

## The BBC's General Terms for the Production of Television Programmes by Independent Producers

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# The BBC's General Terms for the Production of Television Programmes by Independent Producers

## 1. DEFINITIONS

In this Agreement unless the context otherwise requires the following expressions shall have the following meanings:

"Additional Licence Fee" – the sum payable to the Producer by the BBC under General Term 14 as an advance against the payment due to the Producer for 2 packages of further uses under General Term 15.2;

"Advances" – as defined in General Term 7.2.1;

"Agreement" - the Programme production agreement between the BBC and the Producer which includes all schedules hereto (including Schedules 1 to 8);

"Audio Publishing Rights" - the right to adapt, abridge and dramatise the soundtrack of the Programme or any part thereof or any element created therefore for the purposes of an audio recording and to produce in sound only an audio recording or a partwork or recording of the adaptation and to manufacture distribute and sell, (or license to others to do so) such recording(s) (or parts thereof) in any format throughout the world or for use in any media and to broadcast or license the broadcast of the recording in any media;

"Bank" - the bank named in the Commissioning Specification;

"BBC 1" - the BBC public service currently known as BBC1 (whether broadcast by analogue or digital means);

"BBC 2" - the BBC public service currently known as BBC2 (whether broadcast by analogue or digital means);

"BBC2W" - the BBC digital public service currently known as BBC 2 W;

"BBC 3" - the BBC digital public service currently known as BBC 3;

"BBC 4" - the BBC digital public service currently known as BBC 4;

"BBC Code of Practice" – the document entitled 'CODE OF PRACTICE - BBC'S DEALINGS WITH INDEPENDENT PRODUCERS FOR TELEVISION PROGRAMMES COMMISSIONED BY THE BBC' for the time being in force;

"BBC's Delivery Specifications" - all specifications for BBC transmission as are set out in the BBC Technical Standards for Network Television Programme Delivery (BBC 1, BBC 2, BBC 3, BBC 4, Cbeebies and the CBBC Channel) and The Widescreen Booklet, which are contained on the following website:  
[http://www.bbc.co.uk/guidelines/delivering\\_quality/delivery\\_tv.shtml](http://www.bbc.co.uk/guidelines/delivering_quality/delivery_tv.shtml)

"BBC Guidelines" – all relevant BBC guidelines published at the date of this Agreement and available on the Relevant BBC Websites and any others specifically notified to the Producer prior to the first day of principal photography;

"BBC News 24" - the BBC digital public service currently known as BBC News 24;

"BBC NI" - the BBC digital public service currently known as BBC NI;

"BBC Parliament" - the BBC digital public service currently known as BBC Parliament;

"BBC Programme Finance Manager" – the person named as such in the Special Terms

"BBC Public Services" – means the BBC's publicly funded services howsoever delivered;

"BBC Public Service Rights" – means the following irrevocable and royalty-free rights:

- (a) the exclusive right to broadcast, transmit, authorise the transmission of the Programme, and otherwise make available the Programme in those television services whether now existing or developed in the future and provided by the BBC whether by analogue or digital or other means for general reception in the UK which are Home Services and not Commercial Services as referred to in the BBC's Royal Charter (extracts from which are contained in Schedule 6) howsoever such services are delivered, including but not limited to delivery by means of terrestrial and satellite transmitters and by inclusion in cable programme services to transmit the Programme; and
- (b) the right to use or authorise the use of all or part of the Underlying Material and all other material whatsoever made or acquired in connection with the production of the Programme (including the title of the Programme and any design trade mark or other similar rights connected with the Programme) as are necessary to enable the BBC to exercise the rights granted to it under this Agreement; and
- (c) the right to exhibit and show the Programme at television or film festivals; and
- (d) the right to produce and distribute publicity and promotional materials (including publicity stills and poster shots) relating to the Programme in any media; and
- (e) the right to produce and broadcast by such means and in such manner and media and at such times as the BBC shall deem fit, trails of the Programme and extracts of the Programme for publicity purposes; and
- (f) the exclusive right to exercise the Primary New Media Rights; and
- (g) the exclusive right to complete the Programme if for any reason the Producer fails to or is unable to complete the Programme; and
- (h) the exclusive right to exercise the SER ; and
- (i) the right to use the Programme for the BBC's internal purposes; and
- (j) the right to comply with any statutory obligations; and
- (k) the right to deliver the Programme as part of the BBC's transmission service to the British Armed Forces and the Community Channel
- (l) the right to grant sublicences under paragraphs (a) to (k) above.

"the BBC Editorial Representative" - the person named as such in the Special Terms;

"Budget" - the detailed estimate of the cost of production of the Programme prepared by the Producer;

"Business Day" – means a day (other than a Saturday or Sunday) when banks are open for business in London;

"the Cash Flow Schedule" - an agreed Schedule setting out the amounts to be paid by the BBC into the Production Account and the times when they shall be paid;

"CBBC" - the BBC digital public service currently known as CBBC;

"CBeebies" - the BBC digital public service currently known as CBeebies;

"CDPA" - the Copyright Designs and Patents Act 1988 or any statutory amendment thereof or re-enactment or modification from time to time in force or regulations made under such Act;

"Change of Control" - there is a "Change of Control" if any person acquires shares in the Producer carrying a majority of the voting rights then currently exercisable at a general meeting of the Producer or any person acquires the right to control a majority of the shares in the Producer carrying the voting rights then currently exercisable at a general meeting of the Producer or any person acquires the right to appoint or remove a majority of the directors of the Producer;

"Charge" - any charge in favour of the BBC which the BBC may require in relation to the Programme under the Special Terms to secure the Licence Fee;

"Character" - any clearly identifiable, distinctive and named individual (whether real, fictional, human, animal, cartoon or otherwise) originating within the Format and/or Programme which can be precisely and objectively identified visually, audibly and/or graphically by virtue of their appearance, personality, background and/or relationship with other characters and is dramatically represented by likeness, speech, action and/or gestures;

"Commercial Download Rights" - means the right from the period commencing 7 days after first BBC transmission of the Programme (or relevant episode thereof) to download (the transfer and storage of a discrete data file) or authorise the download of the Programme (or part thereof) or Format (or part thereof) by any wire or wireless means including but not limited to the internet and to permit access thereto, viewing thereof and storage of copies of the Programme so downloaded;

"Commercial New Media Rights" – means the right to use the Programme (or part thereof) in any online, interactive or other new media services in whatever format now known or invented in the future, excluding those rights granted to the BBC as part of the Primary New Media Rights;

"Commercial Website Rights" – means the right from the period commencing seven (7) days after first BBC transmission of the Programme (or relevant episode thereof) to set up a commercial website based on the Format of the Programme (but not using the Programme itself) which is editorially acceptable to the BBC (BBC approval not to be unreasonably withheld or delayed) and does not derogate from, undermine or otherwise conflict with the Primary New Media Rights;

"Commissioning Specification" – the document contained in Schedule 2 which has been agreed and sets out the detailed specification and requirements of the Programme, together with any variations thereto as may be agreed in accordance with General Term 9;

"Compliant BBC Form" – means in a form which complies with the following (or such other requirements as the BBC may notify the Producer from time to time or publish on a Relevant BBC Website):

**All documents must:**

1. Include the Producer's name and address
2. State the name of the BBC Programme Finance Manager (or their authorised deputy)
3. State the name of the Programme
4. State the Bank account details (where appropriate)
5. State the Purchase Order number
6. Be made out to the BBC
7. Have an Invoice number /unique document reference number
8. Have a specific Invoice date / tax point
9. State the total and net Value
10. Describe goods or services

**UK VAT documents:**

11. Must include VAT registration number

**Foreign VAT documents (or equivalent) must state:**

12. Foreign currency document claiming VAT - the VAT amount quoted in Sterling
13. Net amount in foreign currency & VAT quoted - exchange rate must be given

**VAT only documents must state:**

14. The words "VAT only" must appear on the document
15. Original invoice number
16. Original invoice amount

**Copy Documents must:**

17. Be acceptable to the BBC Programme Finance Manager (or their authorised deputy)
18. Show clearly the words "certified copy"
19. Have an original signature from the Producer added
20. Fax Copy documents are not acceptable

"Delivery Date" - the date or dates in the Commissioning Specification by which Tape Delivery must be received by the BBC under the terms of this Agreement time being of the essence;

"Delivery Items" - the items listed in the Schedule 3;

"Distribution Rights" - the right to exploit the Programme by all means in all media whether now known or hereafter invented excluding the rights granted to the BBC under this Agreement but including for the avoidance of doubt the Foreign Version Rights, the Commercial New Media Rights, the Library Sales Rights and the Merchandising Rights;

"Foreign Version Rights" - the right to produce (or to authorise such production) and to broadcast and otherwise exploit the Foreign Version (or to authorise such exploitation) by all means and in all media including exploitation of all ancillary and derivative rights arising in respect of the Foreign Version outside the UK and Eire;

"Foreign Version" - a television programme or one or more series of programmes based on the Programme and/or the Format (and any remakes of and prequels or sequels to such programme or series of programmes) in a version designed for exploitation outside the UK and Eire;

"Format" - the characteristics including without limitation any or all of the structure, set and/or setting, Characters, Character relationships, themes, narrative development, concepts, situations, rules, questions, contestants, prizes, catchphrases, transmission title and any other material factors which together comprise the distinctive elements of the Programme;

"Full Delivery" - Tape Delivery and Paper Delivery;

"Further Programme" - a programme or series of programmes based wholly or substantially on the Programme and/or the Format (including any prequel, sequel, Spin-Off or remake);

"the Insurances" - the insurances described in General Term 8;

"Insolvency Events" - any of the following:

- (i) any step (including application, petition, proposal or convening a meeting) is taken with a view to a composition, assignment or arrangement with any creditors of the Producer; or
- (ii) a meeting is convened for the purpose of considering any resolution for (or to petition or apply for) the winding up or administration of the Producer or any such resolution is passed; or
- (iii) any person presents a petition for the winding up of or makes an application for the administration of the Producer; or
- (iv) an order for the winding up or administration of the Producer is made; or
- (v) a notice of intention to appoint an administrator is given by the Producer, its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986) or any documents are filed with the court for the appointment of an administrator; or

- (vi) any liquidator, receiver, administrative receiver, administrator or the like is appointed in respect of the Producer or any part of its assets; or
- (vii) any other step (including application, petition, proposal or convening a meeting) is taken with a view to the administration, winding up or dissolution of the Producer;

"Key Agreements" – the Key Agreements listed in the Commissioning Specification;

"Library Sales Rights" - the right, subject to General Term 12.3, to include or to authorise the inclusion of extracts and sequences from the Programme and rushes in another audio visual work and to exploit or authorise the exploitation of such audio visual work including such extracts and sequences in any media or format whether now known or hereinafter invented;

"Licence Fee" – the total amount payable by the BBC to the Producer in accordance with Special Term 2;

"Licence Period" – the period commencing with signature of this Agreement or the date that preproduction on the Programme started whichever is the earlier and, subject always to General Term 14, continuing in force for a period of 5 years from the date of acceptance by the BBC of Full Delivery;

"Merchandising Rights" - the right to exploit the characters and items, trademarks or designs appearing in the Programme and/or based on the Format through the manufacture and sale of articles including brochures, posters, activity books, toys, games including computer games or other computer software of an instructional nature, novelties, combined packages of books and records, fabrics, apparel, food, drinks and similar goods and through premiums and promotions containing or embodying or exploiting such characters, items, trademarks or designs;

"Net Revenue" – means gross revenue arising in relation to the exercise of the Distribution Rights (less any element withheld from the relevant distributor by way of withholding tax, duty or levy) less the following deductions in the following order of priority where applicable:

- (a) reasonable and customary distribution commission in line with standard industry practice (which shall be inclusive of any sub-distributors and/or sub-licensees and/or agents' commission and which shall be approved by the BBC where the relevant distributor is, or is connected to, the Producer (such approval not to be unreasonably withheld or delayed);
- (b) all direct costs and expenses of and relating solely and directly to the exploitation of the Distribution Rights in line with standard industry practice (including but not limited to any actual costs incurred in respect of prints and master materials, publicity, advertising, shipping, freight and insurance, reversioning, editing, dubbing and subtitling the Programme, stock, duplication, physical distribution, artwork, sleeve duplication and certification);
- (c) any payments of residuals or royalties or use fees or repeat fees payable in relation to the exercise of the Distribution Rights in accordance with collective agreements applicable to the independent television production sector or otherwise in accordance with normal practice in the independent television production sector (but not including those relating to exploitation by the BBC of the BBC Public Service Rights during the Licence Period which have been prepaid);
- (d) any advances (including distribution advances) which are:
  - 1. paid by a third party to the Producer in respect of the Programme; and
  - 2. actually applied by the Producer towards the direct cost of production of the Programme; and
  - 3. recoupable by such third party

- (e) any advance made by the Producer (in excess of the Licence Fee) and actually applied towards the direct cost of production of the Programme(s) which has been agreed with the BBC and is specified in the Special Terms;
- (f) any other amounts agreed with the BBC and specified in the Special Terms (or otherwise subsequently agreed with the BBC in writing) to be recoupable or deductible from gross revenue.

except where the Producer is entitled to a share of gross revenue arising in connection with the exercise of the relevant Distribution Rights where none of the deductions listed in (a)-(f) above are applicable in which case Net Revenue shall mean the share of gross revenue arising in relation to the exercise of the Distribution Rights payable to the Producer by the distributor,

"New Media Extract Rights" means the exclusive right (subject always to the Producer's right to exercise the Promotional Online Rights) to use extracts or grabs of the Programme in any online or interactive television services forming part of the BBC Public Services in accordance with General Term 12.3 in whatever format now known or invented in the future;

"Option Period" – the period specified in General Term 22.2;

"Paper Delivery" – delivery by the Producer to the BBC of the Delivery Items listed in section D of Schedule 3 and any other items which were not delivered pursuant to Tape Delivery;

"Performer" - an individual whose performance is visible or audible in the Programme or who though not performing otherwise participates in or is visible or audible in the Programme;

"Personnel" - officers, employees, consultants, agents, representatives, contractors and advisers;

"Pilot" – a version of the Programme (or single episode of the Programme) which was made to closely create the proposed form of the Programme at approximately the same cost as the episodic cost of the Programme (excluding clearance costs), but not made with the intention of transmission and not transmitted in its delivered form;

"Power of Attorney" – any power of attorney which the BBC may require to be granted by the Producer in favour of a BBC representative;

"Primary New Media Rights" – means the right to exercise the Seven Day New Media Rights, the Streaming Rights, the New Media Extract Rights and the Primary Video-on-Demand Rights; in accordance with General Term 12.7 together with the right to re-format, re-programme or otherwise manipulate or adjust the Programme to the extent necessary to effect the efficient transmission of the Programme in the exercise of such rights;

"Primary School Programming" – programming commissioned for a primary school audience;

"Primary Rights" – all rights granted to the BBC under the General Terms of this Agreement;

"Primary Video-on-Demand Rights" – means the exclusive right within the period of seven (7) days from the relevant BBC transmission of the Programme (or relevant episode thereof) to include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near video-on-demand service forming part of the BBC Public Services;

"Production Account" - the production account for the Programme opened by the Producer at the branch of the Bank named in the Commissioning Specification;

"Production Schedule" - the schedule containing agreed details of the dates and times at which the various steps in the production of the Programme shall be carried out;

"Programme" - the programme or series of programmes designed primarily for television broadcasting described in the Commissioning Specification and which is the subject of this Agreement;

"Programme Trade Marks" - the title of the Programme, the name or likeness of any Character, any trade mark, trade name, brand name or other word, any letters, numerals, logo or other sign, any location, place, building or other thing or feature which is used to identify or is otherwise connected with the Programme or any part or combination of the foregoing;

"Promotional Online Rights" - means the Producer's right to either itself or to license distributors and/or broadcasters to feature footage from the Programme of up to three (3) minutes in duration in total on the Producer's/distributors'/broadcasters' websites provided that:

- (i) such use is solely for the purpose of publicity and promotion of the Programme and/or the Producer; and
- (ii) such material shall not remain on the relevant distributors'/broadcasters' websites for longer than 6 (six) months from transmission or the end of the distribution licence period as appropriate;

"Publicity Stills" - the publicity stills delivered by Producer to the BBC as one of the Delivery Items;

"Regional Production" - a television production which meets two out of the following three criteria:

- (a) the production company must have a substantive business and production base based in the UK outside the M25. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question and of senior personnel involved in seeking programme commissions;
- (b) at least seventy per cent (70%) of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent in the UK outside the M25; and
- (c) at least fifty per cent (50%) of the production talent (i.e not on-screen talent) by cost must have their usual place of employment in the UK outside the M25. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25;

"Regional Programme" - a television programme which:

1. deals with subject matter of specific interest to people living in the region (and of less interest elsewhere); and
2. is clearly set within the region and/or features people known to be residents of, or have close connections with, the region; and
3. meets two out of the following three criteria:
  - (a) the production company must have a substantive business and production base in the region. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions;
  - (b) at least seventy per cent (70%) of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent in the region; and
  - (c) at least fifty per cent (50%) of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the region.

Freelancers without a usual place of employment outside the region will nonetheless count for this purpose if they live in the region;

"Relevant BBC Websites" – the websites listed in Schedule 8 and any others notified to the Producer from time to time;

"Returning Series" – a Programme where the BBC has exercised its recommissioning rights under General Term 22 of this Agreement and/or the agreement relating to the commission of any Further Programme of the same series;

"SER" – simultaneous relay rights, meaning the right to transmit and authorise the transmission of the Programme by all and any technical means in and to Belgium, the Netherlands and Eire (or such other territories as shall be notified to the Producer by the BBC) provided that:

- (a) such transmission is simultaneous with the BBC's transmission in the UK of the Programme and utilises unaltered the same signals as are used for the UK transmission of one of the Home Services;
- (b) the Programme so transmitted is not cut, altered, amended or edited in any way;
- (c) the Programme does not include subtitles nor dubbing except insofar as they are included in the Programme as delivered by the Producer to the BBC;
- (d) except as herein provided any third parties authorised to transmit the Programme shall not be entitled to authorise others to exploit the Programme nor themselves to make copies thereof save to the extent that they are required to do so by law;
- (e) the BBC shall be solely liable in respect of any payments due to the owners of any underlying rights in the Programme in respect of the exercise of the rights described herein; and
- (f) appropriate payment is made for such use;

"Seven Day New Media Rights" – means the right for the period of 7 days from the relevant BBC transmission of the Programme (or relevant episode thereof) to use the Programme (or part thereof) in any online, interactive television or other new media services forming part of the BBC Public Services in whatever format now known or invented in the future, which includes for the avoidance of doubt the right to:

1. download (the transfer and storage of a discrete data file) the Programme (or part thereof) by any wire or wireless means including but not limited to the internet and to permit access thereto, viewing thereof and storage of copies of the Programme so downloaded; and/or
2. include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near-video-on-demand service;

"S4C" - a statutory corporation currently known as S4C whose remit is set out in the Broadcasting Acts 1990 and 1996 and the Communications Act 2003;

"Special Terms" - the Special Terms contained in Schedule 1 constituting part of the Agreement;

"Spin-Off" – a further programme or series of programmes featuring the Characters;

"Streaming Rights" - means the exclusive right to stream (the transfer of an apparently steady and continuous stream of data without a permanent copy of the material being made) the Programme (or parts thereof) by any wire or wireless means including but not limited to the internet (which, for the avoidance of doubt, may include a live stream of part of the Programme specifically commissioned for such purpose);

"Tape Delivery" – delivery by the Producer to the BBC of the Delivery Items relating to the Programme listed in sections A,B,C,E and F of Schedule 3 by the Delivery Date, time being of the essence;

"Transmission Day" – unlimited transmissions within the relevant channel's daily period of continuous transmission;

"The Learning Zone" – the BBC's designated programme zone for education programming;

"The Sign Zone" – any BBC service comprising of programming disseminated with signing specifically to meet the needs of the hearing impaired;

"Third Party Production Finance" – any sums over and above the Licence Fee which are required by the Producer in order to produce and deliver the Programme to the BBC in accordance with the terms of this Agreement (including any sums provided by the Producer);

"Third Party Trade Marks" – any Programme Trade Marks not being owned by the Producer or the BBC;

"UK" – the United Kingdom of Great Britain and Northern Ireland the Channel Islands and the Isle of Man and its territories and waters;

"Underlying Material" – any material of whatever nature (whether specially commissioned for the Programme or pre-existing) including the Format, any Third Party Trade Marks, any literary, dramatic, artistic or musical material or library or other sound record or other material in which copyright, design, trademarks or other similar rights subsist, and which is incorporated into or synchronised with or forms part of, or of which use is made in connection with the Programme;

"Underlying Rights Owner" – the owners of the rights in any Underlying Material;

"Video-On-Demand Rights" – means the exclusive right to include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near video-on-demand service excluding the Primary Video-On-Demand Rights.

## **2. INTERPRETATION**

- 2.1 Any reference in this Agreement to a Statute or Statutory Instrument includes a reference to any Statute or Statutory Instrument amending or replacing it whether in force at the date of this Agreement or coming into force hereafter
- 2.2 The headings and sub-headings in this Agreement are for identification and convenience only and shall not affect the construction or meaning of any provision in it
- 2.3 The BBC and the Producer agree that upon request of the other each will execute and deliver all such further documents as the other shall reasonably request to give effect to the intent and purposes of this Agreement
- 2.4 Unless the context otherwise requires, any reference in this Agreement to the masculine shall include the feminine and vice versa and the singular the plural and vice versa
- 2.5 Any expressions used in this Agreement which are defined in the CDPA shall (unless the context otherwise requires) have the same meanings as in that Act
- 2.6 The word "film" or "programme" as used in this Agreement shall in all cases include any associated sound recording
- 2.7 In this Agreement the term "including" means without limitation; "include" and "includes" shall be construed accordingly
- 2.8 In this Agreement any reference to trade marks (whether as defined terms or otherwise) includes service marks.

### **3. THE BBC REPRESENTATIVES**

The BBC shall appoint certain persons (as set out in Schedule 1) who shall have the power to give specific approvals and reach specific decisions on its behalf. Where any of the BBC Representatives listed in the Special Terms are individually referred to within this Agreement, such reference shall be to the specific individual named, and only the approvals or decisions of such person shall be binding on the BBC. The BBC may from time to time substitute other persons for those appointed and shall notify the Producer of any such changes.

### **4. PRE-CONDITIONS TO THE BBC'S COMMITMENT**

THE BBC shall be under no obligation under this Agreement until:

- 4.1 the Producer has completed and returned and the BBC has approved:
  - 4.1.1 a Commissioning Specification in the form contained in the Schedule 2, signed by the Producer and the BBC;
  - 4.1.2 where requested by the BBC, a Laboratory Letter in the form contained in Schedule 4 (and/or as appropriate a Facilities House Letter in the form contained in Schedule 5) signed on behalf of the Laboratory (or Facilities House) and the Producer; and
- 4.2 the BBC and the Producer have agreed the Licence Fee;
- 4.3 the Producer and the BBC have agreed the Production Schedule (including the Delivery Date);
- 4.4 where the Special Terms provide for the BBC to cash flow the Licence Fee, the Producer has opened the Production Account with the Bank and at the branch of it named in the Commissioning Specification and has delivered to the BBC a certified copy of a resolution of the directors of the Producer in a form approved by the BBC authorising the opening of the Production Account and governing its operation;
- 4.5 the Producer has effected the Insurances as set out in General Term 8; General Terms
- 4.6 the Producer has obtained the BBC's approval of any element in or relating to the Programme over which the BBC has an express right of approval;
- 4.7 the Producer has completed a Health & Safety questionnaire to the BBC's satisfaction;
- 4.8 the Producer has satisfied the BBC in the BBC's absolute discretion that all the financing required to make the Programme is in place or has provided the BBC with a copy of the fully signed agreement(s) relating to the provision of any Third Party Production Finance.

### **5. PRODUCTION**

- 5.1 The Producer shall produce and deliver the Programme in conformity with the Commissioning Specification, the Production Schedule, and the BBC's Delivery Specifications (time being of the essence), and in doing so the Producer shall ensure that the Programme is technically and pictorially of first-class editorial and technical quality and suitable fit and ready for television broadcasting. For the avoidance of doubt, the BBC will give reasonable consideration (taking into account any scheduling or financial requirements that BBC may have in relation to the Programme delivery) to any timely and reasonable request by the Producer to agree a change to the Delivery Date.
- 5.2 All documents required to be certified or signed on behalf of the Producer shall be certified or signed by a duly authorised signatory of the Producer.

- 5.3 In making the Programme the Producer shall:
- 5.3.1 Comply with the BBC Guidelines;
  - 5.3.2 Comply with all applicable: disability discrimination legislation; data protection legislation; health, safety and fire legislation; construction design and management regulations; and all regulations and orders made under such legislation, and in so doing shall nominate a person or persons competent to give appropriate safety advice during production of the Programme and shall produce the Programme safely having due regard to such advice. Where reasonably required, the BBC shall be entitled to be provided with evidence of the Producer's compliance herewith.
  - 5.3.3 Without prejudice to the generality of the BBC Guidelines, consult with the BBC in relation to any advertising that it intends to undertake in order to secure contributors to the Programme
  - 5.3.4 Secure the BBC's consent to any proposed call-rate charges for interactive services relating to the Programme (not to be unreasonably withheld or delayed)
  - 5.3.5 Secure the approval of the BBC Editorial Representative to any treatment or script for the Programme before production commences
- 5.4 The Producer shall be entitled to use such BBC libraries as is agreed Provided That if the Producer fails to return by the due date or damages any material borrowed from BBC libraries then the BBC shall be entitled to deduct and retain from the Licence Fee such costs as are reasonable to repair or replace the missing or damaged materials
- 5.5 The BBC shall be entitled at times reasonably convenient to the Producer to have access to any set or location during the course of production of the Programme for purposes of producing publicity & promotional materials (including publicity stills, poster shots and trails) relating to the Programme
- 5.6 The Producer shall not without the BBC's written consent (such consent not to be unreasonably withheld or delayed) grant to any completion guarantor or any third party any security interest in or mortgage, charge or other encumbrance over or affecting any rights in the Programme which are granted to the BBC under this Agreement and, having secured the BBC's consent, the Producer shall procure that any such third party with a security interest in or mortgage, charge, or other encumbrance over the Programme shall deliver to the BBC a non-disturbance letter in a form satisfactory to the BBC stating that such secured party shall take no action to diminish alter impair or otherwise affect the free use and enjoyment by the BBC of all the rights granted to it.

## **6. PRODUCTION / TALENT CONTRACTS**

- 6.1 Subject always to the provisions of General Terms 6.2-6.5, in order to ensure that the BBC is able to exercise the rights granted to it under the terms of this Agreement, the Producer shall contract all Performers, presenters, contributors, or other persons involved in the production of the Programme or who has provided services or facilities in connection with it, on the basis of collective agreements applicable to the independent television production sector or otherwise in accordance with normal practice in the independent television production sector.
- 6.2 Unless otherwise agreed in writing by the BBC Business Affairs Manager, the Producer shall contract contributions to the Programme on the following basis:

|         |   |   |
|---------|---|---|
| Artists | / | The Producer shall contract the services of any artists, writers and/or |
|---------|---|---|

|  |   |
|--|---|
| Writers / Musicians                                    | musicians in connection with the Programme in accordance with the terms of the current agreement between PACT and the applicable union as at the date of this Agreement, and the minimum payments made shall be as set out in the Special Terms.  |
| Presenters/ Interviewees/ Narrators/ Voiceovers        | <p>The Producer shall contract with any interviewees and/or presenter(s) and/or narrators and/or voice-overs of the Programme on terms whereby no further use repeat fees or residuals shall be payable to him or her in respect of any exercise by the BBC of the rights granted to it under this Agreement; and the Producer shall incorporate the following wording into the contract that it enters into with any presenter of the Programme:</p> <p>" the Company shall be entitled at any time to cancel/terminate this engagement in accordance with Clause [ ] if [the Presenter] has committed any act or omission which in the Company's or the Broadcasters reasonable opinion would bring the Programme, the Company and/or the Broadcaster into [serious] disrepute or prejudice the production or successful exploitation of the Programme."</p>  |
| Archive & Stills                                       | <ol style="list-style-type: none"> <li>1. In relation to BBC library footage: The Producer shall be entitled (subject to any restrictions in respect of specific footage) to incorporate BBC library footage in which the BBC owns the copyright ("the BBC Footage") into the Programme for the sole purpose of the exercise of the rights granted to the BBC under this Agreement without making a payment for such use of the BBC Footage provided that the Producer shall ensure that all underlying rights in such BBC Footage are cleared including the clearance of artists, musicians, writers,</li> <li>2. Unless otherwise specified in the Special Terms, the Producer shall acquire such rights in any other archive and stills incorporated into the Programme to ensure that no further use, repeat fees or residuals shall be payable in respect of any exercise by the BBC of the rights granted to it under this Agreement during the Licence Period provided that the Producer shall ensure that such material is clearable for a further two (2) years (and where reasonably possible, pre-purchased within the Licence Fee for such further two (2) years).</li> </ol> |
| Third party format owners and Underlying Rights owners | The Producer shall within the Licence Fee make such payments to any third party format owners and owners of any Underlying Rights as are necessary to ensure that no use fees, repeat fees or residuals shall be payable in respect of any exercise by the BBC of the rights granted to it under this Agreement for the Licence Period provided that the Producer shall ensure that such material is clearable for a further 2 years (and where reasonably possible, pre-purchased within the Licence Fee for such further 2 years).  |
| Music  | <p><u>Pre-existing material</u>: the Producer shall supply to the BBC Music Copyright Department details of all pre-existing music (including both existing musical works and existing sound recordings) which the Producer proposes to incorporate in the Programme. If the BBC Music Copyright Department thereafter notifies the Producer that the rights to incorporate any item(s) of such pre-existing music in the Programme and to exercise such item(s) in accordance with the rights granted to the BBC under this Agreement as part of the Programme have been acquired by the BBC on behalf of the Producer pursuant to certain agreements between the BBC and certain Collecting Societies or other entities including the Mechanical Copyright Protection Society and British Phonographic Industry then the Producer shall not itself be obliged to acquire such rights in respect of such item(s).</p> <p><u>Commissioned material</u>: The Producer shall within the Licence Fee make such payments in commissioning any specially composed music for</p>  |

|                      |  |
|----------------------|--|
|                      | incorporation in the Programme as are necessary to ensure that no use fees, repeat fees or residuals shall be payable in respect of the exercise of the rights granted to the BBC hereunder save only as may be payable under the paragraph above.   |
| Production personnel | The Producer shall within the Licence Fee make such payments in engaging the services of the individual director and individual producer and all other production personnel engaged in connection with the Programme (including without limitation the executive producer and the film crew) and to the extent reasonably possible in respect of all other contributors of rights services and facilities except as otherwise set out in this Agreement (regardless of whether or not any such individuals are a director and/or shareholder of the Producer or otherwise involved in the management of the Producer) as are necessary to ensure that no use fees, repeat fees or residuals shall be payable in respect of any exercise by the BBC of the rights granted to it under this Agreement. |
| Locations            | When entering into any location agreement in connection with the Programme the Producer shall ensure that no use fees, repeat fees or residuals shall be payable in respect of the location in relation to the exercise of the rights granted to the BBC hereunder.  |

6.3 In contracting for the contributions to the Programme as set out in General Terms 6.1 and 6.2; the Producer shall ensure that:

- 6.3.1 all necessary union clearances; permissions; and consents have been duly obtained and in a timely fashion but in any event before the Delivery Date;
- 6.3.2 all necessary consents under Part II of the CDPA have been duly acquired to enable the BBC to fully exercise the rights granted under this Agreement;
- 6.3.3 the contracts entered into with any credited Performer, presenter, contributor or other person involved in the production of the Programme or who has provided rights services or facilities in connection with it shall incorporate all consents to make and issue or authorise others to make and issue publicity and promotional material (including trails) concerning or including such persons (including the right to use their names photographs and biographies and recordings of interviews with them) without further consent or payment
- 6.3.4 consent is acquired to the incorporation of sequences or extracts from the Programme for use in any BBC Public Service (including as part of any other audio-visual material) in accordance with General Term 12.3 without further payment by the BBC in connection therewith save where provided for under General Term 6.2, Provided That the Producer shall forthwith notify the BBC of any failure to obtain any such consents;
- 6.3.5 any agreement for remuneration otherwise than by cash payments shall ensure that no use fees repeat fees or residuals shall be payable in respect of the exercise by the BBC of the BBC Public Service Rights;
- 6.3.6 a waiver has been acquired in relation to any so-called moral rights under the CDPA
- 6.3.7 there is no provision in such agreements which at the date of this Agreement would render the contributor and/or the Producer in breach of the BBC Guidelines.

6.4 The Producer shall secure the approval of the BBC Legal & Business Affairs Manager or the BBC Programme Finance Manager (not to be unreasonably withheld or delayed) **before** executing

(i) any Key Agreement; and

(ii) any other agreement which provides for the remuneration of any person or party in connection with the exercise of the BBC Public Service Rights not pre-paid for as part of the cost of production of the Programme.

All such documents shall be submitted to the BBC Legal & Business Affairs Manager for approval in first draft form at the earliest stage practicable and the Producer shall make all such amendments thereto as the BBC shall reasonably require before sending such first draft document to the proposed parties (or their agents).

6.5 For the avoidance of doubt, the BBC shall be entitled to pay any further use fees due to contributors as agreed under General Term 6.2 above in relation to the exercise of the BBC Public Service Rights directly to the relevant contributors and the BBC shall indemnify the Producer in relation to any failure to do so. Such payments shall be calculated and paid on the basis of the Delivery Items and the Producer shall indemnify the BBC in relation to any costs or expenses arising as a result of any inaccuracies or omissions in the Delivery Items.

## **7. FINANCE**

7.1 Subject to the provisions of this Agreement, and to the Producer complying with its obligations under it, the BBC shall pay the Licence Fee to the Producer as stipulated in the Special Terms (and it is acknowledged that without prejudice to the provisions of General Terms 18 and 20, the Primary Rights licence fee as set out in Special Term 2.1.1 is non-recoupable).

7.2 Where the Special Terms provide for the BBC to cash-flow the Licence Fee to the Producer:

7.2.1 the cash flow payments advanced by the BBC to the Producer in accordance with Special Term 2.2 (the "Advances") shall be made provided that the Producer has complied with General Term 7.6 in respect of such sums;

7.2.2 any Advances made shall become immediately repayable if:

(i) subject to General Term 18.3.6(ii), the BBC elects to exercise its rights to take over the production of the Programme under General Term 18.1 or;

(ii) the BBC elects to exercise its rights to terminate this Agreement under General Terms 20 or 21.3

7.2.3 subject always to General Term 7.6 below, the Advances shall be paid into the Production Account in such manner and at such times as set out in the Special Terms and into which no other monies shall be paid other than any Third Party Production Finance and out of which all costs incurred or expended in accordance with this Agreement in connection with the production of the Programme shall be paid which payments shall be made in accordance with the resolution relating to the opening and operation of the Production Account described in General Term 4.4 or any resolution amending it which has been agreed by the BBC

7.3 Where the Special Terms provide for the BBC to pay the Licence Fee upon delivery, the BBC shall subject to General Term 7.6, pay the Licence Fee to the Producer in accordance with the Special Terms.

#### Value Added Tax

- 7.4 All sums payable or considerations made in connection with this Agreement shall be exclusive of any Value Added Tax ("VAT") that may become payable on them

#### Overspend/Underspend

- 7.5 The Producer shall be responsible for any and all overspend and (subject to the provisions of General Terms 18, 19 and 21.3) shall be entitled to keep any and all underspend in connection with producing the Programme. (For the avoidance of doubt, General Term 9.4 addresses the issue of any additional costs arising in connection with any agreed change to the Commissioning Specification).

#### Payment of invoices

- 7.6 The BBC shall pay the sums due to the Producer under this Agreement within 10 (ten) working days of receipt of an invoice in Compliant BBC Form (or for cash flow payments under Special Term 2.2, on receipt of a written request in Compliant BBC Form) provided that:

- 7.6.1 the progress reporting required by the BBC under General Term 7.7 by such date has been provided by the Producer to the BBC's satisfaction (such satisfaction to be deemed unless the Producer is notified otherwise within 7 working days of receipt of the progress report by the BBC);
- 7.6.2 any and all Third Party Production Finance due and payable to the Producer by any and all relevant third parties by such date has been duly received by the Producer;
- 7.6.3 in relation to any invoice(s) or written request(s) rendered upon Tape Delivery; the Commissioning Specification has been fully complied with and Tape Delivery has been accepted under General Term 11;
- 7.6.4 in relation to any invoice(s) or written request(s) rendered upon Paper Delivery; Paper Delivery has been fully accepted in accordance with General Term 11.1.2.

#### Verification / Progress Reporting

- 7.7 The BBC is entitled to monitor the production process of the Programme to enable the BBC to assess whether there is any material risk that the Producer may fail to deliver the Programme in accordance with the Commissioning Specification by the Delivery Date (or at all). To enable the BBC to do this, the Producer shall:

- 7.7.1 deliver to the BBC Editorial Representative and the BBC Programme Finance Manager "Production Reports" describing the progress on the production and the Production Schedule at the stages set out in the Commissioning Specification, and at any other stages as may be reasonably requested by the BBC.
- 7.7.2 notify the BBC Programme Finance Manager of any forecast or likely event or problem which could jeopardise production and/or delivery of the Programme in accordance with the Commissioning Specification;

- 7.8 In the event that:

- 7.8.1 a Production Report (referred to in General Term 7.7.1) is delivered by the Producer which causes the BBC to have legitimate concerns relating to the financing of the Programme and/or the management of production; or
- 7.8.2 the viewing of Programme material is not possible or practicable in order to ascertain whether funds are not being properly expended on key elements of the production; or

- 7.8.3 the Programme is the first series of the Programme or a pilot programme; or
- 7.8.4 the Commissioning Specification represents a significant change from the commissioning specification of the previous series of the Programme; or
- 7.8.5 the previous series of the Programme encountered significant problems relating to the financing and/or management of the production; or
- 7.8.6 the BBC has reasonable grounds for concern that there are significant problems relating to the financing of the Programme and/or the management of production and/or the Producer's ability to deliver the Programme in accordance with Commissioning Specification by the Delivery Date (or at all)

then upon request and at such times as determined by the BBC, the Producer shall deliver to the BBC the following:

- (i) at any time after declaration by the BBC of the Primary Rights licence fee, a copy of the Budget; and/or
- (ii) a "Cost to Date Report" showing the costs incurred on the production broken down under the Budget headings; and/or
- (iii) an "Estimated to Complete Report" showing the estimated cost of completing production of the Programme broken down under the Budget headings

Audit rights

- 7.9 The Producer shall maintain complete and accurate books and records (including receipts and invoices) relating to expenditure on the Programme
- 7.10 The Producer shall maintain complete and accurate records as required to evidence and substantiate the Producer's warranty set out in the Special Terms as to whether the Programme qualifies as a Regional Production and/or Regional Programme.
- 7.11 The BBC by its servants and agents shall have the right upon giving reasonable notice at any time and from time to time at reasonable hours to inspect take excerpts from and copy the Producer's books and records and all other documents relating to the Programme as referred to in General Terms 7.9 and 7.10 at the address of which the Producer shall notify the BBC in writing.
- 7.12 In the event that the Special Terms provide for the BBC to pay the Licence Fee upon delivery, the BBC shall only exercise its rights under General Term 7.11:
  - 7.12.1 if the Programme is the first series of the Programme; or
  - 7.12.2 if the Commissioning Specification represents a significant change from the commissioning specification of the previous series of the Programme or a pilot programme; and/or
  - 7.12.3 where circumstances during production have given rise to the BBC having legitimate concerns relating to the financing of the Programme and/or management of the production;
  - 7.12.4 to satisfy itself and/or any third parties as to whether the Programme is a Regional Production and/or Regional Programme
- 7.13 When the circumstances listed in General Term 7.12.1 – 7.12.3 apply, the BBC shall be entitled to receive a "Certified Cost Report" from the Producer being a

detailed statement of the cost of production of the Programme which shall if required by the BBC (at the BBC's cost) be certified to be accurate by the Producer, to be delivered as soon as possible (but not later than 60 (sixty) days after Tape Delivery). For the avoidance of doubt, the costs to be included in the Certified Cost Report shall be the aggregate of the sums paid or payable by the Producer in accordance with this Agreement in producing and delivering the Programme, including a statement of any proceeds of sale of any goods remaining after completion of the Programme and any Third Party Production Finance.

- 7.14 For the avoidance of doubt, where the Special Terms provide that the Agreed Licence Fee includes a 'Prize fund' and/or any 'Other specific production element(s)', such elements of the Licence Fee shall only become payable by the BBC if and when such events occur.

## **8. INSURANCE**

- 8.1 The Producer shall promptly arrange and maintain:

8.1.1 insurance against:

- (a) all risks normally insured against in accordance with the customary practice of prudent film and television producers; and
- (b) any additional risks as may be reasonably required by the BBC to protect its legitimate interests in connection with the Programme; and
- (c) if applicable and required, Film Union insurance

either under the BBC Film and Television Production Scheme arranged by AON ("the AON insurance"); or with such other reputable insurance company or companies Provided That:

- 1. where the Producer elects to use the AON insurance it shall promptly notify the BBC Programme Finance Manager and the cost thereof shall be deducted from the Licence Fee and paid for directly by the BBC; and
- 2. where the Producer elects to use another reputable insurance company, it shall secure the BBC's written approval of the terms of the policy to be taken out in respect of the production of the Programme (not to be unreasonably withheld or delayed)
- 3. In the event that the Producer is also supplying online and/or interactive elements as part of the Programme, then the Producer must also have appropriate technical errors and omissions insurance from a reputable insurance company; and

8.1.2 with a reputable insurer adequate public liability insurance and, where applicable, product liability insurance and/or professional indemnity insurance and/or E&O insurance which shall be no less than three million pounds sterling (£3,000,000) and with scope of cover appropriate to the liability of the Producer in respect of any one claim or incident arising under the Licence to use the BBC trade marks contained in General Term 16.2.4(i) and Schedule 7. For the avoidance of doubt, such minimum insurance level shall not be a limit of liability under such Licence.

Where the Special Terms provide for the Licence Fee to be cash-flowed to the Producer, the Producer shall secure the BBC's prior written approval to the Insurances.

- 8.2 The Producer shall maintain the Insurances (paying any premiums payable by the Producer when due) and shall ensure that the BBC is named as an insured person to the extent required to protect the BBC's interests under this Agreement.

- 8.3 The Producer shall comply with all the conditions and warranties in the policies and shall not do or permit to be done anything which might result in any of the Insurances lapsing or becoming void or voidable
- 8.4 If anything happens which might give rise to a claim under any of the Insurances the Producer shall forthwith inform the BBC and shall consult with the BBC about the making and settling of any claim insofar as relevant to the BBC's interests under this Agreement.
- 8.5 The Producer shall produce to the BBC on demand copies of the Insurances, and receipts for premiums required to be paid in relation to such policies

## **9. EDITORIAL PROCESS**

- 9.1 The Producer shall give the BBC Editorial Representative reasonable advance notice of the dates, times and venues of any principal production meetings and/or proposed viewings not otherwise set out in the Production Schedule.
- 9.2 The BBC Editorial Representative shall at any time be entitled to view and inspect all rushes and cut sequences of the Programme and any sound-recording or soundtrack and to be present at principal production meetings and at any location or studio where the Programme is being made. The Producer shall take full account of all reasonable comments and representations made by the BBC Editorial Representative and, provided that the BBC Editorial Representative shall have given due regard to any representations made by the Producer, the Producer shall comply with any requests for retakes, re-edits or additional material to be included in the Programme
- 9.3 Where any request made by the BBC Editorial Representative under General Term 9.2 is to ensure compliance with the Commissioning Specification, any and all costs relating thereto shall be the Producer's responsibility.
- 9.4 Where any such request constitutes a change to the Commissioning Specification, the Producer and the BBC Programme Finance Manager will engage in timely good faith discussions regarding any additional cost arising from the request. The Producer shall not incur any such cost until the BBC Programme Finance Manager has confirmed in writing:
- 9.4.1 The nature of the request
- 9.4.2 Whether any additional costs are agreed to be funded by compensatory changes to other items in the Budget or as an additional sum to be paid by the BBC
- 9.4.3 The amount of any additional sum payable by the BBC, which shall be paid in accordance with General Term 7.6 and any such sums shall form part of the Licence Fee
- 9.5 If either the BBC or the Producer becomes aware of any circumstances whereby it is either necessary or desirable to amend the Commissioning Specification, such party shall notify the other as soon as reasonably practicable. Following such notification, the procedure set out in General Term 9.4 shall be followed in relation to the payment of any additional costs arising.
- 9.6 Any consultations and requests for approvals addressed to either party under this Agreement shall be made in sufficient time to enable the recipient to give consideration to and reply in respect of the matter in question within a reasonable period of time taking account of the Production Schedule
- 9.7 For the avoidance of doubt, the BBC shall not in any circumstances be under any obligation to fund any costs arising under this General Term 9 unless the BBC Programme Finance Manager has confirmed the arrangement in writing in accordance with the terms of this Agreement. Similarly the Producer is not under

any obligation to make any changes requested by the BBC that constitute an amendment to the Commissioning Specification until such confirmation has been received from the BBC Programme Finance Manager.

- 9.8 Prior to preparing the final cut of the Programme the Producer and the BBC Editorial Representative shall agree a date and time when the BBC Editorial Representative shall be able to view the Programme and the Producer shall give effect to all changes reasonably required by the BBC Editorial Representative when editing the Programme Provided That such changes are required in order to:

9.8.1 meet the BBC's broadcasting standards from time to time in force

9.8.2 comply with the provisions of this Agreement including the Commissioning Specification

9.8.3 comply with the BBC's necessary scheduling exigencies

9.8.4 conform with any obligations imposed by law or with legal advice received by the BBC

and until such time as the BBC shall have notified the Producer that the final cut of the Programme is acceptable all editing shall be carried out on positive copies of the Programme

- 9.9 If at any time following acceptance of Tape Delivery the BBC requires further changes to comply with General Terms 9.8.1, 9.8.2, 9.8.3, 9.8.4 the Producer shall be offered the opportunity to carry out such changes at the BBC's cost but if it refuses or is unable to do so the BBC shall be entitled itself to carry out or require a third party to carry out such changes

- 9.10 Notwithstanding anything contrary contained in the provisions of this Agreement the BBC shall be entitled to add sub-titles or signing or audio description to the Programme for the benefit of visually or hearing impaired viewers. For the avoidance of doubt, if the Producer is supplying any material or services in connection with any Programme related website, the Producer shall comply with the Web Development Guidelines contained on the Relevant BBC Websites.

- 9.11 Notwithstanding the provisions of this General Term 9 and for the avoidance of doubt, the Producer agrees that the BBC shall have final editorial control in connection with the production of the Programme (and the production of any publicity & promotional materials that the BBC is entitled to produce) in accordance with the terms of this Agreement.

## **10 CREDITS AND COPYRIGHT NOTICE**

- 10.1 The BBC shall be entitled to approve all credits prior to their incorporation in the BBC version of the Programme in the UK including without limitation a production credit in accordance with the BBC Guidelines, Provided that the form size and position of such credits and logo shall be approved by the BBC Editorial Representative in advance of such incorporation and to this intent the Producer shall provide the BBC Editorial Representative as soon as practicable after commencement of production with a list of all proposed credits indicating their size and position in relation to the Programme

- 10.2 The BBC undertakes to honour all screen credit obligations agreed under General Term 10.1 incorporated in the transmission copy of the Programme but any inadvertent failure on the BBC's part to comply with this undertaking shall not be deemed a breach of this Agreement

- 10.3 During the Licence Period, the Producer shall include on the transmission copies of the Programme a copyright notice in the form described in the Commissioning Specification

## **11 DELIVERY**

- 11.1 The Programme shall not be treated as completed and delivered unless Tape Delivery and Paper Delivery have both been accepted by the BBC.

- 11.2 Acceptance of Tape Delivery and Paper Delivery under General Term 11.1 shall be in the BBC's absolute discretion, provided always that in either case, delivery shall be deemed accepted after expiry of 30 days from receipt by the BBC, unless notified otherwise (or accepted in writing) earlier.

- 11.3 Upon request by the BBC, the Producer shall:

11.3.1 **at any time** (whether during or after expiry of Licence Period), promptly deliver to the BBC any documentation or materials that may be required to substantiate and evidence the Producer's warranty set out in the Special Terms as to whether the Programme qualifies as a Regional Production or Regional Programme;

11.3.2 grant a Power of Attorney to carry out the actions referred to in General Term 18.3.1

11.3.3 deliver the publicity stills and promotional VHS/DVD tapes as set out in the Commissioning Specification sooner than the Delivery Date, any such earlier date to be agreed in good faith by the parties

- 11.4 For the avoidance of doubt, any acceptance of incomplete Paper Delivery shall not be deemed to be a waiver of the BBC's right to demand and require completion of Full Delivery (but any such written acceptance of incomplete Paper Delivery shall constitute 'acceptance' for the purposes of the Licence Period). 11.3.2 11.3.3

## **12 RIGHTS GRANTED TO THE BBC**

- 12.1 BBC Public Service Rights:

12.1.1 The Producer hereby grants to the BBC during the Licence Period the irrevocable and royalty-free BBC Public Service Rights (and insofar as any such rights are not in existence as at the date of this Agreement then such grant of rights shall operate as a present grant of such future rights).

12.1.2 For the avoidance of doubt, the BBC shall not be deemed to be in breach of this Agreement or the licence granted under General Term 12.1.1 if any broadcast or transmission of the Programme under the BBC Public Service Rights is capable of being received outside of the UK provided the broadcast or transmission was intended for reception within the UK.

12.1.3 Without prejudice to General Term 6.1, the Producer shall ensure that the BBC has the benefit of and is entitled to enforce all contracts (including licences) relating to the Programme entered into by or on behalf of the Producer in order that the BBC can exercise, or sublicense the exercise of, the rights granted to it under this Agreement, and the Producer shall at the request of the BBC, provide the BBC with documentary evidence of compliance with this General Term 12.1.3

12.1.4 The BBC shall be entitled to make all such use of the Publicity Stills delivered to the BBC as part of the Delivery Items as required for the

purposes of exercising any of the rights granted to the BBC under this Agreement

12.1.5 At the request of the BBC the Producer shall reversion or re-edit the Programme as the BBC may require for the following purposes: (1) in pursuance of its programme policy governing the suitability of material contained therein and/or the demands of accurate timing on presentation; (2) for adaptation in connection with the exercise of the BBC Public Service Rights on non-television platforms; Provided that (1) any such re-editing or reversioning is undertaken at the BBC's expense (the level of which shall be pre-agreed in writing by the parties) and (2) any such editing or reversioning shall not impair continuity, and the definition of the Programme in this Agreement is hereby varied to include any such reversioned or re-edited version of the Programme.

12.1.6 The Producer hereby sells and the BBC purchases each of the Delivery Items

## 12.2 Programme Trade Marks:

12.2.1 The Producer hereby grants to the BBC for the Licence Period, an exclusive royalty-free, irrevocable licence to use the Programme Trade Marks (including as part of a domain name) and to grant sublicences to third parties to do the same for the purposes of exercising any of the rights granted to the BBC under this Agreement.

The BBC acknowledges and agrees that (1) as between the Producer and the BBC, the Producer is the proprietor of the Programme Trade Marks, any copyright, design rights and other intellectual property rights subsisting in and the goodwill relating to the Programme Trade Mark and (2) the benefit of all use of the Programme Trade Marks and any additional goodwill accrued as a result of the BBC's activities in connection therewith shall inure, and is hereby assigned, to the Producer.

12.2.2 The parties shall consult in good faith how best to maximise the protection of the Programme Trade Marks, in particular, in order to protect the BBC's rights under this Agreement.

12.2.3 If, having reasonably requested the Producer by written notice to file an appropriate application to register as a trade mark and/or domain name any of the Programme Trade Marks and the Producer has failed to do so within a reasonable period of time (such period to be according to the particular circumstances and specified in the notice), and/or the Producer has failed to progress the application thereafter, the Producer shall appoint the BBC to file or progress or engage a third party to file or progress such application. The Producer shall join any action as may be required subject to the payment of any applicable costs by the BBC which may be recouped by the BBC as referred to in General Term 16.5.2 below. The Producer shall promptly provide the BBC and its agents with such assistance as the BBC (or its agents) may reasonably request in respect of such trade mark and domain name applications.

## 12.3 Extract / Clip Use:

Subject to any outstanding consents being obtained from and any use fees repeat fees and residuals that may be due paid to the owners of any underlying rights in the Programme as provided for under General Term 6.2, the BBC may use and authorise the use of any extracts from the Programme in any BBC Public Services (including as part of any other audio visual material) Provided That:

12.3.1 the BBC shall not make any such use which is:

- (i) before the Programme (or relevant episode thereof) has been first transmitted by the BBC (other than in the exercise by the BBC of its rights under this Agreement to publicise the Programme by way of trails and extracts) ; or
- (ii) designed to 'send-up' the Programme; or
- (iii) for the purposes of creating a new compilation or 'best-of' programme

without the Producer's consent; and

12.3.2 such extracts shall be no longer than 5 (five) minutes per 30 (thirty) minutes or less of Programme running time, and for the avoidance of doubt, where any such extract is included in such other audio visual material which is to be exploited commercially, the Producer will be paid for such exploitation.

#### 12.4 Restrictions on the Producer:

12.4.1 The Producer hereby undertakes that whilst the BBC has a subsisting re-commissioning right in the Programme it shall not, nor authorise any other party to, do any of the following in the UK without the BBC's prior written consent:

- (i) produce any other television programme based on the Programme (or element thereof) or the Format (or element thereof) (including for example "the making of...") provided that consent shall not be unreasonably withheld in relation to such material intended for video/dvd only release; or
- (ii) create or exploit any on-line version of the Programme (or element thereof) or Format (or element thereof); or
- (iii) make any use of any material based on the Programme (or element thereof) or Format (or element thereof) or the Characters for the purposes of any television advertising activities or product endorsement in contravention of the BBC's Fair Trading Guidelines or Producer's Guidelines.

12.4.2 Whilst the BBC has a subsisting re-commissioning right in the Programme, the Producer shall not dispose of any set, props, costumes, equipment, and other similar material created or acquired in connection with the Programme without the BBC's prior written consent provided that the BBC shall pay for the reasonable storage costs incurred in connection therewith, such reasonable costs to be pre-agreed with the BBC and treated as a development cost in connection with any Further Programme that may be commissioned by the BBC.

#### 12.5 BBC's copyright:

For the avoidance of doubt, nothing in this Agreement shall transfer or assign to the Producer any copyright anywhere in the world (including all rights to renewals and extensions of copyright) in any publicity and promotional material (including any publicity stills, poster shots and trails) which is created by or on behalf of the BBC pursuant to the rights granted under this Agreement.

#### 12.6 Radio option:

Where the Producer owns or controls the radio rights in the Format, the Producer grants the BBC the first option to commission a programme or series of programmes based on the Format for broadcast on its radio services primarily made available to audiences in the United Kingdom on terms to be agreed in good

faith, such option to expire upon either 6 months from acceptance of Full Delivery or 6 months from first transmission by the BBC of the first episode of the Programme, whichever is the earlier.

#### New media rights and restrictions

12.7 The BBC hereby agrees that in exercising the Primary New Media Rights:

12.7.1 the Streaming Rights shall only be exercised either simultaneously with any transmission of the Programme that the BBC is entitled to make under the terms of this Agreement, or as a live stream (subject only to any short delay required for compliance purposes) as appropriate;

12.7.2 the Seven-Day-New-Media Rights shall only be exercisable provided that an appropriate technological means is used to limit the availability of the download for the period of its entitlement; and

12.8 The Producer hereby agrees that:

12.8.1 it shall exercise the Commercial New Media Rights only by way of the Commercial Download Rights; the Commercial Website Rights and the Promotional Online Rights, and any other exercise of the Commercial New Media Rights during the Licence Period shall require prior written consent from the BBC (not to be unreasonably withheld or delayed);

12.8.2 the Video-on-Demand Rights shall be held 'in suspension' and shall not be exercised during the Licence Period without the BBC's consent, and the Producer shall hold good faith discussions with the BBC in relation to any proposal by the BBC to exercise such rights as part of a BBC Public Service

12.9 Where it is agreed that:

12.9.1 production of the Programme requires new software coding to be built, the parties shall discuss in good faith who will undertake this work and for the avoidance of doubt:

(i) The BBC shall give the first opportunity to the Producer to undertake such work itself provided that the BBC is satisfied that the Producer is offering a solution which is:

1. editorially appropriate,
2. technically acceptable (including in relation to any third party platform provider),
3. meets all the BBC's Guidelines and
4. is value for money (it being acknowledged that it is unlikely to be value for money to commission the build of a new application for which the BBC has already has a working solution)

that any such agreement reached shall be recorded in a separate written agreement between the parties

(ii) Where the BBC either supplies, builds or has built any such new software coding, it agrees to discuss in good faith any request by the Producer for a non-exclusive licence to use such software coding either

1. where the Producer wishes to exploit the Distribution Rights and such software coding is integral to the exercise of such rights; or
2. where the BBC has elected not to exercise its rights under General Term 22, and the Producer wishes to exercise its rights

under General Term 22 to produce and exploit a Further Programme for a third party and in either case, the Producer shall agree within such non-exclusive licence to pay the BBC an appropriate licence fee or royalty to be agreed in good faith.

- (iii) Where it is agreed that the Producer will supply, build or have built any such new software coding, a budget shall have been submitted to the BBC for approval as part of the commissioning process. Without prejudice to the generality of this agreement, it is acknowledged for the avoidance of doubt that the BBC is hereby entitled to royalty-free exclusive licence to use the software coding as necessary for to enable the BBC to exercise the rights granted under this Agreement.

12.9.2 the Producer shall produce (or subcontract the production of) such software coding, and such software coding is considered by the BBC to be a sufficiently important element of the Programme, the BBC reserves the right to require the Producer as a pre-condition to this Agreement to enter into an escrow agreement under the National Computing Centre standard terms requiring the Producer to make regular deposits of the source code of such software coding throughout its development, and ensure that any updates and modifications are maintained through out the Licence Period.

12.9.3 any specific arrangements are to be undertaken in connection with any interactive element to the Programme, which as a consequence will result in the generation of commercial revenue, such arrangements shall be agreed in good faith in advance between the BBC and the Producer and for the avoidance of doubt shall comply with the BBC Guidelines.

### **13. PUBLICITY / PROMOTION / MARKETING / TRAILS**

Without prejudice to General Term 12:

- 13.1 The Producer acknowledges that any and all publicity promotional and marketing activities and materials concerning the BBC commission and/or transmission of the Programme shall be carried out solely by or on behalf of the BBC and the BBC agrees to use reasonable endeavours to consult the Producer in relation to any material the BBC proposes to issue which makes reference to the Producer by name, provided that the Producer provides any comments to the BBC within a maximum of 7 days of request. The BBC agrees that if it accords credit to any performer or talent in any business-to-business publicity material that it produces, it shall also accord credit to the Producer.
- 13.2 Without prejudice to General Term 13.1 and subject always to General Term 16.3, the Producer agrees that any promotional, publicity, and marketing materials that the Producer intends to produce for its own purposes (including any trails) shall only be used in the UK in such manner as shall coordinate with and compliment any promotional strategy that the BBC may have for the Programme, and for the avoidance of doubt, the Producer shall be entitled to carry out its own business-to-business promotional, publicity, and marketing activities provided that such activities do not bring the BBC into disrepute. Accordingly, the Producer shall consult with the BBC in relation to any promotional initiatives that it intends to undertake in the UK, and shall not carry out or authorise any activity which the BBC reasonably determines would undermine any promotional strategy that it may have for the Programme.
- 13.3 In the event that the Producer wishes to engage an independent public relations specialist (whether an agency or a freelance publicist), the Producer shall either:

13.3.1 consult with the BBC in relation to (a) the appropriate choice of such independent specialist and (b) the engagement (as opposed to commercial) terms of the Producer's contract with them; or

13.3.2 procure that all material produced and issued by such independent specialist and its activities in general in connection with the Programme shall:

- (i) comply with the BBC Guidelines;
- (ii) be of first class quality;
- (iii) not bring the Programme or the BBC into disrepute;
- (iv) comply with the provisions of General Term 13.2 above

and the Producer shall indemnify the BBC in relation to any breach by such independent specialist of sub-clauses (i)-(iv) above. 13.2

#### **14. LICENCE PERIOD**

14.1 Subject always to General Term 14.2, the BBC shall be entitled to extend the Licence Period for a further period of 2 years provided that:

14.1.1 written notification is given to the Producer by the BBC Programme Finance Manager no later than 6 months before the end of the initial Licence Period stating the BBC's intention to extend the Licence Period for a further 2 years; and

14.1.2 the BBC pays to the Producer an Additional Licence Fee calculated as 3.5% of the Licence Fee on or before the last day of the initial Licence Period, and paid as an advance against the sums due to the Producer under General Term 15.2 below.

14.2 For so long as the Programme is or becomes a Returning Series, the BBC may keep extending the Licence Period on a rolling 2 year basis as set out in General Term 14.1 above, save that once the Licence Period is extended beyond the period of 7 years from commencement, the BBC's holdback right under General Term 16.2.3(i) below shall be limited to the exercise of television rights by public service broadcasters.

#### **15. PRE-PAID USES & PAYMENT FOR FURTHER USES**

15.1 It is hereby agreed that payment of the Licence Fee entitles the BBC to exercise the following without further payment to the Producer (but subject to any contributor use payments that may be required as provided for in General Term 6):

15.1.1 any two of the following packages of uses (such two packages to be at the BBC's election and which, for the avoidance of doubt, could be the same package twice):

- (i) one (1) transmission on BBC1;
- (ii) two (2) transmissions on BBC2;
- (iii) nine (9) Transmission Days on BBC3;
- (iv) unlimited transmissions on BBC4;
- (v) unlimited transmissions on BBC2W and BBC2 NI (and any other similar service operated by the BBC);
- (vi) three (3) transmissions on Daytime BBC1 and/or Daytime BBC2 of daytime commissions;
- (vii) 4 transmissions on Daytime BBC1 and/or Daytime BBC2 of peaktime commissions;
- (viii) 3 transmissions on BBC1 and/or BBC2 as appropriate of children's commissions;
- (ix) 20 Transmission Days on CBBC and/or CBeebies;

provided that if the Programme is a Regional Programme and a package listed above is used for a network transmission, the BBC shall pay the Producer the fee set out in General Term 15.2.4

and

- 15.1.2 unlimited use of the Programme transmitted as part of Primary School Programming; and/or The Learning Zone; and/or The Sign Zone; and
  - 15.1.3 such transmissions on the services of S4C as may be required by the BBC insofar as the same are consistent with the permitted number of transmissions set out in S4C's Code of Practice for Programmes Commissioned by S4C; and
  - 15.1.4 the Primary New Media Rights; and
  - 15.1.5 the right to use extracts of the Programme in accordance with General Term 12.3; and
  - 15.1.6 the right to produce and distribute publicity and promotional materials as part of the Public Services Rights
  - 15.1.7 unlimited use of the Programme (or parts thereof) on BBC News 24 and/or BBC Parliament
- 15.2 In relation to any further uses not pre-purchased by the BBC under General Term 15.1, in addition to any contributor use payments that may be required and provided for under General Term 6, the BBC shall pay 3.5% of the Primary Rights Licence Fee for each further package of uses listed under 15.1.1 above (such package to be at the BBC's election) save that:
- 15.2.1 for the purposes of this General Term 15.2 only, the package listed at 15.1.1(ii) above shall be for one transmission on BBC 2; and
  - 15.2.2 if the BBC wishes to acquire the package listed in General Term 15.1.1(v) above, it may do so for the payment of 2% of the Primary Rights Licence Fee; and
  - 15.2.3 if the Programme was originally commissioned as a network commission and the package is being acquired for a regional opt-out repeat transmission it may do so for the payment of 2% of the Primary Rights Licence Fee; and
  - 15.2.4 if the Programme was originally commissioned as a Regional Programme and the package is being acquired for a network transmission, the fee payable shall be 10% of the Primary Rights Licence Fee subject always to a cap of £10,000 per episode
- 15.3 For the avoidance of doubt, where the exercise of any of the rights granted to the BBC under this Agreement does not provide for a specific payment under General Term 15.2, the BBC is entitled to exercise such rights without further payment to the Producer.

## **16. DISTRIBUTION / EXPLOITATION**

- 16.1 The BBC hereby acknowledges that the Producer owns the Distribution Rights and the Producer agrees that in the exercise of such Distribution Rights it will:
  - 16.1.1 comply with the provisions of this General Term 16, and

16.1.2 make the following payments to the BBC (in accordance with General Term 16.5) as follows:

- (i) 15% of Net Revenue where the BBC has not funded a Pilot; or
- (ii) 20% of Net Revenue where the BBC has funded a Pilot

16.2 In exercising its Distribution Rights, the Producer hereby agrees:

16.2.1 that the Producer shall not exercise or authorise the exercise of any Distribution Rights in the Programme:

- (i) in relation to all forms of television sales until the earlier of first full transmission of the final episode of the Programme in the UK by way of exercise of the BBC Public Service Rights or 6 months from acceptance of Full Delivery (and subject to such long-stop date it is acknowledged that the BBC is entitled to the world television premiere of each episode of the Programme) subject always to sub-clause (iv) below;
- (ii) in relation to the Commercial New Media Rights, other than in accordance with General Term 12.8; and
- (iii) in relation to other forms of exploitation, until at least the first transmission of the first episode of the Programme in the UK by way of exercise of the BBC Public Service Rights or 6 months from acceptance of Full Delivery whichever is earlier
- (iv) if the BBC changes its scheduled first transmission of the Programme at such short notice that that a foreign licensor of the Programme, having already placed the Programme in its transmission schedule, would have to reschedule its transmission of the Programme in order for the Producer to comply with General Term 16.2.1(i) above, the BBC (acting through the Director of Television) shall give good faith consideration (taking into account the relevant circumstances giving rise to the BBC's decision to re-schedule) to allowing the foreign transmission to proceed as originally scheduled.

16.2.2 to procure that any exercise of the Distribution Rights:

- (i) where carrying the BBC logo (or any other BBC brand) under the terms of this Agreement (including Schedule 7), comply at all times with the BBC Guidelines; and
- (ii) where not carrying the BBC logo (or any other BBC brand):
  - (a) be consistent with the editorial values and integrity of the Programme and the standards and ethos of the BBC;
  - (b) be carried out to a high level of quality and reflect BBC values of integrity, decency and distinctiveness;
  - (c) offer good value for money to the consumer;
  - (d) not be exercised in any manner which does not comply with the Independent Producer Joint Promotion Guidelines published on the Relevant BBC Websites, or give rise to any appreciable risk that editorial decisions relating to the Programme may be thought to be influenced by commercial considerations, or imply that UK consumers need to buy commercial products and services to access public service programming provided that for the avoidance of doubt nothing in this paragraph shall prevent the Producer per se from

- exercising the Merchandising Rights (for example in connection with tie-ins);
- (e) shall not be carried out in any manner which may cause offence, bring the BBC into disrepute, or diminish the BBC's reputation in any way provided that for the avoidance of doubt nothing in this paragraph shall prevent the Producer per se from exercising the Merchandising Rights (for example in connection with tie-ins); and
- (iii) in relation to the exercise of any Merchandising Rights in the UK during the Licence Period either:
    - (a) be genuine added-value, created explicitly from the intellectual content of the Programme;
    - (b) be of a novelty nature, serving to promote the Programme itself; or
    - (c) in the case of non-novelty merchandise aimed at adults, be relevant to and consistent with the core brand values of the Programme brand and consistent with the editorial theme of the Programme

The Producer may contact the BBC's Marketing Communications & Audiences Department in relation to any guidance it may seek in connection with complying with this General Term 16.2.2.

16.2.3 that during the Licence Period no exercise of any of the following shall take place in the UK & Eire or be targeted at the UK without the BBC's prior written consent (which may be withheld in its absolute discretion):

- (i) any form of television rights (save that in relation to Eire such consent shall be deemed given after expiry of 12 months from acceptance of Full Delivery or first BBC transmission of the last episode of the Programme, whichever is earlier);
- (ii) Library Sales Rights; and
- (iii) the exploitation of the Programme in any radio services

16.2.4 to procure that in the exercise of any of its Distribution Rights in the Programme:

- (i) during the Licence Period, the Programme and any Product or Associated Material relating to: (a) the exercise of any video/dvd rights in the Programme; or (b) any books of the Programme; or (c) any other products or material containing Programme material, shall carry the BBC logo in the UK in such manner as set out in the BBC Independent Production Branding Guidelines for the time being in force and published on the Commissioning Website and for such purposes the BBC grants to the Producer a non-exclusive licence to use (and the Producer undertakes that during the Licence Period, it will use, and procure that any other person deriving title through the Producer shall use) the Trade Marks throughout the Territory on Products and Associated Material produced by the Producer pursuant to the exercise of its rights in the Programme and/or the Programme Trade Marks subject to the terms and conditions set out in Schedule 7.

(In this General Term and Schedule 7, the terms "Trade Marks", "Territory", "Products" and "Associated Material" shall have the meanings ascribed to them in Schedule 7 and the term "this Licence" shall mean this General Term 16.2.4(i) and Schedule 7)

- (ii) the production credit as set out Schedule 2 to this Agreement shall appear on any and every version of the Programme in all media in

all territories during the Licence Period provided that the Producer may elect not to use the BBC logo in the international version of such credit

- 16.2.5 that it undertakes to procure that no exercise of its Distribution Rights in the Programme shall derogate from the rights granted to the BBC under this Agreement without the BBC's prior written consent.
- 16.2.6 that it shall not without BBC's written consent use or authorise the use of any 'out-takes' or rushes from the Programme in the UK for the purposes of producing and exploiting any compilation programme (such consent not to be unreasonably withheld)
- 16.2.7 it shall be entitled either itself or to licence distributors and/or broadcasters to feature footage from the Programme of up to 3 (three) minutes in duration in total on the Producer's/distributors/broadcasters' websites provided that:
  - (i) such use is solely for the purpose of publicity and promotion of the Programme and
  - (ii) such material shall not remain on the relevant distributors/broadcasters' websites for longer than 6 (six) months from transmission or end of distribution licence period as appropriate;
- 16.3 Without prejudice to General Term 13, any publicity or promotional material or literature (including posters, stills and trails) which the Producer produces itself in connection with the Programme shall:
  - 16.3.1 require the BBC's prior written approval where such material or literature contains any reference to the BBC (such approval to be given by the BBC Publicity Department within seven working days of request to the Producer's contact in the Publicity Department or their designated representative in the event that they are unavailable), and where the BBC expressly grants approval to any use of the BBC logo on such materials the terms and approvals procedure set out in Schedule 7 annexed to this Agreement shall apply to such use;
  - 16.3.2 comply with the BBC Guidelines;
  - 16.3.3 not be used or distributed in any way in the UK without the BBC's prior written approval.
- 16.4 The Producer shall not during the Licence Period exploit any rights in any Foreign Version Rights in any media in the UK and/or Eire without the prior written consent of the BBC (save that in relation to Eire such consent shall be deemed given after expiry of 12 months from acceptance of Full Delivery or first BBC transmission of the last episode of the Programme, whichever is earlier) and shall procure that all agreements entered into by the Producer with any third party in connection with the exercise of the Foreign Version Rights shall specifically prohibit such exploitation by such third party (and/or its licensees).
- 16.5 In relation to the BBC's entitlement to participate in the revenue arising from the exercise of the Distribution Rights under this Agreement:
  - 16.5.1 The Producer shall use its reasonable endeavours to promote and ensure the exploitation of the Programme and shall use all reasonable endeavours to procure that offers from third parties for the exploitation of the Programme and/or Format are upon the best commercial terms reasonably obtainable on an arm's length basis

- 16.5.2 The Producer shall account to the BBC in relation to all Net Revenue actually received that it is entitled to share in under the terms of this Agreement on 6 monthly basis for the periods ending 31st March and 30th September, and the Producer shall provide the BBC with copies of the distribution statements received from the relevant distributors and shall prepare and render a statement of account, both of which shall be delivered to the Head of the BBC's Commercial Agency within thirty days of the end of each accounting period and which shall be accompanied by a remittance for the amount shown to be due to the BBC on receipt of a VAT invoice showing the following: -
1. income from the exercise of the Distribution Rights broken down into its different sources
  2. details of the Commission and the Expenses
  3. the sums due to the BBC (including the recoupment of any costs that the BBC may agree to fund under the provisions of this Agreement including any costs in connection with registering trade marks and/or domain names in accordance with General Term 12.2.3)
- 16.5.3 The Producer shall keep and maintain full, accurate and complete books of account in connection with its exercise of the Distribution Rights and shall retain all invoices and other papers and documents to substantiate any receipts, revenues, costs and expenses for at least one year from the end of the term of the agreement giving rise to such revenue (or any extension thereof, if applicable)
- 16.5.4 The BBC may appoint a duly qualified accountant to inspect and examine the Producer's books in respect of exploitation of the Distribution Rights and to take copies of the same or extracts thereof and/or to cause an audit to be undertaken up to once per annum. Such inspection shall be made on reasonable prior notice and during normal business hours on a date or dates to be agreed between the parties. The examination shall be at the expense of the BBC unless errors to the disadvantage of the BBC exceeding 10% (ten percent) shall be disclosed in which case the cost of such examination shall be paid by the Producer
- 16.5.5 The Producer shall indemnify and hold the BBC and its officers directors and employees harmless from and against any and all claims damages liabilities costs and expenses including reasonable lawyers' fees arising out of or caused by any breach by the Producer its agents or sub-licensees or in respect of any of the agreements entered into by it or them in relation to the exercise of the Distribution Rights.
- 16.5.6 If, after two years following first transmission of the last episode of the Programme by the BBC, the Producer has not exercised the Distribution Rights or any of them during such period, the Producer if requested by the BBC shall consult in good faith with the BBC with a view to agreeing future steps (if any) to be taken to exploit the Programme by means of the Distribution Rights in question.

## **17. WARRANTIES AND INDEMNITIES**

### Producer's Warranties:

The Producer warrants and undertakes as follows:

- 17.1 At the date of this Agreement the Producer is an Independent Producer within the meaning of Paragraph 3 of The Broadcasting (Independent Productions) Order 1991 as amended

- 17.2 The Producer is a company duly and properly organised and existing according to English or Scottish law and is a qualifying person in accordance with section 206 of the CDPA and that it has the power and authority to enter into this Agreement and to perform its obligations under it and to grant the rights hereunder
- 17.3 The individual executing this Agreement on behalf of the Producer has been fully empowered and authorised by the Producer to execute this Agreement
- 17.4 Except to the extent that such rights are or become vested in the BBC and subject to any particular provisions contained in the Special Terms:
- 17.4.1 the Producer has or will by the Delivery Date have acquired and shall retain throughout the Licence Period all rights necessary to enable the Producer to grant all the rights acquired by the BBC under this Agreement; and
- 17.4.2 the Producer has or will by the Delivery Date have acquired all such rights in the Underlying Material, in the Programme Trade Marks, in the Publicity Stills, and in the products of the services of Performers and other persons supplying rights services and facilities in respect of the Programme to enable the BBC to fully exercise all rights granted to it under this Agreement without any restriction whatsoever and without the obligation to make any further payment except in respect of:
- (i) such rights as are normally controlled by performing rights societies
  - (ii) repeat fees or residuals to the extent (if any) that the Producer is under this Agreement not obliged to pay them as part of the Licence Fee
- 17.5 Nothing in the Programme will:
- (i) contain material or information that is defamatory or otherwise unlawful or that may threaten, harass, disrupt or otherwise violate the legal rights (including rights of privacy and publicity) of third parties;
  - (ii) infringe the personal proprietary rights (including intellectual property rights) of any third party anywhere in the world; or
  - (iii) promote illegal or unlawful activities
- and the Producer shall use best endeavours to ensure that nothing in the Programme will contain material that is obscene, pornographic, or indecent.
- 17.6 Without prejudice to General Term 17.5 (ii) above, the Producer will use best endeavours to carry out all relevant searches checks and negative checks (including for all unregistered rights) to ensure that no third party intellectual property right exists that the exercise of the BBC Public Service Rights may infringe
- 17.7 The Producer has the right to grant licences under General Term 12 and has not entered and will not during the Licence Period enter into any agreements licensing or assigning or purporting to licence or assign any rights to any third parties which are inconsistent with or would derogate from the rights granted to the BBC hereunder
- 17.8 Notwithstanding the provisions of General Term 22 and whether or not the BBC has exercised its right to commission a Further Programme no person other than the BBC is or will become entitled without the BBC's consent to broadcast any programme based on any script material from the Programme during the Licence Period and any extensions thereof so as to conflict with or derogate from the rights granted to the BBC hereunder

- 17.9 To the best of the Producer's knowledge and belief after all due and diligent enquiry, there are no claims or proceedings pending or threatened which might adversely affect the production delivery of the Programme or the rights granted to the BBC hereunder
- 17.10 In carrying out its obligations under this Agreement the Producer shall comply with all applicable laws, regulations and codes of practice
- 17.11 The Producer shall provide the sums required to fund (and will procure provision of) the Third Party Production Finance at such times as to enable the Producer to produce and deliver the Programme in accordance with the terms of this Agreement
- 17.12 The Producer shall not, and shall procure that its sub-licensees shall not, exercise any of its own rights in the Programme (including the Programme Trade Marks) whether during or beyond the Licence Period or whether in or outside the UK in any way which would bring the Programme or the BBC into disrepute or infringe the BBC Guidelines.
- 17.13 Any underlying contracts which are not delivered to the BBC as part of the Delivery Items do not require any additional payment whatsoever to any person or party in connection with the exercise of the BBC Public Service Rights under the terms of this Agreement
- 17.14 There are no security interests, mortgages, charges or other encumbrances over or affecting the rights granted to the BBC under this Agreement and there is no agreement or commitment to give or create any such security interests, mortgages, charges or other encumbrances.
- 17.15 The Producer has not stopped payment and is not insolvent nor unable to pay its debts according to section 123 of the Insolvency Act 1986 and no steps have been taken with a view to the winding-up, administration or administrative receivership of the Producer or making any composition, assignment or arrangement with any creditors of the Producer
- 17.16 In producing the Programme and generally carrying out its rights and obligations under the terms of this Agreement, the Producer (and its staff and all persons engaged by it for the purposes of this Agreement) shall ensure that its production staff are familiar with the information, guidance and requirements contained on the Relevant BBC Websites
- 17.17 The Licence Fee is no less than 25% of the Budget

#### Producer's Indemnity

- 17.18 The Producer shall indemnify and keep indemnified the BBC against all actions, claims, costs (including reasonable legal costs and settlement costs and payments made on the advice of Counsel), proceedings, damages, expenses, or fines arising directly out of any breach or non-performance by the Producer of any warranty given by it or obligation undertaken by it in this Agreement

#### BBC's warranties

- 17.19 The BBC shall comply with any credit billing logo or copyright requirements as approved by the BBC under General Term 10 above, and shall not delete such approved credits due to artists personnel individuals and corporations concerned in the writing preparation production and presentation of the Programme and it will not delete any part of the approved main or end titles of the Programme or the copyright notice.

17.20 The BBC shall only exercise the rights granted to it under the provisions of this Agreement and shall not exercise any of the rights in the Programme reserved to the Producer.

## **18. TAKEOVER**

18.1 The BBC shall have the right to take over the production of the Programme upon giving written notice to the Producer of its election to do so if:

18.1.1 the Producer is in material breach of any of its warranties undertakings or obligations under this Agreement other than a remediable breach of which the BBC gives the Producer notice and which is corrected within 7 (seven) days of such notice; or

18.1.2 any Insolvency Event occurs or;

18.1.3 if the Producer ceases or threatens to cease to carry on business or;

18.1.4 the BBC elects to enforce its rights pursuant to General Term 21.4 or;

18.1.5 a person who has signed a Key Agreement relating to the provision of their individual services in connection with the Programme shall die or be unable or unwilling to fully and properly to render their services as required under their Key Agreement and the Producer shall be unable to procure the engagement within fourteen (14) days of a substitute individual approved by the BBC (acting reasonably) provided that should the BBC subsequently secure an acceptable substitute individual the Producer shall then have the option of completing the Programme on the terms of this Agreement or;

18.1.6 the Producer undergoes a Change of Control which in the BBC's reasonable opinion is demonstrably prejudicial to the BBC.

18.2 Without prejudice to the BBC's right to take over production of the Programme, if any of the circumstances set out in General Term 18.1 occurs the BBC shall be entitled at its absolute discretion to waive such rights and to release the Producer from any obligation under this Agreement that requires the Producer to expend any material sums of money. In such case this Agreement shall continue in force subject to such waivers.

18.3 If the BBC elects to take over the production of the Programme:

18.3.1 The Producer or the person authorised under the Power of Attorney shall:

(i) assign to the BBC with full title guarantee the entire copyright in all languages in all media (whether now known or hereafter devised) throughout the universe (including all rights to renewals and extensions of copyright) in the Programme; and

(ii) assign to the BBC all contracts relating to the Programme to which the Producer is a party (including for the avoidance of doubt, the benefit of any contract relating to the provision of Third Party Production Finance); and

(iii) deliver to the BBC all such material used in the production of the Programme as the BBC may request,

and the BBC shall be responsible for performing the Producer's obligations under all contracts as from the date of their assignment to the BBC and shall keep the Producer fully indemnified at all times from and against all claims arising out of any breach after the date of such assignment of any such obligations

18.3.2 The Producer and the BBC shall arrange that cheques drawn on the Production Account do not require to be signed on behalf of the Producer and the Producer shall not undertake any further obligation in relation to the Programme;

18.3.3 The BBC shall have the right to proceed with the production and completion of the Programme in such manner (if at all) as it may deem advisable;

18.3.4 All expenditure made by the BBC in connection with the production of the Programme shall be included in the Certified Cost Report;

18.3.5 The BBC shall pay:

- (i) any sums to any relevant third parties as are necessary and reasonable to cover the existing financial obligations of the Producer properly incurred in accordance with the production Budget which are outstanding and unpaid at the date of the written notice to the Producer under General Term 18.1 above; and
- (ii) in circumstances where the Special Terms provide for the BBC to pay the Licence Fee upon delivery, an agreed sum to the Producer equal to the reasonable costs of production which have been incurred and spent by the Producer at the date of the written notice to the Producer under General Term 18.1 (and for the avoidance of doubt, the BBC shall not be obliged to pay the Licence Fee)

18.3.6 In circumstances where the Special Terms provide for the BBC to cash flow the Licence Fee:

- (i) the BBC shall not be obliged to make any further cash flow payments under Special Term 2.2; and
- (ii) the BBC shall release the Producer from the obligation to repay the Advances, save for an amount equal to the amount (if any) standing to the credit of the Production Account that represents any unspent Advance(s) or parts thereof and subject to the Producer making such repayment the BBC shall release from the Charge the property charged by it;

18.3.7 The Producer shall indemnify the BBC against liability to any other party as a result of any act or omission occurring prior to the BBC exercising any or all of its rights under this General Term.

18.4 Nothing in this General Term 18 shall be construed so as to limit or impair any other rights or remedies which the BBC may have under this Agreement or at law or in equity by reason of any breach by the Producer of any of its warranties undertakings or obligations under this Agreement.

## **19. ABANDONMENT OF PRODUCTION**

The BBC shall be entitled, at any time after takeover of the Programme pursuant to General Term 18, to abandon the production of the Programme and if it does so the provisions of General Term 18.3.1, 18.3.2, 18.3.4, 18.3.5, 18.3.6, 18.3.7, and 18.3.8 and 18.4 shall nevertheless apply.

## **20. TERMINATION**

20.1 The BBC shall have the right to terminate this Agreement upon giving written notice to the Producer of its election to do so if:

- 20.1.1 The Producer is in material breach of any of its warranties undertakings or obligations under this Agreement other than a remediable breach of which the BBC gives the Producer notice and which is corrected within 7 (seven) days of such notice or;
- 20.1.2 any Insolvency Event occurs or;
- 20.1.3 if the Producer ceases or threatens to cease to carry on business or;
- 20.1.4 a person who has signed a Key Agreement relating to the provision of their individual services in connection with the Programme shall die or be unable or unwilling to fully and properly to render their services as required under their Key Agreement and the Producer shall be unable to procure the engagement within fourteen (14) days of a substitute individual approved by the BBC (acting reasonably) provided that should the BBC subsequently wish to commission an alternative programme based on the Programme but which takes into account the unavailability of such original key individual the Producer shall have the first negotiating right to produce such alternative Programme or;
- 20.1.5 the Producer undergoes a Change of Control which in the BBC's reasonable opinion is demonstrably prejudicial to the BBC.
- 20.2 Upon termination under General Term 20.1 above, and without prejudice to General Term 20.3 below the Producer shall be released from all its obligations to the BBC under this Agreement, save for where the BBC cash flows the Licence Fee, the Producer's obligation to repay the Advances, and the BBC shall not be obliged to take delivery of the Programme or pay the Licence Fee or make any further cash flow payments under Special Term 2.2 to the Producer.
- 20.3 Nothing in this General Term 20 shall be construed so as to limit or impair any other rights or remedies which the BBC may have under this Agreement or at law or in equity by reason of any breach by the Producer of any of its warranties undertakings or obligations under this Agreement.

## **21. FORCE MAJEURE**

- 21.1 If the production of the Programme is prevented hindered or delayed by any cause not within the control of the Producer (and a strike or lock-out shall not be deemed within the control of the Producer unless in the opinion of the BBC it has been caused by some act or omission of the Producer) either party shall be entitled by written notice given to the other to suspend performance of its obligations hereunder and the parties shall consult with each other and use their best endeavours to limit and reduce expenditure on the production while the suspension continues.
- 21.2 Any suspension shall be effective from the date the circumstance giving rise to it first arose or occurred and during any suspension period each party shall be excluded from the performance of its obligations under this Agreement to the extent of the prevention, hindrance or delay.
- 21.3 If any suspension continues for more than 4 (four) consecutive weeks or if the aggregate of any periods of suspension is more than 6 (six) weeks in any period of 8 (eight) consecutive weeks either party shall be entitled by written notice forthwith to terminate this Agreement and such termination shall be effective from the effective date of the suspension or first suspension.
- 21.4 If either party terminates this Agreement pursuant to General Term 21.3 the BBC shall be entitled to take over the production of the Programme upon giving written notice to the Producer of its election to do so. General Term 18.3 shall apply and

the Producer shall have no further interest whatsoever in the Programme or under this Agreement

## **22. RECOMMISSIONING RIGHT**

22.1 The Producer hereby grants to the BBC the sole and exclusive option to commission the Producer to produce and deliver Further Programme(s) on the same terms as are contained in this Agreement save for any variations to the Licence Fee agreed in good faith in respect of such Further Programme

22.2 The BBC shall notify the Producer of its intention to exercise such option within 9 months of transmission of the last episode of the Programme, or 12 months from acceptance of Full Delivery whichever is earlier ("the Option Period")

22.3 In the event that:

22.3.1 the BBC does not notify the Producer that it wishes to exercise the said option within the Option Period, or

22.3.2 having notified the Producer of its intention to exercise the said option within the Option Period, the agreement to commission such Further Programme(s) is not concluded within 12 months of transmission of the last episode of the Programme, or 18 months from acceptance of Full Delivery whichever is earlier (both parties acting reasonably and in good faith in conducting such negotiations)

then the Producer shall be entitled to produce and exploit Further Programme(s) for a third party notwithstanding and subject always to the BBC's rights in respect of the Programme under this Agreement and any other agreement between the parties relating to the Programme and its exploitation PROVIDED THAT if either party believes that the negotiations to conclude such agreement to commission a Further Programme have not been conducted reasonably and in good faith by the other party, General Term 25.9.2 (i)&(ii) shall apply.

22.4 If the Programme is designed as a pilot programme and the BBC has not exercised the aforesaid option within the Option Period nor has the Programme been transmitted by the BBC on or before the first day of principal photography or recording of the first of such Further Programme(s) by a third party broadcaster then the BBC shall re-assign all the BBC's rights in the Programme to the Producer Provided That the Producer repays the Licence Fee to the BBC and the Producer shall then be entitled to exploit the Programme in such a manner and in such media as it shall decide free of any interest of the BBC therein.

## **23. CONFIDENTIALITY AND FREEDOM OF INFORMATION**

23.1 Each party shall keep any confidential information relating to the business affairs of the other party and its associated companies secure and protected against theft, damage, loss or unauthorised access. Neither party will disclose any such information to any third party other than Personnel of the recipient or the personnel of its associated companies who need to know such information for the purposes of acting under and pursuant to this Agreement and who are made aware of and have agreed to comply with this General Term 23.1. Any disclosure of such information by the Producer to PACT is only permitted on the basis that PACT shall also comply with the provisions of this General Term 23.1. The obligations of this General Term 23.1 shall not apply to any disclosure of information which is required by law or by a competent regulatory authority (subject to General Term 23.2 below), and shall cease to apply to any information which has come into the public domain through no fault of the recipient or which was at the date of disclosure already in the public domain or the possession of the recipient.

23.2 If either party is required to disclose information by law or by a competent regulatory authority, the party required to make such disclosure shall give notice to the other party. The party required to make disclosure shall have the right to disclose any part of the information of the other party solely to the extent that it is legally required to do so pursuant to an order of a court of competent jurisdiction or governmental authority provided that each party shall use its best endeavours to limit disclosure under this General Term 23.2 and to provide the other party with an opportunity to make representations to the relevant court or governmental authority

## **24. NOTICES**

All notices given by the parties under this Agreement shall be in writing and shall be given in the language of this Agreement and deemed delivered as follows:

24.1 by hand - upon delivery; or

24.2 by first-class prepaid registered or recorded delivery post and by airmail if to an overseas address - 48 (forty-eight) hours (120 (one hundred and twenty) hours if to an overseas address) after posting; or

24.3 by any facsimile or other system which prints the notice at the receiving end - upon despatch

Provided That:

(a) no notice shall be deemed to have been given or served unless addressed to the relevant BBC Representative as set out in the Special Terms or to such other address of which that person shall have informed the giver or server of the notice in writing

(b) a notice given or served on a Saturday Sunday or public holiday or outside normal business hours at the place where it is received shall not be deemed given or served until the next commencement of normal business hours there

## **25. GENERAL**

### Entirety

25.1 This Agreement represents the entire understanding between the parties and supersedes all prior agreements, whether oral or written, between the parties in relation to its subject matter. Neither party has entered into this Agreement on the basis of, or has relied on, any statement or representation (whether negligent or innocent) except those expressly contained in this Agreement.

25.2 Except as expressly set forth in this Agreement, neither party grants to the other by implication, estoppel or otherwise, any right, title, licence or interest in any intellectual property right.

25.3 The parties acknowledge that they are not relying on any understanding, arrangement, statement, representation, warranty, condition or term which is not set out in this Agreement. All understandings, arrangements, statements, representations (other than fraudulent misrepresentations), warranties, conditions and terms (including, but not limited to, implied warranties and/or conditions as to satisfactory quality and fitness for purpose) other than those set out in this Agreement are hereby excluded to the maximum extent permissible by law.

25.4 No provision of this Agreement shall operate to:-

25.4.1 exclude any provision implied into this Agreement by English law and which may not be excluded by English law; or

25.4.2 limit or exclude any liability, right or remedy to a greater extent than is permissible under English law including in relation to (1) death or personal

injury caused by the negligence of a party to this Agreement or (2) fraudulent misrepresentation or deceit.

#### Variation

- 25.5 No amendment or variation of the terms of this Agreement shall be valid or binding unless made by prior written agreement between the parties and signed by their duly authorised representatives, who for the purposes of the BBC is the BBC Legal & Business Affairs Manager.

#### Waiver

- 25.6 No waiver by either party of a breach or a default hereunder shall be effective unless in writing and signed by both parties and no such waiver shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature. No failure or delay by either party in exercising any rights, power or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise by any party of any right, power or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

#### No Partnership

- 25.7 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture or employment relationship between the parties or constitute or be deemed to constitute either party as agent of the other for any purpose whatsoever. Neither party shall act or describe itself as the agent of the other party nor shall either party have or represent that it has any authority to make commitments on behalf of the other.

#### Publicity

- 25.8 The Producer shall not, and shall procure that its Personnel shall not, make any announcement, or comment upon, or originate any publicity, or otherwise provide any information to any third party (other than its legal advisors) concerning this Agreement including the existence of this Agreement, the terms of this Agreement, the performance of this Agreement and/or any dispute or disagreement relating to this Agreement without the prior written consent of the BBC.

#### Disputes

- 25.9 Any dispute arising in connection with the BBC Code of Practice or the BBC Terms of Trade will be dealt with in accordance with the following dispute resolution procedure:

25.9.1 Neither party will be entitled to commence legal proceedings under the jurisdiction of the courts in connection with any such dispute unless directed to do so by the Centre for Effective Dispute Resolution ("CEDR") having had the dispute referred to it under General Term 25.9.2 below

25.9.2 In the event of a dispute under this Agreement:

- (i) The BBC and/or the Producer shall notify the BBC's representative (being the Director of the relevant BBC Division) in writing
- (ii) Such Director and any representative of the Producer will meet and will use all reasonable endeavours to resolve the dispute
- (iii) If such meeting fails to resolve a dispute within 21 Business Days of the referral of the dispute to it, the dispute shall at each parties own cost be referred to and resolved by CEDR

#### Governing Law

- 25.10 This Agreement shall be interpreted in accordance with the laws of England and Wales and any dispute or other matter arising hereunder shall be subject (and the parties hereby submit) to the exclusive jurisdiction of the English Courts.

#### Rights of Third Parties

25.11 This Agreement does not create or confer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement

BBC Right to Assign

25.12 The BBC shall be entitled without the consent of the Producer to assign or novate this Agreement (or any of its rights or obligations under this Agreement) to any company which is directly or indirectly owned and/or controlled by the BBC (which for the avoidance of doubt is governed by the BBC's Royal Charter)

Producer non-assignment

25.13 This Agreement is personal to the Producer and the Producer shall not assign, transfer, sub-license, sub-contract, charge, or otherwise deal with the rights granted to the BBC or any obligations on the part of the Producer under this Agreement save as expressly set out in this Agreement without the prior written consent of the BBC unless such dealing is required pursuant to a Change of Control of the Producer which occurs as part of a bona fide solvent restructuring within its Group (for the purposes of this General Term 'Group' shall have the meaning as defined in Schedule 7 to this Agreement). Any consent that the BBC may grant may be conditional upon the relevant party entering into a novation agreement with the BBC and the Producer whereby such party undertakes to perform and to be bound by the terms of this Agreement as if such party were a party to this Agreement ab initio in lieu of the Producer. For the avoidance of doubt, BBC consent shall not be required in connection with the sub-licensing of the Distribution Rights in accordance with General Term 16.

Infringement

25.14 If the BBC or the Producer becomes aware of any actual, threatened or suspected infringement by a third party of any of the BBC's or the Producer's rights under this Agreement (including the Programme Trade Marks), the party that is aware of such action shall give the other written notice of such action and the Producer shall within a reasonable period of time (to be specified in the notice from the BBC) take appropriate action to enforce and preserve the BBC's and the Producer's rights in the Programme under this Agreement.

25.15 The BBC shall provide such cooperation or assistance in this connection as may be required by the Producer to meet its obligations under General Term 25.14 above, including joining the action as a party; and the Producer shall reimburse the BBC with its costs of proving any such assistance cooperation and action.

25.16 In the event that the Producer shall not have taken any action by the end of the period specified in the notice, the BBC shall be entitled (but not obliged) to take any legal or other action (including in the name of the Producer) against any such third party and the Producer shall provide such cooperation or assistance in this connection as may be required, including joining the action as a party; and shall reimburse the BBC with the cost of taking such action.

25.17 The provisions of General Terms 25.14, 25.15 and 25.16 shall also apply to any action taken by the BBC, including any action for injunctive relief or the like under the CDPA and/or the Trade Marks Act 1994 against an infringer and shall in no way limit the BBC's rights under the CDPA and/or the Trade Marks Act 1994.

Severability

25.18 If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable then the remaining provisions of this Agreement shall continue in full force and effect. The judicial or other competent authority making such determination shall have the power to limit, construe or reduce the duration, scope, activity and/or area of such provision, and/or delete specific words or phrases as necessary to render, such provision enforceable.

Authority to bind

- 25.19 Where the provisions of this Agreement specify that a particular representative of the BBC is to confirm or approve a particular obligation or right of the BBC under the terms of this Agreement, only such specified individual has the authority to bind the BBC in relation to such obligation or approval.

Further Assurances

- 25.20 Each party shall, as and when requested by the other party, do all acts and execute all documents as may be reasonably necessary to give effect to the provisions of this Agreement.

No obligation to broadcast

- 25.21 For the avoidance of doubt, nothing contained in this Agreement shall oblige the BBC to exercise the rights granted to it hereunder.

Rights reserved to the Producer

- 25.22 For the avoidance of doubt, all rights and title not specifically granted to the BBC hereunder are specifically reserved to the Producer.

26. **POST – LICENCE PROVISIONS**

For the avoidance of doubt, notwithstanding the expiry of the Licence Period, General Terms 11.3.1; 12.3 (for the purposes of historical or reminiscent use); 14.2; 16.1; 16.2.2; 16.2.4(ii) & Schedule 7 (where the Producer wishes to continue to use the BBC's Trade Marks); 16.3.2 for so long as the Programme is a Returning Series; 16.5; 17; 23; 24; 25; shall continue in full force and effect between the parties.