

**Schedule 11: Exit****1 Introduction**

- 1.1 This Schedule specifies the obligations of the Parties in respect of exit arrangements so as to ensure a Smooth Transfer of the Services.
- 1.2 Notwithstanding anything contained elsewhere in this Agreement, the primary objective of the Parties in exercising the exit and service transition arrangements set out in this Schedule 11 is to ensure a Smooth Transfer of the Services in whole or in part and the transfer of any appropriate assets and agreements to the Successor Service Provider and/or the BBC following expiry or termination of this Agreement or the Services.
- 1.3 The Contractor shall, and shall procure that, its Subcontractors assist the BBC and/or the Successor Service Provider to effect a Smooth Transfer of the Services and agrees that in order to effect a Smooth Transfer certain of the rights granted to the Successor Service Provider will need to be extended for the benefit of the Successor Service Provider's subcontractors.

**2 Draft Exit Plan**

- 2.1 No later than three (3) months after the Start Date the Contractor shall prepare and deliver to the BBC a draft exit plan (the "**Draft Exit Plan**") which shall identify the key elements necessary for accomplishing an exit for the reprourement or otherwise of the Services together with a Smooth Transfer and which as a minimum will include:
  - 2.1.1 a specification of the Services provided by the Contractor under this Agreement, comprising of the main functions and the processes and software applications required to support these functions as described in the Service Documentation;
  - 2.1.2 a list of the Employees specifying their skill sets and experience and whether such Employees are wholly or partly dedicated to the provision of the Services. If Employees are also involved in providing services to other customers of the Contractor, or its Subcontractors, the list should specify the proportion of time which such Employees dedicate to the provision of the Services. The list should also specify and categorise the roles of the Key Personnel by reference to the Services, together with the number and roles of all supervisory Employees used to provide the Services;
  - 2.1.3 to the extent not provided for in paragraph 2.1.2 above, and if the BBC so requests, the Minimum Information, as set out in paragraph 9 below;
  - 2.1.4 the management structure to be employed during transfer (including interfaces with any Successor Service Provider);
  - 2.1.5 the method by which systems and the Services could be divided to enable part or full termination of the Services as described in the Service Documentation;
  - 2.1.6 a list of any security issues that relate to the Services that may affect Smooth Transfer;

- 2.1.7 the Contractor's intentions as to which Employees and posts involved in the provision of the Services will be available for transfer under the terms of the TUPE Regulations;
- 2.1.8 a detailed description of the transfer process that will be used in conjunction with any Successor Service Provider including details of the means to ensure continuing provision of the Services throughout the transfer process or until the cessation of the Services;
- 2.1.9 the Service Levels and performance against those Service Levels;
- 2.1.10 the specification of process and roles and responsibilities for the identification and transfer of such information as may be reasonably required in order to effect a Smooth Transfer and the controlling and tracking of changes to the Minimum Information;
- 2.1.11 a copy of user licences entered into by the Contractor for the provision of the Services and the terms of maintenance agreements for software and hardware;
- 2.1.12 a specification of the activities of the Subcontractors and Third Party Contracts necessary in order to effect a Smooth Transfer;
- 2.1.13 a plan for completion and delivery of all elements of the exit arrangements, including descriptions of activities and their time scales and milestones. This plan shall identify the major risks or unresolved issues associated with these activities;
- 2.1.14 all dependencies on the BBC and any Successor Service Provider in respect of the exit arrangements including any constraints or restrictions such as access to premises, staff and transfer of staff from the Contractor;
- 2.1.15 an up to date version of the Registers (or any part of them);
- 2.1.16 without prejudice to Clauses 32, 37.6 and 37.7, the obligations of the Contractor in relation to the transfer of knowledge necessary for the continued provision of the Services obtained during the performance of the Services which will, as a minimum include the following principles:
  - (a) the Contractor shall transfer to the BBC (and/or, if directed by the BBC, any Successor Service Provider) all information, knowledge, data, know how and ideas relating to the Services that the Contractor (or any Subcontractors) has obtained during the provision of the Services (up to the date of termination or expiry of this Agreement) which is necessary to enable the BBC or any Successor Service Provider) to perform the Services and /or utilise the BBC System;
  - (b) the Contractor will transfer such knowledge in such format as the BBC may advise from time to time, but in any event will be provided in written form and delivered to the BBC (in electronic, machine readable form) within two (2) weeks of the Exit Plan taking effect; and
  - (c) the Contractor shall ensure that the specific items of knowledge to be transferred (or where applicable and set out below, licensed) include the most current, up to date and detailed versions of:

- (i) all information with respect to governance and reporting arrangements, including project management, escalation and notification, operation of the Change Control Procedure, quality control, risk and issues management and actions management;
- (ii) the Transition Plan (if termination occurs before the Start Date) including all Services undertaken and in progress, milestones, the relevant member of personnel accountable for such Services, the due date and the progress achieved;
- (iii) risks and issues logs;
- (iv) details of where information and data is stored and/or available;
- (v) any information and/or documentation, including technical specifications and detailed process maps relating to the systems and processes utilised by the Contractor in the provision of the Services; and
- (vi) any other information that the BBC deems reasonably necessary to ensure a Smooth Transfer of the Services; and

2.1.17 the obligations set out in paragraph 7.1.

### **Approval of Exit Plan**

- 2.2 The Contractor shall obtain the written approval of the BBC of the Draft Exit Plan and upon such approval the Draft Exit Plan will constitute the Exit Plan. Where the BBC does not approve the Draft Exit Plan, the Contractor shall implement all reasonable recommendations proposed by the BBC and shall resubmit a revised Draft Exit Plan for the BBC's written approval within ten (10) Working Days following the BBC's rejection. If following this resubmission, the BBC does not approve the revised Draft Exit Plan, the Parties shall resolve the matter in accordance with Clause 43.
- 2.3 The Parties shall review the Exit Plan annually on or about the anniversary of the approval of the Exit Plan by the BBC pursuant to paragraph 2.2 and the Contractor shall update the Exit Plan following this review and submit it to the BBC in an updated form, for its approval (and in respect of this approval, the procedure set out in paragraph 2.2 shall apply).
- 2.4 The Exit Plan shall contain provisions covering the revisions to the standard exit plan that will be required were this Agreement to be terminated summarily in accordance with Clause 33.1.
- 2.5 In the event an Exit Plan has not been produced at the Exit Start Date, this Schedule 11 shall operate as the Exit Plan, to the extent possible.

### **3 Execution of the Exit Plan**

- 3.1 Exit Start Date means where:

- 3.1.1 notice being given by the BBC to terminate this Agreement or any part of the Service, in accordance with Clauses 4.4 and/or 4.6;

- 3.1.2 notice being given by the BBC to terminate this Agreement in accordance with Clause 33.1 or 33.2; or
  - 3.1.3 notice being given by the Contractor in accordance with Clause 33.3; or
  - 3.1.4 within eighteen (18) months prior to expiry of this Agreement ("**Exit Start Date**").
- 3.2 Within five (5) Working Days after the Exit Start Date, the Contractor shall update the Exit Plan and submit it to the BBC for approval (and in respect of this approval, the procedure set out in paragraph 2.2 shall apply).
- 3.3 The BBC and the Contractor shall reasonably agree (such agreement not to be unreasonably withheld or delayed) the actions that will be carried out based on the updated Exit Plan described in paragraph 3.2. In addition the Parties agree the following:
- 3.3.1 the BBC and the Contractor shall each, not later than three (3) Working Days after the Exit Start Date, nominate a project manager to ensure that their respective responsibilities under this Schedule are met and will notify the other Party of his/her identity;
  - 3.3.2 the BBC and the Contractor shall, not later than fourteen (14) Working Days after the Exit Start Date, agree a process, roles and responsibilities for the identification and transfer of information and for the controlling and tracking of changes to the Minimum Information and the Service Documentation, the commencement date for the implementation of the various activities described in the Exit Plan (which date will in any event be no less than twelve (12) months prior to expiry or termination of the Agreement) and any adjustments to the timetable for the Exit Plan, as may be reasonably required (such agreement not to be unreasonably withheld or delayed) and agree a suitable area within a BBC premises, nominated by the BBC, for accommodation of the project office, if so required by the BBC;
  - 3.3.3 the BBC and the Contractor shall, not later than twenty (20) Working Days after the Exit Start Date, agree upon a timetable for the Exit Plan which shall, in the absence of agreement otherwise, provide that all of the obligations of the Parties shall be completed as soon as reasonably practicable after termination or expiry of this Agreement (such agreement not to be unreasonably withheld or delayed); and
  - 3.3.4 the BBC and the Contractor will no later than twenty (20) Working Days after the Exit Start Date, agree on the activities to be undertaken by the Contractor and the resourcing of such activities, except to the extent that these are set out in the Exit Plan.
- 3.4 From the Exit Start Date, the Parties shall comply with their obligations in the Exit Plan and this Schedule in accordance with the timetable agreed as part of the Exit Plan.
- 3.5 The Contractor shall take a proactive role in identifying additional information and/or activities (other than those set out in the Exit Plan) reasonably necessary for a Smooth Transfer, and will notify the BBC and any Successor Service Provider forthwith upon it becoming aware of such information or additional requirements, and will co-operate with the BBC and/or the Successor Service Provider in order to provide any additional information or satisfy any additional requirements within seven (7) Working Days upon it becoming aware of such information or additional requirements or such period as the Parties may agree.

- 3.6 The Contractor shall continue to carry out its obligations under the Open Book Accounts to the extent and for as long as is necessary after expiry or termination (in whole or in part) of the Agreement, in accordance with the provisions of the Exit Plan, or as otherwise specified herein.

#### **4 Transfer of Assets**

- 4.1 The Contractor shall provide the BBC with an up to date version of the Registers within ten (10) Working Days of a written request by the BBC. Following delivery of the Registers, the Contractor shall provide the BBC with any subsequent changes to the Registers with five (5) Working Days of any such change.
- 4.2 In relation to the Sole Use Assets on termination (in whole or in part) for any reason or in anticipation of expiry of this Agreement, the Contractor shall, within ten (10) Working Days of a written request by the BBC:
- 4.2.1 execute an asset transfer agreement substantially in the form of the template asset transfer agreement attached at Annex 1 to this Schedule 11 and all other documents necessary to transfer to the BBC or a Successor Service Provider all Sole Use Assets requested by the BBC (provided that in the case of partial termination, such Sole Use Assets are only used as part of the terminated Services). In consideration for the transfer of the Sole Use Assets by the Contractor, the BBC or a Successor Service Provider (as required by the BBC) shall pay to the Contractor the sum equal to the net book value of the Sole Use Assets as at the date of termination or expiry (where the net book value is determined using the Contractor's normal accounting policies); and/or
  - 4.2.2 effect a transfer of the agreements relating to the Sole Use Assets, upon receipt by the Contractor of sums outstanding or due on such transfer from the BBC or a Successor Service Provider (as required by the BBC); and/or
  - 4.2.3 relocate Sole Use Assets in accordance with the Asset Transfer Agreement.
- 4.3 In relation to the Shared Use Assets, on termination (in whole or in part) for any reason or on expiry of this Agreement, the Contractor shall, at the BBC's request:
- 4.3.1 continue the provision of the Services using the Shared Use Assets for a transitional period to be agreed (and on fair and reasonable commercial terms to be agreed); and/or
  - 4.3.2 rent the Shared Use Assets to the BBC or the Successor Service Provider at such reasonable costs as may be agreed between the Parties; and/or
  - 4.3.3 license the use of the Shared Use Assets to the BBC or the Successor Service Provider on fair and reasonable commercial terms to be agreed; and/or
  - 4.3.4 support or maintain such Shared Use Assets in accordance with such terms as may be agreed between the Parties.

#### **5 Transferring Third Party Contracts and Third Party Software**

- 5.1 The Contractor will agree with the BBC a list of third party contracts including Third Party Software and provide complete copies to the Successor Service Provider and the BBC of all the

third party contracts and inform the BBC and the Successor Service Provider of any other third party contracts it may become aware of to add to the list if required.

- 5.2 The Contractor shall execute a novation agreement within ten (10) Working Days of the BBC's written request substantially in the form of the template novation agreement attached at Annex 2 to this Schedule 11 in respect of each of the subcontracts and other agreements identified in the Registers and any third party contracts which the BBC requires to be novated to the BBC or the Successor Service Provider (save to the extent that the service provided under such third party contracts continues to be required by the Contractor for the continued provision of the Services in the event of the BBC terminating in part only);
- 5.3 The Contractor agrees that the Successor Service Provider will require, and it will grant to the Successor Service Provider, a right to use Third Party Software for the purpose of testing and trialling and will agree the necessary actions and responsibilities to effect its obligations for a Smooth Transfer.

## **6 Outstanding Projects**

- 6.1 Within twenty (20) Working Days after the Exit Start Date, the Contractor will provide the BBC with the information listed in paragraph 6.2 and the BBC shall review all outstanding projects or other work in progress initiated through the Change Control Procedure and identify the current status, benefits, costs and risks involved and agree for each one whether:
- 6.1.1 the project or other work in progress should be completed by the Contractor; or
- 6.1.2 no further work should be undertaken by the Contractor, and in this case, whether or not such work should be transferred to a Successor Service Provider or simply ceased.
- 6.2 The Contractor shall provide to the BBC and/or the Successor Service Provider a list, which is to be updated monthly, of current work in progress on projects which contains:
- 6.2.1 a description of the project;
- 6.2.2 relevant project records and status reports;
- 6.2.3 an estimate of the time to be taken to complete the project; and
- 6.2.4 a description of the activities required to hand over existing projects.
- 6.3 The Contractor will not change the terms of any work in progress on projects provided in this paragraph 6 without the BBC's prior written consent unless such change is necessary for the Contractor to comply with its obligations under the Agreement.

## **7 BBC Data, BBC IPR and BBC Software and IT Systems**

- 7.1 The Contractor shall, within twenty (20) Working Days of a written request by the BBC provide two (2) copies of the BBC Data, the BBC IPR, the BBC Software and any other software used by the Contractor in the provision of the Services, and all associated documentation to the BBC or other third party as the BBC directs for the purposes of carrying out a procurement of the Services or otherwise, and/or to effect a Smooth Transfer of the Services to the BBC or its

Successor Service Provider and shall provide to the BBC or at its request, to the Successor Service Provider an updated version of the BBC Data, BBC Database, BBC Software and any other software used by the Contractor in the provision of the Services and provide the BBC or any other third party as the BBC so directs with a copy of the Source Codes for the BBC Software in order for the BBC to modify the BBC Software if required.

- 7.2 The Contractor shall at the written request of the BBC on a date specified following termination or expiry of the Agreement return to the BBC, or at the BBC's direction, safely deliver to the Successor Service Provider, the BBC IPR, the BBC System, the documentation and the BBC Property with all associated documentation forthwith on termination or expiry of the Agreement.
- 7.3 The Contractor shall within ten (10) Working Days of a written request by the BBC handover lists of existing passwords and other security access (including security passes and badges and any tokens or cards (either hard or soft) that are used to access the systems) provided to the Employees which need to be retracted/revoked at termination or expiry of the Agreement.
- 7.4 Within twenty (20) Working Days of the Exit Start Date, the Contractor shall put in place and keep updated processes for the removal of systems access for the Employees, a list of arrangements for the removal of any BBC Software or data that resides on any the Contractor laptops or desktops or on servers mainframes, midrange etc, and a list of arrangements for the return or deletion (as required) of any back up copies of BBC Software or BBC Data, copies of all incident reports from the date of this Agreement so as to be able to effect a Smooth Transfer and shall within thirty (30) Working Days of a written request by the BBC implement such processes.
- 7.5 Within twenty (20) Working Days of a written request by the BBC, the Contractor shall engage and continue to engage with the Successor Service Provider in order that the Successor Service Provider may confirm its IT design assumptions as early as possible including details of the planned arrangements for the segregation of the Contractor's IT network from the BBC IT network at expiry of the Agreement, a list detailing where the assets which will transfer to the Successor Service Provider under the terms of the Asset Transfer Agreement are located and agreeing to a systems freeze (i.e. no changes made to any systems) for all systems in order to provide a stable systems base for migration, testing and trialling during Smooth Transfer. Business critical changes during this freeze will be considered by the BBC, and, where approved, actioned via the change control procedure of the Agreement.
- 7.6 Following the Exit Start Date, or within twenty (20) Working Days of a written request by the BBC, the Contractor shall subject to the Data Protection Act 1998, provide the Successor Service Provider or any third party identified by the BBC related to the reprourement of the Services in part or in whole, with copies of data, in a suitable electronic format and subject to third party consent (if required under contract) work together with the Successor Service Provider in order to demonstrate software on its infrastructure including access to the BBC training and QA environments and to provide access to associated documentation used by it in delivering the Services and to be used by the Successor Service Provider and its subcontractors (approved by the BBC) for testing, training and trialling purposes and grant if required by the Successor Service Provider, access to broadband internet from its premises for the knowledge acquisition team to connect to the Successor Service Provider's network during knowledge acquisition.



- 7.7 The Contractor shall hand over all installations, CDs or DVDs for all software licences that are transferred to the Successor Service Provider under the Asset Transfer Agreement or will be managed by them as part of the Successor Service Provider Services and assist the Successor Service Provider by obtaining such replacements for any missing CDs or DVDs at termination or expiry of the Agreement.

## **8 Employee and Subcontractor Support**

- 8.1 The Contractor agrees it shall provide all Employees with the support required to the extent necessary to fulfil its responsibilities relating to the provision of a Smooth Transfer to the BBC or a Successor Service Provider.
- 8.2 Subject to the provisions of paragraph 9 below, in the event of termination in accordance with Clauses 33.1.2 or 33.1.3 the BBC and/or its agents shall be entitled to approach Employees used in the provision of the Services with a view to recruiting such Employees.
- 8.3 The Contractor shall allow the Successor Service Provider staff to backfill on any vacancies that may arise as agreed between the BBC and the Successor Service Provider.
- 8.4 The Contractor acknowledges and agrees that in some cases it will have to recruit the required dedicated resource to comply with its obligations under this Schedule 11 and that there may be a lead time associated with the recruitment but that it will take all steps possible to expedite the necessary recruitment.
- 8.5 The Contractor agrees that the extent of the support needed and the skills needed to effect a Smooth Transfer shall be identified by the BBC in accordance with the requirements of the Successor Service Provider.
- 8.6 Subject to the confidentiality provisions of the Agreement, the Contractor will keep its staff regularly and accurately informed of matters relating to Exit and agree a communication plan with the BBC and the Successor Service Provider to effect a Smooth Transfer.

## **9 Transfer of Employees**

- 9.1 Within ten (10) Working Days of a written request by the BBC (or such other date as the Parties may agree), or any Change Notice which may result in the TUPE Regulations applying, the Contractor shall, and shall procure that any Subcontractor shall provide to the BBC and authorise the BBC to disclose to any third party bidding to become a Successor Service Provider a list identifying all Employees dedicated wholly or primarily engaged in the provision of the Services ("**Services Employees**") together with the information specified in paragraph 9.7 below ("**Minimum Information**").
- 9.2 Within ten (10) Working Days of a written request by the BBC (or such other date as the Parties may agree), or any Change Notice which may result in the TUPE Regulations applying, the Contractor shall not, and shall ensure that its Subcontractors shall not other than where authorised in writing by the BBC to do so:
- 9.2.1 make any amendments, changes or variations to the terms and conditions of employment of Services Employees (including any customarily provided benefits or



- payments) except for the award of annual salary rises in the ordinary course of business at or lower than the prevailing rate of inflation;
- 9.2.2 remove/replace any of the Services Employees or assign any additional employees to perform the Services; and/or
- 9.2.3 increase the proportion of working time spent on the Services by Services Employees who immediately prior to any such change spend less than 50% of their working time on the Services.
- 9.3 The Contractor shall, if requested to do so by the BBC on ten (10) Working Days written notice on or after the Exit Start Date ensure that from the date when such request has been received by the Contractor up to the date of expiry or termination (in whole or in part) of this Agreement:
- 9.3.1 it shall not dismiss more than ten per cent of the total number of Services Employees engaged wholly or mainly in the provision of the Services at that date by reason of redundancy as defined in Section 139(1) of Employment Rights Act 1996 without the prior written consent of the BBC;
- 9.3.2 it shall not employ any additional person to work in the provision of the Services (except to fill an existing or subsequent vacancy) without the prior written consent of the BBC;
- 9.3.3 it shall not move away Key Personnel (save as provided in Clause 13.16) or any other employee who is required for the successful continuation of the Contractor's obligations under this Agreement, without the prior written consent of the BBC;
- 9.3.4 it shall use its reasonable endeavours to retain the services of any Employees engaged wholly or mainly in performing the Services. For the avoidance of any doubt, this paragraph 9.3 does not require the Contractor to improve the terms and conditions of any such Employees; and
- 9.3.5 it shall update the Minimum Information as required and provide the same to the BBC,
- provided always that where the BBC's consent is required under this paragraph 9.3 such consent shall not be unreasonably withheld or delayed.
- 9.4 The Contractor shall within the timescales set out in paragraph 9.1 provide the Minimum Information to the BBC relating to Employees engaged wholly or mainly in the provision of the Services:
- 9.4.1 to allow the BBC in conjunction with the Contractor to assess whether the TUPE Regulations will apply to any change requested pursuant to the Change Control Procedure or on termination (in whole or in part) or expiry of this Agreement; and
- 9.4.2 to allow the BBC to assess any costs which may fall on the BBC or any other Successor Service Provider pursuant to the TUPE Regulations and for the said assessment to be passed to tenderers in the procurement of the Services or services similar to the Services subject to such tenderers first entering into a confidentiality agreement as set out in paragraph 9.5 and the BBC providing copies of the signed agreement to the Contractor.

- 9.5 Within ten (10) Working Days of a written request by the BBC (or such other date as the Parties may agree), the Contractor shall enter into a confidentiality agreement with the Successor Service Provider or any other third party identified by the BBC (relating to the reprourement of the Services in whole or in part), containing obligations substantially similar to those contained in Clause 37 relating to all or any information provided to the Contractor in carrying out the obligations in this Schedule 11.
- 9.6 The BBC shall be entitled to request the Minimum Information at any time throughout the Term, at no additional cost for the first request in any given Year, and any subsequent requests in any such Year shall be at the reasonable cost of the BBC. On receipt of such a request, or in accordance with paragraph 9.1 above, the Contractor will fully and accurately disclose to the BBC within ten (10) Working Days of being so required such information as the BBC may reasonably request in connection with the Services Employees.
- 9.7 For the purposes of this paragraph 9 Minimum Information means any information required by the BBC including without limitation:
- 9.7.1 anonymised details of all Employees, consultants, contract staff or contractors of the Contractor or any Subcontractor who have at any time in the period of twelve (12) months preceding the request been engaged in connection with the Services or part thereof (including in the case of such Employees, against each employee their age, length of service, pay, pay structure, notice entitlement and job grade) showing, by category, numbers of hourly, weekly, monthly paid, full time, part time, permanent and temporary Employees, trainees and consultants;
  - 9.7.2 anonymised details of staff on maternity leave, long term sick leave and staff medical problems;
  - 9.7.3 anonymised details of the workforce profile showing age, sex and postal district of usual place of work;
  - 9.7.4 copies of job descriptions and anonymised employment contracts including offer letter standard terms, company rules and disciplinary procedures and details of any collective agreements written or unwritten with Employees and any amendments thereto;
  - 9.7.5 copies of any anonymised service agreements of any directors and/or senior executives employed in the Services or part thereof;
  - 9.7.6 details of pensions, employee share schemes, company cars, commission, bonus/profit sharing arrangements, insurance schemes, health insurance, season ticket loans and other benefit schemes;
  - 9.7.7 details of any personal commitments to individual members of staff;
  - 9.7.8 details of all recognised unions and/or staff associations;
  - 9.7.9 copies of all redundancy/job security agreements entered into with unions or other recognised representatives;
  - 9.7.10 details of any health and safety complaints or recommendations or claims over the period of this Agreement;

- 9.7.11 details of any resignations or dismissals in the preceding twelve (12) month period;
  - 9.7.12 details of any claims in respect of allegations of unlawful discrimination;
  - 9.7.13 details of current Employment Tribunal, County Court and High Court litigation by or on behalf of or against current or past employees (including contractors who claim to be employees or workers) or trade unions including personal injury claims, arbitration or mediation, awards, decisions still in effect;
  - 9.7.14 summary of all official or unofficial trade disputes since the Start Date, settlements reached, number of days lost due to disputes;
  - 9.7.15 organisational charts; and
  - 9.7.16 "employee liability information", as defined in Regulation 11(2) of the TUPE Regulations, in relation to the Services Employees.
- 9.8 The Contractor hereby warrants and shall ensure that any Subcontractor warrants that all information disclosed pursuant to this paragraph 9 shall be true and accurate to the best of its/their knowledge and belief and the Contractor agrees (and will ensure that any Subcontractor agrees) to indemnify and keep indemnified on demand and hold harmless the BBC and any Successor Service Provider ("Indemnified Party") from and against any and all losses, demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred, directly or indirectly, by the Indemnified Party arising from a breach of such warranty.
- 9.9 If the Contractor ceases (for whatever reason) to provide (either directly or indirectly through any Subcontractor) any Service in whole or in part and any contract of employment of any Services Employee has effect, as a result of the application of the TUPE Regulations, as if originally made between such person (a "Transferred Employee") and the BBC and/or a Successor Service Provider, the Parties agree that:
- 9.9.1 the Contractor shall perform and discharge all obligations in respect of all the Transferred Employees and their representatives up to and including the date on which this Agreement (or part) terminates;
  - 9.9.2 the Contractor shall indemnify and keep indemnified on demand and hold harmless the BBC and any Successor Service Provider ("Indemnified Party") from and against any and all losses, demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred, directly or indirectly, by the Indemnified Party arising from the Contractor's or a Subcontractor's failure to perform and discharge any such obligations and against any and all losses, demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred, directly or indirectly, by the Indemnified Party in respect of the Transferred Employees and/or any former employee of the Contractor and/or a Subcontractor arising from or as a result of:
    - (a) any act or omission by the Contractor and/or any of their Subcontractors occurring prior to the transfer to the BBC or a Successor Service Provider of the right/obligation to perform the Services;

- (b) any failure by the Contractor and/or any Subcontractors to comply with any requirement of Regulation 13 of the TUPE Regulations;
  - (c) all emoluments and outgoings (including all wages, bonuses, PAYE and national insurance contributions, pension contributions in respect of pensionable service and otherwise) which are payable in respect of the period prior to the transfer to the BBC or a Successor Service Provider of the right/obligation to perform the Services; and/or
  - (d) any breach of paragraph 9.2 above.
- 9.10 If any person (other than a person on the list provided as part of the Minimum Information) claims that their contract of employment has or should have transferred to the BBC, and/or any Successor Service Provider pursuant to the TUPE Regulations the following process will apply (unless the BBC or the Successor Service Provider decides, at their discretion, to accept such person's claim in which case such person shall be deemed to be a Transferred Employee to whom paragraph 9.12.1 applies):
  - 9.10.1 the BBC will notify the Contractor in writing within ten (10) Working Days of becoming aware of that fact ("**Notification**");
  - 9.10.2 within ten (10) Working Days of Notification, the Contractor may offer employment to such person or may take at its own cost such other steps as it feels necessary to effect a written withdrawal of the claim; and
  - 9.10.3 if no such offer of employment has been made by the Contractor or such offer has been made but not accepted or if such person has failed to withdraw the claim, then the BBC may (or may ensure that any Successor Service Provider may), following the BBC's notification to the Contractor in writing in advance, terminate the employment of such person within seven days of the expiry of a twenty-eight (28) day period from Notification.

Subject to the provisions of paragraphs 9.10.1 to 9.10.3 being followed or the Parties acting in any other way as may be agreed between them, the Contractor shall indemnify and keep indemnified on demand and hold harmless the BBC and any Successor Service Provider against any and all losses, demands, claims, damages, costs, expenses (including reasonable legal costs and expenses and VAT thereon) and liabilities suffered or incurred, directly or indirectly, by the BBC and any Successor Service Provider arising out of such claim and/or termination.
- 9.11 The Contractor shall and shall procure that any Subcontractors assist the BBC and any Successor Service Provider to communicate with and meet the Services Employees and any person who is the subject of paragraph 9.10 and their trade union or employee representatives as and when reasonably required.
- 9.12 If the Services are transferred to the BBC or a Successor Service Provider and the TUPE Regulations apply in respect of such transfer, the following provisions shall apply in connection therewith:

- 9.12.1 the contracts of employment of each Services Employee, subject to paragraph 9.12.5, shall have effect on the relevant Transfer Date as if originally made between the Employee and the BBC or the Successor Service Provider (as the case may be);
- 9.12.2 the Contractor (or as appropriate any Subcontractor) shall be responsible for all wages, salaries, emoluments and other amounts due or accruing prior to the relevant Transfer Date in respect of the Services Employees and the Contractor will, and shall procure that any Subcontractor shall, discharge all such obligations in respect of the Employees prior to the relevant Transfer Date;
- 9.12.3 the Parties shall use their respective reasonable endeavours to procure that the Subcontractors will comply with their obligations under Regulation 10 of the TUPE Regulations on information and consultation;
- 9.12.4 at the request of the BBC, the Contractor shall, and the Contractor shall procure that the Subcontractors will, within twenty-one (21) days of such request to the Contractor, consult and co-operate with the Successor Service Provider to ensure a Smooth Transfer including the attendance and participation in a joint working group established by the BBC with the purpose of assisting in the co-ordination of the obligations of the Parties and the Successor Service Provider;
- 9.12.5 at the request of the BBC, the Contractor shall indemnify and keep indemnified on demand and hold harmless the BBC against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) which the BBC or the Successor Service Provider incurs by reason or on account of and arising from any action, claim or other legal recourse by any Services Employee or any trade union or staff association recognised by the Contractor or any Subcontractor in relation to the Employees arising from any act or omission of the Contractor or any Subcontractor (including, any failure to comply with its and their information and consultation obligations under the TUPE Regulations) on and prior to the relevant Transfer Date;
- 9.12.6 for the purposes of paragraph 9.12.5, the BBC shall be entitled to claim any losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) of the Successor Service Provider where the BBC has indemnified the Successor Service Provider in respect of such losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) in substantially the same form covering substantially the same scope as the indemnity in paragraph 9.12.5; and
- 9.12.7 the BBC shall indemnify and keep indemnified on demand and hold harmless the Contractor against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) which the Contractor incurs by reason or on account of and arising from any action, claim or other legal recourse by any Services Employee or any trade union or staff association in relation to the Employees arising from any act or omission of the BBC or the Successor Service Provider (including any failure to comply with its or their information and consultation obligations under the TUPE Regulations) on and following the relevant Transfer Date.

- 9.13 The Contractor shall comply with all current relevant anti-discriminatory legislation (for example race relations, equal pay, fair employment and disabled persons' employment) and shall use all reasonable endeavours to adhere to the current relevant codes of practice published by the Equal Opportunities Commission, the Commission for Racial Equality, the Disability Rights Commission and the Department for Education and Employment.
- 9.14 The Contractor shall take all reasonable steps to ensure the observance of the provisions of paragraph 9 by all officers and Employees.
- 9.15 The Contractor shall ensure that any subcontract with a Key Subcontractor shall contain equivalent provisions to this paragraph 9.
- 9.16 Notwithstanding anything to the contrary in this Agreement this paragraph 9 shall survive termination or expiry of this Agreement.
- 9.17 If one Party (the "Claiming Party") becomes aware of any matter that may give rise to a claim against the other in respect of an indemnity given under the provisions of this paragraph 9 the following provisions shall apply:
- 9.17.1 the Claiming Party shall give notice of any such matter or claim as soon as reasonably practicable to the other party and in any event within five (5) Working Days of becoming aware of such matter or claim;
- 9.17.2 the Claiming Party agrees that:
- (a) no admission of liability shall be made by or on behalf of the Claiming Party;
  - (b) control of the defence and/or settlement of the claim shall be carried out following reasonable discussion between the Claiming Party and the other Party, however the final decision on any matter concerning the conduct of the claim or its settlement shall be made by the other Party; and
  - (c) the Claiming Party shall give all reasonable assistance to the other Party in connection with the claim including, subject to any restrictions imposed by law, giving access to relevant personnel and information held by the Claiming Party.

## **10 Reasonable Access**

- 10.1 The Contractor shall permit and shall procure the permission of its Subcontractors to permit the BBC and any person who is tendering for or has been awarded the contract to take over the Services or similar services such access to the Contractor's or Subcontractors' sites and personnel by appointment as is required for the purposes of tendering for or transferring the Services.
- 10.2 The Contractor shall provide the Successor Service Provider staff with all reasonable on-site access to its staff at agreed times, active co-operation assisting the Successor Service Provider with planning, identification of risks or potential risks to the Smooth Transfer or associated activities and co-operation to enable the Successor Service Provider staff to perform knowledge acquisition alongside its staff responsible for providing the Services.

- 10.3 The Contractor will not unreasonably withhold or delay any requests for access to the Contractor premises submitted by the Successor Service Provider in order to be able to effect a Smooth Transfer.
- 10.4 The Contractor shall provide the BBC and/or any potential Successor Service Provider with reasonable access to:
- 10.4.1 such information relating to the Services as remains in the possession or control of the Contractor; and
  - 10.4.2 such Employees as have been involved in the design, development and provision of the services and who are still employed by the Contractor.

## **11 Provision of Resources**

- 11.1 No later than ten (10) months following the Exit Start Date, the Contractor shall in order to facilitate a Smooth Transfer, provide the BBC and/or Successor Service Provider with necessary knowledge and information reasonably required in respect of the Services, which will include information regarding the general nature, delivery and management of the Services and which may involve access to the Contractor staff and, in so far as they are available, the provision of the latest available versions of records set out in paragraph 11.1.1(a) and documents set out in paragraph 11.1.2 (which the Successor Service Provider may copy, change and print in whatever form necessary to facilitate a Smooth Transfer).

11.1.1 Records will include:

- (a) all historic and current process and service performance data; and
- (b) details of all work in progress, problem transactions and other service issues.

11.1.2 Documentation will include those documents which contain knowledge of how the processes are currently implemented and delivered as part of the current service and include:

- (a) process definitions;
- (b) procedures;
- (c) work instructions;
- (d) guidelines and references;
- (e) IT infrastructure and applications design and support documentation;
- (f) application configuration details; and
- (g) any other documentation;

reasonably required by the Successor Service Provider and is held by the Contractor or any material documentation required for Smooth Transition that was held by the Contractor over last 12 months.



- 11.2 The Contractor shall provide such resources, agreed with the BBC, as are reasonably required to comply with its obligations under this Agreement and to facilitate a Smooth Transfer.
- 11.3 The Contractor shall work pro-actively to ensure positive involvement of all staff, required for a Smooth Transfer and take appropriate actions and implement necessary plans when required to continue positive involvement.
- 11.4 The Contractor shall provide one dedicated Employee to join the working group or board as requested by the BBC as provided for in this Schedule and in some cases the Contractor will have to recruit the required dedicated resource and that there may be a lead time associated with the recruitment but that the Contractor shall take all steps possible to expedite the necessary recruitment.

## **12 Impact on Ongoing Provision of the Services and Risks**

- 12.1 In fulfilling the contractual obligations detailed in this Schedule 11, the Contractor shall ensure activities are planned and resourced such that provision of the Services by the Contractor up to the expiry or termination (in whole or in part) of the Agreement is not adversely impacted but, in any event, the Contractor will give the BBC and any Successor Service Provider such assistance and support as is required to successfully achieve the Smooth Transfer of such ongoing Services and ongoing work related with the same.
- 12.2 No later than ten (10) months following the Exit Start Date, the Contractor will deliver to the BBC and the Successor Service Provider a register of exit risks and issues to address specific risks related to any of the Contractor's obligations under the Agreement for the Services throughout the Term. Thereafter, the Contractor will as soon as reasonably practicable or at the latest within two (2) Working Days notify the BBC and Successor Service Provider of any updates to such register and shall in any event maintain and deliver to the BBC and the Successor Service Provider an updated register in advance of each monthly joint working group under paragraph 9.12.4.

## **13 Contractual Amendment**

The Contractor shall not refuse any contractual amendments required by the BBC in order to facilitate a Smooth Transfer of the Services (either in whole or in part), including, for the avoidance of doubt, any requests from the BBC that the Contractor provide the BBC with exit assistance in addition to the obligations set out in the Exit Plan, however, the reasonable costs to the Parties of such changes (in a "no better, no worse basis") will be agreed in good faith and on an open book basis, in accordance with Schedule 7 (**Change Control Procedure**).

## **14 Costs of Exit**

The Contractor's charges for activity related to fulfilling its obligations under this Schedule up to and including the date of termination or expiry of this Agreement shall be included in the Charges. Any such activities undertaken after the date of termination or expiry of this Agreement will be chargeable in accordance with paragraph 18 of Schedule 5 (**Charges**).

**15 Service Levels**

The Contractor will continue to maintain and comply with all Service Level requirements specified in the Agreement whilst carrying out its obligations under this Schedule and will immediately notify the BBC if there are any issues with this requirement.

**16 Premises**

16.1 The Contractor will provide to the Successor Service Provider and the BBC:

16.1.1 details of all sites (including BBC sites) used by the Contractor or its Subcontractors for the provision of the Services;

16.1.2 plans and arrangements for vacating and/or transferring any building space, facilities and services, subject to any agreed property arrangements or site licenses between the BBC and the Contractor, including (but not limited to) the following:

- (a) an accommodation plan;
- (b) a plan for vacating the premises; and
- (c) an accommodation re-instatement plan.

**17 Business Continuity**

The Contractor shall remain responsible for the business continuity and disaster recovery of the Services under the Agreement until the transfer of the Services to the Successor Service Provider has been successfully effected under this Schedule and this Agreement.

**Annex 1 – Template Asset Transfer Agreement – Sole Use Assets**

**British Broadcasting Corporation**

**and**

**[xxxxxxx]**

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**Asset Transfer Agreement**

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THIS AGREEMENT is made on the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) [The **British Broadcasting Corporation**, a corporation formed by Royal Charter whose principal place of business is Broadcasting House, Portland Place, London W1A 1AA (the "**BBC**")][[Insert full name of **Successor Service Provider**] a company incorporated in England and Wales registered number [Insert registered number] the registered office of which is at [Insert registered address] (the "**Successor Service Provider**")]; and
- (2) [Insert full name of **Contractor**] a company incorporated in England and Wales registered number [Insert registered number] the registered office of which is at [Insert registered address] (the "**Contractor**").

**BACKGROUND**

- (A) On [insert date of Original Agreement], the [BBC][**British Broadcasting Corporation**, a corporation formed by Royal Charter whose principal place of business is Broadcasting House, Portland Place, London W1A 1AA (the "**BBC**") and the Contractor entered into an agreement for the provision of certain services in respect of the collection and administration of the TV licence fee as amended and updated from time to time (the "**Original Agreement**").
- (B) On the expiry or termination of the Original Agreement, the BBC has the right to for certain Assets to be transferred from the Contractor to the [BBC][Successor Service Provider] at net book value.
- (C) The Contractor has agreed to sell and transfer, and the [BBC][Successor Service Provider] has agreed to purchase, the Assets on the terms and conditions of this Agreement.

**OPERATIVE PROVISIONS**

**1 Definitions**

- 1.1 The words, terms and expressions set out below shall, unless otherwise stated or unless the context otherwise requires, have the meanings given to them below:

" <b>Agreement</b> "	means the Clauses of this Agreement together with the Schedule;
" <b>Asset</b> "	means the Assets set out in Schedule 1 ( <b>Assets</b> );
" <b>Asset IPR</b> "	means the IPR that enables the use of the Asset;
" <b>Asset Transfer Date</b> "	[means the date of execution of this Agreement;] [DN: the date of asset transfer may be different from the date of execution of this agreement given the drafting of paragraph 4.2 of the schedule.]

<b>"Asset Transfer Price"</b>	means the price payable for the Assets as set out in Clause 2;
<b>"Exit Obligations"</b>	the continued provision of the services and exit assistance as required under the Original Agreement;
<b>"IPR"</b>	means all rights in patents, trade marks, design rights (whether registered or unregistered), copyright, database rights, sui generis rights, know how, trade secrets, trade or business names and other similar rights or obligations whether registrable or not in any country and applications for any of the foregoing; and
<b>"Successor Agreement"</b>	means the agreement between the BBC and [insert full name of Successor Contractor] dated [insert date of Successor Agreement].

- 1.2 Words in the singular shall include the plural, and vice versa.
- 1.3 Headings used are for ease of reference only and should not affect the interpretation of this Agreement.
- 1.4 References to statutes will be to:
- 1.4.1 such statutes as may be amended, replaced or supplemented; and
- 1.4.2 any regulations made under such statutes; and statutes made in the United Kingdom.

## **2 Asset Transfer Price and Fees**

- 2.1 The Contractor hereby sells and transfers to the BBC the Assets with full title guarantee and free from all encumbrances, liens and third party rights in accordance with the provisions of this Agreement.
- 2.2 The BBC shall purchase the Assets from the Contractor for £[insert net book value of Assets] (exclusive of VAT) (the "Asset Transfer Price").
- 2.3 The Contractor shall invoice the BBC the Asset Transfer Price on the Asset Transfer Date.
- 2.4 The BBC shall make payment of the Asset Transfer Price to the Contractor by the end of the month following the month in which the invoice is dated.
- 2.5 The BBC shall not be liable for any other costs incurred in respect of the transfer of the Assets.

## **3 Transfer of Title and Risk**

- 3.1 The BBC shall acquire title to the Assets on the Asset Transfer Date. Risk in the Assets shall pass to the BBC upon the date on which the Contractor is no longer obliged to fulfil any of its Exit Obligations.

- 3.2 Within seven (7) days of the Asset Transfer Date, the Contractor shall deliver to the BBC all conveyances, instruments of title, assignments, consents and other documents as may be reasonably necessary to transfer title to the Asset to the BBC.
- 3.3 Nothing in this Agreement affects the Contractor's obligations to discharge the Exit Obligations.
- 3.4 The Contractor may continue to use the Assets to the extent necessary to allow it to perform the Exit Obligations. If, as part of the Exit Obligations, the Contractor wishes or is obliged to replace any of the Assets, it may do so by notice to the BBC in which case the BBC's title in the relevant Asset shall be transferred to the Contractor and the BBC shall own (without payment of any additional monies) the replacement items (which shall then form part of the Assets).

#### **4 Delivery**

- 4.1 The Contractor shall deliver the Assets to the UK location notified to it by the BBC.
- 4.2 All risks and expenses associated with delivery of the Assets by the Contractor to the BBC shall be borne by the Contractor.

#### **5 Warranties and Representations**

- 5.1 The Contractor undertakes, represents and warrants that on the date of this Agreement, as well as on the Asset Transfer Date of the Assets to the BBC:
- 5.1.1 the Assets to be transferred to the BBC are transferable under the laws of the England;
- 5.1.2 the Contractor has good and marketable title to each Asset (tangible and intangible), each Asset is legally and beneficially owned by the Contractor and that there are no encumbrances, charges or adverse rights over or in respect of any of the Assets or any part of them;
- 5.1.3 there is no material litigation against any of the Assets, which, if decided adversely to the interests of the Contractor, would prevent or prohibit the Contractor from transferring the Assets, free and clear from any security interests, liens, charges, claims or other encumbrances of any nature whatsoever or from otherwise complying in full with the provisions of this Agreement; and
- 5.1.4 the Contractor does not require the consent, approval or authority of any other person to enter into or perform its obligations under this Agreement.
- 5.2 Notwithstanding Clause 5.1, the Contractor warrants that:
- 5.2.1 as at the Asset Transfer Date if the Assets are not fit for their purpose; or
- 5.2.2 during the twelve (12) month period beginning on the Asset Transfer Date, if any of the Assets fail to function in accordance with their specification except for where the Assets fail to function in accordance with their specification which is as a result of the misuse of the Assets since the Asset Transfer Date;

the Contractor shall replace such Asset with a fully functioning Asset (without payment by the BBC of any additional monies).

## **6 Licences**

For the term of the Successor Agreement and any applicable exit period, the Contractor grants to the BBC a worldwide non-exclusive licence to use and to allow its direct and indirect customers, contractors and other users to use the Asset IPR for the purpose of providing and receiving services under the Successor Agreement.

## **7 IPR Indemnity**

The Contractor shall at all times indemnify the BBC and keep the BBC indemnified on demand and hold harmless against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the BBC (or by any other customer, contractor or user permitted under Clause 6) arising from a claim that use of the Asset IPR permitted under this Agreement infringes the rights of any third party. Losses of any other customer, contractor or user permitted under Clause 6 shall be deemed to be losses of the BBC for the purposes of this Clause.

## **8 General**

### ***Waiver***

- 8.1 If a party has a right arising from another party's failure to comply with an obligation under this Agreement and delays in exercising or does not exercise that right, that delay in exercising or failure to exercise is not a waiver of that right or any other right.

### ***Cumulative Rights***

- 8.2 A right, power, remedy, entitlement or privilege given or granted to a party under this Agreement is cumulative with, without prejudice to and not exclusive of any other right, power, remedy, entitlement or privilege granted or given under this Agreement or by law.

### ***Severability***

- 8.3 In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a court with jurisdiction over the parties, such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable Law. The remainder of this Agreement will remain in full force and effect.

### ***Third Party Rights***

- 8.4 Nothing in this Agreement will be deemed to grant any right or benefit to any person or their respective successors in title or assignees, or entitle a third party to enforce a provision of this Agreement and the parties do not intend that any term of this Agreement will be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

### ***Costs***

- 8.5 The parties agree to bear their own legal and other costs and expenses of, and incidental to, the preparation, execution and completion of this Agreement and of any related documentation.



***Further Assurance***

8.6 The parties will do all things reasonably necessary, including executing any additional documents and instruments, to give full effect to the provisions of this Agreement.

***Entire Agreement***

8.7 This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect thereto, except in respect of fraudulent misrepresentations made by either party.

***Amendments to this Agreement***

8.8 In the event of any amendments being made to this Agreement, such amendments shall only be valid if made in writing and signed by both parties.

***Governing Law and Jurisdiction***

8.9 The validity, construction and performance of this Agreement (and any claim, dispute or matter arising under or in connection with it or its enforceability) will be governed by and construed in accordance with the Law of England. The parties submit to the exclusive jurisdiction of the English courts for all purposes relating to and in connection with this Agreement or its subject matter (including its formation, enforceability, validity and interpretation).

Signed for and on behalf of the **British Broadcasting Corporation**

By: .....

Name:

Title:

Signed for and on behalf of **[Insert full name of Contractor]**

By: .....

Name:

Title:

**Schedule 1: Assets**

[Insert list of Sole Use Assets to be transferred to the BBC]

**Annex 2 – Template Novation Agreement**

**[Contractor]**

**and**

**[Subcontractor]**

**and**

**[British Broadcasting  
Corporation][Successor Supplier]**

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**Template Novation Agreement**

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THIS DEED is made on the [ ] day of [ ] 20[ ] (the "**Effective Date**")

**BETWEEN:**

- (1) [Insert full name of Contractor] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (the "**Contractor**");
- (2) [Insert full name of Subcontractor] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (the "**Subcontractor**"); and
- (3) [The British Broadcasting Corporation, a corporation formed by Royal Charter whose principal place of business is Broadcasting House, Portland Place, London W1A 1AA (the "**BBC**")] [Insert full name of Successor Supplier] incorporated and registered in England and Wales with company number [number] whose registered office is at [registered office address] (the "**Successor Supplier**").

**BACKGROUND:**

- (A) The [BBC][British Broadcasting Corporation, a corporation formed by Royal Charter whose principal place of business is Broadcasting House, Portland Place, London W1A 1AA (the "**BBC**") and the Contractor are the parties to an agreement dated [ ] for the provision of certain services in respect of the [collection and administration of the TV licence fee][enforcement of the TV licence fee] as amended and updated from time to time (the "**Agreement**").
- (B) The Contractor and the Subcontractor are the parties to an agreement dated [ ] for [insert details of contract], as amended and updated from time to time (the "**Subcontract**").
- (C) In accordance with paragraph 5.2 of Schedule 11 (**Exit**) of the Agreement, the BBC has the right to novate the Subcontract to [itself][the Successor Supplier] on termination or expiry of the Agreement.
- (D) The parties have agreed that the Contractor's rights, obligations and liabilities under the Subcontract shall be novated to the [BBC][Successor Supplier] on the terms set out in this deed of novation.

**OPERATIVE PROVISIONS**

**1 Novation**

- 1.1 The Contractor hereby agrees to transfer all its rights and obligations under the Subcontract to the [BBC][Successor Supplier]. The [BBC][Successor Supplier] shall enjoy all the rights and benefits of the Contractor under the Subcontract, and all references to the Contractor in the Subcontract shall be read and construed as references to the [BBC][Successor Supplier].
- 1.2 The [BBC][Successor Supplier] agrees to perform the Subcontract and be bound by its terms in every way as if it were the original party to the Subcontract in place of the Contractor.

- 1.3 The Subcontractor agrees to perform the Subcontract and be bound by its terms in every way as if the [BBC][Successor Supplier] were the original party to it in place of the Contractor.

## **2 Release of Obligations and Liabilities**

- 2.1 The Contractor and the Subcontractor agree to release each other from all future obligations to the other under the Subcontract with effect from [ ] (the "**Novation Date**").
- 2.2 The Contractor and the Subcontractor agree to release and discharge the other from all claims and demands arising under or in connection with the Subcontract, except that nothing in this deed shall affect or prejudice any claim or demand that either the Contractor or the Subcontractor may have against the other relating to matters arising before the Novation Date.

## **3 [Indemnity]**

- 3.1 The [BBC][Successor Supplier] agrees to indemnify and keep indemnified the Contractor against any losses, damages or costs the Contractor suffers or incurs under or in connection with the Subcontract as a result of the [BBC][Successor Supplier]'s failure to perform or satisfy its assumed obligations under the Subcontract on or after the Effective Date.
- 3.2 The Contractor agrees to indemnify and keep indemnified the [BBC][Successor Supplier] against any losses, damages or costs the [BBC][Successor Supplier] suffers or incurs under or in connection with the Subcontract as a result of the Contractor's failure to perform or satisfy its obligations under the Subcontract before the Effective Date.]

## **4 Governing law and jurisdiction**

The validity, construction and performance of this Agreement (and any claim, dispute or matter arising under or in connection with it or its enforceability) will be governed by and construed in accordance with the Law of England. The parties submit to the exclusive jurisdiction of the English courts for all purposes relating to and in connection with this Agreement or its subject matter (including its formation, enforceability, validity and interpretation).

Signed for and on behalf of the **British Broadcasting Corporation**

By: .....

Name:

Title:

Signed for and on behalf of **[Insert full name of Contractor]**

By: .....

Name:

Title:

Signed for and on behalf of **[Insert full name of Subcontractor]**

By: .....

Name:

Title: