

The Commissioning Process Framework:

3. The Audio terms of trade for audio producers

- 3.1 The business framework set out below represents the terms of trade that will apply to the commissioning of Audio content from BBC Studios and independent producers from 1 April 2024. These terms will be implemented through the BBC's standard form of commissioning agreement, which is published on the commissioning website, and reviewed from time to time but not less than once every three years. If AudioUK believes that the BBC's standard form of agreement contains any terms which are inconsistent with the provisions of these terms of trade, AudioUK shall be entitled to raise such complaint with the BBC's nominated Commercial, Rights & Business Affairs representative, who shall discuss and agree with AudioUK any amendment to the BBC's standard agreement template that may be necessary to ensure consistency. Prior to making any substantive changes to the standard form agreement to be used for commissioning individual independent producers, the BBC will consult with AudioUK and will give good faith consideration to any comments raised by AudioUK to any proposed changes. For the avoidance of doubt, any change to the standard form of agreement which amounts to a change to the terms of trade set out below will only be made with the agreement of AudioUK.
- 3.2 The provisions outlined in paragraph 3.3 below describe the standard position the BBC will adopt in its commissioning agreements and the agreed price for a commission is based on buying the standard set of rights for that programme as set out in paragraph 3.5 below. However, it is acknowledged that (i) these provisions do not preclude the BBC and an individual producer from concluding an agreement covering a variation to these provisions should they both wish to do so; and (ii) when the BBC commissions a producer to make a programme based on a BBC Owned Format, the producer will be contracted using an appropriate form of agreement, the terms of which shall be agreed between the BBC and the producer in good faith.
- 3.3 Indicative tariff ranges, prices, and payment
- 3.3.1 The BBC will publish a tariff range of indicative prices applicable for different genres of audio content. The tariff will set out the range within which the BBC would expect the individual prices, described in paragraph 3.3.2 below, for specific programmes within that genre to fall. This is to enable independent producers to be clear about the BBC's funding commitment for each genre of audio content. The indicative tariff ranges will be reviewed annually, and will take into account any relevant factors which might reasonably impact on the prices paid.
- 3.3.2 The price the BBC is prepared to pay for a commission will be determined by reference to a number of key factors including:
- (i) The editorial brief for the commission as set out in the published commissioning guidelines/brief;
 - (ii) The expected budget of the programme, as against such guidelines/brief;
 - (iii) The level of any additional up-front third party investment for the project to enable the full editorial potential of the project to be realised, that is offered either to the producer or to the BBC ahead of any commissioning decision being finalised.
- 3.3.3 The price offered will recognise that the programme budget will include a reasonable and industry standard level of production fee in favour of the independent producer and will be inclusive of any applicable development funding that may have been paid by the BBC for the project.
- 3.3.4 New commissioning briefs from 1 April 2024 (and returning series) will contain an initial increase of 10% across speech content, to be maintained at that level as a minimum (not including inflationary increases that may apply in future years).

3.3.5 The BBC will pay the agreed price **70% on signature and 30% on full delivery**, or as otherwise mutually agreed between the independent producer and the BBC as part of the commercial negotiations for the project.

3.4 BBC licence period

The standard licence term granted to the BBC is **five years** from acceptance of full delivery of the programme, subject to any standard post-licence provisions set out in the standard form of agreement referred to above.

3.5 BBC uses and right to extend licence period

3.5.1 The Public Service Rights covered by the initial licence fee include:

- One Tier A Package; and
- Two Tier B Packages; and
- 5 years on demand on BBC Sounds (12 months for music commissioning).

3.5.2 If, within its licence period (which includes any extensions to the initial licence), the BBC wishes to acquire any of the following additional uses:

- One Tier B Package;
- unlimited transmissions on World Service Radio
- unlimited transmissions on Nations Radio

it may do so at any time for an additional payment to the independent producer of **5%** of the initial licence fee per use category above (plus any clearance costs, if applicable).

3.5.3 If the BBC wishes to extend its initial licence period it has the right to do so in return for the following payments:

- For non-returning programmes a payment of **10%** of the initial licence fee for an extension of five years (plus any clearance costs, if applicable), which covers the same uses as the initial licence fee.
- For returning programmes, the BBC has either:
 - (a) the right to renew once on the same basis as non-returning programmes, then an annual right to extend for 3% per year whilst the programme remains a returning programme, enabling all series to be co-terminus (with each further year extension covering 1 x Tier A and 1 year Sounds); or
 - (b) the right to renew on an annual basis (i.e. from year 6) for 3% per year on same basis as the annual basis outlined above.

Any extensions beyond those set out in this clause 3.5.3 shall be subject to mutual agreement.

3.6 Recommissioning right and options

3.6.1 From the first release by the BBC of the first episode of programme on any platform, the BBC has nine months in which to commission additional episodes or a further series of the programme (or 12 months from full delivery whichever is the earlier).

3.6.2 During the licence period the right to commission any Television Adaptation in the UK must be offered first to the BBC at any point, in accordance with the following steps:

- the producer notifies the relevant BBC commissioner(s) of its proposal or willingness to produce an audio visual adaption;
- the parties will then have a 90 day period of exclusive negotiation to be carried out in good faith with a view to the BBC commissioning the development and/or production of an adaptation;
- If the BBC refuses or fails to notify the producer that it has 'green lit' development and/or production of the adaptation within that period then:
 - provided the same proposal material has been offered to the BBC and in no lesser detail than would be offered to a third party; and
 - subject always to the BBC's recommissioning rights of the audio programme and an agreed holdback;

the independent producer can seek development and/or production finance and a commission of the audio-visual adaptation elsewhere, and, for the avoidance of doubt, the BBC shall not have the option to commission development and/or production of audio-visual adaptation(s) of further programmes.

3.7 Branding and attribution

Throughout the licence period, any exploitation of the commercial or distribution rights by the producer must carry BBC branding and attribution in approved form, unless otherwise agreed.

3.8 Commercial exploitation and exclusivity

3.8.1 The Producer retains the Commercial Distribution Rights in the programme and programme's Format, subject to:

- (i) No other party having the right to release the programme prior to the BBC, and BBC's exclusivity in the UK during the licence period for the BBC to deliver its audience promise, save for exploitation via download-to-own, which can take place following first release on a BBC platform;
- (ii) certain provisions to protect the value of the BBC's licence, reputation, and investment into the content and the content's brand (namely the ownership and control of programme strand brands, the attribution provisions and option periods as set out in these terms of trade); and
- (iii) the share of revenue payable to the BBC under paragraph 3.9 below.

3.8.2 The producer has the ability to opt in to the grant of certain Commercial Distribution Rights to BBC Studios at the point of commission. Where granted:

- Such rights will be exercised by BBC Studios based on BBC Studio's standard commercial terms which are contained within the BBC Studios Distribution General Terms available at the following url: <https://www.bbc.co.uk/commissioning/radio/documents/bbc-studios-audio-distribution-general-terms.pdf>
- It is acknowledged that, whilst the BBC Studios Distribution General terms are referred to in this Terms of Trade framework, they are not terms which have been negotiated with AudioUK.
- The producer will undertake clearances in accordance with the BBC's collective arrangements with the relevant trade unions and bodies or where not applicable, in accordance with standard industry practice such that no further payments are required to underlying rights holders or contributors for the exercise of these rights. Should the BBC renegotiate any of its collective arrangements with the relevant trade unions and bodies in a way that includes changes to the way that union/trade body members' contributions are currently (as of 1st April 2024) cleared and/or paid for, the BBC agrees to review the producer's clearance obligations under this paragraph in consultation with AudioUK.

3.8.3 Any release of the BBC's UK exclusivity during the licence period will be in accordance with a programme release policy published on the BBC's commissioning website which will reflect clarity and quality of experience for audiences, prevailing market conditions and evolving BBC strategies, and which will be reviewed from time to time.

3.8.4 Where third party investment is available as envisaged under paragraph 3.3.2(iii) above, it is recognised that this will be in return for certain Commercial Distribution Rights which shall be negotiated as part of the agreement for such investment.

3.9 Share of revenue

Regardless of whether or not the producer appoints BBC Studios to exercise any Commercial Distribution Rights, the BBC and the producer will share revenue from commercial exploitation as follows:

- 3.9.1 The BBC (Public Service) will receive a **20%** share of gross revenue from the exploitation of the Commercial Distribution Rights regardless of the distributor.
- 3.9.2 Where the producer appoints BBC Studios to exploit the Commercial Distribution Rights, it will be in accordance with the opt in process set out as part of the standard template programme production agreement published here: <https://www.bbc.co.uk/commissioning/radio/documents/2024.07.01-audio-indie-ppa-special-terms-002.pdf>
- 3.9.3 Where the producer exploits the Derivative Rights in the programme, the BBC shall be entitled to receive a **25%** share of net revenue.
- 3.9.4 Where the producer exercises Television Adaptation rights, then:
- (a) where the BBC is the commissioner, the revenue share to the BBC shall be the share payable under the applicable commissioning agreement (it being acknowledged that the audio programme is deemed to be a 'qualifying pilot' under the terms of such commissioning agreement); and
 - (b) where a third party is the commissioner, the revenue share shall be **20%**.

10. Definitions

The defined terms used above are as follows:

BBC Owned Format: a **Format** which has been developed or acquired by the BBC prior to commissioning from or tendering to producer(s) and which is clearly identified to the producer in writing as a **BBC Owned Format**

BBC Public Service Rights: the irrevocable and royalty-free right to use the programme (or any part of it) in in any present or future medium in connection with any **BBC Public Service** carried out by the BBC in its normal course of business.

BBC Public Service: any service or activity now existing or developed in the future which is provided or carried out in the delivery of the BBC's obligations and responsibilities as set out under the BBC's Royal Charter and the BBC Agreement with the Secretary of State for Culture, Media and Sport (and any successor to or variations of such Charter & Agreement) by any means now existing or developed in the future and in accordance with the **BBC's Regulatory Framework**.

Commercial Distribution Rights: the right to exploit the finished Programme (or part thereof) throughout the world in order to generate revenue including but not limited to ad insertion, subscription models, audio publishing rights and content sales rights.

Derivative Rights: the right to exploit, or license a third party to exploit, derivative works based on and/or adapted from the **Format** or any element of the Programme including but not limited to live shows, books, translations, but excluding any Television Adaptation.

Format: the characteristics including without limitation any or all of the structure, set and/or setting, characters, character relationships, themes, narrative development, concepts, situations, rules, questions, contestants, prizes, catchphrases, transmission title and any other material factors which together comprise the distinctive elements of a programme.

Regulatory Framework: the BBC's Operating Framework and Operating Licences (as may be updated or replaced by the BBC's regulator(s) from time to time) and any related Policies and Guidance governing the BBC, which set out the conditions for the BBC's distribution of its services and content on or via third party platforms and which include but are not limited to:

- (i) Editorial Control - the BBC must retain editorial control of its content and its placement, including the ability to remove content from the platform should the BBC reasonably believe its required conditions will not be met;
- (ii) Branding & Attribution - users must be able to easily identify which content on a platform is provided by the BBC;
- (iii) Quality - users should be able to enjoy a high quality experience of BBC content and services; and
- (iv) Free Access - users should incur no incremental cost to access BBC content and services.

Television Adaptation: an audio-visual adaptation of the programme or its Format.

Tier A Package: either three transmissions on Radio 1, 2, 3, 4 or 5Live, or six Transmission Days on the Asian Network, Radio 1Xtra, 4 Extra or 6Music.

Tier B Package: either one transmission on Radio 1, 2, 3, 4 or 5Live or six Transmission Days on the Asian Network, Radio 1Xtra, 4 Extra and 6Music; provided that if the Programme was originally commissioned as a regional or Nations Programme and it is used for a network transmission, the BBC shall pay the Producer 10% (ten per cent) of the original Licence Fee to acquire the right to: (i) one transmission on Radio 1, 2, 3, 4 or 5Live; or (ii) ten Transmission Days on the Asian Network, Radio 1Xtra, 4 Extra and 6Music during the Licence Period of a Programme and any extensions.

Transmission Days: unlimited transmissions within the relevant channel's daily period of continuous transmission;