Trade Mark Schedule

1 Definitions

1.1. Terms defined in the remainder of this Agreement shall, unless separately defined below or the context otherwise requires, have the same meaning in this Licence. “Clause” means a clause in this Licence.

1.2. In this Licence, unless the context otherwise requires, the following terms shall have the meanings given to them and the singular shall include the plural and vice versa:

- **“Product”** means anything produced and/or distributed by the Producer in the course of its exploitation of the Distribution Rights and comply with General Term 16

- **“Associated Material”** means items of the types described below and which comply with General Terms 13 and 16 are produced for the purpose of advertising and marketing the Products and the exploitation of the Programme pursuant to the exercise of the Free Television Rights, the Pay Television Rights, the Theatric Rights, the Non-Theatric Rights and the Trapped Audience Rights: (1) packaging material (including if appropriate stickers, inlays and sleeves); (2) paper-based promotional material; (3) On-line promotional material; (4) non-interactive TV, cinema and in-flight promotional material

- **“BBC Group”** means the BBC and its present or future Subsidiaries

- **“company”** includes any body corporate wherever and however incorporated or established

- **“Group”** means, in relation to a company, that company and any company which is a Holding Company of that company or a Subsidiary of that company or of such Holding Company

- **“Licensed Product”** means any Product or Associated Material on which any of the Trade Marks appear pursuant to this Licence

- **“On-line”** means by means of display and/or distribution via electronic means including but not limited to the World Wide Web, mobile or cellular telephones and networks, interactive TV, or other screen-based mechanisms

- **“Samples”** means (where the Trade Marks are to be used On-line) (1) a screen shot or other representation of the display of the proposed Licensed Product, or sufficient information to enable the BBC to access it and (2) details of the proposed Online location of the Licensed Product (eg the url), or (in any other case) two (2) true and accurate samples of each Licensed Product

- **“Subsidiary”/“Holding Company”** A company is a Subsidiary of another company (its Holding Company) if that other company controls it, directly or indirectly (whether through one or more subsidiaries)

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“Territory” means the World

“Trade Marks” means the word mark BBC and the logo form thereof for the time being in force

“to control” in this clause 1 and in clause 6.1.3 means to have the ability to direct the affairs of the entity concerned whether by virtue of contract, ownership of shares, voting rights or otherwise, and the noun “control” shall have a corresponding meaning

2 Quality Control

2.1 The Producer shall use the Trade Marks in accordance with the BBC’s Fair Trading Guidelines, any style guidelines relating to the Trade Marks, and any other relevant guidelines provided to the Producer from time to time. The BBC shall use reasonable endeavours to make available guidelines for the use of the Trade Marks on the most common types of Product and Associated Material in order to facilitate the sample approval process.

2.2 The Producer hereby undertakes that the Licensed Product shall be (1) of good quality in design, material, and workmanship; (2) safe, non-injurious and suitable for the intended purpose; (3) in keeping with the reputation associated with the BBC and/or the Trade Marks both in the manner and context of the use; (4) produced, distributed, sold, marketed and advertised in strict compliance with the provisions of this Licence, the rights of any other party and all applicable laws, codes of practice, standards and regulations, and shall include appropriate warnings and be labelled so that the manufacturer of them is clearly identifiable; and (5) approved by the BBC in accordance with the provisions of clause 3

3 Sample approval

3.1 The Producer shall provide Samples to the BBC for the attention of the Head of the BBC Commercial Agency together with a written request for approval of them, no less than such period of time as agreed in advance with the BBC before using the Trade Marks live On-line or manufacturing the Licensed Product as appropriate, and the BBC shall use reasonable efforts to inform the Producer whether or not the Samples are acceptable within 10 (ten) Business Days of receipt of the Samples. If the Producer does not receive notice that the Samples are acceptable, they are deemed unacceptable.

3.2 The Producer may submit a Sample to the BBC for the attention of the Head of the BBC Commercial Agency with a request that it be approved as a “Format”, indicating which elements of it will be constant in each version produced. The BBC shall be under no obligation to grant approval as a Format, and may do so on such conditions as it sees fit. If a Format is approved by the BBC, Licensed Products in that format (an “Approved Format”) may be produced by the Producer without the need to obtain approval to each version provided that:

3.2.1 the constant elements are in accordance with the Approved Format

3.2.2 the requirement to supply copies contained in clause 3.3 is complied with

3.2.3 where the use is On-line, the Producer will within 24 hours of receipt of a notice from the BBC remove the Trade Marks if the use does not comply

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with the Approved Format or if the BBC reasonably requests changes and such requests have not been complied with within 24 hours of the receipt of the request

3.2.4 the BBC may at any time by notice to the Producer withdraw approval of an Approved Format under this clause 3.2 (so as to require the Producer to obtain the BBC’s prior approval of samples of each use)

3.3 The Producer warrants that the Licensed Product shall conform in every way to the Samples as approved by the BBC and undertakes that:

3.3.1 it will make no use of any of the Trade Marks or of the Licensed Product other than for the purposes of clauses 3.1 or 3.2 unless and until the Producer has the express written approval of the BBC

3.3.2 it will not make any alterations, modifications or changes to the Licensed Product without the specific written consent of the BBC. If any changes are made, the provisions of clause 3.1 shall apply

3.3.3 it will supply to the BBC free of charge further Samples of the Licensed Product as issued no later than the first day on which the Licensed Product is so released, and, upon request by the BBC (at intervals not more frequent than quarterly) and at the BBC’s cost (which shall be at cost or the best trade price if greater), supply to the BBC further Samples of the Licensed Product as manufactured, sold, issued or made available.

3.4 The Producer agrees to recall immediately on written demand by the BBC and at the Producer’s cost any Licensed Products distributed by or on behalf of the Producer which fail to conform to the Samples approved by the BBC under this clause or which the BBC reasonably suspects to be defective and/or unsafe and/or in breach of legal requirements and the Producer shall thereafter cease all distribution and/or sale of the same until such time as they have been corrected to the BBC’s satisfaction. The Producer will at all times have in place appropriate procedures to ensure that such recall and cessation can be effected immediately.

4 Rights in and Registration of the Trade Marks

The Producer acknowledges and agrees that:

4.1 the BBC is the proprietor of the Trade Marks, any copyright, design rights and other intellectual property rights subsisting in and the goodwill relating to the Trade Marks

4.2 the benefit of all use of the Trade Marks and any additional goodwill accrued as a result of the Producer’s activities in connection therewith shall inure, and is hereby assigned, to the BBC

4.3 the Producer will not use the Trade Marks in a manner likely to prejudice their legal protection or validity. In particular, without prejudice to the generality of the foregoing, the Producer shall ensure that if any other logos and/or trade marks are used or incorporated on the Licensed Product they are kept separate from, and are not used in any manner which could lead to confusion as to the ownership, the identity or the distinctive character of, the Trade Marks

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4.4 except as permitted by law or as expressly provided by this Licence or any other written agreement between the parties, the Producer will not make use of the Trade Marks, the name of the BBC or any of its Subsidiaries (present or future) or of any other trade mark, design, copyright or other intellectual property in which the BBC has proprietary rights.

4.5 no application for trade mark nor (unless expressly permitted in writing by the BBC) for domain name registration of, or including, any of the Trade Marks may be made other than by the BBC. The Producer shall if so required by the BBC co-operate with the BBC in securing or attempting to secure registration of the Trade Marks anywhere in the Territory (which shall include providing such written details and further samples of the Licensed Product as the BBC may reasonably request).

4.6 the BBC may register the Producer as licensee or registered user of the Trade Marks in any part of the Territory where registration is necessary or desirable in accordance with the applicable trade mark law and such registration may be cancelled by the BBC on expiry or earlier termination of this Licence for whatever reason.

4.7 the Producer will on receipt of a request from the BBC enter into any further agreements or execute any documents reasonably required by the BBC in order to give effect to clause 4.2 and/or to secure any registrations or cancellations pursuant to clauses 4.5 and 4.6. If registration is at the request of the Producer, the Producer shall bear the costs of such registration but in any other case the Producer’s reasonable costs shall be met by the BBC.

5 Trade Mark and Copyright Notices

The Producer shall, unless otherwise agreed during the course of the sample approval procedure, cause to appear on every Licensed Product the notice “BBC and the BBC logo are trade marks of the British Broadcasting Corporation and are used under licence. Logo © BBC 1996” and/or such other markings or notices and in such locations and sizes as the BBC may from time to time require in order to give appropriate notice of the BBC’s trade mark or other intellectual property rights.

6 Termination

6.1 The BBC may terminate this Licence immediately on the giving of written notice to the Producer if:

6.1.1 the Producer commits a breach of any of the terms of this Agreement and fails to remedy such a breach (if capable of remedy) within 30 (thirty) days (or such shorter reasonable period as is specified in the notice) after receiving written notice from the BBC to do so, or the Producer fails to comply with a notice served under clause 3.2.3

6.1.2 the Producer makes or authorises any representation or does or authorises any act which may be taken to indicate that it has any right, title or interest to the ownership or use of the Trade Marks except under the terms of this Licence, or

6.1.3 the Producer or any company within its Group challenges the validity of or the BBC’s title to any of the Trade Marks; or

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6.1.4 there is any change in control of the Producer or any Holding Company of the Producer unless such change of control occurs as part of a bona fide solvent restructuring within its Group; or

6.1.5 any material step is taken with a view to the Producer ceasing to carry on business, or going or being put into receivership, administrative receivership, administration, bankruptcy, liquidation or any equivalent process in any relevant jurisdiction.

6.2 The Producer will immediately notify the BBC of any event giving the BBC the right to terminate under clause 6.1.4 or 6.1.5.

6.3 Either party may terminate this Licence forthwith on written notice if the continued performance of it is prevented for a period of 60 (sixty) days or more by reason of an event beyond the reasonable control of either party.

6.4 Subject always to clause 6.5 below, on expiry of the Licence Period or earlier termination of this Licence the Producer shall:

6.4.1 immediately cease using the Trade Marks in any form and all rights granted under this Licence shall immediately revert to the BBC.

6.4.2 cancel and/or terminate forthwith all contracts, orders or requests for the supply of any Licensed Products and/or any goods or services which involve or may lead to any use, application or exploitation of the Licensed Products, save for orders agreed in writing by the BBC.

6.4.3 on written notice from the BBC, at its own cost and at the BBC’s discretion either (1) destroy or procure the destruction of all Licensed Products in its possession or control and furnish to the BBC a certificate evidencing destruction in a form acceptable to the BBC or (2) promptly deliver or procure the delivery of all such Licensed Products to the BBC in accordance with the BBC’s reasonable instructions and to such address as the BBC may notify in writing to the Producer.

The obligations in this clause 6.4 shall apply at the end of the Sell-Off Period (as defined in clause 6.5 below) to Licensed Products covered by clause 6.5.

6.5 For a period of six months after the expiry (but not earlier termination) of this Licence (“the Sell-Off Period”), the Producer may, provided it is not in breach, distribute the Licensed Products which are declared in the statement referred to in clause 6.5.2 below, subject to the terms and conditions of this Licence and provided that:

6.5.1 greater quantities of Licensed Products have not been produced in the last 6 (six) months of the Term than have been produced on average in any six-month period of the Term.

6.5.2 the Producer has no less than 60 (sixty) days prior to the end of the Licensed Period provided the BBC with a written statement indicating the number and description of the Licensed Products in the Producer’s possession, under its control or in the course of manufacture at that time.

6.5.3 the Producer has, if required by the BBC, conducted a physical inventory to confirm the accuracy of the statement referred to in clause 7.6.2 in the presence of the BBC’s duly authorised representative(s).

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6.6 Termination of this Licence shall be without prejudice to the accrued rights of each party at the date of termination and clauses 4.5, 4.7, 6.4, 6.5 and 8 and General Term 23 shall survive termination of this Licence

7 Infringement

7.1 The Producer shall immediately give full particulars in writing to the BBC of:

7.1.1 any actual, threatened or suspected infringement by a third party of any of the BBC's rights in and to the Trade Marks which comes to the Producer's attention. The BBC shall not be under any obligation to take any legal or other action against any such third party. Should the BBC decide to take action against any such third party, the Producer shall provide such cooperation or assistance in this connection as the BBC may reasonably request, including but not limited to joining the action as a party, the Producer's reasonable costs for doing so being reimbursed by the BBC. The Producer shall not be entitled to bring any action for infringement of the Trade Marks in its own name or on its own behalf

7.1.2 any claim that the use of the Trade Marks by the Producer infringes the rights of any third party in any part of the Territory ("Third Party Claim") which comes to the Producer's attention. The Producer shall make no comment or admission to any third party in respect of such claim without the prior written approval of the BBC such approval not to be unreasonably withheld, and shall provide such cooperation or assistance in defence of any such claim as the BBC shall reasonably require

7.2 If the BBC at any time reasonably considers that a Third Party Claim is well founded or that there is an unacceptable risk of a Third Party Claim, the BBC may inform the Producer in writing specifying the Trade Mark in question and the applicable part of the Territory, whereupon the Producer shall forthwith cease to use that Trade Mark in the Territory or the part of the Territory specified and the BBC shall have no liability to the Producer as a result.

8 Warranties, indemnity and insurance

8.1 Each party represents, undertakes and warrants that it has the full authority, power and capacity to enter into and fully perform this Licence, but the BBC gives no other warranty including, without limitation, any warranty that there are no conflicting third party rights in any part of the Territory

8.2 The Producer shall indemnify the BBC (which expression shall in this clause 8.2 include its officers, servants, agents, assignees and any company within the BBC Group) against all liabilities, loss, damages, costs and expenses including reasonable legal costs and attorneys’ fees, that the BBC may directly incur as a result of the use of the Trade Marks by the Producer, except insofar as they arise out of any breach of this Licence by the BBC

9 Assignment etc

9.1 This Licence is personal to the Producer which shall not assign, transfer, sub-license, mortgage, pledge, charge, or in any other way encumber or dispose of or purport to encumber or dispose of its rights or obligations under this Licence
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9.2 Without prejudice to the generality of clause 9.1, if the Producer licenses any of its rights in the Programme and/or the Programme Trade Marks to a third party other than a Subsidiary of the BBC (in this paragraph referred to as “the Licensee”), the Producer shall procure that the Licensee shall prior to using the Trade Marks enter into a Trade Mark Licence directly with the BBC in a substantially similar form to this Licence.

10 General

10.1 General Terms 8, 23 and 25 (except 25.11) shall apply to this Licence

10.2 General Term 24 shall apply save that notices to the BBC shall be addressed to Head of Corporate Legal and Intellectual Property

10.3 Except as indicated in clause 8.2, no person who is not a party to this Licence has or shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence. Notwithstanding clause 8.2, the parties shall not require the consent of any other person in order to vary or rescind this Licence by agreement

10.4 The provisions of this Licence shall prevail if there is any conflict between them and those in the remainder of this Agreement.