

Date:

Contributor(s):
Title of Series:
Title of Programme:
Project Numbers:
Title of Work:
Type of Work:
Use of Work:
Initial Fee:
Duration:
Broadcast Date:
Service:

AGREEMENT RELATING TO THE USE OF LITERARY AND DRAMATIC WORKS FOR RADIO

FORM: BASED ON BBC RADIO PA 5 (Complete Work)

An Agreement made between [enter Production Company's name] whose principal office is at [enter Production Company's address] ("the PRODUCER" which shall include any assignee, licensee, subsidiary or associated company and any other person, firm or company deriving title through or under it) and the contributor specified above ("the Contributor")

INTRODUCTORY

The PRODUCER wishes to acquire and the Contributor has agreed to grant rights in the work specified above ("the Work") under this Agreement

IT IS AGREED AS FOLLOWS:

1. Definitions

The following expressions shall have the following meanings and where defined in the Copyright, Designs and Patents Act 1988 as amended from time to time ("the Act") expressions used in this Agreement shall bear the meanings given to them in the Act unless defined otherwise in this Agreement

- 1.1 "Broadcast" means to broadcast and/or (for the avoidance of doubt) include in a cable programme or so to authorise by any means now or hereafter known the Work or a performance reading or recitation of the Work in a Programme for sound reception only (and the first such broadcast or inclusion shall be referred to as "First Broadcast" and subsequent ones as "broadcasts" whether received by broadcast and/or inclusion in a cable programme), simultaneously or non-simultaneously live and/or recorded in the BBC's Core Services or a BBC Digital Service
- 1.2 "BBC Digital Service" means a BBC Public Service Radio Channel other than one of the Core Services
- 1.3 "Contributor" means either the author or the owner of the rights licensed to the PRODUCER under this Agreement if the author is no longer the rights owner (eg. a publisher or Literary Executor)
- 1.4 "Core Services" means the Domestic Services and the World Service
- 1.5 "Domestic Broadcast" means a Broadcast in the BBC's domestic radio services for the British Isles comprising Radios 1,2,3,4, Five Live and BBC National Regions Radio ("the Domestic Services") and (if desired), simultaneously with Domestic Broadcast in Local Radio or in the World Service (but for the avoidance of doubt excluding BBC Digital Services)
- 1.6 "Extract Fee" means where a substantial extract taken from the Work receives a repeat Broadcast the Initial Fee pro rated to determine the payment for the repeat by dividing the Initial Fee by the duration of the Work as shown above and multiplying by the duration of the extract repeated
- 1.7 Gross Receipts: the Producer's or BBC WorldWide's gross revenue from the worldwide distribution of the Programme including the Work from all sources
- 1.8 "Initial Fee" means the fee specified above payable upon signature to the Contributor as set out in Clause 2 at the rates set out in Schedule One which reflect the current broadcast rates applicable per minute at the time of First Broadcast for prose or poetry agreed between the BBC, the Publishers' Association and the Society of Authors (or subsequent rates that have

been agreed by the above parties between the date of this Agreement and the date of First Broadcast) provided that for exploitation pursuant to clause 2.1.D. below any residual payment which becomes due after a period of five years from First Broadcast shall be based upon the rates most recently so agreed

- 1.9 "Local Radio" means the BBC's domestic radio services for the British Isles intended for a specific local area or areas of a National Region (but for the avoidance of doubt excluding Broadcasts syndicated over more than five local radio regions which shall be deemed a Domestic Broadcast) and the expressions "Local Radio Service" and "Local Radio Broadcast" shall bear corresponding meanings.
- 1.10 "New Public Services Fee" means the payment additional to the Initial Fee as set out in Clause 2 which covers further Broadcasts of the Work on BBC Digital Services and use on any Public Service (including but not limited to repeats on BBC Digital Services, so-called simultaneous Internet streaming or subsequent making available on demand via the Internet) but excluding repeats on the Domestic Services and the World Service
- 1.11 "Non-theatrical Distribution" means Trapped Audience Distribution as defined in this Agreement and also the sale or hire of recordings of radio programmes incorporating the Work by all forms of delivery and in all formats for listening by audiences in all institutions, organizations, clubs or societies of a business, educational, cultural, religious, charitable or social nature and other entities except for places to which the general public is invited and admitted upon the payment of an admission fee charged primarily for such viewing
- 1.12 "Programme" means the programme comprising the principal recording of the radio production for which the Work is contracted for inclusion under this Agreement
- 1.13 "Public Service" means any service provided by the BBC which is primarily funded by the BBC's Licence Fee or BBC World Service Grant in Aid and a "BBC Public Service Radio Channel" means a BBC radio channel which is so funded
- 1.14 "Public Service Rights" means the right to use the Work in any medium now known or which may become known in or in connection with any Public Service provided by the BBC for radio or ancillary or complementary to radio including but not limited to any BBC Digital Service any Public Service also provided by so-called simultaneous Internet streaming or subsequent making available on demand via the Internet and any BBC Public Service website intended to complement the BBC radio Programme in which the Work was originally Broadcast
- 1.15 "Radio Distribution" means all forms of commercial radio distribution of a sound recording incorporating the Work however transmitted or delivered whether now or hereafter known and including without limitation all forms of terrestrial broadcast, cable (and including any equivalent on-line, on-demand, streaming or webcast distribution) and/or satellite distribution and including for clarity the right to relay the Programme to the British Forces Broadcasting Service (BFBS) and to sell rent or hire electronic copies via the internet or other on-line means to members of the public for transmission to a physical carrier provided that each such copy made available shall be protected by a copy control mechanism allowing access for a maximum period of thirty days but excluding Non-theatrical Distribution and also for the avoidance of doubt any Public Service use
- 1.16 "Trapped Audience Distribution" means the exploitation of the Work as recorded for radio by all forms of delivery and in all formats to closed circuit radio systems for listening by audiences in premises such as hotels, hospitals, educational institutions, military locations, apartment houses, condominiums, public houses, clubs, restaurants, and discotheques or in the transportation industry
- 1.17 "Work" means the work of the type and title identified above being a complete literary or dramatic work or complete collection or anthology, being a work from categories including but not limited to novels, stories and other prose works of fiction and non-fiction, verse, stage plays, narrative poems, or translations of all such works
- 1.18 "World Service" means the BBC's World Services as defined in its Royal Charter
- 1.19 "World Service Broadcast" means such number of Broadcasts throughout the World in the English Language on the World Service as may be required for a World Service cycle within a period of eight days from first Broadcast and (if desired) simultaneously with such Broadcast, in the BBC's Domestic Services

2. Fees and Rights Granted

The PRODUCER agrees to pay the Contributor or their agent the Initial Fee specified above which is payable upon signature and (subject to clause 3) the Contributor in return hereby grants to the PRODUCER with full title guarantee for

the duration of copyright and any extensions or revivals thereof on a non-exclusive basis the right to reproduce the Work (and including the right to abridge and adapt (including to translate) the Work for the purposes of Broadcast) together with a licence of the following rights in the Work:

2.1 First Broadcast on BBC Core Services or Full BBC Digital Service Rights

A. First Broadcast in Core Services

If a Core Service is specified above as the Initial Service, the right in return for the Initial Fee to authorise the BBC:-

- (i) to include the Work in the Programme and to give a Domestic Broadcast or a World Service Broadcast as the First Broadcast during a period of three years from signature of this Agreement; and
- (ii) to give further Broadcasts in BBC Digital Services and to exercise the Public Service Rights subject to an additional payment of the New Public Services Fee of 10% of the Initial Fee, (payable upon signature) which shall license use of the Work for a period of five years from First Broadcast other than in the Core Services; or

B. First Broadcast in BBC Digital Services

If a BBC Digital Service is specified above as the Initial Service, the right in return for the Initial Fee to authorise the BBC:

- (i) to include the Work in the Programme and to give the First Broadcast in that Service during a period of three years from signature of this Agreement; and
- (ii) to give further Broadcasts in BBC Digital Services and to exercise the Public Service Rights subject to an additional payment of the New Public Services Fee of 10% of the Initial Fee, (payable upon signature) which shall license use of the Work for a period of five years from First Broadcast other than in the Core Services; or

C. First Broadcast in BBC Local Radio Stations

If a Local Radio Service is specified above as the Initial Service, the right in return for the Initial Fee to authorise the BBC:

- (i) to include the Work in the Programme and to give a Local Radio Broadcast as the First Broadcast during a period of three years from signature of this Agreement; and
- (ii) to give further Broadcasts in BBC Digital Services and to exercise the Public Service Rights subject to an additional payment of the New Public Services Fee of 10% of the Initial Fee, (payable upon signature) which shall license use of the Work for a period of five years from First Broadcast other than in the Core Services; and

D. Extension of BBC Public Service Rights

If the BBC has made the First Broadcast under clauses A, B or C above and paid the New Public Services Fee licensing use of the Work for a first period of five years from First Broadcast then following such period to authorise the BBC to give further Broadcasts in BBC Digital Services and to exercise the Public Service Rights other than in the Core Services for one or more further periods of five years (at the BBC's option) subject to further additional payments of such further percentage of the Initial Fee in respect of each five year period as shall be agreed between the BBC, the Publishers' Association and the Society of Authors and which shall be payable upon the first Broadcast occurring after expiry of the previous five year period

2.2 Distribution to Non-Paying Audiences

The right from the date of the First Broadcast of the Work to play and to license recordings of the Programme to be played throughout the world without restriction by Non-theatric Distribution.

2.3 Repeats on Core Services and Local Radio Stations

The right from the date of the First Broadcast (whether under clause 2.1.A, 2.1.B or 2.1.C above) of the Work, to authorise the BBC to give repeat Broadcasts of the Programme simultaneously or non-simultaneously in the BBC's Core Services as a Domestic Broadcast or a World Service Broadcast or on Local Radio subject to payment for each repeat Broadcast upon broadcasting taking place of the applicable rate for the applicable service as set out in Schedule Two to this Agreement or in the case of a substantial extract (unless the use is permitted without payment by law or in accordance with this Agreement) of the Extract Fee

2.4 Commercial Distribution

The right from the date of First Broadcast of the Work to exploit or authorise the exploitation of the Programme including the Work by Radio Distribution throughout the world subject to payment to the Contributor of royalties of an amount equal to 1.5% of Gross Receipts for all exploitation except an undramatised, straight reading (including in translation) of the Work for which the royalty shall be 5% of Gross Receipts

provided that (a) where the Work has been jointly written or a translation of the Work is also contracted and in either case is contracted from contributors separately the royalties above shall be shared equally between the contributors and (b) if more than one Work is included in a Programme contracted from contributors separately then the royalties above shall be shared in the same proportion as the Contributor's Initial Fee bears to the aggregate of the Contributor's Initial Fee and the other contributors' initial fees and (c) the Contributor acknowledges that such payment takes account of all the circumstances including the right to equitable remuneration for rental

2.5 Miscellaneous Uses

The right without further payment to make and use copies of the Work or recordings of the Work as included in the Programme for (i) the private purposes of the BBC (including staff training) or the purposes covered by this agreement (ii) Broadcasting brief excerpts in programmes of an historic or reminiscent nature, (iii) deposit, if the recording is considered of permanent interest with the National Sound Archive and with similar archive-holding bodies for preservation purposes and for private study by bona fide students, (iv) translating the Work into foreign languages for Broadcast or to make sales (v) playing or performance at radio and related media festivals and award ceremonies, (vi) inclusion of brief extracts of the Work or Programme for use in publicity and promotional purposes in all media now known or hereafter devised or discovered, (vii) inclusion of brief extracts of the Programme in all Broadcasts on the Programmes Pick of the Week and Pick of the World.

For clarity the PRODUCER and the BBC will also have the right without further payment to make all uses of the Work permitted under the Act.

3. Rights Restrictions and Termination of Rights

3.1 The Contributor shall notify the PRODUCER of any existing specific restrictions on the rights the Contributor is able to grant in respect of the licence periods, languages, territories or means of exploitation provided for in clauses 2.4 and 2.5 and such restrictions shall if notified and agreed before signature of this Agreement duly modify the licence granted.

3.2 The Contributor shall be entitled to terminate the licence of rights granted to the PRODUCER in clause 2 above by written (not email) notice upon expiry of the period of ten years following signature of this Agreement ("the Termination Date")

3.3 Termination under clause 3.2 shall not however terminate

- (a) any five year extension period of Public Service Rights (other than the Core Services) purchased pursuant to clause 2.1 above
- (b) any right to make one repeat Broadcast of the Programme under paragraph 2. of Schedule Two
- (c) any sub-licence of the right to exploit the Work by Radio Distribution under clause 2.4 above which is granted prior to the Termination Date.

- 3.4 (a) Notice of termination under clause 3.2 above shall be effective (subject to the remainder of this clause 3.) if sent to **[insert Production company's contact's details]**
- (b) Any such notice given shall be deemed to have been received: if by hand at the time of delivery; or if sent by fax the first working day next following the day of sending; or if sent by post three days after posting
- (c) In order to take effect on the Termination Date notice of termination must have been received under sub-clause (b) above three months before the Termination Date or if received after that will take effect on the first business day three months following the date on which it is received under sub-clause (b)

4. **Relays**

Where a foreign or domestic collecting society has under a separate agreement acquired the right to grant or administer a licence of the right to use the Work in particular but not by way of limitation by inclusion of the Work in a service transmitted by satellite, cable or other terrestrial means the Contributor shall not be entitled to payment from the PRODUCER or the BBC in respect of such use nor shall the PRODUCER or the BBC lay claim to any monies payable by such society in respect thereof.

5. **Contributor's Warranty**

5.1 The Contributor warrants that the Work:

- (a) is an original work (provided that where the Contributor is not the author of the Work the Contributor warrants that the Work is original to the best of the Contributor's knowledge and belief)
- (b) does not infringe the copyright or any other proprietary right of any other person (provided that where the Contributor is not the author of the Work the Contributor warrants that the Work does not infringe the copyright or any other right of any other person to the best of the Contributor's knowledge and belief) and that the Contributor is entitled and will remain entitled to grant to the PRODUCER all the rights in all the territories specified as granted to the PRODUCER under this Agreement (subject to Clause 3)
- (c) contains no defamatory matter (provided however that where the Contributor is not the author of the Work the Contributor warrants that the Work contains no defamatory matter to the best of the Contributor's knowledge and belief) and in either case the Contributor shall not be liable for any defamatory matter which in the opinion of the PRODUCER was included in the Work without negligence or malice.

5.2 The PRODUCER warrants that its adaptation of the Work

- (a) will not infringe the copyright or any other proprietary right of any other person
- (b) will not contain any defamatory matter with the exception of any defamatory matter contained in the Work

6. **Moral Rights**

6.1 Where the Work is an original source work (rather than an adaptation) the PRODUCER will notify the BBC to credit the author of the Work in the form "based on a book by [the author]" or in a similar form either at the beginning or end of the Programme based on the Work and the Contributor will not assert the paternity right in a manner inconsistent with this provision.

6.2 The PRODUCER shall notify and pass on to any person to whom it has granted rights to exploit the Programme the obligation relating to credits in sub-clause 6.1 above, and the PRODUCER shall use its reasonable endeavours to ensure that such person shall accept the obligation. But in such circumstances the PRODUCER shall not be liable for any failure of that person to observe the obligation.

6.3 A breach of clause 6.1 shall not entitle the Contributor or the author of the Work to seek injunctive relief and the sole remedy shall be in damages

6.4 The PRODUCER will use reasonable endeavours to rectify any breach of clause 6.1

- 6.5 (a) If the Contributor is the author of the Work the Contributor recognising the needs of radio production hereby waives his/her right under section 80 of the Act not to have the Work subjected to derogatory treatment in respect of uses licensed under this Agreement.
- (b) The PRODUCER recognising its obligation to act in good faith in respect of the waiver granted in sub-clause (a) above undertakes as an obligation binding in honour not to subject the Work to derogatory treatment
- (c) If the Contributor is not the author of the Work the Contributor undertakes to give the PRODUCER reasonable assistance in obtaining a waiver from any person who is entitled to the right under section 80 of the Act in terms similar to those set out in sub-clause (a) above

7. **Dates For Payment**

Payments to be made hereunder shall (a) in the case of payments under Clause 2.1, 2.3 and 2.5 above become due for payment 30 days after the event giving rise to the payment obligation (b) in the case of payments under Clause 2.4 above become due for payment 30 days after the expiry of the first relevant BBC three monthly accounting period following the issue of the Programme to BBC Radio International and provided that a further payment will be made at least once in each year in settlement of any balance due in respect of the royalty on subscription income together with that in respect of all other ad hoc programme sales. If the sum due is less than £10 the amount due will be carried forward to the next payment date unless otherwise specifically requested by the Contributor.

8. **Editorial Control**

For the avoidance of doubt the PRODUCER and the BBC shall have editorial control over the Programme and shall not be bound to make a Programme or use the Work or any part thereof in any way and if it does not do so shall not be liable to the Contributor in any way for any loss or damage suffered by the Contributor thereby or any failure to obtain publicity or any opportunity to enhance the reputation of the Author

9. **Headings**

The headings in this Agreement are for convenience only and shall not affect the construction of any provision in it.

10. **No Agency Partnership Joint Venture or Employment**

Nothing in this Agreement shall be deemed to constitute either party as the agent of the other party or create a partnership joint venture or contract of employment between the parties.

11. **Whole Agreement**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and supersedes all prior arrangements negotiations and discussions (whether oral or written) between the parties relating thereto.

12. **Proper Law**

This Agreement shall be deemed to have been made in the United Kingdom shall be governed by English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

RADIO PUBLISHERS ASSOCIATION AGREEMENT

SCHEDULE ONE

RATES FOR INITIAL FEE

1. The Initial Fee payable to the Contributor shall be based on the following rates:

A. Domestic Services

Plays/Prose (per min)	£15.89
Poetry (per ½ min)	£15.89
Prose for Dramatisation (per min)	£12.39

B. World Service (English) and BBC Digital Service originations

Plays/Prose (per min)	£7.94
Poetry (per ½ min)	£7.94
Prose for Dramatisation (per min)	£6.19

C. Local Radio

Plays/Prose (per min)	£3.97
Poetry (per ½ min)	£3.97
Prose for Dramatisation (per min)	£3.10

PROVIDED THAT for Local Radio Broadcasts syndicated over five or more local radio broadcasts shall be deemed as a Domestic Broadcast and the Domestic Services rate in 1.A above shall apply.

2. Translations of Plays, Prose and Verse shall be payable at two thirds of the above rates payable to each of translator and original author.

RADIO PUBLISHERS ASSOCIATION AGREEMENT

SCHEDULE TWO

**FEES FOR REPEATS ON THE CORE SERVICES AND LOCAL RADIO
(see Clause 2.3)**

1. For each repeat Broadcast of the Programme the PRODUCER will pay the Contributor upon Broadcast taking place 100% of the appropriate rate for the Work as set out in Schedule One relevant to the applicable service on which the repeat broadcast is taking place (provided that the rate payable shall be the current rate agreed between the BBC, the Publishers' Association and the Society of Authors) unless paragraph 2. below applies.
2. Notwithstanding Paragraph 1 above for an additional payment of 80% of the Initial Fee made upon the First Broadcast the BBC shall be entitled to make one repeat Broadcast of the Programme on the originating service at any time.

Signed by or on behalf of the Contributor

.....

Date:

.....

Signed by or on behalf of the PRODUCER

.....

Date:

.....