



Dated the []

**BROADCASTING AUTHORITY
OF IRELAND**

- and -

[]

SOUND BROADCASTING CONTRACT



TABLE OF CONTENTS

| | |
|---|------|
| SECTION 1.0 - INTERPRETATION..... | 3 |
| SECTION 2.0 – CONFIRMATIONS..... | 15 |
| SECTION 3.0 – COMMENCEMENT AND DURATION..... | 17 |
| SECTION 4.0 - APPOINTMENT AND PAYMENT..... | 17 |
| SECTION 5.0 - STATUS OF CONTRACTOR..... | 20 |
| SECTION 6.0 - PERFORMANCE STANDARDS AND MANAGEMENT..... | 29 |
| SECTION 7.0 - PROGRAMMING..... | 36 |
| SECTION 8.0 - TECHNICAL..... | 40 |
| SECTION 9.0 - COMMERCIAL..... | 41 |
| SECTION 10.0 – INFORMATION AND INSPECTIONS..... | 44 |
| SECTION 11.0 – TERMINATION AND SUSPENSION..... | 47 |
| SECTION 12.0 – ASSIGNMENT..... | 52 |
| SECTION 13.0 – GENERAL..... | 53 |
| FIRST SCHEDULE – SPECIFIED AREA..... | I |
| SECOND SCHEDULE – STATUS OF CONTRACTOR..... | II |
| THIRD SCHEDULE – PROGRAMME SCHEDULE AND POLICY STATEMENT..... | VIII |
| FOURTH SCHEDULE – TRANSMITTERS, LINK, STUDIO AND OTHER CONDITIONS..... | IX |



THIS CONTRACT is made the []

BETWEEN

1. **BROADCASTING AUTHORITY OF IRELAND** having its principal office at 2-5 Warrington Place, Dublin 2, (herein called “**Authority**”)

and

2. **[insert]** (herein called “**Contractor**”)

WHEREAS:

- A. The Authority, a body corporate established by the Broadcasting Act 2009, may enter into Sound Broadcasting Contracts.
- B. The Contractor applied to the Authority for a Sound Broadcasting Contract for a **[insert type of service]** service for the Specified Area by making an Application to the Authority in accordance with the 2009 Act.
- C. The Communications Regulator has granted, pursuant to section 59 of the 2009 Act, a Broadcasting Licence to the Authority in respect of the sound Broadcasting transmitter or transmitters to which this Contract relates.
- D. The Authority, in reliance upon the commitments and representations made in the Application, determined in accordance with the 2009 Act that the Contractor was the most suitable applicant to be awarded a Sound Broadcasting Contract for the Specified Area and has agreed to enter into a Sound Broadcasting Contract for the Specified Area with the Contractor on the terms and conditions set out below.
- E. This Contract has, subject to and in accordance with section 59(3) of the Broadcasting Act 2009, the effect of conveying the benefit and burden of the Broadcasting Licence to the Contractor in respect of the sound Broadcasting transmitter or transmitters to which this Contract relates for the purposes of the Wireless Telegraphy Act 1926 subject to compliance by the Contractor with the terms and conditions of this Contract.



IT IS HEREBY AGREED:

SECTION 1.0 - INTERPRETATION

1.1 **Definitions.** In this Contract (including the Schedules) the following words and expressions have the following meanings:

| | |
|-----------------------------|--|
| “1926 Act” | means Wireless Telegraphy Act 1926; |
| “2009 Act” | means Broadcasting Act 2009; |
| “Applicable Law” | means any European or national law applicable in the State (without further enactment) and includes common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation; |
| “Application” | means, as the case may be, the application or proposal made by the Contractor to the Authority in support of its application for a Sound Broadcasting Contract for [insert] , together with all written clarifications in respect of it submitted by the Contractor to the Authority, two copies of which have been initialled by the parties, for the purposes of identification, prior to the execution of this Contract; |
| “Associated Company” | means a company which is the Contractor’s holding company, or a company, not being the Contractor, which is a subsidiary of the Contractor’s holding company; |
| “Broadcast” | means the transmission, relaying or distribution by Electronic Communications Network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs or visual images or signals are actually received or not; |
| Broadcasting Code” | means a code prepared under section 42 of the 2009 Act which is for the time being in force (and includes, as the |



| | |
|---|---|
| | context admits or requires, any or all of it); |
| “Broadcasting Licence” | means the licence issued by the Communications Regulator pursuant to section 5 of the 1926 Act and section 59 of the 2009 Act in respect of the transmitter or transmitters to which this Contract relates (and includes any variations to the Broadcasting Licence made from time to time by the Communications Regulator in accordance with section 60 of the 2009 Act) (and includes, as the context admits or requires, any or all of it); |
| “Broadcasting Rules” | means rules prepared under section 43 of the 2009 Act which are for the time being in force (and includes, as the context admits or requires, any or all of them); |
| “Broadcasting Service” | <p>means a service which comprises a compilation of Programme Material of any description and which is transmitted, relayed or distributed by means of an Electronic Communications Network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include:-</p> <p>(a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or</p> <p>(b) other audio and audiovisual services provided by way of the Internet;</p> |
| “Broadcasting Services Platform” | means a platform for the Broadcast of Programme Material by means of any transmission system including, without limitation, wireless telegraphy, a satellite device, a cable system, an Internet protocol television network or an MMD System; |



| | |
|------------------------------------|---|
| “Business Day” | means Monday to Friday excluding bank and public holidays in the State; |
| “Clause 5.4 Statement” | means a statement made pursuant to clause 5.4; |
| “Communications Media” | (a) the provision of a Broadcasting Service, (b) the provision of a Broadcasting Services Platform, or (c) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs; |
| “Communications Regulator” | means the Commission for Communications Regulation; |
| “Competition Authority” | means the Authority continued in being by Section 29, Competition Act 2002, or any body in the future charged with the functions of such Authority; |
| “Complaints Code” | means a code of practice prepared and implemented by the Contractor under section 47(3) of the 2009 Act for the handling of complaints made under section 47(1) of the 2009 Act (as amended from time to time) (and includes, as the context admits or requires, any or all of it); |
| “Compliance Committee” | means the committee of the Authority established to undertake the functions set out in section 28 of the 2009 Act; |
| “Compliance Officer” | means the person to whom the Contractor has given the task of ensuring that the Contractor complies with this Contract and with applicable legislation; |
| “Contract” | means the terms and conditions and Schedules of this Contract; |
| “Contract Awards Committee” | means the committee of the Authority established to undertake the functions set out in section 27 of the 2009 Act; |



| | |
|---|---|
| <p>“Effective Date”</p> | <p>means the date this Contract comes into full force and effect and being [INSERT DAY AND MONTH] 2013;</p> |
| <p>“Electronic Communications Network”</p> | <p>means transmission systems including, where applicable:</p> <ul style="list-style-type: none"> (a) switching equipment; (b) routing equipment; or (c) other resources; <p>which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes (irrespective of the type of information conveyed) the use of:</p> <ul style="list-style-type: none"> (i) satellite networks; (ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals; (iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet); (iv) mobile terrestrial networks; (v) networks used for either or both sound and television Broadcasting; or (vi) cable television and internet protocol television networks; |
| <p>“First Level Plc Transaction”</p> | <p>means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring 5% or more (but less than 10%) of the voting rights at general meetings of B, or controlling the exercise of voting rights in respect of such shares;</p> |
| <p>“Insolvent”</p> | <p>means if (i) an order is made for the winding up of the Contractor; (ii) an order is made for the appointment of an examiner to the Contractor; (iii) a resolution winding up the Contractor is passed; (iv) the Contractor suffers the appointment of a receiver or manager over its undertaking or assets or any part of them; (v) the Contractor enters into a scheme of compromise or arrangement with its creditors; (vi)</p> |



| | |
|-----------------------------------|---|
| | the Contractor is unable to pay its debts as they fall due within the meaning of section 214 of the Companies Act 1963 or declares that it is unable to pay its debts; (vii) the Contractor is bankrupt; and/or (viii) anything analogous to the foregoing occurs in any jurisdiction; |
| “Interest” | means an interest within the meaning of clause 5.8 and as determined in accordance with section 5.0; |
| “Key Personnel” | means each of the persons identified in the Second Schedule under <i>Management / Key Personnel</i> or any replacement of any of them from time to time whom is approved, at the Authority’s discretion, in writing as a replacement; |
| “Levy Order” | means a levy order issued from time to time by the Authority under section 33 of the 2009 Act; |
| “Licensed Service” | means the Sound Broadcasting Service which the Contractor is to provide under this Contract, namely the establishment, maintenance and operation of only the Licensed Transmitters serving only the Specified Area and the provision, as specified in this Contract, of a Sound Broadcasting Service (including the provision of all related and incidental work, services, tasks, duties and functions) subject to, and in accordance with, this Contract and the Application; |
| “Licensed Service Content” | means Programme Material Broadcast by or on behalf of the Contractor pursuant to this Contract as a part of or in connection with the Licensed Service (and includes, as the context admits or requires, any or all of the Licensed Service Content); |
| “Licensed Transmitters” | means the transmitter or transmitters which are to be established, maintained and operated by the Contractor under clause 4.1.1 and which are more particularly described in terms of type, location and number in the |



| | |
|--------------------------------|--|
| | Broadcasting Licence; |
| “Media Operator” | means a person who is any of the persons listed at any of (a) to (l) in the definition of a Relevant Person; |
| “Minor Plc Transaction” | means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring less than 5% of the voting rights at general meetings of B, or controlling the exercise of voting rights in respect of such shares; |
| “MMD System” | means a multipoint microwave distribution system used for the transmission of Broadcasting Services on a point to multipoint basis; |
| “Multiplex” | means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public; |
| “Near Relative” | means: <ul style="list-style-type: none"> (a) spouse, civil partner, cohabitant (within the meaning of section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or any analogous legislation of another jurisdiction); and/or (b) child, stepchild, brother, sister, parent, or grandparent; or (where appropriate) the spouse, civil partner or such a cohabitant of any of the aforesaid; |
| “Person in Question” | means a Relevant Person in respect of which a disclosure is made under clause 5.4.1; |
| “Plc Application” | means an application to the Authority under clause 5.18 or |



| | |
|-------------------------------------|---|
| | 5.1.5; |
| “Plc Transaction” | means any transaction, order or event which results in a change in the Interest of a person in a Quoted Company, including where an Interest in shares or voting rights itself does not change but, relative to the aggregate of Interests in a Quoted Company, increases or decreases; |
| “Programme Material” | means audio-visual material or audio material and includes advertisements and material which, when transmitted, constitutes a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services; |
| “Plc Programme of Action” | means a programme agreed by the Authority and the Contractor under clauses 5.25 and 5.26; |
| “Programme Policy Statement” | means the programme policy statement set out in the Third Schedule; |
| “Programme Schedule” | means the programme schedule set out in the Third Schedule; |
| “Quarter” | means a period of three months beginning on 1 st January, 1 st April, 1 st July or 1 st October; |
| “Quoted Company” | means a company whose shares are listed or traded on or through a regulated market, within the meaning of EU Directive 2004/39/EC; |
| “Relevant Change” | means any of the occurrences set out in clauses 5.1.1 to 5.1.6; |
| “Relevant Person” | means any of the following: (a) a person who supplies a compilation of Programme Material which is Broadcast in the State; |



| | |
|------------------------|--|
| | <p>(b) a person who operates a Broadcasting Services Platform which transmits Programme Material to viewers and/or listeners in the State;</p> <p>(c) a programme production company which produces programmes which are Broadcast in the State;</p> <p>(d) an advertisement production company which produces advertisements which are Broadcast in the State;</p> <p>(e) the publisher of a newspaper, magazine or journal in the State;</p> <p>(f) an advertising agency which produces advertisements which are Broadcast in the State, or which acts as a media buyer in respect of the Broadcast of advertisements in the State;</p> <p>(g) a public relations company which carries on business in the State;</p> <p>(h) a music publisher which publishes music which is displayed for sale or Broadcast in the State;</p> <p>(i) a distributor of recorded music which distributes recorded music in the State;</p> <p>(j) a person who is engaged in Communications Media in the State;</p> <p>(k) a person who has a Substantial Interest in a person listed in any of (a) to (j); and</p> <p>(l) a person who is not a national of a Member State of the European Union;</p> |
| <p>“Scheme”</p> | <p>means any schemes (or similar) administered by the Authority under Applicable Law (including under the 2009</p> |



| | |
|---------------------------------------|---|
| | Act) from to time to time (and includes, as the context so admits or requires, any one, more or all of them or any part of any of them); |
| “Second Level Plc Transaction” | means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring 10% or more of the voting rights at general meetings of B, or controlling the exercise of voting rights in respect of such shares; |
| “Section 69(3) Provisions” | means the provisions set out in section 69(3)(a) and (b) of the 2009 Act; |
| “Serious Failure” | has the meaning given to it in clause 11.5, subject to clause 11.6; |
| “Shareholders’ Agreement” | means an agreement to which persons having an Interest in the Contractor are party, which deals with the manner in which the affairs of the Contractor are to be conducted; |
| “Share Purchase Agreement” | means: (a) an agreement, scheme or offer for the sale, purchase, transfer, allotment, issue, redemption, conversion, cancellation, redesignation or creation of shares in the Contractor; and/or (b) an agreement, scheme or procedure in Ireland and / or in any other jurisdiction to re-register the Contractor as a Societas Europae or any other corporate form; |
| “Simulcast Amendment” | means an amendment of the kind referred to in section 134 (6) of the 2009 Act; |
| “Sound Broadcasting Contract” | means a contract under Section 63 of the 2009 Act; |



| | |
|--|---|
| “Sound Broadcasting Contractor” | means the holder of a Sound Broadcasting Contract; |
| “Sound Broadcasting Service” | means a Broadcasting Service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not; |
| “Specified Area” | means the area defined in the First Schedule (and includes, as the context admits or requires, any part or parts or all of it); |
| “State” | means the area of application of the laws enacted by the Parliament established by Bunreacht na hÉireann; |
| “Suspension Notice” | has the meaning given to it in clause 11.2; |
| “Substantial Interest” | means an interest within the meaning of clause 5.9 and as determined in accordance with section 5.0; |
| “Term” | means a period of ten (10) years commencing on the Effective Date and ending on [day/month/year]; |
| “Termination Event” | has the meaning given to it in clause 11.4; |
| “Termination Notice” | has the meaning given to it in clause 11.1; and |
| “Warning Notice” | has the meaning given to it in clause 6.11. |



1.2 **Section, Clause and Schedule References.** Any headings to sections, clauses, paragraphs and schedules are for convenience only and do not affect the meaning of this Contract. Unless the contrary is stated references to:

- (i) schedules mean the schedules to this Contract (and includes all paragraphs within that Schedule);
- (ii) clauses mean the clauses of this Contract;
- (iii) sections means sections of this Contract (and includes all clauses within that section); and
- (iv) paragraphs mean the paragraphs contained in the Schedule in question or (where the Schedule in question comprises more than one part) the part of the Schedule in which the reference occurs.

1.3 **Priority.** In the event of any inconsistency or conflict arising between:

- (i) the clauses and the paragraphs, the clauses take precedence; and
- (ii) the Contract and the Application, the Contract takes precedence.

1.4 **Cognate Words.** Where a meaning is attributed to a word in this Contract a cognate word is interpreted in a manner which is consistent with such meaning.

1.5 **General Interpretation.** The masculine gender includes the feminine and neuter and the singular number include the plural and vice versa. Terms such as “including”, “in particular”, “such as”, and “for example” are not to be read as exhaustive, or to limit, but may extend the generality of the provisions to which they relate. Any obligation on the part of the Contractor in this Contract not to do or omit to do any act or thing is deemed to include an obligation not (insofar as is within the power, control or procurement of the Contractor) to permit or suffer such act or thing to be done or omitted, as the case may be. This Contract will not be interpreted *contra proferentum*.



- 1.6 **Persons.** In this Contract, person means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity or undertaking.
- 1.7 **Programmes.** References in this Contract to “programmes” include sponsored programmes.
- 1.8 **Authority.** A reference in this Contract to the Authority includes, where the context so admits or requires, the Contract Awards Committee and/or the Compliance Committee.
- 1.9 **Non-Compliance.** For all purposes associated with this Contract, a failure to comply with an obligation, whether under contract or Applicable Law, constitutes a failure to comply with such contract or Applicable Law and vice versa.
- 1.10 **Legislation.** Any reference to any legislation includes any modification, amendment, re-enactment, extension or consolidation of the legislation together with any secondary legislation made under it for the time being in force.
- 1.11 **Subsidiary and Holding Company.** In this Contract:
- (a) “subsidiary” has the same meaning as “subsidiary” in the Companies Act 1963 and “subsidiary undertaking” in the European Communities (Companies: Group Accounts) Regulations 1992; and
 - (b) “holding company” has the same meaning as “holding company” in the Companies Act 1963 and “parent undertaking” in the European Communities (Companies: Group Accounts) Regulations 1992.
- 1.12 **Wireless Telegraphy.** In this Contract “wireless telegraphy” has the same meaning as in the 1926 Act.



SECTION 2.0 – CONFIRMATIONS

- 2.1 The Contractor acknowledges and agrees that the Authority has entered into this Contract in reliance on the representations, statement and warranties contained in this Contract and the Application.

- 2.2 The Contractor under this Contract warrants, represents, agrees and confirms that:
 - 2.2.1 the Contractor has not been convicted, within the 12 months preceding the date of this Contract, of an offence under section 3(3) of the 1926 Act or under section 3, 4 or 5 of the Broadcasting and Wireless Telegraphy Act 1988;
 - 2.2.2 the Contractor has received from the Authority a copy of the Broadcasting Licence granted in respect of the Licensed Transmitters;
 - 2.2.3 the Contractor is fully familiar with, and shall fully comply in performing its obligations under the Contract with, all relevant Applicable Laws (including the 2009 Act);
 - 2.2.4 the representations, statements and warranties contained in the Application, and all information furnished by or on behalf of the Contractor to the Authority in connection with this Contract and Application, are true, valid, correct, complete, accurate and not misleading;
 - 2.2.5 the Contractor is an expert in, and is fully competent in all areas of, performing services, works, tasks, duties and functions of a similar nature, scale, importance and complexity to the Licensed Service;
 - 2.2.6 the Contractor has all the necessary personnel, expertise, equipment, transmitters, communications infrastructure and resources to perform its obligations under this Contract on time and in accordance with this Contract;
 - 2.2.7 the Contractor is of sound financial standing and has and will retain sufficient working capital available to it to carry out its obligations in accordance with this Contract throughout the Term;



- 2.2.8 the Contractor has not traded since its incorporation other than for the purposes of entering into this Contract (and/or a previous Sound Broadcasting Contract) and it will not change nor cease its business nor start any other business which is materially different from that to be carried on by it under this Contract;
- 2.2.9 the Contractor is, and will remain for the Term, a company duly organised, validly existing and in good standing under the laws of Ireland and has full power, capacity and authority to enter into this Contract and perform its obligations under this Contract;
- 2.2.10 the execution and performance of this Contract by the Contractor does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Contractor is a party or any consent, judgment, order, or law which is applicable to the Contractor or its assets;
- 2.2.11 there is no pending or threatened actions or proceedings before any court or administrative or regulatory authority or agency which could materially adversely affect the business or operations of the Contractor;
- 2.2.12 the Contractor is not aware of any matter or conflict or circumstance which might restrict or impede it from entering into and performing this Contract or would materially affect the decision of the Authority to enter into this Contract with the Contractor;
- 2.2.13 any registrable interest, within the meaning of the Ethics in Public Office Act 1995, involving the Contractor (and its employees and their relatives) and the Authority (and its employees and officers and their relatives) has been fully disclosed in writing to the Authority prior to the date of this Contract;
- 2.2.14 the Contractor has not offered, given or agreed to give any adviser, officer or employee of the Authority any gift or consideration of any kind as an inducement or reward in connection with this Contract or the application process relating to it; and



2.2.15 the Contractor has satisfied itself as to the full nature and extent of the risks and obligations assumed by it under this Contract.

2.3 The Contractor shall immediately and fully disclose in writing any change in events or circumstances which in any way relates to or is connected with any of the confirmations given in clause 2.2.

SECTION 3.0 – COMMENCEMENT AND DURATION

3.1 **Term.** This Contract commences, and takes legal effect, on and from the Effective Date and continues in full force and effect after that for the Term, subject to clause 11.1. This Contract expires on the expiry of the Term.

SECTION 4.0 - APPOINTMENT AND PAYMENT

4.1 **Appointment.** In exercise of the powers conferred on it by the 2009 Act, the Authority with effect on and from the Effective Date hereby appoints the Contractor, subject to the terms of the 2009 Act, as a Sound Broadcasting Contractor:

4.1.1 with the right and duty to establish and continually maintain and operate only the Licensed Transmitters serving only the Specified Area; and

4.1.2 to continually provide and Broadcast, as a Sound Broadcasting Service only, the Licensed Service for only the Specified Area via only the Licensed Transmitters;

throughout the Term subject to and in accordance with the terms of this Contract, Applicable Law (including the 2009 Act) and in the manner suggested by its Application, and the Contractor hereby accepts such appointment.

4.2 **Scope of Appointment.** This Contract (and the appointment under clause 4.1):

4.2.1 entitles the Contractor to Broadcast, as a Sound Broadcasting Service only, Programme Material for only the Licensed Service via only the Licensed Transmitters for only the Specified Area – any other



Broadcasting, Broadcasting Services, Sound Broadcasting Services, audio and audiovisual services provided by way of the Internet or similar (whether or not it includes Licensed Service Content) is outside the scope of, and is neither regulated nor restricted by, this Contract (though it may be regulated by Applicable Law including the 2009 Act); and

4.2.2 is a Sound Broadcasting Contract for the purposes of a free-to-air service and, accordingly the Contractor may, further to section 71(3) of the 2009 Act, supply Programme Material Broadcast through the Licensed Service for:

(a) inclusion as part of a Multiplex; and/or

(b) the purpose of its being transmitted as a Broadcasting Service in the State or part of the State or elsewhere by means of an Electronic Communications Network.

4.3 **Broadcasting Licence.** The Contractor shall establish, maintain and operate the Licensed Transmitters in accordance with the terms and conditions the Communications Regulator attaches to the Broadcasting Licence (including any variations made to it in accordance with Section 60 of the 2009 Act).

4.4 **Payment.** The Contractor:

4.4.1 upon the date of this Contract, shall pay in full (without set-off, counterclaim, withholding, deduction or similar) and in euro to the account nominated by the Authority the amount or amounts (if any) which the Contractor specified in its Application that it would pay to the Authority in connection with this Contract; and

4.4.2 shall fully (and on time) discharge its obligations under any Levy Order made by the Authority from time to time.

4.5 **Applicable Law.** The Contractor acknowledges and agrees that:



4.5.1 this Contract is subject to the terms of the 2009 Act and any other Applicable Laws; and

4.5.2 the Authority may exercise any rights or obligations under the 2009 Act or Applicable Laws without giving rise to any non-compliance with this Contract.

4.6 **Acknowledgement.** The Contractor acknowledges and agrees that:

4.6.1 the Authority may enter into a Sound Broadcasting Contract of any type and in respect of any area (including the Specified Area) with other persons;

4.6.2 it is possible that Programme Material Broadcast by any other Sound Broadcasting Contractor (or other persons) may be capable of being received in any or all of the Specified Area;

4.6.3 the Contractor enters into this Contract at its own risk and is not entitled to any financial or other support from the Authority in relation to the implementation, direction, provision, Broadcast, management, maintenance and development of the Licensed Service, performance of its obligations or otherwise; and

4.6.4 the Authority has no obligations (without prejudice to Applicable Law), and has no liability (whether for breach of contract, statute or other duty, negligence, or anything else) to the Contractor, in connection with this Contract or the Licensed Service except to the extent expressly stated otherwise in this Contract. For certainty, this clause 4.6.4 does not exclude the Contractor's entitlement to seek or obtain a remedy by way of judicial review arising from a breach of statutory duty or fair procedures.

4.7 **No Right to Renew.** The Contractor acknowledges and agrees that it has no right:

4.7.1 of renewal of this Contract, whether pursuant to section 67 of the 2009 Act or otherwise; and/or



4.7.2 to be offered, in any circumstances, a Simulcast Amendment.

SECTION 5.0 - STATUS OF CONTRACTOR

5.1. **Specified Conditions.** The Contractor acknowledges and agrees that, subject to clauses 5.15:

5.1.1 the Contractor shall not make, permit or suffer any alteration to its Memorandum or Articles of Association without the previous consent in writing of the Authority;

5.1.2 subject to clause 5.1.5, the Contractor shall not permit or suffer any material change in the ownership of the Contractor without the previous consent in writing of the Authority;

5.1.3 subject to clause 5.1.5 and without limiting clause 5.1.2, the Contractor shall not, without the previous consent in writing of the Authority, make, permit or suffer a change in any of the information set out in clause 5.4, the Clause 5.4 Statement or the Second Schedule including each of the following which is deemed to constitute a change in such information:

(a) any circumstance as a result of which the Second Schedule or the Clause 5.4 Statement is no longer accurate, or is misleading in any respect;

(b) the coming into being of a new Shareholders' Agreement; and/or

(c) the coming into being of any agreement which changes the effect of a Shareholders' Agreement;

5.1.4 subject to clause 5.1.5 and without limiting clause 5.1.2, the Contractor shall not, without the previous consent in writing of the Authority, permit or suffer:



(a) a person who at the time of the execution or Effective Date of the Contract has a Substantial Interest in the Contractor:

- (i) ceasing to have that Substantial Interest in the Contractor; or
- (ii) increasing or reducing that Substantial Interest, which includes where that Substantial Interest itself does not change but, relative to the aggregate of Interests in the Contractor increases or reduces;

(b) a person who at the time of the execution or Effective Date of the Contract does not have a Substantial Interest in the Contractor:

- (i) acquiring a Substantial Interest in the Contractor; or
- (ii) subsequently increasing or reducing that Substantial Interest, which includes where that Substantial Interest itself does not change but, relative to the aggregate of Interests in the Contractor increases or reduces;

5.1.5 the Contractor is required to apply to the Authority for its consent (and is not, despite clauses 5.1.2 to 5.1.4 and 5.18, required to apply for the Authority's prior consent) in writing in respect of:

- (i) any First Level Plc Transactions that gives rise to a Relevant Change described in clause 5.1.3 or 5.1.4, if notified in writing by the Authority in accordance with clause 5.18 that it is required to do so; and
- (ii) any Second Level Plc Transactions that gives rise to a Relevant Change described in clause 5.1.3 or 5.1.4, as soon as it becomes aware of the Plc Transaction concerned;

and



5.1.6 it does not have, and is not permitted to have, a Subsidiary without the previous consent in writing of the Authority,

and the Authority may, if it considers it reasonable so to do, refuse to consent to any such Relevant Change. In considering whether to grant its consent, the Authority shall apply the clauses set out in this section 5.0.

5.2 **Constitution and Control.** The Second Schedule contains, in relation to the Contractor:

5.2.1 a certificate of the Secretary of the Contractor setting out certain corporate information regarding the Contractor in a format specified by the Authority;

5.2.2 the names and addresses of its chief executive officer, programme director, financial controller and compliance officer;

5.2.3 details of all Shareholders' Agreements in existence in respect of the Contractor; and

5.2.4 a statement made pursuant to clause 5.4.

5.3 **Constitution.** The Contractor has provided a copy of its Memorandum and Articles of Association to the Authority, and the parties have initialled such copy for the purposes of identification.

5.4 **Statement.** Subject to clauses 5.5 and 5.6, the statement made by the Contractor pursuant to this clause 5.4 is required to set out in a manner approved by the Authority:

5.4.1 the manner in which, and the extent to which, any Relevant Person has a Substantial Interest in the Contractor (and, for the removal of doubt, for the purpose of this clause 5.4.1, a Relevant Person may, in particular, be deemed to have a Substantial Interest in the Contractor by virtue of the operation of clauses 5.9 to 5.13);



- 5.4.2 the manner in which, and the extent to which, the Contractor has an Interest in any Media Operator (and, for the removal of doubt, for the purpose of this clause 5.4.2 the Contractor may, in particular, be deemed to have an Interest in a Media Operator by virtue of the operation of clauses 5.8, 5.11 and/or 5.13);
- 5.4.3 the circumstances by virtue of which a Person in Question is a Relevant Person; and
- 5.4.4 such additional information bearing upon the matters referred to in clauses 5.4.1 to 5.4.3 as has been included in such statement at the direction of the Authority.
- 5.5 **Shareholding in the Contractor.** Where the Clause 5.4 Statement discloses that a Relevant Person has a Substantial Interest in the Contractor, such statement is required to contain details as to the issued share capital of the Contractor and as to the number of shares in the Contractor held by such Relevant Person, distinguishing where appropriate between shares of different classes, save where, with the consent of the Authority, the shareholding of such Relevant Person in the Contractor is represented as a percentage of the total issued share capital of the Contractor.
- 5.6 **Shareholding in Media Operator.** Where the Clause 5.4 Statement discloses that the Contractor has an Interest in a Media Operator and such Media Operator is a company with a share capital, such statement is required to contain details as to the issued share capital of such Media Operator and as to the number of shares in such Media Operator held by the Contractor, distinguishing where appropriate between shares of different classes, save where, with the consent of the Authority, the shareholding of the Contractor in such Media Operator is represented as a percentage of the total issued share capital of such Media Operator.
- 5.7 **Responsibility.** The Contractor is solely responsible for ensuring that the Clause 5.4 Statement is accurate and complete in all respects and contains all the information required by this section 5.0. Whereas the information set out in the Clause 5.4 Statement is set out in a manner approved by the Authority, the Authority takes no responsibility for the statement.



5.8 **Interest.** For the purposes of this Contract, a person (in this clause 5.8, “A”) has an Interest in another person (in this clause 5.8, “B”) if:

5.8.1 (where B is a partnership), A is a partner in B;

5.8.2 (where B is a company), A is the legal or beneficial owner of shares in B, or controls the exercise of voting rights in respect of such shares;

5.8.3 (where B is a company), A is a director of, or a shadow director (within the meaning of section 27 of the Companies Act 1990) of B, or has the right to appoint a director to the board of B;

5.8.4 (where B is a trust), A is a settlor, protector, or beneficiary of B; and/or

5.8.5 (in any case), A is a senior employee of B.

5.9 **Substantial Interest.** Subject to clause 5.10, for the purpose of this Contract a person (in this clause 5.9 “C”) has a Substantial Interest in another person (in this clause 5.9 “D”), where “C” has sufficient proprietary, financial or voting strength within “D” or another entity to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which includes editorial policy) of “D”, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience. The Authority will determine on a case-by-case basis whether a person has a Substantial Interest in another with reference to the overall shareholding structure of the relevant company, including, where there are convertible shares, calculating the percentage of the voting rights both on the basis that conversion has not taken place and on the basis of a notional conversion.

5.10 **Deemed Substantial Interest.** For the purpose of this Contract, a person (in this clause 5.10, “E”) is conclusively deemed to have a Substantial Interest in another person (in this clause 5.10, “F”) if:

5.10.1 (where F is a partnership), E is a partner in F having the right to exercise 10% or more of the voting rights at meetings of F;



- 5.10.2 (where F is a company), E is the legal or beneficial owner of shares in F conferring 10% or more of the voting rights at general meetings of F, or controls the exercise of voting rights in respect of such shares;
- 5.10.3 (where F is a company), E is a director of, or a shadow director (within the meaning of section 27 of the Companies Act 1990) of F, or has the right to appoint a director to the board of F;
- 5.10.4 (where F is a trust), E is a settlor, protector, or beneficiary of F; or
- 5.10.5 (in any case), E is a senior employee of F.
- 5.11 **Chain of Interests.** Where a person (in this clause 5.11, “G”) has an Interest in a second person (in this clause 5.11, “H”) and H has an Interest in a third person (in this clause 5.11, “I”), G is deemed, for the purpose of this Contract, to have an Interest in I and in any person in which I has an Interest, and so on, ad infinitum.
- 5.12 **Chain of Substantial Interests.** Where a person (in this clause 5.12, “J”) has a Substantial Interest in a second person (in this clause 5.12, “K”) and K has a Substantial Interest in a third person (in this clause 5.12, “L”), J is deemed, for the purpose of this Contract, to have a Substantial Interest in L and in any person in which L has a Substantial Interest, and so on, ad infinitum.
- 5.13 **Near Relative.** A person (being a natural person) is deemed, for the purposes of this Contract, to have an Interest in any person in which his Near Relative has an Interest, and is deemed, for the purpose of this Contract, to have a Substantial Interest in any person in which his Near Relative has a Substantial Interest.
- 5.14 **Prior Changes.** For the purpose of clause 5.1 there is deemed to have been a change in the information set out in clause 5.4, the Clause 5.4 Statement or the Second Schedule if there is a change in any of the information so set out from that information as previously changed with the prior written consent of the Authority.
- 5.15 **Exceptions.** A Relevant Change does not require the prior or subsequent written consent of the Authority pursuant to clause 5.1 where it:



- 5.15.1 has occurred as a result of a failure on the part of the company to make all returns to the Companies Registration Office which it is legally required to make;
- 5.15.2 consists only of a change of the address (not being the address of the registered office of the Contractor), provided that in this case clause 5.16 applies; or
- 5.15.3 has occurred only as a result of a Minor Plc Transaction.
- 5.16 **Notification of Change of Address.** A change of the information set out in clause 5.4, the Clause 5.4 Statement or the Second Schedule which consists of a change of address (not being the address of the registered office of the Contractor) shall be notified promptly by the Contractor to the Authority.
- 5.17 **Plc Transaction Reporting Obligation.** The Contractor shall:
- 5.17.1 supply details to the Authority of any Second Level Plc Transactions resulting in a Relevant Change described in clause 5.1.3 or 5.1.4, as soon as the Contractor becomes aware that the Plc Transactions concerned have taken place; and
- 5.17.2 within thirty days of the beginning of each Quarter, supply to the Authority details of any First Level Plc Transactions resulting in a Relevant Change described in clause 5.1.3 or 5.1.4 and which have taken place in the previous Quarter.
- 5.18 **Approval of First Level Plc Transactions.** A First Level Plc Transaction may, at the Authority's discretion, be made subject to the consent of the Authority. When the Contractor supplies details of a First Level Plc Transaction to the Authority under clause 5.17, the Authority may, within sixty (60) days of receipt of such details, give written notice to the Contractor requiring the Contractor to apply for the consent of the Authority to such transaction and the Contractor shall comply with any such notice. If the Authority does not issue such a notice within the sixty (60) day period, the



Contractor is not required to obtain the consent of the Authority to the relevant First Level Plc Transaction.

5.19 **Consideration.** The Authority shall consider every application by the Contractor for consent to a Relevant Change with a view to determining:

5.19.1 whether such Relevant Change is material, viewed in the light of the statutory remit of the Authority, and of such policies as the Authority has adopted in furtherance of such remit; and

5.19.2 (in the event that such Relevant Change is judged to be material), whether such change is undesirable, viewed in the light of such remit and such policies.

5.20 **Statutory Considerations.** Without limitation, in considering whether to grant its consent to a Relevant Change, the Authority shall have regard where appropriate to the criteria specified in section 66(2) of the 2009 Act and, where applicable, section 66(4) of the 2009 Act and any applicable policies of the Authority.

5.21 **Refusal.** The Authority will refuse to consent to a Relevant Change only in circumstances in which it reasonably determines, having regard where appropriate to the criteria specified in Section 66(2) of the 2009 Act and/or Section 66(4) of the 2009 Act and any applicable policies of the Authority, that such change is material and undesirable viewed in the manner provided for in, respectively, clause 5.19.1 and clause 5.19.2. When the Authority decides to refuse to consent to a Relevant Change it will internally record the fact of, and the reasons for, such refusal.

5.22 **Response.** Subject to clause 5.23, the Authority shall endeavour, within sixty (60) days of receipt of a complete application for consent to a Relevant Change, to communicate in writing to the Contractor its consent to, or its refusal to consent to, such Relevant Change.

5.23 **Time Limit.** The Authority may in response to an application for consent to a Relevant Change raise written queries concerning the Relevant Change in respect of which such application is made. The Authority will only be deemed for the purposes of clause 5.22 to have received a complete application in respect of a Relevant



Change when the Contractor has responded in writing to all such queries to the Authority's reasonable satisfaction.

5.24 **Reason.** If the Authority refuses to consent to a Relevant Change for which consent was sought in accordance with this section 5.0, the written communication referred to in clause 5.22 shall set out the Authority's reasons for refusing to consent to such change.

5.25 **Plc Programme of Action for Rejected Plc Application.** If the Authority does not consent to a Relevant Change which arises as a result of a Plc Application, it shall enter into discussions with the Contractor over a period of sixty (60) days from the date on which it has given notice of such rejection under clause 5.22, with a view to agreeing with the Contractor:

5.25.1 an action or actions which the Contractor will take and which (subject to clause 5.25.2) will enable the Authority to consent to such Relevant Change; and

5.25.2 the time scale within which the Contractor is required to complete such action or actions.

5.26 **Agreed Plc Programme of Action.** If within the period referred to in clause 5.25 the Authority and the Contractor agree a Plc Programme of Action they shall within that period sign a memorandum setting out its terms.

5.27 **Implementation of Plc Programme of Action.** The Contractor shall promptly, fully and properly implement any Plc Programme of Action.

5.28 **Failure to Agree a Plc Programme of Action.** If the Authority does not consent to a Relevant Change which arises as a result of a Plc Application, and if within the period referred to in clause 5.25 the Authority and the Contractor fail to agree and sign a Plc Programme of Action, the Authority is entitled to terminate this Contract by issuing a Termination Notice.

5.29 **Written Share Purchase Agreement.** If the Contractor becomes party to a Share Purchase Agreement which is concluded by way of a written agreement, the



Contractor shall supply to the Authority a copy of the Share Purchase Agreement (and a copy of any other Share Purchase Agreements which have not previously been provided to the Authority) within five (5) Business Days of the date upon which the Contractor becomes a party to it.

- 5.30 **Oral Share Purchase Agreement.** If the Contractor becomes party to a Share Purchase Agreement which is not concluded by way of a written agreement, it shall supply to the Authority a memorandum setting out the terms of the Share Purchase Agreement (and of any other Share Purchase Agreements which have not previously been provided to the Authority in accordance with this clause) within five (5) Business Days of the date upon which the Contractor becomes a party to it.
- 5.31 **Third Party Agreement.** If the Contractor receives any information concerning a Share Purchase Agreement to which the Contractor is not a party, it shall, within five (5) Business Days of receiving such information communicate it to the Authority. The information so communicated must, if the Contractor has received a copy of the Share Purchase Agreement, include such copy.
- 5.32 **Monitoring.** The Contractor shall put in place appropriate monitoring procedures so as to enable it to discharge its obligations under clauses 5.1, 5.16, 5.17 and 5.29 to 5.31.

SECTION 6.0 - PERFORMANCE STANDARDS AND MANAGEMENT

- 6.1 **First Class Service.** The Contractor acknowledges and agrees that the objective of this Contract is for the Contractor to provide and Broadcast the best possible Licensed Service and Licensed Service Content (in terms including quality, range, type and user experience) in accordance with, and to, standards acceptable to the Authority.
- 6.2 **Continuous Improvements.** The Contractor shall use all reasonable endeavours to continuously and incrementally make improvements in the Licensed Service and Licensed Service Content, including in terms of quality, range, type and user experience, throughout the Term to the extent reasonably possible and practicable.



6.3 **Service Requirements.** The Contractor warrants, represents and agrees that it shall provide the Licensed Service subject to, and in accordance with:

- 6.3.1 the indicative Programme Schedule;
- 6.3.2 the Programme Policy Statement;
- 6.3.3 the Application;
- 6.3.4 all Applicable Laws (including the 2009 Act);
- 6.3.5 the Broadcasting Codes;
- 6.3.6 the Broadcasting Rules;
- 6.3.7 Complaints Procedure;
- 6.3.8 Broadcasting Licence;
- 6.3.9 this Contract; and
- 6.3.10 any Schemes.

Any conflict or inconsistency between any of the foregoing shall be resolved by the Authority, acting reasonably, in the manner that it considers is most appropriate, having regard to the objective in clause 6.1. The Contractor shall promptly notify the Authority in writing if it considers that there is any conflict or inconsistency.

6.4 **Agreed Deviations.** The Contractor specifically acknowledges and agrees that it may:

- 6.4.1 deviate, without the Authority's prior written approval, from the indicative Programme Schedule provided and on condition that it does not impact on the programming commitments in the Programme Policy Statement; and



6.4.2 only deviate from the Programme Policy Statement and/or Application if, and only to the extent that, it has the prior written consent of the Authority.

6.5 **General Obligations.** The Contractor warrants, represents and agrees that it shall:

6.5.1 provide the Licensed Service with all necessary skill, care, diligence and professionalism in a timely, efficient and safe manner in accordance with, and to, standards acceptable to the Authority;

6.5.2 provide all resources, personnel, expertise, materials, equipment, transmitters, infrastructure and everything else necessary and/or required for the proper provision of the Licensed Service on time in accordance with this Contract;

6.5.3 undertake all such steps as are required to ensure that the Licensed Service are continually and at all times provided and available during the times and in the manner required by this Contract;

6.5.4 provide the Licensed Service using sufficient personnel with the necessary skills, expertise, experience, training, qualifications and language skills and fluency;

6.5.5 at all times use its Key Personnel in the provision and management of the Licensed Service in the manner and to the extent reasonably required by the Authority and shall provide the Authority (or its nominees) with access to each of the Key Personnel at such times as it may require;

6.5.6 not do, or (insofar as is within the power, control or procurement of the Contractor) permit or suffer to be done, anything which interferes unnecessarily with another Sound Broadcasting Contractor or the Authority; and

6.5.7 keep, during the Term and for a period of one (1) year from the date of expiration or termination of this Contract, due and proper records, in accordance with prevalent industry practice (and as may be directed by the Authority from time to time), in relation to the Licensed Service and the



discharge of its obligations and exercise of its rights under this Contract and shall promptly provide such to the Authority at any time within that period in hard copy and/or electronic form in a format specified by the Authority.

6.6 **Service Continuity.** The Contractor shall implement, and periodically test, disaster recovery / business continuity plans in accordance with best industry practice in order to ensure that the Licensed Service is and remains fully available in accordance with this Contract notwithstanding the occurrence of any business interruption or disaster.

6.7 **Co-Operation.** The Contractor shall:

6.7.1 provide the Authority with such information (including copies of its accounts) that the Authority considers it may require in order to enable it to carry out its functions under the 2009 Act and Applicable Law and/or to exercise its rights under, and/or monitor the performance of, this Contract;

6.7.2 co-operate with the Authority and comply with the Authority's reasonable instructions and directions from time to time in connection with this Contract and/or the Licensed Service;

6.7.3 liaise with, and keep-up-to date in respect of material developments, the Authority in connection with the Licensed Service and this Contract and, where requested, shall promptly attend meetings with the Authority and others; and

6.7.4 at all times act in good faith in its dealings with the Authority and the exercise of its rights and performance of its obligations under this Contract.

6.8 **Performance Review.** The Authority may from time to time, on giving fourteen (14) days' notice in writing, require that:

6.8.1 the Contractor meet with the Authority, or its nominee, so that the Authority may review the performance of the Contractor, within a specified period, in the discharge of its obligations and exercise of its right under this Contract;



6.8.2 the personnel of the Contractor specified in such notice attend such meeting;
and

6.8.3 the materials, records, information, data or similar of the Contractor specified
in such notice are made available at such meeting.

6.9 **Self-Assessment.** The Authority may at any time or from time to time require the Contractor, by statement, questionnaire or other format, to self-assess or self-certify its performance and/or its compliance with its obligations under this Contract or Applicable Law (including the 2009 Act). The Contractor shall:

6.9.1 complete any such questionnaire or statement, and in so doing shall comply with such guidelines regarding its completion as are included in or provided therewith; and

6.9.2 shall return such questionnaire or statement to the Authority, duly completed, on or before the date required by the Authority.

The Authority anticipates that it will require the Contractor to complete a questionnaire or statement annually, though it may be more frequently where required by the Authority.

6.10 **Compliance Notices.** The Authority, in connection with and arising from its compliance activities and audit of the performance of this Contract by the Contractor (or otherwise), may (but is not obliged to) from time to time identify in a report, notice or other communication what the Authority considers may be a failure by the Contractor to comply with this Contract and/or Applicable Laws in a particular respect and the reasons for such consideration. Any such report, notice or other form of communication (excluding, for certainty, a Termination Notice or Suspension Notice) is in all cases subject to clause 6.12.

6.11 **Warning Notices.** Without prejudice to any other right or remedy available to the Authority (or the Compliance Committee), if the Authority has reasonable grounds for believing that:



6.11.1 the Contractor may not be performing this Contract in accordance with any term or condition of this Contract; or

6.11.2 the provision of any part of the Licensed Service or the Licensed Service Content may have fallen below the standards required by this Contract and/or Applicable Law (including the 2009 Act),

the Authority may (but it is not required to) give written notice (a "**Warning Notice**") to the Contractor setting out in general terms the matter giving rise to such notice, the fact that it is a Warning Notice and a reminder to the Contractor of the implications of such notice (i.e. that clauses 6.12 and 6.13 apply in such cases and that clause 11.5.15 may apply). The issue of a Warning Notice is, in particular, without prejudice to the right of the Compliance Committee to conduct an investigation pursuant to sections 50 and/or Chapter 2 of the 2009 Act and does not limit or restrict the rights of the Compliance Committee in any way. Any notice issued by the Authority is only a Warning Notice if it is expressly stated in it to be a "Warning Notice".

6.12 **Nature of Compliance and Warning Notices.** The issue of a Warning Notice, or any notice, report or other form of communication referred to in clause 6.10, does not constitute (and will not be deemed to constitute) the making of a finding, pre-determination or pre-judgment by either the Authority or the Compliance Committee in relation to whether, in a particular case, the events concerned in fact constituted a failure by the Contractor to perform in accordance with any term or condition of this Contract for the purposes of any investigation by a Compliance Committee or any other purpose. In the event of an investigation by the Compliance Committee in a particular case, the question of whether or not the Contractor has failed to perform in accordance with any term or condition of the Contract is a matter that will be determined by the Compliance Committee in any (and every) given case at that time and depending on the more particular facts of that case.

6.13 **Improvements.** If the Contractor receives a Warning Notice it shall (unless otherwise stated in the Warning Notice), without prejudice to any other right or remedy of the Authority, promptly provide the Authority with a plan for the remedying by the Contractor, at its sole cost and expense, of the state of affairs giving rise to the Warning Notice specifying in reasonable detail the manner in, and date by, which such state of affairs will be remedied. If the Authority, acting reasonably, is:



- 6.13.1 satisfied with the plan proposed by the Contractor, it shall notify the Contractor accordingly and the Contractor shall implement its proposed programme within the timeline proposed in the plan; or
- 6.13.2 not satisfied with the plan proposed by the Contractor in response to any Warning Notice, it shall notify the Contractor accordingly and the Contractor and the Authority shall engage and act in good faith and reasonably in order to promptly discuss and agree revisions to the Contractor's plan that are satisfactory to the Authority, acting reasonably, in which case the Contractor shall promptly submit the revised plan to the Authority (and clause 6.13.1 and 16.13.3 will apply); or
- 6.13.3 not satisfied with the plan proposed by the Contractor pursuant to clause 16.13.2 (or if no plan is proposed in the first instance or pursuant to clause 16.13.2), or if having put forward such plan the Contractor fails to fully implement it within the timeline proposed in the plan, then this will constitute the occurrence of a Serious Failure for the purposes of clause 11.5.
- 6.14 **Communications.** The grant of any approval, acceptance, confirmation or consent by the Authority, the failure by the Authority to respond to any communication, exercise its rights or remedies or enforce the terms of this Contract, or the provision of any information by the Contractor to the Authority in respect of any matter:
- (a) does not pass any liability or responsibility to the Authority in connection with the matter concerned;
 - (b) does not imply or suggest compliance with this Contract or Applicable Law (including the 2009 Act); and
 - (c) does not in any way diminish the responsibility and liability of the Contractor, or release or excuse it from its obligations, in connection with the matter concerned.
- 6.15 **Human Resources.** In carrying out its activities under this Contract, the Contractor shall endeavour to implement good practice in the area of human resources.



- 6.16 **Employment Law.** The Contractor shall comply with applicable employment law.
- 6.17 **Trade Union.** The Contractor shall recognise the constitutional rights of workers regarding trade union membership.
- 6.18 **Employment Dispute Resolution.** The Contractor shall co-operate with the State dispute resolution machinery provided for under the Industrial Relations Acts, 1946 – 2004 (as the same may be amended or replaced from time to time).

SECTION 7.0 - PROGRAMMING

- 7.1 **Quality.** The Contractor shall provide the quality, range and type of Programme Material which it proposed to offer in its Application. This is without prejudice to the other terms and conditions of this Contract.
- 7.2 **Standards.** The Programme Material Broadcast by the Contractor must at all times be such as in the opinion of the Authority is of a high general standard and of a high quality, in terms including quality, range, type and user experience, and compliant with this Contract and Applicable Law (including the 2009 Act).
- 7.3 **Bought-in Programmes.** The Contractor shall not make use of Programme Material produced by third parties to an extent which, in the opinion of the Authority, is inconsistent with the local character or independence of the Licensed Service.
- 7.4 **Programme Practice.** The Contractor shall not, without the prior written consent of the Authority, alter:
- 7.4.1 its arrangements for the preparation, editing and presentation of news and current affairs;
 - 7.4.2 its practice in respect of the use of Programme Material produced by other Sound Broadcasting Contractors and/or other third parties; and
 - 7.4.3 its practice in relation to the Broadcast of party political Broadcasts.



- 7.5 **Restriction.** The Contractor shall procure that no Programme Material is Broadcast by or on behalf of it, the Broadcasting of which infringes Applicable Law (including section 39 of the 2009 Act), constitutes an offence or an infringement of the legally protected rights of any person, or which constitutes contempt of Court or breach of parliamentary privilege or which unreasonably encroaches on the privacy of an individual.
- 7.6 **Recordings.** The Contractor shall:
- (a) without prejudice to section 40 of the Act, make a recording (of a quality satisfactory to the Authority) and store categories of Programme Material, in the manner prescribed by the Authority from time to time in accordance with section 69 of the 2009 Act, and which may be inspected by the Authority for the term of the Contract and for a period of 6 years after its termination or expiration; and
 - (b) further to section 40 of the 2009 Act, record every Broadcast made by the Contractor and every item of Programme Material supplied by it under the Contract and retain such recordings for ninety (90) days from the date of their Broadcast or supply (as the case may be) or such other period as stands determined by the Compliance Committee for the purposes of section 40 from time to time.
- 7.7 **Storage of Records by Authority.** If it is proposed that the Authority will store on behalf of the Contractor any Programme Material recorded further to section 69(6) of the 2009 Act, the parties may (if considered necessary) put in place a separate agreement setting out any necessary terms or details in relation to such storage as may be agreed between the parties.
- 7.8 **Programme Recordings.** The Contractor shall furnish to the Authority, in such form and detail as the Authority may require, and at such intervals and times as the Authority may specify by notice to the Contractor, recordings of Programme Material which have been Broadcast by the Contractor.
- 7.9 **Authority's Right.** The Contractor acknowledges and agrees that the Authority may make, keep and use recordings of the Licensed Service Content in the discharge of



its statutory functions. This clause survives the termination, expiration or suspension of this Contract.

7.10 **Emergency.** The Contractor shall at its own cost (except to the extent that the Contractor is entitled to receive monies under Section 61(4) of the 2009 Act) cooperate in any arrangements which are put in place under Section 61 of the 2009 Act during the continuance of an emergency declared under Section 10 of the 1926 Act.

7.11 **Indemnity.** The Contractor agrees to fully and effectively indemnify, hold harmless and keep so indemnified on demand the Authority from and against all claims, costs, damages, demands, losses, liabilities, expenses, fines, awards and/or proceedings (including legal costs) suffered or incurred or paid out by the Authority arising directly or indirectly from or out of, or related to or connected in any way with:

7.11.1 Programme Material (including programmes and advertisements) Broadcast by or on behalf of the Contractor;

7.11.2 the Contractor's failure to Broadcast the whole or any part of any Programme Material (including programmes or advertisements);

7.11.3 any death, sickness or injury of any person arising out of or in connection with the establishment, maintenance and/or operation of the Licensed Transmitters and/or sound broadcasting studio and/or arising out of or in connection with the establishment, maintenance and/or operation of the Licenced Service; and/or

7.11.4 any threat or claim that the recording, storage and/or use by the Authority in the discharge of its statutory functions of any Programme Material Broadcast by or on behalf of the Contractor infringes Applicable Law, infringes the copyright, sui generis database rights, trade marks, patents or other intellectual property or quasi intellectual property rights of any person, infringes the privacy, confidentiality, image or data protection rights of any person or gives rise to a tort of defamation or any similar threat or claim.



This clause 7.11 survives the suspension, termination or expiration of this Contract.

7.12 **Insurance.** The Contractor shall obtain and maintain at all times insurance cover in respect of its proposed and actual activities under or in connection with this Contract and the Licensed Service in accordance with prudent commercial practice, and shall include the Authority as an indemnified party in every insurance policy so taken out on the same basis as the Contractor. In particular, but without prejudice to the generality of the foregoing, the Contractor shall obtain and maintain at all times the following minimum levels of insurances (provided that the Authority may, at its sole discretion, direct the Contractor to increase the limits set out below, and that the Contractor shall promptly comply with every such direction):

7.12.1 public liability for not less than €7,500,000 indemnity any one claim;

7.12.2 employer's liability for not less than €13,000,000 any one claim; and

7.12.3 radio contractor's indemnity (otherwise known as libel insurance) for not less than €2,000,000 any one claim.

The above policy or policies of insurance shall be shown by the Contractor to the Authority whenever it requests, together with satisfactory evidence of payment of premiums. The Contractor, at all times, shall ensure all insurance cover taken out in accordance with this clause is on substantially similar terms to those upon which insurance of that kind is normally taken out and includes non-avoidance and non-invalidity provisions so that any action by or against the Contractor constituting a breach of such policy will not prejudice insurance cover afforded to the Authority.

7.13 **Notice of Claims.** If a third party brings or threatens to bring proceedings against the Authority which is or may be covered by the indemnity in clause 7.11, the Authority shall, as soon as is reasonably practicable after such claim is brought or threatened, give the Contractor notice of such proceedings or of such threat. The Authority shall consult with the Contractor before admitting, settling or compromising any such proceedings or threat, and it may, at its absolute discretion, permit the Contractor at its own expense to defend or contest any such proceedings in the name of the Authority, subject to such conditions as may be prescribed by the Authority.



7.14 **Claims Information.** The Contractor shall:

7.14.1 keep a written record of every claim made or threatened against it, arising from Programme Material Broadcast by or on behalf of it, and shall promptly provide to the Authority such written details of such claim or claims (including those referred to in clause 7.14.2) as it may from time to time request in writing; and

7.14.2 promptly notify the Authority of any proceedings instituted against the Contractor arising from or in connection with Programme Material (including programmes or advertisements) Broadcast by or on behalf of the Contractor, and shall keep the Authority informed, on a continuing basis, of developments concerning every claim so instituted.

SECTION 8.0 - TECHNICAL

8.1 **Equipment.** The Contractor shall at its own expense provide, or arrange for the provision of, such equipment, infrastructure, transmitters, links, facilities, plant, premises and technical expertise as may be necessary to enable it to comply with its obligations under this Contract.

8.2 **Head Office.** The Contractor shall establish its head office and studio facilities at the address set out below. Such office and facilities must be in compliance with guidelines of the National Disability Authority (or, if appropriate, of any successor authority) applicable from time to time to offices and facilities of such kind. The Contractor shall not move its head office or studio facilities to any other address without the prior written approval of the Authority. The Contractor may not establish any secondary or additional studios without the prior written consent of the Authority.

Address: **[insert]**

8.3 **Transmitters.** The Contractor shall establish, maintain and operate, in accordance with the Broadcasting Licence and this Contract, the sound Broadcasting transmitters of the type and number specified in the Broadcasting Licence at the location approved in writing by the Authority and the Communications Regulator. The



Contractor shall not establish, maintain or operate Broadcasting transmitters at any other location, or Broadcasting transmitters of a different type or greater number than specified in the Broadcasting Licence, without obtaining the prior written approval of the Authority and of the Communications Regulator.

8.4 **Compliance.** The Contractor shall comply in all respects with the Broadcasting Licence. In addition, the Contractor shall comply with the terms and conditions set out in the Fourth Schedule.

8.5 **Expertise.** The Contractor shall ensure that the technical operating parameters of the Licensed Transmitters at all times conform with the conditions of the Department of Communications, Energy and Natural Resources' *Technical Conditions for Analogue Radio 12/04a* (as amended or replaced from time to time) and that the necessary monitoring equipment and expertise is available to ensure that these technical conditions are complied with and maintained at all times.

8.6 **Frequency.** The Contractor agrees to use such frequency as is for the time being allotted to by the Authority and to use it only on such dates and at such times as are prescribed by the Authority. The Contractor acknowledges and agrees that nothing in this Contract (or the Broadcasting Licence) has the effect of conferring on the Contractor any rights whatever of a proprietary or quasi-proprietary nature (or otherwise) in respect of any frequency.

8.7 **Emergency.** The Contractor shall ensure that its Broadcasting arrangements are such that it is capable of complying with any requirement made of it under section 61 of the 2009 Act.

SECTION 9.0 - COMMERCIAL

9.1 **Limits.** The Contractor shall comply with Applicable Laws (including the 2009 Act), the Broadcasting Codes and the Broadcasting Rules in respect of the Broadcasting of political and commercial communications content.

9.2 **Right of Use.** The Contractor shall provide to the Authority and permit the Authority to retain and make use, to the extent considered by the Authority (acting reasonably) to be necessary, incidental or conducive to the exercise or performance of its



objectives or functions under Applicable law (including the 2009 Act), of such copyrights, sui generis database rights, trademarks, patents, licences, privileges and concessions of the Contractor. If the Contractor considers, in a given case, that its compliance with this clause may breach the intellectual property rights of a third party, the Contractor shall use its best endeavours to find a work around acceptable to the Authority and that achieves the Authority's desired objective.

9.3 **Use of Programme Schedules.** Without prejudice to the generality of clause 9.2, the Contractor shall permit the Authority to use, without charge, information concerning the Contractor's programme schedules for the compilation, preparation, publication and distribution, whether directly by the Authority, the Authority's nominee or otherwise, in magazines, books and other such printed material, websites and such other aural and visual material (electronic or otherwise) as may seem to the Authority to be incidental or conducive to its objectives.

9.4 **Name.** The name of the Contractor's radio station will be **[insert]**. The Contractor shall not change the name of the radio station or use any other business or trade name or description in relation to the Licensed Service or Licensed Service Content Broadcast by it without the prior written approval of the Authority.

9.5 **Material Developments.** The Contractor shall as soon as practicable inform the Authority in writing of:

9.5.1 any proposed material development or material reconstitution of its business or activities;

9.5.2 any proposed acquisition of a business or any interest in a business; and

9.5.3 any proposed establishment of a business.

No such matter may take place without the prior written approval of the Authority. The Authority may indicate that it will approve any such change subject to such conditions as it considers reasonable to impose on the Contractor.

9.6 **Independence.** The Contractor shall at all times be independent of all other Sound Broadcasting Contractors (except insofar as the Authority may in writing agree



otherwise and, in such case, subject to such conditions as the Authority, acting reasonably, imposes on the Contractor). In particular, but without limitation, the Contractor must be independent of other Sound Broadcasting Contractors in matters concerning:

9.6.1 finance;

9.6.2 control; and

9.6.3 the fixing of charges for advertisements, sponsored programmes and/or sponsorship material for inclusion in Programme Material to be Broadcast by the Contractor.

9.7 **No Partnership.** Without prejudice to the generality of clause 9.6, the Contractor shall not, without the prior written consent of the Authority (and subject to such conditions as the Authority, acting reasonably imposes on the Contractor), enter into any agreement or arrangement with any Media Operator (including, without limitation, a Sound Broadcasting Contractor) which creates a partnership or directly or indirectly provides for the sharing of profit or the giving or acceptance of any subsidy, payment or guarantee directly or indirectly related to profits.

9.8 **Permitted Agreements.** Nothing in clauses 9.5 to 9.7 prohibit the Contractor from entering into:

9.8.1 any agreement or arrangement for the purchase and/or sale of programmes, for the sharing, purchase and/or sale of news or other information or for the joint production of programmes; or

9.8.2 any agreement or arrangement with the Mechanical Copyright Protection Society or the Irish Music Rights Organisation or Phonographic Performance (Ireland) or any other such licensing body.

9.9 **Unfairly Prejudicial Activities.** If the Contractor is engaged or has been engaged in activities in contravention of this Contract or Applicable Law (including the 2009 Act) which the Authority considers to be unfairly prejudicial to any other Sound Broadcasting Contractor, the Authority may, after consultation with the Contractor,



give to the Contractor such directions as the Authority considers reasonable and appropriate and the Contractor shall comply with such directions.

SECTION 10.0 – INFORMATION AND INSPECTIONS

- 10.1 **Market Research.** The Authority may require that arrangements made by the Contractor to carry out a market research survey, or any other research relevant to the activities of a Sound Broadcasting Contractor, be co-ordinated with similar arrangements (if any) made by other Sound Broadcasting Contractors and/or the Authority in such manner as are from time to time directed by the Authority. The Authority may require the Contractor to make a financial contribution to such research in either case, and the Contractor shall promptly comply with any such requirement.
- 10.2 **Statistics.** The Contractor shall permit the Authority without charge to publish on a regular basis such information and statistics, including those generated by market research surveys or obtained from the Contractor itself, as seem to the Authority to be conducive to its functions under the 2009 Act.
- 10.3 **Declarations and Returns.** The Contractor shall promptly furnish to the Authority such declarations, returns, documents, accounts and other information concerning it and its Associated Companies and it and their activities as the Authority may require by written notice to the Contractor. In particular, but without limitation, the Contractor shall, if so requested in writing by the Authority, deliver to the Authority within seven (7) days of their completion, the monthly management accounts prepared in accordance with clause 10.5.
- 10.4 **Accounts.** The Contractor shall comply with Applicable Laws relating to the preparation and audit of accounts and the filing of annual returns. It shall notify the Authority, in writing, of any change in its financial year end, within ten (10) days of the date on which its directors resolve on such change.
- 10.5 **Management Accounts.** The Contractor shall comply with such written directions as the Authority communicates to the Contractor from time to time in respect of financial recording, and the preparation of management accounts. In particular, and without prejudice to the generality of the foregoing, the Contractor shall prepare monthly management accounts in such format as the Authority prescribes. The Contractor



shall complete the preparation of such monthly management accounts in respect of a given month within thirty (30) days after the end of such month.

10.6 **Certified Copies.** Without prejudice to the generality of the other provisions in this section 10.0, the Contractor shall:

10.6.1 (if it is a limited company which by law is required to have its accounts audited) send to the Authority certified copies of its accounts and balance sheet (and all other documents required by law to be affixed to them) within ten (10) days of the date upon which the auditors sign their audit report thereon;

10.6.2 (if it is a limited company which by law is not required to have its accounts audited) send to the Authority certified copies of its accounts and balance sheet (and all other documents required by law to be affixed to them) within ten (10) days of date upon which the directors sign such accounts;

10.6.3 (if it is a limited company) send to the Authority a copy of the annual return to be filed in the Companies Registration Office within ten (10) days of the date upon which it is signed on behalf of the company;

10.6.4 (if it is an Industrial and Provident Society) send to the Authority a certified copy of its annual report and accounts, and a copy of the auditors special report (if any), within ten (10) days of the date upon which they are signed by the auditors;

10.6.5 (if it is an Industrial and Provident Society) send to the Authority a copy its annual return to be filed with the Registry of Friendly Societies within ten (10) days of the date upon which it is signed by the auditor; and

10.6.6 certify any documents submitted by the Contractor to the Authority (including documents in relation to its Associated Companies) in such a manner as the Authority may consider appropriate.

10.7 **Right of Circulation.** The Contractor hereby authorises the Authority to furnish to any Minister having for the time being a function in relation to the activities of the



Authority, or to the Competition Authority, Communications Regulator or any regulatory or administrative body, such information (whether obtained from the Contractor or otherwise) about any matter affecting or regarding the Contractor as is in the possession or control of the Authority and is lawfully required by such Minister or body, as the case may be, in connection with its functions.

10.8 **Inspection.** Without prejudice to any other power it may have under Applicable Law or this Contract, the Authority (or a person nominated by it for this purpose) may at any time, upon giving seven (7) days' written notice to the Contractor, inspect and examine any premises at which the Contractor carries on business, and any equipment, facilities, transmitters, infrastructure or plant which are used by it and any documents, data or records which are in the Contractor's possession or under its control and the Contractor:

10.8.1 shall procure that all relevant persons co-operate with, and assist, the Authority (or its nominee) in any such inspections and examinations and provide the Authority (or its nominee) with all such information and answer such questions as may reasonably be required; and

10.8.2 shall, on receiving written notice from the Authority, provide to the Authority or to such nominee copies of such documents, data and records as are specified in such notice.

10.9 **Audit.** Without prejudice to any other power it may have under Applicable Law or this Contract, the Authority may at any time upon giving seven (7) days' written notice to the Contractor, by any of its officers (or by any person nominated by it for the purpose), carry out an audit of the accounts of the Contractor, and such officer or person will, in the conduct of such audit, have the same rights as those enjoyed by the auditor of a company under Applicable Law (including the Companies Acts 1963 to 2009).

10.10 **Employee Records etc.** Without prejudice to the generality of the other provisions in this section 10.0, the Contractor shall promptly furnish to the Authority such information as the Authority may require relating to the contracts of employment, remuneration and working conditions of the Contractor's employees or contractors.



SECTION 11.0 – TERMINATION AND SUSPENSION

11.1 **Termination.** The Authority, without prejudice to any other right or remedy, may (but is not obliged to) serve notice (a "**Termination Notice**") on the Contractor to terminate this Contract with, at the Authority's discretion, immediate effect or with a period of notice specified in the Termination Notice (during which period the Contractor shall continue to perform its obligations under this Contract):

11.1.1 if the Compliance Committee, pursuant to the 2009 Act or other Applicable Laws, recommends to the Authority that the Authority terminate the Contract; and/or

11.1.2 if a Termination Events occurs.

The Contract, subject to its terms, will cease to have effect from the effective termination date set out in the Termination Notice including (unless agreed otherwise by the Authority in writing) pending or during any appeal to the High Court in accordance with section 51(4) of the 2009 Act.

11.2 **Suspension.** Without prejudice to any other right or remedy available to the Authority, the Authority may (but is not required to) give written notice to the Contractor ("**Suspension Notice**") that it is suspending the Contractor's rights and obligations under this Contract, in whole or in part, from the date as is specified in the Suspension Notice if:

11.2.1 the Compliance Committee recommends to the Authority that the Authority suspend the Contract, in which case the Contract will be suspended for such period as the Compliance Committee recommends, or, having regard to all the circumstances, for such lesser period as the Authority considers appropriate; or

11.2.2 the Compliance Committee recommends to the Authority that the Authority terminate the Contract, and having regard to all the circumstances, the Authority decides not to terminate the Contract and instead to suspend the Contract for such period as the Authority considers appropriate; or



11.2.3 otherwise provided for in the 2009 Act;

and in any such case the period of the suspension will be specified in the Suspension Notice or, if no such period is specified, the suspension will continue until further written notice lifting the suspension.

11.3 **Effect of Suspension.** With effect from the date of the suspension:

11.3.1 the Contract, subject to its terms, will cease to have effect for the period for which it is suspended (except to the extent otherwise stated in the Suspension Notice) including (unless agreed otherwise by the Authority in writing) pending or during any appeal to the High Court in accordance with section 51(4) of the 2009 Act;

11.3.2 the Contractor shall immediately stop Broadcasting the Licensed Service via the Licensed Transmitters for the Specified Area (except as instructed otherwise by the Authority in the Suspension Notice) and shall do all such matters as are reasonably specified in the Suspension Notice; and

11.3.3 the Contractor is not entitled to any payment arising out of or in connection with the suspension, including in respect of loss of profit, turnover or contribution to overheads or otherwise, except to the extent otherwise required by Applicable Law.

The Contractor shall, if so instructed in writing by the Authority, resume Broadcasting the suspended Licensed Service in accordance with this Contract and the performance of its other obligations as soon as reasonably possible following receipt of such instruction.

11.4 **Termination Events.** Each of the following is a Termination Event, namely if:

11.4.1 the Contractor is Insolvent or the Authority, acting reasonably, considers that there is a risk that the Contractor is likely to become Insolvent shortly; and/or



- 11.4.2 the Broadcasting Licence is terminated or expires;
 - 11.4.3 the Authority does not consent to a Relevant Change which arises as a result of a Plc Application and the Authority and the Contractor fails to agree and sign a Plc Programme of Action within the period referred to in clause 5.25; and/or
 - 11.4.4 if, in the reasonable opinion of the Authority, it is necessary or prudent to terminate this Contract in order to comply with the requirements of Applicable Law (including the 2009 Act) or settle any complaint or challenge received by the Authority in such respect (including any arising out of or in connection with any process giving rise to the award, renewal or amendment of this Contract).
- 11.5 **Serious Failures.** Each of the following is a Serious Failure, namely if:
- 11.5.1 without limiting section 51(1)(a) of the 2009 Act, any false or misleading information of a material nature was given to the Authority by or on behalf of the Contractor before the making of this Contract;
 - 11.5.2 any false or misleading information of a material nature is given to the Authority by or on behalf of the Contractor after the making of this Contract;
 - 11.5.3 any information requested by the Authority has been withheld by or on behalf of the Contractor before or after the making of this Contract;
 - 11.5.4 the Contractor has failed to comply with its obligations under section 12.0 of this Contract or clauses 5.1, 5.17, 5.27 to 5.30, 7.11 or 7.12;
 - 11.5.5 the Contractor has, in the opinion of the Authority, failed to comply with any obligation or requirement whatever under the 2009 Act or other Applicable Law,
 - 11.5.6 the Contractor has, in the opinion of the Authority, failed to comply with any obligation or requirement whatever under the Broadcasting Licence,



- Broadcasting Code, Broadcasting Rules and/or any Complaints Code or Scheme;
- 11.5.7 the Contractor has failed, in the opinion of the Authority, to comply in a material respect with, or with a material term or condition of, this Contract;
 - 11.5.8 the Contractor has failed, in the opinion of the Authority, on more than one occasion to comply with this Contract;
 - 11.5.9 the Contractor has failed to comply with any term of the Broadcasting Licence;
 - 11.5.10 a matter that is described as Serious Failure in any other clause of this Contract has occurred;
 - 11.5.11 the Contractor threatens to cease, or ceases, broadcasting the Licensed Service (in whole or in part) or abandons this Contract;
 - 11.5.12 the Contractor commits any act, or permits or suffers to be done, anything (whether in connection with this Contract or in connection with any other activities or business of the Contractor) which has a negative impact on the image or reputation of the Authority, the Contractor and/or the Licensed Service or otherwise brings any of them into disrepute;
 - 11.5.13 the Authority, acting reasonably, considers that the Contractor is unable to provide the Licensed Service and perform its obligations under this Contract in the manner contemplated by the Application and/or this Contract;
 - 11.5.14 the Contractor has failed to comply with clause 2.2 or there is a change in any of the circumstances set out in clause 2.2;
 - 11.5.15 the Contractor receives three (3) Warning Notices in respect of the same or substantially the same matter; and



11.5.16 the Contractor does not pay in full any sums due to the Authority pursuant to clause 4.4.1 within ten (10) days of the latest date they were due for payment.

11.6 **Nature of a Serious Failure.** The Contractor acknowledges and agrees that:

11.6.1 it is a condition of this Contract that the Contractor conducts itself so that a Serious Failure does not occur;

11.6.2 the matters that are identified as a Serious Failure are considered by both the Authority and the Contractor to be of a material nature in principle, subject to the more particular circumstances in a given case;

11.6.3 one or more Serious Failures may be referred by the Authority to the Compliance Committee for its consideration;

11.6.4 it is possible that one or more Serious Failures on the part of the Contractor may give rise to, *inter alia*, an investigation by the Compliance Committee resulting in a finding by the Compliance Committee, for the purposes of section 51 of the 2009 Act, that the Contractor is not providing the Licensed Service in accordance with the terms of this Contract and/or a finding by the Compliance Committee, for the purposes of Chapter 2 of the 2009 Act, that there has been a serious or repeated failure by the Contractor to comply with a requirement referred to in section 53(1) of the 2009 Act;

11.6.5 neither the Authority nor the Compliance Committee has made any finding, pre-determination or pre-judgment in relation to whether, in a particular case, the nature of a Serious Failure that has occurred on one or more occasions will, in fact, be considered by the Compliance Committee to be of such seriousness as may, depending on the more particular circumstances, warrant the termination or suspension of the Contract (or any other sanction or action). The question of whether or not this is the case is a matter that will be determined by the Compliance Committee in any (and every) given case at that time and depending on the more particular facts of that case; and



- 11.6.6 clause 11.5 does not contain an exhaustive list of the matters that may give rise to an investigation by the Compliance Committee under sections 50 or Chapter 2 of the 2009 Act or otherwise or any recommendation by the Compliance Committee under section 51 or Chapter 2 of the 2009 Act or otherwise; and
- 11.6.7 clause 11.5 and this clause 11.6 in no way restricts or limits, and is without prejudice to the rights and remedies of, the Compliance Committee and the Authority (including under section 51(1)(a) of the 2009 Act).
- 11.7 **Effect of Other Rights.** The exercise, or decision not to exercise, rights under this Contract (such as to issue a Termination Notice, Warning Notice or Suspension Notice) or the 2009 Act (or other Applicable Laws) does not preclude the subsequent termination of the Contract (or exercise of any rights or remedies) by the Authority on the same or other grounds.
- 11.8 **Effect of Termination or Suspension.** The termination or expiry or suspension of this Contract does not affect either party's obligations accruing prior to the effective date of the termination, expiration or suspension or any rights, remedies or obligations of either party which the Contract provide or imply survive or commence after the expiration, termination or suspension of this Contract.

SECTION 12.0 – ASSIGNMENT

- 12.1 **Assignment.** The Contractor may not, without the prior written consent of the Authority:
- 12.1.1 assign, transfer or novate this Contract (in whole or in part) and/or any right or interest in it or any part of it; or
- 12.1.2 enter into any transaction or procedure under the Companies Acts or any Regulations made under the European Communities Acts to be read or construed therewith, which would or could have or purport to have the effect of assigning or transferring this Contract or any right or interest in it



or any part of it, including without limitation a scheme of arrangement under sections 201 – 203 of the Companies Act 1963, a merger or division under the European Communities (Mergers and Divisions of Companies) Regulations 1987 or a cross-border merger under the European Communities (Cross-Border Mergers) Regulations 2008; or

12.1.3 create any lien, charge or encumbrance of any kind affecting this Contract, any right or interest therein or any part thereof.

12.2 **Consideration.** In considering whether to grant its consent to a matter referred to in clause 12.1, the Authority will, in accordance with section 69(3) of the 2009 Act, have regard to the criteria specified in section 66(2) and, where applicable, section 66(4) of such Act.

SECTION 13.0 – GENERAL

13.1 **Exercise of Powers.** In exercising its powers and discretions under this Contract, the Authority shall behave in a manner which is consonant with its statutory remit. In so doing, it shall act reasonably, taking into account relevant circumstances and ignoring irrelevant circumstances; it shall act in good faith, and shall implement fair procedures.

13.2 **Proper Law and Jurisdiction.** This Contract, and any disputes or matters arising out of or in connection with it, is governed by and construed in accordance with the laws of Ireland and each of the parties hereby irrevocably submits to the exclusive jurisdiction of the Irish Courts.

13.3 **Notices.** Any notice under this Contract must be in writing and signed by or on behalf of the party giving it. Any notice under or in connection with this Contract must be in the English language and must be delivered personally or sent by pre-paid registered or recorded delivery post to the party intended to receive the notice at its address set out at the front of this Contract or any revised address notified in accordance with, and for the purposes of, this clause 13.3. Unless the contrary is proved, each notice is deemed to have been given or made and delivered (if by post) two (2) Business Days after posting or (if delivered by hand) the next Business Day after it was left at the relevant address.



- 13.4 **Entire Agreement.** This Contract represents the entire of the understanding of the parties concerning the subject matter of this Contract and overrides and supersedes, in particular, all prior discussions, agreements, letters of intent and other matters concerning it which are hereby revoked by mutual consent of the Parties. The Contractor confirms that it has not relied on, and has no remedies in respect of, any representations, statements, warranties, conditions and terms except those expressly set out in the Contract and that the parties have not entered into any collateral contract. Nothing in this clause 13.4 excludes any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.
- 13.5 **Execution.** Each Party is entering into the Contract as a principal on its own behalf. This Contract is effective only upon the same being executed and delivered by or on behalf of each party. This Contract may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed constitute an original; all such counterparts together constituting but one and the same instrument.
- 13.6 **Obligations.** If the Contractor comprises of more than one person, all the provisions of this Contract are entered into jointly and severally by each such person and all such persons are jointly and severally liable under this Contract. This Contract is binding on, and enures to the benefit of, the successor and assigns of any party (provided that this is without prejudice to section 5.0 and section 12.0).
- 13.7 **Waiver.** The provisions of this Contract may only be waived by a party in writing by express reference to this clause. A waiver by a party of any failure by the other to comply with any of the provisions of this Contract does not constitute a general waiver of such provision or of any subsequent act contrary to it. The failure or neglect by a party to enforce any provision of this Contract is not (and will not be deemed to be) a waiver of that party's rights under this Contract or Applicable Law and does not prejudice a party's right to take subsequent action in respect of such provision.
- 13.8 **Variation.** No variation of this Contract will be valid unless it is in writing and signed by or on behalf of each of the parties.



- 13.9 **Unenforceable Terms.** If any provisions of the Contract is held by any court of competent jurisdiction or other competent authority to be unenforceable, illegal or void in whole or in part, then such part may be severed by the relevant court or competent authority from the remainder of the Contract which will remain in full force and effect to the fullest extent permitted by Applicable Law.
- 13.10 **No Partnership.** This Contract does not constitute any party the legal representative, employee, employer, joint venturer, partner or agent of the other party nor does any party or any successor of any party have the right or authority to assume, create or incur any liability or obligation of any kind expressed or implied against or in the name of or on behalf of any other party. The Contractor is, at all times in connection with the operation of this Contract, an independent contractor.
- 13.11 **Saver of Rights.** The Authority has knowledge of the contents of the Memorandum and Articles of Association which are annexed to this Contract, and of the Shareholders Agreement(s) details of which are set out in the Second Schedule. Pursuant to the provisions of Section 5.0, the Authority may consent to any such document being amended or replaced. The Authority will not be deemed, by virtue of such knowledge or consent, to have consented to any transaction or event which may be contemplated in the Contractor's Memorandum and Articles of Association or in any such agreement. Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the Authority's rights are cumulative and the exercise of any right or remedy by the Authority is without prejudice to the Authority (and the Compliance Committee's) other rights and remedies under this Contract and/or Applicable Law (including the 2009 Act).



IN WITNESS WHEREOF this Contract has been entered into as Deed by the Authority and the Contractor the day and year first herein **WRITTEN**.



FIRST SCHEDULE – SPECIFIED AREA

[insert]



SECOND SCHEDULE – STATUS OF CONTRACTOR

[insert]



5.2.1 CERTIFICATE OF THE SECRETARY

I, [insert] of [insert], (the “**Company**”) HEREBY CERTIFY as follows: -

- A. The Company, which is registered in [insert] under CRO NO. [insert], has its registered office at [insert].
- B. The Directors of the Company are as follows:
- [insert] of [insert]
 - [insert] of [insert]
- C. No Director of the Company is:
- i. an undischarged bankrupt;
 - ii. a person who is subject to restriction pursuant to Section 150, Companies Act 1990, as the same has been or may be amended or extended; or
 - iii. a person who has been disqualified from acting as a Director pursuant to Section 160, Companies Act 1990, as the same has been or may be amended or extended.
- D. [insert] of [insert] is the Secretary of the Company.
- E. The Company has made all returns to the Companies Registration Office which it is legally required to make.
- F. The Company has an authorised share capital of €[insert] divided into:
- [insert]

The Company has an issued share capital of €[insert] divided into:

- [insert]

Such shares were issued for an aggregate consideration of €[insert]. All of such shares are legally and beneficially owned by [insert].

- G. [insert legal and beneficial owner] has an authorised share capital of €[insert] divided into:



- [insert]

[insert legal and beneficial owner] has an issued share capital of €[insert] divided into:

- [insert]

Such shares were issued for an aggregate consideration of €[insert]. All of such shares are legally and beneficially owned by [insert].

H. As at close of business on [insert] the following shareholders had holdings of 10% or more in the capital of [insert legal and beneficial owner]:

- [insert name and percentage shareholding]

I. The Company has not issued any options over shares in its capital.

J. The Company has not issued any Loan Stock.

K. No resolution to wind up the Company has been passed and no notice of meeting at which it is proposed to wind up the Company has issued or been published. No petition has been presented or is pending to wind up the Company, and no steps have been taken to place the Company in receivership, or to have a Receiver or Examiner appointed.

Dated the [insert]

[insert name and title]



MANAGEMENT / KEY PERSONNEL

1. Chief Executive Officer

[insert]

2. Programme Director

[insert]

3. Financial Controller

[insert]

4. Compliance Officer

[insert]



5.2.3 SHAREHOLDERS' AGREEMENT/S



5.2.4 STATEMENT PURSUANT TO CLAUSE 5.4

**SOUND BROADCASTING CONTRACT DATED [INSERT] BETWEEN BROADCASTING
AUTHORITY OF IRELAND AND THE CONTRACTOR (“CONTRACT”)
STATEMENT PURSUANT TO CLAUSE 5.4**

[insert name]

A. General

1. The provisions of section 1.0 of the Contract (Interpretation) apply to this statement.
2. In this statement I say that a person owns X% of a company when he may at a meeting of such company’s shareholders cast X% of the votes which may be cast at such meeting (rounded to one decimal place).
3. With the agreement of the Authority I have in this statement made no disclosure in Part B concerning any Relevant Person who is a Relevant Person only because he has a Substantial Interest in the Contractor.

**B. The manner and degree to which the Relevant Persons have Substantial interests
in the Contractor is as follows:**

[insert]

**C. The manner and degree to which the Contractor has Interests in Media Operators is
as follows:**

[insert]

Dated the **[insert]**

[insert]



THIRD SCHEDULE – PROGRAMME SCHEDULE AND POLICY STATEMENT



FOURTH SCHEDULE – TRANSMITTERS, LINK, STUDIO AND OTHER CONDITIONS



TRANSMITTERS, LINK, STUDIO AND OTHER CONDITIONS

1. The Contractor shall supply to the Authority plans of the studio design details before going on air. The plans must show the detail that defines the studio acoustic quality in terms of:
 - i. sound insulation;
 - ii. reverberation;
 - iii. resonance;
 - iv. reflective surfaces;
 - v. ventilation.

The Contractor must receive the prior written approval of the Authority before the studios may be used for Broadcast or programme recording purposes.

2. The Contractor shall ensure that all programme originating, linking and control equipment is of Broadcast quality.
3. Without prejudice to the generality of the foregoing, the Contractor shall ensure that the technical quality of the sound Broadcast by the Contractor complies with such standards as the Authority may from time to time notify to the Contractor in writing (whether in the form of technical regulations or otherwise).
4. The Contractor shall undertake, at its expense, such work to its premises, facilities, equipment, infrastructure or installations and provide such space and power supply and other facilities and services as may be required for the operation of any equipment, which the Authority may specify after consultation with the Contractor, to improve or monitor the technical quality of sounds Broadcast by the Contractor.
5. The Contractor shall arrange that all VHF Band II transmitter equipment and associated systems is kept within specification and the test equipment necessary to ensure this is provided and maintained at its own expense by the Contractor unless the Authority agrees otherwise in writing. In this connection, the Contractor shall ensure that all VHF Band II transmitter stations are routine tested annually and the performance figures are within the parameters set by the Commission for



Communications Regulation and details of the foregoing will, on request, be forwarded to the Authority.

6. The Contractor shall ensure that the:
 - i. transmitter front panel meters are calibrated;
 - ii. transmitter output power potentiometers, once set, are sealed with:
 - a) a long-curing tamperproof locking compound,
 - b) a secure mechanical locking device;
 - c) an alphanumeric password; or
 - d) a combination of the above;
 - iii. maximum output power of the transmitters, combined with the antenna gain, is not capable of exceeding the maximum licensed power level by more than 3dB. A derogation for low power assignments may be approved in writing by the Authority prior to transmitter purchases.

7. The Contractor shall ensure that:
 - i. An appropriate *Service Level Agreement* is in place with a reputable electricity supplier for the provision of electrical power.
 - ii. The electrical installation, to include all switch gear, connectors and conductors, is properly maintained to meet current regulations and supply the correct voltage.
 - iii. Throughout the installation industry best practice is followed in order to provide a safe and reliable installation.

8. The Contractor shall provide and maintain such stand-by equipment and facilities, including, in particular, an emergency power supply at each main transmitter and main programme originating point, for the continuance of Broadcasting in the event of a failure on the part of an electricity provider. In addition, the Contractor shall ensure that emergency power change-over switching are interlocked in a manner to ensure that local emergency power cannot be directed towards incoming power lines. For the avoidance of doubt, for the purposes of this Contract, a main transmitter is a transmitter station that is licensed to operate at a total ERP of greater than 27.5dBW or serves an area with a population in excess of 35,000 people.



9. The Contractor shall provide and maintain at its own expense such equipment and facilities, including standby studio, link and transmitter equipment, for the continuance of Broadcasting in the event of a failure of such equipment and facilities.

10. The Contractor shall ensure that all buildings and structures, both existing and new:

- i. are fully resistant to ground moisture and/or water vapour, weather and airborne moisture;
- ii. resist dead loads, imposed loads and wind loads;
- iii. provide stairways, ramps, landings and balconies in accordance with the above criteria;
- iv. meet relevant and specific thermal and acoustics standards;
- v. provide sufficient day-light, ventilation, heating, air conditioning, electrical and earthing, as well as foul, surface, rain-water and effluent water disposal;
- vi. conform to structural fire precautions and allow for the safety of occupants from fire and/or other hazards;
- vii. ensure access for fire appliances and means of assistance to the fire brigade,
- viii. facilitate ease of access, egress and use of studio facilities by people with disabilities and be in accordance with appropriate building regulations and any guidelines issued from time to time by the Authority or National Rehabilitation Board; and
- ix. including transmitter buildings and structures, conform with good construction practices.

11. The Contractor shall ensure that all buildings and structures, both existing and new, listed in paragraph 10 above conform to all relevant codes of practice and standards, both national and international, regarding:

- i. the transmitting mast for safety, lighting, lightning protection, etc;
- ii. the transmitter buildings preventing by means of a trip switch the unauthorised use thereof;
- iii. site protection of mast and transmitter buildings providing adequate security against entry by means of adequate perimeter fencing, such fencing not being less than 2.4 metres in height;



- iv. compliance with emission limits for non ionising radiation for both staff and the general public by use of fencing to limit access and by the implementation of safety procedures for staff and visitors to the transmission facility.
12. Where the Contractor arranges for its own staff or third party contractors to carry out or supervise “rigging” work or transmission maintenance that is related to the transmission of a VHF Band II Broadcasting service that is entered into as part of this Contract, then the Contractor shall fully and effectively indemnify, hold harmless and keep so indemnified on demand the Authority from and against any costs, claims, demands, damages, liabilities, losses, expenses and/or award arising out of or in connection with any death, sickness or injury to any person arising out of or in connection with the carrying out of such works. For the avoidance of doubt, it is the responsibility of the Contractor to ensure that any such works are performed by staff or contractors that have the necessary training, insurance cover and safety systems in place to supervise or complete such works in a safe and effective manner.
13. The Contractor shall provide, if so requested by the Authority, evidence of compliance with statutory or other requirements in relation to each studio and transmitter installation, as appropriate, to include the following:
 - i. planning permission;
 - ii. fire officer approval;
 - iii. Health Board approval;
 - iv. local authority engineering department approval;
 - v. approval of the Irish Aviation Authority; and
 - vi. any other licences or consents required by law.
14. The Contractor shall provide, if so requested by the Authority, the following information in relation to each studio and transmitter installation, as appropriate, to include the following:
 - i. the name, qualifications and experience of the person nominated to do the acceptance testing on each transmission system;
 - ii. the recorded acceptance testing figures for each transmitter under all the nominated parameters;



- iii. the name of the antennae manufacturer, radiation pattern and type of antennae;
 - iv. the design, features and dimensions of each studio; and
 - v. the name of the manufacturer of all studio to transmitter links and rebroadcast receivers together with the associated technical specifications.
15. The Contractor and the Authority will agree an appropriate system for recording and logging Broadcasting output. The Contractor shall install such a system if so requested by the Authority.
16. The Contractor shall, prior to installation, supply to the Authority, a radiation pattern chart of the VHF Band II antenna that it proposes to use in order to meet the terms of the Licence. After installation, the Contractor shall, if so requested by the Authority, supply to the Authority certification by the antenna manufacturer and/or field strength measurements that the antenna has been erected so as to conform with the Broadcasting Licence specifications.
17. Without prejudice to clause 10.8, the Authority, or its nominee, have right of access to inspect and examine all studio and transmission facilities of the Contractor without notice, and the Contractor shall provide immediate access if so requested by the Authority.



PRESENT when the Common Seal of
BROADCASTING AUTHORITY OF IRELAND
was affixed hereto:-

CHAIRPERSON

CHIEF EXECUTIVE

PRESENT when the Common Seal of
[insert]
was affixed hereto:-



Dated the **[insert]**

BROADCASTING AUTHORITY OF IRELAND

- and -

[insert]

SOUND BROADCASTING CONTRACT
