



ÚDARÁS  
CRAOLACHÁIN  
NA hÉIREANN

BROADCASTING  
AUTHORITY  
OF IRELAND

## **REQUEST FOR TENDERS**

**Under the Open Procedure**

**Tender for the provision of audio archiving expertise**

**Deadline for receipt of Tenders:**

**Tuesday, 5<sup>th</sup> April 2016 at 12:00 noon**

**Deadline for queries:**

**Monday, 21<sup>st</sup> March 2016 at 12:00 noon**

**All queries are to be submitted by e-mail only to:  
[skennedy@bai.ie](mailto:skennedy@bai.ie)**

**Replies and clarifications will be posted on  
[www.eTenders.gov.ie](http://www.eTenders.gov.ie)**

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# 1. INTRODUCTION

The Broadcasting Authority of Ireland (BAI) was established on October 1st, 2009, as the independent regulator for radio and television broadcasters in Ireland. The BAI has a range of objectives and functions as follows:

- The licensing of broadcasting services additional to those provided by RTÉ, TG4, the Houses of the Oireachtas Channel and the Irish Film Channel. The Authority also has responsibility for the licensing of multiplex services and for entering into contracts in respect of electronic programming guides (EPG's);
- Preparation and revision of Broadcasting Codes which govern the standards and practices to be observed by broadcasters;
- Broadcasting complaints;
- Responsibility for the management and disbursement of the Broadcasting Fund, a statutory scheme for the granting of funds for the creation of television and radio programmes concerning Irish culture, heritage and experience; and programmes to improve adult literacy; as well as for the granting of funds for the archiving of programme material produced in the State. The Scheme has been in operation since 2005. The Scheme is funded via 7% of the television licence fee.

The roles and responsibilities of the Broadcasting Authority of Ireland are set out in the Broadcasting Act 2009. The BAI is funded through a levy on all broadcasters licensed in the State.

The Broadcasting Authority of Ireland (BAI) is based at 2-5 Warrington Place, Dublin 2.

Under sections 69(6) – (12) of the Broadcasting Act 2009 (“the 2009 Act”) the BAI is assigned the responsibility to set down a format and categories to be followed by sound broadcasting contractors for the purposes of the storing and recording of programme material to safeguard sound programme material essential to the preservation of a historical record of Irish culture, heritage and experience and as a first step towards the development of an integrated approach to the archiving of programme material produced in the State.

The key provisions of sections 69(6) – (12) are set out hereunder and a copy of these sections can be referenced under appendix 1 of this document.

- The Authority must establish a contractual term or condition, requiring sound broadcasters to record and store programme material.
- The Authority must prescribe a format and categories to be followed by sound broadcasting contractors for the purposes of storing and recording of programme material.
- The amounts and categories to be recorded and stored may be varied by the Authority depending on the nature and amount of programme material, in addition to the financial burden associated with such recording and storage.

- Certain categories of programming are suggested for storage and recording including Irish Language and culture; Irish music, drama and entertainment; and, news and current Affairs or documentary.

## **2. SCOPE OF CONTRACT**

The Broadcasting Authority of Ireland (BAI) wishes to award a contract for the provision of appropriate expertise to assist the BAI determine the establishment of an integrated and workable approach for archiving relevant programming by licensed sound broadcasters in accordance with Section 69 (6) – (12) of the Broadcasting Act 2009.

Further information on the specification of requirements is contained in Appendix 1.

The work will commence on signing the contract with the successful candidate; it is currently envisaged that the project may take up to 6 months to complete. Milestones, dates and deliverables will be negotiated prior to contracting.

The BAI is using the open procedure for the award of this contract.

The closing date for tenders is Tuesday, 5<sup>th</sup> April, 2016, at 12:00 noon.

## **3. BUDGET**

The maximum budget for the contract term (excluding any extensions) is €50,000 (excluding VAT). Any tender which exceeds the maximum budget will be classed as ineligible for assessment.

Payment will be on the basis of invoices and will be per BAI payment terms (see Appendix 7).

Costs should be submitted in the Form of Tender in Appendix 2. All costs are to be provided exclusive of VAT.

## **4. INSTRUCTIONS TO TENDERERS**

### **4.1 Tender Documents - Ambiguity, Discrepancy, Error, Omission**

If you consider that you are missing any documents which would prevent you from submitting a comprehensive tender, please email Sally Kennedy at [skennedy@bai.ie](mailto:skennedy@bai.ie) as soon as possible.

Tenderers shall immediately notify the BAI should they become aware of any ambiguity, discrepancy, error or omission in the Request for Tenders (“RFT”). The BAI shall, upon receipt of such notification, notify all tenderers of its ruling in respect

of any such ambiguity, discrepancy, error or omission. Such ruling shall be issued in writing and shall form part of the RFT.

#### **4.2 Deadline for receipt of tenders**

The deadline for receipt of tenders is Tuesday, 5<sup>th</sup> April, 2016, at 12:00 noon.

#### **4.3 Queries**

All queries regarding this tender should be emailed to Sally Kennedy at [skennedy@bai.ie](mailto:skennedy@bai.ie). Responses to all such queries will be posted to [www.etenders.gov.ie](http://www.etenders.gov.ie) in order to ensure that no party has an unfair advantage over any other. The details of the person making a query will not be disclosed when circulating the response. The closing date for receipt of queries is Monday, 21<sup>st</sup> March, at 12:00 noon.

#### **4.4 Submission of tenders**

The completed tender shall be enclosed in a sealed envelope and delivered either by post or hand delivery using the following label as a template:

<p>Tender Enclosed (Audio Archiving Expertise)</p> <p><b>Deadline Date:</b> Tuesday, 5<sup>th</sup> April 2016, at 12:00 noon local time</p> <p>Delivery to: Sally Kennedy Broadcasting Authority of Ireland 2-5 Warrington Place Dublin 2</p>
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The number of copies of completed tenders required is four (4) hard copies and one electronic copy in one single PDF file only on CD ROM or memory stick.

The tenderer is fully responsible for the safe and timely delivery of the tender.

Emailed, faxed or late tenders cannot be considered and will be returned.

#### **4.5 Qualification of tenders**

Please note that qualifications to a tender may be considered a counter offer and may render the tender invalid.

#### **4.6 Modifications to tenders prior to the closing date for receipt of tenders**

Modifications to tenders will be accepted in the form of supplementary information and/or addenda, provided they are submitted in a sealed envelope before the closing date for receipt of tenders.

#### **4.7 Extension of tender period**

The BAI reserves the right, at its sole discretion, to extend the closing date for receipt of tenders by giving notice in writing to tenderers before the original closing date.

#### **4.8 Cost of preparation of tender**

The BAI will not be liable for any costs incurred by tenderers in the preparation of tenders or any associated work effort. It is the responsibility of the tenderer to ensure that they are fully aware and understand the requirements as laid down in the RFT. Tenderers will be responsible for any costs incurred by them in the event of their being required to attend clarification or other meetings.

#### **4.9 Tender Validity Period**

To allow sufficient time for tender assessment, a tender validity period of six months will apply. This period will begin on the closing date for receipt of tenders.

#### **4.10 Currency**

Tender prices may be submitted in Euro only. All invoices and payments will be in Euro only.

#### **4.11 Confidentiality**

The distribution of this RFT is for the sole purpose of obtaining tenders as referred to therein. The distribution does not grant permission or licence to use the documents for any other purpose.

Tenderers are required to treat the details of all documents supplied in connection with the tender process as private and confidential. Similarly the BAI undertakes to use its reasonable endeavours not to disclose to third parties any confidential information received from tenderers, subject to its obligations under law including (if applicable) the provisions of the Freedom of Information Act 2014.

#### **4.12 Conflict of interest**

Any conflict of interest involving a tenderer must be fully disclosed to the BAI. Any registerable interest involving the tenderer and the BAI or employees of the BAI or their relatives must be fully disclosed in the tender or should be communicated to the BAI immediately upon such information becoming known to the tenderer, in the event of this information only coming to their notice after the submission of a bid and

prior to the award of contract. The terms 'registerable interest' and 'relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act, 1995. Failure to disclose a conflict of interest may disqualify a tenderer or invalidate the award of contract, depending on when the conflict of interest comes to light.

#### **4.13 Freedom of Information Act**

Each of the parties will undertake to use their reasonable endeavours to hold confidential any confidential information received from the other party, subject to the BAI's obligations under law, including (if applicable) the provisions of the Freedom of Information Act 2014. The tenderer will agree that, should it wish any confidential information supplied by it to the BAI not to be disclosed, because of its commercial sensitivity, it will, when supplying such information, identify same and specify the reasons for its sensitivity. The BAI will consult with the tenderer about such sensitive information before making a decision regarding release of such information under the Freedom of Information Act 2014. However, the BAI will give no undertaking or assurance that such information will not be released under the provisions of the Freedom of Information Act 2014 and the final decision on whether or not to release such information rests with the BAI or as set out in the Freedom of Information Act 2014.

#### **4.14 Tax Clearance**

It will be a condition for the award of contract that the tenderer can demonstrate tax clearance throughout the lifetime of the contract. See Irish Revenue web site [www.revenue.ie](http://www.revenue.ie).

#### **4.15 Irish Legislation**

Tenderers should be aware that Irish national legislation applies in matters such as employment, working hours, official secrets, data protection, and health and safety. All relevant aspects of such legislation must be observed at all times by the successful service providers.

Tenderers must also have regard to statutory terms relating to minimum pay and to legally binding industrial or sectoral agreements in preparing tenders and delivering services under a contract.

#### **4.16 Confidentiality of evaluation**

After the official opening of tenders, information relating to the examination, clarification, evaluation and comparison of tenders and recommendations concerning the award of the contract will not be disclosed to tenderers or any other persons save as required by law.

#### **4.17 Determination of responsiveness**

After the official opening of tenders, the BAI or its staff or agents will determine whether each tender is substantially responsive to the requirements of the RFT.

Failure to comply with the requirements of this RFT may render the tender non-compliant and the tender may be rejected. Tenderers must:-

- a. Include all documentation specified in this RFT;
- b. Follow the format of this RFT and respond to each element in the order as set out in this RFT;
- c. Comply with all requirements as set out within this RFT;

If a material deviation exists that limits in any substantial way the BAI's rights or the tenderer's obligations under the contract, the tender shall be rejected.

#### **4.18 Clarification of tenders**

To assist in the examination and comparison of tenders, the BAI may ask tenderers for clarification of aspects of their tenders, including a breakdown of the financial proposal or other information.

#### **4.19 Consortia and Prime/Subcontractors**

Where a group of undertakings submit a tender in response to this RFT, BAI will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the contract only ("Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor and/or consortium members.

#### **4.20 Correction of errors**

Detailed pricing of all tenders will be examined for arithmetical errors and the following approach to correction of such errors will apply:

Where there is a discrepancy between the hard copy and the electronic copy of the tender, the hard copy will take precedence;

Where there is a discrepancy between amounts in figures and words, the amount in words shall apply;

Where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern.

The amount stated in the Form of Tender will be adjusted by the BAI in accordance with the above procedure and, with the agreement of the tenderer, shall be considered as binding upon the tenderer. A tenderer not accepting the correction of their tender as outlined may have their tender rejected.

#### **4.21 Interference**

Any effort by the tenderer to unduly influence the BAI, relevant BAI personnel or any other relevant persons or bodies in the process of examination, clarification, evaluation and comparison of tenders and in decisions concerning the award of contract shall have their tender rejected. In accordance with Section 38 of the Ethics in Public Office Act 1995 any money, gift or other consideration from a person holding or seeking to obtain a contract will be deemed to have been paid or given corruptly unless the contrary is proved.

#### **4.22 Inducements to purchase**

The BAI shall be entitled to disqualify a tenderer in the following circumstances:

- If the tenderer has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this contract award procedure or showing or forbearing to show favour or disfavour to any person in relation to this contract award procedure or any other contract award procedure with the BAI, or
- If like acts have been done by any other person employed by the tenderer or acting on its behalf (whether with or without the knowledge of the tenderer).

The Competition Act, 2014 makes it a criminal offence for tenderers to collude on prices or terms in a public tender procedure. Where the BAI has reasonable grounds to believe that a tenderer may have been involved in collusion, it shall be entitled to exclude such tenderer from the competition at its sole discretion.

#### **4.23 “Or Equivalent”**

Please note in relation to this tender document; where reference is made to a particular make, source, process, trademark, type or patent that this is not to be regarded as a de facto requirement. In all such cases it should be understood that the reference in question is accompanied by the words "or equivalent".

#### **4.24 Notification of tender evaluations**

All tenderers will be informed of the outcome of their tender following tender evaluation and subsequent clarifications (if any), as well as of any decisions reached regarding the award of this contract.

#### **4.25 Award to runner-up**

If for any reason it is not possible to conclude the contract with the designated successful tenderer emerging from this competitive process; or if having concluded the contract the BAI considers that the successful tenderer has not met, or cannot meet its obligations; the BAI reserves the right to award the next highest scoring tenderer the contract on the basis of the same terms at any time during the tender

validity period. This shall be without prejudice to the right of the BAI to cancel this competitive process and/or initiate a new contract award procedure at its sole discretion.

#### **4.26 Payment**

The BAI operates in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

#### **4.27 Law**

Both the BAI and the successful tenderer shall comply with Irish law and the jurisdiction of the Irish courts, which will govern the contract.

## 5. EVALUATION OF TENDERS

### 5.1 Eligibility Criteria

The BAI is using the Open Procedure for the award of this contract. While any interested party may submit a tender, only those tenderers who demonstrate that they meet the stated levels of economic, financial and technical capacity will be considered. In order to enable the BAI to ascertain tenderers' economic, financial and technical capacity, all tenders must address the following eligibility criteria in full. These criteria will be assessed on a pass / fail basis. Failure to comply with any rule and fulfil the criterion will result in the tenderer's elimination from the competition.

Tenderers must complete ALL of the tables below. If tenderers do not have in their possession the evidence required under any of the selection criterion when submitting their tender proposals, they may, in the interim, complete the Form of Self-Declaration contained in Appendix 3.

#### 5.1.1 Contact details

**Please complete the table below, proving contact details for your organisation. The table may be expanded as required.**

5.1.1 CONTACT DETAILS	
Name of Organisation	
Contact Person	
Title of Contact Person	
Telephone Number of nominated contact	
E-mail Address of nominated contact	
• Information regarding partnership or subcontracting including the names of all sub-contractors and/or consortium members who will be involved in the provision of services;	

<ul style="list-style-type: none"> <li>• A description of the role to be fulfilled by each subcontractor and/or consortium member; and</li> <li>• The name, title, telephone number and email address of the nominated contact authorised to represent the main contractor</li> </ul>	
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5.1.2. *Insurances*

Tenderers must provide evidence that they possess the forms and levels of insurance specified. Alternatively, tenderers must provide a broker's letter indicating that the forms and levels of insurance specified can be put in place if the tenderer is successful in this competition.

**Please provide evidence (e.g., certificates of insurance) that you possess the forms and levels of insurance specified or that these insurances can be put in place if you are successful in this competition.**

**OR**

**If you do not have in your possession the evidence required under this eligibility criterion when submitting your tender proposals, you may, in the interim, rely upon the Form of Self-Declaration contained in Appendix 3.**

The Form of Self-Declaration confirms either (a) the possession of the forms and levels of insurance specified or (b) that the forms and levels required will be put in place if successful in this competition. In respect of (a), the BAI will require copies of the tenderers' insurance certificates upon request. In respect of (b), the BAI will require, upon request, provision of a broker's letter confirming the tenderer's capacity to put the specified forms and levels of insurance in place if successful in the competition.

It will be a condition for the award of the contract that the successful tenderer provides evidence to demonstrate that it has in place the specified levels of insurance.

5.1.2 INSURANCES		
Insurance type	Level required	Section / appendix of your tender submission where this evidence is provided
Employers Liability	€12.7m	
Public Liability	€6.5m	
Professional Indemnity	€100,000	
ALTERNATIVELY		
Broker's letter indicating that the forms and levels of insurance required can be put in place if the tenderer is successful in this competition		
OR		
The Form of Self Declaration (Appendix 3) is completed in respect of this criterion		Yes / No

5.1.3 *Financial capacity*

Tenderers must provide evidence that they attained a turnover of at least €50,000 in any one of the three previous financial years.

**Please provide appropriate evidence (e.g., auditor's statement or financial accounts) detailing your turnover for each of the three previous financial years.**

**OR**

**If you do not have in your possession the evidence required under this eligibility criterion when submitting your tender proposals, you may, in the interim, complete the Form of Self-Declaration contained in Appendix 3.**

The Form of Self-Declaration confirms either (a) the possession of appropriate evidence that demonstrates a turnover of at least €50,000 in any one of the three previous financial years. The BAI will require, upon request, provision of such evidence.

<b>5.1.3 FINANCIAL CAPACITY</b>	
Type of evidence provided	Section / appendix of your tender submission where this evidence is provided
OR	
The Form of Self Declaration (Appendix 3) is completed in respect of this criterion	Yes / No

**5.1.4 Tax clearance**

Tenderers will be required to produce a tax clearance access number and tax reference number so that the BAI can verify their tax clearance before the contract is awarded and at any time thereafter.

**Please provide a tax clearance access number and tax reference number from the Irish Revenue Commissioners.**

**OR**

**If you do not have in your possession the evidence required under this eligibility criterion when submitting your tender proposals, you may, in the interim, complete the Form of Self-Declaration contained in Appendix 3.**

The Form of Self-Declaration confirms that the supplier will make a tax clearance access number and tax reference number available to the BAI upon request.

#### 5.1.4 TAX CLEARANCE

Section / appendix of your tender submission where this evidence is provided	
<b>Alternatively, the BAI can verify your tax clearance status via the Revenue's online facility (<a href="https://www.revenue.ie/itp/view.jsp">https://www.revenue.ie/itp/view.jsp</a>).</b>	
Should you wish the BAI to avail of this option, please the following fields:	
Do you grant the evaluation panel permission to verify your tax position online?	
Tax Clearance Access Number	
Tax reference number	
Expiry Date (as shown on your tax clearance certificate)	
Signature	
OR	
The Form of Self Declaration (Appendix 3) is completed in respect of this criterion	Yes / No

All self-declared information will be verified prior to the award of the contract. In the event that this verification process reveals that misleading or inaccurate information has been provided, your tender will be rejected from further consideration. Moreover, you may be precluded, at the discretion of the BAI, from participating in future competitions. In the event that, following a request from the BAI, you are not in a position to provide the required evidence within five (5) working days, your tender will be eliminated from further consideration.

5.1.5 *Declaration of Bona Fides*

Tenderers must complete and sign the Declaration of Bona Fides. Non-compliance under any heading of the declaration will result in the automatic elimination of the tender in question.

**Please complete and sign the Declaration of Bona Fides contained in Appendix 4 of this document.**

5.1.6 *Declaration of Statutory Obligations*

Tenderers must complete and sign the Declaration of Statutory Obligations.

**Please complete and sign the Declaration of Statutory Obligations contained in Appendix 5 of this document.**

5.1.7 *Previous experience*

Tenderers must demonstrate that they have delivered three contracts of a similar nature and scale to the BAI's requirements under this tender during the previous three years.

**Please provide evidence of your previous experience in this area by completing the tables below. These tables may be expanded as necessary.**

**5.1.7 PREVIOUS EXPERIENCE (Project #1)**

Title of project	
Client name	
<b>Client contact details</b>	
Contact name	
Contact email	
Contact telephone	
<b>Contract details</b>	
Annual value of contract	
Start date of contract	
Range of services provided	
How the nature and scale of project corresponds to the BAI's requirements for this contract	

**5.1.7 PREVIOUS EXPERIENCE (Project #2)**

Title of project	
Client name	
<b>Client contact details</b>	
Contact name	
Contact email	
Contact telephone	
<b>Contract details</b>	
Annual value of contract	
Start date of contract	
Range of services provided	
How the nature and scale of project corresponds to the BAI's requirements for this contract	

**5.1.7 PREVIOUS EXPERIENCE (Project #3)**

Title of project	
Client name	
<b>Client contact details</b>	
Contact name	
Contact email	
Contact telephone	
<b>Contract details</b>	
Annual value of contract	
Start date of contract	
Range of services provided	
How the nature and scale of project corresponds to the BAI's requirements for this contract	

## 5.2 Award Criteria

This contract will be awarded to the tenderer submitting the most economically advantageous tender, identified following application of the award criteria and weightings detailed hereunder. It is emphasised that the BAI is not bound to accept the most economically advantageous tender or any tender received, and reserves the right to accept or reject in whole or in part any or all tenders received.

Criterion	%	Minimum score required <sup>1</sup>
<b>Methodology and approach</b>		
The proposed candidate should provide information on the processes and mechanisms they will employ to assist the BAI meet the aims of this project, being cognisant of the aims set out under the "specification of requirements" section of this document.	35%	21
<b>Quality and Balance of the Resources proposed</b>		
The proposed candidate will be assessed on the quality, quantity and balance of human resources allocated to ensure effective delivery of the project. This will be based on the curricula vitae of the proposed personnel and any relevant highlighted experience.	30%	18
<b>Methodology for managing contract and continuity of supply</b>		
The proposed candidate should provide a comprehensive description of their methodology for managing the contract including a project plan, timeframe for reporting, response and delivery of the project and management of internal resources. Measures which address any potential issues which could impact on the delivery of the project should also be set out.	5%	3
Ultimate cost	30%	N/A
Total	100%	-

Tenderers must achieve a minimum rating of 60% of the total marks available for each of the individual qualitative criteria in order to avoid elimination from the competition.

### *Calculation of 'Ultimate Cost'*

In order to arrive at a single cost figure for evaluation purposes, the BAI will use the costs and any associated notional quantities listed in the Form of Tender (Appendix 2).

<sup>1</sup> 60% of the maximum achievable score

The lowest ultimate cost tender which also meets all of the minimum requirements specified in these tender documents will receive the maximum score achievable under this criterion. The scores of the other valid tenders will be calculated by using the following formula:

$$\frac{\text{Maximum score achievable} \times \text{Cost of the lowest valid tender}}{\text{Cost of the valid tender in question.}}$$

### **5.3 Verification / clarification meetings**

Meetings for the purpose of verification or clarification may be carried out with appropriate tenderers as part of the evaluation process in order to identify the most economically advantageous tender prior to the award of contract. Such meetings may be required in order to verify the scores achieved by tenderers in respect of their written tenders.

For the avoidance of doubt, tenderers should note that mere performance at interview will not of itself be evaluated.

In the event that such meetings are required, information regarding location and times will be communicated to the chosen tenderers. In order to ensure the optimum effectiveness of such meetings, it is strongly recommended that the key personnel proposed to deliver the services should attend.

# APPENDIX 1 – SPECIFICATION OF REQUIREMENTS

The BAI invites Tenders for the provision of appropriate expertise to assist the BAI determine the establishment of an integrated and workable approach for archiving relevant programming by licensed sound broadcasters in accordance with Section 69 (6) – (12) of the Broadcasting Act 2009.

A copy of the Act is available at <http://www.irishstatutebook.ie/eli/pdf/2009/en.act.2009.0018.pdf>

Key areas of work envisaged include:

- Assist drafting a project plan, to include short and long term approaches, for realising recording and storage practices set out under the Act.
- Identifying and prescribing appropriate format/s for retention of relevant material.
- Prescribing appropriate metadata standards for material.
- Advice on potential prioritisation of relevant programming.
- Identifying and advising on potential storage solutions and data migration.
- Advice on international best practice and potential developments in the area of archiving broadcast material.
- Advice on potential costs and resources required to implement Section 69(6) – (12) for each broadcaster and the BAI.
- Advise on potential issues and assist in identifying solutions to same.
- Liaise with all relevant broadcasters and identify current technical capabilities/knowledge in relation to archiving programme material.
- Prescribing solutions for accessibility, including copyright and commercial issues.
- Provide feasibility studies into potential archiving approaches.
- Assist drafting a policy document for the Archiving of Programme Material by Sound Broadcasting Contractors licensed by the BAI.

The BAI also welcome views from prospective candidates on additional tasks that they envisage may be applicable to the aims of this project that have not been included above.

***\*Candidates should set out the methodology they will use in order to deliver the key areas of work outlined above.***

## **Candidate Requirements**

Candidates need to demonstrate the following:

- An in-depth understanding of the principals of archiving and the archiving profession.
- An in-depth understanding of digital archiving solutions and developments relating to audio formats.
- Advanced information technology skills.
- An in-depth knowledge of audio formats and categories.
- An in-depth understanding of audio transfer solutions.
- An in-depth understanding of Irish and EU copyright requirements relating to the retention of audio programming.
- An in depth understanding of international standards relating to metadata standards for audio formats.

- An understanding of the commercial and community Irish sound broadcasting sector.
- A proven ability to communicate positively and effectively with a range of individuals and organisations.
- Strong project management experience.
- A proven ability to work independently and as part of a team.
- A proven ability to work to set deadlines within an allocated budget.
- Excellent report writing and analytical skills.

The BAI also welcome views from prospective candidates on additional requirements that they envisage may be relevant to the aim of this project that have not been included above.

### **Resource allocation**

Candidates should specifically identify all inputs, personnel and respective rates that will be used to deliver the project.

### **Timeframe**

The work will commence on signing the contract with the successful candidate; it is currently envisaged that the project may take up to 6 months to complete. Milestones dates and deliverables will be negotiated prior to contracting.

## APPENDIX 2 - FORM OF TENDER

To: Broadcasting Authority of Ireland (BAI)

From: .....

Cost	
Total cost of contract (excluding VAT)	

**Note to tenderers: The cost proposal must be inclusive of all out of pocket expenses, travel, subsistence and ancillary expenses or costs of every description.**

I / We confirm that I/we

- Will keep this offer for the contract open for acceptance by you for a period of 6 months from the date of deadline for submission of tenders,
- Agree that you are not bound to accept the most economically advantageous or any tender you may receive,
- Have read and thoroughly examined the Request for Tenders ("RFT"),
- Fully understand the RFT and the BAI's requirements,
- Undertake to treat the details of this RFT, its tender [and any subsequent negotiations] as private and confidential,
- Acknowledge that acceptance by the BAI of its tender will not constitute a binding and enforceable agreement and that a legally enforceable agreement will not exist until and unless the contract has been executed by the BAI and the tenderer,
- Have availed of all offers for additional information or have otherwise satisfied myself/ourselves as to conditions that may in any manner affect the performance of the contract,
- Have included everything necessary for the performance of the contract which are either expressly stated in the RFT or contained in any supplementary information or which could reasonably be inferred therefrom,
- Have found no errors, omissions, conflicts or ambiguities in the RFT except those which I/We have brought to the attention of the BAI before the latest date for submitting queries,
- Have included for compliance with all statutory requirements applicable in Ireland and those applicable in any country where parts of the contract may be performed that are in force 7 days prior to the deadline for receipt of tenders,
- Will not, if awarded the contract, employ labour in a manner that is discriminatory in relation to gender, race, religious beliefs, age etc.,
- Will not, if awarded the contract, source any part of the contract in countries subject to official international trading sanctions.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

**Failure to sign this Form of Tender will invalidate the offer**

Name (block capitals)	
On behalf of (tenderer name)	
Contact address:	
Telephone	
Email	

## APPENDIX 3 – FORM OF SELF-DECLARATION

<b>SELF DECLARATION OF FINANCIAL AND ECONOMIC CAPACITY</b>	
To	Broadcasting Authority of Ireland
From:	
Competition:	Tender for the provision of audio archiving expertise
<b>Tax clearance</b>	Please confirm (Yes / No)
I confirm that I have applied for a Tax Clearance Certificate, which will be made available promptly following receipt of a request from the BAI.	
<b>Turnover</b>	Please confirm (Yes / No)
I confirm that I have adequate financial capacity to meet the turnover requirements specified in respect of Eligibility Criterion 5.1(3), and will provide appropriate evidence to this effect promptly following receipt of a request from the BAI	
<b>Insurances</b>	Please confirm (Yes / No)
I confirm possession of the following forms and levels of insurance, and will provide insurance certificates as evidence of this fact promptly following receipt of a request from the BAI: Public Liability Insurance                    €6.5m Employer's Liability Insurance                €12.7m Professional Indemnity                         €100k	
<b>OR</b>	
I undertake to put the required forms and levels of insurance in place if successful in the competition, and will provide a broker's letter indicating my capacity to do so promptly following receipt of a request from the BAI.	
Name:	
Position:	
Telephone:	
Email:	
Signature:	
Date:	

**THIS FORM MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE TENDERER'S ORGANISATION**

## APPENDIX 4 - DECLARATION OF BONA FIDES

Name of Tenderer:			
Address:			
Number	QUESTION Please tick Yes or No as appropriate to the following statements relating to the current status of your organisation	YES	NO
		Please ✓	
1.	The Tenderer is bankrupt or is being wound up or its affairs are being administered by the court or has entered into an arrangement with creditors or has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations.		
2.	The Tenderer is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations.		
3.	The Tenderer, a Director or Partner, has been convicted of an offence concerning his professional conduct by a judgement which has the force of res judicata or been guilty of grave professional misconduct in the course of their business.		
4.	The Tenderer has not fulfilled its obligations relating to the payment of taxes or social security contributions in Ireland or any other State in which the Tenderer is located.		
5.	The Tenderer, a Director or Partner has been found guilty of fraud.		
6.	The Tenderer, a Director or Partner has been found guilty of money laundering.		
7.	The Tenderer, a Director or Partner has been found guilty of corruption.		
8.	The Tenderer, a Director or Partner has been convicted of being a member of a criminal organisation.		
9.	The Tenderer has been guilty of serious misrepresentation in providing information to a public buying agency.		
10.	The Tenderer has contrived to misrepresent any information relevant to this tender.		
<b>THIS FORM MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE TENDERER'S ORGANISATION</b> I certify that the information provided above is accurate and complete to the best of my knowledge and belief. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and future tenders.			
SIGNATURE		Date	
Name		Position	
Telephone		Email	

# APPENDIX 5 - STATUTORY OBLIGATIONS DECLARATION

To: Broadcasting Authority of Ireland

Tender for: Provision of audio archiving expertise

We: \_\_\_\_\_,

confirm that:

We are fully compliant with the minimum terms and conditions of the Employment Regulation Order of the Irish Labour Court, with the Working Time Directive and with all other relevant employment legislation, as well as all relevant Health & Safety Regulations.

AND

We have procedures in place to ensure that our subcontractors, if any are used for this contract, apply the same standards.

I certify that the information provided above is accurate and complete to the best of my knowledge and belief. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in future Tenders.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Failure to sign this Declaration will invalidate the offer

Name (block capitals)	
On behalf of (Tenderer name)	
Contact address:	
Telephone	
Email	

## APPENDIX 6 - RESOURCE ALLOCATION SCHEDULE

Please provide details for the individuals nominated to undertake the contract for the BAI. Comprehensive curriculum vitae must be included for each individual identified.

Name of proposed team member(s)	Role
Name of Back-Up Team Members(s) in the case of unavailability of core team	

Tenderers must guarantee that the above staff shall be fully available for delivery of the services identified, and that any proposed change to the assigned staff will be agreed in writing with BAI. In this case details of replacement staff must be made known to BAI.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Name in Capitals: \_\_\_\_\_

Company: \_\_\_\_\_

# **APPENDIX 7 – BROADCASTING AUTHORITY OF IRELAND TERMS AND CONDITIONS**

These terms and conditions shall apply to the Contract between the Authority and the Supplier and shall not be deemed to be amended or excluded in whole or part save by written agreement duly executed by the Supplier and the Authority and making express provision for such amendment or exclusion. Any rights or remedies of the Authority otherwise or elsewhere provided for in the Tender Documents shall be deemed to be in addition to and not to limit the rights and entitlements of the Authority pursuant to these terms and conditions. Any terms or conditions of the Supplier (including any terms and conditions contained in Schedule D) whether contained in quotations, invoices or otherwise, conflicting with or purporting to amend or exclude these terms and conditions shall be deemed not to apply.

## **1. General Terms**

- 1.1 This Contract takes legal effect on and from the Effective Date and continues in full force and effect for the Term unless earlier terminated in accordance with this Contract.
- 1.2 The Supplier undertakes to perform the Services from the Effective Date until expiry of the Term to the highest professional standards at all times and in compliance with the terms of this Contract.
- 1.3 The Supplier shall accept sole responsibility for acquiring any permits or licences necessary for its performance of the Contract.
- 1.4 The Authority shall not be responsible under any circumstances for any loss or damage suffered by the Supplier or its servants or agents in the performance of the Contract, nor entertain any claim relating to such damage.

## **2. Probationary Period**

- 2.1 In the event that the Term exceeds six (6) months, the first six (6) month period of the Term will be a probationary period.
- 2.2 Without prejudice to any other rights of the Authority pursuant to this Contract, the Authority may terminate this Contract for any reason or no reason during the probationary period on one week's notice to the Supplier.
- 2.3 During this probationary period the performance and suitability of the Supplier to perform the Services will be monitored. At the end of the probationary period the Supplier will be informed in writing if it has successfully completed the probationary period.

## **3. Payment Terms**

- 3.1 Prior to the performance of any Services under this Contract it shall be the responsibility of the Supplier to procure the issue from the Authority of a valid written purchase order for the relevant Services and the Services may be supplied only following issue of such written purchase order by the Authority to the Supplier.

- 3.2 In accordance with the Late Payments in Commercial Transactions Regulations 2012, payment will be made within 30 (thirty) days of receipt of a complete and accurate invoice, delivered by the Supplier to the Authority's Finance Department, quoting a valid purchase order number.
- 3.3 Payment will not be made to a Supplier who has failed to supply or refused to comply with a request for a current Tax Clearance Certificate.
- 3.4 The Authority shall withhold tax as required by the Taxes Consolidation Act 1997 (as amended) and the Revenue Commissioners in respect of payments made by public bodies for professional services.
- 3.5 Any and all taxes applicable to the provision of the Services under and in accordance with this Contract will be the sole responsibility of the Supplier and the Supplier so acknowledges and confirms.
- 3.6 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to the Authority in respect of any breach of this Contract), the Authority may deduct, with prior notice to the Supplier, that sum from any sum then due, or which at any later time may become due to the Supplier by the Authority under this Contract.

#### **4. Warranties**

- 4.1 The Supplier warrants, represents and undertakes that, subject to the remaining provisions of this clause 4:
  - 4.1.1 it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Contract and to provide the Services hereunder;
  - 4.1.2 it owns, has obtained or is able to obtain, all relevant titles that are necessary to allow it carry out its obligations and responsibilities under this Contract;
  - 4.1.3 It has not and will not in the supply of the Services under this Contract at any time infringe the intellectual or other property rights of any third party;
  - 4.1.4 it is entering into this Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
  - 4.1.5 it will provide the Services in accordance with the terms and conditions of this Contract;
  - 4.1.6 it will provide the Services with all reasonable due diligence, skill and care, and that all persons engaged by the Supplier in connection with the provision of the Services shall be competent, appropriately qualified and experienced having regard to the Services being provided;

- 4.1.7 following a written request to that effect by the Authority, the Supplier will procure the immediate removal of any member of the Supplier's personnel and the replacement by another suitably qualified member of the Supplier's personnel. The Authority agrees to act reasonably and in good faith in relation to any such request;
- 4.1.8 it has acquainted itself with and shall comply with all relevant legal and/or regulatory statutes, bylaws, regulations and requirements of any government, local or other competent authority and best industry practice including but not limited to those relating to tax, health, safety and the environment, employment, and those made known by the Authority to the Supplier in this Contract, the Tender Documents (if applicable) or otherwise in connection with the Services;
- 4.1.9 any materials, software, facilities and equipment used for or incorporated into the Services shall be fit for their intended purpose and of good quality and workmanship;
- 4.1.10 it will maintain the confidentiality and integrity of any Customer Information or Confidential Information acquired or accessed by the Supplier and/or Supplier Personnel in the course of providing the Services.
- 4.1.11 the Services shall not infringe any patent, trademark, registered design, copyright or other right of any third party and the Supplier shall indemnify the Authority against all actions, claims, suits, demands, losses, costs or expenses incurred or likely to be incurred by the Authority under this heading and the Supplier covenants and undertakes not to enter into any agreement which in any way interferes with the rights granted by the Supplier to the Authority under this Contract.

"Customer Information" means all information, data, records, material, programs, databases, e-mails, accounts information and all other information of the Authority which is to be located and/or stored on the Servers as may be part of the provision of Services.

"Servers" means the server(s) on which the Customer Information will be located and/or stored in the course of providing the Services which for the avoidance of doubt may be virtual servers in a multi tenancy environment.

- 4.2 The warranties and remedies provided for in this clause 4 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Authority of all or part of the Services in respect of such warranties and remedies.
- 4.3 The Supplier undertakes to notify the Authority forthwith of any material change to the status of the Supplier with regard to the warranties, representations and undertakings as set out in this clause 4 and to comply with all reasonable directions of the Authority with regard thereto which may include termination of this Contract.

## 5. Supply of Services

- 5.1 The Services shall be supplied to the satisfaction of the Authority in strict conformity with this Contract and the Specification of Services set out in Schedule A, except as may otherwise be agreed in writing by the Authority. The Supplier will provide such reports, if any, as are detailed in Schedule A promptly.
- 5.2 The Supplier shall during the term of the Contract perform the Services and shall take all appropriate steps having regard to its obligations under the Contract to ensure that all matters are dealt with to ensure performance of the Services as provided for in the Contract and to achieve the timely, efficient and economic performance of its obligations under the Contract in a manner and to the standards and within the time stipulated in the Contract.
- 5.3 If the Authority is not satisfied with the standard of any part of the Services provided, the Authority, at its absolute discretion, may either:
  - 5.3.1 require the Supplier, within a specified period and at no charge, to re-perform and/or re-execute the relevant Services to its satisfaction; or
  - 5.3.2 perform and/or execute all or part of the relevant Services by using its own personnel or by engaging a third party to do so and all costs and expenses incurred by the Authority in such regard will be deducted from any sums due or to become due to the Supplier under this Contract, or will be recoverable from the Supplier by the Authority as a debt free from counterclaim, set-off or similar.
- 5.4 Without prejudice to any other rights of the Authority under the Contract, the Authority may terminate this Contract with immediate effect if the Supplier does not comply with any requirement under condition 5.3 within the time specified or if the Authority is not satisfied with the standard of any such remedial Services undertaken by the Supplier.
- 5.5 The Supplier will prioritise its obligation under this Contract in relation to the other business activities of the Supplier to ensure that it can comply with its covenants and obligations in the manner contemplated by this Contract.
- 5.6 The Supplier acknowledges that it does not have any exclusive right to provide the Services, or services similar or identical to the Services, to the Authority, and that there is no guarantee of any value, volume or frequency of Services unless otherwise specified.
- 5.7 The Supplier acknowledges and agrees that the Authority is deemed to have fully relied on the Supplier's skill, expertise and experience in providing the Services.
- 5.8 The Supplier shall comply with all relevant standards and codes (including inter alia voluntary codes) and all applicable laws, ordinances, statutes, orders, rules and regulations of any governmental or other applicable authority having jurisdiction (hereafter "Laws") in its performance of the services and production and provision of the Services hereunder and shall ensure that the Services are in compliance with such Laws and without prejudice to the generality of the foregoing shall ensure that the production, creation and transmission of all materials supplied or generated pursuant to the Contract shall be designed and implemented in strict compliance with those Laws and shall obtain

and pay for, at its own cost all licences and permits necessary for the performance of Services under the Contract.

- 5.9 Nothing in this Contract shall prohibit or be deemed to prohibit the Supplier from providing services similar to the Services to any other third party, providing that the provision of services to any such third party shall not interfere or adversely affect the provision of the Services to the Authority.

## **6. Change Control Procedure**

- 6.1 Both parties agree that any request for change to the scope of the Services will be processed in writing according to the following Change Control Procedure.
- 6.1.1 At any time during the term of this Contract, either party may propose a change or changes to any part or parts of this Contract.
- 6.1.2 The Change Control Procedure set out in this clause 6 will apply to all changes irrespective of whether the Supplier or the Authority proposes the change.
- 6.1.3 A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services and the supply of Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- 6.1.4 The parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and a tender submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the parties.
- 6.1.5 On approval of an Impact Assessment, this Contract and/or the schedules should be updated and revised as appropriate and in writing.
- 6.1.6 In the event that either party rejects the Impact Assessment, the change(s) shall not take place and the parties shall continue to perform their obligations under this Contract.
- 6.1.7 The Supplier and the Authority will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented.

## **7. Specifications**

- 7.1 The Authority agrees that, from time to time, the Supplier may subject to the prior written approval of the Authority:
- 7.1.1 for operational reasons, change the technical Specification of Services to be provided by the Supplier hereunder provided it does not materially affect the performance of the Services; and/or
  - 7.1.2 suspend the Services, for operational reasons, such as repair, maintenance or improvement of the Services or because of an emergency; and/or
  - 7.1.3 give to the Authority instructions with regard to the use by the Authority of its systems which are reasonably necessary for reasons of health and safety or to enable the Supplier to effectively deliver the Services.
- 7.2 The Supplier will restore the Services within a timeframe approved by the Authority.

## **8. Intellectual, Industrial and Commercial Property Rights**

- 8.1 All specifications, products or documents supplied by the Authority in connection with the Contract together with all intellectual property rights, design rights or copyright connected therewith shall remain the property of the Authority.
- 8.2 The Supplier, with full title guarantee, irrevocably grants and assigns to the Authority, by way of an exclusive and immediate assignment of present and future copyright, subject to clauses 8.3 and 8.4 all of the Supplier's right title and interest of whatsoever nature, whether vested or contingent in and to the Services and all related rights and properties for the Authority to hold absolutely throughout the world in all languages and in any and all media (whether now known or hereafter invented) for the full period of copyright and all renewals, revivals, reversions and extensions and thereafter in perpetuity.
- 8.3 The Supplier grants to the Authority a non-exclusive, non-transferable, perpetual, irrevocable, royalty free, multiple user and worldwide licence to use any software supplied by the Supplier in connection with the provision of the Services to the extent incorporated in, and necessary in conjunction with, the Services or any deliverables provided under this Contract in order to allow the Authority to utilise the Services or any deliverables so provided in accordance with their intended use for the Authority's business purposes.
- 8.4 The Authority acknowledges that in the course of the Supplier's provision of the Services, the Supplier may use products, materials or methodologies proprietary to it or third parties. The Authority agrees that it shall not obtain any rights in such proprietary products, materials and methodologies (or as may be modified or enhanced) except pursuant to a separate written agreement executed by the parties and that such products, materials and methodologies shall be returned to the Supplier (within five (5) Business Days) in good order and condition on the request of the Supplier or on the termination of this Contract.
- 8.5 The provisions of this clause will continue to apply notwithstanding the termination of this Contract for any reason and notwithstanding the completion of the Services.

- 8.6 The Supplier shall indemnify, defend and hold harmless the Authority from any and all damages and costs awarded by a court of competent jurisdiction or any amounts agreed in settlement, including reasonable legal fees and expenses, arising out of any claims of infringement by the Supplier of any patent, trade mark, copyright, goodwill, covenant or other intellectual or other property right or similar right whether registerable or not in any jurisdiction.
- 8.7 If as a result of any such action or infringement detailed in clause 8.6 the Authority is unable to lawfully use or benefit from the Services, or if such action or claim is likely to be made or is initiated, the Supplier will either procure for the Authority the right to continue to use and benefit from the Services in accordance with the Contract, or replace or modify the Services, with services of comparable quality, serviceability and capability at no cost to the Authority, so that it becomes non-infringing.
- 8.8 The Supplier shall not obtain any rights in products, materials or methodologies proprietary to the Authority except pursuant to a separate written agreement executed by the parties.
- 8.9 The Supplier shall at the request and reasonable expense of the Authority provide such assistance as the Authority may require in obtaining, maintaining, defending and/or enforcing the Authority's rights in respect of the Services, including without limitation the execution of all necessary documents. The Supplier unconditionally and irrevocably waives any non-transferable rights in the Services and shall procure that written, unconditional and irrevocable waiver of any moral or other non-transferable rights in the same, whether asserted or not, has been given by Supplier Personnel in a form approved by the Authority, acting reasonably, and delivered to it prior to the commencement of the Services.

## **9. Compliant Systems/Machinery/Products**

The Supplier guarantees and undertakes that all systems, machinery, hardware, software and products supplied or used in the performance of this Contract are or will, when supplied or used, be Compliant Systems. In this clause the term Compliant Systems means that the performance and functionality of the systems, machinery, hardware, software and products will be consistent and uninterrupted regardless of the date and time on which they are being used or operated and regardless of any currency which they use or to which they refer where use of or reference to that currency is required by law or by the terms of this Contract.

## **10. Liability, indemnity and insurance**

- 10.1 The Supplier shall be liable to the Authority for any losses, actions, proceedings, costs, expenses, damages, claims and liabilities incurred by the Authority arising out of:
- 10.1.1 any injury, including fatal injury and disease, to Supplier or Authority personnel or third parties, or loss or damage to the property of third parties which is caused or contributed to by the negligence, error, omission, breach of statutory duty, breach of contract or other default of the Supplier, its employees, servants or agents; and

- 10.1.2 any assertion against the Authority that any member or former member of Supplier Personnel is or was an employee or worker of the Authority including without limitation, any liability for income tax or Pay Related Social Insurance contributions of Supplier Personnel, or any interest or penalties thereon or any claim for breach of contract, unfair dismissal, a statutory or other redundancy payment, unlawful deductions from wages, equal pay, sex, race or disability discrimination, a protective award or any other claim.
- 10.2 The Supplier hereby agrees to fully and effectively indemnify, hold harmless and keep so indemnified on demand the Authority from and against any liabilities whatever suffered or incurred by the Authority arising out of and/or in connection with the negligence, default, act or omission of the Supplier and/or its personnel, sub-contractors or agents. This indemnity survives the termination or expiration of this Contract for whatever reason.
- 10.3 The Supplier will, at its sole cost and expense, effect and maintain for the benefit of the Authority for the Term, and such further period as may be required or ought prudently to be effected and maintained after the expiration or termination of this Contract, insurance cover with reputable insurers to cover its liabilities that may arise under or in connection with this Contract including:
- 10.3.1 public liability insurance with minimum cover of six million five hundred thousand euro (€6.5m) for each and every claim;
- 10.3.2 employer's liability insurance with minimum cover of thirteen million euro (€13m) for each and every claim; and
- 10.3.3 professional indemnity insurance, if required by the Authority, with minimum cover of two million six hundred thousand euro (€2.6m) for each and every claim (which professional indemnity insurance will be kept in place for at least two (2) years from the expiration or termination of the Contract).
- 10.4 The policies of insurance referred to in clause 10.3 will be shown by the Supplier to the Authority whenever the Authority requests, together with satisfactory evidence of payment of premiums.
- 10.5 Where the Supplier or any sub-contractor fails to insure any risk as required by the Authority, in accordance with the Contract, the Authority may insure the risk in question and deduct the amount of the premiums from any monies due to the Supplier.

## **11. Confidentiality**

- 11.1 This Contract (including any negotiations relating thereto, the subject matter, terms or performance of this Contract) and all information relating to the affairs or business of both parties ("Confidential Information") shall be treated as proprietary and confidential. Both parties undertake to treat as confidential, and to cause their employees, agents and sub-contractors to treat as confidential, any and all Confidential Information of the other party which may come into its own possession or into the possession of any of their employees, agents or sub-contractors as a result of or in connection with the provision of the Services. The parties shall use the Confidential Information solely for the purposes of fulfilling their

obligations under this Contract and shall not, subject to clause 11.3, at any time during or after expiry or termination of this Contract, disclose the said Confidential Information whether directly or indirectly to any third party without the prior written consent of the other party nor copy the said Confidential Information unless specifically permitted to do so by the other party. The parties undertake to make all relevant employees, agents and sub-contractors aware of this term and to take all steps necessary to ensure compliance with the obligations under this clause.

- 11.2 In protecting such Confidential Information, each party shall employ the highest standard of care, which shall in no event be less than the standard of care it employs in protecting its own confidential information.
- 11.3 Except with the prior written consent of the party from which it is received (the "Disclosing Party"), no party will disclose the other party's Confidential Information or any part thereof to any third party other than its own employees, agents or sub-contractors and then only to the extent that such disclosure is necessary for the performance of its obligations under this Contract, in which case, the party that has received the Confidential Information (the "Receiving Party") will take all reasonable steps to ensure that such information is treated as confidential by the person to whom it is disclosed, including requiring such person to enter into an appropriate confidentiality agreement with the Receiving Party. This paragraph and sections herein will not apply to:
- 11.3.1 information required by the law of any jurisdiction to which the disclosure is subject, provided that the Receiving Party has taken all practicable legal steps to prevent such disclosure and has where practicable consulted with the other party on the manner and timing of the disclosure;
  - 11.3.2 information disclosed to the professional advisers or auditors of the party under obligations of confidence no less stringent than those assumed by the Receiving Party hereunder (which the Receiving Party undertakes to enforce);
  - 11.3.3 information lawfully in the possession of the recipient before the disclosure under this Contract took place;
  - 11.3.4 information that has come into the public domain through no fault of that party or breach of confidentiality;
  - 11.3.5 information that the other party has given prior written approval to such disclosure;
  - 11.3.6 information lawfully obtained from a third party who is free to disclose it; or
  - 11.3.7 information which is received or obtained by the Receiving Party without restriction on disclosure from a source free to disclose it other than the Disclosing Party or an agent of the Disclosing Party.
- 11.4 The restrictions contained in this clause 11 shall continue to apply after the termination of this Contract.

## **12. On-site Services**

- 12.1 To the extent that all or any part of the Services are to be provided at or on or involve any entry on to Authority owned or controlled property then the Supplier shall comply with the following:
- 12.1.1 prior to commencing the Services, the Supplier and any sub-contractors shall have obtained all necessary information relating to the property including (without limitation) any local conditions and the facilities at the property and any other information relevant to the Services to be provided under and in accordance with this Contract. The Authority shall ensure the information provided is correct and accurate in all material respects;
  - 12.1.2 when on Authority property the Supplier and any sub-contractor shall comply strictly with all of the Authority's regulations relating to the property in question and any other requirements the Authority might have in relation to the Supplier's entry onto or presence at the property including but not limited to, health and safety, prevention of fire, use of facilities and security arrangements;
- 12.2 the Supplier shall ensure that all personnel are dressed in a manner appropriate to the location and the work to be performed. This may include the requirement to wear safety clothing if so specified by the Authority; and
- 12.3 if and to the extent required by the Authority, the Supplier shall undergo induction training in relation to the regulations and requirements referred to above before entering on to the relevant property.

## **13. Data Protection/Freedom of Information**

- 13.1 The Authority and the Supplier shall comply with their obligations under the Data Protection Acts 1988 and 2003 (as amended) and any other applicable data privacy laws and regulations (together, the "Data Privacy Laws") in connection with this Contract.
- 13.2 In the event of any breach by the Supplier or the Supplier Personnel of the obligation under clause 13.1 above, the Authority may pursue any rights or remedies they have at law (as may be limited by this Contract) in respect of any proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of, caused or arising from such breach.
- 13.3 The Authority is subject to the provisions of the Freedom of Information Acts 1997- 2003 (as amended) and, accordingly, information furnished to the Authority by the Supplier may be subject to the provisions of the Freedom of Information Acts. If the Supplier considers any of the information supplied by it to the Authority pursuant to this Contract should not be disclosed because of its sensitivity it should, when providing the information, identify same and specify the reasons for its sensitivity. It shall not be sufficient for the Supplier to furnish the Authority with a general statement of confidentiality in respect of all information furnished to the Authority.

13.4 The Supplier acknowledges that the Authority may be obliged under the Freedom of Information Acts 1997-2003 to disclose information regardless of any representations made by the Supplier.

#### **14. Publicity**

The Supplier may only list or advertise the Authority's name on a reference list or utilise the Authority's name for purposes of advertisement or sales with the prior written permission of the Authority.

#### **15. Audit**

15.1 The Authority or its authorised representatives shall have the right to audit all costs, rates and expenses relating to the Contract and the provision of the Services.

15.2 The Supplier shall maintain all records relevant to the Contract for the Term and for at least three (3) years after the termination of the Contract howsoever terminated.

15.3 The Supplier will maintain the aforesaid records either physically or by electronic media and the Authority or its authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid records.

#### **16. Settlement**

The Authority shall be at liberty in settling and valuing the amount due to the Supplier to take into consideration any deficiency in the quality of the Services or in the quality of the materials and labour employed in the manufacture or provision thereof, and to make, on account of the said deficiency, such reduction in price or prices as it may consider reasonable.

#### **17. Termination at will**

The Authority may terminate this Contract or cancel its order for any Services in whole or in part with thirty (30) days prior written notice without having to show cause.

#### **18. Termination for cause or on insolvency**

18.1 The Authority shall be at liberty, upon breach of any of the terms and conditions of the Contract, or on the Supplier becoming bankrupt or insolvent, or making any assignment for the benefit of creditors forthwith, or being unable to provide the Services for any reason for a period in excess of two (2) weeks, to terminate the Contract altogether and to withhold from the Supplier as absolutely forfeited all monies which the Supplier might otherwise have claimed under the terms and conditions of the Contract and to do all things that the Authority shall consider proper for having the Contract completed by another supplier and to recover from the Supplier, or deduct from any monies of the Supplier in the Authority's hands, the extra expense occasioned thereby.

18.2 If the Authority considers that a breach of any of the terms and conditions of the Contract is capable of remedy and steps can be taken by the Supplier to prevent its recurrence, the Authority may, at its absolute discretion and by notice in writing, grant the Supplier a period

of fifteen (15) days within which the Supplier will have the opportunity to remedy the breach. The termination provision in clause 18.1 shall apply in the event of any failure by the Supplier to remedy the breach within the fifteen (15) day period (or any extension that the Authority may in its absolute discretion grant to the Supplier).

## **19. Consequences of termination**

- 19.1 On any termination of this Contract, howsoever occasioned, the Supplier shall promptly return to the Authority all of the Authority's product, samples and data in its possession or under its control and delete any and all of the Authority's data and information, (confidential or otherwise), from its systems and, if and to the extent requested by the Authority, fully and promptly co-operate with the Authority and provide reasonable assistance to ensure the smooth transfer of the provision of the Services from the Supplier to a new service provider.
- 19.2 Unless the Authority expressly agrees otherwise, such return shall be completed within one (1) calendar month of the termination of this Contract.
- 19.3 On termination of this Contract, the Supplier will refund to the Authority any Charges already paid to the Supplier under the terms of this Contract for Services to be delivered but which have not or cannot then be so delivered for reasons of termination of this Contract.

## **20. Dispute Resolution**

- 20.1 Without prejudice to any party's right to terminate, the parties shall try to settle quickly and amicably any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination.
- 20.2 The dispute shall, in the first instance, be discussed by the parties in an attempt to reach an amicable solution. If such attempt fails within 48 hours from the first written notice by one party to the other party that a dispute exists, the matter may be submitted by either party in writing to the highest ranking directors or senior personnel of the Supplier and the Authority who have responsibility for the provision or use of the Services to which the dispute relates. Such directors or senior personnel shall consult with the goal of attaining a solution satisfactory to both parties within 48 hours of submission.
- 20.3 If no satisfactory solution is attained pursuant to the process outlined at clause 20.2 the parties will have the option to terminate the Contract.
- 20.4 The operation of this clause shall not prevent the Authority from taking any formal action or proceedings at any time.

## **21. Force Majeure**

- 21.1 Neither party shall be liable for any breach of its obligations under this Contract resulting from the circumstances of Force Majeure.

- 21.2 Each party shall use its reasonable endeavours to give notice to the other upon becoming aware of an event of Force Majeure which materially affects its ability to perform its obligations, such notice to contain details of the circumstances giving rise to the event of Force Majeure.
- 21.3 The party unable to perform its obligations by reason of the event of Force Majeure shall be excused performance in accordance with this clause 21.
- 21.4 In the event that the Force Majeure continues for a period of more than thirty (30) calendar days the Authority may terminate the Contract at fourteen (14) days' notice to the Supplier.
- 21.5 In the event the Supplier is unable to perform its obligations by reason of the event of Force Majeure the Authority shall be relieved from any obligation to make payments under this Contract.

"Force Majeure" means an event or circumstance or combination of events and/or circumstances not within the reasonable control of either or both the Authority and/or the Supplier (the "Affected Party") which has the effect of delaying or preventing the Affected Party from complying with its obligations under this Contract including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts, and similar) occurring at the Affected Party's places of business.

## **22. Assignment and Sub-contracting**

- 22.1 This Contract shall not be assigned or transferred or sub-contracted in whole or in part by the Supplier without the prior written consent of the Authority.
- 22.2 All sub-contract documents and sub-supplier selection shall be subject to written approval by the Authority prior to award of each sub-contract. No such approval shall create any contractual relationship between the Authority and any sub-supplier.
- 22.3 The Supplier shall be fully responsible for those elements performed by its sub-suppliers and for the acts and omissions of all its sub-suppliers to the same extent as it is for the acts and omissions of persons directly employed by it.
- 22.4 The Supplier shall maintain all sub-contract records and documentation, including without limitation, correspondence between the Supplier and its sub-suppliers and shall preserve such documents for three (3) years after termination of the Contract or such other period as the Authority may request. The Supplier shall make such records and documentation available to the Authority as part of the Authority's rights of audit under the Contract.

## **23. Waiver**

- 23.1 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall:

- 23.1.1 affect that right, power or remedy; or
- 23.1.2 operate as a waiver of it.
- 23.2 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 23.3 No waiver of any right, power or remedy provided by law or under this Contract shall take effect unless it is in writing and signed by authorised representatives of the party giving the waiver.

## **24. Supplier Personnel**

- 24.1 The Authority and the Supplier acknowledge that the arrangements described in this Contract are such that no contractual relationship will exist either expressly or impliedly between any Supplier Personnel and the Authority.
- 24.2 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all health and safety rules and regulations and other requirements of the Authority notified to it from time to time.
- 24.3 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all monitoring procedures and any other monitoring requirements of the Authority notified to it from time to time.
- 24.4 The Supplier shall ensure that all Supplier Personnel shall irrevocably and with full title guarantee assign any and all right, title and interest in the products of their services and all related rights and properties hereunder to the Supplier to hold absolutely throughout the world in perpetuity.
- 24.5 The Supplier shall indemnify, keep indemnified and hold harmless, the Authority and its officers, employees, contractors and agents from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of, caused by, or arising from any default or breach of Supplier Personnel of the obligations set out in clauses 24.2 to 24.4 above.
- 24.6 In the event that the Authority has reasonable grounds for dissatisfaction with the manner in which the Services are being carried out, they may require the Supplier to replace the Supplier Personnel involved PROVIDED that the Authority shall be entitled:
  - 24.6.1 in the event that the Supplier is unable to provide a substitute which the Authority, acting reasonably, finds acceptable; or
  - 24.6.2 in the event that the Authority, acting reasonably, is not satisfied with two consecutive substitutes;to terminate this Contract.

24.7 The Supplier agrees that the Supplier Personnel will accept all local security arrangements deemed reasonably necessary by the Authority provided such security arrangements are advised to the Supplier in writing in advance.

24.8 The Supplier agrees that the Supplier Personnel will comply with project control/reporting arrangements deemed necessary by the Authority provided that such project control/reporting arrangements are advised to the Supplier in writing in advance.

"Supplier Personnel" shall mean any personnel, officers, contractors and agents employed or engaged by Supplier in relation to the supply of any part of the Services hereunder.

## **25. Transfer**

The Supplier agrees that in the event that it is not successful in re-tendering (or in the event of it not re-tendering) for the provision of any new services at the expiry, early termination or non-renewal of the Contract, it will liaise, consult and co-operate in all reasonable respects with any new service provider in order to facilitate a smooth handover, including without limitation returning any and all property in the possession of the Supplier, its employees or agents.

## **26. No Partnership**

26.1 Nothing contained in this Contract and no actions taken by the parties under this Contract shall constitute a partnership, joint venture, association or other co-operative entity between the parties or authorise either party to represent the other or to contract on behalf of the other party.

26.2 The Supplier is acting solely as an independent contractor and is not an agent of the Authority, nothing in this Contract shall render the Supplier an employee, worker, agent or partner of the Authority and the Supplier shall not hold itself out as such.

26.3 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Authority for and in respect of:

26.3.1 any income tax, national insurance and/or social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify the Authority against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Authority in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

26.3.2 any liability for any employment-related claim or any claim based on employment status (including reasonable costs and expenses) brought by the Supplier or any agent, employee or sub-supplier of the Supplier against the Authority arising out of or in connection with the Services.

26.4 The Authority may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier.

## 27. Notices

27.1 Any notice under this Contract shall be delivered personally or by courier, or by registered post or recorded delivery or by fax (and confirmed by swift post, placed in the post on or on the day after the date of transmission) to the address specified below for the giving of notices.

### For notices given to the Supplier:

[Company Name]

[Address ]

[Contact name]

### For notices given to the Authority:

Broadcasting Authority of Ireland

2-5 Warrington Place, Dublin 2

[Contact name]

27.2 Any notice given pursuant to this Contract shall be deemed to have been given or received in the case of dispatch by swift post on the fourth calendar day from and including the date of posting or in the case of dispatch by pre-paid registered or recorded post on the third Business Day from and including the date of dispatch and immediately in the case of actual delivery to the address specified above for the giving of notices. Any notice sent by fax and confirmed by swift post shall be deemed to have been given the next Business Day following the day of transmission.

27.3 A party may change its notice details on giving notice to the other party of change in accordance with this clause 27. The notice shall only be effective on the date falling three (3) clear Business Days after the notification has been received or such later date as may be specified in the notice.

27.4 For the purposes of this Contract, "Business Day" shall mean any day other than Saturday, Sunday or any other day which is a public holiday in the Republic of Ireland between the hours of 9.00 and 17.30.

## 28. Severability

Any provision of this Contract which is held to be void, illegal or unenforceable shall to the extent of such invalidity be deemed severable and the offending provisions excluded and the remaining provisions of this Contract will be unaffected by such severance and shall continue to be valid and enforceable to the fullest extent of the law.

## 29. Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of Ireland and shall be subject to the jurisdiction of the Irish courts.