PC3

TERMS OF TRADE FOR THE PURCHASE OR HIRE OF GOODS, FACILITIES AND SERVICES

1. Definitions

In this Contract the following terms shall have the following meaning:
"BBC" means British Broadcasting Corporation of Broadcasting House, Portland Place, London W1A 1AA; "Contract" means these terms of trade, and the Purchase Documentation; "Contract Period" means, subject to Clause 14, the period specified in the Purchase Documentation; "Contract Price" means the price payable by the BBC to the Supplier as specified in the Purchase Documentation; "Deliverables" means the Goods, Facilities and/or Services specified in the Purchase Documentation to be supplied or used in performance of the Contract; "Dry Hire" means the hire or loan of Goods or Facilities where no staff or operators are provided by the Supplier; "Facilities" means any facilities to be provided by the Supplier pursuant to the Contract; "Goods" means any item(s), including without limitation software and digital codes, to be manufactured and/or provided by the Supplier pursuant to the Contract or in the case of Services the physical or other product(s) of the Services; "IPR" means copyright, patent, trade mark, design right, topography right, database right, rights of confidence, broadcast rights and all other similar rights anywhere in the world whether or not registered and including applications for registration of any of them; "Purchase Documentation" means the BBC purchase order and any other written specification detailing the Supplier, the Deliverables, the Contract Price, and where appropriate the Contract Period and Special Conditions; "Safety Requirements" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy; "Services" means any services to be provided by the Supplier pursuant to the Contract (which will include where appropriate any equipment/materials provided by the Supplier to perform the Services); "Special Conditions" means any amendments or additional conditions specified in the Purchase Documentation which shall take precedence over these terms of trade; "Supplier" shall be the organisation or individual responsible for providing the Deliverables under the Contract and the Supplier shall where relevant be deemed to include all of its officers, employees, subcontractors and/or agents engaged in any way in the performance of the Contract; "Wet Hire" means the hire or loan of Goods or Facilities where the Supplier also provides (directly or indirectly) staff (including independent contractors) and/or operators and for the avoidance of doubt shall include the provision of Goods and/or Facilities to perform Services.

2. Existence of Contract

2.1. The Contract shall prevail at all times over all other terms and conditions which the Supplier may purport to apply and to the extent any obligations hereunder have already been performed by either party, then such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of the Contract. The provision of the Deliverables shall be deemed conclusive evidence of the Supplier's acceptance of the Contract provided the Supplier has been given notice of the terms herein.

2.2. The Supplier undertakes to deliver the Deliverables in accordance with the Contract. Timely provision is of the essence of the Contract and the Supplier shall notify the BBC immediately it becomes aware of any likely delay in such provision.

3. Good Faith/Outside Activities/Publicity

The Supplier shall act in good faith at all times and shall neither bring the BBC into disrepute nor, without the prior consent of the BBC, make any reference to the BBC in any advertising, promotional or published material, nor speak in public about the BBC or its affairs.

4. Contract Price/Payment

4.1. In consideration of the Deliverables provided under the Contract the BBC shall pay to the Supplier the Contract Price exclusive of VAT (which if applicable shall be applied at the appropriate rate) subject to and in accordance with Clauses 4.2, 4.3 and 4.4 below.

4.2. The Supplier shall submit a valid VAT invoice for the whole or any part of the Contract Price to the BBC at the address specified in the Purchase Documentation quoting the relevant Purchase Documentation number. The BBC shall pay such sums as are due by the end of the month following the month in which the invoice is dated in accordance with this Clause 4.

4.3. The BBC reserves the right to withhold payment to the extent that the Deliverables have not been provided in accordance with the Contract and shall notify the Supplier accordingly giving reasons for such withholding. The BBC shall only be entitled to withhold that amount indicated as in dispute. If any sum of money is recoverable from or payable by the Supplier to the BBC under this or any other contract with the Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under this or any other contract. Exercise by the BBC of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise, at law or in equity.

4.4. Subject to Clauses 4.3, 4.4.1 and 4.4.2 if the BBC fails to make payment in accordance with Clause 4.2 the Supplier shall be entitled to charge the BBC interest from the date specified for payment of the principal sum described in Clause 4.2 upon the unpaid amount of the principal sum at the rate of 4 per cent. per annum above the Bank of England base rate in force at the time this Clause 4.4 becomes applicable until payment of the principal sum is made in full PROVIDED THAT:

4.4.1. The Supplier shall give written notice to the BBC that the amount has not been paid in accordance with Clause 4.2 and specifying: the total amount of interest owed at the date of the notice, and, if the principal sum has not been paid, the daily rate at which the interest will continue to accrue; the invoice or invoices to which the interest relates; and the addressee to whom and address to which payment should be made;

4.4.2. In the event that any sum is agreed between the parties or found to be due to the Supplier following the withholding of payment referred to in Clause 4.3 above, the BBC will pay interest on that sum in accordance with Clause 4.4 above from the date on which the BBC should have paid that sum pursuant to Clause 4.2 above.

4.5. Other than where specifically agreed in the Contract, the BBC shall not be obliged to pay any time or materials charges or expenses to the Supplier in addition to the Contract Price in respect of costs which the Supplier may have incurred in the performance of the Contract. Where the Contract does provide that the BBC shall/may reimburse the Supplier in relation to any expenses, it is a condition precedent of the BBC making any payment to the Supplier, that the expenses have been reasonably, properly and necessarily incurred by the Supplier in the performance of the Contract, that the expenses do not exceed those which a BBC employee of comparable qualifications and position would have been entitled to incur under applicable BBC staff expense policy guidelines, and that the Supplier has supplied the BBC with proper supporting evidence thereof.

4.6. Where the Supplier is VAT registered the Supplier shall recover VAT on any expenditure incurred as described in Clause 4.5 above, in the normal course of its business and shall specify only the net amount of such expenditure in the invoice to the BBC prior to adding VAT thereto at the appropriate rate.

4.7. The Supplier shall comply with relevant BBC budgetary limits which the BBC has provided to the Supplier from time to time and in the event that the Supplier exceeds such limits without the prior approval of the BBC, the BBC shall not be liable to reimburse the Supplier in respect of any sums over such limits.

5. Security/Access/Inspection

5.1. The Supplier shall obtain from the BBC identity cards or entry permits and shall display these whilst on BBC premises. The Supplier shall return these cards/permits to the BBC upon termination or expiry of the Contract.

5.2. The BBC may request and shall be supplied with identification of the Supplier and may conduct random security checks including checking the Supplier’s possessions and vehicle(s) whilst on BBC premises.

5.3. The BBC shall at its discretion give to the Supplier by prior arrangement such access to BBC premises and such general BBC facilities (for example, catering and sanitary) at BBC premises as the Supplier may reasonably require to fulfil its obligations under the Contract. However the BBC may refuse admission to or remove from BBC premises any person whom the BBC deems unacceptable for whatsoever reason other than solely to frustrate the Contract.

5.4. The Supplier shall upon the request of the BBC grant the BBC such access to the Supplier's premises or such other premises as the BBC may reasonably require for inspection of any Goods, Facilities and/or BBC equipment/materials provided under the Contract or for any other reason connected with the performance of the Contract.

6. Health/Safety/Fire and Environmental Requirements

6.1. The Supplier shall comply with all current relevant:

6.1.1 Safety Requirements including but not limited to those issued by the Health & Safety Commission and Executive, the Home Office and those BBC Safety Requirements notified in writing to the Supplier; and

6.1.2 Environmental Requirements including but not limited to those issued by the European Union and UK Government as enforced by the relevant UK Regulator.

6.2. The BBC and the Supplier may agree Safety and Environmental Requirements in addition to or different from those specified in Clause 6.1;

6.3. Without prejudice to its obligations under Clause 6.1 above the Supplier shall:

6.3.1. upon the request at any time of the BBC, submit to and fully co-operate with any safety and environmental vetting process required by the BBC and provide a written statement of the Supplier’s own Safety and Environmental Requirements;

6.3.2. assess reasonably foreseeable risks to health and safety (including fire) and the environment that may affect the BBC or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to the BBC upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with the BBC accordingly;

6.3.3. consult with the BBC, comply with the procedures to be followed and take all reasonable steps in the event of serious and imminent danger to any person(s) arising out of or in any way connected with the performance of the Contract.

6.3.4. consult with the BBC, comply with the procedures to be followed and take all reasonable steps in the event of a serious environmental incident arising out of or in any way connected with the performance of the Contract.

6.4. The BBC shall notify the Supplier of risks to health and safety and the environment which are reasonably foreseeable to the BBC and which may affect the Supplier or the BBC arising out of or in any way connected with the activities of the BBC in connection with the Contract, and the Supplier shall have due regard to these.

7. Wet and Dry Hire of Goods or Facilities

7.1. This Clause 7 sets out the BBC's entire liability with respect to loss of or damage to Goods and/or Facilities hired or loaned to the BBC by the Supplier.

7.2. Where the Contract consists of Dry Hire of Goods or Facilities, the BBC shall be responsible to the Supplier for the prompt repair or replacement (at the BBC's option) of Goods or Facilities lost or damaged whilst in the charge and control of the BBC, provided that the Supplier notifies the BBC promptly upon discovery thereof and other than to the extent that the loss or damage is caused by the Supplier's breach of any of the provisions of the Contract or any other of its acts or omissions.

7.3. Where the Contract consists of Wet Hire the Supplier shall be responsible for the care, control, security, insurance and maintenance of the Goods and Facilities, including for any loss of or damage to the Goods or Facilities, other than to the extent that the loss or damage is caused by the negligence or wilful default of the BBC where, subject to Clause 7.4 below, the BBC shall be responsible for prompt repair or replacement provided that the Supplier notifies the BBC promptly upon discovery of any such loss or damage.

7.4. In any event, and notwithstanding anything contained in the Contract, the BBC's entire liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising by reason of or in connection with this Clause 7 shall be limited to:

7.4.1. repair and/or replacement under sub Clauses 7.2 and 7.3 above subject to a maximum liability of 25% of the value of the relevant Goods or Facilities or £250,000, whichever is the higher AND where applicable;

7.4.2. payment of that proportion of the Contract Price attributable to the period during which the Goods and/or Facilities are being repaired or replaced provided that such period shall not extend beyond the Contract Period and where applicable the Supplier uses all reasonable efforts to ensure that the repair or replacement is achieved in the minimum possible time.

7.5. The BBC shall not be liable for any consequential or indirect loss, loss of profits, revenues and/or business, anticipated savings, in each case, whether or not in the contemplation of the parties at the time of entering into the Contract, incurred by the Supplier as a result of the loss of or damage to the Goods and Facilities (by whatever means) during the course of their being hired or loaned to the BBC, and the Supplier is advised to arrange and maintain insurance in respect of such loss.

8. Delivery of Goods

8.1. The Supplier shall ensure that any Goods are kept in a suitable and secure manner at the Supplier's own risk and expense until the whole or any part thereof are either delivered to the BBC at the Supplier's own risk and expense or collected by the BBC at the BBC's own risk and expense from the point of collection in accordance with the delivery instructions specified in the Purchase Documentation. The Supplier shall ensure that the Goods are packed in such a manner as to reach the BBC in good condition, clearly labelled in accordance with the delivery instructions and accompanied by delivery notes specifying the quantity and type thereof and the relevant Purchase Documentation number.

8.2. Subject to Clause 8.1, where the Contract consists directly or indirectly of the sale of Goods ownership thereof shall vest in the BBC absolutely at such time as the BBC either takes physical possession or makes payment (whether in full or in part) for the Goods, whichever is the first to occur.

8.3. Where any Goods are found by the BBC upon delivery or collection or subsequently not to conform with the Contract, the BBC may accept or reject the whole or any part thereof and if rejected, without prejudice to any other remedy available to

the BBC, may return the Goods to the Supplier at the Supplier's own risk and expense and promptly recover any sums paid for the rejected part.

9. Equipment/Materials

9.1. The Supplier shall be responsible for the care, control, security and maintenance of any materials and equipment used or provided by the Supplier to perform the Contract. The BBC may provide a storage area for any such equipment/materials but is under no obligation to do so. The Supplier shall ensure that any such storage area is fit for the intended purpose and it is used in a suitable, careful and secure manner at the Supplier's own risk and expense and the BBC accepts no liability therefor. The BBC reserves the right to reclaim the storage area upon notification.

9.2. The Supplier shall not use any BBC equipment/ materials without the prior consent of the BBC and shall where relevant be responsible for the care, control, security and maintenance of such materials and equipment which it uses..

10. Liability/Insurance/Indemnity

10.1. Nothing in the Contract excludes either party's liability for death or personal injury caused by that party's negligence or wilful default.

10.2. The Supplier shall arrange and maintain with a reputable insurer adequate Public Liability Insurance and, where applicable, Product Liability Insurance and/or Professional Indemnity Insurance which shall be no less than three million pounds sterling (£3,000,000) and with scope of cover appropriate to the Deliverables provided under the Contract in respect of any one claim or incident. For the avoidance of doubt, such minimum insurance level shall not be a limit of liability under the Contract.

10.3. The Supplier shall arrange and maintain adequate insurance of at least the full value of any such Goods or Facilities in relation to loss or damage of any Goods or Facilities provided under the Contract where risk has not yet passed to the BBC pursuant to Clause 8.

10.4. The Supplier shall produce to the BBC on demand copies of the insurance policies maintained in accordance with the terms of this Contract, and receipts for premiums required to be paid in relation to such policies.

10.5. Where the Supplier engages a sub-contractor the Supplier shall either ensure that the insurance requirements as specified in Clause 10.2 extend to cover the legal liabilities of the sub-contractor or that the sub-contractor holds its own insurance which complies with Clause 10.2.

10.6. The Supplier shall be responsible for insuring against loss, damage and liabilities to third parties and anyone carried in or on any equipment including without limitation motor vehicles or mobile plant provided by the Supplier to perform the Contract.

10.7. The Supplier shall indemnify the BBC against all costs and expenses (including legal costs), losses and liabilities which the BBC may incur as a result of the Supplier's:

10.7.1. breach of or non-compliance with its obligations or warranties under the Contract;

10.7.2. negligence or wilful default;

10.7.3. any claims from third parties made as a result of its acts or omissions (including relating to infringement of any IPR supplied under or used in connection with the Contract); or

10.8. The BBC shall not be liable for any consequential or indirect losses, loss of profits, revenues and/or business, anticipated savings, in each case, whether or not in the contemplation of the parties at the time of entering into the Contract, unless expressly set out in the Contract.

11. Warranties

The Supplier undertakes, warrants and represents that:

11.1. Except as otherwise agreed prior to performance of the Contract, it shall obtain for the BBC all necessary consents, permissions and/or clearances in third party rights (including IPRs) with respect to the Deliverables;

11.2. All Deliverables are fit for the purpose for which they are supplied and, where relevant, are of satisfactory quality, good construction, suitable and sound material and adequate strength and have been tested prior to delivery;

11.3. It shall be competent to fulfil its obligations under the Contract (which includes having relevant experience, training and/or qualifications) and shall use such due care, skill and diligence as would reasonably be expected of a competent supplier of

the Deliverables whilst discharging its obligations under the Contract, perform the Contract in a timely and professional manner and hold any licence, permit and/or certificate required by law for the performance of the Contract;

11.4. It shall, unless otherwise agreed by the BBC in advance of the Supplier discharging its obligations under the Contract, comply with all current relevant national and/or international technical standards and procedures and BBC technical standards and procedures, details of which the BBC shall provide to the Supplier;

11.5. It and the Deliverables shall comply with all current relevant laws and regulations and the Supplier shall use all reasonable efforts to comply with all published relevant codes of conduct;

11.6. The Deliverables being supplied or used in performance of the Contract shall where relevant possess the capability to record or process and or utilise data in accordance with the provisions of the British Standards Institute requirements for Year 2000 compliance set out in DISC PD 2000-1: 1998; and

11.7. At its own expense the Supplier shall ensure that the functionality of Deliverables will not be prejudiced by any changes caused by the introduction within any EU member country including the United Kingdom or any of its constituent parts (hereinafter the "**Introducing Country**") of European Monetary Union ("**EMU**") whether or not (i) the Euro is introduced within the Introducing Country as a result of EMU or (ii) the Euro becomes legal tender within the Introducing Country. In particular Deliverables shall, if appropriate, be able to recognise the Euro and if necessary convert its value into UK Pounds Sterling at the then current exchange rate.

12. Data Protection

12.1. For the purposes of this Clause 12, the terms "processing", "personal data", "data controller", "data processor" shall bear the same meanings as set out in the Data Protection Act 1998.

12.2. The Supplier acknowledges that it may process personal data from time to time, which may relate to the BBC (including its employees) and/or other third parties, in the course of performing its obligations under the Contract ("**BBC's Personal Data**").

12.3. The Supplier acknowledges and agrees that the BBC shall be the data controller and the Supplier shall be the data processor in respect of the processing of the BBC's Personal Data.

12.4. The Supplier shall and shall ensure that its employees, contractors and/or agents comply with the following obligations:

12.4.1. process the BBC's Personal Data only in accordance with instructions from the BBC;

12.4.2. take reasonable steps to ensure the reliability of any individuals or entities who have access to the BBC's Personal Data;

12.4.3. take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to the BBC's Personal Data as may be required, having regard to the state of technological development and the cost of any measures, to ensure a level of security appropriate to the harm that might result from such processing, loss, destruction or damage and the nature of the BBC's Personal Data to be protected and where relevant in accordance with the BBC's Information Security polices as notified to the Supplier from time to time;

12.4.4. not do any of the following without the BBC's prior written authorisation:

12.4.4.1. except as permitted by the Contract, use the BBC's Personal Data for any other purposes, including marketing purposes;

12.4.4.2. transfer the BBC's Personal Data to third parties apart from its employees, contractors and/or agents; or

12.4.4.3. transfer the BBC's Personal Data outside the EEA;

12.4.5. grant to the BBC such access as is reasonably necessary to enable the BBC to verify that the Supplier is performing its obligations under this Clause 12; and

12.4.6. return materials, information or data containing BBC's Personal Data to the BBC from time to time as required by the BBC or on completion of the processing of the BBC's Personal Data.

12.5. The Supplier agrees and undertakes to indemnify and keep indemnified the BBC and hold the BBC harmless against all and any demands, claims, actions, proceedings, liabilities, costs, expenses (including legal expenses), losses, injury or damages whatsoever incurred or suffered by the BBC arising out of the breach by the Supplier of any of its obligations under this Clause 12.

12.6. If the Supplier engages any agent and/or contractor to perform any of its obligations under this Clause 12, it shall ensure that any contract with such an agent and/or contractor contains equivalent provisions as those set out in Clause 12.4. If the Supplier breaches this Clause 12 due to any act or omission on the part of such an agent or contractor during the course of the Contract, this shall be deemed a breach of this Clause 12 by the Supplier.

13. Confidentiality and FOIA Disclosure

13.1. Except for the purposes of the Contract, neither the Supplier nor the BBC (each a "**Party**" for the purposes of this Clause) will use or make available to any third party at any time during or after the Contract any Designated Information of the other Party except that nothing shall prevent a Party disclosing Designated Information:

13.1.1. which is or later comes into the public domain otherwise than through an act or omission of the Party receiving the Designated Information;

13.1.2. which is required to be disclosed in accordance with the Freedom of Information Act 2000 ("**FOIA**"), if applicable, or otherwise is required to be disclosed by law, order of court, the requirements of any regulatory authority or taxation authority or the rules of any stock exchange;

13.1.3. which is disclosed with the prior written consent of the other Party;

13.1.4. which is or becomes available to the other Party from third parties without a similar obligation of confidentiality;

13.1.5. which is disclosed on an unrestricted basis to third parties;

13.1.6. which is already known to the other Party;

13.1.7. which is independently developed by the other Party; or

13.1.8. which is disclosed to its employees, professional advisors, agents and subcontractors solely on a need-to-know basis provided that the disclosing Party procures that the person to whom such disclosure is made complies with the obligations under this Clause 13 as if it were a party to the Contract.

13.2. In this Clause 13, "**Designated Information**" means information (in whatever form) relating to the business or affairs of a Party which is disclosed at any time by or on behalf of that Party to the receiving Party, or otherwise is in the possession of the receiving Party, in connection with the Contract:

13.2.1. which is designed by any Party as confidential; and/or

13.2.2. if the FOIA is applicable to such information, where the Supplier is the Party making the disclosure, designates that it wishes (subject to Clause 13.6 below) such information to be treated as exempt from disclosure under FOIA by notice in writing to the BBC subject to Clause 13.6.

13.3. The Supplier recognises that, if FOIA is applicable to the Contract, the BBC may be required to release information relating to any subject matter contained in the Contract whether it is held by the BBC, the Supplier or by another person on behalf of the BBC to comply with its obligations under FOIA.

13.4. If the BBC receives a request for information under FOIA which covers any subject matter contained in the Contract and requires assistance in obtaining such information, the Supplier shall (and shall procure that any of its agents and/or contractors) at its own cost ensure that the BBC's request for assistance is responded to promptly and in any event within 10 days of receipt.

13.5. If the Supplier receives a request for information under FOIA regarding the subject matter contained in the Contract, it shall (and shall procure that any of its agents and sub-contractors) transfer to the BBC all such requests that it receives as soon as possible and provide to the BBC with information that the BBC may request promptly and in any event within 10 days of receipt. The Supplier shall not respond directly to such a request for information under FOIA unless expressly authorised to do so by the BBC.

13.6. The BBC will have the sole responsibility for determining:

13.6.1. whether information is exempt from disclosure under FOIA; and/or

13.6.2. what information will be disclosed in response to a request for information under FOIA.

14. Contract Period and Termination

The BBC may by notice in writing terminate the Contract with immediate effect if:

14.1. the Supplier commits a breach of any of the provisions of the Contract and:

14.1.1. the breach is capable of remedy and the Supplier fails to remedy the breach within 7 days (or such shorter period as may be reasonable) of receipt of a written notice specifying the breach and requiring its remedy (in which case the BBC reserves the right to remedy the breach and recover the costs thereof from the Supplier and terminate the Contract in accordance with this Clause 14); or

14.1.2. the breach is not capable of remedy; or

14.1.3. the breach is a material breach or a breach of a material term.

14.2. the Supplier is unable to provide the named individual(s) pursuant to Clause 21; or.

14.3. the Supplier commits an act of bankruptcy or insolvency, is unable to pay its debts as or when they fall due or makes any composition or arrangement with its creditors, or goes into liquidation or if any order is made or a resolution is passed for the winding up of the Supplier (except for the purpose of a solvent amalgamation or reconstruction), or if it ceases or prepares to cease trading, or if it suffers the appointment of a receiver, administrative receiver, administrator or similar officer over the whole or part of any of its assets; or

14.4. there is a change of control of the Supplier, for which purposes “control” means the ability to direct the affairs of the Supplier whether by virtue of contract, ownership of shares or otherwise howsoever; or

14.5. the continued performance thereof is prevented by reason of any event beyond the reasonable control of the BBC or the Supplier (any such occurrence being deemed an event of force majeure).

14.6. the Supplier delays in delivering the Deliverables or notifies the BBC that it is likely to be so delayed, or the BBC reasonably believes it will be so delayed.

14.7. there is in the BBC’s reasonable opinion a financial, editorial or other substantial reason and in such event the BBC’s liability to the Supplier shall be limited to payment of such sums as may be due to the Supplier up to and including the date of termination; and

14.7.1. where the Contract consists of the hire or loan of Goods or Facilities or the provision of Services, the payment of a cancellation fee in an amount to be decided by the BBC using its sole discretion, to be exercised reasonably, having due regard to the Suppliers duty and ability to mitigate any loss it may suffer; or

14.7.2. where the Contract consists of the sale of Goods or Facilities, payment of such costs as the Supplier may have properly, reasonably and directly incurred in relation to fulfilling the Contract, prior to the date of termination. The Supplier shall provide the BBC with satisfactory evidence of such costs, and any reimbursement shall always be subject to the Supplier’s duty to mitigate any losses it may suffer.

15. Consequences of Termination

15.1. Termination of the Contract for whatever reason shall:

15.1.1. not prejudice any right of action accruing or already accrued to either party at the date of termination; and the rights and obligations of either party arising under Clauses 3, 4.3, 10, 11, 12, 13, 14, 15, 16, 18, 19, 22 and 25 shall survive termination of the Contract;

15.1.2. subject to Clause 14.7 not in itself give rise to a claim by the Supplier for damages or otherwise beyond a claim for payment due under the Contract up to and including the date of termination;

15.2. Upon termination of the Contract for whatever reason the Supplier shall promptly deliver up to the BBC at the Supplier’s own risk and expense the whole or any part of any Deliverables owned by the BBC pursuant to Clause 8.2 hereof, and any BBC equipment/materials, identity cards or entry permits provided or used under the Contract. The BBC shall be deemed to have irrevocably all powers and authority to enter the Supplier's premises or any other premises to recover and remove such items and recover the costs thereof from the Supplier.

16. Intellectual Property Rights

16.1. In consideration of the payment of the Contract Price, the Supplier hereby assigns to the extent to which it is able and otherwise agrees to assign to the BBC absolutely and with full title guarantee, and warrants that all the Supplier's relevant officers, employees and/or agents and any sub-contractor engaged by the Supplier have assigned and/or agreed to assign to the Supplier absolutely and with full title guarantee all IPRs (both existing at the date hereof and in the future) in the products of any Services in all languages throughout the Universe for the full period of such rights (including all rights to renewals and extensions thereof).

16.2. The Supplier hereby to the extent permissible by law waives irrevocably, and warrants that all the Supplier's relevant officers, employees and/or agents and any sub-contractor engaged by the Supplier have to the extent permissible by law waived irrevocably the benefits of any provision of law known as "moral rights" (including without limitation any right of the Supplier, its officers, employees and/or agents or its sub-contractor under sections 77 to 85 inclusive of the Copyright, Designs and Patents Act 1988 and under any resale right arising from EU law) or any similar laws of any jurisdiction in which waiver is permissible.

16.3. The Supplier hereby grants the BBC a non-exclusive, royalty-free, irrevocable license to use and sub-licence any IPRs in any Deliverables under the Contract, which it has not assigned under this Clause 16.

16.4. The Supplier hereby warrants that there are no potential, threatened or actual claims by its employees in respect of patents or potential patents.

17. Assignees/Sub-Contractors and Specialised Sub-contractors

17.1. The Supplier shall not without the prior consent of the BBC assign or sub-contract any of its rights or obligations under the Contract to any third party.

17.2. Notwithstanding that all liability for any sub-contractor rests with the Supplier, any sub-contractor engaged by the Supplier shall be required to be subject to the same obligations as the Supplier is subject to under the Contract and the Supplier shall do all things necessary to ensure that the sub-contractor complies with these including obtaining an undertaking from the sub-contractor in favour of the BBC binding the sub-contractor to comply with the Contract and giving the sub-contractor all relevant information provided to the Supplier by the BBC

17.3. Where the Supplier engages a sub-contractor for the provision of the Deliverables for work involving aircraft (including helicopters, balloons, model aircraft, parachutes), armourers, asbestos, diving, explosives, pyrotechnics and fire effects; flying ballet; lasers; location lighting; scaffolding and similar structures; specialised rigging and wiremen; hydraulic hoist contractors, smoke effects and stunt artists, the Supplier shall:

17.3.1. only use those sub-contractors pre-vetted by the BBC for that purpose, a list of which the BBC shall provide to the Supplier on request;

17.3.2. obtain a written risk assessment from the sub-contractor and incorporate such assessment in the Supplier’s own risk assessment referred to in Clause 6.3.2;

17.4. The BBC reserves the right to vary the kinds of work for which it requires BBC pre-vetted subcontractors and shall notify the Supplier accordingly and/or to require the use of such pre-vetted sub-contractors for the provision of the Deliverables outside the UK and/or to require the Supplier to comply with any procedure in addition to or in substitution for the use of such sub-contractors as notified to the Supplier from time to time.

18. BBC Policy

18.1. If required by the BBC to do so, the Supplier shall comply with current BBC Editorial Guidelines and any other relevant BBC policy, details of which the BBC shall provide to the Supplier on request.

18.2. The BBC's editorial decision shall be final and nothing in the Contract shall oblige the BBC to broadcast or prevent the broadcast of any programme, either in whole or in part, in connection with which the Deliverables are provided under the Contract.

19. On Air Credits

Any credits awarded to the Supplier pursuant to the Contract shall be in accordance with any BBC applicable credit guidelines.

20. Information Provision and Performance Monitoring

20.1. If requested by the BBC, the Supplier shall provide evidence of compliance with any of the Supplier's obligations under the Contract, including without limitation in connection with the measures set under Clause 20.2.

20.2. To ensure that the Deliverables achieve the level of service required by the BBC, where appropriate the BBC may stipulate a range of measures by which the Supplier’s performance can be assessed.

21. Replacement of Named Individual(s)

Where the Contract specifies that the Supplier shall provide a named individual(s) to perform in whole or in part the

Supplier's obligations under the Contract and the individual(s) for whatsoever reason becomes unable to do so the Supplier shall promptly notify the BBC thereof and as promptly as is reasonably possible provide a suitable replacement(s) acceptable to the BBC. If the Supplier is unable to provide the named individual(s) in accordance with this Clause 21 the BBC shall have the right to terminate the Contract forthwith pursuant to Clause 14.2.

22. TUPE

22.1. Where the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**TUPE Regulations**") and/or any superseding or amending legislation may apply to the Services provided hereunder:

22.1.1. the Supplier shall provide the BBC, within fourteen days of receipt of a written request, with all the information that the BBC may reasonably require including, but not limited to, for the purpose of assessing any costs which may fall upon the BBC or any other transferee of the undertaking ("**New Supplier**") as a direct or indirect result of the transfer of the undertaking to the BBC or to a third party.

22.1.2. the Supplier shall procure that for a period of three months before the end of the Contract Period, or upon the giving by either party of notice to terminate the Contract (whichever shall be the first to occur), and ending in either case on the date of termination:

22.1.2.1. no new person shall be employed to work in the undertaking without the prior written consent of the BBC and every reasonable endeavour shall be used to retain the services of any persons so employed and all other persons who are employed in the undertaking at the commencement of the three month period or from the notification, whichever is applicable; and

22.1.2.2. no variation shall be made to such person's contract of employment without the prior written consent of the BBC.

22.2. The Supplier hereby warrants to the BBC and the New Supplier that all the information disclosed pursuant to a request under Clause 22.1.1 shall be true and accurate to the best of its knowledge and belief and the Supplier hereby agrees to indemnify the BBC against all claims, demands, costs and expenses (including legal costs on a solicitor and own client basis), losses and liabilities ("**Losses**") arising directly or indirectly from a breach of this warranty.

22.3. If the contract of employment or employment relationship of any employee working in the undertaking transfers to the BBC or the New Supplier pursuant to the TUPE Regulations on termination of this Contract or otherwise, the Supplier shall indemnify the BBC against all Losses which relate to or arise out of any act or omission by the Supplier prior to the date of transfer which the BBC or the New Supplier incurs in relation to such contract of employment or employment relationship.

22.4. The Supplier shall indemnify the BBC against any Losses which the BBC or the New Supplier incurs pursuant to the TUPE Regulations which relate to or arise out of the dismissal on or before the end of the Contract Period of any employee who has worked in the undertaking.

22.5. The warranties, undertakings and indemnities given to the New Supplier pursuant to this Clause 22 shall be held by the BBC on trust for the New Supplier.

23. Equal Opportunities Requirements

The Supplier shall:

23.1. comply with all current relevant anti-discriminatory legislation (including without limitation race relations, equal pay, fair employment and disabled persons employment and minimum wage legislation);

23.2. where the Supplier employs more than one hundred (100) individuals and its registered office is in the United Kingdom the Supplier shall provide, if requested by the BBC, a written statement of the Supplier's equal opportunities policy and an adequate explanation of how the policy will be effected over time;

23.3. use all reasonable endeavours to adhere to the current relevant codes of practice published by the Equal Opportunities Commission, the Commission for Racial Equality, the Department of Employment and the Fair Employment Commission (Northern Ireland).

24. Disability Discrimination

Where the Supplier provides Deliverables directly to the public or a section thereof and is therefore a "provider of services" for the purposes of Part III of the Disability Discrimination Act 1995 (the "**1995 Act**"), the Supplier, with respect to the Deliverables:

24.1. shall comply with all the relevant provisions of the 1995 Act;

24.2. warrants that the Deliverables shall comply with the 1995 Act at no additional expense to disabled persons or the BBC; and

24.3. shall indemnify the BBC against all claims, demands, costs and expenses (including legal costs on a solicitor and own client basis), losses and liabilities incurred by the BBC as a result of the Supplier's breach of this warranty.

25. General

25.1. Unless and until specified in writing pursuant to the Contract by an authorised official of either party, any notice required to be given pursuant to the Contract shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, or by fax confirmed by first class post, or by e-mail which has been received, as evidenced by receipt by the sender of a read receipt, to the BBC Department placing the order or the Supplier at the address as specified in the Purchase Documentation, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting

25.2. The failure of either party to exercise or enforce any right conferred upon it by the Contract shall not be deemed to be a waiver of any such right or operate so as to bar the exercise or enforcement thereof at any time(s) thereafter, as a waiver of another or constitute a continuing waiver.

25.3. Nothing in the Contract shall be deemed to constitute either party as the agent of the other or create a partnership or joint venture between the parties and the Supplier shall have no power to bind the BBC or to contract in the name of or create a liability against the BBC in any matter whatsoever.

25.4. Any amendment or variation to the Contract shall only be made by prior written agreement between the parties.

25.5. The unenforceability of any single provision of the Contract shall not affect any other provision thereof. Where such a provision is held to be unenforceable, the parties shall use their best endeavours to negotiate and agree upon an enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the unenforceable provision.

25.6. The headings to the clauses and sections of these terms of trade are for ease of reference only and shall not affect the interpretation or construction of the Contract.

25.7. Without prejudice to the rights of either party in respect of actions relating to fraudulent misrepresentation, the Contract and any appendices and any documents referred to therein constitutes the entire understanding between the parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.

25.8. This Contract does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.

25.9. This Contract shall be governed in accordance with English Law. It is irrevocably agreed for the exclusive benefit of the BBC that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with this Contract and that accordingly any suit, action or proceeding arising out of or in connection with this Contract (in this Clause referred to as "**Proceedings**") may be brought in such courts. Nothing in this Clause shall limit the right of the BBC to take Proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking by the BBC of Proceedings in any other jurisdiction, whether concurrently or not.