

**Transitional provisions to insert into the Special Terms until the revised General Terms are agreed:**

5. Variations to the 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 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>

6. Special Provisions:

- 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.