

THE BBC'S GENERAL TERMS FOR THE PRODUCTION OF RADIO PROGRAMMES BY INDEPENDENT PRODUCERS

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

1. **DEFINITIONS**

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

"Additional Licence Fee" – the sum payable to the Producer by the BBC under **General Term 14** as an advance against the payment due to the Producer for 1 package of further uses under **General Term 15.2**;

"Advances" – as defined in **General Term 7.2.1**;

"Agreement" - the Programme production agreement between the BBC and the Producer which includes all schedules hereto (including Schedules 1 to 4);

"Archive New Media Rights" – means notwithstanding the Primary-Audio-on-Demand Rights, the perpetual right to use the Programme (or part thereof) in any online, interactive, or other new media services forming part of the BBC Public Services in whatever format now known or invented in the future, save that the Archive New Media Rights in the following instances shall be limited to 5 minutes per 30 minutes of content:

- (i) when the genre of the Programme as set out in the Commissioning Specification is specified as being within the genre of comedy, drama/readings or narrative history (and in the event of disagreement as to the applicable genre the dispute resolution procedures in **General Term 25.9** shall apply); or
- (ii) if the Producer notifies the BBC Legal and Business Affairs Manager specified in the Special Terms (or such other appropriate person as the BBC may notify the Producer) in writing of Net Revenue for the relevant Programme (or episode thereof) of at least 3% of its Licence Fee arising from commercial exploitation of the actual audio content contained within the Programme, and in such event for the avoidance of doubt the Archive New Media Rights shall apply until the BBC receives notification otherwise under this clause.

"Audio-on-Demand Rights" – means the exclusive right to include or license the Programme (or part thereof) for inclusion in an audio-on-demand service or near-audio-on-demand service including any "download-to-rent" service or any other service allowing temporary access to the Programme in accordance with the Commercial Streaming Guidelines, but excluding the Primary Audio-On-Demand Rights and the World Service Audio on Demand Rights;

"Audio-visual Content" – means audio-visual content of or relating to a Programme produced at the Producer's own cost and in accordance with **General Term 16.2.7**.

"Audio Publishing Rights" - the right to adapt, abridge and dramatise the soundtrack of the Programme or any part thereof or any element created therefor 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's Delivery Specifications" - all specifications for BBC transmission located at the website address for delivery set out in the Special Terms;

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

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

"BBC National Radio Networks" - means the BBC public services currently known as BBC Radio 1, BBC Radio 2, BBC Radio 3, BBC Radio 4, and BBC Radio Five Live (whether broadcast by analogue or digital means);

"BBC Digital Radio Services" - means the BBC digital public services currently known as BBC 6 Music, BBC 4Extra, BBC 1Xtra, BBC Five Live Sports Extra, and BBC Asian Network;

"BBC Network Rights" - means the right to deliver the Programme as part of the commercial exploitation of an entire BBC radio network internationally for distribution (whether broadcast, transmitted or streamed over any platform) but time shifted to reflect the difference in time zones between the UK and the country where the stream will be rebroadcast in consideration for which the Producer will receive fair and equitable payment on the basis of a formula BBC can devise and agree with the Radio Independents Group always taking into account the administrative effort required to support such mechanism.

"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 radio services whether now existing or developed in the future and provided by the BBC whether by analogue or digital or other means for general reception in the UK which are Home Services and not Commercial Services as referred to in the BBC's Royal Charter (extracts from which contained in Schedule 7) 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 broadcast the Programme at programme festivals; and
- (d) the right to produce and distribute publicity and promotional materials (including publicity stills and poster shots) relating to the Programme in any media; and
- (e) the right to produce and broadcast by such means and in such manner and media and at such times as the BBC shall deem fit, trailers of the Programme and extracts of the Programme for publicity purposes; and

- (f) the exclusive (unless otherwise stated in this Agreement) right to exercise the Primary New Media Rights worldwide, including the right in exercising the Primary New Media Rights to segment/chapterise a Programme or episode of a Programme or part of a Programme and to make such segments/chapters/parts embeddable within the BBC's Embeddable Media Player and to syndicate as part of the BBC's Public Services; 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 right to use the Programme for the BBC's internal purposes; and
- (i) the right to comply with any statutory obligations; and
- (j) the exclusive right to host a Programme related website on bbc.co.uk throughout the Licence Period subject only to the Producer's Commercial Website Rights;
- (k) the exclusive right to produce and transmit Gaelic and Welsh versions of the Programme and to produce and transmit English versions of Gaelic and Welsh programmes subject always to the provisions set out in **General Term 15.5**;
- (l) the right to license the Programme (or any episode thereof) for broadcast in British Forces Broadcasting Service radio services;
- (m) the exclusive right to exercise the Thirty-Day-New-Media Rights, the Streaming Rights and the New Media Extract Rights (save that extracts shall be limited to five minutes per sixty minutes of Audio-visual Content or thirty seconds in respect of any music performance track whichever is the greater) in any Audio-visual Content. For the avoidance of doubt any reference to audio in the exercise of such rights in this Agreement shall equally apply to audio-visual; and
- (n) the right to grant sub-licences under paragraphs (a) to (n) above.

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

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

"Cash Flow Schedule" - an agreed Schedule setting out the amounts to be paid by the BBC into the Production Account or the Producer's bank account as specified in the Special Terms and the times when they shall be paid;

"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 to make available the relevant episode of the Programme as an individual discrete purchase by the general public for permanent download (or other technological means of permanent digital access by the 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 subject always to the terms in **General Term 16**;

"Commercial New Media Rights" - means subject to **General Term 12.9** 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, which shall include the Commercial Website Rights;

"Commercial Streaming Guidelines" - means the commercial streaming guidelines contained in Schedule 8.

"Commercial Website Rights" - means the right from the period commencing () after first BBC transmission of the Programme (or relevant episode thereof) to set up a commercial website or app based on the Format of the Programme (but not using the Programme itself) which is editorially acceptable to the BBC, does not derogate from, undermine or otherwise conflict with the BBC Public Service Rights and has BBC approval in accordance with **General Term 12.9**;

"Commissioned Material" means any material of whatever nature in which copyright design trade mark or other similar rights subsist or will subsist and of which use is made or intended to be made in or in connection with the Programme being material whose creation is contracted for by the Producer for use in or in connection therewith including without limitation the scripts for the Programme;

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

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

All documents must:

1. *Include the Producer's name and address*
2. *State the name of the BBC Finance Representative (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 Finance Representative (or their authorised deputy)
18. Show clearly the words "certified copy"
19. Have an original signature from the Producer added
20. Fax Copy documents are not acceptable

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

"Delivery Items" - the items listed in clause 6 of the Commissioning Specification;

"Distribution Rights" - the right to exploit the Programme and the Audio-visual Content 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; the Physical Product Rights; Audio-on-Demand Rights; the Commercial Download Rights; and the Merchandising Rights,

"Foreign Version Rights" - the right to produce (or to authorise such production) and to broadcast and otherwise exploit the Foreign Version (or to authorise such exploitation) by all means and in all media including exploitation of all ancillary and derivative rights arising in respect of the Foreign Version outside the UK and Eire and for the avoidance of doubt excluding producing and broadcasting Gaelic and Welsh versions of the Programme;

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

"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" - delivery of all Delivery Items which in the case of a series of programmes shall mean delivery of the Delivery Items for the last episode in the series;

"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);

"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;

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

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

"Library Sales Rights" - the right subject to **General Term 12.4** to include or to authorise the inclusion of extracts and sequences from the Programme and rushes in another audio work and to exploit or authorise the exploitation of such audio 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 the production started whichever is the earlier and, subject always to **General Term 14**, continuing in force for a period of 10 (ten) years from the date of first transmission or 6 (six) months from acceptance by the BBC of Full Delivery whichever is earlier;

"Merchandising Rights" - the right to exploit the characters and items trade marks 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 records 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 trade marks or designs;

"Nations Radio" - means the BBC's regional and local radio stations, minority language stations, and BBC Wales and BBC Scotland English language services;

"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) in the case of exploitation of Audio-Visual Content only, the direct costs of production of the Audio-visual Content as pre-agreed with the BBC;
- (b) 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);
- (c) 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);
- (d) 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 normal practice in the independent radio 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);
- (e) any advances (including distribution advances) which are:
 - 1. paid by a third party to the Producer in respect of the Programme;
 - 2. actually applied by the Producer towards the direct cost of production of the Programme;
 - 3. recoupable by such third party; and
 - 4. which has been agreed by the BBC and is specified in the Special Terms.
- (f) any advance made by the Producer (in excess of the Licence Fee) and actually applied towards the direct cost of production of the Programme(s) which has been agreed with the BBC and is specified in the Special Terms;
- (g) any other amounts agreed with the BBC and specified in the Special Terms (or otherwise subsequently agreed with the BBC in writing) to be recoupable or deductible from gross revenue.

except where the Producer is entitled to a share of gross revenue arising in connection with the exercise of the relevant Distribution Rights where none of the deductions listed in (a)-(g) 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 and perpetual right (subject always to the Producer's right to exercise the Promotional Online Rights) to use extracts or clips of the Programme no longer than 5 (five) minutes per 30 (thirty) minutes or less of Programme running time in any online or interactive services forming part of the BBC Public Services in whatever format now known or invented in the future;

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

"Paper Delivery" – delivery by the Producer to the BBC of the Delivery Terms listed in the "Paperwork" section of Clause 6, Schedule 2 of the Special Conditions;

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

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

"Physical Product Rights" means the sole and exclusive right to manufacture, distribute, sell, hire, licence, advertise, promote and exploit in any manner whatsoever any device or other appliance (including without limitation audio tapes, DAT, compact discs and DVDs) whatsoever whether now or hereafter invented bearing or used for emitting sounds (unaccompanied by visual images) of the Programme whether in whole or in part;

"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;

"Podcast Rights" – means the right to make the Programme available as a download for a period of 30 days after the relevant BBC transmission of the Programme (or relevant episode thereof) save that the Podcast Rights shall not apply if:

(i) the genre of the Programme as set out in the Commissioning Specification is specified as being within the genre of comedy, drama/readings or narrative history (and in the event of disagreement as to the applicable genre the dispute resolution procedures in **General Term 25.9** shall apply); or

(ii) the Producer notifies the BBC Business Affairs Manager specified in the Special Terms (or such other appropriate person as the BBC may notify the Producer) in writing of Net Revenue for the relevant Programme (or episode thereof) of at least 3% of its Licence Fee arising from commercial exploitation of the actual audio content contained within the Programme, and in such event for the avoidance of doubt the Podcast Rights shall apply until the BBC receives notification otherwise under this clause.

"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 Archive New Media Rights; the Streaming Rights; the New Media Extract Rights; the Primary Download Rights; the Podcast Rights; the Thirty Day New Media Rights; and the Primary-Audio-on-Demand Rights; in accordance with **General Term 12.8** 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 Rights" – all rights granted to the BBC under the General Terms of this Agreement;

"Primary-Audio-on-Demand Rights" – means the exclusive right within the period of 30 (thirty) 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 an audio-on-demand service forming part of the BBC Public Services

Where the Programme forms part of a series the BBC shall be able to offer each episode of the series by way of audio-on-demand for the duration of the series plus 30 (thirty) days from transmission. For the avoidance of doubt, in respect of further transmissions of the Programme or series by the BBC during the Licence Period, the above rights shall apply on a non-exclusive basis;

"Primary Download Rights" – means the right to make available a download (the transfer and storage of a discrete data file) of the Programme (or part thereof) by any wire or wireless means including but not limited to the internet and to permit access thereto, listening thereof and storage of copies of the Programme so downloaded:

- (i) until such time as the BBC implements the Primary Download Rights in point (ii) below in respect of radio, the right to allow the audience, upon download of the Programme (or any episode thereof) by the audience within the seven day window from any transmission by the BBC of the Programme/episode of the Programme, to have the Programme/episode of the Programme remain on the user's hardware until first accessed (or thirty days from download whichever is sooner), then such user has seven days to listen to the Programme/episode of the Programme after which the Programme/episode of the Programme will expire; then
- (ii) at such time as the BBC has implemented the right in this paragraph in respect of radio, the right to allow the audience, upon download of the Programme (or any episode thereof) by the audience within the thirty day window from any transmission by the BBC of the Programme/episode of the Programme, to have the Programme/episode of the Programme remain on the user's hardware and to listen to the Programme/episode of the Programme until the end of the thirty day window after which the Programme/episode of the Programme will expire;

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

"Production Personnel" - means any person working in an editorial or production management capacity in connection with the Programme (irrespective of their contracted job title) including anyone carrying out the following roles: Executive Producer, Producer, Editor, Assistant Producer, Broadcast Assistant, Researcher, Presenter (where involved in the production of the programme);

"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 radio 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 5 (five) minutes per 30 minute programme 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;
- (ii) such use shall not be until 30 days after the BBC's first transmission of the Programme (or episode thereof) without the prior written consent of the BBC (not to be unreasonably withheld or delayed); and
- (iii) such material shall not remain on the relevant distributors' websites after the end of the distribution licence or on the broadcasters' websites for longer than 6 (six) months from transmission as appropriate;

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

"Programme Budget" - means the detailed breakdown of the cost of production of the Programme (prepared in a form specified by the BBC) and agreed by the BBC and the Producer a copy of which shall (if required by the BBC) be attached to this Agreement;

"Relevant BBC Websites" - the websites listed in Schedule 3 and any others notified to the Producer from time to time;

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

"Source Material" means the Format and/or any material of whatever nature (except Commissioned Material and Third Party Material) in which copyright design trade mark or other similar rights subsist or will subsist and upon which the Programme is to be based whether in whole or in part;

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

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

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

"Tape Delivery" - means delivery of the Programme in the format specified in Schedule 2 of the Special Terms;

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

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

“Third Party Material” means any literary dramatic artistic or musical material and any library or other film or sound record or other material in which copyright design trade mark or other similar rights subsist owned by a third person and which is used in or in connection with or synchronised with the Programme but excluding the Source Material and Commissioned Material;

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

“Thirty-Day-New-Media Rights” – means the right for the period of 30 (thirty) days from the relevant BBC transmission of the Programme (or relevant episode thereof) to use the Programme (or part thereof) in any online, interactive, 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 Primary Download Rights and/or the Primary Audio-on-Demand Rights;

“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” – means any Commissioned Material, Source Material, Third Party Material and any other material of whatever nature, including any literary, dramatic, artistic or musical material or library or other sound record or other material in which copyright, design, trade marks 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 Audio-visual Content (or part thereof) for inclusion in a video-on-demand service or near video-on-demand service, excluding the BBC’s rights in the Audio-visual Content under **General Term 16.2.7(iii)**, in accordance with the Commercial Streaming Guidelines;

“World Service Audio-on-Demand Rights” - means the non-exclusive right within the period of 30 (thirty) days from the relevant transmission in the BBC’s World Service of the Programme (or relevant episode thereof) to include or licence the Programme (or part thereof) for inclusion in an audio-on-demand service forming part of BBC World Service;

“World Service Radio Rights”- means the following rights:

- (a) the non-exclusive right to broadcast, transmit, authorise the transmission of the Programme (or any part of it) in the BBC’s World Service in English in cycles of 7 (seven) broadcasts in each World Service region provided that the first and last of such broadcasts shall take place within 8 (eight) days of each other and to exercise the World Service Audio-on-Demand Rights in consideration of the payment specified in **General Term 15**; 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. The Producer shall ensure such rights are clearable (ie. cleared subject to payment by BBC World Service of a pre-agreed fee in respect of Underlying Material and contributions where appropriate).

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 In this Agreement the term "including" means without limitation; "include" and "includes" shall be construed accordingly;
- 2.7 In this Agreement any reference to trade marks (whether as defined terms or otherwise) includes service marks.

3. THE BBC REPRESENTATIVES

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

4. CONTRACTUAL PRE-CONDITIONS

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

- 4.1 the Producer has secured the approval, as requested in the Commissioning Specification, of the BBC's Editorial Representative to the proposed treatment/outline, the script, the presenter and/or other contributors and the producer for the Programme and has completed and returned a Commissioning Specification in the form contained in Schedule 2, approved by the BBC and signed by the Producer and the BBC;
- 4.2 the BBC and the Producer have agreed the Programme Budget and the Licence Fee;
- 4.3 where the Special Terms provide for the BBC to cash flow the Licence Fee, the Producer has opened the Production Account with the Bank at the branch of it named in the Commissioning Specification (if required in Special Term 5.2);
- 4.4 the Producer has effected the Insurances as set out in **General Term 8**;

- 4.5 the Producer has obtained the BBC's approval of any element in or relating to the Programme over which the BBC has an express right of approval;
- 4.6 the Producer has completed a Health & Safety questionnaire to the BBC's satisfaction;
- 4.7 if applicable, the Producer has satisfied the BBC in the BBC's absolute discretion that all 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 to the BBC in accordance with the terms of this Agreement and in conformity with the Commissioning Specification. In doing so the Producer shall ensure that they meet the standards of a first class producer and that the Programme is of first class editorial and technical quality and suitable and fit for radio broadcasting;
- 5.2 The BBC shall 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;
- 5.3 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 (or Executive Producer where indicated by the Network);
- 5.4 In making the Programme, the Producer shall:
 - 5.4.1 comply with the BBC Guidelines at all times during the making of and in connection with the Programme;
 - 5.4.2 notify the BBC's Editorial Representative of any issues of sensitive content to which the BBC Guidelines apply and list such issues in the BBC Radio and Music Compliance Form (Schedule 4);
 - 5.4.3 comply with all applicable: child protection legislation, disability discrimination legislation; data protection legislation; health, safety and fire legislation; construction design and management regulations; and all regulations and orders made under such legislation, and in so doing shall nominate a person or persons competent to give appropriate safety advice during production of the Programme and shall produce the Programme safely having due regard to such advice. Where reasonably required, the BBC shall be entitled to be provided with evidence of the Producer's compliance herewith;
 - 5.4.4 if requested in the Commissioning Specification, secure the approval of the BBC Editorial Representative to any treatment or script for the Programme before production commences (such approval shall usually only be relevant to drama and readings);

5.4.5 in relation to safeguarding children and young people the Producer confirms that:

5.4.5.1 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;

5.4.5.2 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 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;

5.4.5.3 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.

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.

5.4.6 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, such approval not to be unreasonably withheld or delayed. For the purposes of this clause only participants shall not include Performers giving dramatic performances, presenters, writers, musicians or Production Personnel;

5.4.7 ensure that neither it nor its staff shall bring the Programme or the BBC into disrepute in any manner whether through any production, promotion, or exploitation activity or generally carrying out its rights, entitlements and obligations under the terms of this Agreement during the Licence Period, whether inside or outside the UK, and shall use all reasonable endeavours to procure that its sub-licensees, subcontractors, and all other persons engaged by it in connection with the Programme shall comply with the same obligation.

5.5 The Producer shall be entitled to use such BBC libraries as is agreed for the production of the Programme. BBC Archives may make a direct charge for research services. 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 from the Licence Fee such costs as are reasonable to repair or replace the missing or damaged materials or to charge such costs directly to the Producer (in its own discretion);

- 5.6 The BBC shall be entitled at times reasonably convenient to the Producer to have access to any recording studio or location during the course of production of the Programme for the purposes of producing publicity & promotional materials (including publicity stills, poster shots and trails) relating to the Programme;
- 5.7 The Producer shall not without the BBC's written consent (such consent not to be unreasonably withheld or delayed) grant 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. 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.
- 5.8 For the avoidance of doubt, it is acknowledged that any details set out in Clause 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.

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, in accordance with normal practice in the independent radio production sector;
- 6.2 Unless otherwise agreed by the BBC Business Affairs Manager, the Producer shall be responsible for and bear all costs in contracting contributions to the Programme on the basis of the table below. These requirements do not oblige the Producer to obtain better terms for the BBC than the BBC's own agreements with Underlying Rights holders (where applicable). However, in the event that this limits the exercise by the BBC of its rights under this Agreement or reduces the amount of Net Revenue the BBC would expect to receive from exploitation of the Distribution Rights in the Programme in the relevant market if such Distribution Rights had been granted to the BBC, the Producer shall ensure that such restrictions are agreed in advance by the BBC's Business Affairs Manager and are noted in the Special Terms;

Artists / Writers / Musicians	The Producer shall contract the services of any artists, writers and/or musicians in connection with the Programme in accordance with normal practice for the independent radio sector at the date of this Agreement, and the minimum pre-paid uses made shall be as set out in the Special Terms.
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

	<p>wording into the contract that it enters into with any presenter of the Programme:</p> <p>“ the Company shall be entitled at any time to cancel/terminate this engagement in accordance with Clause [] if [the Presenter] has committed any act or omission which in the Company's or the Broadcaster’s reasonable opinion would bring the Programme, the Company and/or the Broadcaster into disrepute or prejudice the production or successful exploitation of the Programme.”</p>
Archive & Stills	<p>1. In relation to BBC archive: The Producer shall be entitled (subject to any restrictions in respect of specific footage) to incorporate BBC archive sound (including soundtrack) from audio visual footage in which the BBC owns the copyright (“the BBC Archive”) 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 Archive. Notwithstanding this the Producer shall ensure that all underlying rights in such BBC Archive 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 Archive in the Programme. All other rights in the BBC Archive 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 any stills to be used for publicity purposes 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. The Producer shall also ensure that such material is clearable for a further 5 (five) years (and where reasonably possible, pre-purchased within the Licence Fee for such further 5 (five) years).</p>
Third party format owners (or similar)	<p>The Producer shall within the Licence Fee make such payments to any third party format (or similar source material) owners 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. The Producer shall also ensure that such material is clearable for a further 5 (five) years (and where reasonably possible, pre-purchased within the Licence Fee for such further 5 (five) years).</p>
Music	<p><u>The Producer shall be responsible for making any necessary payments in respect of pre-existing musical material as follows:</u></p> <p>1. any music or sound recordings included in the Programme for broadcast where the right to broadcast is NOT covered by the BBC’s blanket music licences; and</p>

	<p>2. any music or sound recordings recorded/dubbed into the Programme where the right to record/dub is NOT covered by the BBC's blanket music licences.</p> <p>The Producer shall be responsible in each case for ascertaining whether the right to record/dub into the Programme and/or broadcast any music or sound recordings is/are covered by the BBC's blanket music licences by obtaining such confirmation from BBC Music Copyright.</p> <p>In the event of queries, the points of contact in the BBC Music Copyright department are listed on the BBC's Commissioning Website (website address as listed in the Special Terms).</p> <p><u>Commissioned Musical Material:</u> Where material is commissioned, the Producer shall within the Licence Fee acquire all necessary rights and make such payments in commissioning any specially composed music for incorporation in the Programme as are required 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 1 above in respect of the broadcast rights in the material.</p>
Production personnel	<p>The Producer shall within the Licence Fee make such payments 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 in engaging the services of:</p> <p>(i) 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 production team); and</p> <p>(ii) (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.</p>
Locations/ Venues	<p>When entering into any location or venue 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 clearances (including union clearances if applicable), permissions and consents have been duly obtained and in a timely fashion but in any event before the Delivery Date;

6.3.2 all necessary consents under Part II of the CDPA have been duly acquired to enable the BBC to fully exercise the rights granted under this Agreement;

- 6.3.3 the contracts entered into with any credited Performer, presenter, contributor or other person involved in the production of the Programme or who has provided rights services or facilities in connection with it shall incorporate all consents to make and issue or authorise others to make and issue publicity and promotional material (including trails) concerning or including such persons (including the right to use their names photographs and biographies and recordings of interviews with them) without further consent or payment;
 - 6.3.4 consent is acquired to the incorporation of sequences or extracts from the Programme for use in any BBC Public Service (including as part of any other audio material) in accordance with **General Term 12.4** without further payment by the BBC in connection therewith save where provided for under **General Term 6.2**. The Producer shall 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 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 5.4** above.
- 6.4 Where the BBC requests it, the Producer shall secure the approval of the BBC Legal & Business Affairs Manager or the BBC Finance Representative (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.

Following the BBC's request, all such documents shall be submitted to the BBC Legal & Business Affairs Manager for approval in first draft form at the earliest stage practicable and the Producer shall make all such amendments thereto as the BBC shall reasonably require before sending such first draft document to the proposed parties (or their agents). In giving its approval, the BBC may request a requirement for the Producer to include certain provisions in the agreement (for example, a key individual to co-operate with various publicity initiatives relating to the Programme).

- 6.5 For the avoidance of doubt, the Producer shall pay any further use fees, repeats or residuals 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 (or the World Service as applicable) shall pay to the Producer an amount equal to the costs for the same, such amount to be pro-rated according to the proportion of the Programme used in any further use of any part of the Programme provided always that such pro-ration is permitted by the BBC's agreements relating to the contributor/contribution concerned.

7. FINANCE

- 7.1 In consideration of the satisfactory performance of all of the Producer's obligations under this Agreement, the BBC shall pay the Licence Fee to the Producer in accordance with the Special Terms subject to and in accordance with **General Terms 11 and 7.3, 7.4, 7.5 and 7.8** below. It is acknowledged that without prejudice to the provisions of **General Terms 18 and 20**, the Licence Fee as set out in Special Term 2 is non-recoupable.
- 7.2 Where the Special Terms provide for the BBC to cash-flow the Licence Fee to the Producer:
- 7.2.1 the cash flow payments advanced by the BBC to the Producer in accordance with Special Term 2.2 (the "Advances") shall be made provided that the Producer has complied with **General Term 7.3** 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 right to terminate this Agreement under **General Terms 20 or 21.3**.
- 7.2.3 subject to 7.2.4 below, the BBC shall pay the Advances into the bank account specified in the Special Terms.
- 7.2.4 where it is specified in the Special Terms that the Producer shall open a Production Account, 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. No other monies shall be paid into the Production Account other than any Third Party Production Finance and all costs incurred or expended in accordance with this Agreement in connection with the production of the Programme shall be paid from the Production Account, which payments shall be made in accordance with the resolution relating to the opening and operation of the Production Account described in **General Term 4.3** or any resolution amending it which has been agreed by the BBC.
- 7.3 Value Added Tax
The Producer shall submit a VAT invoice in Compliant BBC Form for the whole or any part of the Licence Fee to BBC Accounts payable, and the Producer and the BBC agree that the BBC shall pay such sums as are due by no later than the end of the month following the month of each payment specified in Clause 2 of the Special Terms;

- 7.4 The BBC reserves the right to withhold payment where the Producer has not fulfilled its obligations in accordance with this Agreement and shall notify the Producer accordingly. The BBC shall give reasons for the withholding of the payment and shall only be entitled to withhold that amount indicated as in dispute. If any sum of money shall be recoverable from or payable by the Producer under this Agreement or any other contract with the Producer, the same may be deducted from any sum then due or which at any time thereafter may become due to the Producer under this Agreement or any other contract with the Producer. Exercise by the BBC of its rights under this **General Term 7.4** shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise, at law or in equity;
- 7.5 Subject to **General Term 7.4** above and to **General Term 7.6** below, in the event that the BBC fails to make payment in accordance with **General Term 7.3** above the Producer shall be entitled to charge the BBC interest from the date specified for payment of the principal in **General Term 7.3** upon the unpaid amount of the principal at the rate of 4% (four per cent) per annum above the Bank of England base rate in force from time to time until payment of the principal is made in full PROVIDED THAT written notice shall be given by the Producer to the BBC that the amount has not been paid and specifying the total amount of interest owed at the date of the notice, and, if the principal has not been paid, the daily rate at which the interest will continue to accrue; the invoice or invoices to which the interest relates; the addressee to whom and address to which payment should be made;
- 7.6 In the event that any sum is agreed between the parties or found to be due to the Producer following the withholding of payment referred to in **General Term 7.4** above, the BBC will pay interest on that sum in accordance with **General Term 7.4** above from the date on which the BBC would otherwise have paid that sum pursuant to **General Term 7.3** above;
- 7.7 Accounting and Audit
The Producer shall maintain complete and accurate books and records (including receipts and invoices) relating to expenditure on the Programme.
- 7.7.1 Notwithstanding any termination of this Agreement, the Producer undertakes and agrees:
- (a) to keep proper records and books of account in relation to the Programme ("**the Accounts**");
 - (b) to keep the Accounts either separate or clearly identifiable from any other records;
 - (c) to permit the BBC or its duly authorised representative at all reasonable times and on request to inspect and take copies or extracts from the Accounts and to provide the BBC or its duly authorised representative with such further information as is reasonably required by the BBC; and
 - (d) to preserve the Accounts for a period of not less than 6 (six) years from the expiry or other termination of this Agreement; and

- (e) at the request of the BBC, the Producer shall open a separate bank account designated as trust account under the joint control of the Producer and the BBC and referring to the latest working title of the Programme at a bank approved by the BBC into which all payments by the BBC shall be made and the Producer shall execute a bank mandate resolution in the form supplied by the BBC Finance Representative. The BBC shall be provided with copies of all bank statements for such bank account.

7.8 Overspend/Underspend

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).

8. INSURANCE

8.1 The Producer shall promptly arrange and maintain:

8.1.1 insurance against:

- 8.1.1.1 Public Liability, such insurance having a minimum liability limit of One Million Pounds (£1,000,000) and Employer's Liability Insurance. The Producer agrees on request to produce to the Legal and Business Affairs Manager the relevant policy or policies and proof of the latest premium(s) paid in respect thereof;
- 8.1.1.2 all risks normally insured against in accordance with the customary practice of prudent radio producers including by agreement of the parties errors and omissions insurance if specified in the Commissioning Schedule following good faith discussions between the parties acting reasonably and (only if applicable and specified in the Commissioning Specification) artist and weather insurance; and
- 8.1.1.3 any additional risks as may be reasonably required by the BBC to protect its legitimate interests in connection with the Programme; and
- 8.1.1.4 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.

8.2 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;

8.3 If anything happens which might give rise to a claim under any of the Insurances the Producer shall immediately 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;

8.4 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 be responsible for the making of all day-to-day editorial decisions during the production of the Programme. Notwithstanding the provisions of this **General Term 9** and for the avoidance of doubt, the Producer agrees that the BBC shall have final editorial control in connection with the production of the Programme (and the production of any publicity & promotional materials that the BBC is entitled to produce) in accordance with the terms of this Agreement;
- 9.2 The Producer shall consult with the BBC's Editorial Representative from time to time during the production of the Programme as required by the BBC, and the BBC shall be entitled to send a representative to script meetings and studio/recording sessions, to ensure that the content of the Programme meets with the programme requirements of and is acceptable on editorial grounds to the BBC. If requested in the Commissioning Specification, the Producer shall make every effort to provide the BBC's Editorial Representative with the studio script of the Programme on the date set out and agreed in the Commissioning Specification (except where the Programme does not contain scripts and subject to delays caused by the BBC or other reasons beyond the Producer's control). The Producer shall take full account of all reasonable comments and representations made by the BBC Editorial Representative or representative (as appropriate) 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 recordings, 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 Editorial Representative shall discuss such proposed changes in good faith. If the BBC Editorial Representative agrees any changes to the Commissioning Specification, the Producer and the BBC Finance Representative 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 Finance Representative 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; and
- 9.4.3 The amount of any additional sum payable by the BBC, which shall be paid in accordance with **General Term 7** 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 Finance Representative 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 Finance Representative;
- 9.8 The Producer shall supply copies of the final edit of the programme to the BBC's Editorial Representative and any others currently specified at Section 6 of the Commissioning Specification by the Delivery Date 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; or
 - 9.8.4 conform with any obligations imposed by law or with legal advice received by the BBC.
- 9.9 If at any time following acceptance of Delivery the BBC requires further changes to comply with **General Terms 9.8.1, 9.8.2, 9.8.3, 9.8.4** the Producer shall be offered the opportunity to carry out such changes at the BBC's cost but if it refuses or is unable to do so the BBC shall be entitled itself to carry out or require a third party to carry out such changes.
- 9.10 If the Producer is supplying any material or services in connection with any Programme related website, the Producer shall comply with the Web Development Guidelines contained on the Relevant BBC Websites.
- 9.11 The Producer shall refer any legal and compliance questions relating to the content of the Programme to the BBC's Editorial Representative as soon as it becomes aware of them. The BBC's Editorial Representative shall where appropriate refer the matter to the BBC's Programme Legal Advice Department.
- 9.12 In the event that the Editorially Responsible Person named in Clause 1 of the Editorial Specification is no longer available then the Producer shall inform the BBC Editorial Representative immediately in writing and the BBC shall be entitled to approve the replacement which approval or otherwise shall be communicated in writing. In the event that a replacement acceptable to BBC cannot be found then the BBC shall be entitled to terminate this Agreement or takeover production at the BBC's election further to **General Terms 18 and 20**.

10. CREDITS AND COPYRIGHT NOTICE

- 10.1 The credit to the Producer shall be as specified in the Commissioning Specification.

11. DELIVERY

- 11.1 The Programme shall be completed in accordance with the provisions of this Agreement and delivered ready for broadcast by the Tape Delivery Date, time being of the essence;
- 11.2 The Programme shall not be treated as completed and delivered until all of the Support Materials and Paperwork listed in Special Term 6 are delivered to and accepted by the BBC;
- 11.3 Upon request by the BBC, the Producer shall grant a Power of Attorney to carry out the actions referred to in **General Term 18.3.1**;
- 11.4 The Producer shall complete a BBC Radio & Music Compliance Form for each episode of the Programme (Schedule 4) to be delivered for approval by the BBC's Commissioning Editor simultaneously with delivery of the Programme. For the avoidance of doubt the Editorially Responsible Person specified in Clause 1 of the Commissioning Specification as authorised to sign the BBC Radio and Music Compliance Form shall listen to the Programme (or episode as applicable) in full prior to completion of the BBC Radio and Music Compliance Form.
- 11.5 Without prejudice to the generality of the General Terms:
- 11.5.1 The Producer confirms and undertakes that all materials supplied to the BBC (or its authorised representatives or agents) in connection with the Programme, including any and all such materials which are to be used for promotional purposes (such as for online listings and audience navigation applications) have been created, obtained, and produced in compliance with:
- (a) the BBC Guidelines (in particular the BBC Editorial Guidelines, available at bbc.co.uk/guidelines); and
 - (b) the provisions of all relevant underlying agreements, and
 - (c) cleared in accordance with the relevant terms of this Agreement.
- 11.5.2 The obligations set out in **General Term 11.5.1** above shall apply to any such material which is created or adapted by the BBC and is subsequently verified by the Producer for use by or on behalf of the BBC. Where the BBC requests such verification, the Producer shall within a maximum of 7 (seven) days of the request give such verification or non-verification as is appropriate.
- 11.5.3 The provisions of this **General Term 11.5** apply whether such material is delivered pursuant to the terms of this Agreement or pursuant to an additional or subsequent request by the BBC or its authorised representative or agent.

12. RIGHTS GRANTED TO THE BBC

12.1 BBC Public Service Rights:

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

- 12.1.2 For the avoidance of doubt, the BBC shall not be deemed to be in breach of this Agreement or the licence granted under **General Term 12.1.1** if any broadcast or transmission of the Programme under the BBC Public Service Rights is capable of being received outside of the UK provided the broadcast or transmission was intended for reception within the UK;
- 12.1.3 Without prejudice to **General Term 6.1**, the Producer shall ensure that the BBC has the benefit of and is entitled to enforce all contracts (including licences) relating to the Programme entered into by or on behalf of the Producer in order that the BBC can exercise, or sublicense the exercise of, the rights granted to it under this Agreement, and the Producer shall at the request of the BBC, provide the BBC with documentary evidence of compliance with this **General Term 12.1.3**;
- 12.1.4 The BBC shall be entitled to make all such use of the Publicity Stills delivered to the BBC as part of the Delivery Items as required for the purposes of exercising any of the rights granted to the BBC under this Agreement;
- 12.1.5 At the request of the BBC the Producer shall reversion or re-edit the Programme as the BBC may require for the following purposes: (1) in pursuance of its programme policy governing the suitability of material contained therein and/or the demands of accurate timing on presentation; (2) for adaptation in connection with the exercise of the BBC Public Service Rights on non-radio platforms; Provided that (1) any such re-editing or reversioning is undertaken at the BBC's expense (the level of which shall be pre-agreed in writing by the parties) and (2) any such editing or reversioning shall not impair continuity, and the definition of the Programme in this Agreement is hereby varied to include any such reversioned or re-edited version of the Programme;
- 12.1.6 The Producer hereby sells and the BBC purchases each of the Delivery Items.

12.2 BBC Network Rights and BBC Store:

- 12.2.1 The Producer hereby grants to the BBC the BBC Network Rights in consideration of the payments set out in **General Term 16** (and in so far as any such rights are not in existence, if applicable, as at the date of this Agreement then such grant of rights shall operate as a present grant of such future rights).
- 12.2.2 The Producer shall simultaneously on signature of this Agreement enter into an agreement with BBC Store Limited (or such other relevant entity) as set out at **Schedule 5** to grant a non-exclusive licence of the Commercial Download Rights in the Programme for the purposes of being included in the venture currently known as "BBC Store".

12.3 Programme Trade Marks:

- 12.3.1 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;

12.3.2 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;

12.3.3 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.

12.4 Extract / Clip Use in other BBC programming:

Notwithstanding the Archive New Media Rights and subject to any outstanding consents being obtained from and any use fees, repeat fees and residuals that may be due paid to the owners of any underlying rights in the Programme as provided for under **General Term 6.2**, the BBC may use and authorise the use of any extracts from the Programme in any other BBC audio material provided that:

12.4.1 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 other than a review programme such as Pick of the Week

without the Producer's consent; and

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

12.5 Restrictions on the Producer:

12.5.1 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 **audio** 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 commercial download/**CD/cassette** only release; or
- (ii) save as permitted under **General Term 12.9 and General Term 16.2.7** 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 radio or television or online advertising activities or product endorsement in contravention of the BBC's Fair Trading Guidelines or BBC Editorial Guidelines.

12.5.2 Whilst the BBC has a subsisting re-commissioning right in the Programme, the Producer shall not dispose of any props, 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 if applicable 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.

12.6 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.

12.7 Television Option:

Where the Producer owns or controls the television rights in the Format, the Producer grants the BBC the first option to commission a programme or series of programmes based on the Format from the Producer for broadcast on its television services primarily made available to audiences in the United Kingdom on terms to be agreed in good faith, such option to expire upon 9 (nine) months from first transmission by the BBC of the Programme or in the case of a Programme which is a series, 9 (nine) months from transmission by the BBC of the last episode forming part of the series. Where the Producer does not have an appropriate track record in producing TV programmes for the BBC, the parties shall enter into good faith discussions regarding the placing of the commission.

12.8 New media rights and restrictions

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

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

12.8.2 the Primary Download Rights shall only be exercisable provided that an appropriate timed out Digital Rights Management System is used to limit the availability of the download for the period of its entitlement.

12.9 The Producer hereby agrees that the exercise of the Commercial New Media Rights during the Licence Period shall be subject to the prior written consent of the BBC to be based on clear and transparent guidelines published on the BBC website. The BBC acknowledges that an underlying principle of such guidelines will be to enhance commercial opportunities for the Producer in the online environment whilst ensuring that the core public service propositions are not undermined in the eyes of the licence fee payer, and it is clear to the audience what is being provided by the public licence fee and what must be purchased or funded through commercial opportunities.

12.10 Where it is agreed that:

12.10.1 production of the Programme requires new software coding to be built, or a website or other interactive proposition forms part of the programme proposal and the BBC agrees that such a proposition should form part of the programme commission, the parties shall discuss in good faith who will undertake this work and for the avoidance of doubt:

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

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

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 or website, it agrees to discuss in good faith any request by the Producer for a non-exclusive licence to use such software coding either:

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

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

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

12.10.2 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;

12.10.3 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;

12.11 For the avoidance of doubt, the BBC and the Producer acknowledge that transmission of the BBC Public Services may be received outside the primary intended area of reception (ie. the UK) and such reception shall not constitute a breach of this Agreement by the BBC.

13. PUBLICITY / PROMOTION / MARKETING / TRAILS

Without prejudice to **General Term 12**:

13.1 The Producer acknowledges that any and all publicity promotional and marketing activities and materials concerning the BBC commission and/or transmission of the Programme shall be carried out solely by or on behalf of the BBC and the BBC agrees to use reasonable endeavours to consult the Producer in relation to any material the BBC proposes to issue which makes reference to the Producer by name, provided that the Producer provides any comments to the BBC within a maximum of 7 (seven) days of request. The BBC agrees that if it accords credit to any Performer or talent in any business-to-business publicity material that it produces, it shall also accord credit to the Producer;

13.2 Without prejudice to **General Term 13.1** and subject always to **General Term 16.3**, the Producer agrees that any promotional, publicity, and marketing materials that the Producer intends to produce for its own purposes (including any trails) shall only be used in the UK in such manner as shall coordinate with and complement 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 "Break" Provision within Licence Period

For all programming except drama, comedy, music documentaries with the potential for further broadcast on 6Music and programmes including a significant proportion of live music performances specially commissioned for the BBC after 5 years have elapsed from first transmission of the Programme (or the transmission of the last episode of the Programme in the case of a series) the Producer shall be entitled to approach the BBC and request early termination of the BBC's Licence Period. The BBC shall not unreasonably refuse or delay a response to such request. If the BBC intends to continue to exploit its Primary Rights during the Licence Period, this shall be reasonable grounds for the BBC to refuse such request for early termination of the Licence Period.

14.2 Extension of Licence Period

Subject always to **General Term 14.4**, the BBC shall be entitled to extend the Licence Period for a further period of 5 (five) years provided that:

14.2.1 written notification is given to the Producer by the BBC Finance Representative no later than 6 (six) months before the end of the initial Licence Period stating the BBC's intention to extend the Licence Period for a further 5 (five) years "the Extended Licence Period"; and

14.2.2 the BBC pays to the Producer an Additional Licence Fee calculated as 15% (fifteen per cent) of the Licence Fee on or before the last day of the initial Licence Period, and paid as an advance against the sums due to the Producer under **General Term 15.2** below;

14.3 For the avoidance of doubt, further extensions to the Licence Period can be mutually agreed on individually negotiated terms if this is acceptable to both parties.

14.4 Returning Series

14.4.1 For the period the Programme is or becomes a Returning Series, the BBC shall have the exclusive right to continue extending the Licence Period on a rolling 5 (five) year basis at the rates as set out below ("the Extension Fee"):

Licence Period	Extension Fee (% of original Licence Fee)
Extension 1 Years 10-15	15% (fifteen per cent)
Extension 2 Years 15-20	20% (twenty per cent)
Extension 3 Years 20-25	25% (twenty five per cent)
Extension 4 Years 25-30	30% (thirty per cent)

The Extension Fee shall increase by further increments of 5% (five per cent) every 5 (five) years.

14.4.2 Once the Licence Period is extended beyond the period of 10 (ten) years, the BBC's holdback right under **General Term 16.2.1(i)** below shall be limited to the free-to-air broadcasters whether analogue or digital regardless of whether the transmission is via analogue or digital means (including for the avoidance of doubt via the internet or a broadband service provider).

14.5 The option to recommission a Returning Series lapses after 9 (nine) months of transmission of the last episode of that Returning Series.

15. PRE-PAID USES & PAYMENT FOR FURTHER USES

15.1 Network Radio

It is hereby agreed that payment of the Licence Fee entitles the BBC to exercise one Tier A Package and one Tier B Package 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 (i) **Tier A Package** – either 3 (three) transmissions on the analogue networks **or** 6 (six) Transmission Days on the digital networks;

(ii) **Tier B Package** – either 1 (one) transmission on the analogue network **or** 6 (six) Transmission Days on the digital networks;

provided that if the Programme was originally commissioned as a regional or Nations Programme and it is used for a network transmission, the BBC shall pay the Producer 10% (ten per cent) of the original Licence Fee to acquire the right to:

(i) 1 (one) transmission on the analogue networks; or

(ii) 10 (ten) Transmission Days on the digital networks

during the Licence Period of a Programme and any extensions.

and

15.1.2 the Primary New Media Rights; and

15.1.3 the right to use extracts of the Programme in accordance with **General Term 12.4**; and

15.1.4 the right to produce and distribute publicity and promotional materials as part of the Public Services Rights; and

For the avoidance of doubt the BBC shall be able to determine which of the exploitation packages specified in Tier A and B it wishes to exercise at any time during its Licence Period without prior notification.

15.2 The BBC shall be entitled on payment of 5% (five per cent) of the Licence Fee to acquire the right to:

Tier C Package

(i) 1 (one) transmission on the analogue networks; or

(ii) 10 (ten) Transmission Days on the digital networks

during the Licence Period of a Programme and any extensions.

For the avoidance of doubt this payment is in addition to any contributor payments which may be required under **General Term 6**.

15.3 Nations Radio

Where a Programme is originally commissioned for Nations Radio, the Licence Fee covers unlimited transmissions on Nations Radio during the Licence Period. If the Licence Period is extended in accordance with **General Term 14**, the right to unlimited transmissions shall continue for the Extended Licence Period.

15.4 The BBC shall be entitled on payment of 5% (five per cent) of the Licence Fee to acquire the right to unlimited transmissions on Nations Radio during the Licence Period of a Programme originally commissioned for Network Radio.

15.5 In exercising the transmission rights set out above the BBC shall also have the right to reversion any Programme from the Welsh or Gaelic languages to the English language and vice versa. Provided that the Producer has the requisite language skills, the Producer shall have the first option to produce such reversioned programme for a fee to be agreed between the BBC and the Producer.

15.6 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.

15.7 World Service

The BBC can acquire the non-exclusive World Service Radio Rights on the payment of 5% (five per cent) of the Licence Fee and the cost of clearing the rights in any Underlying Material, such option to be exercised within two years of first transmission on the BBC's national radio networks.

15.8 The Producer will be responsible for ensuring that the World Service Radio Rights in any Underlying Material are clearable, which means cleared subject to payment of a pre-agreed fee where appropriate. In the event that any of the rights in the Underlying Material are not clearable, the Producer shall ensure that this is agreed in advance by the BBC's Legal and Business Affairs Manager and noted in the Special Terms.

15.9 Underlying Clearances

Unless agreed otherwise, under the Licence Fee the Programme should be pre-cleared for Tier A and Primary New Media Rights save in relation to Nations radio where it is pre-cleared for 2 transmissions and Primary New Media Rights.

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) 30% (thirty per cent) of Net Revenue where the BBC has not funded a Pilot; or
- (ii) 35% (thirty five per cent) of Net Revenue where the BBC has funded a Pilot; or
- (iii) 50% (fifty per cent) of Net Revenue where the Producer has exploited any of:
 - (a) any Distribution Right in respect of Audio-visual Content;
 - (b) the Commercial Download Rights within the period commencing after first BBC transmission of the Programme (or relevant episode thereof) and 7 days after such time, after which time the payments to the BBC will be 30% or 35% in accordance **General Term 16.1.2 (i) or (ii)**;
 - (c) the Commercial New Media Rights under **General Term 12.9**; or
 - (d) the Distribution Rights under **General Term 16.2.1(i)** below in respect of radio, television and on-demand in the UK or Eire.

16.2 In exercising its Distribution Rights, the Producer hereby agrees that the BBC has exclusive rights in the television, radio and online markets in the UK and Eire during the Licence Period save for that which is permitted under **General Term 16.2.1**. The Producer further agrees:

16.2.1 that the Producer shall not exercise or authorise the exercise of any Distribution Rights in the Programme or Audio-visual Content during the Licence Period:

- (i) in relation to the UK or Eire radio or television market (including Library Sales or any reversion of the Programme) or the Audio-on-Demand Rights or Video-on-Demand Rights in the UK or Eire

without the BBC's consent, the BBC publishing a release policy setting out the approach it will take with requests for such exploitation;

- (ii) in relation to all forms of sales of radio programmes to international broadcasters or syndicators (including Audio-on-Demand Rights outside of the UK and Eire) until the earlier of first full transmission of the relevant episode of the Programme in the UK by way of exercise of the BBC Public Service Rights or 6 (six) months from acceptance of Full Delivery (and subject to such long stop date it is acknowledged that the BBC is entitled to the world radio premiere of each episode of the Programme) subject always to sub-clause (iv) below;
- (iii) in relation to the Video-on-Demand Rights outside of the UK and Eire, for a period of 30 (thirty) days after first full transmission of the Programme (or final episode thereof) in the UK by exercise of the BBC Public Service rights;
- (iv) in relation to the Commercial New Media Rights, other than in accordance with **General Term 12.9**;
- (v) in relation to the Commercial Download Rights, until after first BBC linear transmission;
- (vi) in relation to other forms of exploitation (ie exploitation that does not include the actual audio content or Audio-visual Content of the Programme), until the earlier of (i) the first full transmission of the relevant episode of the Programme in the UK by way of exercise of the BBC Public Service Rights; or (ii) 6 months from acceptance of Full Delivery;
- (vii) 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 Radio & Music) 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,

provided that any sale of a Programme which contains references to the network brand (eg. Radio 1, Radio 2 etc) shall require the removal of such references and the insertion of the BBC audio sting in accordance with the BBC Commercial Branding Guidelines.

16.2.2 to procure that any exercise of the Distribution Rights:

- (i) will comply with the BBC Commercial Branding Guidelines;
- (ii) where carrying the BBC logo (or any other BBC brand) is subject always to BBC approval on a case by case basis and the terms and conditions of the Trade Mark Licence set out at Schedule 6, comply at all times with the BBC Guidelines; and
- (iii) where not carrying the BBC logo (or any other BBC brand):

- (a) be consistent with the editorial values and integrity of the Programme and the standards and ethos of the BBC;
 - (b) be carried out to a high level of quality and reflect BBC values of integrity, decency and distinctiveness;
 - (c) offer good value for money to the consumer;
 - (d) not be exercised in any manner which does not comply with the Independent Producer Joint Promotion Guidelines published on the Relevant BBC Websites, or give rise to any appreciable risk that editorial decisions relating to the Programme may be thought to be influenced by commercial considerations, or imply that UK consumers need to buy commercial products and services to access public service programming provided that for the avoidance of doubt nothing in this paragraph shall prevent the Producer per se from exercising the Merchandising Rights (for example in connection with tie-ins);
 - (e) shall not be carried out in any manner which may cause offence, bring the BBC into disrepute, or diminish the BBC's reputation in any way provided that for the avoidance of doubt nothing in this paragraph shall prevent the Producer per se from exercising the Merchandising Rights (for example in connection with tie-ins);
- (iv) 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 to procure that in the exercise of any of its Distribution Rights in the Programme:

- (i) subject to the BBC's approval (where the BBC shall in its sole discretion determine whether or not BBC Branding on a product would be appropriate) during the Licence Period, the Programme and any Product or Associated Material relating to:
 - (a) the exercise of the Physical Product Rights or the Commercial Download Rights or Audio Publishing 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. The BBC logo shall be carried in such manner as set out in the BBC Commercial Branding Guidelines for the time being in force and published on the Commissioning Website. For such purposes the BBC grants to the Producer a non-exclusive licence to use (and the Producer undertakes that during the Licence Period, it will use, and procure that any other person deriving title through the Producer shall use) the Trade Marks throughout the Territory on Products and Associated Material produced by the Producer pursuant to the exercise of its rights in the Programme and/or the Programme Trade Marks subject to the terms and conditions set out in Schedule 7. The BBC shall determine whether BBC branding would be appropriate and communicate its decision to the Producer within 1 (one) month of receipt by the BBC of a request from the Producer.

(In this General Term and Schedule 6, the terms "Trade Marks", "Territory", "Products" and "Associated Material" shall have the meanings ascribed to them in Schedule 6 and the term "this Licence" shall mean this **General Term 16.2.3(i)** and Schedule 6.)

- (ii) during the Licence Period the exercise of any other Merchandising Rights (other than those specifically set out in 16.2.3(i) above) shall require the BBC's approval, not to be unreasonably withheld, and subject to good faith discussions. Approval is to be deemed given if due consideration followed by a decision and a response has not been given to the Producer within 1 (one) month of receipt of a request.
 - (iii) the production credit as set out at Schedule 2 to this Agreement shall appear on any and every version of the Programme in all media in all territories during the Licence Period provided that the Producer may elect not to use the BBC logo in the international version of such credit.
 - (iv) for the avoidance of doubt, the BBC and the Producer shall discuss in good faith whether any book release relating to a Programme constitutes a book tied into the Programme taking into account, without limitation, how closely:
 - (i) the content of the book is based on the Programme; and
 - (ii) the marketing of the book is linked to the marketing of the Programme.
- 16.2.4 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.
- 16.2.5 that it shall not without BBC's written consent use or authorise the use of any 'out-takes' or unedited material from the Programme in the UK for the purposes of producing and exploiting any compilation programme (such consent not to be unreasonably withheld).
- 16.2.6 it shall be entitled either itself or to license distributors and/or broadcasters to feature footage from the Programme of up to 5 (five) minutes per 30 (thirty minutes or less of Programme running time) on the Producer's/distributors/broadcasters' websites provided that:

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

16.2.7 it shall be entitled to create Audio-visual Content (whether as part of the Commercial New Media Rights or otherwise) provided that:

- (i) the BBC has not taken up its Television Option set out in **General Term 12.7** (or decides in its sole discretion that it does not intend to commission Audio-visual Content before expiry of the BBC's Television Option);
- (ii) the BBC has provided its prior written approval in any event (such approval not to be unreasonably withheld or delayed);
- (iii) the BBC has a first option to broadcast any Audio-visual Content on the BBC's television services on terms to be agreed in good faith, such option to expire on the earlier of 9 (nine months) from first transmission by the BBC of the relevant Programme (or first transmission of the last episode of the Programme where part of series) or (ii) the end of the Licence Period.

16.3 Without prejudice to General Term 13, the Producer shall notify the Head of Portfolio Marketing BBC Audio & Music of any publicity or promotional material or literature (including posters, stills and trails) which is produced by or on behalf of the Producer or its distributor(s), in connection with the Programme, and any such material or literature shall:

16.3.1 comply with the BBC Guidelines;

16.3.2 not be used or distributed in any way in the UK without the BBC's prior written approval;

16.3.3 not be used or distributed in any way outside the UK without the BBC Editorial Representative's prior written approval (not to be unreasonably withheld or delayed) where either:

- (i) the BBC has notified the Producer that the Programme is included on the BBC's 'Managed Programme List'; or
- (ii) subsequent to notification of any such proposed material by the Producer, the BBC informs the Producer within seven working days of the notification that it wishes such materials to be subject to BBC approval.

For the avoidance of doubt any use of the BBC logo on such material or literature shall require the BBC's prior written approval, and the terms and approvals procedure set out in Schedule 6 annexed to this Agreement shall apply to such use.

- 16.4 The Format rights are retained by the Producer subject to the following:
- 16.4.1 other than the potential for the Programme to be commissioned for television broadcast (without prejudice to the BBC's Television Option as set out in **General Term 12.7**), the Format rights cannot be exercised in the UK whilst the BBC has a recommissioning right in the Programme;
 - 16.4.2 The Producer shall not during the Licence Period exploit any rights in any Foreign Version in any media in the UK and/or Eire without the prior written consent of the BBC (save that in relation to Eire such consent shall be deemed given after expiry of 12 (twelve) months from acceptance of Full Delivery or first BBC transmission of the last episode of the Programme, whichever is earlier) and shall procure that all agreements entered into by the Producer with any third party in connection with the exercise of the Foreign Version Rights shall specifically prohibit such exploitation by such third party (and/or its licensees).
 - 16.4.3 the BBC has the first option to commission for its television services within 9 (nine) months of first transmission of the Programme as set out in **General Term 12.7**;
 - 16.4.4 on exercise of the Format rights in relation to television commissioning, the BBC shall have the option to recommission from the Producer one further programme or series of the programme for its radio services in accordance with **General Term 14**.
- 16.5 In relation to the BBC's entitlement to participate in the revenue arising from the exercise of the Distribution Rights under this Agreement:
- 16.5.1 The Producer shall use its reasonable endeavours to promote and ensure the exploitation of the Programme and shall use all reasonable endeavours to procure that offers from third parties for the exploitation of the Programme and/or Format are upon the best commercial terms reasonably obtainable on an arm's length basis, and shall ensure that the BBC actual share of revenues (at the relevant percentage under **General Term 16.1.2**) remains at what would be expected as the market rate for exploitation of the Distribution Rights taking into account the definition of Net Revenue;
 - 16.5.2 The Producer shall account to the BBC in relation to all Net Revenue actually received that it is entitled to share in under the terms of this Agreement on 6 (six) monthly basis for the periods ending 30th June and 31st December, and the Producer shall provide the BBC with copies of the distribution statements received from the relevant distributors and shall prepare and render a statement of account, both of which shall be delivered to the Head of the Business Affairs, BBC Radio and Music within 30 (thirty) days of the end of each accounting period and which shall be accompanied by a remittance for the amount shown to be due to the BBC on receipt of a VAT invoice showing the following:-
 - 1. income from the exercise of the Distribution Rights broken down into its different sources
 - 2. details of the Commission and the Expenses

3. the sums due to the BBC (including the recoupment of any costs that the BBC may agree to fund under the provisions of this Agreement including any costs in connection with registering trade marks and/or domain names in accordance with **General Term 12.2.3**)

16.5.3 The Producer shall keep and maintain full, accurate and complete books of account in connection with its exercise of the Distribution Rights and shall retain all invoices and other papers and documents to substantiate any receipts, revenues, costs and expenses for at least one year from the end of the term of the agreement giving rise to such revenue (or any extension thereof, if applicable);

16.5.4 The BBC may appoint a duly qualified accountant to inspect and examine the Producer's books in respect of exploitation of the Distribution Rights and to take copies of the same or extracts thereof and/or to cause an audit to be undertaken up to once per annum. Such inspection shall be made on reasonable prior notice and during normal business hours on a date or dates to be agreed between the parties. The examination shall be at the expense of the BBC unless errors to the disadvantage of the BBC exceeding 10% (ten per cent) shall be disclosed in which case the cost of such examination shall be paid by the Producer;

16.5.5 The Producer shall indemnify and hold the BBC and its officers, directors and employees harmless from and against any and all claims damages liabilities costs and expenses including reasonable lawyers' fees arising out of or caused by any breach by the Producer its agents or sub-licensees or in respect of any of the agreements entered into by it or them in relation to the exercise of the Distribution Rights.

16.5.6 If, after 2 (two) years following first transmission of the last episode of the Programme by the BBC, the Producer has not exercised the Distribution Rights or any of them during such period, the Producer if requested by the BBC shall consult in good faith with the BBC with a view to agreeing future steps (if any) to be taken to exploit the Programme by means of the Distribution Rights in question.

16.6 Ethical policy

16.6.1 The Producer acknowledges the importance of ethical business practices in the context of the obligations of the Producer as set out in **General Term 17.11**.

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 Producer is aware of the Ethical policy adopted by BBC Worldwide Limited which is available online at <http://bbcworldwide.com> which reflects the BBC's approach to the issue.

17. WARRANTIES AND INDEMNITIES

Producer's Warranties:

The Producer warrants and undertakes as follows:

- 17.1 The Producer is a sole trader/partnership/limited liability partnership/company duly and properly organised and existing according to English or Scottish law and is a qualifying person in accordance with section 206 of the CDPA and that it has the power and authority to enter into this Agreement and to perform its obligations under it and to grant the rights hereunder.
- 17.2 The individual executing this Agreement on behalf of the Producer has been fully empowered and authorised by the Producer to execute this Agreement.
- 17.3 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:
- 17.3.1 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
- 17.3.2 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) use fees, repeat fees or residuals to the extent (if any) that the Producer is under this Agreement not obliged to pre clear the relevant rights as part of the Licence Fee.
- 17.4 Nothing in the Programme will:
- (i) contain material or information that is defamatory, libellous 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 its best endeavours to ensure that nothing in the Programme will contain material that is obscene, pornographic, or indecent.

- 17.5 Without prejudice to **General Term 17.4 (ii)** above, the Producer will use best endeavours to carry out all relevant searches, checks and negative checks (including for all unregistered rights) to ensure that no third party intellectual property right exist that the exercise of the BBC Public Service Rights may infringe.
- 17.6 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.
- 17.7 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.
- 17.8 To the best of the Producer's knowledge and belief after all due and diligent enquiry, there are no claims or proceedings pending or threatened which might adversely affect the production delivery of the Programme or the rights granted to the BBC hereunder.
- 17.9 In carrying out its obligations under this Agreement the Producer shall comply with all applicable laws, regulations and codes of practice.
- 17.10 If applicable, the Producer shall provide the sums required to fund (and will procure provision of) the Third Party Production Finance at such times as to enable the Producer to produce and deliver the Programme in accordance with the terms of this Agreement.
- 17.11 The Producer shall not, and shall procure that its sub-licensees shall not, exercise any of its own rights in the Programme (including the Programme Trade Marks) whether during or beyond the Licence Period or whether in or outside the UK in any way which would bring the Programme or the BBC into disrepute or infringe the BBC Guidelines.
- 17.12 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.
- 17.13 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.
- 17.14 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.

17.15 In producing the Programme and generally carrying out its rights and obligations under the terms of this Agreement, the Producer (and its staff and all persons engaged by it for the purposes of this Agreement) shall ensure that its production staff are familiar with the information, guidance and requirements contained on the Relevant BBC Websites.

17.16 In respect of the Production Personnel:

- (i) those Production Personnel listed in clause 8 of the Commissioning Specification entitled "Training Requirements" have completed the training requirements as set out in that clause 8 as of the date of signature of this Agreement;
- (ii) all Production Personnel will on involvement in the production of the Programme and in any event no later than Tape Delivery complete the training requirements as set out in clause 8 of the Commissioning Specification; and
- (iii) the Producer shall as part of Tape Delivery set out the names of all Production Personnel together with confirmation that all such persons so listed have completed the training requirements as set out in clause 8 of the Commissioning Specification, such paperwork to be verified and signed by the Executive Producer (or where no executive producer is specified in the Commissioning Specification, the Programme's producer).

The Producer shall maintain complete and accurate records as required to evidence and substantiate the Producer's warranty as set out in this General Term. 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 and copy such records at the address of which the Producer shall notify the BBC in writing.

17.17 The BBC has strict Guidelines for safeguarding the welfare of children and young people in productions which the Producer is responsible for complying with in respect of its production. The Producer hereby warrants and undertakes that it shall adhere to the regulations concerning children taking part in performances, including prescribed working hours, as well as the requirements of the BBC Child Protection Policy. The Producer shall only involve a child in its production if it has first obtained the prior written consent of the parent / guardian for and on behalf of the child, as well as obtained any necessary licence required under the Children's (Performances) Regulations 1968 (as amended).

17.18 In the event that the BBC in its absolute discretion grants its prior written consent to the exercise of the Distribution Rights in the Programme or associated Audio-visual Content in the UK or Eire radio/audio-on-demand or television/video-on-demand markets pursuant to **General Term 16.2.1(i)**, 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 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 audio release policy as referred to in **General**

- Term 16.2.1(i)** at the date that the request for the relevant consent is made;
- (iii) 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 audio/video-on-demand offerings;
 - (iv) 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 or the BBC;
 - (v) the proposed licensee has not, to the best of the Producer's knowledge and belief following all reasonable and prudent enquiries, in the past breached the conditions attached to any similar licence of rights from the Producer;
 - (vi) in exercising any radio (or television in the case of audio-visual Content) 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 5 (five) working days' notice*;
 - (vii) 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;
 - (viii) 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;
 - (ix) if the Programme is a consumer or business programme, there shall be no sponsorship of the Programme itself in the exercise of such rights;
 - (x) 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;
 - (xi) 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**;
 - (xii) 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;

(xiii) 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 10% except where necessary to fit the standard slot lengths of the Licensee's transmission schedule; and

(xiv) 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 etc) when reusing/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 by the BBC to produce to the BBC evidence of such permission(s).

17.19 Producer's Indemnity

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.

17.20 BBC's Warranty

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

18. TAKEOVER

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

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

18.1.2 any Insolvency Event occurs or;

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

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

- 18.1.5 a person who has signed a Key Agreement relating to the provision of their individual services in connection with the Programme shall die or be unable or unwilling to fully and properly render their services as required under their Key Agreement and the Producer shall be unable to procure the engagement within 14 (fourteen) days of a substitute individual approved by the BBC (acting reasonably) provided that should the BBC subsequently secure an acceptable substitute individual the Producer shall then have the option of completing the Programme on the terms of this Agreement; or
- 18.1.6 the Producer undergoes a Change of Control which in the BBC's reasonable opinion is demonstrably prejudicial to the BBC; or
- 18.1.7 the named Editorially Responsible Person shall be unavailable to fulfil this role in relation to the production and the Producer shall be unable to procure the engagement of a substitute individual approved by the BBC (acting reasonably).
- 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 If applicable, 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 Programme Budget which are outstanding and unpaid at the date of the written notice to the Producer under **General Term 18.1** above; and
- (ii) in circumstances where the Special Terms provide for the BBC to pay the Licence Fee upon delivery, an agreed sum to the Producer equal to the reasonable costs of production which have been incurred and spent by the Producer at the date of the written notice to the Producer under **General Term 18.1** (and for the avoidance of doubt, the BBC shall not be obliged to pay the Licence Fee).

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

- (i) the BBC shall not be obliged to make any further cash flow payments under **Special Term 2.2**; and
- (ii) the BBC shall release the Producer from the obligation to repay the Advances, save for an amount equal to the amount (if any) standing to the credit of the Production Account or the Producer's bank account as specified in the Special Terms 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**.

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

19. ABANDONMENT OF PRODUCTION

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

20. TERMINATION

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

20A CONSEQUENCES FOR BREACH OF BBC GUIDELINES

Without prejudice to 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 5.4.1 shall entitle the BBC (acting reasonably) to require the Producer to:

- (i) remove any BBC branding from any exercise of the Distribution Rights; and/or

(ii) remedy any editorial failings in the Programme at its own cost; and/or

(iii) accept any variations of the terms of this Agreement deemed appropriate 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 such variations are reasonable and proportionate; and/or

(iv) not exercise or promote any of the Distribution Rights without BBC written approval (and it is acknowledged that any such approval may be subject to certain conditions to reflect the nature of the breach) where the exercise or promotion of any such rights would bring (or be reasonably expected to bring) the BBC into disrepute or damage the reputation of the BBC.

21. FORCE MAJEURE

21.1 If the production of the Programme is prevented, hindered or delayed by any cause not within the control of the Producer (and a strike or lock-out shall not be deemed within the control of the Producer unless in the opinion of the BBC it has been caused by some act or omission of the Producer) either party shall be entitled by written notice given to the other to suspend performance of its obligations hereunder and the parties shall consult with each other and use their best endeavours to limit and reduce expenditure on the production while the suspension continues.

21.2 Any suspension shall be effective from the date the circumstance giving rise to it first arose or occurred and during any suspension period each party shall be excluded from the performance of its obligations under this Agreement to the extent of the prevention, hindrance or delay.

21.3 If any suspension continues for more than 4 (four) consecutive weeks or if the aggregate of any periods of suspension is more than 6 (six) weeks in any period of 8 (eight) consecutive weeks either party shall be entitled by written notice forthwith to terminate this Agreement and such termination shall be effective from the effective date of the suspension or first suspension.

21.4 If either party terminates this Agreement pursuant to **General Term 21.3** the BBC shall be entitled to take over the production of the Programme upon giving written notice to the Producer of its election to do so. **General Term 18.3** shall apply and the Producer shall have no further interest whatsoever in the Programme or under this Agreement.

22. RECOMMISSIONING RIGHT

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

22.2 The BBC shall notify the Producer of its intention to exercise such option within 9 (nine) months of transmission of the last episode of the Programme ("the Option Period").

22.3 In the event that:

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

22.3.2 having notified the Producer of its intention to exercise the said option within the Option Period, the agreement to commission such Further Programme(s) is not concluded within 12 (twelve) months of transmission of the last episode of the Programme (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(s) have not been conducted reasonably and in good faith by the other party, **General Term 25.9.2 (i) and (ii)** shall apply.

22.4 If the Programme is designed as a pilot programme and the BBC has not exercised the aforesaid option within the Option Period nor has the Programme been transmitted by the BBC on or before the first day of 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, 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

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**. The obligations of this **General Term 23.1** shall not apply to any disclosure of information which is required by law or by a competent regulatory authority (subject to **General Term 23.2** below), and shall cease to apply to any information which has come into the public domain through no fault of the recipient or which was at the date of disclosure already in the public domain or the possession of the recipient.

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

24. NOTICES

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

24.1 by hand - upon delivery; or

- 24.2 by first-class prepaid registered or recorded delivery post and by airmail if to an overseas address - 48 (forty-eight) hours (120 (one hundred and twenty) hours if to an overseas address) after posting; or
- 24.3 by any facsimile or other system which prints the notice at the receiving end - upon despatch

Provided that:

- (a) no notice shall be deemed to have been given or served unless addressed to the relevant BBC Representative as set out in the Special Terms or to such other address of which that person shall have informed the giver or server of the notice in writing;
- (b) a notice given or served on a Saturday, Sunday or public holiday or outside normal business hours at the place where it is received shall not be deemed given or served until the next commencement of normal business hours there.

25. GENERAL

Entirety

- 25.1 This Agreement represents the entire understanding between the parties and supersedes all prior agreements, whether oral or written, between the parties in relation to its subject matter. Neither party has entered into this Agreement on the basis of, or has relied on, any statement or representation (whether negligent or innocent) except those expressly contained in this Agreement.
- 25.2 Except as expressly set forth in this Agreement, neither party grants to the other by implication, estoppel or otherwise, any right, title, licence or interest in any intellectual property right.
- 25.3 The parties acknowledge that they are not relying on any understanding, arrangement, statement, representation, warranty, condition or term which is not set out in this Agreement. All understandings, arrangements, statements, representations (other than fraudulent misrepresentations), warranties, conditions and terms (including, but not limited to, implied warranties and/or conditions as to satisfactory quality and fitness for purpose) other than those set out in this Agreement are hereby excluded to the maximum extent permissible by law.
- 25.4 No provision of this Agreement shall operate to:
- 25.4.1 exclude any provision implied into this Agreement by English law and which may not be excluded by English law; or
- 25.4.2 limit or exclude any liability, right or remedy to a greater extent than is permissible under English law including in relation to (1) death or personal injury caused by the negligence of a party to this Agreement or (2) fraudulent misrepresentation or deceit.
- 25.5 Variation
No amendment or variation of the terms of this Agreement shall be valid or binding unless made by prior written agreement between the parties and signed by their duly authorised representatives, who for the purposes of the BBC is the BBC Legal & Business Affairs Manager.

25.6 Waiver

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.

25.7 No Partnership

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.

25.8 Publicity

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.

25.9 Disputes

Any dispute arising in connection with this Agreement will be dealt with in accordance with the following dispute resolution procedure:

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

25.9.2 In the event of a dispute under this Agreement:

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

25.10 Governing Law

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.

25.11 Rights of Third Parties

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.

25.12 BBC Right to Assign

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).

25.13 Producer non-assignment

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 25.13** 'Group' shall have the meaning as defined in Schedule 6 to this Agreement). Any consent that the BBC may grant may be conditional upon the relevant party entering into a novation agreement with the BBC and the Producer whereby such party undertakes to perform and to be bound by the terms of this Agreement as if such party were a party to this Agreement ab initio in lieu of the Producer. For the avoidance of doubt, BBC consent shall not be required in connection with the sub-licensing of the Distribution Rights in accordance with **General Term 16**.

25.14 Infringement

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

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

25.18 Severability

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.

25.23 Bribery Act 2010

The Producer is aware that the Bribery Act has come into force and undertakes to comply with the provisions of the Act. A pan-industry working group (including the BBC, ITV, ITN, Channel 4, and Pact) has been convened to engage with the Serious Fraud Office with a view to agreeing an industry Code of Practice or an SFO Statement of Recognition. Until the outcome of such discussions is known, the Producer acknowledges that the BBC has made available its own Anti-Bribery Code of Conduct, and the Producer confirms that it shall adopt equivalent practices where appropriate.

25.24 Bullying/harassment

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 would expect 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 are likely to damage the BBC's reputation and accordingly could lead to a breach of the Producer's contractual warranties.

26. POST – LICENCE PROVISIONS

For the avoidance of doubt, notwithstanding the expiry of the Licence Period, **General Terms 11.3; 12.4** (for the purposes of historical or reminiscent use); **14.2; 16.1; 16.2.2; 16.2.3(i) & Schedule 6** (where the Producer wishes to continue to use the BBC's Trade Marks); **16.3.1** (for so long as the Programme is a Returning Series); **16.5; 17; 23; 24; 25** shall continue in full force and effect between the parties.

Schedule 6

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 Distribution Rights (including without limitation the Merchandising Rights, the Commercial New Media Rights, the Foreign Version Rights and the Library Sales 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 anybody 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)
“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 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
- 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
 - 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).
- 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
- 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.

Schedule 7 Excerpt from Charter

Copy of Royal Charter for the continuance of The British Broadcasting Corporation

DEPARTMENT OF NATIONAL HERITAGE
BROADCASTING
TERM OF CHARTER

2. This Our Charter shall come into force on the first day of May, One thousand nine hundred and ninety-six, from which date the Existing Charter shall be revoked. Subject as herein provided this Our Charter shall continue in force until the thirty-first day of December Two thousand and six

OBJECTS OF THE CORPORATION

3. The objects of the Corporation are as follows:-

- (a) To provide, as public services, sound and television broadcasting services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment for general reception in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof, and on board ships and aircraft (such services being hereinafter referred to as "the Home Services") and for reception elsewhere within the Commonwealth and in other countries and places overseas (such services being hereinafter referred to as "the World Service") the Home Services and the World Service together being hereinafter referred to as "the Public Services".
- (b) Subject to the prior approval of Our Secretary of State or within such limits as may be agreed from time to time between the Corporation and Our Secretary of State, to provide, as public services, other services whether or not broadcasting or programme supply services (such services being hereinafter referred to as "the Ancillary Services").
- (c) Subject to the prior approval of Our Secretary of State, to provide (whether alone or together with any other person firm or corporation) sound and television broadcasting services and communication services (whether by analogue or digital means) and to provide sound and television programmes of information, education and entertainment funded by advertisements, subscription, sponsorship, pay-per-view system, or any other means of finance whether for reception by the general public free of charge or available on individual demand or encrypted or not in Our United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and the territorial waters thereof and elsewhere in the world (such services being hereinafter referred to as "the Commercial Services").
- (d) To hold the existing and to construct or acquire or lease and establish and install additional stations for wireless telegraphy and apparatus for wireless telegraphy in Our United Kingdom, the Channel Islands and the Isle of Man, and to use the same for the emission and reception of wireless telegraphy for the purposes aforesaid, and for purposes ancillary or related to those purposes.
- (e) To hold the existing and to construct or acquire or lease additional equipment and apparatus for the transmission and reception and relaying of telecommunication signals over telecommunication systems or by any other method whether now known or hereafter invented or developed and whether or not over paths provided by any material substance in Our United Kingdom, the Channel Islands and the Isle of Man, and to use the same for purposes ancillary or related to the purposes aforesaid.

Schedule 8

Commercial Streaming Guidelines

To the extent that any Programmes are made available for commercial streaming, the Producer shall comply and ensure that any third party licensees shall comply with the following conditions:

- (1) Programmes shall not be aggregated to build a BBC collection
- (2) Any streaming service cannot imply that it is a BBC channel or service
- (3) Each Programme shall require an individual click per performance for access
- (4) Any service shall be secure from piracy to industry standards
- (5) There shall be no implication of BBC endorsement of services
- (6) The following type of advertisers shall be prohibited as per BBC Guidelines.
 - Political parties/lobbying organisations & pressure groups/governments/government agencies
 - Tobacco manufacturers and smoking accessories
 - Religious organisations
 - Weapons, weapons manufacturers, gun clubs
 - Gambling establishments/companies/services
 - Pornographic or sexually explicit establishments/companies/services including escort agencies and websites
- (7) All Audio-visual Content shall be BBC branded throughout using 'BBC blocks' in top-left hand corner of video.
- (8) All Programmes shall feature an audio sting to be determined by the BBC currently envisaged as "First heard on BBC [network]" in respect of access to that performance. Where clips from a Programme are disaggregated each clip shall contain the BBC audio sting. Where audio only content is also visually represented, the relevant visual still shall feature the relevant BBC channel/radio network logo or 'BBC blocks' as determined by BBC.
- (9) Any Programme available for streaming shall link back to bbc.co.uk to the relevant network page, generally as a link from the description of video/audio on the site where such description exists (where content is contained in an embeddable player there shall be a burnt in link as consistent with technological developments at the time).
- (10) Any reference to the BBC or BBC brands (other than the credit or track titles) shall require written approval of the BBC. Notwithstanding the above, for the avoidance of doubt

Producer or any licensee shall be precluded from using the BBC or BBC brands to promote any service without the written approval of the BBC.

(11) The following restrictions shall apply in respect of advertising types:

- no advertising formats that obscure the content, temporarily or otherwise (i.e. no overlays or superstitials or similar) are permissible;
- no interruptive formats are permissible and content shall be clearly separated from advertising by buffers, endcaps or similar at either end of the break (for example a branded intro/outro)
- any advertising shall represent no more than 15% of the total duration of a stream (e.g. 30 secs of advertising for a single song of around 4 mins duration).

Notwithstanding the foregoing, in the event that any Programmes are made available on services featuring advertising in a manner contrary to clauses (6) and (11) above by the Producer or its licensees, BBC's remedy shall be to treat such availability as a breach of the BBC Guidelines entitling the BBC to exercise its rights in respect of take-down.