

BBC STUDIOS AND POST PRODUCTION LIMITED

**TERMS OF TRADE FOR THE ENGAGEMENT OF FREELANCES
("BBC STUDIOS AND POST PRODUCTION FREELANCE TERMS OF TRADE")**

1. Definitions

"BBC" means the British Broadcasting Corporation of Broadcasting House, Portland Place, London W1A 1AA; "BBC Studios and Post Production" means BBC Studios and Post Production Limited of BBC Television Centre, Room 6500, Wood Lane, London W12 7RJ; "Contract" means these terms of trade and the Purchase Documentation; "Contract Period" means, subject to Clause 19, the period specified in the Purchase Documentation; "Fee" means the fee payable by BBC Studios and Post Production to the Freelance as specified in the Purchase Documentation; "Freelance" means the individual engaged by BBC Studios and Post Production to provide their Services under the Contract and shall include any individual engaged by the Freelance to assist in providing the Services; "Intellectual Property Right (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; "Product(s)" means any physical or other product(s) of the Services including any film of which the Freelance is principal director; "Purchase Documentation" means the BBC Studios and Post Production purchase order and/or other written specification detailing the Freelance, the Services, any Product(s), the Fee 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 Freelance pursuant to the Contract (which will include where appropriate any equipment/materials provided by the Freelance 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.

2. Existence of Contract

- 2.1. The Contract shall prevail at all times over all other terms and conditions which the Freelance 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.
- 2.2. The Freelance undertakes to provide the Services in accordance with the Contract.
- 2.3. The signature of the Freelance on Purchase Documentation or, in the absence thereof, the provision of the Services shall be deemed conclusive evidence of the Freelance's acceptance of the Contract, provided the Freelance has been given notice of the terms herein.

3. Time of the Essence

Timely provision of the Services is of the essence of the Contract and the Freelance shall notify BBC Studios and Post Production immediately if the Freelance becomes aware of any likely delay in such provision.

4. Good Faith/Outside Activities/Publicity

The Freelance shall act in good faith towards the BBC and BBC Studios and Post Production and shall not bring the BBC or BBC Studios and Post Production into disrepute nor, without the prior consent of BBC Studios and Post Production, make any reference to the BBC or BBC Studios and Post Production in any advertising, promotional or published material nor speak in public about the BBC or BBC Studios and Post Production or their respective affairs.

5. Fee/Payment

- 5.1. In consideration of the Services provided under the Contract BBC Studios and Post Production shall pay to the Freelance the Fee together with any applicable VAT subject to and in accordance with this Clause 5.

- 5.2. The Freelance shall submit a valid VAT invoice for the whole or any part of the Fee to BBC Studios and Post Production at the address specified in the Purchase Documentation quoting the relevant Purchase Documentation number and the name and telephone of the person to whom the Freelance reports at BBC Studios and Post Production. BBC Studios and Post Production 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.
- 5.3. BBC Studios and Post Production reserves the right to withhold payment to the extent that the Services have not been provided in accordance with the Contract and shall notify the Freelance accordingly giving reasons for such withholding. BBC Studios and Post Production shall only be entitled to withhold that amount indicated as in dispute. If any sum of money is recoverable from or payable by the Freelance to BBC Studios and Post Production under this or any other contract with the Freelance, the same may be deducted from any sum then due or which at any time thereafter may become due to the Freelance under this or any other contract with the Freelance. Exercise by BBC Studios and Post Production 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.
- 5.4. Subject to Clause 5.3 and to Clauses 5.4.1 and 5.4.2, if BBC Studios and Post Production fails to make payment in accordance with Clause 5.2 the Freelance shall be entitled to charge BBC Studios and Post Production interest from the date specified for payment of the principal sum in Clause 5.2 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 5.4 becomes applicable until payment of the principal is made in full PROVIDED THAT:
- 5.4.1. the Freelance shall within the first 30 days of the sum becoming overdue give written notice to BBC Studios and Post Production that the amount has not been paid in accordance with Clause 5.2 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.
- 5.4.2. In the event that any sum is agreed between the parties or found to be due to the Freelance following the withholding of payment referred to in Clause 5.3 above, BBC Studios and Post Production will pay interest on that sum in accordance with 5.4 above from the date on which BBC Studios and Post Production should otherwise have paid that sum pursuant to Clause 5.2 above.
- 5.5. Other than where specifically agreed in the Contract, BBC Studios and Post Production shall not be obliged to pay any time or materials charges or expenses to the Freelance in addition to the Fee in respect of costs which the Freelance may have incurred in the performance of the Contract. Where the Contract does provide that BBC Studios and Post Production shall/may reimburse the Freelance in relation to any expenses, it is a condition precedent of BBC Studios and Post Production making any payment to the Freelance, that the expenses have been reasonably, properly and necessarily incurred by the Freelance in the performance of the Contract, that the expenses do not exceed those which a BBC Studios and Post Production employee of comparable qualifications and position would have been entitled to incur under applicable BBC Studios and Post Production staff expense policy guidelines, and that the Freelance has supplied BBC Studios and Post Production with proper supporting evidence thereof.
- 5.6. Where the Freelance is VAT registered the Freelance shall recover VAT on any expenditure incurred as described in Clause 5.5, in the normal course of business and shall specify only the net amount of such expenditure in the invoice to BBC Studios and Post Production prior to adding VAT thereto at the appropriate rate.
- 5.7. BBC Studios and Post Production may request that in certain circumstances the Freelance act as a buying and/or paying agent of BBC Studios and Post Production for the purchase of goods, facilities or services on BBC Studios and Post Production behalf. Any such occasion and the budgetary limits thereof must be agreed in writing between BBC Studios and Post Production and the Freelance in advance of any expenditure being incurred.

Where VAT is payable on such occasion the Freelance shall obtain a VAT invoice made out to BBC Studios and Post Production. Where required, reimbursement to the Freelance shall only be made on production and approval of an appropriate invoice evidencing such expenditure.

6. Warranties

The Freelance undertakes warrants and represents that :

- 6.1. except as otherwise agreed prior to performance of the Contract, they shall obtain for BBC Studios and Post Production all necessary consents, permissions and/or clearances of third party rights (including IPR's) with respect to the Products and Services;
- 6.2. they shall not, by reason of any other contract or engagement or otherwise, be precluded from entering into and fulfilling their obligations under the Contract, throughout the Contract Period;
- 6.3. they are a self-employed individual and as such are not an employee of BBC Studios and Post Production. It acknowledges that BBC Studios and Post Production shall have no liability to them as employer or otherwise in respect of any health or medical insurance or expenses nor in respect of any loss of income or other loss or expense arising due to illness injury or damage sustained in the course of performing the Contract unless caused by the negligence or default of BBC Studios and Post Production.
- 6.4. they are registered with the Inland Revenue as self employed, and are taxable under Schedule D of the Income and Corporation Taxes Act 1988 as amended, and agrees to indemnify BBC Studios and Post Production against any claims by the Inland Revenue resulting from a breach of this warranty.
- 6.5. they shall be competent to fulfil their obligations under the Contract (which includes having relevant experience, training and/or qualifications), and shall use due care, skill and diligence as would reasonably be expected of a competent provider of the Products and Services, comply with all relevant professional standards and/or requirements (if applicable) 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.
- 6.6. they shall attend at such places (whether in the United Kingdom or overseas) and at such times as is necessary for the performance of their obligations under the Contract.
- 6.7. all Product(s) and/or Services 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.
- 6.8. they and the Product(s) and Services shall comply with all current relevant laws and regulations and they shall use all reasonable efforts to comply with all relevant published codes of conduct.
- 6.9. any equipment/materials being provided by them in the performance of the Contract and all Product(s) 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.
- 6.10. at their own expense they shall ensure that the functionality of Product(s) 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 Product(s) 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.

7. Replacement of Freelance

Without prejudice to Clause 6.2, where the Freelance becomes unable for whatsoever reason to fulfil their obligations under the Contract they shall promptly notify BBC Studios and Post Production and as promptly as is reasonably practicable provide a suitable replacement(s) acceptable to BBC Studios and Post Production. Notwithstanding the foregoing where the Freelance is unable to fulfil their obligations under the Contract, BBC Studios and Post Production shall have the right to terminate the Contract forthwith pursuant to Clause 19.

8. Security/Access/Inspection

- 8.1. The Freelance shall obtain from BBC Studios and Post Production, identity cards or entry permits and shall display these whilst on BBC or BBC Studios and Post Production premises. The Freelance shall surrender these cards/permits to BBC Studios and Post Production either when its obligations under the Contract have been discharged or upon termination pursuant to Clause 19 whichever is the earlier.
- 8.2. BBC Studios and Post Production may request and be supplied with identification of the Freelance and conduct random security checks including checking the Freelancer's possessions and vehicle(s) whilst on BBC or BBC Studios and Post Production premises.
- 8.3. BBC Studios and Post Production shall at its discretion give to the Freelance by prior arrangement such access to BBC and BBC Studios and Post Production premises and facilities (for example, catering and sanitary) at BBC and BBC Studios and Post Production premises as the Freelance may reasonably require to fulfil its obligations under the Contract.
- 8.4. Notwithstanding Clauses 8.1 and 8.3 however, BBC Studios and Post Production may refuse admission to or remove from BBC or BBC Studios and Post Production premises any person including the Freelance, whom BBC Studios and Post Production deems unacceptable for whatsoever reason (other than solely to frustrate the Contract).
- 8.5. The Freelance shall upon the request of BBC Studios and Post Production grant BBC Studios and Post Production such access to its premises or such other premises as BBC Studios and Post Production may reasonably require for inspection of any Product(s) and/or BBC Studios and Post Production equipment/materials provided under the Contract, or for any other reason connected with the performance of the Contract.

9. Health/Safety/Fire and Environmental Requirements

- 9.1. The Freelance shall comply with all current relevant Safety Requirements including but not limited to those issued by the Health & Safety Commission and Executive, the Home Office and those BBC Studios and Post Production and BBC Safety Requirements notified in writing to the Freelance.
- 9.2. BBC Studios and Post Production and the Freelance may agree Safety Requirements in addition to, or different from, those specified in Clause 9.1.
- 9.3. BBC Studios and Post Production shall notify the Freelance of risks to health and safety (including fire) which are reasonably foreseeable to the BBC and which may affect the Freelance or BBC Studios and Post Production arising out of or in any way connected with the activities of BBC Studios and Post Production in connection with the Contract, and the Freelance shall have due regard to these.
- 9.4. Without prejudice to its obligations under Clause 9.1 the Freelance shall:
 - 9.4.1. upon the request at any time of BBC Studios and Post Production, submit to, and fully co-operate with, any safety vetting process required by the BBC or BBC Studios and Post Production and provide a written statement of the Freelance's own Safety Requirements;

- 9.4.2. assess all reasonably foreseeable risks to health and safety (including fire) that may affect BBC Studios and Post Production 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 BBC Studios and Post Production upon request, and (including without limitation compliance with the requirements of any fire certificate that may affect the supply of the Services hereunder) promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with BBC Studios and Post Production accordingly;
- 9.4.3. fully co-operate with BBC Studios and Post Production and any others as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) are eliminated or adequately controlled;
- 9.4.4. consult with BBC Studios and Post Production, 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.
- 9.4.5. upon request promptly provide BBC Studios and Post Production with a copy of any risk assessment carried out pursuant to Clause 9.4.2.

10. Technical Standards

- 10.1. The Freelance shall comply with all current relevant:
 - 10.1.1. national and/or international technical standards and procedures; and
 - 10.1.2. BBC and BBC Studios and Post Production technical standards and procedures details of which BBC Studios and Post Production shall provide to the Freelance.

11. Equipment/Materials

- 11.1. The Freelance shall be responsible for the care, control, security, insurance and maintenance of any equipment and materials used or provided by the Freelance or any person connected with the Freelance, to perform the Contract.
- 11.2. BBC Studios and Post Production may provide a storage area for any such equipment/materials but is under no obligation to do so. The Freelance 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 Freelance's own risk and expense and BBC Studios and Post Production accepts no liability therefor. BBC Studios and Post Production reserves the right to reclaim the storage area upon notification.
- 11.3. The Freelance shall not use any BBC or BBC Studios and Post Production equipment/materials without the prior consent of BBC Studios and Post Production and shall where relevant be responsible for the care, control, security of such materials and equipment which they use until such time as such use ceases and the equipment/materials are returned to BBC Studios and Post Production.

12. Delivery of Product(s)

- 12.1. The Freelance shall ensure that any Product(s) is kept in a suitable, and secure manner at the Freelance's own risk and expense until the whole or any part thereof is either delivered to BBC Studios and Post Production at the Freelance's own risk and expense or collected by BBC Studios and Post Production at BBC Studios and Post Production's own risk and expense from the point of collection in accordance with the delivery instructions specified in the Purchase Documentation. The Freelance shall ensure that the Product(s) is packed in such a manner as to reach BBC Studios and Post Production 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.

- 12.2. Subject to Clause 12.1, where the Contract consists directly or indirectly of the sale of a Product(s) ownership thereof shall vest in BBC Studios and Post Production absolutely at such time as either BBC Studios and Post Production takes physical possession, or makes payment (whether in full or in part) for the Product(s), whichever is the first to occur.
- 12.3. Where any Product(s) is found by BBC Studios and Post Production, upon delivery or collection or subsequently, not to conform with the Contract, BBC Studios and Post Production may accept or reject the whole or any part thereof and if rejected without prejudice to any other remedy available to BBC Studios and Post Production, may return the Product(s) to the Freelance at the Freelance's own risk and expense and promptly recover any sums paid for the rejected part.

13. Liability/Insurance/Indemnity

- 13.1. Nothing in the Contract excludes either party's liability for death or personal injury caused by that party's negligence or wilful default.
- 13.2. The Freelance shall arrange and maintain adequate insurance of at least the full value of any such Product(s) in relation to loss or damage of any Product(s) provided under the Contract where risk has not yet passed to BBC Studios and Post Production pursuant to Clause 12.
- 13.3. The Freelance shall produce to BBC Studios and Post Production, 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.
- 13.4. Where the Freelance engages a sub-contractor (other than a service company providing the services of a named individual) in accordance with Clause 23 the Freelance shall ensure that the sub-contractor holds its own public liability insurance, and where applicable product liability insurance, with an adequate indemnity limit which shall be no less than three million pounds sterling (£3,000,000) with scope of cover appropriate to the Services provided under the Contract. For the avoidance of doubt, such minimum insurance level shall not be a limit of liability under the Contract.
- 13.5. The Freelance shall be responsible for insuring any equipment including without limitation motor vehicles or mobile plant provided by the Freelance to perform the Services against loss or damage and liabilities to third parties and anyone carried in or on such equipment.
- 13.6. The Freelance shall indemnify BBC Studios and Post Production against all costs and expenses (including legal costs), losses and liabilities which BBC Studios and Post Production may incur as a result of :
- 13.6.1. the Freelance's breach of or non-compliance with its obligations or warranties under the Contract;
- 13.6.2. the Freelance's negligence or wilful default;
- 13.6.3. 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).
- 13.7. Neither party shall be liable for any "consequential" or "special" 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.

14. BBC Studios and Post Production Budgetary Limits

The Freelance shall where appropriate comply with the current relevant BBC Studios and Post Production budgetary limits where BBC Studios and Post Production has provided details thereof to the Freelance.

15. BBC/BBC Studios and Post Production Policy

- 15.1. If required by BBC Studios and Post Production to do so the Freelance shall comply with the current BBC Producers' Guidelines, BBC Online Guidelines and any other relevant BBC and BBC Studios and Post Production policy, details of which BBC Studios and Post Production shall provide to the Freelance on request.
- 15.2. The Freelance agrees with BBC Studios and Post Production that 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 Product(s) and/or Services are provided under the Contract.

16. On Air Credits

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

17. Intellectual Property Rights

- 17.1. In consideration of the payment of the Fee, the Freelance hereby assigns and otherwise agrees to assign to BBC Studios and Post Production absolutely and with full title guarantee, and warrants that any individual, agent or sub-contractor engaged by the Freelance to assist in providing the Product(s) and/or Services have assigned and/or agreed to assign to the Freelance absolutely and with full title guarantee all IPRs (both existing at the date hereof and in the future) in any Product(s) in all languages throughout the Universe for the full period of such rights (including all rights to renewals and extensions thereof).
- 17.2. The Freelance hereby to the extent permissible by law, waives irrevocably and warrants that any individual, agent or sub-contractor engaged by the Freelance to assist in providing the Product(s) and/or Services 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 Freelance, the individual, agent or 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.
- 17.3. The Freelance hereby grants BBC Studios and Post Production a non-exclusive, royalty free, irrevocable licence to use and sub-licence any IPRs in any Product(s) under the Contract which have not, for whatsoever reasons, been assigned under this Clause 17.
- 17.4. The Freelance hereby warrants that there are no potential, threatened or actual claims by its agents or subcontractors in respect of patents or potential patents.

18. Confidentiality

- 18.1. Except to the extent required for the purposes of performing its obligations under the Contract, the Freelance will not use or make available at any time during or after the Contract to any third party any information relating to the business or affairs of the BBC or BBC Studios and Post Production which is disclosed or otherwise is in the Freelance's possession under or in respect of the Contract, including the Contract and its subject matter, except in relation to information which:
- 18.1.1. is or later comes into the public domain otherwise than through an act or omission of the Freelance; or
 - 18.1.2. was already known to the Freelance at the time of disclosure otherwise than by an unauthorised disclosure by a third party; or
 - 18.1.3. disclosure is required by law, order of court, the requirements of any regulatory authority or taxation authority or the rules of any stock exchange; or
 - 18.1.4. the Freelance has the prior written consent of BBC Studios and Post Production to do so.

18.2. Notwithstanding Clause 18.1, the Freelance can disclose information to its professional advisors, agents and sub-contractors solely on a need-to-know basis provided that the Freelance procures that the person to whom such disclosure is made complies with the obligations under this Clause 18 as if they were a party to the Contract.

19. Termination

BBC Studios and Post Production may at any time by notice in writing terminate the Contract with immediate effect if:

19.1. the Freelance commits any breach of any of the provisions of the Contract and:

19.1.1. the breach is capable of remedy and the Freelance has failed to remedy the breach within 7 days (or such shorter period as may be reasonable) of receipt of a notice specifying the breach and requiring its remedy (in which case BBC Studios and Post Production reserves the right to remedy the breach and recover the costs thereof from the Freelance and terminate the Contract in accordance with this Clause 19; or

19.1.2. the breach is not capable of remedy; or

19.1.3. the breach is a material breach or a breach of a material term;

19.2. the continued performance thereof is prevented by reason of any event beyond the reasonable control of BBC Studios and Post Production or the Freelance (any such occurrence being deemed an event of force majeure); or

19.3. if the Freelance delays in providing the Product(s) and/or Services or notifies BBC Studios and Post Production that they are likely to be so delayed, or BBC Studios and Post Production reasonably believes the Freelance will be so delayed.

19.4. there is in BBC Studios and Post Production's opinion a financial, editorial or other substantial reason and in such event the BBC Studios and Post Production's liability to the Freelance shall be limited to:

19.4.1. payment of such sums as may be due to the Freelance up to and including the date of termination; and

19.4.2. payment of a sum equivalent to two weeks Fee or payment up to the end of the Contract Period whichever is the lesser provided that BBC Studios and Post Production shall be entitled to offset such sum against sums due to the Freelance under any subsequent contract with the Freelance for any period coinciding with the Contract Period in this Contract.

20. Consequences of Termination

20.1. Termination of the Contract howsoever arising shall:

20.1.1. subject to Clause 19.4 not in itself give rise to a claim by the Freelance for damages or otherwise beyond a claim for payment due under the Contract up to and including the date of termination; or

20.1.2. 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 4, 5.3, 6, 9, 12, 18, 19.4, 22, 23, 24 and 26, shall survive termination of the Contract.

20.2. Upon termination of the Contract for whatever reason the Freelance shall promptly deliver up to BBC Studios and Post Production at the Freelance's own risk and expense the whole or any part of any Product(s) owned by the BBC or BBC Studios and Post Production pursuant to Clause 12.2 hereof and any BBC or BBC Studios and Post Production

equipment/materials, identity cards or entry permits provided or used under the Contract. BBC Studios and Post Production shall be deemed to have irrevocably all powers and authority to enter the Freelance's premises or any other premises to recover and remove such items and recover the costs thereof from the Freelance.

21. Equal Opportunities Requirements

The Freelance shall:

- 21.1. comply with all current relevant anti-discriminatory legislation (including without limitation race relations, equal pay, fair employment, disabled persons employment and minimum wage legislation);
- 21.2. comply with BBC Studios and Post Production's equal opportunities policy, details of which BBC Studios and Post Production shall provide to the Freelance when engaging personnel on behalf of BBC Studios and Post Production in performance of the Contract; and
- 21.3. 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).

22. Information Provision

- 22.1. If requested by BBC Studios and Post Production, the Freelance shall provide evidence of compliance with any of the Freelance's obligations under the Contract including, without limitation, in connection with the measures set out under Clause 22.2.
- 22.2. To ensure that the Product(s) and/or Services achieve the level of service required by BBC Studios and Post Production, where appropriate BBC Studios and Post Production may stipulate a range of measures by which the Freelance's performance can be assessed.

23. Assignment/Sub-Contractors

- 23.1. The Freelance shall not without the prior consent of BBC Studios and Post Production assign or sub-contract any of its rights or obligations under the Contract to any third party.
- 23.2. Where the Freelance engages, with BBC Studios and Post Production consent, a sub-contractor for work involving aircraft (including helicopters, balloons, model aircraft, parachutes); armourers; asbestos; diving; explosives, pyrotechnics and fire effects; flying ballet; hydraulic hoist contractors; lasers; location lighting; scaffolding and similar structures; specialised rigging and wiremen; smoke effects and stunt artists the Freelance shall:
 - 23.2.1. only use those sub-contractors pre-vetted by the BBC or BBC Studios and Post Production for that purpose, a list of which the BBC Studios and Post Production shall provide to the Freelance on request.
 - 23.2.2. obtain a written risk assessment from the sub-contractor and incorporate such assessment in the Freelance's own risk assessment referred to in Clause 9.4.2.
- 23.3. BBC Studios and Post Production reserves the right to vary the kinds of work for which it requires sub-contractors pre-vetted by the BBC or BBC Studios and Post Production and shall notify the Freelance accordingly and/or to require the use of such pre-vetted sub-contractors for the provision of Product(s) and/or Services outside the UK and/or to require the Freelance to comply with any procedure in addition to or in substitution for the use of such sub-contractors
- 23.4. Notwithstanding that all liability for any sub-contractor rests with the Freelance where a sub-contractor is engaged by the Freelance in accordance with Clause 23.1 the Freelance shall ensure that the sub-contractor shall be subject to the same obligations as the Freelance is subject to under the Contract and the Freelance shall do all things necessary

to ensure that the sub-contractor complies with these, including if requested obtaining an undertaking from the sub-contractor in favour of BBC Studios and Post Production binding the sub-contractor to comply with the Contract and giving the sub-contractor all relevant information provided to the Freelance by BBC Studios and Post Production.

24. Data Protection

24.1. The Freelance shall comply in all respects with all current data protection legislation including the Data Protection Act 1998 (the "Act");

24.2. If in the reasonable opinion of BBC Studios and Post Production, as a result of entering into the Contract the Freelance becomes a Data Processor and BBC Studios and Post Production a Data Controller as defined in the Act, then the Freelance shall:

24.2.1. process personal data (as defined in the Act) in accordance with the eight Data Protection Principles and, in particular, in order to comply with the Seventh Data Protection Principle, shall, and shall procure that the Freelance's sub-contractors and any other person within the control of the Freelance, shall:

24.2.1.1. process personal data only in accordance with instructions from BBC Studios and Post Production;

24.2.1.2. take reasonable steps to ensure the reliability of any employees who have access to personal data;

24.2.1.3. take such technical and organisational security measures against unauthorised and unlawful processing of, accidental loss of, destruction of or damage to, 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 data to be protected;

24.2.1.4. grant to BBC Studios and Post Production such access as is reasonably necessary to enable BBC Studios and Post Production to verify the Freelance is performing its obligations under this Clause 24; and

24.2.2. where applicable, comply with the provisions of the Telecommunications (Data Protection and Privacy) Regulations 1999 regarding unsolicited direct marketing.

24.3. If the Product(s) or the Services contain personal data governed by the Data Protection Acts 1984 and/or 1998 then the Freelance warrants that such data was obtained by the Freelance and is supplied to BBC Studios and Post Production in compliance with those Acts and the Telecommunications (Data Protection and Privacy) Regulations 1999.

25. Disability Discrimination

25.1. Where the Freelance provides Product(s) and/or Services 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 Freelance, with respect to the Product(s) and/or Services:

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

25.1.2. warrants that the Product(s) and/or Services shall comply with the 1995 Act at no additional expense to disabled persons or BBC Studios and Post Production; and

25.1.3. shall indemnify BBC Studios and Post Production against all claims, demands, costs and expenses including legal costs, losses and liabilities incurred by BBC Studios and Post Production as a result of the Freelance's breach of this warranty.

26. General

- 26.1. Unless and until specified otherwise in writing 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 prepaid first class post, or by e-mail which has been received, as evidenced by the receipt by the sender of a read receipt or other acknowledgement, to BBC Studios and Post Production or the Freelance at the addresses 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.
- 26.2. The failure of either party to exercise or enforce any right conferred upon them 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.
- 26.3. Nothing in the Contract shall be deemed to constitute an employment relationship, or either party as the agent of the other or create a partnership or joint venture between the parties and save as expressly agreed in Purchase Documentation the Freelance shall have no power to bind BBC Studios and Post Production or to contract in the name of or create a liability against BBC Studios and Post Production in any matter whatsoever.
- 26.4. Any amendment or variation to the Contract shall be made by prior written agreement between the parties.
- 26.5. The unenforceability of any single provision of the Contract shall not affect any other provision thereof. Where 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.
- 26.6. 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.
- 26.7. This Contract does not create or confer any right under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.
- 26.8. Without prejudice to the rights of either party in respect of 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.
- 26.9. This Contract shall be governed in accordance with English law. It is irrevocably agreed for the exclusive benefit of BBC Studios and Post Production 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 26 shall limit the right of BBC Studios and Post Production to take Proceedings against the Freelance in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking of Proceedings in any other jurisdiction, whether concurrently or not.