

# **BBC Studios and Post Production Limited**

## **Terms of Trade for the supply of goods, facilities and services**

### **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; "BBC Premises" means any premises being owned or occupied by the BBC; "BBC Studios and Post Production Premises" means any premises being owned or occupied by BBC Studios and Post Production; "Contract" means these terms of trade and the Contract Document; "Contract Document" means the BBC Studios and Post Production contract top sheet detailing the Deliverables and detailing the Customer, the Goods, the Services, the Facilities, the Contract Price, the Contract Period and any Special Conditions; "Contract Period" means, subject to Clause 23, the period specified in the Contract Document; "Contract Price" means the amount payable by the Customer to BBC Studios and Post Production as specified in the Contract Document; "Customer" shall be the organisation or individual as specified in the Contract Document to whom BBC Studios and Post Production is supplying the Deliverables and shall be where relevant deemed to include all of its offices, employees, sub-contractors and/or agents, engaged in anyway in the Contract; "Customer's Premises" means any premises being owned or occupied by the Customer; "Deliverables" means any or all of the Goods, Facilities and/or Services; "Facilities" means those parts of BBC and/or BBC Studios and Post Production Premises made available to the Customer pursuant to the Contract; "Goods" means any item(s), including without limitation software and digital codes to be manufactured and/or provided by BBC Studios and Post Production pursuant to the Contract; "Dry Hire" means Goods hired to the Customer, not under the control of BBC Studios and Post Production; "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; "Safety Requirements" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy; "Services" means the services of personnel (of whatsoever nature) supplied by BBC Studios and Post Production pursuant to the Contract; "Special Conditions" means any amendments or additional conditions specified in the Contract Document which shall take precedence over these terms of trade; "Material" means any good or material provided by the Customer to BBC Studios and Post Production in connection with this Agreement.

### **2. BBC Studios and Post Production Offer**

All bookings made by the Customer for any BBC Studios and Post Production Deliverables will be subject to a written offer made by BBC Studios and Post Production. The offer is quoted exclusive of VAT (which, if applicable, shall be applied at the appropriate rate) and is in good faith based on current costs. Written acceptance of the offer is deemed to be an order for the Deliverables which shall immediately become binding upon the parties and shall in all respects be subject to the Contract.

### **3. Prevailing Contract**

The Contract shall prevail at all times to the exclusion of all other terms and conditions including any terms and conditions which the Customer may purport to apply except as otherwise agreed in accordance with Clause 31.

#### **4. Contract Price/Payment**

(1) In consideration of the Deliverables supplied under the Contract the Customer shall pay to the BBC the Contract Price exclusive of VAT (which, if applicable, shall be applied at the appropriate rate) subject to and in accordance with this Clause 4.

(2) BBC Studios and Post Production shall submit an invoice to the Customer for payment due at the address as specified in the Contract Document quoting the relevant Contract Document number and the Customer shall remit full payment due within thirty (30) days of date of invoice.

(3) In the event that the Customer fails to make payment by the due date BBC Studios and Post Production shall, without prejudice to its other rights under the Contract (including but not limited to those set out in Clause 23) or otherwise, at law or in equity be entitled to:

(a) charge the Customer interest from the date specified for payment of the principal sum described in Clause 4(2) upon the outstanding amount at such rate as BBC Studios and Post Production may decide but which in any event shall not exceed 5% per annum above the BBC's principal banker's normal base rate from time to time accruing daily until payment of the principal sum is paid in full.

(b) require payment in advance for the continued performance of the Contract without incurring any liability whatsoever to the Customer;

(c) refuse to further perform the Contract without incurring any liability whatsoever to the Customer;

(d) suspend further performance of the Contract until the Customer has supplied a satisfactory credit reference or bank guarantee;

(e) be reimbursed by the Customer for all costs and expenses incurred in the collection of any overdue amount.

#### **5. Cancellation**

(1) Subject always to the other provisions of the Contract, if the Customer wishes to cancel the Contract it shall provide written notification thereof and BBC Studios and Post Production reserves the right at all times to make a cancellation charge(s) as specified in the Contract Document.

(2) Notwithstanding the provisions of Clause 5(1) in the event of a cancellation of the Contract the Customer shall in addition remain liable to repay BBC Studios and Post Production all monies committed or incurred by BBC Studios and Post Production as a result of the Contract.

#### **6. Expenses**

Where the Contract Price does not include travel and subsistence expenses BBC Studios and Post Production shall be entitled to reimbursement of all such reasonable expenses required to be made by any person engaged by BBC Studios and Post Production for the performance of the Contract. The level of such expenses shall be at current BBC Studios and Post Production rates or where appropriate at actual cost (net of recoverable VAT) and all payments made by the Customer to BBC Studios and Post Production shall have VAT applied at the appropriate rate.

## **7. Supply of Goods, Facilities and/or Services**

(1) BBC Studios and Post Production shall use its reasonable endeavours to supply the Customer with Deliverables of such a standard as to enable BBC Studios and Post Production to service adequately the requirements of the Customer.

(2) Subject to Clause 7(1) BBC Studios and Post Production shall use its reasonable endeavours to remedy, free of charge, any material defect in the Goods and/or Facilities which becomes apparent up to twelve months or such other period as may be agreed from the date the Customer has beneficial use thereof (the "Warranty Period") provided that:

(a) such defects are notified to BBC Studios and Post Production within a reasonable time of such defect becoming apparent to the Customer;

(b) BBC Studios and Post Production is permitted to make a full examination of the alleged defects;

(c) the defect did not occur as a result of misuse, neglect, alteration, modification, mishandling or unauthorised adjustment by any person other than BBC Studios and Post Production personnel;

(d) the Customer undertakes to install free of charge to BBC Studios and Post Production (if applicable) small replacement parts supplied by BBC Studios and Post Production;

(e) the defect did not arise out of any information, design specification or materials supplied by the Customer;

(f) non payment by the Customer of any outstanding amount due under the Contract shall automatically cancel any Warranty Period.

(3) Where Services are supplied any equipment supplied to perform the Services shall only be operated by BBC Studios and Post Production personnel unless otherwise agreed between the parties.

(4) If requested by the Customer, BBC Studios and Post Production shall within a reasonable time provide to the Customer any information as may be reasonably required for the purpose of the Contract as agreed between the parties.

## **8. Additional Goods, Facilities and/or Services**

In the event that the Customer requires any goods, facilities and/or services in addition to the Goods, Facilities and/or Services supplied pursuant to the Contract, upon prior notice by the

Customer to BBC Studios and Post Production thereof, BBC Studios and Post Production shall use its reasonable endeavours subject always to its other commitments to provide such additional goods, facilities and/or services but shall be under no obligation. Payment therefor shall be negotiated at the time BBC Studios and Post Production agrees to such supply and shall be in all respects subject to the Contract. Details of any costs relating thereto shall be agreed between the parties prior to the charges being incurred.

## **9. Health, Safety and Fire**

(1) The Customer shall at all times comply with all Safety Requirements including but not limited to those issued by the Health & Safety Commission and Executive, the Home Office and those BBC and BBC Studios and Post Production Safety Requirements notified orally or in writing to the Customer.

(2) BBC Studios and Post Production and the Customer may agree Safety Requirements in addition to or different from those specified in Clause 9(1).

(3) The Customer shall:

(a) assess 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 reasonable request, and 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;

(b) 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) that may affect BBC Studios and Post Production arising out of or in any way connected with the performance of the Contract are eliminated or adequately controlled;

(c) consult with BBC Studios and Post Production on the procedures to be followed in the event of serious and imminent danger to any persons that may affect BBC Studios and Post Production arising out of or in any way connected with the performance of the Contract and shall comply therewith.

(4) BBC Studios and Post Production shall notify the Customer of all risks to health and safety which are reasonably foreseeable to BBC Studios and Post Production and which may affect the Customer or the BBC arising out of or in anyway connected with the performance of the Contract and the Customer shall have due regard to these.

(5) Where the health, safety and fire requirements of the Contract are additional to or differ from those as specified in Clause 9(1), BBC Studios and Post Production and the Customer shall agree such requirements and shall exchange such information as is necessary for that purpose (and they shall acknowledge receipt thereof in writing). BBC Studios and Post Production and the Customer shall at all times comply with such requirements as agreed hereunder.

## **10. Usage of Deliverables**

(1) Subject always to Clause 7(3), the Customer shall ensure that any person engaged by it to carry out any duties in connection with the Deliverables:

(a) is competent for such duties (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 Customer whilst discharging its obligations under the Contract,

(b) hold any necessary licence, permit and/or certificate required by law relating to such duties.

(2) The Customer shall use the Deliverables only for the purpose as specified in the Contract Document and for no other purpose.

(3) The Customer shall promptly inform BBC Studios and Post Production of all relevant facts relating to the use of the Deliverables and shall within a reasonable time provide all such information as BBC Studios and Post Production may reasonably require to execute the Contract.

(4) The Customer warrants that all information provided by it to BBC Studios and Post Production under the Contract shall be accurate in all material respects and that the Customer is entitled to provide the information without recourse to any third party or that such third party approval has been obtained.

(5) The Customer shall not use the Goods and/or Facilities in any hazardous manner or at any location or in any manner other than as agreed with BBC Studios and Post Production.

(6) Subject to Clause 10(8), the Customer shall at all times keep the Goods and/or Facilities supplied under the Contract in good condition.

(7) The Goods and/or Facilities are supplied at the Customer's own risk and the Customer shall be liable to BBC Studios and Post Production for any loss thereof or damage thereto (otherwise than in consequence of any negligence on the part of BBC Studios and Post Production) and the Customer shall notify BBC Studios and Post Production promptly of any such loss or damage.

(8) The Customer shall not carry out any repair to or replacement of the Goods without the prior consent of BBC Studios and Post Production. The cost of any repair or replacement by BBC Studios and Post Production shall be paid by the Customer.

(9) The Customer shall not make any alteration(s) or addition(s) to the Goods and/or Facilities without the prior consent of BBC Studios and Post Production. Where BBC Studios and Post Production so consents the Customer shall ensure that any such alteration(s) or addition(s) is of a temporary nature and the Customer shall be responsible for restoring the Goods and/or Facilities to their original condition where applicable at the end of each periodic use thereof (as agreed with BBC Studios and Post Production) and either upon expiry of the Contract Period or upon termination of the Contract, whichever is the earlier. Where the restoration has not been made to the satisfaction of BBC Studios and Post Production the cost of any further restoration by BBC Studios and Post Production shall be paid by the Customer.

(10) BBC Studios and Post Production reserves the right to be present at any premises where the Deliverables are being supplied at all times.

(11) The Customer shall allow BBC Studios and Post Production full and convenient access at all reasonable times to the Customer's Premises or such other premises as required by BBC Studios and Post Production for the purpose of carrying out the Contract.

(12) The Customer shall not take the Goods and/or Services outside the United Kingdom without the prior consent of BBC Studios and Post Production. Where BBC Studios and Post Production so consents the Customer shall within a reasonable time obtain all necessary import permits and export licences if appropriate, licences and customs clearances and any other permissions whatsoever as required for the Goods and/or Services and the Customer shall pay all customs and import duties and any other costs associated with the performance of its obligations under this sub-clause.

(13) Where applicable at the end of each periodic use of the Deliverables (as agreed with BBC Studios and Post Production) and either upon expiry of the Contract Period or upon termination of the Contract, whichever is the earlier, the Customer shall:

(a) leave the Goods and/or Facilities in good condition;

(b) in respect of any property of the Customer remove from BBC and/or BBC Studios and Post Production Premises all such property and in default BBC Studios and Post Production shall be entitled to either arrange for transportation of such property to the Customer (and the provisions contained in Clause 13(2) shall apply in respect thereto) or subject to giving the Customer a reasonable period of notice dispose of such property as BBC Studios and Post Production sees fit. BBC Studios and Post Production shall be entitled to recover from the Customer all costs relating to the transportation or disposal of such property and in the case of the latter shall be entitled to retain any portion of any proceeds of sale for that purpose;

(c) promptly vacate the Facilities and/or cease using the Goods and/or Services and where applicable return the Goods to BBC Studios and Post Production (and the provisions contained in Clause 14(1) and (2) shall apply in respect thereto). If any part of the Goods or Facilities is not returned BBC Studios and Post Production reserves the right to make further charges to the Customer whilst the Goods or Facilities are inoperative. In the event that the Customer shall fail to comply with this Clause 10(13)(c) BBC Studios and Post Production shall be deemed to have irrevocably all reasonable powers and authority to do all things or acts necessary or advisable to retake possession of the Deliverables and shall be entitled to recover from the Customer all costs relating thereto.

(14) Any equipment supplied by the Customer that is to be used by BBC Studios and Post Production whether at BBC Premises, BBC Studios and Post Production Premises or otherwise shall remain at the Customer's own risk and expense and BBC Studios and Post Production shall not assume any responsibility for such equipment.

(15) Where the Contract includes the secondment of BBC Studios and Post Production personnel (of whatsoever nature) to the Customer, they shall be subject to the direction, control and

management of the Customer. The Customer shall be responsible for all tasks performed by such persons and BBC Studios and Post Production shall not be liable to the Customer for any works which are performed by them.

(16) The Customer shall at its own expense make available for the use by BBC Studios and Post Production for purposes of the Contract such supplies of electricity, water, gas, air and other services as agreed between the parties.

(17) Where the Customer is to use any Goods and/or Customer's property on BBC Premises or BBC Studios and Post Production Premises upon prior notification by the Customer the BBC shall use its reasonable endeavours to provide a secure area(s) for the Goods and such property as agreed between the parties. The secure area(s) shall be provided at the Customer's own expense (where the cost thereof is not included in the Contract Price) and BBC Studios and Post Production accepts no liability for the Goods and such property whilst in the secure area(s) other than in consequence of any negligence on the part of BBC Studios and Post Production.

(18) Where the Customer requires the use of any Services away from BBC Premises or BBC Studios and Post Production Premises the Customer shall use its reasonable endeavours to provide a secure area(s) for any BBC or BBC Studios and Post Production property as agreed between the parties. The secure area(s) shall be provided at the Customer's own expense (where the cost thereof is not included in the Contract Price) and BBC Studios and Post Production accepts no liability for such property whilst in the secure area(s) other than in consequence of any negligence on the part of BBC Studios and Post Production.

(19) The Customer shall not move or otherwise interfere with any BBC or BBC Studios and Post Production property unless specifically authorised by BBC Studios and Post Production to do so.

## **11. Security/Access/Inspection**

Where the Contract requires the Customer to attend at BBC Premises or BBC Studios and Post Production Premises:

(a) the Customer shall provide to BBC Studios and Post Production a list of all its personnel and/or agents who will be attending at BBC Premises or BBC Studios and Post Production Premises 48 hours in advance of access being required or as soon as practical and shall update the list as necessary. Such persons shall be given entry permission or issued with a BBC Studios and Post Production identification (as determined by BBC Studios and Post Production) and where identity cards or entry permits are issued they shall be displayed by such persons whilst on BBC Premises or BBC Studios and Post Production Premises and shall be returned to BBC Studios and Post Production either upon expiry of the Contract Period or when no longer required by such persons or upon termination of the Contract, whichever is the earlier. The identification issued remains the property of BBC Studios and Post Production;

(b) BBC Studios and Post Production may request and shall be supplied with identification of any person engaged by the Customer whilst on BBC Premises or BBC Studios and Post Production Premises and conduct random security checks including checking the Customer's and/or any such

person's possessions and vehicle(s) whilst on BBC Premises or BBC Studios and Post Production Premises;

(c) BBC Studios and Post Production shall at its discretion give to the Customer by prior agreement such access to BBC Premises or BBC Studios and Post Production Premises and such general facilities (for example, catering and sanitary) at the BBC Premises or BBC Studios and Post Production Premises as the Customer may reasonably require to fulfil its duties. However the BBC may refuse admission to, or remove from BBC Premises or BBC Studios and Post Production Premises any person whom BBC Studios and Post Production deems unacceptable for whatsoever reason other than solely to frustrate the Contract.

(d) BBC Studios and Post Production may refuse permission for the Customer to bring on to BBC Premises or BBC Studios and Post Production Premises property not essential for the Customer's use of the Deliverables.

## **12. Visitors to BBC Premises or BBC Studios and Post Production Premises**

Where the Customer requires any members of the public (including but not limited to invited guests or visitors) to attend at BBC Premises or BBC Studios and Post Production Premises the Customer shall:

(a) ensure that any such persons comply with such rules, regulations and directions that are notified to them by BBC Studios and Post Production;

(b) not permit or allow any such persons to attend at BBC Premises or BBC Studios and Post Production Premises without the prior written consent of BBC Studios and Post Production and such consent maybe granted by BBC Studios and Post Production upon certain conditions;

(c) take full responsibility for any such persons and shall indemnify BBC Studios and Post Production from and against any loss, damage, liability or expense caused by any such person.

## **13. Delivery of Goods**

(1) Where the Goods are being supplied to the Customer away from BBC Studios and Post Production Premises:

(a) the delivery instructions shall be as specified in the Contract Document;

(b) they shall be supplied at the Customer's own expense;

(c) the risk in the Goods shall pass to the Customer at the time of despatch from BBC Studios and Post Production Premises or any other premises from where they were despatched to the Customer.

(2) In respect of any property of the Customer which BBC Studios and Post Production transports on behalf of the Customer such transportation shall be carried out at the Customer's own risk and expense and insurance responsibility.

#### **14. Title in Goods and/or Facilities**

(1) Where the Contract consists of the hiring out or leasing of any Goods and/or Facilities, they shall remain at all times the sole and exclusive property of BBC Studios and Post Production and the Customer shall not sell assign let pledge mortgage charge encumber or part with possession of or otherwise deal with the Goods and/or Facilities or any interest therein or create or allow to be created any lien thereon and BBC Studios and Post Production may terminate the Contract with immediate effect upon written notice in the event of the Customer making any attempt to do so.

(2) Where the Contract consists of the sale of any Goods, title shall pass from BBC Studios and Post Production to the Customer when the Contract Price and any monies outstanding from the Customer to BBC Studios and Post Production are paid in full. Notwithstanding that title to the Goods has not passed under this Clause 14 (2) BBC Studios and Post Production shall be entitled to sue for the Contract Price and any other monies outstanding once payment thereof has become due.

#### **15. Intellectual Property Rights**

(1) All IPR's arising from the performance of the Contract shall vest in and be owned by the Customer. For the avoidance of doubt, no assignment of any Pre-existing IPR will be assigned under this Contract. "Pre-existing IPR" means any IPR owned by BBC Studios and Post Production or the BBC at the commencement of this Contract.

(2) Subject to Clause 15(3), BBC Studios and Post Production shall, at its own expense, defend or at its option settle any actions brought against the Customer which consist of a claim that the sale, distribution or use of any Goods under the Contract infringes any IPR belonging to a third party and BBC Studios and Post Production shall be responsible for all costs and lawyers' fees involved and pay any damages finally awarded against the Customer in such action provided that the Customer promptly notifies BBC Studios and Post Production of such a claim, gives BBC Studios and Post Production express authority to proceed as contemplated by this sub-clause (2) and provides BBC Studios and Post Production with all available information and assistance as BBC Studios and Post Production may reasonably require.

(3) Where under the Contract the Customer provides BBC Studios and Post Production with material and/or information which is subject to copyright or third party IPR's or otherwise the Customer warrants that it has acquired, at the Customer's own expense, all necessary consents, permissions and/or clearances in the rights and shall hold BBC Studios and Post Production harmless in respect of the same.

#### **16. Indemnity**

The Customer shall indemnify BBC Studios and Post Production against all liabilities, claims, demands, damages, losses, costs and expenses (including legal costs) which may be incurred by or brought against BBC Studios and Post Production in respect of:

(a) injury to any person or loss of or damage to any property arising out of or in connection with the

use by the Customer of any Goods and/or Facilities and/or Services as a result of any negligent act or omission by the Customer;

(b) any breach of or non-compliance by the Customer of any of its obligations or warranties under the Contract;

(c) the Customer's negligence or wilful default;

(d) 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).

## **17. Liability**

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

(2) Subject to Clause 17(1) BBC Studios and Post Production shall only be liable to the Customer for accidental loss or damage caused by the negligence or default of BBC Studios and Post Production.

(3) In no circumstances shall BBC Studios and Post Production be liable for any loss of profits or any indirect or consequential loss of any nature whatsoever.

(4) In any event, and notwithstanding anything contained in the Contract, BBC Studios and Post Production's liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising by reason or in connection with this Contract (except in relation to death or personal injury) shall be limited to the Contract Price.

## **18. Insurance**

(1) The Customer shall arrange and maintain insurance throughout the Contract Period to cover its legal liabilities and the responsibilities imposed by the Contract including but not limited to Public liability insurance with a scope of cover appropriate to the Deliverables supplied under the Contract with an adequate indemnity limit which shall be no less than three million pounds sterling (£3,000,000) 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.

(2) Where the Customer engages a sub-contractor the Customer shall ensure that the insurance requirements as specified in Clause 18(1) extend as necessary to cover the liabilities and responsibilities of the sub-contractor under the Contract or that the sub-contractor holds its own insurance in accordance with Clause 18(1).

(3) The Customer shall provide to BBC Studios and Post Production prior to the commencement of the Contract Period satisfactory evidence of compliance with this Clause 18.

(4) Where the Contract consists of Dry Hire of Goods or Facilities;

(a) the Customer shall arrange and maintain adequate insurance in relation to the loss of or damage to any Goods or Facilities hired or loaned to the Customer by BBC Studios and Post Production.

(b) the Customer shall be responsible to BBC Studios and Post Production for the prompt repair or replacement (at BBC Studios and Post Production's option) of Goods or Facilities lost or damaged whilst in the charge and control of the Customer, other than to the extent that the loss or damage is caused by the BBC Studios and Post Production's breach of any of the provisions of the Contract or any other of its omissions.

(5) BBC Studios and Post Production shall not be liable for any consequential or indirect loss, including any loss of profits revenues and/or business, anticipated savings, whether or not in the contemplation of the parties at the time of entering into the Contract, incurred by the Customer 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 by BBC Studios and Post Production, and the Customer is advised to arrange and maintain insurance in respect of such loss.

#### **19. Warranties**

The Customer undertakes, warrants and represents that:

(1) Except as otherwise agreed prior to performance of the Contract, it shall obtain for BBC Studios and Post Production all necessary consents, permissions and/or clearances in third party rights (including IPR's) with respect to the Material.

(2) All Material is fit for the purpose for which it is supplied and, where relevant, is of satisfactory quality, good construction, suitable and sound material and adequate strength and has been tested prior to delivery.

#### **20. Force Majeure**

(1) Neither party shall be liable for any failure to fulfil its obligations under the Contract by reason of any event beyond its reasonable control including but not by way of limitation Acts of God, strikes, lockouts, war, riot, civil commotion, order or Act of Government (whether national or international), any such occurrence being deemed an event of force majeure.

(2) If either BBC Studios and Post Production or the Customer is prevented or delayed from or in performing any of its obligations under the Contract by an event of force majeure then that party shall be entitled by notice in writing to the other party given at any time during the subsistence of the event to suspend the Contract for the duration of the event. Where the party giving notice is unable to proceed with the Contract by reason of matters arising from the event for a reasonable period of time following notice of suspension then such party shall have the right to terminate the Contract with immediate effect in writing.

#### **21. BBC Studios and Post Production Authority**

The Customer shall comply with any directions given to it by any personnel or agent of BBC Studios and Post Production with regard to a matter within the competence of such person and the

Customer shall ensure that all its personnel and/or agents and any other person present at the instance of the Customer shall comply with such directions.

## **22. Compliance**

The Customer shall provide, if requested by BBC Studios and Post Production, evidence of compliance with any of its obligations under the Contract.

## **23. Termination**

(1) BBC Studios and Post Production shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract Period:

(a) the Customer shall fail to make any payment due under the Contract in full in accordance with Clause 4;

(b) the Customer shall commit or cause to be committed any breach of its obligations under the Contract and

(i) the breach is capable of remedy and the Customer fails to remedy the breach within 7 days (or such shorter period as may be reasonable) of receipt of a written notice to the Customer specifying the breach and requiring its remedy (in which case BBC Studios and Post Production may remedy the breach and recover the costs thereof from the Customer and terminate the Contract in accordance with this Clause 23; or

(ii) the breach is not capable of remedy; or

(iii) the breach is a material breach or a breach of a material term.

(c) the Customer 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 whether voluntary or compulsory, or if any order is made or a resolution is passed for the winding up of the Customer (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

(d) there is a change of control of the Customer. For the purposes of this paragraph (d) "control" means the ability to direct the affairs of the Customer whether by virtue of contract, ownership of shares or otherwise howsoever in relation to the subject matter of the Contract;

(e) BBC Studios and Post Production exercises its rights under Clause 14 (1); or

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

(2) The Customer shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract Period BBC Studios and Post Production shall commit or cause to be committed any breach of its obligations under the Contract provided that in the case of a breach capable of remedy the Customer shall have first given written notice to BBC Studios and Post

Production specifying the breach complained of and requiring the same to be remedied within a reasonable period of time from notification thereof and BBC Studios and Post Production shall have failed to comply therewith.

(3) Termination of the Contract howsoever arising shall be without prejudice to any rights accruing or already accrued to either party at the date of termination.

(4) Upon termination of the Contract for any cause whatsoever all sums accrued due to BBC Studios and Post Production under the Contract shall immediately become due and payable to BBC Studios and Post Production.

(5) The rights and obligations of either party arising under Clauses 14, 15, 16, 17, 20, 22, 23(5), 25, 27, 29 and 34 shall survive termination of the Contract.

#### **24. Assignment**

The Customer shall not without the prior written consent of BBC Studios and Post Production assign the benefit of the Contract in whole or in part or any of its obligations under the Contract.

#### **25. Good Faith/Outside Activities**

The Customer 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.

#### **26. Screen Credits/Advertising Material**

If requested by BBC Studios and Post Production, the Customer shall use its best endeavours to afford BBC Studios and Post Production a credit in the end roller credits of any programme(s) produced by the Customer utilising the Deliverables and in any associated advertising or other material.

#### **27. Information and Confidentiality**

(1) Except to the extent required for the purposes of performing its obligations under the Contract, the Customer 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 its possession under or in respect of the Contract, including this Contract and its subject matter except in relation to information which:

(a) is or later comes into the public domain otherwise than through an act or omission of the Customer; or

(b) was already known to the Customer at the time of disclosure otherwise by an unauthorised disclosure by a third party; or

(c) 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

(d) the Customer has the prior written consent of BBC Studios and Post Production to do so.

(2) Notwithstanding Clause 27 (1), the Customer may disclose information to its employees, professional advisors, agents and subcontractors solely on a need-to-know basis provided that the

Customer procures that the person to whom such disclosure is made complies with the obligations under this Clause 27 as if it were a party to the Contract.

## **28. Notices**

Any notice required to be given pursuant to the Contract shall be in writing and sent either by hand, prepaid recorded delivery, registered post, telefacsimile transmission or electronic mail to BBC Studios and Post Production or the Customer at the address as specified in the Contract Document and the notice shall be deemed to have been received by the addressee at the time of delivery (if by hand) or within seventy two (72) hours of posting or twenty four (24) hours if sent by telefacsimile transmission or electronic mail to the correct telefacsimile transmission number (with correct answerback) or correct electronic mail number of the addressee.

## **29. Waiver**

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. No waiver of any term or condition of the Contract shall operate as a waiver of another or constitute a continuing waiver.

## **30. No Agency, Partnership or Joint Venture**

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 Customer 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 other than as set out in the Contract.

## **31. Variation**

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

## **32. Severability**

The unenforceability of any single provision of the Contract shall not affect any other provision thereof.

## **33. Whole Contract**

The Contract and any appendices and any documents annexed thereto and/or 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.

## **34. Law**

The Contract shall be construed in accordance with the laws of England and Wales.