

1. Definitions

In the Contract the following terms shall have the following meanings unless the context otherwise requires:

"Background IPR" means any and all IPR owned by or used by either party to this Contract and which are or were developed independently of this Contract (whether before the Contract Period or otherwise) and which such party introduces to the other (intentionally or otherwise) for use in the performance of this Contract;

"BBC" means the BBC Entity specified in the Contract Documents as the supplier of Deliverables to the Customer and where no BBC Entity is so specified in the Contract Documents shall mean British Broadcasting Corporation of Broadcasting House, Portland Place, London W1A 1AA;

"BBC Entity" means the British Broadcasting Corporation or any BBC Subsidiary;

"BBC Group" means the British Broadcasting Corporation and the BBC Subsidiaries;

"BBC Premises" means any premises being owned, controlled or occupied by any BBC Entity;

"BBC Subsidiaries" means all entities that are members of the British Broadcasting Corporation's "group" and each of their "subsidiaries" (as such terms are defined in the Companies Act 2006);

"Contract" means these terms of trade and the Contract Documents;

"Contract Documents" means the BBC contract signature sheet and any other document detailing the Deliverables and detailing the Customer, the Goods, the Services, the Facilities, the Contract Price, and where appropriate the Contract Period and any Special Conditions;

"Contract Period" means, subject to Clause 23, the period specified in the Contract Documents;

"Contract Price" means the amount payable by the Customer to the BBC as specified in the Contract Documents;

"Customer" shall be the organisation or individual as specified in the Contract Documents to whom the BBC 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 Group" means the Customer and any other body corporate or other person which the Customer has control from time to time;

"Customer's Premises" means any premises being owned, controlled or occupied by the Customer or any member of the Customer's Group;

"Data Privacy Legislation" means the Data Protection Act 2018, the General Data Protection Regulation 2016/679 ("GDPR"), the GDPR as enacted by the United Kingdom ("UK GDPR"), the Privacy and Electronic Communications Regulations (EC Directive) 2003, and any legislation that repeals, replaces, supersedes or amends any such legislation relating to the processing of personal data and/or e-privacy;

"Deliverables" means any or all of the Goods, Facilities and/or Services to be supplied or used in the performance of the Contract;

"Deliverables Commencement Date" means the date on which the BBC or any member of the BBC Group or any of its or their subcontractors commences provision of all or part of the Deliverables pursuant to this Contract;

"Existing Deliverables Provider" means any person, firm, company or other entity (including, but not limited to, the Customer and any member of the Customer's Group or any subcontractors) that before the Deliverables Commencement Date performs services or activities that are fundamentally the same as the Deliverables or any part of the Deliverables;

"Facilities" means those parts of BBC Premises made available to the Customer pursuant to the Contract;

"Foreground IPR" means any and all IPR created in the performance of this Contract;

"Goods" means any item(s), including without limitation software and digital codes to be manufactured and/or provided by the BBC pursuant to the Contract, or in the case of Services the physical or other product(s) of the Services;

"IPR" means copyright and related rights, patents, rights to inventions, trade marks, trade names and domain names, registered design rights, design rights, topography rights, rights in databases, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including applications (or rights to apply) for, and renewals, reversions, revivals and extensions of such rights and all similar or equivalent rights or forms of protection, including any accrued rights of action, which subsist or will subsist now or in the future in any part of the world;

"IPR Claim" means any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) in relation to any of the BBC's Background IPR and/or Foreground IPR, used to provide the Deliverables to the Customer under this Contract;

"Liabilities" means any actions, awards, claims, compensation, costs (including legal costs), damages, losses, demands, expenses, liabilities, interest, fines, payments (including, by way of settlement), penalties or proceedings;

"Replacement Deliverables" means any services or activities which are fundamentally the same as any of the Deliverables and which the Customer receives in substitution for any of the Deliverables or any part thereof after termination, cessation or variation of the Deliverables or any part thereof;

"Safety and Environmental Requirements" means health, safety, fire and environmental requirements (whether legislative or otherwise), codes of practice, guidance and policy;

"Services" means any services of personnel (of whatsoever nature) supplied by the BBC pursuant to the Contract (which will include where appropriate any equipment/materials provided by the BBC to perform the Services) and any services reasonably or necessarily implied by reason of the scope of Services as well as those which are actually set out in the Contract itself;

"Special Conditions" means, subject to Clause 3(2), any amendments or additional conditions specified in the Contract Documents which shall take precedence over these terms of trade;

"Stock" means any good or material provided by the Customer to the BBC in connection with this Contract;

"Successor Contractor" means any person, firm, company or other entity (including, but not limited to, the Customer and any member of the Customer's Group or any subcontractors) that performs Replacement Deliverables;

"TUPE Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any legislation amending, modifying, extending, varying, superseding, replacing, substituting or consolidating it from time to time;

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 or in any other primary or secondary legislation applicable in all or part of the United Kingdom and any similar sales, consumption or turnover tax in addition to the foregoing elsewhere in the world;

"Working Day" means Monday to Friday (inclusive), excluding days on which the banks in England are generally not open for business.

2. BBC Offer

All bookings made by the Customer for any Deliverables will be subject to a written offer made by the BBC to the Customer upon the terms and conditions contained in the Contract. 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 by the Customer is deemed to be an order for the Deliverables upon the terms and conditions contained in the Contract which shall immediately become binding upon the parties.

3. Terms and Conditions of Contract

- (1) The Contract shall prevail at all times in relation to the order and supply of Deliverables to the entire exclusion of all other terms and conditions. Except as otherwise agreed in accordance with Clause 33, no terms or conditions endorsed upon, delivered with or contained in the Customer's order or booking, purchase order, specification or similar document will form part of the Contract and the Customer hereby waives irrevocably any right which it may otherwise have to rely on such terms and conditions.
- (2) Where the Special Conditions contain any additional provisions that conflict with these terms of trade or which amend these terms of trade, such provisions shall only take precedence over these terms of trade where they have been agreed in the Contract Documents and are expressly stated to take precedence.
- (3) To the extent that any obligations under the Contract have already been performed by either party prior to its execution, such obligations shall for all purposes be deemed to have been performed in accordance with and subject to the provisions of the Contract.

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) The BBC 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. Time for making payments shall be of the essence of the Contract.
- (3) In the event that the Customer fails to make payment by the due date the BBC 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 do any or all of the following:
 - (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 the BBC 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 or other form of security acceptable to the BBC;
 - (e) be reimbursed by the Customer for all costs and expenses incurred in the collection of any overdue amount; and/or

- (f) notify Customer that it may not use the Deliverables and/or any IPR as contemplated by Clause 15(4) unless and until the overdue payment is made in full to the BBC.

(4) If the cost to the BBC of performing its obligations under the Contract shall be increased either (i) due to a change in or insufficiency of Customer's instructions; (ii) by reason of any rise in the cost of labour, materials or transport; (iii) attributable to duties, taxes, exchange rates, bank or other financial handling charges; or (iv) the making after the date of signature of the Contract of any statutory and other regulations that shall affect the BBC in the performance of its obligations, the BBC reserves the right to add to the Contract Price the amount of any such increase and shall notify the Customer at the earliest reasonable opportunity.

(5) The BBC shall be entitled but not obliged at any time to set off any liability of the Customer to the BBC against any liability of the BBC to the Customer (in either case howsoever arising and whether any such liability is due and payable or will become due and payable at a later date, actual or contingent, liquidated or un-liquidated and irrespective of the currency of its denomination including sums paid under the Contract or any other contract between the BBC and the Customer). Exercise of the BBC of its rights under Clause 4(5) shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise, at law or in equity.

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 the BBC reserves the right at all times to make a cancellation charge(s) as specified in the Contract Documents.
- (2) Notwithstanding the provisions of Clause 5(1) in the event of a cancellation of the Contract the Customer shall in addition indemnify the BBC in full and on demand for all expenses and other monies committed or incurred by the BBC as a result of the Contract.

6. Expenses

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

7. Supply of Goods, Facilities and/or Services

(1) The BBC undertakes to deliver the Deliverables in accordance with the Contract in all material respects using reasonable care and skill. Delivery dates and times are estimates only and time shall not be of the essence for the provision of the Deliverables. The BBC reserves the right to amend the Deliverables if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Deliverables, and the BBC shall notify the Customer in any such event.

(2) To the extent that Goods are to be manufactured in accordance with a specification supplied by or on behalf of the Customer, the Customer shall indemnify the BBC against all liabilities, costs, expenses, damages and losses (including any legal and other professional costs and expenses) suffered or incurred by the BBC in connection with any claim made against the BBC for actual or alleged infringement of a third party's IPR arising out of or in connection with the BBC's use of the specification supplied by or on behalf of the Customer.

(3) The BBC warrants to the Customer that it shall supply the Services to the Customer in accordance with their description in the Contract in all material respects and that the Services will be provided using reasonable care and skill.

(4) The BBC warrants that on delivery in the case of Goods and from the date the Customer first has beneficial use of Facilities in the case of Facilities, and for a period of 12 months thereafter (the "**Warranty Period**"), the Goods and/or Facilities shall:

- (a) conform in all material respects with their description in the Contract;
 - (b) in the case of Goods only, be free from material defects in design, material and workmanship; and
 - (c) be fit for any purpose held out by the BBC,
- (the "**Warranty**").

(5) Subject to sub-clause (6) below the BBC shall, at its option, repair or replace/substitute the defective or non-conforming Goods and/or Facilities free of charge, or refund the Contract Price of the defective or non-conforming Goods and/or Facilities paid to date to the Customer in full provided that:

- (i) the fact that some or all of the Goods and/or Facilities do not comply with the Warranty is notified to the BBC in writing by the Customer within a reasonable time of discovery during the Warranty Period and such written notification shall include reasonable evidence from the Customer that the claimed defect or non-conformance is covered by the Warranty (such fact to remain subject to confirmation by the BBC);
- (ii) the BBC is permitted to make a full examination of the Goods and/or Facilities and the Customer (if asked to do so by the BBC) returns such Goods to the BBC's nominated BBC Premises at Customer's cost to facilitate such examination;
- (iii) the Customer undertakes to install free of charge to the BBC (if applicable) small replacement parts for the Goods supplied by the BBC; and

- (iv) the Customer is not in default of any of its payment obligations under the Contract at the time the Warranty notification is submitted to the BBC.
- (6) The BBC shall not be liable for the Goods' and/or Facilities failure to comply with the Warranty if:
 - (i) the Customer or any other person makes any further use of such Goods and/or Facilities after giving a notice to the BBC in accordance with Clause 7(5) without the prior written consent of the BBC;
 - (ii) the Goods and/or Facilities differ from their description in the Contract as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
 - (iii) the defect or non-conformance of the Goods and/or Facilities arises as a result of fair wear and tear or normal deterioration of the Goods and/or Facilities;
 - (iv) the defect or non-conformance of the Goods and/or Facilities arises as a result of misuse, neglect, alteration, modification, mishandling or unauthorised adjustment or modification (other than in accordance with the written directions of the BBC, including, without limitation, as to as to the storage, installation, commissioning, use, repair or maintenance of the Goods and/or Facilities) by any person other than BBC personnel;
 - (v) the defect or non-conformance of the Goods arises as a result of the BBC following any information, drawing, design or Goods specification supplied by or on behalf of the Customer;
 - (vi) in respect of the Warranty in Clause 7(4)(b) only, all or part of the Goods are not of the BBC's design or manufacture (as applicable); or
 - (vii) the Customer owes any outstanding amounts under the Contract which are overdue.
- (7) Any Goods and/or Facilities determined by the BBC to have "no fault found" under the Warranty shall result in the Customer being liable to the BBC for its costs associated with investigating the compliance of the Goods and/or Facilities with the Warranty (including, without limitation, the BBC's costs of testing, disassembling, re-assembling and returning the Goods to the Customer or visiting and inspecting or engaging a qualified third party to attend the Facilities).
- (8) In respect of Goods supplied under the Contract by the BBC which are excluded from the Warranty under Clause 7(6)(vi) the Customer shall be entitled only to the benefit of any manufacturer's warranty or guarantee the benefit of which the BBC is able to obtain and pass to the Customer.
- (9) Except as provided in this Clause 7 the BBC shall have no liability to the Customer in respect of the Goods' and/or Facilities failure to comply with the Warranty.
- (10) The warranties provided in this Clause 7 by the BBC are exclusive. All warranties, conditions and terms implied by law (whether by statute, common law or otherwise) (save for the conditions set out in section 12 of the Sale of Goods Act 1979 and sections 2, 7 and 13 of the Supply of Goods and Services Act 1982) are excluded from the Contract to the fullest extent permitted by law.
- (11) Where Services are supplied any equipment supplied to perform the Services shall only be operated by BBC personnel unless otherwise agreed between the parties.
- (12) The BBC shall supply the Deliverables subject to the condition that the BBC reserves the right at all times to withdraw the supply thereof where required by the BBC for financial, editorial or other substantial reason. In the event that the BBC exercises such right, then without prejudice to the provisions of sub-clauses 7(3), 7(4) and Clause 5, the BBC's liability shall be limited to the supply of alternative goods, facilities and/or services in substitution for the original Goods, Facilities and/or Services or an alternative contract period or date(s) in substitution for the original Contract Period and (if appropriate) a reasonable reduction in the Contract Price.
- (13) If requested by the Customer, the BBC 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.
- (14) If the BBC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - (a) without limiting or affecting any other right or remedy available to it, the BBC shall have the right to suspend performance of the Deliverables until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the BBC's performance of any of its obligations;
 - (b) the BBC shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the BBC's failure or delay to perform any of its obligations as set out in this Clause 7(14); and
 - (c) the Customer shall reimburse the BBC on written demand for any costs or losses sustained or incurred by the BBC arising directly or indirectly from the Customer Default.

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 the BBC thereof, the BBC 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 to do so. Payment therefor shall be negotiated at the time the BBC agrees to such supply and shall be in all respects subject to the Contract, with such amendments as may be agreed between the parties in accordance with Clause 33. Details of any costs relating thereto shall be agreed between the parties prior to the charges being incurred.

9. Health, Safety and Environmental and Fire

- (1) The Customer shall at all times comply with all Safety and Environmental Requirements including but not limited to those issued by the Health & Safety Commission and Executive, the Home Office and those BBC Safety and Environmental Requirements notified in writing to the Customer and those environmental requirements issued by the UK Government as enforced by the relevant UK Regulator.
- (2) The BBC and the Customer may agree Safety and Environmental Requirements in addition to or different from those specified in Clause 9(1).
- (3) Without prejudice to its obligations under Clause 9(1), the Customer shall:
 - (a) upon request at any time by the BBC, submit to and fully co-operate with any safety and environmental vetting process required by the BBC and provide a written statement of the Customer's own Safety and Environmental Requirements;
 - (b) assess reasonably foreseeable risks to health and safety (including fire) and the environment that may affect the BBC or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to the BBC upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with the BBC accordingly;
 - (c) fully co-operate with the BBC and any others as necessary to ensure that all reasonably foreseeable risks to health and safety (including fire) and the environment that may affect the BBC arising out of or in any way connected with the performance of the Contract are eliminated or adequately controlled;
 - (d) consult with the BBC, comply with the procedures to be followed and take all reasonable steps in the event of serious and imminent danger to any persons that may affect the BBC arising out of or in any way connected with the performance of the Contract; and
 - (e) consult with the BBC, comply with the procedures to be followed and take all reasonable steps in the event of a serious environmental incident arising out of or in any way connected with the performance of the Contract.
- (4) The BBC may notify the Customer of risks to health and safety and the environment which are reasonably foreseeable to the BBC and which may affect the Customer or the BBC arising out of or in any way connected with the performance of the Contract and, without prejudice to its obligations under Clauses 9(1) to 9(3) (inclusive), the Customer shall have due regard to these.
- (5) Where the health, safety and environmental and fire requirements of the Contract are additional to or differ from those as specified in sub-clause (1), the BBC 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). The BBC and the Customer shall at all times comply with such requirements as agreed hereunder.

10. Usage of Deliverables

- (1) The Customer shall ensure that any person employed or engaged by it to carry out any duties in connection with the Deliverables:
 - (a) is suitably competent and skilled 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 person in the Customer's industry, profession or trade whilst performing the obligations assigned to them under the Contract,
 - (b) holds and maintains any necessary licence, permit, consent and/or certificate required by law relating to such duties; and
 - (c) cooperates with the BBC in all matters related to the Deliverables.
- (2) The Customer shall use the Deliverables only for the purpose as specified in the Contract Document and for no other purpose and shall not be permitted to use Deliverables and/or any IPR as contemplated by Clause 15(4) where the BBC has put Customer on notice that it is in breach of its obligations under Clause 4 for so long as the breach remains unremedied by Customer.
- (3) The Customer shall promptly inform the BBC of all relevant facts relating to the use of the Deliverables and shall within a reasonable time provide all such information as the BBC may reasonably require to perform the Contract.
- (4) The Customer warrants that all information and/or materials provided by it to the BBC under or in connection with the Contract shall be complete and accurate in all material respects and that the Customer is entitled to provide it without restriction or obligation of confidentiality 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 in writing with the BBC.
- (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 the BBC for any loss thereof or damage thereto (otherwise than in consequence of any negligence on the part of the BBC) and the Customer shall notify the BBC promptly of any such loss or damage.

- (8) The Customer shall not carry out any repair to or replacement of the Goods/Facilities without the prior written consent of the BBC. The cost of any repair or replacement by the BBC 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 written consent of the BBC. Where the BBC 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 the BBC) 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 the BBC the cost of any further restoration by the BBC shall be paid by the Customer.
- (10) The BBC reserves the right to be present at any BBC Premises where the Deliverables are being supplied at all times.
- (11) The Customer shall allow the BBC full and convenient access at all reasonable times to the Customer's Premises or such other premises as required by the BBC 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 written consent of the BBC. Where the BBC so consents the Customer shall within a reasonable time obtain all necessary import permits, 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 the BBC) 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 Premises all such property and in default the BBC 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 the BBC sees fit. The BBC 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 the BBC (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 the BBC 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 sub-clause (c) the BBC 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 the BBC whether at BBC Premises or otherwise shall remain at the Customer's own risk and expense and the BBC shall not assume any responsibility for such equipment.
- (15) Where the Contract includes the secondment of BBC 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 the BBC 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 the BBC 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 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 the BBC 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 the BBC. BBC reserves the right to reclaim the storage area upon notification to the Customer.
- (18) Where the Customer requires the use of any Services away from BBC Premises the Customer shall use its reasonable endeavours to provide a secure area(s) for any BBC property or equipment 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 the BBC accepts no liability for such property whilst in the secure area(s) other than in consequence of any negligence on the part of the BBC.
- (19) The Customer shall not move or otherwise interfere with any BBC property unless specifically authorised by the BBC to do so.

11. Security/Access/Inspection

- (1) Where the Contract requires the Customer to attend at BBC Premises:
- (a) the Customer shall provide to the BBC a list of all its personnel and/or agents who will be attending at BBC Premises prior to the commencement of the Contract Period and shall update the list as necessary. Such persons shall be given entry permission or issued with a BBC identity cards or entry permits (as determined by the BBC) and where identity cards or entry permits are issued they shall be displayed by such persons whilst on BBC Premises and shall be returned to the BBC 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 the BBC;

- (b) the BBC may request and shall be supplied with identification of any person engaged by the Customer whilst on BBC 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;
 - (c) the BBC shall at its discretion give to the Customer by prior agreement such access to BBC Premises and such general BBC facilities (for example, catering and sanitary) at the BBC Premises as the Customer may reasonably require to fulfil its duties. However the BBC may refuse admission to, or remove from BBC Premises any person whom the BBC deems unacceptable for whatsoever reason other than solely to frustrate the Contract.
 - (d) the Customer shall only have access the BBC Premises for the duration of the Contract and shall only use the BBC Premises for the purposes permitted by the Contract;
 - (e) the Customer will not cause or permit any damage to BBC Premises;
 - (f) the Customer shall not obstruct any access ways in or at the BBC Premises nor cause the same to become dirty or untidy and shall not leave any rubbish on them;
 - (g) the Customer will not cause or permit any act or thing which may be or become a nuisance or inconvenience to the BBC or its tenants or other occupiers of BBC Premises or any adjoining or neighbouring premises;
 - (h) the Customer shall comply with the requirements or all statutes, regulations and bylaws which affect an occupier of the Facilities and will not do any act, matter or thing which would or might constitute a breach of any planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any competent authority;
 - (i) the Customer will observe such reasonable rules and regulations the BBC may make (including but not limited to security) and of which the BBC shall notify the Customer from time to time governing the Customer's use of the Facilities and/or BBC Premises;
 - (j) the Customer will not impede in any way the BBC's its servants or agents in the exercise of the BBC's rights of possession or control of the Facilities and/or BBC Premises and every part thereof;
 - (k) the BBC may refuse permission for the Customer to bring on to BBC Premises property not essential for the Customer's use of the Deliverables; and
 - (l) possession and control of the Facilities and/or BBC Premises shall at all times remain vested in the BBC and the Customer shall not have any estate or interest in them or in any part of them. It is not the intention of either the Customer or the BBC to create a relationship of landlord and tenant.
- (2) Subject to Clauses 7 and 17, the BBC gives no warranty or assurance as to the condition, safety or suitability of BBC Premises for the Customer's use or receipt of the Deliverables and, to the extent permitted by law, access to and use of BBC Premises is at the Customer's risk.

12. Visitors to BBC Premises

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

- (a) ensure that any such persons comply with such rules, regulations and directions that are notified to them by the BBC;
- (b) not permit or allow any such persons to attend at BBC Premises without the prior written consent of the BBC and such consent maybe granted by the BBC upon certain conditions;
- (c) take full responsibility for any such persons and shall indemnify the BBC on demand and keep the BBC indemnified from and against any loss (including any legal and other professional costs and expenses), damage, liability or expense caused by any such person; and
- (d) ensure that any such persons behave in a respectful and considerate manner appropriate for sharing space with other users and visitors of the BBC Premises and comply with BBC policies regarding the behaviour of individuals in BBC Premises and acknowledge that the BBC reserves the right to refuse access to such persons or remove such persons from BBC Premises who do not comply with the aforementioned BBC policies.

13. Delivery and inspection of Goods

- (1) Where the Goods are being supplied to the Customer away from BBC 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 Premises or any other premises from where they were despatched to the Customer.
- (2) In respect of any property of the Customer which the BBC transports on behalf of the Customer such transportation shall be carried out at the Customer's own risk and expense and insurance responsibility.
- (3) BBC shall use its reasonable endeavours to deliver the Goods by any stated or agreed delivery date(s), but shall not be liable for any loss howsoever arising in the event of late or non-delivery of Goods and/or any instalment due to any occurrence whatsoever beyond its control. Timely provision of the Deliverables is not of the essence of the Contract. The Customer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

- (4) BBC may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- (5) The Customer shall inspect the Goods immediately upon receipt and shall be deemed to have accepted the Goods as delivered unless the Customer notifies BBC within 3 (three) days following receipt of any Goods of any alleged material defects discovered on reasonable inspection. If so notified, BBC shall, at its option, repair or replace the defective Goods or refund the price in full if already paid by the Customer, subject to Clause 13(2), the conditions set out in Clause 7(5)(ii) to 7(5)(iv) and to the limitations on liability set out in Clause 7(6).
- (6) If the Customer is obliged to collect the Goods from BBC Premises or any other agreed premises, and the Customer has failed to collect the Goods by the expiry of the 7th (seventh) day following notification of readiness for despatch, BBC shall be entitled to treat the Contract as repudiated by the Customer. Until the Contract is so terminated BBC may, at its option, either store the Goods itself or have them stored by a third party on such terms as it in its absolute discretion thinks fit. Any reasonable storage and transportation costs will be added to the Contract Price and be payable by the Customer. If BBC elects to treat the Contract as repudiated, it shall be entitled to sell the Goods to an alternative buyer and retain the proceeds of such sale.
- (7) Prior to the passing of legal and beneficial ownership in the Goods to the Customer pursuant to Clause 14, the Customer's right to possession of the Goods shall terminate immediately at any time:
 - (a) if the Customer becomes insolvent;
 - (b) on the BBC giving the Customer notice that it has concerns regarding the financial standing of the Customer;
 - (c) if the Customer is in breach of any of its obligations under the Contract (including, without limitation, its payment obligations under Clause 4);
 - (d) if the Customer encumbers or in any way charges any of the Goods or makes attempts to do so as detailed in Clause 14(1); or
 - (e) if the Contract terminates.
- (8) The Customer grants the BBC, its agents, employees and sub-contractors an irrevocable licence to enter any Customer Premises or any other premises where the Goods are or may be stored prior to the passing of legal and beneficial ownership in the Goods to the Customer pursuant to Clause 14 in order to inspect them, or where the Customer's right to possession of the Goods has terminated, to recover the Goods.

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 the BBC 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 the BBC 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 the BBC to the Customer when the Contract Price and any monies outstanding from the Customer to the BBC are paid in full. Notwithstanding that title to the Goods has not passed under this Clause 14(2) the BBC shall be entitled to sue for the Contract Price and any other monies outstanding once payment thereof has become due.
- (3) Unless and until legal and beneficial title to the Goods has passed to the Customer, the Customer shall:
 - (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as BBC property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

15. Intellectual Property Rights

- (1) Nothing in this Contract shall affect ownership of Background IPR.
- (2) The Customer (where free to do so) hereby grants to the BBC a royalty-free, non-exclusive licence to use Background IPR owned by or licensed to the Customer, for the purpose of, and only to the extent necessary for, performing the BBC's obligations under this Contract.
- (3) The Customer hereby assigns to the BBC, by way of present assignment of present and future rights, absolutely and free from all charges, encumbrances and rights exercisable by third parties and, without prejudice to the foregoing, with full title guarantee, any and all of its rights, title and interest in the Foreground IPR (and warrants that all the Customer's relevant officers, employees and/or agents and any sub-contractor engaged by the Customer have assigned all their rights, title and interest in Foreground IPR to the Customer so as to allow such assignment to the BBC).
- (4) Provided that all monies owed to the BBC under this Contract have been paid in full and to the extent that:
 - (a) any Background IPR owned or introduced by the BBC; and/or
 - (b) any Foreground IPR,

is implemented in or otherwise required for the Customer to use and benefit from the Deliverables the BBC hereby grants to the Customer a royalty-free, non-exclusive licence to use such Background IPR and Foreground IPR for such purposes.

- (5) In the event of an IPR Claim against the Customer, the Customer shall:
- (a) promptly notify the BBC of the IPR Claim;
 - (b) not make any statement, act or omission which does or may prejudice any settlement negotiations related to, or defence of, the IPR Claim; and
 - (c) provide the BBC with all available information and assistance as the BBC may reasonably require.
- (6) The BBC shall, at its own discretion, decide what action to take including (without limitation) whether to (a) defend or settle any such IPR Claim brought against the Customer and (b) the Customer shall take such as the BBC may reasonably request in writing to avoid, dispute, mitigate, compromise or defend the IPR Claim.

16. Indemnity

The Customer shall indemnify the BBC on demand and keep indemnified the BBC and hold the BBC harmless from and against all liabilities, claims, demands, damages, losses, costs and expenses (including legal and other professional costs and expenses) which may result, be incurred by or brought against the BBC 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, Facilities and/or Services as a result of any negligent act or omission or wilful default by the Customer or in breach of, or non-compliance with, the Contract by the Customer;
- (b) any breach of or non-compliance by the Customer of any of its obligations, undertakings, representations or warranties under the Contract;
- (c) the Customer's negligence or wilful default; and/or
- (d) any claims from third parties made as a result of its acts or omissions (including relating to infringement of any IPR supplied by or on behalf of the Customer 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 or for fraud or fraudulent misrepresentation or in relation to any other liability which cannot be excluded or limited by applicable law.
- (2) Subject to Clauses 7, 17(1), 17(3) and 17(4) the BBC shall only be liable to the Customer for loss or damage caused by the negligence or wilful default of the BBC.
- (3) In no circumstances shall the BBC be liable for any consequential or indirect losses, loss of profits, revenues and/or business, anticipated savings, loss of goodwill or reputation, in each case, whatsoever and whether or not in the contemplation of the parties at the time of entering into the Contract.
- (4) In any event, and notwithstanding anything contained in the Contract other than Clause 17(1), the BBC's maximum aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, under statute or otherwise howsoever arising by reason of or in connection with this Contract shall be limited to the Contract Price.

18. Insurance

- (1) The Customer shall, at its own expense, 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:
- (a) 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 two million pounds sterling (£2,000,000) 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; and
 - (b) all risks insurance at the full replacement value of the Goods where they are to be used by the Customer away from BBC Premises.
- (2) Where the Customer engages a sub-contractor the Customer shall ensure that the insurance requirements as specified in Clause 18(1)(a) and (b) 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)(a) and (b).
- (3) The Customer shall provide to the BBC prior to the commencement of the Contract Period satisfactory evidence of compliance with this Clause 18.

19. Customer Representations and Warranties

The Customer undertakes, warrants and represents that:

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

- (2) All Stock is fit for the purpose for which it is supplied and, where relevant, is of satisfactory quality, without fault or error, good construction and workmanship, suitable and sound material and adequate strength and has been tested prior to delivery.
- (3) It shall comply with all applicable laws and regulations and shall hold and continue to hold all licenses, consents, authorisations and permissions required in order to receive or use the Goods, Facilities and/or Services.
- (4) It shall comply with the Bribery Act 2010 and Modern Slavery Act 2015.
- (5) Where it is providing the BBC with (i) Stock and/or (ii) receiving access to Goods and/or Facilities to be operated by BBC personnel pursuant to the Contract (the **"Relevant Deliverables"**), as part of the Relevant Deliverables only it shall:
 - (a) implement and maintain procedures for itself and implement due diligence procedures in its supply chain to ensure that there is no slavery or human trafficking or forced labour in a relevant supply chain connected with the Stock;
 - (b) notify the BBC as soon as it becomes aware of any of any actual or suspected slavery or human trafficking in a supply chain in connection with the Stock; and
 - (c) notify the BBC as soon as it becomes aware of any actual or suspected violations of the BBC Ethical Policy (available at <https://www.bbc.com/supplying/documents/bbc-ethical-trading-policy.pdf>) (including instances which may put the BBC in breach of the BBC Ethical Policy) in connection with the Stock and/or the BBC personnel operating the Relevant Deliverables.
- (6) On a continuing basis throughout the Contract Period that neither the Customer nor any of its officers, employees and, if relevant, its suppliers or sub-contractors or other persons associated with it:
 - (a) has been convicted of any offence involving bribery or corruption or slavery and human trafficking; or
 - (b) has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with bribery and corruption or slavery and human trafficking.

20. Force Majeure

- (1) Neither party shall be liable for any failure to fulfil its obligations under the Contract (other than a failure in performance of a payment obligation owing to the other party) by reason of any event beyond its reasonable control including, but not by way of limitation, acts of God, fire, flood, storm, strikes, lockouts, war, terrorist activity, riot, civil commotion, nuclear accident, order or Act of Government (whether national or international), any such occurrence being deemed an event of force majeure.
- (2) If either the BBC or the Customer is prevented or delayed from or in performing any of its obligations under the Contract (other than in performance of a payment obligation owing to the other party) 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 of force majeure to suspend the Contract without liability for the duration of the event of force majeure. Where the party giving notice is unable to proceed with the Contract by reason of matters arising from the event of force majeure for a continuous or aggregate period of more than twenty (20) days in total following notice of suspension then such party shall have the right to terminate the Contract with immediate effect in writing.

21. BBC Authority

The Customer shall comply with any directions given to it by any personnel or agent of the BBC 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. The Customer shall at all times remain fully responsible for and assume control and total liability for the employment and engagement of all its employees and consultants and all employees and consultants of its sub-contractors, including without limitation ensuring compliance with all applicable discrimination and equal opportunities legislation.

22. Compliance and financial reporting

The Customer shall provide, if requested by the BBC, evidence of (i) compliance with any of the Customer's obligations under the Contract and/or (ii) Customer's ongoing solvency and capability to fulfil its obligations under the Contract.

23. Termination and consequences of termination

- (1) The BBC shall be entitled to terminate the Contract, in whole or in part, with immediate effect in writing if at any time during the Contract Period:
 - (a) the Customer fails to make any payment due under the Contract in full in accordance with Clause 4; or
 - (b) the Customer commits or causes 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 the BBC 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; or

- (c) the Customer commits an act of bankruptcy or insolvency, or is unable to pay its debts as or when they fall due, or the value of its assets is less than the amount of its liabilities taking into account contingent and prospective liabilities, or commences negotiations with its creditors generally or any class of them with a view to rescheduling any of its debts or makes a proposal for or enters any composition or arrangement with its creditors generally or any class of them, or goes into liquidation whether voluntary or compulsory, or if any petition is presented or order 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 any steps are taken in relation to applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, or if it ceases or threatens or prepares to cease trading (or a material part thereof), or if it suffers or if any steps are taken in relation to the appointment of a receiver, administrative receiver, administrator or similar officer over the whole or part of any of its assets, or if Customer's financial position deteriorates to such an extent that in BBC's opinion Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - (d) if the Customer is a natural person, if the Customer suffers or there occurs in relation to the Customer any event which in the reasonable opinion of the BBC is analogous to any of the events referred to in Clause 23(1)(c); or
 - (e) there is a change of control of the Customer. For the purposes of this paragraph (e) "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; or
 - (f) the BBC exercises its rights under Clause 14(1); or
 - (g) the continued performance thereof is prevented by reason of any event beyond the reasonable control of the BBC or the Customer (any such occurrence being deemed an event of force majeure).
- (2) The Customer shall give prompt notice in writing to the BBC of each and every of the factual event(s) set out in Clause 23(1) which arise from time to time and which could be of potential relevance to the BBC in determining whether to exercise its termination rights under this Clause 23.
- (3) The Customer shall be entitled to terminate the Contract with immediate effect in writing if at any time during the Contract Period the BBC commits or causes to be committed any material breach of its obligations under the Contract provided that in the case of a material breach capable of remedy the Customer shall have first given written notice to the BBC specifying the breach complained of and requiring the same to be remedied within a reasonable period of time from notification thereof and the BBC shall have failed to comply therewith.
- (4) Termination of the Contract howsoever arising shall be without prejudice to any rights accruing or already accrued to either party on or before the date of termination of the Contract and will not in itself give rise to a claim by the Customer for damages or otherwise.
- (5) Upon termination of the Contract for any cause whatsoever all sums accrued due to the BBC under the Contract shall immediately become due and payable to the BBC.
- (6) The rights and obligations of either party arising under Clauses 4, 13, 14, 15, 16, 17, 18, 20, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 34, 35, 36 and 38 together with those other clauses the survival of which are necessary for the interpretation or enforcement of this Contract shall survive termination of the Contract.

24. Assignment and sub-contracting

The Customer shall not without the prior written consent of the BBC assign the benefit of the Contract in whole or in part or sub-contract, novate or otherwise transfer any of its rights or obligations under the Contract in whole or in part to any third party. BBC shall be entitled to assign sub-license, sub-contract or otherwise transfer, any of its rights or obligations under the Contract, in whole or in part, to any third party.

25. Good Faith/Outside Activities/Publicity

The Customer shall act in good faith at all times towards the BBC Group and shall not bring the BBC Group into disrepute. The Customer shall not, without the prior written consent of the BBC, make any reference to the BBC, any member of the BBC Group or any of their respective trade marks in any advertising, promotional or published material nor make any reference to the BBC, any member of the BBC Group or any of their respective trade marks in a way that may imply an endorsement of the Customer or its goods and/or services or by making any reference to the BBC, any member of the BBC Group or any of their respective trade marks.

26. Screen Credits/Advertising Material

If requested by the BBC, the Customer shall use its best endeavours to afford the BBC 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. Confidentiality and FOIA Disclosure

- (1) Except for the purposes of the Contract, neither the Customer nor the BBC (each a "**Party**" for the purposes of this Clause) will use or make available to any third party at any time during or after the Contract any Designated Information (defined below) of the other Party except that nothing shall prevent a Party disclosing Designated Information:
 - (a) which is or later comes into the public domain otherwise than as a direct or indirect result of the Party receiving the information or a party engaged by that party, contrary to their respective obligations of confidentiality;

- (b) which is required to be disclosed in accordance with the Freedom of Information Act 2000 (“**FOIA**”), if applicable, or otherwise is required to be disclosed by law, order of court, the requirements of any regulatory authority or taxation authority or the rules of any stock exchange;
- (c) which is disclosed with the prior written consent of the other Party;
- (d) which is or becomes available to the other Party from third parties or is already known to the other Party, otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure;
- (e) which is independently developed by the other Party; or
- (f) which is disclosed to its employees, professional advisors, agents and subcontractors solely on a need-to-know basis provided that the disclosing Party procures that the person to whom such disclosure is made complies with the obligations under this Clause as if it were a party to the Contract.

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

- (a) which is identified by any Party as confidential or is clearly by its nature confidential; and/or
- (b) where the Customer is the receiving Party, which is received by the Customer in the course of it having access to BBC Premises in connection with the Contract notwithstanding that this information may not necessarily be identified as confidential; and/or
- (c) if the FOIA is applicable, which the Customer designates that it wishes (subject to Clause 27(4) below) to be treated as exempt from disclosure under FOIA by notice in writing to the BBC.

(3) The Customer recognises that, if FOIA is applicable to this Contract, the BBC may be required to release information relating to any subject matter contained in the Contract whether it is held by the BBC, the Customer or by another person on behalf of the BBC. If the BBC receives a FOIA request for information which covers any subject matter contained in the Contract and requires assistance in obtaining such information, the Customer (or any agent or sub-contractor of the Customer) shall at its own cost ensure (and procure that any of its agents and sub-contractors so ensure) that the BBC’s request for assistance is responded to promptly and in any event within 5 days of receipt. If the Customer receives a request for information under FOIA regarding the subject matter contained in the Contract, it shall (and shall procure that any of its agents and sub-contractors) transfer to the BBC all such requests that it receives as soon as possible and provide to the BBC with information that the BBC may request promptly and in any event within five (5) days of receipt. The Customer shall not respond directly to such a request for information under FOIA unless expressly authorised to do so by the BBC.

(4) The BBC will have sole responsibility for determining:

- (a) whether information (including Designated Information) is exempt from disclosure under FOIA; and/or
- (b) what information (including Designated Information) will be disclosed in response to a request for information under FOIA.

28. BBC Policies

(1) The Customer shall comply with:

- (a) the BBC Editorial Guidelines (available at <http://www.bbc.co.uk/editorialguidelines/>);
- (b) the BBC’s Anti-Bribery Code of Conduct and Policy (available at http://downloads.bbc.co.uk/foi/classes/policies_procedures/anti-bribery-policy.pdf);
- (c) the BBC’s Bullying and Harassment Policy (available at http://downloads.bbc.co.uk/foi/classes/policies_procedures/bullying_harassment_policy.pdf); and
- (d) any other relevant BBC policy which is available at <http://www.bbc.co.uk/guidelines/> or details of which the BBC shall otherwise provide to the Customer on request.

29. TUPE

(1) The parties acknowledge and agree that they do not envisage or intend that the TUPE Regulations will apply to the commencement or provision of the Deliverables in whole or in part. The parties further acknowledge and agree that they do not envisage or intend that the TUPE Regulations will apply on or in connection with the termination, cessation or variation of the provision of the Deliverables or this Contract in whole or in part. As a result, the parties expect and intend that there shall be no transfer of the contracts of employment of any employees of the BBC, any Existing Deliverables Provider, the Customer or any Successor Contractor (or any member of their groups or of their subcontractors) at any time under the TUPE Regulations.

(2) Each party agrees that:

- (a) it shall not bring any claim or proceedings against the other party (or any member of the other party’s groups or their subcontractors); and
- (b) the other party (or the relevant member of the other party’s groups or their relevant subcontractors) shall not be responsible for any Liabilities incurred by that party arising out of, in relation to or in connection with any breach or

alleged breach by the other party (or any member of the other party's groups or their subcontractors) of its obligations under regulation 11 of the TUPE Regulations.

- (3) If, notwithstanding the provisions of Clause 29(1), any person employed or engaged by an Existing Deliverables Provider (a "**Existing Provider Employee**") becomes or is found or alleged to have become an employee of the BBC (or of a member of the BBC Group or of any of its or their subcontractors) as a result of or in connection with the commencement or the provision of all or part of the Deliverables by the BBC (or by a member of the BBC Group or by any of its or their subcontractors) as a result of the operation of the TUPE Regulations, then:
- (a) the BBC will, upon becoming aware of such transfer or allegation, notify the Customer in writing as soon as reasonably practicable;
 - (b) the BBC may, within 7 days of such notification, request that the Customer makes (or, if applicable, procures that any other Existing Deliverables Provider makes) to such Existing Provider Employee an offer in writing to re-employ him or her under a new contract of employment (on terms and conditions no less favourable than their terms and conditions of employment at the date of the transfer or alleged transfer) to take effect on the termination of the employee's employment with the BBC (or the relevant member of the BBC Group or the relevant subcontractor) (the "**Existing Provider Re-Employment Offer**");
 - (c) upon such request being made, the Customer shall be entitled to make or procure the Existing Provider Re-Employment Offer within 14 days after the BBC's request (the "**Existing Provider Re-Employment Period**");
 - (d) if the Existing Provider Re-Employment Offer is accepted by the Existing Provider Employee in writing, then the Customer shall inform the BBC in writing within 7 days after receipt of such acceptance and the BBC shall immediately terminate (or procure that the relevant member of the BBC Group or the relevant subcontractor terminates) the Existing Provider Employee's employment and waive (or, if appropriate, procure the waiving of) the right to notice of termination;
 - (e) if the Existing Provider Re-Employment Offer is rejected by the Existing Provider Employee or is not accepted within 14 days after being made, or if an Existing Provider Re-Employment Offer is not made within the Existing Provider Re-Employment Period, then the BBC (or the relevant member of the BBC Group or the relevant subcontractor) shall be entitled to (i) offer employment to the Existing Provider Employee or continue to employ the Existing Provider Employee as the case may be, or (ii) terminate the Existing Provider Employee's contract of employment within 21 days of the end of the Existing Provider Re-Employment Period.
- (4) Subject to compliance by the BBC with its obligations under Clause 29(3), the Customer shall indemnify the BBC against all Liabilities that it (or the relevant member of the BBC Group or the relevant subcontractor) incurs arising out of, in connection with or as a result of the termination of the Existing Provider Employee's employment and any sum payable to or in respect of the Existing Provider Employee in respect of, arising out of, in connection with or as a result of his or her employment up to and including the date of such termination.
- (5) If, notwithstanding the provisions of Clause 29(1), any person employed or engaged by the BBC (or any member of the BBC Group or its or their subcontractors) (a "**BBC Employee**") becomes or is found or alleged to have become an employee of any Successor Contractor as a result of or in connection with the termination, cessation or variation of all or part of the Deliverables or upon the commencement of the provision of Replacement Deliverables by the Successor Contractor as a result of the operation of the TUPE Regulations, then:
- (a) the Customer will, upon becoming aware of such transfer or allegation, notify the BBC in writing as soon as reasonably practicable;
 - (b) the Customer may, within 7 days of such notification, request that the BBC makes (or, if applicable procures that the relevant member of the BBC Group or the relevant subcontractor makes) to such BBC Employee an offer in writing to re-employ him or her under a new contract of employment (on terms and conditions no less favourable than their terms and conditions of employment at the date of the transfer or alleged transfer) to take effect on the termination of the BBC Employee's employment with the Successor Contractor ("**BBC Re-Employment Offer**");
 - (c) upon such request being made, the BBC shall be entitled to make or procure the BBC Re-Employment Offer within 14 days after the Customer's request (the "**BBC Re-Employment Period**");
 - (d) if the BBC Re-Employment Offer is accepted by the BBC Employee in writing, then the BBC shall inform the Customer in writing within 7 days after such acceptance and the Customer shall immediately terminate (or procure that any other Successor Contractor terminates) the BBC Employee's employment and shall waive (or, if appropriate, procure the waiving of) the right to notice of termination;
 - (e) if the BBC Re-Employment Offer is rejected by the BBC Employee or not accepted within 14 days after being made, or if a BBC Re-Employment Offer is not made within the BBC Re-Employment Period, then the Successor Contractor shall be entitled to (i) offer the BBC Employee employment or continue to employ the BBC Employee as the case may be, or (ii) terminate the BBC Employee's contract of employment within 21 days of the end of the BBC Re-Employment Period.
- (6) Subject to compliance by the Successor Contractor with its obligations under Clause 29(5) above, the BBC shall indemnify the Successor Contractor against all Liabilities that it incurs arising out of, in connection with or as a result of the termination of the BBC's Employee's employment and any sum payable to or in respect of the BBC Employee in respect of, arising out of, in connection with or as a result of his or her employment up to and including the date of such termination.
- (7) The indemnities in this Clause 29 shall survive the expiry or termination of this Contract for any reason, whether lawful or otherwise.

- (8) Subject always to the parties' obligations under applicable Data Privacy Legislation, each party shall, on request by the other party and at their own expense, provide to the other such information or documents as the other party may reasonably require relating to the terms of employment, pension and life assurance arrangements, health benefits, welfare, trade union, employee representatives, collective agreements, collective or individual grievances or any other matter concerning any of employee who has transferred or alleged to have transferred to the other party under the TUPE Regulations as a result of or in connection with the commencement, provision, termination, cessation or variation of the Deliverables (or any part thereof) under this Contract.

30. 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 or by prepaid first class post, or by fax confirmed by first class post or by email which has been received, as evidenced by receipt by the sender of a read receipt from the recipient to: (i) in the case of a notice to the BBC, the relevant person specified in the Contract Documents and to the relevant address or fax number specified in the Contract Documents or (ii) in the case of a notice to the Customer, at the address or fax number as specified in the Contract Documents, and any such notice in each of the cases (i) and (ii) 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.

31. 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.

32. 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 the BBC or to contract in the name of or create a liability against the BBC in any matter whatsoever other than as set out in the Contract.

33. Variation

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

34. Severability

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

35. Whole Contract

Without prejudice to the rights of either party in respect of actions relating to fraudulent misrepresentation, the Contract and any appendices and any documents annexed thereto and/or referred to therein (including the Contract Documents) 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. The parties agree that in entering in this Contract they place no reliance on any statement, warranty or representation other than those expressly set out herein.

36. Third Party Rights

Save where expressly stated in the Contract, the Contract does not create or infer any rights under the Contracts (Rights of Third Parties) Act 1999 which are enforceable by any person who is not a party to the Contract.

37. Counterparts

This Contract may be executed in any number of counterparts, each of which when executed (and delivered or transmitted by electronic means) shall constitute a duplicate original, and all counterparts shall together constitute the one agreement.

38. Law

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