculated sum to cover potential costs that are not provided for in the agreed production budget). The contingency should not be included in the producer's cash flow, and will be retained by RTÉ until required. If it is not required then it will be retained by RTÉ. Where a programme is co-funded by RTÉ with other parties it is acknowledged that alternative arrangements may be agreed.
- 3.6 RTÉ's approach to multi-annual and volume commissioning is that RTÉ will seek to conclude such deals where RTÉ feels they are editorially and financially justified (*see endnote 5*).
- 3.7 The producer will be responsible for producing and delivering the programme in accordance with the agreed production budget (*see endnote 6*).

#### **4. Production matters**

- 4.1 RTÉ will expect the independent producer to comply with all applicable laws and codes in the course of production of the programme including without limitation compliance with all applicable health & safety legislation, employer legislation and tax legislation and to provide proof of such compliance when requested by RTÉ.
- 4.2 RTÉ will expect producers to effect production related insurances (the terms and level of such cover to be subject to RTÉ approval in each case) to be in place on all productions and to provide RTÉ with proof of same.
- 4.3 RTÉ will expect independent producers to report the progress of productions by submitting progress and cost reports at intervals and in a form to be agreed with RTÉ. RTÉ will also expect that independent producers will make full and timely disclosure to RTÉ of all matters that may be relevant to the production of the programme including any problems or issues that may arise during production. Should any issues arise within RTE that affect the production, RTE shall inform the producer in a timely manner of this.
- 4.4 On occasions where a producer materially defaults on the producer's obligations under the commissioning agreement, and the independent producer fails to remedy same then RTÉ, in addition to any other rights it may have in respect of the default, will normally expect to have the option of either taking over or abandoning the production of the programme.
- 4.5 RTÉ will expect the producer to undertake in the commissioning agreement that the programme will be original and that nothing in the production of the programme or in the programme itself (including where the producer delivers promotional materials, in any such promotional materials) will breach any applicable laws and codes or bring RTÉ into any disrepute and further that the producer will clear all third party rights in respect of the programme for purposes of exploitation set out in clause 5 below save where it is specifically agreed to the contrary by RTÉ.
- 4.6 RTÉ will expect to rely on all the contractual provisions and warranties given by the producer under the commissioning agreement. RTÉ may agree, on a case by case basis, to include provision in the production budget for reasonable and necessary legal fees that may be incurred by the producer for the purposes of the production of the programme. For the avoidance of doubt, any such provision may not be used by the producer to cover legal costs incurred by the producer as a result of the default or negligence of the producer. The producer will keep records

of all agreements and clearances relating to the production of the programme and will provide copies of all these documents on delivery of the programme to RTÉ. RTÉ may on occasion require a right of prior approval over certain production agreements and clearances. Where legal difficulties arise as a result of the failure by the producer to secure all necessary agreements and clearances, and where such difficulties require the engagement of professional legal advice either from legal advisers based in RTÉ or from external professionals the costs of such services shall be borne by the producer. Where RTÉ, as publisher/broadcaster becomes party to any legal action, or threat of action or Broadcasting Authority of Ireland Compliance Committee submission, as a result of matters relating to a programme, the producer of that programme shall co-operate fully and in every way with RTÉ in responding and dealing with such matters. It is in the interests of both RTÉ and the producer that any such problems are anticipated and dealt with prior to transmission. The producer, therefore, must ensure that RTÉ is advised of any possible legal problems well in advance of transmission in order that steps may be taken to avoid subsequent difficulties. RTE will have a continuing right of access to Programme outtakes/unused recordings made in the course of the production on request by RTÉ to the producer if required by RTE for purposes of any legal dispute or regulatory complaint relating to the Programme. The obligation of the producer to retain outtakes and unused recordings in this regard shall be the duration of the Primary Rights Term to include any extension of that term. Any other use by the producer or RTE of Programme outtakes/unused recordings made in the course of production to be subject to further agreement in good faith between the producer and RTE.

4.7 RTÉ will expect the programme will be produced and delivered by the independent producer in accordance with the technical specifications and delivery material requirements set out in the RTÉ standard delivery schedule for independent commissioned programmes.

4.8 All credits must comply with RTÉ credit guidelines and the producer will submit a list of all proposed credits for prior written approval by RTÉ.

## **5. Programme rights**

5.1 In situations where RTÉ is the principal production funder of a commissioned programme, RTÉ will expect in consideration of the RTÉ production funding that the producer shall deliver programme materials to RTÉ in accordance with RTÉ delivery requirements and that the producer shall grant to RTÉ certain rights described as Primary Rights.

5.2 The producer shall retain ownership of the copyright in the produced programme (unless otherwise agreed by the producer) and of all rights not granted to RTÉ as Primary Rights. The rights retained by the producer are described as “Secondary Rights” (*see endnote 7*). Unless otherwise agreed by the producer with RTÉ Secondary Rights may be exploited by the producer subject to the provisions of paragraph 5.8 below.

5.3 Primary Rights means:

5.3.1 the right during the Initial Term (as defined in clause 5.4 below) to make the programme (including extracts/clips) available on RTÉ Services (defined in the Appendix) below.

5.3.2 the right during the Initial Term to promote the programme in all media including support websites/social media, and to use programme material (including extracts/clips but not the whole programme) in such promotion.

5.3.3 the right during the Initial Term to make the programme available outside the island of Ireland as part of an RTÉ owned and/or branded diaspora service provided that where the producer can confirm that inclusion in such diaspora service will prejudice the

successful commercial exploitation of the programme outside the island of Ireland then a reasonable holdback on the availability of the programme to the diaspora service will be agreed in good faith. It is acknowledged that RTE already makes programmes available internationally as follows: Long Wave; Astra satellite; Eurosat; online via [www.rte.ie](http://www.rte.ie), on RTÉ mobile applications and on certain third party public service radio broadcast stations outside Ireland and that nothing in this provision is intended to restrict RTE's continuing rights to do so.

- 5.3.4 the following rights for archive purposes ("the Archive Rights") during the the period of Programme copyright
- (a) the right to retain a copy of the programme in the RTÉ Archive,
  - (b) the right to make the programme (including extracts/clips) available pursuant to RTÉ's statutory archive usage scheme (with prior consultation with and approval in writing of the producer) (*see endnote 8*)
  - (c) the right to make the programme permanently available for listening (but not for permanent download) on non-exclusive basis (unless exclusivity is agreed with the producer) on an RTÉ owned or branded archive/catch-up site, subject to the producer receiving a further payment if RTÉ notifies the producer that RTÉ wishes to make the programme permanently or temporarily available in that manner such payment, where applicable, could take the form of a share of pay per view or subscription income paid by a viewer for the right to listen to that programme on such site, or payment of an amount in line with RTE rates at that time for programmes of a similar nature included on such sites and
  - (d) the right to use short extracts from a commissioned programme in review programmes, awards programmes and programmes of a retrospective or archival nature.
- 5.3.5 RTÉ shall have the right to use some or all of the content of a commissioned programme in a separately produced programme subject to prior consultation with the producer and payment to the producer of an agreed usage fee.
- 5.4 The term of the Primary Rights in the case of a commissioned radio programme shall be five years from the date of first broadcast of the programme by RTÉ ("Initial Term") and RTÉ shall have the option to re-licence the programme for transmission on RTÉ's scheduled broadcast services subject to payment by RTÉ to the producer of an amount in line with RTE acquisition rates at that time. In the case of returning series, RTÉ will have the option to renew the exclusive licence for all previous series while the programme is still being commissioned.
- 5.5 The usage referred to in clause 5.3.1, 5.3.2, 5.3.3, 5.3.4(d) above shall not involve an additional payment to producer except where the access for the listener to listen to the programme on the RTÉ Service is on a pay subscription or pay per listen basis (i.e. there is a specific payment by the listener for the right to listen to the specific programme), in which case then RTÉ's revenue from such payments attributable to the programme shall be subject to a 50/50 split with the producer of revenue remaining after deduction of costs and overhead. The programme shall be available to the listener on RTÉ Services during the Initial Term in a manner to be decided by RTÉ including the decision whether the programme should be available free to user or through subscription or pay per view/listen at some point during the Initial Term.
- 5.6 RTÉ shall retain the existing right to sell any advertising and sponsorship around the programme (including any product placement) and retain revenues from such activities (subject in the case of broadcast sponsorship to a finders fee of up to 15% (inclusive of all agency fees) where the producer sources such sponsorship with RTÉ prior written approval) and also the right to run competitions in and around the programmes. Where SMS/IVR

revenues from competitions (or from voting on vote programmes) then such revenues will, after deduction of costs and 15% fee, be divided 30% to producer/70% to RTÉ.

- 5.7 RTÉ's Primary Rights will be exclusive within the island of Ireland during the Initial Term (including any extensions thereof).
- 5.8 The Secondary Rights shall be retained by the producer for exploitation throughout the world in perpetuity subject to
  - 5.8.1 RTÉ to have a right of reasonable approval over proposed exploitation of the Secondary Rights in the island of Ireland to ensure RTÉ's reasonable commercial, editorial and reputational interests are protected.
  - 5.8.2 In the case of any exploitation outside the island of Ireland of the Secondary Rights, RTÉ shall not have a right of approval in respect of such exploitation by the producer (subject to RTÉ premiere rights referred to in clause 5.8.3 below) but the producer shall make best endeavours to ensure that the exploitation shall be carried out to maximise overall commercial revenues while offering fair value to the listener/consumer and shall not be carried on in a manner which may cause offence, bring RTÉ into disrepute or diminish RTÉ's reputation in any way or give rise to an appreciable risk that editorial decisions relating to the content of the programme may be thought to be influenced by commercial considerations and for that purpose the producer shall notify to RTÉ the essential deal terms regarding any such deals on conclusion of such deals
  - 5.8.3 RTÉ shall have the right to the premiere world broadcast of the programme and neither the producer nor any third party may broadcast or exploit the programme and the Secondary Rights outside the island of Ireland prior to 28 days after the first broadcast of the programme by RTÉ unless otherwise agreed by RTÉ in writing.
  - 5.8.4 The programme and all associated materials and products shall throughout the world, unless RTÉ agrees otherwise in writing, carry the RTÉ credit (and logo in the case of printed materials) in such form as is required under RTÉ brand guidelines as may be amended by RTÉ from time to time
  - 5.8.5 RTÉ to receive 50%, or, where the programme is partly funded by parties other than RTÉ, a lower percentage reflecting RTÉ's proportionate contribution to the programme budget, calculated as a proportion of 50% (the "Applicable Share" subject to section 7.3 of the net revenue (gross revenues less bona fide costs) throughout the world in perpetuity from all exploitation of the Secondary Rights. This is in order to deliver value back to the licence fee payer and as an acknowledgement of the investment and added value that RTÉ makes to the programme. The producer shall send RTÉ accounting statements and any payments due to RTÉ on a calendar quarterly basis for 24 months and thereafter on a six monthly basis and RTÉ shall be entitled to audit the producer (including receiving copies of all agreements and related correspondence regarding exploitation of the Secondary Rights).

- 5.9 If RTE wishes to acquire the right to exploit any Secondary Rights from the producer, that shall be subject to further and separate negotiation between RTE and the producer. RTE shall have a right of 14 day first negotiation in respect of acquiring those rights, such 14 day right of such negotiation to begin on notice from producer to RTE or vice versa. In the event that:
- (a) RTE does not make an offer in writing to the producer within that 14 day period specifying the particular Secondary Rights that RTE wishes to acquire and the proposed acquisition terms, then after the expiry of that 14 day period the producer shall be free to negotiate and agree terms with third parties in respect of the exploitation of those rights any such agreement(s) with third parties to be subject to the provisions of section 5.8 above, or
  - (b) RTE does make an offer in writing to the producer within that 14 day period specifying the particular Secondary rights that RTE wishes to acquire and the proposed acquisition terms but the producer refuses RTE's offer then (subject to the provisions of clause 5.8 above) the producer may negotiate and conclude deals with third parties in respect of such rights.
- 5.10 RTE will co-operate with the producer in the marketing outside Ireland of the commissioned programme.
- 5.11 It is recognised that RTE needs to take account of developing technologies and new media and for that purpose, by prior agreement RTE may use programmes and programme material on a trial and non-profit basis in testing such new technologies and new media. No payment will be payable to producers for use of programmes and programme materials in such tests unless RTE requests the producer to carry out reversioning of the programme or of programme material for such purpose, in which case RTE will pay the producer agreed reversioning costs.
- 5.12 During the Initial Term, RTE will have the exclusive right to create and maintain online content, including though not confined to website(s), mobile applications, and postings or pages on social media such as Facebook and YouTube in respect of the commissioned programme. RTE shall pay the independent producer a fee for any additional work and delivery items specifically requested by RTE for the purposes of the programme's online content not already accommodated within the programme budget (*see endnote 9*).
- 5.13 Subject to the comments in clause 5.14 below in respect of formats, RTE will be granted the option to recommission the programme (including any spin-offs from that programme), such option normally to be exercisable by RTE not later than 6 months (unless otherwise agreed) after the broadcast by RTE of the last episode of the preceding series. If RTE does not exercise such option within that period then the producer shall be entitled to make alternative arrangements for the production of further programmes with third parties.
- 5.14 Where an original programme format is exclusively created by the independent producer then the format rights will remain vested in the producer and may be exploited by the producer, subject
- (a) to the rights granted to RTE in connection with the production and exploitation of the RTE programme based on the format
  - (b) to RTE's right of prior approval (such approval not to be unreasonably withheld) where the producer proposes to licence the format to any competitor of RTE whose signal is receivable in Ireland (including UK broadcasters whose channels are available in Ireland) where such production might conflict with the Primary Rights for Ireland granted to RTE (*see endnote 10*).



The producer and RTÉ will agree an exploitation strategy to co-ordinate the sale of the RTÉ programme so that the sale of the RTÉ programme internationally will not adversely affect the sale of the format rights by the producer or its agent internationally.

RTÉ will have an ongoing right to commission further episodes or series of the programme, such right normally to be exercisable by RTÉ not later than 6 months (unless otherwise agreed) after the first RTÉ broadcast of the programme (or of the last episode thereof if a series). RTÉ agrees that in the event that RTÉ does not indicate its 'in principle' decision to commission a subsequent series (or spin-off if applicable) within such option period, the independent producer will thereafter be entitled to produce and exploit a subsequent programme with/for third parties (subject to any rights RTÉ may have in the format).

RTÉ will be entitled on RTÉ request to receive a development credit in the form "Developed in association with RTÉ" in the end credits (customary prominence for a development credit) of all such subsequent programmes produced without RTÉ involvement.

- 5.15 In the case of formats originated by producers where RTÉ is the first broadcaster to commission and broadcast the format, RTÉ shall be entitled to receive up to 15% of all consideration received by the producer from the exploitation of the format rights in all media throughout the world in perpetuity excluding for the avoidance of doubt (i) any revenues paid to the producer by RTÉ arising from the exploitation of the programme commissioned by RTÉ, (ii) production fees paid to the producer where the producer is commissioned to produce programmes based on the format and (iii) fees and expenses paid by a third party licensee of the format rights to the producer in respect of individual consulting producer fees PROVIDED that such production fees and consultancy fees and expenses are in line with custom and practice in the international radio format licensing industry.
- 5.16 Where the programme format is jointly created by RTÉ and the independent producer then RTÉ and the independent producer will jointly own and control the format and there will be no exploitation of the format rights by either RTÉ (subject to the rights granted to RTÉ in connection with the RTÉ programme) or the independent producer except in accordance with a separate agreement to be negotiated in good faith.
- 5.17 Where the programme format is exclusively created by RTÉ or by a third party other than the producer then RTÉ reserves the right to apply different terms to the commission.
- 5.18 Should either party (i.e. the producer or RTE) wishes to enter the programme into awards or festivals then it shall notify the other in writing in advance, any costs related to an entry to be the responsibility of the party submitting the entry and any entry to be on basis that both the involvement of the producer and RTE in the production shall be properly noted and credited. It is agreed that in no circumstances shall an entry be made without the prior written approval of both the producer and RTE in each case which approval is not to be unreasonably withheld by either the producer or RTÉ and each respond to any request within 15 working days of receipt of the request). In the event that a programme is entered or nominated for award by a third party where the consent of the producer or publisher is not required or sought, either party shall inform the other as soon as they are aware of that nomination.

## **6. Dispute Resolution**

- 6.1 In the event of a dispute arising between RTÉ and an independent producer about the application of the Code itself, rather than the terms of a specific negotiation, the independent producer shall refer the dispute to the Director of the relevant Radio Division in which the dispute arises. Both parties shall negotiate in good faith to resolve any such dispute.
- 6.2 If bi-lateral negotiations under 6.1 above cannot resolve the dispute within 28 days then both parties will agree to put the dispute to mediation by an independent mediator to be agreed in good faith by RTE and the producer
- 6.3 Both parties will pay their own costs and will seek to ensure that costs are minimised so that neither the independent producer nor RTÉ is disadvantaged by the expense.

## **7. Reservation**

- 7.1 The arrangements in this Code may be revised by RTÉ in the case of commissions of programmes where:

Underlying rights are purchased by RTÉ from a different entity than the independent producer who is contracted to produce the programme e.g. sports programming, international formats, certain live event shows etc;

An independent producer is given a commission by RTÉ based on an RTÉ created format/programme/idea/brand;

RTÉ is not the primary funder.

- 7.2 In the case of commissioned programmes where RTÉ is not the primary funder (i.e. RTÉ is the source of between 25% and 50% of the funding), RTÉ will negotiate the following matters with the producer with due reference to the respective reasonable requirements and commercial expectations of RTÉ and the other funders of the programme:

- (i) Number of RTÉ transmissions (subject to a minimum of five transmissions (with off peak narrative repeat within 7 days) plus 30 day catch-up window after each transmission on RTÉ Services) during the Initial Term
- (ii) RTÉ 50% share of revenues under clauses 5.8.5 to be reduced pro rata to RTÉ's proportionate contribution to the programme budget, calculated as a proportion of 50%

Other matters that may be appropriate for negotiation having regard to the specific circumstances of a programme may include for example whether the programme will be available for licensing by RTÉ pursuant to the RTÉ statutory archive usage scheme, whether clause 5.9 shall apply to the Secondary Rights to the programme and whether RTÉ premiere broadcast right under clause 5.8.3 shall apply within a reasonable timeframe e.g. within 12 months of accepted delivery to RTÉ

- 7.3 It is recognised that for the purposes of negotiating RTÉ's share of revenues under clause 5.8.5, the full extent of RTÉ's financial and non-financial contributions (e.g. agreement of RTÉ to sponsorship in the case of programmes with enhanced sponsorship and/or product placement) to the financing of the programme shall be taken into account in good faith by the producer provided it is acknowledged by RTÉ that there is a maximum cap of 50% on RTÉ share.

- 7.4 The arrangements in this Code do not preclude RTE and an individual independent producer from concluding an agreement covering a broader or different range of provisions to those outlined above, should they both wish to do so.
- 7.5 RTE and the individual producer shall keep terms of a confidential nature confidential subject to any disclosure that may be required of RTE pursuant to Freedom of Information legislation.

#### Endnotes

1. In the case of some submissions the proposal might not be ready to enter into production immediately and may require further development in advance of production. In such cases RTE may agree at that point to provide development funding pursuant to a development contract. RTE will decide whether or not to commission the programme within an agreed length of time, not to exceed 6 months unless otherwise agreed by the parties after the accepted delivery by RTE of the final development work commissioned by RTE from the producer.
2. RTE will have no liability for any costs or obligations incurred by the producer should the producer commence production or incur production costs prior to final agreement on, and signature by RTE and the producer of, the programme agreement.
3. The level of RTE funding will be influenced by a range of factors including but not limited to: the complexity/duration/scale of the production (number of days of filming/recording, location of filming/recording etc); use of archive/third party owned material; use of on and off screen/air talent; use of CGI; detailed schedule requirements; number of episodes in a series; level of any production funding from other production funders; whether the programme is a new or returning series, whether it is an Irish or overseas production; total volume of programming commissioned by RTE from the producer.
4. The matters that RTE shall take into account in negotiating production fees in the case of each production shall include criteria such as (i) amount of the production budget, (ii) the complexity of the production, (iii) duration and scale of the production, (iv) the originator of the programme concept, (v) the total volume of work commissioned by RTE from an individual producer, (vi) whether the programme is part of a multi-annual deal.
5. RTE Independent Radio Productions (IRP) policy is that the maximum period RTE IRP will continue re-commissioning a returning commissioned series without carrying out a public re-tender for potential replacement programmes is four years unless the relevant RTE Radio Station Head decides to extend for one additional year i.e. a commissioned returning series will not be re-commissioned for more than five years without RTE IRP holding a public re-tender for potential replacement programmes. For the avoidance of doubt, it is acknowledged that RTE IRP may in its discretion elect to hold re-tenders at an earlier stage, that RTE IRP retains final decision on what programmes are commissioned, and that RTE IRP is not precluded from deciding following the re-tender process to re-commission the returning series in which case the foregoing time limits will re-start as regards that returning series.
6. RTE will have no liability for any unauthorised overspend by the producer or for any extra costs incurred by the producer if the agreed budget turns out to be insufficient. RTE will pay the production funding in accordance with the agreed cash flow subject to RTE being in receipt of proper invoices and a current tax-clearance certificate from the independent producer at each payment stage. No payments will be made by RTE prior to signature of the commissioning contract. Cost reports must accompany each payment request other than the signature payment. Cost reports should detail expenditure to date, creditors outstanding, and a detailed estimate of the costs to complete the production. Cost reports, together with copies of the production bank account statements and bank reconciliation, must accompany the final payment amount.
7. Secondary rights shall include without limitation foreign radio sales rights and merchandising rights ( which shall include, without limitation, permanent paid digital download, toys, tie-in publishing/books/magazines, tie-in soundtracks, tie-in live events both inside and outside the island of Ireland)
8. The producer shall receive 50% of any revenues from archive sales of the programme to third parties remaining after deduction of costs and RTE Library overhead); provided that in the case of a full radio programme (as opposed to extracts/clips from such radio programme), if RTE has not exercised its option to extend the RTE broadcast rights after the 5 year term of the Primary Rights in respect of that programme then after that the producer may licence that radio programme for broadcast by other broadcasters in Ireland (including radio broadcaster competitors of RTE)

subject to RTÉ's right of prior reasonable approval to ensure RTÉ's reasonable commercial, editorial and reputational interests are protected. In the case of approval being given, the programming will carry clear branding identifying RTÉ as the commissioner of the programme and RTÉ shall receive 50% share of any revenues from such exploitation;

9. In addition, the independent producer will be entitled to exploit short clips of the programmes on the producer's own corporate promotional website for corporate promotional purposes only. In the event that RTÉ decides not to establish website(s) in Ireland for the programme, RTÉ may in its discretion and on the independent producer's request permit the independent producer to establish and maintain a programme website on such terms as may be agreed between RTÉ and the independent producer, keeping in mind that RTÉ needs to be satisfied that programme websites do not contain material of a nature that will bring the programme or RTÉ into disrepute and that RTÉ policy is to promote the RTÉ Player as the on-line interface for RTÉ listeners. Subject to the holdback in clause 5.3.3, where a programme is licensed for radio broadcast in a territory outside the island of Ireland, the independent producer may establish and maintain a programme support website for the purpose of promoting and transmitting the programme in that territory only (i.e. geo-blocked to that territory), such website(s) not to contain material of a nature that will bring the programme or RTÉ into disrepute.
10. This right of prior approval in the case of UK broadcasters will lapse an agreed period of time following completion by RTÉ of the first RTÉ broadcast of the first RTÉ programme or series based on the format (with the proviso that the producer will procure that the presenter of the RTÉ programme/series will not present any other version prior to such time as RTÉ elects not to commission the RTÉ version any more).

## Appendix

In the case of radio programme commissions, RTÉ services means:

- (i) the radio channels currently known as Radio 1, 2FM, Lyric FM, Radio na Gaeltachta, RTÉ Radio 1 Extra, RTÉ Gold, RTÉ 2xm, RTÉ Pulse, RTÉ Junior and all and any other existing or future radio channels that are licensed or authorised to broadcast by RTÉ (where any such licence or authorisation is legally required) on all platforms and media where such radio channels are transmitted pursuant to RTE's statutory obligations;
- (ii) any content service distributed by means of electronic communications network as defined in the Broadcasting Act 2009 including the internet, websites, digital text services or mobile telecommunication services, or content zones which are now or hereafter wholly or partly owned or controlled or operated or branded and/or provided by RTÉ or any subsidiary of RTÉ and/or any entity from time to time in common ownership with RTÉ;
- (iii) any RTÉ-branded content service distributed by means of electronic communications network as defined in the Broadcasting Act 2009 direct-to-consumer on-demand mobile telecommunication network or internet services, and third party-branded direct-to-consumer on-demand content provision portals that make RTÉ content available to the public

For these purposes, "**Channel**" and "**Service**" shall include without limitation any RTÉ branded websites, the RTE Player, apps, internet channels, portal sites, content zones, information or entertainment services provided to mobile devices, content service distributed by means of electronic communications network as defined in the Broadcasting Act 2009 including the internet and any other form of media (linear or non linear) now known or hereafter invented for the purpose of communicating to the general public live or recorded visual images and/or sounds and/or reproductions of literary, dramatic, musical or artistic works, films, broadcasts sound recordings and any other form or description of information.