**BAI SECTION 71 CONTENT PROVISION BROADCASTING CONTRACT**

**GUIDE FOR APPLICANTS & APPLICATION FORM**

*(Updated in August 2019)*

## **PROCESS SUMMARY OVERVIEW**

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| **APPLICATION** |
| The application consists of TWO parts as follows:  (a) [The Application Form](#_OFFICIAL_APPLICATION_FORM); and  (b) [The Mandatory Documentation](#_Section_Three:_THE).  A non-refundable **application fee** of €1,500 plus 23% VAT is charged for Section 71 applications.  *Should an application prove successful, the applicant will be invoiced by the BAI for a contract fee. The contract fee will be based on the number of years the service will operate and is payable**in advance of contract signing. The minimum tenure for a contract is five years and the maximum tenure is 10 years.*  *For more information on applicable application fees, please reference the Fees Section of this guide.*  A signed and dated soft copy of your Application Form with all the required Mandatory Documentation must be emailed as PDF documents in one email to [s71@bai.ie](mailto:s71@bai.ie).  **It is recommended that you submit the application five months in advance of the first proposed broadcast date in order to allow sufficient time for the application to be processed and for a potential contract to be agreed with the BAI.** |

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| **ASSESSMENT STAGE ONE – PRELIMINARY ASSESSMENT** |
| Stage One will commence on receipt of the completed application and applicable application fee.   * The BAI checks that the appropriate application fee has been received. *(All fees should be made via bank transfer to the account listed in the Fees section.)*      * The application is checked by the BAI to ensure that all sections have been completed and the Mandatory Documentation enclosed. * If the application does not pass Stage One, it will be returned to the applicant. * If the application passes Stage One, the BAI will confirm receipt and the application will progress to Stage Two.   **It is the applicant’s responsibility to ensure that all submitted documentation is accurate.** Permission to alter a submitted application will be at the discretion of the BAI. |

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| **ASSESSMENT STAGE TWO – QUALITATIVE ASSESSMENT** |
| Qualifying Applications are assessed with regard to the following criteria;   1. Completion of the Application Form and Mandatory Documentation. 2. Confirmation of compliance with the following;  * the policies of the BAI, * [Section 71](http://www.irishstatutebook.ie/eli/2009/act/18/section/71/enacted/en/html#sec71) of the *Broadcasting Act, 2009*  1. The extent to which the service proposed is in accordance withtheobjectives of the *BAI Broadcasting Services Strategy.* 2. The ability of the applicant to provide the necessary resources and expertise to run the service successfully. 3. BAI approval of character test information relating to relevant persons.   Arising from this Qualitative Assessment, the BAI may request an applicant to provide additional information in relation to certain aspects of its application. A timeframe will be set within which a response to this request must be received. |

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| **DECISION** |
| Following satisfactory completion of Stage Two, the Executive of the BAI may:-   * Recommend to the Contract Awards Committee that a contract in principle, be awarded to the applicant, subject to the successful conclusion of contract negotiations; or * Decide not to recommend a contract be entered into with the Applicant. |

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| **IF A CONTRACT IS RECOMMENDED IN PRINCIPLE** |
| 1. The applicant is informed of the offer in principle, subject to the conclusion of contract negotiations and any other conditions the BAI may wish to attach to the award of contract. 2. The Applicant will be invoiced for the applicable Contract Fee. This is currently set at €2,000 plus 23% VAT per year of broadcast. The total amount charged will be dependent on the duration of the contract.   *For more information on contract fees, please reference the Fees Section of this guide.*   1. When the Contract Fee has been received, a contract will be negotiated with the applicant. 2. If contract negotiations are successfully concluded, three copies of the contract will be issued to the applicant to be signed, sealed, and returned to the BAI. 3. On receipt and upon final review, the contracts are signed, sealed and dated by the BAI and one copy is sent to the contractor. |
| **IF A CONTRACT IS NOT RECOMMENDED IN PRINCIPLE** |
| The BAI will notify the applicant of its decision and the reasons for that decision, in writing or email. |

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## **SECTION ONE: INTRODUCTION**

Section 71 of the Broadcasting Act 2009 (“2009 Act”) provides that the Broadcasting Authority of Ireland (“BAI”), on the recommendation of the Contract Awards Committee, may enter into a contract with an applicant for the provision of content, consisting of a compilation of programme material for the purpose of inclusion as part of a multiplex, or, for the purpose of its being transmitted as a broadcasting service in the State, part of the State, or elsewhere, by means of an electronic communications network, including, a satellite network, an MMD system, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network, or any other form of electronic communications network.

When reviewing an application for a section 71 contract for a domestic service[[1]](#footnote-1), which is primarily intended for reception by members of the public in Ireland, the BAI will have regard to the following objectives set out in the *BAI Broadcasting Services Strategy 2018*:

* To facilitate a mix of voices, opinions and sources of news and current affairs in audio-visual media which enhances democratic debate and active citizenship in Ireland;
* To foster a media landscape that is representative of, and accessible to, the diversity of Irish society;
* To foster and promote quality programming in the Irish language and to encourage the development of Irish language initiatives across the broadcasting sector;
* To encourage creativity and innovation as distinctive features of the Irish audio-visual sector;
* To work with stakeholders to support the achievement of greater sustainability for the Irish audio-visual sector; and to ensure an increased focus on creativity and innovation across all BAI activities.

Applications may also be made under section 71 for non-domestic services.[[2]](#footnote-2) The appropriate entity to contract with the BAI, is the supplier of the programme material, namely, the legal person, which determines the content of the compilation of audio-visual or, audio material which will be available. The contractor shall be a person who falls under the jurisdiction of the State.[[3]](#footnote-3)

A contractor does not enjoy any right (by virtue of its Contract), to access a multiplex and/or, an electronic communications network, (including a satellite network, an MMD system, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network, or any other form of electronic communications network) and be distributed. The contractor must negotiate the appropriate rights of carriage.

In addition to referring to the [Broadcasting Act 2009](http://www.oireachtas.ie/documents/bills28/acts/2009/a1809.pdf), applicants are also asked, where relevant, to refer to the BAI’s [*Ownership and Control Policy*](http://www.bai.ie/wordpress/wp-content/uploads/2012-OC-policy-Apr-2012.pdf), the *Broadcasting Services Strategy* and in the instance of audio-visual content, the EU Audio-Visual Media Services Directive 2010/13 (“AVMSD”).

Applicants can contact the BAI ([s71@bai.ie](mailto:s71@bai.ie)) to discuss any queries in relation to the application process.

A reference in these Guidelines to the BAI shall, where the context so requires, be interpreted as a reference to the Authority, Contract Awards Committee or Compliance Committee of the Broadcasting Authority of Ireland.

## **SECTION TWO – FEES**

**Application:**

The standard application fee is currently €1,500 plus 23% VAT; the application fee must be transferred to the BAI account listed below, in order for an application to be considered. This fee is non-refundable.

**CONTRACT:**

The standard contract fee is currently set at €2,000 plus 23% VAT per year of broadcast. The total amount charged will be dependent on the duration of the contract. The total amount is payable prior to entry into the contract. The minimum tenure for a contract is five years, and the maximum tenure is 10 years.

Should the contract be terminated early by mutual agreement, the BAI may, at its absolute discretion, refund a portion of the contract fee. This will be determined by the BAI, taking account of the number of years remaining in the contract term at the time of termination.

**BAI ACCOUNT INFORMATION:**

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| Account Name:   *The Broadcasting Authority of Ireland*  Account Number:   *03603097*  Sort Code:  *98-50-20*  BIC: *ULSB IE 2D*  IBAN:  *IE85 ULSB 9850 2003 6030 97*  REF: *S71*[Initials of Applicant Name] |

The applicable Application and Contract fees must be transferred to this account.

**Fees are subject to change at the BAI’s discretion.** **In the event that the BAI changes its fees, the applicable fee scale will be made available on the BAI’s website at** [**www.bai.ie**](http://www.bai.ie)**. Depending on the nature of the service, the BAI may consider reduced fees in some circumstances.**

## **Section Three: THE APPLICATION PROCESS**

## 1. APPLICATION DETAILS

A complete application consists of two parts:

1. The  [Application Form](#_OFFICIAL_APPLICATION_FORM) attached in *Appendix Two*;
2. The Mandatory Documentation.

**(a) Application Form**

Applicants should complete the Application Form attached at *Appendix Two*. This application form consists of nine sections.

1. Applicant Information;
2. The purpose, for which a content provision contract is required;
3. Information on the service
   1. Name
   2. Description
   3. Recipient Member State / areas and target audience/s;
4. Programme Content;
5. Jurisdiction of the State;
6. Ownership and Control Information;
7. Relevant Person Character Test;
8. Compliance and Monitoring; and
9. Signed Declaration & Application Checklist.

**(b) Mandatory Documentation**

The following mandatory documentation **must** be submitted to the BAI **with the application**. The application will be considered incomplete and will not be assessed unless these documents are provided.

(i) **Secretary’s Certificate or Equivalent**

To enter into a contract with the BAI, an applicant must be a legally constituted organisation or group, e.g. a company, co-operative society, educational institution etc. The applicant must confirm its legal status and submit a Secretary’s Certificate or equivalent setting out certain details of the company such as:-

* The registered office/branch in the State;
* The names and addresses of the company directors;
* The name and address of each person who is the legal, and/or, beneficial owner of shares in the Contractor, which together confer on their holder the right to cast votes at a general meeting of the Contractor which represents 5%, or more, of the votes that may be cast at such a meeting; and
* Name and address of the proposed Compliance Officer.

*Template Secretary’s Certificates for companies are included for information at* [*Appendix Four*](#_APPENDIX_FOUR)*.*

If the applicant is not a company, a society, or an educational institution, it **must** contact the BAI in advance of submitting its application to confirm the appropriate documentation which must be submitted under the following:

(ii) **Company Constitution or Equivalent**

An applicant must submit an initialled and dated copy of its Constitution or equivalent.

If the applicant is an Educational Institution, established and governed under Irish legislation, the applicant should identify the appropriate legislation.

(iii) **Proof of payment of the Application Fee.**

Please note an application fee **(€1,500 plus VAT**, currently at 23%) must be paid by bank transfer to the BAI Bank account listed under the Fees Section of this Guide.

1. **Programme Policy Statement and Indicative Programme Schedule**

A Programme Policy Statement (PPS) which sets out the programming commitments for the proposed service is agreed with the applicant and included in the contract. A template PPS for radio and TV services can be found at the end of this document. An indicative Programme Schedule is agreed with the applicant and included in the contract.

(v) **Quote for Insurance**

An applicant must provide a quote for an appropriate insurance policy. The policy will need to be obtained prior to contracting with the BAI and be maintained for the duration contract. The policy should cover the contractor’s proposed and actual activities under, or in connection with, the proposed contract and the licensed service in accordance with prudent commercial practice, and shall include the BAI 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 BAI 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):

* public liability for not less than €7,500,000 indemnity any one claim;
* employer’s liability for not less than €13,000,000 any one claim; and
* 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 BAI whenever it requests, post contracting, 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-invalidation provisions so that any action by or against the contractor constituting a breach of such policy will not prejudice insurance cover afforded to the BAI.

## 2. SUBMITTING AN APPLICATION

The application, inclusive of the Application Form and the Mandatory Documentation should be sent electronically to the following email address: [s71@bai.ie](mailto:s71@bai.ie). Processing of the application will not commence until all of the requested documentation has been received. An application will be deemed incomplete unless all of the documentation listed above has been provided.

An application can take between two and five months to process. The length of time will depend on, *inter alia,* the nature of the service/s, the sufficiency of the information provided and whether or not any follow up, clarifications or additional information are required by the BAI. Any delay in the submission of responses from the Contractor to queries or clarifications made by the BAI, will delay the processing of the application.

Applicants should, therefore, ensure that their applications are submitted five months in advance of their first proposed on air date. Existing contractors who wish to re-apply upon the expiration of existing contracts should also do so at least five months prior to the expiry date.

## 3. QUERIES

Queries regarding the application process in general should be directed to [s71@bai.ie](mailto:s71@bai.ie).

Alternatively, applicants can telephone the BAI offices at 01 6441200.

## **Section Four: THE ASSESSMENT PROCESS**

The assessment process is divided into three phases as set out below.

**Stage One – Preliminary Assessment**

Once received, an application will be checked by the BAI to ensure that it is complete, i.e. that the [appropriate application fee](#_SECTION_TWO_–), Application Form and Mandatory Documentation have been submitted and received.

* If the application passes Stage One Assessment, the BAI will acknowledge receipt of the application. The application will then progress to Stage Two – Qualitative Assessment.
* If the application does not pass Stage One Assessment, the Applicant will be notified that the application has been rejected and the reasons for this.

**Stage Two – Qualitative Assessment**

*(Please note: Definitions which apply for the purpose of this section are contained in* [*Appendix 1*](#_APPENDIX_ONE) *at the end of this Guide)*

Qualifying applications will be assessed with reference to the following criteria:

1. The information provided by the applicant as follows:
   1. *Jurisdiction*

The BAI applies the criteria set out in Article 2 of the AVMSD as set out in *Appendix 1.* These criteria concern, *inter alia,* the location of the applicant’s head office, its editorial decision making and the presence of a significant part of the applicant’s EU workforce.

These criteria are assessed on a case by case basis on the submission of specific proposals by the applicant.

* 1. *Purpose for which a compilation of programme material is to be supplied:*

The BAI shall have regard to the purpose for which a compilation of programme material is to be supplied. The BAI shall not enter into a Content Provision Contract with a contractor unless the contractor wishes to supply a compilation of programme material for inclusion as part of a multiplex, or for the purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network including a satellite network, an MMD system, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network or any other form of electronic communications network.

* 1. *Diversity of Content*

The BAI shall have regard to the objectives of the *Broadcasting Services Strategy.* In particular, for domestic services broadcast within the State, or part of the State, applicants will be required to set out how the proposed service will add to the diversity of services available and offer a variety of content to audiences.

* 1. *Ownership and Control*

The BAI shall have regard to the *BAI Ownership and Control Policy,* and in particular, the provisions therein relating to character (character test information), experience, expertise and the level of communications media held by the applicant, and in the case of television services, the jurisdictional provisions as set out in the AVMSD. The BAI considers it appropriate to do so in the interest of promoting plurality of ownership, diversity in viewpoint, outlet, and source in communications media.

* 1. *Monitoring and Compliance*

The BAI shall have regard to the adequacy of the technical devices and organisational procedures put in place, or proposed by the applicant to ensure compliance with applicable legislation, codes, rules and regulations, the Content Provision Contract and, to the experience of the personnel responsible for compliance.

If the applicant, or relevant persons associated with the applicant, have previously held a Section 71 or other broadcasting contract, the BAI will have regard to the compliance record of the relevant entities, with regard to the Broadcasting Act 2009, BAI codes, rules and contracts.

1. The applicant has confirmed it is compliant with the policy of the BAI[[4]](#footnote-4) and Section 71 of the 2009 Act in relation to submissions from former unlicensed operators[[5]](#footnote-5).
2. The applicant's ability to provide all of the necessary resources and expertise to run the service successfully.

Arising from the Qualitative Assessment, the BAI may request an applicant to provide additional information in relation to certain aspects of its application. The BAI will set a timeframe within which a response to this request must be received. If a response is not provided within the requested timeframe, the assessment process will be delayed.

On completion of the Qualitative Assessment phase, the BAI Executive will decide whether:

* To recommend to the Contract Awards Committee that it enter into a contract with the applicant; or
* To not make such a recommendation to the Contract Awards Committee. If an application is not recommended, the BAI will inform the applicant of the reasons.

A report on the outcomes of the Qualitative Assessment will be presented to the Contract Awards Committee for consideration and decision.

**Stage Three – Ratification**

The Contract Awards Committee will consider the BAI Executive’s report in relation to the Qualitative Assessment of each application received. It will then decide, based on this report, the Application Form and Mandatory Documentation:

* To recommend to the BAI Authority that it enter into a content provision contract with an applicant in principle, subject to any terms the Committee deems relevant to the successful conclusion of contract negotiations with the BAI; or,
* Not to make such a recommendation to the BAI Authority in respect of an application.

The BAI will subsequently notify the applicant of its decision and the reasons for that decision by email or in writing.

## **SECTION FIVE: CONTRACT and CONTRACTUAL TERMS**

**Contract**

If a contract is awarded to the applicant in principle:

* The BAI will inform the applicant of the decision to award a contract in principle and any relevant conditions;
* The BAI will forward an invoice to the applicant for the entire contract fee, (currently ***€2,000 per annum*** plus VAT at 23%, for each year a service is licensed) the fee should be transferred to the account information referenced in the [Fees Section](#_SECTION_TWO_–) in this Guide;

Applicants are requested to submit the payment upon receipt of the invoice and separately confirm the transfer by emailing [s71@bai.ie](mailto:s71@bai.ie).

* Following receipt of the contract fee the BAI will request a copy of the applicant’s executed insurance policy and all the required contract documentation necessary to draft the contract.
* The applicant company’s signatories will be required to sign and seal three copies of the contract and return to theBAI; the contracts will be then countersigned and sealed by the BAI following a final review. A copy will be sent to the applicant.

**Contractual Terms**

In performing its statutory functions, the BAI is charged with endeavouring to ensure the provision of open and pluralistic broadcasting services. More specifically, it is charged with promoting diversity in control of the more influential commercial and community broadcasting services.

The contractual terms reflect the provisions of the 2009 Act and any relevant policy decisions of the BAI. All signed contracts are public documents and can be inspected at the BAI’s offices. The following is an indicative list of the obligations that fall upon an applicant. It does not purport to be an exhaustive list of the contractual or statutory obligations.

1. ***Ownership and Control***

The *BAI Ownership and Control Policy* details its approach to the application of the statutory provisions to the ownership and control of broadcasting services, including the objectives to be achieved, as well as the rules to support the achievement of the objectives.

Every Content Provision Contract will include certain information in relation to the corporate structure, shareholders, Directors and senior management of the contractor and their relevant media interests in Ireland. This information will be set out in a manner prescribed by the BAI within the schedules to the contract. The second schedule contains the Secretary’s Certificate and the names and addresses of the directors of the company or key personnel involved in the service.

A contractor is also obliged to inform the BAI throughout the contract term of any changes to the ownership structure of the Applicant. Material changes will require the approval of the BAI before they can be implemented.

1. ***Contract Duration and Fees***

In general, a Content Provision Contract is agreed for **a minimum period of 5 years** up to a **maximum period of 10 years**.

Fees are subject to change at the BAI’s discretion. Currently, the standard application fee is €1,500 plus 23% VAT. The standard contract fee is €2,000 plus 23% VAT per year of contract duration. The application fee must be paid in order for an application to be considered. The entire contract fee must be paid in order for the BAI to execute a contract.

1. ***Programme Content***

Every Content Provision Contract shall include a Programme Policy Statement with which the Contractor must comply. This Statement describes the type of service proposed and programme genres e.g. general entertainment, children’s channel etc. It also sets out the contractual and statutory programming commitments of the contractor. Material changes to this Statement will require the prior approval of the BAI. An Indicative/Sample Programme Schedule is also included in the contract.

Programming must comply with the relevant provisions of the 2009 Act and BAI codes and rules.

1. **Contract Conditions/Sanctions**

A Content Provision Contract includes the following conditions:-

* + 1. A condition requiring the prospective contractor to pay a contract fee to the BAI, of such an amount as it considers appropriate. If the fee is not paid, the BAI shall not enter into a contract with the prospective contractor.
    2. A condition requiring the contractor to pay, on request by the Compliance Committee of the BAI, a sum of money in respect of a failure by the contractor to comply with a particular term or condition of the contract. The maximum amount to be paid under any contract shall be specified, and the contractor is required to comply with a request for payment by the BAI.
    3. A condition requiring the contractor to comply with any broadcasting codes or rules[[6]](#footnote-6) with respect to the programme material and advertising supplied in pursuance of the contract.
    4. A condition providing that the BAI may terminate a contract where any of the programme material supplied in pursuance of the contract contravenes Article 27 (Protection of Minors in Television Broadcasting) of the AVMSD.
    5. A condition providing that the BAI may terminate a contract where any of the programme material supplied in pursuance of the contract contravenes the Prohibition of Incitement to Hatred Act 1989, or constitutes an incitement to commit an offence. The condition will also specify if such a supply of programme material has occurred within six months of a previous such supply by the same person, the BAI shall terminate the contract.
    6. A condition requiring the contractor to ensure that news is broadcast in an objective and impartial manner and without any expression of the broadcaster’s own views.
    7. A condition requiring the contractor to ensure that the broadcast treatment of current affairs is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster’s own views.
    8. A condition requiring the contractor to ensure that the broadcast treatment of any policy proposal regarding broadcasting, which is the matter of public controversy or debate and is being considered by the Government or the Minister, is reported and presented in an objective and impartial manner.
    9. A condition requiring the contractor to ensure that anything which may reasonably be regarded as causing harm or offence, or as being likely to promote, or incite to, crime, or, as tending to undermine the authority of the State, is not broadcast by the broadcaster.
    10. A condition requiring the contractor to ensure that in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.
    11. A condition requiring the contractor not to broadcast an advertisement which is directed towards a political end or which has any relation to an industrial dispute.
    12. A condition requiring the contractor not to broadcast an advertisement which addresses the issue of the merits or otherwise of adhering to any religious faith or belief or, of becoming a member of any religion or religious organisation.

***European Works*** *(Applicable to Audio-Visual Content Only)*

Pursuant to Article 16 of the AVMSD, there is an obligation on all television broadcasters to reserve for European works, where practicable and by appropriate means, a majority proportion of its transmission time, excluding the time appointed to news, sporting events, games, advertising and teleshopping. This apportionment of transmission time shall be made having regard to the Contractor’s informational, educational, cultural and entertainment responsibilities to its viewing public and shall be achieved progressively, on the basis of suitable criteria.

However, the obligation under the AVMSD shall not apply to contracts for the following services:

* Television services that are intended for local audiences and do not form part of a national network; and,
* Television services that are exclusively devoted to sport, news, games, teleshopping or promotion.

***Independent Producers*** *(Applicable to Audio Visual Content Only)*

Article 17 of the AVMSD, provides that television broadcasters must, where practicable and by appropriate means, reserve at least 10% of their transmission time, or alternatively, at least 10% of their programming budget, to European works created by producers who are independent of television broadcasters.

Under definition 71, the AVMSD provides “when defining producers who are independent of broadcasters” as referred to in Article 17 of the AVMSD, Member States should take account of criteria such as:

* The ownership of the production company,
* The amount of programmes supplied to the same broadcaster, and,
* The ownership of secondary rights.

***Minimum News and Current affairs* *(Applicable to Radio Contractors Only)***

Radio contractors are required to ensure that no less than 20% of the broadcasting time is devoted to news and current affairs content. If the broadcasting service is provided for more than 12 hours in any one day, radio contractors shall ensure that two hours of broadcasting time between 07.00 and 19.00 hours is devoted to news and current affairs content. The BAI may authorise a derogation from these conditions if it is satisfied that to do so would be beneficial to the listeners of the sound broadcasting service. Any such request should be set out in the application.

***Transmission***

Contractors must ensure that content is carried within contracted dates only. On completion of the contract period, or on any date not included in the contract, the carrying of content must cease in such a manner as to ensure that it is not possible to inadvertently continue with its carriage except in the case where a new contract has been issued by a relevant authority.

Contractors must ensure that the premises from which they operate provides access to disabled people, in line with Part M of the Building Regulations.

***Compliance***

Contractors are required to supply information and/or programme recordings in a format and at times specified by the BAI for monitoring compliance with statutory and/or contractual conditions and for other regulatory purposes. This includes information relating to content (including advertising and sponsorship, performance and complaints), ownership and control.

The BAI requires that recordings of all material are made and retained for 90 days for compliance monitoring purposes.

In addition, a contract imposes an obligation on a contractor to keep recordings of every item of programme material supplied by him or her under a Content Provision Contract, and to retain such recordings for such period as determined by the BAI from time to time. The contractor shall make any such recordings available to the BAI upon request. The period currently is 90 days.

Under Section 69 (6) of the 2009 Act, all contractors will be required to retain recordings of certain material in a format to be specified by the BAI and to keep such recordings, as specified by the BAI, for the term of the contract and for a period of 6 years thereafter.

1. **Broadcast of Feeds into Multiple Jurisdictions**

The BAI takes the view that a single content provision contract should suffice in circumstances where the Programme Material[[7]](#footnote-7) on the services is identical and is broadcast at the same time i.e. the audiences in one or more countries are able to view the same editorial content and advertisements at the same time on the services. The language of the feeds may be different. Catch up (replay) and +1 TV services are generally treated as a feature of the TV service and do not usually require an additional content provision contract.

1. **Termination and Suspension**

Part 5 of the 2009 Act provides that the Compliance Committee may recommend to the BAI that the BAI terminate or suspend, for such period of suspension as the Compliance Committee considers reasonable, a Content Provision Contract entered into by the BAI-

* if any false or misleading information of a material nature was given to the Contract Awards Committee by, or on behalf of, the holder of the contract before it was entered into, or
* if the holder of the contract has, upon a finding by the Compliance Committee under section 50(7), having regard to the investigation concerned under that section, failed on one or more occasions to comply with a term or condition of the contract and the nature of that failure is of such seriousness as, in the opinion of the Compliance Committee, warrants the termination or suspension of the contract.[[8]](#footnote-8)

A staff member of the BAI so authorised by the Compliance Committee, or a suitably qualified person appointed by the Compliance Committee, may conduct an investigation under Part 5 of the 2009 Act, if it has reasonable grounds for believing that a Contractor is not providing a service in accordance with the terms of his or her contract. This investigation can be into the operational, programming, financial, technical or other affairs of a Contractor. It is the duty of the Contractor to co-operate with the investigation.

***8. Financial Sanctions***

In accordance with Section 71(5) (b) of the 2009 Act, a Content Provision Contract shall include a condition authorising the BAI to request the contractor to pay to it, in respect of a failure by the holder to comply with a particular term or condition of the contract, a sum of money not exceeding an amount to be specified in the Contract.

In addition to the possibility of a fine under Section 71, Part 5 of the 2009 Act provides for the possibility of the imposition of a financial sanction as directed by either the Court[[9]](#footnote-9), or the BAI, following an investigation under Section 53 of the 2009 Act. An investigation under this section shall be undertaken where the Compliance Committee is of the opinion that there are circumstances suggesting that it is appropriate to investigate and report on any apparent breach by a broadcaster of a requirement of:

* Section 39(1) (Duties of a broadcaster),
* Section 40(1), (2) or (3); (recordings of broadcasts), and
* Any broadcasting code or rule.

It is the duty of a contractor to co-operate in any such investigation. The BAI may publish details concerning decisions or statements of findings by the Court on a website maintained by the BAI.

The amount of the sanction imposed following an investigation shall not exceed **€250,000**.

## **SECTION SIX: PUBLIC ACCESS AND FREEDOM OF INFORMATION**

* The BAI makes applications available for inspection at its offices. The BAI, as a public body is also subject to the provisions of the Freedom of Information Act, 2014.
* If an applicant wishes the BAI to treat any part of the application as confidential, it should be presented in an annex to the application and be appropriately marked. The applicant should outline in a covering letter the reasons for believing that the public should not have access to the material in such annex.
* Where the BAI believes that material which an applicant has placed in a confidential annex should be made available for inspection, it will enter into discussions with the applicant in an effort of reaching agreement as to the extent of disclosure. If agreement cannot be reached, the BAI will treat the application as having been withdrawn.
* Each applicant shall be responsible for providing the BAI with such authorisations, waivers and/or indemnities as it may reasonably require in connection with the disclosure to members of the public of material contained in the application.

The BAI will consult with applicants about sensitive information before making a decision on any request received under the Freedom of Information Act 2014.

## **SECTION SEVEN: GENERAL DISCLAIMER**

The information supplied in this document is not an exhaustive account of the statutory requirements and legal obligations on applicants. It should not be regarded as a complete or authoritative statement of the law. Persons to whom the present document is made available must make their own independent assessment after taking their own professional advice and making such further investigations, as they deem necessary on all relevant matters. The BAI makes no representation or warranty, express or implied, with respect to the information contained in the present document or with respect to any oral or written information made or to be made available to any potential applicant or its professional advisers. Any liability therefore is expressly disclaimed. The BAI reserves the right to correct or alter any part of the present document. In the event that this document is corrected or altered, an updated version will be made available on the BAI’s website at [www.bai.ie](http://www.bai.ie).

## **APPENDIX ONE**

## **LEGISLATIVE DEFINITIONS**

**“*Communications Media*”** means activities which may from time to time in the written policies of the BAI be so categorised. Communications Media are defined in the 2009 Act as:

1. the provision of a broadcasting service, the provision of a broadcasting services platform, or
2. the publication of newspapers or periodicals consisting substantially of news and comment on current affairs.

The 2009 Act also requires the BAI to interpret the following statutory terms: ‘control’ and ‘substantial interests’. The BAI gives effect to these terms as follows:

***“Substantial Interests”:*** has sufficient proprietary, financial or voting strength within the relevant company to determine or direct the policy of the company or companies to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which shall include editorial policy) of the company or companies, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.

**“*Control*”:** is in a position, proprietarily, financially or in terms of voting rights, to determine or direct the policy of the company, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.[[10]](#footnote-10)

***“European Works”:*** **(Applicable to Audio-visual Content Contractors)**

* Works originating in EU Member States;
* Works originating in European third States party to the European Convention on Trans-frontier Television of the Council of Europe and fulfilling the conditions of point (ii) below;
* Works co-produced within the framework of agreements related to the audio-visual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements;

Application of the provisions of the second and third indents shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned;

(ii) the works referred to in the first and second indents of point (i) are works mainly made with authors and workers residing in one or more of the States referred to in the first and second indents of point (i) provided that they comply with one of the following three conditions:

* They are made by one or more producers established in one or more of those States, or
* Production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or
* The contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

Works that are not European works within the meaning of point (i) but that are produced within the framework of bi-lateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

***“Independent Producers”:*** Article 17 (Applicable to Audio-visual Content Contractors):

Article 17 of the AVMSD provides that Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping or alternatively, at the discretion of the Member State, at least 10% of their broadcasting budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

***“Jurisdiction of the State”:***  Article 2(2) of the AVMSD provides that the media service providers under the jurisdiction of a Member State are those: (a) established in that Member State in accordance with paragraph 3; or (b) to whom paragraph 4 applies.

Paragraph 3 provides: For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:

1. The media service provider has its head office in that Member State and the editorial decisions about the audio visual media service are taken in that Member State;
2. If a media service provider has its head office in one Member State but editorial decisions on the audio visual are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audio visual media service activity operates.

If a significant part of the workforce involved in the pursuit of the audio visual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office.

If a significant part of the workforce involved in the pursuit of the audio visual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State.

1. If a media service provider has its head office in a Member State but decisions on the audio visual media service are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audio visual media service activity operates in that Member State.

Paragraph 4 provides:

Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

* they use a satellite up-link situated in that Member State;
* although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.

**“*Media Operators***” include:

* 1. Contractors pursuant to the Broadcasting Act, 2009;
  2. Persons supplying a compilation of programme material broadcast in the State;
  3. Programme production companies producing programmes broadcast in the State;
  4. The operators of broadcasting services platforms in the State;
  5. Publishers of newspapers and/or magazines displayed for sale in the State;
  6. Advertisement production companies and advertising agencies producing advertisements broadcast in the State;
  7. Advertising agencies acting as media buyers for the broadcast of advertisements in the State;
  8. Public relations companies carrying on business in the State;
  9. Music publishers publishing music displayed for sale in the State;
  10. Music distributors distributing recorded music in the State;
  11. Persons who are not nationals of a European Union Member State; and
  12. Persons having a Substantial Interest in a Media Operator as listed above.

***“Relevant Person”:*** A relevant person is considered to be an individual with a substantial interest in the Applicant and includes Directors, the Secretary, the Senior Management Team (in particular the CEO / Managing Director, Programme Controller, Financial Controller and Compliance Officer.)

## **APPENDIX TWO**

## **OFFICIAL APPLICATION FORM**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SECTION ONE – APPLICANT INFORMATION** | | | | |
| **Name of Applicant** (*The Applicant must be a single legal entity, e.g. a body corporate, co-operative society etc. If the Applicant is a body corporate, a copy of the certificate of incorporation must be included with the application*). |  | | | |
| **Registered Number of the Applicant**  (company registration/identification number) |  | | | |
| **Registered Office/Branch Address of Applicant** |  | | | |
| **Address for contact and correspondence (if different)** |  | | | |
| **Does the Applicant hold, or has it previously held a broadcasting contract with the BAI?**  (If you are a repeat Applicant or have held, or currently hold, any other Broadcasting Contract with the BAI please confirm that you have no outstanding levy[[11]](#footnote-11) fees or contract compliance issues with said contract/s) |  | | | |
| **Has the proposed contracting entity, or any relevant person within the contracting entity, ever been issued with a compliance/warning notice from the BAI?**  If yes, please set out when and why this notice was issued. |  | | | |
| **Has the proposed service previously been operated by the proposed contracting entity in another jurisdiction?**  If yes, please provide details on the named jurisdiction and relevant regulatory/licensing authority |  | | | |
| **If you have answered YES to the question above, please detail your Compliance record with the named authority.**  **N.B. This should include the issuing of compliance notices, sanctions, fines etc.** |  | | | |
| **Name and Address of Compliance Officer**  (The Compliance Officer is generally based in Ireland and authorised by the Applicant to represent it and liaise with the BAI on all contractual matters) |  | | | |
| **Compliance Officer’s Phone Number**  (A mobile number may be provided) |  | | | |
| **Compliance Officer’s Email Address** |  | | | |
| **Public contact for Applicant** (name and position, full address, telephone and fax numbers, e-mail and website addresses) |  | | | |
| **Names and addresses of all Directors** |  | | | |
| **Roles, qualifications and relevant experience of the management team**  (CEO, Compliance Office, CFO or equivalent) |  | | | |
| **SECTION TWO - PURPOSE OF CONTENT PROVISION CONTRACT** | | | | |
| **From the following options, confirm the purpose for which you require a Content Provision Contract:** | | | | |
| **For the purpose of inclusion as part of a multiplex** | | | | **YES/NO** |
| Specify the multiplex operator and location in question | |  | | |
| **For the purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network** | | | | **YES/NO** |
| Please specify the method/s of transmission and location from the following list: | | | | |
| Satellite network | | | | **YES/NO** |
| MMD system | | | | **YES/NO** |
| Fixed or mobile terrestrial network | | | | **YES/NO** |
| Cable television network | | | | **YES/NO** |
| Internet protocol television network | | | | **YES/NO** |
| Any other form of electronic communications network (please specify). | | | | **YES/NO** |
| **SECTION THREE - JURISDICTION IN THE STATE** | | | | |
| If the compilation of programme material to be supplied is audio-visual, please confirm that the Contractor falls within the jurisdiction of the State. | | | | |
| * 1. Where is the Applicant’s head office situated? |  | | | |
| * 1. Where will editorial decisions about programme material be made? |  | | | |
| * 1. Where will scheduling decisions about programme material be made? |  | | | |
| * 1. Does the Applicant have (or will it have) offices in more than one country?[[12]](#footnote-12) If so, please specify the countries. |  | | | |
| * + 1. What functions in relation to broadcasting/programming will be performed in each country? |  | | | |
| * + 1. How many employees will be based in each country? |  | | | |
| * 1. Where will Directors’ meetings be held? |  | | | |
| * 1. Where will management meetings be held? |  | | | |
| * 1. Where will shareholders’ meetings be held? |  | | | |
| * 1. Is it proposed that any of the Directors and/or senior managers of the Applicant be resident in Ireland? |  | | | |
| **SECTION FOUR – OWNERSHIP AND CONTROL INFORMATION** | | | | |
| **(a) Character of the Applicant - Ownership and Control** | | | | |
| ***Shareholder information***  Please specify: | | | | |
| The total number of shares, the number of shares per class of shares, and the associated rights (specify voting, non-voting, preference, other etc.); |  | | | |
| The percentage of shares held by each shareholder, together with the number of shares and the class thereof; where those holdings are in the names of trustees or nominees, the *beneficial owners* should be named; |  | | | |
| Whether there are any shareholders’ agreement governing the exercise of voting rights or establishing pre-emption mechanisms. If there is, please describe briefly the principles governing the exercise of voting rights and/or the pre-emption mechanisms; |  | | | |
| The name and address of the holders of an interest in excess of 10% in a body that has a controlling or substantial interest in the applicant; |  | | | |
| The shareholders which are not EU nationals and their nationality. |  | | | |
| ***Directors***  If the Applicant is a company, please provide in respect of the following individuals their full names, addresses, nationality and country of residence. If the Applicant is not a company, similar information should be provided about those responsible for management and policy-making. | | | | |
| the Directors of the Applicant; |  | | | |
| where relevant, the Directors of any shareholders of the Applicant holding more than 10% of the shares of the Applicant; |  | | | |
| where relevant, the Directors of companies which hold, directly or indirectly, an interest in excess of 10% in a body that has a controlling or substantial interest in the Applicant; |  | | | |
| where relevant, the Directors of companies which hold, directly or indirectly, a controlling or substantial interest in a body holding more than 10% of the shares of the applicant. |  | | | |
| * + - * 1. **Media Concentration**   Please indicate: | | | | |
| * + 1. the shareholders of the Applicant who have substantial interests in, or control of, Media Operators as defined in *Appendix 1*. |  | | | |
| * + 1. the directors of the Applicant who have substantial interests in, or control of, Media Operators. |  | | | |
| * + 1. which, if any, of the Applicant’s shareholders is or has been involved in a broadcasting service licensed by the BAI. |  | | | |
| * 1. **Signatories, Seal and Compliance with BAI policies** | | | | |
| **Name of the Authorised Signatories** (and their capacity within the group) who will sign the contract of behalf of applicant. These signatories must be authorised in accordance with the Applicant’s Constitution or equivalent governing rules.  *(Please note the company seal will be affixed to the Content Provision Contract)* |  | | | |
| **Please confirm the company / organisation has a Seal** in order to seal a contract on behalf of the company / organisation.  *(please note a stamp will not be accepted)* |  | | | |
| **Please confirm the Applicant’s compliance with the BAI’s Policy and Section 62 of the Broadcasting Act 2009 with regard to the following:**  *Further to Section 62 of the Broadcasting Act 2009[[13]](#footnote-13), and the BAI’s policy in this regard, the BAI will accept applications once none of the Applicant’s Directors, Secretary, Management team or any on-air staff have been convicted of an offence under Section 3 (3) of the Act of 1926 or under Section 3, 4 or 5 of the Act of 1988 or involved in any unlicensed activity for* ***12 months*** *before the application is submitted.* |  | | | |
| **SECTION FIVE – RELEVANT PERSON CHARACTER TEST** | | | | |
| **This section must be completed and signed separately by each “relevant person” associated with the Applicant.**  The BAI, as a matter of policy, applies the character test to the Directors, senior managers (CEO, CFO and Programme Controller or equivalent positions) and shareholders, whose shareholding constitutes a substantial interest in, or control, of the Applicant when considering applications for content provision contracts. In assessing character, the BAI applies the ordinary meaning of the word and considers, in particular, if the relevant person, is a fit and proper person to hold a broadcasting, content provision or multiplex contract (as appropriate) with reference to the provisions of sections 66 or 137 of the 2009Act (as appropriate) and in the context of its compliance with other relevant statutory and regulatory provisions. | | | | |
| 1. *Have you ever been convicted of an offence involving fraud or dishonesty?* | Yes / No (*If yes please explain)* | | | |
| 1. *Have you ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Acts 2014 (as amended) in this jurisdiction or under equivalent legislation in any other jurisdiction?* | Yes / No (*If yes please explain)* | | | |
| 1. *Have you ever been adjudicated as bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of its assets, in this or any other jurisdiction?* | Yes / No (*If yes please explain)* | | | |
| 1. *Have you ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors’ voluntary liquidation, examinership, or which made any arrangement with its creditors or class of creditors?* | Yes / No (*If yes please explain)* | | | |
| 1. *Have you ever been convicted of an offence under any legislation by which Broadcasting and/or Wireless Telegraphy is regulated in this or any other jurisdiction?* | Yes / No (*If yes please explain)* | | | |
| 1. *Have you ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction?* | Yes / No (*If yes please explain)* | | | |
| 1. *Are you aware of any reason why it may not be a fit and proper person to be awarded a contract?* | Yes / No (*If yes please explain)* | | | |
| ***Name:*** | | | **Date:** | |
| ***Signature:*** | | | | |
| ***Relevance to Applicant:*** | | | | |
| ***Contact details:*** | | | | |

|  |  |
| --- | --- |
| **SECTION SIX - PROPOSED SERVICE INFORMATION** | |
|  | **Please provide the following detail on the proposed service** |
| **Proposed Service Name** |  |
| **Type of Service/Channel Proposed**  (Please describe the type of service proposed: programme genres, target audiences etc.) |  |
| **Please indicate whether the service is audio or audio-visual** |  |
| **Please indicate the desired duration of the contract. Section 71 Contract durations are generally concluded for a period of between 5 and of 10 years** |  |
| **Please indicate if a single content provision contract is being sought for multiple feeds of the same programme material[[14]](#footnote-14)**  (please detail number of services, countries/areas of reception and target audiences) |  |
| **Please indicate the language of the service/s** |  |
| **Please indicate the hours of transmission** (per day/per week) |  |
| **Please indicate whether the service/s will carry advertising, sponsorship or other forms of commercial communications and describe the form it will take** |  |
| **In the case of audio-visual services, please provide details of any access service provision proposed for persons who are deaf or have a hearing impairment, persons who are blind or partially sighted, and persons who have a hearing impairment and are partially sighted** |  |
| **If the service is a radio service, please confirm that not less than 20% of the broadcasting time (or two hours between 07.00 and 19.00 hours if the broadcasting service is provided for more than 12 hours in any one day) is devoted to the broadcasting of news and current affairs programmes. If a derogation is being sought in respect of this requirement, please indicate how such a derogation would be beneficial to the listeners of the sound broadcasting service** |  |
| **Please complete the template Programme Policy Statement provided at the end of this document.**  **Please include an indicative programme schedule** |  |
| **Target audience** | |
| **Please specify the means of distribution and the distribution provider** |  |
| **Will the service/s be subject to subscription fees? Please specify (part of basic package, other package, cost etc.)** |  |
| **Please provide a profile of the target audience for the service/s** |  |
| **SECTION SEVEN – DIVERSITY OF CONTENT** | |
| **If the service is to be provided in Ireland, please describe how it is envisaged that the service will add to the range and diversity of broadcasting services within the relevant area** |  |
| **If the service is to be provided in Ireland, please describe how the proposed service will add to the plurality and diversity of broadcasting services, referring where appropriate (having regard, *e.g.,* to the target audience) to how the proposed service will serve the needs of the people of the island of Ireland, bearing in mind their languages and traditions and their religious, ethical and cultural diversity** |  |
| **If the service is to be provided in Ireland, please demonstrate how the proposed service will respect the Constitutional right to freedom of expression** |  |
| |  | | --- | | **SECTION EIGHT– CODES & RULES, COMPLIANCE & MONITORING** | | |
| **Please describe how the proposed service/s will protect the interests of children taking into account the vulnerability of children and childhood, to undue commercial exploitation** |  |
| **Please also describe the measures to be put in place to ensure that the proposed service/s will comply with applicable broadcasting codes and rules, with the provisions on the Protection of Minors, with the Prohibition on Incitement to Hatred, and Incitement to Commit an Offence** |  |
| **Please provide full details of the arrangements to be made for compliance with applicable legislation, the BAI contract, the BAI codes and rules, including human and technical resources** |  |
| **Please describe the system to be used for the recordings of programmes** |  |
| **Please identify all personnel who will be responsible for compliance and set out their relevant experience** |  |
| **SECTION NINE – SIGNED DECLARATION & APPLICATION CHECKLIST** | |

I hereby apply to the Broadcasting Authority of Ireland for a Content Provision Contract as described above and declare that the information given in the application form is, to the best of my knowledge and belief, correct.

I enclose:

1. a copy of all mandatory documentation including the Constitution (or if the Applicant is not a body corporate, the equivalent documentation, with a translation into English if not in the English or Irish language);
2. evidence of electronic payment of the appropriate (non-refundable) application fee.

Signature ⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯

Name (in block capitals) ⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯

Position ⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯

Date ⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯⎯

|  |  |
| --- | --- |
| **CHECKLIST - Please ensure that each of the documents listed below have been attached to your application email:** | |
| 1. Completed and signed application form in PDF FORMAT *(inclusive of signed and dated character tests for all relevant persons)* |  |
| 1. Completed Programme Policy Statement and Indicative Programme Schedule |  |
| 1. Signed and dated Secretary’s Certificate |  |
| 1. Signed and dated Company Constitution or equivalent |  |
| 1. Quote for Insurance |  |
| **Details of the information required for each of the above is set out in the guidelines provided at the start of this document.** | |

**Email entire** application (i.e. Application Form & all Mandatory Documentation) to [s71@bai.ie](mailto:s71@bai.ie)

## **APPENDIX THREE**

## **PROGRAMME POLICY STATEMENT** **(Television)**

The Statement should provide a service description e.g. the type of service/channel proposed and describe the nature of the programme with reference to programme genres etc. in sufficient detail such that the full nature of the service is clear.

## **PROGRAMME POLICY STATEMENT** **(Radio Only)**

Programming commitment should be written in a measureable way, for example;

The service will broadcast X number news & current affairs / sports / arts / Irish language programmes a week of at least X minutes duration.

|  |
| --- |
| * **Aim / Ethos of the proposed service** |
|  |
| * **Target Audience** |
|  |
| **Broadcast Hours per 24 hour day.**   * The service will broadcast from X am to X pm/am each day. * X number of hours will be live per day. * X number of hours will be pre-recorded / automated. |
| * **Speech / Music Ratio** |
|  |
| * **Music Policy if applicable** |
|  |
| * **News & Current Affairs** – please provide details of news and current affairs programming set out, the number of programmes and / or duration of programmes to be broadcast each day / week. |
|  |
| * **Sports Programming** |
|  |
| * **Irish Language and / or Special Interest Speech programming if applicable** |
|  |

## **APPENDIX FOUR**

## **TEMPLATE SECRETARY’S CERTIFICATES**

(Please only choose the template applicable to your applicant COMPANY)

Company: CERTIFICATE OF THE SECRETARY

I, [*Enter Name*], of [*Address*], Secretary of *[Enter name of company]* ("the Company") HEREBY CERTIFY as follows:-

A. The Company, which is registered in Dublin under CRO NO. [*Registration Number*], has its registered office at *[Enter registered office]*

B. The Directors of the Company are as follows:

i. [*name and address*]

ii. [*name and address*]…

1. No Director of the Company is:
2. an undischarged bankrupt;
3. a person who is subject to restriction pursuant to the Companies Act, 2014 as the same has been or may be amended or extended; or
4. a person who has been disqualified from acting as a Director pursuant to the Companies Act, 2014, as the same has been or may be amended or extended.
5. [*Name and Address*] is the Secretary of the Company.
6. [*Name and Address*] is the Designated Officer of the Company.

F. The Company has made all returns to the Companies Registration Office which it is legally required to make.

G. Paragraphs I sets out details as to Significant Shareholders in the company. The table sets out the name and address of each such shareholder and, in the third column, the voting rights attaching to each such shareholder’s shares in the company as a percentage of all the votes which may be cast by shareholders of the Company at general meetings.

H. A Significant Shareholder, for the purposes of this Certificate is a shareholder to whose shares are attached voting rights which represent more than 5% of all the votes which may be cast by shareholders in the company at general meetings.

I. The following table sets out details as to Significant Shareholders in the Company:-

|  |  |  |  |
| --- | --- | --- | --- |
| Registered Owner | Address | **Beneficial Owner** | **Percentage** |
|  |  |  |  |
|  |  |  |  |

J. The Company has not granted any options over shares.

K. The Company has no employee share option scheme in place.

L. The Company has not issued loan stock / has issued loan stock as follows:

M. No resolution to wind up the Company has been passed and no notice of a meeting at which it is proposed to wind up the company has been issued or 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 of 201\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECRETARY**

Company Limited by Guarantee without a Share Capital - CERTIFICATE OF THE SECRETARY

I, [*Enter Name*], of [*Address*], Secretary of *[Enter name of company]* ("the Company") HEREBY CERTIFY as follows:-

A. The Company, which is registered in Dublin under CRO NO. [*Registration Number*], has its registered office at *[Enter registered office]*

B. The Directors of the Company are as follows:

i. [*name, address and category of membership*]

ii. [*name, address and category of membership*]…..

C. No Director of the Company is:

1. an undischarged bankrupt;
2. a person who is subject to restriction pursuant to the Companies Act, 2014 as the same has been or may be amended or extended; or
3. a person who has been disqualified from acting as a Director pursuant to the Companies Act, 2014 as the same has been or may be amended or extended.

D. [*Name and Address*] is the Secretary of the Company.

E. [*Name and Address*] is the Designated Officer of the Company.

F. Membership of the Company is open to the following:

1. [List Category of Membership, Fee and Entitlement to Appoint Directors]
2. [List Category of Membership, Fee and Entitlement to Appoint Directors]
3. [List Category of Membership, Fee and Entitlement to Appoint Directors]…..

G. The Company has made all returns to the Companies Registration Office which it is legally required to make.

H. The Company is limited by guarantee and does not have a share capital.

I. No resolution to wind up the Company has been passed and no notice of a meeting at which it is proposed to wind up the company has been issued or 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 of 201\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SECRETARY**

1. A domestic broadcaster is a provider of a television programme service which is primarily intended for reception by members of the public in Ireland. Non-domestic services are television programme services licensed by the BAI for reception in other Members States other than Ireland. [↑](#footnote-ref-1)
2. Non-domestic services are television programme services licensed by the BAI for reception in other Members States other than Ireland. [↑](#footnote-ref-2)
3. *See the attached* [*Appendix*](#_DEFINITIONS) *One for the definition of jurisdiction.* [↑](#footnote-ref-3)
4. *The policy of the BAI is to consider applications once none of an applicant’s Directors, Secretary, Management team or any on-air staff have been involved in unlicensed activity for at least twelve months prior to the submission of the application.* [↑](#footnote-ref-4)
5. *This includes, but is not limited to, a transmitter being activated on unlicensed days.* [↑](#footnote-ref-5)
6. *The codes and rules prepared by the BAI are available on the BAI’s website at* [*www.bai.ie*](http://www.bai.ie/)*. These include the Code of Programme Standards, the General Advertising Code, Children’s Advertising Code, the Access Rules, Rules on Advertising and Teleshopping (Daily and Hourly Limits).* [↑](#footnote-ref-6)
7. The Broadcasting Act, 2009 defines ‘Programme Material’ as ‘audio visual material or audio material and incudes advertisements and material which, when transmitted, will constitute a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) of services.’ [↑](#footnote-ref-7)
8. *Any decision of the BAI made pursuant to the Act may be appealed by the holder of the contract to the High Court. A contract terminated under section 50 or any other provision of the Act or under a provision of the contract shall cease to have effect; a contract suspended under section 51 or any other provision of the Act or under a provision of the contract shall cease to have effect for the period for which it is suspended.* [↑](#footnote-ref-8)
9. *The Court means the High Court.* [↑](#footnote-ref-9)
10. Further guidance is provided in the *BAI Ownership and Control Policy, 2012* [↑](#footnote-ref-10)
11. The BAI levy does not current apply to section 71 Content Provision Contracts. [↑](#footnote-ref-11)
12. Countries within and outside of the European Union. [↑](#footnote-ref-12)
13. Section 62 states “The Contract Awards Committee shall not recommend to the BAI the grant of a sound broadcasting contract to a person who has been convicted under Section 3(3) (inserted by section 181(2)) of the Act of 1926 or under section 3, 4 and 5 of the Act of 1988 if the conviction occurred less than 12 months before the first day on which the person proposes to engage in the sound broadcasting activities to which the application for the sound broadcasting contract relates. [↑](#footnote-ref-13)
14. The applicant must demonstrate that the programme material on each feed is identical and broadcast at the same time. [↑](#footnote-ref-14)