



Dated the [ ]

**BROADCASTING AUTHORITY OF IRELAND**

and

[ ]

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**SOUND BROADCASTING CONTRACT**

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THIS CONTRACT is made the [ ]

**BETWEEN:**

1. **BROADCASTING AUTHORITY OF IRELAND** having its principal office at 2-5 Warrington Place, Dublin 02 XP29, (herein called “**Authority**”)

**AND**

2. **[insert]** a company incorporated under the laws of Ireland with registered number **[insert]** and having its registered office at **[insert]** (herein called “**Contractor**”) (herein called “**Contractor**”)

**WHEREAS:**

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

**IT IS HEREBY AGREED:**

**SECTION 1.0 - INTERPRETATION**

**1.1 Definitions**

In this Contract (including the Recitals and the Schedules) the following words and expressions have the following meanings:

“ <b>1926 Act</b> ”	means Wireless Telegraphy Act 1926;
“ <b>2009 Act</b> ”	means Broadcasting Act 2009;
“ <b>Applicable Law</b> ”	means any law applicable in Ireland and shall include without limitation, common law, rules of any court of competent jurisdiction, statute, delegated or subordinate legislation (including statutory instruments and bye-laws), directives, decisions, regulations or rules of the European Union and the European Courts and includes any code of practice or guidelines for the time being in force;

<b>“Broadcast”</b>	means the transmission, relaying or distribution by Electronic Communications Network of communications, sounds, signs, visual images or signals, intended for direct reception by the general public whether such communications, sounds, signs or visual images or signals are actually received or not;
<b>“Broadcasting Codes”</b>	means a code or codes prepared under section 42 of the 2009 Act which is or are for the time being in force (and includes, as the context admits or requires, any or all of the code or codes);
<b>“Broadcasting Licence”</b>	means a licence issued by the Communications Regulator pursuant to section 5 of the 1926 Act and section 59 of the 2009 Act in respect of the Licensed Transmitters (and includes any variations to the Broadcasting Licence made from time to time by the Communications Regulator in accordance with section 60 of the 2009 Act);
<b>“Broadcasting Rules”</b>	means the rules prepared under section 43 of the 2009 Act which are for the time being in force (and includes, as the context admits or requires, any or all of them);
<b>“Broadcasting Service”</b>	means a service which comprises a compilation of Programme Material of any description and which is transmitted, relayed or distributed by means of an Electronic Communications Network, directly or indirectly for simultaneous or near-simultaneous reception by the general public, whether that material is actually received or not, and where the programmes are provided in a pre-scheduled and linear order, but does not include: <ul style="list-style-type: none"> <li>(a) a service provided in a non-linear manner where each user of the service chooses a programme from a catalogue of programmes, or</li> <li>(b) other audio and audiovisual services provided by way of the Internet;</li> </ul>
<b>“Broadcasting Services Platform”</b>	means a platform for the Broadcast of Programme Material by means of any transmission system including, without limitation, wireless telegraphy, a satellite device, a cable system, an Internet protocol television network or an MMD System;
<b>“Business Day”</b>	means Monday to Friday excluding bank and public holidays in the State;
<b>“Clause 5.3 Statement”</b>	means a statement made pursuant to clause 5.3;
<b>“Communications Media”</b>	means: <ul style="list-style-type: none"> <li>(a) the provision of a Broadcasting Service,</li> <li>(b) the provision of a Broadcasting Services Platform, and/or</li> <li>(c) the publication of newspapers or periodicals consisting substantially of news and comment on current affairs;</li> </ul>

<b>“Communications Regulator”</b>	means the Commission for Communications Regulation established under the Communications Regulation Act 2002, or any body in the future charged with the functions of such Commission;
<b>“Companies Act”</b>	means the Companies Act 2014;
<b>“Competition Authority”</b>	means the Authority continued in being by section 29 of the Competition Act 2002, or any body in the future charged with the functions of such Authority;
<b>“Complaints Code”</b>	means a code of practice prepared and implemented by the Contractor under section 47(3) of the 2009 Act for the handling of complaints made under section 47(1) of the 2009 Act;
<b>“Compliance Committee”</b>	means the committee of the Authority established to undertake the functions set out in section 28 of the 2009 Act;
<b>“Compliance Notice”</b>	has the meaning given to it in clause 11.1;
<b>“Compliance Officer”</b>	means the person (being one of the Key Personnel) to whom the Contractor has given the task of ensuring that the Contractor complies with this Contract;
<b>“Contract”</b>	means the terms and conditions and Schedules of this Contract;
<b>“Data Protection Legislation”</b>	means the Data Protection Acts 1988 to 2018;
<b>“Effective Date”</b>	means the date this Contract comes into full force and effect and being [INSERT DAY AND MONTH] 202x;
<b>“Electronic Communications Network”</b>	<p>means transmission systems including, where applicable:</p> <ul style="list-style-type: none"> <li>(a) switching equipment;</li> <li>(b) routing equipment; or</li> <li>(c) other resources;</li> </ul> <p>which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes (irrespective of the type of information conveyed) the use of:</p> <ul style="list-style-type: none"> <li>(i) satellite networks;</li> <li>(ii) electricity cable systems, to the extent that they are used for the purposes of transmitting signals;</li> <li>(iii) fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet);</li> <li>(iv) mobile terrestrial networks;</li> <li>(v) networks used for either or both sound and television Broadcasting; or</li> </ul>

	(vi) cable television and internet protocol television networks;
<b>“First Level Plc Transaction”</b>	means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring 5% or more (but less than 10%) of the voting rights (or the right to control the exercise of such voting rights) at general meetings of B;
<b>“Insolvent”</b>	<p>means in respect of a person if:</p> <ul style="list-style-type: none"> <li>(a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 570 of the Companies Act or (being a partnership) has any partner to whom any of the foregoing apply;</li> <li>(b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party;</li> <li>(c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;</li> <li>(d) an application is made to court, or an order is made, for the appointment of a receiver or examiner, or if a notice of intention to appoint a receiver or examiner is given or if a receiver or examiner is appointed over it (being a company);</li> <li>(e) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed an administrative receiver;</li> <li>(f) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Business Days;</li> <li>(g) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (f) above (inclusive); or</li> <li>(h) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; and/or</li> <li>(i) anything analogous to the foregoing occurs in any jurisdiction;</li> </ul>

<b>“Interest”</b>	means an interest within the meaning of clause 5.7;
<b>“Key Personnel”</b>	means each of the persons identified in the Second Schedule under <i>Management/Key Personnel</i> or any replacement of any of them from time to time whom is approved in writing by the Authority (at its discretion);
<b>“Levy Order”</b>	means a levy order issued from time to time by the Authority under section 33 of the 2009 Act;
<b>“Licensed Service”</b>	means the Sound Broadcasting Service which the Contractor is to provide under this Contract, namely the establishment, maintenance and operation of the Licensed Transmitters serving the Specified Area only and the provision, as specified in this Contract, of a Sound Broadcasting Service (including the provision of all related and incidental work, services, tasks, duties and functions) subject to, and in accordance with, this Contract;
<b>“Licensed Service Content”</b>	means Programme Material Broadcast by or on behalf of the Contractor pursuant to this Contract as a part of or in connection with the Licensed Service (and includes, as the context admits or requires, any or all of the Licensed Service Content);
<b>“Licensed Transmitters”</b>	means the transmitter or transmitters which are to be established, maintained and operated by the Contractor under clause 4.1.1 and which are more particularly described in terms of type, location and number in the Broadcasting Licence;
<b>“Minor Plc Transaction”</b>	means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring less than 5% of the voting rights (or the right to control the exercise of such voting rights) at general meetings of B;
<b>“MMD System”</b>	means a multipoint microwave distribution system used for the transmission of Broadcasting Services on a point to multipoint basis;
<b>“Multiplex”</b>	means an electronic system which combines programme material and related and other data in a digital form and the transmission of that material and data so combined by means of wireless telegraphy directly or indirectly for reception by the general public;
<b>“Near Relative”</b>	means:  (a) spouse, civil partner, cohabitant (within the meaning of section 172 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 or any analogous legislation of another jurisdiction); and/or  (b) child, stepchild, brother, sister, parent, or grandparent; or (where appropriate) the spouse, civil partner or such a cohabitant of any of the aforesaid;
<b>“Person in Question”</b>	means a Relevant Person in respect of which a disclosure is made

	under clause 5.3;
<b>“Plc Application”</b>	means an application to the Authority under clause 5.1.5;
<b>“Plc Transaction”</b>	means any transaction, order or event which results in a change in the Interest of a person in a Quoted Company, including where an Interest in shares or voting rights itself does not change but, relative to the aggregate of Interests in a Quoted Company, increases or decreases;
<b>“Programme Material”</b>	means audio-visual material or audio material and includes advertisements and material which, when transmitted, constitutes a direct offer to the public for the sale or supply to them of goods or other property (whether real or personal) or services;
<b>“Plc Programme of Action”</b>	means a programme agreed by the Authority and the Contractor under clause 5.20 and/or clause 5.21;
<b>“Programme Policy Statement”</b>	means the programme policy statement set out in the Third Schedule;
<b>“Programme Schedule”</b>	means the indicative programme schedule set out in the Third Schedule;
<b>“Quarter”</b>	means a period of three months beginning on 1 <sup>st</sup> January, 1 <sup>st</sup> April, 1 <sup>st</sup> July or 1 <sup>st</sup> October in each year during the Term;
<b>“Quoted Company”</b>	means a company whose shares are listed or traded on or through a regulated market, within the meaning of EU Directive 2004/39/EC;
<b>“Relevant Change”</b>	means any of the occurrences set out in clauses 5.1.1 to 5.1.6 inclusive;
<b>“Relevant Person”</b>	means any of the following: <ul style="list-style-type: none"> <li>(a) a person who supplies a compilation of Programme Material which is Broadcast in the State;</li> <li>(b) a person who operates a Broadcasting Services Platform which transmits Programme Material to viewers and/or listeners in the State;</li> <li>(c) a programme production company which produces programmes which are Broadcast in the State;</li> <li>(d) an advertisement production company which produces advertisements which are Broadcast in the State;</li> <li>(e) the publisher of a newspaper, magazine or journal in the State;</li> <li>(f) an advertising agency which produces advertisements which are Broadcast in the State, or which acts as a media buyer in respect of the Broadcast of advertisements in the State;</li> </ul>



	<p>(g) a public relations company which carries on business in the State;</p> <p>(h) a music publisher which publishes music which is displayed for sale or Broadcast in the State;</p> <p>(i) a distributor of recorded music which distributes recorded music in the State;</p> <p>(j) a person who is engaged in Communications Media in the State;</p> <p>(k) a person who has a Substantial Interest in a person listed in any of (a) to (j) above; and</p> <p>(l) a person who is not a national of a Member State of the European Union;</p>
<b>“Scheme”</b>	means any schemes (or similar) administered by the Authority under Applicable Law from time to time (and includes, as the context so admits or requires, any one, more or all of them or any part of any of them);
<b>“Second Level Plc Transaction”</b>	means any Plc Transaction resulting in a person (“A”) having an Interest in shares in another person (“B”) conferring 10% or more of the voting rights (or the right to control the exercise of such voting rights) at general meetings of B;
<b>“Secretary’s Certificate”</b>	means a certificate in the form set out in the Second Schedule as provided by the Contractor to the Authority on or prior to the date of this Contract and as to be updated by the Contractor from time to time during the Term in accordance with the provisions of this Contract;
<b>“Serious Failure”</b>	has the meaning given to it in clause 11.5;
<b>“Shareholders’ Agreement”</b>	means an agreement to which persons having an Interest in the Contractor are party, which deals with the manner in which the affairs of the Contractor are to be conducted;
<b>“Share Purchase Agreement”</b>	<p>means:</p> <p>(a) an agreement, scheme or offer for the sale, purchase, transfer, allotment, issue, redemption, conversion, cancellation, redesignation or creation of shares in the Contractor; and/or</p> <p>(b) an agreement, scheme or procedure in Ireland and/or in any other jurisdiction to re-register the Contractor as a Societas Europae or any other corporate form;</p>
<b>“Simulcast Amendment”</b>	means an amendment of the kind referred to in section 134 (6) of the 2009 Act;
<b>“Sound Broadcasting”</b>	means a contract under Section 63 of the 2009 Act;

<b>Contract</b>	
<b>“Sound Broadcasting Contractor”</b>	means the holder of a Sound Broadcasting Contract;
<b>“Sound Broadcasting Service”</b>	means a Broadcasting Service which transmits, relays or distributes, by wireless telegraphy, communications, sounds, signs or signals intended for direct reception by the general public whether such communications, sounds, signs or signals are actually received or not;
<b>“Specified Area”</b>	means the area defined in the First Schedule (and includes, as the context admits or requires, any part or parts or all of it);
<b>“State”</b>	means the area of application of the laws enacted by the Parliament established by Bunreacht na hÉireann;
<b>“Suspension Notice”</b>	has the meaning given to it in clause 11.7;
<b>“Substantial Interest”</b>	has the meaning given to it in clause 5.8;
<b>“Term”</b>	means a period of ten (10) years commencing on the Effective Date and ending on [day/month/year];
<b>“Termination Event”</b>	has the meaning given to it in clause 11.11;
<b>“Termination Notice”</b>	has the meaning given to it in clause 11.9; and
<b>“Warning Notice”</b>	has the meaning given to it in clause 11.2.

## 1.2 Interpretation

In this Contract the following rules of interpretation shall apply:

- 1.2.1 Clause, Schedule and paragraph headings are for convenience only and shall not affect the interpretation of this Contract;
- 1.2.2 references to Sections mean Sections of this Contract;
- 1.2.3 references to clauses are to clauses of this Contract;
- 1.2.4 references to paragraphs mean the paragraphs contained in the Schedule in question or (where the Schedule in question comprises more than one part) the part of the Schedule in which the reference occurs;
- 1.2.5 reference to Schedules mean the Schedules to this Contract (and includes all paragraphs within that Schedule);
- 1.2.6 references to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality), government, government sub-division and/or agency and that person’s personal representatives, successors and permitted assigns;
- 1.2.7 a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established;

- 1.2.8 “subsidiary” has the same meaning as “subsidiary” in the Companies Act and the term “subsidiary undertaking” shall have a corresponding meaning;
- 1.2.9 “holding company” has the same meaning as “holding company” in the Companies Act and the term “parent undertaking” shall have a corresponding meaning;
- 1.2.10 unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular;
- 1.2.11 unless the context otherwise requires a reference to one gender shall include a reference to the other genders;
- 1.2.12 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision;
- 1.2.13 references to Applicable Law include the 2009 Act;
- 1.2.14 references to the “Authority” shall include (where the context so admits or requires) the Compliance Committee and any other committee of the Authority that under the 2009 Act performs a function or role in relation to this Contract; and
- 1.2.15 any obligation on the part of the Contractor in this Contract not to do or omit to do any act or thing is deemed to include an obligation not (insofar as is within the power, control or procurement of the Contractor) to permit or suffer such act or thing to be done or omitted (as the case may be).
- 1.2.16 any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding or succeeding those terms;
- 1.2.17 references to “programmes” include sponsored programmes; and
- 1.2.18 the term “wireless telegraphy” has the same meaning as in the 1926 Act.

### 1.3 **Priority**

In the event of any inconsistency or conflict arising between the clauses and the paragraphs then the clauses take precedence.

### 1.4 **Contra Proferentem**

In the event that an ambiguity or question of intent or interpretation arises in relation to this Contract then this Contract shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of this Contract.

## **SECTION 2.0 – CONFIRMATIONS**

- 2.1 The Contractor acknowledges and agrees that the Authority has entered into this Contract in reliance on the representations, statements and warranties contained in this Contract.
- 2.2 The Contractor warrants and represents to and for the benefit of the Authority that:

- 2.2.1 the Contractor has not been convicted, within the twelve (12) months preceding the date of this Contract, of an offence under section 3(3) of the 1926 Act or under any of section 3, section 4 or section 5 of the Broadcasting and Wireless Telegraphy Act 1988;
- 2.2.2 the Contractor is fully aware of the terms of the Broadcasting Licence granted in respect of the Licensed Transmitters;
- 2.2.3 the Contractor is fully familiar with, and shall fully comply in performing its obligations under the Contract with, all relevant Applicable Laws;
- 2.2.4 the Contractor has all the necessary personnel, expertise, equipment, transmitters, communications infrastructure and resources to perform its obligations under this Contract on time and in accordance with this Contract;
- 2.2.5 the Contractor is of sound financial standing and has and will retain sufficient working capital available to it to carry out its obligations in accordance with this Contract throughout the Term;
- 2.2.6 the Contractor has not traded since its incorporation other than for the purposes of entering into this Contract (and/or a previous Sound Broadcasting Contract) and it will not change nor cease its business nor start any other business which is materially different from that to be carried on by it under this Contract;
- 2.2.7 the Contractor is, and will remain for the Term, a company duly incorporated, properly organised, validly existing and in good standing under the laws of Ireland;
- 2.2.8 the Contractor has full power, capacity and authority to enter into this Contract and perform its obligations and has taken all necessary action to authorise its entry into and performance of, this Contract and the transactions contemplated hereby;
- 2.2.9 this Contract constitutes its legal, valid, binding and enforceable obligations;
- 2.2.10 the execution and performance of this Contract by the Contractor does not and will not contravene its constitutional documents or any Applicable Law and does not and will not conflict with or constitute a breach or default under any contract or agreement or obligation of any kind to which the Contractor or any of its assets is a party or is subject to;
- 2.2.11 there is no pending or threatened actions, investigations or proceedings before any court or administrative or regulatory authority or agency which could materially adversely affect the business or operations of the Contractor or its ability to carry out its obligations in accordance with this Contract throughout the Term;
- 2.2.12 the Contractor is not aware of any matter or conflict or circumstance which might restrict or impede it from entering into and performing this Contract or would materially affect the decision of the Authority to enter into this Contract with the Contractor;
- 2.2.13 any registrable interest, within the meaning of the Ethics in Public Office Act 1995, involving the Contractor (and its employees and their relatives) and the Authority (and its employees and officers and their relatives) has been fully disclosed in writing to the Authority prior to the date of this Contract;
- 2.2.14 the Contractor has not offered, given or agreed to give any adviser, officer or employee of the Authority any gift or consideration of any kind as an inducement or reward in connection with this Contract or the application process relating to it;
- 2.2.15 all information supplied by the Company or on its behalf to the Authority for the purposes of or in connection with this Contract is true, accurate and complete in all respects and the Company has not omitted to disclose any information to the Authority which, if disclosed, would adversely affect the decision

of the Authority to enter into this Contract. For the purposes of this clause 2.2.15 the expression "information" includes:

- (a) all information supplied to the Authority by the Contractor in relation to this Contract before the Effective Date;
- (b) all information contained in the Secretary's Certificate; and
- (b) all information supplied or to be supplied to the Authority by the Contractor under this Contract (to include information provided pursuant to Section 5.0); and

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

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

### **SECTION 3.0 – COMMENCEMENT AND DURATION**

#### **3.1 Term**

3.1.1 This Contract commences, and takes legal effect, on and from the Effective Date.

3.1.2 This Contract expires on the expiry of the Term (unless otherwise terminated in advance of that date pursuant to the provisions of Section 11.0).

### **SECTION 4.0 - APPOINTMENT AND PAYMENT**

#### **4.1 Appointment**

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

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

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

throughout the Term subject to and in accordance with the terms of this Contract, the Broadcasting Licence and Applicable Law and the Contractor hereby accepts such appointment subject to the terms of this Contract.

#### **4.2 Scope of Appointment**

This Contract (and the appointment under clause 4.1):

4.2.1 entitles the Contractor to Broadcast, as a Sound Broadcasting Service only, Programme Material for the Licensed Service only via the Licensed Transmitters for the Specified Area only and not otherwise; and

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

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

#### 4.3 **Payments**

The Contractor:

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

#### 4.4 **Acknowledgement**

The Contractor acknowledges and agrees that:

- 4.4.1 the Authority may enter into a Sound Broadcasting Contract of any type and in respect of any area (including the Specified Area) with other persons;
- 4.4.2 it is possible that Programme Material Broadcast by any other Sound Broadcasting Contractor (or other persons) may be capable of being received in any or all of the Specified Area;
- 4.4.3 the Contractor enters into this Contract at its own risk and is not entitled to any financial or other support from the Authority in relation to the implementation, direction, provision, Broadcast, management, maintenance and development of the Licensed Service, performance of its obligations or otherwise; and
- 4.4.4 the Authority has no obligations (without prejudice to Applicable Law), and has no liability (whether for breach of contract, statute or other duty, negligence or anything else) to the Contractor in connection with this Contract or the Licensed Service except to the extent expressly stated otherwise in this Contract. For certainty, this clause 4.4.4 does not exclude the Contractor's entitlement to seek or obtain a remedy by way of judicial review arising from a breach of statutory duty or fair procedures.

#### 4.5 **No Right to Renew**

The Contractor acknowledges and agrees that it has no right:

- 4.5.1 of renewal of this Contract, whether pursuant to section 67 of the 2009 Act or otherwise; and/or
- 4.5.2 to be offered, in any circumstances, a Simulcast Amendment.

### **SECTION 5.0 - STATUS OF CONTRACTOR**

#### 5.1. **Specified Conditions**

The Contractor acknowledges and agrees that:

- 5.1.1 the Contractor shall not make, permit or suffer any alteration to:
  - (a) its constitutional documents; or
  - (b) its Shareholders Agreement (as supplied to the Authority prior to the Effective Date) without the previous consent in writing of the Authority;

- 5.1.2 subject to clause 5.1.5, the Contractor shall not permit or suffer any material change in the ownership of the Contractor without the previous consent in writing of the Authority;
- 5.1.3 subject to clause 5.1.5 (and without limiting clause 5.1.2) the Contractor shall not, without the previous consent in writing of the Authority, make, permit or suffer a change in any of the information set out in clause 5.3, the Clause 5.3 Statement or the current Secretary's Certificate including each of the following which is deemed to constitute a change in such information:
- (a) any circumstance as a result of which the current Secretary's Certificate or the Clause 5.3 Statement is no longer true, accurate and complete and/or is misleading in any respect;
  - (b) the coming into being of a new Shareholders' Agreement; and/or
  - (c) the coming into being of any agreement which changes or varies the effect of a Shareholders' Agreement;
- 5.1.4 subject to clause 5.1.5 (and without limiting clause 5.1.2) the Contractor shall not, without the previous consent in writing of the Authority, permit or suffer:
- (a) a person who at the date of this Contract or the Effective Date (whichever is the earlier) has a Substantial Interest in the Contractor:
    - (i) ceasing to have that Substantial Interest in the Contractor; or
    - (ii) increasing or reducing that Substantial Interest, which includes where that Substantial Interest itself does not change but, relative to the aggregate of Interests in the Contractor increases or reduces;
  - (b) a person who at the date of this Contractor the Effective Date (whichever is the earlier) does not have a Substantial Interest in the Contractor:
    - (i) acquiring a Substantial Interest in the Contractor; or
    - (ii) subsequently increasing or reducing that Substantial Interest, which includes where that Substantial Interest itself does not change but, relative to the aggregate of Interests in the Contractor increases or reduces;
- 5.1.5 the Contractor is required to apply to the Authority for its consent (and is not, despite clauses 5.1.2 to 5.1.4 and clause 5.16, required to apply for the Authority's prior consent) in writing in respect of:
- (a) any First Level Plc Transactions that gives rise to a Relevant Change described in clause 5.1.3 or 5.1.4; and
  - (b) any Second Level Plc Transactions that gives rise to a Relevant Change described in clause 5.1.3 or 5.1.4

as soon as it becomes aware of the Plc Transaction concerned; and

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

and the Authority may, if it considers it reasonable so to do, refuse to consent to any such Relevant Change in accordance with the terms of this Contract.

## 5.2 **Secretary's Certificate**

The Contractor shall:

- (a) when requested to do so by the Authority; and
- (b) if any of the information contained in any prior Secretary's Certificate alters or changes

provide an updated Secretary's Certificate to the Authority from time to time during the Term provided always that the provision of any such updated Secretary's Certificate to the Authority shall not relieve the Contractor from any obligation in this Contract to obtain the previous written consent of the Authority to any such change or alteration to the information contained in the Secretary's Certificate.

### **5.3 Statement**

Subject to clause 5.4 and clause 5.5, the statement made by the Contractor pursuant to this clause 5.3 is required to set out in a manner approved by the Authority:

- 5.3.1 the manner in which, and the extent to which, any Relevant Person has a Substantial Interest in the Contractor (and, for the removal of doubt, for the purpose of this clause 5.3.1, a Relevant Person may, in particular, be deemed to have a Substantial Interest in the Contractor by virtue of the operation of any of clause 5.8 to clause 5.12 inclusive);
- 5.3.2 the manner in which, and the extent to which, the Contractor has an Interest in any Relevant Person (and, for the removal of doubt, for the purpose of this clause 5.3.2 the Contractor may, in particular, be deemed to have an Interest in a Relevant Person by virtue of the operation of any of clause 5.7, clause 5.10 and/or clause 5.12);
- 5.3.3 the circumstances by virtue of which a Person in Question is a Relevant Person; and
- 5.3.4 such additional information bearing upon the matters referred to in clause 5.3.1 to clause 5.3.3 inclusive as has been included in such statement at the direction of the Authority.

### **5.4 Shareholding in the Contractor**

Where the Clause 5.3 Statement discloses that a Relevant Person has a Substantial Interest in the Contractor, such statement is required to contain details as to the issued share capital of the Contractor and as to the number of shares and per centage shareholding in the Contractor held by such Relevant Person, distinguishing where appropriate between shares of different classes and the rights attaching to such different classes of shares.

### **5.5 Shareholding in Relevant Person**

Where the Clause 5.3 Statement discloses that the Contractor has an Interest in a Relevant Person and such Relevant Person is a company with a share capital, such statement is required to contain details as to the issued share capital of such Relevant Person and as to the number of shares and per centage shareholding in such Relevant Person held by the Contractor, distinguishing where appropriate between shares of different classes and the rights attaching to such different classes of shares.

### **5.6 Responsibility**

The Contractor is solely responsible for ensuring that the Clause 5.3 Statement is true, accurate and complete in all respects and contains all the information required by this Section 5.0. Notwithstanding the



fact that the Authority may prescribe or approve the form of a Clause 5.3 Statement, the Authority takes no responsibility for the content of such statement.

#### **5.7 Interest**

For the purposes of this Contract, a person (in this clause 5.7, "A") has an Interest in another person (in this clause 5.7, "B") if:

- 5.7.1 (where B is a partnership), A is a partner in B;
- 5.7.2 (where B is a company), A is the legal or beneficial owner of shares in B, or controls the exercise of voting rights in respect of such shares;
- 5.7.3 (where B is a company), A is a director of, or a shadow director (within the meaning of section 221 of the Companies Act) of B, or has the right to appoint a director to the board of B;
- 5.7.4 (where B is a trust), A is a settlor, trustee, protector, or beneficiary of B; and/or
- 5.7.5 (in any case), A is a senior employee of B.

#### **5.8 Substantial Interest**

- 5.8.1 Subject to clause 5.9, for the purpose of this Contract a person (in this clause 5.8 "C") has a Substantial Interest in another person (in this clause 5.8 "D"), where "C" has sufficient proprietary, financial or voting strength within "D" or another entity to be able to influence directly or indirectly to an appreciable extent the strategic direction or policy (which includes editorial policy) of "D", with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.
- 5.8.2 The Authority will determine on a case-by-case basis whether a person has a Substantial Interest in another entity with reference to the overall shareholding structure of the relevant company, including, where there are convertible shares, calculating the percentage of the voting rights both on the basis that conversion has not taken place and on the basis of a notional conversion.

#### **5.9 Deemed Substantial Interest**

For the purpose of this Contract, a person (in this clause 5.9, "E") is conclusively deemed to have a Substantial Interest in another person (in this clause 5.9, "F") if:

- 5.9.1 (where F is a partnership), E is a partner in F having the right to exercise ten per cent (10%) or more of the voting rights at meetings of F;
- 5.9.2 (where F is a company), E is the legal or beneficial owner of shares in F conferring ten per cent (10%) or more of the voting rights (or the right to control the exercise of such voting rights) at general meetings of F;
- 5.9.3 (where F is a company), E is a director of, or a shadow director (within the meaning of section 221 of the Companies Act) of F, or has the right to appoint a director to the board of F;
- 5.9.4 (where F is a trust), E is a settlor, trustee, protector, or beneficiary of F; or
- 5.9.5 (in any case), E is a senior employee of F.

#### **5.10 Chain of Interests**

Where a person (in this clause 5.10, "G") has an Interest in a second person (in this clause 5.10, "H") and H has an Interest in a third person (in this clause 5.10, "I"), G is deemed, for the purpose of this Contract, to have an Interest in I and in any person in which I has an Interest, and so on, ad infinitum.

#### **5.11 Chain of Substantial Interests**

Where a person (in this clause 5.11, "J") has a Substantial Interest in a second person (in this clause 5.11, "K") and K has a Substantial Interest in a third person (in this clause 5.11, "L"), J is deemed, for the purpose of this Contract, to have a Substantial Interest in L and in any person in which L has a Substantial Interest, and so on, ad infinitum.

#### **5.12 Near Relative**

A person (being a natural person) is deemed, for the purposes of this Contract, to have an Interest in any person in which his Near Relative has an Interest, and is deemed, for the purpose of this Contract, to have a Substantial Interest in any person in which his Near Relative has a Substantial Interest.

#### **5.13 Exceptions**

A Relevant Change does not require the prior or subsequent written consent of the Authority pursuant to clause 5.1 where it:

- 5.13.1 has occurred as a result of a failure on the part of the company to make all returns to the Companies Registration Office which it is legally required to make;
- 5.13.2 consists only of a change of the address (not being the address of the registered office of the Contractor), provided that the Contractor promptly notifies the Authority of such change; or
- 5.13.3 has occurred only as a result of a Minor Plc Transaction.

#### **5.14 Plc Transaction Reporting Obligation**

The Contractor shall:

- 5.14.1 within thirty (30) days of the beginning of each Quarter, supply to the Authority details of any First Level Plc Transactions resulting in a Relevant Change described in clause 5.1.3 or 5.1.4 and which have taken place in the previous Quarter; and
- 5.14.2 supply details to the Authority of any Second Level Plc Transactions resulting in a Relevant Change described in clause 5.1.3 or 5.1.4, as soon as the Contractor becomes aware that the Plc Transactions concerned have taken place.

#### **5.15 Approval of First Level Plc Transactions**

A First Level Plc Transaction may, at the Authority's discretion, be made subject to the consent of the Authority. When the Contractor supplies details of a First Level Plc Transaction to the Authority under clause 5.14.1, the Authority may, within sixty (60) days of receipt of such details, give written notice to the Contractor requiring the Contractor to apply for the consent of the Authority to such transaction and the Contractor shall comply with any such notice. If the Authority does not issue such a notice within the sixty (60) day period, the Contractor is not required to obtain the consent of the Authority to the relevant First Level Plc Transaction.

#### **5.16 Consideration**

5.16.1 The Authority shall consider every application by the Contractor for consent to a Relevant Change with a view to determining:

- (a) whether such Relevant Change is material, viewed in the light of the statutory remit of the Authority, and of such policies as the Authority has adopted in furtherance of such remit; and
- (b) (in the event that such Relevant Change is judged to be material), whether such change is undesirable, viewed in the light of such remit and such policies.

5.16.2 Without limitation to clause 5.16.1, in considering whether to grant or refuse consent to a Relevant Change, the Authority shall have regard to:

- (a) the criteria specified in section 66(2) of the 2009 Act;
- (b) (where applicable) the provisions of section 66(4) of the 2009 Act; and
- (c) any applicable policies of the Authority.

## 5.17 Refusal

5.17.1 The Authority will refuse to consent to a Relevant Change only in circumstances in which it reasonably determines, having regard to the provisions of clause 5.16.2, that such change is material and undesirable viewed in the manner provided for in clause 5.16.1.

5.17.2 When the Authority decides to refuse to consent to a Relevant Change it will internally record the fact of, and the reasons for, such refusal.

## 5.18 Response

5.18.1 Subject to clause 5.19, the Authority shall endeavour, within sixty (60) days of receipt of a complete application for consent to a Relevant Change, to communicate in writing to the Contractor its consent to, or its refusal to consent to, such Relevant Change.

5.18.2 If the Authority refuses to consent to a Relevant Change the written communication referred to in clause 5.18.1 shall set out the Authority's reasons for refusing to consent to such Relevant Change

## 5.19 Time Limit

The Authority may in response to an application for consent to a Relevant Change raise written queries concerning the Relevant Change in respect of which such application is made. The Authority will only be deemed for the purposes of clause 5.18.1 to have received a complete application in respect of a Relevant Change when the Contractor has responded in writing to all such queries to the Authority's reasonable satisfaction.

## 5.20 Plc Programme of Action for Rejected Plc Application

If the Authority does not consent to a Relevant Change which arises as a result of a Plc Application, it shall enter into discussions with the Contractor over a period of sixty (60) days from the date on which it has given notice of refusal of consent under clause 5.18, with a view to agreeing with the Contractor:

5.20.1 actions which the Contractor will take and which (subject to clause 5.20.2) will enable the Authority to consent to such Relevant Change; and

5.20.2 the time scale within which the Contractor is required to complete such actions.

#### **5.21 Agreed Plc Programme of Action**

If within the period referred to in clause 5.20 the Authority and the Contractor agree a Plc Programme of Action they shall within that period sign a memorandum setting out its terms.

#### **5.22 Implementation of Plc Programme of Action**

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

#### **5.23 Failure to Agree a Plc Programme of Action**

If the Authority does not consent to a Relevant Change which arises as a result of a Plc Application, and if within the period referred to in clause 5.20 the Authority and the Contractor fail to agree and sign a Plc Programme of Action, the Authority is entitled to terminate this Contract by issuing a Termination Notice.

#### **5.24 Share Purchase Agreement**

5.24.1 If the Contractor becomes party to a Share Purchase Agreement which is concluded by way of a written agreement, the Contractor shall supply to the Authority a full copy of the Share Purchase Agreement (and a copy of any other Share Purchase Agreements which have not previously been provided to the Authority) within five (5) Business Days of the date upon which the Contractor becomes a party to it.

5.24.2 If the Contractor becomes party to a Share Purchase Agreement which is not concluded by way of a written agreement, it shall supply to the Authority a memorandum setting out the full terms of the Share Purchase Agreement (and of any other Share Purchase Agreements which have not previously been provided to the Authority in accordance with this clause) within five (5) Business Days of the date upon which the Contractor becomes a party to it.

#### **5.25 Third Party Agreement**

If the Contractor receives any information concerning a Share Purchase Agreement to which the Contractor is not a party, it shall, within five (5) Business Days of receiving such information communicate it to the Authority. The information so communicated must, if the Contractor has received a copy of the Share Purchase Agreement, include such copy.

#### **5.26 Monitoring**

The Contractor shall put in place appropriate monitoring procedures so as to enable it to discharge its obligations under this Section 5.0.

### **SECTION 6.0 - PERFORMANCE STANDARDS AND MANAGEMENT**

#### **6.1 First Class Service**

The Contractor acknowledges and agrees that the objective of this Contract is for the Contractor to provide and Broadcast the best possible Licensed Service and Licensed Service Content (in terms including quality, range, type and user experience) in accordance with, and to, standards acceptable to the Authority.

#### **6.2 Codes**

The Contractor acknowledges and agrees that it is a fundamental term of this Contract that the Contractor performs its obligations hereunder and Broadcasts and provides the Licensed Service and Licensed Content in compliance with the Broadcasting Codes and the Broadcasting Rules.

### 6.3 **Laws**

6.3.1 The Contractor acknowledges and agrees that:

- (a) this Contract is subject to the terms of all Applicable Laws; and
- (b) the Authority may exercise any rights, entitlements or obligations under Applicable Laws without giving rise to any non-compliance with this Contract.

6.3.2 Without prejudice to the generality of clause 6.3.1 the Contractor shall:

- (a) recognise the constitutional rights of workers regarding trade union membership;
- (b) co-operate and engage with the dispute resolution machinery provided for under the Industrial Relations Acts 1946 to 2015; and
- (c) comply with its obligations under Data Protection Legislation (to include any guidelines and codes issued by the Data Protection Commissioner thereunder) and Broadcast the Programme Material and otherwise provide the Licensed Service in a manner consistent with its obligations under such provisions.

### 6.4 **Service Requirements**

The Contractor undertakes and agrees that it shall provide the Licensed Service subject to, and in accordance with:

- 6.4.1 the Programme Schedule;
- 6.4.1 the Programme Policy Statement;
- 6.4.3 all Applicable Laws;
- 6.4.4 the Broadcasting Codes;
- 6.4.5 the Broadcasting Rules;
- 6.4.6 the Contractor's Complaints Code;
- 6.4.7 the Broadcasting Licence;
- 6.4.8 this Contract; and
- 6.4.9 the Schemes.

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

### 6.5 **Complaints Code**

- 6.5.1 The Contractor shall prepare a Complaints Code and provide a copy of that Complaints Code to the Authority.
- 6.5.2 The Contractor shall operate the Complaints Code in accordance with the provisions of section 47 of the 2009 Act.
- 6.5.3 The Contractor shall have due regard to any guidance published by the Compliance Committee in the preparation and/or operation of a Complaints Code.
- 6.5.4 The Contractor shall comply with any written direction issued by the Compliance Committee issued under section 48 of the 2009 Act.

## 6.6 **Continuous Improvements**

The Contractor shall use all reasonable endeavours to continuously and incrementally make improvements in the Licensed Service and Licensed Service Content, including in terms of quality, range, type and user experience, throughout the Term to the extent reasonably possible and practicable.

## 6.7 **Agreed Deviations**

The Contractor specifically acknowledges and agrees that it may:

- 6.7.1 only deviate, without any requirement for the Authority's prior written approval, from the Programme Schedule on condition that such deviation does not impact on the programming commitments in the Programme Policy Statement; and
- 6.7.2 only deviate from the Programme Policy Statement if, and only to the extent that, it has the prior written consent of the Authority.

## 6.8 **General Obligations**

The Contractor undertakes and agrees that it shall:

- 6.8.1 provide the Licensed Service with all necessary skill, care, diligence and professionalism in a timely, efficient and safe manner in accordance with, and to, standards acceptable to the Authority;
- 6.8.2 provide all necessary resources and personnel (to include personnel with the necessary training, qualifications and language skills and fluency), and/or required for the proper provision of the Licensed Service on time in accordance with this Contract;
- 6.8.3 undertake all such steps as are required to ensure that the Licensed Service is continually and at all times provided and available during the times and in the manner required by this Contract;
- 6.8.4 at all times use its Key Personnel in the provision and management of the Licensed Service in the manner and to the extent reasonably required by the Authority and shall provide the Authority (or its nominees) with access to each of the Key Personnel at such times as it may require;
- 6.8.5 not do, or (insofar as is within the power, control or procurement of the Contractor) permit or suffer to be done, anything which interferes unnecessarily with another Sound Broadcasting Contractor or the Authority;
- 6.8.6 appoint a Compliance Officer who shall be responsible for ensuring the Contractor's compliance with this Contract; and
- 6.8.7 keep, during the Term and for a period of six (6) years from the date of expiration or termination of this Contract, due and proper records, in accordance with prevalent industry practice (and/or as may be

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

#### **6.9 Service Continuity**

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

#### **6.10 Co-Operation**

The Contractor shall:

- 6.10.1 provide the Authority with such information (including copies of its accounts) that the Authority considers it may require in order to enable it to carry out its functions under Applicable Law and/or to exercise its rights under, and/or monitor the performance of, this Contract;
- 6.10.2 co-operate with the Authority and comply with the Authority's reasonable instructions and directions from time to time in connection with this Contract and/or the Licensed Service;
- 6.10.3 liaise with the Authority, and keep the Authority up-to date in respect of material developments in connection with the Licensed Service and this Contract and, where requested, shall promptly attend meetings with the Authority and others; and
- 6.10.4 at all times act in good faith in its dealings with the Authority and the exercise of its rights and performance of its obligations under this Contract.

#### **6.11 Performance Review**

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

- 6.11.1 the Contractor meet with the Authority, or its nominee, so that the Authority may review the performance of the Contractor in the discharge of its obligations and exercise of its right under this Contract;
- 6.11.2 the personnel of the Contractor specified in such notice attend such meeting; and
- 6.11.3 the materials, records, information, data or similar of the Contractor specified in such notice are made available at such meeting.

#### **6.12 Self-Assessment**

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

- 6.12.1 complete any such questionnaire or statement, and in so doing shall comply with such guidelines regarding its completion as are included in or provided therewith; and
- 6.12.2 shall return such questionnaire or statement to the Authority, duly completed, on or before the date required by the Authority.  
The Authority anticipates that it will require the Contractor to complete a questionnaire or statement annually, though it may be more frequently where required by the Authority.

### 6.13 Human Resources

In carrying out its activities under this Contract, the Contractor shall endeavour to implement good practice in the area of human resources.

## SECTION 7.0 - PROGRAMMING

### 7.1 Quality

The Contractor shall provide the quality, range and type of Programme Material which it proposed to offer in the Programme Schedule. This is without prejudice to the other terms and conditions of this Contract.

### 7.2 Standards

The Programme Material Broadcast by the Contractor must at all times be such as in the opinion of the Authority is of a high general standard and of a high quality, in terms including quality, range, type and user experience, and compliant with this Contract and Applicable Law.

### 7.3 Bought-in Programmes

The Contractor shall not make use of Programme Material produced by third parties to an extent which, in the opinion of the Authority, is inconsistent with the local character or independence of the Licensed Service or is otherwise in breach of the provisions of this Contract.

### 7.4 Programme Practice

The Contractor shall not, without the prior written consent of the Authority, alter:

- 7.4.1 its arrangements for the preparation, editing and presentation of news and current affairs;
- 7.4.2 its practice in respect of the use of Programme Material produced by other Sound Broadcasting Contractors and/or other third parties; and/or
- 7.4.3 its practice in relation to the Broadcast of party political Broadcasts.

### 7.5 Restriction

The Contractor shall procure that no Programme Material is Broadcast by or on behalf of it which:

- 7.5.1 infringes Applicable Law;
- 7.5.2 constitutes an offence or an infringement of the legally protected rights of any person;,,
- 7.5.3 constitutes contempt of Court or breach of parliamentary privilege;
- 7.5.4 unreasonably encroaches on the privacy of a person; or
- 7.5.5 infringes the Broadcasting Codes or the Broadcasting Rules.

### 7.6 Recordings



The Contractor shall:

- 7.6.1 without prejudice to section 40 of the 2009 Act, make a recording (of a quality satisfactory to the Authority) and store categories of Programme Material, in the manner prescribed by the Authority from time to time in accordance with section 69 of the 2009 Act, and which may be inspected by the Authority for the term of this Contract and for a period of six (6) years after its termination or expiration; and
- 7.6.2 further to section 40 of the 2009 Act, record every Broadcast made by the Contractor and every item of Programme Material supplied by it under this Contract and retain such recordings for ninety (90) days from the date of their Broadcast or supply (as the case may be) or such other period as determined by the Compliance Committee from time to time.

#### **7.7 Storage of Records by Authority**

If it is proposed that the Authority will store on behalf of the Contractor any Programme Material recorded further to section 69(6) of the 2009 Act, the parties may (if considered necessary) put in place a separate agreement setting out any necessary terms or details in relation to such storage.

#### **7.8 Programme Recordings**

The Contractor shall furnish to the Authority, in such form and detail as the Authority may require, and at such intervals and times as the Authority may specify by notice to the Contractor, recordings of Programme Material which have been Broadcast by the Contractor.

#### **7.9 Authority's Right**

The Contractor acknowledges and agrees that the Authority may make, keep and use recordings of the Licensed Service Content in the discharge of its statutory functions. This clause survives the termination, expiration or suspension of this Contract.

#### **7.10 Emergency**

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

#### **7.11 Indemnity**

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

- 7.11.1 Programme Material (including programmes and advertisements) Broadcast by or on behalf of the Contractor;
- 7.11.2 the Contractor's failure to Broadcast the whole or any part of any Programme Material (including programmes or advertisements);
- 7.11.3 any death, sickness or injury of any person arising out of or in connection with the establishment, maintenance and/or operation of the Licensed Transmitters and/or sound broadcasting studio and/or arising out of or in connection with the establishment, maintenance and/or operation of the Licensed Service; and/or

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

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

## 7.12 Insurance

7.12.1 The Contractor shall (at its own cost and expense) obtain and maintain at all times insurance cover in respect of its proposed and actual activities under or in connection with this Contract and the Licensed Service in accordance with prudent commercial practice, and shall include the Authority as an indemnified party in every insurance policy so taken out on the same basis as the Contractor.

7.12.2 In particular, but without prejudice to the generality of clause 7.12.1., the Contractor shall obtain and maintain at all times the following minimum levels of insurances (provided that the Authority may, at its sole discretion, direct the Contractor to increase the limits set out below, and that the Contractor shall promptly comply with every such direction):

- (a) public liability insurance for not less than €7,500,000 any one claim;
- (b) employer's liability insurance for not less than €13,000,000 any one claim; and
- (c) radio contractor's indemnity insurance (otherwise known as libel insurance) for not less than €2,000,000 any one claim.

7.12.3 The Contractor shall maintain the policies of insurance in paragraphs (a) and (b) of clause 7.12.2 for a period of twelve (12) months after the termination or expiration of this Contract.

7.12.4 The Contractor shall maintain the policy of insurance in paragraph (c) of clause 7.12.2 for a period of twenty four (24) months after the termination or expiration of this Contract.

7.12.5 The policy or policies of insurance to be maintained by the Contractor under this clause 7.12 shall be shown by the Contractor to the Authority whenever it requests, together with satisfactory evidence of payment of premiums.

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

## 7.13 Notice of Claims

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

## 7.14 Claims Information

The Contractor shall:

- 7.14.1 keep a written record of every claim made or threatened against it, arising from Programme Material Broadcast by or on behalf of it, and shall promptly provide to the Authority with written details of such claim or claims (including those referred to in clause 7.14.2) as it may from time to time request in writing; and
- 7.14.2 promptly notify the Authority of any proceedings instituted against the Contractor arising from or in connection with Programme Material Broadcast by or on behalf of the Contractor, and shall keep the Authority informed, on a continuing basis, of developments concerning every proceedings so instituted.

## **SECTION 8.0 - TECHNICAL**

### **8.1 Equipment**

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

### **8.2 Licensed Transmitters**

8.2.1 The Contractor shall establish, maintain and operate the Licensed Transmitters in accordance with the terms and conditions of the Broadcasting Licence.

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

### **8.3 Head Office**

The Contractor shall establish its head office and studio facilities at the address set out below. The Contractor shall not move its head office or studio facilities to any other address without the prior written approval of the Authority. The Contractor may not establish any secondary or additional studios without the prior written consent of the Authority.

Address: **[insert]**

### **8.4 Compliance with Technical Requirements**

8.4.1 The Contractor shall (at its own cost and expense) comply in all respects with the Broadcasting Licence.

8.4.2 The Contractor shall (at its own cost and expense) comply with the terms and conditions set out in the Fourth Schedule in respect equipment, infrastructure, transmitters, links, facilities, plant, and premises required to comply with its obligations under this Contract.

### **8.5 Expertise**

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

### **8.6 Frequency**

8.6.1 The Contractor agrees to use such frequency as is for the time being allotted to it by the Authority and to use it only on such dates and at such times as are prescribed by the Authority.

8.6.2 The Contractor acknowledges and agrees that nothing in this Contract (or the Broadcasting Licence) has the effect of conferring on the Contractor any rights whatever of a proprietary or quasi-proprietary nature (or otherwise) in respect of any frequency.

## 8.7 **Emergency**

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

## **SECTION 9.0 - COMMERCIAL**

### 9.1 **Right of Use**

9.1.1 The Contractor shall provide to the Authority and permit the Authority to retain and make use, to the extent considered by the Authority (acting reasonably) to be necessary, incidental or conducive to the exercise or performance of its objectives or functions under Applicable Law, of such copyrights, sui generis database rights, trademarks, patents, licences, privileges and concessions of the Contractor.

9.1.2 If the Contractor considers, in a given case, that its compliance with clause 9.1.1 may breach the intellectual property rights of a third party, the Contractor shall use its best endeavours to find a work around acceptable to the Authority and that achieves the Authority's desired objective.

### 9.2 **Use of Programme Schedules**

Without prejudice to the generality of clause 9.1, the Contractor shall permit the Authority to use, without charge, information concerning the Contractor's programme schedules for the compilation, preparation, publication and distribution, whether directly by the Authority, the Authority's nominee or otherwise, in magazines, books and other such printed material, websites and such other aural and visual material (electronic or otherwise) as may seem to the Authority to be incidental or conducive to its objectives.

### 9.3 **Name**

9.3.1 The name of the Contractor's radio station will be **[insert]**.

9.3.2 The Contractor shall not change the name of the radio station or use any other business or trade name or description in relation to the Licensed Service or Licensed Service Content Broadcast by it without the prior written approval of the Authority.

### 9.4 **Material Developments**

The Contractor shall as soon as practicable inform the Authority in writing of:

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

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

9.4.3 any proposed establishment of a business.

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

## 9.5 Independence

The Contractor shall at all times be independent of all other Sound Broadcasting Contractors (except insofar as the Authority may in writing agree otherwise and, in such case, subject to such conditions as the Authority, acting reasonably, imposes on the Contractor). In particular, but without limitation, the Contractor must be independent of other Sound Broadcasting Contractors in matters concerning:

9.5.1 finance;

9.5.2 control; and

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

## 9.6 No Partnership

Without prejudice to the generality of clause 9.5, the Contractor shall not, without the prior written consent of the Authority (and subject to such conditions as the Authority, acting reasonably, imposes on the Contractor), enter into any agreement or arrangement with any Relevant Person (including, without limitation, a Sound Broadcasting Contractor) which creates a partnership or directly or indirectly provides for the sharing of profit or the giving or acceptance of any subsidy, payment or guarantee directly or indirectly related to profits.

## 9.7 Permitted Agreements

Nothing in clause 9.4 to clause 9.6 shall prohibit the Contractor from entering into:

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

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

## 9.8 Unfairly Prejudicial Activities

If the Contractor is engaged or has been engaged in activities in contravention of this Contract or Applicable Law which the Authority considers to be unfairly prejudicial to any other Sound Broadcasting Contractor, the Authority may, after consultation with the Contractor, give to the Contractor such directions as the Authority considers reasonable and appropriate and the Contractor shall comply with such directions.

## SECTION 10.0 – INFORMATION AND INSPECTIONS

### 10.1 Market Research

10.1.1 The Authority may require that arrangements made by the Contractor to carry out a market research survey, or any other research relevant to the activities of a Sound Broadcasting Contractor, be co-ordinated with similar arrangements (if any) made by other Sound Broadcasting Contractors and/or the Authority in such manner as are from time to time directed by the Authority.

10.1.2 The Authority may require the Contractor to make a financial contribution to such research in either case, and the Contractor shall promptly comply with any such requirement.

### 10.2 Statistics

The Contractor shall permit the Authority without charge to publish on a regular basis such information and statistics, including those generated by market research surveys or obtained from the Contractor, as seem to the Authority to be conducive to its functions under the 2009 Act.

### 10.3 **Declarations and Returns**

10.3 The Contractor shall promptly furnish to the Authority such declarations, returns, documents, accounts and other information concerning it and its holding company or any subsidiary and its and their activities as the Authority may require by written notice to the Contractor.

### 10.4 **Accounts**

The Contractor shall comply with Applicable Laws relating to the preparation and audit of accounts and the filing of annual returns. It shall notify the Authority, in writing, of any change in its financial year end, within ten (10) days of the date on which its directors resolve on such change.

### 10.5 **Management Accounts**

10.5.1 The Contractor shall comply with such written directions as the Authority communicates to the Contractor from time to time in respect of financial recording and the preparation of management accounts.

10.5.2 In particular, and without prejudice to the generality of clause 10.5.1, the Contractor shall prepare monthly management accounts in such format as the Authority prescribes. The Contractor shall complete the preparation of such monthly management accounts in respect of a given month within thirty (30) days after the end of such month and, if so requested in writing by the Authority, promptly provide copies of such monthly management accounts to the Authority.

### 10.6 **Certified Copies**

Without prejudice to the generality of the other provisions in this Section 10.0, the Contractor shall:

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

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

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

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

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

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

### 10.7 **Right of Circulation**

The Contractor hereby authorises the Authority to furnish to any Minister having for the time being a function in relation to the activities of the Authority, the Competition Authority, the Communications Regulator or any regulatory or administrative body, such information (whether obtained from the Contractor or otherwise) about any matter affecting or regarding the Contractor as is in the possession or control of the Authority and is lawfully required by such Minister or body, as the case may be, in connection with its functions.

## 10.8 Inspection

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

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

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

## 10.9 Audit

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

## SECTION 11.0 – COMPLIANCE NOTICES, WARNING NOTICES, SUSPENSION AND TERMINATION

### 11.1 Compliance Notices

The Authority, in connection with and arising from its compliance activities and audit of the performance of this Contract by the Contractor (or otherwise), may (but is not obliged to) from time to time identify in a report, notice or other communication what the Authority considers may be a failure by the Contractor to comply with this Contract and/or Applicable Laws in a particular respect (a "**Compliance Notice**") and the reasons for such consideration. Any such Compliance Notice is in all cases subject to the terms of clause 11.3.

### 11.2 Warning Notices

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

11.2.1 the Contractor may be in breach of this Contract; or

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

the Authority may (but it is not required to) give written notice (a "**Warning Notice**") to the Contractor setting out in general terms the matter giving rise to such notice, the fact that it is a Warning Notice and

a reminder to the Contractor of the implications of such notice (i.e. that clause 11.3 and clause 11.4 apply in such cases and that clause 11.5.15 may apply). The issue of a Warning Notice is, in particular, without prejudice to the right of the Compliance Committee to conduct an investigation pursuant to section 50 and/or Chapter 2 of the 2009 Act and does not limit or restrict the rights of the Compliance Committee in any way. Any notice issued by the Authority is only a Warning Notice if it is expressly stated in it to be a "Warning Notice".

### **11.3 Nature of Compliance and Warning Notices**

11.3.1 The issue of a Compliance Notice or a Warning Notice does not constitute (and will not be deemed to constitute) the making of a finding, pre-determination or pre-judgment by either the Authority or the Compliance Committee in relation to whether, in a particular case, the events concerned in fact constitute or constituted a failure by the Contractor to perform its obligations in accordance with any term or condition of this Contract (whether for the purposes of any investigation by a Compliance Committee or otherwise).

11.3.2 In the event of an investigation by the Compliance Committee in a particular case, the question of whether or not the Contractor has failed to perform its obligations in accordance with any term or condition of the Contract is a matter that will be determined by the Compliance Committee in any (and every) given case at that time and depending on the more particular facts of that case.

11.3.3 For the avoidance of doubt the Authority (or the Compliance Committee) shall be entitled to issue a Warning Notice irrespective of whether a Compliance Notice for the same matter has already issued to the Contractor.

### **11.4 Improvements**

11.4.1 If the Contractor receives a Compliance Notice the Contractor shall promptly engage with the Authority to propose ways in which the Contractor intends to deal with the subject matter of any such Compliance Notice.

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

11.4.3 If the Authority, acting reasonably, is:

- (a) satisfied with the plan proposed by the Contractor in response to any Warning Notice, it shall notify the Contractor accordingly and the Contractor shall implement its proposed programme within the timeline proposed in the plan; or
- (b) not satisfied with the plan proposed by the Contractor in response to any Warning Notice, it shall notify the Contractor accordingly and the Contractor and the Authority shall engage and act in good faith and reasonably in order to promptly discuss and agree revisions to the Contractor's plan that are satisfactory to the Authority, acting reasonably, in which case the Contractor shall promptly submit the revised plan to the Authority (and paragraphs (a) and (c) (as the case may be) of this clause 11.4.3 will apply); or
- (c) not satisfied with the plan proposed by the Contractor in response to any Warning Notice or if no plan is proposed in the first instance or if having put forward such plan the Contractor fails to fully implement it within the timeline proposed in the plan, then this will constitute the occurrence of a Serious Failure for the purposes of clause 11.5.



## 11.5 Serious Failures

Each of the following is a Serious Failure, namely if:

- 11.5.1 without limiting section 51(1)(a) of the 2009 Act, any false or misleading information of a material nature was given to the Authority by or on behalf of the Contractor before the making of this Contract;
- 11.5.2 any false or misleading information of a material nature is given to the Authority by or on behalf of the Contractor after the making of this Contract;
- 11.5.3 any information requested by the Authority has been withheld by or on behalf of the Contractor before or after the making of this Contract;
- 11.5.4 the Contractor has, in the opinion of the Authority, failed to comply with its obligations under Section 5.0 or Section 12.0 or clause 7.11 or clause 7.12 of this Contract;
- 11.5.5 the Contractor has, in the opinion of the Authority, failed to comply with any obligation or requirement whatever under Applicable Law;
- 11.5.6 the Contractor has failed, in the opinion of the Authority, to comply in a material respect with, or with a material term or condition of, this Contract or is otherwise in breach of this Contract;
- 11.5.7 a matter that is described as Serious Failure in any other clause of this Contract has occurred;
- 11.5.8 the Contractor threatens to cease, or ceases, broadcasting the Licensed Service (in whole or in part) or abandons this Contract;
- 11.5.9 the Contractor commits any act, or permits or suffers to be done, anything (whether in connection with this Contract or in connection with any other activities or business of the Contractor) which has a negative impact on the image or reputation of the Authority, the Contractor and/or the Licensed Service or otherwise brings any of them into disrepute;
- 11.5.10 the Authority, acting reasonably, considers that the Contractor is unable to provide the Licensed Service and perform its obligations under this Contract in the manner contemplated by this Contract; or
- 11.5.11 the Contractor receives three (3) Warning Notices in respect of the same or substantially the same matter.

## 11.6 Significance of a Serious Failure

The Contractor acknowledges and agrees that:

- 11.6.1 it is a condition of this Contract that the Contractor conducts itself so that a Serious Failure does not occur;
- 11.6.2 the matters that are identified as a Serious Failure are considered by both the Authority and the Contractor to be of a material nature in principle, subject to the more particular circumstances in a given case;
- 11.6.3 one (1) or more Serious Failures may be referred by the Authority to the Compliance Committee for its consideration;
- 11.6.4 it is possible that one (1) or more Serious Failures on the part of the Contractor may give rise to, *inter alia*, an investigation by the Compliance Committee resulting in a finding by the Compliance Committee, for the purposes of section 51 of the 2009 Act, that the Contractor is not providing the Licensed Service

in accordance with the terms of this Contract and/or a finding by the Compliance Committee, for the purposes of Chapter 2 of the 2009 Act, that there has been a serious or repeated failure by the Contractor to comply with a requirement referred to in section 53(1) of the 2009 Act;

11.6.5 neither the Authority nor the Compliance Committee has made any finding, pre-determination or pre-judgment in relation to whether, in a particular case, the nature of a Serious Failure that has occurred on one (1) or more occasions will, in fact, be considered by the Compliance Committee to be of such seriousness as may, depending on the more particular circumstances, warrant the termination or suspension of the Contract (or any other sanction or action). The question of whether or not this is the case is a matter that will be determined by the Compliance Committee in any (and every) given case at that time and depending on the more particular facts of that case;

11.6.6 clause 11.5 does not contain an exhaustive list of the matters that may give rise to an investigation by the Compliance Committee under section 50 or Chapter 2 of the 2009 Act or otherwise or any recommendation by the Compliance Committee under section 51 or Chapter 2 of the 2009 Act or otherwise; and

11.6.7 clause 11.5 and this clause 11.6 in no way restrict or limit, and are without prejudice to the rights and remedies of, the Compliance Committee and the Authority (including under section 51(1)(a) of the 2009 Act).

## 11.7 **Suspension**

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

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

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

11.7.3 a Serious Failure occurs of such seriousness to warrant in the opinion of the Authority the suspension of this Contract; or

11.7.4 as otherwise provided for in the 2009 Act;

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

## 11.8 **Effect of Suspension**

With effect from the date of the suspension:

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

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

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

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

#### 11.9 Termination

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

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

11.9.2 if a Termination Events occurs; and/or

11.9.3 as otherwise provided for in the 2009 Act.

#### 11.10 Effect of Termination

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

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

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

#### 11.11 Termination Events

Each of the following is a Termination Event, namely if:

11.11.1 the Contractor is Insolvent or the Authority, acting reasonably, considers that there is a risk that the Contractor is likely to become Insolvent;

11.11.2 the Broadcasting Licence is terminated or expires;

11.11.3a Serious Failure occurs of such seriousness to warrant in the opinion of the Authority the termination of this Contract;

11.11.4 the Authority does not consent to a Relevant Change which arises as a result of a Plc Application and the Authority and the Contractor fail to agree and sign a Plc Programme of Action within the period referred to in clause 5.20; and/or

11.11.5if, in the reasonable opinion of the Authority, it is necessary or prudent to terminate this Contract in order to comply with the requirements of Applicable Law or settle any complaint or challenge received by the Authority in such respect (including any arising out of or in connection with any process giving rise to the award, renewal or amendment of this Contract).

#### **11.12 Consequence of Termination and/or Suspension on Contract Rights**

The termination or expiry or suspension of this Contract does not affect either party's obligations accruing prior to the effective date of the termination, expiration or suspension or any rights, remedies or obligations of either party which this Contract provides or implies survive or commence after the expiration, termination or suspension of this Contract.

### **SECTION 12.0 – ASSIGNMENT**

#### **12.1 Assignment by Contractor**

The Contractor may not, without the prior written consent of the Authority:

- 12.1.1 assign, transfer or novate this Contract (in whole or in part) and/or any right or interest in it or any part of it; or
- 12.1.2 enter into any transaction or procedure under the Companies Act which would or could have or purport to have the effect of assigning or transferring this Contract or any right or interest in it or any part of it, including without limitation a scheme of arrangement under Part 9, Chapter 1 of the Companies Act, a merger or division under the European Communities (Mergers and Divisions of Companies) Regulations 1987 or a cross-border merger under the European Communities (Cross-Border Mergers) Regulations 2008; or
- 12.1.3 create any lien, charge or encumbrance of any kind affecting this Contract, any right or interest therein or any part thereof.

#### **12.2 Consideration**

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

#### **12.3 Assignment by Authority**

The Authority shall be entitled to assign or transfer its obligations under this Contractor to any successor body of the Authority.

### **SECTION 13.0 – GENERAL**

#### **13.1 Exercise of Powers**

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

#### **13.2 Proper Law and Jurisdiction**

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

### **13.3 Notices**

13.3.1 Any notice under this Contract must be in writing and signed by or on behalf of the party giving it.

13.3.2 Any notice under or in connection with this Contract must be in the English language and must be delivered personally or sent by pre-paid registered or recorded delivery post to the party intended to receive the notice at its address set out at the front of this Contract or any revised address notified in accordance with, and for the purposes of, this clause 13.3.

13.3.3 A party may notify the other of a change to its address for the purposes of this clause 13.3 and such notification shall only be effective five (5) Business Days after notice of any such change has been given

13.3.4 Unless the contrary is proved, each notice is deemed to have been given or made and delivered (if by post) two (2) Business Days after posting or (if delivered by hand) the next Business Day after it was left at the relevant address.

### **13.4 Entire Agreement**

13.4.1 This Contract and all documents delivered or to be delivered by the Contractor to the Authority under this Contract represents the entire of the understanding of the parties concerning the subject matter of this Contract and overrides and supersedes, in particular, all prior discussions, agreements, letters of intent and other matters concerning it which are hereby revoked by mutual consent of the Parties.

13.4.2 The Contractor confirms that it has not relied on, and has no remedies in respect of, any representations, statements, warranties, conditions and terms except those expressly set out in the Contract and that the parties have not entered into any collateral contract.

13.4.3 Nothing in this clause 13.4 excludes any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

### **13.5 Execution**

13.5.1 Each Party is entering into the Contract as a principal on its own behalf. This Contract is effective only upon the same being executed and delivered by or on behalf of each party.

13.5.2 This Contract may be executed in any number of counterparts and by the different parties on separate counterparts, each of which when executed constitute an original; all such counterparts together constituting but one and the same instrument.

### **13.6 Obligations**

If the Contractor comprises of more than one (1) person, all the provisions of this Contract are entered into jointly and severally by each such person and all such persons are jointly and severally liable under this Contract. This Contract is binding on, and enures to the benefit of, the successor and assigns of any party (provided that this is without prejudice to Section 5.0 and Section 12.0).

### **13.7 Waiver**

13.7.1 The provisions of this Contract may only be waived by a party in writing by express reference to this clause.

13.7.2 A waiver by a party of any failure by the other to comply with any of the provisions of this Contract does not constitute a general waiver of such provision or of any subsequent act contrary to it.

13.7.3 The failure or neglect by a party to enforce any provision of this Contract is not (and will not be deemed to be) a waiver of that party's rights under this Contract or Applicable Law and does not prejudice a party's right to take subsequent action in respect of such provision.

### 13.8 Variation

No variation of this Contract will be valid unless it is in writing and signed by or on behalf of each of the parties.

### 13.9 Unenforceable Terms

If any provision of this Contract is held by any court of competent jurisdiction or other competent authority to be unenforceable, illegal or void in whole or in part, then such part may be severed by the relevant court or competent authority from the remainder of this Contract which will remain in full force and effect to the fullest extent permitted by Applicable Law.

### 13.10 No Partnership

This Contract does not constitute any party the legal representative, employee, employer, joint venturer, partner or agent of the other party nor does any party or any successor of any party have the right or authority to assume, create or incur any liability or obligation of any kind expressed or implied against or in the name of or on behalf of any other party. The Contractor is, at all times in connection with the operation of this Contract, an independent contractor.

### 13.11 Saver of Rights

13.11.1 The Authority has knowledge of the contents of the Contractor's constitutional documents which are annexed to this Contract, and of the Shareholders Agreement(s) details of which are set out in the Second Schedule.

13.11.2 Pursuant to the provisions of Section 5.0, the Authority may consent to any such document being amended or replaced. The Authority will not be deemed, by virtue of such knowledge or consent, to have consented to any transaction or event which may be contemplated in the Contractor's constitutional documents or in any Shareholders Agreement.

13.11.3 Unless a right or remedy of the Authority is expressed to be an exclusive right or remedy, the Authority's rights are cumulative and the exercise of any right or remedy by the Authority is without prejudice to the Authority (and the Compliance Committee's) other rights and remedies under this Contract and/or Applicable Law.

### 13.12 Freedom of Information

The Contractor acknowledges that the Authority may be required to grant access to records held by the Authority in relation to the Licensed Service (including confidential information) to members of the public pursuant to the provisions of the Freedom of Information Act 2014, as may be amended from time to time, and the Contractor shall provide the Authority with copies of any relevant records (for the purpose of the Freedom of Information Act 2014) held by it within five (5) days (or as soon as possible thereafter) of a request being made by the Authority.

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



FIRST SCHEDULE – SPECIFIED AREA

[insert]

DRAFT



**SECOND SCHEDULE – STATUS OF CONTRACTOR**

**[insert]**

DRAFT





## PART 1 - CERTIFICATE OF THE SECRETARY

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

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



- H. As at close of business on [insert] the following shareholders had holdings of 10% or more in the capital of [insert legal and beneficial owner]:
- [insert name and percentage shareholding]
- I. The Company has not issued any options over shares in its capital.
- J. The Company has not issued any Loan Stock.
- K. No resolution to wind up the Company has been passed and no notice of a meeting at which it is proposed to wind up the Company has issued or been published. No petition has been presented or is pending to wind up the Company, and no steps have been taken to place the Company in receivership, or to have a receiver or examiner appointed to the Company or any of its assets or undertaking.

Dated the [insert]

---

[insert name and title]



## PART 2- MANAGEMENT / KEY PERSONNEL

1. Chief Executive Officer

**[insert]**

2. Programme Director

**[insert]**

3. Financial Controller

**[insert]**

4. Compliance Officer

**[insert]**

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**PART 3 - SHAREHOLDERS' AGREEMENT/S**

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**PART 4 - STATEMENT PURSUANT TO CLAUSE 5.3**

**SOUND BROADCASTING CONTRACT DATED [INSERT] BETWEEN BROADCASTING AUTHORITY OF IRELAND AND THE CONTRACTOR (“CONTRACT”)**

**STATEMENT PURSUANT TO CLAUSE 5.3**

**[insert name]**

**A. General**

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

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

**[insert]**

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

**[insert]**

Dated the **[insert]**

\_\_\_\_\_  
**[insert]**



**THIRD SCHEDULE – PROGRAMME SCHEDULE AND POLICY STATEMENT**

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**FOURTH SCHEDULE – TRANSMITTERS, LINK, STUDIO AND OTHER CONDITIONS**

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## TRANSMITTERS, LINK, STUDIO AND OTHER CONDITIONS

1. The Contractor shall supply to the Authority plans of the studio design details before going on air. The plans must show the detail that defines the studio acoustic quality in terms of:
  - (a) sound insulation;
  - (b) reverberation;
  - (c) resonance;
  - (d) reflective surfaces; and
  - (e) ventilation.

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

2. The Contractor shall ensure that all programme originating, linking and control equipment is of Broadcast quality.
3. Without prejudice to the generality of the foregoing, the Contractor shall ensure that the technical quality of the sound Broadcast by the Contractor complies with such standards as the Authority may from time to time notify to the Contractor in writing (whether in the form of technical regulations or otherwise).
4. The Contractor shall undertake, at its expense, such work to its premises, facilities, equipment, infrastructure or installations and provide such space and power supply and other facilities and services as may be required for the operation of any equipment, which the Authority may specify after consultation with the Contractor, to improve or monitor the technical quality of sounds Broadcast by the Contractor.
5. The Contractor shall arrange that all VHF Band II transmitter equipment and associated systems is kept within specification and the test equipment necessary to ensure this is provided and maintained at its own expense by the Contractor unless the Authority agrees otherwise in writing. In this connection, the Contractor shall ensure that all VHF Band II transmitter stations are routine tested annually and the performance figures are within the parameters set by the Commission for Communications Regulation and details of the foregoing will, on request, be forwarded to the Authority.
6. The Contractor shall ensure that the:
  - (a) transmitter front panel meters are calibrated;
  - (b) transmitter output power potentiometers, once set, are sealed with:
    - (i) a long-curing tamperproof locking compound,
    - (ii) a secure mechanical locking device;
    - (iii) an alphanumeric password; or
    - (iv) a combination of the above; and





- (c) maximum output power of the transmitters, combined with the antenna gain, is not capable of exceeding the maximum licensed power level by more than 3dB. A derogation for low power assignments may be approved in writing by the Authority prior to transmitter purchases.
7. The Contractor shall ensure that:
- (a) an appropriate *Service Level Agreement* is in place with a reputable electricity supplier for the provision of electrical power;
  - (b) the electrical installation, to include all switch gear, connectors and conductors, is properly maintained to meet current regulations and supply the correct voltage; and
  - (c) throughout the installation industry best practice is followed in order to provide a safe and reliable installation.
8. The Contractor shall provide and maintain such stand-by equipment and facilities, including, in particular, an emergency power supply at each main transmitter and main programme originating point, for the continuance of Broadcasting in the event of a failure on the part of an electricity provider. In addition, the Contractor shall ensure that emergency power change-over switching are interlocked in a manner to ensure that local emergency power cannot be directed towards incoming power lines. For the avoidance of doubt, for the purposes of this Contract, a main transmitter is a transmitter station that is licensed to operate at a total ERP of greater than 27.5dBW or serves an area with a population in excess of 35,000 people.
9. The Contractor shall provide and maintain at its own expense such equipment and facilities, including standby studio, link and transmitter equipment, for the continuance of Broadcasting in the event of a failure of such equipment and facilities.
10. The Contractor shall ensure that all buildings and structures, both existing and new:
- (a) are fully resistant to ground moisture and/or water vapour, weather and airborne moisture;
  - (b) resist dead loads, imposed loads and wind loads;
  - (c) provide stairways, ramps, landings and balconies in accordance with the above criteria;
  - (d) meet relevant and specific thermal and acoustics standards;
  - (e) provide sufficient day-light, ventilation, heating, air conditioning, electrical and earthing, as well as foul, surface, rain-water and effluent water disposal;
  - (f) conform to structural fire precautions and allow for the safety of occupants from fire and/or other hazards;
  - (g) ensure access for fire appliances and means of assistance to the fire brigade,
  - (h) facilitate ease of access, egress and use of studio facilities by people with disabilities and be in accordance with appropriate building regulations and any guidelines issued from time to time by the Authority or National Rehabilitation Board; and
  - (i) including transmitter buildings and structures, conform with good construction practices.



11. The Contractor shall ensure that all buildings and structures, both existing and new, listed in paragraph 10 above conform to all relevant codes of practice and standards, both national and international, regarding:
  - (a) the transmitting mast for safety, lighting, lightning protection, etc;
  - (b) the transmitter buildings preventing by means of a trip switch the unauthorised use thereof;
  - (c) site protection of mast and transmitter buildings providing adequate security against entry by means of adequate perimeter fencing, such fencing not being less than 2.4 metres in height;
  - (d) compliance with emission limits for non ionising radiation for both staff and the general public by use of fencing to limit access and by the implementation of safety procedures for staff and visitors to the transmission facility.
  
12. Where the Contractor arranges for its own staff or third party contractors to carry out or supervise “rigging” work or transmission maintenance that is related to the transmission of a VHF Band II Broadcasting service that is entered into as part of this Contract, then the Contractor shall fully and effectively indemnify, hold harmless and keep so indemnified on demand the Authority from and against any costs, claims, demands, damages, liabilities, losses, expenses and/or award arising out of or in connection with any death, sickness or injury to any person arising out of or in connection with the carrying out of such works. For the avoidance of doubt, it is the responsibility of the Contractor to ensure that any such works are performed by staff or contractors that have the necessary training, insurance cover and safety systems in place to supervise or complete such works in a safe and effective manner.
  
13. The Contractor shall provide, if so requested by the Authority, evidence of compliance with statutory or other requirements in relation to each studio and transmitter installation, as appropriate, to include the following:
  - (a) planning permission;
  - (b) fire officer approval;
  - (c) Health Board approval;
  - (d) local authority engineering department approval;
  - (e) approval of the Irish Aviation Authority; and
  - (f) any other licences or consents required by Applicable Law.
  
14. The Contractor shall provide, if so requested by the Authority, the following information in relation to each studio and transmitter installation, as appropriate, to include the following:
  - (a) the name, qualifications and experience of the person nominated to do the acceptance testing on each transmission system;
  - (b) the recorded acceptance testing figures for each transmitter under all the nominated parameters;
  - (c) the name of the antennae manufacturer, radiation pattern and type of antennae;



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



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

**CHAIRPERSON**

**CHIEF EXECUTIVE**

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



Dated the [insert]

**BROADCASTING AUTHORITY OF IRELAND**

- and -

[insert]

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**SOUND BROADCASTING CONTRACT**

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