

Confidential and Commercially Sensitive



Houses of the
Oireachtas
Tithe an Oireachtais

Contract between the

Houses of the Oireachtas Commission

and

Pi Communications Ltd

for

**The Management, Operation and Maintenance of the Television Facilities and Digital Recording
systems in the Houses of the Oireachtas**

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THIS AGREEMENT is made on 23 March 2010

BETWEEN

1. **THE HOUSES OF THE OIREACHTAS COMMISSION**, a body corporate responsible for the running of the Houses of the Oireachtas and the administration and management of the Houses of the Oireachtas Service, having its address at Leinster House, Kildare Street, Dublin 2 (hereinafter referred to as the "Contracting Authority")

and

2. **PI COMMUNICATIONS LTD**, a company incorporated in Northern Ireland with registration number NI 45158 having its registered address at 19 Church Avenue, Dunmurry, Belfast BT17 9RS (hereinafter referred to as the "Service Provider")

each a "Party" and together the "Parties".

WHEREAS

- A. The Contracting Authority is responsible for the running of the Houses of the Oireachtas and the administration and management of the Houses of the Oireachtas Service;
- B. The Contracting Authority issued a Request for Tender on 10 September 2010 for the management, operation and maintenance of the television facilities and digital recording systems in the Houses of the Oireachtas (the "RFT");
- C. The RFT specified that an appointed service provider would be required to manage, operate and maintain the television facilities and digital recording systems in the Houses of the Oireachtas; and
- D. The Service Provider was the preferred tenderer on the basis of the Service Provider's tender dated 1 October 2010 and subsequent clarifications.

THE PARTIES NOW AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 In this Agreement:

"**Archive**" means the place or places of storage of Content.

"**Assets Register**" means an inventory of the Equipment to be maintained by the Service Provider on behalf of the Contracting Authority, the first of which is agreed as set out in Clause 3.4.

"**Back-Up Team Staff**" means members of the Service Provider's wider organisation that will substitute for Full-Time Staff during periods of holiday, sickness, unavailability or extended leave or for any other reason as agreed between the Parties.

"**Business Day**" means a day (other than a Saturday or Sunday) on which clearing banks are generally open for business in Ireland.

"**Call Out Hours**" mean hours other than Normal Working Hours during a Year as required when proceedings of the Houses of the Oireachtas or Committees are taking place.

"Change Request Procedure" means the change request procedure set out in Schedule C.

"Confidential Information" means the information referred to in Clauses 8.1 and 8.2.

"Content" means the Essence (physical and/or electronic) and Metadata (physical and/or electronic) owned by the Contracting Authority as a result of the previous televising of the proceedings of the Houses of the Oireachtas and Committees to the extent that it exists on the Effective Date and as created by the Service Provider under this Agreement.

"Content Service" means that part of the Services to be provided by the Service Provider consisting of (a) the provision of Content as a live feed signal to the Service Outputs of designated broadcasters and other third parties as set out in Schedule J; (b) recording Content to the standards set out in Schedule K or as otherwise requested by the Contracting Authority; and (c) maintaining a complete parliamentary audio-visual Archive.

"Contracting Authority Broadcast Manager" ("Broadcast Manager") means such person as may be notified in this regard to the Service Provider by the Contracting Authority.

"Costs" has the meaning given to it in Clause 10.2.

"Direct Maintenance Agreements" ("DMAs") mean, on the Effective Date, the agreements set out in Schedule F, and any additional agreements as the Parties may agree during the Term.

"Disclosing Party" means, for the purposes of Clause 8, the Party which disclosed or granted access to its Confidential Information to the other Party.

"Effective Date" means the date on which the Service Provider commenced providing the Services under this Agreement, being 01 January 2011.

"Equipment" means the equipment identified at Schedule A, as may be amended pursuant to Clause 3, together with any additional equipment added to the Assets Register from time to time by agreement of the Parties.

"Essence" means the visible images (including moving and still), audible and ancillary (including textual) data owned by the Contracting Authority as a result of previous televising of the proceedings of the Houses of the Oireachtas or Committees to the extent that such images and data exist on the Effective Date and as created by the Service Provider under this Agreement through its creation of such images or data.

"Fees" shall have the meaning set out in Clause 10.1.

"Force Majeure" shall bear the meaning given to it in Clause 21.1.

"Full-Time Staff" means the following members of the Service Provider Staff who provide the Services during Normal Working Hours occupying the roles of Production Manager, Facilities Co-ordinator/Assistant to the Production Manager, Production Co-ordinator, Technical Supervisor and Assistant Technical Supervisor, or their equivalents.

"Handling Fee" means the fee payable to the Service Provider by the Contracting Authority in consideration for certain of the Services relating to technical consumables and certain third-party supplied services, which is calculated in accordance with Schedule B.

"Internal Clients" means Members of the Houses of the Oireachtas, their staff and the staff of the Houses of the Oireachtas.

"Intellectual Property Rights" means any and all copyright, patents, registered designs, trade marks, drawings, utility models, design rights, business ideas, concepts, inventions, rights of extraction and utilisation relating to databases, database rights, sui generis rights, trade secrets, technical information, know-how, semi-conductor topography rights, goodwill and all other intellectual property and associated rights including but not limited to any and all moral rights and all other intellectual property rights of a similar or corresponding nature whether registered or not, or capable of registration or not, and including all applications anywhere in the world and the right to apply for any of the foregoing rights.

"Maintenance Management System" ("MMS") means the multi-user, IT-based system in which records relating to the Services provided in respect of the Equipment shall be recorded and stored, including those relating to the Assets Register, the condition of the Equipment, and the maintenance work carried out by the Service Provider on the Equipment as part of the Services and as is more particularly described in Schedule D.

"Metadata" means the cataloguing and descriptive data owned by the Contracting Authority to the extent that such images and data exist on the Effective Date as well as any cataloguing and descriptive data created by the Service Provider under this Agreement, including but not limited to tape and other media identifiers, contents and positional information, rights information, storage location information and event-, participant-, subject- and other attribute-information.

"Normal Working Hours" means 09.45 to 18.00, Monday to Friday excluding public holidays in Ireland.

"Oireachtas Broadcasting Unit" ("OBU") means the section of the Office of the Houses of the Oireachtas responsible for the provision of production, broadcasting, support and related services for the broadcasting of the proceedings of the Houses of the Oireachtas.

"Part-Time Staff" means members of the Service Provider's team other than Full-Time Staff used by the Service Provider to provide the Services.

"Premises" means Leinster House or otherwise in the Dublin 2 area of which the Contracting Authority has possession for the time being for the purposes of accommodating the Members of the Houses of the Oireachtas, their staff and/or staff of the Houses of the Oireachtas or any other place where the Houses of the Oireachtas, their staff and/or staff of the Houses of the Oireachtas may from time to time decide.

"Quality Management System" ("QMS") means the system (described in Clause 4 and Schedule G as may be varied by agreement between the Parties from time to time).

"Resource Management System", ("RMS") means the system described in Clause 4 and Schedule E as may be varied by agreement between the Parties from time to time.

"Rules of Coverage" means such rules of coverage for the televising of parliamentary proceedings as are adopted from time to time by the Joint Committee pursuant to Standing Orders of the Dail and Seanad respectively, and notified to the Service Provider by the Contracting Authority.

"Service Credits" means the amounts (detailed in Clause 18) payable by the Service Provider to the Contracting Authority in the event of a Service Failure in respect of the Service Provider's failure to meet the corresponding Service Levels;

"Service Failure" means a failure by the Service Provider due to its negligence or breach of its obligations under this Agreement to provide the Services in accordance with the Service Levels.

"Service Levels" means the levels and standards to which the Content Services are to be provided by the Service Provider as set out in Clause 18.2.

"Service Outputs" means those destinations receiving video, audio, ancillary components of the Services and related Metadata of the service as live feeds.

"Service Provider Account Manager" ("Account Manager") means such person as may be notified in that regard to the Contracting Authority by the Service Provider.

"Service Provider Production Manager" ("Production Manager") means such person as may be notified to the Contracting Authority by the Service Provider as the principal contact person assigned by the Service Provider from time to time for the day to day management of the delivery of the Services and the management of the Full-Time Staff, Part-Time Staff and Back-up Staff on behalf of the Service Provider.

"Service Provider Staff" means the employees, agents and independent contractors which the Service Provider and permitted sub-contractors use to perform the Services, and includes Part-Time Staff, Back Up Staff, Full-Time Staff and temporary day staff.

"Service Provider Technical Supervisor" ("Technical Supervisor") means the principal person on the Service Provider Staff responsible for maintenance (preventative and breakdown) and technical support Services, including but not limited to maintenance of full records relating to all technical matters, taking of all necessary steps to restore service in the event of Service Failure, definition, maintenance and testing of business continuity and contingency plans, provision of technical information to the Production Manager and third Parties as from time to time may be required, ensuring conformity with appropriate technical standards.

"Services" means the services described in Schedule I, and any changes to the Services as may be agreed between the Parties from time to time in accordance with the Change Request Procedure. For the avoidance of doubt, the Services shall include the Content Service.

"Sitting Day" means a day that the Dail, Seanad or Committee are in session, as the context may require.

"Sound Contractor" means the contractor responsible for operation and maintenance of the sound acquisition, recording, editing, replay and archiving system used in the Premises.

"Stock" means physical media including but not limited to data, video and audio tapes, DVD's, optical discs, magnetic discs, labels, boxes and paper.

"Term" means the term of the Agreement as provided for in Clause 2 which includes the "Initial Term".

"Third Party Service Provider" means a third party service provider or supplier to the Contracting Authority, an illustrative list of which, as of the Effective Date, is set out in Schedule H.

"Third Party Services" means any services provided by a Third Party Service Provider.

"Unscheduled Events" means (1) special sittings of the Houses of the Oireachtas and (2) sittings of the Houses of the Oireachtas or their Committees during scheduled recess weeks and (3) sittings of Committees and/or the Houses outside of Dublin.

"Year" means a calendar year of the Term, beginning on 1 January and ending on 31 December; "Year 1" shall mean 1 January 2011 to 31 December 2011, "Year 2" shall mean 1 January 2012 to 31 December 2012 and other years of the Term shall be denoted accordingly.

1.2 In this Agreement and the schedules hereto:

- (a) A reference to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as amended, extended or re-enacted prior to the date hereof and, subject to Clause 3.12, all statutory instruments, regulations or orders made pursuant thereto.
- (b) Reference to the singular includes reference to the plural and vice versa and reference to the masculine gender includes reference to the feminine and neuter genders and vice versa.
- (c) Unless the context clearly otherwise requires, reference to any Clause, sub-Clause, paragraph, recital, Schedule or Annexure or Attachment is to a Clause, sub-Clause, paragraph, recital, Schedule or Annexure or Attachment (as the case may be) of or to this Agreement.
- (d) The Schedules to this Agreement form an integral part of this Agreement and shall have as full effect as if they were expressed in the body of this Agreement and the expressions "this Agreement" and "the Agreement" as used in any of the Schedules shall mean this Agreement.
- (e) Words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall unless the context clearly indicates to the contrary refer to the whole of this Agreement and not to any particular section or Clause hereof.
- (f) Reference to persons includes references to bodies corporate, unincorporated associations, firms and partnerships.
- (g) In construing this Agreement and the Schedules hereto the so-called "ejusdem generis rule" shall not apply and accordingly the interpretation of general words shall not be restricted by being preceded, or by being followed, by words indicating a particular class of acts, matters or things.
- (h) Reference to a document is, subject to Clause 3.12, a reference to that document as from time to time supplemented or varied.
- (i) Headings to clauses are for convenience only and do not affect the interpretation of this Agreement.

2 COMMENCEMENT OF SERVICES AND TERM

- 2.1 This Agreement shall commence with effect from the Effective Date and shall have an initial term of three years from that date (the "Initial Term") unless terminated earlier in accordance with this Agreement.
- 2.2 The Contracting Authority may, at its sole discretion, extend this Agreement on two occasions beyond the Initial Term for a period of up to one year per extension, being a period of two years in total, provided that the Contracting Authority notifies the Service Provider of the first such extension three months prior to the conclusion of the initial contract term, and of the second such extension three months prior to the conclusion of the first extended term. Unless so extended, this Agreement automatically terminates at the end of the Initial Term, and, if extended, automatically terminates at the end of the

first or second extended Term, as the case may be, unless terminated earlier in accordance with this Agreement.

3 THE SERVICES

- 3.1 The Service Provider shall provide the Services as set out in this Agreement in compliance with Standing Orders of the Dail and Seanad and the Rules of Coverage. The Service Provider will liaise and co-operate with the Contracting Authority and the Broadcast Manager in relation to the provision of the Services. It is required that the Service Provider operate to a series of Key Performance Indicators (KPI) for the provision of the Services. The Service Provider shall be responsible for putting in place system or systems for capture, monitoring and reporting of KPI data to the Contracting Authority, in accordance with Schedule L. It is required that presentation and discussion of KPI will form an agenda item at monthly service review meetings, however significant non-compliance with KPI should be brought to the attention of the Broadcast Manager promptly upon discovery at all times.
- 3.2 The Service Provider shall, when requested by the Contracting Authority, provide the Services off site or at an alternative or temporary venue other than Leinster House. The Equipment necessary for the provision of such Services shall either be supplied to the Service Provider from existing stores or existing installations in the Houses of the Oireachtas or shall be rented or leased by the Contracting Authority from a third party on a temporary basis. The Service Provider shall provide all operational and technical services necessary in the selection, provision, setting up, testing, maintenance and operation of such equipment and, where appropriate, the return of such equipment to third party suppliers. Any reasonable additional costs and expenses incurred by the Service Provider incurred as a result of providing such Services off site or at alternative or temporary venues shall be borne by the Contracting Authority provided such additional costs and expenses are agreed in advance with the Contracting Authority, such agreement not to be unreasonably withheld or delayed.
- 3.3 The Contracting Authority confirms that, in so far as it is aware, the Equipment set out in Schedule A is an accurate list of the equipment owned by the Contracting Authority used to deliver the Services prior to the Effective Date and that such Equipment is located at the Premises. Within six weeks of the date of signing hereof the Service Provider shall, in the company of a nominated representative of the Contracting Authority (who shall make themselves available when reasonably requested by the Service Provider during Normal Working Hours), audit the Equipment list set out in Schedule A and shall notify the Contracting Authority:
- (a) of changes that it believes should be made to the list in Schedule A to reflect such Equipment as at the date of the notice; or
 - (b) that it confirms that the list of the Equipment as set out in Schedule A is accurate.
- 3.4 Within twenty-one days of a notice referred to in Clause 3.3(a), the Contracting Authority shall notify the Service Provider of its approval of the revised Equipment list, such approval not to be unreasonably withheld or delayed or the Contracting Authority shall notify the Service Provider that it does not agree with the revised Equipment list. In the event of the latter notice being received by the Service Provider, the Service Provider will organise a meeting at which the Parties shall endeavour to agree the list of the Equipment.

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- 3.5 Once the Equipment list is agreed pursuant to Clause 3.3 or 3.4 it shall be deemed to be the first Assets Register, and the Service Provider shall keep the Assets Register current in all material respects in accordance with the MMS set out in Schedule D. The Parties agree to carry out an audit on the Equipment thirty days prior to the end of each Year in accordance with clauses 3.3 and 3.4.
- 3.6 As part of the Services the Service Provider will provide the Services specified in Schedule F to the Contracting Authority in respect of the management of the DMAs. The Contracting Authority acknowledges that it retains sole responsibility to, and liability for, any third party with which it has a DMA and that the Service Provider has no obligation, responsibility or liability to any third party in respect of such DMAs, including but not limited to any obligation to make any payment to any third party pursuant to a DMA. Notwithstanding any other provision of this Agreement, it is acknowledged and agreed that the Service Provider is not in breach of this Agreement and has no responsibility or liability to the Contracting Authority for:
- (a) any failure by a third party;
 - (b) any Service Failure; and/or
 - (c) any breach of this Agreement,
- which is directly attributable to (i) a failure of a third party to comply with the terms and conditions of any DMA, including any failure to deliver any goods or services save to the extent where such failure is attributable to the negligence or default of the Service Provider or its servants, agents or subcontractors; and/or (ii) any inadequacy or deficiency in the terms and conditions of any DMA or the scope of the obligations and responsibilities under any DMA.
- 3.7 In consideration for the Service Provider carrying out the Services in respect of the DMAs under this Agreement, the Service Provider shall be entitled:
- (a) after prior agreement with the Broadcast Manager, to exercise, the rights to carry out the obligations of the Contracting Authority under the DMAs as provided for in the DMAs and on behalf of and for the account of the Contracting Authority; and
 - (b) after prior agreement with the Broadcast Manager, to waive any of the rights and/or obligations owed by third parties to the Contracting Authority pursuant to the DMAs save in respect of financial rights or financial obligations owed by the third parties to the Contracting Authority pursuant to the DMAs.
- 3.8 The Contracting Authority shall also consult with the Service Provider in respect of any new DMA, necessary for the provision of the Services, which the Service Provider recommends be put in place in respect of the operations of the OBU, and the Contracting Authority may authorise the Service Provider to negotiate a DMA on its behalf during the Term on terms and conditions to be agreed between the Parties at that time, such DMA to be subject to the final approval of the Contracting Authority. If the Contracting Authority does not put in place or continue a DMA recommended by the Service Provider, the Service Provider will not be responsible or liable for, or in breach of this Agreement as a result of, any consequences of the failure to put in place such DMA and will not, subject to the Change Request Procedure, be required to remedy any consequence of such failure. In the event of the Contracting Authority requesting the Service Provider to provide additional services vis a vis any DMA to those set out in Schedule F, then the Service Provider also reserves the right to make the provision of such services conditional on the payment of additional Fees which must be agreed between the

Contracting Authority and the Service Provider in advance of the Service Provider negotiating a DMA on behalf of the Contracting Authority subject to the Change Request Procedure.

- 3.9 The Contracting Authority shall supply the Service Provider with such information as the Service Provider may from time to time reasonably require for the purpose of the performance of the Services in respect of the DMAs, insofar as the Contracting Authority has the authority to disclose such information PROVIDED that where the Contracting Authority refuses on such grounds to make any such information available the Service Provider shall be under no liability to the Contracting Authority for, and will not be in breach of this Agreement as a result of, any failure to perform such Services which is as a result of such refusal.
- 3.10 The Contracting Authority shall notify the Service Provider of any termination or expiration of a DMA or, where it sees fit, of its intention to terminate or allow the expiration of a DMA. The Contracting Authority may consult with the Service Provider prior to the renegotiation, variation, extension or renewal of the terms or conditions of any DMAs. The Contracting Authority acknowledges that any renegotiation, variance, expiration, extension, termination or renewal of a DMA shall and may not affect the Services to be provided to the detriment of the Service Provider or decrease the Fees to be paid under this Agreement without the prior written agreement of the Parties in accordance with the Change Request Procedure.
- 3.11 Either Party may request a change to the Services pursuant to the Change Request Procedure set out in Schedule C and the other Party will consider in good faith any Change requested by the requesting Party.
- 3.12 Any:
- (a) change in law;
 - (b) variation or supplementation of a document,
 - (c) change or variation of any Standing Orders of the Dail and Seanad and the Rules of Coverage, and/or
 - (d) change in the place of performance of the Services or the Location of the Equipment from the Premises,

which may result in the Service Provider suffering or incurring additional costs, expenses, time, liability or responsibility in respect of the performance of the Services or this Agreement will be dealt with pursuant to the Change Request Procedure.

- 3.13 Notwithstanding any other provisions of this Agreement, it is acknowledged and agreed that the Service Provider is not required to invest in any additional Equipment and that the Service Provider is not in breach of this Agreement and, subject to the Service Provider's obligations under Schedule F, has no responsibility or liability to the Contracting Authority or any other person as a result of any Service Failure or breach of this Agreement which is a result of any inadequacy, fault, error, shortfall or design flaw in the Equipment.

4 QMS, RMS AND MMS

- 4.1 The Service Provider and the Contracting Authority shall perform its respective functions and obligations set out in Schedules D, E and G, to develop and implement the MMS, RMS and the QMS. If the Service Provider fails to complete the development phase of the MMS, RMS and the QMS within 60 days of the date of signing hereof (or as otherwise agreed in writing between the parties) the Contracting Authority may, in its absolute discretion, notify the Service Provider of its decision to withhold ten per cent of the next Fees payment until the development phase of each of the MMS, RMS and QMS have been completed and approved by the Contracting Authority, provided that the Contracting Authority will not unreasonably withhold, delay or condition such approval.
- 4.2 Following the QMS analysis process referred in Schedule G, the Service Provider and the Contracting Authority shall review the outputs from the QMS and will discuss with each other in good faith whether it is appropriate to agree, in accordance with the Change Request Procedure, any changes to the Services, the Fees or any other provision of this Agreement.

5 SERVICE PROVIDER STAFF

- 5.1 The Service Provider undertakes to ensure that it shall have a sufficient number of Service Provider Staff with the necessary qualifications, skills, training and/or experience to provide the Services pursuant to this Agreement during Normal Working Hours, Call Out Hours and any Sitting Days, as required.

- 5.2 The Service Provider shall ensure that it has the following Full-Time Staff available, as appropriate, to perform the Services:

Production Manager, Assistant Production Manager, Facilities/Production Co-Ordinator, Technical Supervisor, Assistant Technical Supervisor.

The Service Provider shall also provide fully qualified, trained and/or experienced operators as Part-Time Staff. Without prejudice to the generality of the foregoing, the Service Provider agrees to meet its obligations regarding Service Provider Staff as set out in the Agreement, but shall be entitled to use, as Service Provider Staff, different people of equivalent qualifications and/or experience to those expressly named in the Tender. The Service Provider shall use all reasonable endeavours to procure that the Key Staff are available to perform the Services in their respective roles "Key Staff" means members of the following Business Units: Management and Administration Team; Maintenance, Installation and Technical Support; Live Operations Team/Content Repackaging and Distribution Team, or their equivalents. Replacement Key Staff should be at least of equal status or of equivalent industry qualification/experience, training and skills to the Key Staff being replaced and be suitable for the responsibilities of that person in relation to the Services. The Service Provider shall request the consent of the Contracting Authority prior to the replacement of any Key Staff and such consent shall not be unreasonably withheld or delayed.

- 5.3 The Service Provider warrants that the Service Provider Staff will have all necessary technical and/or other relevant qualifications and/or experience appropriate to their posts.
- 5.4 The Service Provider warrants that it will exercise reasonable care, skill and attention in the provision of the Services and in the appointment and monitoring of its servants, agents and sub contractors, in accordance with industry standards which would be

expected of a properly qualified and experienced service provider experienced in providing services of a similar scope, nature and size to the Services.

- 5.5 The Service Provider undertakes to ensure that appropriate members of the Service Provider Staff are available to provide Services when needed during Call Out Hours, and further undertakes to ensure that it has Back-Up Team Staff available to it, as appropriate. It is at the Service Provider's discretion as to which members of the Service Provider Staff shall be available during Call Out Hours.

6 LICENSE TO ENTER PREMISES

- 6.1 Subject to the security clearance requirements of the Contracting Authority as set out in Clause 7, the Service Provider Staff shall be permitted to enter and remain in Leinster House during the opening hours notified to the Service Provider pursuant to Clause 6.3 for the purposes of carrying out the Services. In the event of an Unscheduled Event requiring the provision of the Services outside of Leinster House, the Contracting Authority shall ensure that the Service Provider is provided with access to any relevant building or is provided with access to and the right to use mobile equipment to facilitate the provision of this Service. The Service Provider and the Service Provider Staff shall observe and comply with such rules and regulations as may be in force at any time for the use of Leinster House or any other relevant building or site as determined by the Contracting Authority, provided that such rules and regulations do not give rise to any additional costs and expenses for the Service Provider. The Contracting Authority reserves the right to refuse to admit to the Premises or any other premises or site of the Contracting Authority, as appropriate, any persons employed or engaged by the Service Provider or a subcontractor, whose admission would, in the reasonable opinion of the Contracting Authority, be undesirable. Following the Contracting Authority's refusal, the Service Provider shall be afforded a reasonable opportunity in which to provide alternative persons employed or engaged by the Service Provider, or a subcontractor as appropriate and the Service Provider will not be liable or responsible for, or in breach of this Agreement, to the extent that it cannot perform its obligations under this Agreement in the meantime (provided that it does not, in a given case, persistently propose unsuitable alternative persons or, in a number of similar cases, repeatedly propose unsuitable alternative persons which have been previously rejected).
- 6.2 If it is necessary to carry out urgent and/or unexpected maintenance or other aspects of the Services, the Contracting Authority shall grant the Service Provider Staff (within a reasonable time of a request being made to this effect) emergency access to the Premises. The Contracting Authority agrees that until such access is granted, or where such access is refused or delayed, the Service Provider shall not be in breach of this Agreement and/or liable for any damages, costs or claims arising as a result of its failure to provide the Services save to the extent that the inability to access the Premises is caused by the negligence or default of the Service Provider, its servants, agents or any subcontractors.
- 6.3 The Contracting Authority shall, within four weeks of the date of signing hereof, provide a notice to the Service Provider of the opening hours of the Premises and a contact point for emergency access, and shall provide the Service Provider with reasonable advance notice of any changes to such opening hours or contact details as may occur from time to time. The Contracting Authority shall be responsible for liaising with the Office of Public Works in relation to the upkeep, maintenance, decoration, servicing, facilities, utilities and operation of the Premises, including all fixtures, fittings and cabling and to ensure that all such matters meet all applicable Irish and EU health and safety requirements.

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- 6.4 The Contracting Authority shall provide the Service Provider with access to and use of the Equipment and the Premises free of charge for the purposes of this Agreement, and shall be responsible for ensuring that appropriate DMAs are in place for the maintenance and, as necessary, repair and replacement, of the Equipment where not to do so would unreasonably inhibit the Service Provider from providing the Services and performing its obligations under this Agreement.
- 6.5 The Contracting Authority shall ensure that the Service Provider is furnished with all details reasonably necessary for the display of on-screen captions for specified proceedings of the Houses of the Oireachtas and Committees at least one hour prior to the commencement of the proceedings, and the Service Provider shall use such details to provide the requisite on-screen captions. In the event that such details are delivered less than one hour prior to commencement of the proceedings, the Service Provider cannot guarantee that the on-screen captions will appear as required but will use reasonable endeavours to ensure that they do so appear.
- 6.6 Both the Service Provider and the Contracting Authority shall ensure that it and its agents and employees comply with law in its performance of this Agreement, and the Contracting Authority shall ensure that the Broadcast Manager notifies the Service Provider in writing and within a reasonable period of any amendments to the Rules of Coverage, with which the Service Provider shall comply.
- 6.7 The Service Provider acknowledges that the Broadcast Manager, as an agent of the Contracting Authority for the purposes of this Agreement, has complete discretion as to broadcasting, dissemination, publication or distribution of Content, and shall be the primary provider of any relevant information regarding the Contracting Authority's interpretation of the Rules of Coverage and of any clarification or guidance reasonably sought by the Production Manager regarding the performance of this Agreement.

7 SECURITY CLEARANCE

- 7.1 The Service Provider undertakes that only the Service Provider Staff with either full security clearance from the Contracting Authority, or provisional security clearance pending same, shall provide the Services in the Premises. Any Service Provider Staff that have security clearance on the first date of this Agreement by virtue of the Service Provider having previously provided services to the Contracting Authority prior to that date will be provided with temporary passes while the updated security clearance is being carried out.
- 7.2 The Service Provider shall provide the Contracting Authority with a full list of and necessary personal details (including but not limited to names, addresses and dates of birth) relating to all Service Provider Staff expected to be involved in carrying out the Services in the Premises to the extent it can do so in accordance with the Data Protection Acts 1998 and 2003 ("the Data Protection Acts"). The aforementioned security clearance procedure shall be conducted, on behalf of the Contracting Authority, by the Superintendent of the Houses (in conjunction with the Garda Síochána) and in accordance with the Data Protection Acts.
- 7.3 In the event of a negative change of the security status of any previously approved member of the Service Provider Staff, the Contracting Authority will inform Service Provider of the negative change of the security status and may direct that that person immediately cease to carry out the Services until otherwise agreed between the Parties. The Service Provider shall comply with any direction given in this regard by the Contracting Authority.

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- 7.4 Temporary/day staff will be allowed to carry out the Services at the relevant location if supervised by a member of the Service Provider Staff who has full security clearance. The Contracting Authority reserves the right to request from the Service Provider an advance list of the names of any proposed temporary/day staff. The Service Provider shall ensure that any temporary/day staff wear a day pass while in the Premises or any other relevant location.
- 7.5 If the Contracting Authority refuses to provide security clearance or revokes it in respect of a particular member of the Service Provider Staff, the Service Provider shall be afforded a reasonable opportunity in which to provide alternative persons employed or engaged by the Service Provider, or a subcontractor, as appropriate and the Service Provider will not be liable or responsible for, or in breach of this Agreement, to the extent that it cannot perform its obligations under this Agreement in the meantime (provided that it does not, in a given case, persistently propose unsuitable alternative persons or, in a number of similar cases, repeatedly propose unsuitable alternative persons which have been previously rejected).

8 **CONFIDENTIALITY**

- 8.1 The Contracting Authority undertakes that all information, to the extent that it is, and has been designated by the Service Provider in writing prior to its being imparted to the Contracting Authority as confidential or commercially sensitive or which ought reasonably be considered confidential from its nature or from the circumstances surrounding its disclosure, will be treated in strictest confidence by the Contracting Authority, save where a court or tribunal orders otherwise, and subject to the provisions of the Freedom of Information Acts 1997 and 2003 (as amended, if at all, during the term of this Agreement), and subject further to requests for information from the Comptroller and Auditor General or other public or regulatory body with which it is appropriate to comply, provided in this latter case that such body will be made aware of the confidentiality or commercial sensitivity of the information.
- 8.2 The Service Provider undertakes that all information provided to it by the Contracting Authority to the extent that such information is, and has been designated by the Contracting Authority as being confidential or commercially sensitive information or which ought reasonably be considered confidential or commercially sensitive information from its nature or from the circumstances surrounding its disclosure will be treated in strictest confidence by it, its servants, agents, contractors and advisors, other than information published by or at the direction of the Contracting Authority or otherwise already in the public domain without breach of an obligation of confidentiality, save where a court or tribunal or other regulatory body orders otherwise.
- 8.3 Each Party hereby undertakes, with respect to the other Party's Confidential Information that it (and, in the case of the Service Provider, the Service Provider Staff) shall:
- (a) use Confidential Information only for the purposes of this Agreement;
 - (b) not disclose any Confidential Information to any third party (other than where such party is making such disclosure in compliance with its other obligations hereunder, and for the purposes of performing its obligations under this Agreement) without the consent of the Disclosing Party;
 - (c) in the case of the Service Provider take all necessary precautions to ensure that all Confidential Information is held in confidence; and

(d) obtain from each member of the Service Provider Staff a signed confidentiality undertaking consistent with that given in this Clause and shall impose upon the Service Provider Staff the same obligations with respect to the Confidential Information of the other party as imposed under this Clause, before that member of the Service Provider Staff begins work in connection with the Agreement.

8.4 Nothing in this Clause 8 shall restrict the disclosure of information which:

(a) is required to be disclosed by the law of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction;

(b) has come into the public domain other than by breach of this Clause 8 or other obligation of confidentiality;

(c) was in the possession of the receiving party without restriction in relation to disclosure before the date of receipt of the disclosing party;

(d) was obtained from a third party who was free to divulge same without breaching an obligation of confidentiality; or

(e) the Disclosing Party has given prior written approval to the Receiving Party in respect of the disclosure.

8.5 The Service Provider acknowledges the Official Secrets Act 1963. The Service Provider shall ensure, by training, display of notices or by other appropriate means, that all Service Provider Staff providing the Services in connection with this Agreement have notice that these statutory provisions apply to them and shall continue so to apply after the expiry or termination of this Agreement.

8.6 The Receiving Party shall immediately report to the Disclosing Party in writing any breach or suspected breach of the Receiving Party's obligations set out in Clause 8, immediately upon becoming aware of the breach, whether by the Receiving Party any third party or, in the case of the Service Provider, any of the Service Provider Staff.

8.7 Notwithstanding the other provisions of this Clause 8, the Service Provider agrees that the Contracting Authority, pursuant to Directive 89/665/EEC and applicable EC Treaty principles, may release all and any information whether constituting confidential information or otherwise (including but not limited to information in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, policy-related, technical or otherwise) arising out of or in connection with the tender process or any part thereof and the Service Provider hereby waives any claim of confidentiality, howsoever arising, over all and any such information.

8.8 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

9 DATA PROTECTION

9.1 The Parties acknowledge that in performing their respective obligations under this Agreement a Party may process personal data received from or on behalf of the other Party ("data controller") within the meaning of the Data Protection Acts 1988 and 2003 (the "Data Protection Acts"). In such circumstances:

(a) the receiving party will only collect and process personal data in accordance with the Data Protection Acts and instructions of the data controller and solely as strictly necessary for the performance of its obligations or exercise of its rights under this Agreement; and

(b) the receiving party shall not disclose or permit the disclosure of such personal data, other than as required or otherwise permitted by law;

(c) the receiving party shall implement such technical and organisational security measures to guard against the loss, destruction, corruption or alteration of personal data as are required to comply with its obligations under the Data Protection Acts; and

(d) the data controller will ensure that the disclosure of any personal data to the receiving party is, and its instructions to the receiving party in relation to the processing of personal data are, compliant and consistent with the Data Protection Acts.

- 9.2 Each Party shall immediately notify the other Party of any breach of the first party's obligations under this Clause 9.

10 INVOICING AND PAYMENT

- 10.1 The annual fees payable by the Contracting Authority to the Service Provider in consideration for the performance of the Service Provider's obligations, including the provision of the Services under this Agreement are set out in Schedule B (the "Fees").
- 10.2 The costs payable by the Contracting Authority to the Service Provider in respect of the Service Provider's expenditures in the performance of the Services under this Agreement are, except as otherwise provided in this Agreement, set out in Schedule B (the "Costs").
- 10.3 The Fees shall be payable quarterly in equal amounts to the Service Provider by the Contracting Authority in advance of each quarter of the Year to which they relate upon submission of a valid invoice by the Service Provider to the Contracting Authority. The Costs shall be paid monthly in arrears to the Service Provider by the Contracting Authority upon submission of a valid invoice by the Service Provider to the Contracting Authority.
- 10.4 Any invoice sent by the Service Provider to the Contracting Authority shall make reference to the headings set out in Schedule B when itemising the Costs or Fees payable to the Service Provider. All invoices to be sent by the Service Provider to the Contracting Authority shall be sent to the Contracting Authority's Broadcast Manager, or such other person as may be nominated by the Contracting Authority in writing to the Service Provider from time to time.
- 10.5 The Fees and Costs set out in Schedule B are exclusive of Value Added Tax or any other applicable sales taxes. Payment will be subject to the retention by the Contracting Authority, if appropriate, in accordance with Section 523 of the Taxes Consolidation Act 1997, of any withholding taxes payable in respect to the Service Provider.
- 10.6 Any invoice payable to the Service Provider by the Contracting Authority shall, subject to Clause 10.7, be paid by cheque made payable to the Service Provider (or into the account notified to the Contracting Authority from time to time) no later than 30 days of the date of receipt by the Contracting Authority of the invoice. The Service Provider may

notify the Contracting Authority of changes to the account details mentioned above in writing from time to time.

- 10.7 The Contracting Authority undertakes to the Service Provider that it will abide by S.I. No. 388 of 2002, save that the Contracting Authority shall be entitled to dispute on reasonable grounds, the Service Provider's invoices, in whole or in part, within fourteen (14) calendar days of receipt, in which case payment of the undisputed element will be made in full in accordance with Clause 10.6 and the disputed element of the invoice shall be suspended pending the Parties' settlement or resolution of the dispute, in accordance with Clause 16 (Dispute Resolution) and then paid in full immediately upon settlement or resolution of the dispute in accordance therewith.
- 10.8 Whenever, under the Agreement, any sum of money shall be recoverable from or payable by the Service Provider in respect of Service Credits or any over-payments of Fees or Costs, the same may be deducted from any sum then due, or which at any time may become due to the Service Provider under this Agreement, subject to prior written notice to the Service Provider.
- 10.9 Except as provided for in this Agreement, nothing herein shall require the Service Provider to provide, and nothing herein shall entitle the Service Provider to payment for, goods or services beyond the scope of this Agreement, or which are not provided for in this Agreement.
- 10.10 The Service Provider shall obtain and provide to the Contracting Authority, either prior to or within thirty (30) days of the date of this Agreement, a current tax clearance certificate from the Revenue Commissioners. The Service Provider shall continue to hold, in good standing, current issues of all such certificates for the duration of this Agreement.

11 PROPERTY

11.1 Material Property

The Service Provider acknowledges that, subject to receipt of the Costs, ownership of Stock purchased by the Service Provider pursuant to this Agreement (whether blank or otherwise) shall vest in the Contracting Authority and shall remain at all times vested in the Contracting Authority whether or not such physical materials are in actual possession of the Contracting Authority, free and clear of all liens, charges and other security interests.

11.2 Intellectual Property

(a) All intellectual property rights, title and interest in all notes, reports, illustrations, diagrams, drawings, schedules, data records, images, other materials (including without limitation all and any audio, visual or audio-visual recordings, transcripts, books, papers) produced specifically for the purposes of this Agreement (collectively 'the Materials') (or any part or parts thereof) shall vest in the Contracting Authority and the Service Provider so acknowledges and confirms. For the avoidance of doubt the Service Provider hereby assigns, transfers and conveys to the Contracting Authority absolutely all intellectual property rights, title or interest in the Materials to the extent that any such intellectual property rights title or interest may be deemed by law to reside in the Service Provider.

(b) The Contracting Authority grants to the Service Provider a limited and non-exclusive, non-transferable licence to use (i) the Content, Materials and the Equipment and (ii) any notes, reports, illustrations, diagrams, drawings, schedules, data records, images, other materials (including without limitation all and any audio, visual or audio-visual recordings, transcripts, books, papers), software that the Contracting Authority directly or indirectly provides to the Service Provider pursuant to this Agreement to the extent necessary for the Service Provider to perform its obligations under this Agreement and warrants that it has the right to do so. The Contracting Authority acknowledges that the Service Provider shall have no obligation to procure any necessary consents or clearances from any individual to allow the Service Provider to televise, broadcast or record the image or voice of the person for the purposes of performing this Agreement.

12 LIABILITY AND INDEMNITIES

- 12.1 The Service Provider shall be liable for and shall indemnify the Contracting Authority, and keep it fully indemnified, against and in respect of:

(a) any liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal insofar as any such injury or damage arises out of or in the course of or by reason of the execution of the Services and to the extent that such injury or damage is due to any negligence, act, omission or default of the Service Provider, its servants or agents or any sub-contractor and its servants or agents;

(b) any liability, loss, claim or proceedings whatsoever in respect of personal injury to or disease contracted by or the death of any person whomsoever arising out of or in the course of or caused by the execution of the Services or the failure to comply with the provisions hereof and to the extent that such injury or damage is due to any negligence or default of the Service Provider, its servants or agents or any sub-contractor, its servants or agents;

provided that the Contracting Authority shall take reasonable steps to mitigate its loss, and provided that the Service Provider's liability in any particular instance shall not exceed the financial limits set out in Clause 15.

- 12.2 The Service Provider acknowledges that the Contracting Authority is relying on the Service Provider's skill, expertise and experience in providing the Services pursuant to this Agreement.
- 12.3 Subject always to Clause 12.4, neither party will be liable for any economic loss, loss of profits, business, revenue, or goodwill and/or any special, indirect or consequential loss in connection with this Agreement whatsoever which arise under or in connection with this Agreement.
- 12.4 Neither Party limits its liability for death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence or any other loss which by applicable law cannot be excluded or limited.
- 12.5 The Service Provider's liability to the Contracting Authority arising under any indemnity in this Agreement shall be without prejudice to any other right or remedy available to the Contracting Authority.

- 12.6 Nothing in this Clause 12 shall confer any right or remedy upon either party to which such party would not otherwise be legally entitled.
- 12.7 If a number of defaults give rise to substantially the same loss then they shall be regarded as giving rise to only one claim under this Agreement.
- 12.8 The Service Provider shall fully indemnify, keep indemnified and hold the Contracting Authority harmless on demand against any costs, claims, expenses or damages incurred in connection with any claim or allegation of infringement of any third party Intellectual Property Rights arising out of the provision, use or receipt of the Services.

13 **WARRANTIES AND ASSURANCES**

- 13.1 Without prejudice to any other warranties in this Agreement, the Service Provider warrants and undertakes as follows:
- (a) that it has the capacity and the authority to enter into this Agreement and to carry out its obligations and responsibilities hereunder and that the Agreement is executed by a duly authorised representative of the Service Provider;
 - (b) that the Service Provider Staff are appropriately experienced, qualified and trained and are fully acquainted with the scope of the Services to be provided;
 - (c) that it will perform the Services and use the Equipment with reasonable care, skill and attention in the provision of the Services and in a reasonably timely, workmanlike and cost effective manner which would be expected of a properly qualified and experienced service provider experienced in providing services of a similar scope, nature and size to the Services and that the Services and the deliverables shall be provided in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments, as well in compliance with the standards listed in Schedule K to the extent normally done under accepted industry standards and to the extent the Equipment is capable of doing so;
 - (d) that it shall use the Equipment for the purpose of providing the Services only and shall ensure that the Service Provider's operation of the Equipment meets all applicable Irish and EU health and safety requirements and the Contracting Authority's own internal health and safety rules to the extent made available in writing to the Service Provider; and
 - (e) that it is able to pass good title in the Stock, free from any charge or encumbrance;
 - (f) that where materials, (including for the avoidance of doubt the Stock) are used in providing the Services they will be reasonably fit for the purpose for which they were provided; and
 - (g) that all statements and representations in the Tender were, when made, as regards facts, true and accurate and, as regards expressions of opinion, honestly made on reasonable grounds. The Service Provider is not aware of any fact, matter or circumstance, and it shall advise the Contracting Authority of any fact, matter or circumstance of which it may become aware, which would render any such statement or representation to be false or misleading.

- 13.2 The Contracting Authority warrants that it has the authority to enter into this Agreement and to carry out its obligations and responsibilities hereunder.
- 13.3 The warranties commence on the Effective Date and survive termination of this Agreement for any reason.
- 13.4 The Parties will agree the appropriate records to be kept by the Service Provider in relation to the provision of the Services. The Service Provider will and must, at the Contracting Authority's reasonable request and cost, make such agreed records available for inspection or provide copies to the Contracting Authority at the end of each Year and for three years following termination of this Agreement.
- 13.5 The Service Provider excludes all conditions, undertakings, covenants, representations (other than fraudulent misrepresentations) and warranties of any kind relating to the Services or otherwise whether express or implied, whether imposed by statute (including, without limitation, section 39 of the Sale of Goods and Supply of Services Act 1980), tort, equity or common law and not expressly stated in this Agreement.

14 **TAX**

- 14.1 The Service Provider agrees to ensure that it has a valid and up-to-date tax certificate and that it shall maintain all necessary tax registrations required under legislation during the Term, and that any time during the Term if so requested by the Contracting Authority in writing, it will provide the Contracting Authority with a valid and up-to-date tax certificate and that it shall notify the Contracting Authority immediately in the event of any relevant tax certificate ceasing to be available.
- 14.2 The Service Provider acknowledges that it is responsible for ensuring that its tax affairs are in order and up-to-date during the Term. The Service Provider shall assume all responsibility for and shall pay all proper assessments in respect of all income or corporation taxes or taxes of a like nature measured by or on the net income or profits of the Service Provider, or by or on emoluments paid by the Service Provider to its employees and will operate PAYE procedures in respect of fees paid to its employees, to the extent that they are connected to this Agreement.
- 14.3 In the event that the Service Provider assigns or sub-contracts any part of the Agreement pursuant to Clause 27, the Service Provider shall retain (for inspection by the Contracting Authority) tax reference numbers for any assignees or sub-contractors whose payments exceed €650 (including VAT) and shall indemnify the Contracting Authority against any claims made against the Contracting Authority for any tax charged on the profits or income of assignees or sub-contractors so far as such profits or income related to the Services provided under this Agreement.

15 **INSURANCE**

- 15.1 The Service Provider warrants that it has taken out and will maintain during the Term of this Agreement,
 - (i) Public Liability insurance for €6,500,000 for each and every claim;
 - (ii) Professional Indemnity Insurance for €1,000,000 for each and every claim; and

(iii) Employer's Liability Insurance for €13,000,000 for each and every claim

and that the policies set out at 15.1(i) and (iii) will include provisions by which in the event of any claim, in respect of which the Service Provider would be entitled to receive indemnity under the policy, being brought or made against the Contracting Authority, the insurer will indemnify the Contracting Authority against such claims and any costs, charges and expenses incurred by the Contracting Authority in respect thereof.

- 15.2 The abovementioned policies shall be with insurers approved by the Contracting Authority, which approval shall not be unreasonably withheld.

16 ESCALATION PROCEDURE (DISPUTE RESOLUTION)

- 16.1 Either party may refer a dispute or controversy between the Parties concerning the interpretation, performance, breach or threatened breach of this Agreement and any other disputes arising out of or in connection with this Agreement (a "Disputed Matter") to the other party by sending a notice to either the Broadcast Manager or the Production Manager (as the case may be) setting out the background and the reasons why the matter is a Disputed Matter.
- 16.2 The Broadcast Manager and the Production Manager will meet to discuss the Disputed Matter and all circumstances and facts relevant to the dispute, and shall analyse the dispute with a view to negotiating and resolving it in good faith within five days of receipt of the notice referred to in Clause 16.1.
- 16.3 If the Broadcast Manager and the Production Manager are unable to resolve the Dispute within five business days of receipt of the notice referred to in Clause 16.1, then they will notify the dispute to the Account Manager of the Service Provider and the Principal Officer, Broadcasting and Information, of the Contracting Authority.
- 16.4 If the Account Manager and the Principal Officer are unable to resolve the Dispute within seven business days of receipt of the notice referred to in Clause 16.3, then either party may opt to pursue whatever rights of recourse the party has under this Agreement.

17 TERMINATION

- 17.1 The Contracting Authority may without prejudice to any other rights herein contained, at any time by notice in writing, terminate this Agreement as and from the date of service of such notice;
- (a) if the Service Provider commits an act of insolvency or enters into liquidation, whether compulsory or voluntary (except liquidation, for the purpose of reconstruction) or if the Services Provider ceases or threatens to cease to carry on its business;
- (b) if the Service Provider, being a company, shall suffer a change of control, where it may reasonably be anticipated that the change of control would, or will, have a material effect on the Service Provider's ability to perform its obligations under the Agreement;

(c) if the Service Provider is in material or persistent default of this Agreement as set out in Clause 20 and provided that, in the case of persistent default, the Contracting Authority notified the Service Provider of each default at the time it occurred; or

(d) if the Service Provider shall be subject to an event of Force Majeure in accordance with Clause 21.5(b).

- 17.2 Either Party may, at any time by notice in writing, terminate this Agreement forthwith, in the event that the other party is in material or persistent default of any obligation set out in this Agreement and provided that, in the case of persistent default, the innocent Party notified the other Party of each default at the time it occurred.
- 17.3 Termination in accordance with this Clause 17 shall not prejudice or affect any right of action or remedy, which shall have accrued or shall thereafter accrue to either Party.
- 17.4 Upon termination or expiry of this Agreement, the Service Provider shall repay forthwith to the Contracting Authority any advance payment in full, without deduction, withholding or counterclaim made by the Contracting Authority relating to Services not to be performed by the Service Provider in accordance with this Agreement as at the date of termination or expiry of this Agreement.
- 17.5 Upon termination of this Agreement for whatever reason including, but not limited to, expiry of this Agreement through the effluxion of time if, following termination, the Contracting Authority so requests the Service Provider, the Service Provider shall continue to provide such reasonable assistance as the Contracting Authority shall require to perform the Services, such reasonable assistance being chargeable at the Service Provider's then prevailing normal commercial rates.

18 SERVICE CREDITS

- 18.1 In the event the Service Provider, as a result of a Service Failure, fails to provide the Services in accordance with any individual Service Level, the Service Provider shall promptly notify the Contracting Authority of the estimated extent and duration of the Service Failure and the Contracting Authority shall, without prejudice to any applicable right of the Contracting Authority under clauses 19 and 20, be entitled to receive Service Credits from the Service Provider.
- 18.2 Service Credits shall be calculated by the Contracting Authority on a quarterly basis and credited to the following quarter's invoice. A Service Credit for a Service Failure shall be calculated as one (and not more than one) of the following as applicable:
- (a) where there is a loss of Content Service for any period of up to five (5) cumulative minutes in any one Sitting Day, the applicable Service Credit shall be 20% of the rate otherwise payable in respect of completed Content for that day by the relevant Service Provider's Staff the subject of the Service Failure, as set out in Schedule B; or
- (b) where there is a loss of Content Service for any period in excess of five (5) minutes up to and including ten (10) cumulative minutes in any one Sitting Day, the applicable Service Credit shall be 40% of the rate otherwise payable in respect of completed Content for that day by the relevant Service Provider's Staff the subject of the Service Failure, as set out in Schedule B; or

(c) where there is a loss of Content Service for any period in excess of ten (10) minutes up to and including thirty (30) cumulative minutes in any one Sitting Day, the applicable Service Credit shall be 70% of the rate otherwise payable in respect of completed Content for that day by the relevant Service Provider's Staff the subject of the Service Failure, as set out in Schedule B; or

(d) where there is a loss of Content Service for any period of in excess of thirty (30) cumulative minutes in any one Sitting Day, the applicable Service Credit shall be 100% of the rate otherwise payable in respect of completed Content for that day by the relevant Service Provider's Staff the subject of the Service Failure, as set out in Schedule B.

- 18.3 Any Service Credits may be offset by the Contracting Authority against future amounts due by the Contracting Authority to the Service Provider. In the event that a Service Credit cannot be offset within 90 days of such Service Credit arising, the Service Provider shall pay the amount of the relevant Service Credit to the Contracting Authority within 100 days of that Service Credit first arising.
- 18.4 Service Credits are in full and final settlement of any and all claims arising out of a Service Failure.
- 18.5 The Parties acknowledge that any limitation on liability set out in this Agreement excludes all Service Credits. The Service Credits for any quarter in respect of all Service Failures in that quarter is limited in aggregate to 25% of the Fees payable in that quarter.
- 18.6 The Contracting Authority may in its absolute discretion (at any point in time) waive its rights to particular Service Credits that are then due to the Contracting Authority provided that any such waiver shall not be considered as a waiver of any other or subsequent rights the Contracting Authority may have to Service Credits from time to time.
- 18.7 If a Service Failure shall continue for a period of one Sitting Day then the Service Provider shall give the Contracting Authority all reasonable assistance to arrange for part or all of the Services, at the sole discretion of the Contracting Authority, to be provided by a third party service provider as arranged by the Contracting Authority. In that event, the obligation on the Service Provider to pay Service Credits shall end with notice of the Contracting Authority's decision to transfer Services to the alternative service provider in accordance with Clause 19.3. Any restoration of the Services by the Service Provider shall be without prejudice to the Service Provider's obligation to pay Service Credits pertaining to the failure prior to the date and time of the restoration.

19 **BREACH AND 'STEP-IN' RIGHTS**

19.1 Without prejudice to Clauses 18 and 20, if at any time there is:

(a) a single Service Failure that lasts for a period of two hours in any seventy-two hour period; or

(b) a series of Service Failures that last for a period of four hours over any thirty day period; or

(c) a Force Majeure event that materially affects the Service Provider's ability to perform the Services for any period in excess of twenty four hours in any five day period provided that such is not a breach of this Agreement or a Service Failure)

the Contracting Authority may issue a notice to the Service Provider of its intention to 'step in' and to arrange for the affected Services, at the sole discretion of the Contracting Authority, to be provided by a third party service provider as arranged by the Contracting Authority in accordance with Clause 19.3.

- 19.2 If the Contracting Authority steps in to pursuant to Clause 19.3 no Service Credits will be payable or accrue for the duration of the step in and the Service Provider will have no liability whatever arising out of or in connection with any performance or non-performance of the Services during the period of step-in.
- 19.3 Without prejudice to Clauses 20 or 21, if at any time the Contracting Authority is required to 'step in' to perform the Services in accordance with clauses 19.1 or if the Service Provider is otherwise in breach of its obligations under this Agreement, the Contracting Authority will issue a notice to the Service Provider to this effect a reasonable period before doing so. If the Service Failure(s) and/or the breach(s) is not rectified to the reasonable satisfaction of the Contracting Authority within such reasonable period of time as is specified in the notice, the Contracting Authority may take such measures as it deems necessary to rectify the position, including but not limited to appointing one or more other entities to discharge the Service Provider's obligations until the Service Provider is in a position to do so.
- 19.4 The Service Provider shall reimburse the Contracting Authority in respect of its reasonable costs in discharging the Service Provider's obligations if, in the circumstances described in Clause 19.1(a) or (b) (but not in the case of Clause 19.1(c)), it steps in to discharge such obligations provided that the liability of the Service Provider in this respect shall be limited to the difference in the Fees which would have been payable to the Service Provider for the Services it failed to provide, and the costs actually incurred by the Contracting Authority in procuring the Services. The Contracting Authority will not be obliged to make further payment to the Service Provider until the Service Failure(s) and/or the breach(s) as set out in Clause 18, 19 and/or 20 have been successfully remedied PROVIDED THAT
- 19.4.1 the Contracting Authority shall use its reasonable commercial endeavours to mitigate its losses arising under this indemnity; and
- 19.4.2 the indemnity shall cease to apply if the Contracting Authority terminates this Agreement and contracts with a third party to provide the Services in lieu of the Service Provider.
- 19.5 The Contracting Authority will permit the Service Provider to resume performance of the Agreement once the Service Failure(s) and/or the breach(s) is rectified to the satisfaction of the Contracting Authority or the Force Majeure ceases.

20 DEFAULT

- 20.1 If either party shall commit a material breach of this Agreement, then, if such default shall continue (whether by action or omission) for 28 days after a notice is served by delivery to the defaulting party at its place of business or by sending the notice by prepaid registered post specifying the default, the other party may, without prejudice to any other rights or remedies, thereupon and at the latest within ten days of the expiry of the said 28 days, by notice by registered post, terminate the Agreement. In the event of such notice to the Service Provider from the Contracting Authority, or upon any other termination or expiration of the Agreement, the Service Provider shall return all property, including all property held in electronic format belonging to the Contracting Authority. The Service

Provider shall not remove, edit or in any way tamper with such property prior to returning it to the Contracting Authority.

20.2 With reference to clause 20.1 above the following *inter alia* shall be material breaches on the part of the Service Provider the:

- (a) suspension of or failure to provide all or part of the Content Services in a manner not contemplated by this Agreement;
- (b) suspension of or failure to provide all or a material part of the Services (excluding the Content Services) in a manner not contemplated by this Agreement;
- (c) refusal or persistent failure to comply with instructions from the Contracting Authority and/or the Broadcasting Manager;
- (d) breach of any warranty or indemnity given pursuant to this Agreement;
- (e) breach of clause 6.1, 7, 8, 9 and 27;
- (f) breach by the Service Provider to take out and maintain the required insurances pursuant to clause 15;
- (g) coming into disrepute as a professional entity as a result of an adverse court judgment or adverse public finding by a Tribunal or other public or regulatory body provided that in the event of an adverse court judgement the Service Provider has the right to refer the matter to dispute resolution under Clause 16; and
- (h) loss of Content caused by the Service Provider's negligence, act, default or omission.

20.3 With reference to clause 20.1 above the following *inter alia* shall be material breaches on the part of the Contracting Authority, the:

- (a) failure to pay any undisputed invoice properly due for a period of thirty days following the due date;
- (b) breach of any warranty given pursuant to this Agreement; or
- (c) material and persistent breach of clause 8, 9 and 27.

21 FORCE MAJEURE

21.1 If and to the extent that either party (the "Affected Party") is hindered or prevented by circumstances not within its reasonable ability and control, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, trade disputes, strikes, lockouts, acts or omissions of Governments or other competent authority, acts of terrorism, war, military operations, acts or omissions of third parties for whom the Affected Party is not responsible ("Force Majeure") from performing any of its obligations under this Agreement, the Affected Party shall be relieved of liability for failure to perform such obligations.

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- 21.2 The Affected Party shall promptly notify the other party (the "Other Party") of the estimated extent and duration of such inability to perform its obligations (the "Force Majeure Notification").
- 21.3 Upon becoming aware of the cessation of the event of Force Majeure the Affected Party shall immediately notify the Other Party of such cessation.
- 21.4 If, as a result of Force Majeure, the performance by the Affected Party of its obligations under this Agreement is only partially affected, the Affected Party shall nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 21.5 In the case a Force Majeure notification then, if the Force Majeure lasts for more than 30 days from the date of the Force Majeure notification and notice of cessation has not been given pursuant to Clause 21.3 and such Force Majeure prevents the Affected Party from performing its obligations in whole or to a material extent during that period, the Other Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than five days written notice to the Affected Party after expiry of the said 30 day period PROVIDED THAT such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to Clause 21.3 is received by the Other Party prior to the expiry of the five days' notice. If this Agreement is not terminated in accordance with the provisions of this sub-clause 21.5 then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party.

22 **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

- 22.1 The Service Provider shall not:
 - (a) offer to give or agree to give any person in the service of the Government any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the Government or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor
 - (b) enter into this Agreement if in connection with it a commission has been paid or agreed to be paid to any person in the Government by the Service Provider or on the Service Provider's behalf or to the Service Provider's knowledge, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been fully disclosed in writing to the Contracting Authority. In such circumstances, the Contracting Authority may (in its absolute discretion) consent to the payment of the commission in accordance with the terms and conditions of the agreement.

23 **SEVERABILITY**

- 23.1 If any clause or part of this Agreement or the application thereof shall for whatever reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect the remainder of this Agreement which shall continue in full force, provided that if any clause or part so adjudged would enforceable if amended or varied in

a manner consistent with the Parties' intentions as expressed in this Agreement, it shall thenceforth be construed as if it was so amended or varied.

24 **ENTIRE AGREEMENT**

- 24.1 This Agreement, including all Schedules and Appendices constitutes the entire agreement between the Parties with regard to the subject matter hereof and replaces, supersedes and cancels all previous arrangements, understandings or agreements, whether oral or written, between the Parties.
- 24.2 Each of the Parties confirms and agrees that it has not relied on, and has no rights and remedies in respect of, any terms, conditions, representations or warranties except those expressly set out in this Agreement, provided always, that nothing in this Agreement shall limit or exclude any liability of a party to fraud.

25 **PUBLICITY**

- 25.1 No announcement of publicity concerning this Agreement or any matter arising under or pursuant to it shall be made by the Service Provider without the prior written consent of the Contracting Authority.
- 25.2 The Service Provider undertakes that in relation to all material provided to Internal Clients, the principal logo used will be that of the OBU and no other brand will appear save for that of the Service Provider where appropriate.

26 **ASSIGNMENT / SUB-CONTRACTING**

- 26.1 The Service Provider shall not assign, novate or sub-contract any or all of its obligations under this Agreement without the prior written consent of the Contracting Authority, such consent not to be unreasonably withheld or delayed.
- 26.2 The Service Provider shall be responsible and liable for all acts and omissions of such sub-contractors as if they were the acts or omissions of the Service Provider.

27 **NOTICES**

- 27.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand, fax or by registered post to the relevant person at the following address or facsimile no. (or such other address or facsimile number as that person may by notice designate in writing from time to time to the person giving the notice):

*The Contracting Authority Address: Leinster House, Dublin 2.
Facsimile No: 01 6184523*

*The Service Provider Address: 19 Church Ave, Dunmurry, Belfast BT 17 9RS
Facsimile No:*

and shall be deemed to be received upon being delivered by hand, within two days of being sent by registered post or, in the case of a transmission by facsimile, at the time the sender's fax machine issues a transmission report that the facsimile has been sent to the relevant number, as the case may be.

28 **WAIVER**

- 28.1 No waiver by either Party of any breach of any of the terms of this Agreement in a particular instance shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other terms. No delay in taking an action will affect a Party's rights in respect of a breach.

29 **VARIATION**

- 29.1 This Agreement may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties or in accordance with the Change Request Procedure.

30 **CHOICE OF LAW**

- 30.1 This Agreement and any disputes or matters arising out of it shall be governed by and construed in all respects in accordance with the laws of Ireland and the Parties submit to the jurisdiction of the Courts of Ireland.

31 **INFORMATION**

- 31.1 The Service Provider shall, until the expiry or termination of this Agreement, immediately notify the Contracting Authority of any of the following:
- (a) any change affecting the location from which Services will be provided to the Contracting Authority,
 - (b) any imminent proposed change in control of the Service Provider to the extent that it can do so without breaching any obligation of confidentiality,
 - (c) proposed changes in Full-Time Staff involved in the provision of the Services, and
 - (d) proposed alterations to the Service Provider practices or procedures which will have a material effect on the operation of this Agreement.
- 31.2 The Service Provider shall provide to the Contracting Authority a copy of its audited accounts on a yearly basis and such other information as the Contracting Authority may reasonably request in writing from time to time provided the information requested is relevant to the performance of this Agreement.

32 TRANSFER OF SERVICE

- 32.1 The Service Provider, subject to Clause 32.2, shall, in the event of anticipated expiry, termination, suspension or non-renewal of this Agreement, and in advance of such expiry, termination or non-renewal (or during any period of suspension where appropriate) as the case may be, upon request by notice from the Contracting Authority, and within a reasonable period of receipt of such notice or such other date agreed between the Parties, liaise, consult and co-operate with the Contracting Authority, or its nominated representatives in so far as the notice reasonably specifies, so as to endeavour to facilitate a smooth handover (including no loss of or quality of Services) in a change of operator and any additional Services undertaken as part of additions to this Agreement; provided that such obligations shall not impede the Service Provider from delivering the Services during the Term.
- 32.2 Without prejudice to the provisions of Clause 32.1, where the Service Provider provides additional services other than the Services in the course of such liaison, consultation or co-operation with the Contracting Authority, the Service Provider shall be entitled to charge an additional fee, to be agreed in advance with the Contracting Authority, in respect of those additional services. Where the Agreement is terminated by the Contracting Authority due to the breach by the Service Provider of its obligations under this Agreement, the aforesaid additional support services will be provided by the Service Provider at no additional charge to the Contracting Authority.
- 32.3 The Service Provider shall undertake to comply fully with the provisions of Council Directive 2001/23/EC on the approximation of laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business, as implemented in Irish law by Statutory Instrument SI No. 131 of 2003 European Communities (Protection of Employees on Transfers of Undertakings) Regulations 2003 (hereinafter referred to as "the Regulations"), in respect of any change of Service Provider.
- 32.4 The Service Provider shall acknowledge that:
- (i) the Contracting Authority will not be responsible for any of the Service Provider's obligations under the Regulations;
 - (ii) the Service Provider shall have no recourse against the Contracting Authority with respect to any liabilities or obligations arising from the application of the Regulations;
 - (iii) the Service Provider shall indemnify and hold the Contracting Authority harmless against all claims, judgments, decrees, orders, awards, costs, liabilities and expenses howsoever arising by virtue of any failure by the Service Provider to comply with its obligations under the Regulations.

33 RELATIONSHIP BETWEEN THE PARTIES

- 33.1 Nothing in this Agreement is intended to create a relationship of agency or partnership between the Parties.
- 33.2 Except as may be expressly authorised in this Agreement:

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- (a) neither Party shall have any authority to act or make representations on behalf of the other Party; and
- (b) nothing in this Agreement shall impose any liability on either Party in respect of any liability incurred by the other Party.

AS WITNESS WHEREOF this Agreement has been entered into on the date first herein written:

SIGNED BY
for and on behalf of
the Service Provider
in the presence of

.....
Service Provider

.....
Witness

.....
Print Name

SIGNED BY
for and on behalf of
the Contracting Authority
in the presence of

.....
Contracting Authority

.....
Witness

.....
Print Name

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SCHEDULE A

Equipment Schedule

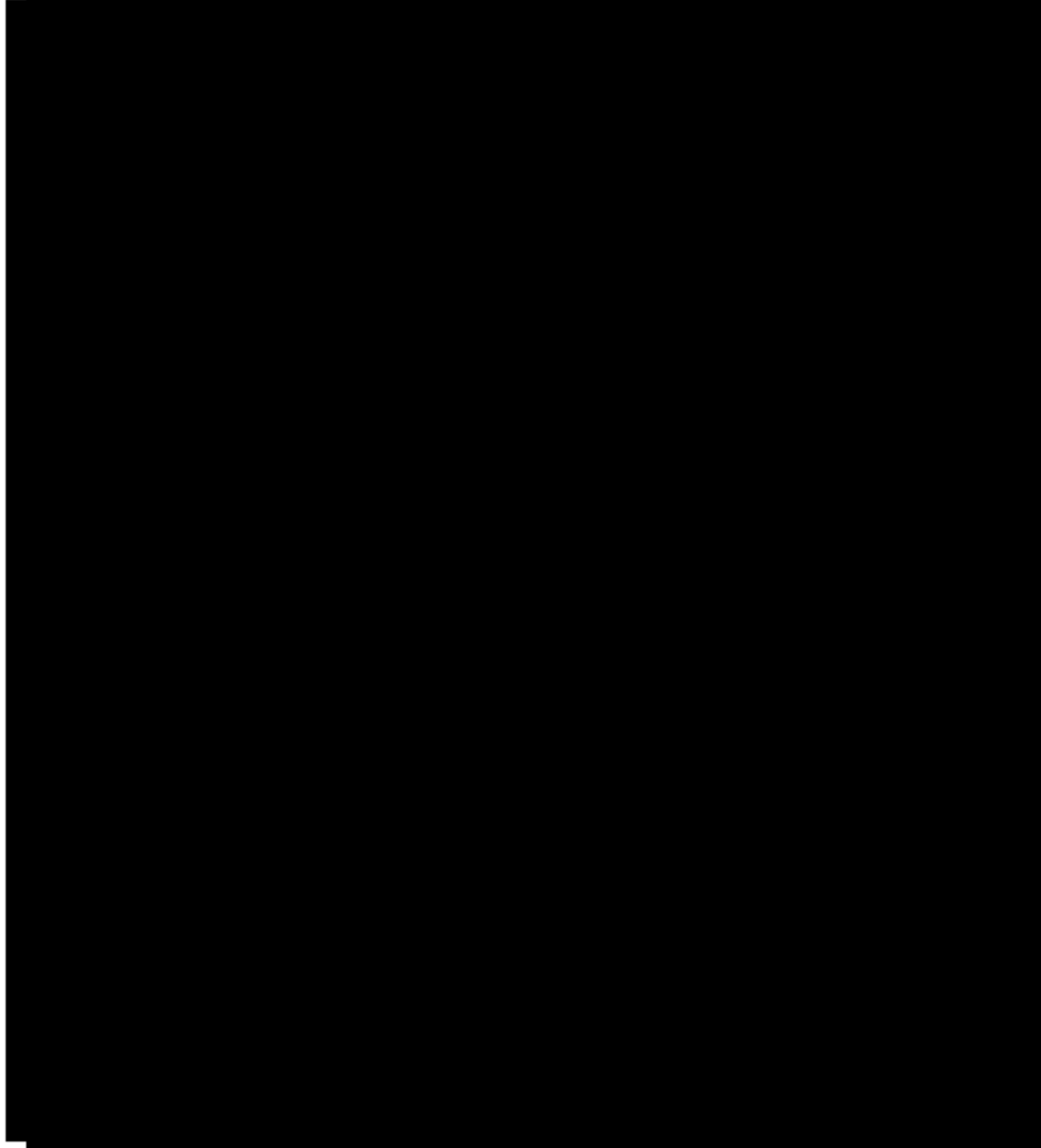
[to be completed six weeks after the date of signing the Agreement]

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SCHEDULE B

Fees and Costs

The following Schedule sets out Fees and Costs to be paid to the Service Provider by the Contracting Authority, and it supersedes the pricing sections of the Tender (including any provision relating to prices, costs or fees in the Tender) in their entirety.



SCHEDULE C

Change Request Procedure

Either Party may at any time during the Term, by notice in writing to the other Party, request a change or modification to the Services (or any related change), giving details of the proposed change, including the proposed date of implementation (a "Change"), in which case:

- (a) the Service Provider will (at its own cost) promptly provide the Contracting Authority with an evaluation of the proposed Change which will cover feasibility, impact on the Services, any resource requirements, the likely implementation date and the fees or charging principle for implementation and any changes to this Agreement;
- (b) if an evaluation report cannot be provided within twenty one (21) calendar days of the date of service of notice incorporating the request for a Change, the Service Provider will give the Contracting Authority, within ten (10) calendar days of the Service Provider's receipt of the request, a written acknowledgement of the request for a Change and an indication of when the report will be available (which shall be within a reasonable time);
- (c) the Contracting Authority will consider the evaluation report and will notify the Service Provider in writing, within twenty one (21) calendar days of the Contracting Authority's receipt of the report, of the Contracting Authority's decision whether or not to proceed with the Change in accordance with the evaluation report or any amendments to it agreed by the parties after its submission to the Contracting Authority. If the Contracting Authority:
 - (i) requests the Service Provider to proceed, then the Change shall be implemented in accordance with this Agreement and the evaluation report and the Services and Agreement shall be amended accordingly; or
 - (ii) does not require the Change to be implemented, the Services shall continue to be provided in accordance with this Agreement as if the Change had not been requested.

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SCHEDULE 3

Maintenance Management System (MMS)

[NOTE: MMS to be developed by Service Provider within 60 days of the commencement of contract]

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SCHEDULE E

Resources Management System (RMS)

[NOTE: RMS to be developed by Service Provider within 60 days of commencement of contract]

SCHEDULE =

**Technical Supervision and Maintenance Services
in Respect of Direct Maintenance Agreements**

1. The following Schedule sets out the Services in respect of the DMAs that the Service Provider shall provide and which shall be facilitated by the Contracting Authority.
2. In the event of a breakdown or fault of the Equipment in respect of which there is a DMA, the Service Provider shall, as appropriate: -
 - (i) identify whether a breakdown or a fault of the Equipment exists;
 - (ii) investigate the cause of the breakdown or fault of the Equipment;
 - (iii) attempt to remedy a breakdown or a fault of the Equipment where the Service Provider believes it may be possible, advisable or permissible under a DMA to do so;
 - (iv) contact the relevant Third Party Service Provider with whom/which the Contracting Authority has a DMA in order to inform he/she/it of the breakdown or fault and he/she/it obligations under the relevant DMA;
 - (v) correspond with the relevant Third Party Service Provider with regard to the appropriate means and location of remedial works in respect of any breakdown or fault of the Equipment; and
 - (vi) obtain an estimate of time and/or cost of repair or replacement of the Equipment from the relevant Third Party Service Provider;
 - (vii) where reasonably possible use alternative equipment to the faulty Equipment as are necessary to ensure the proper continued provision of the Services.
3. In the event of routine or scheduled maintenance services being recommended and/or provided in respect of any Equipment under a DMA ("Scheduled Maintenance Services"), the Service Provider shall:-
 - (viii) contact the relevant Third Party Service Provider with whom/which the Contracting Authority has a DMA in order to schedule the Scheduled Maintenance Services ;
 - (ix) schedule and organise the Scheduled Maintenance Services with the relevant Third Party Service Provider;
 - (x) correspond with the relevant Third Party Service Provider with regard to the appropriate means and location of the Scheduled Maintenance Services; and
 - (xi) where appropriate, obtain an estimate of time and/or cost of the Scheduled Maintenance Services from the relevant Third Party Service Provider.
4. Provided that the Broadcast Manager has approved the placing of an order with the relevant Third Party Service Provider for the repair or replacement of particular Equipment, or any Scheduled Maintenance Services for which there is a Cost, the Service Provider shall manage the Third Party Service Provider's remedial and replacement work and/or Scheduled Maintenance Services on the Contracting Authority's behalf by :

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- (i) placing a final order for remedial and replacement work or Scheduled Maintenance Services with the Third Party Service Provider;
 - (ii) delivering the broken or faulty Equipment to the Third Party Service Provider or their approved distributors, agents or suppliers, if the Service Provider considers it necessary or appropriate;
 - (iii) supervising the carrying out of remedial and installation work by Third Party Service Providers at the Premises, if the Service Provider considers it necessary or appropriate;
 - (iv) receiving and processing invoices from Third Party Service Providers for remedial and installation work carried out, replacement material or equipment provided or Scheduled Maintenance Services provided by Third Party Service Providers;
 - (v) reviewing each invoice received from Third Party Service Providers with reference to orders placed by the Service Provider with the Third Party Service Provider, the remedial and replacement work carried out by Third Party Service Providers together with any replacement material and equipment, or Scheduled Maintenance Services provided by Third Party Service Providers;
5. The Service Provider shall monitor the operations of all Direct Maintenance Agreements on behalf of the Contracting Authority and in particular, the Service Provider shall:-
- (i) Budget on an annual basis for the services and replacement materials that would be expected to be provided by Third Party Service Providers under a DMA and advise the Contracting Authority of such costs;
 - (ii) attend annual reviews of the performance of the DMAs with the Broadcast Manager;
 - (iii) maintain records of breakdowns of and faults pursuant to the MMS and maintain records of routine and/or scheduled maintenance;
 - (iv) liaise with Sony with a view to Sony establishing a reporting system reporting on the use of the archive and storage system for the Content (i.e. the Petasite which forms part of the Equipment); and
 - (v) maintain logs and schematics drawings of the Equipment as part of the MMS;
- subject to receiving reasonable support, assistance and information from the Contracting Authority and/or relevant Third Party Service Providers.
6. The Service Provider is not liable or responsible for any Equipment for which there is no DMA or an inadequate DMA or for any Equipment which the Contracting Authority declines to have maintained, repaired or replaced in accordance with the Service Provider or Third Party Service Provider's recommendation and will not be in breach of this Agreement as a result of any failure of any or all such Equipment.
7. It is acknowledged that the manufacturer(s) listed below constitute Third Party Service Providers with which the Contracting Authority has a DMA on the Effective Date.
- (a) Eurotek

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SCHEDULE G

Quality Management System (QMS)

[NOTE: QMS to be developed by Service Provider within 60 days of the commencement of the contract]

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SCHEDULE H

Third Party Service Providers and Third Party Services

1. Digital Archive System -- Eurotek

SCHEDULE I

The Services

The Service Provider will, in close liaison with the Contracting Authority's designated Broadcast Manager, be required to manage, operate and maintain all relevant aspects and the equipment of the televising facilities (except where the Contracting Authority specifies otherwise).

1. Management and administration functions

Service Provider Management and administration duties include:

1.1 Resources

- (a) To provide and organise such quantity and mix of Service Provider permanent and contract (including freelance) personnel as is required to discharge successfully the management and administrative functions of the service called for in this Agreement, including provision of any replacement personnel where conditions of absence for whatever reason apply.
- (b) To provide and organise such quantity and mix of Service Provider permanent and contract (including freelance) personnel as is required to discharge successfully the operational functions of the service called for in this Agreement, including provision of any replacement personnel where conditions of absence for whatever reason apply.
- (c) To provide and organise such quantity and mix of Service Provider permanent and contract (including freelance) personnel and other resources as is required to discharge the maintenance and technical functions of the service called for in this Agreement, including provision of any replacement personnel where conditions of absence for whatever reason apply.

1.2 Personnel training and development

- (a) Ensure competence of Service Provider personnel provided to meet the needs of this Agreement.
- (b) Design, implement and operate operator training, development and assessment programmes to ensure that operator qualifications, knowledge and skills are sufficient to meet the needs of the Service Provider's obligations under this Agreement on a continuing basis.
- (c) Deliver specific training (in conjunction with the Broadcast Manager, or such other persons delegated by the Contracting Authority as may be required), to all relevant Service Provider personnel on the Rules of Coverage on an annual basis for the purposes of refresh and following any change(s) to the Rules of Coverage.

1.3 Deployment of resources

- (a) Attend and participate in weekly, monthly and annual meetings with the Broadcast Manager to review and discuss production and service delivery matters.
- (b) Staff the OBU service desk (reception area), including telephone(s) fax and e-mail points of enquiry, during the following hours:
 - 9:45 a.m. – 6:00 p.m. Monday to Friday, excepting Bank and Public holidays and Easter and Christmas recess periods.
 - The service desk shall also be staffed for the duration of any facilities bookings.
 - A minimum of one person shall be on duty at all times.
- (c) Staff the Central Apparatus Room (CAR), during the following hours:

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9:45 a.m. – 6:00 p.m. Monday to Friday, excepting Bank and Public holidays and Easter and Christmas recess periods.

CAR shall also be staffed whenever chambers and committee rooms are in session and for the duration of any facilities bookings.

A minimum of one person shall be on duty at all times.

- (d) Liaise with such other external and internal parties (e.g. the holder of the contract for chamber and committee room audio; Office of Public Works (OPW), in relation to the Houses of the Oireachtas internal TV distribution system and other matters, to ensure satisfactory overall delivery of the televising service.

1.4 Systems and record keeping

- (a) Design, implement and operate such systems and programmes as are required to meet all statutory duties arising from this Agreement, such as in respect of health and safety.
- (b) Design, implement and operate a fit for purpose Quality Management System (QMS) to ensure that Service Provider performance under this Agreement is monitored, reported on and subject to continuous improvement over the Term.
- (c) Support and contribute actively to processes of issue and risk management within the OBU and Houses of the Oireachtas Service generally to identify and evaluate; identify possible responses; and plan, resource and monitor the effects of any workarounds or other mitigation deployed.
- (d) Operate and maintain a fit for purpose Document Management System (DMS) for the management of documents (including text, images, rich media, diagrams, drawings, schedules, software, etc) relating directly to the equipment, systems and facilities of the OBU), fully accessible to and with data usable by the Broadcast Manager.
- (e) Operate and maintain a fit for purpose Resources Management System (RMS) for the management of human and technical resources, fully accessible to and with data usable by the Broadcast Manager.
- (f) Operate and maintain a fit for purpose Maintenance Management System (MMS) system for the management of the fixed asset register of technical equipment, systems and facilities (including hardware and software elements of same) and management of planned and unplanned maintenance activity (whether, or not the subject of the maintenance is within scope of a Direct Maintenance Agreement [DMA] and including tracking of software release version management), fully accessible to and with data usable by the Broadcast Manager.
- (g) To keep and make available for use (including audit) where required necessary, accurate and proper records relating to Service Provider activity; technical consumables and maintenance spare parts usage; supplier expenditure; and equipment, systems and facilities usage in order to support management systems, including charging and invoicing by the OBU.

1.5 Service development

- (a) Pro-actively support the Broadcast Manager in identifying, assessing and quantifying needs and opportunities for changes to / development of services under and / or allied to this Agreement, including minor and major projects in connection with 'business as usual' or 'business continuity' operations.
- (b) Where elected and requested, to provide estimates to resource major projects using Service Provider and / or third party resources and, where further requested and for such consideration as may be

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required, to act as agent for the Contracting Authority in the technical consulting and management of such projects.

- (c) Support management of this Agreement by the respective parties, including the Change Request procedural component, where changes to requirements of this Agreement may be formally identified; their likely impacts on the parties to the Agreement (and others, where appropriate) assessed; and approved changes implemented in an efficient and effective manner.
- (d) On taking up this Agreement and thereafter annually, to review and recommend updates to the rate card for OBU products and services.

1.6 Transition planning and support

- (a) Following the conclusion of this Agreement, through a combination of site inspection, sound project management and general due diligence, and in liaison and co-operation with the Broadcast Manager and such other Houses of the Oireachtas Service staff and third parties as may be required, achieve a seamless¹ transition to the following Televising Contract.
- (b) Provide assistance and support to the successful tenderer for the following Televising Contract, or such contract or contracts as may be equivalent to effect a seamless transition to successive arrangements including, but not limited to, handover of records; equipment, systems and facilities familiarisation.

2. Operational functions

Service Provider Operational duties under this Agreement include:

2.1 Deployment of resources

- (a) To attend the Houses of the Oireachtas, OBU and locations associated with the equipment, systems and facilities of this Agreement and operate same in accordance with the needs of the schedules (including as revised).
- (b) To provide, hire, rig, operate, de-rig and return such equipment, systems and facilities as may from time to time be required to support unscheduled / special events (including tests in connection with business continuity planning by the Houses of the Oireachtas Service) within and in the vicinity of the Leinster / Kildare House complex and elsewhere in the Republic (including Dublin Castle).

2.2 Content production

- (a) Receive schedules, caption requirements and other requests data from the Houses of the Oireachtas Service and plan the use of human and technical resources (liaising with such internal and external parties as may be required) to successfully achieve the desired televising coverage.
- (b) To produce and deliver live, audio-visual (AV) (including captioned) content of the proceedings of the Dail, Seanad and Committee Rooms, plus any unscheduled / special events as may be required in compliance with the production (including Rules of Coverage) and technical standards contained in this Agreement, to agreed interface points in respect of:
 - the Houses of the Oireachtas internal TV distribution system;
 - The Web TV distribution system (supporting the website);
 - Recognised domestic and international broadcasters, as may from time to time be required;

¹ No interruption or loss of service (including quality) to the users of the Televising Contract.

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And:

- Such others as the Contracting Authority may from time to time require.

- (c) In connection with the production of live content (and thereafter to remain associated with recordings of such content committed to archive): To record 'Point of Interest' (PoI) metadata to the agreed metadata schema and with such frequency as may be requested by the Broadcast Manager.
- (d) To commit to the current Digital Archive, plus other supplementary broadcast and non-broadcast quality recording formats as from time to time may be required, audio-visual (AV) content of the proceedings of the Dail, Seanad and Committee Rooms, plus any unscheduled/special events as may be required in compliance with the production and technical standards contained in this Agreement.

2.3 Servicing of user requests

- (a) Service and fulfil valid and proper requests from users (including Houses of the Oireachtas Members; recognised national and international broadcasters; interested parties; and the public) for copies of content, in live or recorded form, by means of media specified, and in accordance with the rate card for OBU products and services, as may be varied from time to time.
- (b) Service and fulfil valid and proper requests from users (including recognised international broadcasters and other parties) for access to and use of Houses of the Oireachtas content and the equipment, systems and facilities of the OBU in accordance with the rate card for products and services, as may be varied from time to time.

2.4 Quality Control (QC)

- (a) To test, prior to use for producing content of the proceedings and in order to determine fitness for use and ability to deliver quality, the equipment, systems and facilities of this Agreement (including provision of satisfactory feeds supplied by the audio contractor) plus any additional equipment, systems and facilities as may from time to time be required in connection with unscheduled / special events, as above.
- (b) To monitor, assess and record details of production and technical quality and impairments, on a continuous basis for the duration of content production sessions and to record details of any irregularities.

2.5 Systems and record keeping

- (a) In connection with the production of live content: Produce and pass for use as part of the wider management reporting system(s) an appropriate Content Production Report, containing details of chamber/committee/source produced (title); date; (local) start time and duration of the production; Digital Archive filing system reference(s); vision and sound individual quality gradings and impairments, plus an overall quality grading for the production; and operational personnel (crew) details.
- (b) In connection with the recording of still and moving AV content in fulfilment of user requests: Produce and pass for use as part of the wider management reporting (including financial) system(s) an appropriate Record Report, containing details of the physical media reference number; recording title; date of recording; machine source and destination details; video aspect ratio and audio track layout details; Digital Archive filing system/source reference details; starting and finishing timecodes (where available) else index time and duration of the recording; operator comments and name.

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3. Maintenance and technical functions

Service Provider Maintenance and technical duties under this Agreement include:

3.1 Initial review

- (a) Within four weeks of commencement of this Agreement, preparation of a maintenance assessment of equipment, systems and facilities of the OBU and preparation of a report of findings and recommendations to the Broadcast Manager.

3.2 Budget preparation

- (a) Preparation of an annual maintenance budget detailing consumables, spare parts and equipment recommended for purchase for presentation to and discussion with the Broadcast Manager.

3.3 Systems and record keeping

- (a) Establish (or continue, as may be considered appropriate) and operate on an ongoing basis a fault reporting scheme with the contractor responsible for the provision of audio feeds from the chambers and committee rooms and ensure that such a scheme is integrated within the Service Provider's own overall service management process.
- (b) Establish (or continue, as may be considered appropriate) and operate on an ongoing basis a fault reporting scheme with the Houses of the Oireachtas Service and/or Office of Public Works (OPW) in relation to the Houses of the Oireachtas internal TV distribution system and ensure that such a scheme is integrated within the Service Provider's own overall service management process.
- (c) Establish (or continue, as may be considered appropriate) and operate on an ongoing basis, a fault reporting scheme with the Houses of the Oireachtas Service department / contractor responsible for the Web TV (Internet streaming) of vision and sound feeds from the chambers and committee rooms and ensure that such a scheme is integrated within the Service Provider's own overall service management process.
- (d) To ensure that technical records relating to the hardware and software elements of the equipment, systems and facilities part of this Agreement are kept up to date and available for use by Service Provider; third party maintenance contractors (whether under DMA, or not) and other Houses of the Oireachtas Service approved service providers; the Broadcast Manager; and Houses of the Oireachtas Service staff and relevant contractors, servants and agents as may be required.

The following is a non-exhaustive list of records that are included:

- Asset register
- Spare parts list
- System block diagrams and detailed drawings (mechanical and electrical)
- Cable and signal distribution frame schedules
- Technical furniture layouts, including equipment racks, control desks and monitor stacks

3.4 Maintenance and minor projects

- (a) Production, broadcasting and ICT systems health monitoring, fault diagnosis and 'root-cause' analysis.
- (b) Where requested, to act as agent in connection with DMAs that the Contracting Authority may from time to time enter into in connection with the equipment, systems and facilities of the OBU.

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- (c) Direct supply of first- and some second-line technical support (including planned and unplanned maintenance work) for the equipment, systems and facilities of the OBU other than that for which the Contracting Authority has in place a DMA.
- (d) Organising, including requesting, scheduling and otherwise managing indirectly supplied second- and third-line technical support for the equipment, systems and facilities of the OBU other than that for which the Contracting Authority has in place a DMA.
- (e) Undertaking minor project works allied to maintenance, e.g. replacement of equipment and systems on an essentially like-for-like basis.
- (f) Continuation and (where appropriate) completion of projects in progress from the commencement of this Agreement:

The following is a list of projects in progress:

- Enhancements to the IBIS MAM software suite (iFind and other software components), including in the areas of search and retrieval functionality; auto-restore of content from Digital Archive; housekeeping of storage devices (including automated, rules-based purge of disk devices).
- Refurbishment of Sony DTF-2 Petasite / legacy digital archive components.
- Migration of cataloguing metadata from legacy digital archive (Oracle / SQL database for previous Sony DTF-2 PetaSite) into IBIS MAM application.
- Migration of cataloguing metadata relating to that portion of the archive of AV content of Houses of the Oireachtas proceedings held on various videotape formats (FileMaker Pro database) into IBIS MAM application.

3.5 Consumables, spare parts and labour

- (a) To source, supply, maintain and account for technical consumables (including recording media for AV and other content) used for this Agreement. The Service Provider is permitted to levy a handling fee on technical consumables, which shall be specified in tenders.
- (b) To source, supply, maintain and account for such spare parts and labour (including any obtained on a third party basis) as from time to time may be agreed as necessary in connection with the maintenance of the equipment, systems and facilities of the OBU, used for this Agreement. The Service Provider is permitted to levy a handling fee on third party supplied spare parts and labour, which shall be specified in tenders.
- (c) Where relevant, to source, supply, maintain and account for test equipment and other maintenance facilities necessary to ensure Service Provider compliance with this Agreement.

3.6 Technical-related advice and support

- (a) Provision of advice and assistance to the Broadcast Manager and, where required, others in the Houses of the Oireachtas Service, in connection with the ongoing technical sustainability, suitability, compatibility and maintenance (including Total Cost of Ownership aspects) of the equipment, systems and facilities making up the OBU.
- (b) To assist broadcasters and service providers (in as far as is necessary under this Agreement) in resolution of issues associated with transfers of Houses of the Oireachtas content out of (and into, where appropriate) the OBU.

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3.7 Operational support

- (a) Issue requests for retrieval of archive content from off-site store; manage retrieved content while in the OBU; and issue requests for return of content to off-site store following use.

3.8 Quality Control (QC)

- (a) Implementation of technical 'workarounds' necessary in mitigation of issues affecting Service Provider performance under this Agreement.
- (b) To ensure and maintain the technical quality and data integrity of AV content (essence and metadata) committed to the Digital Archive and / or associated systems of storage.

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SCHEDULE J

Third Party Service Recipients

1. HEA Net
2. C MOD

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SCHEDULE K

Recording Standards

The OBU operates to the EBU standards – Video: EBU CCIR601 and Audio: 3205E and IEC268-10/11b

SCHEDULE L

Key Performance Indicators (KPIs)

KPI	Service Level	Notes
PERSONNEL RELATED		
Availability of staffed OBU service desk during specified office hours	99% of all hours for sitting days	Averaged, reckoned and reported monthly.
	98% of all hours for non-sitting days	
Availability of other Service Provider management and administration function in the OBU during specified office hours	99% of all hours for sitting days	Averaged, reckoned and reported monthly
	98% of all hours for non-sitting days	
Availability of Service Provider maintenance and technical function in the OBU during specified office hours	99% of all hours for sitting days	Averaged, reckoned and reported monthly
	98% of all hours for non-sitting days	
Availability of sufficient qualified operators to staff control rooms of the OBU given minimum of 24 hours notice of sitting date and time by the Contracting Authority	99.8% of all such occasions	Averaged, reckoned and reported monthly.
Availability of sufficient qualified operators to staff control rooms of the OBU given less than 24 hours notice of sitting date and time by the Contracting Authority	99.5% of all such occasions	Averaged, reckoned and reported monthly.
Availability of sufficient qualified personnel to cover unscheduled / special events taking place within Ireland given minimum of 24 hours notice of sitting date and time by the Contracting Authority	95% of all occasions	Averaged, reckoned and reported annually

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Availability of sufficient qualified personnel to cover unscheduled / special events taking place within Ireland given less than 24 hours notice of sitting date and time by the Contracting Authority.	90% of all occasions	Averaged, reckoned and reported annually.
Deliver (in conjunction with the Broadcast Manager, or such other persons delegated by the Contracting Authority as may be required) training to all personnel following notification of change(s) to Rules of Coverage	Within two weeks of issue of changed Rules of Coverage, subject only to availability of relevant Houses of the Oireachtas Service staff.	Reported monthly, following change(s).
Deliver (in conjunction with the Broadcast Manager, or such other persons delegated by the Contracting Authority as may be required) refresher training to all personnel on Rules of Coverage	Minimum once per calendar year.	Reported annually.
VISION AND SOUND QUALITY AND AVAILABILITY RELATED		
Availability of grade 4, or better, dual-channel sound across live feeds	99.5%	Excluding performance of audio contractor. As assessed at designated interface point(s). Averaged, reckoned and reported monthly across total of live content minutes.
Availability of grade 4, or better (excluding editorial accuracy) captions across live feeds	99.5%	As assessed at designated interface point(s). Averaged, reckoned and reported monthly across total of live content minutes.
Availability of grade 4, or better, vision (excluding captions component) across live feeds	99.5%	As assessed at designated interface point(s). Averaged, reckoned and reported monthly across total of live content minutes.
Availability of grade 4, or better, record to and retrieval of content committed to the current Digital Archive	99.9%	Excluding performance in respect of live feeds and migrated, previously archived, content. Averaged, reckoned and reported monthly across total of committed content hours.
Availability of cataloguing metadata for content committed to the Digital Archive under the new	99.9%	Averaged, reckoned and reported monthly across total of all committed metadata items.

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Televising Contract		
CONTENT ACCURACY RELATED		
Accuracy of captions applied by the Service Provider to chamber and committee room output feeds with respect to requests made by the Contracting Authority	99.5% of all captions applied	Averaged, reckoned and reported monthly.
Accuracy of cataloguing metadata for archived content	99% of total of all metadata items committed	Averaged, reckoned and reported monthly.
RESPONSE TIMES RELATED		
Time to amend caption applied (or to be applied) by the Service Provider to chamber and committee room output feeds	Within 5 minutes of receipt of notification to amend	Reckoned and reported monthly in respect of each and every occasion.
Time to issue notification to Broadcast Manager of actual KPI-affecting vision and sound quality and availability issue (including faults)	Within 30 minutes of occurrence	Reckoned and reported monthly in respect of each and every occasion.
Time to issue notification to Broadcast Manager of potential KPI-affecting vision and sound quality and availability issue (including faults)	Within 4 hours of occurrence	Reckoned and reported monthly in respect of each and every occasion.
Time for Service Provider to fulfil user requests (excluding shipping) for supply of content on broadcast and non-broadcast media	Within two working days from receipt of request from Contracting Authority	Averaged, reckoned and reported monthly across total of all requests.
Time for Service Provider to provide management, operations and maintenance-related information maintained under the Televising Contract upon request from	Within two working days from receipt of request from Contracting Authority	Averaged, reckoned and reported monthly across total of all requests.

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Broadcast Manager (or other person as may from time to time be authorised to request same by the Contracting Authority)		
Time to supply resources information to trigger OBU charging / invoicing in relation to servicing of user requests	Within one calendar week following date of fulfilment of request	Averaged, reckoned and reported monthly across total of all requests.
Time for Service Provider to supply information (including invoice and credit note, where applicable) relating to 'actuals' service fee if and as different from 'notional' service fee paid	Within two calendar weeks following end of relevant payment period	Reckoned in respect of each payment made by the Contracting Authority and reported in the month following.
COST SAVINGS THROUGH IMPROVING EFFICIENCY		
Overall cost savings (Management and administration and cost of content elements of contract only) delivered to the Contracting Authority as a result of Service Provider efficiency savings	Minimum 3% year on year	Reckoned and reported annually.