



Code of Fair Trading Practice

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Introduction

TG4 is the national Irish language television service established by statute in 1996 and funded by Government to deliver a full range of high quality Irish language content to audiences at home and abroad. It is a Public Service Broadcaster.

TG4's mission is to "*provide an attractive and innovative television and content service in Irish, that celebrates Irish creativity and identity – language, culture, music and sport, packaged and presented to be accessible and appealing in order to connect to audiences in Ireland and worldwide*".

TG4's objects are specified in Section 118 of the Broadcasting Act 2009 and include the following:

1. To establish and maintain and operate a public service national television broadcasting service;
2. To establish and maintain a website and teletext services;
3. To establish and maintain archives and libraries;
4. To establish and maintain a public service television broadcasting service to be made available to Irish communities outside of the island of Ireland;
5. To establish and maintain public service non-broadcast, non-linear audio-visual media services;
6. To make the service available on all platforms; and,
7. To exploit such commercial opportunities as may arise in the pursuit of its other statutory objects.

In the fulfilment of its objects, TG4 is specifically mandated to provide a comprehensive range of programmes:

- primarily in the Irish language;
- that reflect the cultural diversity of the whole island of Ireland;
- that entertain, inform and educate;
- that provide coverage of sporting, religious and cultural activities;
- of news and current affairs, primarily in the Irish language;
- for children; and,
- that provide coverage of proceedings in the Houses of the Oireachtas and the European Parliament.

Under broadcast legislation, TG4 is permitted to originate programmes and procure programmes from any source. As a publisher / broadcaster, TG4 commissions a significant amount of original Irish language programmes from the Irish language independent production sector. TG4 welcomes this partnership approach with the sector as a means of ensuring a high quality television and content service for Irish audiences both at home and abroad.

TG4's brand will be synonymous with strong, creative Irish language content. TG4's content will be available in the home, on the go and in cinemas, both in the island of Ireland and worldwide through direct and syndicated provision. Through this TG4 will ensure universal access and the normalisation of the Irish language in the daily lives of Irish people.

TG4 also commits to spending all of its public funding on the commissioning, production and broadcast of Irish language content.

Independent Producers – Our Service Commitments

TG4 is mandated by legislation to facilitate or assist contemporary cultural expression and to encourage or promote innovation and experimentation in broadcasting. TG4 delivers on this by (amongst other activities) encouraging high standards of programme quality in addition to supporting the talents and creative resources of the Irish language independent production sector.

Through TG4's content commissioning activities, it seeks to support the development of a strong independent production sector and to work directly to stimulate the knowledge and creativity of the sector.

As a Public Service Broadcaster operating largely on the Publisher-Broadcaster model, TG4 is committed to the dual aims of working in an equitable and mutually beneficial partnership with the independent production sector while ensuring the most efficient use of the public funding it receives.

On an annual basis, TG4 commissions a wide variety of programming genres from the independent production sector which are broadcast across all parts of the schedule including peak time.

TG4 commits to supporting the independent production sector by working closely with supplier companies throughout all stages of the commissioning process from the earliest creative concept development through to the production and post-production stages of each project.

TG4 commits to working with the independent production sector in a fair and honest manner. To support this, there are two key mechanisms in place (amongst others) to ensure that TG4's commercial relationship with independent producers is transparent, as follows:

- This Code of Fair Trading Practice
- Commissioning and development processes which are structured to ensure transparency and fairness. These are detailed in the ***TG4 Commissioning and Development Processes*** document. See www.tg4.ie/

Background to the Code of Fair Trading Practice

Under Section 112(1) of the Broadcasting Act 2009, TG4 is required to prepare and publish a Code of Fair Trading Practice which sets out the principles that shall apply when agreeing terms for the commissioning of programming material from independent producers.

The Act also directs the Broadcasting Authority of Ireland (BAI) to issue guidance to Public Service Broadcasters (PSBs) on the format of this Code. The Act directs the BAI to ensure that this guidance is general in nature and that it should not specify the particular items to be included in the Code. The BAI issued a guidance document in November 2017 entitled *Code of Fair Trading Practice: Guidance for Public Service Broadcasters*.

TG4 considered the contents of the BAI guidance document in drafting this Code of Fair Trading Practice which has been submitted to and approved by the Minister for Communications, Climate Action and Environment (the “Minister”), following consultation with the BAI.

The Broadcasting Act 2009 directs TG4 to include in its code reference to its approach to:

- (a) Acquisition of rights;
- (b) Multi-annual commissioning; and, (c) Timetable for contractual negotiations.

TG4's Code of Fair Trading Practice not only presents its approach to the above, it also reflects TG4's requirement, as a publicly funded organisation, to ensure that its trading practices are devised to enable it to comply with its statutory objects and that it delivers the most efficient use of public money.

The documents referred to in this Code are reviewed and updated from time to time.

Commissioning & Development Process Overview

TG4 has published *TG4's Commissioning & Development Processes* document. This document sets out for suppliers the procedures (including process for submitting commissioning proposals and decision-making timetable etc.), budget parameters and contact details as well as providing an outline of the assessment and feedback methods utilised by TG4 in commissioning content. These processes are constantly reviewed and updated. The key elements of these processes are reflected in the TG4 Commissioning & Development Processes document.

TG4 recognises the importance of transparency and of providing clear feedback relating to the commissioning and production process. It is committed to these key elements of the relationship with the independent production sector.

Development funding

- Following consideration of a submission, TG4 may decide to fund the development of a programme/series. If TG4 decides to fund the development of a programme/series, it will issue a development contract. TG4 and the production company will own all rights in the developed work equally as tenants in common save in exceptional circumstances.
- In the event that TG4 decides not to produce a programme/series based on the developed work, TG4 agrees to reassign all rights retained by TG4 in the developed work to the production company upon repayment of the development funding. TG4 however retains the right to have an end credit "developed in association with TG4" in the manner agreed with TG4, in any programme commissioned by a third party, which uses the developed work.
- If TG4 decides to commission a programme/series based on the developed work the rights in respect of the commissioned programme/series are specified in a separate agreement called the programme commissioning agreement.

Commissioning of a Programme / Series

- Following a consideration of a submission, TG4 may decide to commission the programme/series. The over-riding factor in deciding whether to commission a production company to produce programme/series will be its suitability for inclusion in the TG4's broadcast schedule. Originality, Irish language content, visual excellence and other editorial factors will also form part of the assessment.
- TG4 has drafted and published *TG4 Commissioning & Development Processes* a document which sets out the details of this process and the approach to the negotiation of the Production Budget and Cashflow arrangements.
- TG4 will commission programming by way of contracts for an individual programme or series and by way of multi-annual contracts as the needs of the schedule require.

Acquisition of Rights

Rights are acquired by TG4 to enable it to comply with its statutory objects. In addition, the objective is to enable TG4 to adapt and respond to changing market conditions, technological developments and the evolving needs of the audiences while at all times ensuring that it delivers value for money as a public funded organisation.

For the purposes of this Code of Fair Trading Practice, the following terms shall have the following meanings:

Format	means the characteristics of a Programme by which the Programme can be identified as having a unique and original identity and manner of production which is capable of being sold as “a format” as that term is understood within the audio-visual, film and television production industry.
First Broadcast Date	means the date on which TG4 first makes a Programme (or where a series, first makes the last episode of such series) available to the public or delivers the Programme to the public on any platform <u>OR</u> the date that is 9 (nine) months after accepted delivery of the Programme by TG4, whichever date is earlier (provided that making trailers or promos available to the public prior to the initial broadcast of the entire Programme will not constitute “first broadcast” for the purposes of this definition).
Gross Receipts	means the full amount received in respect of the commercial exploitation by any means of a Programme, or International Programme prior to deduction of any distribution commission/ sales agent commission, distribution expenses and/or any agreed deferral amounts.
Net Profits	means the sums received by TG4 or the Producer earned from the commercial exploitation by any means of a Programme, or International Programme after deduction of any distribution commission / sales agent commission and after deduction of distribution expenses (which shall not in total exceed 30% of the Gross Receipts) and/or after deduction of any agreed deferral amounts.
TG4 Option Period	means the period of 12 (twelve) weeks commencing on the expiration of the Initial Licence Period.
Initial Licence Period	means the period commencing on the signing of the programme commissioning agreement and ending 5 years and 7 days from the First Broadcast Date.
Second Licence Period	means the period of 5 years and 7 days from the date on which TG4 reacquires Primary/Multiplatform Rights in the Programme from the Producer on the exercise of the TG4 option to re-acquire Primary/ Multiplatform Rights after the expiration of the Initial Licence Period.

Programme	means any single episode programme or multi-episode series of programmes, produced by a Producer for TG4 under a programme commissioning contract and which is produced primarily in the Irish language and includes parts of the Programme and all sound recordings included in the soundtrack of the Programme and excerpts from sound recordings and/or other films incorporated in the Programme together with promos subtitles Programme websites interactive applications and other content produced by the Producer pursuant to the programme commissioning agreement.
International Programme	means any version of a Programme which is produced by or on behalf of the Producer with the exception of the Irish version of the Programme.
Rate Card Rates	means the TG4 rate card agreed between TG4 and SPI which specifies the licence renewal rates payable by TG4 to Producers for the re-acquisition by TG4 of Primary / Multiplatform Rights.
Secondary Rights	means Ancillary Rights and Clip Sale Rights combined.
Ancillary Rights	means those rights in the Programme set out at clause 5 below.
Clip Sale Rights	means those rights in the Programme set out at clause 6 below.
Distribution Rights	means those rights in the Programme set out at clause 3 below.
Retained Rights	means all those rights in the Programme other than those granted by the Producer to TG4 under a programme commissioning contract.
Primary / Multiplatform Rights	means those rights in the Programme set out at clause 4 below.
Producer	means any independent production company that produces a Programme under a programme commissioning contract.
Ten Year Period	means a period equivalent to the Initial Licence Period plus the Second Licence Period plus the TG4 Option Period.

1. Copyright

The fundamental principle informing this Code is that copyright in a Programme and any International Programme shall be held exclusively by the Producer unless otherwise mutually agreed by the Producer with TG4.

2. Rights granted to TG4

- (a) The Producer shall grant the Primary / Multiplatform Rights in a Programme exclusively to TG4 for the Initial Licence Period.
- (b) The Producer shall grant the Secondary Rights in a Programme to TG4 in perpetuity subject to the exclusivity provisions relating to those rights as indicated at clause 5 (Ancillary Rights) and clause 6 (Clip Sale Rights).
- (c) TG4 shall have an exclusive option, exercisable by TG4 at any time prior to the expiration of or during the TG4 Option Period, to re-acquire the Primary / Multiplatform Rights in a Programme from the Producer for the Second Licence Period. This option shall be exercised by TG4 by giving written notice of its intention to do so to the Producer and the payment by TG4 to the Producer of a licence fee at Rate Card Rates.
- (d) Any distribution agreements entered into by the Producer in respect of the Programme and/or the International Programme during the Ten Year Period must be concluded on the basis that the Primary / Multiplatform Rights will remain available to be exercised in full by TG4 during the Ten Year Period and on the basis that the Secondary Rights are exercisable by TG4 in perpetuity.
- (e) Any right exercisable by the Producer in a Programme, International Programme or Format under this Code shall be in all cases and for the avoidance of doubt, entirely without prejudice to the Primary/Multiplatform Rights and Secondary Rights in the Programme granted by the Producer to TG4.

3. Distribution Rights

The Distribution Rights and the Retained Rights in a Programme and any International Programme shall remain with the Producer and may be exercised by the Producer subject to the following restrictions and provisions and further without prejudice to clause 2(e):

- (a) The Distribution Rights may be exercised by the Producer in any medium or format (now known or yet to be developed) to include without limitation DVD, online streaming, Download-to-Own, Video on Demand, Near Video on Demand, Pay Per View and all subsidiary and merchandising rights incorporated in or derived from the Programme and the International Programme regardless of the manner or method of exploitation subject always to the restrictions set out in this clause 3.
- (b) The Producer may not exercise any of the Distribution Rights in the island of Ireland during the Ten Year Period, unless TG4 elects not to avail of its option to re-acquire the Primary/ Multiplatform Rights for the Second Licence Period, in which case the Producer may exercise the Distribution Rights in the island of Ireland after the expiration of the Initial Licence Period and the Option Period combined.
- (c) The Distribution Rights may not be exercised by the Producer outside of the island of Ireland until 28 (twenty-eight) days after the First Broadcast Date.
- (d) Exercise of the Distribution Rights by the Producer during the Ten Year Period:

- (i) Island of Ireland: During the Ten Year Period, the Producer may not exercise or permit any third party to exercise the Primary/Multiplatform Rights in the Programme or in the International Programme in the island of Ireland.
 - (ii) Outside of the island of Ireland: Unintended overspill of an International Programme which is licensed in a territory outside the island of Ireland and where the target audience for the International Programme (to include marketing and promotion of the International Programme) is audiences located outside the island of Ireland and audiences in the island of Ireland are not targeted, shall not be a breach of the restriction at 3 (d) (i) above.
 - (iii) Outside of the island of Ireland: During the Ten Year Period the Producer shall ensure that any online service on which either the Programme or the International Programme is made available outside of the island of Ireland is geo-blocked so that it is not available to internet users in the island of Ireland.
 - (iv) TG4 shall have the exclusive and sole discretion to consent, on an exceptional and occasional basis, to the lifting of all or some of the restrictions set out in clause 3 (d)(i).
 - (v) The restrictions at clause 3(d) (i) to (iii) above shall not apply after the Initial Licence Period and TG4 Option Period combined if TG4 decides not to exercise its exclusive option to re-acquire the Primary / Multiplatform Rights for the Second Licence Period, subject always to clause 3 (j) below.
- (e) During the Ten Year Period (during the Initial Licence Period and Option Period combined, if TG4 decides not to exercise its option to re-acquire Primary / Multiplatform Rights for the Second Licence Period), TG4's consent shall be required in respect of the appointment of any distributor of a Programme and/or any International Programme, such right of consent to be exercised always in good faith taking into account TG4's statutory obligations in respect of the promotion of Irish language programming in the island of Ireland and abroad and the legitimate commercial expectations of both the Producer and TG4. TG4's consent is similarly required in respect of any marketing or promotional campaigns proposed for the exercise of Distribution Rights during that same period.
- (f) In respect of the appointment of any distributor or sub-distributor or where the Producer sells rights in a Programme or any International Programme directly without the involvement of a distributor, TG4 shall have inspection rights in respect of the books of account and records of the Producer /distributor /sub-distributor in respect of such distribution and exploitation of that Programme / International Programme.
- (g) No more than 30% (thirty percent) of Gross Receipts may be deducted by way of total distribution commission and distribution expenses whether by the Producer, any distributor or sub-distributor.

- (h) The Producer shall pay to TG4 the percentage of Net Profits detailed under the Commercial Opportunities section of this Code, in perpetuity.
- (i) During any period in which TG4 holds Primary / Multiplatform Rights in the Programme, whether the Initial Licence Period, the Second Licence Period or any subsequent licence period, the consent of TG4 to the terms of any distribution agreements entered into in respect of a Programme or an International Programme shall be required, such consent to be exercised by TG4 in good faith taking into account TG4's statutory obligations in respect of the promotion of Irish language programming in Ireland and abroad and the legitimate commercial expectations of both the Producer and TG4.
- (j) When entering into any distribution agreement in respect of a Programme after the Ten Year Period, the Producer shall notify the Ard -Stiúrthóir of TG4 in writing of its intention so to do and TG4 shall indicate any or all elements of Primary / Multiplatform Rights it would like to see preserved and available for possible re-acquisition by TG4 in the future, in the context of that proposed distribution deal. The Producer shall use reasonable and good faith efforts to preserve those identified elements of the Primary / Multiplatform Rights in the distribution deal in question but shall not be required to preserve those elements of the Primary / Multiplatform Rights to its own material commercial disadvantage. After the conclusion of the distribution deal, the Producer will notify TG4 of the duration of the distribution agreement.
- (k) At all times after the Ten Year Period, TG4 shall be entitled to acquire from the Producer those elements of the Primary / Multiplatform Rights that are available at that time for re-acquisition by TG4 for a fee to be negotiated and agreed by TG4 and the Producer using prevailing Rate Card Rates at the time as a guideline for the value to be attributed to those elements of the Primary / Multiplatform Rights, being re-acquired, or where the Primary / Multiplatform Rights are re-acquired in their entirety, at prevailing Rate Card Rates for re-acquisition of the entirety of Primary / Multiplatform Rights.
- (l) The Producer will use its best endeavours to exercise the Distribution Rights to maximize profits and collect and remit the agreed share of Net Profits to TG4.
- (m) TG4 will receive such credit as it may specify in the Programme and the International Programme(s), together with promotional materials issued in connection with the Programme or International Programme as well as on any merchandising content derived from the Programme or International Programme.
- (n) Formats:
 - (i) Where a Format has been originated and developed jointly by the Producer and TG4, the format will be owned by them in equal shares as tenants in common and the Producer and TG4 shall liaise at all times with each other in respect of the exercise of the Distribution Rights in that Format and the Producer shall exercise the Distribution Rights in that Format in accordance with the distribution obligations in this clause 3 or in such other manner as is agreed with TG4. It may be agreed that those rights shall be exercised by TG4 on behalf of itself and the Producer. TG4 shall be entitled to receive 50% (fifty percent) of the Net Profits in respect of the exercise of the Distribution Rights in the joint Format to which this clause 3(n)(i) applies in perpetuity.

- (ii) Where the Format has been created exclusively by the Producer the Format will be owned by the Producer and the Producer shall exercise the Distribution Rights in that Format in accordance with the distribution obligations in this clause 3. TG4 shall be entitled to receive 15% (fifteen percent) of Net Profits in respect of the exercise of Distribution Rights in any Format to which this clause 3(n)(ii) applies in perpetuity.
 - (iii) The amount and allocation of the distribution commission and distribution expenses associated with the sale of any Format to which clause 3 (n)(i) applies shall be as agreed in good faith by the Producer and TG4.
- (o) Websites and social media:
- Subject always to the restrictions and provisions set out in this clause 3 in respect of the exercise of Distribution Rights by the Producer:
- (i) the Producer shall have the exclusive right to provide websites, social media pages and interactive applications associated with the distribution of a Programme or an International Programme(s) in any territory outside of the island of Ireland provided that the aforesaid are geo-blocked and are not accessible to any internet user in the island of Ireland during any period in which TG4 holds Primary / Multiplatform Rights in the Programme. Any promotion or marketing by the Producer of a Programme and/or an International Programme outside of the island of Ireland may not be targeted at viewers in the island of Ireland; and
 - (ii) Only with the prior written consent of TG4, which TG4 may grant or withhold in its sole discretion, may the Producer create and maintain, in a manner agreed between TG4 and the Producer, its own website in the island of Ireland, for the promotion and publicity of a Programme and / or an International Programme.
- (p) Subject always to the fundamental principle set out in this Code that Distribution Rights in a Programme and International Programme should usually be held and exercised by the Producer, alternative distribution arrangements in respect of a Programme or International Programme may be made with the mutual agreement of the Producer and TG4. on a case by case basis.

4. PRIMARY / MULTIPLATFORM RIGHTS comprise:

- (a) the unrestricted making available and delivery of a Programme or parts thereof, to the public, on all platforms and media by any method and means now known or hereafter devised where TG4 content or existing or future TG4 channels or parts thereof are made available to the public or delivered, throughout the world (on an exclusive basis in the island of Ireland and on a non-exclusive basis throughout the rest of the world) on a free, pay or subscription basis, including without limitation by means of linear, non linear, social media sites and analogous sites, TG4 owned or TG4 branded apps, internet streaming, video on demand, catch up, downloading (provided commercial download to own rights are not included in the Primary / Multiplatform rights unless otherwise agreed with the Producer), sideloading, with or without subtitles, signing, audio description or other methods of access in accordance with the access requirements

applicable to broadcasters from time to time. The Primary / Multiplatform Rights also include without limitation the right to provide and authorise the provision of Programme websites, social media pages and interactive applications associated with the Programme and the promotion of any Programme in all media including at festivals and exhibitions. The Programmes may only be delivered by way of TG4 owned services and/or TG4 branded content on third party platforms/media (unless otherwise agreed with the Producer) including without limitation on the RTE player (excluding the pay service known as the RTE International Player), an All Ireland player and other PSB services in the island of Ireland and the United Kingdom. The Primary / Multiplatform Rights include without limitation the right to supply programming to a Diaspora channel or similar initiative.

Primary / Multiplatform Rights include the right for TG4 to authorise third parties to exercise all or any of those rights .

- (b) For the avoidance of doubt and without prejudice to the Clip Sale Rights the Primary / Multiplatform Rights do not include the right for TG4 to make any licence sales of a Programme.
- (c) For the avoidance of doubt, in any situation where TG4 receives a fee or any financial remuneration in respect of any rights granted to third parties to show a Programme as part of the exercise of Primary / Multiplatform Rights (e.g. App sales) resulting in Net Profits earned by TG4, then the Producer(s) in question shall be entitled to receive the percentage of Net Profits (apportioned between them as appropriate) detailed at the Commercial Opportunities part of this Code and TG4 shall account to the Producer(s) and pay such portion of Net Profits to the Producer(s) no less than once per calendar year unless otherwise agreed with the Producer.

5. ANCILLARY RIGHTS

The Ancillary Rights are specified at clause 5 (a)-(h).

The Ancillary Rights specified at clause 5(a), (b), (c) and (g), are granted in perpetuity and shall be exercisable exclusively by TG4 within the island of Ireland and non-exclusively throughout the rest of the world for any and all periods during which TG4 holds Primary / Multiplatform Rights in the Programme and thereafter shall be exercisable non-exclusively throughout the world in perpetuity, without further payment to the Producer or any other person. The Ancillary Rights specified at clause 5(d), (e), (f) and (h) are granted in perpetuity and shall be exercisable non-exclusively by TG4 throughout the world, without further payment to the Producer or any other person.

- a) The right to make extracts from a Programme available to the public (up to 5 minutes in aggregate per half hour Programme).
- b) the right to make a Programme and/or extracts thereof available to the public for use solely for the purposes of education or research but not for commercial purposes.
- c) The right to include extracts from a Programme in other programmes produced by or for TG4. TG4 will pay the Producer a fee for such use at Rate Card Rates save that there will be no payment in respect of the use of extracts in review programmes or awards programmes.

- d) The right to use a Programme and/or extracts on a non-exclusive commercial basis to enable TG4 to comply with its statutory obligations (as amended from time to time) in respect of establishing and maintaining archives and libraries including pursuant to sections 111 and s118(1) (e) and s118 (1)(i) of the Broadcasting Act 2009 (as amended).
- e) The right to exercise all other incidental rights on a non-exclusive basis to enable TG4 to comply with its statutory objects and responsibilities (as amended from time to time) or to facilitate same, including without limitation, the ‘must offer’ obligations imposed on TG4 by the Broadcasting Act 2009 (as amended from time to time), provided that for the avoidance of doubt its acknowledged that this sub-clause 5 (e) is not intended to cover TG4’s generic statutory obligation to provide a psb service.
- f) The right to retain a Programme in the TG4 archive and on a non-exclusive basis to provide copies of a Programme and/or extracts to the public for personal, non-commercial purposes only and to educational institutions, archives, cultural institutions, or institutions of a charitable or social nature for use by such bodies for non-commercial purposes (charging a reasonable copying and / or administration fee to cover the cost of making the copy available to a member of the public for their personal use will not constitute commercial use).
- g) The right to make a Programme and/or extracts thereof available to the public on TG4 owned or TG4 branded archive sites provided that commercial download to own rights are not permitted unless otherwise agreed with the Producer. It is agreed that following the expiry of any period during which TG4 holds Primary / Multiplatform Rights in a Programme, TG4 will on request liaise with the Producer in order to facilitate a third party licence of a Programme if the archive availability of the Programme interferes materially with the commercial exploitation by the Producer of the Programme or the International Programme and TG4 will if required take down the Programme for the duration of the third party licence.
- h) The right to do all acts restricted by copyright on a non-exclusive basis solely for the purposes of the exercise of the rights granted to TG4.

Ancillary Rights include the right for TG4 to authorize third parties to exercise all or any of the Ancillary Rights.

6. CLIP SALE RIGHTS comprise:

- (a) The right to make extracts of the Programme available for sale on a non-exclusive basis throughout the world in perpetuity pursuant to TG4’s statutory commercial archive usage scheme as detailed in the Ancillary Rights at clause 5 and in the Archive section below subject to the payment by TG4 to the Producer of 50% of any commercial fee paid to TG4.
- (b) TG4 shall be entitled to deduct from any such commercial fee a sum to cover its reasonably incurred copying / administrative costs prior to sharing the balance as to 50% with the Producer.
- (c) TG4 shall be entitled to levy a charge on the requester of archive material in an amount required to cover its reasonably incurred copying / administrative costs and such charge shall not be considered a commercial fee for the purposes of this clause 6.

Clip Sale Rights include the right for TG4 to authorize third parties to exercise the Clip Sale Rights on its behalf.

7. First option to further commission:

- TG4 also has a first option to commission a further programme/series/spin-off based on a Programme on terms to be agreed in good faith between the Producer and TG4. If TG4 wishes to commission as aforesaid it will commit in principle within 12 months of the First Broadcast Date. In the event that TG4 does not commission a sequel(s) to the programme/series, TG4 shall have an end credit “developed in association with TG4” in the manner agreed with TG4, in any programme/series commissioned by a third party.
- TG4 shall inform the Producer prior to the expiration of such 12 month period if it has made a definite decision *not* to re-commission the Programme.

8. General

- (a) The Programme will be fully cleared by the Producer to allow the exploitation of the Programme without restriction worldwide in perpetuity without further payment to the Producer or any third party, unless otherwise agreed with TG4.
- (b) Further archive clearances
 - (i) Without prejudice to clause 8 (a) above and where, on an exceptional basis, TG4 has agreed to restricted clearance duration of any archive material contained in a Programme for the Initial Licence Period, TG4 shall be entitled at any time to require the Producer to extend the duration of the clearance of that archive material to enable TG4 to re-acquire Primary / Multiplatform Rights in the Programme for the Second Licence Period and / or any other subsequent licence period.
 - (ii) TG4 shall put the Producer in funds to pay the archive licence extension fees charged by the relevant archive rights holder for such further archive clearance
 - (iii) If, for good and demonstrable reason and despite the Producer’s reasonable and good faith efforts, the Producer is unable to arrange for such further archive clearance, it shall inform TG4 and the Producer and TG4 shall liaise in good faith with each other about how best to render the Programme suitable for use by TG4 to enable TG4 to re-acquire Primary / Multiplatform Rights.
 - (iv) The Producer shall not be entitled to charge a fee for its own administrative time spent engaged in obtaining such further archive clearance. The costs of any re-edit required for clearance compliance purposes pursuant to this clause 8(b), to include producer time spent on re-edit if deemed applicable, shall be negotiated in good faith between TG4 and the relevant Producer on a case-by-case basis.
 - (v) With the exception of the licence fee which is payable at Rate Card Rates and subject to this clause 8(b), no payments of any nature will be payable by TG4 to the Producer or to any third party in respect of the exercise of the Primary / Multiplatform Rights

during the Second Licence Period and/or any other subsequent licence period during which TG4 may hold Primary / Multiplatform Rights.

- (c) TG4 will own the delivery material in relation to the Programme. The Producer will own the offcuts / outtakes.
- (d) TG4 may wish to acquire certain or all of the Retained Rights on terms to be mutually agreed by the Producer with TG4 on a case by case basis.
- (e) The rights arrangements detailed in this Code do not prevent TG4 and the Producer from contractually agreeing to the grant of more comprehensive rights to TG4, should both parties so decide.
- (f) All references in this Code to “TG4 consent” shall mean the prior written consent of TG4 and, subject to clauses 3(e) and 3(h)(i), TG4 may grant or withhold such consent in its sole discretion.
- (g) Rate Card Rates shall be reviewed periodically and agreed between SPI and TG4 to ensure that Rate Card Rates are fair and equitable by reference to commercial norms in the television industry. (see footnote q) below)

Commercial Opportunities

TG4 is obliged under statute (Section 118(1)(i) of the Broadcasting Act 2009) to exploit such commercial opportunities as may arise in the pursuit of its other statutory objects. It is further obliged to maximize revenues in complying with this statutory object.

Net Profits will be divided as follows:

- Firstly, the Producer will be entitled to recoup deferrals in first position.
- Secondly TG4 is entitled to 50% of the Net Profits in respect of the Programme and the International Programme(s) in perpetuity.
- Subject to the final bullet point under this heading “Commercial Opportunities”, the Producer is entitled to 50% of the Net Profits in respect of the Programme and the International Programme(s) in perpetuity.
- In the alternative in respect of productions which are governed by this Code of Fair Trading Practice, which are co-funded by the BAI, and unless agreed otherwise with the BAI, and subject to the final bullet point under this heading “Commercial Opportunities”, the Net Profits will be divided as follows: firstly the Producer will be entitled to recoup deferrals in first position, secondly the BAI recoups its percentage of Net Profits based on its formula (i.e. BAI funding divided by the total funding x 50) with the balance of the Net Profits being divided equally between TG4 and the Producer until the BAI’s investment is recouped. In third position the Net Profits will be divided equally between TG4 and the Producer until TG4 has recouped its investment; and in fourth position TG4 will be entitled to a percentage of the Net Profits which is proportionate to TG4’s

investment in the overall funding and the Producer is entitled to the remainder of the Net Profits in perpetuity.

- In respect of productions which are governed by this Code of Fair Trading Practice and which are co-funded by other funders, Net Profits will be divided in the manner agreed with the relevant co-funders.
- Profits arising in respect of a Format produced jointly by the Producer and TG4 and profits arising from a Format produced solely by the Producer will be governed by Clause 3(n). Where a Format has been created by TG4 such Programme will fall outside the scope of this Code of Fair Trading Practice.
- TG4 will have the right to seek sponsorship in respect of the Programme and may permit sponsors to receive aural and/or visual credits within or around a Programme as permitted by applicable codes on commercial communications. Sponsorship monies will not form part of the Net Profits and will be retained exclusively by TG4. The Producer may not enter into discussions with or reach agreement with potential sponsors without TG4's consent. If TG4 consents to the Producer entering into discussions with potential sponsors and consents to the proposed sponsorship agreement, the Producer will be entitled to a finder's fee if it secures sponsorship monies, but such finder's fee will not be payable where the sponsorship money secured by the Producer is required to make up a deficit in the budget. The Producer may not enter into discussions with third parties in respect of product placement and commercial communications. TG4 may permit product placement or other forms of commercial communications within or around a Programme as permitted by applicable codes on commercial communications. Monies arising from such product placement or other commercial communications will not form part of the Net Profits and will be retained exclusively by TG4. TG4 may run competitions in and around the Programme and monies arising from such competitions after deduction of costs will form part of the Net Profits.

Archive

TG4 is obliged under the Broadcasting Act 2009 (as amended from time to time) to establish and maintain archives and libraries in the manner outlined in the Act. TG4 has the rights to enable it to comply with this object as detailed in the Ancillary Rights at clause 5 above.

In order to facilitate ease of access to programmes TG4 is granted Clip Sale Rights in respect of extracts of the Programme as detailed in the Clip Sale Rights section at clause 6 above.

TG4 will include in the clip licence agreement an entitlement to an end credit for the Producer on such third party produced programme. TG4 will take cognizance of any clearance restrictions or content sensitivities in respect of such clip licences which have been notified to the TG4 legal department and the TG4 librarian in writing at the time of the delivery of the Programme to TG4, or in exceptional circumstances prior to the licence of the clip to the third party.

Compliance

TG4 is committed to the proper protection of the integrity of the ideas of independent producers. However, TG4 has final editorial control over all Programmes and associated online and interactive content commissioned for TG4.

Producers must comply with all relevant laws including health and safety legislation tax legislation, employer legislation and data protection legislation and Programmes must comply with all codes, regulations, guidelines and requirements issued by regulatory bodies such as the BAI and others, as updated from time to time, which apply to TG4 output.

Compliance with the Code of Fair Trading Practice

This Code of Fair Trading Practice has been approved by the Minister and TG4 commits to complying fully with it.

TG4 is aware of the statutory provision that empowers the Minister to request the BAI to report on compliance by TG4 with the Code of Fair Trading Practice and of TG4's statutory duty to co-operate with the BAI in this regard.

Amendments to the Code of Fair Trading Practice

TG4 may from time to time, with the approval of the Minister, having consulted with the BAI, revise and publish amendments to this Code of Fair Trading Practice.

Dispute Resolution

In the event of a dispute in respect of the provisions of this Code of Fair Trading Practice (as opposed to a dispute in respect of a particular contract), the Rannóg na gClár will attempt to resolve the dispute in good faith in consultation with the Producer.

In the absence of resolution, the matter will be referred to the Ard- Stiúrthóir with a view to satisfactorily resolving the dispute. In the event that the dispute cannot be resolved effectively by the Ard- Stiúrthóir, it will be referred to an independent third party mediator (who will be appointed by the President for the time being of the Law Society of Ireland) for resolution.

TG4 and the Producer will seek to minimize costs during this process and all parties will be responsible for their own costs in relation to any dispute.

Exclusions to the Code of Fair Trading Practice

The following programmes fall outside of TG4's Code of Fair Trading Practice:

- Programmes where underlying rights and / or consents are acquired by TG4 from third parties to enable filming for programmes to take place e.g. live event shows, to include live sports coverage and sporting event review / preview programmes. For the avoidance of doubt, this exclusion shall not apply to sports documentaries which incorporate archive footage from programmes exempted under this provision, regardless of whether or not TG4 has acquired the necessary rights / consents directly from third parties.
- Programmes where the production company does not own or control the rights in the programme idea, format or brand, including programmes where TG4 has acquired or licensed the necessary rights directly; where TG4 has commissioned the recording of a live event TG4 will own the copyright in both the live event and the video inserts. If clips from the video inserts are used in any other programme (including TG4 programmes) then clause 6 in relation to clip sale rights shall apply. For the avoidance of doubt, this exclusion shall not apply to subsequent programmes which incorporate archive footage from programmes exempted under this provision.
- Where the production company is commissioned to produce a programme which is based on a TG4 created format/programme/idea/treatment/brand. TG4 will ensure that any commissioning round in respect of such a programme will state clearly that the programme will not fall under the Code;
- If TG4 has not incurred a legal obligation to pay at least 25% of the cost of the making of a programme before work on the making of the programme commences as outlined in the BAI Guidelines;
- Programmes where the production company agrees in its sole discretion to grant more extensive rights to TG4;
- Multiannual contracts for the purposes of delivery of a programme or series of programmes and which are connected with a format or brand belonging to TG4 shall be excluded from the Code. In the event of a conflict between this provision and any other provision in the Code relating to multiannual contracts this provision shall have precedence.
- Programmes produced pursuant to a specific scheme co-funded with third parties including without limitation e.g. Splanc, ildána, Cine4, Oscailt, Uair, Celtic format initiative;
- Programmes co-funded by third party broadcasters based outside of the island of Ireland;
- Programmes supplied by RTE to TG4 by way of the "hour per day" under s120 of the Broadcasting Act; and

- Studio based programmes based in TG4 using TG4 facilities and personnel, but nonetheless commissioned from a production company.

Communications with TG4

All feedback and communications are welcomed. They will be handled by:

Stiúrthóir na gClár

Rannóg na gClár

TG4

Baile Na hAbhann

Co. Galway

alan.esslemont@tg4.ie

Phone: 091 505050

Fax: 091 505021

You can also contact us directly through our website www.tg4.ie/foir / www.tg4.ie/feedback

Footnotes:

- a) The Programme will be produced to the highest standard in the Irish language and it will be of first class technical quality in accordance with TG4 technical standards. It will be produced in accordance with the agreed essential elements including without limitation an agreed budget, agreed production schedule and agreed personnel and any changes to the agreed essential elements must be approved by TG4. Irish language speaking contractors and employees will be engaged by the Producer. The Producer will ensure that the agreed budget is adequate to complete the production and delivery of the Programme in accordance with the programme commissioning contract. The budget will be paid in instalments into a trust account to be used by the Producer solely for the Programme, upon receipt of an invoice and tax clearance cert together with such cost reports as TG4 may request. The trust account will be subject to the normal rules applicable to trust accounts opened for TG4 funded productions. The final instalment (which may on a case by case basis include up to 60% of the production fee) will be payable, when the Programme, the delivery material and clearance paperwork have been delivered and the audit has been completed in each case to TG4's satisfaction. If the agreed budget is inadequate, the Producer is responsible for the overspend. The Producer may with TG4's consent pay any overspend from underspend in other areas of the budget and if there is still an overspend the production company will pay it from the production fee and the Producer's other resources. TG4 will however give good faith consideration to any request from the Producer for TG4 to fund a portion of the overspend, provided the overspend has been agreed in advance with TG4. Underspend arises where the Producer makes savings which are due solely to the economy and good management of the Producer. Such underspend will be divided equally between TG4 and the Producer.

- b) Any contingency provided in the budget will be retained entirely by TG4 if it is not needed.
- c) Production contracts entered into by the Producer in respect of all content included in the Programme will provide for a full buyout of all rights (including a waiver of moral rights) for the entire period of copyright including all renewals reversions and extensions and if possible in perpetuity, save as otherwise agreed by TG4 and the Producer will provide copies of the production contracts to TG4. The Programme will be fully cleared by the Producer to enable the exercise of the rights granted to TG4 and to enable the Producer to exercise the Retained Rights in each case without further payment to the Producer or any third party, save the payment to the local performing rights society in respect of the broadcast of the music in the Programme. The Producer will ensure that the Programme is original is not defamatory or in contempt of court and does not infringe the rights of any third party.
- d) Adequate production insurance will be effected and maintained by the Producer and TG4's interest will be noted on the policy, which will be supplied to TG4.
- e) TG4 shall be entitled to monitor the production editorially and financially. TG4 will have final editorial control of the Programme and may make or require the making of edits and changes to the Programme as it may decide. The Producer will make such edits as TG4 may request at the Producer's cost. If TG4 requires the Producer to make changes after approval by TG4 of the offline of the Programme, TG4 will pay for the editing cost of such changes, provided the Programme as made otherwise complies with the programme commissioning agreement. TG4 is not obliged to exercise the rights granted.
- f) TG4 shall be entitled to such credit as is specified by TG4. TG4 shall be entitled to preapprove the credits prior to their incorporation in the Programme, International Programme(s) associated materials and products and in publicity material in connection with the Programme and the International Programme(s).
- g) The Producer will remit to TG4 the applicable percentage of Net Profits within 45 days after 30 June and 31 December accompanied by a statement of account. In addition, on request the Producer will provide an annual statement to TG4 certified by the Producer's accountant and at the Producer's cost. The Producer will maintain records and books of account and TG4 will be entitled to access and copy such records and books of account.
- h) The Producer will adopt and implement employment policies consistent with employment legislation and requirements and comply with all statutory and other requirements of an employer and will pay all third parties who have provided services goods or facilities or granted rights in connection with the Programme and the International Programme(s) in a timely manner. The Producer and the production personnel will not bring TG4 into disrepute. The Producer and the production personnel will comply with policies and guidelines issued by TG4 from time to time and with all applicable legislation and regulations including without limitation health and safety requirements.
- i) Where props, sets and other items (collectively "Props") have been acquired or constructed by or on behalf of the Producer for the purposes of producing a Programme using programme production funding provided by TG4, TG4 shall be entitled to require that ownership and possession of those Props be transferred promptly to TG4 on request where TG4 may require those Props for the purposes of producing or commissioning the production of other programmes in the future, whether from the Producer or another production company.

- j) The Producer will be responsible for obtaining and maintaining all licences and making all payments to collecting agencies including without limitation in respect of any music lyrics or sound recordings included in the Programmes and International Programme(s), in respect of the exercise by or on behalf of the Producer of the Distribution Rights.
- k) The Producer will keep TG4 informed of any potential legal difficulties in respect of the Programme and will indemnify TG4 fully in respect of any claims arising. TG4 will be entitled to assume control of any claim litigation or complaint relevant to the broadcast or proposed broadcast by TG4 of a Programme and the Producer will provide TG4 with all assistance.
- l) In the event of termination or takeover of a production all monies held in the trust account will be repaid to TG4 and all goods and facilities in connection with the production of the Programme will be made available to TG4. In addition in the event of termination or takeover the Producer will assign to TG4 all copyright and all other rights in the Programme (together with the benefit of the Producer's share of the Format where the Format is owned jointly) for the full period of copyright including all renewals reversions and extensions and if possible in perpetuity and it will transfer to TG4 ownership in all parts of the Programme and all other material including offcuts/rushes which have been produced and such parts of the Programme and material together with all documentation and records in connection with the Programme will be delivered to TG4. TG4 has the right but no obligation to complete or procure the completion of the production in the event of a termination or takeover of the production.
- m) The Producer and TG4 will treat as confidential all information in connection with the Programme and in connection with each other's business bearing in mind that TG4 is subject to the provisions of the Freedom of Information Act 2014 and records and documents are liable to be disclosed pursuant to the requirements of that Act.
- n) The programme commissioning contract will include such pre-contractual, security requirements and other requirements as may be required by TG4 including in respect of Programmes which involve third party funding and no security will be given by the Producer in respect of the Programme, the production account or the Props without TG4's consent.
- o) TG4 may monitor and audit compliance by the Producer with the programme commissioning agreement.
- p) In respect of multiannual programme commissioning contracts, where there is any material reduction in the funding made available to TG4 during the term of any such contract, TG4 reserves the right to invoke the following procedure:
 - (i) TG4 shall notify the Producer in writing of the material reduction in its funding and the Producer shall take any such remedial action(s) required in writing by TG4 and / or agree to such amendments to the multiannual programme commissioning contract in question, to enable the continuation of the agreement on amended terms.
 - (ii) If the Producer has not taken such remedial action and /or agreed to such amendments within a period of 8 (eight) weeks from the date of its receipt of the notice, TG4 shall be entitled to serve 8 (eight) weeks' written notice of termination of

the contract in question on the Producer and shall have no further liability under that contract, including payment liability, from the date of termination onwards.

- q) SPI and TG4 have agreed that Rate Card Rates as per the rate card applicable at the date of this Code (see copy attached) shall apply until such time as they are replaced by a rate card reviewed and mutually agreed by SPI and TG4, which review shall be concluded by SPI and TG4 eighteen months after the date of this Code.. Rate Card Rates shall after that be mutually reviewed and agreed by SPI and TG4 every 3 years. SPI and TG4 agree that the rate card being applied prior to each such review shall continue to apply until each periodic review is concluded, after which the reviewed rate card shall apply.

CRÍOCH / END

Cárta ráta do chostas san uair ar ábhar TG4
Athcheadúnú do chraoladh neamhtheoranta il-ardán

Seánra	Fuinneog	
	2 bhliain	5 bliana
<u>Singil</u>	€	€
Cláir Faisnéise	1,500	1,750
Ob-doc/dráma faisnéise	1,750	2,000
Siamsaíocht	1,200	1,400
Ceol	1,200	1,400
Dráma	2,000	2,250
<u>Sraith</u>		
Cláir Faisnéise	1,250	1,500
Ob-doc/dráma faisnéise	1,500	1,750
Siamsaíocht	1,000	1,200
Ceol	1,000	1,200
Dráma	1,750	2,000

TG4 Rate card per hour of content
Re licensing for unlimited multi platform broadcast

Window		
Genre	2 years	5 years
<u>Single</u>	€	€
Documentaries	1,500	1,750
Ob-doc/drama doc	1,750	2,000
Entertainment	1,200	1,400
Music	1,200	1,400
Drama	2,000	2,250
<u>Series</u>		
Documentaries	1,250	1,500
Ob-doc/drama doc	1,500	1,750
Entertainment	1,000	1,200
Music	1,000	1,200
Drama	1,750	2,000