



Coimisiún
na Meán

Section 71 Content Provision Contract: Guidelines for radio services on a Trial DAB+ Multiplex

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APPLICATION

The application consists of the submission of an **application form** and **mandatory documentation**.

A non-refundable **application fee** of €375 is charged for all Section 71 applications for radio services for inclusion as part of a Trial DAB+ Multiplex.¹ (See *Section 2: Fees*.)

A **signed and dated PDF** of your application form, along with all the required mandatory documentation, must be emailed to dab@cnam.ie. It is recommended that you submit your completed application **two months in advance of the proposed broadcast date** to allow sufficient time for the application to be assessed and for a potential contract to be agreed with Coimisiún na Meán (“the Commission”).



It is the **applicant’s responsibility to ensure that all submitted documentation is accurate**. Any changes to a submitted application must be agreed with the Commission. The Commission may also request an applicant to provide additional information.

ASSESSMENT

Stage One – Preliminary Assessment checks:

- ✓ That the appropriate application fee has been paid.
- ✓ That all sections of the application have been completed, and the mandatory documentation has been submitted.

If the application does not pass Stage One, it will be returned to the applicant. If the application passes Stage One, the Commission will confirm receipt, and the application will progress to Stage Two.

Stage Two – Qualitative Assessment:

- ✓ That the applicant is under the jurisdiction of the State.
- ✓ That the programme material proposed will be compliant with legislative requirements and the policies of the Commission.
- ✓ That the contract award will support the objectives of the Commission’s *Broadcasting Services Strategy*.
- ✓ That the applicant satisfies the character test (at Appendix 2) and has the necessary resources, experience and expertise, having regard to the nature of the service proposed.

DECISION

IF A CONTRACT IS RECOMMENDED IN PRINCIPLE:

- The applicant is informed of the offer in principle, subject to the successful conclusion of contract negotiations and compliance with any other conditions the Commission may attach to the award of the contract.
- The applicant will be invoiced for the applicable contract fee. This is currently set at €500 per year for any trial period and is paid upon the successful conclusion of contractual negotiations, prior to entering into the contract. If the contract fee is not paid, the Commission shall not enter into the contract.²
- If contract negotiations are successfully concluded, two copies of the contract will be issued to the applicant to be signed, sealed, and returned to the Commission.

IF A CONTRACT IS NOT RECOMMENDED IN PRINCIPLE:

The Commission will notify the applicant of its decision and provide a statement of reasons.

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¹ The Trial in this context refers to the operation of a DAB+ multiplex under a Test and Trial Licence granted by the Communications Regulator. <https://www.comreg.ie/industry/radio-spectrum/test-trial/>

² Section 71(8) of the Broadcasting Act 2009.



Section One: Introduction

Section 71 of the [Broadcasting Act 2009](#), (“the 2009 Act”) provides that the Coimisiún na Meán (“the Commission”) may enter into a contract with an applicant for the provision of content, consisting of a compilation of programme material for the purpose of inclusion **as part of a multiplex**, or, for the purpose of its being transmitted as a broadcasting service in the State, part of the State, or elsewhere, by means of an electronic communications network, including, a satellite network, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network, or any other form of electronic communications network.³

These Guidelines and application form apply to applications for radio services for inclusion as part of a DAB+ Multiplex operated under a Test & Trial Ireland Licence granted by the Communications Regulator (“ComReg”) in the State.

Test & Trial Ireland⁴ is a licence (“Trial Licence”) that ComReg can provide to support innovation and the development of wireless communications using Ireland’s radio spectrum. The licence may only be issued where, in ComReg’s opinion, there is scope for a full operational licence for the service under trial to be issued in the radio spectrum concerned. At the date of publication of these Guidelines, there was one such Trial Licence in operation by Foothold Communications under the name FáilteDAB.⁵

To include radio services in a DAB+ Multiplex, service providers must have a section 71 content provision contract or a sound broadcasting contract that enables simulcast on a multiplex.

When assessing applications for content provision contracts, the Commission will have regard to the following objectives set out in the Commission’s *Broadcasting Services Strategy*:

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

³ See the attached Appendix One for the definition of “*electronic communications network*”.

⁴ [Test & Trial Ireland](#)

A contractor does not enjoy any right (by virtue of a content provision contract) to access a multiplex and/or an electronic communications network for distribution. The contractor must negotiate the appropriate carriage rights with the relevant DAB+ multiplex operator.

Applicants can contact the Commission (dab@cnam.ie) with any queries regarding these Guidelines, the application form, or the application process.



Section Two: Fees

In accordance with section 71(9), the Commission may specify different fees for particular classes of content provision contractors. Standard application and contract fees for radio services for inclusion in a DAB+ Multiplex are as follows:

APPLICATION:

The application fee is currently set at €375. It must be transferred to the Commission account listed below for the application to be considered. This fee is non-refundable.

CONTRACT:

The reduced contract fee is currently set at €500 per annum. For the purpose of a DAB+ Trial, the term of the content provision contract will align with the term of the Trial Licence granted by ComReg to the multiplex operator.

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

ACCOUNT INFORMATION:

Financial institution: Allied Irish Bank Branch address: 1-4 Baggot St Lower, Dublin 2 Account name: Coimisiún na Meán IBAN: IE43AIBK93101268283086 BIC code: AIBKIE2D Sort code: 93-10-12 Account number: 68283086

The applicable application and contract fee/s must be transferred to this account.

The application fee must be transferred prior to or on submitting an application to the Commission.

The contract fee must be transferred prior to entering into the content provision contract with the Commission.

Fees are subject to change at the Commission's discretion. If the Commission changes its fees, the applicable fee scale will be made available on the Commission's website at cnam.ie and the Guidelines will be updated.

Section Three: The Application Process

APPLICATION DETAILS

A complete application consists of two parts:

- 1) The Application Form; and
- 2) The Mandatory Documentation.

(a) Application Form

Applicants must complete the application form. This application form consists of eight sections.

1. Applicant Information;
2. The purpose for which a content provision contract is required;
3. Ownership and Control Information;
4. Character Test;
5. Proposed Programme Content;
6. Funding Model;
7. Diversity of Content;
8. Codes and Rules, Compliance and Monitoring; and
9. Signed Declaration & Application Checklist.

(b) Mandatory Documentation

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

(i) Secretary's Certificate or Equivalent

To enter into a contract with the Commission, an applicant must be a legally constituted organisation or group, such as a company, cooperative society, or educational institution. The applicant must confirm its legal status and submit a Secretary's Certificate or equivalent setting out certain details of the company, such as:

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

- Name and address of the proposed Compliance Officer.

Template Secretary Certificates for companies are included in Appendix 1 of the application form.

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

(ii) Company Constitution or Equivalent

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

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

(iii) Proof of payment of the Application Fee.

The application fee (**€375**) must be paid by bank transfer to the Commission's bank account listed under the Fees Section of these Guidelines.

(iv) Programme Policy Statement and Indicative Programme Schedule

A Programme Policy Statement ("PPS"), which sets out the programming commitments for the proposed service, is agreed with the applicant and included in the contract. A template PPS for radio is included in *Appendix 1* of the application form. An indicative Programme Schedule is agreed with the applicant and included in the contract.

(v) Quote for Insurance

An applicant must provide a quote for an appropriate insurance policy. The policy must be obtained before contracting with the Commission and maintained for the duration of the contract. The policy should cover the contractor's proposed and actual activities under, or in connection with, the proposed contract and the licensed service in accordance with prudent commercial practice and shall include the Commission as an indemnified party in every insurance policy so taken out on the same basis as the contractor.

In particular, but without prejudice to the generality of the foregoing, the contractor shall obtain and always maintain the following minimum levels of insurance (provided that the Commission may, at its sole discretion, direct the contractor to increase the limits set out below, and that the contractor shall promptly comply with every such direction):

- public liability for not less than €7,500,000 indemnity for any one claim;
- employer's liability for not less than €13,000,000 for any one claim; and
- libel insurance for not less than €2,000,000 for any one claim.

The above policy or policies of insurance shall be shown by the contractor to the Commission whenever it requests, post-contracting, together with satisfactory evidence of payment of premiums. The contractor, at all times, shall ensure all insurance cover taken out in accordance with this clause is on substantially similar terms to those upon which insurance of that kind is usually taken out and

includes non-avoidance and non-invalidation provisions so that any action by or against the contractor constituting a breach of such policy will not prejudice insurance cover afforded to the Commission.

SUBMITTING AN APPLICATION

The application, including the application form and mandatory documentation, should be sent electronically to the following email address: dab@cnam.ie. An incomplete application will be returned to the applicant.

An application can take up to two months to process. The duration will depend on, among other factors, the sufficiency of the information provided and whether the Commission requires any follow-up, clarification, or additional information. Any delay by the contractor in responding to Commission queries or clarifications will delay processing of the application.

Applicants should therefore ensure their applications are submitted **two (2) months** before their first proposed on-air date. Existing contractors participating in a DAB Trial who wish to reapply upon the expiration of their contracts should also adhere to this timeframe and apply at least two months prior to the expiry date.

QUERIES

General queries regarding the application process should be directed to dab@cnam.ie. Alternatively, applicants can telephone the Commission's offices at 01 6441200.

Section Four: The Assessment Process

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

Stage One – Preliminary Assessment

Once received, the Commission will review the application to ensure it is complete, i.e., that the appropriate application fee, application form, and mandatory documentation have been submitted and received.

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

Stage Two – Qualitative Assessment

(Please note: Definitions which apply for the purpose of this section are contained in Appendix 1 at the end of these Guidelines.)

The Commission's staff will assess qualifying applications with reference to the following criteria:

a) The information provided by the applicant is as follows:

i. Jurisdiction

The applicant must be under the jurisdiction of the State. Please see Appendix 1 for the definition from section 2A of the 2009 Act.

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

The Commission shall have regard to the purpose for which a compilation of programme material is to be supplied. The Commission shall enter into this class of content provision contract with a contractor who wishes to provide a compilation of programme material for inclusion as part of a DAB+ Multiplex, or for the purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network.

iii. Diversity of Content

The Commission shall have regard to the objectives of the *Broadcasting Services Strategy* and the Commission's *Media Plurality Policy*, both of which are available on the Commission's website. Applicants will be required to demonstrate how the proposed service will enhance the diversity of available services and enhance media plurality for audiences.

iv. Ownership and Control

The Commission shall have regard to the Commission's *Ownership and Control Policy*, and in particular, the provisions therein relating to character (character test information), experience, expertise and the level of communications media held by the applicant. The Commission considers it appropriate to do so in the interest of promoting plurality of ownership, diversity of viewpoint, outlets, and sources in communications media.

v. Monitoring and Compliance

The Commission shall consider the adequacy of the technical devices and organisational procedures implemented or proposed by the applicant to ensure compliance with applicable legislation, codes, rules, regulations, the content provision contract, and the experience of the personnel responsible for compliance.

If the applicant, or relevant persons associated with the applicant, have previously held a content provision contract or other broadcasting contract, the Commission will have regard to the compliance record of the relevant entities, with regard to the 2009 Act, and the Commission's codes, rules and contracts.

- b) The applicant has confirmed it is compliant with the policy of the Commission⁶ and Section 71 of the 2009 Act in relation to submissions from former unlicensed operators.⁷
- c) The applicant's character and the necessary experience, expertise and resources, having regard to the nature of the service proposed.

Based on the Qualitative Assessment, the Commission may request that an applicant provide additional information on certain aspects of its application. The Commission will set a timeframe for receiving a response to this request. If a response is not provided within the requested timeframe, the assessment process cannot proceed to Stage Three.

Stage Three – Decision and Contract Award

Upon completing the Qualitative Assessment phase, the Commission's staff will present a Qualitative Assessment Report to the Commission for consideration and decision.

The Commission will consider the Qualitative Assessment of each application received. It will then decide, based on this report, the application form and mandatory documentation:

- To enter a content provision contract with an applicant in principle, subject to the applicant's agreement with the terms and conditions mandated by the 2009 Act and as the Commission considers appropriate; or,
- Not to enter a content provision contract with an applicant in respect of an application.

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

⁶ The policy of the Commission is to consider applications once none of an applicant's Directors, Secretary, Senior Management Team or any on-air staff have been involved in unlicensed activity for at least twelve months prior to the submission of the application.

⁷ This includes, but is not limited to, a transmitter being activated on unlicensed days.

If a contract is awarded to the applicant in principle:

- The Commission will inform the applicant of the decision to award a contract in principle, subject to any necessary terms and conditions;
- The Commission will forward an invoice to the applicant for the entire contract fee, which should be transferred to the account information referenced in the Fees Section in these Guidelines;
- Applicants are requested to submit the payment upon receipt of the invoice and separately confirm the transfer by emailing dab@cnam.ie.
- Following receipt of the contract fee, the Commission will request a copy of the applicant's executed insurance policy and all the required contract documentation necessary to draft the contract.
- The applicant's authorised signatories will be required to sign and seal two copies of the contract and return these to the Commission; the contracts will then be countersigned and sealed by the Commission following a final review. A copy of the executed contract will be sent to the applicant.

Section Five: Contractual Terms and Conditions

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

The contractual terms reflect the provisions of the 2009 Act and the Commission's relevant policy decisions. All signed contracts are public documents⁸ and can be inspected at the Commission's offices. The following is an indicative list of obligations that apply to an applicant. It does not purport to be an exhaustive list of the contractual or statutory obligations.

1. Ownership and Control

The Commission's *Ownership and Control Policy* ("O&C Policy") outlines its approach to applying statutory provisions regarding the ownership and control of broadcasting services. It includes the objectives to be achieved and the rules that support them. The Policy is used by the Commission to assess the ownership and control element of applications for broadcasting contracts, evaluate relevant requests for contract variations, and address any compliance issues that may arise subsequently with respect to such contracts. The Commission endeavours to ensure that its regulatory arrangements operate proportionately, fairly and consistently. In this regard, the Policy provides clarity and certainty regarding the regulatory approach to be adopted and the rules that will apply.

Every content provision contract will include certain information regarding the contractor's corporate structure, shareholders, directors, and senior management, and their relevant media interests in the State. This information will be set out as prescribed by the Commission in the schedules to the contract. The second schedule contains the Secretary's Certificate and information relating to the directors, senior management, and the contractor's shareholding structure. A contractor is also obliged to inform and/or obtain the prior approval of the Commission, throughout the contract term, of any changes to its ownership structure and other matters as specified in the content provision contract.

2. Contract Duration and Fees

A content provision contract for the purpose of the DAB+ Trial is agreed for a **period of one (1) year** with the option to extend for a period of **one (1) year**, subject to the continuation of the Trial Licence.

In addition to the non-refundable application fee, an annual **contract fee of €500 applies for the term of the contract**.

3. Programme Content

Every content provision contract shall include a Programme Policy Statement that contains the programming commitments that will be complied with for the contract term.. Material changes to this statement will require the prior approval of the Commission. An Indicative Programme Schedule is also included in the contract.

Programming must comply with the relevant provisions of the 2009 Act and the Commission's media service codes and rules.

⁸ Subject to GDPR.

4. Contractual Conditions

In accordance with the 2009 Act, a content provision contract will include the following conditions:

- i. A condition requiring the prospective contractor to pay a contract fee to the Commission, of such an amount as it considers appropriate. If the fee is not paid, the Commission shall not enter into a contract with the prospective contractor.
- ii. A condition requiring the contractor to pay, on request by the Commission, a sum of money in respect of a failure by the contractor to comply with a particular term or condition of the contract. The maximum amount payable under any contract shall be specified, and the contractor is required to comply with the Commission's payment request.
- iii. A condition requiring the contractor to comply with any media service codes or media service rules⁹ with respect to the programme material and commercial communications supplied in pursuance of the contract.
- iv. A condition requiring the contractor to ensure that news is broadcast in an objective and impartial manner and without any expression of the broadcaster's own views.
- v. A condition requiring the contractor to ensure that the broadcast treatment of current affairs is fair to all interests concerned and that the broadcast matter is presented in an objective and impartial manner and without any expression of the broadcaster's own views.
- vi. A condition requiring the contractor to ensure that the broadcast treatment of any policy proposal regarding broadcasting, which is the matter of public controversy or debate and is being considered by the Government or the Minister, is reported and presented in an objective and impartial manner.
- vii. A condition requiring the contractor to ensure that anything which may reasonably be regarded as causing harm or undue offence, or as being likely to promote, or incite to, crime, or, as tending to undermine the authority of the State, is not broadcast by the broadcaster.
- viii. A condition requiring the contractor to ensure that anything which may reasonably be regarded as conduct falling within Article 5 of Directive (EU) 2017/541 on combatting terrorism or as being likely to promote, or incite to, violence or hatred against a group of persons, based on any of the grounds referred to Article 21 of the Charter of Fundamental Rights of the European Union, is not broadcast by the broadcaster.
- ix. A condition requiring the contractor to ensure that in programmes broadcast by the broadcaster, and in the means employed to make such programmes, the privacy of any individual is not unreasonably encroached upon.

⁹ The Commission's Codes and Rules are available on the Commission's [website](#) with regard to the following: Programme Standards; Fairness, Impartiality and Objectivity in News & Current Affairs; Short News Reporting; General Commercial Communications; Children's Commercial Communications; Advertising, Teleshopping, Signal Integrity & Information; and Access Rules for Television Broadcasters.

- x. A condition requiring the contractor not to broadcast an advertisement which is directed towards a political end or which has any relation to an industrial dispute.
- xi. A condition requiring the contractor not to broadcast an advertisement which addresses the issue of the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation.
- xii. A condition that, where any of the programme material supplied by the contractor in pursuance of the contract, (i) contains anything referred to in section 46J(1)(c) or (d) of the 2009 Act, (ii) contains anything which may impair the physical, mental or moral development of children which is not presented in such a way that children will not normally see or hear it, or (iii) constitutes an incitement to commit an offence, the Commission may, or, if such a supply of programme material has occurred within 6 months of a previous such supply by the same contractor having occurred, shall, terminate the content provision contract.
- xiii. A condition otherwise enabling and/or requiring the Commission to suspend or terminate the content provision contract where the programme material supplied contravenes a statutory obligation and/or in other specified circumstances.
- xiv. A condition requiring the contractor to comply with any Levy Order made by the Commission under section 21 of the 2009 Act.

This list does not purport to be exhaustive of all the conditions that may be included in the content provision contract.

5. News and Current Affairs/Public Service Content

Audiences should be exposed to a range of media services and content to ensure access to diverse voices, opinions, and analyses. The 2009 Act does not impose a minimum requirement for news and current affairs content on content provision contractors. As a matter of policy, the Commission considers it important that news, current affairs and public service content are made available on services operating as part of a DAB+ Multiplex to enhance plurality and diversity in broadcasting services for audiences.

Applicants are requested to include programme content that supports this broader pluralism objective, but taking into account the Trial context for DAB+, the quantity and nature of the content are not being prescribed by the Commission.

6. Transmission

A contractor does not enjoy any right (by virtue of its contract) to access a multiplex and/or an electronic communications network for distribution. The contractor must negotiate the appropriate carriage rights with the relevant DAB+ multiplex operator.

Where rights of carriage on the DAB+ Multiplex are agreed, contractors must ensure that content is broadcast only within the contracted dates. On completion of the contract term or on any date not included in the contract, the carrying of content must cease in such a manner as to ensure that it is not possible to inadvertently continue with its carriage, except in the case where a new contract has been issued by a relevant authority.

Contractors must ensure that the studio from which they operate provides access to disabled people, in line with Part M of the Building Regulations¹⁰.

7. Compliance

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

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

In addition, a contract imposes an obligation on a contractor to keep recordings of every item of programme material supplied by him or her under a content provision contract, and to retain such recordings for such period as determined by the Commission from time to time pursuant to section 46P of the 2009 Act. The contractor shall make any such recordings available to the Commission upon request. The period currently is 90 days.

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

8. Termination and Suspension

Section 71 of the 2009 Act enables the Commission to terminate a content provision contract where the programme material breaches a condition referred to in *ix* in section 4 above, or contains anything which may impair the physical, mental or moral development of children which is presented in such a way that children will not normally see or hear it or constitutes an incitement to commit an offence. Where such a supply has occurred within 6 months of a previous such supply by the same person, the Commission shall terminate the contract.

Section 51 of the 2009 Act enables the Commission to terminate, or suspend for such period as it considers reasonable, a contract entered into under Section 71—

- (a) if any false or misleading information of a material nature was given to the Commission by or on behalf of the holder of the contract before it was entered into, or

¹⁰ [Technical Guidance Document M - Access and Use](#)

- (b) if, following an investigation under section 50, the Commission has made a finding under subsection (7) of that section that the holder of the contract has failed on one or more occasions to comply with a term or condition of the contract, and the nature of that failure is of such seriousness as in the Commission's opinion warrants the termination or suspension of the contract."¹¹

9. Financial Sanctions

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

In addition to the possibility of a fine under Section 71, Part 8B of the 2009 Act provides for the possibility of the imposition of an administrative financial sanction following an investigation into a suspected contravention, being a failure to comply with certain provisions of the 2009 Act, a media service code or rule, an online safety code or certain other statutory rules.

¹¹ Any decision of the Commission made pursuant to the 2009 Act may be appealed by the holder of the contract to the High Court. A contract terminated under section 50 or any other provision of the 2009 Act or under a provision of the contract shall cease to have effect; a contract suspended under section 51 or any other provision of the 2009 Act or under a provision of the contract shall cease to have effect for the period for which it is suspended.

Section Six: Data Protection and Freedom of Information

In order to assess applications in accordance with the statutory criteria, we will require information about the applicant, its directors, shareholders/members and staff. This data and documentation may include personal information such as job titles, contact details, salaries, and e-mail addresses. The Commission shall comply with its obligations under the General Data Protection Regulation (GDPR) Directive, the Data Protection Act 2018 and any other applicable data privacy laws and regulations when handling and processing any such personal information submitted to this funding initiative. The information submitted in an application, including any personal information, will be used to process the application and to consult with the applicant. Any personal information submitted will only be retained if the application is successful. Such information will be required for the period of the Trial Licence. The Commission is obligated and committed to protecting all personal data submitted.

The Commission makes applications available for inspection at its offices. The Commission, as a public body, is also subject to the provisions of the Freedom of Information Act, 2014.

- If an applicant wishes the Commission to treat any part of the application as confidential, it should be presented in an annexe to the application and be appropriately marked. The applicant should, in a covering letter, outline the reasons for believing that the public should not have access to the material in such an annexe.
- Where the Commission believes that material which an applicant has placed in a confidential annexe should be made available for inspection, it will enter into discussions with the applicant in an effort to reach an agreement as to the extent of disclosure. If agreement cannot be reached, the Commission will treat the application as having been withdrawn.
- Each applicant shall be responsible for providing the Commission with such authorisations, waivers and/or indemnities as it may reasonably require in connection with the disclosure to members of the public of material contained in the application.

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

General Disclaimer

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

Appendix 1: Relevant Definitions

In this Policy, the following definitions apply:

- “the 2009 Act”:** means the Broadcasting Act 2009
- “Commission”:** means Coimisiún na Meán
- “Communications Media”:** Means –
- Broadcasting Services
 - Audiovisual on-demand media services,
 - Designated online services.
 - Or Newspapers or periodicals consisting substantially of news and comment on current affairs.
- “Content Provision Contract”:** (Section 71) means a contract between the Commission and a person whereby that person may supply a compilation of programme material for the purposes of its:
- Inclusion as part of a multiplex;
 - The purpose of its being transmitted as a broadcasting service in the State, part of the State or elsewhere by means of an electronic communications network, including a satellite network, a fixed or mobile terrestrial network, a cable television network, an internet protocol television network or any other form of electronic communications network.
- “Jurisdiction of the State”:** Section 2A of the 2009 Act sets out how the question of whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined as follows:
- 2A. (1) For the purposes of this Act, the question whether a media service provider is under the jurisdiction of the State (or another Member State) is to be determined in accordance with this section.
- (2) A media service provider is under the jurisdiction of a Member State if under subsection (5) it is established in that state.
- (3) If a media service provider is not, under subsection (5), established in a Member State, then the provider is under the jurisdiction of a Member State if—
- (a) it uses a satellite up-link situated in that state, or

- (b) it uses satellite capacity appertaining to that state.
- (4) If subsections (2) and (3) do not determine the question in relation to a media service provider, then the provider is under the jurisdiction of the Member State in which it is established within the meaning of Articles 49 to 55 of the Treaty on the Functioning of the European Union.
- (5) The following provisions apply to a media service provider for the purposes of subsections (2) and (3):
 - (a) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in the same Member State, the provider is established in that Member State;
 - (b) if the provider has its head office in a Member State, and the relevant editorial decisions are taken in another Member State, then—
 - (i) if a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where the provider has its head office, the provider is established in that Member State,
 - (ii) if subparagraph (i) does not apply but a significant part of the workforce involved in the pursuit of the programme-related audiovisual media service activity operates in the Member State where relevant editorial decisions are taken, the provider is established in that Member State, and
 - (iii) if neither subparagraph (i) nor subparagraph (ii) applies, the provider is established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;
 - (c) if the place where the provider has its head office and the place where the relevant editorial decisions are taken are different, and only one of them is in a Member State, the provider is

established in that Member State, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

(6) In this section—

“audiovisual media service activity” means activity relating to the audiovisual media service concerned;

“relevant editorial decisions” means editorial decisions about the audiovisual media service concerned.

“Substantial Interests”:

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

“Control”:

is in a position, proprietarily, financially or in terms of voting rights, to determine or direct the policy of the company, with regard in particular to programme output, that is, sourcing, production, supply or delivery to the audience.¹²

“Electronic Communications Network”:

means transmission systems, including, where applicable –

- Switching equipment,
- Routing equipment, or
- Other resources.

Which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, and such conveyance includes the use of –

- Satellite networks;
- Electricity cable systems, to the extent that they are used for the purposes of transmitting signals;
- Fixed terrestrial networks (both circuit-switched and packet-switched, including the Internet);
- Mobile terrestrial networks;
- Networks used for either or both sound and television broadcasting, and;
- Cable television and Internet Protocol Television networks

¹² Further guidance is provided in the Commission’s *Ownership and Control Policy*.

“Media Service Provider”:

Irrespective of the type of information conveyed.
Means a person who provides an audiovisual media service.

“Media Operator” and “Relevant Person”:

means any of the following:

- a) a person who supplies a compilation of Programme Material which is Broadcast in the State;
- b) a programme production company which produces programmes which are Broadcast in the State;
- c) an advertisement production company which produces advertisements which are Broadcast in the State;
- d) the publisher of a newspaper, magazine or journal consisting substantially of news and comment on current affairs, which is displayed for sale in the State;
- e) an advertising agency which produces advertisements which are Broadcast in the State, or which acts as a media buyer in respect of the Broadcast of advertisements in the State;
- f) a public relations company which carries on business in the State;
- g) a music publisher which publishes music which is displayed for sale or Broadcast in the State;
- h) a distributor of recorded music which distributes recorded music in the State;
- i) a person who is engaged in Communications Media in the State;
- j) a person who has a Substantial Interest in a person listed in any of (a) to (j) above and/or a Provider of Communications Media; and
- k) a person who is not a national of a Member State of the European Union;



Appendix 2: Character Test

- i. Has the applicant ever been convicted of an offence (excluding 'spent convictions') relating to any of the following:- fraud or dishonesty; membership of a criminal organisation; corruption; terrorist offences; money laundering; terrorist financing; child labour; human trafficking?
- ii. Has the applicant ever been restricted or disqualified as a Company Director, or convicted of any offence under the Companies Act 2014 in this jurisdiction or under equivalent legislation in any other jurisdiction?
- iii. Has the applicant ever been adjudicated a bankrupt, become insolvent or entered into a voluntary arrangement with creditors, or had a receiver appointed to any of its assets, in this or any other jurisdiction?
- iv. Has the applicant ever been a director of a company to which a receiver was appointed, which went into compulsory liquidation, creditors' voluntary liquidation, examinership or which made any arrangement with its creditors or class of creditors?
- v. Has the applicant ever been convicted of an offence under any legislation by which Broadcasting and/or Wireless Telegraphy is regulated in this or any other jurisdiction?
- vi. Has the applicant ever had a licence or contract issued by a broadcasting licensing body or any other statutory body suspended or revoked in this or any other jurisdiction?
- vii. Has the applicant ever been the subject of any of the following:- adverse findings by a tax authority; adverse findings by a regulatory body in relation to gross professional misconduct; adverse findings by a competition authority in relation to anti-competitive conduct?
- viii. Is the applicant aware of any reason why it may not be a fit and proper person to be awarded a contract?

Signature of Applicant: _____

Name (block capitals): _____

Relevance to Applicant: _____

Date: _____