

Schedule of Terms and Conditions

These Terms and Conditions together with the Deal Memorandum defined below are legally binding and contain the agreement between the Buyer and RTÉ relating to the purchase of Advertisements.

These Terms and Conditions apply to the purchase of all Advertisements on or after 1st January 2009.

A booking by a Buyer to insert an Advertisement together with the Buyer's confirmation (whether verbally, in writing, electronically or otherwise) in respect of such insertion will constitute the Buyer's acceptance of, and agreement to be bound by, these Terms and Conditions and the Deal Memorandum irrespective of whether or not the Deal Memorandum is signed by the Buyer. These Terms and Conditions and the Deal Memorandum may only be amended to the extent agreed in writing by RTÉ. In the event of any conflict between these Terms and Conditions and the Deal Memorandum, the Deal Memorandum will prevail.

1.0 Definitions

1.1 In these Terms and Conditions and the Deal Memorandum words and expressions shall have their ordinary meaning unless otherwise defined within these Terms and Conditions or within the Glossary of Airtime Terms found as an Appendix to this document.

AB Deadline or **Advance Booking Deadline** means in relation to a calendar month the dates notified by RTÉ to the Buyer as the AB Deadlines or Advance Booking Deadline(s) for that month;

Advertiser means a person, firm or company placing advertising with RTÉ under these Terms and Conditions;

Advertisement Copy means any item of advertising copy intended for television broadcast in respect of which airtime has been sold and which has been accepted for transmission in accordance with these Terms and Conditions;

Agency means an advertising agent or agency, being a person, buying advertising with RTÉ on behalf of one or more clients;

Agency as Principal means where the Buyer is an Agency, the Agency will be deemed to contract as Principal in all respects and not as agency on behalf of its clients and as such it will be responsible for the payment of all amounts due to RTÉ and the performance of all other obligations under this Agreement;

Agreement means the Deal Memorandum and these Terms and Conditions;

Airtime Credit means the value of the number of TVR's by which actual delivery of a Campaign to a Buyer exceeds the agreed delivery at the time of booking;

ASAI means the Advertising Standards Authority for Ireland or any superseding body;

Auditing means RTÉ's rights to audit as set out in **clause 12**;

Auditors has the meaning given in **clause 12**;

Barter means any advertising airtime that can be paid for otherwise than in cash;

Booking means a request by an Advertiser or Agency to place advertising on RTÉ;

Broadcast means all Gross Expenditure, in any form, incurred by or on behalf of the Buyer in relation to the transmission of advertising airtime (whether via cable, satellite, or whether via any other means) for all existing commercial television channels capable of providing live transmissions, during the Term of this Agreement, of any visual and/or audio visual advertising capable of being received within the Republic of Ireland;

Buyer means the Principal identified in the Deal Memorandum, being either an Agency or Direct Advertiser provided that where such a person is not a separate legal entity it shall be deemed to include the legal entity or entities which own(s) such person;

Buyer Commitments means the minimum commitments made by the Buyer in relation to share of Broadcast and/or Volume as set out in the Deal Memorandum;

Campaign means all or part of the Advertising Airtime within a Booking which relates to a single burst of activity for a single product/brand or service for a single promotional purpose;

Cancellation means a cancellation of Airtime booked under any Agreement following a request by the Buyer;

Client and Clients: shall mean the advertising client and clients, as appropriate, of an Agency;

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

Copy means advertising material provided to RTÉ for the purpose of broadcast whether finished or in preparation;

Copy Rotation means the instructions provided to RTÉ regarding Copy to be broadcast;

Cost Per Thousand or CPT means the cost per 1000 (one thousand) Impacts, for a target audience, in respect of advertising airtime;

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;

Daypart means the part or parts of the viewing day commencing and finishing at times expressly specified by RTÉ;

Deal Memorandum means any agreement entered into by a Buyer with RTÉ for the purchase of advertising for a specific Term. Such agreement may be in writing signed by both parties or being implemented by mutual agreement;

Direct Advertiser means a person placing the order with RTÉ for the purchase of the advertising airtime other than through an Agency;

DRTV means Advertisements which include a direct call to action to the viewer which facilitates a direct response by way, but not restricted to, telephone, email and/or text message;

EFT means Electronic Funds Transfer;

Exclusions: means any excluded brands of any client of the Buyer which are identified as such in the Agreement documents;

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

Impact means a measure of viewing with one Impact being one viewing of one advertisement by one person/viewer;

Late Booking Fee means the additional fee applicable to any Booking accepted after the Advance Booking Deadline as set out in the Deal Memorandum or quoted by RTÉ Television Sales;

Late Copy means Advertisement Copy received after 12 Midday on the previous Working Day prior to transmission; or from time to time after deadlines that are announced by RTÉ;

Late Copy Surcharge means a charge of €250 (plus VAT) payable by the Buyer for Advertisement Copy received after the Late Copy deadline; as identified in Late Copy above;

Payment Date has the meaning given in **clause 9**;

Principal means the person identified as such in the Deal Memorandum or in the absence of a Deal Memorandum the Buyer;

Pro-Forma Buyer means a Buyer which at the relevant time has not been granted credit by RTÉ;

RTÉ means Radio Telefis Eireann, a body corporate established under Irish broadcasting legislation which expression shall include successors in title and assigns of Radio Telefis Eireann;

SDMT means Same Day Money Transfer;

Strikeweight means the amount of TVR's by reference to an agreed period;

Television Audience Measurement (TAM) Services means media research company appointed by the Irish Broadcasters to measure television viewing in the Republic of Ireland;

Term means the period of the Agreement as set out in the Deal Memorandum;

Third Party means any separate individual or company that is contracted by the Buyer, typically a company that provides auxiliary services such as Barter, to act on behalf of its recognised portfolio of clients;

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

Under Delivery means the situation where the share of Broadcast and/or Volume is less than the Buyer Commitments as set out in the Deal Memorandum;

Volume means the volume of Gross Expenditure set out in the Deal Memorandum and which the Buyer guarantees to RTÉ will be the minimum Gross Expenditure under this Agreement;

Working Day means a day, except a Saturday or Sunday, which is not a public holiday, religious holiday, or bank holiday in the Republic of Ireland;

1.2 Terms and Conditions and Deal Memorandum

A request by a Buyer to RTÉ to book advertising shall signify the Buyer's acceptance of these Terms and Conditions;

In these Terms and Conditions and the Deal Memorandum, unless the context otherwise requires:

a reference to the 'parties' is a reference to RTÉ and the Buyer;

a reference to a clause is a reference to a clause of these terms and conditions unless in the context the reference is clearly to a clause of the Deal Memorandum;

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;

where an order which authorises a person ('the first person') to exercise any functions of another person ('the second person') any reference in this Agreement to the second person will include a reference to the first person; and

References to abbreviations for audience demographics will have the same meaning as currently attributed to such abbreviations by the TAM provider;

The headings in this Agreement are for convenience only and will not affect its interpretation;

For the purposes of calculating RTÉ TVR's and Impacts RTÉ shall use such measurement service or mechanism as RTÉ deems appropriate;

2.0 Agency as Principal

- 2.1 Where the Buyer is an Agency, the Agency will be deemed to contract as Principal in all respects and not as agent on behalf of its clients and as such all rights and responsibilities under the Agreement shall rest solely between RTE and the Agency and the Agency will be responsible for the payment of all amounts due to RTE and the performance of all other obligations under the Agreement;
- 2.2 Copy approval, amendments, and copy rotations/instructions shall be the responsibility of the Buyer acting as Principal acting in all dealings with RTE;

3.0 Credit

- 3.1 RTE may in its absolute discretion at any time grant credit (with or without conditions and/or limits) to the Buyer and withdraw credit previously granted to the Buyer and/or vary any conditions and/or limits applying to any credit. For the purposes of considering whether or not to grant credit RTE reserves the right to require the Buyer to provide such information as RTE may reasonably require to RTE or RTE's insurers or any other credit information service and the Buyer shall provide such information promptly upon request. The Buyer will comply with the obligations contained in any agreement between it and RTE or any such third party relating to the granting of credit by RTE (including specific terms of any bank guarantee that may be required to secure a credit facility) and the Buyer acknowledges that no information or report made by RTE or any third party will in any way oblige the RTE to grant credit (on particular terms or otherwise) to the Buyer;
- 3.2 The Buyer agrees that RTE may disclose to its insurers and any credit information service any information provided by the Buyer to RTE (and that its insurers and any third parties may disclose to RTE information provided by the Buyer to such third parties) or relating to RTE's dealings with the Buyer. The Buyer represents and warrants that all information provided by the Buyer to RTE and/or its insurers and/or any other credit information service 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;

4.0 Commission

RTE may in its sole and absolute discretion provide Commission to a Buyer in respect of the purchase of advertising airtime by that Buyer under a Deal Memorandum and/or subject to these Terms and Conditions. Commission is not applied to late payment surcharges, cancellation fees, late copy charges,

postponement charges and any interactive advertising costs. RTÉ requires Buyers to comply with its Agency recognition process before Commission can be considered;

5.0 Confirmation of Advertising Airtime Bookings

- 5.1 A booking is subject to acceptance by RTÉ and can be accepted by RTÉ either in writing, by the provision of airtime to the Buyer or by the use of an electronic approval/booking system such as, but not limited to, CARIA. CARIA is a web based communications vehicle presently in widespread use;
- 5.2 RTÉ reserves the right, at its sole discretion, to apply a Late Booking Fee if a booking is made after the Advance Booking Deadline and accepted by RTE. The Late Booking Fee may be of such sum as RTÉ may at its reasonable discretion determine or as has been otherwise agreed between the Parties;
- 5.3 Once acceptance of a Booking has been acknowledged Parties will agree a proposed first transmission date and a schedule of proposed advertising airtime in accordance with **Clause 6**;

6.0 Acceptance of Advertisements

- 6.1 Any advertisement for transmission on RTÉ will only be transmitted if it is approved in advance by RTE. All advertisements shall be subject to prior written approval by RTÉ to ensure compliance with RTÉ's own internal policies on advertising and with all relevant legislation and codes applicable to RTÉ including applicable Irish broadcasting legislation (together with codes issued pursuant to that legislation by the Broadcasting Commission of Ireland and applicable to RTÉ) and the Audiovisual Media Services Directive (collectively the "Applicable Laws") and the Code of Standards for Broadcast Advertising and the Code of Advertising Standards for Ireland maintained by the Advertising Standards Authority for Ireland (ASAI) (the "Codes"), and which can be amended from time to time;
- 6.2 All advertising material must also comply with RTÉ's technical requirements. Details of RTÉ's technical requirements are available upon request and the Buyer will comply with and be bound by such requirements. It is the responsibility of the Buyer to ensure that all advertisements satisfy the RTÉ's technical requirements and comply with Applicable Laws and reflect the spirit, not just the letter, of the Codes;

- 6.3 Scripts and/or storyboards for all advertisements should be submitted to RTÉ Copy Clearance at least 5 working days in advance of the first intended date of transmission for provisional approval by RTÉ or its designated agent. Scripts and/or storyboards must be submitted by the Buyer to RTÉ Copy Clearance in time for them to be considered by RTÉ and where necessary, adjusted before commencement of production prior to transmission. Failure to abide by this deadline may result in the campaign being cancelled and subject to the charges as detailed in Clause 8.2 of this document;
- 6.4 Approval of a script and/or storyboard or filmed, recorded or live advertisements shall not in any way prejudice RTÉ's right to reject final Advertising Copy as provided for below. The Buyer, as the contracting party, remains at all times responsible for the delivery of final copy for transmission by RTÉ in accordance with the delivery deadlines in **Clause 6.5**;
- 6.5 Advertisement Copy in respect of television, and a detailed list of all third party copyright/licence material used in the Advertisement Copy (including a music cue sheet (in a form to be subject to RTÉ approval) setting out full music details, whether specially composed or not, in particular the exact duration, composer, arranger, publisher, source of the recording including the record label and number of each musical work and recording), must be delivered to RTÉ in Dublin no later than 12:00 midday on the previous working day to the date of the first intended transmission. Failure to adhere to the copy delivery deadline shall result in a Late Copy Surcharge as may from time to time be advised by RTÉ. RTE reserves the right to change these charges currently set at €250. For the avoidance of doubt Late Copy Surcharges shall be liable to VAT;
- 6.6 In exceptional circumstances RTÉ shall endeavour to accept Advertisement Copy delivered in a period less than this timeframe. However, in such cases, RTÉ shall not be under any obligation to notify the Buyers if the Advertisement Copy is deemed unsuitable. In the event that an Advertisement does not comply with Applicable Laws or Codes or RTÉ's technical requirements RTÉ reserves the right to charge the Buyer in full for all airtime booked in respect of such Advertisement whether or not such Advertisement is transmitted;
- 6.7 In the event that RTÉ deems the Advertisement Copy to be unsuitable, RTÉ shall notify the Buyer who must be prepared to supply alternative copy by the terms set out in 6.6. Should alternative copy not be accepted by RTÉ, then RTÉ shall be entitled to repeat previous copy broadcast by RTÉ or to transmit other suitable material. RTÉ shall be entitled to be paid the full rate for each transmission;
- 6.8 The provisions of **Clauses 6.6 and 6.7** shall apply without prejudice to any special arrangements, which are made for bookings at shorter notice;

- 6.9 RTÉ reserves the right, at its absolute discretion and without incurring any liability, to decline to transmit any Advertisement without giving any reason for so declining but in such event the Buyer shall not (unless such refusal by RTE is in the circumstances set out in Clause 6.6 above) be liable to pay for any Advertisement which RTÉ so declines to transmit;
- 6.10 RTÉ reserves the right in its absolute discretion to do any act or thing in respect of the transmission of any Advertisement or part thereof (including the fading, editing or cutting thereof) which is found to contain unsuitable Advertisement Copy. RTÉ shall not incur any liability to the Buyer who shall have no claim whatsoever for damages or otherwise in respect of any alternation (or non-transmission) of any such Advertisement or part thereof. The Buyer shall remain liable to RTÉ in respect of any charges payable hereunder for such advertisements;
- 6.11 RTÉ reserves the right to refuse or to surcharge Advertisements 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 Advertisements at a rate equivalent to that which RTÉ would have charged had the advertisement for each product, service or activity been submitted to it separately;
- 6.12 RTÉ reserves the right to restrict any repeat transmission of the same Advertisement;
- 6.13 Subject to the provisions of **Clause 16**, all bookings shall be accepted on the understanding that they will be paid for at the rates in force at the date of transmission or on a level of spend agreed with the Buyer;
- 6.14 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;
- 6.15 A Buyer may not change an advertisement (including from one product to another) after it has been approved in accordance with this Clause 6 without seeking RTE approval of such change in accordance with this **Clause 6**;

7.0 Dates and Times of Transmission

- 7.1 RTÉ will use its reasonable endeavours to transmit advertisements at the dates and times last agreed with and/or approved by the Buyer prior to transmission but the Buyer acknowledges and agrees that such commitment is subject to the right of RTÉ at all times to transmit advertisements at the dates and times which it considers to be most efficient having regard to the demand for advertising and its

requirements to deliver target audiences generally. The Buyer also acknowledges and agrees that RTÉ may change the date or time or position of any transmission of an Advertisement as it sees fit for legal reasons or any other change in circumstances. RTÉ will not be held responsible in any way for the content, nature or subject matter of any other advertising or programme transmitted on RTÉ and the effect or otherwise that any of the same may have on the effectiveness or otherwise of any advertising transmitted by RTÉ on behalf of the Buyer. RTÉ may fulfil its obligations to the Buyer by transmitting any advertisement submitted to it by the Buyer on any RTÉ service or channel operating from time to time;

- 7.2 If transmission of an advertisement does not take place at all or such transmission only takes place in part, in each case through no fault of the Buyer, subject to **Clauses 6.6 and 6.7**, RTÉ will after consultation with the Buyer and subject to any Airtime Credit seek to agree with the Buyer another transmission date and time of reasonably equivalent value. Save as provided in **Clause 6.6 and 6.7**, RTÉ will have no liability for any loss arising out of or in connection with any failure to transmit an advertisement in whole or in part at any date or time or at all. If transmission of an advertisement does not take place or such transmission 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 RTE, 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 transmit the same;
- 7.3 If an advertisement is transmitted but is transmitted incorrectly through no fault of the Buyer such failure shall not constitute a breach of the Deal Memorandum and RTÉ may, at its discretion, provide reparation it deems appropriate;
- 7.4 Advertisements transmitted within 5 minutes of the Daypart agreed between the parties will be deemed to have been transmitted within such Daypart;
- 7.5 In the event of RTÉ's transmission 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 moneys due and owing by the Buyer to RTÉ at the time of such termination, the moneys to be calculated by reference to particulars of transmission dates and times as set out in RTÉ's transmission logs which shall be accepted by the Buyer;

8.0 Cancellations

- 8.1 The transmission of any advertisement 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 booking. If a booking is cancelled by the Buyer other than in accordance with this clause, the Buyer will remain liable to RTÉ for charges in full whether or not the transmission takes place. The booking of 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;

- 8.2 Without prejudice to the rights of RTÉ under **Clause 8.1** RTÉ may in its absolute discretion be prepared to consider applications made in exceptional circumstances by the Buyer for the cancellation and/or variation of bookings after the applicable Advance Booking Deadline subject always to the following conditions:

RTÉ being supplied with full details of exceptional circumstances giving rise to the application by notice in writing at least 5 working days before the scheduled commencement of transmission; or

To the Buyer paying to RTÉ:

a cancellation fee of 25% of the relevant agreed and approved Gross Expenditure where the application is received by RTÉ after the Advance Booking Deadline but on or before the last Working Day 4 weeks prior to the first scheduled transmission date;

a cancellation fee of 50% of the relevant agreed and approved Gross Expenditure where the application is received by RTÉ on or before the last Working Day 3 weeks prior to the first scheduled transmission date;

a cancellation fee of 75% of the relevant agreed and approved Gross Expenditure where the application is received by RTÉ on or before the last Working Day 2 weeks prior to the first scheduled transmission date;

a cancellation fee of 100% of the relevant agreed and approved Gross Expenditure where the application is received by RTÉ at any later time;

- 8.3 The arrangements set out in **Clause 8.2** will be entered into by RTÉ only in exceptional circumstances and at its absolute discretion. RTÉ will not be obliged to give reasons for accepting or declining to accept an application for cancellation. The Buyer acknowledges and agrees that the charges referred to in **Clause 8.2** are a genuine pre-estimate of RTÉ's loss;

9.0 Payment Terms

9.1 Invoicing

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;

9.2 Pro-Forma Buyer

A Pro-Forma Buyer shall pay RTÉ the total amount invoiced by RTÉ for advertising airtime not later than 10 working days before the first scheduled transmission date of the relevant Advertisement Copy. If the Pro-Forma Buyer fails to comply with the provisions of this clause, without prejudice to its other rights RTÉ may at any time thereafter without any liability to the Buyer refuse to transmit any such Advertisement Copy for such Buyer;

9.3 Credit Buyer

9.3.1 A Credit Buyer shall pay RTÉ the total amount invoiced by RTÉ for advertising airtime, including Late Copy Surcharges, not later than the last working day of the month following the month of transmission of Advertisement Copy (the "Payment Date"). If the Credit Buyer fails to comply with the provisions of this clause, without prejudice to its other rights RTÉ may at any time thereafter without any liability to the Buyer withdraw any credit granted to the Buyer and refuse to transmit any further advertisement copy on behalf of the Buyer (and in the case of an Agency withdraw agency recognition and remove that Agency from RTÉ's register of approved agencies) with immediate effect;

9.3.2 Any invoiced amounts not paid by a Credit Buyer prior to the Payment Date will be subject to an immediate surcharge of 2% of such amount payable immediately. A further surcharge of 1% will be imposed in respect of the principal amount which is still outstanding on the 10th day of each subsequent month;

9.3.3 For the purposes of **Clause 9** payment will be deemed to have been made on or prior to the Payment Date if RTÉ has received a cheque, which is subsequently cleared for payment for the total amount invoiced or written confirmation that the Buyer has sent the full amount invoiced by EFC, Direct Debit or SDMT, in each case on the Payment Date;

9.3.4 A Credit Buyer will notify RTÉ in writing of any query in relation to any invoice no later than the 15th day of the month following the month of transmission. No invoice may be queried after this date. Notwithstanding any such query the RTÉ Credit Buyer will remain liable to pay the full invoiced amount pending resolution

of the written query. If the query is resolved in favour of the Credit Buyer RTÉ will cancel any surcharge levied on the relevant amount;

10.0 Calculation of Buyer Commitments

- 10.1 The Buyer undertakes to RTÉ to procure that Gross Expenditure under the Agreement with RTÉ during the Term is not less than the percentage share of Broadcast set out in the Deal Memorandum or is not less than the Volume specified in the Deal Memorandum. In the case of any estimated minimum volume stated in the Deal Memorandum, the Buyer acknowledges that RTÉ expects to receive not less than this amount of Gross Expenditure under this Agreement;
- 10.2 The amount of Gross Expenditure with RTÉ (including prepayments and deferrals) under the Agreement in respect of the Term will only include expenditure in respect of advertising airtime actually transmitted and/or displayed during the Term under the Agreement;
- 10.3 The amount of Gross Expenditure with RTÉ under the Agreement in respect of the Term will not include any expenditure reasonably declined in writing by RTE;
- 10.4 For the avoidance of doubt no Gross Expenditure with the Buyer and/or third parties which would otherwise fall within Broadcast shall be excluded without the prior written agreement of RTE;
- 10.5 The amount of Gross Expenditure with third parties will include all non cash and part cash transactions (including barter and contra transactions) and all expenditure with third parties will be valued in cash at the *full arm's length market value* of the relevant advertising; and
- 10.6 In the event that the parties fail to agree the full arm's length market value of any advertising (or any part thereof) for the purposes of **clause 10** within 21 days of the date of either or both parties first commencing to seek such an agreement, RTÉ may request the Auditors to determine such value.;

11.0 Treatment of value shortfall in Broadcast share/volume delivery

If any audited share/Volume commitment in the Agreement is under-delivered, RTÉ at its sole discretion shall be entitled to recover the full amount of shortfall from the Buyer. The Buyer shall pay to RTÉ forthwith the cost of the audit, together with the amount of the shortfall and interest thereon accruing daily at an annual rate which is 3% above the base lending rate of the European Central Bank from the date when sum became due, this being the final date of the Term as identified in the Deal Memorandum this being the date on which the Auditors

provided the final audit result for the Agreement to RTE, until the date of actual payment;

12.0 Auditing and reporting

- 12.1 RTÉ reserves the right to subject all Agreements made between RTÉ and the Buyer to an independent audit (upon reasonable notice) at any time during the course of the Agreement and after the Agreement has expired to ensure that terms and conditions have been complied with. The Auditors are to be permitted access to any information, including access to all associated undertakings and relevant third parties (including specialist Barter/Outdoor Companies) and make such enquiries within both media and finance departments of the Buyer as they consider relevant to the performance of their duties. The Buyer will ensure that all relevant third parties keep accurate records on its behalf and ensure Auditor access to such records in order to establish compliance with the Agreement. The Buyer will provide auditors with supporting working papers reconciling the certified share delivery with media bookings derived from DDS or other media booking system. RTÉ shall be entitled to receive details of all audited expenditures falling within the terms of the Agreement;
- 12.2 In the event that the terms of the Agreement have not been complied with RTÉ will be compensated in accordance with the terms set out in this Deal Memorandum;

13.0 Material and Property Liability

Reasonable care will be taken by RTÉ in respect of Advertisement Copy materials delivered to and received by RTÉ for transmission. RTÉ will have no liability for material damaged or delayed and delivery will only be confirmed by RTÉ when technical quality has been confirmed. It shall be the responsibility of the Buyer to recover any Advertisement Copy materials from RTÉ at the end of the campaign period. RTÉ will not be liable for copy storage after this point;

14.0 Warranties

The Buyer warrants and undertakes that:

It will be responsible for obtaining and paying for all necessary clearances and consents for the transmission of any material contained in an Advertisement Copy, and/or all permissions with regard to the appearance of any person in an advertisement;

The Advertisement Copy will not breach any rights of any third party whatsoever, (including without limitation copyright) or be defamatory of any third party in any way;

It will where required satisfy RTÉ that any necessary permission has been obtained and all necessary rights cleared with the owners of any rights, including with regard to music, the performing rights and the mechanical rights in any material proposed for use in any advertisement. RTÉ shall have the right to refuse to broadcast any advertisement until the rights position has been addressed to its satisfaction;

15.0 Indemnity

The Buyer agrees that it will indemnify and keep RTÉ indemnified against all actions, proceedings, costs, damages, expenses, penalties/claim, demands and liabilities arising from any breach of the above warranties or in any manner whatsoever resulting from the use, recording or broadcasting of any Advertisement Copy or matter delivered to RTÉ for transmission by, or on behalf of, the Principal. The Buyer agrees that this indemnity shall not preclude RTÉ from conducting its own defence in any legal proceedings brought against it and the Buyer warrants and undertakes that it will indemnify RTÉ against the reasonable legal costs incurred by RTÉ in conducting such defence;

16.0 Airtime Credit

Airtime Credits only apply to television airtime;

Airtime Credits refer to Airtime Credits for over and under delivery of television ratings against agreed Deal Memorandum parameters and 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;

In the event that any Buyer Airtime Credits or broadcaster Airtime Credits become due under the Deal Memorandum between the parties, both parties agree that they shall carry forward and reconcile such Airtime Credits at the end of the Term. Reconciliations shall be made in terms of airtime unless otherwise agreed;

17.0 Change of Rates and Conditions

Whilst as much notice as possible will be given of all changes RTÉ reserves the right to change the advertisement rate and any of these terms and conditions at SIX WEEKS notice and in the event of such a change, the rates payable and the terms and conditions applicable shall be those at the time of transmission. The

Buyer concerned shall (by serving written notice on RTÉ within 10 (ten) Working Days of receipt of notice of such change) be entitled to cancel any booking for an advertisement to which the changed rates or terms and conditions would otherwise be applicable;

18.0 Regional Rates

Regional rates maybe offered to Buyers for business conducted solely in a specific area covered by one of RTÉ's transmitters. Dublin City and County are excluded for this scheme. RTÉ reserves the right to restrict the transmission of any advertisement booked under this scheme to the appropriate transmitter;

19.0 Special Rates

Special charges and conditions may be announced by RTÉ from time to time for particular programmes;

20.0 Termination

- 20.1 If any of the terms of this Agreement which on the part of the Buyer are to be observed, fulfilled and kept are not so observed, fulfilled and kept, RTÉ may (notwithstanding the waiver of any previous breach) terminate this Agreement with the Buyer at any time thereafter by notice in writing to that effect, without prejudice to the right of RTÉ to recover any sums payable to it;
- 20.2 Any Agreement will terminate automatically 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 Courts ("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 a demand; or (e) a petition to wind up the Buyer is filed in the High Court; or (f) a provisional liquidator is appointed to the Buyer; 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;
- 20.3 No failure or delay by RTÉ or the Buyer in exercising any of its rights will be deemed to be a waiver of those rights and no waiver of any provision will be deemed to be a waiver of any subsequent breach of the same or any other provision;
- 20.4 Termination shall have effect on a prospective basis and will not affect any rights of any party in respect of any prior breach of this Agreement nor any rights or liabilities of any party accrued prior to termination of this Agreement. Without

limitation to the foregoing, termination shall not affect any right of RTÉ to recover any sums payable to RTÉ by the Buyer;

21.0 **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 this Agreement forthwith;

22.0 **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;

23.0 **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 that extent be severed from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law;

24.0 **Entire Agreement**

The Deal Memorandum and these Terms and Conditions contain the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all prior proposals, representations, agreements and negotiations relating thereto, whether written, oral or implied, between the parties or their respective advisers and no modification or amendment of this agreement shall be validly made unless in writing and signed by or on behalf of RTÉ and the Buyer;

25.0 **Assignment**

25.1 The Buyer may not assign, transfer, charge or make over a Deal Memorandum or any of the Buyer's rights or obligations under this Agreement without the prior

written 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 of RTÉ;

25.2 The Buyer represents and warrants 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).

26.0 **Confidentiality**

The Buyer and RTÉ will each at all times during the Term and thereafter keep the provisions of this Agreement and any confidential or commercially sensitive information acquired from the other confidentially and will not disclose the same to any third party except as may be specifically permitted under the terms of this Agreement or as may be required by law;

27.0 **Governing Law**

These terms and conditions 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;