THE BBC’S BUSINESS FRAMEWORK FOR THE COMMISSIONING OF INDEPENDENT PRODUCTIONS
TO BE ADOPTED FROM 7 July 2014

The terms set out in this framework were agreed in 2014, and are currently under review and negotiation with Pact. This review has been prompted by the BBC’s evolving strategy for the iPlayer which, following the BBC Board’s decision that the Public Interest Test has been met, is currently awaiting a final decision by Ofcom in accordance with the BBC’s regulatory framework. As many of the BBC’s current commissioning negotiations relate to programmes which are likely to deliver after Ofcom’s final decision, the BBC is inviting suppliers to agree to vary the standard on-demand rights as set out in this framework. The exercise of any varied on-demand rights would always be subject to compliance with the BBC’s regulatory permissions applicable at the relevant time. Where negotiations are with an Independent Producer who does not wish to vary the standard terms, the commission would proceed on the standard basis. It is recognised in both the BBC’s Code of Practice (in para 3.2j) and in section 6 of this Framework, that the BBC and an individual Independent Producer may agree to vary the standard terms on an individual commission if they wish to.

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1. Introduction
Under the provisions of the Communications Act 2003, the BBC is required to publish and comply with a Code of Practice for agreeing the terms for the commissioning of qualifying independent productions. The Code has been approved by Ofcom and is published here. The Code states that the BBC will agree its ‘Terms of Trade’ with Pact prior to publication. The Business Framework set out below represents these Terms of Trade, and has been agreed with Pact on 16 October 2013.

2. Key principles applicable to all BBC independent commissions
2.1 The BBC’s audience promise
In delivering to its audiences content which has been funded in whole or in part by the licence fee, the BBC will deliver the public purposes as set out in its Charter and Agreement; in the relevant service licences as approved by the BBC Trust; and in its published strategies.
In particular:

(a) The BBC will efficiently and effectively deliver public value on behalf of its licence fee payers; and

(b) BBC audiences will be able to:
1. Get BBC services free at the point of use, in ways and on devices that suit them;
2. Catch up on BBC programmes for a reasonable period for free after transmission, at home and on the move;
3. Get hold of all recent BBC programmes and be treated to the best of the BBC’s library of programmes in trusted environments—with a ‘permanent collection’ available for free, and paying for other content which would otherwise not be available.

2.2 Ownership
Copyright in content commissioned in accordance with the BBC’s Code of Practice shall remain vested in the producer who created it.

2.3 Public service rights
In return for the payment of a licence fee, the BBC shall be granted a licence of public service rights.
2.4 **Commercial exploitation**
The producer shall be in control of licensing the rights in their content which are primarily and directly designed to generate secondary commercial revenues, subject to:

a) a period of exclusivity in favour of the BBC which is sufficient for the BBC to deliver its audience promise;
b) certain provisions to protect the value of the BBC’s licence, reputation, and the investment it has made into the content and the content’s brand; and
c) an appropriate share of revenue payable to the BBC.
d) the BBC recognises that other stakeholders (for example the producer itself and any commercial distributors) may have invested in the content.

2.5 **Attribution and Branding**
In all publication, promotion, exploitation, and other use of or reference to the content, there will be appropriate attribution to the BBC and its brand.
3. **BBC commitments under its Code of Practice**

3.1 **Tariffs**
In accordance with paragraph 6 of the Code, the BBC has published [here](#) a list of indicative tariff ranges applicable for different genres of programming.

3.2 **Commercial Release Policies**

a) In accordance with paragraph 3.2(f) of the Code, the BBC has published [here](#) a release policy setting out the approach it will take to requests for consent to exploit the programme commercially on television and video-on-demand services in the UK during the BBC’s licence period.

b) The BBC's published release policy setting out the general approach it will take to requests for consent to exploit the clips and extracts of the programme commercially on television and online services in the UK during the BBC’s licence period is available [here](#).

c) The BBC will publish the principles and guidelines it adopts from time to time when considering requests for consent to use the programme brand in connection with commercial websites, apps, and social media activity in or accessible from the UK, as referred to in section 4.3(2) below.

4. **The BBC’s standard contract**

4.1 The BBC has published [here](#) its standard form of agreement to be used for commissioning individual independent producers in accordance with the Code of Practice and this Framework. If Pact believes that the BBC’s standard form of agreement contains any terms which are inconsistent with the provisions of this Framework or the BBC Code of Practice, Pact shall be entitled to raise such complaint with the BBC’s Controller of Rights, Legal & Business Affairs who shall discuss and agree with Pact any amendment to the BBC’s standard agreement template that may be necessary to ensure consistency. Prior to making any substantive changes to the standard form agreement to be used for commissioning individual independent producers, the BBC will consult with Pact and will give good faith consideration to any comments raised by Pact to any proposed changes. For the avoidance of doubt, any change to the standard form of agreement which amounts to a change to the terms contained in the Framework can only be made with the agreement of Pact.

4.2 In the context of the Key Principles set out in paragraph 2 above, the provisions outlined below describe the standard position the BBC will adopt in its commissioning agreement with independent producers. However, as reflected in paragraph 6 below, these may need to be varied to reflect any changes to the standard provisions which both parties wish to make.

1. **BBC licence period**
The standard licence term granted to the BBC is 5 years from acceptance of full delivery of the programme, subject to any standard post-licence provisions set out in the standard form of agreement referred to above (which at the date of signature of this Framework is General Term 26), and any agreed extensions.

2. **The BBC’s public service on-demand offer:**
In exercising its public service rights, the BBC shall be entitled for the period from 7 days prior to the first linear broadcast of the Programme (‘the Preview’) and up to 30 days following the broadcast to use the Programme 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:

a) temporarily 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 temporary access thereto, viewing thereof and temporary storage of copies of the Programme so downloaded; and/or

b) include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near-video-on-demand service;

Such on-demand use may be exercised with any BBC repeat broadcast, except for the Preview.

3. **Exclusivity**
The BBC shall be entitled to a period of exclusivity for the exercise of its rights before any commercial exploitation takes place, as follows:
<table>
<thead>
<tr>
<th></th>
<th><strong>In the UK</strong></th>
<th><strong>Ex-UK</strong></th>
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<tbody>
<tr>
<td><strong>DVD / DTO</strong></td>
<td>Day 1 following 1st BBC tx of the relevant episode, or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
<td>Day after 1st BBC tx of the relevant programme / episode or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
</tr>
<tr>
<td><strong>Linear Television</strong></td>
<td>In accordance with the BBC’s Programme Release Policy</td>
<td>Day first BBC tx of the relevant programme / episode or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
</tr>
<tr>
<td><strong>Commercial VOD (incl catchup)</strong></td>
<td>The BBC will be clear and transparent regarding its approach to consent, with the objective being to: - enhance commercial opportunities for producers in the online environment, - ensure that the core public service propositions for the content are not undermined in the eyes of the licence fee payer and make it very clear to the audience what is provided by the licence fee funding, and what must be purchased or funded through commercial opportunities. Consent will be granted in accordance with the published principles and guidelines that its adopts from time to time when considering requests for consent.</td>
<td>In accordance with the BBC’s Programme Release Policy</td>
</tr>
<tr>
<td><strong>Commercial Websites &amp; Apps</strong></td>
<td>Day after first BBC tx of the relevant programme / episode or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
<td>Day after tx of the relevant programme / episode or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
</tr>
<tr>
<td><strong>Library Sales</strong></td>
<td>In accordance with the BBC’s Library Sales Release Policy</td>
<td>Day after 1st BBC tx of relevant episode (or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier, but without prejudice to any pre-existing series exploitation).</td>
</tr>
<tr>
<td><strong>Merchandise / Books / Other</strong></td>
<td>Day after 1st BBC tx of relevant episode (or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier)</td>
<td>Day after tx of the relevant programme / episode or 7 days following first BBC Public Service use, or 6 months from acceptance of Full Delivery, whichever is the earlier</td>
</tr>
</tbody>
</table>
| **Format use**         | (a) New further programmes – commissioning right exclusive to BBC in UK during the BBC’s recommissioning option  
(b) BBC consent over foreign version into UK during BBC licence unless BBC recommissioning option has expired and another UK broadcaster has commissioned further programmes | |
| **Additional Material** | In accordance with paragraph 8 below.                                       | |

4. **BBC Store:**

(a) The BBC’s standard commissioning agreement will include a non-exclusive grant of rights in the Programme to enable it to be included on a non-exclusive basis in the venture currently known as ‘BBC Store’. The rights shall be licensed for the duration of the BBC’s Licence Period, subject to an extension of these rights in the event that Pact opt-in to the continuation of their involvement in the BBC Store project at the project’s official review point(s). The rights shall be licensed to the BBC in accordance with and subject to the business model for BBC Store as agreed with Pact.

(b) It is acknowledged that under the BBC Code of Practice one of the factors that the BBC takes into account in determining its price offer in the context of the BBC’s standard commissioning agreement referred to in (a) above, is “the level of up-front third party investment, if any, that the programme could reasonably expect to attract in the marketplace”. To ensure this happens, price negotiations would have a route of referral to the relevant Genre’s BBC Controller of Business where there is an impasse who will – in reaching a timely resolution to all parties satisfaction, with all parties acting reasonably and in good faith – take into account all relevant circumstances and speak directly to the independent producer to do so.
5. Third party and producer investment into production and accounting of distribution revenues

(a) In accounting to the BBC for its share of Net Revenue, the Producer shall ensure that 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 25% entitlement to Net Revenue 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 agreed during the previous 6 months, by media, territory and date. The BBC and Pact shall produce some case study examples to show how these accounting principles will work in practice.

(b) In reporting and accounting to the BBC its share of Net Revenue; Producers shall ensure that timely and clear statements are sent to the BBC every 6 months by the Producer or its appointed Distributor. These shall provide all necessary evidence for the gross revenue (even if none received) and any deductions; detail the appropriate BBC net share for the exploitation; and give totals for each title reported. The Producer will ensure that any Distributor is made aware of all relevant reporting obligations and the terms and value of any agreed recoupments.

6. Further use payments and right to renew

(a) The number of uses covered by the primary rights licence fee depends on which services the programme is being used, and are as set out in the BBC Code of Practice. If, within its licence period, the BBC wishes to make more uses of the programme than those covered by the primary rights licence fee, it may do so on payment to the independent producer as follows:
   i. 2% of the primary rights licence fee paid for the relevant series or episode in order for the BBC to purchase an additional ‘package’ of use as specifically listed in the BBC Code of Practice.
   ii. When purchasing an additional BBC 2 ‘package’, the payment described above shall be for one transmission on BBC 2. In relation to the other ‘packages’ as listed in the Code of Practice, the payment described shall be to replicate the number of transmissions stated in the package.

(b) For the avoidance of doubt, the BBC may elect at any time during its licence period which two packages it intends to use as part of the primary rights licence fee and the first BBC transmission of the programme includes the right to a free narrative repeat (meaning within 7 days of the original transmission) of the programme on the same or any digital BBC channel.

(c) Under the BBC Code of Practice the BBC has the right to renew its licence for a further period of two years. If the BBC wishes to exercise this option it will make a payment of 2% of the primary rights licence fee as an advance against the further use payments set out above. Further extensions to the licence period can be mutually agreed on individually negotiated terms if this is acceptable to both parties. In the case of returning series, the BBC will have the opportunity to renew the exclusive licence for all previous series while the programme is still being commissioned (save that for any renewals beyond the first licence renewal (ie 7 years), the holdback relating to television sales by the independent producer in the UK shall be limited to public service broadcasters).

7. Share of revenue

The BBC shall be entitled to receive a standard share of back end revenue from all exploitation of the programme as follows:

(a) For exploitation in the UK by way of linear television and commercial VOD during the BBC's licence period of rights released in accordance with the published Release Policy: 25%

(b) For exploitation of dto / permanent digital ownership rights in the UK during the BBC's licence period: 25%

(c) For all other exploitation of the programme: 15%

8. Editorial Control and BBC guidelines
The BBC will have final editorial control over all BBC versions of programmes commissioned from independent producers including all associated online and interactive elements. All production and exploitation of all programmes will comply with applicable BBC guidelines.

4.3 **Children’s commissions**

Pact and the BBC acknowledge that in relation to the commissioning of programmes for the BBC’s children’s channels, (a) the standard provisions set out in this framework shall apply and (b) that the BBC has included some updates to the release policy referred to in paragraph 3.2a) above specifically in respect of Children’s commissions.

5. **Funding**

5.1 The agreed licence fee will be the fixed price the BBC will pay for the programme after good faith negotiations between the parties. The BBC will agree either to cash-flow the agreed licence fee according to agreed stage payments, or it will pay the agreed licence fee upon delivery. Pre-agreed stage payments are intended to remove the need in the majority of cases for detailed negotiation between the parties, whilst ensuring that they reflect the particular production schedule. Where staged payments are agreed, the stages will typically be as set out below. However, where the nature of the programme or the production schedule mean that these stages are inappropriate, the BBC and the independent will consider in good faith stages for cashflow that reflect the particular nature of the production whilst still retaining the two final 5% payments in respect of paper and tape delivery.

<table>
<thead>
<tr>
<th>Standard stage payments:</th>
<th>Entertainment</th>
<th>Drama</th>
<th>Factual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipt by BBC of signed agreement</td>
<td>15%</td>
<td>5%</td>
<td>15%</td>
</tr>
<tr>
<td>1st day of pre-production</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Commencement of Principal Photography</td>
<td>25%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Mid point of filming and viewing of rushes by BBC Editorial Rep</td>
<td>20%</td>
<td>25%</td>
<td>N/A</td>
</tr>
<tr>
<td>1st day of Edit</td>
<td>10%</td>
<td>25%</td>
<td>10%</td>
</tr>
<tr>
<td>Approval of rough cut</td>
<td>N/A</td>
<td>N/A</td>
<td>20%</td>
</tr>
<tr>
<td>Approval of fine cut of episode 1</td>
<td>10%</td>
<td>5%</td>
<td>10%</td>
</tr>
<tr>
<td>Acceptance of Tape Delivery</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Acceptance of Paper Delivery (subject always to a cap of 100,000)</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
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</tbody>
</table>

5.2 Where the BBC proposes to pay the Licence Fee on delivery, the BBC will ensure that contract documentation has been established with a minimum of 2 reputable banks. In addition to the primary rights licence fee (but not relevant for the purposes of the section below entitled "Funding above the Primary Rights Licence Fee"), the BBC will pay for the actual costs of cash-flowing the primary rights licence fee (e.g. interest, arrangement fees and legal fees) all of which have been pre-agreed with the BBC.

5.3 Pact and the BBC agree that the policy purpose of the UK Television Tax Relief (TTR) is to support the production of original UK content. This means that where part of the budget expenditure for a programme qualifies for TTR and the producer applies for it, the funds released from HMRC as a result are expected to be used to support UK production budgets. Both Pact and the BBC recognise that:

5.3.1 The BBC may take into consideration the potential availability of TTR when making its price offer for the programme. Having made its price offer, the BBC will not reduce (or increase) the price offered (or agreed), should the actual level of tax credit ultimately be more (or less) than anticipated by the parties or lead to a funding surplus or deficit for the production.

5.3.2 It is acknowledged that in most cases the Producer will be required to obtain a loan and or otherwise deficit finance the proposed TTR element of the programme budget funding (“the TTR Loan”).

5.3.3 It is acknowledged that the producer will be entitled to decide how any surplus TTR (being any TTR received by the Producer not required to discharge the TTR Loan and its associated costs) will be deployed towards the programme’s production costs or overspends and/or administrative costs incurred by the producer in applying for the tax credit or tax credit loan; and/or in respect of any
other production or development work, priority being given to other contemporaneous BBC commissions and developments.

5.3.4 The Producer will warrant that the relevant TTR legislation is complied with and any surplus will be deployed for the stated policy purpose. Pact and/or the BBC will be entitled to request evidence from the producer regarding the application of any such surplus.

6. **Evolving strategic initiatives**

6.1 It is recognised by Pact and the BBC that the business framework outlined in this document will apply to as standard to programmes commissioned by the BBC. However, as reflected in the BBC Code of Practice, these standard arrangements do not preclude the BBC and an individual independent producer from concluding an agreement covering a different range of provisions from those outlined above, should they both wish to do so in order to deliver a specific and demonstrable strategic project(s). Any such variations to the standard business framework will be negotiated case by case by the BBC and the independent producer in good faith and with regard to the Key Principles outlined in section 2 above.

6.2 Examples of current BBC strategic projects include the BBC’s requirement for a broader set of public service rights in order to include a programme in the BBC’s ‘permanent collection’, or to meet BBC Learning’s strategic objectives online; or if a programme is commissioned for BBC Alba; or where the BBC agrees to assume specific commercial risks on behalf of the independent producer:

(i) **BBC Knowledge and Learning:**
The BBC may commission certain projects which are intended to feature in the BBC’s public service Knowledge and learning online ‘product’ where a broader set of BBC Public Service Rights may need to be acquired, for example, in relation to the BBC’s extract rights in such content.

(ii) **Access to the programme archive:**
The BBC is currently collaborating as part of a large and growing set of public archives made available by UK institutions, acting as an enabling force to link and support them in an increasingly connected public space. As part of this initiative, the BBC has been mandated by the BBC Trust to start building a ‘permanent collection’ of some of its past programmes for free streamed online access by anyone in the UK via the BBC’s Public Services.

These would consist of content from the BBC’s knowledge-building and culture archive, which collectively represents a national resource of unique cultural, historic and educational value. To give clarity to the market and to align with the BBC’s Service Licence framework, the BBC intends to focus its audio-visual ‘permanent collection’ around the **BBC Four** service which places Knowledge and Culture at the heart of its offer to audiences.

The audience offer is anticipated to focus on the BBC Four “Collection Releases” which support major broadcast seasons and series. Selected new programming is included for permanent publication alongside complementary archive content (which could include content originally broadcast on other channels, radio, or digitised physical artefacts, as editorially relevant). A small number of selected BBC Four long-form programme strands may also be made available over time.

Outside these anticipated areas, there may also be other limited occasions where the BBC and the independent producer agree for the BBC to provide the BBC UK audience access to content on a similar ongoing basis.

(iii) **BBC provision of production and/or financial support and/or other commercial risk sharing initiatives:**
There may be certain occasions when negotiating a new commission where, in return for a variation to the standard framework, the BBC and the independent producer agree that the BBC will share or assume specific
commercial risks associated with an individual commission. For example, the BBC may be willing to agree to provide support for the independent producer, such as to:
  o fund the commission at a level above the primary rights licence fee;
  o underwrite the risk of securing third party investment into a production;
  o otherwise accept responsibility for a commercial risk on the project in a manner not applicable to the standard contractual position;
  o provide access to business affairs/production expertise as a resource to the production.

7. **Contracting Talent**

7.1 Independent producers will contract talent on the basis of the relevant collective agreements applicable to the independent television production sector and in accordance with standard industry practice.

7.2 Pact have agreed to consult the BBC in connection with any discussion that it may have to vary the provisions of any such collective agreement in any manner which may impact on the rights granted to the BBC in programmes it commissions (or has commissioned) from independent producers. PACT agrees to give good faith consideration to the BBC’s views.

8. **Additional Material**

The provisions regarding Additional Material are set out in the Schedule below.

9. **SER Rights and Revenue**

In accordance with the principle established in the BBC’s *General Terms for the Production of Television Programmes by Independent Producers* introduced pursuant to the Terms of Trade agreed between Pact and the BBC on 30 July 2004, the licence granted to the BBC to exercise the SER Rights will continue to be subject to appropriate payment being made for such use. The BBC and Pact regard this right of the producer to remuneration for such retransmissions of commissioned productions as entitling AGICOA, the collecting society that during the period since July 2004 has represented holders of retransmission rights in acquired and commissioned television programmes included in the BBC television channels, to receive a share of the licence fees for such retransmissions received from the cable distribution platforms and as entitling the producer to claim a part of the revenues received by AGICOA.

The grant of SER Rights to the BBC on a royalty free basis under clause 12.1 of the General Terms means that no separate payment (other than payment of the Licence Fee) will be made to the producer by the BBC in respect of the exercise of those rights by the BBC. Separately, BBC Worldwide receives revenues in respect of such retransmissions of commissioned programmes, such revenues being in respect of the licensing of the rights of the BBC as the broadcaster in its channels of these programmes and of the other works included in them.

10. **General**

10.1 Where certain time periods are expressed in this Framework by reference to acceptance of ‘full delivery’, it is acknowledged that full delivery shall be deemed accepted after expiry of thirty (30) days from receipt by the BBC, unless notified otherwise (or accepted in writing) earlier.

10.2 In line with Clause 10 of the BBC Code of Practice, this Framework will be reviewed on a three-yearly basis.

Agreed on 16 October 2013 by:

<table>
<thead>
<tr>
<th>John McVay</th>
<th>Bal Samra</th>
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<tbody>
<tr>
<td>Chief Executive</td>
<td>Commercial Director</td>
</tr>
<tr>
<td>Pact</td>
<td>BBC</td>
</tr>
</tbody>
</table>
Schedule regarding Additional Material

1 Definition:

"Additional Material" is material based on or related to the Programme and/or the Format (as defined in the General Terms) to include, by way of example only, material such as out-takes, behind the scenes footage, cast interviews, biographies, mini-episodes, highlight packages, preview packages, clips, applications and non-disc based games designed primarily to support and/or enhance the public service Programme offering etc (for the avoidance of doubt, this is not intended to include disc based/high production value commercial game propositions or other Merchandising Rights).

2 Key principles:

It is acknowledged that Additional Material is an integral part of the Programme, Format and brand in which the BBC is investing. Accordingly, the provisions below relating to the use of such Additional Material are designed to reflect the key principles regarding the rights in the Programme including with regard to the BBC’s exclusivity in the UK.

All exploitation of Additional Material and Programme clips must comply with the BBC Guidelines, carry appropriate BBC branding and adhere to any relevant compliance requirements (programme compliance, legal and regulatory compliance etc) for so long as the BBC is commissioning the Programme and/or has a subsisting re-commissioning right in the Programme.

3 Production and exploitation of Additional Material:

The independent producer is entitled to create Additional Material subject to the overarching principles set out below:

3.1 If the independent producer creates Additional Material, it may exploit the Additional Material in the manner set out in paragraph 4 below.

3.2 Whilst the BBC has a subsisting re-commissioning right in the Programme:

1. the independent producer must secure the BBC’s prior written consent in relation to any use or exploitation of the Additional Material in the UK other than as set out in paragraph 4 below; and

2. the BBC has the sole and exclusive option to commission, use and/or exploit Additional Material subject only to the independent producer’s rights under paragraph 4 below.

3.3 If the BBC wishes to exercise such option:

1. The relevant material would be commissioned and/or licensed for a separate licence fee to be agreed between the parties, and calculated by reference to the additional and reasonable costs of production. If the independent producer does not have the relevant technical expertise itself to produce the Additional Material and/or provide the necessary warranties, the parties shall identify in good faith a solution to enable the BBC to commission or license such Additional Material from the independent producer (which might include, for example, the independent producer sub-licensing or sub-contracting parts of the commission to third parties or to the BBC).

2. The terms to apply to the exercise of such option and the rights granted to the BBC will be negotiated on a case by case basis, but for the avoidance of doubt, shall not be for any period shorter than the licence period in the Programme, and shall as a minimum include the right to use the Additional Material on any of the BBC’s public services in the UK.

3.4 Accordingly, it is acknowledged that:
1. The independent producer should discuss its proposals and ideas to produce Additional Material with the BBC at the earliest opportunity and before investing its own resource in Additional Material propositions;

2. It is in both parties' interests for the BBC to communicate its intention to commission and/or license the Additional Material as early as possible in the Programme commissioning/production process and the BBC encourages independent producers to include any proposals for Additional Material as part of the proposal for the overall Programme commission;

3. Should the BBC decide not to exercise its option under paragraph 3.2(b) above, the BBC will grant written consent under paragraph 3.2(a) above, provided that in the BBC's sole discretion, the BBC's public service offering in connection with the Programme and/or Additional Material is not thereby compromised, confused or undermined with regards to the audience.

4 Use of Additional Material by the independent producer:

Whether or not the BBC commissions or licences Additional Material as referred to in paragraph 3 above, the independent producer may, with prior notification to the BBC, exploit Additional Material in the following manner:

4.1 as part of the exploitation of the DVD and Commercial Download Rights in the Programme in accordance with the General Terms; and

4.2 as part of any permitted Programme sale to the UK secondary television and video-on-demand market in accordance with the BBC's Programme Release Policy; and

4.3 as part of any international Programme exploitation (i.e. outside the UK) in accordance with the General Terms.

5 Commercial Exploitation of Programme Clips:

5.1 Programme Clips for Permanent Download-to-Own e.g. clips for sale to mobiles or other handheld devices:

The independent producer may sell Programme clips to end users (either itself or through its authorised licensees), provided that the end user is not able to access such clips from any service operated by any other public service broadcaster and/or its affiliated/subsidiary services or companies, by way of permanent download-to-own in the same way as it may exercise the Commercial Download Rights in the whole Programme (or episode thereof) as set out in the General Terms (including, for the avoidance of doubt, the provisions relating to the accounting for the BBC's share of Net Revenue), subject to the following restrictions on volume:

1. The Programme clip(s) shall be no longer than 5 minutes in total per 30 mins of Programme or episode running time (i.e. for example, in relation to a 30 minute episode you could have 2 clips of 2 minutes in length and 1 of one minute; or 1 clip of 4 minutes); and

2. Subject to the 5 minute limit above, any individual comedy clip cannot exceed 2 minutes in length; and

3. In each instance the BBC's specific consent is required in relation to Children's programmes, NHU programmes, and serious factual programmes where the BBC's Licence Fee is more than £200,000 per hour. ("Clip Restrictions").

Where the independent producer is selling Programme clips as set out above, it is entitled to make available via a free stream to the end user a preview of the Programme Clip of no more than 20 seconds.

5.2 Programme clips commercialised in any other manner (i.e. excluding permanent download-to-own) e.g. making Programme clips available for streaming at no cost to the end user via a website carrying advertising:

The independent producer may make Programme clips commercially available for these purposes subject only to (a) the Clip Restrictions outlined in paragraph 5.1 above, and (b) after the period of 6 months from the BBC's first transmission of the last episode of the Programme; and
(c) payment of 25% of the Net Revenue deriving from such exploitation to the BBC

Unless such restrictions are otherwise relaxed by the BBC as part of granting a consent as referred to in paragraph 3.2 of the Business Framework.

5.3 For the avoidance of doubt, the use or exploitation by the independent producer of clips comprising Additional Material is set out in paragraph 3.2 above.