

British Broadcasting Corporation

and

Capita Business Services Limited

Agreement

**for the Management, Collection, Administration and
Enforcement of the Television Licence Fee**

The original of this agreement is bound in two volumes:

Volume I contains the terms and conditions to Schedule 16 and Schedules 18-22

Volume II contains Schedule 17

VERSION CONTROL TABLE		
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BETWEEN:

- BACKGROUND:**

- ## OPERATIVE PROVISIONS

1.1 In this Agreement, capitalised words and phrases shall have the meanings ascribed to them in Schedule 1 (**Definitions**).

- 1.2 In this Agreement, unless the context indicates a contrary intention:
- 1.2.1 words suggesting the singular include the plural and vice versa;
 - 1.2.2 references to a person include a partnership, trust, company, any form of governmental or supra governmental body, agency or authority, corporation and unincorporated or incorporated association or statutory authority;
 - 1.2.3 headings used are for ease of reference only and should not affect the interpretation of this Agreement;
 - 1.2.4 references to any agreement or instrument are to that agreement or instrument as amended, novated, supplemented, varied or replaced from time to time;
 - 1.2.5 use of the words 'includes', 'including', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
 - 1.2.6 a reference to any body is:
 - (a) (if that body is replaced by another organisation), deemed to refer to that organisation; and
 - (b) (if that body ceases to exist), deemed to refer to the organisation which most nearly or substantially serves the same purpose or objects as that body.
- 1.3 References to this Agreement include its Schedules, Annexes and Appendices, and this Agreement as from time to time amended and references to Clauses, Schedules, Annexes and Appendices are references to clauses, schedules, annexes and appendices to this Agreement and references to Clauses are to Clauses in these terms and conditions.
- 1.4 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- 1.5 References to times of day are to London time unless otherwise stated.
- 1.6 Any reference to records or other information means records or other information in any form in which those records or that information is stored, whether in paper form, electronic form or in any other medium.
- 1.7 A reference to £ and pounds is to Sterling.
- 1.8 In the event and to the extent only of any conflict, apparent conflict or ambiguity in or between any of these documents, the documents shall be applied in the following decreasing order of precedence:
- 1.8.1 the Clauses of this Agreement and Schedule 1 (**Definitions**);
 - 1.8.2 Schedule 2 (**Services**);
 - 1.8.3 Schedule 6 (**Service Level Agreement**);
 - 1.8.4 Schedule 3 (**Transition**);

- 1.8.5 Schedule 10 (**Data Protection**);
 - 1.8.6 Schedule 12 (**Business Continuity and Disaster Recovery**);
 - 1.8.7 Schedule 11 (**Exit**);
 - 1.8.8 Schedule 5 (**Charges**);
 - 1.8.9 Schedule 14 (**Interface Services**);
 - 1.8.10 Schedule 15 (**BBC System**); and
 - 1.8.11 the remaining Schedules.
- 1.9 Worked examples and calculations are for illustrative purposes only.

2 Completion Arrangements

- 2.1 The rights and obligations of each Party under this Agreement shall have no force or effect unless and until each of the following conditions has been fulfilled:
- 2.1.1 the BBC has received certified copy extracts of the board minutes or documents of record issued by the Contractor's company secretary and/or the Guarantor's company secretary (as appropriate) of:
 - (a) the Contractor approving the execution of this Agreement; and
 - (b) the Guarantor approving the execution of the Parent Company Guarantee pursuant to Clause 5.11;
 - 2.1.2 the BBC has received either a copy of policies of insurance with proof of renewal (if applicable) or a copy of the Contractor's insurance broker's note summarising the insurance policies held and the levels of cover as contemplated by Clause 31;
 - 2.1.3 the Contractor has executed and delivered to the BBC the Trade Mark Licence,

(together the "**Completion Arrangements**").
- 2.2 The provisions of this Agreement shall take full force and effect on and from the Effective Date, provided that the Completion Arrangements have been fulfilled on or before 5.30pm on the Effective Date. In the event that the Completion Arrangements have not been fulfilled on or before 5.30pm on the Effective Date, the BBC shall, in its absolute discretion, determine if it will allow an extension of time for the Completion Arrangements to be fulfilled and if so then the Effective Date shall be the date of such extension.
- ## 3 Appointment and Authorisation
- 3.1 The BBC hereby appoints and authorises the Contractor to exercise and perform on its behalf (save to any extent prohibited by Law, BBC Policies or the Standards) all acts relating to the collection, administration and the enforcement of the Licence Fee and the administration of the

Over 75 Licence to the extent necessary for the performance of the Services in accordance with the terms of this Agreement.

- 3.2 The BBC or an authorised agent of the BBC may, at any time, take such steps as it deems are necessary in order to ensure that the BBC's powers and obligations pursuant to Part 4 of the Communications Act 2003 are discharged and that the management, collection, administration, and the enforcement of the Licence Fee is conducted in accordance with the Law.

Field Force Authorisation

- 3.3 The BBC shall procure that on and from the Start Date, the Contractor and/or any of the Relevant Employees (as the case may be) be authorised as the BBC's agent to exercise and perform on the BBC's behalf (save to the extent prohibited by Law) all such rights, powers, duties and discretions which are, or may from time to time be, conferred or imposed upon the BBC under all legislation and which are necessary for the performance by the Contractor of its obligations in relation to or in connection with civil litigation and/or Prosecution activities relating to the Licence and the collection of Licence Fee Revenue, including the application for and exercise of search warrants under Section 97 of the WTA and under Section 366 of the Communications Act 2003.
- 3.4 The Contractor shall submit details of all Employees whom the Contractor wishes the BBC to authorise as Relevant Employees to perform the Contractor's obligations under the Prosecution Policy (the "**Candidates**"). The Contractor shall provide all information reasonably requested by the BBC in respect of each Candidate, which relates to the employment of the Candidate including details of employment history, disciplinary record and relevant unspent criminal convictions (provided always that this obligation shall not require the Contractor to disclose any information which it is prohibited by Law from disclosing). Any Candidate authorised by the BBC in writing in accordance with Clause 3.3 shall be a Relevant Employee for the purposes of this Agreement. The BBC may, in its sole discretion, refuse to authorise any Candidate (provided that it shall act reasonably in exercising this right and notify the Contractor of its reasons for so doing in writing). The Contractor acknowledges that the BBC may also, at any time and in its sole discretion, revoke any person's status as a Relevant Employee (provided that it shall act reasonably in exercising this right and notify the Contractor of its reasons for so doing in writing).
- 3.5 The Contractor shall keep the BBC informed of any relevant and material changes the Contractor becomes aware of in relation to the employment history, disciplinary record and criminal record of each Relevant Employee (provided always that this obligation shall not require the Contractor to disclose any information which it is prohibited by Law from disclosing) and the Contractor acknowledges that following authorisation by the BBC in accordance with Clause 3.3 the BBC may, at any time and in its sole discretion, revoke any person's status as a Relevant Employee (provided that it shall act reasonably in exercising this right and notify the Contractor of its reasons for so doing in writing), and from the date of such revocation the Contractor shall procure that such person ceases to be a Relevant Employee and nothing in this Clause 3.5 intends to, or does, require the Contractor to prevent that Relevant Employee remaining in the employment of the Contractor as an Employee.
- 3.6 In relation to Clauses 3.4 and 3.5, if disclosure of information by the Contractor is not permitted by Law, the Contractor shall use its reasonable endeavours to satisfy any legal conditions to enable lawful disclosure to be made.

- 3.7 The Contractor shall ensure that the list of Relevant Employees is updated as and when required to reflect those carrying out Prosecution activities and reviewed Quarterly to ensure it is up-to-date. The BBC shall, on written request by the Contractor, grant such addition to or change to the names of the Relevant Employees (as the case may be) which the Contractor reasonably and necessarily requires for the Prosecution activities, provided the requirements set out in Clauses 3.4 and 3.5 are met.
- 3.8 The Parties acknowledge that only Relevant Employees are entitled to bring Prosecutions on behalf of the BBC.
- 3.9 The Contractor shall procure that Relevant Employees carry out Prosecutions in accordance with the Prosecution Policy, and Civil Enforcement in accordance with the Civil Enforcement Policy, and in accordance with the terms of this Agreement. The Contractor shall procure that proceedings shall not be instituted pursuant to this Agreement without the prior written approval of the BBC in any particular case where any of the circumstances set out below apply:
- 3.9.1 the case has only arisen because of any recent change to the Regulations;
 - 3.9.2 the case involves matters which the Contractor, acting reasonably, believes break new ground, or are sensitive or doubtful (including, without limitation, sensitive or doubtful Prosecutions and/or Civil Enforcement);
 - 3.9.3 the case involves matters that the BBC has notified the Contractor that the BBC believes break new ground, or are sensitive or doubtful (including, without limitation, sensitive or doubtful Prosecutions and/or Civil Enforcement);
 - 3.9.4 the case involves the Prosecution and/or Civil Enforcement of a person aged 73 years or over; or
 - 3.9.5 all appeals.

4 Term of the Agreement & Break Options

- 4.1 Subject to Clause 2.1, this Agreement shall take effect on the Effective Date and unless terminated in accordance with the provisions of this Agreement, shall expire eight (8) years from and including the Start Date (the "**Initial Term**").

Extension of Term

- 4.2 The BBC shall be entitled to extend this Agreement or extend any part of the Services beyond the Initial Term on one or more occasion. Subject to Clause 4.3, any extension(s) shall be on the same terms and conditions and for such duration(s) as the BBC may require, save that the final expiry date of this Agreement shall be no later than 30 June 2027. In the event that the BBC wishes to exercise its rights as set out in this Clause 4.2, it shall give at least six (6) months' prior written notice to the Contractor of its intention to do so, on each occasion.
- 4.3 The Charges that shall apply for the duration of any extension(s) of this Agreement shall be calculated pursuant to paragraph 19 of Schedule 5 (**Charges**).

Break Options

4.4 Subject to the provisions of Clause 4.5, the BBC shall be entitled to terminate this Agreement or terminate any part of the Service during the Term by giving the Contractor at least twelve (12) months' prior written notice of its intention to do so in the event that:

4.4.1 the BBC ceases to be the body responsible pursuant to Part 4 of the Communications Act 2003 for the collection, administration and enforcement of the Licence Fee;

4.4.2 the Licence Fee is no longer the BBC's principal source of funding;

4.4.3 there is a fundamental change to the Licence Fee such that the Services are no longer required in the form specified in this Agreement or that the Services would need to be changed in a manner outside the reasonable contemplation of the Parties at the Effective Date; or

4.4.4 the BBC ceases to exist.

4.5 Where the circumstances specified in:

4.5.1 Clause 4.4.1 arise (whilst always recognising that the BBC cannot bind, and may not necessarily be in a position to influence the actions of, any potential future body responsible for the management, collection, administration and enforcement of the Licence Fee) the BBC shall make all reasonable efforts to arrange for the novation of this Agreement to any such body; and

4.5.2 Clauses 4.4.2 and 4.4.3 arise (subject to any legal, quasi legal or other procedural constraints, including constraints arising from the Public Contracts Regulations 2006 or otherwise at Law, which the BBC may be under a duty or obligation to observe at the time),

the BBC shall make reasonable efforts to re-negotiate the terms of this Agreement to enable it to accommodate any revised funding regime or changes to the Licence Fee in accordance with the provisions of Clause 23, before the BBC may invoke its right to terminate this Agreement pursuant to Clause 4.4. If the BBC does invoke its right to terminate this Agreement or terminate any part of the Services pursuant to Clause 4.4 then the BBC shall be obliged to pay the Contractor's Breakage Costs.

BBC Right to Terminate for Convenience

4.6 The BBC shall be entitled to terminate this Agreement in whole or terminate any part of the Services hereunder for convenience at any time during the Term by giving the Contractor at least twelve (12) months' prior written notice of its intention to do so provided such notice shall not take effect until at least two (2) years after the Effective Date, and in this event the BBC shall be liable to pay the Contractor the Contractor's Breakage Costs.

5 The Services

- 5.1 On and from the Start Date, the Contractor shall provide the Services in accordance with the terms of this Agreement.
- 5.2 The Contractor shall provide the Services in accordance with:
- 5.2.1 Best Industry Practice; and
 - 5.2.2 all due care, skill and diligence.
- 5.3 The Contractor undertakes to perform such Additional Services as may be agreed by the Parties. Such Additional Services shall be performed by the Contractor in accordance with the applicable provisions of this Agreement.
- 5.4 On and from the Start Date and for the duration of the Digital Switchover Help Scheme, the Contractor shall provide the Help Scheme Services in accordance with the terms of this Agreement.

Transition Migration and Implementation

- 5.5 The Contractor shall perform all of its obligations relating to Transition, Migration and Implementation Phase including its Transition Responsibilities set out in Schedule 3 (**Transition**).
- 5.6 The Contractor shall co-operate with the BBC and the Incumbent to the extent necessary to effect a Smooth Transfer.
- 5.7 On and from the Start Date, the Contractor shall effect the necessary changes to the applications, processes, tools, resources, facilities and management necessary to implement the Target Operating Model by 30 December 2015, in a manner so as to ensure no interruption or delay in the collection of the Licence Fee or disruption to the Customer.
- 5.8 The Contractor shall minimise the impact of Migration so as not to impede the levels of services provided by the Incumbent.

Continuous Improvement

- 5.9 With effect from the completion of the Transition Responsibilities of the Contractor, the Contractor shall provide Continuous Improvement as described in the Continuous Improvement Plan.

Non-exclusivity

- 5.10 The Contractor acknowledges that the BBC is not required to obtain the Services exclusively from it during the Term.

Parent Company Guarantee

- 5.11 The Contractor shall obtain from its Parent Company an executed guarantee in the form set out in Schedule 21 (**Parent Company Guarantee**) in accordance with Clause 2.1 by 31 January 2012.

6 Disrepute to BBC

- 6.1 The Contractor shall take all reasonable steps to preserve the reputation and good name of the BBC in fulfilling its obligations under this Agreement and shall not do anything which would or might reasonably be expected to diminish the reputation or good name of the BBC, nor shall the Contractor omit to do anything which would be reasonable for it to do having regard to its obligations under this Agreement generally and in particular in respect of this Clause 6.1.
- 6.2 In providing the Services the Contractor shall not and shall procure that its officers and Employees do not express any fact, opinion or thought as being the fact, opinion or thought of the BBC unless specifically authorised in writing in advance by the BBC.
- 6.3 The Contractor shall take such steps and put in place such resources as are necessary to:
- 6.3.1 obtain the BBC's written approval before it takes any action which might reasonably be expected to result in press or public comment which relates in any way to the BBC's interest, reputation or standing; and
 - 6.3.2 provide the BBC with prompt notice of all actions which it has taken which at the time such actions were taken it did not foresee might result in press or public comment which relates in any way to the BBC's interest, reputation or standing, but which the Contractor subsequently does or ought reasonably to foresee shall result in such comment.

7 Service Documentation

- 7.1 The Contractor:
- 7.1.1 shall submit the Service Documentation to the BBC for approval no later than three (3) months after the Start Date and in addition, in accordance with the Transition Plan;
 - 7.1.2 shall ensure that the Service Documentation accurately reflects the current Service Environment and be consistent, accurate and of high quality;
 - 7.1.3 shall, subject to paragraph 7.1.4 update the Service Documentation, at least once a Quarter to reflect all changes to the Service Environment or the Services made in accordance with this Agreement and shall provide a copy of each update to the BBC within five (5) Working Days of the production of such update; and
 - 7.1.4 shall submit and update the Registers in accordance with Clause 41.1 of this Agreement.

8 BBC Responsibilities

- 8.1 The BBC shall discharge its obligations under this Agreement with all due skill, care and diligence.
- 8.2 The BBC shall perform its Transition Responsibilities in accordance with its obligations in Schedule 3 (**Transition**).

8.3 If the Contractor is unable to perform any of the Services or believes it is likely to be so prevented, as a direct result of a failure by the BBC to perform its obligations under this Agreement then:

- 8.3.1 to the extent that and for so long as such failure results from a failure by the BBC to perform its obligations (not including where the Contractor has contributed to such failure);
- 8.3.2 where the Contractor has notified the BBC in writing of the delay or likely delay setting out the steps that the BBC is required by this Agreement to take under this Clause 8.3, and
- 8.3.3 the Contractor has provided such notice in accordance with this Clause 8.3 immediately it becomes aware of a delay or likely delay,

the Contractor shall not be liable to the BBC for such failure to provide such Services where it has taken all steps appropriate to reduce the impact on the Services of the BBC's failure.

9 Compliance with the Law, BBC Policies and Standards

9.1 The Contractor shall comply with, and shall provide the Services in accordance with the Law, in force in the Territory in particular (including without limitation), the Contractor shall undertake, or refrain from undertaking, such acts as the BBC requests so as to enable the BBC to comply with its obligations under:

- 9.1.1 the Human Rights Act 1998 in the exercise of a public function;
- 9.1.2 RIPA;
- 9.1.3 the Equality Act 2010; and
- 9.1.4 the powers and obligations of the BBC pursuant to Part 4 of the Communications Act 2003, the Regulations and the WTA.

9.2 The Contractor shall not do anything which may result in the BBC under any Law incurring or having imposed upon it any penalty or other liability.

9.3 The Contractor shall keep itself informed of any forthcoming Law and changes to the Law which may affect this Agreement and the Services and shall take such necessary action in accordance with the instructions or the approval of the BBC to ensure that it is able to adapt and continue the provision of the Services without interruption or diminution. The Contractor shall notify the BBC of such proposed changes in the Law promptly.

9.4 The Contractor shall provide the Services in accordance with:

- 9.4.1 the BBC Policies and Standards; and
- 9.4.2 the Charter and the BBC Agreement.

9.5 The BBC shall provide the Contractor with up-to-date copies of, and maintain up-to-date, the BBC Policies and Directions.

- 9.6 In the event that the circumstances arise in which the Contractor requires clarification on the interpretation of the BBC Policies, Standards or the Law relating to the Licence and the Services, the Contractor shall seek such clarification prior to implementing the relevant aspect of the BBC Policies, Standards or the Law relating to the Licence and the Services upon which the Contractor requires clarification.

Compliance with BBC's Interpretation of the BBC Policies and Standards

- 9.7 The Contractor shall abide by the BBC's interpretation of:
- 9.7.1 the BBC Policies;
 - 9.7.2 the Charter and the BBC Agreement;
 - 9.7.3 any Direction and the Regulations;
 - 9.7.4 the BBC's powers and obligations pursuant to Part 4 of the Communications Act 2003;
 - 9.7.5 the BBC's powers and obligations pursuant to the WTA;
 - 9.7.6 the BBC's powers and obligations pursuant to RIPA; and/or
 - 9.7.7 the Standards,
- in carrying out its obligations under this Agreement.

Changes in Law, BBC Policies and Standards

- 9.8 Subject to Clause 9.9, the Contractor shall comply with all changes in Law, as soon as is practicable but without delay, at its own cost (and not at the cost of the BBC), except where there is:
- 9.8.1 a change in Law relating to the matters listed in Clauses 9.7.2, 9.7.3, 9.7.4, 9.7.5 and 9.7.6;
 - 9.8.2 a change in the BBC's interpretation of the matters listed in Clauses 9.7.1, 9.7.2, 9.7.3, 9.7.4, 9.7.5 and 9.7.6; and/or
 - 9.8.3 a change in Law specific to the BBC, or the collection, administration and enforcement of the Licence Fee.
- 9.9 The BBC shall be liable for any additional costs incurred by the Contractor arising directly from the changes listed in Clause 9.8.1, 9.8.2 and 9.8.3 to be calculated in accordance with the provisions of paragraph 3 of Schedule 5 (**Charges**).
- 9.10 Any change necessitated as a result of the Contractor's failure to effect or properly carry out the Services in accordance with the BBC's interpretation of the matters described in Clauses 9.7.1 to 9.7.7 shall be at the Contractor's own cost and not at the cost of the BBC.

Anti-Bribery

9.11 The Contractor shall:

- 9.11.1 comply with the Bribery Act 2010 and all Law relating to anti-bribery and anti-corruption;
- 9.11.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 9.11.3 comply with the BBC's policy, code of conduct and guidance relating to anti-bribery and anti-corruption described in Schedule 8 (**BBC Policies and Standards**);
- 9.11.4 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the provisions of this Clause 9.11, and shall enforce them where appropriate;
- 9.11.5 promptly report to the BBC any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Agreement;
- 9.11.6 immediately notify the BBC after becoming aware if a foreign public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor (and the Contractor warrants that in so far as it is aware (having made all appropriate enquiries) it has no foreign public officials as Employees or direct or indirect owners at the date of this Agreement);
- 9.11.7 within three (3) months after the Effective Date, and annually thereafter, certify to the BBC in writing signed by an officer of the Contractor, compliance with this Clause 9.11 by the Contractor and all persons associated with it and all other persons for whom the Contractor is responsible under this clause. The Contractor shall provide such supporting evidence of compliance as the BBC may reasonably request; and
- 9.11.8 ensure that any person associated with the Contractor who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 9.11. The Contractor shall be responsible for the observance and performance by such persons of the provisions of this Clause 9.11, and shall be directly liable to the BBC for any breach of this Clause 9.11 by such persons.

9.12 Breach of Clause 9.11 shall be deemed a material breach not capable of remedy under Clause 33.2.2 of the Agreement.

9.13 For the purpose of Clauses 9.11 and 9.12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively, and a

person associated with the Contractor includes but is not limited to any Subcontractor of the Contractor.

10 Co-operation Agreement

- 10.1 The Contractor shall enter into a co-operation agreement, unless otherwise agreed by the BBC, in substantially the form set out in Schedule 13 (**Co-operation Agreement**) with the Marketing Provider (the "**Co-operation Agreement**") by 01/06/2012 and in accordance with the criteria set out in Annex 1 Part 1: Milestones of Schedule 3 (**Transition**),
- 10.2 Where the parties to the Co-operation Agreement are unable to reach agreement as to the terms of the Co-operation Agreement in accordance with Clause 10.1, the matter shall be resolved in accordance with Clause 43, where the Marketing Provider shall be entitled to attend and fully participate.
- 10.3 Once the Co-operation Agreement has been executed by the parties to the Co-operation Agreement, any disputes to any of its terms or changes to be made to it, shall be determined in accordance with the escalation procedure set out in the Co-operation Agreement.
- 10.4 The Co-operation Agreement shall govern the working relationship between the Contractor and the Marketing Provider so as to ensure that the services provided by the Contractor, the Marketing Provider and each of the providers all interface together fully.
- 10.5 The Contractor shall provide the BBC with a copy of the proposed final form of the Co-operation Agreement, and take into consideration any comments the BBC may have, prior to execution by the Contractor. The Contractor shall notify the BBC when such Co-operation Agreement has been executed by the parties to it and provide the BBC with a copy of such executed Co-operation Agreement.
- 10.6 The Contractor shall comply with the terms of the Co-operation Agreement and shall not amend or terminate the Co-operation Agreement without the prior written approval of the BBC. The BBC shall ensure that its agreement with the Marketing Provider makes provision for the Co-operation Agreement with the Contractor.
- 10.7 In the event of any change in identity of the Marketing Provider, the Contractor shall use all reasonable endeavours to enter into a co-operation agreement similar in intent to the Co-operation Agreement, with the replacement provider, upon such terms and within the reasonable timetable agreed in advance with the BBC.
- 10.8 At the request of the BBC the Contractor shall use all reasonable endeavours to enter in a co-operation agreement similar in intent to the Co-operation Agreement with any third party supplier of ancillary services in respect of the management, collection, administration and enforcement of the Licence.
- 10.9 The Contractor acknowledges and agrees that its obligations under the Co-operation Agreement are for the benefit of the BBC. The Contractor's obligations under the Co-operation Agreement shall therefore be deemed to be obligations under this Agreement which shall be enforceable by the BBC.

- 10.10 The BBC shall either procure the continued provision of the marketing services provided for in the Co-operation Agreement throughout the Term, or in the event of any change in the scope of the said marketing services, the Parties shall in good faith agree such changes as to this Agreement on the basis that the Contractor is in a 'no better and no worse' position than that it would otherwise had been.
- 10.11 Any material breach of Clause 10.1 or of the Co-operation Agreement shall be a material breach of this Agreement entitling the BBC to terminate this Agreement pursuant to Clause 33.2.

11 Liquidated Damages

- 11.1 If any Key Milestone is not met by its respective Key Milestone Date, the BBC may require the Contractor to pay to the BBC Liquidated Damages for each day of delay at the daily rate (irrespective of how many Key Milestones have not been met) of £14,000, up to a maximum amount of seven (£7) million pounds for the total amount of Liquidated Damages payable by the Contractor to the BBC during the Term of this Agreement.
- 11.2 The BBC agrees that it shall hold the Liquidated Damages received from the Contractor under Clause 11.1 on account to be drawn down by the BBC to meet any costs resulting from the Contractor's delay in meeting any Key Milestone, and following completion of Migration and again following completion of Transition, the BBC shall return any unspent or uncommitted sum in respect of each period to the Contractor.
- 11.3 Notwithstanding Clause 11.1, the BBC shall be entitled to claim any remedy available to it for any Losses incurred by it as a result of a breach of this Agreement.
- 11.4 The Liquidated Damages specified in Clause 11.1 may be recovered by the BBC in its sole discretion as a sum of money payable by the Contractor.
- 11.5 The Parties acknowledge that the amounts for the Liquidated Damages specified in Clause 11.1 are a genuine pre-estimate of losses which the BBC is likely to suffer by reason of such delay.

12 Service Levels and Service Credits

- 12.1 On and from the Start Date, the Contractor shall provide the Services in accordance with the Service Levels.
- 12.2 No later than three (3) months prior to the start of each Financial Year the Parties shall jointly undertake an Annual Service Level Review. The purpose of the Annual Service Level Review is to ensure that the Key Performance Indicators and the Performance Indicators continue to be appropriate and effective in the measurement of the Contractor's performance, and that in particular:
- 12.2.1 the Service Levels do not act to impede the delivery of Continuous Improvement in the effective, appropriate and proportionate collection of the Licence Fee;
 - 12.2.2 the experience of Customers through their interaction with the Contractor and the Employees enhances the public acceptability of the Licence Fee;

- 12.2.3 the Service Levels contribute to incentivising the right behaviour by the Contractor, the achievement of the BBC's operational priorities and to improving Licence Fee collection rates and enhancing the reputation of TV Licensing; and
- 12.2.4 the introduction of any Changes to the Service Levels shall not interrupt the continuity in the collection of the Licence Fee.
- 12.3 The Parties' negotiations during the Annual Service Level Review shall not aim to degrade the overall level of the Services, instead the Parties shall in good faith work together to update the Service Levels so as to achieve the purpose of the Annual Service Level Review described in Clause 12.2.
- 12.4 In the event that the Parties are unable to agree the conclusions reached as a result of the Annual Service Level Review one month prior to the commencement of the relevant Financial Year, the matter shall be determined in accordance with Clause 43. For the avoidance of doubt, the Parties agree that the current Annual Service Level Review shall remain in force during the time until the matter has been resolved.
- 12.5 If at any time after the Start Date the Contractor fails to provide the Services in accordance with the Service Levels then, without prejudice to Clause 12.6:
 - 12.5.1 the Contractor shall award the Service Credits Payable to the BBC; and
 - 12.5.2 the Contractor shall comply with its obligations set out in paragraph 6 of Schedule 6 (**Service Level Agreement**).
- 12.6 Notwithstanding Clause 12.2, the Service Levels shall be reviewed:
 - 12.6.1 immediately by the board or group identified by the BBC in the event that the Service Credits Payable during a Financial Year exceed seven (7) percent of the total Charges paid for that Financial Year and forecast as payable for the remainder of that Year; and
 - 12.6.2 immediately by the board or group identified by the BBC in the event of any significant change in process or volume.
- 12.7 Save as provided in paragraph 4 of Schedule 6 (**Service Level Agreement**), all Changes to the Service Levels required as a result of a review under Clause 12.6 shall be agreed through the Change Control Procedure.

13 Staff Employed by the Contractor

- 13.1 The Contractor shall ensure that the Services are rendered by sufficient numbers of appropriately experienced, qualified and trained Employees, competent to undertake their respective tasks with all care, skill, and diligence.
- 13.2 The Contractor shall provide sufficient Employees to meet the volume of contacts generated by the Marketing Provider or forecast by the Parties so as to meet the Service Levels.

- 13.3 The Contractor shall where permitted by Law carry out all relevant checks (police, Criminal Records Bureau or otherwise) so as to ensure that any person who discloses that they have a Relevant Conviction, or who is found by the Contractor to have any Relevant Convictions is not employed or engaged in the provision of any part of the Services.
- 13.4 The Contractor shall, in accordance with the Seventh Data Protection Principle (as set out in the Data Protection Act 1998) and the provisions of Schedule 10 (**Data Protection**), take reasonable steps to ensure the reliability and suitability of any of its Employees who shall have access to the Personal Data.
- 13.5 In respect of its Employees, the Contractor shall not unlawfully discriminate, harass or victimise because of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, or commit any other unlawful act within the meaning and scope of any law, enactment, order or regulation relating to discrimination, and employment, including the Equality Act 2010.
- 13.6 The Contractor shall undertake, or refrain from undertaking, such acts as the BBC requests so as to enable the BBC to comply with its obligations under the public sector equality duty in the Equality Act 2010.
- 13.7 The Contractor shall use its reasonable endeavours to adhere to the current Codes of Practice and Guidance issued by the Equality and Human Rights Commission.
- 13.8 The Contractor shall develop and maintain Employee retention and development policies, the Employee incentivisation schemes described in paragraph 2.3 of Schedule 4 (**Governance**) and a programme to develop Employee performance.
- 13.9 The Contractor shall review and continuously refine the skills profile required of the Employees during the Term.

Key Personnel

- 13.10 Annex 1 of Schedule 4 (**Governance**) identifies the roles of key personnel in respect of the Contractor and any Key Subcontractor which at the Effective Date the BBC has identified as being key to the provision of the Services ("**Key Personnel**").
- 13.11 The Contractor shall provide the BBC with a copy of the curriculum vitae:
- 13.11.1 within seven (7) Working Days after the Effective Date of the Employees which the Contractor proposes shall occupy the roles set out in Annex 1 of Schedule 4 (**Governance**); and
 - 13.11.2 within seven (7) Working Days prior to the candidates' interviews, for all candidates described in Clauses 13.12.1 and 13.12.3.
- 13.12 The BBC shall be entitled to interview, comment on the suitability of and either approve or reject candidates put forward by the Contractor or any Key Subcontractor, prior to appointment of:
- 13.12.1 the Key Personnel;

- 13.12.2 any new key role within the Services (in either the Contractor's or any Key Subcontractor's organisation) which is not identified in Annex 1 of Schedule 4 (**Governance**); or
- 13.12.3 any proposed replacement staff of existing Key Personnel.
- 13.13 The Contractor shall not (and shall procure that the relevant Key Subcontractor shall not) appoint any candidate which the BBC rejects in accordance with Clause 13.12. Where the BBC approves the candidate in accordance with Clause 13.12, the Contractor shall compile and forward to the BBC (and keep updated within seven (7) Working Days of approval of such Key Personnel, a list of Key Personnel, which shall be binding on the Parties.
- 13.14 The Contractor shall procure at all times during the Term that the Employees appointed to the roles of Key Personnel (or their replacements) are actively involved in the performance of this Agreement and devote such of their time, attention and abilities to the Services as may be necessary for the provision of the Services in accordance with Best Industry Practice.
- 13.15 The Contractor agrees that the Key Personnel identified to carry out the Transition Responsibilities shall remain available until such time as the BBC has agreed that their respective roles are no longer required.
- 13.16 The BBC shall be entitled to request the replacement of any proposed or serving staff appointed as Key Personnel on the grounds of:
- 13.16.1 a manifest lack of experience and/or the required skills to carry out the tasks and/or responsibilities required of them; and/or
- 13.16.2 the Key Personnel becoming unavailable for any reason, including as a result of death, injury, sickness, promotion or resignation, for (save in the case of death) a period longer than two months; and/or
- 13.16.3 a breach of any provision of this Agreement by the individual concerned; and/or
- 13.16.4 gross misconduct or other misconduct actionable under the Contractor's or relevant Subcontractor's (if appropriate) disciplinary rules,
- provided that the BBC shall not exercise this right unreasonably and shall afford the Contractor a reasonable opportunity (being not less than five (5) Working Days) to address the BBC's stated concerns prior to the BBC exercising its rights under this Clause 13.16. The Contractor shall replace any proposed or serving Key Personnel with an individual whose abilities, qualifications and experience are appropriate for the job requirements. The Contractor shall give the BBC as much notice as is reasonably practicable that any of the Key Personnel are likely to become unavailable in accordance with Clause 13.16.
- 13.17 In the event that the Contractor proposes to dismiss any Key Personnel, the BBC's prior approval shall be required (save in circumstances where summary dismissal is appropriate as a result of gross misconduct, where the BBC's consent shall not be required and the Contractor shall notify the BBC of the steps taken and the circumstances in which it had been necessary to dismiss the Employee).

13.18 The Contractor shall take all reasonable steps to ensure that all staff employed by it, and to procure that all staff employed by any Subcontractor, in connection with this Agreement shall have a valid Licence.

TUPE

13.19 The Parties acknowledge that the contracts of employment of the Transferring Employees may transfer to the Contractor from the Incumbent or any subcontractor of the Incumbent with effect from the Start Date. Of the contracts of employment that do transfer, the Parties and the Incumbent may agree that some or all of the contracts of employment of the Transferring Employees shall transfer on a date other than the Start Date. Any such agreed date shall be the date on which the relevant Transferring Employees start to provide the Services under this Agreement. If an alternative date for transfer is agreed pursuant to this Clause 13.19, references to "Start Date" in this Clause 13.19 shall be construed to mean the alternative agreed date.

13.20 The BBC shall indemnify the Contractor against all 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 Transferring Employee or any trade union or staff association recognised by the Incumbent or any subcontractor of the Incumbent in relation to the Transferring Employees arising from any act or omission of the Incumbent (including any failure to comply with its and their information and consultation obligations under TUPE Regulations) or any subcontractor of the Incumbent prior to the Start Date.

13.21 The Contractor shall indemnify the BBC against all awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) which the BBC incurs by reason or on account of and arising from any action, claim or other legal recourse by any Transferring Employee arising from:

13.21.1 any act or omission of the Contractor or any Subcontractor on or after the Start Date; and

13.21.2 any change imposed by the Contractor or any Subcontractor in the working conditions or contract of employment of any Transferring Employee which shall occur or which such Transferring Employee anticipates shall occur on or after the Start Date; and

13.21.3 any failure by the Contractor or any Subcontractor to comply with its obligations to inform and consult pursuant to Regulation 13 of the TUPE Regulations.

13.22 For the purposes of Clause 13.21 the BBC shall be entitled to claim from the Contractor any awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) of the Incumbent or any subcontractor of the Incumbent where the BBC has indemnified the Incumbent or any subcontractor of the Incumbent in respect of such awards, losses, damages, costs, demands, liabilities, interest and expenses (including all reasonable legal costs) in substantially the same form and covering substantially the same scope as the indemnity in Clause 13.21.

14 Remittance of Revenue

- 14.1 The Contractor shall collect, administer, account and remit all Licence Fee Revenue to the BBC or H.M. Treasury (as applicable) and administer the Over 75 Licence in accordance with the applicable provisions of this Agreement.
- 14.2 The Contractor shall comply with the Accounting Responsibilities.

15 Due Diligence

- 15.1 The Contractor acknowledges that it:
- 15.1.1 has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied to it by or on behalf of the BBC;
 - 15.1.2 has raised all relevant due diligence questions with the BBC before the submission of the Tender Documentation; and
 - 15.1.3 has entered into this Agreement in reliance on its own due diligence alone.

16 Charges

- 16.1 In consideration of the supply of the Services in accordance with the terms of this Agreement the BBC shall pay the Charges to the Contractor.
- 16.2 The BBC may retain or set off any amount owed to it by the Contractor against any amount owed by it to the Contractor under this Agreement or under any other agreement between the BBC and the Contractor.
- 16.3 The Charges shall only be varied as expressly provided for in this Agreement.
- 16.4 The Contractor shall invoice the BBC and the BBC shall make payment in accordance with the provisions of Schedule 5 (**Charges**).
- 16.5 The Contractor agrees that any Additional Services provided shall be offered to the BBC at charges calculated in accordance with paragraph 11 of Schedule 5 (**Charges**).
- 16.6 All amounts under this Agreement are exclusive of VAT chargeable in respect thereof and the Party paying such amount shall, in addition, pay any VAT properly chargeable thereon against the provision of a valid VAT invoice.
- 16.7 The BBC shall be entitled to benchmark the Charges and the Services or any part thereof in accordance with the provisions set out in Annex 4 to Schedule 5 (**Charges**).
- 16.8 The Contractor shall provide to the BBC an audited Statement of Account in respect of each Financial Year by the end of April next following the end of the relevant Financial Year.

17 Prevention of Fraud

- 17.1 The Contractor shall take all steps necessary to prevent fraud by its Employees and shareholders in connection with the receipt of Licence Fee Revenue.
- 17.2 The Contractor shall notify the BBC immediately if it has reasons to suspect that any fraud has occurred, is occurring or is likely to occur.
- 17.3 If the Contractor or its Subcontractors commit fraud in relation to this Agreement or any other agreement they may have with the BBC, the BBC may either:
- 17.3.1 terminate this Agreement and recover from the Contractor the amount of any Losses suffered by the BBC resulting from the termination, including the cost reasonably incurred by the BBC of making arrangement for the supply of the Services and any additional expenditure incurred by the BBC throughout the remainder of the Term; or
 - 17.3.2 recover in full from the Contractor any Losses sustained by the BBC in consequence of any breach of Clauses 17.1 to 17.3.

18 Post Contract Verification - Acknowledgement

- 18.1 The Contractor acknowledges that it shall not be entitled to increase any of the Charges nor (in the absence of fraud, negligence or any misrepresentation, misconduct or deliberate concealment by the BBC), shall the Contractor be entitled to bring a claim or allegation against the BBC (whether in contract, tort or otherwise), in respect of or in reliance upon any inaccuracy, insufficiency, error or omission of any kind whatsoever that was set out or referred to in the Data Room Files or any other data or information disclosed to the Contractor by the BBC, and the Contractor declined provisions offered by the BBC in its invitation to tender that provided for the post contract verification of any element of the Cost Model.

19 Security Requirements, Disaster Recovery and Business Continuity

- 19.1 The Contractor shall comply with the provisions of Schedule 12 (**Business Continuity & Disaster Recovery**).
- 19.2 The Contractor shall prepare and supply, for the BBC's approval within thirty (30) Working Days before the Start Date, a Security Plan which complies with the security requirements set out in Schedule 12 (**Business Continuity & Disaster Recovery**), the BBC Policies, and the Standards set out in Schedule 8 (**BBC Policies and Standards**).
- 19.3 The Contractor shall devise draft Business Continuity Plans for the BBC's approval and thereafter implement the approved plans in accordance with paragraph 5.1 of Schedule 12 (**Business Continuity and Disaster Recovery**).
- 19.4 The Contractor shall devise and implement a Disaster Recovery Plan which complies with the disaster recovery requirements set out in paragraph 6 of Schedule 12 (**Business Continuity and Disaster Recovery**).

- 19.5 In the event of an Incident, the Contractor shall ensure that the extent of disruption of Licence Fee revenue to H.M. Treasury is minimised.
- 19.6 In the event that any failure on behalf of the Contractor to implement the Disaster Recovery Plan (or such elements thereof as may be relevant) materially diminishes the level of the Services being received by the BBC, the BBC shall be entitled to a reimbursement of the Charges in proportion to:
- 19.6.1 the level of the Services being received by the BBC; and
 - 19.6.2 the duration of any materially reduced level of the Services being received by the BBC.

20 Governance of Agreement

- 20.1 The Contractor and the BBC shall each carry out their respective responsibilities described in Schedule 4 (**Governance**).
- 20.2 Where reports including Management Information, Service Documentation and reporting of Transition Deliverables are to be submitted under this Agreement and the Co-operation Agreement (as appropriate), the Contractor shall render such reports at the time and in such form as may be specified in this Agreement or the Co-operation Agreement respectively or as otherwise reasonably requested by the BBC. Submission and receipt of these reports shall not prejudice the rights of either Party under this Agreement.

21 Press Announcements and Public Statements

- 21.1 Except with the prior written approval of the BBC, the Contractor (including its Group and its officers and Employees) shall not make any public statement or press announcement in relation to this Agreement, unless such statement or announcement is required by the rules of the London Stock Exchange or by Law. In the event that any statement is required to be made in the Contractor's or the Group annual report and accounts, the Contractor shall provide and shall ensure that the Group provides to the BBC the draft text of the proposed statement at least three (3) Working Days in advance of publication for the BBC's approval (not to be unreasonably withheld or delayed).
- 21.2 In the event that the BBC approves any proposal to make a public statement or press announcement by the Contractor in relation to this Agreement, the Contractor shall:
- 21.2.1 submit the same to the BBC, for the BBC's further, prior written approval; and
 - 21.2.2 agree the timing of its release with the BBC.
- 21.3 Notwithstanding Clause 21.1, the Contractor may use the BBC's name for the sole purposes of internal announcements within its organisation.
- 21.4 Any publicity material used by the Contractor shall make clear that the BBC does not endorse the Contractor or its provision of the Services and any description of the Services in such publicity material shall be in general terms only.

- 21.5 Any use of the BBC's name, trade marks or logos approved by the BBC pursuant to Clauses 21.1 and 21.2 shall, be subject strictly to the terms of the written approval referred to in those sub-clauses.

22 Corrupt Gifts

22.1 The Contractor:

- 22.1.1 has not prior to the Effective Date and shall not offer or offer to give or agree to give any person employed or otherwise engaged by the BBC or any associated person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other agreement or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other agreement;
- 22.1.2 has not entered into this Agreement and has not and shall not enter into any other agreement with the BBC or any associated person in connection with which commission has been paid or agreed to be paid by the Contractor or on its behalf or to its knowledge; and/or
- 22.1.3 has not accepted and shall not accept bribes or other improper financial inducements from any contractor or subcontractor in relation to the Services.

23 Change Control

- 23.1 Either Party may request changes in accordance with Schedule 7 (**Change Control Procedure**).
- 23.2 The basis upon which any variation in Charges is to be calculated is set out in Schedule 5 (**Charges**).
- 23.3 The Contractor acknowledges that the BBC may seek to introduce changes so as to reduce the level of Charges. Such changes shall be implemented in accordance with the Change Control Procedure.
- 23.4 The Contractor shall not be entitled to unreasonably refuse to agree a Change Notice submitted by the BBC. It shall only be considered reasonable for the Contractor to refuse a Change Notice where the Parties have failed, acting reasonably to agree the impact of any additional costs to be incurred by the Contractor in accordance with paragraph 3 of Schedule 5 (**Charges**) and Schedule 7 (**Change Control Procedure**) where such agreement is required or on the grounds that the change in question would result in:
- 23.4.1 legitimate health and safety concerns for the Contractor which cannot be avoided by making changes to the way in which the Services are provided;
- 23.4.2 the Contractor and/or the BBC being in breach of any Law or infringing a third party's rights; and/or

- 23.4.3 the Contractor being required to seek regulatory consents which the Contractor can demonstrate to be unobtainable;
- 23.5 The Contractor shall implement any change agreed between the Parties in accordance with the relevant Change Notice, with Schedule 7 (**Change Control Procedure**) and with the other provisions of this Agreement.

24 Warning Notices and Increased Monitoring

- 24.1 Without prejudice to the other rights or remedies of the BBC, if at any time the Contractor has:
- 24.1.1 in the BBC's opinion failed to comply with any of its obligations under this Agreement;
 - 24.1.2 pursuant to paragraph 2.27 of Schedule 3 (**Transition**) failed to fulfil the Trialling Criteria;
 - 24.1.3 on two (2) or more occasions of failure to meet a Service Level in any three (3) month period;
 - 24.1.4 incurred Service Credits on five (5) or more occasions in any six (6) month period;
 - 24.1.5 any failure to agree the Co-operation Agreement;
 - 24.1.6 a claim for Liquidated Damages made against it of more than one hundred and ninety six thousand pounds (£196,000); and/or
 - 24.1.7 failed to Achieve any Key Milestone by its associated Key Milestone Date,
- then the BBC may, but is not obliged to, provide a written notice (a "**Warning Notice**") to the Contractor setting out the matter or matters giving rise to such notice and containing a reminder to the Contractor of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice.
- 24.2 Without prejudice to the other rights or remedies of the BBC, if the Contractor receives two (2) or more Warning Notices in any three (3) month period, the BBC may, by written notice to the Contractor, either reasonably increase the level of its monitoring of the Contractor and/or a Key Subcontractor, or (at the BBC's option) require the Contractor to increase the level of its monitoring of its own or its Key Subcontractor's performance of its obligations under this Agreement, in respect of the Services (or relevant part thereof) to which the Warning Notices relate until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the BBC that either it or its Key Subcontractor shall perform (and is capable of performing) its obligations under this Agreement, in which case, the following provisions shall apply:
- 24.2.1 any such notice to the Contractor shall specify in reasonable detail the additional measures to be taken by the BBC or by the Contractor or its Key Subcontractor (as the case may be) in monitoring the performance of the Contractor, and/or Key Subcontractor;

- 24.2.2 if the Contractor and/or its Key Subcontractor (acting reasonably) objects to any of the specified measures on the grounds that they are excessive it shall notify the BBC in writing within two (2) Working Days of the receipt of the notice referred to in Clause 24.2.1 of the measures objected to (and of any changes necessary in order to prevent prejudice to the Contractor's performance of its obligations under this Agreement);
 - 24.2.3 the measures to be taken by the BBC and/or the Contractor (as the case may be) shall be agreed the Parties or, in the absence of agreement within three (3) Working Days of the BBC's receipt of the Contractor's objection, be determined pursuant to Clause 43; and
 - 24.2.4 the Contractor shall bear its own costs and the costs of its Key Subcontractors and shall reimburse the BBC in respect of any additional costs that are directly incurred by the BBC in respect of any such additional measures.
- 24.3 In Clause 24.2, references to "monitoring" shall include the gathering of information, the provision of reports, site visits, management meetings and audits.

25 Audit & Open Book

Access to Information

- 25.1 The Contractor shall monitor its performance of the Services in accordance with this Agreement and shall provide the BBC with the following (the "**Management Reports**"):
- 25.1.1 within 14 days of a request by the BBC, the Open Book Accounts and any internal audits relating to compliance with any aspect of this Agreement generally;
 - 25.1.2 within 14 days of a request by the BBC, access to all information relating to the calculation of the Charges and/or the Contractor's performance of its obligations under this Agreement;
 - 25.1.3 on a Quarterly basis within 14 days after the end of the Quarter in question, an accurate summary of the information referred to in Clause 25.1.1 in a format to be agreed between the Contractor and the BBC; and
 - 25.1.4 within 14 days of a request by the BBC, a detailed breakdown of time spent and activity completed for any element of the Services paid for by the BBC by way of day rates or otherwise on a time and materials basis or equivalent.
- 25.2 The Contractor shall provide the BBC with access to any BBC Data held in whatever form, in each case on request at any time during the Term.
- 25.3 For the avoidance of doubt, nothing in this Clause 25 shall entitle the BBC or the BBC Audit Representatives to access confidential information relating to the Contractor's other customers.

Duty to Retain Records

25.4 Subject to the BBC's data retention policy set out in Schedule 8 (**BBC Policies and Standards**), the Contractor shall keep secure and maintain until at least six (6) years after expiry or termination of this Agreement (or such later date as is required from time to time under applicable Law) the Management Reports together with separate, complete and accurate books of account and documentation relating to the following (the "**Records**"):

- 25.4.1 all Licence Fee Revenue and Refunds;
- 25.4.2 all records and receipts relating to Over 75 Licences;
- 25.4.3 all fines and Court costs awarded and recovered or collected;
- 25.4.4 all BBC Data that is or has been held by the Contractor;
- 25.4.5 the provision of the Services and compliance by the Contractor with this Agreement; and
- 25.4.6 the payments made by the BBC pursuant to this Agreement.

Audit Rights

25.5 The BBC and/or the BBC Audit Representatives shall have the right from time to time on reasonable notice (being not less than five (5) Working Days) to perform a full and detailed audit, access and inspection (each, an "**Audit**") and/or to request copies of the Records, systems, hardware, processes, controls and facilities (in each case to the extent they are relevant to the provision of the Services under this Agreement), in order to verify:

- 25.5.1 that the performance of the Services by both the Contractor and any Subcontractor complies with this Agreement;
- 25.5.2 the books, systems and facilities used by the Contractor and any Subcontractor to perform the Services;
- 25.5.3 compliance with the Accounting Responsibilities;
- 25.5.4 compliance with Clause 38;
- 25.5.5 compliance with Clause 35 and Clause 36;
- 25.5.6 the amounts charged and/or proposed to be charged to the BBC under this Agreement (including in relation to any element of the Services provided by Subcontractors) and any data used to justify such amounts;
- 25.5.7 the Contractor's measurement of the Service Levels and calculations of any Service Credits;
- 25.5.8 the Contractor's compliance with the provisions of this Agreement generally; and/or
- 25.5.9 such other matters as the BBC Audit Representatives may reasonably require to be verified.

Cost of Audit & Open Book

25.6 Each Party shall pay its own costs directly or indirectly incurred as a result of the BBC exercising its rights under Clause 25.5, save in the event that:

25.6.1 an overpayment by the BBC has been revealed by the audit or inspection in the circumstances described in Clause 25.10.1; and/or

25.6.2 an audit or inspection reveals a material failure by the Contractor to comply with its obligations in accordance with this Agreement,

in which event the Contractor shall reimburse the BBC all the costs associated with the said audit and the Contractor shall pay its own costs.

25.7 Subject to Clause 25.6, the BBC shall pay its own costs and the Contractor's costs directly incurred by the Contractor as a result of a BBC audit or inspection of the same area of the Service more than once in any twelve month period, unless such audit or inspection has been limited to reviewing evidence of the Contractor's compliance with any recommendation or agreement reached as a result of previous audit findings.

Suspected Fraudulent Activity

25.8 Notwithstanding Clause 25.5, in the event that the BBC and/or the BBC Audit Representatives reasonably suspect any fraudulent activity or other impropriety by any person on the part of the Contractor or any Subcontractor, the BBC and/or the BBC Audit Representatives (as applicable) shall be entitled to immediate and unrestricted access to the Records, the Contractor's systems, hardware, processes, controls and facilities (to the extent they are relevant to the provision of Services under this Agreement) to investigate such activity or impropriety (a "**Fraud Investigation**"). If requested by the BBC and/or the BBC Audit Representatives (as applicable), the Contractor shall carry out an investigation of the suspected fraudulent activity or other impropriety and report the results of the investigation to the BBC and/or the BBC Audit Representatives within five (5) Working Days of a request by the BBC to do so.

Contractor Co-operation

25.9 The Contractor shall, at no additional cost to the BBC, provide all reasonable access and assistance in order to enable the BBC and/or the BBC Audit Representatives (as applicable) to exercise the rights under this Clause 25. Such assistance shall include the right of the BBC to access such of the Contractor's or any Subcontractor's sites which are used for the performance of the Services (including any Locations) during the Term upon twenty four (24) hours' written notice (and during normal office hours) and to take copies of any materials relating to this Agreement. The Contractor shall, at no additional cost to the BBC, also provide, and shall procure that any Subcontractor shall provide, all reasonably necessary assistance in order to enable the BBC Audit Representatives to complete any such audit internal to the BBC for which access to the data and systems held or managed by the Contractor is required and allow the BBC Audit Representatives to take copies of all relevant materials.

Action on Audit Findings

25.10 If any Audit or Fraud Investigation reveals:

25.10.1 any error or incorrect calculation of:

- (a) Licence Fee Revenue and Refunds;
- (b) the Charges;
- (c) Liquidated Damages;
- (d) Service Credits;
- (e) Revenue Credits; and/or
- (f) other sums payable under this Agreement,

then an appropriate correcting payment or credit shall be made and any monies due to the BBC or the Contractor (as appropriate) reimbursed as soon as reasonably practicable thereafter;

25.10.2 any error or incorrect handling of BBC Data under this Agreement, the Contractor shall comply with the BBC's instructions in relation to correcting the matter; or

25.10.3 any non-compliance by the Contractor with the provisions of this Agreement, the Contractor shall correct that non-compliance as soon as reasonably practicable and at no additional cost to the BBC and report to the BBC on the process of taking the correcting action.

26 Step-in Rights

Step-In Events

26.1 The BBC may take action under this Clause 26 in the following circumstances (each a "**Step-In Event**"):

26.1.1 the BBC, acting reasonably, considers that a breach or failure by the Contractor to meet its obligations under this Agreement may create an immediate and serious threat to the management, collection, administration and enforcement of the Licence Fee;

26.1.2 the Contractor suffers or in the BBC's reasonable opinion is likely to suffer a Force Majeure Event which causes, or is likely to cause a material interruption or delay in the provision of any part of the Services or the Licence Fee Revenue;

26.1.3 a Warning Notice has been served on the Contractor and it has failed to demonstrate to the reasonable satisfaction of the BBC that either it or its Key Subcontractor shall perform or is capable of performing its obligations under this Agreement; or

26.1.4 any act or omission of the Contractor or any Subcontractor:

- (a) creates a material interruption, reduction or delay in the provision of all or any material part of the Services;

- (b) is prejudicial to the BBC's other contractors' ability to provide all or any material part of its services to the BBC to a material degree;
- (c) causes the BBC to incur any liability in respect of any third party; and/or
- (d) is materially prejudicial to the BBC's ability to fulfil its powers and obligations under Part 4 of the Communications Act 2003, the WTA or any other responsibilities under the Charter or this Agreement;

26.1.5 the Contractor is affected by any of the events set out in Clause 33.1.2;

26.1.6 any Trial fails to meet the Trialling Criteria;

26.1.7 the BBC considers the circumstances to require step-in as a result of suspected fraud or another situation occurs whereby the BBC is compelled to take direct action, such as a Direction; or

26.1.8 the BBC is entitled to terminate this Agreement.

Action prior to Step-In

26.2 Before the BBC exercises its right of step-in under Clauses 26.5 to 26.9 it shall permit the Contractor within ten (10) Working Days of the BBC's request to do so, the opportunity to demonstrate to the BBC's reasonable satisfaction that the Contractor is still able to provide the Services in accordance with the terms of this Agreement and/or remedy the circumstances giving rise to the Step-In Event without the requirement for the BBC to take action.

26.3 If the BBC is not satisfied with the Contractor's demonstration pursuant to Clause 26.2, the BBC shall be entitled on notice to require the Contractor to take those steps that the BBC considers necessary or expedient to mitigate or rectify the issues giving rise to the Step-In Event including the following:

26.3.1 to immediately commence an investigation into the events giving rise to the Step-In Event and as soon as reasonably practicable following the completion of such investigation to report to the BBC and discuss with the BBC the remedial steps which it intends to take;

26.3.2 to cooperate fully with the BBC or any other individual appointed by the BBC in performing all or any part of the Services (including any part of the Services provided by a Subcontractor);

26.3.3 to take such remedial steps that the BBC considers appropriate to ensure the performance of all or part of the Services (including any part of the Services provided by a Subcontractor);

26.3.4 to invite the BBC to approve the plan for implementation of the remedial steps required by the BBC pursuant to Clause 26.3.3;

26.3.5 to permit a BBC representative to attend and/or speak at meetings of the Contractor when the remedial steps are planned and approved; and/or

26.3.6 to report to the BBC on a daily basis on the progress in implementing such remedial steps,

(a "**Rectification Notice**").

26.4 If the Contractor:

26.4.1 fails to confirm to the BBC within ten (10) Working Days of receipt of a Rectification Notice that it is willing to comply with the provisions of the Rectification Notice;

26.4.2 fails to cooperate with the BBC or its representative referred to in Clause 26.3.2; or

26.4.3 fails to take the remedial steps notified to it by the BBC under Clause 26.3.3 within the timescales required by the Rectification Notice,

then the BBC may exercise its rights to step-in under Clauses 26.5 to 26.9 either itself or with the assistance of third party contractors, provided that the Contractor may require any such third parties to comply with a confidentiality undertaking equivalent to that set out in Clause 37.

Exercise of Step-In

26.5 If the BBC exercises its rights under Clauses 26.5 to 26.9, it shall serve notice on the Contractor (a "**Step-In Notice**").

26.6 A Step-In Notice shall set out the following:

26.6.1 the action the BBC wishes to take and in particular the Services it wishes to control;

26.6.2 the reason for and the objective of taking the action and whether the BBC reasonably believes that the primary cause of the action is due to the Contractor's default;

26.6.3 the date it wishes to commence the action and the time period which it believes shall be necessary for the action;

26.6.4 whether the BBC shall require access to the Contractor's premises (including the Locations);

26.6.5 whether the BBC shall require the Contractor's Employees to carry out the Services or part of the Services;

26.6.6 to the extent practicable, the effect on the Contractor and its obligations to provide the Services during the period the action is being taken.

26.7 Following service of a Step-In Notice, the BBC shall:

26.7.1 take the action set out in the Step-in Notice and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**");

26.7.2 keep records of the Required Action taken and provide information about the Required Action to the Contractor;

- 26.7.3 co-operate wherever reasonable with the Contractor in order to enable the Contractor to continue to provide any Services in relation to which the BBC is not assuming control;
 - 26.7.4 act reasonably in mitigating any costs which the Contractor shall incur as a result of the exercise of the BBC's rights under this Clause 26.7; and
 - 26.7.5 where possible, minimise the period of completion of the Required Action to less than three (3) months.
- 26.8 For so long as and to the extent that the Required Action is continuing, the Contractor shall not be liable to the BBC for the provision of the Services to the extent that they are the immediate subject of the Required Action.
- 26.9 If the Required Action results in:
- 26.9.1 the degradation of any Services not subject to the Required Action; or
 - 26.9.2 the non-Achievement of any Key Milestone,
- in each case, beyond that which would have been the case had the BBC not taken the Required Action, then the Contractor shall be entitled to an agreed adjustment of the Charges, provided that the Contractor can demonstrate to the reasonable satisfaction of the BBC that the Required Action has led to the degradation or non-Achievement unless the Required Action cannot reasonably be taken without such an effect.

Step-Out

- 26.10 Before ceasing to exercise its step-in rights under Clauses 26.5 to 26.9, the BBC shall deliver a written notice to the Contractor (a "**Step-Out Notice**"), specifying:
- 26.10.1 the Required Action it has actually taken;
 - 26.10.2 any information which is in the BBC's reasonable opinion is necessary for the Contractor to know in order to develop a Step-Out Plan as defined in Clause 26.11; and
 - 26.10.3 the date on which the BBC plans to end the Required Action ("Step-Out Date"), subject to the BBC being satisfied with the Contractor's ability to resume the provision of the Services and the Step-Out Plan as defined in Clause 26.11.
- 26.11 The Contractor shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the BBC's written approval a draft plan ("**Step-Out Plan**") relating to the resumption by the Contractor of the Services, including any action the Contractor proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 26.12 If the BBC does not approve the draft Step-Out Plan, the BBC shall inform the Contractor of its reasons for not approving it. The Contractor shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the BBC for the BBC's approval. Such process shall continue until such time as a Step-Out Plan is approved by the BBC.

Costs related to Step-In and Step-Out

26.13 The Contractor shall bear its own costs and the costs of the BBC and any third parties in connection with any step-in and step-out by the BBC under this Clause 26.

27 BBC System

27.1 On and from the Start Date the Contractor shall provide the Services in accordance with the Service Architecture.

27.2 The Contractor shall implement the BBC System in the Service Environment in accordance with the Transition Plan.

27.3 The Contractor shall maintain the BBC System so as to ensure that it is Available.

27.4 The Contractor shall ensure that at all times during the Term, the systems used to store and/or process BBC Data are logically separated from the remainder of the Contractor's other business and computer systems.

27.5 The Contractor shall only use or permit the use of the BBC System for the performance of its obligations pursuant to this Agreement.

27.6 With effect from the final Transition Milestone, the Contractor must ensure that the information technology (including hardware, software and network infrastructure) for the BBC System is refreshed in accordance with the description set out in pages 229 to 231 of document 002B (the solution questionnaire) within the Tender Documentation and paragraph 26 of Schedule 2 (**Services**) and in every other respect is at a technological level that is comparable with the level of technological advancement generally being used or attained by, and on an investment cycle comparable to those of, organisations with similar requirements to the BBC for services comparable to the Services, save where the BBC has expressly agreed otherwise in writing. Without prejudice to the foregoing, the Contractor shall use its reasonable efforts to notify the BBC of any new technological developments or services that:

27.6.1 could reasonably be expected to have a favourable impact on the Services; or

27.6.2 are made generally available to the Contractor's other customers.

27.7 For the avoidance of doubt, Clause 27.6 shall not require the BBC to implement any such new technology developments or services which would result in an increase in the Charges to the BBC or which in the BBC's reasonable opinion: (i) would have an adverse impact on the transferability or operation of the BBC System; or (ii) would not be cost-effective; or (iii) would not have a favourable impact on the Services; or (iv) would otherwise be undesirable.

27.8 Ninety (90) days prior to the completion of Transition, and thereafter within two months of each anniversary thereof during the Term, the Contractor shall prepare and/or update, and provide to the BBC for review, a plan setting out the manner in which the Contractor proposes to meet its obligations under Clause 27.6 (the "**Technology Plan**"). Following submission of the Technology Plan, the Parties shall discuss and use their respective reasonable efforts to agree its contents. If the Parties fail to reach agreement within (ten) 10 Working Days after

submission of it pursuant to this Clause 27.8, the Technology Plan shall be resolved in accordance with Clause 43.

27.9 The Parties shall comply with any Technology Plan agreed or determined pursuant to Clause 27.8.

27.10 The Contractor may not make any modification to the underlying infrastructure of the BBC System which might reasonably be expected to render materially more difficult and/or costly the separation of the BBC System from the remainder of the Service Environment (excluding any modifications made by the Contractor on a temporary basis as a direct result of the performance or maintenance of the BBC System pursuant to Clause 27.3) without the prior written approval of the BBC.

27.11 The Contractor shall not less than ten (10) Working Days before the Start Date (or such other period as the BBC may require) deposit the Source Materials in escrow with the NCC Group Manchester, Technology Centre, Oxford Road, Manchester M1 7EF on the basis of the appropriate standard agreement or on such other terms as the BBC, the Contractor and the NCC shall agree. The Contractor shall ensure that the deposited version of the Source Materials is the current version and is kept up-to-date as the Source Material is modified or upgraded. The costs of escrow shall be borne by the Contractor.

27.12 Where the Contractor is unable to procure compliance with the provisions of Clause 27.11 in respect of any Third Party Software, it shall provide the BBC with written evidence of its inability to comply with these provisions and shall agree with the BBC a suitable alternative to escrow that affords the BBC the nearest equivalent protection. The Contractor shall be excused from its obligations under Clause 27.11 only to the extent that the Parties have agreed on a suitable alternative.

27.13 In circumstances where the BBC obtains the release of the Source Material from escrow, the Contractor hereby grants to the BBC a perpetual, assignable, royalty-free and non-exclusive licence to Use and support the Source Material version of the BBC Software to the extent necessary for the receipt of the Services or any replacement services or the BBC's normal business undertakings.

27.14 The Contractor shall provide the Interface Services to the third parties listed in Schedule 14 (**Interface Services**) as may be required by the BBC.

27.15 The Contractor shall ensure that the release of any new software or upgrade to software used to provide the Services complies with the interface requirements in Schedule 14 (**Interface Services**), shall notify the BBC in writing three (3) months before the release of such new software or upgrade to software and shall co-ordinate its activity with the BBC to ensure it minimises any disruption to the Services, the BBC's business or any services provided to the BBC by the BBC's other contractors.

Title and Risk in the BBC System

27.16 The tangible elements of the BBC System specified in Part 1 of Schedule 15 (**BBC System**), shall at all times remain the sole and exclusive property of the BBC. The tangible elements of the BBC System specified in Part 2 of Schedule 15 (**BBC System**), shall (subject to Clause 27.19) at all times remain the sole and exclusive property of the Contractor (or its lessors as applicable). The tangible elements of the BBC System specified in Part 3 of Schedule 15 (**BBC**

System), shall at all times remain the sole and exclusive property of the third party identified as their owner in Part 3 of Schedule 15 (**BBC System**).

27.17 The Contractor shall not sell, assign, let, pledge, mortgage, charge, encumber or part with possession of or otherwise deal with the BBC System or any interest therein or create or allow to be created any lien thereon without the BBC's written permission and any attempt by the Contractor to do so shall constitute a material breach of this Agreement entitling the BBC to terminate this Agreement in accordance with Clause 33.2.

27.18 The Contractor shall be responsible for any loss or damage to the BBC System.

27.19 The BBC may, at its sole discretion on and from the Exit Start Date, require the Contractor, at the Contractor's cost, either pursuant to paragraph 5.1 of Schedule 11 (**Exit**) novate, or to assign all or any sub-contracts, rental or lease agreements (other than those relating to real property), licences (including licences in respect of the Third Party Software), maintenance agreements, support agreements and all other agreements (other than contracts of employment) which have been entered into by the Contractor substantially or wholly used for the purpose of or in connection with the BBC System, and the BBC Software. Any such assignment pursuant to this Clause 27.19 shall become effective on termination or expiry of this Agreement or relevant Service, if so required by the BBC by the service of written notice upon the Contractor by the BBC, such notice to be served prior to the termination or expiry of this Agreement.

27.20 The BBC shall have the right on the expiry or termination of any Service or on the termination of this Agreement:

27.20.1 to acquire the Sole Use Assets, in accordance with the provisions of Schedule 11 (**Exit**); and

27.20.2 to the continued provision of the Services relying on Shared Use Assets, the rental of a Shared Use Asset or any Shared Use Asset together with the maintenance thereof by on or behalf of the Contractor.

27.21 The Contractor shall, as from the Start Date or from the time that the Contractor commences to process Personal Data under this Agreement, whichever is the sooner, and throughout the Term, comply with:

27.21.1 the provisions of the Single Services Framework; and

27.21.2 the Contractor's responses set out in the Single Services Framework including any further requirements of the BBC in respect of such responses.

28 Warranties

28.1 The BBC warrants:

28.1.1 that it has full capacity and authority and all necessary licences, permits and consents to enter into and perform this Agreement; and

28.1.2 the Agreement is executed by a duly authorised representative of the BBC.

28.2 The Contractor warrants, represents and undertakes:

- 28.2.1 that it has full capacity and authority and has and shall maintain in force all necessary licences, permits and consents to enter into and perform this Agreement;
- 28.2.2 that this Agreement is executed by a duly authorised representative of the Contractor;
- 28.2.3 all statements and representations made to the BBC prior to execution of this Agreement (including in the Tender Documentation) are true, accurate and at the date of execution of this Agreement, complete and the Contractor has advised the BBC of any fact, matter or circumstance of which it may become aware, having made due and careful enquiry, which would render any such statement or representation to be false or misleading;
- 28.2.4 not to unlawfully discriminate, either directly or indirectly, harass or victimise because of age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation, as set out in the Equality Act 2010 or other applicable Law relating to discrimination;
 - (a) in the provision of the Services to the public;
 - (b) in relation to all Employees, and
 - (c) to take all reasonable steps to ensure the observance of this obligation by all Employees;
- 28.2.5 that, to the extent that it is within the control of the Contractor, the provision of the Services shall not interfere with or disrupt the business or operations of the BBC or any BBC contractors (other than where the Contractor is properly fulfilling its obligations under this Agreement);
- 28.2.6 that it shall co-operate with all BBC contractors in the performance of their respective contractual obligations to the BBC and comply with the obligations set out in the Co-operation Agreement(s);
- 28.2.7 that it shall exercise proper controls so as to prevent fraud, the loss, unauthorised disclosure or use, corruption or theft of BBC Data and illegal activity by the Employees;
- 28.2.8 that all data created, collated, generated and inputted by the Contractor on to the BBC Database and any other material or information to be provided to the BBC under this Agreement shall, to the best of the Contractor's knowledge and belief, be true, accurate and complete;
- 28.2.9 that it is not, at the Effective Date, subject to any litigation or threat of litigation which could impact on its ability to provide the Services or any Deliverables or impact on the reputation of the BBC and that it shall immediately notify the BBC if, after the Start Date, it becomes subject to any litigation or threat of litigation [pertinent to the BBC or delivery of the Services];

- 28.2.10 in the event of the exercise of the BBC's rights to acquire the BBC System (or parts thereof) in accordance with the provisions of Schedule 11 (**Exit**), the BBC shall acquire title to any equipment free from any and all encumbrances and the BBC shall have the right to quiet possession of such equipment;
- 28.2.11 that the provision of the Services and the BBC's receipt thereof shall not infringe any rights (including Intellectual Property Rights) of any third party;
- 28.2.12 that it has the right to make the assignments and licences of the Intellectual Property Rights referred to in Clause 32 and that neither the Key Personnel nor the Contractor's current or ex-employees nor any third party has or shall have any title, right or interest (legal or equitable) in those Intellectual Property Rights which are assigned to the BBC under the provisions of Clause 32;
- 28.2.13 that the BBC System shall comply in all material respects with the Service Documentation;
- 28.2.14 at the time it is delivered to the BBC on expiry or earlier termination of this Agreement by the Contractor, that the BBC System shall have been tested for all, and shall not contain any known viruses including backdoors, time bombs, trojan horses, worms, drop dead devices, or any other computer software designed or intended to: (i) permit access or use of the BBC System or the BBC's computer systems by the Contractor or by a third person other than those authorised by the BBC; or (ii) disable, damage, erase, destroy, disrupt or impair the normal operation of the BBC System or any other software or data on the BBC's computer systems (collectively referred to as "**Viruses**");
- 28.2.15 it shall take all reasonable steps to ensure that no Employee, agent or Subcontractor of the Contractor shall introduce a Virus to the BBC System or other BBC owned information technology when maintaining or using the BBC System;
- 28.2.16 that all items of hardware and software comprised within the Service Architecture are Date Compliant;
- 28.2.17 that it shall not, without the prior written consent of the BBC, make any statement orally or in writing, publicly or privately or do any act or otherwise conduct itself in such a manner as shall or may in the reasonable opinion of the BBC disparage the BBC or bring it into disrepute;
- 28.2.18 that the Services shall satisfy and meet the requirements specified in Schedule 8 (**BBC Policies and Standards**);
- 28.2.19 that save for the items listed as at the Effective Date in paragraph 4 of Part 2 of Schedule 15 (**BBC System**) being the Contractor's Retained IPR except where the BBC agrees otherwise in writing, ensure that all software and hardware used in the provision of the Services is not proprietary to the Contractor; and
- 28.2.20 that the Services shall be performed in accordance with all applicable provisions of the Service Documentation and this Agreement.

29 General Indemnities

29.1 The Contractor shall, on written demand indemnify, keep indemnified and hold harmless the BBC from and against any and all Losses suffered or incurred, by the BBC, howsoever arising and whether or not foreseeable, in consequence of:

29.1.1 death or personal injury caused by the Contractor;

29.1.2 loss, destruction or damage to property caused by the Contractor its Employees;

29.1.3 any breach, non performance or non observance by the Contractor its Employees of any of the following:

(a) Clause 9 (Compliance with the Law, BBC Policies and Standards);

(b) Clause 14.2 (Remittance of Revenue);

(c) Clause 19 (Security Requirements and Disaster Recovery);

(d) Clause 34.1 (Exit Plan and Consequences of Termination);

(e) Clause 35 (Protection of Personal Data);

(f) Clause 36 (Freedom of Information);

(g) Clause 37 (Confidentiality); or

(h) Schedule 10 (**Data Protection**);

29.1.4 any loss, theft, misuse or corruption of BBC Data and/or the BBC System caused by the Contractor its Employees to the extent that the same does not fall within the scope of Clause 29.1.3(h);

29.1.5 any fraudulent acts or omissions of the Contractor or its Employees (including theft, loss and misuse of monies and/or the unauthorised disclosure of BBC Confidential Information);

29.1.6 any wasted legal cost orders or equivalent by the Courts in the enforcement of the Licence; and

29.1.7 any breach, non-performance or non-observance by the Contractor or its Employees of its obligations under this Agreement to the extent that the same does not fall within the scope of any other part of Clause 29.1.

29.2 If the BBC wishes to assert its right to be indemnified pursuant to this Clause 29, it shall, as soon as reasonably practicable, notify the Contractor of the particular matter (stating in reasonable detail the nature of the matter and so far as is practicable the amount claimed).

29.3 Any sum payable by the Contractor to the BBC pursuant to this Clause 29 shall be paid free and clear of all deductions, taxes or withholdings whatsoever save only as may be required by any applicable Law.

- 29.4 The indemnities contained in this Clause 29 are without prejudice to and in addition to any warranties, indemnities, remedies or other rights provided by Law and/or under any other provision of this Agreement for the benefit of the BBC.
- 29.5 The BBC shall indemnify and keep indemnified and hold harmless the Contractor from any and all Losses suffered or incurred by the Contractor in consequence of the infringement of any rights (including Intellectual Property Rights) of any third party arising out of the Contractor's proper use of:
- 29.5.1 the BBC IPR as listed in Part 1 of Schedule 15 (**BBC System**) as at the Effective Date together with any BBC IPR inserted into Part 1 of Schedule 15 (**BBC System**) during the Term by the BBC itself (excluding any Contractor Bespoke IPR, Third Party IPR or any other BBC IPR not inserted into Part 1 of Schedule 15 (**BBC System**) by the BBC itself; and/or
- 29.5.2 the Trade Marks (as defined in the Trade Mark Licence).

30 Limitation of Liability

- 30.1 Nothing in this Clause 30 or elsewhere in this Agreement shall limit:
- 30.1.1 either Party's liability to the other for:
- (a) death or personal injury resulting from negligence of that Party or its servants, agents or employees including in the case of the Contractor, the Subcontractors;
 - (b) fraud, bribery or fraudulent misrepresentation, by it or its employees;
 - (c) breach of any of its obligations as to title implied by statute; or
 - (d) any other act or omission or liability which cannot be limited under Law; and
- 30.1.2 the Contractor's liability for Losses under or in connection with the indemnities given by the Contractor pursuant to Clauses, 29.1.1, 29.1.3(b), 29.1.3(c), 29.1.3(d), 29.1.3(e), 29.1.3(h), 29.1.4 and 29.1.5.
- 30.2 Save as provided for in Clause 30.1 and subject to Clauses 30.3, 30.4, 30.5 and 30.6 the liability of the Contractor to the BBC:
- 30.2.1 under Clause 29.1.2 for Losses suffered or incurred, by the BBC, howsoever arising and whether or not foreseeable, relating to the BBC's tangible property, shall not exceed twenty five million pounds (£25m) in total; and
- 30.2.2 for all other Losses suffered or incurred, by the BBC, howsoever arising and whether or not foreseeable, shall not exceed the sum of one hundred and twenty five million pounds (£125m) in total during the Term except during the period from the date the final Transition Milestone is achieved to the commencement of the Exit Start Date when such amount will be reduced to one hundred million pounds (£100m) in total.

- 30.3 If this Agreement is extended under Clause 4.2, the amounts of the cap on liability of the Contractor under Clause 30.2.2 for the extended term shall be varied in the same proportion as any variation made to the Charges to apply during the extended term.
- 30.4 Subject to Clause 30.1, the liability of the BBC in respect of any Losses suffered or incurred by the Contractor for which the BBC is liable under this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed five million pounds (£5m) in total. For the avoidance of doubt, the cap of liability expressed in this Clause does not apply to the BBC's obligation to pay the Contractor's Breakage Costs, Charges or any other sum properly due and payable by the BBC under this Agreement.
- 30.5 Any Service Credits or Revenue Credits paid or payable by the Contractor in accordance with and subject to the terms of Schedule 6 (**Service Level Agreement**) shall not count towards the Contractor's aggregate liability for the purposes of Clause 30.2.
- 30.6 The BBC nor the Contractor shall be liable for any Consequential Losses under this Agreement.

31 Insurance

- 31.1 The Contractor shall have and maintain throughout the Term and thereafter for a period of six (6) years with a reputable insurer who has an "AM Best" credit rating of A (or better), insurance covering all of the risks which may be incurred by the Contractor arising out of the acts or omissions of the Contractor, its Employees in connection with this Agreement, including:
- 31.1.1 public and products liability insurance in the sum of twenty million pounds (£20m) per occurrence;
 - 31.1.2 fidelity insurance in the sum of ten million pounds (£10m) per occurrence and in aggregate per annum;
 - 31.1.3 professional indemnity insurance (including Technology Errors and Omissions and "Hacker Damage" Perils) in the sum of twenty million pounds (£20m) per occurrence and in the aggregate per annum. The scope of the insurance maintained in respect of 'Hacker Damage' perils shall reflect the broadest coverage, appropriate to the Services, which is customarily available in the insurance market from time to time during the Term. For the avoidance of doubt, this shall include cover for the cost to repair or replace websites, intranet, networks, computer systems, programs, and electronic data which is used to deliver the Services and which are damaged, destroyed, altered, corrupted, copied, stolen or misused by a hacker and shall additionally cover the fees of a public relations firm to assist in re-establishing the business reputation, a forensic consultant to establish the identity of a hacker, a security consultant to review electronic security and the cost of any reasonable security improvements;
 - 31.1.4 employers liability insurance in the sum of twenty (£20m) per occurrence;
 - 31.1.5 all risks property insurance for the full replacement value of any equipment on loan from the BBC or used for the delivery of the Services to the BBC (which shall be within the insurance cover referred to in Clause 31.1.1 so that:

- (a) such cover includes pool Re UK Terrorism cover or equivalent; and
 - (b) the BBC's interests shall be noted by the Contractor's insurers as loss payee.
- 31.1.6 all risks property and business interruption insurance on a reinstatement basis for all assets used to deliver the Services with limits of cover, such cover to include:
 - (a) pool Re UK Terrorism cover or equivalent; and
 - (b) computer all risks insurance, including data reinstatement costs and increased cost of working, in respect of all hardware, software and data (whether provided by the Contractor or the BBC) where the BBC's interests shall be noted by the Contractor's insurers as loss payee.
- 31.2 The Contractor shall on or before the commencement of each Year promptly provide the BBC with either a copy of policies of insurance together with proof of renewal or a copy of a broker's note summarising the insurance policies held and the levels of cover.
- 31.3 The Contractor shall notify the BBC of any material changes to the level, type or other material provisions of the abovementioned insurance policies.
- 31.4 The Contractor shall not by its acts or omissions cause any of the above mentioned insurance policies to be invalidated or avoided.
- 31.5 In the event of a claim being made under any of the insurance policies maintained in accordance with this Clause 31, any proceeds received by the Contractor in respect of such claim shall, unless the BBC specifies otherwise be applied in the following order:
 - 31.5.1 first, in reinstating or repairing (if applicable) any items, software, premises, or data owned by the BBC that have been lost, damaged or destroyed;
 - 31.5.2 second, in taking any steps which may be necessary to enable a full resumption of the Services in accordance with this Agreement;
 - 31.5.3 third, in discharging any sums owing to the BBC by the Contractor in respect of this Agreement; and
 - 31.5.4 thereafter, any balance shall be payable to the Contractor.
- 31.6 Where the Contractor engages any Subcontractor, the Contractor shall ensure that the relevant Subcontractor holds such insurance cover as is reasonable taking into account the extent of the Services to be provided by the Subcontractor.

32 Licences to Use Software and Other Intellectual Property Rights

Ownership of BBC IPR

- 32.1 The Parties agree as between the BBC and the Contractor that the BBC shall own all of and the Contractor shall not acquire any proprietary right, title to or interest in the BBC IPR or any reproductions, enhancements and/or modifications thereto.

- 32.2 All Intellectual Property Rights: (i) in any reproductions, enhancements, replacements, amendments and/or modifications to all or any part of the BBC IPR made by the Contractor or any Subcontractor; and (ii) in any other reproductions, enhancements, replacements, amendments and/or modifications to all or any part of the BBC System other than those relating to the Contractor's Retained IPR and the Third Party Software shall vest in the BBC and the Parties agree and acknowledge that the Intellectual Property Rights referred to in this Clause 32.2 shall form part of the BBC IPR.
- 32.3 The Intellectual Property Rights described in Clause 32.2 to the extent that such Intellectual Property Rights are assignable under that Clause, are hereby assigned to the BBC with full title guarantee for the full term of protection of such IPR (together with any extensions, renewals and reversions) throughout the world immediately on the coming into existence of the relevant Intellectual Property Rights as appropriate.

Licence to Use the BBC IPR

- 32.4 The BBC hereby grants to the Contractor a non-exclusive, personal, non-transferable, royalty-free licence during the Term to Use the BBC IPR (such licence shall include the right on the part of the Contractor to grant similar sub-licences to its Subcontractors on the conditions set out in this Clause 32.4 where such Subcontractors require a sub-licence to provide the Services to the BBC).

Assignment of the Contractor Bespoke IPR

- 32.5 The Contractor hereby assigns to the BBC, with full title guarantee, title to and all rights and interest in the Contractor Bespoke IPR.
- 32.6 The assignment under Clause 32.5 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Contractor Bespoke IPR, as appropriate.
- 32.7 On the BBC's request, the Contractor must execute any formal assignment or other document required to give effect to Clause 32.5 and must provide all reasonable assistance requested by the BBC to perfect, protect, defend or assert its interests in the subject matter of Clause 32.5.
- 32.8 The BBC shall grant to the Contractor a non-exclusive, personal, non-transferable, royalty-free licence during the Term to Use and commercially exploit the Contractor Bespoke IPR (such licence shall include the right on the part of the Contractor to grant similar sub-licences to its Subcontractors on the conditions set out in this Clause 32.8 where such Subcontractors require a sub-licence to provide the Services to the BBC).

BBC's Rights to Use the Contractor's Retained IPR

- 32.9 The Contractor hereby grants to the BBC a perpetual, non-exclusive, non-transferable, royalty-free licence to use the Contractor's Retained IPR to the extent necessary for the BBC to receive and benefit from the Services and the Deliverables. Such licence shall include the right on the part of the BBC to grant similar sub-licences to any Successor Service Provider for the purposes of a Smooth Transfer, provided that the BBC shall notify the Contractor of the identity of any such sub-licensee and shall obtain from such sub-licensee a confidentiality agreement in favour of the Contractor on terms reasonably acceptable to the Contractor.

Assignment of the Third Party Bespoke IPR

- 32.10 The Contractor shall procure that the relevant third party assigns the Third Party Bespoke IPR to the BBC, with full title guarantee, title to and all rights and interest.
- 32.11 The assignment under Clause 32.10 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Third Party Bespoke IPR, as appropriate.
- 32.12 On the BBC's request, the Contractor shall procure that the relevant third party executes any formal assignment or other document required to give effect to Clause 32.10 and must provide all reasonable assistance requested by the BBC to perfect, protect, defend or assert its interests in the subject matter of Clause 32.10.
- 32.13 The BBC shall grant to the Contractor a non-exclusive, personal, non-transferable, royalty-free licence during the Term to Use the Third Party Bespoke IPR (such licence shall include the right on the part of the Contractor to grant similar sub-licences to its Subcontractors on the conditions set out in this Clause 32.13 where such Subcontractors require a sub-licence to provide the Services to the BBC).

BBC's Rights to Use Third Party Intellectual Property Rights

- 32.14 The Contractor shall procure for the BBC a perpetual, non-exclusive, non-transferable, royalty-free licence to Use (including a right to sub-licence) any Intellectual Property Rights which are first created by any third party, to the extent necessary for the BBC to receive and benefit from the Services and the Deliverables (including for the purposes of effecting a Smooth Transfer of the Services) and which are not assigned to the BBC pursuant to Clause 32.10.
- 32.15 The Contractor shall procure for the BBC a non-exclusive, non-transferable, royalty-free licence to Use (including a right to sub-licence) (but excluding the rights to maintain, modify or enhance) any Third Party Software which does not fall within the scope of Clause 32.14.

Contractor's Rights to Use Third Party Intellectual Property Rights

- 32.16 The Contractor shall comply with the terms of all licences granted to it for the use of the Third Party Software to ensure that such Third Party Software licence is not terminated to the detriment of the Services.
- 32.17 Prior to the Start Date the Contractor shall use all reasonable endeavours to enter into such novation agreements with the Incumbent and the other parties to the Incumbent Licences as are necessary to transfer the Incumbent Licences to the Contractor or, in the event that the Contractor is unable to enter into such novation agreements, the Contractor shall enter into agreements that provide substantially the same functionality and benefit as those Incumbent Licences it was unable to novate.

Waiver of Moral Rights

- 32.18 The Contractor hereby waives irrevocably and shall procure that the relevant third party together with all the Contractor's officers and Employees involved in the provision of the Services at any time during the Term shall waive irrevocably all moral rights (including such rights of the Contractor, its officers, Employees, contractors, Subcontractors or agents under

Sections 77 to 85 of the Copyright Designs and Patents Act 1988 or any similar laws of any jurisdiction to the extent permitted in that jurisdiction) in respect of all the Intellectual Property Rights in the Contractor Bespoke IPR, the Third Party Bespoke IPR and in the Intellectual Property Rights described in Clauses 32.2 to the fullest extent permitted by Law.

BBC's Trade Mark Licence

32.19 On or before the Effective Date, the Contractor shall enter into the Trade Mark Licence with the BBC.

32.20 The Parties agree that any use of the TVLF Standard Documentation shall be subject always to the terms of the Trade Mark Licence.

32.21 The Contractor shall comply with the terms of the Trade Mark Licence throughout the Term. Any failure of the Contractor to comply with its obligations under the Trade Mark Licence shall be a material breach of this Agreement allowing the BBC to terminate this Agreement pursuant to Clause 33.2.

Indemnity for Breach of Intellectual Property Rights

32.22 The Contractor undertakes that the provision of the Services, the Deliverables and/or any Intellectual Property Rights referred to in Clauses 32.2, 32.9, 32.14 and 32.15 and the BBC's possession, sub-licensing, use or receipt (as the case may be) thereof in accordance with and as contemplated by this Agreement, shall not infringe any rights (including Intellectual Property Rights) of any third party. The Contractor shall, on written demand indemnify, keep indemnified and hold harmless the BBC (including its officers, employees, agents, licensees and assignees, for whom the BBC contracts as trustee) from and against any and all BBC Losses and liabilities suffered or incurred whether foreseeable or not, arising out of or otherwise in connection with any action or claim by a person alleging that the BBC's use, possession, licensing or receipt of the Intellectual Property Rights in the Services and/or the Deliverables infringes the rights of that or any other person. Without limiting this Clause 32.22, where any claim or action causes the BBC's quiet enjoyment of the Services and/or the Deliverables or any part thereof to be disrupted or impaired, the Contractor must, at the Contractor's expense and at the BBC's option:

32.22.1 procure for the benefit of the BBC the right to continue to use, license and exploit the Services in accordance with this Agreement; or

32.22.2 modify or replace the Services and/or Deliverables so that no further infringement shall occur, provided that the Services and/or Deliverables so modified or replaced continue to meet the warranties, and in the case of the Services, the Service Levels, in accordance with this Agreement.

32.23 The Contractor undertakes that:

32.23.1 it shall notify the BBC in writing immediately of any claim (including claims in respect of Clause 32.22) relating to any of the rights (including any Intellectual Property Rights) granted or conferred to the BBC pursuant to this Agreement; and

32.23.2 it shall not make any admission, compromise or settle any claim referred to in Clause 32.23.1 without the prior written consent of the BBC.

33 Termination

BBC Right of Termination

33.1 The BBC may terminate this Agreement (without prejudice to its other rights and remedies) or (at its option) require the partial termination of the Services by notice in writing, such notice to take effect on the date of service of such notice if:

33.1.1 there is a Change in Control (other than as a result of a solvent amalgamation, re-organisation or reconstruction within the Contractor's Group) of the Contractor or its Parent Company;

33.1.2 the Contractor or the Guarantor becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets; if any petition is presented, order made or resolution passed for its winding up, bankruptcy or dissolution; if it otherwise proposes or enters into any composition or arrangement with its creditors or any class of them, if it ceases to carry on business or if it claims the benefit of any statutory moratorium or the Contractor suffers, or there occurs in relation to the Contractor, any event which in the reasonable opinion of the BBC is analogous to any of the events mentioned in this sub-clause in any part of the world;

33.1.3 there is a Financial Distress Event, in accordance with the provisions of paragraph 6 of Schedule 18 (**Financial Distress**);

33.1.4 the Contractor suspends or ceases to carry on its business or any material part of its business in the ordinary course or materially alters the nature of its business as conducted at the date of this Agreement or any steps are taken to do any of the same and such suspension, cessation or alteration has or is likely to have a material adverse effect on the delivery of the Services;

33.1.5 the Contractor commits a breach of this Agreement which causes the BBC to suffer Losses which exceed either of the caps on liability set out in Clause 30.2;

33.1.6 the Contractor fails to:

- (a) submit a recovery plan as required pursuant to paragraph 3.1.2 of Schedule 3 (**Transition**);
- (b) comply with the agreed recovery plan as required pursuant to paragraph 3.1.3 of Schedule 3 (**Transition**); and/or
- (c) the Contractor fails to Achieve a Key Milestone within six (6) months of its associated Key Milestone Date; and/or

33.1.7 where there has been:

- (a) a persistent failure of a single Key Performance Indicator over three (3) consecutive measurement periods; and/or

- (b) five (5) instances of failure of a single Key Performance Indicator in any rolling twelve (12) Month period.

33.2 The BBC may terminate this Agreement (without prejudice to its other rights and remedies) or (at its option) require the partial termination of the Services with immediate effect by written notice to the Contractor such notice to take effect on the date of service of such notice, if the Contractor commits a material or persistent breach of any of its obligations under this Agreement and if:

33.2.1 the breach is capable of remedy and the Contractor has failed to remedy the material breach within thirty (30) days of written notice to the Contractor specifying the breach and requiring it to be remedied; or

33.2.2 the breach is not capable of remedy.

Contractor Rights of Termination

33.3 The Contractor may terminate the Agreement on thirty (30) days written notice to the BBC if the BBC fails to pay an undisputed Charge exceeding £5M or more by the due date having been given ninety (90) days written notice by the Contractor to cure such failure to pay.

34 Exit Plan & Consequences of Termination

34.1 The Contractor shall comply with the provisions of Schedule 11 (**Exit**) and shall:

34.1.1 continue to provide the Services on an interim basis after the Term until such time as a Successor Service Provider has been appointed, so as to ensure a Smooth Transfer (and in such circumstances the terms of this Agreement shall remain in full force and effect during any such period in which the Contractor is continuing to provide the Services);

34.1.2 carry out its obligations in accordance with the provisions set out in Schedule 11 (**Exit**) during the Term and on or from expiry (in whole or in part) of this Agreement until such time that all of the obligations of the Contractor in Schedule 11 (**Exit**) have been fully met to the satisfaction of the BBC.

34.2 On expiry or on termination of this Agreement:

34.2.1 where applicable, the BBC shall pay the Contractor's Breakage Costs in accordance with Schedule 5 (**Charges**);

34.2.2 the Contractor shall repay forthwith to the BBC any advance payments which have been made by the BBC in respect of Services to have been provided after the date of termination of this Agreement;

34.2.3 the Contractor shall return to the BBC all items and property belonging to the BBC which shall include such elements of the BBC System as are owned by the BBC or acquired by it pursuant to Schedule 11 (**Exit**), the BBC Database and the BBC Property; and

- 34.2.4 cease to use the BBC Data and, at the direction of the BBC:
- (a) provide the BBC and/or the Successor Service Provider with a complete and uncorrupted version of the BBC Data in electronic form in a format and on media agreed with the BBC and/or the Successor Service Provider in writing; and
 - (b) on the receipt of the BBC's written instructions destroy all copies of the BBC Data and promptly provide written confirmation to the BBC that such copies of the BBC Data have been destroyed.
- 34.3 If the BBC has terminated the Agreement pursuant to Clauses 33.1.2 or 33.2 the BBC may at its sole discretion, on the effective date of termination, replace the management of that part of the Contractor's business as is responsible for performing the Contractor's obligations pursuant to Clause 34.1.1 and Schedule 11 (**Exit**) and the Contractor shall be relieved of its obligations under this Agreement to that extent).
- 34.4 In the event that this Agreement is terminated by the BBC due to the Contractor (and for the avoidance of doubt not the Guarantor) being affected by one or more of the events set out in Clauses 33.1.2 and 33.1.4, the BBC and/or its agents shall be entitled to offer employment to any employees or agents of the Contractor who are or have previously been involved in the provision of the Services. The BBC shall notify the Contractor prior to approaching any Employees with a view to recruitment and shall consult with the Contractor as to how and when such approach should be made.
- 34.5 Without prejudice to any obligations or rights which have accrued to either Party on termination or on expiry of this Agreement, the Parties shall have no further obligations or rights under this Agreement, save that Clauses 6, 9, 16.2, 21, 28, 29, 30, 31, 32, 34, 35, 36, 37 together with those other Clauses, the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue to have force and effect after the end of the Term.

35 Protection of Personal Data

- 35.1 The Contractor shall comply with the provisions of Schedule 10 (**Data Protection**).
- 35.2 The Contractor shall comply with Data Protection Law throughout the Term and for as long as it is processing Personal Data.
- 35.3 The Contractor shall take all necessary steps to ensure that Personal Data belonging to or provided or made available by the BBC which comes into its possession or the possession of its Subcontractors in the course of providing the Services is protected in accordance with the security requirements set out in Schedule 12 (**Business Continuity & Disaster Recovery**).
- 35.4 Without prejudice to Clause 44, the Contractor shall not without the BBC's express written consent subcontract any of its obligations under this Agreement so far as these obligations involve the processing of Personal Data and in any event any such obligations may only be subcontracted to a party which in the BBC's reasonable opinion can comply with the obligations under this Clause 35 and Schedule 10 (**Data Protection**), and subject to the Contractor ensuring the relevant subcontract is in compliance with Clause 44 and contains such terms in respect of the processing of Personal Data as the BBC may require.

36 Freedom of Information

- 36.1 The Contractor shall provide the BBC with such assistance (including the provision of BBC Data and/or all information that the Contractor holds on the BBC's behalf) as the BBC may require in order to comply with its obligations under the FOIA.
- 36.2 Without prejudice to the generality of Clause 36.1 the Contractor shall:
- 36.2.1 pass to the BBC (within one (1) Working Day) all FOIA requests it receives in respect of the BBC;
 - 36.2.2 respond within ten (10) Working Days to any written request by the BBC for information and or assistance in relation to FOIA request or within such time as the BBC may by notice in writing reasonably require; and
 - 36.2.3 comply and adhere with the BBC's guidelines and procedures on FOIA notified to the Contractor from time to time by the BBC.
- 36.3 In no event shall the Contractor respond directly to any FOIA requests or communicate with a person making a FOIA request about that request unless expressly authorised to do so in writing and in advance by the BBC.
- 36.4 The Contractor acknowledges that, notwithstanding the provisions of Clauses 32, 35 and 37, the BBC may be obliged under the FOIA to disclose certain information (including this Agreement), but the BBC shall consult with the Contractor, where reasonably practicable, regarding the disclosure of information which is listed in Schedule 19 (**Designated Information**) or information which would otherwise be protected under Clause 37.
- 36.5 The Contractor shall ensure that all information held on behalf of the BBC and requested under FOIA that exists and is within its control or possession is retained for disclosure by the BBC in accordance with this Clause 36.5 and for such period and in such manner as the BBC may direct.
- 36.6 The BBC shall be responsible for determining in its absolute discretion whether information is exempt from disclosure under the FOIA. Without prejudice to this, Schedule 19 (**Designated Information**) contains a list of the information which the Parties acknowledge as at the Effective Date may be exempt from disclosure under the FOIA and the BBC agrees to give due consideration, prior to making any disclosure of this information, to the commercially sensitive nature of this information. The BBC shall, wherever practicable, notify the Contractor prior to the disclosure of any information listed in Schedule 19 (**Designated Information**). The information listed in Schedule 19 (**Designated Information**) may be added to from time to time by the Contractor, in accordance with the Change Control Procedure. The Contractor acknowledges that the list in Schedule 19 (**Designated Information**) is of indicative value only and that the BBC may nevertheless be obliged to disclose information which is listed as Designated Information and may constitute Confidential Information in accordance with Clause 36.4.

37 Confidentiality

- 37.1 Each of the Parties shall keep confidential and shall not disclose to any person any Confidential Information, whether in written or any other form, which has been or may be disclosed to it ("receiving party") by or on behalf of the other party ("disclosing party") except insofar as the Confidential Information:
- 37.1.1 is required by a person employed or engaged by the receiving party in connection with the proper performance of this Agreement; or
 - 37.1.2 is required to be disclosed to the receiving party's professional advisors or insurers for the purpose of obtaining advice in relation to or insurance cover for the risks arising out of this Agreement; or
 - 37.1.3 is required to be disclosed by Law (including, without limitation, FOIA) or by regulation (whether or not having the force of Law as may be promulgated by regulatory organisations such as OFCOM) by the receiving party, provided (subject to Clause 36) that the receiving party shall (where practicable) notify the disclosing party of the information to be disclosed and the circumstances in which the disclosure is alleged to be required as early as reasonably possible before such disclosure must be made and shall take all reasonable action to avoid and limit such disclosure; or
 - 37.1.4 is required to be disclosed by the BBC to a BBC Audit Representative in which case, the BBC shall (if practicable) notify the Contractor in writing and shall use reasonable endeavours to procure that the BBC Audit Representative complies with the terms of this Clause 37.1 and Clause 37.2 as if it were bound by the terms hereof.
- 37.2 Any disclosure of Confidential Information permitted under Clause 37.1.1 shall (to the extent permitted by Law) be in confidence, shall only be to the extent that any persons to whom the information is disclosed need to know the same for the performance of their duties and the receiving party shall be obliged to procure that all such persons are aware of the obligation of confidentiality and undertake to comply with it. The Parties acknowledge that such restrictions may not be imposed where disclosure takes place pursuant to an FOIA request for information.
- 37.3 The Contractor hereby undertakes to use the Confidential Information disclosed to it by or on behalf of the BBC solely in connection with the performance of this Agreement and not otherwise for its own benefit or the benefit of any third party.
- 37.4 Confidential Information does not include information which:
- 37.4.1 is or becomes generally available to the public otherwise than as a direct or indirect result of disclosure by the receiving party or a person employed or engaged by the receiving party contrary to their respective obligations of confidentiality; or
 - 37.4.2 is or was made available or becomes available to the receiving party otherwise than pursuant to this Agreement and free of any restrictions as to its use or disclosure.
- 37.5 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that the disclosing party shall, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any

threatened or actual breach of the provisions of this Clause, in addition to any damages or other remedy to which it may be entitled.

- 37.6 Nothing in this Clause 37 shall prevent the BBC from dealing with the BBC IPR (including the Service Documentation and any other Deliverables) as it wishes.
- 37.7 Nothing in this Clause 37 shall entitle the Contractor to refuse to supply in accordance with the terms of this Agreement any information (including the Minimum Information) which it is obliged to supply by this Agreement, or restrict the BBC from disclosing any information, at such time and to such an extent as the BBC deems necessary in the event that the BBC puts the Services out to tender, provided that the recipients of such information enter into agreements with the BBC containing confidentiality obligations substantially similar to those contained in this Clause 37 and the BBC provides copies of such agreements to the Contractor.
- 37.8 The Contractor shall not enter into any discussions or correspondence with any Governmental or regulatory body in any matter relating to the Licence Fee, (other than in the usual course of business with the DWP, and HM Treasury in relation to Licence Fee Receipts), or this Agreement without the prior written consent of the BBC. Where the BBC itself proposes, or is involved in, any such discussions or correspondence it may, at its discretion, invite the Contractor to participate or contribute as the BBC deems appropriate.

38 BBC Data

Use of BBC Data

- 38.1 The Contractor shall not use the BBC Data for any purpose other than the performance of the Services.
- 38.2 The Contractor shall not delete or remove any copyright notices or other proprietary notices of the BBC placed on, contained within or relating to the BBC Data.

Loss of BBC Data

- 38.3 The Contractor shall take all steps necessary (having regard to the nature of its other obligations under this Agreement) to ensure the integrity of the BBC Data and to prevent any corruption or loss of the BBC Data.
- 38.4 In the event that the BBC Data is corrupted or lost as a result of any default by the Contractor, the BBC shall have the option, without prejudice to any other remedies that may be available to it either under this Agreement or otherwise, to require the Contractor at its own expense to restore or procure the restoration of the BBC Data in accordance with the Disaster Recovery Plan.

Data Maintenance

- 38.5 Within twenty (20) Working Days after the Start Date the Contractor shall:
- 38.5.1 provide to the BBC a draft plan containing the details described in Schedule 2 (**The Services**) (the "**Draft Data Due Diligence Plan**" or "**Draft Data DDP**") for BBC approval;

- 38.5.2 within ten (10) Working Days of the BBC's receipt of the draft plan set out in paragraph 38.5.1 the BBC shall either approve the Draft Data DDP, or propose changes or additions to it. Where the BBC has requested any changes or additions to the Draft Data DDP, the Contractor shall update the said draft and submit it to the BBC for approval. The BBC shall either provide its approval, or refer the revised Draft Data DDP to the appropriate group or board for approval or rejection. In the event that the said group or board rejects the Draft Data DDP, the BBC shall immediately refer the matter to be dealt with pursuant to Clause 43;
- 38.5.3 within five (5) Working Days of the BBC's approval under paragraph 38.5.2 provide to the BBC the final Draft Data DDP for approval. The BBC shall provide its approval of the final Draft Data DDP to the Contractor in writing within five (5) Working Days; and
- 38.5.4 following the BBC's approval of the draft Data DDP, the Contractor shall carry out Data Due Diligence in accordance with the Data Due Diligence Plan.
- 38.6 The BBC shall have the right to attend and witness each Data Due Diligence test or any part thereof according to the methodology expressed in the test (but shall not be required to do so).
- 38.7 With twenty (20) Working Days after the Data Due Diligence the Contractor shall report the findings and its recommendations to improve the quality of the BBC Data for consideration by the BBC. Recommendations shall include a remedial plan for improving the accuracy of the BBC Data and a period during which the plan shall be implemented and a process for sampling of the BBC Data upon completion of the remedial plan, in order to ascertain the success or otherwise of such remedial steps taken.
- 38.8 The Contractor shall implement any or all of the recommendations in the remedial plan, when requested by the BBC.
- 38.9 The Contractor shall carry out at least three (3) Data Due Diligence tests each year commencing on the Start Date unless the BBC otherwise agrees.
- 38.10 The Contractor shall ensure that the BBC Data is accurately maintained at a standard no less than that revealed in the initial Data Due Diligence exercise as evidence by the most up to date Data Due Diligence Test each Year. In the event that the Contractor fails to maintain the BBC Data to the said level of accuracy, it shall take all steps necessary to remedy the inaccuracies prior to the next Data Due Diligence exercise, at its own cost.

39 BBC Stationery

- 39.1 All BBC Stationery shall remain the property of the BBC and shall be used by the Contractor, its officers and Employees only for the purposes of this Agreement.
- 39.2 The Contractor undertakes the safe custody of and due return of all BBC Stationery and shall be responsible for the costs of replacement of any BBC Stationery which is lost or damaged whilst in its possession and for any other losses or liabilities which may arise directly from such loss or damage.

- 39.3 The Contractor shall be responsible for any deterioration in the BBC Stationery while the BBC Stationery is in the possession of the Contractor.
- 39.4 The Contractor shall not have a lien on any BBC Stationery for any sum due to the Contractor, and the Contractor shall take all necessary steps to ensure that the title of the BBC and the exclusion of any such lien are brought to the notice of all Subcontractors and other persons dealing with any BBC Stationery.
- 39.5 The Contractor shall at all times during the Term insure all BBC Stationery in its possession against loss or damage.
- 39.6 The Contractor shall only use the BBC Stationery in the delivery of the Services and for no other uses whatsoever.

40 Title and Risk

- 40.1 As between the BBC and the Contractor, all BBC Property shall remain the property of the BBC and shall be used by the Contractor and its Employees solely for the purpose of performing its obligations pursuant to this Agreement.
- 40.2 The Contractor shall notify the BBC as soon as reasonably practicable of it becoming aware that any BBC Property is not in a satisfactory condition or within sixty (60) Working Days of receipt of such BBC Property by or on behalf of the Contractor, whichever is the earlier. In the event of failure to so notify, such property shall be deemed to be in satisfactory working order for the purposes of this Agreement.
- 40.3 Notwithstanding Clause 40.1, risk of damage to or the loss of BBC Property shall pass to the Contractor at the time it takes possession of it and shall remain with the Contractor until it is delivered securely to the BBC in accordance with the BBC's instructions at the end of the Term. The Contractor undertakes the safe custody, appropriate maintenance and repair and due return of all BBC Property in good working order and fit for the purposes for which such BBC Property was provided and shall carry out, and be responsible for the costs of, the replacement or repair (as appropriate) of any BBC Property which is lost or damaged whilst in its possession.
- 40.4 The Contractor shall be responsible for any deterioration in the BBC Property save for any deterioration resulting from its normal and proper use for the purposes of this Agreement and/or fair wear and tear, provided that such deterioration resulting from normal and proper use is not caused by or contributed to by any failure of the Contractor to provide due maintenance and repair of such BBC Property.
- 40.5 The Contractor shall not have a lien on any BBC Property for any sum due to the Contractor and the Contractor shall take all necessary steps to ensure that the title of the BBC and the exclusion of any such lien are brought to the notice of all Subcontractors and other persons dealing with any BBC Property.
- 40.6 Title to and risk in all equipment and other tangible property used by the Contractor to perform the Services other than the BBC Property shall remain with the Contractor (or its Subcontractors or lessors as applicable) at all times.

41 Registers

41.1 On and from the Start Date the Contractor shall:

41.1.1 maintain a register of:

- (a) all of the assets used in the provision of the Services, detailing their ownership and status as either Sole Use Assets or Shared Use Assets, any agreements that relate to such assets and in addition, in respect of Sole Use Assets, the net book value of such assets;
- (b) all Subcontracts and other related agreements (including all software and other licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services; and
- (c) all BBC Data and BBC IPR that are in the Contractor's possession and control;

all in sufficient detail to permit the BBC and/or the Successor Service Provider to understand how the Contractor provides the Services so as to enable the BBC to Benchmark and/or retender some or all of the Services and enable the Smooth Transfer of the Services (collectively the "**Registers**").

- 41.2 The Contractor shall maintain the Registers in such format as is agreed between the Parties and shall update the Registers annually or otherwise at the BBC's request and in particular in the event that assets, Key Subcontracts or other relevant agreements are entered into, change or end during the Term.
- 41.3 The Contractor shall provide the BBC with an up to date version of the Registers (or any part of them) within five (5) Working Days of the BBC's request.
- 41.4 The Contractor shall ensure that all Sole Use Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

42 Force Majeure

- 42.1 Subject to the remaining provisions of this Clause 42, either Party may claim relief from liability under this Agreement for non-performance of its obligations, to the extent it is prevented from doing so as a direct result of a Force Majeure Event. In particular, the Contractor shall be relieved from its obligations to pay Service Credits and Liquidated Damages to the extent that it is directly prevented from performing any relevant obligation by the Force Majeure Event and the Charges due shall be reduced proportionately by the BBC to the extent that the BBC does not receive the Services as a result of the Force Majeure Event.
- 42.2 An act, event or omission shall only be considered to be a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions by the affected Party.
- 42.3 The Contractor shall not be able to claim relief for a Force Majeure Event in respect of:

- 42.3.1 its failure to provide the Services pursuant to the Disaster Recovery Plan unless the failure is due to the Force Majeure Event preventing the operation in whole or in part of the relevant parts of the Disaster Recovery Plan;
 - 42.3.2 an event it has caused or its Employees have caused; and
 - 42.3.3 any industrial action taken by its Employees.
- 42.4 Each Party shall take all reasonable steps necessary to anticipate a Force Majeure Event.
- 42.5 If either Party becomes aware of circumstances of Force Majeure Event it shall forthwith notify the other Party by the most expeditious method then available and in any event, within 3 (three) days and shall provide the other Party with reasonable proof of the Force Majeure Event and of its likely effect on the performance obligations under the Agreement including the period which it is estimated that such failure or delay shall continue.
- 42.6 As soon as practicable following the Party's notification under Clause 42.5 the Parties shall consult with each other in good faith and agree appropriate arrangements to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Agreement.
- 42.7 Where the Contractor is affected by the Force Majeure Event it shall take all steps in accordance with Best Industry Practice to prevent the impact of a Force Majeure Event from extending to affect its remaining obligations under this Agreement, to mitigate the effect of any Force Majeure Event and to undertake the performance of its affected obligations under this Agreement, at the earliest opportunity.
- 42.8 In the event that a Force Majeure event continues for twenty (20) days or longer the Party not seeking to rely on the Force Majeure Event may terminate this Agreement by notice in writing, such notice to take effect on the date of service of such notice.
- 42.9 The Party affected by the Force Majeure Event shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes it to be unable to comply with its obligations under this Agreement. Following such notification, this Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.

43 Dispute Resolution

Subject to paragraph 13.1 of Schedule 4 (**Governance**) and unless otherwise stated under this Agreement, where there is any dispute under this Agreement the matter shall be referred for resolution under the Escalation Procedure. In the event that the Escalation Procedure has not resolved the dispute, then the matter shall be referred to the Dispute Resolution Procedure.

44 Use of Subcontractors

- 44.1 The Contractor shall be primarily liable for the provision of the Services and complying with the terms of this Agreement, notwithstanding the appointment of any Subcontractor by it.

Prior Approval

44.2 The Contractor shall be entitled to subcontract any of its obligations under this Agreement provided that:

- 44.2.1 the Contractor has obtained the BBC's prior written consent (not to be unreasonably withheld or delayed) as to the identity of the Subcontractor to whom the Contractor proposes to subcontract and the extent of the Services that the Contractor proposes to subcontract. The BBC shall be deemed to have consented to those Subcontractors identified in Schedule 22 (**Subcontractors**) at the Effective Date;
- 44.2.2 any such consent shall be subject to such conditions, if any, as the BBC may acting reasonably determine;
- 44.2.3 the Contractor shall notify the BBC not less than thirty (30) Working Days prior to the date on which it intends to sign a subcontract with any Subcontractor and the BBC shall be entitled to review and provide comments on the terms of such subcontract prior to the Contractor and the Subcontractor entering into the subcontract;
- 44.2.4 if requested by the BBC, the Contractor shall replace any Subcontractor who in the reasonable opinion of the BBC fails to satisfactorily perform its obligations such that it would, if a Party to this Agreement, be in material breach of this Agreement; and
- 44.2.5 if requested in writing by the BBC, the Contractor shall procure that each Key Subcontractor that is approved in accordance with Clause 44.5 enters into a direct contractual relationship with the BBC.

44.3 Except where otherwise agreed between the Parties, the Contractor shall ensure that each Subcontractor is contractually bound to comply with all the terms of this Agreement which are relevant to the Subcontractor's service provision. For the avoidance of doubt, the obligation set out in this Clause 44.3 extends, but is not limited, to ensuring that Subcontractors offer the BBC all the rights that the BBC has as against the Contractor (in so far as such rights pertain to the obligations being performed by the Contractor) in Clauses 9 (**Compliance with Law and BBC Policies and Standards**), 24 (**Audit & Open Book**), 38 (**BBC Data**), 29 (**Indemnities**), 26 (**Step-In Rights**), 35 (**Protection of Personal Data**), 36 (**Freedom of Information**) and 37 (**Confidentiality**), 13.1 to 13.22 (**Staff Employed by the Contractor/ TUPE**), Schedule 10 (**Data Protection**), Schedule 12 (**Business Continuity & Disaster Recovery**) and Schedule 11 (**Exit**).

44.4 The Contractor shall have in place a plan setting out the measures to be taken by it to ensure the continuity of the provision of the Services in the event that any of its contracts with any of its Subcontractors is terminated at short notice and shall provide a copy of such plan to the BBC if requested within ten (10) Working Days of such request.

Approved Subcontractors

44.5 Subject to the Contractor complying with the terms of this Clause 44, the BBC hereby consents to the Contractor subcontracting those elements of the Services specified in Schedule 22 (**Subcontractors**) to those Subcontractors identified therein.

Appointment of Key Subcontractors

- 44.6 In the event that a Subcontractor is nominated for or appointed to provide services which are central to the Contractor's ability to perform the Services in accordance with the Service Levels, to satisfy the provisions of the Co-operation Agreement or otherwise in the BBC's opinion directly or indirectly provide a core element of the Services on the Contractor's behalf, the BBC shall be entitled to nominate the said Subcontractor as a Key Subcontractor.
- 44.7 If the BBC identifies a Subcontractor as a Key Subcontractor it shall notify the Contractor in writing of the identity of the Key Subcontractor.
- 44.8 The Parties acknowledge the significance to the BBC of the Services provided by the Key Subcontractors. In addition to the provisions set out in Clause 44.3, for each Key Subcontractor, the Contractor shall ensure the terms of the Key Subcontract include express provisions enabling the BBC to:
- 44.8.1 Step-In;
 - 44.8.2 enforce its rights as a third party under the Key Subcontract; and
 - 44.8.3 require the novation of the Key Subcontract by the Contractor to the BBC, or its nominee.
- 44.9 The Contractor shall not terminate or materially amend the terms of any Key Subcontract without the BBC's prior written consent, which shall not be unreasonably withheld or delayed.
- 44.10 Where the Contractor is unable to secure the provisions set out in Clause 44.8 in any Key Subcontract either at all or at no additional charge, the Contractor shall promptly notify the BBC in writing and the Parties shall agree the appropriate action to be taken and where the Parties are unable to agree, the BBC may require the Contractor to seek an alternative key subcontractor.

Service Provider as Principal

- 44.11 The Contractor is entering into this Agreement as principal not agent and may not enforce any of its rights under or in connection with this Agreement for the benefit of any other person. The Contractor shall be the BBC's sole point of contact in relation to all matters concerning this Agreement.

Change in Control of Subcontractor

- 44.12 The Contractor shall notify the BBC as soon as it becomes aware of any proposed Change in Control of a Key Subcontractor. The BBC may refuse to give its consent to the said Change in Control (where it is entitled to do so) or otherwise require the Contractor to replace its Key Subcontractor in circumstances in which the BBC reasonably believes that the relevant Change in Control would adversely impact on the Key Subcontractor's ability to perform its role in the provision of the Services.

Reporting on Subcontractors

- 44.13 No less than every six (6) months during the Term, the Contractor shall provide a report to the BBC setting out the roles, performance and general status (including financial standing) of all Key Subcontractors.

45 Locations subject to BBC Consent

The Contractor shall obtain the BBC's prior written consent if it (or any division or other business unit comprised within the Contractor) intends to move the operation of any of the Services outside of the Locations.

46 Third Party Rights

Nothing in this Agreement shall be deemed to grant any right or benefit to any person (except for any Party to this Agreement) 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 shall be enforceable by a third party by virtue of the Contracts (Rights of Third Parties) Act 1999.

47 General

Amendments

- 47.1 This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by a duly authorised representative of the BBC on behalf of the BBC and by a duly authorised representative of the Contractor on behalf of the Contractor.

Notices

- 47.2 A Party notifying or giving notice under this Agreement shall give notice in writing (which shall not include email) and be either:

- 47.2.1 delivered by hand;
- 47.2.2 transmitted by facsimile;
- 47.2.3 sent by prepaid first class post;
- 47.2.4 by prepaid recorded delivery post; or
- 47.2.5 sent by courier.

Service of Notice

- 47.3 A notice given in accordance with Clause 47.2 is received:
- 47.3.1 if left at the recipient's address, on the date of delivery;

47.3.2 if sent by recorded delivery post or courier, on evidence of receipt.

Communications

47.4 Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing (which expressly includes communications delivered by e-mail provided each is promptly followed by a hard copy delivered in accordance with this Agreement) by or on behalf of the BBC or, as the case may be, by or on behalf of the Contractor.

47.5 Any notice or other communication whatsoever which is intended to have legal effect, invokes, or gives notice of the intention to invoke, any of the rights or remedies of either Party under this Agreement, waives any of the rights or remedies of either Party under this Agreement, or relates or refers to any change or proposed change to the terms of this Agreement shall be given or made by any method described in Clause 47.2. If that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made after two (2) Working Days for a letter, or four (4) hours for a facsimile transmission. In the case of hand delivery or delivery by courier, notice or communication shall be deemed for the purposes of this Agreement as being given immediately upon delivery at the address given hereunder for such delivery.

47.6 For the purposes of Clause 47.2 the address of each Party shall be:

47.6.1 For the BBC:

BBC TV Licensing Unit
4th Floor, BBC White City
201 Wood Lane
London W12 7TQ
For the attention of the Head of Revenue Management
Telephone: 020 8008 7970 Facsimile: 020 8008 2656

47.6.2 For the Contractor:

Capita business Services Limited
71 Victoria Street, Westminster
London SW1H 0XA
For the attention of the Head of Legal and Commercial Group
Telephone: 020 7799 1525 Facsimile: 020 7799 1526

47.7 Either Party may change its address for service by notice as provided in Clause 47.6.

Relationship of Parties

47.8 Except as provided for in Clauses 3.1, 3.2 and 3.3 nothing in this Agreement or any circumstances associated with it or its performance give rise to any relationship of agency, partnership or employer and employee between the BBC and the Contractor or between the BBC and any Subcontractor.

No Security

47.9 The Contractor shall not, without the BBC's prior written consent, give or purport to give any security interest in any of its rights to receive payment from the BBC under this Agreement.

Waiver

47.10 The failure or delay of either Party to insist upon strict performance of any provision of this Agreement or the failure or delay of either Party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.

47.11 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clauses 47.5 and 47.6.

Assignment

47.12 The BBC may assign its rights under this Agreement without the Contractor's prior written consent provided the BBC gives notice of that assignment to the Agreement. The Contractor may not assign its rights or transfer its obligations under this Agreement to any person or entity unless it obtains the BBC's prior written consent.

47.13 In no event shall any such assignment by either Party relieve that Party of its obligations under this Agreement.

Consents and Approval

47.14 Except where expressly provided as being in the discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, that action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

Cumulative Rights

47.15 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

47.16 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 shall 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 shall remain in full force and effect.

Non-Exclusive Remedies

47.17 Unless a right or remedy of the BBC is expressed to be an exclusive right or remedy, the exercise of it by the BBC is without prejudice to the BBC's other rights and remedies.

Construction

47.18 No rule of construction shall apply in the interpretation of this Agreement to the disadvantage of one Party on the basis that such Party put forward or drafted this agreement or any provision of this Agreement.

Costs

47.19 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.

47.20 The Contractor shall be liable for the payment of any stamp duty or similar tax or levy payable on execution of this Agreement or any related documents.

Appointment of Representatives

47.21 The BBC shall be entitled to appoint any third party representatives on its behalf to perform obligations upon its behalf or exercise rights available to it under this Agreement.

Further Assurance

47.22 The Parties shall, and shall procure that their agents, employees and Subcontractors shall, do all things reasonably necessary, including executing any additional documents and instruments, to give full effect to the provisions of this Agreement.

Entire Agreement

47.23 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.

Conduct of Claims

47.24 The Contractor shall notify the BBC in the event of that any claim is brought by a third party against the Contractor relating to this Agreement or the provision of the Services (a "Third Party Claim"). The BBC shall promptly notify the Contractor if in the BBC's reasonable opinion, such Third Party Claim:

- 47.24.1 exposes the BBC to any potential liability;
 - 47.24.2 could impact on the BBC's ability to fulfil its obligations under the Charter and the BBC Agreement; and/or
 - 47.24.3 could result in damage to the BBC's reputation, or reduce or diminish the public's acceptability of the Licence Fee.
- 47.25 In the case of any of the circumstances set out in Clauses 47.24.1 to 47.24.3, the BBC may on written notice to the Contractor elect to take over the conduct of a defence to the Third Party Claim. Unless and until the BBC so notifies the Contractor, the Contractor shall:
- 47.25.1 consult with and obtain the approval of the BBC as to the proposed course of action in relation to each material step during the course or in the resolution of such Third Party Claim, such approval not to be unreasonably withheld or delayed;
 - 47.25.2 without prejudice to the generality of Clause 47.25.1, within as short a period as is reasonably practicable taking due account of the nature of the Third Party Claim and the kind of and stage reached in any proceedings, obtain written legal advice from an external legal adviser as to the likely outcome of the Third Party Claim and provide a copy or copies of such advice to the BBC;
 - 47.25.3 if external legal advisers and/or counsel are engaged, diligently use such external legal advisers and/or counsel, who must be competent in the field(s) of Law relevant to the Third Party Claim; and
 - 47.25.4 conduct the defence, communications or negotiations of the Third Party Claim in such a way as not to bring the reputation or name of the BBC into disrepute or cause damage or other detriment to the repute or character of any trade mark of the BBC.
- 47.26 In the event that the BBC elects to take over the conduct of the defence to a Third Party Claim, it shall:
- 47.26.1 consult with the Contractor and take into account the Contractor's comments and opinion where reasonably practical to do so and keep the Contractor informed as to the progress of such defence;
 - 47.26.2 notify the Contractor in the event that the BBC proposes to enter into negotiations for the settlement of the Third Party Claim; and
 - 47.26.3 notify the Contractor in the event that the Third Party Claim is withdrawn by the claimant.

Duty to Mitigate

- 47.27 Each Party agrees that it shall take and continue to take all reasonable steps to eliminate or mitigate any losses and/or damages that may arise under this Agreement.

Governing Law and Jurisdiction

- 47.28 The validity, construction and performance of this Agreement (and any claim, dispute or matter arising under or in connection with it or its enforceability) shall be governed by and construed in

accordance with the Law of England. The Parties agree to submit to the exclusive jurisdiction of the English Courts.

Successors and Assignees

47.29 This Agreement is binding on the BBC and its successors and assignees and the Contractor and the Contractor's successors and permitted assignees.

48 Special Events

48.1 If a Special Event occurs, the Contractor shall notify the BBC as soon as reasonably practicable, and in any event within seven (7) days after it became aware that the Special Event has impacted or is likely to impact the Contractor's ability to collect Licence Fee Revenue in any Financial Year, of its claim for an adjustment to the Bandings and/or p/£ Rate for the Financial Year in which the Special Event occurred.

48.2 The Contractor shall demonstrate to the BBC:

48.2.1 why it believes that a Special Event has occurred or is likely to occur;

48.2.2 that it has taken all reasonable steps to mitigate the impact of the Special Event without incurring a material increase in its cost of collection;

48.2.3 the amount by which the Licence Fee Revenue Collected has been affected; and

48.2.4 whether the Special Event will have a positive or negative impact on the Licence Fee Revenue Collected in future Financial Years.

48.3 The Parties shall enter good faith discussions and/or negotiations to determine the extent of any adjustments to the current or future BBC Income Baseline, Cumulative Baseline Adjustment Factor, p/£ Rate or Bandings as a result of the Special Event.

48.4 If the Parties cannot agree the extent of the adjustment required, or the BBC disagrees that a Special Event has occurred or that the Contractor is entitled to any relief under this Clause, the Parties shall resolve the matter in accordance with the Escalation Procedure.

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

Signature:

Name: **Mark Thompson**

Title: **Director General, BBC**

Date:

Signature:

Name: **Zarin Patel**

Title: **Chief Financial Officer, BBC**

Date:

Signed for and on behalf of **Capita Business Services Limited**

Signature:

Name: **Paul Pindar**

Title: **Chief Executive, Capita Business Services Limited**

Date:

Schedule 1: Definitions

The expressions set out below shall have the meanings ascribed thereto:

"Accounting Principles"	<p>means those accounting principles used by the Contractor which are consistent with:</p> <ul style="list-style-type: none">(a) the normal accounting policies of the Group as published in the most recent Group annual report and accounts, in relation to which the BBC shall be informed as soon as reasonably possible of any changes or proposed changes in such accounting policies which have a material effect on the profit share and Charges calculated for the purposes of this Agreement; and(b) UK Generally Accepted Accounting Principles or the prevalent accounting principles currently in use within the BBC;
"Accounting Ratio Thresholds"	<p>means the Accounting Ratio Thresholds as set out in Appendix 2 to Schedule 18 (Financial Distress);</p>
"Accounting Ratios"	<p>means the 'Net Total Interest Cover Ratio' and the 'Total Net Debt to EBITDA Ratio' for the Guarantor and/or the Key Subcontractors, (as the case may be) calculated using the audited accounts of the Guarantor and/or the Key Subcontractors (as the case may be) for each of their respective financial years;</p>
"Accounting Responsibilities"	<p>has the meaning ascribed to it in Schedule 9 (Accounting Responsibilities);</p>
"Achieve"	<p>means in respect of a Trialling Certificate/Trialling Success, to meet all the Trialling Criteria for that Documentary Deliverable or Service and in respect of a Milestone, the completion of the event or task represented by such Milestone;</p>
"Additional Services"	<p>means such additional services as may be required by the BBC during the Term to ensure the effective, appropriate and proportionate collection of the Licence Fee and all services which the Parties agree in accordance with the Change Control Procedure are to be performed by the Contractor pursuant to Clause 5.3;</p>
"Agreed Downtime"	<p>means a period on a specific date commencing at a time agreed in advance in writing by the BBC during which the BBC System (or an agreed part of it) may be unavailable which for the</p>

	avoidance of doubt shall always fall between 23.45 hours and 04.15 hours;
"Agreement Management"	means the activities carried out by the Parties in relation to the management of the Services and other responsibilities contained in the Co-operation Agreement and this Agreement in accordance with Schedule 4 (Governance);
"Agreement"	means the Terms and Conditions, the Schedules, Annexes and other attachments, as amended from time to time in accordance with the Agreement, and any other documents expressly identified in this Agreement;
"ALF"	means the administered licence facility forming part of the BBC System including all related hardware and software comprised in that database;
"Annex"	means any annex to any Schedule to this Agreement;
"Annual Activities Plan"	means the annual activities plan prepared by the Marketing Provider in accordance with the TVL Marketing Agreement;
"Annual Service Level Review"	means the review of Service Levels conducted pursuant to Clause 12;
"Approval"	means any approval given by the BBC including for the purpose of ensuring that documentation and material complies with the BBC Policies, Standards and the Regulations and any legislation relating to Licensing including the Human Rights Act 1998;
"ARC Licences"	means a concessionary Licence issued to a resident of "accommodation for residential care" as defined in the Regulations;
"Arrears"	means instalments that are due under a payment plan for a Licence Fee that has not been made by a Customer;
"ASK"	means the centralised online help resource provided to Employees and shall include all related software;
"Asset Transfer Agreement"	means the asset transfer agreement attached to Annex 1 of Schedule 11 (Exit);
"Audit"	has the meaning ascribed to it in Clause 25.5;
"Available Service Credit Cap"	means in respect of any Financial Year, the remaining element of the Service Credit Cap after any Service Credit Amounts accrued in that Financial Year have been applied;
"Available"	means the period of time during which the BBC System is fully functional and accessible to any Customer or BBC contractor in

	the provision of the Services measured monthly and excluding (a) Agreed Downtime and (b) the measures described in Service Levels 4 and 5 set out in Schedule 6 (Service Level Agreement);
"BACS"	means Bankers Automated Clearing Services;
"Banding"	means the value shown in the column "banding" in Annex 1 of Schedule 5 (Charges);
"Baseline Adjustment Factor"	means the product of the Growth Factor, the Licence Fee Rate Factor and Television Penetration Rate Factor;
"Baseline Report"	means the report setting out certain assumptions relating to the costs of providing the Services as set out in Annex 3 of Schedule 5 (Charges);
"BBC Account"	means the BBC's bank account as notified in writing to the Contractor by the BBC;
"BBC Agreement"	means the agreement between the BBC and Her Majesty's Secretary of State for Culture, Media and Sport dated 30 June 2006, which came fully into effect on 1 January 2007;
"BBC Audit Representative"	means the BBC (including the BBC Trust), its internal and external auditors (and, in each case, their appointed contractors), and any other body with competent jurisdiction (including the National Audit Office the Information Commissioner and/or the Commission for Equality and Human Rights, and their successors);
"BBC Contract Manager"	means the contract manager appointed by the BBC from time to time;
"BBC Data"	means all data (including Personal Data), information, addresses, telephone numbers, text, drawings, diagrams, images or sound embodied in any electronic or tangible medium (excluding any computer software) and: (i) which are supplied or in respect of which access is granted to the Contractor by the BBC pursuant to this Agreement including the DWP Data and the BBC Database Data; or (ii) which the Contractor creates and/or collates under this Agreement; or (iii) which is obtained by the Contractor on behalf of the BBC for the purposes of this Agreement;
"BBC Database Data"	means all data obtained from, or belonging to, the BBC which is stored on the BBC System;
"BBC Database"	means any database that includes the BBC Data, as updated from time to time and is used by the Contractor and/or Sub

	Contractors for the provision of the Services;
"BBC Income Baseline"	means the Initial Baseline varied by the Cumulative Baseline Adjustment Factor;
"BBC Policies"	means the BBC policies listed in paragraph 2 of Schedule 8 (BBC Policies and Standards);
"BBC Property"	means any property (excluding the BBC System) issued or otherwise furnished in connection with this Agreement from time to time by or on behalf of the BBC as agreed by the Parties in writing;
"BBC Software"	means the software in the items listed in the BBC IPR in Part 1 of Schedule 15 (BBC System) including the software interfaces thereto and any software comprised within the Contractor Bespoke IPR and Third Party Bespoke IPR;
"BBC Stationery"	means all stationery used in the provision of the Services by the Contractor to correspond with or about a Customer and/or carry out the enforcement activities set out in paragraph 18 of Schedule 2 (Services);
"BBC System"	means the configuration, as may be updated from time to time in accordance with this Agreement, of integrated hardware, software and communications components (the current configuration being specified in Schedule 15 (BBC System)) which link different parts of the system with one another and all other items for the purpose of providing the Services;
"BBC IPR"	means: <ul style="list-style-type: none">(a) those items listed in Part 1 of Schedule 15 (BBC System);(b) all other IPR that become the ownership of the BBC under the terms of this Agreement; and(c) TVLF Standard Documentation and any other IPR created by the BBC during the Term;
"Benchmarking Report"	means the report described in Annex 4 of Schedule 5 (Charges);
"Benchmarking"	means the process of independently reviewing the services and charges in accordance with the provisions set out in Annex 4 to Schedule 5 (Charges);
"Best Industry Practice"	means, in relation to any undertaking in any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a skilled and experienced person at the leading edge of their field engaged in the same type of

	undertaking under the same or similar circumstances, evidenced by compliance with relevant ISO or equivalent BSI standards, and shall include compliance with the Standards;
"Break Option"	has the meaning ascribed to it in Clause 4.4;
"Business Continuity Management System"	means a business continuity management system for identifying Business Continuity Risks and for providing a framework to protect people, buildings and systems and to put in place contingency arrangements to ensure an effective response to Incidents that minimises their impact on the Services and safeguards the interests of the BBC evidenced by compliance with relevant ISO or equivalent BSI standards, and shall include compliance with the Standards;
"Business Continuity Plan"	means the plan to be devised by the Contractor which sets out all the contingency arrangements and response actions that the Contractor has in place in the event of an Incident;
"Business Continuity Policy"	means a policy setting out the aims, principles and approach to business continuity management;
"Business Continuity Risks"	means potential disasters, events, incidents, strikes, risks or other circumstances that could threaten the proper delivery of the Services to the BBC in accordance with this Agreement;
"Business Process Management"	means the BBC processes captured within the BBC System;
"CADH"	means the customer data hub forming part of the BBC System including all related hardware and software comprised in that database;
"Call Log"	means the user screen call log application forming part of the BBC System including all related hardware and software comprised in that database;
"Cancelled"	means in respect of a Licence, when the Contractor cancels any outstanding amount of the Licence Fee in accordance with BBC Policies and "Cancellation" and "Cancel" shall be construed accordingly;
"Candidate"	has the meaning ascribed to it in Clause 3.4;
"Capacity Plan"	has the meaning ascribed to it in Clause 9 of the Co-operation Agreement;
"Cash Payment Plan"	means the cash easy entry scheme as described in the Regulations, and the MCP;
"Cash Schemes"	means Cash Payment Plan and TV Licensing Savings Card;

"CASSIE"	means any database relating to the administration of Cash Payment Plan and MCP which includes BBC Data, as updated from time to time, to which access is granted to the Contractor by or on behalf of the BBC pursuant to this Agreement;
"CAVES"	means the Capita address verification system forming part of the BBC System including all related hardware and software comprised in that database;
"Change Control Procedure"	means the procedure applying to any change to the Services and/or this Agreement set out in Schedule 7 (Change Control Procedure);
"Change in Control"	means any circumstance which gives rise to a change giving a person or group of persons the right to: (a) exercise 50 per cent or more of the voting rights at general meeting in the Contractor or any direct or indirect parent of the Contractor; or (b) appoint or remove the majority of the board of directors of the Contractor or any direct or indirect parent of the Contractor; or (c) exercise a dominant influence over the Contractor or any direct or indirect parent of the Contractor in accordance with the provisions contained in the Memorandum, Articles or other constitutional documents of the Contractor or such Parent Company or by virtue of any contract, including any shareholders' agreement;
"Change Notice"	means the form used by the Parties to set out the agreed change and which shall be substantially in the form set out in either of Annex 1 or Annex 2 of Schedule 7 (Change Control Procedure) as the circumstances may require;
"Change Request"	means a written request for a change submitted by either the BBC or the Contractor in accordance with paragraph 3 of Schedule 7 (Change Control Procedure);
"Change"	means any change made to this Agreement or a change to the Services at the request of either Party;
"Charges"	has the meaning ascribed to it in paragraph 2.1 of Schedule 5 (Charges);
"Charter "	means the charter for the continuance of the BBC granted to the BBC by Her Majesty the Queen in Council and is supplemental to the Royal Charter of Incorporation of the BBC granted to the BBC on 19th September 2006 which came fully into effect on 1st January 2007;
"Civil Enforcement Policy"	means the policy on Civil Enforcement to be provided by the Contractor;
"Civil Enforcement"	means the civil enforcement action against persons who owe money for a Licence that has been issued which is not

	Cancelled or Revoked;
"CMDW"	means the campaign management data warehouse forming part of the BBC System as described in Schedule 8 (Policies and Standards) including all related hardware and software comprised in that database as updated from time to time;
"CMS"	means the campaign management system' forming part of the BBC System including all related hardware and software comprised in that database;
"Collectable Income"	means the BBC Income Baseline plus the level of Licence Fee Revenue foregone attributable to the BBC's estimation of Licence Fee evasion;
"Collecting Accounting Period"	means a calendar month during the term of this Agreement;
"Collection Charges"	means the p/£ Rate payable by the BBC to the Contractor, calculated in accordance with Schedule 5 (Charges) and by reference to the table of rates described in Annex 1 of Schedule 5 (Charges);
"Complaint"	means any communication from a Customer (whether written or otherwise) which expresses dissatisfaction with the Services, the services of the Marketing Provider or any other issue concerning TV Licensing including the words and phrases set out in Annex 1 to Schedule 2 (Services);
"Completion Arrangements"	has the meaning ascribed to it in Clause 2;
"Confidential Information"	means, in relation to a Party, all information (whether the information is in oral or written form or is recorded in any other medium) about or pertaining to the business affairs (including products, developments, trade secrets, know-how, personnel or suppliers) of that Party or its customers (including, in the case of the BBC, the Personal Data) which is disclosed to the other Party, the other Party's contractors or, sub-contractors or agents or any of their respective employees, or which is acquired by or otherwise comes to the knowledge of the other Party, the other Party's sub-contractors or agents or any of their respective employees whether directly or indirectly pursuant to and in the course of the provision and/or receipt of the Services, and the performance of the Parties' respective obligations under this Agreement;
"Consequential Loss"	means any direct or indirect loss of profits, loss of business, loss of goodwill, damage to reputation or anticipated savings, howsoever arising;
"Contact Strategy"	means the contact strategies developed by the Marketing Provider and/or the Contractor whereby Customers experience

	a seamless and tailored Customer contact approach;
"Continuous Improvement Plan"	means the plan produced by the Contractor in accordance with paragraph 9.1 of Schedule 4 (Governance) to deliver Continuous Improvement;
"Continuous Improvement"	means the continuous and steady improvement in the provision of the Services and the Contractor's performance of its obligations under this Agreement throughout the Term together with the processes, methodologies and investment necessary to ensure that the Contractor and its Employees identify, assess and implement changes at all levels necessary to deliver improvement in the Service beyond Best Industry Practice;
"Contractor Bespoke IPR"	means the Intellectual Property Rights in any work (including software) written by or otherwise created or developed by the Contractor for use in providing the Services to the BBC including the Intellectual Property Rights in any software interfaces created or developed by the Contractor for use with the BBC System;
"Contractor Cash Payment Plan Account"	has the meaning ascribed to it in paragraph 1.4.2 of Schedule 9 (Accounting Responsibilities);
"Contractor Change Costs"	means the sums calculated in accordance with the provisions set out in paragraph 12 of Schedule 5 (Charges);
"Contractor DDI Account"	has the meaning ascribed to it in paragraph 1.4.3 of Schedule 9 (Accounting Responsibilities);
"Contractor Documentation"	means all documents (howsoever created or stored) produced or supplied by the Contractor for dissemination to third parties (whether to the public in general or to individuals) pursuant to this Agreement (including correspondence, application forms, literature, policy statements and documents);
"Contractor Material"	means any material created or supplied by the Contractor pursuant to this Agreement (including all internal guidelines, manuals, scripts created by the Contractor to enable its officers and Employees to supply the Services) and all documents (in whatever form and howsoever stored) detailing the Contractor's business processes;
"Contractor Non-DDI Account"	has the meaning ascribed to it in paragraph 1.4.4 of Schedule 9 (Accounting Responsibilities);
"Contractor TVLSC Account"	has the meaning ascribed to it in paragraph 1.4.1 of Schedule 9 (Accounting Responsibilities);
"Contractor's Account"	means such accounts of the Contractor for such purposes as

	may be notified to the BBC from time to time;
"Contractor's Breakage Costs"	has the meaning ascribed to it in paragraph 17 of Schedule 5 (Charges);
"Contractor's Exit Costs"	means the Contractor's costs in performing the Exit Plan as described in paragraph 18 of Schedule 5 (Charges);
"Contractor's Forecast"	means the forecast made by the Contractor of the Licence Fee Revenue it anticipates it will collect in each Financial Year as set out in Annex 3 to Schedule 5 (Charges). The Contractor's Forecast shall be expressed as a percentage increase above the BBC Income Baseline for each corresponding Financial Year;
"Contractor's Retained IPR"	means those Intellectual Property Rights of the Contractor which exist at the date of this Agreement and are identified by the Contractor in Part 2 of Schedule 15 (BBC System) or which come into existence during the Term other than the Contractor Bespoke IPR or the Specially Created IPR;
"Conviction"	other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
"Co-operation Agreement"	means the agreement to be entered into between the Contractor and the Marketing Provider as further described in Clause 10.1;
"Cost Model"	Means the cost model provide by the Contractor in the Tender Documentation and set out in Annex 1 of Schedule 5 (Charges);
"Credit Ratings Thresholds"	means the Credit Rating Thresholds for the Guarantor and/or Key Subcontractors (as the case may be) as set out in Appendix 2 to Schedule 18 (Financial Distress);
"Credit Ratings"	means the credit ratings for the Guarantor and/or Key Subcontractors (as the case may be) as rated by the Rating Agency under Schedule 18 (Financial Distress);
"Critical Priority"	means, in relation to a problem, the complete loss of multiple services or an outage that affects the whole of a system;
"Critical Systems"	means the parts or elements of the BBC System identified as critical to the continuity of the Services by the BBC set out in Annex 1 of Schedule 12 (Business Continuity and Disaster Recovery) which shall include all additional and/or replacement

	systems or parts thereof intended to provide the same or similar business functions throughout the Term;
"CSC"	means for the purposes of Schedule 18 (Financial Distress): Computer Sciences Corporation of 3170 Fairview Park Drive, Falls Church, VA 22042, USA;
"Cumulative Baseline Adjustment Factor"	means the product of the Initial Baseline Adjustment Factor and the Baseline Adjustment Factor for each Financial Year prior to the Financial Year in respect of which the BBC Notifies the Contractor of the BBC Income Baseline under paragraph 5.2 of Schedule 5 (Charges);
"Customer Analytics"	means the analysis of Customer behaviour and attributes, enabling the development of relevant Customer segmentation and contact strategies for customer groups informing direct marketing activities undertaken by the Marketing Provider and/or Contractor as set out in paragraph 1.1 of Schedule 2 (Services);
"Customer Facing Documentation"	means any form of communication produced and/or issued by the BBC and/or the Contractor and forwarded to the Customer regarding any part of the Service;
"Customer"	means any person or organisation who may require or is in possession of a Licence and includes the agent authorised in accordance with the BBC TV Licensing Customer ID Policy set out in the BBC Policies;
"Data Due Diligence Plan" or "Data DDP"	means the plan approved by the BBC in accordance with Clause 38.5.3;
"Data Processing Practices and Procedures"	means the systems, practices and procedures which the Contractor intends to use in its processing of Personal Data and processing will have the meaning set out in Section 1(1) the Data Protection Act 1998;
"Data Protection Law"	means the European Community Directive 95/94/EC and all Law implementing the same in the UK, including the Data Protection Act 1998 and the relevant subsidiary legislation and Codes of Practice issued by the Information Commissioner from time to time, together with any other legislation of the European or UK Parliaments or of the jurisdiction of the Locations coming into force during the Term which is designed to protect individuals with regard to the processing of their Personal Data;
"Data Room Files"	means the information contained in the BBC data room made available to the Contractor from 1 March 2011 to 13 September 2011;
"Data Subject"	shall have the meaning given to it under Data Protection Law;

"Date Compliant"	means that dates can be accurately processed (including calculating, comparing and sequencing date data) from, into and between centuries and/or years, including leap year calculations so that neither performance of the Services nor functionality of any part of the Service Architecture is affected by any change in date;
"DCMS"	means the Department for Culture, Media and Sport or such other department of H.M. Government which may be given responsibility for matters relating to the Licence Fee;
"DDI Scheme"	means the scheme for the payment of the Licence Fee known as the Direct Debit Instalment scheme;
"Deliverable Description"	a document describing a Deliverable in the format specified at Appendix A to Annex 3;
"Deliverable"	means all physical manifestations of the Services and the performance by the Contractor of its obligations hereunder;
"Designated Information"	means that material identified by the Contractor and described in Schedule 19 (Designated Information);
"Digital Switchover Help Scheme"	means the help scheme described in an agreement between the BBC and Her Majesty's Secretary of State for Culture, Media and Sport dated 30 April 2007;
"Direct Debit Schemes"	means any direct debit scheme for payment of the Licence Fee which includes monthly budget plan, quarterly budget scheme, direct debit annual and DDI Scheme;
"Direction"	means any direction or determination of the Secretary of State given under the WTA or the Communications Act 2003 relating to the Licence;
"Disaster Recovery Period"	means the period commencing on the declaration of an Incident, until the time that the parties agree that Services have been fully restored;
"Disaster Recovery Plan"	means the plan prepared by the Contractor pursuant to Clause 19.4;
"Dispute Resolution Procedure"	means the procedure set out in paragraph 11 of Schedule 4 (Governance) and reference to "Dispute Resolution" shall mean the application of such procedures;
"Documentary Deliverables"	means a deliverable that takes the form of Service Documentation;
"Documentation"	means: (a) all reports and papers, e-mails or letters provided by the

Contractor to any BBC; and

- (b) all descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures and other documentation as:
 - (i) is required to be supplied by the Contractor under this Agreement;
 - (ii) is required by the Contractor in order to provide the Services; or
 - (iii) has been or shall be generated for the purpose of providing the Services or is incidental to the generation of the Services;

"Draft Data Due Diligence Plan" or "Draft Data DDP"	means the draft plan containing the details described in paragraph 20.2 of Schedule 2 (Services);
"DWP Data"	means information provided to the BBC or its agents pursuant to the Television Licences (Disclosure of Information) Act 2000;
"DWP"	means the Department of Work and Pensions or such other body with similar responsibilities;
"Effective Date"	means [<i>this will be the date of signature</i>] or such other date as may be elected by the BBC as contemplated under Clause 2.2;
"Employee"	means the Contractor's employees, agents, consultants and Subcontractors and any other persons who provide or are involved in the provision of any Service, including those employed or engaged by any Subcontractor;
"Entry Criteria"	means the criteria that must be satisfied before a Test Stage can begin as defined in the Test Plan and/or Test Specifications;
"Error Threshold"	means the level of errors above which a Test or Test Stage is deemed to be unsuccessful;
"Escalation Procedure"	has the meaning ascribed to it in paragraph 10 of Schedule 4 (Governance);
"Exit Criteria"	means the criteria that must be satisfied before a Test Stage can complete as defined in the Test Plan and/or Test Specifications;
"Exit Plan"	means the plan developed by the Contractor and approved by the BBC in accordance with Schedule 11 (Exit);
"Exit Start Date"	has the meaning ascribed to it in paragraph 3.1 of Schedule 11 (Exit);

"Factor"	means a number which represents the difference between a value prior to its being changed and after it has been changed (for example the factor 1.10 represents the difference between £1.00 prior to being increase by 10 per cent to £1.10);
"Field GUI"	means the online real time lookup application used as part of the handheld device software suite forming part of the BBC System including all related hardware and software comprised in that database;
"Final Migration Milestone"	means the final milestone following cut over of the Services on the Start Date;
"Financial Distress Escrow Account"	means an escrow account established in accordance with Schedule 18 (Financial Distress) in the joint names of the Contractor and the BBC with a bank approved by the BBC;
"Financial Distress Event"	means the occurrence of one or more of the events listed in Schedule 18 (Financial Distress);
"Financial Distress Service Continuity Plan"	means a plan setting out how the Contractor (together with the Guarantor and/or Key Subcontractors, as the case may be) will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that the Contractor, the Guarantor and/or a Key Subcontractor(s) suffers a Financial Distress Event;
"Financial Year"	means the BBC's Financial Year, being the period 1 April to 31 March of each year during the term of this Agreement or such other period as the BBC may decide from time to time;
"First Draft Delivery Date"	means the date by which the Contractor shall submit a draft Documentary Deliverable to the BBC as agreed within the Review Plan;
"FLOSSY"	means the hardware and software identified as such in Schedule 15 (BBC System), as updated from time to time, forming part of the BBC System;
"FOAMIN"	means the MS Access database field office admin forming part of the BBC System including all related hardware and software comprised in that database;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
"Force Majeure"	means an act of God (such as earthquake, fire, solar flare and flood), war and industrial dispute (subject to [42.2]) or other event which prevents the performance by a Party of all or

	material part of its obligations under this Agreement;
"Foreground IPR"	means all IPR which are created or developed by or on behalf of the Contractor (including by any Subcontractor) specifically for the purposes of the provision of the Services (and for the avoidance of doubt, such term includes any Bespoke Software);
"Form of Licence"	means the nature of Licence that the Customer has requested including electronic, paper or large print;
"Fraud Investigation"	has the meaning ascribed to it in Clause 25.8 of the Terms and Conditions;
"Group"	means in relation to the Contractor, any company which is a subsidiary or holding company of the Contractor or a wholly owned subsidiary of the Contractor's holding company;
"Growth Factor"	means the factor representing the rate of annual growth in all populations to which the Licence Fee applies, as further described in paragraph 6 of Schedule 5 (Charges);
"Guarantor"	means [insert full name of Guarantor];
"Help Scheme Provider"	means Carillion Energy Services Limited of 24 Birch Street, Wolverhampton, United Kingdom WV1 4HY registered company number 03858865 and any replacement thereto;
"Help Scheme Services"	means the services described in paragraph 12 of Schedule 2 (Services);
"High Priority"	means, in respect of a problem, degradation of service to multiple users of a system or complete loss of a major function of the service or system;
"ICMS"	means the integrated complaints management system forming part of the BBC System including all related hardware and software comprised in that database;
"iHUB"	means the integration hub, data transformation and synchronisation between LASSY, CADH and CMS which forms part of the BBC System including all related hardware and software comprised in that database;
"Impact Assessment"	<p>means a written assessment, prepared by the Contractor, under Schedule 7 (Change Control Procedure), of the impact of the proposed Change comprising (to the extent relevant in the context of the proposed Change):</p> <p>(a) an assessment of the impact on the Services and/or the methods or working practices employed by the Contractor in the provision of the Services;</p>

- (b) a proposed solution (in terms of technology, staffing, working practices, accommodation, or other elements of the Contractor's solution);
- (c) any impact on any of the BBC's obligations under this Agreement, its retained operations or any of the BBC's other third party contractors, suppliers and/or service providers;
- (d) any anticipated impact on the Contractor's costs in the provision of the Services;
- (e) any anticipated impact on the amount of Licence Fee Revenue collected;
- (f) a timetable for the implementation of the Change;
- (g) any impact on the level of Charges; and
- (h) any changes required to the terms of this Agreement.

"Implementation Phase"

means the period from the end of Migration until the Contractor has Achieved the TOM;

"Incident"

means the occurrence or crystallisation of a Business Continuity Risk;

"Incumbent Licences"

means:

- (a) [identify here any 3rd party licence agreements used prior to the Effective Date by the Incumbent, that are required by the Contractor and the date of the novation agreement to the Contractor, if relevant]; and
- (b) such other agreements as may be agreed by the Parties;

"Incumbent"

means iQor UK Limited whose registered office is at 33/34 Winckley Square, Preston, Lancashire PR1 3EL and whose company number is 2404237;

"Initial Baseline"

means three billion, six hundred and eighty one million, four hundred and twenty nine thousand, four hundred and fifty eight pounds (£3,681,429,458) varied at the BBC's discretion either by the Baseline Adjustment Factor or by reference to the actual sum collected in Financial Year 11/12;

"Initial Baseline Adjustment Factor"

means:

- (a) if the BBC elects that the Initial Baseline be varied by reference to the actual sum collected in Financial Year 11/12, then a factor equal to the actual sum collected in Financial Year 11/12 divided by three billion, six

hundred and eighty one million, four hundred and twenty nine thousand, four hundred and fifty eight pounds (£3,681,429,458); or

- (b) if the BBC elects that the Initial Baseline be varied by the Baseline Adjustment Factor, then a factor of one (1).

"Initial Term"	has the meaning ascribed to it in Clause 4.1;
"Instalment Schemes"	means Cash Schemes and Direct Debit Schemes;
"Intellectual Property Rights"	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 (including the Territory) and applications for any of the foregoing;
"Interface Services"	means the services as set out in Schedule 14 (Interface Services) to be provided by the Contractor with which the Services should interface to ensure the smooth running of the administration, enforcement and collection of the Licence Fee;
"iQor"	means iQor UK Limited;
"Issue Fee"	means the sum of money payable on the issue or renewal of a Licence pursuant to the WTA or the Communications Act 2003 and prescribed in the Regulations;
"IVR"	means the IVR applications forming part of the BBC System including all related hardware and software comprised in that database;
"Joint Risk Register"	has the meaning ascribed to it in paragraph 6.1 of Schedule 4 (Governance);
"Key Milestone Dates"	means the Key Milestone Date(s) set out in Table A of Schedule 3 (Transition);
"Key Milestone"	means each of the Key Milestone(s) set out in Table A of Schedule 3 (Transition);
"Key Performance Indicator"	has the meaning ascribed to it in paragraph 2 of Schedule 6 (Service Level Agreement);
"Key Personnel"	has the meaning ascribed to it in Clause 13.11.1 and shall include the roles set out in paragraph 5.5 of Schedule 3 (Transition);
"Key Subcontract"	means a contract with a Key Subcontractor;

"Key Subcontractor"	means a Subcontractor identified by the BBC as a Key Subcontractor in accordance with Clause 44.6 as listed in Schedule 22 (Subcontractors) from time to time;
"LASSY"	means any database or system relating to the administration, collections and enforcement of the Licence Fee which includes BBC Data, as updated from time to time, to which access is granted to the Contractor by or on behalf of the BBC pursuant to this Agreement;
"Law"	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body, as may be amended, replaced or supplemented, that is enacted, issued or adopted in the Territory and directives and all other legislation of the European Union that are or is directly applicable to the Territory;
"Legacy Payments"	has the meaning ascribed to it in paragraph 4 of Schedule 5 (Charges);
"Level 1 Credit Rating/Accounting Ratio"	means the Credit Rating or Accounting Ratio Threshold (as applicable) described as such in Appendix 2 to Schedule 18 (Financial Distress);
"Level 2 Credit Rating/Accounting Ratio"	means the Credit Rating or Accounting Ratio Threshold (as applicable) described as such in Appendix 2 to Schedule 18 (Financial Distress);
"Level 3 Credit Rating/Accounting Ratio"	means the Credit Rating or Accounting Ratio Threshold (as applicable) described as such in Appendix 2 to Schedule 18 (Financial Distress);
"Licence Fee Rate Factor"	means the factor representing the annual change in the price of a full colour Licence as further described in paragraph 8 of Schedule 5 (Charges);
"Licence Fee Receipts"	means all payments received by the Contractor for or towards payment of the Licence Fee;
"Licence Fee Revenue Collected"	means the total sum of the Licence Fee Revenue transferred from the Contractor Accounts to either the Relevant Account or the BBC in accordance with Schedule 9 (Accounting Responsibilities) measured over each Financial Year to the nearest pound (£), and "Collecting" and "Collection" shall be construed accordingly;
"Licence Fee Revenue"	means the Licence Fee Receipts and the Licence Fee Savings;

"Licence Fee Savings"	means all savings received by the Contractor from Customers in respect of the payment of a Licence;
"Licence Fee"	means all sums payable in respect of a Licence as prescribed in Regulations;
"Licence"	means a licence for the right to use or install a television receiver (as such term is defined in the Communications Act 2003);
"Licensable Places"	has the meaning ascribed to it in the TV Licensable Places Policy;
"Liquidated Damages"	means the liquidated damages set out in Clause 11.1
"Locations"	means: <i>[addresses from where the services will be provided to be inserted]</i> ;
"Losses"	<p>means:</p> <p>(a) in the case of both Parties, any and all damages, claims , liabilities, actions, costs, expenses (including the cost and expenses of legal or professional services on an indemnity basis), demands and charges howsoever arising suffered or incurred by a Party, in each case whether or not the loss arose in the ordinary course of business; and</p> <p>(b) in the case of the BBC only includes the following:</p> <p>(i) the costs (in excess of the Charges which would have otherwise have been due and payable to the Contractor) properly and reasonably incurred, of maintaining services equivalent to the Services for what would have been the remainder of the Term in the event the Agreement or the Services are terminated (in whole or in part);</p> <p>(ii) the costs, properly and reasonably incurred, in connection with the process of re-procuring the Services from a third party provider and implementing the same, and any increase in the Charges payable to that provider over and above the Charges that would have been payable to the Contractor;</p> <p>(iii) any other or additional costs in connection with restoring lost, damaged or corrupted software or data and/or of reconstructing or reloading data (including Customer data) and consequent recover and/or rework caused by Contractor's breach of the Agreement;</p> <p>(iv) the cost of replacing tangible goods or tangible materials</p>

lost, stolen or damaged caused Contractor's breach of this Agreement;

- (v) compensation payable or damages incurred by the BBC to Customers as a result of Contractor's breach of the Agreement (including any ex gratia payments to the extent that they are reasonably incurred);
- (vi) additional reasonable operational and administrative costs and expenses arising from any breach by the Contractor;
- (vii) wasted expenditure or charges rendered unnecessary and incurred by the BBC arising from the Contractor's default;
- (viii) any payments which should have been received in respect of Licence Fee Revenue or Legal Costs Recovered which are, or become, irrecoverable as a result of any default by the Contractor together with interest at a rate of 4% per annum above the base lending rate from time to time of The Bank of England from the time such payments should have been received until the BBC receives payment in respect of same from the Contractor under Clause 29.1;
- (ix) any additional financing costs incurred by the BBC as ordered by a result of the Contractor's breach of this Agreement and/or
- (x) any fines, charges or other costs such as ordered by a regulator incurred by the BBC as a result of the Contractor's breach of this Agreement;

"Maintain"

means the identification of all failures, defects, faults or malfunctions in the BBC System, the provision of permanent solutions as soon as practicable following identification and the provision of temporary or workaround fixes or patches pending implementation of a permanent solution;

"Major Change"

means a change or proposed change in circumstances that would result in the level of Collectable Income reducing by £50m or more within a twelve (12) month period or £100m in a thirty-six (36) month period, or increasing by £50m or more within a twelve (12) month period;

"Management Information"

means the reports described in paragraph 3 of Schedule 4 (**Governance**) (including the Service Review Pack), the Service Level Reporting and the reporting described in paragraphs 21.1.2 to 21.1.5 of Schedule 2 (**Services**) and any other

	document as advised by the BBC from time to time;
"Management Reports"	has the meaning ascribed to it in Clause 25.1;
"Marketing Plan"	means the marketing plan developed by the Marketing Provider as approved by the BBC which sets out the activities to be undertaken in order to meet the strategic objectives of the Marketing Strategy;
"Marketing Provider"	means Proximity London Limited whose registered office is at 191 Old Marylebone Road, London, NW1 5DW and whose registered number is 02617496 or such other organisation as notified in writing by the BBC to the Contractor;
"Marketing Strategy"	means the integrated marketing strategy developed by the Marketing Provider which articulates the overall marketing activity and brand strategy for TV Licensing;
"MCP"	means the payment scheme known as monthly cash plan;
"Meaningful Response"	means a complete response to a Customer which does not require further communication from the Contractor to satisfy the Customer enquiry prior to any secondary contact from the Customer;
"Migration"	means the period from the Effective Date to the Start Date;
"Milestone (s)"	means the milestone(s) identified in the Transition Plan and shall include the Key Milestones;
"Milestone Achievement Certificate"	means a certificate issued by the BBC in accordance with the provisions of paragraph 13 of Part B of Annex 2 to Schedule 3 (Transition);
"Milestone Dates"	means the milestone date(s) identified in the Transition Plan and shall include the Key Milestone Dates;
"Milestone Payments"	mean the payments due from the BBC to the Contractor in respect of each Milestone identified in the Table 1 of Schedule 5 (Charges);
"Minimum Information"	means the information specified in paragraph 9.7 of Schedule 11(Exit) and the Service Documentation;
"Month" or "Monthly"	means calendar month;
"Network Operator"	means the operator(s) of the network(s) of outlets at which point of sale terminals transmit details of payment for the Licence Fee and at the Start Date being PayPoint plc (company number 03581541) having its registered office at 1 The Boulevard, Shire Park, Welwyn Garden City, Hertfordshire AL7 1EL;

"Non-Critical Systems"	means all parts or elements of the BBC Systems other than Critical Systems;
"Normal Priority"	means, in respect of a problem, complete loss of a minor function of the service or complete loss of service for a single user. A technical query or minor problem, such as any transactions, batch, loss of service, slow response times or printing affecting single users or external customers where the business impact is negligible;
"Novation Agreement"	means the novation agreement set out in Annex 2 to Schedule 11 (Exit);
"Offshore Register"	means the register of business processes and technology services that the BBC has consented to be undertaken offshore in accordance with the principles described in Appendix 1 and as further illustrated in Appendix 2 of Schedule 10 (Data Protection).
"Open Book Accounts"	<p>means financial and non-financial information, complete and accurate in all material respects, relating to the Services and how the Charges are calculated, including information relating to:</p> <ul style="list-style-type: none">(a) actual capital expenditure, including capital replacement costs;(b) actual operating expenditure, including the costs of staff consumables, subcontracted and bought in services;(c) interest, expenses and other third party financing costs; and(d) details of generic and any specific overhead recoveries, <p>all as relate to provision of the Services and in sufficient detail to enable the BBC to ascertain the Contractor's margin in relation to the Agreement;</p>
"Open Book Basis"	means the maintenance of the Open Book Accounts by the Contractor and the provision of access for the BBC Audit Representative to such Open Book Accounts in accordance with Clause 25;
"Operational Analytics"	means the analysis of the Contractor's business processes to be undertaken by the Contractor as set out in paragraphs 2.1 and 2.2 of Schedule 2 (Services);
"Out-turn Forecast"	means, at any point in time, the BBC's forecast total annual Licence Fee Revenue that is expected to be collected by the end of the Financial Year, calculated with reference to the total Licence Fee Revenue performance in any Financial Year,

	expressed as year to date, taking into account proportionately any exceptional events (caused directly or indirectly by reasons beyond the Contractor's control) that have resulted in a temporary delay in the collection of Licence Fee Revenue;
"Over 75 Licence"	means a Licence as prescribed by the Regulations available on application by a person aged 75 years and above for use at their principal residence;
"Over the Counter Suppliers"	means PayPoint and the respective post offices for the Isle of Man, Guernsey or Jersey;
"Overheads"	means the Contractor's overheads calculated in accordance with paragraph 15 of Schedule 5 (Charges);
"PAF"	means the postal address file maintained by Royal Mail;
"Parent Company Guarantee"	means the parent company guarantee in the form set out in Schedule 21 (Parent Company Guarantee);
"Parent Company"	means any company which is the ultimate Holding Company of the Contractor or any other company of which the ultimate Holding Company of the Contractor is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the Contractor or which is engaged in the same or similar business to the Contractor. The term "Holding Company" shall have the meaning ascribed by Sections 736 and 736A of the Companies Act 1985 or any statutory re-enactment or amendment thereto;
"Parties"	means a party to this Agreement and includes its successors in title and permitted assigns and "Party" shall have a corresponding meaning;
"PCI Rules"	means a multi-faced security standard that includes requirements for services management, policies, procedures, network architecture, software changes and other critical protective measures issued by the Payment Card Industry Standard Council;
"Pence Per Pound Rate" and "p/£ Rate"	means the sum payable by the BBC to the Contractor for each pound (£) of Licence Fee Revenue Collected at the rate set out in Annex 1 of Schedule 5 (Charges);
"Performance Indicator"	has the meaning ascribed to it in paragraph 2 of Schedule 6 (Service Level Agreement);
"Personal Data"	means all personal data related to the provision of the Services and the BBC (including any sensitive personal data relating to any Customer) which is processed by the Contractor pursuant to the provision of the Services (as the terms 'personal data',

	'sensitive personal data' and 'processing' are defined in Data Protection Law);
"Planned Successful Trialling Date"	means the date specified in an agreed Test Plan for a proposed date by which Trialling Success will have been Achieved pursuant to Annex 3 of Schedule 3 (Transition);
"Planned Trialling Certificate Date"	means the date on which it is planned that a Trialling Certificate will be issued;
"Points"	has the meaning ascribed to it in paragraph 9.1 of Schedule 6 (Service Level Agreement);
"Postage Provider"	means UK Mail Limited whose registered office is Express House, 464 Berkshire Avenue, Slough, Berkshire SL1 4PL and whose registered number is 00965783;;
"Pre-tax Profit"	means the Turnover for that financial year of the Contractor before tax, less the Contractor's actual costs including Overheads incurred in respect of the Services calculated in accordance with paragraph 15 of Schedule 5 (Charges) in that Financial Year as set out in the Statement of Account and/or the Open Book Accounts;
"Pricing Model"	means the document attached to Annex 1 of Schedule 5 (Charges);
"Print Provider"	means Communisis UK Limited whose registered office is at Wakefield Road, Leeds, West Yorkshire LS10 1DU and whose registered number is 01006371;
"Profit Margin"	means the amount of the Contractor's Pre-Tax Profit expressed as a percentage of the Turnover;
"Profit Share"	means the sharing of Pre-Tax Profit in accordance with paragraph 13 of Schedule 5 (Charges);
"Prosecution Policy"	means the policy on the prosecution of Licence Fee evaders to be provided by the Contractor;
"Prosecution Statement"	means a record of interview which would provide sufficient evidence against the interviewee such as to give a realistic prospect of conviction of that person or entity for a relevant Licence related offence under the WTA or the Communications Act 2003 anywhere in the Territory;
"Prosecution"	means any prosecution for a Licence related offence under the WTA or the Communications Act 2003;
"QDOS"	means the contact centre application used to facilitate customer calls forming part of the BBC System including all related

	hardware and software comprised in that database;
"Quarter"	means each period of three months commencing on the first day of each July, October, January and April, and "Quarterly" shall be interpreted accordingly;
"Quarterly Activity Plan"	means the quarterly activity plan prepared by the Marketing Provider prepared in accordance with the TVL Marketing Agreement;
"Rating Agency"	means the rating agency specified in Appendix 3 to Schedule 18 (Financial Distress);
"Records"	has the meaning ascribed to it in Clause 25.4;
"Refund"	means a refund made of the Licence Fee in accordance with the TV Licensing Refund Policy set out in Schedule 8 (BBC Policies and Standards) and "Refunded" shall be interpreted accordingly;
"Registers"	has the meaning ascribed to it in Clause 41.1;
"Regulations"	means any regulation or order enacted, issued or adopted in the Territory, in connection with the Licence and/or in relation to the detection of a television receiver;
"Reimbursement"	means monies paid towards an Issue Fee repayable because a Licence is not issued;
"Relevant Account"	means the Government's account for which the BBC is responsible (for credit to the HM Treasury consolidated fund account) or such other account as shall be notified by the BBC to the Contractor;
"Relevant Conviction"	means a Conviction that is relevant to the nature of the Services to be provided including fraud, embezzlement, dishonesty, theft and violence;
"Relevant Employees"	means an Employee of the Contractor approved and authorised in accordance with Clause 3.4 to carry out Prosecutions;
"Renewal"	means the issue of a Licence to a Customer who has already had a Licence;
"Reporting Period"	means the frequency of reporting for each Service Level, as described in Annex 1 to Schedule 6 (Service Level Agreement);
"Returned Mail"	means undelivered mail returned by sender by Royal Mail;
"Revenue Credit"	has the meaning ascribed to it in paragraph 21 of Schedule 5

	(Charges);
"Revenue Service Target"	means the specified level of Licence Fee revenues in each Financial Year of the Term as set out in Schedule [];
"Review Plan"	means a plan for undertaking the review and approval of a Documentary Deliverable, as described in Annex 2 of Schedule 3 (Transition);
"Revoked"	means in respect of a Licence where the letter of revocation is sent by the Contractor and "Revocation" will be construed accordingly;
"RIPA"	means the Regulation of Investigatory Powers Act 2000;
"SASSIE"	means the savings card administration system;
"Schedule"	means any of the Schedules to this Agreement;
"Search Warranty Policy"	means the policy on the obtaining and executing of a search warrant on Customer premises to be provided by the Contractor;
"Secure Bureau Service"	means the suite of applications used to facilitate taking card payments forming part of the BBC System including all related hardware and software comprised in that database;
"Security Plan"	means the plan prepared by the Contractor pursuant to Clause 19.2 and approved by the BBC;
"Segmentation Strategy"	means the segmentation strategy developed by the Marketing Provider and/or the Contractor whereby Customers are segmented to ensure that they have a contact experience suited to their needs and behaviours and that delivers successful outcomes;
"Service Architecture"	means the configuration of integrated components and communication links comprised in the overall structure of the BBC System integrated within the Service Environment;
"Service Area"	has the meaning ascribed to it in paragraph 2.2 of Schedule 6 (Service Level Agreement);
"Service Catalogue"	means the catalogue of technical services to deliver the BBC television licensing business processes;
"Service Credit Amount"	has the meaning ascribed to it in paragraph 9.2 of Schedule 6 (Service Level Agreement);
"Service Credit Cap"	has the meaning ascribed to it in paragraph 10 of Schedule 6 (Service Level Agreement);

"Service Credits Payable"	has the meaning ascribed to it under paragraph 9.3 of Schedule 6 (Service Level Agreement);
"Service Credits"	means service credits payable in accordance with Schedule 6 (Service Level Agreement);
"Service Documentation"	means the documents listed in paragraph 1.2 of Schedule 20 (Service Documentation) to be provided by the Contractor to the BBC pursuant to Clauses 7.1 and 41.1;
"Service Environment"	means the Contractor's computer, telecommunication and business operating systems used in the provision of the Services as at the date of this Agreement and as changed from time to time;
"Service Level (s)"	means the Key Performance Indicators and the Performance Indicators;
"Service Level Exception Report"	has the meaning ascribed to it in paragraph 7.3 of Schedule 6 (Service Level Agreement);
"Service Level Reporting"	means the reporting described in paragraph 7 of Schedule 6 (Service Level Agreement);
"Service Review Pack"	has the meaning ascribed to it in paragraph 3.4 of Schedule 4 (Governance);
"Services"	means all or any part of the services described in Schedule 2 (Services) (together with any other service the performance of which is necessary for, or incidental to the performance of such services) and the Additional Services;
"Severity 1 Error"	has the meaning ascribed to it in paragraph 9.23.1 of Annex 2 of Schedule 3 (Transition);
"Severity 2 Error"	has the meaning ascribed to it in paragraph 9.23.2 of Annex 2 of Schedule 3 (Transition);
"Severity 3 Error"	has the meaning ascribed to it in paragraph 9.23.3 of Annex 2 of Schedule 3 (Transition);
"Severity 4 Error"	has the meaning ascribed to it in paragraph 9.23.4 of Annex 2 of Schedule 3 (Transition);
"Severity 5 Error"	has the meaning ascribed to it in paragraph 9.23.5 of Annex 2 of Schedule 3 (Transition);
"Shared Use Assets"	means those assets used by the Contractor in connection with the provision of the Services but also used in the provision of the Services to other customers of the Contractor;

"Short Term Licence"	means an interim Licence as described in the Regulations;
"Single Services Framework"	means the Single Services Framework set out in the BBC Policies;
"Smooth Transfer"	means the transfer of the responsibility for the provision of the Services from the Incumbent to the Contractor or on the termination of any Service, and the termination or expiry of this Agreement the transfer of any Service to a Successor Service Provider without any disruption to the collection of the Licence Fee and so as to prevent or mitigate any inconvenience to Customers;
"Sole Use Assets"	means those assets used by the Contractor solely in connection with the provision of the Services;
"Source Code"	means up to date computer programming code of the software concerned in human-readable form such as to enable it to be compiled or interpreted into equivalent object code and all other information, software and documentation necessary for the use, reproduction, modification and enhancement of the software;
"Source Materials"	means the source code comprised in the BBC Software, and any Third Party Software not readily available in the market, (for the avoidance of doubt, in human-readable form and in such form that it can be compiled or interpreted into equivalent object code) together with all technical information and documentation (including all specifications, input and output formats, algorithms and file structures) necessary for the use, reproduction, modification and enhancement of such BBC Software and any Third Party Software;
"Special Event"	means any unusual or one off event (including but not limited to severe weather conditions, fuel shortages, failure of external bank transfer systems) which is beyond the Contractor's reasonable control and affects the Licence Fee Revenue Collected, but is not a Force Majeure Event, as further described in Clause 48;
"Specially Created IPR"	means any intellectual property rights in any work developed, commissioned or created wholly or substantially in connection with the provision of the Services or this Agreement;
"Standards"	means the Standards listed in paragraph 4 of Schedule 8 (BBC Policies and Standards);
"Start Date"	means the date on which the provision of the Services by the Contractor shall commence, which shall be 1 July 2012;
"Statement of Account"	means the description of the Contractor's costs (to be audited annually) in the provision of its obligations under this

	Agreement, in the form of the Cost Model;
"Statutory Discount"	means any discount in respect of the Licence Fee pursuant to the WTA or the Communications Act 2003;
"Step-In Event"	has the meaning ascribed to it in Clause 26;
"Step-In Notice"	has the meaning ascribed to it in Clause 26;
"Step-In"	means the exercise by the BBC of its rights pursuant to Clause 26;
"Step-Out Date"	has the meaning ascribed to it in Clause 26;
"Step-Out Notice"	has the meaning ascribed to it in Clause 26;
"Step-Out Plan"	has the meaning ascribed to it in Clause 26;
"Subcontractor"	means any third party to which the BBC has consented that the Contractor subcontracts its obligations under this Agreement in accordance with Clause 44.2.1 and as identified in Schedule 22 (Subcontractors) and shall include each Key Subcontractor;
"Successor Service Provider"	means any service provider and any or all of its subcontractors who take on the whole or part of the Services in succession to the Contractor or a Subcontractor which shall include the BBC;
"Target Operating Model or TOM"	means the Contractor's Target Operating Model described in the Tender Documentation;
"Technology Plan"	has the meaning ascribed to it in Clause 27.8;
"Television Penetration Rate Factor"	means the factor representing the rate of change in the Television Penetration Rate as further described in paragraph 7 of Schedule 5 (Charges);
"Television Penetration Rate"	means the percentage of total UK households that are "TV Households" according to the Broadcasters' Audience Research Board (BARB) adjusted by the BBC to take account of those households viewing licensable content on devices other than television sets but who do not own a television set;
"Tender Documentation"	means the tender documentation submitted by the Contractor in response to the BBC's invitation to tender as referred to in Recital (F) of this Agreement;
"Term"	means the Initial Term together with any extensions thereto effected in accordance with Clause 4.2 and subject to early termination of this Agreement in accordance with its terms;
"Termination Date"	means the date on which this Agreement [or any Services

	provided under it] expires or terminates;
"Terms and Conditions"	means the terms and conditions of this Agreement excluding the Schedules and their Annexes;
"Territory"	means England, Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man;
"Test Data"	means the data to be used in the performance of Testing;
"Test Plan(s)"	means a plan for undertaking a Test of a Service pursuant to Annex 3 of Schedule 3 (Transition);
"Test Specification(s)"	means a document containing detailed information regarding an individual Test, as described in paragraph 3.7.21 of Annex 3 of Schedule 3 (Transition);
"Test Stage(s)"	means an identified stage within a Test as described within Annex 3 of Schedule 3 (Transition);
"Test(s) Co-ordinator"	means an individual identified by the BBC or the Contractor, or by a third party such as any Other Contractor, to co-ordinate their respective responsibilities with regard to any Test;
"Tests and Testing"	any of the tests carried out in respect of the Services pursuant to Annex 3 to Schedule 3 (Transition);
"Third Party Bespoke IPR"	means the Intellectual Property Rights in any work (including software) written by or otherwise created or developed by a third party for the purposes of the Contractor or any party on its behalf involved in providing the Services to the BBC including the Intellectual Property Rights in any software interfaces created or developed by the third party for use with the BBC System;
"Third Party Software"	means any software in which the Intellectual Property Rights are owned by a third party not connected with the Contractor or the BBC;
"TOMI"	means the TV Licensing Operational Management and Insight System owned by the BBC and managed by the Marketing Provider, used primarily for the management of the marketing proofing process and for sharing information relating to marketing campaigns between the BBC, the Marketing Provider, Communis UK and the Contractor;
"Total Points"	has the meaning ascribed to it in paragraph 9.2 of Schedule 6 (Service Level Agreement);
"Trade Mark Licence"	means a trade mark licence in the form set out in Schedule 16 (Trade Mark Licence);

"Transfer Date"	means (i) the date on which this Agreement terminates or expires or, if earlier, (ii) in respect of termination of part of the Services, the date on which such Services are terminated;
"Transferring Employees"	means those employees who are wholly or mainly engaged in services equivalent to the Services immediately before the Start Date;
"Transition Board"	means a board consisting of representatives of the Incumbent (for the period of Migration only), the BBC and the Contractor with the responsibility for overseeing Transition as described in the Transition Plan;
"Transition Deliverables"	means a Deliverable required as part of the Transition Plan and shall include any deliverable listed in Annex 4 to Schedule 3 (Transition);
"Transition Milestones"	means the milestones for the performance of the Transition Responsibilities during the Transition Period and shall include the Milestones as set out in Annex 1 Part 1 of Schedule 3 (Transition);
"Transition Period"	means the Implementation Period and the Migration Period;
"Transition Plan"	means all documents produced and agreed by the BBC and the Contractor describing a Smooth Transfer of the Services from the Incumbent, including the Gantt Chart and the resources identified in Annex 1 to Schedule 3 (Transition), the draft communications plans set out in Annex 3 to Schedule 3 (Transition) and the Transition Deliverables;
"Transition Responsibilities"	means the respective obligations of the Parties set out in Schedule 3 (Transition) and as further described in the Transition Plan;
"Transition Working Group"	means a working group consisting of representatives of the Incumbent (for the period of Migration only), the BBC and the Contractor with the responsibility for the day to day delivery of the Transition as described in the Transition Plan and reporting to the Transition Board;
"Transition"	means the period of Migration and the Implementation Phase;
"Trial"	means a Test of a Service or element of the Service;
"Trialling Certificate"	a certificate issued by the BBC if all applicable Trialling Criteria in respect of the Documentary Deliverable or Service are Achieved;
"Trialling Criteria"	the criteria (developed and approved in accordance with Part A of Annex 2 of Schedule 3 (Transition)) against which the

	Deliverables or Services will be tested for the purpose of assessing whether or not they meet the Services;
"Trialling Failure"	means where a review of a Documentary Deliverable or a Test of a Service and or element of the Service is recorded as unsuccessful because the relevant Trialling Criteria have not been met;
"Trialling Procedure"	the procedure for trialling the Services and the Documentary Deliverables as set out in Part A of Annex 2 of Schedule 3 (Transition);
"Trialling Success"	means where a review of a Documentary Deliverable or a Test of a Service and/or element of the Service is recorded as successful because the relevant Trialling Criteria have been met;
"TUPE Regulations"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Turnover"	means, in relation to any Financial Year, the aggregate Charges and Contractor's Breakage Costs (excluding VAT) received by the Contractor for the provision of the Services from the BBC or any third party;
"TV Dealers"	has the meaning given in the WTA 1967;
"TV Licence Savings Stamps"	means the savings stamps issued for purchase by Customers as a means of saving towards payment of the Licence Fee;
"TV Licensing Licensable Places Policy"	means the BBC TV Licensing Licensable Places Policy listed in the BBC Policies;
"TV Licensing Savings Card" or "TVLSC"	means the TV Licensing Savings Card which allows Customers to save towards the payment of the Licence Fee;
"TVL Marketing Agreement"	means the agreement between the BBC and the Marketing Provider;
"TVL Net"	means the TV Licence intranet forming part of the BBC System including all related hardware and software comprised in that database;
"TVL Processes"	means the processes forming part of the BBC System: <ul style="list-style-type: none">(a) cheque production;(b) Over 75s refunds;(c) cheque reconciliation;(d) credit & debit card payment reconciliation;

- (e) unpaid manual direct debits;
- (f) homebanking reconciliation;
- (g) cheques reissued;
- (h) 2 year no set guards;
- (i) 1 year no set guards;
- (j) complaints database;
- (k) raille/large print requests;
- (l) duplicate licences;
- (m) customer on instalments (standing orders);
- (n) investigations (Licence held claims);
- (o) scheme players;
- (p) student accommodation;
- (q) MPs/MEPs/MLAs/LCC;
- (r) diplomats;
- (s) not yet coded – counterfoil;
- (t) not yet coded – monthly direct debit;
- (u) not yet coded – quarterly & annual direct debit;
- (v) continuous credit card;
- (w) manual payments;
- (x) uncharged receipts;
- (y) stamp encashment;
- (z) manual refunds (including superseded access database);
and
- (aa) cheque reissues (including superseded access database).

"TVL Web Back Office"

means the application that facilitates investigation of Customers' failed transactions on the TVL Websites and shall include all related software;

"TVL Websites"

means the BBC TV Licensing website currently located at the URL www.tvlicensing.co.uk, the cash plan website currently located at the URL <http://cashplans.tvlicensing.co.uk/products> and any other websites operated from time to time by or on behalf of the BBC in connection with TV Licensing and any modifications and/or developments to the same;

"TVLEO"

means the TV Licence enforcement officer systems forming part of the BBC System including all related hardware and software comprised in that database;

"TVLF Standard Documentation"	means all standard form documentation relating to the Licence process supplied by the BBC, or on behalf of the BBC, to the Contractor pursuant to this Agreement;
"Unlicensed Addresses"	means an occupied Licensable Place that does not have a Licence where required by the Regulations;
"Use"	means (when used in the context of computer software) the right to load, execute, store, transmit, display, copy, maintain, modify and enhance or otherwise utilise the software solely for the purposes connected with the provision or receipt of the Services or as otherwise envisaged by this Agreement including for the purposes of processing the BBC Data to the extent permitted by Law and the provisions of this Agreement. Such right of use shall not include the right to reverse assemble, reverse compile, decode or otherwise translate the BBC Software, except to the extent permitted by Law; and (when used in the context of items other than computer software) the word "Use" shall mean the use of that item as might reasonably be inferred by the nature of the item and the nature of the Services;
"User Acceptance Test"	means acceptance testing involving the users of the BBC System;
"Virus"	has the meaning ascribed to it in Clause 28.2.14;
"Warning Notice"	means a notice issued by the BBC to the Contractor pursuant to Clause 24;
"WFMT"	means the online, dynamically updated work flow management tool to be provided by the Marketing Provider to provide the BBC and the Contractor (and all other TV Licensing suppliers) (as agreed between the Parties including in respect of their access rights);
"Working Day"	means between the hours of 08:00 to 17:30 on any day (other than Saturday or Sunday) on which the banks are open for business in London;
"WTA"	means the Wireless Telegraphy Acts 1967 and 2006; and
"Year"	means each twelve (12) month period during the Term commencing on the Effective Date and every subsequent anniversary of the Effective Date.