

*Version control:*

*August 2018: Updates **in red** to accommodate updated definition of Data Protection Legislation and additional clauses on data protection.*

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**AGREEMENT BETWEEN THE PARTIES:**

- A. The Producer and the BBC have completed their negotiations concerning the commissioning by the BBC from the Producer of the Programme (as defined below) in accordance with the 'CODE OF PRACTICE ON BBC'S DEALINGS WITH INDEPENDENT PRODUCERS FOR TELEVISION PROGRAMMES COMMISSIONED BY THE BBC' and the associated 'BBC Business Framework for the Commissioning of Independent Productions dated 16 October 2013' ("BBC Terms of Trade") and now wish to record their agreement in writing.
- B. The BBC Production Agreement Special Terms ('Special Terms') which have been agreed and signed incorporate these BBC Production Agreement General Terms ('General Terms'). The Special Terms and General Terms together with the Appendices and Schedules to which they refer form the agreement between the parties ("Agreement").
- C. Words and expressions defined in General Term 1 of the General Terms shall have the same meanings where used elsewhere in this Agreement.
- D. This Agreement shall take effect from the date preproduction started on the Programme or the date of execution of this Agreement whichever is the earlier. In the event of any conflict or inconsistency between the Special Terms and the General Terms, the former shall prevail.
- E. This Agreement may be executed in separate counterparts by the Parties and each counterpart shall when executed and delivered be an original document, but all counterparts shall together constitute one and the same instrument. Executed copies of the signature pages of this Agreement sent by facsimile or transmitted electronically in either Tagged Image Format Files (TIFF) or Portable Document Format (PDF) shall be treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights they may have to object to such treatment
- F. The BBC and the Producer confirm that the BBC has not required as a condition to this Agreement that the Producer in connection with the production of the Programme uses any BBC production facilities (whether the details of such use are included in the terms of this Agreement or elsewhere); or refrains from using the production facilities of any other broadcaster. Accordingly, the BBC and the Producer confirm that the circumstances in article 3(3) of the Broadcasting (Independent Productions) Order 1991 as amended do not apply to this Programme.

**GENERAL TERMS:****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 two (2) packages of further uses under General Term 15.2;

"Advances" – as defined in General Term 7.2.1;

"Agreed Recoupments" – means the sums set out in the Special Terms which are agreed by the BBC as being recoupable either by a third party or the Producer and which are actually applied by the Producer towards the direct cost of production of the Programme, provided that:

- the exact amount or proportion of recoupment is the subject of agreement with the BBC;
- the recoupment of any Agreed Recoupments shall occur in the order in which the revenue was received by the Producer (or its Distributor if the Distributor is reporting directly to the BBC) to ensure that the BBC's entitlement of 25% Net Revenue under General Term 16.1.2 (iii) from exploitation pursuant to consent granted under General Term 16.2.3 is applied to a fair and appropriate apportionment of the receipts, where the receipts relate to a combination of distribution rights attracting differing BBC back end shares as set out above;
- the Producer shall not knowingly do anything which might serve to undermine this principle and will ensure that its Distributor(s) also adhere to these principles;
- on a six (6) monthly basis, the Producer shall provide to the BBC a statement (from the Producer or its distributor as applicable) identifying sales reported during the previous (six) 6 months, by media, territory and date; and
- that any advances received by the Producer which are not applied to the direct costs of production in respect of the agreed Commissioning Specification constitute distribution receipts which are shared with the BBC in accordance with this Agreement and do not form part of the Agreed Recoupments;

"Agreement" - the Programme production agreement between the BBC and the Producer which includes all schedules hereto;

"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 Business Affairs Manager" - means the person identified as such in the Special Terms, or as otherwise notified by the BBC to the Producer;

"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 Editorial Representative" - the person who signed the Commissioning Specification on behalf of the BBC;

"BBC Guidelines" - all relevant BBC guidelines published or linked to at the date of this Agreement from the following website:  
<http://www.bbc.co.uk/commissioning/tv/production/articles/policies-guidelines> and any others specifically notified to the Producer prior to the first day of principal photography;

"BBC New Media Representative" - means the person who signed the New Media Deliverables Attachment on behalf of the BBC

"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 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 not commercial services as referred to in the BBC's Royal Charter) 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 (including for the avoidance of doubt on any so-called BBC 'Big Screens' funded by the BBC licence fee and located around the country); 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;

"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 either (i) one (1) day from first BBC transmission for Programmes commissioned other than for BBC3 or one (1) day after first exercise of the BBC Public Service Rights for Programmes commissioned for BBC3 or; (ii) in respect of the Producer's exploitation of the Commercial Download Rights outside the UK and Eire six (6) months from acceptance of Full Delivery whichever is the earlier of the episode of the Programme to be exploited, to make that episode of the Programme available, either itself or through its licensees (subject always to compliance by such licensees with General Term 16 as appropriate), as an individual discrete purchase by the general public for permanent download (or other technological means of permanent digital access by the individual discrete purchaser as may develop over time) to own by any wire or wireless means (including but not limited to the internet) in such a manner as to permit access to, viewing and storage of copies of the Programme as a permanent download/ability to access;

**"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 either (i) seven (7) days after first BBC transmission for Programmes commissioned other than for BBC3 (or relevant episode thereof); or (ii) seven (7) days after first exercise of the BBC Public Service Rights for Programmes commissioned for BBC3 (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 annexed to the Special Terms which has been agreed and signed by the BBC and the Producer 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):

**All documents must:**

1. Include the Producer's name and address
2. State the name of the BBC Business Affairs 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 Business Affairs 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

"Contributors Form" - a form generated by Silvermouse to record on-screen and off-screen participants;

"Data Protection Legislation" - the General Data Protection Regulation ('GDPR') 2016/679, and other EU legislative instruments, the Data Protection Act 2018 and any other UK laws and regulations relating to personal data and privacy as may be in force from time to time;

"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 as Delivery Items on the BBC's Commissioning website at the following url: <http://downloads.bbc.co.uk/commissioning/site/delivery-items-november-2020.pdf>

"Diamond" - a diversity monitoring initiative set up by the Creative Diversity Network to monitor the diversity of individuals participating in productions both on-screen and off-screen in the United Kingdom;

"Diamond Diversity Data" - all personal data inputted into the Diversity Data Modules

"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;

"Diversity Actual Form" - a form generated by Silvermouse which (i) is auto-populated from Participants entered on the Contributors Form (ii) allows Participants with a mandatory role type (other than those recorded on the Contributors Form) to be added or excluded (iii) allows Participants with a non-mandatory role type to be added (iv) allows Participants who have filled in a Diversity Self-Service Form to be added;

"Diversity Characteristics" - for the purposes of Diamond the six diversity characteristics are: gender, gender identity, age, ethnicity, sexual orientation and disability;

"Diversity Data Modules" - means the data forms and functionality on Silvermouse created for the purposes of collecting and reporting on Diamond Diversity Data;

"Diamond Guidance Notes" - the Diamond Guidance Notes version version 1.1 dated August 2016 as may be varied from time to time in agreement with Pact, such agreement not to be unreasonably withheld or delayed

"Diversity Perceived Form" - a form generated by Silvermouse to record perceived Diversity Characteristics of Participants, where evident;



"Diversity Self-declaration Form" - a form generated by Silvermouse which invites Participants to submit their actual Diversity Characteristics;

"Diversity Self-Service Form" - a form that invites Participants to directly enter their actual Diversity Characteristics;

"Excluded Categories" - categories of role types and Participants for which data should not be collected in Diamond, as specified in the Diamond Guidance Notes;

"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 five (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 Agreed Recoupments.

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)-(d) 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 final paperwork Delivery Items and any other items which were not delivered pursuant to Tape Delivery;

"Participant" - a participant in the Programme, whether on-screen or off-screen, as detailed in the Diamond Guidance Notes;

"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 Thirty 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 thirty (30) 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, and a new media (temporary download or streamed) premiere/preview of the Programme which may be made available from (seven) 7 days prior to the first linear broadcast (the "Preview Right");

"Producer Advance" – means 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, excluding any Third Party Production Finance;

"Producer's Nominated Representative" - means the person who signed the Commissioning Specification on behalf of the Producer (unless otherwise notified in writing to the BBC Business Affairs Manager);

"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 six (6) 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 complies with the Ofcom definition of Regional Production set out on [Ofcom's website](#).

"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 inside the region will nonetheless count for this purpose if they live in the region;

"Real Living Wage" - The rate set out by the Living Wage Foundation:  
<http://www.livingwage.org.uk/>

"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 BBC's UK transmission;
- (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;

"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;

"Silvermouse" - a web-based system developed by Soundmouse used by broadcasters and production companies for production paperwork or any equivalent replacement web-based diversity monitoring system adopted for Diamond;

"Soundmouse" - Soundmouse Limited;

"Special Terms" - the Special Terms of this Agreement signed by the BBC and the Producer;

"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 all the Delivery Items relating to the Programme required on or by the Delivery Date, time being of the essence save for any final paperwork Delivery Items;

"Thirty Day New Media Rights" - means the Preview Right and the right for the period of thirty (30) 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;

"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;

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

"Trade Mark Schedule" – the Schedule to this Agreement, the terms of which are set out at the url available at the following url:

[www.bbc.co.uk/commissioning/downloads/trade\\_mark\\_schedule.pdf](http://www.bbc.co.uk/commissioning/downloads/trade_mark_schedule.pdf) ;

"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 identified in this Agreement) who shall have the power to give specific approvals and reach specific decisions on its behalf. Where any of such BBC Representatives 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:
- (a) the Commissioning Specification signed by the Producer and the BBC;
  - (b) where requested by the BBC, a Laboratory Letter and/or as appropriate a Facilities House Letter in the standard form(s) acceptable to the BBC as provided on the BBC's Commissioning Website at the following url address:  
[http://www.bbc.co.uk/commissioning/downloads/facilities\\_house\\_letter.docx](http://www.bbc.co.uk/commissioning/downloads/facilities_house_letter.docx) signed on behalf of the Laboratory (or Facilities House) and the Producer;
- 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;
- 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 in the Commissioning Specification and/or the Special Terms;
- 4.7 the Producer has completed a Health and 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 the 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: child protection legislation, disability discrimination legislation, data protection legislation, health safety and fire legislation, anti-bribery 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; and
- 5.3.6 Secure the prior written approval of the BBC Editorial Representative to any viewing of any Programme related material or content by any Programme participant(s) prior to Tape Delivery, where such viewing could lead to a breach of the BBC Guidelines, such approval not to be unreasonably withheld or delayed.
- 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 the purposes of producing publicity and 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.
- 5.7 For the avoidance of doubt, it is acknowledged that any details set out in Part 1 of the Commissioning Specification entitled "Editorial Specification" under the heading "Editorial Compliance Considerations" are without prejudice to the Producer's general obligations under this Agreement to comply with the BBC Guidelines.
- 5.8 In relation to **safeguarding children and young people**:
  - 5.8.1 The Producer confirms that:
    - 1. it has, or will have put in place before commencement of pre-production, specific processes within its organisation to implement the BBC's Child Protection Policy in the context of producing the Programme for the BBC;
    - 2. it will make the appropriate and permitted pre-employment DBS (or equivalent) checks on any of its personnel who are due to be carrying out as part of their normal duties or for intense periods any teaching, training or instruction, care or supervision of any children involved on the Programme, and provide evidence or confirmation of those checks to the BBC if requested;
    - 3. it will notify the BBC as soon as possible (which shall be considered as being within 48 hours of a senior member of the production team being informed) about any allegation or complaint of the nature set out in the

BBC Child Protection Policy in relation to the Programme or Programme personnel, and will keep the BBC informed of the progress of any investigation (of any nature) into such allegations or complaint, and whilst the Producer remains fully responsible for dealing with the issue in the appropriate manner, it shall enable the BBC to input into those investigations.

- 5.8.2 The BBC shall be entitled upon giving reasonable notice to undertake a review with the Producer to ensure the Producer has the procedures in place to effectively implement the BBC's Child Protection Policy in relation to the Programme or Programme personnel. For the avoidance of doubt, no exercise by the BBC of such right of a review shall waive the warranties and obligations of the Producer under the terms of this Agreement.
- 5.9 In relation to **Telephony Services**: In the event that as part of production of the Programme the Producer proposes to arrange for the supply of telephony services in connection with the Programme, without prejudice to the generality of the terms of this Agreement, in connection with such services it is specifically acknowledged and agreed as follows:
- 5.9.1 all arrangements for the supply of telephony services shall be made in accordance with the BBC's Guidance Notes to Independent Production Companies for the Use of Interactivity in BBC Commissioned Programmes, published here:  
<http://www.bbc.co.uk/commissioning/tv/production/business-and-production-guide.shtml#audience-interaction> ;
- 5.9.2 the agreement for the supply of such services is identified in the Commissioning Specification as a Key Agreement and accordingly shall not be entered into by the Producer without the prior approval of the proposed terms and conditions by the BBC ("Telephony Services Agreement");
- 5.9.3 As set out in the Commissioning Specification, the Producer shall appoint an individual employee of the Producer to be responsible and accountable for the operation of the telephony services in connection with the Programme in accordance with the Phone Pay Plus, OFCOM, and the relevant BBC Guidelines, and any other specific instructions of the BBC.
- 5.10 Without prejudice to General Term 5.3, the Producer is aware that the Bribery Act has come into force and undertakes to comply with the provisions of the Act. The Producer confirms that it will take into account the Anti-Bribery High Level Principles & Guidelines for Independent Producers and will establish and implement suitable Anti-bribery policy(s) within its organisation.
- 5.11 The Producer acknowledges that the BBC does not tolerate any form of bullying and/or harassment and is committed to providing a workplace in which the dignity of individuals is respected. It expects its suppliers to have the same attitude and to have in place a company policy addressing the subject of bullying and harassment, which will be made available to the BBC on request. The BBC also considers it to be 'best practice' for such a company policy to include a protected disclosure whistle-blowing policy for its production personnel. It is acknowledged that any grievances of this nature which are successfully pursued by an individual working for the Producer and made public are likely to damage the BBC's reputation and accordingly could lead to a breach of the Producer's contractual warranties.

- 5.12 Diverse representation on and off screen is extremely important to the BBC. By 'diversity' we mean reflecting modern Britain in all its cultural, social, age, gender and geographical richness as well as ensuring representation of disabled people and ethnic minorities. The Producer shall put in place and maintain a Diversity and Inclusion policy.

Diversity and Project Diamond

- 5.13 The Parties acknowledge and agree that the BBC is participating in Diamond. For the purposes of Diamond, the parties acknowledge and agree that the BBC will be the Data Controllers of all Diamond Diversity Data and the Producer will be the Data Processor of the Diamond Diversity Data inputted by the Producer to the Diversity Data Modules, and the BBC will use all Diamond Diversity Data in accordance with its obligations under the Data Protection Legislation.
- 5.14 The Producer shall, save in respect of the Excluded Categories: (i) notify the Participants of the submission of their e-mail addresses into Silvermouse for the purpose of being invited to complete the Diversity Self-declaration Form, and (ii) complete the Contributors Form, the Diversity Actual Form and (iii) complete the Diversity Perceived Form in Silvermouse. For the purposes of this clause, "complete" shall have the meaning set out in the Diamond Guidance Notes.
- 5.15 Where a Participant does not provide the Producer with an e-mail address the Producer will use reasonable endeavours to supply or make available to the Participant a Diversity Self-Service Form.
- 5.16 The BBC may compile reports using Diamond Diversity Data relating to the Programme that is contained in the Diversity Data Modules (the "Reports"). The BBC may choose to share the Reports with the Producer and will do so on the basis that the Producer acts as a Data Processor of the Reports and the Producer agrees to treat the Reports as confidential and hold them in accordance with the provisions of the Data Protection Legislation.
- 5.17
- 5.17.1 Subject to the provisions of 5.17.2 below, the BBC shall indemnify the Producer against:
- (i) any direct financial loss and or penalty actually suffered by the Producer due to a data infringement under Data Protection Legislation with respect to the Diamond Diversity Data that is incurred by the Producer substantially and directly as a result of the Producer being a data processor of Diamond Diversity Data where such infringement is as a direct result of the BBC's, or Soundmouse's actions; and/or
  - (ii) any reasonable external legal costs actually incurred by the Producer in respect of (a) such data infringement claim referred to in (i) above, and/or (b) defending any claim or action with respect to mishandling of the Diamond Diversity Data made against the Producer by a Participant substantially and directly as a consequence of the Participant's involvement in Diamond, and being made as a direct result of the BBC's, and/or Soundmouse's actions.
- 5.17.2 The indemnity set out in 5.17.1 shall be subject to the following:
- (i) the Producer has fully complied with all its obligations and responsibilities under the applicable contract (if any) between itself and the affected

- individual, the provisions relating to Diamond and data protection in this Agreement, Data Protection Legislation and the Diamond Guidance Notes (in so far as the Diamond Guidance Notes are relevant to a claim under this indemnity). If a Producer has reason to believe that the Data Protection Legislation and the Diamond Guidance Notes are inconsistent, it shall promptly notify the BBC and follow the instructions subsequently given to it by the BBC. For the avoidance of doubt, providing the Producer acts in accordance with the provisions of this clause 5.17.2, if a regulatory body or court of competent jurisdiction determines that the Diamond Guidance Notes are not fully consistent with the Data Protection Legislation and such inconsistency results in the Producer making a claim under this indemnity, the validity of the indemnity shall not be affected;
- (ii) where the Producer has contracted the Participants the contract incorporates the pan-industry agreed or equivalent wording for project Diamond;
  - (iii) the Producer will notify the BBC immediately in writing in the event that a claim arising under 5.17.1 has been made against the Producer;
  - (iv) the BBC is entitled to control any investigation into and/or defence to such actions/claims/proceedings being made;
  - (v) the Producer will provide such cooperation or assistance as the BBC may reasonably request in conducting such investigation and/or defence;
  - (vi) the Producer will not make any admissions of liability or agreement to settle nor incur any legal costs in investigating or defending any such claim without the prior written consent of the BBC;
  - (vii) the Producer will take all reasonable steps to mitigate their losses; and
  - (viii) the total liability of the BBC per claim under clause 5.17.1(i) or (ii) is limited to: (a) £500,000 where there is only one claim arising from a data subject from the act or omission which gives rise to the claim; and (b) £1,000,000 in aggregate for a series of claims arising from data subjects from the same act or omission.
  - (ix) In the event that the BBC terminates its participation in the Diamond project or ceases to be a member of the CDN this indemnity will no longer apply. For the avoidance of doubt, if the act or omission which gives rise to any liability under this indemnity occurs prior to the date the BBC terminates its participation in the Diamond project or ceases to be a member of the CDN, the validity of this indemnity shall not be affected.
- 5.18 The Producer acknowledges that to complete Paper Delivery some paperwork, as indicated in the Delivery Items, will be delivered electronically using Silvermouse and the Producer agrees to enter into Silvermouse the contact details of certain individuals involved in the production of the Programme as requested on the paperwork if a Producer response is required for queries.
- Data Protection
- 5.19 For the purposes of Clauses 5.19 to 5.29 and the Commissioning Specification, the terms "processing", "Personal Data", "controller", "data subject", "processor", "personal data breach", "supervisory authority" and "joint controller" shall bear the same meanings as set out in the Data Protection Legislation.
- Producer as controller:
- 5.20 Unless otherwise specified in the Commissioning Specification, the Producer will be the controller of any Personal Data processed for the purpose of the commissioning and production of the Programme ("the Programme Personal Data")

- 5.21 When acting as the controller the Producer undertakes to comply with its obligations under Data Protection Legislation, specifically but not limited to Chapters II, III and IV of GDPR.
- BBC and Producer as joint controllers (when clauses 5.22 to 5.29 shall apply):
- 5.22 Where specified in the Commissioning Specification, the Producer and the BBC will be joint controllers of the Programme Personal Data, and the BBC and Producer shall comply with all Data Protection Legislation applicable to controllers, shall process such Programme Personal Data in accordance with its privacy policy, and shall not process such Programme Personal Data for any other purpose or in any other manner except to the extent set forth in this clause and as otherwise may be required by the Data Protection Legislation.
- 5.23 The BBC and Producer shall each co-operate acting reasonably with the other and provide assistance (each at their own incurred reasonable costs) , to the extent required under the Data Protection legislation and subject to the individuals rights for the purpose of ensuring that the processing of the Programme Personal Data meets the following obligations: (i) with all Data Protection Legislation, including in relation to transfers of data to third countries; (ii) shall not be processed for a purpose beyond those purposes set out in the Commissioning Specification without the prior specific written authorization of the other party which will not be unreasonably withheld; (iii) shall limit its processing of the Programme Personal Data to that necessary for their respective purposes; (iv) shall as soon as reasonably practicable notify the other of a personal data breach affecting such Programme Personal Data which might be reportable to the ICO, and shall provide reasonable assistance to and cooperate with the other in relation to such personal data breach.
- 5.24 The BBC and Producer shall, and shall ensure that its employees, sub-contractors and/or agents, comply with the obligations set out in 5.25 below and shall take reasonable steps to ensure the reliability of any individuals or entities who have access to the Programme Personal Data and ensure that such persons are aware of the obligations under this Agreement, in particular with respect to security, integrity and applicable confidentiality of the Programme Personal Data and to protect the rights of data subjects.
- 5.25 The BBC and Producer shall process the Programme Personal Data securely, taking into account the nature, scope, context and purposes of processing, and shall implement appropriate technical and organisational security measures to protect the Programme Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Programme Personal Data transmitted, stored or otherwise processed, including by assessing that the level of security used is appropriate to the risk of processing the Programme Personal Data to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services, including, as appropriate;
- (i) use of pseudonymisation and/or encryption technologies; and
  - (ii) regularly testing, assessing and evaluating the effectiveness of physical, technical and organisational measures and disaster recovery processes.
- 5.26 The BBC and Producer shall promptly provide, at their own reasonable cost, such necessary and reasonable assistance and co-operation to the other and to any supervisory authority, in connection with:
- (i) any investigations, audits or enquiries made by a supervisory authority in relation to the processing of Programme Personal Data pursuant to this Agreement;

- (ii) responding to a request, query or complaint from a data subject in relation to their Programme Personal Data;
  - (iii) each's ability to comply with any other obligation as imposed on it by the Data Protection Legislation; and
  - (iv) carrying out any data protection impact assessment as appropriate.
- 5.27 The BBC and Producer shall notify the other as soon as reasonably practicable after it becomes aware of an actual personal data breach affecting the Programme Personal Data and, in any event, within forty-eight (48) hours of identification to enable each party to comply with its obligation to notify the supervisory authority if required.
- 5.28 Such notice should to the extent possible, include the information required to be notified to the supervisory authority by a data controller set out in Article 33 (3).
- 5.29 In the event of a personal data breach in respect of Programme Personal Data the BBC and Producer agree to:
- (i) not make any public announcements relating to that personal data breach that may adversely affect the other and to work together to jointly address any communication strategy in relation to the personal data breach;
  - (ii) take all reasonable and appropriate corrective action;
  - (iii) work together in a timely and cooperative manner, taking into account the requirements of the Data Protection Legislation to determine whether to provide notice to data subjects whose Personal Data may have been affected by such personal data breach, taking into consideration whether or not such notice is required by Data Protection Legislation or guidance;
  - (iv) co-operate with the other in relation to any required data breach notification to a supervisory authority.

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

- 6.1 Subject always to the provisions of General Terms 6.2 to 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 / Writers / Musicians	The Producer shall contract the services of any artists, writers and/or musicians in connection with the Programme in accordance with the terms of the current agreement between the Producers Alliance for Cinema and Television ("PACT") and the applicable union as at the date of this Agreement and the initial channel clearance payments required in relation to Equity and WGGB contributions as set out in the Special Terms shall be made.
Presenters/ Interviewees/ Narrators/ Voiceovers	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: " 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 Broadcaster's 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."
Archive & Stills	<p>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 (or has a licence of BBC Public Service Rights in the footage) (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, third party footage and stills (the "Underlying Archive Rights") and shall where necessary obtain and pay for such clearances in respect of the use of the BBC Footage in the Programme. All other rights in the BBC Footage are expressly reserved to the BBC (but it is acknowledged that any request by the Producer to clear such footage for the purposes of exercising the Producer's rights in the Programme shall be treated no less favourably than any similar request made in connection with BBC in-house programmes).</p> <p>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).</p>
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 two (2) years (and where reasonably possible, pre-purchased within the Licence Fee for such further two (2) years).
Music	<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



	<p>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 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.</p>
Production personnel	<p>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.</p>
Locations	<p>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.</p>

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 for 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; and
- 6.3.8 there is no provision in such agreements which conflicts with the provisions of General Term 5.3.6 above.
- 6.4 The Producer shall secure the approval of the BBC Business Affairs 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 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.
- 6.6 The Producer shall ensure that all production personnel directly engaged by the Producer, or a company within the same group, working on the production and/or delivery of the Programme to the BBC are paid the appropriate Real Living Wage according to the location of their work within the UK as applicable. The rate of the Real Living Wage that the BBC is taking as a benchmark is that set out by the Living Wage Foundation: <http://www.livingwage.org.uk/>

## **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:

- 7.1.1 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;
  - 7.1.2 the Producer accepts that in accordance with the PACT Framework for Recharging Directors & Producers Rights Society payments to Independent Producers effective from 1 January 2005, a sum may be payable by the Producer to the BBC in relation to the Programme in accordance with this Framework. The Producer agrees that the BBC shall be entitled to withhold this sum from the final Stage Payment set out in the Special Terms and accordingly the Producer shall deduct the appropriate sum (if relevant) from the final invoice rendered to the BBC;
  - 7.1.3 where the Programme is contracted to deliver by tape, the Licence Fee includes the cost of one technical review of the Programme master tape by the BBC, the cost of subsequent technical reviews will also be deducted from the cashflow.
- 7.2 Where the Special Terms provide for the BBC to cashflow the Licence Fee to the Producer:
- 7.2.1 the cashflow payments advanced by the BBC to the Producer in accordance with the Special Terms (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/or Producer Advance 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.
  - 7.2.4 Where the Special Terms confirm that a Production Account is not needed for the Programme:
    - (i) the Producer undertakes to record all expenditure and income for the Programme against a unique profit centre in the Producer's internal accounting system. The BBC will pay the Licence Fee into the Producer's nominated bank account in accordance with the Cash Flow Schedule. No costs other than those properly incurred in connection with the production of the Programme will be recorded against this unique profit centre.
    - (ii) General Term 18.3.2 shall be deleted
    - (iii) General Term 18.3.6(ii) below shall be amended as follows:  
"the BBC shall release the Producer from the obligation to repay the Advances, save for an amount equal to the total of the Advances made by the BBC to the Producer less the total of costs recorded

- against the unique profit centre for the Programme and subject to the Producer making such repayment the BBC shall release from the Charge the property charged by it;"
- (iv) Until acceptance of Tape Delivery the Producer shall only use the Licence Fee to fund the properly incurred costs of production of the Programme.
- 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 (it being acknowledged that VAT does not apply to Directors UK deductions).
- 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 ten (10) Business Days of receipt of an invoice in Compliant BBC Form (or for cashflow payments under the Special Terms, 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 seven (7) Business 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; and
- 7.6.5 the Producer has delivered to the BBC any deliverables required under this Agreement, receipt of which is a condition of the payment of such invoice.
- 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 Business Affairs Manager "Production Reports" describing the progress on the production and the Production Schedule at the stages set out in the Special Terms and at any other stages as may be reasonably requested by the BBC;
- 7.7.2 notify the BBC Business Affairs 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.
- 7.8A Creative Skillset Levy  
Where part of the budget expenditure for the Programme qualifies for UK Television Tax Relief (TTR) and the Producer (or other qualifying television production company on the Programme) applies for the same, the Producer agrees that it shall where possible make provision in the Budget for and, only where the application is successful, and only once the applicant has received said tax credit from the HMRC, shall pay the appropriate Skillset levy to Creative Skillset's Skills Investment Fund and shall, if requested, provide proof of such payment to the BBC and/or Pact.

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; and/or
  - 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 to 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 and to be delivered as soon as possible (but not later than sixty (60) 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 and/or Producer Advance.
- 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.
- 7.15 The Producer shall maintain and implement appropriate Health and Safety policies and operational procedures in connection with the production of the Programme and shall cooperate generally with the BBC with regard to assurance monitoring of the Producer's Health and Safety policy and processes. The BBC shall at any time whether before, during or after production of the Programme be entitled, upon giving reasonable notice, at reasonable hours to conduct an audit of such policies

and procedures for the purposes of carrying out reasonable Health and Safety assurance monitoring of the Producer. For the avoidance of doubt, no exercise by the BBC of such right of audit shall undermine in anyway the warranties and obligations of the Producer under the terms of this Agreement.

- 7.16 Where the Special Terms identify Agreed Recoupments, the Producer shall submit a final cost report (certified by the Producer's Finance Director, or equivalent) demonstrating the application of the Agreed Recoupments towards the direct cost of production (including production fee and overhead) of the Programme.

## **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 Quartz (the "Quartz insurance") or with such other reputable insurance company or companies Provided That:

- 1. where the Producer elects to use the Quartz insurance it shall promptly notify the BBC Business Affairs 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, prior to Principal Photography and as a condition of payment of the relevant stage payment as set out in the Special Terms, 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); and
- 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 errors and omissions insurance which shall be no less than £3,000,000 (Three Million Pounds Sterling) 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 the Trade Mark Schedule. 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 cashflowed 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 Business Affairs 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 Business Affairs 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 Business Affairs 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 Business Affairs 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 to 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 subtitles 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 any Web Development Guidelines included in the BBC Guidelines.

- 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 and 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 thirty (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; and/or
  - 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).

- 11.5 Without prejudice to the generality of these General Terms, The Producer confirms and undertakes that the Programme and all materials supplied to the BBC (or its authorised representatives or agents) for publication including any promotional purposes in connection with the Programme, such as but not limited to material for online listings and audience navigation applications, (whether such material is delivered pursuant to the terms of this Agreement or pursuant to an additional or subsequent agreement with the BBC or its authorised representative or agent) have been created, obtained, and produced in compliance with:
- 11.5.1 the BBC Guidelines (in particular the BBC Editorial Guidelines, available at <http://bbc.co.uk/guidelines>); and
  - 11.5.2 the provisions of all relevant underlying agreements, and
  - 11.5.3 cleared in accordance with the relevant terms of this Agreement (or by subsequent agreement between the parties, where applicable).
- 11.6 Where the Special Terms confirm the commissioning of New Media Deliverables under the terms of this Agreement:
- 11.6.1 The BBC commissions the Producer to provide the New Media Deliverables as defined in the New Media Deliverables Attachment identified in the Special Terms.
  - 11.6.2 The provision of such New Media Deliverables shall be subject to the terms and conditions and all other information set out in the Special Terms and New Media Deliverables Attachment. For the avoidance of doubt, the BBC shall have final editorial control in relation to the New Media Deliverables.
  - 11.6.3 In the event of any conflict between the Special Terms and/or New Media Deliverables Attachment) and the General Terms of this Agreement in relation to the New Media Deliverables, the provisions the Special Terms and/or New Media Deliverables Attachment shall prevail.
- 11.7 If Tape Delivery is on digital format, the Producer shall retain a copy of the Programme on either tape or digital file during the Licence Period in the event that the Producer may be required to supply the Programme to the BBC again (for technical reasons prior to transmission or otherwise).

## **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; and (2) for adaptation in connection with the exercise of the BBC Public Service Rights on non-television platforms; Provided that: (i) 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 (ii) 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 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 five (5) minutes per thirty (30) 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 at the prevailing market rate for the applicable use.

**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 UK on terms to be agreed in good faith, such option to expire upon either (i) six (6) months from acceptance of Full Delivery; or (ii) six (6) months from first transmission by the BBC of the first episode of the Programme for Programmes commissioned other than for BBC3 or six (6) months from first exercise of the BBC Public Service Rights in the first episode of the Programme for Programmes commissioned for BBC3, whichever is the earlier.

New media rights and restrictions

12.7 The BBC hereby agrees that for Programmes commissioned other than for BBC3 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; and

12.7.2 the Thirty Day New Media Rights, Primary Video on Demand Rights and packages acquired in accordance with General Term, 15.1.1(b) or General Term 15.2.5 shall only be exercisable provided that all such use will be copy protected and that an appropriate technological means is used to limit the availability of the download for the period of the BBC's entitlement and the UK territory.

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 in relation to the Video-on-Demand Rights:

(i) Within the UK and Eire: shall not be exercised during the Licence Period without the BBC's consent;

(ii) Outside the UK and Eire: the BBC hereby consents to the Producer exercising (or authorising the exercise of) the Video-On-Demand



Rights outside the UK and Eire PROVIDED THAT in relation to any such exercise:

1. the Producer (and any appointed licensee/service provider) undertakes that the exercise of such Video-On-Demand Rights:
  - (a) is subject to any appropriate technological and commercially reasonably effective means of copy protection preventing the unauthorised viewing and onward download, broadcast, transmission, retransmission and/or access to the Programme by a recipient within the UK and Eire;
  - (b) shall not take place prior to either the BBC's first television transmission of the Programme in the UK if commissioned other than for BBC3, or first exercise of the BBC Public Service Rights if commissioned for BBC3 (or six (6) months from acceptance of Full Delivery, whichever is the earlier) and accordingly other than in respect of the BBC, the Video-On-Demand Rights shall not be promoted or marketed as a "world premiere" and no marketing nor promotion of the exercise of such rights shall be specifically targeted at UK viewers;
- and
2. for the avoidance of doubt, any and all exercise of such rights shall comply generally with all other applicable provisions of General Term 16.

#### 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,
  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), and

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 a royalty-free exclusive licence to use the software coding as necessary 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 throughout 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.

12.10 **BBC Created Material:** Where identified in the Special Terms, the Producer and the BBC agree that:

12.10.1 the BBC shall create certain online material for the Programme as set out in the Special Terms ("BBC Created Material").

12.10.2 The Producer hereby grants to the BBC for the Licence Period an exclusive, royalty-free, irrevocable licence to use or incorporate the Format of the Programme within the BBC Created Material.

12.10.3 All rights, including without limitation all intellectual property rights in and to the BBC Created Material (excluding any Format of the Programme used or incorporated), and the BBC Assets (as defined in the Special Terms or documents referred therein) are expressly reserved by the BBC.

12.10.4 The Producer shall have an option to obtain a non-exclusive, worldwide (excluding the United Kingdom and Eire) licence of the BBC Created Material from the BBC, at a price and on terms to be agreed by the parties in good faith.

### **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:
- 13.1.1 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 seven (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.
- 13.1.2 Where the BBC creates, produces, or adapts any material relating to the Programme for promotional purposes, the BBC Editorial Representative may ask the Producer's Nominated Representative to review such material and inform the BBC whether or not the Producer's Nominated Representative considers in good faith that the proposed use (including timings where relevant) is (or could be) inconsistent with the BBC Guidelines or in breach of any third party contract, and in executing the BBC's overall responsibility to finalise and comply such material, the BBC shall be entitled to rely on the response(s) or information provided by 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 trailers) 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.

#### **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 two (2) years provided that:
- 14.1.1 written notification is given to the Producer by the BBC Business Affairs Manager no later than six (6) months before the end of the initial Licence Period stating the BBC's intention to extend the Licence Period for a further two (2) years; and
- 14.1.2 the BBC pays to the Producer an Additional Licence Fee calculated as two per cent (2%) of the Primary Rights 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 two (2) year basis as set out in General Term 14.1 above, save that once the Licence Period is extended beyond the period of seven (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 either:
- (a) any two (2) of the following packages of uses (such two (2) packages to be at the BBC's election and which, for the avoidance of doubt, includes one free narrative transmission (meaning within seven (7) days of the original transmission of the Programme on the same or any digital BBC Channel) of the premiere BBC transmission; and could be the same package twice):
    - (i) one (1) transmission on BBC1;
    - (ii) two (2) transmissions on BBC2;
    - (iii) [Intentionally Deleted and replaced by (b) below];
    - (iv) fifteen (15) Transmission Days 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) four (4) transmissions on Daytime BBC1 and/or Daytime BBC2 of peaktime commissions;
    - (viii) three (3) transmissions on BBC1 and/or BBC2 as appropriate of children's commissions;
    - (ix) twenty (20) Transmission Days on CBBC and/or CBeebies;
  - or:
  - (b) one package of use comprised as follows: 24 x 30-day windows on BBC3 and one transmission commencing either before 1800 or after

2235 on either BBC1 or BBC2, it being acknowledged that the intention is for the Programme to premiere online;

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 uses on the services of S4C as may be required by the BBC insofar as the same are consistent with the permitted uses 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; and
  - 15.1.7 unlimited use of the Programme (or parts thereof) on BBC News 24 and/or BBC Parliament; and
  - 15.1.8 the rights to dub or subtitle the Programme from English into Welsh and/or Gaelic language and vice versa (as applicable).
- 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 two per cent (2%) 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 (a)(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 (a)(v) above, it may do so for the payment of two per cent (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 two per cent (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 ten per cent (10%) of the Primary Rights Licence Fee subject always to a cap of £10,000 (Ten Thousand Pounds Sterling) per episode; and
  - 15.2.5 for the purposes of this General Term 15.2, if the Programme was commissioned for BBC3 the package listed at 15.1.1 (b) above shall be

for either 6 x30-day windows on BBC3 or one transmission commencing between 1800 and 2235 on either BBC1 or BBC2.

- 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) fifteen per cent (**15%**) of Net Revenue or twenty per cent (**20%**) where the BBC has funded a Pilot; save as varied in (ii) and (iii) below;
- (ii) twenty five per cent (**25%**) for Commercial Download Rights (or other forms of permanent digital ownership) in the UK during the Licence Period;
- (iii) twenty five per cent (**25%**) during the Licence Period in relation to exploitation in the UK where the BBC grants its prior written consent pursuant to General Term 16.2.3 and/or 12.8.2(i) in accordance with its published Programme Release Policy for the time being in force thereafter reverting to the percentage as set out in (i) above.

- 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) subject always to General Term 16.2.3, in relation to all forms of **television sales** until after the earlier of:
  - a. first full BBC transmission in the UK for Programmes commissioned other than for BBC3; or
  - b. 7 (seven) days following the first exercise of BBC Public Service Rights for Programmes commissioned other than for BBC3; or
  - c. first exercise of the BBC Public Service Rights for Programmes commissioned for BBC3; or
  - d. ~~or~~ six (6) months from acceptance of Full Delivery

of the episode of the Programme to be distributed (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;
- (iii) in relation to other forms of exploitation, until after the earlier of:
  - a. first full BBC transmission in the UK for Programmes commissioned other than for BBC3; or
  - b. 7 (seven) days following the first exercise of BBC Public Service Rights for Programmes commissioned other than for BBC3; or
  - c. first exercise of the BBC Public Service Rights for Programmes commissioned for BBC3; or
  - d. six (6) months from acceptance of Full Delivery

of the episode of the Programme to be distributed but without prejudice to any pre-existing series exploitation; and

- (iv) if the BBC changes its scheduled first transmission of the Programme at such short notice 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 the Trade Mark Schedule), 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 BBC's Third Party Brand and Design Commercial Guidelines for the time being in force as included in the BBC Guidelines, 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 and 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 twelve (12) months from acceptance of Full Delivery or either first BBC transmission of the last episode of the Programme for Programmes commissioned other than for BBC3 or first exercise of the BBC Public Service Rights for Programmes commissioned for BBC3, 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's Third Party Brand and Design Commercial Guidelines for the time being in force as included in the BBC Guidelines 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 the Trade Mark Schedule;

(In this General Term and the Trade Mark Schedule, the terms "Trade Marks", "Territory", "Products" and "Associated Material" shall have the meanings ascribed to them in the Trade Mark Schedule and the

term "this Licence" shall mean this General Term 16.2.4(i) and the Trade Mark Schedule);

- (ii) the production credit as set out in the Commissioning Specification 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); and

16.2.7 it shall be entitled 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
- (ii) such material shall not remain on the relevant distributors'/broadcasters' websites for longer than six (6) months from transmission or end of the distribution licence period as appropriate;

16.3 Without prejudice to General Term 13, the Producer shall:

16.3.1 procure that any Programme promotional or publicity material or literature to be used by or on behalf of the Producer (or its distributor, licensee or agent) in the UK: (a) complies with the BBC Guidelines, and (b) shall not be distributed in any way without the BBC's prior written approval;

16.3.2 ensure that appropriate contractual provisions are in place to ensure that any Programme promotional or publicity material or literature to be used by or on behalf of the Producer (or its distributor, licensee or agent) outside the UK must not impair the quality, meaning or integrity of the Programme or bring either party into disrepute or be defamatory of any person;

16.3.3 without prejudice to General Terms 16.3.1 and 16.3.2 above, where the BBC has notified the Producer that the Programme is included on the BBC's 'Managed Risk Programme List':

- (i) a good faith discussion shall take place at the earliest opportunity between the Producer's Nominated Representative and the BBC Editorial Representative and, where appropriate, any co-production partner about any specific risks identified with the exploitation of the Distribution Rights (including any associated promotional and publicity activity);
- (ii) both parties will agree in writing a strategy for managing such identified risks which shall be incorporated in the Producer's distribution plans; and

- (iii) upon receipt of such plan(s), the BBC Editorial Representative may notify the Producer's Nominated Representative that they wish to approve any specific promotional material or literature prior to its use and accordingly the Producer shall not authorise the use of such material without the written approval of the BBC (not to be unreasonably withheld or delayed).

For the avoidance of doubt, any use of the BBC logo on any such material or literature shall require the BBC's prior written approval and the terms and approvals procedure set out in the Trade Mark Schedule shall apply to such use.

- 16.4 The Producer shall not during the Licence Period exploit 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 twelve (12) months from acceptance of Full Delivery or first BBC transmission of the last episode of the Programme if commissioned other than for BBC3, or first exercise of the BBC Public Service Rights if commissioned for BBC3, 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 (including from any connected company) for the exploitation of the Programme and/or Format are upon the best commercial terms reasonably obtainable on an arm's length basis (which for the avoidance of doubt includes the requirement for delivery of industry standard distribution reporting in order for the Producer to meet its obligations under General Term 16.5.2 below);
  - 16.5.2 The Producer shall account to the BBC in relation to all reported and received revenue relating to the Programme on six (6) monthly basis for the periods ending 31 March and 30 September and the Producer shall provide the BBC with copies of the distribution statements received from the relevant distributors (including any connected company) 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 (30) 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; and
    - 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 ten per cent (10%) 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; and

16.5.6 If, after two (2) 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

16.5.7 The Producer shall not enter into any arrangement with any third party (including those third parties listed as providing Third Party Production Finance in the Special Terms) which may conflict with the terms of this Agreement, including the level of Agreed Recoupments as applied to the definition of Net Revenue.

16.6 In relation to the exercise of Merchandising Rights:

16.6.1 The Producer acknowledges the importance of ethical business practices

16.6.2 The BBC recommends to the Producer that it adopts an ethical business policy in relation to its distribution of the Programme so that consumers respect the brand and also so that the reputation and integrity of the BBC and the Producer are undiminished

16.6.3 The Ethical policy adopted by BBC Worldwide Limited which is available online which reflects the BBC's approach to the issue:  
<http://bbcworldwide.com/media/34660/bbcw%20ethical%20code%20of%20conduct.pdf>

## **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 sections 154 and 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; and
  - (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 their 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 their 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 license 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 or 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:
- (a) provide the sums required to fund (and will procure provision of) the Third Party Production Finance and/or Producer Advance at such times as to enable the Producer to produce and deliver the Programme in accordance with the terms of this Agreement and
  - (b) apply the Third Party Production Finance and/or Producer Advance (if any) in full towards the direct cost of production of the Programme in addition to the BBC's Licence Fee save where any amounts of the Third Party Production Finance which are not required for the direct cost of production of the Programme, such sums shall not be deducted when calculating Net Revenue; they shall be treated as distribution receipts (as set out in the definition of Agreed Recoupments) and shared accordingly between the Producer and the BBC;
- 17.12 The Producer shall not and shall procure that its sub-licensees, sub-contractors and all other persons engaged by it in connection with the Programme shall not in the exercise of any of its own rights in the Programme (including the Programme Trade Marks) or in producing and delivering the Programme in accordance with this Agreement, whether during or beyond the Licence Period or whether in or outside the UK, through its acts or omissions, bring the Programme or the BBC into disrepute or infringe the BBC Guidelines (it being acknowledged that a material breach of this warranty can be incapable of remedy where it involves a breach of trust);
- 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 in the BBC Guidelines;

17.17 The Licence Fee is no less than twenty five per cent (25%) of the Budget.

17.17A Where identified as a Regional Production in the Special Terms, the Producer warrants that, in compliance with the OFCOM Regional Production qualification criteria, the Programme shall qualify as a Regional Production and that the information set out in the Commissioning Specification in relation to the OFCOM Regional Production qualification criteria (including any specified Ofcom Macro Region) is true and accurate.

17.17B In the event that the BBC in its absolute discretion grants its prior written consent pursuant to General Term 12.8 and/or General Term 16.2.3, the Producer agrees that such consent is given on the basis that the Producer hereby warrants and undertakes to the BBC that:

- (i) it shall comply with any scheduling and/or marketing approvals required by the BBC as a condition of granting its consent and as also set out in the written consent;
- (ii) it shall not grant any rights in relation to the number of Transmission Days (for linear broadcast) and/or applicable licence period (for both linear broadcast and commercial on-demand offerings) in excess of the standard levels set out in the BBC's Release Policy as published at the date that the request for the relevant consent is made;
- (iii) it shall not grant any rights to any other Public Service Broadcaster (whether in relation to their main or subsidiary services) where a Public Service Broadcaster is ITV, Channel 4, FIVE and/or S4C;
- (iv) any proposed licensee or its services shall be either regulated by Ofcom or warrants to fully adhere to the Ofcom Broadcast Code and associated guidelines (including any watershed policies) in respect of, for the avoidance of doubt, both linear broadcast and commercial video-on-demand offerings;
- (v) the association of the Programme with the proposed licensee shall not infringe any BBC Guidelines as published at the date of the request for consent or otherwise damage the reputation of the Programme or Programme brand of the BBC;
- (vi) the proposed licensee has not in the past breached the conditions attached to any similar licence of rights from the Producer;
- (vii) in exercising any television rights in the Programme in the UK during the Licence Period, the Producer shall procure (i.e. include an appropriate provision in its contract with the Secondary Channel/licensee, hereinafter "Procure") that any proposed transmissions of the Programme by the proposed licensee shall be approved in advance in writing by the BBC, i.e. the Producer will Procure an obligation on the licensee to obtain approval of the transmission pattern it is proposing from a named BBC scheduling contact, giving them at least five (5) Business Days notice;
- (viii) it shall Procure that no off-air marketing or publicity materials used by the Producer or licensee shall refer to any on-air programme sponsor;



- (ix) either it or the licensee shall be fully responsible for clearing all associated underlying rights (including music) to enable the licensee to freely exercise the rights granted to it by the Producer;
- (x) if the Programme is a consumer or business programme, there shall be no sponsorship of the Programme itself in the exercise of such rights;
- (xi) it shall Procure that any licensee of the Programme undertakes to remove the Programme from its services at any time upon written requirement from the BBC or the Producer that: (a) there has been a complaint regarding the Programme either upheld or partially upheld by the BBC's Editorial Complaints Unit and/or the Governor's Programme Complaint Committee and/or Ofcom; (b) legal reasons exist to prevent re-use of the Programme; and/or (c) exceptional reasons exist to require such action;
- (xii) it shall Procure that the licensee will collaborate with the Producer to enable the Producer to fulfil its obligations to the BBC as appropriate in accordance with General Term 13.2;
- (xiii) it shall Procure that the BBC branding on the Programme as required in accordance with General Term 16 (which includes by reference relevant BBC Guidelines) shall be retained by any licensee in the exercise of such rights;
- (xiv) the Programme will not be promoted, edited, transmitted or used (e.g. urls/additional credits) in any way which could bring the BBC or the Programme into disrepute and/or impair the Programme's quality, meaning or integrity and/or reduce the running time by more than ten per cent (10%) except where necessary to fit the standard slot lengths of the Licensee's transmission schedule; and
- (xv) it shall give due consideration to potentially sensitive contributors (including without limitation and by way of example only, victims of crime, children, old footage that may cause embarrassment or concern to the contributor when shown later in time, those discussing trauma or intimate personal revelations) when re-using/reversioning Programme material and acknowledges that any Programme material featuring such contributors needs to be treated with appropriate sensitivity and will pay due regard to the effect of any re-broadcast on the contributor over time, to the extent that it may be necessary to go back to such contributors prior to selling the Programme into the secondary market and it shall ensure that where the Programme contains sensitive or controversial subject matter including intimate personal information and/or features member(s) of the general public in any key narrative contained in the Programme, the Producer shall: (a) have ensured that its contributor release forms make it clear that the Programme is owned by the Producer and may be sold in due course to other broadcasters as well as the BBC, and (b) prior to any sale of the Programme the Producer shall ensure that all appropriate permissions have been obtained prior to such uses being made and on request from the BBC to produce to the BBC evidence of such permission(s).

Further information is available at:

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/accuracy/useoflibrarymat.shtml#>

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/privacy/revisitingpastes.shtml>

<http://www.bbc.co.uk/guidelines/editorialguidelines/edguide/privacy/useoflibrarymat.shtml>

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 seven (7) 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 party to a Key Agreement relating to the provision of specific services in connection with the Programme shall die or be unable or unwilling to fully and properly render or provide the specific services as required under their Key Agreement and the Producer shall be unable to procure the engagement within fourteen (14) days of a substitute party approved by the BBC (acting reasonably) provided that should the BBC subsequently secure an acceptable substitute party 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 cashflow payments under the Special Terms; 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 seven (7) 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 party to a Key Agreement relating to the provision of specific services in connection with the Programme shall die or be unable or unwilling to fully and properly to render or provide the specific services as required under the Key Agreement and the Producer shall be unable to procure the engagement within fourteen (14) days of a substitute party 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 services 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 cashflows 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 cashflow payments under the Special Terms 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.

## **20A CONSEQUENCES OF BREACH OF BBC GUIDELINES**

Without prejudice to the provisions of General Terms 18 and/or 20 or any other applicable rights and remedies available to the BBC under this Agreement, any breach of General Term 5.3.1 shall entitle the BBC (acting appropriately and reasonably) to require the Producer to:

- (i) remove any BBC branding from any exercise of the Distribution Rights;
- (ii) rectify any breaches of the BBC Guidelines in the Programme at its own cost;
- (iii) discuss in good faith any variations of the terms of this Agreement proposed by the BBC in light of the circumstances of the relevant breach, to apply upon any exercise of the BBC's option under General Term 22 provided that any such variations are reasonably proportionate; and/or
- (iv) if the remedies set out in (i) and (ii) above are not achievable to the satisfaction of the BBC, not exercise or promote any of the Distribution Rights without BBC written approval (not to be unreasonably withheld or delayed, it being acknowledged that any such approval may be subject to certain conditions to reflect the nature of the breach).

## **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 four (4) consecutive weeks or if the aggregate of any periods of suspension is more than six (6) weeks in any period of eight (8) 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, provided that the BBC shall first offer the Producer the first option of producing the Programme on the terms hereunder. If the Producer does not exercise such option within a reasonable period of time, the BBC may proceed to takeover production subject to good faith negotiations with the Producer in relation to use of the Format insofar as one exists at the date

of takeover, taking into account all relevant circumstances at the time. If, prior to the BBC making such election, the Producer wishes to resurrect production of the Programme, it shall notify the BBC in writing of such desire, and the BBC shall have the first option to enter into a new agreement in connection with the Programme under the same or similar terms taking into account current standard, industry terms between the parties at the relevant time.

## **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 (a) within nine (9) months of transmission of the last episode of the Programme if commissioned other than for BBC3, or (b) within nine (9) months of first exercise of the BBC Public Service Rights in the last episode of the Programme if commissioned for BBC3, or (c) twelve (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 (a) twelve (12) months of transmission of the last episode of the Programme if commissioned other than for BBC3, or (b) twelve (12) months of first exercise of the BBC Public Service Rights in the last episode of the Programme if commissioned for BBC3, or (c) eighteen (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, written notification shall be given to that other party and the BBC representative (being the BBC's Controller of Rights, Legal & Business Affairs for the purpose of this clause) and any representative of the Producer will meet and use all reasonable endeavours to resolve the matter.

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 or which is required to be disclosed in accordance with the Freedom of Information Act 2000 (the "**FOIA**") if applicable.
- 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 reasonable 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, provided the ability to grant such opportunity is within their control.
- 23.3 The Producer recognises that if FOIA is applicable to this Agreement or any information relating to this Agreement the BBC may be required to release information contained in or relating to this Agreement, whether it is held by the BBC, the Producer or by another person on behalf of the BBC to enable the BBC to comply with its obligations under FOIA.
- 23.4 If the Producer receives a request for information under FOIA regarding any information contained in or relating to this Agreement it shall (and shall procure that any of its agents and sub-contractors) transfer to the BBC all such requests that it receives as soon as possible and in any event within five (5) Business Days of receipt. The Producer shall not respond directly to such a request for information under FOIA unless expressly authorised to do so by the BBC.
- 23.5 If the BBC receives a request for information under FOIA which covers any information contained in or relating to this Agreement and the BBC requires assistance in obtaining this information and/or responding to the request, the Producer shall (and shall procure that its agents and sub-contractors shall) at its own cost provide the BBC with such assistance promptly and in any event within ten (10) Business Days of receipt.
- 23.6 If a request for information under the FOIA is received which covers any information contained in or relating to this Agreement, the BBC shall use all reasonable endeavours to consult with the Producer in respect of the appropriate



response to such a request for information. Notwithstanding the same, the BBC shall have the sole responsibility for determining:

23.6.1 whether the information is exempt from disclosure under FOIA; and/or

23.6.2 what information shall be disclosed in response to a request for information under FOIA.

## **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 - forty eight (48) hours (one hundred and twenty (120) 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; and
- (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 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 If any dispute arises in connection with the BBC Code of Practice or the BBC Terms of Trade, the parties will use all reasonable endeavours to resolve the dispute. If the parties fail to resolve the dispute within 28 Business Days of written notification of the dispute by one party to the other, the dispute shall at each party's own cost be referred to mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation a party must give to the other party to the dispute a written request for mediation ("ADR request"). A copy of the ADR request should be sent to CEDR. The mediation will start as soon as reasonably practicable after the date of the ADR request. No party may commence any court proceedings or arbitration in relation to any dispute arising in connection with the BBC Code of Practice or the BBC Terms of Trade until it has attempted to settle the dispute by mediation and either;

- (i) the mediation has terminated or
- (ii) the other party has failed to participate in the mediation,

**provided that** the right to issue proceedings is not prejudiced by a delay and that nothing in this General Term 25.9 shall affect a party's right to apply to the English courts to seek injunctive or declaratory relief or an order for delivery up.

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 the Trade Mark Schedule). 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. It is acknowledged that any action that the Producer would be required to take pursuant to General Term 25.14 must be reasonable and proportionate (taking into account all relevant circumstances) and might include the requirement to register a trade mark and/or domain name.
- 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.

25.19 Authority to bind

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.

25.20 Further Assurances

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.

25.21 No obligation to broadcast

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

25.22 Rights reserved to the Producer

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) and the Trade Mark Schedule (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 and 25 shall continue in full force and effect between the parties.