

# Consolidated Terms & Conditions of Business

---

2019

**RTÉ** Media Sales

# RTÉ Terms and Conditions of Business

## INTRODUCTION

These Terms and Conditions of Business together with the Deal Memorandum and any Booking are legally binding and contain the agreement (“**Agreement**”) between the Buyer and RTÉ, relating to the purchase of Media.

These Terms and Conditions of Business apply to the purchase of all Advertising on or after 1<sup>st</sup> January 2019.

A Booking by a Buyer to purchase Media (whether accepted by RTÉ verbally, in writing, electronically or otherwise) will constitute the Buyer’s acceptance of, and agreement to be bound by, these Terms and Conditions of Business and the Deal Memorandum and/or Booking irrespective of whether or not the Deal Memorandum or Booking is signed by the Buyer.

## 1. DEFINITIONS AND INTERPRETATION

- 1.1. **Definitions:** In these Terms and Conditions of Business and the Deal Memorandum words and expressions shall have their ordinary meaning unless otherwise defined within these Terms and Conditions of Business.
- 1.2. In addition, definitions used in these Terms and Conditions of Business or in any Deal Memorandum are defined in Schedule 1.
- 1.3. Definitions which are relevant and used only within a particular clause are defined in that clause.

## 2. STATUS OF THE BUYER

- 2.1. **Agency as Principal:** It is acknowledged that the Buyer may be an Agency or a Direct Advertiser. Where the Buyer is an Agency it contracts with RTÉ as principal in all respects and not in any circumstances as a commercial agent on behalf of its Clients. Accordingly, all rights and responsibilities under the Agreement shall exist solely between RTÉ and the Agency and the Agency will be responsible for the payment of all amounts due to RTÉ and the performance of all other obligations of the Buyer under the Agreement.
- 2.2. **Affiliates:** If any Affiliate of an Agency is entitled to the benefit of the Agreement under a relevant Deal Memorandum:
  - 2.2.1. the Agency shall be responsible for the acts and/or omissions of its Affiliate in connection with the Agreement; and
  - 2.2.2. the Agency will be liable to RTÉ for the acts or omissions of the Affiliate as if they were acts or omissions of the Agency to the extent they breach the Agency’s obligations under the Deal Memorandum or are otherwise stated in the Deal Memorandum to apply to such Affiliates.

## 3. CREDIT

- 3.1. **Credit and Information:** RTÉ may in its absolute discretion at any time grant the Buyer credit (with or without conditions and/or limits as determined by RTÉ in its sole discretion). Where a Buyer is granted credit it shall be given ‘Agency Recognition’ status (and be included on the Register of Approved Agencies). RTÉ may, in its sole discretion, withdraw such Agency Recognition status (and remove such Buyer from the Register of Approved Agencies and/or vary any conditions and/or limits applying to any credit). For the purposes of RTÉ considering whether or not to grant credit, the Buyer may be required by RTÉ to provide to RTÉ or to RTÉ’s insurers such information as RTÉ may require promptly upon request. The Buyer will comply

with the obligations contained in any agreement between it and RTÉ or any such third party relating to the granting of credit by RTÉ (including specific terms of any guarantee that may be required to secure credit) and the Buyer acknowledges that no information or report made by RTÉ or any third party will in any way oblige RTÉ to grant credit (on particular terms or otherwise) to the Buyer.

- 3.2. **Disclosure of Credit Information:** The Buyer agrees that RTÉ may disclose to its Insurers any information provided by the Buyer to RTÉ (and will ensure that any third parties may disclose to RTÉ information provided by the Buyer to such third parties) or relating to RTÉ's dealings with the Buyer. The Buyer represents and warrants that all information provided by the Buyer to RTÉ and Insurers shall be true, accurate and not misleading and the Buyer undertakes to notify the recipients of such information promptly of any material change in such information.

#### 4. COMMISSION

- 4.1. **Agency Commission:** RTÉ may in its sole and absolute discretion apply Agency Commission in respect of the purchase of Media by an Agency and for the avoidance of doubt this will not exceed 15% of the Gross Expenditure payable to RTÉ.
- 4.2. **Application:** Agency Commission is only applied to the actual cost of the Media and is not applied to any other charges such as Late Copy Surcharge, cancellation or deferment charges, Late Booking Fees or any fees in relation to Production or Creative Solutions.
- 4.3. **Not payable on Print Competitions:** Agency Commission is not applied to competition Bookings including in respect of the RTÉ Guide.

#### 5. BOOKINGS, PRICING AND DEMOGRAPHYS

- 5.1. **Acceptance of Bookings at RTÉ's Discretion:** RTÉ shall have no obligation to accept any Bookings for Media submitted by the Buyer. If RTÉ wishes to accept any Booking, RTÉ may do so either in writing, by the provision of Media to the Buyer or by the use of an electronic Campaign Approval System.
- 5.2. **Late Booking:** RTÉ reserves the right, at its sole discretion, to decline any Booking made after the Advance Booking Deadline or dis-apply any preferential terms (including any RTÉ Pricing Terms or qualitative commitments) offered in the Deal Memorandum.
- 5.3. **RTE Pricing subject to ABD:** Where RTÉ Pricing Terms are agreed in the Deal Memorandum, unless otherwise agreed in writing, these will be subject to Campaigns being booked by the Buyer in advance of the Advance Booking Deadline and where Campaigns are booked after the Advance Booking Deadline, RTÉ reserves the right to charge these Campaigns at a pricing determined at its sole discretion (and which may or may not be based on the pricing set out in the Rate Card).
- 5.4. **Material changes to Booking after ABD:** Any RTÉ Pricing Terms may be dis-applied by RTÉ (at its sole election) if the Buyer requires any material changes to be made to the Campaign requirements (as stipulated in the Booking) following the date on which the Booking is agreed where the changes are requested following the ABD.
- 5.5. **Rate Card Discounts subject to deadlines:** Any discounts off the Rate Card will also be subject to compliance with any deadlines stipulated in the Rate Card.
- 5.6. **Price conversion from 30" rates:** Transmissions of a longer or shorter duration than 30 seconds will be will be subject to RTÉ's price conversion from 30 second rates for all Media.

- 5.7. **Specials:** Special rates and conditions may be announced by RTÉ from time to time for particular editorial content. Any Media relating to such editorial content shall be subject to such special rates and conditions.
- 5.8. **Demographics:** For the purposes of targeting audiences in relation to each type of Media, RTÉ shall use the standard audience segmentation Demographics from time to time.

## 6. ADVERTISING COPY COMPLIANCE REQUIREMENTS

- 6.1. **Compliance with Legal and Industry Codes and the RTÉ's Copy Clearance Policy:** The Buyer shall ensure that all Advertising Copy complies with both the letter and the spirit of all Legal and Industry Codes and with the Copy Clearance Policy.
- 6.2. **Submission of Advertising Copy:** The Buyer must submit all Advertising Copy (together with all relevant scripts, storyboard and detailed lists of all copyright/licence material as required by the Copy Clearance Policy) to the Copy Clearance Committee within the timelines set out in the Copy Clearance Policy. Advertising Copy will only be published by RTÉ' if it has been approved in writing by the Copy Clearance Committee.
- 6.3. **Failure to comply:** In the event that the Buyer fails to comply with any Advertising Copy clearance deadlines, as stipulated in RTÉ's Copy Clearance Policy:
- 6.3.1.the Buyer will be liable to pay, where relevant, a Late Copy Surcharge as set out in the Copy Clearance Guidelines; and/or
- 6.3.2.RTÉ shall be entitled to charge the full amount of the fees for the Media booked without any liability to publish such Advertising Copy.
- 6.4. **Compliance with Technical Copy Requirements:** All Advertising material must comply with RTÉ's Technical Copy Requirements. Details of RTÉ's Technical Copy Requirements are available upon request and the Buyer will comply with and be bound by such requirements. Failure to comply with such Technical Copy Requirements could result in Advertising Copy deadlines being missed and the remedies as set out above in clause 6.3 being applied.
- 6.5. **Right to charge:** In the event that Advertising Copy does not comply with the Legal and Industry Codes, or RTÉ's Technical Copy Requirements or is not otherwise approved by the Copy Clearance Committee, RTÉ reserves the right to charge the Buyer in full for all Bookings in respect of such Media whether or not such Media has been published.
- 6.6. **Unsuitable Advertising Copy:** In the event that RTÉ deems the Advertising Copy to be unsuitable, RTÉ shall notify the Buyer which must be prepared to supply alternative Advertising Copy. Should alternative Advertising Copy not be accepted by RTE, then RTÉ shall be entitled, without incurring any liability, to do any of the following:
- 6.6.1.decline to publish the Advertising Copy;
- 6.6.2.repeat previous Advertising Copy published by RTÉ;
- 6.6.3.publish other suitable material (or apply the remedies set out in clause 6.3. RTÉ shall be entitled to be paid the full rate for such Booking; or
- 6.6.4.in its absolute discretion to do any act or thing to satisfy itself that the Advertising Copy is suitable to publish (including the fading, editing or cutting thereof),
- and in all cases, the Buyer shall remain liable to RTÉ in respect of any charges payable hereunder for such Media.

- 6.7. The provision for clauses 6.5 and 6.6 shall apply without prejudice to any special arrangements, which are made for Bookings at shorter notice.
- 6.8. **Right to decline to publish:** RTÉ reserves the right, at its absolute discretion and without incurring any liability, to decline to publish any Advertising Copy or without giving any reason for so declining but in such event the Buyer shall not (unless such refusal by RTÉ is in the circumstances set out in clause 6.5 above) be liable to pay for any Media which RTÉ so declines to transmit.
- 6.9. **Right to apply a surcharge for Advertising Copy advertising more than one product, service or activity:** RTÉ reserves the right to refuse or to apply a surcharge on Advertising Copy advertising more than one product, service or activity. If in RTÉ's opinion, the editing of two or more advertisements results in the advertisement of more than one product, service, or activity, which is designed to take advantage of reduced rates, RTÉ reserves the right, at its absolute discretion, to charge such Media at a rate equivalent to the which RTÉ would have charged had the advertisement for each product, service or activity been submitted to it separately.
- 6.10. **Copy Rotation Instructions:** RTÉ will use its reasonable endeavours to adhere to Copy Rotation Instructions but will not be liable for any failure to comply with those instructions.
- 6.11. **Consent to amend Advertising Copy:** A Buyer may not change any Advertising Copy (including from one product or another) after it has been approved in accordance with this clause 6 and the Copy Clearance Policy without seeking RTÉ's written approval of such change in accordance with this Clause 6 and the Copy Clearance Policy.

## 7. TV AIRTIME TRANSMISSION

- 7.1. **Transmission of Airtime Spots:** Subject to clause 7.2 below, RTÉ shall have the right to transmit Spots at the dates and times which it considers to be most efficient for the purposes of delivering the Buyer's Campaign objectives.
- 7.2. **Timeshifted Channels:** Where the parties do agree in advance any particular transmission times and/or dates for Spots, the Buyer agrees that it shall take into account any Timeshifted Channels when establishing transmission schedules with RTÉ and, for the avoidance of doubt, the Buyer accepts that RTÉ may fulfil its obligations under the Booking on the corresponding Timeshifted Channel. If any Advertising Copy is not transmitted on a particular agreed day and/or in an agreed segment of a day or a Daypart, RTÉ will use reasonable endeavours to reinsert such Advertising Copy in equivalent Airtime within the relevant Campaign period. Where such Advertising Copy was break or programme specific, RTÉ will use reasonable endeavours to offer an alternative transmission at some other date. If such offer is not made or accepted by the Buyer, the Booking (in relation to the particular individual time/date specific Spot or Spots only) shall be cancelled and the Buyer shall have no claim against RTÉ in respect of any Loss for such non-transmission save that RTÉ shall make no charge to the Buyer for the cancelled Spot(s).
- 7.3. **Transmission Failure:** Notwithstanding any other applicable terms in these Terms and Conditions of Business, if a failure to transmit any Spot is due solely to the fault of RTÉ, RTÉ shall not charge the Buyer in respect of such Spot however RTÉ shall incur no liability for any Loss howsoever arising including any failure to meet any agreed TVR target.
- 7.4. **Transmission Schedule Changes:** In the event that RTÉ makes any significant alteration(s) to the transmission schedule of any Channel and notifies the same to the Buyer, RTÉ reserves the right to re-establish the advertising breaks concerned as unsold time. In the case of an existing Booking in an affected break, RTÉ will agree with the Buyer alternative transmission times for such Spots.

- 7.5. **Daypart Segments and Impacts:** Spots appearing within 5 minutes of the relevant Daypart segment band will be regarded as appearing within that Daypart segment. Advertising Copy booked for transmission at a specific time will be transmitted in the commercial break nearest to that time. All Timeshifted Channel Impacts in a Campaign will be reconciled as if they were transmitted in the corresponding Daypart on the parent channel.
- 7.6. **Transmission of additional Spots:** RTÉ reserves the right to transmit additional Spots at no extra charge in order to achieve its Airtime objectives, in accordance with its internal procedures and policies.

## 8. RADIO AIRTIME

- 8.1. **Laydown:** Any agreement in the Deal Memorandum or Booking to supply Radio Airtime on the basis of a Laydown (including any agreed tolerance allowance) is given on a reasonable endeavours basis and subject always to: (a) availability; and (b) RTÉ's right to reasonably optimise Campaigns across its available Radio Airtime.
- 8.2. **Laydown unavailable:** Where the Laydown offered in the Deal Memorandum or Booking is not available, and the Buyer does not wish to proceed with a Booking using an alternative laydown, the Gross Revenue that would have been spent with RTÉ shall not, for the avoidance of doubt, be treated as having been spent with RTÉ when calculating whether a Buyer Guarantee has been met.
- 8.3. **No guarantees on transmission on times/dates:** RTÉ does not guarantee that the times and/or dates of transmission will be adhered to, but, if for any reason an advertisement is not transmitted on the day and in the Time Segment agreed, RTÉ shall endeavour to offer a transmission at some other time and other date which may be accepted by the Buyer, provided that if any offer of such a transmission is not accepted (or is not made) the original bookings shall be cancelled and the Buyer shall have no claim against RTÉ in respect of non-transmission or for any expense or damage whatsoever incurred as a result thereof. RTÉ shall make no charge to the Buyer for such booking but RTÉ shall be entitled to be paid by the Buyer any agreed fees. RTÉ shall be paid any expenses it incurs in respect of any facilities arranged or provided.
- 8.4. **Limitation on liability:** RTÉ shall not incur any liability for any failure to transmit all or any part of any advertisement as a result of any failure of transmission, except that if a total failure to transmit shall be due to any fault of RTÉ the Buyer shall not be charged for the advertisement. In the event of a partial failure to transmit over the entire RTÉ Radio network, RTÉ may at its discretion allow a rebate, the amount of which shall be determined by RTÉ.
- 8.5. **Fixed break timings:** Timings used by the RTÉ in the acceptance of Bookings in fixed breaks are approximate and denote the planned position or sequence only.
- 8.6. **Transmission losses:** Particulars of transmission times and transmission losses as set out in RTÉ's station logs shall be accepted by the Buyer
- 8.7. **Transmission Schedule Changes:** In the event that RTÉ makes any significant alteration(s) to the transmission schedule of any Channel and notifies the same to the Buyer, RTÉ reserves the right to re-establish the advertising breaks concerned as unsold time. In the case of an existing Booking in an affected break, RTÉ will agree with the Buyer alternative transmission times for such Spots.

## 9. DIGITAL ADVERTISING

- 9.1. **Reasonable endeavours to display:** RTÉ will use its reasonable endeavours to display the advertisement on the Campaign Dates but the Buyer acknowledges and agrees that no commitment is given by RTÉ that the advertisement will be displayed on such dates. The Buyer also acknowledges and agrees that RTÉ may change the date, time, Site Area or

geography (or any other aspect of the display of the advertisement) of any display as it sees fit in order to deal with any change in Legal and Industry Codes or any other change in circumstances and that the positioning of any advertisement within the Website or elsewhere on its Digital Offering is always at the sole discretion of RTÉ. RTÉ will not be held responsible in any way for the content, nature or subject matter of any other advertising displayed on its Website or elsewhere on its Digital Offering and the effect or otherwise that any of the same may have on the effectiveness or otherwise of any advertising displayed by RTÉ on its Website or elsewhere on its Digital Offering on behalf of the Buyer.

- 9.2. **Limitation on liability:** If the display of an advertisement does not take place at all or such display only takes place in part, in each case through no fault of the Buyer, subject to the Parties' rights and obligations set out in clause 9.1, RTÉ will use its reasonable endeavours to agree with the Buyer other Campaign Dates. Save as provided in this clause 9.2 and clause 9.3, RTÉ will have no liability for any Loss arising out of or in connection with any failure to display an advertisement in whole or in part at any date or time or at all.
- 9.3. **Incorrect display:** If an advertisement is displayed but is displayed incorrectly through no fault of the Buyer such failure shall not constitute a breach of this Agreement and without prejudice to this, RTÉ and the Buyer will use their reasonable endeavours to agree how to compensate the Buyer.
- 9.4. **Discretion to amend or change content:** RTÉ retains the right to change or amend the content or format or any other aspect of the Digital Offering at any time in its absolute discretion and without the need to give any notice to the Buyer.
- 9.5. **Digital Impressions – No Guarantee:** The number of Impressions stated in each Booking is an estimate of the number of Impressions to be delivered over the relevant Campaign Dates. The number of Impressions delivered will vary across the relevant Campaign Dates and could be higher or lower than the value of the Impressions booked. RTÉ provides no guarantee that the number of Impressions booked will be delivered.
- 9.6. **Impressions Measurement:** RTÉ shall, or shall procure that a third party provider shall, measure the number of Impressions actually achieved in relation to any Campaign ("**RTÉ Impressions Measurement**"). Following the end of the Campaign, RTÉ shall use reasonable endeavours to provide to the Buyer the Impressions measurement for the relevant Campaign.
- 9.7. **Impressions Discrepancy:** Where the RTÉ Impressions Measurement is more than 10% (ten per cent.) less than that supplied by the Buyer, RTÉ agrees to investigate the difference subject to: (a) the Buyer providing all information which RTÉ reasonably requests in relation to such investigation; and (b) the Buyer having paid RTÉ in full all amounts due according to the number of Impressions stated in the relevant Booking, RTÉ shall consider the matter in good faith but any decision shall be in its sole discretion.
- 9.8. **Impression Shortfall:** In the event that the Impressions delivered for a Campaign are less than those estimated both RTÉ and the Buyer will agree shortfalls. Any shortfall will be delivered against one or more other Campaigns during the Term, or where this is not possible, RTÉ shall decide in its sole discretion how to compensate the Buyer which may include carrying over the shortfall into the next deal term.

## 10. PRINT

- 10.1. All Advertising Copy delivered to RTÉ must be accompanied by a colour proof.
- 10.2. Delivery of proof and Advertising Copy constitutes Buyer's agreement to RTÉ's publication of such advertisement.

## 11. CREDIT RECONCILIATION

- 11.1. **Media Credit:** Where any Buyer Media Credits or RTÉ Media Credits become due under the Deal Memorandum between the Parties, the Parties agree that they shall carry forward and reconcile the Media Credits at the end of each quarter, end of each year and at the end of the Term. Reconciliation shall be made in terms of Media value unless otherwise agreed.
- 11.2. **Reconciliation:** In the event that no such trading relationship exists and all agreements between RTÉ and the Buyer relating to the sale of Media have terminated, RTÉ will use its reasonable endeavours to agree a position with the Buyer in order to formally reconcile the Media Credits. Where (a) the parties are unable to agree a position in relation to the Media Credits within 30 days from the date on which RTÉ notifies the Buyer that it wishes to discuss the same; or (b) the Buyer is insolvent or any of the other insolvency-related elements set out in clause 16.2.4 apply to it; then RTÉ shall be entitled to require payment from the Buyer in relation to the value of such Media Credit owed to RTÉ.
- 11.3. **Client Moves:** In circumstances where a Client of a Buyer moves any or all of its business to another Agency it is the responsibility of the Buyer to notify RTÉ in writing prior to such move whether it wishes any Media Credit applicable to such Client to be transferred to such other Agency. The Buyer agrees that any such transfer is subject to the prior written consent of RTÉ and RTÉ being satisfied that the other Agency has agreed to such transfer. It is the responsibility of the Buyer to obtain the other Agency's written agreement and the Buyer undertakes to RTÉ that it will indemnify, keep indemnified and hold harmless RTÉ, both during and after the Term, from and against all Loss arising out of or in connection with any claim or dispute with any third party relating to any such transfer or purported transfer of such Media Credit.

## 12. WARRANTIES AND INDEMNITIES

- 12.1. The Buyer represents, warrants and undertakes to RTÉ that:
- 12.1.1. it has obtained, maintained and paid for all necessary permits, licenses, authorisations and any other consents (whether statutory or otherwise) required under the Agreement, including in respect of the publication of any advertisement or copyright material contained in, or the appearances of any person in, the Advertising Copy including any music rights or performing rights;
  - 12.1.2. all Advertising Copy or use, recording, broadcasting, transmission, distribution or communication to the public thereof does not breach the copyright or other rights (including intellectual property rights) of, or is not defamatory to, any third party;
  - 12.1.3. all Advertising Copy is not in any way misleading, false, defamatory, obscene, indecent or otherwise offensive;
  - 12.1.4. Advertising Copy does not contain any Viruses;
  - 12.1.5. in accordance with clause 25, the Buyer will, and will procure that its Clients will, comply with all Legislation (including in particular the Data Protection Rules) in relation to User Data;
  - 12.1.6. all Advertising Copy complies with all Legal and Industry Codes and shall not include any prohibited communications;
  - 12.1.7. the Advertising Copy shall at all times perform without any material error or defect, shall be of satisfactory quality, shall not cause any harm or damage to any software or hardware of RTÉ or any third party and shall comply with any technical requirements communicated to the Buyer by RTÉ ; and

12.1.8. that all information relating to the Buyer shall be true and accurate at all times. The Buyer undertakes to notify RTÉ promptly of any material change in such information (including without limitation any change in the ownership or control of the Buyer).

12.2. **Buyer Indemnity:** Notwithstanding anything to the contrary contained herein, the Buyer will indemnify, keep indemnified and hold harmless RTÉ against all Loss arising from any breach or threatened or purported breach of the above warranties or any of its obligations contained herein.

12.3. **Co-operation with BAI or any other relevant Competent Authority:** In the event of any issues raised by BAI or any other relevant Competent Authority in connection with RTÉ's compliance with any Legal and Industry Codes, the Buyer shall co-operate fully with RTÉ and provide such assistance as may reasonably be required by any of the same in connection with such issue.

12.4. **Anti-Corruption Laws:** The Buyer will not, and nor will any of their officers, employees, shareholders, representatives or agents, directly or indirectly offer, promise or give or request, agree to or receive any financial or other advantage with respect to any matters which are the subject of the Agreement which would violate any anti-corruption laws or regulations including but not limited to the Criminal Justice (Corruption Offences) Act 2018, the Ethics and Public Office Acts 1995 and 2001 (Ethics Acts) and the Local Government Act 2001 and related codes of conduct.

12.5. **Transparency:** The Parties are committed to full transparency across all pricing, commissions, discounts and other commercial arrangements which have been agreed between the Parties. Accordingly, the Buyer shall not misrepresent to any Client the nature of the arrangements that the Buyer (or any part of its Agency Buying Group) has with RTÉ and warrants that it shall not by: (i) entering into, or (ii) discharging its obligations hereunder, or (iii) the receipt of any benefits conferred by the Deal Memorandum or otherwise (whether received by the Buyer or by any part of its Agency Buying Group), breach any contractual or legal obligations to its Clients.

12.6. **Indemnity:** Notwithstanding anything to the contrary contained herein, the Buyer will indemnify, keep indemnified and hold harmless RTÉ and its Affiliates against all Loss arising from any breach or threatened or purported breach of the warranties contained in this clause 10.

### 13. MATERIALS AND PROPERTY LIABILITY

13.1. **Care of Materials:** Reasonable care will be taken by RTÉ in respect of any materials or content provided by or on behalf of the Buyer to RTÉ whilst in the possession of RTÉ, but subject thereto, RTÉ cannot accept liability for any Loss arising out of or in connection with any damage, loss, deletion or otherwise of the same (whether or not the same are in the possession of RTÉ or any third party engaged by RTÉ) and RTÉ will be under no obligation to return any of the same to the Buyer or any other third party. The Buyer will be responsible for ensuring that it retains backup copies of all materials and content that are provided by it to RTÉ and that these are insured for full value (and for the avoidance of any doubt, RTÉ will have no obligation to put in place any insurance policy in respect of the same).

13.2. **Right to delete:** RTÉ may destroy or delete any materials or content provided by or on behalf of the Buyer if not published for a period of three months after the later of the date of receipt or last publication of it by RTÉ without further reference to the Buyer.

13.2.1. The Buyer grants RTÉ a worldwide, royalty free, non-exclusive, freely assignable licence:

13.2.2. to use any materials and content provided by the Buyer for the purpose of enabling RTÉ (and its sub-contractors) to perform its obligations under this Agreement;

13.2.3. to market, publish, perform and promote the advertisement in the manner set out in the Booking; and

13.2.4. for Users of the Digital Offering to have the right to access and use the advertisement and any other content provided by the Buyer.

#### 14. PUBLICITY AND INFORMATION CONCERNING ADVERTISEMENTS

14.1. No Buyer shall, without the prior written consent of RTÉ, publish any information in connection with any advertisement or Campaign which has been published or is scheduled for publication by RTÉ. The Buyer shall treat any information, not already in the public domain, about RTÉ (including, for the avoidance of doubt, in respect of programmes or other content and Campaigns) as Confidential Information. RTÉ shall be entitled to refer to the Buyer's association with RTÉ and the Media booked hereunder to promote RTÉ's business generally.

#### 15. CANCELLATION AND DEFERMENT

15.1. **Campaign Booking Cancellation before the ABD:** A Booking may be cancelled by the Buyer prior to the applicable Advance Booking Deadline by giving written notice to RTÉ and no charges will be due to RTÉ in relation to such cancelled Booking. If a Booking is cancelled by the Buyer other than in accordance with this clause, the Buyer will remain liable to pay RTÉ's charges in full whether or not the advertisements are published. A Booking for any advertisement may be cancelled by RTÉ at any time prior to the applicable Advance Booking Deadline without any liability whatsoever on the part of RTÉ. Nothing in this clause 15.1 shall affect RTÉ's right to reject any Bookings made after the relevant ABD.

15.2. **Campaign Booking Cancellation after the ABD:** The Buyer shall be liable to pay the full amount of RTÉ's charges in relation to a Booking where such Booking is cancelled (and such cancellation includes a request to decrease the Campaign budget) after the Advance Booking Deadline. RTÉ may in its absolute discretion be prepared to consider applications made in exceptional circumstances by the Buyer for the cancellation and/or deferment of a Booking after the applicable Advance Booking Deadline subject always to the following conditions:

15.2.1. RTÉ being supplied with full details of exceptional circumstances giving rise to the application by notice in writing before the Launch Date; and

15.2.2. the Buyer paying to RTÉ the amounts set out in RTÉ's Deferment and Cancellation Policy

15.3. **Deferment of Campaigns after ABD:** RTÉ may, in its absolute discretion, agree to allow a Buyer to defer a Booking after ABD subject to: (a) the payment of a deferment fee as outlined in RTÉ's Deferment and Cancellation Policy (b) the deferment not being for a period longer than the period stipulated in the Deferment and Cancellation Policy and in this regard, RTÉ may, in its sole discretion, treat a deferment from month to month as a cancellation.

15.4. **Cancellation and Deferment at RTÉ's Discretion:** For the avoidance of doubt, the arrangements set out in clauses 15.1 - 15.2.1 will be agreed by RTÉ in its absolute discretion and RTÉ shall not be obliged to give reasons for accepting or declining to accept an application for cancellation or deferment made by the Buyer. The Buyer acknowledges and agrees that the fees referred to in clauses 15.1 - 15.3 are a genuine pre-estimate of RTÉ's Loss.

#### 16. SUSPENSION OR TERMINATION

16.1. The Agreement will continue throughout the Agreement Period unless terminated earlier in accordance with the provisions in this clause.

16.2. **Suspension or Termination by RTÉ:** RTÉ may, by notice in writing to the Buyer, suspend or terminate any accepted Booking, the Deal Memorandum or the entire Agreement (as applicable) at any time if any of the following takes place:

16.2.1. without prejudice to RTÉ's rights as set out in clauses 6 - 9, if the Buyer commits any material breach of any provision of the Agreement (and in the case of a remediable breach, fails to remedy such breach within 10 (ten) Working Days' from receipt of written notice from RTÉ specifying the breach); or

16.2.2. any changes in any Legal and Industry Codes or RTÉ's status prevent it from continuing or, in RTÉ's reasonable opinion, make it more onerous for RTÉ to publish advertisements or otherwise fulfill its obligations under the Agreement; or

16.2.3. the activities or conduct of the Buyer or activities relating to its business are such that RTÉ reasonably considers them to be detrimental to the reputation and/or goodwill and/or brands of RTÉ; or

16.2.4. if (a) a receiver (or a receiver and manager) is appointed to the Buyer; or (b) a petition is filed in the High or Circuit Court (the "Court") seeking the protection of the Court for the Buyer; or (c) an examiner or an interim examiner is appointed to the Buyer; or (d) a demand under the provisions of Section 214, Companies Act 1963 is served on the Buyer (the Buyer to immediately inform RTÉ of the receipt of such demand) or (g) an official liquidator is appointed to the Buyer; or (h) a resolution is passed by the Buyer placing the Buyer in either creditors' voluntary liquidation or members' voluntary liquidation; or

16.2.5. if there is a material change in the ownership of or a change of control of the Buyer or if the Buyer disposes of all or a substantial part of its assets or undertaking; or

16.2.6. in accordance with the provisions of clause 26.1 (Force Majeure).

16.3. **Consequences of Termination:** Upon termination, the rights and obligations of the Parties under these Terms and Conditions of Business shall terminate and be of no future effect, except that:

16.3.1. any rights or obligations to which either of the Parties may be entitled (including RTÉ's right to be paid any Gross Expenditure due and owing by the Buyer) or be subject before such termination shall remain in full force and effect; and

16.3.2. clauses 1, 2, 3, 11.1, 11.2, 10, 13, 14, 17, 22, 23, 25 and 26 together with any other clauses intended to have continuing effect, shall remain in full force and effect.

## 17. LIABILITY

17.1. **RTÉ's Liability Excluded:** In no event will RTÉ be liable for:

17.1.1. any indirect or consequential loss, claim or damage; nor

17.1.2. any direct or indirect loss of profits, reputation, data, business or opportunity, or other economic loss, in each case whether such claim is based on breach of contract, tort (including negligence) or otherwise, and whether or not the Buyer has been advised of the possibility of such damage.

17.2. To the fullest extent permitted by law, all warranties, conditions, terms or other provisions, express or implied and whether imposed by statute or otherwise are excluded.

17.3. **Maximum Liability:** Subject to clause 17.1 above the maximum liability that RTÉ shall have towards the Buyer in respect of any Loss arising out of or in connection with the Deal Memorandum or any Booking in the event that RTÉ is held liable for damages or losses

suffered by the Buyer shall not exceed the amount paid by the Buyer (less applicable VAT) to RTÉ in respect of the Media in connection with the Booking in which the liability arises.

- 17.4. **Failure to publish:** If the display of an advertisement does not take place or such display only takes place in part, in each case through no fault of the Buyer and as a result of circumstances beyond the reasonable control of RTÉ and RTÉ is unable to display the advertisement on alternative Campaign Dates, the Buyer will have no obligation to pay any charges in respect of the same and RTÉ will have no liability for any Loss arising out of or in connection with any failure to display the same.
- 17.5. In no event shall the Buyer be able to claim the same Loss from the Terms and Conditions of Business, the Deal Memorandum and/or the Booking.
- 17.6. **No liability for other content published on RTÉ properties:** RTÉ shall not be held responsible in any way for the content, nature or subject matter of any other content published on any of the RTÉ Media properties including the effect or otherwise that any of the same may have on the effectiveness or otherwise of any Advertising Copy/Campaign published by RTÉ for a Buyer.
- 17.7. **Errors:** RTÉ shall incur no liability for any error in any Advertising Copy published except to the extent that such error is due solely to the fault of RTÉ in which case RTÉ's sole liability to the Buyer shall be that RTÉ shall not charge the Buyer for the charges made in the Booking in relation to only such erroneously transmitted Advertising Copy.

## 18. FINANCE

- 18.1. **Pro Forma Buyer:** Charges payable by a Pro-Forma Buyer must be paid in full in advance of the Launch Date, by such advance period as notified by RTÉ to the Buyer in the Rate Card, Deal Memorandum or otherwise from time to time.
- 18.2. **Credit Approved Agency:** Subject to clause 18.8 and any other payment dates notified by RTÉ, charges payable by a Credit Buyer will be paid not later than the relevant invoice payment date, typically being 30 days from invoice. If a Credit Buyer fails to comply with the provisions of this clause, without prejudice to its other rights and remedies, RTÉ may at any time thereafter, without any liability to the Buyer:
- 18.2.1. withdraw any credit granted to the Buyer (thereby withdrawing Agency Recognition status and remove the Buyer from the Register of Approved Agencies); and
  - 18.2.2. cease publication of any Media scheduled to be published in relation to any Campaigns pursuant to any Bookings; and
  - 18.2.3. apply a Late Payment surcharge as set out below.
- 18.3. **Late Payment by Credit Buyer:** Any charges not paid by a Credit Buyer on or before the Payment Date will be subject to an immediate surcharge of 2% of such amount payable immediately. A further surcharge of 1% payable immediately will apply in respect of the principal amount which is still outstanding on the 10th day of each subsequent month.
- 18.4. **Date of Payment:** For the purposes of this clause 18, payment will be deemed to have been made on or before the Payment Date if RTÉ has received the full amount by EFT, Direct Debit or SDMT in each case prior to 12.30p.m. on the Payment Date.
- 18.5. **Currency:** RTÉ invoices are issued in Euro. Bookings made in a foreign currency will be converted to Euro at a fixed exchange rate as advised by RTÉ at the date of booking. Payment from Buyers should be made in the invoiced currency.

- 18.6. **Invoicing:** Invoices will be in accordance with the relevant payment requirements. Failure by RTÉ to render or dispatch invoices at the times referred to above will not affect the obligation of the Buyer to make payment as required in accordance with these Terms and Conditions of Business.
- 18.7. **Invoice Queries:** The Buyer shall notify RTÉ of any queries in relation to any invoice no later than 15 (fifteen) Working Days of the invoice date. No invoice may be queried after this date. Notwithstanding any such query, the Buyer will remain liable to pay the full amount of any invoice pending final resolution of the query. If the query is resolved in favour of the Buyer, RTÉ will cancel any surcharge levied on the relevant amount, cancel any invoice and re-issue an invoice for the revised amount.
- 18.8. **Quarterly Reconciliation:** RTÉ and the Buyer will reconcile all completed Campaigns on a quarterly basis to determine future liability. RTÉ will invoice the Buyer for the booked number of Impressions at the end of each calendar month. Multi month Campaigns will be invoiced on pro-rata basis and billed at the end of each calendar month. Pro-rata charges will be calculated by the total booking price divided by the number of days in the total Campaign multiplied by the days of the Campaign month to be invoiced. The invoicing issued may not reflect the actual Impressions delivered in relation to a particular Campaign. The Buyer will pay all invoices based on the value of the Impressions booked and will not withhold payment or re-claim payment for under-delivery of those Impressions.
- 18.9. **Spend Check Letters:** Each month, RTÉ will confirm by way of a Gross Expenditure check letter to the Buyer, the Buyer's Gross Expenditure with RTÉ for such month by Advertiser and Campaign (each a "Spend Check Letter").
- 18.10. **Spend Check Letter Queries:** The Buyer shall notify RTÉ of any queries in relation to such Spend Check Letters within 7 Working Days of receipt of the same. If no Spend Check Letter queries are raised by the Buyer within these 7 Working Days, absent manifest error, the Parties shall treat these Spend Check Letters as an accurate record of the Buyer's monthly Gross Expenditure with RTÉ (as broken down by Advertiser and Campaign) and may be relied upon by RTÉ for invoicing purposes and the Auditors (in respect of calculating the Buyer's Gross Expenditure with RTÉ over the relevant period). No invoice may be queried after this date. Notwithstanding any such query, the Credit Buyer will remain liable to pay the full amount of any invoice and all invoiced amounts will remain subject to the provisions of clauses 18.1, 18.2 and/or 18.3, as relevant, pending final resolution of the query. If the query is resolved in favour of the Buyer, RTÉ will cancel any surcharge levied on the relevant amount, cancel any invoice and re-issue an invoice for the revised amount.
- 18.11. **Set Off:** All payments of accounts for Media shall be made in full and the Buyer shall have no right to claim any set off or to make any counterclaim in any proceedings brought by RTÉ in respect of any such payment. RTÉ is entitled to set off any monies due to it by the Buyer, against any monies due by RTÉ to the Buyer (or any of such Buyer's Affiliates).
- 18.12. **VAT:** All payments are subject to VAT at the applicable rate.

## 19. CALCULATION OF BUYER GUARANTEES

- 19.1. **Gross Expenditure:** The Buyer undertakes to RTÉ that the amount of Gross Expenditure with RTÉ in respect of Media during the Term shall not be less than either:
- 19.1.1. the Volume Expenditure Minimum Guarantee set out in the Deal Memorandum; or
- 19.1.2. any other Guarantee(s) set out in the Deal Memorandum, together referred to as the "**Buyer Guarantee**".
- 19.2. **Benefits conditional on meeting the Buyer Guarantee:** The Buyer acknowledges that any discounts offered against the Rate Card in the Deal Memorandum together with any

other benefits (including ABD discounts, and other qualitative commitments, such as relating to positions-in-breaks) are offered on the basis of and are contingent and conditional upon the Buyer's agreement in relation to its Buyer Guarantee.

19.3. **Calculation of Buyer Guarantee:** In circumstances where a relevant Buyer Guarantee has been agreed in the Deal Memorandum, for the purposes of calculating the Buyer's relevant Gross Expenditure with RTÉ:

19.3.1. the Parties agree that the amount of Gross Expenditure with RTÉ in respect of the Term will only include Gross Expenditure in respect of Media actually published by RTÉ during the Term; and

19.3.2. the amount of Gross Expenditure with RTÉ under the Agreement in respect of the Term will not include any Gross Expenditure reasonably declined by RTÉ.

19.4. **Right to increase the Buyer Guarantee:** For the avoidance of doubt, the Buyer Guarantee set out in the Deal Memorandum is agreed on the basis of the status quo of the Agency Buying Group (where relevant) and the Clients of the Buyer which exist at the beginning of the Agreement Period. To the extent that during the course of the Agreement Period the Buyer and/or Agency Buying Group of which the Buyer is part acquires other Affiliates which results in new Clients, RTÉ shall have the right but not the obligation to increase the Buyer Guarantee proportionately.

## 20. DEAL FAILURE

20.1. **Under Delivery Compensation:** In the event that the Buyer fails to comply with its Buyer Guarantee obligations and such failure is evidenced in the Audit Report, RTÉ reserves its right to require the Buyer to pay to RTÉ forthwith (together with any applicable VAT) the amount of any Under Delivery (as identified in the Audit Report) (the "**Under Delivery Compensation**") together with interest accruing at an annual rate which is 3% above the base lending rate of the European Central Bank from the date when the sum became due, this being the final date of the Term identified in the Deal Memorandum, until the date on which payment is made.

20.2. **Enhanced Buyer Guarantee:** In its sole discretion, and without any obligations in this regard, RTÉ may agree with the Buyer an enhanced Buyer Guarantee (or trading position in relation to other advertising inventory acquired by the Buyer from RTÉ) in a subsequent Agreement Period in lieu of requiring payment of any Under Delivery Compensation as stipulated in clause 20.1 above. In this regard, subject to clause 20.3 below, the Buyer acknowledges that RTÉ may take into account the wider trading relationship between RTÉ and the Buyer when considering an enhanced trading position (across all advertising inventory sold by RTÉ) in the following year in lieu of requiring payment of any Under Delivery Compensation. For the avoidance of doubt, if the Parties fail to reach agreement on any enhanced Buyer Guarantee (for a subsequent Agreement Period) within 90 (ninety) days of the filing of the Audit Report, RTÉ reserves the right to require payment of the Under Delivery Compensation in accordance with clause 20.1.

20.3. **Audit costs:** Where any Under Delivery Compensation is due in accordance with clause 20.1 the Buyer shall also be liable to pay to RTÉ forthwith the cost of the Audit Report.

## 21. DEAL MEMORANDUM

21.1. The Deal Memorandum will set out specific terms agreed between RTÉ and the Buyer to be applied during the course of the Term in relation to all Campaign Bookings including, for example, in relation to pricing terms, the quality of the Media and the Buyer Commitment.

## 22. AUDITING AND REPORTING

- 22.1. **Records:** The Buyer will, and will procure that all of its Buying Agencies, relevant Affiliates, Third Party Representatives (to include Barter/Contra companies), other relevant third parties (including outdoor companies, production companies and other content rights holders) and Clients will, on its behalf, maintain accurate financial, accounting and media records of all Gross Expenditure to the extent such expenditure will assist in establishing whether or not the Buyer has complied or will comply with any Buyer Guarantee (and any obligation in relation to Under Delivery Compensation) ("**Records**"). For the avoidance of doubt, such accurate financial, accounting and media records include:
- 22.1.1. all information (including all media codes and media streams) contained within the Media Booking System (e.g. DDS/MediaOcean Spectra) of the Buyer, its Buying Agencies, Affiliates, Third Party Representatives and any other relevant third parties (including outdoor companies, production companies and other content rights holders); and
- 22.1.2. all information, without any limitation, held within the financial, accounts or media departments of the Buyer, its trading divisions, Affiliates, Third Party Representatives, its Clients and any other relevant third parties that hold information about relevant Gross Revenue in respect of Media expenditure.
- 22.2. **Audit Rights:** RTÉ has the right to appoint a firm of auditors (the "**Auditors**") to audit the Records and produce a report (the "**Audit Report**") in order to establish whether or not the Buyer has complied or will comply with the Deal Memorandum and, in particular, the Buyer Guarantee (and any obligation in relation to Under Delivery Compensation at any time during the course of the Deal Memorandum and after the Deal Memorandum has expired). The Buyer will and will procure that the Auditors will have unrestricted access to: (a) all Records and (b) all other information which the Auditors consider (in their sole discretion) to be relevant to establishing whether or not the Buyer has complied or will comply with any Buyer Guarantee (and any obligation in relation to Under Delivery Compensation) and ensure that (a) and (b) are provided promptly so as to enable the Auditors to audit the Records and endeavour to produce the Audit Report within 6 months of the end of the Agreement Period (without prejudice to RTÉ's right to have the Auditors carry out an audit at any time during the course of the Agreement and after the Agreement has expired).
- 22.3. **The Buyer to supply the Auditors with information requested:** In addition to procuring unrestricted access to the Records and all other information that the Auditors consider (in their sole discretion) to be relevant for the purpose of this clause 22.3 the Buyer will provide all such assistance to the Auditors as required by the Auditors including but not limited to supplying the Auditors with any information to support the information extrapolated from the Media Booking Systems or to support any calculations provided by the Buyer as being an accurate representation of the position in respect of its compliance with the Buyer Guarantee. Furthermore, the Buyer shall obtain all relevant consents (as required) from all Clients in respect of whom Bookings are made by that Buyer, to ensure that RTÉ has access to all relevant details about and Records of any such Client for the purposes of an audit carried out pursuant to this clause 22.3. At RTÉ's reasonable request, the Buyer will provide written confirmation to RTÉ that such consents have been obtained together with any supporting evidence reasonably required by RTÉ.
- 22.4. **Remedies:** In the event that the terms of the Agreement have not been complied with RTÉ will be compensated in accordance with clause 20 of these Terms and Conditions of Business. For the avoidance of doubt, the Buyer acknowledges and agrees that RTÉ is entitled to see all the results of any audit carried out pursuant to this clause 22.4, including but not limited to: (i) the Auditors' assessment of the amount of Gross Expenditure with RTÉ in respect of Media during the Term, (ii) the pass/fail result of the audit and (ii) the monetary amount by which the Buyer passed or failed the audit as calculated by the Auditors against the target figure, together with any comments by the Auditors that are required to explain the result.
- 22.5. **Letter of Representation:** If required by RTÉ, the Buyer shall procure that, within one month of an audit taking place, the Buyer's most qualified accountant shall provide to RTÉ a

signed representation statement confirming that: (i) RTÉ and/or the Auditors have been given full and complete access to all relevant information and documentation including but not limited to all information and documentation relating to Gross Expenditure pertaining to the Buyer Guarantee; and (ii) the figures provided by the Buyer during the audit are a complete and accurate statement. The Parties agree that failure to sign and return the representation statement is a material breach of this Agreement for the purposes of clause 16.2.1 of these Terms and Conditions of Business.

## 23. CONFIDENTIALITY

23.1. **Confidential Obligations:** Each Party shall keep confidential all Confidential Information relating to the other Party, its Affiliates and/or any third party which is obtained by it as a result of it entering into or performing its obligations under the Deal Memorandum. Each Party will only disclose Confidential Information to those of its employees, officers, professional advisors, approved sub-contractors and agents (and RTÉ shall only disclose to its Affiliates) who:

23.1.1. need to know it for the purpose of exercising or performing its rights and obligations under the Agreement;

23.1.2. are informed of the confidential nature of the information divulged; and

23.1.3. agree to act in compliance with the Deal Memorandum. Neither Party will disclose that information to any third party (other than its employees, officers, approved sub-contractors, professional advisors, agents and in respect of RTÉ its Affiliates, in accordance with this clause).

23.2. The Buyer shall treat any information, not already in the public domain, about RTÉ (including, for the avoidance of doubt, in respect of programmes or other content and Spots and RTÉ's transmission schedules) as Confidential Information.

## 24. CHANGES TO TERMS AND CONDITIONS OF BUSINESS

24.1. RTÉ reserves the right to change these Terms and Conditions of Business on not less than 4 weeks' notice, and in the event of such change, the terms and conditions applicable shall be those in force at the time of the publication of the Campaign, provided that the Buyer shall (by serving written notice on RTÉ within two weeks of receiving such notice of change) be entitled to cancel any Booking for any Media that would be subject to such new terms and conditions.

## 25. DATA PROTECTION

25.1. **Compliance with Data Protection Rules:** The Buyer warrants, undertakes and represents that it will comply with all applicable Data Protection Rules and RTÉ's privacy policy.

25.2. **User Data:** All User Data will be the exclusive property of RTÉ.

25.3. **Data Collection Technology:** Where a Buyer wishes to use cookies, web beacons, tracking pixels and/or any other similar technologies for the purpose of collecting data from Users ("**the Data Collection Technology**") in connection with a Campaign, the Buyer shall notify RTÉ in advance of Booking the Media in relation to the same and provide all information requested by RTÉ regarding such Data Collection Technology (which may include, for example, completion of a questionnaire or similar document produced by RTÉ). In the event that RTÉ approves the Buyer's proposed use of such Data Collection Technology, this shall be explicitly recorded within the Booking and the Buyer agrees to use such Data Collection Technology and all data collected from it solely in the manner as disclosed and approved by

RTÉ. The Buyer agrees that a data processing agreement or such other agreement shall be entered into with RTÉ as necessary.

25.4.

25.5. **RTÉ ownership of data:** All data collected by the Buyer through such Data Collection Technology will be Confidential Information owned by RTÉ and will not be disclosed by the Buyer to any third party without RTÉ's prior written consent. The Buyer will not use the Data Collection Technology or any data collected through it for the purpose of tracking or targeting Users when they leave RTÉ's digital environment or combine such data with information collected from other sources without RTÉ's prior written consent.

## 26. MISCELLANEOUS

26.1. **Force Majeure:** Neither RTÉ nor the Buyer shall be liable to the other for any failure of performance hereunder which is due to an Act of God, accident, fire, lockout, strike or other labour dispute, riot or civil commotion, failure of technical or electrical facilities not within such Party's reasonable control, act of public enemy, enactment, rule, order or act of government (whether national or local), or other acts or events of a similar or different nature beyond the reasonable control of either party, any such act or event being deemed an event of "Force Majeure". Should an event of Force Majeure continue for a period of sixty (60) days or more then RTÉ and the Buyer shall be entitled to terminate the Agreement forthwith.

26.2. In the event of RTÉ's publication activities being restricted, curtailed or prevented by any law or any other act or thing beyond RTÉ's control, RTÉ may at any time, notwithstanding anything herein before contained, forthwith terminate any arrangement made hereunder without prejudice to RTÉ's right to be paid by the Buyer any monies due and owing by the Buyer to RTÉ at the time of such determination.

26.3. **No Partnership/Agency/Joint Venture/Employment relationship with RTÉ:** This Agreement shall not be deemed to create any partnership, agency, joint venture or employment relationship between RTÉ and the Buyer and the Buyer shall not do or permit any act to be done whereby it may be represented that any such relationship exists between RTÉ and the Buyer.

26.4. **Severability:** If and to the extent that any of the terms and conditions of this Agreement shall be determined to be invalid, unlawful or unenforceable, such term or condition shall to the extent possible

26.5. **Entire Agreement and Amendments:** The Agreement contracts the entire agreement between the Parties with respect to the subject matter of this Agreement and shall supersede all prior representations, agreements and negotiations relating thereto, whether written, oral or implied between the Parties or their respective advisers and no modifications or amendment of this Agreement shall be validly made unless in writing and signed by or on behalf of RTÉ and the Buyer.

26.6. **Assignment:** The Buyer may not assign, transfer or make a charge over the Agreement or any of the Buyer's rights or obligations under this Agreement without prior consent of RTÉ. RTÉ may not assign, transfer, charge or make over this Agreement or any of its rights or obligations without the prior written consent of the Buyer except where it is to a group company or successor in title to RTÉ.

26.7. **Conflict:** In the event of any conflict between these Terms and Conditions of Business, the Deal Memorandum and any Booking, the following order of precedence will be given:

1. Booking
2. Deal Memorandum

3. Terms and Conditions of Business.

26.8. **Governing Law:** The Agreement shall be construed in accordance with the law of Ireland and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the courts of Ireland.

## Schedule 1

### Definitions and Interpretation

1. **Interpretation:** In these Terms and Conditions, the Deal Memorandum and the Booking, unless the context otherwise requires:
  - 1.1. a reference to a clause is a reference to a clause of these Terms and Conditions of Business unless in the context the reference is clearly to a clause of the Deal Memorandum or the Booking;
  - 1.2. a reference to a person includes an individual, firm, partnership, business division, joint venture, agency, trust, association, body corporate, corporation, company, committee, organisation and any other entity whether or not having a separate legal personality;
  - 1.3. references to abbreviations for audience demographics will have the same meaning as currently attributed to such abbreviations by TAM;
  - 1.4. the headings are for convenience only and will not affect its interpretation; and the terms "**include**", "**including**" and "**in particular**" are to be construed without limiting the generality of the words that precede them
  - 1.5. references to "**publish**" or "**publication**" means all forms of publication including by way of print or online publication, television or radio transmission, display or streaming or any other means of making available content to the public.
2. Unless the context otherwise requires:
  - (a) a person includes a legal person (such as a limited company) as well as a natural person;
  - (b) the words "include" and "including" shall be construed without limitation; and
  - (c) any reference to an enactment of legislation includes any subordinate legislation made from time to time under it and is to be construed as references to that enactment as from time to time amended or modified or any enactment replacing it.

The headings in this Agreement are for ease of reference only and shall be disregarded in construing or interpreting the Agreement.

- 1.3 The following terms shall have the corresponding meanings for the purposes of this Agreement:

## General Definitions

**AAI** means Association of Advertisers in Ireland;

**ABD or Advance Booking Deadline or AB Deadline** means the booking deadlines specified in the Rate Card and/or published AB Deadlines for which pricing discounts or uplifts may apply;

**Advance Booking Discount** means any advance payment booking discount stipulated in the Rate Card;

**Advertising Copy** means the advert to be published as specified in the Booking;

**Advertiser** means a person, firm or company making a Booking (either as a Direct Advertiser or through an Agency) with RTÉ under the Deal Memorandum;

**Advertorial** means an Advertisement giving information about a Brand in the style of an editorial article;

**Affiliate** means in respect of a company, a company which is its subsidiary or holding company or a company which is a subsidiary of that holding company, and the terms 'subsidiary' and 'holding company' shall have the meaning given to them by section;

**Agency** means a Media buying agency (including an Agency Buying Group) buying Media from RTÉ on behalf of one or more Clients;

**Agency Buying Group** means, in relation to any Agency, itself and any of its Affiliates and trading divisions that purchase Media from any Media sales house;

**Agency Commission** has the meaning given in clause 4;

**Agency Portfolio of Clients** means all of the Advertisers on whose behalf an Agency purchases Media and a reference to a 'Client' shall be construed accordingly;

**Agreement** has the meaning given in the opening introductory paragraph;

**Agreement Period or Term** means the specific term specified in any Deal Memorandum during which a Buyer Guarantee is given;

**Agency Recognition** means where credit (with or without conditions and/or limits) is granted to the Buyer and the Buyer is listed on the Register of Approved Agencies;

**ASAI** means the Advertising Standards Authority for Ireland which includes any successor or replacement body;

**Audience** means Demographics recognised and reported by TAM, audiences tracked and measured by JNLR as well as audiences recognised, reported and traded by RTÉ across any of RTÉ's media, platforms, channels or stations;

**Auditors** has the meaning given in clause 22.2;

**Audit Report** has the meaning given in clause 22.2;

**AVMSD** means the EU Audiovisual Media Services Directive;

**BAI** means the Broadcasting Authority of Ireland;

**Barter** means any Advertising that is paid for in a form other than cash or Contra;

**Booking** means a request by a Buyer to book Media represented by RTÉ either through an insertion order, booking form or other form of request required by RTÉ and which may include specific terms in relation to the specific types of Media being booked, pricing and Campaign Dates,;

**Brand** means an Advertiser's product, service or brand;

**Buyer Guarantee** means the minimum Guarantee(s) given by the Buyer as set out in the Deal Memorandum as referenced in clause 19.1;

**Buying Agency** means a trading division or Affiliate of an Agency Buying Group which buys Media on behalf of a Client Portfolio;

**Campaign** means all or part of a Media campaign set out within a Booking which relates to a single burst of activity for a single Brand or service for a single promotional purpose;

**Campaign Dates** means the preferred Campaign dates specified in the Booking for the display of the Advertising Copy;

**Campaign Approval System** means the web based campaign approval communications vehicle which is used by the advertising industry, or any such other vehicle, including but not limited to CARIA;

**CARIA** means the web based campaign approval communications vehicle of that name which is used by the advertising industry;

**Classified** means advertisements arranged according to categories featuring items offered for sale at a set price for a set period of time;

**Client or Clients** means the Advertisers and other clients, as appropriate, of an Agency;

**Client Portfolio** means all of the Clients on whose behalf the Buyer (or a Buying Agency);

**Competent Authority** means any national court, the European courts, any governmental authority, any other person exercising powers pursuant to any Legislation or any other official person (including BAI, the ASAI, AAI and IAPI) and any relevant industry body;

**Commercial Library** means RTÉ's internal departments for both TV & Radio which is responsible for accepting delivery of all Advertising Copy. The department will ingest all Advertising Copy due to air, whilst carrying out quality checks in relation to audio/visual content and ensuring that durations match Bookings;

**Confidential Information** means any information marked as such and any other information which might reasonably be assumed to be confidential in any form emanating from either Party at any time and shall include any compilation of otherwise public information in a form not publicly known and the existence and contents of any Deal Memorandum or Booking in respect of Media to which RTÉ is a Party and any information, materials or data in any form produced by, for or on behalf of either Party during the term of or pursuant to such an Agreement but shall not include:

(a) information which at the time of disclosure is publicly known or information which after disclosure becomes publicly known other than as a result of any breach of this Agreement;

(b) information which can be shown to be known to the other Party, other than under a subsisting obligation of confidentiality, or restricted use, prior to the disclosure; and

(c) information made available to the other Party by a third party having a right to do so and who has not imposed on that Party any subsisting obligation of confidentiality or restricted use in respect thereof;

**Contra** means Media exchanged by a Media sales house for equivalent media value rather than cash (for example where Airtime is exchanged for another form of advertising such as press, radio or outdoor or for programming);

**Copy Clearance Committee** means RTÉ's internal Advertising Copy clearance committee (or its designated copy clearance agent as advised by RTÉ) that approves Advertising Copy prior to its publication by RTÉ;

**Copy Clearance Policy** means RTÉ's copy clearance policy setting out the deadlines for supplying Advertising Copy to the Copy Clearance Committee (together with all relevant ancillary documentation such as scripts, storyboards, copyright/licence material) and the remedies for failure to comply with such policy which shall be made available from time to time and includes, but shall not be limited to, Schedule 2;

**Copy Rotation Instruction** means the instructions provided to RTÉ regarding Advertising Copy;

**Creative Solutions** means Advertorials (print & digital), sponsorship, promotions, cover wraps, non-display inventory (for example translucent paper executions, and scented paper), printing on the polybag, events and display inventory that forms part of a creative solution Campaign;

**Credit Buyer** means a Buyer which at the relevant time has been granted credit by RTÉ and includes a Buyer which at the relevant time has been granted credit subject to any limit or other conditions but only to the extent such limit has not at the relevant time been exceeded or such conditions are at the relevant time satisfied;

**Credit Information** means information about the Buyer's financial position to evidence its credit worthiness pursuant to clause 3;

**Credit Insurers** means any credit insurance company and any other entity to which RTÉ may reasonably require Credit Information to be supplied for the purposes of granting credit pursuant to clause 3;

**Data Protection Rules** means all data protection and privacy laws including but not limited to the Data Protection Act 2018, the EU General Data Protection Rules (GDPR), the EU Privacy and Electronic Communications Regulations (PECR) or any superseding or amending legislation;

**Deal Failure** has the meaning given in clause 20;

**Deal Failure Compensation** has the meaning given in clause 20;

**Deal Memorandum** means any annual (or covering such other period as agreed) trading arrangement between a Buyer and RTÉ which may include Buyer Commitments, qualitative commitments and discounts off the Rate Card;

**Deferment and Cancellation Policy** means RTÉ's deferment and cancellation policy as set out by RTÉ from time to time and incorporating the Deferment and Cancellation Summary set out in Schedule 3;

**Demograph** means an audience type defined by age or social classification as defined by TAM, JNLR or RTÉ;

**Direct Advertiser** means an Advertiser buying Media directly with RTÉ and not through an Agency;

**EFT** means electronic funds transfer payment system;

**End Date** means the last Campaign Date;

**Force Majeure Event** shall have the meaning given in clause 26.1

**Gross Expenditure** means gross expenditure, whether in cash or otherwise, before any Agency Commission but net of VAT;

**IAB** means the Internet Advertising Bureau;

**IAPI** means Advertising Practitioners in Ireland;

**Late Booking Fee** means an additional fee applicable to any Booking accepted after the Advance Booking Deadline as set out in the Deal Memorandum, Rate Card or which is otherwise communicated to a Buyer by RTÉ;

**Late Copy** means Advertising Copy received: (a) in relation TV airtime, later than 12pm midday on the previous working day prior to Launch Date (or after the deadlines confirmed by RTÉ Traffic as set out in the Rate Card); (b) in relation to Radio Airtime, later than 12pm midday on the previous working day prior to Launch Date (or after the deadlines confirmed by RTÉ Traffic as set out in the Rate Card); (c) in relation to digital display advertisements, later than 24 hours in advance of Launch Date; (d) in relation to Video Advertisements, no later than 5 days in advance of the Launch Date; (e) in relation to all other types of online advertisements, no later than the dates notified by RTÉ to the Buyer; (f) in relation to the RTÉ Guide, later than 5 business days prior to the on-sale date, (g) in relation to any Advertising Copy for which RTÉ requests updates, amendments and/or replacements, no later than the date notified by RTÉ to the Buyer;

**Late Copy Surcharge** means the surcharge for Late Copy as stipulated in the Copy Clearance Guidelines;

**Launch Date** means the intended date of first publication of the advertisement as specified in the Booking or as otherwise agreed;

**Legal and Industry Codes** means all Legislation, regulations, requirements, rulings, restrictions, standards, directions, rules of common law including but not limited to those relevant to the buying and publication of Advertising Copy, the BAI General Commercial Communications Code, the BAI broadcasting codes and standards, the ASAI Code of Standards for Advertising and Marketing Communications in Ireland, AAI adjudications, bulletins, codes, guidance notes, rules, the laws set out in the AVMSD, any requirements, Institute of Advertising Practitioners in Ireland, the Office of Press Ombudsman Ireland and the Press Council of Ireland;

**Legislation** means all laws, Irish legislation all provisions of the Treaties constituting the European Community, the European Union and the European Economic Area, all Data Protection Rules and all orders, regulations, directives, conventions and subordinate legislation made pursuant to such an Act or Treaty or otherwise having the force of law, in each case as amended, varied or replaced from time to time;

**Loss** means all losses, claims, liabilities, costs, expenses and damages;

**Media Booking System** means the Buyer's media booking system;

**Media Credits** means TV Airtime Credits, radio airtime and video-on-demand Media credits for over and under delivery (of TVRs, Radio Impacts or Impressions as relevant) actually delivered for a Campaign and/or against the agreed Deal Memorandum parameters and such are reconciled to the equivalent monetary value of the Media within the month they occur by reference to RTÉ's issued pricing for the month;

**Net Revenue** means Gross Revenue less Agency Commission;

**Non Spot** means TV or radio sponsorship, product placement, advertiser funded programming, radio promotions, radio outside broadcasts, branded content, digital sponsorship, player PPS or as otherwise notified by RTÉ;

**Parties** means RTÉ and the Buyer and Party means one of them;

**Payment Date** has the meaning given in clause 18;

**Principal** means the Buyer identified as such in the Deal Memorandum;

**Production** means Advertising Copy production including but not limited to layouts, resizing, typesetting, retouching, colour matching, editing, translations, making mock-ups, proof-reading and photography;

**Pro-Forma Buyer** means a Buyer which at the relevant time, is not given Agency Recognition and therefore has not been granted credit by RTÉ;

**Rate Card** means the relevant annual rate card published by RTÉ setting out its pricing for RTÉ Media;

**Register of Approved Agencies** means the register maintained by RTÉ which lists those Buyers that have, at the relevant time, been granted Agency Recognition status (and which may also confirm relevant conditions and/or credit limits in relation to such Buyer);

**Records** has the meaning given in clause 22.1;

**RTÉ** means Radio Telefís Éireann a body corporate established by the Broadcasting Authority Acts, 1960 – 2001, which expression shall include the successors in title and assigns of the body;

**RTÉ Channel Sets** means the channel sets as described in the Deal Memorandum;

**RTÉ Pricing Terms** means the pricing terms available to a Buyer as set out in the Deal Memorandum;

**RTÉ Traffic** means RTÉ's internal department for TV & Radio which is responsible for implementing all Copy Rotation Instructions issued to RTÉ for commercial airtime;

**SDMT** means same day money transfer electronic payments;

**Spend Check Letters** has the meaning given in clause 18.9;

**Technical Copy Requirements** means RTÉ's technical specification requirements for Copy from time to time in force and available upon request;

**Third Party Representative** means any entity acquiring Media on behalf of a Buyer or on behalf of any of the Agency's Portfolio of Clients including any companies trading Barter or Contra on behalf of any of the Agency or on behalf of any of the Agency's Portfolio of Clients;

**Under Delivery** means the Gross Expenditure money value calculated by the Auditors as being the amount by which the Volume Expenditure Minimum Guarantee or other Buyer Guarantee(s) actually delivered to RTÉ is less than the Volume Expenditure Minimum Guarantee or other Buyer Guarantee(s) expressly set out in the Deal Memorandum;

**Under Delivery Compensation** has the meaning given in clause 20.1;

**Value Pot** means Media made available to a Buyer to use as in its discretion (subject to any limitations required by RTÉ) as part of the commercial terms agreed in the Deal Memorandum;

**Volume Expenditure Minimum Guarantee** means the volume of Gross Revenue set out in the Deal Memorandum which the Buyer commits to spending with RTÉ; and

**Working Day** means a day, except a Saturday or Sunday, which is not a public holiday, religious holiday, or bank holiday in Ireland.

### **Print Specific Definitions**

**ABC Release** means the Audited Bureau of Circulation's twice yearly release reporting on volumes of magazine sales across the industry;

**Competitor Publications or Competitor Titles** means third party competitor Publications and any new publications launched by a Competitor of RTÉ which are deemed by RTÉ to compete with any RTÉ publication from time to time;

**Magazines Ireland** means trade association of magazine publishers in Ireland;

**Monthly Publications** means the RTÉ Publications which are published on a monthly basis;

**Insert** means a one-page or multi-page separate print Advertisement that is distributed and inserted into a RTÉ Publication;

**Publication or Title** means a print magazine; and

**RTÉ Guide** means RTÉ's weekly premium entertainment, lifestyle and TV listings magazine.

## TV Airtime Specific Definitions

**Airtime** means any Spot or Non Spot Media capable of being received in Ireland;

**Airtime Credit** means airtime credits for over and under delivery of TVRs actually delivered for a Campaign and/or against the agreed Deal Memorandum parameters and such are reconciled to the 30 second equivalent monetary value of the Airtime within the month they occur by reference to RTÉ's issued final station price for the month;

**Channel(s)** means the RTÉ television channels;

**CPT or Cost Per Thousand** means the cost per 1000 (one thousand) Impacts, for a target Audience, in respect of Airtime;

**Daypart** means the part or parts of the viewing day commencing and finishing at times expressly specified by RTÉ (Daytime, Peak, Late Night and All Day);

**DRTV** means advertisements which include a direct call to action to viewers which in turn facilitates a direct response by way of, but not restricted to, telephone, email and/or text message typically but not exclusively broadcast pre 1800 and post 2430;

**Premium** means any advertising Spot which is of a higher standard (in respect of either location or type) that is made available as a premium buy;

**Programme Production Support** means a programming created with direct input of a Buyer. The Buyer's input could be financial, creative or by allowing production teams access to talent, events or other resources with which the Buyer has an existing relationship;

**Spot** means a slot for an advertisement (within an advertising break) on a channel but for the avoidance of doubt shall not include advertisements relating to video on demand content;

**Strikeweight** means the amount of TVRs by reference to the relevant weekly period;

**TAM** means Television Audience Measurement Services and any successor or replacement;

**Timeshifted Channel** means a Channel that shows content that is originally shown on another Channel at an earlier time;

**TV Audience** means Demographics recognised and reported by TAM;

**TV Impact** means a measure of viewing with one Impact being one viewing of one advertisement by one person; and

**TVR** means a television rating being one percent of a given audience universe.

## Radio Specific Definitions

**Radio Airtime** means any airtime used for Spot advertisements in commercial breaks in a radio broadcast or transmission (excluding S&P) covering all distribution means (including local, national and regional airtime) including but not limited to digital television, analogue, DAB and broadband (including advertising inventory in online music streaming and online music recommendation services) and foreign language stations;

**Radio Station** means a radio station and includes all RTÉ radio stations identified in the Deal Memorandum;

**Radio Audience** means audience as tracked and measured by JNLR;

**Radio Impacts** means a measure of listening with one impact being one listen of one advertisement by one person;

**JNLR** means the Joint National Listenership Research Limited and any successor or replacement;

**RTÉ Radio** means the RTÉ Radio Stations as described in the Deal Memorandum;

**Sponsorship and Promotion or 'S&P'** means radio airtime used for sponsorship credits and prize promotions;

**Spot** means a slot for an advertisement (within an advertising break) on a radio station; and

**Time Segments** mean agreed time bands for the purposes of booking and monitoring Radio Airtime (sometimes referred to as day parts).

## Digital Specific Definitions

**Ad Sentry** means an algorithm based programme which captures information in real time in the RTÉ CMS and determines if articles are suitable for carrying advertising;

**App** means a software application distributed and/or operated by RTÉ for use on any or all of the following: a mobile phone; smartphone; hand set; tablet; or other mobile device enabled for internet access and/or communications, and includes the RTÉ.ie App and RTÉ News Now App;

**Banner Advertisement** means Media displayed on the Website, including but not limited to banners, tiles, skyscrapers, and islands but excluding Video Advertisements;

**CPM** means cost per mille, the cost for each thousand digital Impressions;

**Digital Offering** means RTÉ's digital offering including Media available for purchase relating to its Website, Video Advertisements, on its App or any other digital offerings offered by RTÉ,

**Guaranteed Site** means Media, the specific location of which has been agreed by the parties;

**Impressions** means the total number of times an Advertisement served to a User of a Website or App (as applicable) each month;

**Online Advertisement** means Media made available as display or in a video stream on the Website;

**Site Area** means the area of the Website specified in the Insertion Order as the Buyer's preferred area of the Website for the display of the Advertisement;

**User** means a user of the Website;

**User Data** means data relating to a User and/or its household obtained by RTÉ from access to its digital services;

**Video Advertisement** means Media made available in streamed video content on the Website;

**Viruses** includes "trojans", "worms", "logic bombs", "cancelbots" or other malware or harmful code as the same may be generally understood within the computing industry from time to time;

**VOD** means video on demand and/or on-demand streamed broadcast content available on the Digital Offering; and

**Websites** means the RTÉ website [www.RTE.ie](http://www.RTE.ie) and any other websites which RTÉ represents in relation to Media sales.

## **Schedule 2– Copy Clearance Policy**

This Copy Clearance Policy may be supplemented or amended from time to time at RTÉ's sole discretion.

### **TV / VOD**

Copy clearance deadlines: 7 – 10 days before the Campaign Launch Date.

The deadline for “approved copy” to be delivered for transmission is 12pm on the day prior to transmission and 12pm Friday for Saturday, Sunday and Monday, or at such other times as may be notified by RTÉ e.g. early Christmas closedowns.

A Late Copy Surcharge of €250 will be charged per piece of Advertising Copy not received by the deadlines above.

All TV / VOD copy to be sent to [adclearance@rte.ie](mailto:adclearance@rte.ie)

### **Radio**

Copy clearance deadlines: 5 - 7 days before Campaign Launch Date.

The deadline for “approved copy” to be delivered for transmission is 12pm on the day prior to transmission and 12pm Friday for Saturday, Sunday and Monday, or at such other times as may be notified by RTÉ e.g. early Christmas closedowns.

Late Copy Surcharges for Radio are not currently applied (albeit that RTÉ reserves the right to do so).

All Advertising Copy to be sent to [adclearance@rte.ie](mailto:adclearance@rte.ie).

### **Digital Display**

Display copy clearance deadline:

- Standard Display: 1 working day prior to live date
- Takeovers: 2 working day prior to live date
- Rich media: 2 working day prior to live date

Late Copy Surcharges for display are not currently applied (albeit that RTÉ reserves the right to do so).

All Advertising Copy to be sent to [adsonline@rte.ie](mailto:adsonline@rte.ie).

### **RTÉ Guide**

Copy clearance deadline: 6 days before issue date

Late Copy Surcharges for display are not currently applied (albeit that RTÉ reserves the right to do so).

All RTÉ Guide copy to be sent to [karen.foster@rte.ie](mailto:karen.foster@rte.ie).

### **Schedule 3– Deferment and Cancellation Summary**

This Deferment and Cancellation Summary may be supplemented or amended from time to time at RTÉ's sole discretion and will be read in conjunction with any published cancellation or deferment policies as set out in the Rate Card or otherwise.

#### **TV Radio and VOD**

A removal of all or part of a Booking post approval will be deemed a cancellation.

Published cancellation charges will apply to all cancellations.

- A Booking may be cancelled by a Buyer prior to the applicable ABD on TV, Radio, VOD by giving written notice to RTÉ and no cancellation charge will apply.
- Budget decreases post ABD on RTÉ will be treated as cancellations
- Specials or Spot buy Bookings will be subject to 100% cancellation charge from the time of Booking approval.

#### **Deferments / Late Amendments**

A Deferment is defined as a Booking made on TV, Radio or VOD that moves from one month to another within a deal period.

Published deferment policies will apply to all deferments.

Bookings moving outside a deal period shall be treated as a cancellation (and will attract the relevant cancellation charge).

- Campaigns moving within a month are not defined as a deferment.
- Any change in Campaign details including short-term buying strategy changes, late/additional moneys, and short-term commercial length changes must be put in writing. Such changes may incur charges should RTÉ deem market conditions dictate.
- Budget increases will be treated as late approvals and post ABD pricing will apply. Short term market pricing will also apply to budget increase if published by RTÉ prior to amendment.

#### **Cancellation and deferment policy RTÉ Guide**

- Notification of cancellations must be received in writing and will be subject to a 100% cancellation charge.