

DATED

2009

PROGRAMME PRODUCTION AGREEMENT

BETWEEN

(1) THE BRITISH BROADCASTING CORPORATION

(2) [ ]

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[ ]

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## THIS PROGRAMME PRODUCTION AGREEMENT

Dated [ ] 2008

### IS MADE BETWEEN:

(1) THE BRITISH BROADCASTING CORPORATION  
of Broadcasting House, London W1A 1AA ("the BBC")

and [ ]  
Company Registration Number [ ] ("the Producer")

### INTRODUCTION:

- A. The Producer and the BBC have completed their negotiations concerning the commissioning by the BBC from the Producer of the Programme (as defined below) in accordance with the 'CODE OF PRACTICE ON BBC'S DEALINGS WITH INDEPENDENT PRODUCERS FOR TELEVISION PROGRAMMES COMMISSIONED BY THE BBC' and the associated 'BBC Terms of Trade for Independent Television Productions Commissioned by the BBC' ("BBC Terms of Trade") and now wish to record their agreement in writing ("Agreement").
- B. The BBC and the Producer confirm that the BBC has not required as a condition to this Agreement that the Producer in connection with the production of the Programme –
- (a) uses any BBC production facilities (whether the details of such use are included in the terms of this Agreement or elsewhere); or
  - (b) refrains from using the production facilities of any other broadcaster.

Accordingly, the BBC and the Producer confirm that the circumstances in article 3(3) of the Broadcasting (Independent Productions) Order 1991 as amended do not apply to this Programme.

### AGREEMENT BETWEEN THE PARTIES:

1. The Producer shall produce and deliver to the BBC a television programme or series of programmes the detail of which is set out in Schedule 2 ("the Programme") and the BBC shall pay the Licence Fee; on the terms contained in the Special Terms set out in Schedule 1 to this Agreement ("Special Terms"); and the BBC's General Terms for the Production of Television Programmes by Independent Producers dated 30 July 2004 a copy of which is published on [http://www.bbc.co.uk/commissioning/tv/business/general\\_terms.pdf](http://www.bbc.co.uk/commissioning/tv/business/general_terms.pdf) ("the General Terms"); and the Schedules to this Agreement.
2. Words and expressions defined in General Term 1 of the General Terms shall have the same meanings where used elsewhere in this Agreement.
3. This Agreement shall take effect from the date preproduction started on the Programme or the date of execution of this Agreement whichever is the earlier.
4. In the event of any conflict or inconsistency between the Special Terms and the General Terms, the former shall prevail.

This Agreement is entered into on the date first written above.

## Schedule 1 Special Terms

### 1. **BBC Representatives:**

	Name	Telephone	Email
BBC Editorial Representative			
BBC Business Affairs Manager			
BBC New Media Representative			
Producer's Nominated Representative for purposes of Special Term 6.7.2 and General Term 16.3			

### 2. **Licence Fee:**

2.1 The Licence Fee of a total of £[ ] ( ) is made up as follows:

- 2.1.1 Primary Rights licence fee: £[ ]  
 [2.1.2 Funding above Primary Rights licence fee: £[ ] ]  
 [2.1.3 Prize fund as set out in the  
 Commissioning Specification: £[ ] ]  
 [2.1.4 Other specific production  
 element(s) as set out in the  
 Commissioning Specification: £[ ] ]

The above figures do not include the Independent Production Training Levy. This will be collected separately from the Producer by PACT directly

In the event that the Producer elects to obtain insurance under the BBC/AON scheme, insurance costs shall be deducted by the BBC from the cashflow set out in Special Term 2.2 below. The Primary Rights Licence Fee includes the cost of one technical review of the Programme master tape by the BBC, the cost of subsequent technical reviews will also be deducted from the cashflow.

2.2 Payable:

*If cash-flowing:*

In accordance with the [following Stage Payments:] [agreed Cash-Flow Schedule]

Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
Receipt by BBC of signed Agreement	1 <sup>st</sup> day of pre-production	Commencement of Principal Photography	Mid-point of filming and viewing of rushes by BBC Editorial Representative	First day of edit
%	%	%	%	%
£	£	£	£	£

Stage 6	Stage 7	Stage 8	Stage 9
Approval of rough cut	Approval of fine cut of episode 1	Acceptance of Tape Delivery	Acceptance of Paper Delivery (subject always to a cap of £100,000)
%	%	%	%
£	£	£	£ (less any appropriate deduction as referred to in Special Term 6.4)

**If paying on delivery:**

Stage 1	Stage 2
Acceptance of Tape Delivery	Acceptance of Paper Delivery
95%	5%
£	£ (less any appropriate deduction as referred to in Special Term 6.4)

[2.3 In addition to the Licence Fee, the BBC shall pay the sum of £[ ] ([ ] pounds sterling), (“the New Media Fee”) for the supply of the New Media Deliverables (as defined in Schedule 9), in accordance with Part B and Part C of Schedule 9. A full breakdown of the New Media Fee is also set out at Part B of Schedule 9.

**3. Contributor rights – pre-paid uses:**

3.1 The Producer shall contract contributors to the Programme within the Licence Fee on the minimum basis as set out in General Term 6 save only as may be varied in Special Term 3.2 or as otherwise agreed in writing by the BBC.

3.2 The minimum pre-payment required to be made within the Licence Fee in relation to the following contributors is as set out below:

Equity Artists	<p>[[1/2] UK Network TV transmissions on BBC One/Two]  <b>[OR]</b>            [9 Transmission Days on BBC [Four/Three] in accordance with Clause T23 of the agreement between Equity and PACT dated 1 August 2004 as amended and updated.]</p> <p><b>IF APPROPRIATE</b></p> <p>Artists to be optioned for series [2] and [3] under terms pre-approved by the BBC insofar as it is legally possible to do so.]</p>
Writers	<p><b>[If BBC One or Two commission</b>            [1/2] UK Network TV transmission (on BBC One or Two) in accordance with Clause 26(i) of the agreement between the Writers’ Guild of Great Britain and PACT dated 1 February 2003 [ (“WGGB/PACT Agreement”) ] and a further sum (payable on the first day of principal photography) equal to 15% of the script fee for a 5-year licence for BBC Public Service uses (excluding repeats on BBC One and BBC Two) (“the BBC Public Service Uses”)]</p> <p><b>[OR]</b>  <b>[If BBC Three or Four commission – if this reflects the agreement reached</b>            Unlimited uses on all BBC Public Services (in respect of which 15% of the script fee shall be payable on the first day of principal photography), excluding repeats on BBC One and BBC Two.</p> <p>The Producer acknowledges that the Programme has been commissioned by the BBC as a commission primarily for BBC [Three][Four] and the minimum clearance requirements for BBC [Three][Four] within the Licence Fee do not require pre-clearance of the writer’s Subsequent Use Advance as defined under the WGGB/PACT Agreement. [The Producer shall inform the BBC in the event that it pays such advance for the purposes of exercising the Distribution Rights].</p>
Archive & Stills	Unlimited use on all BBC Public Services for the Licence Period (renewable subject only to payment of an approved rate) and for all promotional use permitted under this Agreement.
Music	<p>Composers            In relation to members of all relevant Collecting Societies covered by the BBC blanket licensing arrangements, General Term 6.2 in relation to music is un-amended.</p> <p>In all other cases (where composers are not members of the relevant societies) their contribution must be acquired for unlimited use on all BBC Public Services for the Licence Period (renewable subject only to payment of an approved rate) and for all promotional use permitted under this Agreement.</p> <p>Musicians            Unlimited use on all BBC Public Services excluding repeats on BBC1, BBC2 and BBC Radio</p>

	which would attract further payment in line with the contributors' PACT / MU Agreement and which shall be set out clearly in the schedule of residuals.
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#### **4. Agreed Recoupments (as referred to in the definition of Net Revenue)**

None

**[OR]**

It is agreed that the [sum][advance] of £ [ ] may be recoupable from gross revenue arising in connection with the exercise of the Distribution Rights, as follows:

[ ]

The Producer warrants that it will pass on to its third party investors any rights and/or obligations arising in relation to the foregoing in its contractual arrangements with such third party investors.

For the avoidance of doubt, the above is always without prejudice to compliance with the principles set out in the definition of Agreed Recoupment at General Term 1 (as amended).

#### **5. Variations to General Terms:**

5.1 The **Seven-Day-New-Media Rights, Primary-Video-on-Demand Rights** and **BBC Primary New Media Rights** shall be extended include a new media (temporary download or streamed) premiere/preview of the Programme which may be made available from 7 days prior to the first linear broadcast ("the Preview"); plus a "Floating" window; and Series Stacking as follows:

(a) "Floating" window

Upon download of the Programme (or any episode thereof) by the audience within the 7 day window from any linear transmission by the BBC of the episode/programme, the episode/programme can remain on the users hardware until first accessed (or 13 weeks from download whichever is sooner), then the user has 7 days to view the episode/programme after which the episode/programme expires.

(b) Series Stacking

Such rights in each episode of the Programme shall extend to seven days after the linear transmission of the final episode of the Programme – "a series stack" subject to the following:

- Such series stack shall be capped at a total of 13 weeks programming available on demand at any one time (excluding for the avoidance of doubt the 7 day Preview period).
- During the time that it is made available on-demand by the BBC, each episode of the series can be temporarily downloaded for viewing with a "floating" window as set out in (a) above.
- Series stacking will not apply to repeats.

All such use will be copy protected and will only be exercised provided that appropriate technological means are used to limit the availability of the download to the period of the BBC's entitlement and the UK territory.

5.2 The following amendments shall be made:

5.2.1 The definition of Net Revenue shall be amended to read as follows:

"Net Revenue"– means gross revenue arising in relation to the exercise of the Distribution Rights (less any element withheld from the relevant distributor by way of withholding tax duty or levy) less the following deductions in the following order of priority where applicable:

- (a) reasonable and customary distribution commission in line with standard industry practice (which shall be inclusive of any sub-distributors and/or sub-licensees and/or agents' commission and which shall be approved by the BBC where the relevant distributor is, or is connected to, the Producer, (such approval not to be unreasonably withheld or delayed);
- (b) all direct costs and expenses of and relating solely and directly to the exploitation of the Distribution Rights in line with standard industry practice (including but not limited to any actual costs incurred in respect of prints and master materials, publicity, advertising, shipping, freight and insurance, reversioning, editing, dubbing and subtitling the Programme, stock, duplication, physical distribution, artwork, sleeve duplication and certification);
- (c) any payments of residuals or royalties or use fees or repeat fees payable in relation to the exercise of the Distribution Rights in accordance with collective agreements applicable to the independent television production sector or otherwise in accordance with normal practice in the independent television production sector (but not including those relating to exploitation by the BBC of the BBC Public Service Rights during the Licence Period which have been prepaid);
- (d) any Agreed Recoupments;

except where the Producer is entitled to a share of gross revenue arising in connection with the exercise of the relevant Distribution Rights where none of the deductions listed in (a)-(d) above are applicable in which case Net Revenue shall mean the share of gross revenue arising in relation to the exercise of the Distribution Rights payable to the Producer by the distributor,

5.2.2 An additional definition for "Agreed Recoupments" shall be inserted as follows:

"Agreed Recoupments" means the sums set out in the Special Terms which are agreed by the BBC as being recoupable either by a third party, or the Producer, and which are actually applied by the Producer towards the direct cost of production of the Programme, provided that the exact amount or proportion of recoupment is the subject of agreement with the BBC; and that any advances received by the Producer, which are not applied to the direct costs of production in respect of the agreed Commissioning Specification, constitute distribution receipts which are shared with the BBC in accordance with this agreement and do not form part of the Agreed Recoupments".

5.3 The definition of Commercial Download Rights is amended to read as follows:

**"Commercial Download Rights–"** - means the right from the period commencing 7 days after first BBC linear transmission of the Programme (or relevant episode thereof) to make the Programme (or relevant episode of the Programme) available, either itself or through its licensees (subject always to

compliance by such licensees with General Term 16 as appropriate) as an individual discrete purchase by the general public for permanent download 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;

5.4 The percentage payments payable by the BBC under General Terms 14.1.2 and 15.2 shall be increased to 4%.

5.5 The package of use set out in General Term 15.1.1(iv) shall be reduced to fifteen (15) Transmission Days.

5.6 References in the General Terms to BBC Legal & Business Affairs Manager and BBC Programme Finance Manager shall be replaced with "BBC Business Affairs Manager".

5.7 The following additional warranties shall be inserted into General Term 17:

"17.17A In the event that the BBC in its absolute discretion grants its prior written consent pursuant to General Term 12.8.2 and/or General Term 16.2.3, the Producer agrees that such consent is given on the basis that the Producer hereby warrants and undertakes to the BBC that:

- (i) it shall comply with any scheduling and/or marketing approvals required by the BBC as a condition of granting its consent and set out in the written consent;
- (ii) it shall not grant any rights in relation to the number of Transmission Days (for linear broadcast) and/or applicable licence period (for both linear broadcast and commercial on-demand offerings) in excess of the standard levels set out in the BBC's Release Policy as published at the date that the request for the relevant consent is made;
- (iii) it shall not grant any rights to any other Public Service Broadcaster (whether in relation to their main or subsidiary services) where a Public Service Broadcaster is ITV, Channel 4, Channel FIVE and/or S4C;
- (iv) any proposed licensee or its services shall be either regulated by Ofcom or warrants to fully adhere to the Ofcom Broadcast Code and associated guidelines (including any watershed policies) in respect of, for the avoidance of doubt, both linear broadcast and commercial video-on-demand offerings;
- (v) the association of the Programme with the proposed licensee shall not infringe any BBC Guidelines as published at the date of the request for consent, or otherwise damage the reputation of the Programme or Programme brand or the BBC;
- (vi) the proposed licensee has not in the past breached the conditions attached to any similar licence of rights from the Producer;
- (vii) in exercising any television rights in the Programme in the UK during the Licence Period the Producer shall procure (i.e. include an appropriate provision in its contract with the Secondary Channel/licensee, hereinafter "Procure") that any proposed transmissions of the Programme by the proposed

licensee shall be approved in advance in writing by the BBC, i.e. the Producer will Procure an obligation on the licensee to obtain approval of the transmission pattern it is proposing from a named BBC scheduling contact, giving them *at least* 5 (five) working days' notice;

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

information and/or features member(s) of the general public in any key narrative contained in the Programme, the Producer shall

(a) have ensured that its contributor release forms make it clear that the Programme is owned by the Producer and may be sold in due course to other broadcasters as well as the BBC and

(b) prior to any sale of the Programme the Producer shall ensure that all appropriate permissions have been obtained prior to such uses being made, and on request by the BBC to produce to the BBC evidence of such permission(s).

Further information is available:

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

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

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

5.8 The following new provisions shall be inserted into General Term 5 and General Term 6 and General Term 20:

"5.3.6 Secure the prior written approval of the BBC Editorial Representative to any viewing of any Programme related material or content by any Programme participant(s) prior to Tape Delivery, where such viewing could lead to a breach of the BBC Guidelines, such approval not to be unreasonably withheld or delayed."

"5.7 For the avoidance of doubt, it is acknowledged that any details set out in Part 1 of the Commissioning Specification entitled "Editorial Specification" under the heading "Editorial compliance considerations" are without prejudice to the Producer's general obligations under this Agreement to comply with the BBC Guidelines."

"6.3.8 there is no provision in such agreements which conflicts with the provisions of General Term 5.3.6 above."

"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 5.3.1 shall entitle the BBC (acting appropriately and reasonably) to require the Producer to:

- (i) remove any BBC branding from any exercise of the Distribution Rights; and/or
- (ii) rectify any breaches of the BBC Guidelines in the Programme at its own cost; and/or
- (iii) discuss in good faith any variations of the terms of this Agreement proposed by the BBC in light of the circumstances of the relevant breach, to apply upon any exercise of the BBC's option under General Term 22 provided that any such variations are reasonable and proportionate; and/or

- (iv) if the remedies set out under (i) and (ii) above are not achievable to the satisfaction of the BBC, not exercise or promote any of the Distribution Rights without BBC written approval (not to be unreasonably withheld or delayed, it being acknowledged that any such approval may be subject to certain conditions to reflect the nature of the breach)."

5.9 General Term 17.12 shall be amended as follows:

"17.12 The Producer shall not, and shall procure that its sub-licensees, subcontractors, and all other persons engaged by it in connection with the Programme shall not, in the exercise of any of its own rights in the Programme (including the Programme Trade Marks) or in producing and delivering the Programme in accordance with this Agreement, whether during or beyond the Licence Period or whether in or outside the UK, through its acts or omissions, bring the Programme or the BBC into disrepute or infringe the BBC Guidelines (it being acknowledged that a material breach of this warranty can be incapable of remedy where it involves a breach of trust)."

5.10 General Term 16.3 shall be deleted and replaced with the following clause:

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

- 16.3.1 procure that any Programme promotional or publicity material or literature to be used by or on behalf of the Producer (or its distributor, licensee or agent) **in the UK** (a) complies with the BBC Guidelines, and (b) shall not be distributed in any way without the BBC's prior written approval;
- 16.3.2 ensure that appropriate contractual provisions are in place to ensure that any Programme promotional or publicity material or literature to be used by or on behalf of the Producer (or its distributor, licensee or agent) **outside the UK** must not impair the quality, meaning or integrity of the Programme or bring either party into disrepute or be defamatory of any person
- 16.3.3 without prejudice to General Terms 16.3.1 and 16.3.2 above, where the BBC has notified the Producer that the Programme is included on the BBC's 'Managed Risk Programme List':
  - (i) a good faith discussion shall take place at the earliest opportunity between the Producers Nominated Representative and the BBC Editorial Representative and, where appropriate, any co-production partner, about any specific risks identified with the execution of the Distribution Rights (including any associated promotional and publicity activity); and
  - (ii) both parties will agree in writing a strategy for managing such identified risks which shall be incorporated in the Producer's distribution plans; and
  - (iii) upon receipt of such plan(s), the BBC Editorial Representative may notify the Producer's Nominated Representative that they wish to approve any specific promotional material or literature prior to its use, and accordingly, the Producer shall not authorise the use of such material without the written approval of the BBC Editorial Representative (not to be unreasonably withheld or delayed).

For the avoidance of doubt any use of the BBC logo on any such material or literature shall require the BBC's prior written approval, and the terms and

approvals procedure set out in Schedule 7 annexed to this Agreement shall apply to such use.

**6. Special Provisions:**

- 6.1 The Producer warrants that the Programme [shall] [shall not] qualify as a Regional [Production][Programme].
- 6.2 The BBC confirms that the Licence Fee shall not be secured by a Charge.
- 6.3 In the event that the BBC in its discretion grants its prior written consent pursuant to General Term 16.2.3 and/or 12.8.2, the Net Revenue payable to the BBC in relation to the exercise of such rights shall be 25% during its exclusive Licence Period, thereafter reverting to the relevant percentage as set out in General Term 16.1.2.
- 6.4 The Producer accepts that in accordance with the PACT Framework for Recharging Directors & Producers Rights Society payments to Independent Producers effective from 1 January 2005, a sum may be payable by the Producer to the BBC in relation to the Programme in accordance with this Framework. The Producer agrees that the BBC shall be entitled to withhold this sum from the final Stage Payment set out in Special term 2.2 above and accordingly the Producer shall deduct the appropriate sum (if relevant) from the final invoice rendered to the BBC.

**6.5 Video on Demand Rights outside UK and Eire:**

For the purposes of General Term 12.8.2, the BBC hereby consents to the Producer exercising (or authorising the exercise of) Video-on-Demand Rights outside the UK and Eire PROVIDED THAT in relation to any such exercise:

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

**6.6 Telephony Services**

In the event that as part of production of the Programme the Producer proposes to appoint a third party to (or to itself) provide telephony services in connection with the Programme, without prejudice to the generality of the terms of this Agreement, in connection with such services it is specifically acknowledged and agreed as follows:

- (i) the proposed service provider shall be approved by the BBC;
- (ii) the agreement for the supply of such services is identified in the Commissioning Specification as a Key Agreement and accordingly shall not be entered into by the Producer without the prior approval of the proposed terms and conditions by the BBC (“Telephony Services Agreement”);
- (iii) the call rates to be charged to the public shall be approved in writing by a representative from the BBC’s Editorial Policy Department, and the Producer shall forward to the BBC Business Affairs Manager a copy of such written approval.
- (iv) As set out in the Commissioning Specification, the Producer shall appoint an individual employee of the Producer to responsible and accountable for the operation of the telephony services in connection with the Programme in accordance with the ICSTIS, OFCOM, and the relevant BBC Guidelines, and any other specific instructions of the BBC.
- (v) In accordance with clause 12.9.3 of the General Terms in so far as there is any [residual] net revenue arising as a result of the telephony services used in connection with the Programme, after deduction of all associated costs as provided for in the Telephony Services Agreement, such revenue will be applied as approved by the BBC Business Affairs Manager

6.7 Without prejudice to the generality of the General Terms:

- 6.7.1 The Producer confirms and undertakes that the Programme and all materials supplied to the BBC (or its authorised representatives or agents) for publication including any promotional purposes in connection with the Programme, such as but not limited to material for online listings and audience navigation applications, (whether such material is delivered pursuant to the terms of this Agreement or pursuant to an additional or subsequent agreement with the BBC or its authorised representative or agent) have been created, obtained, and produced in compliance with:
  - (i) the BBC Guidelines (in particular the BBC Editorial Guidelines, available at [bbc.co.uk/guidelines](http://bbc.co.uk/guidelines)); and
  - (ii) the provisions of all relevant underlying agreements, and
  - (iii) cleared in accordance with the relevant terms of this Agreement (or by subsequent agreement between the parties, where applicable).
- 6.7.2 Where the BBC creates, produces, or adapts any material relating to the Programme for promotional purposes, the BBC Editorial Representative may ask the Producer’s Nominated Representative to review such material and inform the BBC whether or not the Producer’s Nominated Representative considers in good faith that the proposed use (including timings where relevant) is (or could be) inconsistent with the BBC Guidelines or in breach of any third party contract, and in executing the BBC’s overall responsibility to finalise and comply such material, the BBC shall be entitled to rely on the response(s) or information provided by the Producer.

6.8 **Safeguarding Trust Training:**

Without prejudice to General Terms 5.3 and 17.16:

- 6.8.1 The Producer warrants and undertakes that:
  - (i) the Key Production Personnel listed in part 7 of the Commissioning Specification entitled “Training Requirements” have completed the training requirements as set out in that part 7 as of the date of signature of this Agreement;

- (ii) all Production Personnel will by the first day of principal photography (or the date of their engagement if later) have completed the training requirements as set out in part 7 of the Commissioning Specification.
- 6.8.2 The Producer shall as part of the Production Report delivered to the BBC in accordance with this Agreement prior to payment of "*Stage Payment 6 (Approval of rough cut)*" set out the names of all Production Personnel who have completed the training requirements as set out in part 7 of the Commissioning Specification in accordance with Special Term 6.8.1 (ii) above, such Production Report to be verified and signed by the Executive Producer.
- 6.8.3 The Producer shall maintain complete and accurate records as required to evidence and substantiate the Producer's warranty as set out in Special Term 6.8.1 above, and shall deliver as part of Paper Deliver a copy of such records for each of the Production Personnel.
- 6.8.4 An additional definition for "Production Personnel" shall be inserted into General Term 1 as follows:  

"Production Personnel" means any person carrying out the following roles on the Programme (irrespective of their contracted job title and unless specifically excluded for legitimate reasons by agreement with the BBC Editorial Representative): executive producer, producer, associate producer, assistant producer, director, editor, programme researcher, writer if the Programme is a factual programme or other programme genre involving the portrayal of factual matters, production manager, head of production, and any other senior editorial and senior production management roles on the Programme.

## [6.9 **New Media provisions**

### 6.9.1 **New Media Deliverables**

- [(i) The BBC hereby commissions the Producer to provide the New Media Deliverables as defined in Schedule 9.
- (ii) The provision of such New Media Deliverables shall be subject to the terms and conditions and all other information set out in this Special Term 6.9 and Schedule 9 attached. For the avoidance of doubt, the BBC shall have final editorial control in relation to the New Media Deliverables.
- (iii) In the event of any conflict between Schedule 9 or the General Terms of this Agreement in relation to the New Media Deliverables, the provisions of Schedule 9 shall prevail.]

### [6.9.2 **BBC Created Material**

- [(i) The Producer and the BBC agree that the BBC shall create a [website on [bbc.co.uk/](http://bbc.co.uk/) interactive television application/WAP site] for the Programme ("BBC Created Material").
- (ii) The Producer hereby grants to the BBC for the Licence Period an exclusive, royalty-free, irrevocable licence to use or incorporate the Format of the Programme within the BBC Created Material.
- (iii) All rights, including without limitation all IPR in and to the BBC Created Material (excluding any Format of the Programme used or incorporated), and the BBC Assets (as defined in Schedule 9) are expressly reserved by the BBC.

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

[6.10 The Producer acknowledges that for the purposes of General Term 7.8.5 below, the previous series of the Programme encountered significant problems relating to the financing and/or management of the production.]

[End of Schedule 1]

## Schedule 3 Delivery Items

# **BBC** Delivery Items

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**All delivery requirements (including any explanatory notes) are as listed on the following pages of this Schedule.**

Please refer to the BBC Delivery Website. The site has everything you need to know about delivering paperwork and data as well as the physical tape delivery itself.

It contains:

- An explanation of the delivery process from beginning to end – providing a timeline of what you need to know – including an explanation of our terminology and interactive requirements
- Details of where you need to deliver the Delivery Items
- A guide to the BBC's programme numbering system.

The site can be found at:

**<http://www.bbc.co.uk/delivery>**

In addition there is a Technical Delivery site, where you can find all the latest technical requirements that programmes need to meet for London deliveries. This site can be found at:

**[http://www.bbc.co.uk/guidelines/delivering\\_quality/delivery\\_tv.shtml](http://www.bbc.co.uk/guidelines/delivering_quality/delivery_tv.shtml)**

# BBC Delivery Items

<b>A:</b>	<b><u>PRE-TAPE DELIVERY PAPERWORK:</u></b>	<b><u>DELIVERY TO:</u></b>
1	Laboratory Access/ Facilities House Letter	Business Affairs Assistant
2	Approved front & end titles	BBC Editorial Representative
3	Television Billing Form	Programme Delivery Co-ordinator – on word doc template (available from the Programme Delivery Co-ordinator) or via P4A System for Drama commissions
<b>B:</b>	<b><u>PRE TAPE DELIVERY PUBLICITY MATERIALS:</u></b>	
1	Publicity Stills: The number of stills set out in the Commissioning Specification produced and delivered to a sufficient technical and editorial quality.	BBC Picture Publicity
2	Production Notes/Press Kit (comprising): 1. Full cast list 2. Full crew list 3. Short synopsis (2-3 paragraphs) 4. Long synopsis (2-3 pages) 5. Location/interview production notes 6. Biographies of principal cast 7. Biographies of key crew	BBC Publicity
3	Press Information	BBC Publicity
4	Key Publicity contact address list	BBC Publicity
<b>C1:</b>	<b><u>FILM, VIDEOTAPE AND SOUND</u></b>	
1	1 x 625 line PAL digibeta either 16:9 FHA (protected 14:9) or other aspect ratio as agreed beforehand OR 1 x HDCam tape 16:9 (protected 14:9)  (as prescribed in the Commissioning Specification)  Please refer to technical guidelines on BBC website <a href="http://www.bbc.co.uk/commissioning/delivery/">http://www.bbc.co.uk/commissioning/delivery/</a> or <a href="http://www.bbc.co.uk/guidelines/delivering_quality/pdf/tv/hd_summary_delivery_for_mats.pdf">http://www.bbc.co.uk/guidelines/delivering_quality/pdf/tv/hd_summary_delivery_for_mats.pdf</a>	Programme Delivery Co-ordinator
2	1 x timecoded (BITC) VHS PAL 625 3x DVD	Programme Delivery Co-ordinator
3	Master split-track soundtrack on DA88 per episode (n/a for Factual, Entertainment or Childrens commissions unless specifically requested)	Programme Delivery Co-ordinator

4	Promotional preview DVDs (as prescribed in the Commissioning Specification)	BBC Publicity
5	Clips	Clips should be delivered in accordance with the Commissioning Specification and included in the master DigiBeta for each episode/whole series.
<b>C2: TX PAPERWORK:</b>		
1	TV Compliance Form <b>duly signed by Executive Producer named in the Commissioning Specification in Schedule 2</b>	Programme Delivery Co-ordinator – on word doc template available from the Programme Delivery Co-ordinator
2	First Transmission Form  Copies of these forms and guidance notes on completion can be found at: <a href="http://www.bbc.co.uk/commissioning/delivery/ondelate.shtml">http://www.bbc.co.uk/commissioning/delivery/ondelate.shtml</a>	Programme Delivery Co-ordinator – on word doc template available from the Programme Delivery Co-ordinator or via P4A System for Drama commissions
3	Bad Language List (Word Document)	Programme Delivery Co-ordinator
4	Post-production script (Word document) – as required by genres	Programme Delivery Co-ordinator
5	If required for programmes including dialogue in a foreign language, translation scripts	Programme Delivery Co-ordinator
<b>D: FINAL PAPERWORK:</b>		
1	Programme as Completed Form	Programme Delivery Co-ordinator – on word doc template available from the Programme Delivery Co-ordinator or via P4A System for Drama commissions
2	Music Reporting Form & Cue Sheet	Programme Delivery Co-ordinator – on word doc template available from the Programme Delivery Co-ordinator or or via P4A System for Drama commissions
3	Schedule of Residuals	Business Affairs Assistant
4	OFCOM FORM (Independent and Regional Production Confirmation)	Business Affairs Assistant
5	On-Screen Portrayal Form	<b>Programme Delivery Co-ordinator</b>
6	<b>Safeguarding Trust certification of completion of the required Modules for all Production Personnel</b>	<b>Business Affairs Assistant</b>
<b>E: ADDITIONAL PAPERWORK</b>		
6	Key Agreements	Business Affairs Assistant

# **BBC** Delivery Items

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## **Explanatory Notes:**

### **A. PRE-TAPE DELIVERY PAPERWORK:**

1. If shooting on film The Laboratory Access letter found in Schedule 4 should be completed and returned.
2. The Facilities House letter found in Schedule 5 should be completed and returned.
2. Approved front and end titles list (including BBC branding, and in drama programmes, a reference to URL – [bbc.co.uk/drama](http://bbc.co.uk/drama)).
3. The Television Billing form is to provide essential information for BBC Broadcast and Broadcasting Data Services for circulation to listings magazines and the Electronic Programme Guides for DSAT & DTT.  
Specific information required can be found at:  
[http://home.gateway.bbc.co.uk/p4a/user\\_guides/billings.html](http://home.gateway.bbc.co.uk/p4a/user_guides/billings.html)

### **B. PRE-TAPE DELIVERY PUBLICITY MATERIALS:**

1. We need to receive:
  - A number (as set out in the Commissioning Specification) of high quality colour original images taken by a professional photographer for each programme in a series. These can be provided as digital images at a minimum size of 40mb as a raw file for set up and episodic shots. Alternatively stills can be supplied on original colour transparency film or negative film with corresponding contact sheet. All stills should be clearly numbered.
  - A caption list corresponding with the images, should indicate each image number, the programme title, photographer's name, the name of the subject, presenter or actor(s) who appears in each shot and if relevant the character(s) that they play.
  - A list of any other approved shots to be supplied.
- 1.1 Amongst these pictures should be at least two generic set up images which best represent the whole series.

Set up: means posed portraits of main cast, singles and significant pairs and groups. Taken under controlled conditions, art directed, lit and styled

Episodic: Unique images of key scenes or cast in each episode
2. The Photography must be of professional standard and should be of sufficiently different and varying content so as may be used together or separately across a broad spectrum of media without compromising each other.

Photographic stills are normally required 9 weeks in advance but our press/publicity teams should be involved at as early a stage as possible (essential on major series), preferably before filming commences.

Photographs should be fully cleared of copyright and artists' restrictions, including associated moral rights. Where archive or artwork photography is being supplied the images should be cleared for publicity without restriction

Note that screen grabs taken from the master are of very limited use, (news stories, websites), and are not acceptable for newspaper features or magazines.

## **C1. FILM, VIDEOTAPE AND SOUND:**

- 1.1 Where the Programme is to be delivered in widescreen videocassette form - One 625 line Digibeta 16x9 anamorphic videocassette of the completed episodes for transmission.

These tapes will be transmitted on the digital service in 16x9 and simultaneously in 14x9 letterbox on the analogue service. The conversion from 16x9 to 14x9 will take place automatically in real time. The picture image will be derived directly from the centre of the 16x9 image. Therefore, the film must be shot and transferred such that no significant action will be lost nor the composition excessively compromised.

- 1.2 Where the Programme is to be delivered not in widescreen videocassette form – A D3 format videocassette of the Programme recorded in colour edited and assembled main and end titled with an integrated synchronised sound-track (on audio tracks 1 and 2).

Any deviation from any of the above specification must be agreed with the BBC in accordance with General Term 9.

The Programme Delivery Co-ordinator/Drama Delivery Unit will arrange with BBC Post Production Resources for a **Transmission Review** to be carried out, to establish that the videocassette is of first class, blemish free quality and is suitable for transmission.

2. 1 x VHS PAL 625 timecoded viewing cassette to match the final Digibeta videocassette and should have BITC and VITC.  
3 x DVD PAL (Clean copies).
3. Further information can be found at:  
[http://resources.gateway.bbc.co.uk/uploads/PP\\_Dev\\_Lib\\_TASCAM.doc](http://resources.gateway.bbc.co.uk/uploads/PP_Dev_Lib_TASCAM.doc)
4. As prescribed in Schedule 2 the Commissioning Specification.
5. As prescribed in Schedule 2 the Commissioning Specification.

## **C2. TRANSMISSION PAPERWORK:**

1. TV Compliance Form – in such form as available on the BBC Delivery Website:  
<http://www.bbc.co.uk/commissioning/delivery/>
2. First transmission Form, also available on the BBC Delivery Website:  
<http://www.bbc.co.uk/commissioning/delivery/>
3. Please highlight each and every incidence of Bad Language with a programme timecode.
4. If required, translation scripts in the case of Programmes including dialogue in a foreign language.

## **D. FINAL PAPERWORK:**

1. Programme as Completed Form - fully completed with contributors and copyright information.
2. Music Reporting Form & Music Cue Sheet

Both the above are available at:  
<http://www.bbc.co.uk/commissioning/delivery/>

3. Schedule of Residuals per episode available from the Genre Business Affairs Assistant or from:  
[http://www.bbc.co.uk/commissioning/forms/schedule\\_residuals.xls](http://www.bbc.co.uk/commissioning/forms/schedule_residuals.xls). This must be delivered in a form that may not be manipulated (hard copy, fax or PDF) AND in electronic form to the Business Affairs Assistant
4. The OFCOM form is available from the Genre Business Affairs Assistant or from the BBC website at: <http://www.bbc.co.uk/commissioning/forms/irpofcom.xls>
5. The BBC Vision On-Screen Portrayal form (available from the BBC website at: [www.bbc.co.uk/commissioning](http://www.bbc.co.uk/commissioning)).
6. Certified copies of (i) any Key Agreement(s) 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.  
Please confirm with Business Affairs Manager if this is required.

[End of Schedule 3]

**Schedule 4  
Laboratory Letter**

FROM: [Laboratory]

TO: THE BRITISH BROADCASTING CORPORATION  
Broadcasting House  
London W1A 1AA

[Date]

Dear Sirs,

" \_\_\_\_\_ "

1. In consideration of your agreeing that all or part of the laboratory work for the production of the television programme or series of programmes with the above provisional title ("the Programme") shall be carried out by us with the consent of [ \_\_\_\_\_ ] (the Producer") we hereby undertake:
  - a. Subject to Paragraph 2 below, to hold to your order the picture and sound negatives of the Programme ("the Negatives") from such time as they shall come into our possession until transmission by you of the last episode of the Programme.
  - b. Subject to Paragraph 2 below, not to part with possession of the Negatives or any material derived from them except on your written instructions until transmission by you of the last episode of the Programme.
  - c. Not to assert any right of lien or other claim against the Negatives or any other material derived from the Negatives or created in connection with the Programme except in respect of sums due to us for work carried out by us in respect of the Programme.
2. We hereby acknowledge that the Producer is entitled to reasonable access to relevant materials in order to create at its own cost masters for distribution and exploitation purposes provided that this does not adversely affect the delivery schedule to you as notified to us by the Producer.

Yours faithfully,

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Director for and on behalf of  
[Laboratory]

We hereby consent to the terms contained in the foregoing letter.

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Director for and on behalf of  
[ \_\_\_\_\_ ]

**Schedule 5  
Facilities House Letter**

FROM: [Facilities House]

TO: THE BRITISH BROADCASTING CORPORATION  
Broadcasting House  
London W1A 1AA

[Date]

Dear Sirs,

" \_\_\_\_\_ "

- 1 In consideration of your agreeing that all or part of the post-production video facilities work for the production of the television programme or series of programmes with the above provisional title ("the Programme") shall be carried out by us and with the consent of [ ] ("the Producer") we hereby undertake:
  - a. Subject to Paragraph 2 below, to hold to your order the copy of the edited master tape of the Programme ("the Copy Master") from such time as it shall come into our possession until transmission by you of the last episode of the Programme.
  - b. Subject to Paragraph 2 below, not to part with possession of the Copy Master or any material derived from it except on your written instructions until transmission by you of the last episode of the Programme.
  - c. Not to assert any right of lien or other claim against the Copy Master or any other material derived from the Copy Master or created in connection with the Programme except in respect of sums due to us for work carried out by us in respect of the Programme.
2. We acknowledge that the Producer is entitled to reasonable access to relevant materials in order to create at its own cost masters for distribution and exploitation purposes provided that this does not adversely affect the delivery schedule to you as notified to us by the Producer.

Yours faithfully,

\_\_\_\_\_  
Director for and on behalf of  
[Facilities House]

We hereby consent to the terms contained in the foregoing letter

\_\_\_\_\_  
Director for and on behalf of  
[ ]

## **Schedule 6**

### **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 January, Two thousand and seven, 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 sixteen.

#### PUBLIC PURPOSES OF THE CORPORATION

3. The Public Purpose of the Corporation are as follows: -

- (a) sustaining citizenship and civil society;
- (b) promoting education and learning;
- (c) stimulating creativity and cultural excellence;
- (d) representing the UK, its nations, regions and communities;
- (e) bringing the UK to the world and the world to the UK;
- (f) in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

4. How the BBC promotes its Public Purposes: the BBC's mission to inform, educate and entertain

(1) The BBC's main activities should be the promotion of its Public Purposes through the provision of output which consists of information, education and entertainment, supplied by means of—

- (a) television, radio and online services;
- (b) similar or related services which make output generally available and which may be in forms or by means of technologies which either have not previously been used by the BBC or which have yet to be developed.

(2) The BBC may also carry out other activities which directly or indirectly promote the Public Purposes, but such activities should be peripheral, subordinate or ancillary to its main activities. Overall, such peripheral, subordinate or ancillary activities of the BBC should bear a proper sense of proportion to the BBC's main activities, and each of them should be appropriate to be carried on by the BBC alongside its main activities.

(3) The means by which the BBC is, or is not, to promote its Public Purposes within the scope described in this Charter may be elaborated in a Framework Agreement (see article 49).

5. The independence of the BBC

(1) The BBC shall be independent in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs. (2) Paragraph (1) is subject to any provision made by or under this Charter or any Framework Agreement or otherwise by law.

## Schedule 7 Trade Mark Schedule

### 1 Definitions

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

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

"Product"	means anything produced and/or distributed by the Producer in the course of its exploitation of the Distribution Rights and comply with General Term 16
"Associated Material"	means items of the types described below and which comply with General Terms 13 and 16 are produced for the purpose of advertising and marketing the Products and the exploitation of the Programme pursuant to the exercise of the Free Television Rights, the Pay Television Rights, the Theatric Rights, the Non-Theatric Rights and the Trapped Audience Rights: (1) packaging material (including if appropriate stickers, inlays and sleeves); (2) paper-based promotional material; (3) On-line promotional material; (4) non-interactive TV, cinema and in-flight promotional material
"BBC Group"	means the BBC and its present or future Subsidiaries
"company"	includes any body corporate wherever and however incorporated or established
"Group"	means, in relation to a company, that company and any company which is a Holding Company of that company or a Subsidiary of that company or of such Holding Company
"Licensed Product"	means any Product or Associated Material on which any of the Trade Marks appear pursuant to this Licence
"On-line"	means by means of display and/or distribution via electronic means including but not limited to the World Wide Web, mobile or cellular telephones and networks, interactive TV, or other screen-based mechanisms
"Samples"	means (where the Trade Marks are to be used On-line) (1) a screen shot or other representation of the display of the proposed Licensed Product , or sufficient information to enable the BBC to access it and (2) details of the proposed Online location of the Licensed Product (eg the url), or (in any other case) two (2) true and accurate samples of each Licensed Product
"Subsidiary" / "Holding Company"	A company is a Subsidiary of another company (its Holding Company) if that other company controls it, directly or indirectly (whether through one or more subsidiaries)
"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 8**  
**Relevant BBC Websites**

The BBC Commissioning Website	bbc.co.uk/commissioning/
General Guidelines (includes: <ul style="list-style-type: none"> <li>• Editorial (including Online Services Guidelines;</li> <li>• bbc.co.uk Standards and Guidelines</li> <li>• Credit Guidelines</li> </ul>	bbc.co.uk/guidelines
Independent Producer Joint Promotion Guidelines	<a href="http://www.bbc.co.uk/commissioning/tv/business/joint_promotions.pdf">http://www.bbc.co.uk/commissioning/tv/business/joint_promotions.pdf</a>
The BBC Delivery Websites: <ul style="list-style-type: none"> <li>• general delivery info</li> <li>• technical standards</li> <li>• Compliance Guidelines</li> </ul>	bbc.co.uk/delivery bbc.co.uk/commissioning/delivery/finalsteps.shtml#onscreen bbc.co.uk/guidelines/delivering_quality/delivery_tv.shtml bbc.co.uk/commissioning/delivery/ondeldate.shtml
BBC Policies Website (including the Fair Trading Guidelines)	bbc.co.uk/info/policies/
Programme Duration Guidelines	bbc.co.uk/durations
Credit and Branding Guidelines	bbc.co.uk/credits bbc.co.uk/branding
Interactive TV Guidelines	bbc.co.uk/commissioning/structure/interactivetv.shtml bbc.co.uk/commissioning/newmedia/itv.shtml
Children's Privacy Guidelines	bbc.co.uk/commissioning/tv/business/childrens_privacy.pdf

**[SCHEDULE 9  
NEW MEDIA DELIVERABLES]**

Signed for )  
and on behalf )  
of the BBC by: )

.....  
Name:

Print name.....

Job title.....

Signed for )  
and on behalf )  
of the Producer by: )

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Name:

Print name.....

Job title.....

Witnessed by:

.....  
Name:

Print name.....