

RTÉ

**STANDARD
PROJECT**

TERMS AND CONDITIONS

OCT 2017

(Revised Oct 2017)

CONTENTS	Page
1. DEFINITIONS	4
2. APPLICATION OF TERMS	8
3. COMPLIANCE WITH LAW	9
4. TERM	9
5. AGREEMENT	10
6. DELIVERY DATE	11
7. ACCEPTANCE TESTING	12
8. DELAYS	13
9. RTÉ PROJECT MANAGER	14
10. WARRANTIES AND UNDERTAKINGS OF SUPPLIER.	14
11. CHANGE VARIATION PROCEDURE	16
12. CONTRACT PRICE	17
13. INTELLECTUAL PROPERTY RIGHTS.	17
14. RTÉ PROPERTY	18
15. SUB-CONTRACTORS	18
16. NOTICES	19
17. TAX CLEARANCE CERTIFICATES	20
18. HEALTH & SAFETY	20
19. INDEMNITIES	20
20. LIMITATION OF LIABILITY	21
21. RISK AND INSURANCE	22
22. TERMINATION.....	22
23. CONSEQUENCES OF TERMINATION.....	23

24. FORCE MAJEURE	24
25. FORBEARANCE	24
26. EXPENSES RECOVERABLE BY RTÉ	24
27. BRIBERY	24
28. SURETIES	25
29. DISABILITY	25
30. TRAINING OF STAFF	25
31. STORAGE AND ACCOMMODATION	25
32. REMOVAL OF ARTICLES, MATERIALS, RUBBISH, ETC. FROM THE SITE.	25
33. CORRESPONDENCE	25
34. NON-ASSIGNMENT	25
35. CONFIDENTIALITY AND FREEDOM OF INFORMATION.	25
36. SEVERANCE	26
37. NO EMPLOYMENT AND NO PARTNERSHIP.	26
38. DISPUTE RESOLUTION.	27
39. PROPER LAW AND JURISDICTION	27
[40. DATA PROTECTION]	27]

THESE PROJECT TERMS AND CONDITIONS are entered into **BETWEEN**

- (1) **RAIDIÓ TEILIFÍS ÉIREANN**, a statutory corporation regulated pursuant to the Broadcasting Act 2009 whose headquarters is located at Montrose, Donnybrook, Dublin 4 (hereinafter called “**RTÉ**”), such expression to include its Subsidiaries; and
- (2) _____ **[insert name]**, a **[insert description eg. limited liability company]** having its office at _____ **[insert address]** (hereinafter called “**the Supplier**”) and shall be deemed: (a) in the case of a single Supplier to include his executors, administrators and permitted assigns; (b) in the case of several Suppliers to include jointly and severally the partnership or firm (if any) and each of the Suppliers and their respective executors, administrators and permitted assigns; and (c) in the case of a company to include its successors and permitted assigns.

WHEREAS:

1. RTÉ is the owner and occupier of a complex of buildings and premises situated at Donnybrook, Dublin 4 ("the Site") and operates a public service media service in accordance with the Broadcasting Act 2009 from the Site.
2. The Supplier is engaged in the business of designing, manufacturing, selling, installing and operating systems and providing the related services and maintenance and support services required by RTÉ to be provided, and has the requisite skill, knowledge and experience in that field.
3. Following a public tendering process carried out by RTÉ commencing on _____ **[insert date]**, the Supplier has been selected by RTÉ to provide the System(s) and/or Product(s) and/or Services and/or Maintenance and Support Services (as defined below).
4. In reliance upon the Supplier's skill, knowledge and expertise, RTÉ wishes to engage the Supplier upon the terms and conditions set out below.

1. DEFINITIONS

- 1.1 In these Project Terms and Conditions, unless the context otherwise requires:

“**Business Day**” means any day other than Saturday or Sunday or a bank or public holiday in Ireland.

“**Change Variation Procedure**” means the procedure outlined in Schedule 2 hereto.

“**Contract Price**” means the price payable for the development, delivery, licence and installation of the System(s), Product(s), all related Services **[and Maintenance and Support Services]** as set out on the Statement of Works.

“**Defect(s)**” means any defect, error, malfunction or fault in the design, development, manufacturing, materials, workmanship, finish, delivery, implementation, supply, commissioning, configuration, operation or performance of the System(s) and/or Product(s) (or any Software or other part of it) as a direct or indirect result of which the System(s) and/or Product(s) [and/or Hosting Services] does not fully conform to, comply with and/or satisfy the Specification or does not function in accordance with the terms of these Conditions.

[“**Developed Software**” shall mean and comprise the custom developed applications and developed software the facilities and functions thereof which are more particularly described or to be described in the Specification together with all other Software and computer programmes with the exception of Software Products, which are necessary for or incidental to the proper operation of the System(s) and/or

Product(s) (including any Modifications in respect of the Developed Software.) **[delete if not relevant]**

“**Effective Date**” means the date of signature of these Conditions.

“**Exceptions List**” means all errors, defects and issues relating to the System(s) and/or Products which result from the Supplier’s failure to adhere to the Specification which may be identified by RTÉ during the Warranty Period and without prejudice to RTÉ’s other rights under these Conditions.

“**Final Acceptance Date**” means the relevant date set out and/or referred to in the Project Plan when the System(s) and/or Product(s) shall have been delivered and installed and made Ready for Use by the Supplier.

“**Final Acceptance Certificate**” is a notice signed and issued by the RTÉ Project Manager when the System(s), Products and/or Services have passed all of the final Testing Procedures. The date of signing the Final Acceptance Certificate is the “Final Acceptance Certificate Date.”

[“**Hosting Services**” means the hosting services to be provided by the Supplier to RTÉ in accordance with these Conditions, as more particularly described in the Specification and the Service Level Agreement.] **[delete if not relevant]**

“**Insolvent**” means if a party is bankrupt, has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation on terms approved in advance by RTÉ), and/or the Party is unable to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014 (or any event similar to the foregoing occurs in any jurisdiction).

“**Intellectual Property Rights or IPR**” means all intellectual property rights including without limitation applications, patents, trade marks, design rights, copyright, database rights (whether or not any of these is registered and including any applications for registration of any such rights), know-how, inventions, confidential information and trade secrets and all rights or forms for the protection of a similar nature or having similar effect to any of these which may exist anywhere in the world.

“**Invitation to Tender**” means **[insert date and details of Tender]**.

“**Maintenance and Support Services**” means the maintenance and support services to be provided by the Supplier to RTÉ as set out in Schedule 3 hereto.

“**Modification**” means any New Release or New Version which is acquired by the Supplier or any other modification to the Software made in accordance with these Conditions.

“**New Release**” means a new release of all or any part of the Software suitable for use by RTÉ in which previously identified faults or vulnerabilities have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

“**New Version**” means a new version of the Software released by the Supplier after the Final Acceptance Date which provides additional and/or improved functionality and/or performance.

“**Open Source Software**” means:

- a) Open-source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>) including any “copyleft” open-source software; or

- b) software that is distributed or otherwise made available under a licence which adopts a licensing or distribution model that requires the licensee to publish or otherwise make available to the licensor and/or other licensees any of the Source Code to any modification or derivative work used or created by or on behalf of the licensee;

“Order” means RTÉ’s written instructions to develop, deliver, licence and make Ready for Use the System(s) and/or Product(s) and incorporates these Conditions.

“Payment Schedule” means the payment dates set out in the Statement of Work.

“Phase” or “Phases” means the phases by which the System(s) and/or Product(s) will be developed, supplied and made Ready for Use which are particularly described in the Project Plan and Statement of Work and where the context so admits or requires any one or more or any combination of the Phases or any part or parts thereof.

“Product(s)” means any goods agreed to be supplied by the Supplier to RTÉ.

“Project” means the project described in the Statement of Work for the provision of certain Services and the supply of the Software Products and/or development of the Developed Software in respect of the detailed design, development and implementation and installation of the System(s) and/or Product(s).

“Project Manager” means, in the case of RTÉ, the person appointed by RTÉ for liaising with the Supplier in the provision of the System(s), Product(s) and/or Services in accordance with these Conditions and for the purposes of communication and resolution of issues with the Supplier, and in the case of the Supplier, means the project manager that the Supplier appoints and the expressions “the RTÉ Project Manager” and “the Supplier’s Project Manager” shall be construed accordingly.

“Project Plan” means the fully detailed project plan fully populated with all the tasks, delivery dates and dates for the development, delivery, installation, and making Ready for Use of the System(s), Product(s) and/or Services and as set out in the Statement of Work.

“Proposal” means the response to the Tender submitted by the Supplier.

“Ready for Use” means when the System(s), Products and/or Services is fully supplied, installed, implemented, tested, accepted and operating in accordance with the provisions of these Conditions and as more particularly described in the Specification and Statement of Work.

“RTÉ Content” means all content owned or licensed by RTÉ and supplied by RTÉ to the Supplier [or developed by the Supplier as part of the Services], including without limitation, [polls, graphics, text, logos, branding, video streams, videos, images, audio streams, audio and sound recordings] ***[review and use items as applicable]***

“RTÉ Data” means all

- (a) business rules, logic, configurations, processes and data including, without limitation, personal data owned by RTÉ and supplied by RTÉ to the Supplier in order to enable the Supplier develop the System(s), Products and/or Services [and
- (b) all data generated as a result of the operation of the System(s), Products and/or Services including without limitation data and personal data submitted and/or created by RTÉ customers or users (“Customer Generated Data”) ***[delete if not relevant]***.

["Service Level Agreement” means the service level agreement set out in schedule 4.] ***[delete if not relevant]***

[**“Service Levels”** means the services set out in the Service Level Agreement (and which includes, as the context so admits or requires, any one, more or all of them).]
[delete if not relevant]

“Services” means all services including [software development services, project management services, training services, installation services, consulting services and [Maintenance and Support Services][and Hosting Services]] to be provided by the Supplier in accordance with and for the purposes of these Conditions and which are set out in the Specification and Statement of Work. **[review and use items as applicable]**

“Software” means the Software Products and Developed Software together with any Modifications.

“Software Products” shall mean the items of non-bespoke computer software licensed by the Supplier as part of the System(s) and/or Product(s) and more particularly described in the Statement of Work.

“Specification” means the technical description of the System(s), Product(s) and/or Services to be developed, delivered and installed by the Supplier as contained in the Statement of Work and the Tender Documentation.

“Statement of Work (SOW)” means the statement of work attached as Schedule 1 hereto and including the Project Plan, Specification, Testing Procedures and Payment Schedule.

“Subsidiary” shall have the meaning given to it under Article 7 of the Companies Act 2014.

“Supplier Data” means all business rules, logic, configurations, processes and data owned by the Supplier and used by the Supplier in the course of the development and making Ready for Use of the System(s) and/or Product(s).

[**“Support Hours”** [TBC subject to Maintenance and Support Services Schedule]][**delete if not relevant**]

[**“Source Code”** means computer programs or data in eye-readable form and in such form that it can be compiled, rebuilt, understood and interpreted by a reasonably skilled programmer into equivalent object code, together with all technical information, tools, materials and documentation necessary for the use, reproduction, modification and enhancement of such computer programs.][**delete if not relevant**]

“System(s)” means the system(s) for **[insert name of System(s)]** as more particularly described in the Proposal and Specification, to be developed, delivered, licensed and made Ready for Use by the Supplier in accordance with these Conditions and Statement of Work and incorporating the Product(s), Software and Services.

“Tender Documentation” means the Invitation to Tender and the Supplier’s Proposal.

“Testing Procedures” means the test procedures for acceptance of the System(s), Product(s) and/or Services as set out in the Statement of Work. As a minimum the Testing Procedures or any Modification must demonstrate that each part of the System(s), Product(s) and/or Services comply in every capacity with the Statement of Work. If the Testing Procedures are not identified in detail in the Statement of Work as at the Effective Date they shall be agreed by both Parties at least two weeks prior to the commencement of any testing of any part of the System(s), Product(s), Services or Modification.

“Term” shall have the meaning set out in condition 4 below.

“these Conditions” means these Project Terms and Conditions for the System(s) and Schedules 1, 2, 3 and 4 attached hereto entered into by RTÉ or its duly authorised representative and the Supplier and Tender Documentation. These Conditions shall apply to the development, delivery and making Ready for Use of the System(s) and Product(s) and all related Services.

“Warranty Period” shall mean a period detailed in the Statement of Work. In the event that no period is detailed in the Statement of Work the “Warranty Period” shall mean a period of twelve (12) months which shall commence on the Final Acceptance Certificate Date.

1.2 In these Conditions:

- 1.2.1 Save as otherwise provided herein, any references in these Conditions to conditions or paragraphs are references to the conditions or paragraphs of these Conditions unless the context otherwise admits or so requires.
- 1.2.2 Words such as hereunder, hereof and herein and other words commencing with here shall unless the context clearly indicates to the contrary, refer to the whole of these Conditions and not to any particular condition hereof.
- 1.2.3 References to the singular shall include the plural and vice versa and reference to any gender shall include other genders.
- 1.2.4 References to “liability”, unless the context otherwise requires includes claims, demands, proceedings, damages, losses, costs and expenses.
- 1.2.5 The headings to the conditions in these Conditions are for reference only and shall not affect the interpretation of these Conditions.
- 1.2.6 These Conditions may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when executed and delivered shall constitute an original, all such counterparts together constituting as one and the same instrument.
- 1.2.7 Amendments to or modifications of these Conditions may be made only by mutual agreement of all parties in writing, and shall be subject to whatever approvals or appropriate authorities as may be required by law.
- 1.2.8 These Conditions and all rights and obligations hereunder shall for all purposes be treated and construed as being separate and apart from any other agreement or agreements or any rights or obligations thereunder save only insofar as the express provision requires to the contrary.
- 1.2.9 The parties hereto enter these Conditions as principals for and on their own behalf.
- 1.2.10 In the event of any ambiguity or conflict between the Conditions and Tender Documentation, the order of precedence shall be as follows:
 - 1.2.10.1 these Project Terms and Conditions;
 - 1.2.10.2 Schedules 1, 2 and 3 to these Project Terms and Conditions;
 - 1.2.10.3 the Invitation to Tender; and
 - 1.2.10.4 the Supplier’s Proposal.

2. APPLICATION OF TERMS

- 2.1 These Conditions are the only conditions upon which RTÉ is prepared to deal with the Supplier and they shall govern the relationship between the parties to the entire exclusion of all other terms and conditions. The Supplier confirms that it has not relied upon, and has no rights and remedies in respect of any terms and conditions, representations or statements other than them expressly set out in these Conditions.
- 2.2 These Conditions shall prevail over any inconsistent terms or conditions contained in or referred to in any documentation provided or relied upon by the Supplier, the Schedules, and all or any conditions or stipulations contrary hereto are hereby excluded and extinguished and the Supplier expressly confirms the acceptance of this condition and of these Conditions in full.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's Proposal will form part of the Conditions, and the Supplier waives any right it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all RTÉ purchases and any variation of these Conditions shall have no effect unless expressly agreed in writing and signed by RTÉ and the Supplier.

3. COMPLIANCE WITH LAW

- 3.1 The Supplier shall comply with all relevant requirements of any statute, statutory rule or order or other instrument or regulation having the force of law concerning the supply of the System(s), Product(s), performance of the Services and/or Maintenance and Support Services and performance of the Conditions including but not limited to compliance with all relevant employment, equality, disability, health and safety, environmental, data protection, child protection and taxation legislation.

4. TERM

Select Option A, B or C and delete non-applicable options.

Option A – Conditions for Fixed Term:

- 4.1 The Conditions shall commence on the Effective Date and shall remain in force for a period of **[insert period of time]** ("Term"). **OR**

Option B – Conditions for Initial Term of 1 year with RTÉ option to renew for a further period:

- [4.1 The Conditions shall commence on the Effective Date and shall continue in force for an initial term of one (1) year ("Initial Term").
- 4.2 On expiry of the Initial Term, RTÉ shall have the right to renew the Conditions for a further period of [XXX] (XX) years **[insert period of time]** ("Additional Term") in accordance with this condition 4.2. RTÉ shall notify the Supplier in writing sixty (60) days prior to expiry of the Initial Term of its intention to renew the Conditions. Any renewal of the Conditions shall be on the same terms as set out in the Conditions. Unless the Supplier receives written notification from RTÉ of its intention to renew the Conditions under this condition 4, the Conditions shall expire on expiry of the Initial Term.] **OR**

Option C – Conditions for Initial Term of 1 year with RTÉ option to renew Conditions for 2 subsequent terms of 1 year each:

- [4.1 These Conditions shall commence on the Effective Date and shall continue in force for an initial term of one (1) year ("Initial Term").
- 4.2 On expiry of the Initial Term, RTÉ shall have the option to renew the Conditions for an additional one (1) year term ("First Additional Contract Term"). RTÉ shall notify the Supplier in writing of its intention to renew the Conditions for the First Additional Contract Term sixty (60) days prior to expiry of the Initial Term. Any renewal of the Conditions shall be on the same terms as set out in the Conditions. Unless the

Supplier receives written notification from RTÉ of its intention to renew the Conditions under this condition 4, the Conditions shall expire on expiry of the Initial Term.

- 4.3 On expiry of the First Additional Contract Term, RTÉ shall have the option to renew the Conditions for a further additional one (1) year term (“Second Additional Contract Term”) in accordance with the provisions of condition 4.2. For the avoidance of doubt, these Conditions shall not be renewed beyond the Second Additional Contract Term.]

5. AGREEMENT

- 5.1 Subject to and in accordance with the provisions of these Conditions and in consideration of the payment of the Contract Price, the Supplier hereby agrees with RTÉ:

5.1.1 from the Effective Date to undertake and complete each Phase of the Project in accordance with the Statement of Work;

5.1.2 to design, install, implement and make Ready for Use the System(s) and Product(s) in accordance with the Specification and Statement of Work and the Supplier agrees with RTÉ that the System(s) and Product(s) shall be free from any charge and/or encumbrance upon the making Ready for Use of the System(s) and Product(s); [The legal and beneficial ownership of the Products shall pass to RTÉ on delivery];

5.1.3 to design, install, implement, make Ready for Use and provide the Services and to provide what is reasonably required for the proper provision of the System(s) and Product(s) and the installation, application, implementation and making Ready for Use of the System(s) according to the true intent and meaning of the Specification and Statement of Work; [The legal and beneficial ownership of the Products shall pass to RTÉ on delivery];

5.1.4 ***[to develop and create the Developed Software in accordance with the Specification and the Statement of Work;] [insert/delete as appropriate]***

5.1.5 ***[to transfer ownership of the Intellectual Property Rights in the Developed Software to RTÉ in accordance with condition 13;] [insert/delete as appropriate]***

5.1.6 to ensure that the System(s), Product(s) and/or Services shall upon the Final Acceptance Date, provide the facilities and functions set out in the Specification and Statement of Work and to ensure that any operating manuals supplied provide adequate instruction to enable RTÉ and its personnel make proper use of such facilities and functions;

5.1.7 to use appropriately experienced, qualified, skilled and trained personnel in performing any Services and to provide the System(s), Product(s), Services and the Maintenance and Support Services with all due skill, care and diligence and in a timely manner;

5.1.8 to remove any person engaged in the Project whose removal is requested in writing by the RTÉ Project Manager who, acting reasonably, considers such person to be unsatisfactory;

5.1.9 to prioritise the Project in relation to the other business activities of the Supplier in such a manner that will ensure that the System(s), Product(s) and/or Services are delivered and made Ready for Use in accordance with these Conditions;

5.1.10 to provide such other co-operation and assistance as might be generally and reasonably required for the provision of the System(s), Product(s) and/or Services, the Maintenance and Support Services; and

- 5.1.11 to provide the Maintenance and Support Services [and Hosting Services] and correct and repair promptly all Defects reported to the Supplier in accordance with the [Service Level Agreement and Service Levels]/or [provisions of Schedule 3 hereto.]
- 5.2 Subject to the provisions of these Conditions, and in consideration of the Supplier providing the System(s), Product(s), Services and Maintenance and Support Services, RTÉ hereby undertakes and agrees with the Supplier:
- 5.2.1 to ensure that the specific duties and obligations allocated to RTÉ as set out in the Statement of Work are performed by RTÉ in a timely manner in accordance with the Statement of Work;
- 5.2.2 to provide access to the Site as is necessary for the carrying out by the Supplier of its responsibilities in accordance with these Conditions;
- 5.2.3 to provide the Supplier and its personnel with adequate work space and other facilities as the Supplier may reasonably require to provide the System(s), Product(s) and supply the Services and/or Maintenance and Support Services;
- 5.2.4 to ensure that the RTÉ Project Manager participates in regular review meetings at a reasonable time at the RTÉ Site with the relevant Supplier personnel to evaluate and discuss reports on the Project's progress in accordance with condition 9;
- 5.2.5 to and hereby does grant to the Supplier a non-exclusive, royalty free licence for the Term to use the RTÉ Data [and RTÉ Content]~~][delete if not applicable]~~ in connection with the development, installation and making Ready to Use the System(s), Product(s) and the Services and to provide Maintenance and Support Services to RTÉ only.
- 5.3 **Licence Grant:** Subject to and in accordance with the provisions of these Conditions and in consideration of the payment of the Contract Price, the Supplier hereby grants to RTÉ the following:
- 5.3.1 a perpetual, non-exclusive, transferable, non-revokable, worldwide, royalty free licence to use, adapt, maintain and support the Software Products in relation to the System(s) and/or Product(s) or any related system(s) and/or products put in place by RTÉ in the future;
- 5.3.2 a perpetual, non-exclusive, transferable, non-revokable, worldwide, royalty free licence to use, adapt, maintain and support the Supplier Data in relation to the System(s) and/or Product(s) or any related system(s) and/or products put in place by RTÉ in the future.
- 5.3.3 a perpetual, non-exclusive, transferable, non-revokable, worldwide, royalty free licence to use, adapt, exploit, maintain and support the Intellectual Property Rights in any materials or tools used by the Supplier which are necessary in order for RTÉ to have the full benefit of the Services and the System(s) and/or Product(s) and the licences granted to RTÉ under these Conditions.
- 6. DELIVERY DATE**
- 6.1 The Supplier shall deliver and make Ready for Use the System(s), Product(s) and/or Services in accordance with the delivery dates set out in the Project Plan.
- 7. ACCEPTANCE TESTING**
- 7.1 **Inspection of System(s), Product(s) and/or Services prior to delivery to RTÉ:**

- 7.1.1 The Supplier shall complete all relevant inspections and testing of the System(s), Modification(s), Product(s) and/or Services prior to delivery to RTÉ.
- 7.1.2 The whole of the System(s), Product(s) and/or Services or any part thereof shall be available for inspection and testing by RTÉ or its representatives at any time prior to delivery. The Supplier shall provide RTÉ with all facilities reasonably required for inspection and testing. Any such right of inspection shall not in any way prejudice or limit the statutory, legal or equitable rights of RTÉ.
- 7.1.3 If the results of any inspection or testing causes RTÉ to be of the opinion that the System(s), Modification(s), Product(s) and/or Services do not conform or are unlikely to conform with the Statement of Work, RTÉ shall inform the Supplier and the Supplier shall immediately at its own expense take such action as is necessary to ensure conformity and in addition RTÉ shall have the right to require and witness further testing and inspection. If any expense in connection with rejected articles or material or unsatisfactory work is incurred by RTÉ, the amount of such expense shall be deducted from any payment to be made to the Supplier.
- 7.1.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the System(s), Modification(s), Product(s) and/or Services and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under these Conditions.

7.2 Testing of Products and/or Services after delivery to RTÉ:

- 7.2.1 Without prejudice to the inspection procedures outlined above, on completion of delivery, installation and making the System(s), Modification(s), Product(s) and/or Services Ready for Use in accordance with the Statement of Work delivery dates, the Supplier shall conduct the Testing Procedures prior to RTÉ conducting the Testing Procedures and when fully satisfied that the System(s), (or any Modification to it,) Product(s) and/or Services pass the Testing Procedures, the Supplier shall formally invite RTÉ to conduct the Testing Procedures. RTÉ may appoint third party independent quality assurance advisors at any stage during the Testing Procedures.
- 7.2.2 If the RTÉ Testing Procedures in respect of the System(s), (or any Modification to it,) Product(s) and/or Services have not been recorded as successful following completion of the Testing Procedures by RTÉ, then, RTÉ shall have the right, at its sole option, to:
 - 7.2.2.1 accept such part of the System(s), (or Modifications as the case may be), Product(s) and/or Services as RTÉ may, at its sole discretion, decide and pay a pro rated fee therefore, calculated based on reasonable and objective criteria; and/or
 - 7.2.2.2 without prejudice to its other rights and remedies, extend the acceptance test period for a period, which shall not exceed twenty (20) Business Days, during which period, the Supplier shall (at the Supplier's sole expense) correct the fault(s) which caused the Testing Procedures to be recorded as unsuccessful; or
 - 7.2.2.3 where RTÉ is not satisfied with the outcomes of options set out in conditions 7.2.2.1 and/or 7.2.2.2 above, RTÉ shall reject the System(s),(or Modifications as the case may be), Product(s) and/or Services and terminate these Conditions.
- 7.2.3 In the event that RTÉ extends the period for Testing Procedures, pursuant to condition 7.2.2.2 and the Testing Procedures by RTÉ have not been recorded

as successful by the end of the relevant period, then, RTÉ shall have the right, at its sole option, to:

7.2.3.1 accept such part of the System(s), (or Modification, as the case may be), Product(s) and/or Services as RTÉ may, at its sole discretion, decide and pay a pro rated fee therefore, calculated based on reasonable and objective criteria; and/or

7.2.3.2 without prejudice to its other rights and remedies, extend the Testing Procedures period for an additional period, which shall not exceed ten (10) Business Days, during which period, the Supplier shall (at the Supplier's sole expense) correct the fault which caused the repeat Testing Procedures by RTÉ to be recorded as unsuccessful; or

7.2.3.3 where RTÉ is not satisfied with the outcomes of options set out in conditions 7.2.3.1 and/or 7.2.3.2 above, RTÉ shall reject the System(s), (or Modification, as the case may be), Product(s) and/or Services and terminate these Conditions.

7.2.4 The period, or periods, set out in sub-condition 7.2.2.2 and/or 7.2.3.2 shall operate to reset all subsequent delivery dates by the relevant period or periods, or such lesser period or periods agreed between the parties, including all dependent dates for issuing invoices as set out in the Statement of Work.

7.3 If the Products and/or Services pass all the final Testing Procedures, RTÉ's Project Manager shall sign and issue the Final Acceptance Certificate. This is without prejudice to RTÉ's right to draw up an Exceptions List at any time during the Warranty Period which the Supplier shall be obliged to deal with to RTÉ's reasonable satisfaction.

8. DELAYS

8.1 If the Supplier shall fail to supply the System(s), Product(s), and/or Services to RTÉ by the Final Acceptance Date and where such delay is attributable to the Supplier or a third party engaged by the Supplier, the Supplier shall pay RTÉ, as and by way of liquidated damages, for any loss or damage sustained by RTÉ resulting from the delay during the period from the Final Acceptance Date two percent (2%) of the total Contract Price payable under these Conditions every week of delay, subject to a maximum amount of twenty percent (20%) of the total Contract Price payable under these Conditions.

8.2 The payment of the liquidated damages herein shall not relieve the Supplier from its obligations to provide the System(s), Product(s) and/or Services and/or Maintenance and Support Services or from any other liability or obligation under these Conditions.

8.3 RTÉ shall be entitled to deduct any amount of liquidated damages as set out in condition 8.1 hereof from any amount due and payable to the Supplier under these Conditions which shall be treated as a debt due to RTÉ.

8.4 If the Supplier shall fail to provide the System(s), Product(s) and/or Services and/or Maintenance and Support Services within ten (10) weeks from the Final Acceptance Date, then provided that such delay is attributable to the Supplier or a third party engaged by the Supplier and notwithstanding anything else contained in these Conditions, RTÉ shall be entitled at any time thereafter to terminate these Conditions with immediate effect and without prejudice to any rights that RTÉ may have under these Conditions.

8.5 The Supplier acknowledges that the amount of liquidated damages provided herein is fair and reasonable and represents on the basis of the information communicated by

RTÉ to the Supplier a fair and genuine pre-estimate of any resulting loss or expense of RTÉ.

- 8.6 Each party shall advise the other of any actual or potential delays and shall in no way be held responsible for any Force Majeure or delay caused by any act or omission, or delay in response by the other party.
- 8.7 All delivery dates and dates set out in the Project Plan by which a Phase is to be completed by the Supplier shall be extended if any delay or stoppage is caused by any act or omission of RTÉ, its employees, agents or sub-contractors and the length of such extension shall be equivalent to the length of the delay caused by said act or omission of RTÉ, its employees, agents or sub-contractors. Similarly, all delivery dates and dates by which a Phase is to be completed will be extended in accordance with condition 24 (Force Majeure) if any delay or stoppage is caused as a result of Force Majeure events. In the event that a delay or stoppage is caused by any act or omission of RTÉ, its employees, agents or sub-contractors, the Supplier, acting reasonably, reserves the right to initiate the Change Variation Procedure as it deems appropriate.

9. RTÉ PROJECT MANAGER

- 9.1 The RTÉ Project Manager has been appointed by RTÉ for the purpose of these Conditions to ensure that due and proper compliance by the Supplier of its obligations herein and to act on RTÉ's behalf in relation to certain matters in connection with these Conditions.
- 9.2 The Supplier shall comply with the reasonable requirements and recommendations of the RTÉ Project Manger providing that the requirements and recommendations of the RTÉ Project Manager are consistent with these Conditions.
- 9.3 The RTÉ Project Manager shall at all reasonable times be available and liaise with the Supplier and RTÉ and shall have full responsibility for reviewing workmanship and progress of each Phase and the supply, installation, application and making Ready for Use the System(s) and Product(s), for the satisfactory completion of all the Testing Procedures including the final Acceptance Test and for the supervision of the Supplier's provision of the Services and Maintenance and Support Services.
- 9.4 The RTÉ Project Manager need not necessarily be solely one person and given the nature of the tasks and the skills and expertise required may be more than one person but at all times acting jointly. The Supplier shall be informed in writing if and when the duties of the RTÉ Project Manager might be undertaken jointly by more than one person and the procedures, including reporting procedures, which shall operate in such instances.

10. WARRANTIES AND UNDERTAKINGS OF SUPPLIER

- 10.1 The Supplier hereby undertakes and agrees with RTÉ as follows:
- 10.1.1 that it has the full capacity and authority and all necessary licences, permits and consents to provide the System(s), Product(s), the Services [,Hosting Services][***delete if not applicable***] and the Maintenance and Support Services under and in a manner contemplated by these Conditions;
- 10.1.2 that the Supplier has the right to licence all the rights, interest, copyright and other proprietary and Intellectual Property Rights in the System(s) and/or Product(s) to RTÉ in accordance with condition 5;
- 10.1.3 that the Supplier has the right to assign all rights and ownership in the Developed Software to RTÉ in accordance with condition 13;

10.1.4 that the System(s) and Software [and Product(s)] shall take, interface, work and integrate with RTÉ's hardware and that the System(s), Software and Product(s) shall take, interface and integrate with the current technical environment of RTÉ [as described in the Statement of Works]; and

10.1.5 that the coding of the Software shall comply with industry standards for the development of efficient applications.

[Delete if not applicable] [10.1.6 In respect of Modifications:

- a) no Modification issued by the Supplier in accordance with the Maintenance and Support Services or pursuant to these Conditions will adversely affect the performance or functionality of any part of the System(s) and/or Product(s) or the Hosting Services;
- b) each modification so issued will be compatible with the Software comprised within the System(s) and/or Product(s) and any other hardware, software and equipment used by RTÉ which needs to interface, work or integrate in any way with such modification; and
- c) the implementation of each Modification will not necessitate the upgrading or replacement of the Software comprised within the System(s) and/or Product(s) or such other hardware, software and equipment which at the date of issue of the Modification is interfacing, working or integrating with the earlier release or version;]

10.1.7 all Software used by or on behalf of the Supplier, including any New Releases and New Versions, will:

- a) be currently supported and maintained versions of that Software and will continue to be supported and maintained versions for at least [three(3)] years;
- b) be free of Defects;
- c) be free from Viruses, or anything else that would impair performance of the Software as might reasonably be expected to operate in the System(s) and/or Product(s); and
- d) perform in accordance with the user manuals and any applicable published specification for such Software.

10.2 The Supplier hereby undertakes and agrees with RTÉ that [during the Warranty Period] the System(s) and/or Product(s) shall:

10.2.1 correspond, operate and comply with the Specification and the Statement of Work; and

10.2.2 be free from Defects, other than such non-conformities which do not in any way affect the functionality or performance of the System(s) and/or Product(s), in materials, workmanship, components, installation and operation.

10.3 The Supplier hereby undertakes and agrees with RTÉ that it shall and that its servants, agents, contractors and sub-contractors shall provide the Services and/or Maintenance and Support Services in a good, proper, efficient and workmanlike manner and in compliance with the terms of these Conditions.

10.4 The Supplier hereby undertakes and agrees with RTÉ that the provision of the System(s) and/or Product(s) and RTÉ's use of the System(s) and/or Product(s) shall not infringe the Intellectual Property rights of any third party.

10.5 The Supplier hereby undertakes and agrees with RTÉ that the development and provision of the System(s) and/or Product(s) in accordance with these Conditions and the methodologies used provide sufficient flexibility to permit choices to be made or options, subject to the Change Variation Procedure being properly implemented, to

be taken at or during the Phases and to incorporate during the Phases incremental advances or improvements in technology.

- 10.6 The Supplier hereby undertakes and agrees with RTÉ that on the Final Acceptance Date, the System(s) and/or Product(s) shall be a high quality solution conforming with recognised industry standards for similar systems and/or products in accordance with the Specification and the Statement of Work.
- 10.7 The Supplier hereby undertakes and agrees with RTÉ that the System(s) and/or Product(s) shall comply with best industry practice in respect of its security and shall be throughout the Term be kept secure and adequately protected from unauthorised access and if applicable, shall comply with RTÉ's security requirements as specified in the Statement of Work. The Supplier hereby undertakes and agrees with RTÉ that the System(s) and/or Product(s) and all subsequent modifications, upgrades and enhancements provided by the Supplier shall be free from viruses and other material defects.
- 10.8 The Supplier hereby undertakes and agrees with RTÉ that all the representations and statements contained in the Statement of Work are true and accurate as of the date of submission of the Supplier's Proposal to RTÉ and that material changes which have occurred to any of said statements and representations since the submission date thereof have been brought to the attention of RTÉ.
- 10.9 The Supplier hereby undertakes and agrees with RTÉ that the System(s) and/or Product(s) will be reliable, resilient and scalable [as described in the Statement of Work].
- 10.10 The Supplier hereby undertakes and agrees with RTÉ that the System(s), Product(s), Services and Maintenance, Support Services [and Hosting Services]~~[delete if not applicable]~~ shall comply with all relevant European Union or national standards, statutory or otherwise.
- 10.11 The Supplier hereby undertakes and agrees with RTÉ that its personnel and agents shall at all times take full account of and abide by RTÉ's Site and security rules which have been notified to the Supplier and at all times comply with RTÉ's reasonable instructions whilst on the Site.

11. CHANGE VARIATION PROCEDURE

- 11.1 Either Party shall be entitled at any time to submit a written request in accordance with the Change Variation Procedure in Schedule 2 to request a change to the System(s), Product(s), Services and/or Maintenance and Support Services.
- 11.2 No extra work, services, or addition to, alteration or modification of, or deduction from the System(s), Product(s), Services and/or Maintenance and Support Services [and/or Hosting Services]~~[delete if not applicable]~~ specified in the Statement of Work, shall be carried out under these Conditions at the expense of RTÉ unless a change request has been submitted in accordance with the Change Variation Procedure, approved by both Parties and an order in writing has been received by the Supplier from RTÉ in respect of such approved change. The extra cost involved or saving effected by such order as aforesaid shall subject to the terms hereof be added to or deducted from the Contract Price, as the case may be. Where the Conditions do not contain appropriate prices in respect of such extras, additions, alterations or deductions, the prices for such deviations, together with any necessary modification of the time for completion, shall be stated in writing by the Supplier, before the change request is agreed and approved by both Parties and the order specified in this condition is given, and in any case in which this is not possible, any dispute as to the fairness or otherwise of the charges and demands subsequently made by the Supplier in respect of such extras, additions, alterations or deduction shall be referred to dispute resolution as provided in condition 38 hereof.

12. CONTRACT PRICE

- 12.1 The Contract Price for the provision of the System(s), Product(s), Services and/or Maintenance and Support Services [and/or Hosting Services]~~delete if not applicable~~ is set out in the Statement of Work and shall be:
- 12.1.1 exclusive of any applicable value added tax (which shall be payable by RTÉ subject to receipt of a VAT invoice); and
 - 12.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery and any duties, imposts or levies other than value added tax.
- 12.2 No increase in the Contract Price may be made (whether on account of increased material, labour or transport costs, fluctuations in rates of exchange or otherwise) without the prior consent in writing of RTÉ.
- 12.3 The Contract Price shall be paid by RTÉ in accordance with the terms of the Payment Schedule.
- 12.4 The provisions of the Prompt Payment of Accounts Act, 1997 as amended or revised and the Late Payment in Commercial Transactions Regulations, 2012 as amended or revised, shall apply to all interest on late payment of fees. RTÉ shall have thirty (30) days from the date of receipt of an undisputed invoice from the Supplier to discharge this invoice.
- 12.5 Any invoice (or part thereof) disputed by RTÉ must be notified to the Supplier (hereinafter called "Dispute Notice") within ten (10) Business Days of the date of receipt and state the reasons for withholding payment. Upon receipt of the Dispute Notice, the Supplier and RTÉ will work together in good faith to resolve such disputes in a prompt and mutually acceptable manner in accordance with the provisions of condition 38. RTÉ agrees to pay any disputed amounts within ten (10) Business Days once the issues raised in the Dispute Notice have been resolved.

13. INTELLECTUAL PROPERTY

- 13.1 The sole and exclusive ownership of the Intellectual Property Rights in all RTÉ Data [and RTÉ Content]~~delete if not applicable~~ furnished by RTÉ to the Supplier in order to enable development of the Software and/or System(s) and/or Product(s) or the provision of the Services and/or Maintenance and Support Services [and/or Hosting Services]~~delete if not applicable~~ shall vest in RTÉ as the owner thereof. The Supplier shall not unless authorised to do so in writing by RTÉ, disclose to any third party or use any such RTÉ Data [and RTÉ Content]~~delete if not applicable~~ except as required for the purposes hereof.
- 13.2 The sole and exclusive ownership of any Developed Software developed by or on behalf of the Supplier for or in connection with the System(s) and/or Product(s) and/or the Developed Software and all Intellectual Property Rights therein shall vest in RTÉ as the owner thereof, and, to the extent that such ownership does not vest in RTÉ upon creation, the Supplier hereby assigns, conveys and sets over unto RTÉ absolutely all Intellectual Property Rights in and to the Developed Software. The Supplier shall execute all consents and assignments required in order to transfer ownership of the Developed Software to RTÉ. The Supplier shall not unless authorised to do so in writing by RTÉ, disclose to any third party or use any such Developed Software except as required for the purposes hereof.
- 13.3 Subject to Condition 5.3 (Licence Grant), the sole and exclusive ownership of any Software Products and/or Supplier Data used by the Supplier in the development and making Ready for Use of the System(s) and/or Product(s) and all Intellectual Property Rights therein shall vest in the Supplier as the owner thereof.

- 13.4 Except as expressly stated in these Conditions, nothing in these Conditions shall grant or be deemed to grant either party any right, title or interest in any Intellectual Property Rights owned by the other party and nothing in these Conditions shall entitle either party to use the other party's logos or trade marks or any other Intellectual Property Rights in any way whatsoever without the prior written consent of the other party.
- [13.5 The Supplier shall deliver to RTÉ the Source Code and object code in respect of any Developed Software and Modifications to the Developed Software, and will promptly provide RTÉ with any updates to them.][~~delete if not applicable~~]
- 13.6 The Supplier will not, without RTÉ's prior and specific written consent, use in the provision of the Services or include in the System(s) and/or the Product(s) (including the Software Products and Developed Software) or introduce into the System(s) and/or Product(s) any Open Source Software that would:
- a) breach the terms applicable to any software owned or licenced to RTÉ;
 - b) create or purport to create, obligations for RTÉ with respect to Intellectual Property Rights owned or licensed by RTÉ; or
 - c) grant, or purport to grant, to any third party, any rights or immunities under Intellectual Property Rights owned or licensed by RTÉ.
- [13.7 The Supplier, at its initial and ongoing cost and expense and on RTÉ's request, shall enter into a short form of the current Single Licensee Software Escrow Agreement with RTÉ and NCC Escrow International Limited (or its successors at the time of entering into the escrow agreement) which, subject to any amendments required by RTÉ shall provide for the Source Code in the Software to be placed in escrow with NCC Escrow International Limited, or its successors at the time of entering into the escrow agreement and for such Source Code to be kept fully up to date and to be released to RTÉ in certain circumstances including, without limitation, when the relevant person is Insolvent or when the Supplier ceases to support the System(s) and/or Product(s) or provide the Maintenance and Support Services (including where it fails to do so in respect of a particular version of the Software used by RTÉ), for whatever reason, or purports to charge excessive maintenance and support fees and/or fees for the such services.][~~delete if not applicable~~]

14. RTÉ PROPERTY

- 14.1 The Supplier shall be responsible for the safety of all materials, tools and equipment deposited with him by RTÉ in connection with these Conditions, and shall be liable for any loss of, or damage to, such materials and tools whilst they are in his custody. Such materials and tools shall at all times be and remain the exclusive property of RTÉ and shall not be disposed of other than in accordance with RTÉ's written instructions nor shall such items be used other than as authorised by RTÉ in writing. The Supplier shall keep such records of the materials so deposited as will enable RTÉ from time to time to check the quantities used in hand against those delivered to the Supplier's charge.

15. SUB-CONTRACTORS¹

- 15.1 The Supplier shall be responsible for the performance of the entire of its obligations under these Conditions. Any sub-contractor selected shall be subject to the prior approval in writing of RTÉ. The Supplier shall be prohibited from transferring or assigning directly or indirectly, to any person or persons whatever, any part or the whole of these Conditions without the prior written approval of RTÉ. Sub-contractors will be required to comply with these Conditions and in particular the terms relating to compliance with all relevant legislation including without limitation legislation relating to data protection, [child protection], employment and Health and Safety. The

¹ The scope of the clause may be amended, where appropriate, at RTÉ's sole discretion.

Supplier is responsible for the acts and omissions of its sub-contractors and the engagement by the Supplier of, or approval by RTÉ of a subcontractor does not in any way limit or affect the Supplier's responsibility and liability under these Conditions.

16. NOTICES

16.1 Any notice or other communication to be given hereunder shall either be delivered personally or sent by registered post or facsimile transmission. The address for service of the parties shall be:

16.1.1 in the case of RTÉ:

Contact: Head of Procurement,
Address: Raidió Teilifís Éireann, Dublin 4, Ireland.
Phone: 00 353 1 2082276
Email: purchasing@rte.ie

And

16.1.2 in the case of the Supplier:

Contact:
Address:
Phone:
Email:

[insert Supplier contact details and address]

16.2 All notices shall be deemed to have been served as follows:-

16.2.1 if personally delivered, at the time of delivery;

16.2.2 if posted, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and

16.2.3 if communicated by email transmission at the time of transmission;

PROVIDED that where, in the case of delivery by hand [or transmission by email], such delivery or transmission occurs after 6 pm on a Business Day or on a day which is not a Business Day, service shall be deemed to occur at 10 am on the next following Business Day.

16.3 In providing such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authorities as a prepaid registered letter [or that the email transmission was made after obtaining in person or by telephone appropriate evidence of the capacity of the addressees to receive the same, as the case may be.]

17. TAX CLEARANCE CERTIFICATES

17.1 RTÉ is obliged to request companies to provide a current tax clearance certificate TC2 certificate where appropriate. This applies to suppliers with whom RTÉ spend over €10,000 in any twelve (12) month period. All current suppliers are monitored by Purchasing to ensure compliance. RTÉ will require proof that a Supplier has fulfilled his obligations relating to payments of tax and social welfare contributions before a contract can be awarded and each payment under such contract is made.

18. HEALTH & SAFETY

- 18.1 The Supplier shall when on RTÉ premises and/or on RTÉ business comply with the highest standards for health and safety. All employees, visitors and contractors must comply with the RTÉ health and safety statement as directed by the Safety Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (General Application) Regulations, 2007, the Safety, Health and Welfare at Work (Construction) Regulations, 2013 and any subsequent amendments, legislation applicable to the services being provided or work being undertaken or systems and/or products being provided

19. INDEMNITIES

- 19.1 The Supplier shall indemnify RTÉ and keep RTÉ indemnified in full on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the System(s) and Product(s) and/or Supplier Data and/or Services, and/or Maintenance and Support Services [and/or Hosting Services]~~[delete if not applicable]~~ infringe the Intellectual Property Rights of any unaffiliated third party subject to the following:

19.1.1 RTÉ shall promptly notify the Supplier in writing of any allegations of infringement of which it has notice and will not make any admissions without the Supplier's prior written consent nor take any step (or omit to take any step) which would prejudice the Supplier's defence of the claim.

19.1.2 RTÉ, at Supplier's request and expense, shall allow the Supplier subject to condition 19.1.3 to conduct and/or settle all negotiations and litigation relating from any such claims under this condition 19.1.

19.1.3 The conduct by the Supplier of any such negotiations or litigation shall be conditional upon the Supplier:

- (a) giving to RTÉ such reasonable financial or equivalent security as shall from time to time be reasonably required by RTÉ to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses and costs for which RTÉ may become liable, and
- (b) taking over such conduct within a reasonable time after being notified of the claim in question.

19.1.4 RTÉ shall, at the request of the Supplier, afford all reasonable assistance with such negotiations or litigation and shall be reimbursed by the Supplier for any reasonable out of pocket expenses, incurred in so doing.

19.1.5 If RTÉ's normal use of System(s), Product(s), [Supplier Data,] and/or Services, and/or Maintenance and Support Services is held by a Court of competent jurisdiction to constitute an infringement of a third party's Intellectual Property Rights or if the Supplier is advised by legal counsel that such use or possession is likely to constitute such an infringement, then the Supplier shall promptly and at its own expense,

- (a) procure for RTÉ the right to continue using and possessing the System(s), and/or Product(s), and/or Supplier Data and/or Services, and/or Maintenance and Support Services; or
- (b) modify or replace the System(s), Product(s), and/or Supplier Data and/or Services, and/or Maintenance and Support Services [and/or Hosting Services]~~[delete if not applicable]~~ (without detracting from their overall performance) so as to avoid the infringement in which event the Supplier shall compensate RTÉ for the amount of any loss

and/or damage sustained or incurred by RTÉ by reason of such modification or replacement; or

- (c) if 19.1.5(a) or 19.1.5(b) cannot be accomplished on reasonable terms refund the portion of the Contract Price paid to date by RTÉ to the Supplier back to RTÉ.

19.1.6 For the avoidance of doubt, the indemnities contained in this condition 19.1 shall not apply where any infringement of third party property rights is solely attributable to:

- (a) modifications to the System(s) and/or Product(s) and/or Services, and/or Maintenance and Support Services requested solely by RTÉ [and/or Hosting Services]; or
- (b) from any use of the System(s) and/or Product(s) and/or Services, and/or Maintenance and Support Services [and/or Hosting Services] not in compliance with the terms of these Conditions; or
- (c) from modification of the System(s) and/or Product(s) and/or Services, and/or Maintenance and Support Services [and/or Hosting Services] by RTÉ without the prior written authorisation of the Supplier.

19.2 The Supplier shall indemnify RTÉ in full and hold RTÉ harmless in respect of any loss, damages, proceedings, suits, third party claims, judgements, awards, expenses and costs (including legal costs) incurred by or taken against RTÉ as a result of the negligence, fault, error, omission, act or breach of the Supplier or of its employees, staff, contractors, agents or representatives or for any breach of these Conditions whatsoever by the Supplier.²

20. LIMITATION OF LIABILITY

20.1 Neither party excludes or restricts in any way its liability for death or personal injury caused by negligence or for fraudulent misrepresentation.

20.2 Except for the provisions of condition 20.1, in no event shall RTÉ, its officers, employees, contractors and agents be liable for indirect, special, incidental, punitive or consequential loss or damages including but not limited to whether occasioned by the act, breach, omission, default or negligence of its personnel. For the avoidance of doubt, such consequential loss shall include without limitation, loss of profits, loss of revenue, loss of use of data, loss of sales, loss of turnover, loss of savings or anticipated savings, loss of investments, loss of or damage to goodwill, loss of or damage to business, interruption to business, loss of or damage to reputation, loss of contracts, loss of, or loss of use of any (i) software or (ii) data, loss of use of any computer or other equipment or plant; cost of capital, losses or liabilities under or in relation to any other contract whether or not foreseeable, arising out of or in connection with these Conditions whether based on contract, tort or any other legal theory, even if RTÉ has been advised of the possibility of such damages and for the purposes of this condition 20.2, the term "loss" includes a partial loss or reduction in value as a complete or total loss.

20.3 Except for the provisions of condition 20.1, if RTÉ is in breach of any obligations under these Conditions (or any part of them) then, subject to condition 20.1, RTÉ's liability to the Supplier in respect of direct loss or damage of whatsoever nature, howsoever arising, including without limitation, costs, charges, expenses, suits, claims, liquidated damages, or proceedings brought against the Supplier, flowing from any one event or series of connected events arising out of or in connection with these Conditions shall be limited to the total amount of the Contract Price payable under these Conditions for all events whether connected or unconnected arising.

² The scope of the indemnities may be amended, where appropriate, at RTÉ's sole discretion.

For the avoidance of doubt, RTÉ's liability under condition 20.1 only shall be unlimited.

- 20.4 If the Supplier is in breach of any obligations under these Conditions (or any part of them) then the Supplier's liability to RTÉ in respect of loss or damage of whatsoever nature, howsoever arising, including without limitation, costs, charges, expenses, suits, claims, liquidated damages, or proceedings brought against RTÉ, flowing from any one event or series of connected events arising out of or in connection with these Conditions shall be unlimited.³
- 20.5 Each party hereby expressly acknowledges and agrees that the forgoing limitations of liability are essential elements of the basis of the bargain between the parties and in the absence of such limitations, the material and economic terms of these Conditions would be substantially different.

21. RISK AND INSURANCE

- 21.1 The Supplier undertakes for the benefit of RTÉ to effect and maintain during the Term with a reputable insurance company the following policies of insurance in respect of liability in damages arising from the negligent act, omission or default on the part of the Supplier, its personnel, agents, licensees, subcontractors or invitees in the exercise of these Conditions or any activities or actions ancillary to or consequential to the exercise of these Conditions by the Supplier:

22.1.1 public liability insurance in the sum of **€6.5 million** in respect of any claim arising out of a single incident;

[22.1.2 product liability insurance in the sum of **€6.5 million** in respect of any claim arising out of a single incident; [where a Product or Products are being supplied]]

22.1.3 employer's liability insurance in the sum of **€13 million** in respect of any claim arising out of a single incident; and;

[22.1.4 professional indemnity insurance in the sum of a minimum of **€1 million** to be reviewed on a case by case basis in respect of any claim arising out of a single incident; [where a professional service is being provided in whole or part of the supply]]

and

upon request shall produce (from time to time) to RTÉ evidence of the current policy of such insurances and receipts for the premiums payable thereof throughout the Term.

These limits apply unless an alternative limit is notified in writing by the RTÉ Head of Procurement specifically for the purchase made pursuant to these Conditions.

22. TERMINATION

- 22.1 RTÉ may at any time by notice in writing terminate the Conditions, as from the date of service of such notice whereupon RTÉ shall have no liability under the Conditions in any of the following events:

22.1.1 if the Supplier shall commit any breach of the Conditions and such breach has not been remedied within thirty (30) days of notification to the Supplier by RTÉ of such breach;

³ (a) Exclusion of Supplier's liability for consequential loss may be included where appropriate at RTÉ's sole discretion; (b) a limitation of Supplier's liability may be included at RTÉ's sole discretion.

- 22.1.2 if the Supplier shall become bankrupt or have a receiving order or order for the administration of his estate made against him or shall take any procedure for liquidation of composition under any of the Bankruptcy Acts for the time being in force, or make any conveyance, assignment or arrangement for the benefit of creditors;
- 22.1.3 if the Supplier shall make or negotiate for any composition or arrangement with or assignment for the benefit of its creditors or shall present a petition or have a petition presented for its winding up or shall enter into any liquidation (other than for the purposes of reconstruction or amalgamation), shall call any meeting of its creditors, shall have a receiver and/or a receiver and manager or an examiner of all or any of its undertakings or assets appointed, shall be deemed by Section 570 of the Companies Act, 2014 to be unable to pay its debts or shall cease to carry on business, or an examiner or interim examiner is appointed to the Supplier.
- 22.1.4 if the Supplier shall be declared by a Court of competent jurisdiction to be of unsound mind or shall be declared by such Court to be incapable from any other cause whatever of controlling or managing his affairs;
- 22.1.5 if time is of the essence and the Supplier fails to deliver on the completion date/delivery date; or
- 22.1.6 if RTÉ reasonably apprehends that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier accordingly.

providing always that such termination as aforesaid shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to RTÉ under the Conditions.

- [22.2 RTÉ may, at any time terminate the Maintenance and Support Services [and/or Hosting Services] for whatever reason with **one⁴ month's prior written notice**. The Supplier will promptly reimburse RTÉ in respect of any of the Contract Price paid in advance for Maintenance and Support Services [and/or Hosting Services] that will not be provided].

23. CONSEQUENCES OF TERMINATION

- 23.1 In the event that these Conditions are terminated by RTÉ under condition 22, RTÉ shall have no further liability to the Supplier and shall not be obliged to discharge any outstanding portion(s) of the Contract Price, save that RTÉ shall discharge any invoice(s) outstanding at the date of termination of the Conditions in accordance with the Payment Schedule, provided that such invoice(s) are not in dispute between RTÉ and the Supplier.
- 23.2 In the event of termination or expiry of these Conditions, the Supplier shall return all RTÉ Data and any copies thereof to RTÉ within ten (10) Business Days from the date of termination or expiry of these Conditions. The Supplier shall certify in writing that all copies of the RTÉ Data have been returned to RTÉ and that all RTÉ Data has been expunged from the Supplier's records, including but not limited to all computers and computer databases owned and/or operated by the Supplier.
- 23.3 In the event of termination of these Conditions and on request by RTÉ, the Supplier shall continue to provide the Services including but not limited to Hosting Services of the System(s) and/or Product(s) (if appropriate) and provide the Maintenance and Support Services during any notice period subject to the terms of these Conditions and for a reasonable time thereafter and shall provide such assistance as is reasonably requested in order to facilitate the transfer of the System(s) and/or Products and RTÉ Data and provision of the Maintenance and Support Services to

⁴ The length of this time period may be amended, where appropriate, at RTÉ's sole discretion.

any other service provider including but not limited to facilitating the transfer of the Hosting Services of the System(s) and/or Product(s) (if appropriate), at the Supplier's rates as agreed with RTÉ and if rates are not agreed, then at the rates in force as of the date of notice of termination.

- 23.4 Both parties hereby confirm that the following conditions shall survive termination and/or expiry of these Conditions: conditions 5 (Agreement), 10 (Warranties and Undertakings of Supplier), 13 (Intellectual Property), 18 (Health and Safety), 19 (Indemnities), 20 (Limitation of Liability), 21 (Risk and Insurance), 35 (Confidentiality and Freedom of Information), 39 (Proper Law and Jurisdiction) and [40 (Data Protection)].

24. FORCE MAJEURE

- 24.1 RTÉ reserves the right to defer the date of delivery of the System(s), Product(s), Services and/or Maintenance and Support Services [and/or Hosting Services] or payment or to cancel the Conditions or reduce the scope of the System(s) and/or Product(s), Services and/or Maintenance and Support Services [and/or Hosting Services]~~[delete if not applicable]~~ if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of RTÉ including, without limitation, acts of God, governmental actions, war, threat of war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), interruption or failure of utility service, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

- 24.2 The Supplier may defer the date of delivery of the Products and/or Maintenance and Support Services [and/or Hosting Services] ~~[delete if not applicable]~~ if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier due to acts of God, governmental actions, war, threat of war or national emergency, acts of terrorism, riot, civil commotion, fire, explosion, flood and epidemic.

25. FORBEARANCE

- 25.1 RTÉ's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Supplier and no waiver by RTÉ in respect of any breach shall operate as a waiver in respect of any subsequent breach.

26. EXPENSES RECOVERABLE BY RTÉ

- 26.1 All expenses that may be incurred by RTÉ on account of damage to property, of accident, or of any act, neglect, omission or failure on the part of the Supplier or his workmen, shall be deemed to be a debt due from the Supplier to RTÉ, and may be deducted from any sums due or that may become due to the Supplier under any contract with RTÉ, and may be recovered by RTÉ from the Supplier by legal action or otherwise.

27. BRIBERY

- 27.1 Any bribe, commission, gift, loan or advantage given, promised or offered by or on behalf of the Supplier, or any agent or servant of the Supplier in relation to the obtaining or to the execution of these Conditions or any other contract for RTÉ or given, promised, or offered by or on behalf of the Supplier or any agent or servant of the Supplier to any officer or person in the service or employment of RTÉ, who shall be in any way connected with the execution of any such contract shall subject the Supplier to cancellation of all contracts which the Supplier may hold for RTÉ and also to payment of any loss resulting from any such cancellation. Any question or dispute as to a breach of this condition, or the sums to be paid, shall be settled by RTÉ in such manner and on such evidence or information as it thinks fit and its decision shall be final.

28. SURETIES

28.1 The Supplier shall (if required) produce two sufficient sureties the acceptance of whose security has been authorised by RTÉ, to enter into a bond for the due performance of the Conditions.

29. DISABILITY

29.1 No Minister of State (Senior and Junior), member of the RTÉ Board or employee of RTÉ shall be admitted to or share part of these Conditions or any benefit to so arise there from.

30. TRAINING OF STAFF

30.1 All training requirements are set out in the Statement of Work.

31. STORAGE AND ACCOMMODATION

31.1 The Supplier shall provide on or at a convenient distance from the Site, suitable storage accommodation for all materials in connection with the Conditions.

32. REMOVAL OF ARTICLES, MATERIALS, RUBBISH, ETC. FROM THE SITE.

32.1 The Supplier shall remove all articles and materials, resulting from the provision of the System(s), Products(s), the Services and/or the Maintenance and Support Services and shall leave the Site neat and tidy.

33. CORRESPONDENCE

33.1 All correspondence, letters and schedules dealing with the Conditions shall be in the English language and shall be furnished in duplicate by the Supplier and marked for the attention of the RTÉ Head of Procurement and the RTÉ Project Manager.

34. NON-ASSIGNMENT

34.1 The Supplier shall not without the consent in writing of RTÉ assign or transfer the Conditions or any part of it to any other company, person or firm.

35. CONFIDENTIALITY AND FREEDOM OF INFORMATION

35.1 Subject to condition 35.5, "Confidential Information" means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the "Disclosing Party") to the other Party/another Party (the "Receiving Party") whether before or after the date of these Conditions including, without limitation, information relating to the negotiation, provisions and subject matter of these Conditions or the Disclosing Party's operations, processes, plans or intentions, RTÉ Data and Supplier Data, Intellectual Property Rights, trade secrets or business affairs.

35.2 Subject to conditions 35.3 and 35.5, during these Conditions and if these Conditions should have expired or have been terminated for whatever reason, for a period of five (5) years from the date of receipt of the Confidential Information, the Receiving Party:

35.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations under these Conditions;

35.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with conditions 35.3 and/or 35.5; and

35.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

At the written request of the Disclosing Party, the Receiving Party shall return within ten (10) Business Days all originals and copies of Confidential Information received from the Disclosing Party.

35.3 Subject to condition 35.5, the Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

35.3.1 it is required by law;

35.3.2 the information has come into the public domain, otherwise than through a breach of this condition by the Receiving Party;

35.3.3 it is required by existing contractual obligations of which the Disclosing Party is aware;

35.3.4 it is required by any securities exchange or regulatory or governmental body to which it is subject; or

35.3.5 the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of these Conditions.

35.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under these Conditions as if the Recipient was a party to these Conditions.

35.5 The Supplier acknowledges that it is aware that RTÉ is a public sector body designated under the provisions of the Freedom of Information Acts, 2014. The Supplier acknowledges that it has been notified prior to the execution hereof that these Conditions may therefore be liable to public disclosure on request made under this Act, subject to RTÉ's entitlement to refuse to disclose certain information on the grounds set out in the Act. RTÉ and the Supplier acknowledge that these Conditions are commercially sensitive.

35.6 The Supplier shall not promote, advertise or /publicise its relationship with RTÉ nor use RTÉ as a referee without the prior written consent of RTÉ.

36. SEVERANCE

36.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

37. NO EMPLOYMENT AND NO PARTNERSHIP

37.1 For the avoidance of doubt, it is acknowledged that the Supplier is a company and not an employee of RTÉ and has no entitlements to employment protections or benefits under statute, contract, common law or otherwise and the Supplier undertakes not to make any employment related claim of any nature against RTÉ during or after these Conditions, under statute, contract, common law or otherwise.

37.2 The Supplier is solely responsible for engaging all Supplier personnel required for the provision of the System(s), Product(s), Services and/or Maintenance and Support Services and for ensuring that all Supplier personnel have the appropriate experience and training. The Supplier is solely responsible for the discharge of all payments due to Supplier personnel and RTÉ has no liability whatsoever or howsoever arising for

any failure on the part of the Supplier to discharge its obligations to Supplier personnel.

- 37.3 These Conditions do not give rise to any relationship of partnerships or agency or joint ventures

38. DISPUTE RESOLUTION

- 38.1 All disputes between the parties arising out of or in any way relating to these Conditions shall in the first instance be referred by either party to the following nominated representatives for the time being: _____ **[insert name]** for RTÉ; and _____ **[insert name]** for the Supplier to the dispute being resolved by the respective nominated representatives. Each party shall endeavour to resolve the dispute in all good faith.

- 38.2 If the procedure referred to in condition 38.1 above does not achieve a resolution of the dispute within ten (10) Business Days from the referral of the dispute to the respective nominated representatives, the dispute may be referred by any party to a court having competent jurisdiction in accordance with condition 39 below.

39. PROPER LAW AND JURISDICTION

- 39.1 These Conditions shall be governed by and construed in all respects (including the formation thereof and the performance thereunder) by the laws of Ireland and RTÉ and the Supplier hereby irrevocably submits to the exclusive jurisdiction of the Irish Courts.

40 [DATA PROTECTION]⁵

- 40.1 Terms and expressions used in this Condition 40 have the same meaning as in the Data Protection Acts 1988 and 2003. This condition 40 shall apply between the Effective Date and the date the new General Data Protection Regulation (Regulation (EU) 2016/679) ("GDPR") comes into force, being 25th May 2018. On 25th May 2018, this condition 40 shall be superceded and replaced by Condition 40 set out in Schedule 5 - the Data Processing Schedule attached to these Conditions. The Supplier and RTÉ each acknowledge and agree that they shall respectively comply with the provisions of Condition 40 as set out in Schedule 5 from 25th May 2018 onwards.

- 40.2 The Supplier acknowledges and agrees that RTÉ is the data controller and the Supplier is the data processor in respect of all personal data processed by the Supplier on behalf of RTÉ in providing the System(s), Product(s) and/or Services Maintenance and Support Services.

- 40.3 The Supplier warrants, represents, confirms and agrees that it:

40.3.1 will comply with its obligations under the Data Protection Acts 1988 and 2003 and act in manner consistent with RTÉ's obligations under and does not bring RTÉ into non-compliance with the Data Protection Acts 1988 and 2003;

40.3.2 will only deal with and process personal data controlled by RTÉ in full compliance with, and subject to, the instructions received from RTÉ and in compliance with these Conditions;

40.3.3 will not use or process any personal data controlled by RTÉ for any purpose except the performance of its obligations under these Conditions;

⁵ Data Protection condition will be included where required at RTÉ's sole discretion

- 40.3.4 has in place and will adopt and maintain for the duration of these Conditions, and prior to processing any personal data controlled by RTÉ, appropriate technical and organisational security measures in dealing with such personal data in order to protect against unauthorised or accidental access, loss, alteration, disclosure or destruction of such data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing and that it will keep such measures up-to-date and current;
- 40.3.5 will not export or transfer or host any such personal data outside the European Economic Area without RTÉ's prior written consent;
- 40.3.6 will take all reasonable steps to ensure that (i) persons employed or engaged by it, and (ii) other persons employed or engaged at its place of work, are aware of and comply with this Condition 40; and
- 40.3.7 will have in place appropriate back up procedures in order to restore or recover any personal data or any other data or information and will do so in the event of any disaster or similar incident.
- 40.4 The Supplier agrees at the request of RTÉ to submit its facilities, practices, procedures and measures for audit by RTÉ and/or its nominees and/or the Data Protection Commissioner, and to provide access to records, information and personnel and answer questions, to ascertain and/or monitor compliance with this Condition 40 and Data Protection Acts 1988 and 2003 generally.
- 40.5 The Supplier, upon request by RTÉ, will promptly provide to RTÉ or its nominee, a copy of all personal data controlled by RTÉ which is processed by or in the possession, control or custody of the Supplier in the format and on the media reasonably specified by RTÉ and will fully co-operate and assist with the migration and transfer of such to RTÉ or its nominee at no cost to RTÉ.
- 40.6 The Supplier will irrevocably delete, destroy and expunge all personal data processed by it pursuant to these Conditions upon the termination or expiration of these Conditions upon request by RTÉ.
- 40.7 The Supplier will immediately notify the RTÉ of any suspected or actual security breach (including unauthorised or accidental access, loss, alteration, corruption, disclosure or destruction of any personal data) and will fully co-operate and comply with the RTÉ in such respect. The Supplier will not make any statements or disclosures in such respect (including to the Data Protection Commissioner) without RTÉ's prior written consent and will notify RTÉ of, and permit and facilitate the attendance by RTÉ at, any meetings or calls with the Data Protection Commissioner (or any other supervisory or Government agency) and will copy RTÉ on all correspondence with the Data Protection Commissioner.
- 40.8 The Supplier shall indemnify RTÉ against any liability arising from any claims by a data subject and/or any regulator due to a failure by the Supplier or any third party acting on behalf of the Supplier to comply with this condition 40 to the extent that they relate to an obligation or restriction placed on the Supplier in respect of personal data controlled by RTÉ.

**SCHEDULE 1
STATEMENT OF WORK**

[Attach copy of Statement of Work]

Particularly identifying

1. ***The Final Acceptance Date***
2. ***The Contract Price***
3. ***The Payment Terms***
4. ***The Project Plan (including delivery dates for milestones for each Phase)***
5. ***The Specification [and Requirements]***
6. ***The Testing Procedures (if available at this time)***
7. ***The Warranty Period***
8. ***Deliverables***

SCHEDULE 2 CHANGE VARIATION PROCEDURE

1. Either Party may at any time request a change to the System(s), Product(s), Services, Maintenance and Support Services provided such change requested under this Change Variation Procedure does not materially alter the Specification for the System(s), Product(s), Services and/or Maintenance and Support Services.
2. If the Change Variation Procedure results in changes to the Contract Price, such changes shall be consistent with the Contract Price specified in the Statement of Work.
3. Until such time as a Change Variation Notice (CVN) has been approved and signed by both parties, the Supplier shall, unless otherwise expressly agreed in writing, continue to provide the System(s) and Product(s) and perform the Services and Maintenance and Support Services in accordance with these Conditions and RTÉ shall be obliged to make payments in respect of that work in the manner set out in the Payment Schedule.
4. Any work undertaken in connection with any proposed change to these Conditions or any part or parts thereof by the Supplier (other than that which has previously been agreed in accordance with the Conditions or a signed CVN and which does not subsequently become the subject of an CVN) shall be undertaken entirely at the expense and liability of the Supplier.
5. Any discussions, negotiations or other communications which may take place between the parties' Project Managers or personnel in connection with any proposed change to these Conditions or any part or parts thereof, including but not limited to the submission of any written communications, prior to the approval and signing by both parties of the relevant CVN, shall be without prejudice to the rights of either party.
6. Discussions between RTÉ and the Supplier concerning a change to the System(s), Product(s), Services, the Maintenance and Support Services or any part or parts thereof, shall result in one of the following:
 - a) no further action being taken; or
 - b) a request to change the Specification for the System(s), Product(s), Services, the Maintenance and Support Services, by RTÉ; or
7. Where a written request for a change is received, the requester shall, unless otherwise agreed, submit two copies of a CVN in the form set out at the end of this Schedule signed by the requester to the receiving Party within a period agreed at the time.
2. For each Change Variation Notice submitted, RTÉ shall, within the period of the validity of the Change Variation Notice:
 - a) allocate a sequential number to the Change Variation Notice;
 - b) evaluate the Change Variation Notice and, as appropriate:-
 - c) log all Change Variation Notices;
3. The Party receiving the Change Variation Notice shall review the Change Variation Notice and either sign or reject the Notice.
4. A Change Variation Notice signed by both Parties shall constitute an amendment to these Conditions and Statement of Work.
5. In the event of an emergency, where there is not sufficient time available for the parties to carry out their respective obligations set out in the Change Variation Procedure, the Supplier shall use reasonable endeavours to meet RTÉ's request for variation. As soon as is reasonably practicable, the parties shall complete the Change Variation Procedure. In the event of a dispute for such variation, the parties shall meet as soon as is reasonably practicable to resolve such dispute in accordance with the provisions of condition 38.

6. Each Party agrees to carry out its respective obligations in relation to this CVN procedure in good faith and acting reasonably.
7. Each Change Variation Notice shall contain:
 - a) the title of the change;
 - b) description of the requirement;
 - c) the identity of the originator and date of the request or recommendation for the change;
 - d) the justification for the change;
 - e) full details of the change including any specifications;
 - f) additional charges, if any, of the change;
 - g) a timetable for implementation together with any proposals for acceptance of the change;
 - h) a schedule of payments if appropriate;
 - i) details of the likely impact, if any, of the change on other aspects of the Products and/or Services including but not limited to:
 - i. the personnel to be provided;
 - ii. the charges if applicable;
 - iii. the payment profile;
 - iv. the documentation to be provided;
 - v. the training to be provided;
 - vi. service levels; and
 - vii. working arrangements;
 - viii. any resultant variations to the Statement of Work;
 - ix. the period of validity of the Change Variation Notice (if any) being not less than twenty (20) Business Days; and
 - x. provision for signature by RTE and the Supplier.

Change Variation Notice	
By and Between:	The Supplier
and:	RTÉ

Change Variation Notice Details	Agreement Details
Date:	Title or Reference No:
Reference No.:	
Raised by:	Date:

Reason for the Change:
Description of the Change:
Timetable for the Change and Commencement Date:
Price: Validity of price:
Impact on other work under the Statement of Work:
Impact on timescales under the Statement of Work:

The parties hereby agree to change the Statement of Work and Conditions in the manner and in consideration of the terms set out above. Save as expressly set out in this Change Variation Notice the terms and conditions of the Conditions shall remain in full force and effect.

Agreed for and on behalf of the Supplier	Agreed for and on behalf of RTÉ
Signed: _____	Signed: _____
Title: _____	Title: _____
Date: _____	Date: _____

SCHEDULE 3
MAINTENANCE AND SUPPORT SERVICES [and Service Level Agreement]

[Insert description of Maintenance and Support Services]

**[SCHEDULE 4
Hosting Services]**

[Insert description of Hosting Services]

SCHEDULE 5

DATA PROCESSING SCHEDULE

This Schedule 5 shall supercede Condition 40 of the Conditions and shall take effect on 25th May 2018. If there are any conflicts or inconsistencies between this Schedule 5 and the Project Terms and Conditions, the provisions in this Schedule 5 prevail. For the avoidance of doubt, reference to the “Conditions” in this Schedule shall include this Schedule 5.

“40 DATA PROTECTION

RTÉ and Supplier agree the following:

40.1 Definitions

“**Data Protection Incident**” means a breach of the Data Protection Legislation, or other incident, leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed in accordance with the Conditions, and includes potential breach or incident being investigated by Supplier.

“**Data Protection Legislation**” means

40.1.1 the Irish Data Protection Acts 1988 and 2003;

40.1.2 the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;

40.1.3 the EU Data Protection Directive 95/46/EC;

40.1.4 the EU ePrivacy Directive 2002/58/EC (as amended) (the “**ePrivacy Directive**”);

40.1.5 any relevant transposition of, or successor or replacement to, those laws (including, when they come into force, the General Data Protection Regulation (Regulation (EU) 2016/679) (“**GDPR**”) and the successor to the ePrivacy Directive); and

all other industry guidelines (whether statutory or non-statutory) or applicable codes of practice and guidance notes issued from time to time by the Irish Data Protection Commissioner relating to the processing of Personal Data or privacy.

“**Party**” mean either RTÉ or the Supplier who shall together be known as the “Parties”.

“**Personnel**” means the employees, agents and/or contractors working for or on behalf of a Party.

40.2 Data Processing

40.2.1 Within this Condition 40.2 “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**” and “**Processing**” shall have the same meanings as in the Data Protection Legislation and “**Processed**” and “**Process**” shall be construed in accordance with the definition of “**Processing**”.

40.2.3 Supplier agrees that to the extent that it Processes Personal Data for or on behalf of RTÉ, it is subject to, and agrees to comply fully with the Data Protection Legislation.

40.2.4 Supplier shall cooperate with RTÉ and take reasonable steps requested by RTÉ where required for RTÉ to comply with any notification or other obligations applicable to RTÉ under the Data Protection Legislation.

40.2.5 In respect of the Processing of Personal Data by the Supplier or Supplier Personnel under or in connection with the Conditions, the Supplier shall, and shall procure that the Supplier Personnel shall:

- (a) only Process the Personal Data to the extent required to provide the Services in accordance with the terms of the Conditions or otherwise in accordance with documented instructions of RTÉ from time to time;
- (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised to do so in writing by RTÉ;
- (c) promptly comply with any request from RTÉ requiring Supplier to amend, transfer or delete any Personal Data;
- (d) implement appropriate technical and organisational measures to:
 - (i) protect Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, destruction, damage, alteration, or disclosure;
 - (ii) to comply with Data Protection Legislation; and
 - (iii) to ensure the protection of the rights of the Data Subject;
- (e) ensure that Supplier Personnel are made aware of and observe the Supplier's obligations under this Condition with regard to the security and protection of Personal Data;
- (f) Process the Personal Data in accordance with the Data Protection Legislation (as applicable) and not do or permit anything to be done which might cause RTÉ in any way to be in breach of the Data Protection Legislation;
- (g) provide written evidence of Supplier's compliance with Data Protection Legislation as may be requested by RTÉ from time to time;
- (h) cooperate and assist, as requested by RTÉ, and put appropriate technical and organisational measures in place to enable RTÉ to comply with any exercise of rights by a Data Subject under the Data Protection Legislation in respect of Personal Data processed by the Supplier under the Conditions (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data);
- (i) not process the Personal Data anywhere outside of the European Economic Area without the prior written consent of RTÉ (and subject then, in the event of any transfer outside the European Economic Area, to the execution of any document or agreement which, in the reasonable opinion of RTÉ, is required in order to lawfully effect any such transfer of Personal Data);

- (j) at the request of RTÉ or any competent regulatory or supervisory authority, submit for audit the Processing activities (and related facilities) carried out pursuant to the Conditions which shall be carried out by RTÉ, its authorised representatives (bound by a duty of confidentiality) and/or representatives of the relevant regulatory or supervisory authority; and
- (k) cease Processing the Personal Data immediately upon the termination or expiry of the Conditions or, if sooner, the Services to which it relates and as soon as possible thereafter, at RTÉ's option, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains and the Supplier shall confirm in writing that this Condition 40.1.1(k) has been complied with in full. The provisions of Condition 40.1.1(k) shall not apply to the extent the Supplier is obliged by applicable law to keep copies of the Personal Data.

40.2.5 Supplier shall notify RTÉ as soon as reasonably practicable and in any event within twenty-four (24) hours of:

- (l) any legally binding request for disclosure of Personal Data by a law enforcement or other competent authority unless prohibited by law from doing so; and
- (m) any request received directly from a Data Subject without responding to that request, unless required by law or it has been otherwise authorised by RTÉ to do so;
- (n) receiving any correspondence, notice or other communication whether orally or in writing from the relevant data protection regulator or any other regulator or person, relating to the Personal Data; or
- (o) becoming aware of a breach of this Condition 40.0.

40.2.6 Without prejudice to any other provision of the Conditions, RTÉ may, on reasonable notice, request a detailed written description of (i) the technical and organisational methods employed by the Supplier and its sub-processors (if any) for the Processing of Personal Data; and/or (ii) the Processing activities carried out by the Supplier on behalf of RTÉ [containing at least the amount of detail as required by Article 30(2) of the GDPR]⁶. Within ten (10) days of receipt by the Supplier of RTÉ's written request (which shall include a detailed description of RTÉ's requirements), the Supplier shall deliver a written report to RTÉ in sufficient detail that RTÉ can reasonably determine whether or not any applicable Personal Data is being or has been processed in compliance with the Data Protection Legislation and in accordance with the Conditions.

40.2.7 Without prejudice to the other provisions of this Condition 40.0, if the Supplier or any member of the Supplier Personnel becomes aware of any Data Protection Incident, then the Supplier shall promptly (but in any event within twenty-four (24) hours of discovery) notify RTÉ by telephone and by email. The Supplier shall, at no additional cost to RTÉ, provide RTÉ with all

⁶ This is an optional portion of this clause as the obligation referred to does not apply to organisations with >250 employees unless such organisation carries out high risk processing, the processing is not occasional, or the processing includes special categories of data or data in respect of criminal convictions and offences.

resources, assistance and cooperation as are required by RTÉ for RTÉ to notify the Office of the Irish Data Protection Commissioner (or analogous body in any other relevant jurisdiction and any bodies which may succeed or replace them from time to time) of a Data Protection Incident and for RTÉ to provide such reports or information as may be requested by it in relation to such Data Protection Incident and/or for RTÉ to notify the relevant Data Subjects of such Data Protection Incident, as applicable.

40.2.8 Supplier shall, at no additional cost to RTÉ, provide RTÉ with all resources and assistance as are required by RTÉ for RTÉ to discharge its duties pursuant to Articles 35 and 36 GDPR including, but not limited to, promptly at the request of RTÉ providing information in respect of any data protection impact assessment which RTÉ conducts.

40.2.8 Supplier may only authorize a third party (a “**Sub-r Processor**”) to process the Personal Data being processed for or on behalf of RTÉ with the prior written consent of RTÉ and provided that:

the Sub- Processor’s contract is on terms which are substantially the same as those set out in this Schedule;

the Sub- Processor will be subject to the same obligations as those which Supplier is subject to under this Schedule; and

the Sub- Processor’s contract terminates automatically on termination of the Conditions for any reason.

40.2.9 Where Supplier appoints or otherwise uses the services of a Sub-Processor, Supplier shall be fully liable to RTÉ for the performance, acts and omissions of Sub- Processor. Nothing in this Schedule shall relieve Supplier of any liability for the acts or omissions of its staff, employees or contractors in relation to the Personal Data.

40.2.10 Supplier agrees not to use any Personal Data which it processes on behalf of RTÉ for direct marketing purposes without the prior written authorisation of RTÉ.

40.2.11 Supplier agrees and warrants that the technical and organisational measures referred to in this Schedule are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the Personal Data to be protected having regard to the state of the art.

40.2.12 Supplier further agrees and warrants that the processing of the Personal Data has been and will continue to be carried out in accordance with the Data Protection Legislation.

40.2.13 The Supplier shall indemnify RTÉ against any liability arising from any claims by a data subject and/or any regulator due to a failure by the Supplier or any third party acting on behalf of the Supplier to comply with this condition 40 to the extent that they relate to an obligation or restriction placed on the Supplier in respect of personal data controlled by RTÉ.”

Contract Signature Page

IN WITNESS whereof the parties hereto have executed these Conditions on the _____ day
of _____, 20____.

SIGNED for and on behalf of)
RAIDÍÓ TEILIFÍS ÉIREANN)

In the presence of

Witness:

Name:

Address:

SIGNED for and on behalf of)
[Name of Supplier])

In the presence of

Witness:

Name:

Address: