

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 Studioworks"** means BBC Studioworks Limited of BBC Elstree Centre, Eldon Avenue, Borehamwood, WD6 1NL who are wholly owned subsidiary of 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 BBC Studioworks 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)

**"Policies"** means all policies of both BBC Studioworks Limited and the British Broadcasting Corporation which the Supplier must warrant to comply with and will be communicated to the Supplier from time to time;

**"Purchase Documentation"** means the BBC Studioworks purchase order and any other document specifying the Supplier, the Deliverables, the Contract Price, and where appropriate the Contract Period and Special Conditions;

**"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. 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 BBC Studioworks 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 BBC Studioworks into disrepute. The Supplier shall not, without the prior written consent of BBC Studioworks, make any reference to BBC Studioworks or its trade marks in any advertising, promotional or published material nor make any reference to BBC Studioworks 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 BBC Studioworks 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, BBC Studioworks shall pay to the Supplier the Contract Price.
- 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, 4.4 and 4.6 below.
- 4.3. The Supplier shall submit a valid VAT invoice to BBC Studioworks for the whole or any part (as required by BBC Studioworks) of the Contract Price to BBC Studioworks Accounts Payable at the address specified in the Purchase Documentation quoting the relevant Purchase Documentation number. BBC Studioworks shall pay to the bank account specified by the Supplier such sums as are due by the end of the month following the month in which BBC Studioworks has determined the invoice to be valid and undisputed, in accordance with this Clause 4.
- 4.4. BBC Studioworks reserves the right to withhold payment to the extent that the Deliverables have not been provided in accordance with the Contract or if BBC Studioworks receives an invoice which it believes is not valid and/or properly due and BBC Studioworks shall notify the Supplier accordingly giving reasons for such withholding. BBC Studioworks shall only be entitled to withhold an amount equal to the sum which is in dispute.
- 4.5. BBC Studioworks shall be entitled but not obliged at any time to set off any liability of the Supplier to BBC Studioworks against any liability of BBC Studioworks 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 BBC Studioworks and the Supplier). Exercise by BBC Studioworks of its rights under this 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.
- 4.6. Subject to Clauses 4.4 and 4.5 if BBC Studioworks 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 BBC Studioworks interest on the overdue amount from the due date 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 BBC Studioworks that the amount has not been paid in accordance with Clause 4.3 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

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which payment should be made.

- 4.7. 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 BBC Studioworks shall not be obliged to pay any Expenses in addition to the Contract Price. Where the Contract does provide that BBC Studioworks 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 BBC Studioworks (and if BBC Studioworks agrees in its discretion to reimburse Expenses which are not so agreed, that they do not exceed those which a BBC Studioworks employee of comparable qualifications and position would have been entitled to incur under applicable BBC Studioworks staff expense policy guidelines), and in either case being reasonably, properly and necessarily incurred by the Supplier in the performance of the Contract and BBC Studioworks being provided with a valid VAT invoice together with full supporting evidence for such Expenses.
- 4.8. Where the Supplier is VAT registered the Supplier shall recover VAT on any expenditure incurred as described in Clause 4.7 above, in the normal course of its business and shall specify only the net amount of such expenditure in the invoice to BBC Studioworks prior to adding VAT thereto at the appropriate rate.
- 4.9. If BBC Studioworks 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, BBC Studioworks shall:
- 4.9.1. be entitled to pay the amount or amounts in question after the deduction of the amount of such withholding or deduction;
  - 4.9.2. promptly pay to the relevant authority within the period permitted by law the amount of such withholding or deduction; and
  - 4.9.3. provide the Supplier with written evidence that it has made the payment to the relevant authority.

If BBC Studioworks 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 BBC Studioworks fully indemnified from and against any liabilities or expense in connection with such withholding or deduction.

- 4.10. The Supplier shall comply with any relevant BBC Studioworks budgetary limits which BBC Studioworks 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 BBC, BBC Studioworks shall not be liable to reimburse the Supplier in respect of any sums over such limits.

**5. Security/Access/Inspection**

- 5.1. The Supplier shall obtain from BBC Studioworks identity cards or entry permits and shall display these whilst on BBC Studioworks premises. The Supplier shall return these cards/permits to BBC Studioworks upon termination or expiry of the Contract.
- 5.2. BBC Studioworks 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 BBC Studioworks premises.
- 5.3. BBC Studioworks shall at its discretion give to the Supplier by prior arrangement such access to BBC Studioworks premises and such general BBC Studioworks facilities (for example, catering and sanitary) at BBC Studioworks premises as the Supplier may reasonably require to fulfil its obligations under the Contract. However BBC Studioworks may refuse admission to or remove from BBC Studioworks premises any person whom BBC Studioworks deems unacceptable for whatsoever reason other than solely to frustrate the Contract. BBC Studioworks does not give any warranty or assurance as to the condition, safety or suitability of BBC Studioworks premises for the provision of Services and, to the extent permitted by law, access to and use of BBC Studioworks premises is at the Supplier's risk and the Supplier shall be responsible for the health and safety of its personnel at BBC Studioworks premises. The Supplier shall promptly vacate all BBC Studioworks 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 BBC.
- 5.4. The Supplier shall upon the request of BBC Studioworks grant BBC Studioworks such access to the Supplier's premises or such other premises as BBC Studioworks may reasonably require for inspection of any Goods, Facilities and/or BBC Studioworks equipment/materials provided under the Contract or for any other reason connected with the performance of the Contract.

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**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 BBC Studioworks 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. BBC Studioworks 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 BBC Studioworks, submit to and fully co-operate with any safety and environmental vetting process required by BBC Studioworks 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 BBC Studioworks or any third party arising out of or in any way connected with the performance of the Contract, and provide a copy of such assessment to BBC Studioworks upon reasonable request, and promptly take all reasonable steps to eliminate or adequately control such risks and shall notify and co-operate with BBC Studioworks accordingly;
- 6.3.3. consult with BBC Studioworks, 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 BBC Studioworks, 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. BBC Studioworks may notify the Supplier of risks to health and safety and the environment which are reasonably foreseeable to BBC Studioworks and which may affect the Supplier or BBC Studioworks arising out of or in any way connected with the activities of BBC Studioworks 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.

**7. Wet and Dry Hire of Goods or Facilities**

- 7.1. This Clause 7 sets out BBC Studioworks' entire liability with respect to loss of or damage to Goods and/or Facilities hired or loaned to BBC Studioworks by the Supplier.
- 7.2. Where the Contract consists of Dry Hire of Goods BBC Studioworks shall be responsible to the Supplier for the prompt repair or replacement (at BBC Studioworks' option) of Goods lost or damaged whilst in the charge and control of BBC Studioworks, 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 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 BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks, 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 BBC Studioworks 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 BBC Studioworks where, subject to Clause 7.5 below, BBC Studioworks shall be responsible for prompt repair or replacement provided that the Supplier notifies BBC Studioworks 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, BBC Studioworks' 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:

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- 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 BBC Studioworks at the Supplier's own risk and expense or collected by BBC Studioworks at BBC Studioworks' 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 BBC Studioworks. BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks' 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 BBC Studioworks.
- 8.3. Ownership of any Goods that are sold under the Contract shall vest in BBC Studioworks absolutely at such time as BBC Studioworks 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 BBC Studioworks upon delivery or collection or subsequently not to conform with the Contract, BBC Studioworks may accept or reject the whole or any part thereof and if rejected, without prejudice to any other remedy available to BBC Studioworks, 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. BBC Studioworks 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 BBC Studioworks accepts no liability for damage to equipment or material stored on its premises. BBC Studioworks reserves the right to reclaim the storage area upon notification.
- 9.2. The Supplier shall not use any BBC Studioworks equipment/materials without the prior written consent of BBC Studioworks and shall where relevant be responsible for the care, control, security and maintenance of such materials and equipment which it uses.

**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 and/or professional indemnity insurance which shall be no less than three million pounds sterling (£3,000,000) in each case and with scope of cover appropriate to the Deliverables provided under the Contract in respect of any one claim or incident.
- 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 BBC Studioworks pursuant to Clause 7.



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- 10.4. The Supplier shall produce to BBC Studioworks 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 BBC Studioworks on demand and keep indemnified BBC Studioworks and hold BBC Studioworks harmless from and against all costs and expenses (including legal costs), losses and liabilities which BBC Studioworks may incur as a result of the Supplier's:
- 10.7.1. breach of or non-compliance with its obligations or warranties under the Contract;
  - 10.7.2. negligence or wilful default; and
  - 10.7.3. any claims from third parties made as a result of its acts or omissions (including relating to infringement of any IPR supplied under or used in connection with the Contract).
- 10.8. The BBC Studioworks shall not 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.

**11. Warranties**

- 11.1. The Supplier undertakes, warrants and represents that:
- 11.1.1. except as otherwise agreed in writing prior to performance of the Contract, it shall obtain for BBC Studioworks all necessary consents, permissions and/or clearances in third party rights (including IPR) with respect to the Deliverables;
  - 11.1.2. 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;
  - 11.1.3. 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 BBC Studioworks and approved in writing by BBC Studioworks;
  - 11.1.4. 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;
  - 11.1.5. it shall, unless otherwise agreed in writing by BBC Studioworks 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 BBC Studioworks technical standards and procedures, details of which BBC Studioworks shall provide to the Supplier;
  - 11.1.6. 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;
  - 11.1.7. it shall comply and procure that its sub-contractors comply with the Bribery Act 2010 and BBC Anti-Bribery Code of Conduct and Policy (which are available at [http://downloads.bbc.co.uk/commissioning/site/anti\\_bribery\\_high\\_level\\_principles.pdf](http://downloads.bbc.co.uk/commissioning/site/anti_bribery_high_level_principles.pdf)); and
  - 11.1.8. it shall comply and procure that its sub-contractors comply with BBC Bullying and Harassment Policy (which is available at: [http://downloads.bbc.co.uk/foi/classes/policies\\_procedures/bullying\\_harassment\\_policy.pdf](http://downloads.bbc.co.uk/foi/classes/policies_procedures/bullying_harassment_policy.pdf)).

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- 11.2. BBC Studioworks' rights under the Contract are in addition to the statutory conditions implied in favour of BBC Studioworks 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.
- 11.3. 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 Protection**

- 12.1. For the purposes of this Clause 12, **Data Protection Legislation** means the Data Protection Act 1998 and any other applicable laws relating to the processing of Personal Data under this Contract including 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 including (from and including 25 May 2018, where applicable) the General Data Protection Regulation 2016/679/EU ("**GDPR**"). The terms "Data Subject", "Processing", "Personal Data", "Controller", "Processor", "Personal Data Breach", "Sensitive Personal Data", "Supervisory Authority" and "Third Country" shall bear the same meanings as set out in the Data Protection Legislation.
- 12.2. The Supplier may process Personal Data and/or Sensitive Personal Data from time to time in the course of performing its obligations under this Contract, as set out in the Purchase Documentation, and the necessary purposes of the processing ("**Agreed Purposes**") as set out therein shall set out BBC Studioworks' instructions for processing. The Supplier shall not process such Personal Data and/or Sensitive Personal Data ("**BBC Studioworks Personal Data**") other than in accordance with these instructions, which may be amended from time to time, at BBC Studioworks' sole discretion. The Supplier shall only be entitled to process BBC Studioworks Personal Data during the Contract Period, or until termination, whichever is earlier.
- 12.3. The Parties agree to the binding obligations as set out within this Clause 12 with respect to the processing of BBC Studioworks Personal Data.
- 12.4. The Supplier acknowledges and agrees that BBC Studioworks shall be the controller and the Supplier shall be the processor in respect of the processing of BBC Studioworks Personal Data.
- 12.5. The Supplier shall comply at all times with its own obligations imposed by the Data Protection Legislation, including but not limited to the statutory processor obligations set out in Article 28 of the GDPR (the **Statutory Processor Obligations**) and shall not perform their obligations under this Contract in such a way as to cause BBC Studioworks to breach any of its obligations under the Data Protection Legislation.
- 12.6. The Supplier shall and shall ensure that its employees, sub-contractors and/or agents comply with the following obligations:
- 12.6.1. process BBC Studioworks Personal Data only in accordance with documented instructions from BBC Studioworks and for the Agreed Purposes, except as may be required under applicable law;
- 12.6.2. take reasonable steps to ensure the reliability of any individuals or entities who have access to BBC Studioworks Personal Data and ensure that such persons are aware of the Supplier's obligations under this Contract, in particular with respect to security, integrity and confidentiality of BBC Studioworks Personal Data and to protect the rights of Data Subjects;
- 12.6.3. ensure that all staff engaged by the Supplier have committed themselves to the obligation of confidentiality regarding BBC Studioworks' Personal Data processed under this Contract.
- 12.6.4. process BBC Studioworks Personal Data securely at all times, taking into account the nature, scope, context and purposes of processing, by implementing appropriate technical and organisational security measures to protect BBC Studioworks Personal Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to BBC Studioworks Personal Data transmitted, stored or otherwise processed by the Supplier and where relevant in accordance with BBC Studioworks' Information Security policies as notified to the Supplier from time to time. The Supplier shall ensure a level of security appropriate to the risk of processing BBC Studioworks Personal Data, including, as appropriate:
- 12.6.5. the pseudonymisation and/or encryption of BBC Studioworks Personal Data;

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- 12.6.6. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
  - 12.6.7. the ability to restore the availability and access to BBC Studioworks Personal Data, in a timely manner in the event of a physical or technical incident or other disaster;
  - 12.6.8. a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;
    - 12.6.8.1. where stored on electronic portable media (including without limitation, laptops, memory sticks or CD roms), encrypted and password protected; and
    - 12.6.8.2. hard copy documents containing BBC Studioworks Personal Data shall be stored securely using appropriate security measures including without limitation locked cabinets or equivalent, and
- access to all BBC Studioworks Personal Data, whether stored and processed electronically or otherwise, shall be restricted to such of the Supplier's relevant officers, employees and/or agents and any sub-contractors engaged by the Supplier who have a specific need to access BBC Studioworks Personal Data and for only the Agreed Purposes.
- 12.7. The Supplier shall not do any of the following without BBC Studioworks' prior specific written authorisation:
    - 12.7.1. retain or process BBC Studioworks Personal Data for longer than is necessary to carry out the Agreed Purposes or as may be required by the Data Protection Legislation;
    - 12.7.2. use BBC Studioworks Personal Data for any other purposes other than the Agreed Purposes, including marketing purposes;
    - 12.7.3. subject always to Clause 12.10, transfer, or permit the transfer of, BBC Studioworks Personal Data to third parties such as its sub-contractors and/or agents; or
    - 12.7.4. transfer, or permit the transfer of, BBC Studioworks Personal Data to a Third Country or an international organisation except (i) on BBC Studioworks' written instructions; (ii) there has been a European Community finding of adequacy pursuant to Article 25(6) of the EC Data Protection Directive in respect of that country or, after 25 May 2018, pursuant to Article 45 of the GDPR; (iii) where the Supplier (and its agents and/or sub-contractors) have agreed to comply with a lawful transfer mechanism, as set out under Articles 46, 47 or 49 of the GDPR, such as the standard contractual clauses or other provisions or other approved programmes, including but not limited to the US-EU Privacy Shield, or approved successor programme and so long as the Supplier remains subject to such programme for the duration of the processing; and in each such case, only where the Supplier has informed and obtained BBC Studioworks' consent in advance of such transfer.
  - 12.8. The Supplier shall promptly provide at no charge such necessary and reasonable assistance and co-operation to BBC Studioworks and to any Supervisory Authority, in connection with:
    - 12.8.1. any investigations, audits or enquiries made by a Supervisory Authority in relation to BBC Studioworks Personal Data;
    - 12.8.2. BBC Studioworks being able to comply and respond to a request, query or complaint from a Data Subject in relation to their Personal Data,
    - 12.8.3. BBC Studioworks being able to comply with any other obligation as imposed on it by the Data Protection Legislation;
    - 12.8.4. upon notification by BBC Studioworks of any request from a Data Subject for portability, minimisation, rectification of or erasure of that Data Subject's Personal Data and/or Sensitive Personal Data or to cease or not begin processing, of that Data Subject's Personal Data, assist BBC Studioworks in responding to the request and update its records accordingly; or
    - 12.8.5. carrying out any data protection impact assessment, including the privacy by design and privacy by default techniques employed, in relation to the processing of BBC Studioworks Personal Data covered by this Contract.
  - 12.9. The Supplier shall notify BBC Studioworks immediately if it becomes aware of, or reasonably suspects the occurrence of, any potential or actual Personal Data Breach affecting BBC Studioworks Personal Data and, in any event, within twenty-four (24) hours of identification to enable BBC Studioworks to comply with its obligation to notify the relevant Supervisory Authority. The Supplier shall provide reasonable assistance to BBC Studioworks to facilitate the handling of any Personal



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Data Breach in an expeditious and compliant manner and for the Parties to consider what action is required to resolve the issue in accordance with the Data Protection Legislation and any applicable Supervisory Authority guidance. Such notice shall, at a minimum:

- 12.9.1. describe the nature of the Personal Data Breach including, where possible, the categories and approximate number of (a) affected Data Subjects, and (b) data records, and (c) whether BBC Studioworks Personal Data was de-identified, pseudonymised, anonymised or encrypted;
  - 12.9.2. communicate the name and contact details of the Supplier's data protection officer or other contact point in relation to the Personal Data Breach;
  - 12.9.3. describe the likely consequences of the Personal Data Breach; and
  - 12.9.4. describe the measures taken or proposed to be taken by the Supplier to address the personal data breach including where appropriate, to mitigate its adverse effects.
- 12.10. In the event of a Personal Data Breach affecting BBC Studioworks Personal Data, the Supplier shall:
- 12.10.1. not make any announcements and/or representations, relating to the Personal Data Breach, or acknowledge any correspondence relating to that breach without BBC Studioworks' prior written approval;
  - 12.10.2. take all reasonable and appropriate corrective action, including without limitation, at the request of BBC Studioworks and at the Supplier's expense, provide notice to Data Subjects whose Personal Data and/or Sensitive Personal Data may have been affected by such Personal Data Breach, whether or not such notice is required by the Data Protection Legislation;
  - 12.10.3. permit BBC Studioworks to participate in any investigation, corrective action, and remediation process relating to the Personal Data Breach;
  - 12.10.4. co-operate with BBC Studioworks in relation to any Personal Data Breach notification to a Supervisory Authority and take all such steps as may be required by a Supervisory Authority;
  - 12.10.5. promptly provide, at no charge, such assistance and additional information to BBC Studioworks to enable it to fulfil its obligations to communicate the Personal Data Breach to affected Data Subjects. BBC Studioworks, in its sole discretion, shall be responsible for determining the content of any notice to affected Data Subjects including any offers of assistance, monitoring or payments to affected Data Subjects; and
- without limiting the foregoing, (1) if BBC Studioworks is required to notify Data Subjects, the Supplier will reimburse BBC Studioworks for all direct and indirect expenses and costs related to the Personal Data Breach and (2) if the root cause of the Personal Data Breach is determined by BBC Studioworks to be under the control of the Supplier, any such payment to BBC Studioworks will not limit BBC Studioworks' right to recover damages it incurs as a result of Supplier's Personal Data Breach, but the amount of damages will be reduced by the amount paid under this paragraph.
- 12.11. Where the Supplier seeks to engage any agent and/or sub-contractor to perform any of its obligations under this Contract, the Supplier shall seek BBC Studioworks' prior specific written consent which shall not be unreasonably withheld. Any such consent, shall be conditional upon the Supplier entering into a written contract with such an agent and/or sub-contractor which contains equivalent provisions and obligations as those set out in the Clause 12, specifically at Clause 12.6, and contains a provision whereby such written contract terminates automatically on termination of this Contract for any reason and grants the Supplier the ability to conduct periodic assessments of such agent and/or sub-contractor's data protection and security safeguards and practices to ensure compliance. The Supplier shall provide, upon request of BBC Studioworks, information about the results of such assessments.
  - 12.12. Where any agent and/or sub-contractor fails to fulfil its data protection obligations under such written contract, the Supplier will be deemed to have breached this Clause 12 and shall remain fully liable for the acts or omissions its agent and/or sub-contractors.
  - 12.13. The Supplier shall grant to BBC Studioworks, or its appointed representatives, such access as is reasonably necessary to enable BBC Studioworks access to such premises owned or controlled by the Supplier, or its agents or sub-contractors, and used by the Supplier in the performance of its obligations under this Contract to inspect and audit all facilities, equipment, documents and electronic data relating to and/or used in the processing of BBC Studioworks Personal Data by the Supplier.
  - 12.14. Upon completion of the processing of BBC Studioworks Personal Data and otherwise immediately on expiry or earlier termination of this Contract, the Supplier shall destroy by putting BBC Studioworks Personal Data beyond use, or return

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materials, information or data containing BBC Studioworks Personal Data to BBC Studioworks at BBC Studioworks' option. For the avoidance of doubt, any provision of this Contract that expressly or by implication is intended to come into or continue into force on or after expiry or termination of this Contract shall remain in full force and effect.

- 12.15. The Supplier agrees and undertakes to indemnify on demand and keep indemnified BBC Studioworks and defend at its own expense, and hold BBC Studioworks 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 BBC Studioworks or for which BBC Studioworks may become liable due to any failure by the Supplier arising out of the breach by the Supplier or its employees, agents and/or sub-contractors, 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 BBC Studioworks (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;
  - 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 13 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 BBC.
- 13.3. The Supplier recognises that, if FOIA is applicable to the Contract, BBC Studioworks may be required to release information relating to any subject matter contained in the Contract whether it is held by BBC Studioworks, the Supplier or by another person on behalf of BBC Studioworks to comply with its obligations under FOIA.
- 13.4. If BBC Studioworks 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 BBC Studioworks' request for assistance 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 BBC Studioworks all such requests that it receives as soon as possible and provide to BBC Studioworks with information that BBC Studioworks 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 BBC Studioworks.

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- 13.6. The BBC Studioworks 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**

- 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 11.3) 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, 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.

**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 BBC Studioworks 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 BBC Studioworks) of receipt of a written notice specifying the breach and requiring its remedy (in which case BBC Studioworks 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

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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 BBC Studioworks), 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 BBC Studioworks 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;
  - 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 BBC Studioworks that it is likely to be so delayed, or BBC Studioworks 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 BBC Studioworks of any event within Clause 15.2 which occurs and which would entitle BBC Studioworks to terminate the Contract.
- 15.4. In addition to BBC Studioworks' rights to terminate the Contract pursuant to Clause 15.2, BBC Studioworks may by notice in writing terminate the Contract with immediate effect if there is in BBC Studioworks' reasonable opinion a financial, editorial or other substantial reason and in such event BBC Studioworks' 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 BBC Studioworks 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. 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;

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- 16.2. Upon termination of the Contract for whatever reason, the Supplier shall:
- 16.2.1. promptly deliver up to BBC Studioworks, at the Supplier's own risk and expense, the whole or any part of any Deliverables owned by BBC Studioworks pursuant to Clause 8.3, and any BBC Studioworks equipment/materials, identity cards or entry permits provided or used under the Contract and BBC Studioworks 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. The Supplier shall provide BBC Studioworks 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 BBC Studioworks (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 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 BBC Studioworks to use or benefit from the Deliverables, the Supplier grants to BBC Studioworks 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 BBC Studioworks will not subject BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks from receiving or using all or any part of the Deliverables, the Supplier shall promptly, at its own cost, and at BBC Studioworks' election and without prejudice to BBC Studioworks' rights or remedies, either:
- 17.6.1. procure the right for BBC Studioworks 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.

**18. Assignees/Sub-Contractors and Specialised Sub-contractors**

- 18.1. The BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks binding the sub-contractor to comply with the Contract and giving the sub-contractor all relevant information provided to the Supplier by BBC Studioworks.
- 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;



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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 BBC Studioworks for that purpose, a list of which BBC Studioworks 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 BBC Studioworks reserves the right to vary the kinds of work for which it requires BBC Studioworks 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 Studioworks and BBC Policies and On Air Credits**

- 19.1. The Supplier shall comply with:
- 19.1.1. the BBC Editorial Guidelines (available at <http://www.bbc.co.uk/editorialguidelines/>);
  - 19.1.2. the BBC Anti-Bribery Code of Conduct and Policy (available at [http://downloads.bbc.co.uk/commissioning/site/anti\\_bribery\\_high\\_level\\_principles.pdf](http://downloads.bbc.co.uk/commissioning/site/anti_bribery_high_level_principles.pdf));
  - 19.1.3. the BBC Bullying and Harassment Policy (available at [http://downloads.bbc.co.uk/foi/classes/policies\\_procedures/bullying\\_harassment\\_policy.pdf](http://downloads.bbc.co.uk/foi/classes/policies_procedures/bullying_harassment_policy.pdf));
  - 19.1.4. the BBC Code of Ethical Policy (available at [http://downloads.bbc.co.uk/supplying/pdf/BBC\\_Ethical\\_Policy.pdf](http://downloads.bbc.co.uk/supplying/pdf/BBC_Ethical_Policy.pdf)); and
  - 19.1.5. any other relevant BBC policy which is available at <http://www.bbc.co.uk/guidelines/> or details of which BBC Studioworks shall otherwise provide to the Supplier on request.
- 19.2. BBC Studioworks' editorial decision shall be final and nothing in the Contract shall oblige BBC Studioworks 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 any BBC Studioworks applicable credit guidelines which are available at <http://www.bbc.co.uk/guidelines/>.

**20. Information Provision and Performance Monitoring**

- 20.1. If requested by BBC Studioworks, 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 BBC Studioworks, 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 BBC Studioworks, where appropriate BBC Studioworks 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 BBC Studioworks thereof and as promptly as is reasonably possible provide a suitable replacement(s) acceptable to BBC Studioworks. If the Supplier is unable to provide the named individual(s) in accordance with this Clause 21 BBC Studioworks shall have the right to terminate the Contract forthwith pursuant to Clause 15.2.2.

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**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 BBC Studioworks 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 BBC Studioworks 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. BBC Studioworks or a New Supplier has inherited liability in respect of any Supplier Employee and/or his/her/their employee representative(s) as a result of the provisions of the TUPE Regulations, then the Supplier will indemnify and keep indemnified BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks or a New Supplier is notified to BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks or a New Supplier is notified to BBC Studioworks or New Supplier in writing);
- 22.2.2.4.any failure or alleged failure of the Supplier, a sub-contractor of the Supplier, BBC Studioworks 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 BBC Studioworks 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, BBC Studioworks 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 BBC Studioworks (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

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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 BBC Studioworks 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. 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 BBC Studioworks, a written statement of the Supplier's or sub-contractor's equal opportunities policy (as applicable) to the BBC, 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 BBC Studioworks requests so as to enable BBC Studioworks to comply with its obligations under the public sector equality duty in the Equality Act 2010.
- 23.1.7. The Supplier agrees and undertakes to indemnify on demand and keep indemnified BBC Studioworks and hold BBC Studioworks 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 BBC Studioworks 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 BBC Studioworks, are paid the appropriate National Living Wage, London Living Wage or Scottish Living Wage, as applicable. The definition of the Living Wage that BBC Studioworks is taking as a benchmark is that set out by the Living Wage Foundation: <http://www.livingwage.org.uk/>. The Supplier shall co-operate and provide all reasonable assistance to BBC Studioworks in monitoring the effect of the National Living Wage, London Living Wage and/or Scottish Living Wage, as applicable, and shall provide BBC Studioworks with any documentation that BBC Studioworks reasonably requests in order to verify that this condition is being met.

**25. 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 there is no slavery or human trafficking in its supply chains;
  - 25.1.2. at its own cost respond promptly to:
    - 25.1.2.1. any reasonable request from BBC Studioworks to provide an independent audit report in respect of slavery, human trafficking or ethical sourcing; and / or
    - 25.1.2.2. all slavery and human trafficking due diligence questionnaires issued to it by BBC Studioworks from time to time and shall ensure that its responses to all such questionnaires are complete and accurate;

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and

25.1.3. notify BBC Studioworks as soon as it becomes aware of 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.

**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 BBC Studioworks and the Supplier.

**27. General**

27.1. 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 BBC Studioworks, the relevant person specified in the Purchase Documentation (quoting any purchase order number), BBC Studioworks 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.

27.2. 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.

27.3. 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 BBC Studioworks or to contract in the name of or create a liability against BBC Studioworks in any manner whatsoever.

27.4. 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 BBC.

27.5. 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 BBC Studioworks may from time to time require in order to vest in and secure to BBC Studioworks and its successors in title the full benefit of the assets, rights and benefits to be transferred or granted to BBC Studioworks under the Contract and for the protection and enforcement of the same and otherwise to give full effect to the terms of the Contract.

27.6. 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.

27.7. 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.

27.8. 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.

27.9. 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.

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- 27.10. 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.
- 27.11. 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.
- 27.12. The Contract shall be governed in accordance with English Law. It is irrevocably agreed for the exclusive benefit of BBC Studioworks 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 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 BBC Studioworks 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 BBC Studioworks of Proceedings in any other jurisdiction, whether concurrently or not.
- 27.13. 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.