

BBC STUDIOS MULTI GENRE PRODUCTIONS LIMITED TERMS OF TRADE FOR THE PURCHASE OR HIRE OF GOODS, FACILITIES AND SERVICES

1. Definitions

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

"Background IPR" any IPR which exists prior to the date of the Contract and/or which is developed entirely independently of it;

"BBC" means the British Broadcasting Corporation of Broadcasting House, Portland Place, London W1A 1AA;

"Contract" means these terms of trade and the Purchase Documentation;

"Contract Period" means, subject to Clause 15, the period specified in the Purchase Documentation;

"Contract Price" means the price payable by the Customer to the Supplier as specified in the Purchase Documentation;

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

"Dry Hire" means the hire or loan of Goods or Facilities where no staff or operators are provided by the Supplier;

"Facilities" means any facilities to be provided by the Supplier pursuant to the Contract;

"Foreground IPR" means any IPR comprised in or relating to the Deliverables or which is a product of any Services, excluding the Background IPR;

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

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

"Premises" means premises owned, controlled or occupied by a Party or any affiliate of that Party which are made available for use by the Supplier or its sub-contractors for provision of the Services (or any of them)

"Purchase Documentation" means the Customer's purchase order and any other document specifying the Supplier, the Deliverables, the Contract Price, and where appropriate the Contract Period and Special Conditions;

"Remote Connection" means the method provided by the Customer which enables the Supplier to remotely access the Customer network in order to perform the Services;

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

"Special Conditions" means, subject to Clause 2.3, any amendments or additional conditions specified in the Purchase Documentation;

"Supplier" means the organisation or individual responsible for providing the Deliverables under the Contract and the Supplier shall where relevant be deemed to include all of its officers, employees, sub-contractors and/or agents engaged in any way in the performance of the Contract;

"VAT" means value added tax as provided for in the Value Added Tax Act 1994 or in any primary or secondary legislation promulgated by the European Community, or any official body or agency of the European Community and any similar sales, consumption or turnover tax introduced in addition to the foregoing whether within the European Community or elsewhere in the world;

"Wet Hire" means the hire or loan of Goods or Facilities where the Supplier also provides (directly or indirectly) staff (including independent sub-contractors) and/or operators and for the avoidance of doubt shall include the provision of Goods and/or Facilities to perform Services; and

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

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2. Terms and Conditions of Contract

- 2.1. The Supplier agrees to be bound by the terms of the Contract by the earlier of either signature of the Purchase Documentation or commencing the provision of the Deliverables.
- 2.2. Without prejudice to Clause 28.10, the terms and conditions of the Contract shall govern all orders and supply of the Deliverables to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or confirmation of order, specification or similar document will form part of the Contract and the Supplier hereby waives irrevocably any right which it otherwise might have to rely on such terms and conditions.
- 2.3. 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 Purchase Documentation and are expressly stated to take precedence.
- 2.4. 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.
- 2.5. The Supplier undertakes to deliver the Deliverables in accordance with the Contract. Timely provision of the Deliverables is of the essence of the Contract and the Supplier shall notify the Customer immediately it becomes aware of any likely delay in such provision.

3. Good Faith/Outside Activities/Publicity

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

4. Contract Price/Payment

- 4.1. In consideration of the provision of the Deliverables in accordance with the terms of the Contract, the Customer shall pay to the Supplier the Contract Price pursuant to Clause 4.3 below.
- 4.2. The Contract Price is stated exclusive of VAT (which if applicable, shall be applied at the appropriate rate) subject to and in accordance with Clauses 4.3, 4.5, 4.6 and 4.7 below.
- 4.3. The Supplier shall submit a valid VAT invoice to the Customer for the whole or any part (as required by the Customer) of the Contract Price to the address specified in the Purchase Documentation quoting the relevant Purchase Documentation number and marking it for the attention of 'Accounts Payable'.
- 4.4. Each of the Supplier and the Customer warrants that it has taken all reasonable steps to secure its computer systems and computer networks to ensure that unauthorised third parties cannot purport to act on its behalf.
- 4.5. The Customer shall pay to the bank account specified by the Supplier or which purports, fraudulently or otherwise howsoever, to have been specified by the Supplier such sums as are due by the end of the month following the month in which the Customer considers the invoice to be valid and undisputed, in accordance with this Clause 4.
- 4.6. The Customer reserves the right to withhold payment to the extent that the Deliverables have not been provided in accordance with the Contract or if the Customer receives an invoice which it believes is not valid and/or properly due and the Customer shall notify the Supplier accordingly giving reasons for such withholding. The Customer shall only be entitled to withhold an amount equal to the sum which is in dispute.
- 4.7. The Customer shall be entitled but not obliged at any time to set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier (in either case howsoever arising and whether any such liability is due and payable or will become payable at a later date, actual or contingent, liquidated or un-liquidated and irrespective of the currency of its denomination including sums payable under the Contract or any other contract between the Customer and the Supplier). Exercise by the Customer of its rights under this Clause 4.7 shall be without prejudice to any other rights or remedies available to it under the Contract or otherwise, at law or in equity.
- 4.8. Subject to Clauses 4.6 and 4.7 if the Customer fails to pay by the due date any amount payable in accordance with Clause 4.3, the Supplier shall be entitled but not obliged to charge the Customer interest on the overdue amount from the due date

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for payment up to the date of payment, at the rate of four per cent (4%) per annum above the Bank of England base rate in force at the time, provided that the Supplier shall give written notice to the Customer that the amount has not been paid in accordance with Clause 4.3 and 4.5 and specifying: the total amount of interest owed at the date of the notice, and, if the overdue amount has not been paid, the daily rate at which the interest will continue to accrue; the invoice or invoices to which the interest relates; and the addressee to whom and address or details of the account to which payment should be made.

- 4.9. Unless stated otherwise in the Contract, the Contract Price is inclusive of all out of pocket expenses which may be incurred by the Supplier, including any time and materials charges, travel and subsistence expenses incurred in the course of provision of the Deliverables ("**Expenses**") and the Customer shall not be obliged to pay any Expenses in addition to the Contract Price. Where the Contract does provide that the Customer shall/may reimburse the Supplier in relation to any Expenses, any such payment shall be subject to such Expenses being agreed to in writing in advance by the Customer and if the Customer agrees in its discretion to reimburse Expenses which are not so agreed, that they do not exceed those which a Customer employee of comparable qualifications and position would have been entitled to incur under applicable BBC staff expense policy guidelines (such guidelines having been adopted by the Customer as its own policy guidelines) and in either case being reasonably, properly and necessarily incurred by the Supplier in the performance of the Contract and the Customer being provided with a valid VAT invoice together with full supporting evidence for such Expenses.
- 4.10. Where the Supplier is VAT registered the Supplier shall recover VAT on any expenditure incurred as described in Clause 4.9 above, in the normal course of its business and shall specify only the net amount of such expenditure in the invoice to the Customer prior to adding VAT thereto at the appropriate rate.
- 4.11. If the Customer is required, pursuant to any applicable present or future law, rule or regulation of any competent governmental or other administrative body, to make any deduction or withholding in respect of tax or otherwise from any amount or amounts payable to the Supplier pursuant to the Contract, the Customer shall:
- 4.11.1. be entitled to pay the amount or amounts in question after the deduction of the amount of such withholding or deduction;
 - 4.11.2. promptly pay to the relevant authority within the period permitted by law the amount of such withholding or deduction; and
 - 4.11.3. provide the Supplier with written evidence that it has made the payment to the relevant authority.
- If the Customer does not make such withholding or deduction, the Supplier shall pay any and all taxes and other charges payable on account of such sums and the Supplier indemnifies and agrees to keep the Customer fully indemnified from and against any liabilities or expense in connection with such withholding or deduction.
- 4.12. The Supplier shall comply with any relevant budgetary limits which the Customer provides to the Supplier from time to time and in the event that the Supplier exceeds such limits without the prior approval in writing of the Customer, the Customer shall not be liable to reimburse the Supplier in respect of any sums over such limits.

5. Security/Access/Inspection

- 5.1. When and as requested by the Customer, the Supplier shall obtain from the Customer identity cards or entry permits and shall display these whilst on the Customer's premises. The Supplier shall not permit these items to be used for any other purpose and shall return these cards/permits to the Customer upon termination or expiry of the Contract, or upon earlier request by the Customer.
- 5.2. The Customer may request and shall be supplied with identification of the Supplier and may conduct random security checks including checking the Supplier's possessions and vehicle(s) whilst on the Customer's premises.
- 5.3. The Customer shall at its discretion give to the Supplier by prior arrangement such access to Customer premises and such general Customer facilities (for example, catering and sanitary) at Customer premises as the Supplier may reasonably require to fulfil its obligations under the Contract. However the Customer may refuse admission to or remove from the Customer's premises any person whom the Customer deems unacceptable for whatsoever reason other than solely to frustrate the Contract. The Customer does not give any warranty or assurance as to the condition, safety or suitability of the Customer's premises for the provision of Services and, to the extent permitted by law, access to and use of Customer premises is at the Supplier's risk and the Supplier shall be responsible for the health and safety of its personnel at the Customer's premises. The Supplier shall promptly vacate all of the Customer's premises upon the earlier of the completion of any Services or expiry or termination of the Contract and shall make good any damage caused by its occupation, use or vacation of the premises to the satisfaction of the Customer.
- 5.4. The Supplier shall upon the request of the Customer grant the Customer such access to the Supplier's premises or such

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other premises as the Customer may reasonably require for inspection of any Goods, Facilities and/or Customer equipment/materials provided under the Contract or for any other reason connected with the performance of the Contract.

- 5.5. When using Remote Connection, the Supplier (including its employees and subcontractors) shall not access or attempt to access any other systems or data areas within the Customer network other than the system or data area which is the subject of the Services and shall only use such access for the performance of the Services.

6. Health/Safety/Fire and Environmental Requirements

- 6.1. The Supplier shall comply with all current relevant Safety and Environmental Requirements including but not limited to those safety requirements issued by the Health & Safety Commission and Executive, the Home Office and those Customer and/or BBC safety requirements notified in writing to the Supplier and those environmental requirements issued by the European Union and UK Government as enforced by the relevant UK Regulator.
- 6.2. The Customer and the Supplier may agree in writing Safety and Environmental Requirements in addition to or different from those specified in Clause 6.1.
- 6.3. Without prejudice to its obligations under Clause 6.1 above the Supplier shall:
- 6.3.1. upon the request at any time of the Customer, submit to and fully co-operate with any safety and environmental vetting process required by the Customer and provide a written statement of the Supplier's own Safety and Environmental Requirements;
 - 6.3.2. assess reasonably foreseeable risks to health and safety (including fire) and the environment that may affect the Customer 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 Customer upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with the Customer accordingly;
 - 6.3.3. consult with the Customer, comply with the procedures to be followed and take all reasonable steps in the event of serious and imminent danger to any person(s) arising out of or in any way connected with the performance of the Contract; and
 - 6.3.4. consult with the Customer, comply with the procedures to be followed and take all reasonable steps in the event of a serious environmental incident arising out of or in any way connected with the performance of the Contract.
- 6.4. The Customer may notify the Supplier of risks to health and safety and the environment which are reasonably foreseeable to the Customer and which may affect the Supplier or the Customer arising out of or in any way connected with the activities of the Customer in connection with the Contract, and, without prejudice to its obligations under Clauses 6.1, 6.2, and 6.3, the Supplier shall have due regard to such risks.
- 6.5. The Supplier acknowledges sustainability is important to the Customer and commits to supporting the Customer to achieve its sustainability goals as set out in Responsible Procurement (bbc.co.uk) (<https://www.bbc.co.uk/supplying/working-with-us/responsible-procurement>), in so far as the provision of the Deliverables under the Contract may impact the achievement of those goals. In particular the Supplier will:
- 6.5.1. take reasonable steps to reduce its greenhouse gas emissions, meaning the natural and anthropogenic gases which trap thermal radiation in the earth's atmosphere and are specified in Annex A to the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) or otherwise specified by the UNFCCC at the date of the Contract, as may be amended from time to time;
 - 6.5.2. take reasonable steps to reduce its carbon footprint, meaning the amount of carbon dioxide emissions associated with all the activities of the Supplier; and
 - 6.5.3. upon reasonable request provide the Customer with information on the sustainability activities being undertaken by the Supplier in relation to the Deliverables and permit the Customer to audit the Supplier's compliance with the provisions of this Clause 6.5.

7. Wet and Dry Hire of Goods or Facilities

- 7.1. Subject to clause 10.1, this Clause 7 sets out the Customer's entire liability with respect to loss of or damage to Goods and/or Facilities hired or loaned to the Customer by the Supplier.
- 7.2. Where the Contract consists of Dry Hire of Goods the Customer shall be responsible to the Supplier for the prompt repair or replacement (at the Customer's option) of Goods lost or damaged whilst in the charge and control of the Customer, save to the extent that the loss or damage is caused by the Supplier's breach of any of the provisions of the Contract or any other of

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its acts or omissions; or is due to fair wear and tear sustained during normal use of the Goods; and in any event provided that the Supplier notifies the Customer promptly upon discovery of such loss or damage.

- 7.3. Where the Contract consists of Dry Hire of Facilities, the Facilities shall remain at the risk of the Supplier and the Customer shall be responsible to the Supplier for the prompt reasonable repair or replacement of Facilities damaged during the period of Dry Hire of such Facilities to the Customer, save to the extent that the damage is caused by the Supplier's breach of any of the provisions of the Contract or any other of its acts or omissions; or is due to fair wear and tear sustained during normal use of the Facilities; and in any event provided that the Supplier notifies the Customer promptly upon discovery of such damage.
- 7.4. Where the Contract consists of Wet Hire, the Goods and Facilities shall remain at the risk of the Supplier and the Supplier shall be responsible for the care, control, security, insurance and maintenance of the Goods and Facilities, including for any loss of or damage to the Goods or Facilities, other than to the extent that the loss or damage is caused by the negligence or wilful default of the Customer where, subject to Clause 7.5 below, the Customer shall be responsible for prompt repair or replacement provided that the Supplier notifies the Customer promptly upon discovery of any such loss or damage.
- 7.5. In any event, and notwithstanding anything contained in the Contract including the Supplier's obligations to arrange and maintain insurance cover under Clauses 10.2 and 10.3, the Customer's entire liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising by reason of or in connection with this Clause 7 shall be limited to:
- 7.5.1. repair and/or replacement under sub Clauses 7.2 and 7.3 above subject to a maximum liability of twenty five per cent (25%) of the value of the relevant Goods or Facilities or two hundred and fifty thousand pounds sterling (£250,000), whichever is the higher; and
- 7.5.2. where applicable, payment of that proportion of the Contract Price attributable to the period during which the Goods and/or Facilities are being repaired or replaced provided that such period shall not extend beyond the Contract Period and where applicable the Supplier uses all reasonable efforts to ensure that the repair or replacement is achieved in the minimum possible time.

8. Delivery of Goods

- 8.1. Other than in the case of the Dry Hire or Wet Hire of Goods under Clause 7 above, the Supplier shall ensure that any Goods are kept in a suitable and secure manner at the Supplier's own risk and expense until the relevant Goods are either delivered to and received by the Customer at the Supplier's own risk and expense or collected by the Customer at the Customer's own risk and expense from the point of collection in accordance with the delivery instructions specified in the Purchase Documentation or otherwise specified in writing by the Customer. The Customer shall have the right to change its delivery instructions, including delivery dates, at any time by reasonable notice to the Supplier.
- 8.2. The Supplier shall, at its own expense, ensure that the Goods are packed in such a manner as to reach the Customer in good condition, clearly labelled in accordance with the delivery instructions and accompanied by delivery notes specifying the quantity and type of Goods and the relevant Purchase Documentation number. The Supplier shall, at its own expense, repair or replace (at the Customer's option) Goods lost or damaged in transit, and delivery will not be deemed to have taken place until replacement or repaired items have been delivered to the Customer.
- 8.3. Ownership of any Goods that are sold under the Contract shall vest in the Customer absolutely at such time as the Customer either takes physical possession or makes payment (whether in full or in part) for the Goods, whichever is the first to occur.
- 8.4. Where any Goods are found by the Customer upon delivery or collection or subsequently not to conform with the Contract, the Customer may accept or reject the whole or any part thereof and if rejected, without prejudice to any other remedy available to the Customer, may return the Goods to the Supplier at the Supplier's own risk and expense and promptly recover any sums paid for the rejected part.

9. Equipment/Materials

- 9.1. The Supplier shall be responsible for the care, control, security and maintenance of any materials and equipment used or provided by the Supplier to perform the Contract. The Customer may provide a storage area for any such equipment/materials but is under no obligation to do so. The Supplier shall ensure that any such storage area is fit for the intended purpose and it is used in a suitable, careful and secure manner at the Supplier's own risk and expense and the Customer accepts no liability for damage to equipment or material stored on its premises. The Customer reserves the right to reclaim the storage area upon notification.
- 9.2. The Supplier shall not use any Customer equipment/materials without the prior written consent of the Customer and shall

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where relevant be responsible for the care, control, security and maintenance of such materials and equipment which it uses.

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10. Liability/Insurance/Indemnity

- 10.1. Nothing in the Contract excludes either party's liability for death or personal injury caused by that party's negligence, wilful default or for fraud.
- 10.2. The Supplier shall, at its own expense, arrange and maintain with a reputable insurer such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract including adequate public liability insurance and, where applicable, product liability insurance which shall have a limit of liability of no less than five million pounds sterling (£5,000,000) per occurrence (and in the annual aggregate in respect of product liability insurance); and/or (ii) where applicable, professional indemnity insurance which shall have a limit of liability of no less than three million pounds sterling (£3,000,000) per occurrence and in the annual aggregate, in each case with scope of cover appropriate to the Deliverables provided under the Contract.
- 10.3. The Supplier shall arrange and maintain adequate insurance of at least the full value of any such Goods in relation to loss or damage of any Goods provided under the Contract where risk has not yet passed to the Customer pursuant to Clauses 7 and/or 8.
- 10.4. The Supplier shall produce to the Customer on demand copies of the insurance policies maintained in accordance with the terms of the Contract and copies of receipts for premiums required to be paid in relation to such policies.
- 10.5. Where the Supplier engages a sub-contractor the Supplier shall either ensure that the insurance requirements as specified in Clause 10.2 extend to cover the legal liabilities of the sub-contractor or that the sub-contractor holds its own insurance which complies with Clause 10.2.
- 10.6. The Supplier shall be responsible for insuring any equipment including motor vehicles or mobile plant provided by the Supplier to perform the Contract, against loss, damage and liabilities to third parties and anyone carried in or on such equipment.
- 10.7. The Supplier shall indemnify the Customer on demand and keep indemnified the Customer and hold the Customer harmless from and against all costs and expenses (including legal costs), losses and liabilities which the Customer may incur as a result of:
- 10.7.1. the Supplier's breach of or non-compliance with its obligations or warranties under the Contract;
- 10.7.2. the Supplier's negligence or wilful default; and
- 10.7.3. any claims from third parties made as a result of the Supplier's acts or omissions (including relating to infringement of any IPR supplied under or used in connection with the Contract).
- 10.8. Neither party shall be liable for any consequential or indirect losses, loss of profits, revenues and/or business, anticipated savings, loss of good will or reputation in each case, whether or not in the contemplation of the parties at the time of entering into the Contract.
- 10.9. Unless otherwise specified in the Purchase Documentation and expressly stated to take precedence over this Clause 10.9, and at all times subject to Clause 10.1 and 7.5, the liability of the Customer in respect of any losses suffered or incurred by the Supplier for which the Customer is liable under this Contract, whether in contract, tort (including negligence), breach of statutory duty or any other grounds, shall not exceed an aggregate total of the sum which is equal to the total amount payable by the Customer under this Contract. For the avoidance of doubt, the limit on the Customer's liability expressed in this Clause 10.9 does not apply to the Customer's obligation to pay the Contract Price as properly due and payable by the Customer under this Contract

11. Warranties

- 11.1. Each party represents and warrants:
- 11.1.1. it is validly incorporated and duly registered in accordance with the laws of the jurisdiction of its incorporation;
- 11.1.2. it has all requisite power and authority to enter into and perform this Contract without the consent, approval or authority of any other legal person; and
- 11.1.3. it holds any licence, permit and/or certificate required by law for the performance of the Contract.
- 11.2. The Supplier undertakes, warrants and represents that:

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- 11.2.1. except as otherwise agreed in writing prior to performance of the Contract, it shall obtain for the Customer all necessary consents, permissions and/or clearances in third party rights (including IPR) with respect to the Deliverables;
 - 11.2.2. all Goods and Facilities comprised in the Deliverables are fit for the purpose for which they are supplied and are of satisfactory quality, without fault or error, of good construction and workmanship, of suitable and sound material and adequate strength and have been tested prior to delivery;
 - 11.2.3. the Deliverables will conform in all respects with any description of the Deliverables in the Contract and the Deliverables shall be consistent with any sample supplied to, or inspected by the Customer and approved in writing by the Customer;
 - 11.2.4. it shall be competent to fulfil its obligations under the Contract (which includes having relevant experience, training and/or qualifications) and shall use such due care, skill and diligence as would reasonably be expected of a competent supplier of the Deliverables whilst discharging its obligations under the Contract, and it shall perform the Contract in a timely and professional manner in accordance with best industry practice for suppliers of deliverables similar to the Deliverables and hold any licence, permit and/or certificate required by law for the performance of the Contract;
 - 11.2.5. it shall, unless otherwise agreed in writing by the Customer in advance of the Supplier discharging its obligations under the Contract, comply with all current relevant national and/or international technical standards and procedures and the Customer technical standards and procedures, details of which the Customer shall provide to the Supplier;
 - 11.2.6. it and the Deliverables shall comply with all current relevant laws and regulations and the Supplier shall use all reasonable efforts to comply with all published relevant codes of conduct;
 - 11.2.7. it shall comply and procure that its sub-contractors comply with the Bribery Act 2010 and the BBC's Anti-Bribery Code of Conduct and Policy, which the Customer has adopted as its own (which are available at http://downloads.bbc.co.uk/commissioning/site/anti_bribery_high_level_principles.pdf); and
 - 11.2.8. to not engage in any activity, practice or conduct which would constitute either: (i) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or (ii) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017, and to notify the Customer in writing if it becomes aware of any breach of this Clause or has reason to believe it has received a requested or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 in connection with the Contract; and
 - 11.2.9. it shall comply and procure that its sub-contractors comply with the BBC's Bullying and Harassment Policy, which the Customer has adopted as its own (which is available at: http://downloads.bbc.co.uk/foi/classes/policies_procedures/bullying_harassment_policy.pdf).
- 11.3. The Customer's rights under the Contract are in addition to the statutory conditions implied in favour of the Customer by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable statute in force from time to time.
 - 11.4. The Supplier shall at its own expense ensure that the functionality of Deliverables will not be prejudiced by any changes caused by the introduction within any EU member country including the United Kingdom or any of its constituent parts (hereinafter the "**Introducing Country**") of European Monetary Union ("**EMU**") whether or not (i) the Euro is introduced within the Introducing Country as a result of EMU or (ii) the Euro becomes legal tender within the Introducing Country. In particular Deliverables shall, if appropriate, be able to recognise the Euro and if necessary convert its value into UK Pounds Sterling at the then current exchange rate.

12. Data Privacy

- 12.1. For the purposes of this Clause 12, "**Data Privacy Legislation**" means the Data Protection Act 2018, where applicable, the General Data Protection Regulation 2016/679/EU ("GDPR") and/or the GDPR as enacted by the United Kingdom ("UK GDPR"), and any other applicable laws relating to the processing of Personal Data under the Contract, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all related regulations, regulatory codes of practice, opinions and guidance issued from time to time, including by the Information Commissioner, and in each case any amending, superseding or replacement applicable law. The terms "**Controller**", "**Data Subject**", "**Domestic Law**", "**International Organisation**", "**Member State**", "**Personal Data**", "**Personal Data Breach**", "**Processing**", "**Processor**", "**Supervisory Authority**", "**Third Country**" and "**Union**" shall bear the same meanings as set out in the applicable Data

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Privacy Legislation.

- 12.2. The Parties agree to the binding obligations as set out within this Clause 12 with respect to the Processing of Personal Data by the Supplier under the Contract ("**Contract Personal Data**").
- 12.3. The Parties acknowledge and agree the BBC shall be the Controller and the Supplier shall be the Processor in respect of the Supplier's Processing of Contract Personal Data.
- 12.4. The Supplier shall comply at all times with its own obligations imposed by the Data Privacy Legislation, and shall not perform its obligations under the Contract in such a way as to cause the BBC to breach any of its obligations under Data Privacy Legislation.
- 12.5. This Contract, including the Agreed Purposes and Purchase Documentation, shall constitute the BBC's documented instructions.
- 12.6. Except to the extent permitted under this Clause 12, the Supplier shall (and shall procure its personnel, permitted sub-processors and/or agents shall) Process Contract Personal Data only in accordance with the BBC's documented instructions as may be amended from time to time at the BBC's sole discretion. Prior to commencing Processing of the Contract Personal Data, the Supplier shall inform the BBC if it or its permitted sub-processors and/or agents are subject to a legal requirement under Domestic Law or Union or Member State law (as applicable) to Process the Contract Personal Data other than in accordance with the BBC's documented instructions, unless prohibited by such law on important grounds of public interest. The Supplier shall immediately inform the BBC if, in its opinion, an instruction infringes data protection law which forms part of Domestic Law or other Union or Member State law as applicable.
- 12.7. The Supplier shall not export or permit the export of Contract Personal Data to a Third Country or International Organisation without the BBC's prior written consent. Supplier data exports approved by the BBC at the time of signing this Contract are set out in the Purchase Documentation. Such consent shall be subject to:
- 12.7.1. the Processing of the Contract Personal Data being undertaken in a Third Country which is the beneficiary of an applicable adequacy decision;
- 12.7.2. the use of a valid cross border transfer mechanism to ensure appropriate safeguards and an adequate level of protection under Article 46 of UK GDPR and/or EU GDPR as applicable; or
- 12.7.3. the transfer otherwise being in compliance with Article 46 of UK GDPR and/or EU GDPR (as applicable). Should the cross border transfer mechanism relied upon by the Supplier under Clause 12.7.2 be declared invalid, the BBC may require the Supplier to either: (i) enter into a valid cross border transfer mechanism specified by the BBC; or (ii) cease the transfer.
- 12.8. The Supplier shall provide the following as part of any request for prior written consent under Clause 12.7:
- 12.8.1. details of a valid cross border transfer mechanism to be used by the Supplier for the transfer;
- 12.8.2. a transfer impact assessment prepared by, or on behalf of the Supplier which complies with applicable Data Privacy Legislation; and
- 12.8.3. any information reasonably requested by the Customer to enable the Customer to comply with Data Privacy Legislation.
- 12.9. The Supplier shall ensure all persons authorised to Process Contract Personal Data (including persons authorised by its permitted sub-processors and agents) have committed themselves to an obligation of confidentiality or are under an appropriate statutory obligation of confidentiality.
- 12.10. The Supplier shall ensure (and shall procure its permitted sub-processors and agents ensure) the Contract Personal Data is Processed securely at all times, taking into account the nature, scope, context and purposes of the Processing as well as the risk of varying likelihood and severity for the rights and freedoms of individuals.
- 12.11. The Supplier shall comply with all Customer information security policies set out in Clause 19 as may be amended from time to time at the Customer's sole discretion.
- 12.12. The Supplier shall ensure no sub-processor is engaged to Process the Contract Personal Data without the prior written consent of the Customer which shall be conditional on the Supplier ensuring the sub-processor providing sufficient guarantees under a written contract to implement measures to ensure the processing they carry out will meet the requirements of this Clause 12. The Supplier shall provide the Customer with a copy of each such contract on request. Such

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contract shall grant the Supplier the ability to conduct periodic assessments of the sub-processor's data protection and security safeguards and practices. The Supplier shall provide, upon request of the Customer, information about the results of such assessments. Where a sub-processor appointed by the Supplier fails to fulfil its data protection obligations, the Supplier will remain fully liable for the acts or omissions of its sub-processor.

- 12.13. The Supplier shall promptly provide and procure at no charge to the Customer, information and reasonable assistance to enable the Customer to fulfil its obligations to:
- 12.13.1. respond to requests from Data Subjects made in reliance of the Data Privacy Legislation;
 - 12.13.2. demonstrate the Supplier's compliance (and any permitted sub-processors and/or agents compliance) with this Clause 12 including the record keeping under applicable Data Privacy Legislation; and
 - 12.13.3. comply with other obligations imposed on the Customer by the Data Privacy Legislation, included but not limited to:
 - 12.13.3.1. security;
 - 12.13.3.2. privacy impact assessments; and
 - 12.13.3.3. consultation, investigation, audit and enquiries by a supervisory authority.
- 12.14. The Supplier shall notify the Customer promptly, and no later than twenty-four (24) hours of becoming aware of, or reasonably suspecting the occurrence of, any Personal Data Breach affecting the Contract Personal Data ("Incident"). Such notice shall:
- 12.14.1. describe the nature of the Incident including, where possible, the categories and approximate number of (i) affected Data Subjects, and (ii) data records, and (iii) whether the affected Contract Personal Data was deidentified, pseudonymised, or encrypted;
 - 12.14.2. communicate the name and contact details of the Supplier's data protection officer or other contact point in relation to the Incident;
 - 12.14.3. describe the likely consequences of the Incident; and
 - 12.14.4. describe the measures taken or proposed to be taken by the Supplier to address the Incident including where appropriate, measures to mitigate its possible adverse effects.
- 12.15. Where information at Clause 12.14 is unavailable, the Supplier shall detail the information known to it at the time and it shall set out the steps to be undertaken by it to further investigate the Incident. No later than thirty-six (36) hours after the first notice, the Supplier shall submit a further notice to the Customer containing information required by Clause 12.14. If the Supplier fails to notify the Customer within the specified period or fails to provide the information, the Supplier shall be deemed to be in breach of this Clause 12.
- 12.16. In the event of a Personal Data Breach affecting the Contract Personal Data, including where the Customer has determined an incident qualifies as a Personal Data Breach, the Supplier shall at no charge:
- 12.16.1. provide reasonable assistance to the Customer to facilitate the handling of the Personal Data Breach in an expeditious and compliant manner in accordance with applicable Data Privacy Legislation and Supervisory Authority guidance;
 - 12.16.2. not make any announcements, notifications and/or representations, relating to the Personal Data Breach, or acknowledge any correspondence relating to it without the Customer's prior written approval;
 - 12.16.3. take all reasonable and appropriate corrective action requested by the Customer;
 - 12.16.4. cooperate, provide assistance and information for the Customer to communicate the Personal Data Breach to the affected Data Subjects (and the Customer shall determine in its sole discretion whether such notice will be made, including its content and any offers of assistance, monitoring or payments);
 - 12.16.5. co-operate, provide assistance and information for the Customer to notify a Supervisory Authority about the Personal Data Breach (the Customer shall determine in its sole discretion whether such notification will be made);
 - 12.16.6. the Supplier shall take all such steps as may be required a Supervisory Authority and will permit the Customer to participate in any investigation, corrective action, and remediation process relating to the Personal Data Breach; and

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- 12.16.7. without limiting the foregoing, the Supplier will reimburse the Customer for all direct and indirect expenses and costs related to the Personal Data Breach and, if the root cause of the Personal Data Breach is determined by the Customer to be under the control of the Supplier, any such payment to the Customer will not limit the Customer's right to recover damages it incurs as a result of such Personal Data Breach, but the amount of damages will be reduced by the amount paid under this Clause.
- 12.17. Where Contract Personal Data has been provided to the Supplier by or behalf of the Customer, or it has been created by or acquired by the Supplier in the course of the provision of the Services then upon completion of the Processing of such Contract Personal Data and otherwise immediately on expiry or earlier termination of the Contract, the Supplier shall, at the Customer's option, destroy by putting such Contract Personal Data beyond use, or return materials, information or data containing such Contract Personal Data to the Customer unless Domestic Law or Union or Member State law as applicable requires storage of Contract Personal Data. In all other cases the Supplier shall, at the Customer's request or upon expiry or termination of the Contract, immediately cease Processing (and procure its personnel, permitted sub-processors and/or agents cease Processing) the Contract Personal Data.
- 12.18. The Supplier shall grant to the Customer, or its appointed representatives, such access as is reasonably necessary to the premises owned or controlled or used by the Supplier, its permitted sub-processors and/or agents in the performance of its obligations under the Contract to inspect and audit all facilities, equipment, documents and electronic data relating to and/or used in the Processing of the Contract Personal Data.
- 12.19. To the extent a party Processes Contract Personal Data for the purposes contractual administration, each party shall be a separate and independent Controller of such Contract Personal Data. For the avoidance of doubt Article 26 of UK GDPR and GDPR as applicable shall not apply. Each party shall:
- 12.19.1. comply with all Data Privacy Legislation applicable to that party in respect of the collection, processing and sharing of such Contract Personal Data;
- 12.19.2. only process such Contract Personal Data for the purposes of the Contract and as otherwise may be permitted by the Data Privacy Legislation;
- 12.19.3. promptly provide assistance and co-operation to the other party where reasonably required for that party to comply with its obligations in Data Privacy Legislation in relation to such Contract Personal Data;
- 12.19.4. notify the other party without undue delay, and in any event within forty-eight (48) hours, if it becomes aware of, or reasonably suspects the occurrence of, any Personal Data Breach affecting such Contract Personal Data.
- 12.20. The Supplier agrees and undertakes to indemnify on demand and keep indemnified the Customer and defend at its own expense, and hold the Customer harmless from and against all and any demands, claims, actions, proceedings, liabilities, costs, expenses (including legal expenses calculated on a full indemnity basis, and all other professional expenses and costs), losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, regulatory penalty, fine or penalties), injury or damages whatsoever incurred or suffered by the Customer or for which the Customer may become liable due to any failure by the Supplier arising out of the breach by the Supplier or its personnel, agents and/or sub-processors, of any of its data protection obligations under this Clause 12.

13. Confidentiality and FOIA Disclosure

- 13.1. Except for the purposes of the Contract, neither the Supplier nor the Customer (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 Confidential Information of the other Party except that nothing shall prevent a Party disclosing Confidential Information to the extent that it:
- 13.1.1. is or later comes into the public domain otherwise than as a direct or indirect result of disclosure by the Party receiving the Confidential Information or a party engaged by that Party, contrary to their respective obligations of confidentiality;
- 13.1.2. is required to be disclosed in accordance with the Freedom of Information Act 2000 ("**FOIA**"), if applicable, or otherwise is required to be disclosed by law, order of court, the requirements of any regulatory authority or taxation authority or the rules of any stock exchange;
- 13.1.3. is disclosed with the prior written consent of the other Party;
- 13.1.4. is or becomes available to the other Party from third parties or is already known by the other Party, otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure;

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- 13.1.5. is independently developed by the other Party; or
- 13.1.6. is disclosed to its employees, professional advisors, agents and sub-contractors 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 12 as if it were a party to the Contract.
- 13.2. In this Clause 13, "**Confidential Information**" means information (in whatever form) relating to the business or affairs of a Party which is disclosed at any time by or on behalf of that Party to the receiving Party, or otherwise is in the possession of the receiving Party, in connection with the Contract:
- 13.2.1. which is identified by any Party as confidential or is clearly by its nature confidential; and/or
- 13.2.2. if the FOIA is applicable to such information, where the Supplier is the Party making the disclosure, designates that it wishes (subject to Clause 13.6 below) such information to be treated as exempt from disclosure under FOIA by notice in writing to the Customer.
- 13.3. The Supplier recognises that, if FOIA is applicable to the Contract, the Customer may be required to release information relating to any subject matter contained in the Contract whether it is held by the Customer, the Supplier or by another person on behalf of the Customer (including the BBC) to comply with its obligations under FOIA.
- 13.4. If the Customer or BBC receives a request for information under FOIA which covers any subject matter contained in the Contract and requires assistance in obtaining such information, the Supplier shall (and shall procure that any of its agents and/or sub-contractors) at its own cost ensure that the a request for assistance from either the Customer or the BBC is responded to promptly and in any event within five (5) days of receipt.
- 13.5. If the Supplier receives a request for information under FOIA regarding the subject matter contained in the Contract, it shall (and shall procure that any of its agents and sub-contractors) transfer to the Customer all such requests that it receives as soon as possible and provide to the Customer with information that the Customer may request promptly and in any event within five (5) days of receipt. The Supplier shall not respond directly to such a request for information under FOIA unless expressly authorised to do so by the Customer.
- 13.6. The Customer will have the sole responsibility for determining:
- 13.6.1. whether information (including Confidential Information) is exempt from disclosure under FOIA; and/or
- 13.6.2. what information (including Confidential Information) will be disclosed in response to a request for information under FOIA.

14. Force Majeure and Binding Directions

- 14.1. In the Contract, "**Force Majeure Event**" shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events or omissions beyond the reasonable control of the party so prevented including, to the extent that these are beyond such control, nuclear accident or acts of God, war or terrorist activity, riot, civil commotion, fire, flood or storm except that:
- 14.1.1. neither a lack of funds nor a default or misconduct by any third party employed or engaged as an agent or sub-contractor by the party claiming force majeure will be a cause beyond the reasonable control of that party unless caused by events or circumstances which are themselves Force Majeure Events;
- 14.1.2. mere shortage of labour, materials, equipment or supplies will not constitute a Force Majeure Event unless caused by events or circumstances which are themselves Force Majeure Events; and
- 14.1.3. strikes, lock-outs or other industrial disputes involving the workforce of the party so prevented or of any of its sub-contractors or suppliers or the occurrence of an event associated with EMU (as defined in Clause 11.4) will not constitute a Force Majeure Event.
- 14.2. If either party is prevented from performance of any of its obligations under the Contract by a Force Majeure Event, that party (for the purposes of this Clause 14.2 the "**claiming party**") will as soon as reasonably possible and in any event within one (1) Working Day after commencement of the Force Majeure Event serve notice in writing on the other party specifying the nature and extent of the circumstances of the Force Majeure Event, and will subject to service of such notice have no liability in respect of any delay in performance or any non-performance of any such obligation (and the time for performance will be extended accordingly) to the extent that the delay or non-performance is due to a Force Majeure Event provided that:
- 14.2.1. the Claiming Party could not have avoided the effect of the Force Majeure Event by taking precautions which,

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having regard to all matters known to it before the occurrence of the Force Majeure Event and all relevant factors, it ought reasonably to have taken but did not take; and

14.2.2. the Claiming Party has taken all reasonable steps as are necessary to mitigate the effect of the Force Majeure Event and to carry out its obligations under the Contract in any other way that is reasonably practicable.

14.3 If: (i) Ofcom, in its regulatory function concerning the BBC under the Communications Act 2003, the BBC Charter or the BBC-DCMS Framework Agreement; and/or (ii) in respect of the Subsidy Control Act 2022, the Competition and Markets Authority, Competition Appeal Tribunal or any other body, authority, tribunal or court, imposes any binding direction, order, injunction, decree, requirement or condition on the BBC (a "Binding Direction"), then in so far as such Binding Direction necessitates changes to the rights and obligations under the Contract (a "Directed Change"), then the Supplier shall cooperate with the BBC and take all such steps and actions as may be reasonably required by the BBC to give effect to the Directed Change.

15. Contract Period and Termination

15.1. Subject always to earlier termination pursuant to Clause 15.2 the Contract shall terminate on expiry of the Contract Period (if any).

15.2. The Customer may by notice in writing terminate the Contract with immediate effect if:

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

15.2.1.1. the breach is capable of remedy and the Supplier fails to remedy the breach within seven (7) days (or such shorter period as may be reasonably required by the Customer) of receipt of a written notice specifying the breach and requiring its remedy (in which case the Customer reserves the right to remedy the breach and recover the costs thereof from the Supplier and terminate the Contract in accordance with this Clause 15.2.1); or

15.2.1.2. the breach is not capable of remedy; or

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

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

15.2.3. the Supplier: becomes or is deemed to have become insolvent (including being unable to pay its debts as they fall due and/or that the value of its assets is less than the amount of its liabilities taking into account contingent and prospective liabilities), or if the Supplier proposes or enters into any composition, arrangement or compromise with its creditors generally or any class of them, or if any petition is presented, order is made or resolution is passed for the winding up of the Supplier (except for the purpose of a solvent scheme of arrangement, restructuring or reconstruction previously approved in writing by the Customer), or if an administration order is made or an application for such an order is presented in respect of the Supplier, or if the Supplier ceases, prepares to cease or threatens to cease to carry on its business (or a material part thereof) or is dissolved, or if steps are taken for the appointment of a receiver (including an administrative receiver), administrator, provisional liquidator, liquidator, manager, trustee, nominee, supervisor or similar officer over the whole or part of any of its business or assets, in each case under any law relating to bankruptcy, insolvency or the relief of debtors anywhere in the world;

15.2.4. where the Supplier is a partnership, if a voluntary arrangement is proposed, or any one or more of the partners in such partnership suffers an interim order or bankruptcy order to be made or a petition is presented for his or her bankruptcy, or an interim receiver is appointed, or he or she otherwise becomes insolvent or makes any general arrangement or composition with his or her creditors, in each case under any law relating to bankruptcy, insolvency or the relief of debtors anywhere in the world;

15.2.5. where the Supplier is an individual, he has a bankruptcy petition presented against him or has an interim order or bankruptcy order made against him, an interim order is made for a voluntary arrangement in respect of him, he makes any general composition with his creditors, dies, becomes of unsound mind or a patient for the purposes of any statute relating to mental health or commits a criminal offence (other than a minor motoring offence), in each case under any law relating to bankruptcy, insolvency or the relief of debtors anywhere in the world;

15.2.6. the Supplier suffers or there occurs in relation to that party any event which in the reasonable opinion of the Customer is analogous to any of the events referred to in Clauses 15.2.3, 15.2.4 or 15.2.5;

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

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- 15.2.8. the continued performance thereof is prevented by reason of a Force Majeure Event (as defined in Clause 14.1) for a continuous or aggregate period of more than twenty (20) days in total;
 - 15.2.9. the Supplier delays in delivering the Deliverables or notifies the Customer that it is likely to be so delayed, or the Customer reasonably believes it will be so delayed; or
 - 15.2.10. the Supplier commits a breach of the Bribery Act 2010.
- 15.3. The Supplier shall give prompt notice in writing to the Customer of any event within Clause 15.2 which occurs and which would entitle the Customer to terminate the Contract.
- 15.4. In addition to the Customer's rights to terminate the Contract pursuant to Clause 15.2, the Customer may by notice in writing terminate the Contract with immediate effect if there is in the Customer's reasonable opinion a financial, editorial or other substantial reason and in such event the Customer's liability to the Supplier shall be limited to payment of such sums as may be due to the Supplier up to and including the date of termination and:
- 15.4.1. where the Contract consists of the hire or loan of Goods or Facilities or the provision of Services, the payment of a cancellation fee in an amount to be decided by the Customer using its sole discretion, to be exercised reasonably, having due regard to the Supplier's duty and ability to mitigate any loss it may suffer; or
 - 15.4.2. where the Contract consists of the sale of Goods or Facilities, payment of such costs as the Supplier may have properly, reasonably and directly incurred in relation to fulfilling the Contract, prior to the date of termination.

16. Consequences of Termination

- 16.1. Expiry of termination of the Contract for whatever reason shall:
- 16.1.1. not prejudice any right of action accruing or already accrued to either party at the date of termination; and the rights and obligations of either party arising under Clauses 3, 4.4, 10, 11, 12, 13, 16, 17, 19, 22 and 24 shall survive termination of the Contract;
 - 16.1.2. subject to Clause 15.4, not in itself give rise to a claim by the Supplier for damages or otherwise beyond a claim for payment due under the Contract up to and including the date of termination;
- 16.2. Upon termination of the Contract for whatever reason, the Supplier shall:
- 16.2.1. promptly deliver up to the Customer, at the Supplier's own risk and expense, the whole or any part of any Deliverables owned by the Customer pursuant to Clause 8.3, and any Customer equipment/materials, identity cards or entry permits provided or used under the Contract and the Customer shall be deemed to have irrevocably all powers and authority to enter the Supplier's premises or any other premises to recover and remove such items and recover the costs thereof from the Supplier; and
 - 16.2.2. provide the Customer with satisfactory evidence of such costs, and any reimbursement shall always be subject to the Supplier's duty to mitigate any losses it may suffer.

17. Intellectual Property Rights

- 17.1. All Background IPR is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom the right to use the Background IPR has derived).
- 17.2. The Supplier hereby assigns to the Customer (including by way of present assignment of present and future rights) on creation, absolutely and free from encumbrances and with full title guarantee, all right, title and interest in the Foreground IPR throughout the world for the full unexpired period of such rights and any reversions and extensions of such period as may be provided under any applicable law throughout the world together with all accrued rights of action in respect of any infringement of such rights for the full term of such rights (and warrants that all the Supplier's relevant officers, employees and/or agents and any sub-contractor engaged by the Supplier have agreed to do the same).
- 17.3. The Supplier hereby to the extent permissible by law waives irrevocably, and warrants that all the Supplier's relevant officers, employees and/or agents and any sub-contractor engaged by the Supplier have to the extent permissible by law waived irrevocably, the benefits of any provision of law known as "moral rights" in the Deliverables (including without limitation any

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right of the Supplier, its officers, employees and/or agents or its sub-contractor under sections 77 to 85 inclusive of the Copyright, Designs and Patents Act 1988 and under any resale right arising from EU law) or any similar laws of any jurisdiction in which waiver is permissible.

- 17.4. To the extent that any of the Supplier's or its licensors' Background IPR is implemented in or otherwise required for the Customer to use or benefit from the Deliverables, the Supplier grants to the Customer a royalty-free, non-exclusive perpetual licence to use such Background IPR for such purposes.
- 17.5. The Supplier warrants, represents and undertakes that provision, use and possession of the Deliverables by the Supplier and the Customer will not subject the Customer to any claim of infringement of any IPR or other proprietary rights of a third party.
- 17.6. The Supplier shall immediately give written notice to the Customer of any actual, threatened or suspected claim that the Deliverables infringe any IPR or other proprietary rights of a third party. If such a claim would prevent the Customer from receiving or using all or any part of the Deliverables, the Supplier shall promptly, at its own cost, and at the Customer's election and without prejudice to the Customer's rights or remedies, either:
- 17.6.1. procure the right for the Customer to continue using the infringing item that is subject to the claim; or
- 17.6.2. replace or modify the infringing item with a non-infringing substitute of the same functionality or capability.
- 17.7. The Supplier shall not use nor include any artificial intelligence or machine learning in the Services and/or Deliverables provided to the Customer, or in connection with any Customer content, data or Confidential Information, without the prior written and express permission of the Customer (to which the Customer may attach any conditions at its sole discretion).
- 18. Assignees/Sub-Contractors and Specialised Sub-contractors**
- 18.1. The Customer 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.
- 18.2. The Supplier shall not without the prior consent of the Customer 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.
- 18.3. Notwithstanding that all liability for any sub-contractor rests with the Supplier, any sub-contractor engaged by the Supplier shall be required to be subject to the same obligations as the Supplier is subject to under the Contract and the Supplier shall do all things necessary to ensure that the sub-contractor complies with these including obtaining an undertaking from the sub-contractor in favour of the Customer binding the sub-contractor to comply with the Contract and giving the sub-contractor all relevant information provided to the Supplier by the Customer.
- 18.4. Where the Supplier engages a sub-contractor for the provision of the Deliverables for work involving aircraft (including helicopters, balloons, model aircraft, parachutes), armourers, asbestos, diving, explosives, pyrotechnics and fire effects; flying ballet; lasers; location lighting; scaffolding and similar structures; specialised rigging and wiremen; hydraulic hoist contractors, smoke effects and stunt artists, the Supplier shall:
- 18.4.1. only use those sub-contractors pre-vetted by the Customer for that purpose, a list of which the Customer shall provide to the Supplier on request; and
- 18.4.2. obtain a written risk assessment from the sub-contractor and incorporate such assessment in the Supplier's own risk assessment referred to in Clause 6.3.2.
- 18.5. The Customer reserves the right to vary the kinds of work for which it requires Customer pre-vetted sub-contractors and shall notify the Supplier accordingly and/or to require the use of such pre-vetted sub-contractors for the provision of the Deliverables outside the UK and/or to require the Supplier to comply with any procedure in addition to or in substitution for the use of such sub-contractors as notified to the Supplier from time to time.
- 19. BBC Policies and On Air Credits**
- 19.1. The Supplier shall comply with the following BBC policies (as may be amended from time to time) which have been adopted by the Customer as its own:
- 19.1.1. the BBC Editorial Guidelines (available at <http://www.bbc.co.uk/editorialguidelines/>);

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- 19.1.2. the BBC's Anti-Bribery Code of Conduct and Policy (available at http://downloads.bbc.co.uk/commissioning/site/anti_bribery_high_level_principles.pdf);
 - 19.1.3. the BBC's Bullying and Harassment Policy (available at http://downloads.bbc.co.uk/foi/classes/policies_procedures/bullying_harassment_policy.pdf);
 - 19.1.4. the BBC's Code of Ethical Policy (available at http://downloads.bbc.co.uk/supplying/pdf/BBC_Ethical_Policy.pdf);
 - 19.1.5. the BBC's Single Use Plastic statement of intent (available at <http://downloads.bbc.co.uk/aboutthebbc/reports/policies/sustainability/single-use-plastics-statement-of-intent.pdf>); and
 - 19.1.6. the BBC's information security policies available at <https://www.bbc.com/supplying/working-withus/information-security>; and
 - 19.1.7. any other relevant BBC policy which is available at <http://www.bbc.co.uk/guidelines/> or details of which the Customer shall otherwise provide to the Supplier on request.
- 19.2. The Customer's editorial decision shall be final and nothing in the Contract shall oblige the Customer to broadcast or prevent the broadcast of any programme, either in whole or in part, in connection with which the Deliverables are provided under the Contract.
- 19.3. Any credits awarded to the Supplier pursuant to the Contract shall be in accordance with the applicable broadcaster credit guidelines.

20. Information Provision and Performance Monitoring

- 20.1. If requested by the Customer, the Supplier shall provide evidence of compliance with any of the Supplier's obligations under the Contract, including in connection with the measures set under Clause 20.3.
- 20.2. If requested by the Customer, the Supplier shall provide all reasonable assistance in relation to any requests for information or investigations undertaken by any third party with competent jurisdiction, including but not limited to, the Information Commissioner.
- 20.3. To ensure that the Deliverables achieve the level of service required by the Customer, where appropriate the Customer may stipulate a range of measures by which the Supplier's performance can be assessed.

21. Replacement of Named Individual(s)

Where the Contract specifies that the Supplier shall provide a named individual(s) to perform in whole or in part the Supplier's obligations under the Contract and the individual(s) for whatsoever reason becomes unable to do so the Supplier shall promptly notify the Customer thereof and as promptly as is reasonably possible provide a suitable replacement(s) acceptable to the Customer. If the Supplier is unable to provide the named individual(s) in accordance with this Clause 21 the Customer shall have the right to terminate the Contract forthwith pursuant to Clause 15.2.2.

22. TUPE

- 22.1. The parties consider that neither the commencement nor the termination of the provision of the Services (or any part of them) by the Supplier pursuant to the Contract shall constitute a relevant transfer for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (the "**TUPE Regulations**") and that, as a result, there shall be no transfer of the contracts of employment of any employees of the Customer or of the Supplier (or of any sub-contractor of either party).
- 22.2. If, notwithstanding the above, any person (including the Supplier or a sub-contractor to the Supplier) should claim that:
 - 22.2.1. an employee or former employee of the Supplier (or a sub-contractor of the Supplier) (a "**Supplier Employee**") is employed either by the Customer or by a person engaged to provide services which are the same or similar to the Services (or a part of the Services) (a "**New Supplier**") as a result of the provisions of the TUPE Regulations; or
 - 22.2.2. the Customer or a New Supplier has inherited liability in respect of any Supplier Employee and/or his/her/their

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employee representative(s) as a result of the provisions of the TUPE Regulations, then the Supplier will indemnify and keep indemnified the Customer and any New Supplier against all losses, costs, liabilities, expenses, actions, proceedings, claims and demands arising out of or in connection with:

22.2.2.1.any claim or other legal recourse brought by such person in respect of any fact or matter concerning or arising from any Supplier Employee's employment with or termination of employment by the Supplier (or its sub-contractor);

22.2.2.2.the employment or alleged employment of any Supplier Employee by the Customer or a New Supplier from the date (or alleged date) of transfer of employment from the Supplier (or its sub-contractor) until three (3) months after the date that the claim such Supplier Employee is employed by the Customer or a New Supplier is notified to the Customer or New Supplier in writing;

22.2.2.3.any claim or other legal recourse in respect of any fact or matter concerning or arising from the termination or alleged termination of a Supplier Employee's employment by the Customer or a New Supplier (so long as any such termination or alleged termination occurs no later than one month after the date that the claim that such Supplier Employee is employed by the Customer or a New Supplier is notified to the Customer or New Supplier in writing);

22.2.2.4.any failure or alleged failure of the Supplier, a sub-contractor of the Supplier, the Customer and/or a New Supplier to inform and consult with employee representatives under the TUPE Regulations in relation to the Supplier Employees; or

22.2.2.5.any allegation that the Customer or a New Supplier is in breach of any provision of the TUPE Regulations or otherwise is liable for a breach of the TUPE Regulations by the Supplier (or a sub-contractor of the Supplier).

22.3. At any time following the giving of notice by either party to terminate the Contract, the Customer may request, and following such request, the Supplier shall provide within five (5) Working Days, any and all information concerning the terms and conditions of employment or engagement of the Personnel (as defined in Clause 23.1 below).

22.4. During any period of notice given by either party to terminate the Contract or any period in which the Supplier anticipates or contemplates giving such notice, the Supplier shall, and shall procure that its sub-contractors shall (as applicable), if requested by the Customer (but not, for the avoidance of doubt, otherwise) re-assign, re-deploy, transfer and/or amend the contract of employment of any Personnel so that the TUPE Regulations do not apply in relation to such Personnel in connection with the termination of the Contract.

23. Personnel

23.1. At all times during the term of the Contract, the Supplier shall 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 (from time to time, the "**Personnel**"). In particular, and without limiting the generality of the foregoing, the Supplier shall:

23.1.1. be responsible for performing or procuring the performance of all obligations and assuming all liabilities arising pursuant to the contract of service or the contract for services of the Personnel, including but not limited to the payment of salary, fees or any other emoluments or benefits and for the withholding of tax and National Insurance contributions and making any other deductions or contributions as required by law to or in respect of the Personnel;

23.1.2. be responsible for recruiting, supervising and managing the Personnel;

23.1.3. ensure that all Personnel have the necessary skills, expertise, qualifications, experience and training to provide the Services;

23.1.4. itself comply, and ensure that its agents and sub-contractors comply with any and all of their obligations (howsoever arising) in relation to the Personnel;

23.1.5. itself comply, and ensure that its agents, sub-contractors and all Personnel comply with any and all requirements, policies and/or procedures notified to any or all of them by the Customer and observe all health and safety precautions that are required by any applicable laws, rules or regulations or collective bargaining agreements;

23.1.6. itself comply and procure the compliance of each of its agents, sub-contractors, employees and workers, with all discrimination and equal opportunities legislation applicable to each of the Personnel and to the Deliverables.

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Furthermore, the Supplier agrees that:

23.1.6.1. if the Supplier or any of its sub-contractors employs more than one hundred (100) individuals and its registered office is in the United Kingdom the Supplier shall provide, if requested by the Customer, a written statement of the Supplier's or sub-contractor's equal opportunities policy (as applicable) to the Customer, as well as an adequate explanation of how the policy is and will be implemented over time;

23.1.6.2. it shall use all reasonable endeavours to itself adhere, and procure that each of its sub-contractors adheres, to the current relevant codes of practice in relation to employment and to the delivery of services to the public published by the Equality and Human Rights Commission and the Equality Commission Northern Ireland; and

23.1.6.3. it shall undertake, or refrain from undertaking, such acts as the Customer requests so as to enable the Customer to comply with its obligations under the public sector equality duty in the Equality Act 2010.

23.2. The Supplier agrees and undertakes to indemnify on demand and keep indemnified the Customer and hold the Customer harmless from and against all and any demands, claims, actions, proceedings, liabilities, costs, expenses (including legal expenses), losses, injury or damages whatsoever incurred or suffered by the Customer arising out of the breach by the Supplier of any of its obligations under Clauses 23.1.5 and 23.1.6.

24. Living Wage

24.1. The Supplier shall ensure that all personnel directly or indirectly engaged by the Supplier, or a company within the same group, and working on the Premises of the Customer or the BBC, are paid the appropriate National Living Wage, London Living Wage or Scottish Living Wage, as applicable. The definition of the Living Wage that the Customer and the BBC is taking as a benchmark is that set out by the Living Wage Foundation: <http://www.livingwage.org.uk/> (as may be amended from time to time). The Supplier shall co-operate and provide all reasonable assistance to the Customer and/or the BBC in monitoring the effect of the National Living Wage, London Living Wage and/or Scottish Living Wage, as applicable, and shall provide the Customer and/or the BBC with any documentation that the Customer and/or the BBC reasonably requests in order to verify that this condition is being met.

25. Ethical Trading and Modern Slavery

25.1. The Supplier shall:

25.1.1. implement due diligence procedures for its own suppliers, sub-contractors and other participants in its supply chains, to ensure that they comply with the standards laid out in the BBC Ethical Policy (which the Customer has adopted as its own) and to ensure that there is no slavery or human trafficking or forced labour in its supply chains;

25.1.2. at its own cost respond promptly to:

25.1.2.1. any reasonable request from the Customer to provide an independent audit report in respect of slavery, human trafficking or ethical sourcing; and/or

25.1.2.2. all ethical trading, slavery and human trafficking due diligence questionnaires issued to it by the Customer from time to time and shall ensure that its responses to all such questionnaires are complete and accurate; and

25.1.3. notify the Customer as soon as it becomes aware of any actual or suspected violations of the BBC Ethical Policy and/or any actual or suspected slavery or human trafficking in a supply chain which has a connection with the Contract.

25.2. The Supplier represents and warrants on an ongoing basis throughout the Contract Period that neither the Supplier nor any of its officers, employees and if relevant, its suppliers or sub-contractors or other persons associated with it:

25.2.1. has been convicted of any offence involving slavery and human trafficking; or

25.2.2. has been or is it 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 slavery and human trafficking.

25.3. The Supplier represents and warrants to the Customer on continuing basis for the duration of the Contract Period that:

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25.3.1. neither it nor any organisation or individual affiliated to, or engaged by, the Supplier in the provision of the Services is:

25.3.1.1 on any sanctions list published by the United Kingdom, United States of America, or European Union or any other country relevant to the delivery of Services and Deliverables under this Contract (each a "Sanctions List");

25.3.1.2 is owned or controlled or acting for or on behalf of any organisation or individual which is on a Sanctions List;

25.3.2 in the performance of this Contract the Customer shall not be caused to deal, directly or indirectly, with any property, funds or economic resource itself listed on a Sanctions List or otherwise subject to sanctions;

25.3.3 each party's obligations under this Contract can be fully performed without violating, infringing or the Customer becoming subject to any applicable sanctions.

25.4. In the event the Customer reasonably believes the Supplier is at any time in breach of any of the representations and warranties given at Clause 25.3 above (or that the statements therein are otherwise untrue), the Customer shall be entitled to terminate this Contract on written notice the Supplier. In such case the Customer shall have no liability to the Supplier whatsoever including in respect of any fees, whether due prior to termination or otherwise.

26. Conflicts of Interest

26.1. In providing the Deliverables, the Supplier will not do anything, or knowingly or negligently permit a situation to arise, whereby a conflict of interest may be created between the interests of the Customer and the Supplier.

27. Waiver of Injunctive Relief

27.1. Supplier waives the right to seek injunctive or other equitable relief or to enjoin or restrain the production, distribution, exhibition, advertising, or any other means of exploitation of the Programme. Under no circumstances shall the Supplier have the right to rescind or terminate any of Customer's rights hereunder.

28. General

28.1. Unless and until specified in writing pursuant to the Contract by an authorised official of either party, any notice required to be given pursuant to the Contract shall be in writing and sent either by hand, by prepaid recorded delivery or registered post or by prepaid first class post, or by fax confirmed by first class post, or by e-mail which has been received, as evidenced by receipt by the sender of a read receipt, addressed to: (i) in the case of notice to the Customer, the relevant person specified in the Purchase Documentation (quoting any purchase order number), the Customer Department and the address as specified in the Purchase Documentation; or (ii) in the case of notice to the Supplier at the address as specified in the Purchase Documentation, and any such notice shall be deemed to have been received by the addressee at the time of delivery or in the case of prepaid first class post, two days after posting.

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

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

28.4. Any amendment or variation to the Contract shall only be made by prior written agreement (including email) between the parties and, in particular, any amendment to these terms of trade shall either be in writing and signed by the parties or, if made by email, must include an express statement of an intention to amend or vary the Contract which is agreed by the Customer.

28.5. Notwithstanding the covenants for title made in Clause 17.2, the Supplier shall execute or cause to be executed all such other documents and do or cause to be done all such further acts and things as the Customer may from time to time require in order to vest in and secure to the Customer and its successors in title the full benefit of the assets, rights and benefits to be transferred or granted to the Customer under the Contract and for the protection and enforcement of the same and otherwise to give full effect to the terms of the Contract.

28.6. 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

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- 28.7. The headings to the clauses and sections of these terms of trade are for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 28.8. Any reference to a statute, statutory provision, subordinate legislation, code or guideline ("Legislation") is a reference to such Legislation as amended and in force from time to time and to any Legislation which re-enacts or consolidates (with or without modification) any such Legislation.
- 28.9. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 28.10. Without prejudice to the rights of either party in respect of actions relating to fraudulent misrepresentation, the Contract and any appendices and any documents referred to therein constitutes the entire understanding between the parties with respect to the subject matter thereof and supersedes all prior agreements, negotiations and discussions between the parties relating thereto.
- 28.11. 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.
- 28.12. The Contract and any dispute, claim, suit, action or proceedings (including non-contractual disputes, claims, suits, actions or proceedings) arising out of or in connection with the Contract or its formation (in this Clause referred to as "Proceedings") shall be governed in accordance with English Law. It is irrevocably agreed for the exclusive benefit of the Customer that the courts of England are to have jurisdiction to settle any disputes which may arise out of or in connection with the Contract and that accordingly any Proceedings may be brought in such courts. Nothing in this Clause shall limit the right of the Customer to take Proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of Proceedings in one or more jurisdictions preclude the taking by the Customer of Proceedings in any other jurisdiction, whether concurrently or not.
- 28.13. This Agreement 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 the counterparts shall together constitute the one agreement.