

# BBC radio commissioning agreement

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**LICENCE TO BROADCAST ON RADIO MATERIAL WRITTEN FOR THE BBC**

**FORM: RADIO COMMISSIONING AGREEMENT**

An Agreement made on 2011 BETWEEN THE BRITISH BROADCASTING CORPORATION whose principal office is at Broadcasting House Portland Place London W1 1AA (“the BBC” which shall include any assignee, licensee, subsidiary or associated company and any other person, firm or company deriving title through or under it) AND the Writers’ Guild of Great Britain of 15 Britannia Street, London, WC1X 9JN (the “WGGB”) AND the Society of Authors of 84 Drayton Gardens, London SW10 9SB (“the Society”) AND the Personal Managers’ Association Limited whose registered office is at 83 Ebury Street, London SW1 9QY (“the PMA”) creating a model for good practice in the relations of the BBC with writers.

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## IT IS AGREED AS FOLLOWS:

**1. Definitions**

The following expressions shall have the following meanings and where defined in the Copyright, Designs and Patents Act 1988 as amended from time to time (“the Act”) expressions used in this Agreement shall bear the meanings given to them in the Act unless defined otherwise in this Agreement:

- 1.1 “Acceptance”: acknowledgement that the draft of the Work in question is in accordance with the brief specified by the BBC and of a quality acceptable for radio Broadcast by the BBC and the expression “Accept” shall have a corresponding meaning
- 1.2 “Adaptation”: a fictional dramatic work for a single programme or Series which converts an existing dramatic work written for another medium (such as a stage play) into a Work or Works for radio
- 1.3 “Audio Publication”: see Schedule Three
- 1.4 “Broadcast” means to broadcast (including in a cable programme) or so to authorise by any means now or hereafter known the Work or a performance reading or recitation of the Work in a Programme primarily for sound reception (and the first such broadcast or inclusion under this Agreement shall be referred to as “First Broadcast” and subsequent ones as “Broadcasts” whether received by wireless broadcast and/or inclusion in a cable programme), simultaneously or non-simultaneously live and/or recorded in the BBC’s Public Services
- 1.5 “BBC Digital Service” means a BBC Public Service Radio Channel other than one of the Core Services
- 1.6 “Commercial Distribution” means any distribution carried out as part of the BBC’s commercial services under clause 101 of the Framework Agreement as provided for under the BBC’s Royal Charter and which are in particular but without limitation provided or undertaken with a view to generating a profit and for clarity may include all or any of the acts restricted by copyright in a work under section 16 of the Act
- 1.7 “Core Services” means the Domestic Services and the World Service
- 1.8 “Deal Memo”: the agreement in writing between the BBC and the Writer based on the form set out in Schedule Five specifying particulars of the commission or rights extension in a previously commissioned Work which incorporates the terms set out in this Agreement and forms the contract for the commission or extension.
- 1.9 “Domestic Broadcast” means a Broadcast in the BBC’s domestic radio services for the British Isles comprising Radios 1,2,3,4, Five Live and BBC National Regions Radio (“the Domestic Services”) and (if desired), simultaneously with Domestic Broadcast in Local Radio or in the World Service (but for the avoidance of doubt excluding BBC Digital Services)
- 1.10 “Extract Fee” means where a substantial extract taken from the Work excluding sketch material (a) receives a repeat Broadcast in the BBC’s Public Services other than the Digital Services following the initial period of five years from First Broadcast, the appropriate fee indicated in Schedule One divided by the duration of the Script and multiplied by the duration of the extract; or (b) is exploited by way of Radio Distribution or Non-Theatrical Distribution the fraction of the Gross Receipts that the duration of the Extract bears to the duration of the Programme; or (c) is exploited by way of Audio Publication means the fraction of the Gross Receipts that the duration of the Extract bears to the duration of the Recording, Set or Compilation (as defined in Schedule Three)

- 1.11 “General Permissions Framework Agreement”: the agreement with this title entered into between the parties hereto which allocates functions and powers to the Radio Forum additional to those set out in this Agreement.
- 1.12 “Gross Receipts” means the BBC’s gross revenue actually received by the BBC in the United Kingdom from the worldwide Commercial Distribution of the Programme including the Work from all sources (including any licence fee agreed between the BBC and a co-producer in respect of the co-producer’s right to transmit the Programme on its own service) but excluding value added tax or any other tax
- 1.13 “Initial Fee” means the fee specified above payable to the Writer as set out in clause 2 provided that for exploitation pursuant to clause 3.1 below any residual payment which becomes due after a period of five years from First Broadcast shall be based upon the rates most recently so agreed
- 1.14 “Local Radio” means the BBC’s domestic radio services for the British Isles intended for a specific local area or areas of a National Region (but for the avoidance of doubt excluding Broadcasts syndicated over more than five local radio regions which shall be deemed a Domestic Broadcast) and the expressions “Local Radio Service” and “Local Radio Broadcast” shall bear corresponding meanings.
- 1.15 “Narrative Repeat” a repeat broadcast made within seven days of First Broadcast”.
- 1.16 “New Public Services Fee” means the payment additional to the Initial Fee as set out in Clause 3 which covers further Broadcasts of the Work and extracts thereof in BBC Digital Services and use on any Public Service (including but not limited to repeats on BBC Digital Services, so-called simultaneous Internet streaming or subsequent making available on demand via the Internet and/or via wireless means and Podcasts as defined in clause 3.1.4(b)) but excluding fees attributable to analogue repeats on the Domestic Services and the World Service
- 1.17 “Non-Theatric Distribution” means Trapped Audience Distribution as defined in this Agreement and also the sale or hire of recordings of radio programmes incorporating the Work by all forms of delivery and in all formats for listening by audiences in all institutions, organizations, clubs or societies of a business, educational, cultural, religious, charitable or social nature and other entities except for places to which the general public is invited and admitted upon the payment of an admission fee charged primarily for such viewing
- 1.18 “Podcast”: a programme or programme extract made available (i) on-demand without charge to the listener (ii) from the BBC’s websites or BBC-approved websites (iii) via the Internet or other Internet Protocol means including RSS feed and (iv) without the application of access or copy control technologies
- 1.19 “Print and Publication”: the publication of either the Work (“Publication”) or a work based on the Work (“Derivative Publication”) and in either case in printed book magazine and/or periodical form and/or in electronic form and including without limitation any novelised version, adaptation, dramatisation, narrative serialisation or syndication based on the Work
- 1.20 “Programme” means the programme comprising the principal recording of the radio production for which the Work is contracted for inclusion under this Agreement
- 1.21 “Public Service” means any service provided by the BBC for the purpose of promoting its Public Purposes under clause 100 of the Framework Agreement provided for in the BBC’s Royal Charter and/or the World Service as provided for under clause 64 of the Framework Agreement and any successor to or variation of those provisions in the Charter or Agreement. And a “BBC Public Service Radio Channel” means a BBC radio channel which is so provided
- 1.22 “New Public Service Rights” means the right to use the Work and extracts thereof in any medium now known or which may become known in or in connection with any Public Service provided by the BBC for radio or ancillary or complementary to radio including but not limited

to any BBC Digital Service any Public Service also provided by so-called simultaneous Internet streaming or subsequent making available on demand via the Internet and any BBC Public Service website intended to complement the BBC radio Programme in which the Work was originally Broadcast but excluding the analogue broadcast of the Core Services and the World Service

- 1.23 “Radio Distribution” means all forms of Commercial Distribution for radio of a sound recording incorporating the Work however transmitted or delivered whether now or hereafter known and including without limitation all forms of terrestrial broadcast, cable (and including any equivalent on-line, on-demand, streaming or webcast distribution) and/or satellite distribution and including for clarity the right to relay the Programme to the British Forces Broadcasting Service (BFBS) but excluding Audio Publication Non-Theatrical Distribution and also for the avoidance of doubt any Public Service use
- 1.24 “Radio Forum”: a forum established by the BBC, the WGGB, the Society and the PMA for the purpose set out in clause 8 of this Agreement
- 1.25 “Regional Broadcast”: a Broadcast in one National Region of the BBC’s Domestic Services and (if desired by the BBC) simultaneously with such Broadcast in the World Service
- 1.26 “RPI Adjustment”: an increase to the Initial Fee for the purpose of calculating any residual due to the Writer in respect of repeat Broadcasts commencing two years after first Broadcast and which shall be pro rata to the increase occurring between the Retail Prices Index (“RPI”) figure (including mortgage interest payments and indirect taxes) which is available for the month of first Broadcast of any single programme based on the Script or of the first episode of the series in question and the most recent published RPI figure available at the time of the repeat Broadcast
- 1.27 “Single Broadcast Fee”: an Initial Fee for a single Broadcast as set out in Clause 2 below
- 1.28 “Stage Rights”: the right to produce and perform live stage plays based on the Script (including allied merchandising and other customary exploitation rights)
- 1.29 “Television Transfer”: the adaptation and exploitation of the Work for performance on television or equivalent televisual presentation by all means and media now or hereafter known
- 1.30 “Theatrical Rights”: the right to produce exhibit and exploit by all means and media (including allied merchandising and other customary exploitation rights) a film for the cinema theatre based on the Script
- 1.31 “Trapped Audience Distribution” means the exploitation of the Work as recorded for radio by all forms of delivery and in all formats to closed circuit radio systems for listening by audiences in premises such as hotels, hospitals, educational institutions, military locations, apartment houses, condominiums, public houses, clubs, restaurants, and discotheques or in the transportation industry
- 1.32 “Two Broadcasts Fee”: the Initial Fee for Two Broadcasts as set out in Clause 2 below
- 1.33 “Work” means the presently or previously commissioned or submitted work (or where appropriate part of the work) of the type and title identified above being a complete literary or dramatic work from the following categories; sketches, questions, short stories and other prose works of fiction and non-fiction, verse, Adaptations of stage plays, or translations of all such works and extensions of rights in previously commissioned or contracted works including original plays and Dramatisations (meaning a Work which converts into dramatic form for radio a work not already in dramatic form)
- 1.34 “World Service” means the BBC’s World Services as defined in clause 64 of the Framework Agreement under its Royal Charter

- 1.35 “World Service Broadcast” means such number of Broadcasts throughout the World in the English Language on the World Service as may be required for a World Service cycle within a period of eight days from first Broadcast and (if desired) simultaneously with such Broadcast, in the BBC’s Domestic Services
- 1.36 “Writer”: the person or persons named as such in a Deal Memo into which the terms of this Agreement are incorporated

## **2. Commissions /Submissions/Extension of Rights and Initial Fee**

The BBC undertakes to commission writers to write new Works or contract existing Works on terms no less favourable than those contained in this Agreement.

### **2.1 Commissions and Submissions**

#### **2.1.1 Commissions**

The Writer will write and deliver the Work not later than the date specified in the Deal Memo or in the absence of such a date in accordance with a schedule to be agreed between the Writer and the BBC. The Work will be delivered in electronic form unless otherwise agreed.

The Writer will carry out the commission to the best of the Writer’s ability in accordance with the brief agreed by the Writer with the BBC including as to the duration specified in the Deal Memo and in consultation with such person or persons as the BBC may direct and including both rewrites and minor revisions requested by the BBC from time to time.

Half of the Initial Fee will be payable on return of the signed Deal Memo and the other half on Acceptance by the BBC of the Work as suitable for broadcasting.

#### **2.1.2 Submissions**

In the case of Works, for example short stories and sketches, which are submitted to the BBC, the Writer also undertakes to carry out both rewrites and minor revisions if requested by the BBC and to deliver the Work. In such cases the Initial Fee shall be paid 50% on signature and 50% on Acceptance by the BBC of the Work as suitable for broadcasting. If the Writer’s submitted Work does not require rewrites the Initial Fee shall be paid in full on acceptance following signature.

### **2.2 Extensions**

For the extension of rights in a Work the Writer has already written for the BBC, the Initial Fee will be paid in full upon first broadcast or other use under this licence following signature.

### **2.3 Initial Fee Amount (radio broadcast commissions)**

The Initial Fee will normally be an amount which satisfies the Writer’s remuneration for one Broadcast (“the Single Broadcast Fee”) but may at the BBC’s election be an amount which satisfies the Writer’s remuneration for two Broadcasts (“the Two Broadcasts Fee”) and upon payment of the latter, the BBC shall be entitled to make one repeat Broadcast of the Programme on the originating service at any time without further payment.

### **2.4 Fee amount (original scripted/sketch podcast commissions)**

The fee payable for a commission for an original scripted or sketch Podcast shall be as set out below covering the Writer’s remuneration for Podcast exploitation for a period of 5 years from first being made available as a podcast.



Category 1	Up to 6 Minutes	<b>£315</b>
Category 2	7-10 Minutes	<b>£579</b>
Category 3	11-19 Minutes	<b>£1051</b>
Category 4	20-29 Minutes	<b>£1578</b>
Category 5	30-40 Minutes	<b>£2314</b>
Scripts over 40'00	subject to individual negotiation	

### **3. Rights Granted**

In consideration of the payment of the Initial Fee and various other payments as set out in this Agreement, the Writer grants to the BBC with full title guarantee during such period as such rights are protected by the laws of any jurisdiction and any extensions or revivals thereof and thereafter as far as possible in perpetuity an irrevocable licence in the Work whether of present or future copyright of the following rights and including the right to abridge and adapt (including to translate) the Work for the purposes of Broadcast.. Such licence shall be exclusive until First Broadcast. Following first broadcast radio and podcast rights remain exclusive to the BBC, and all other rights are then non-exclusive subject to Clause 4 below.

#### **3.1 First Broadcast on BBC Core Service /BBC Digital Services/Local Radio and New Public Services**

##### **3.1.1 First Broadcast in Core Services**

If a Core Service is specified above as the Initial Service, the right in return for the Initial Fee:

- (a) to include the Work in the Programme and to give a Domestic Broadcast or a World Service Broadcast as the First Broadcast during a period of three years from signature of this Agreement; and
- (b) to give further Broadcasts in BBC Digital Services and to exercise the New Public Service Rights subject to an additional payment of the New Public Services Fee of 15% of the Single Broadcast Fee (payable upon Acceptance of the Work in the case of commissions and submissions under clause 2.1.1 and 2.1.2 respectively and on Broadcast in the case of extensions under clause 2.2) which shall license use of the Work for a period of five years from first being made available other than in the Core Services;

##### **3.1.2 First Broadcast in BBC Digital Services**

If a BBC Digital Service is specified above as the Initial Service, the right in return for the Initial Fee:

- (a) to include the Work in the Programme and to give the First Broadcast in that Service during a period of three years from signature of this Agreement; and
- (b) to give further Broadcasts in BBC Digital Services and to exercise the New Public Service Rights subject to an additional payment of the New Public Services Fee of 15% of the Single Broadcast Fee (payable upon Acceptance of the Work in the case of commissions and submissions under clause 2.1.1 and 2.1.2 and on Broadcast in the case of extensions under clause 2.2) which shall license use of the Work for a period of five years from first being made available other than in the Core Services;

### **3.1.3 First Broadcast in BBC Local Radio Stations**

If a Local Radio Service is specified above as the Initial Service, the right in return for the Initial Fee:

- (a) to include the Work in the Programme and to give a Local Radio Broadcast as the First Broadcast during a period of three years from signature of this Agreement; and
- (b) to give further Broadcasts in BBC Digital Services and to exercise the New Public Service Rights subject to an additional payment of the New Public Services Fee of 15% of the Single Broadcast Fee, (payable upon Acceptance of the Work in the case of commissions under clause 2.1.1 and 2.1.2 and on Broadcast in the case of extensions under clause 2.2) which shall license use of the Work for a period of five years from first being made available other than in the Core Services;

### **3.1.4 Use on Radio Four Extra, Radio Player, Podcasts and Renewal of Public Service Rights:**

Following the expiry of such five year period in 3.1.1, 3.1.2 or 3.1.3.:

- (a) i) the BBC's right to make Broadcasts on Radio 4 Extra (and upon Broadcast to make programmes available for access by the public by means of electronic transmission for audio on demand) shall be subject to the payment of a fee equivalent to 5% of a Single Broadcast Fee for the Script. Such fee shall cover the Writer's remuneration for the use of the Work on six transmission days each consisting of any continuous period of twenty four hours during which the Script may be Broadcast four times over a period of three years commencing from the first such Broadcast on Radio 4 Extra and provided that if the BBC has exhausted the number of Broadcasts made in return for the above payment or if the three year period has expired it may pay another such 5% fee and obtain the right to further three year licences on the same terms and/or:
  - ii) the BBC shall have the right to make further uses of the Script as described in Definition 1.21 "New Public Services Rights" (other than Transmissions on Radio 4 Extra in 3.1.4 (a) (i) above) for one or more further periods of five years (at the BBC's option) subject to further payment of a fee equivalent to 10% of a Single Broadcast Fee in respect of each five year period. Such fee shall be payable upon the first use occurring after expiry of the previous five year period. For clarity, payments are subject to the RPI Adjustment
- (b) The BBC shall also have the right if it wishes to make Podcasts of its radio programmes available in its Public Services for a limited period of time. The New Public Services Fee shall cover the Writer's remuneration for the use of the Work for up to five years commencing from so being made available..
- (c) The payment arrangements including but not limited to those set out in sub-clause (b) above in this Agreement may be varied by any relevant alternative provisions in the General Permissions Framework Agreement when entered into on behalf of writers by the WGGB, the Society and the PMA with the BBC as the parties to the Radio Forum

### **3.2 Distribution to Educational Establishments**

The right from the date of the First Broadcast of the Work to make and distribute (or authorise others to make and distribute) recordings of an Educational Programme in the British Isles to schools and other educational establishments on a cost recovery basis where the establishment has not recorded the programme under licence from the Educational Recordings Agency.

### **3.3 Repeats on Core Services and Local Radio Stations**

The right from the date of the First Broadcast or Podcast of the Work (whether under clause 2.4, 3.1.1, 3.1.2 or 3.1.3), to give repeat Broadcasts of the Programme simultaneously or non-simultaneously in the BBC's Core Services as a Domestic Broadcast or a World Service Broadcast or on Local Radio subject to payment for each repeat Broadcast upon broadcasting taking place of the applicable rate for the applicable service as set out in Schedule One to this Agreement or in the case of a substantial extract (unless the use is permitted without payment by law or in accordance with this Agreement) of the Extract Fee;

### **3.4 Commercial Distribution**

The right from the date of First Broadcast of the Work to exploit or authorise the exploitation of the Programme or part of it including the Work or (except in the case of commissioned sketches) an extract from the Work throughout the world by way of Commercial Distribution by:

- 3.4.1** Radio Distribution and Non-Theatric Distribution subject to payment to the Writer of royalties of an amount equal to 5.6% of Gross Receipts or in the case of an extract from the Programme of the Extract Fee
- 3.4.2** Audio Publication subject to the further payments set out in Schedule Two in respect of royalties based on the Gross Receipts or in the case of an extract from the Programme of the Extract Fee and subject to the further provisions set out in Schedule Three

Provided that:

- (1) The BBC shall account to the Writer for any royalties above as follows:
  - (a) Radio Distribution and Non-Theatric Distribution royalties shall be paid to the Writer as set out in Schedule Two below;
  - (b) Audio Publication royalties shall be accounted for as set out in Schedule on the terms set out in Schedule Two.
- (2) Where the Work has been jointly written or a translation of the Work is also contracted and in either case is contracted from writers separately the royalties above shall be apportioned between the writers;
- (3) If more than one Work is included in a Programme contracted from writers separately then the royalties above shall be shared in the same proportion as the Writer's contribution bears to the duration of the whole Programme
- (4) The Writer acknowledges that such payment takes account of all the circumstances including the right to equitable remuneration for rental and lending rights
- (5) In the case of verse or of abridgements and/or in order to take account of the specific requirements of third party co-financiers or co-producers the BBC shall be entitled to negotiate in good faith with the Writer a buy out of the Writer's right to receive any fee residual or royalty in place of the arrangements set out in this Agreement (including Audio Publication). In these negotiations the market value of the additional rights to be bought out will be taken into account.

### **3.5 Miscellaneous Uses**

The right without further payment to make and use copies of the Work or recordings of the Work as included in the Programme for:

- (i) the private purposes of the BBC (including staff training) or the purposes covered by this agreement
- (ii) broadcasting brief excerpts in programmes of an historic or reminiscent nature
- (iii) deposit, if the recording is considered of permanent interest with the National Sound Archive and with similar archive-holding bodies for preservation purposes and for private study by bona fide students
- (iv) translating the Work into foreign languages for Broadcast or to make sales
- (v) playing or performance at radio and related media festivals and award ceremonies
- (vi) use in publicity and promotional purposes in all media now known or hereafter devised or discovered
- (vii) inclusion of brief extracts of the Programme in programmes of a reminiscent nature and in BBC review programmes such as the programme Pick of the Week.

For clarity the BBC will also have the right without further payment to translate record abridge and adapt the Work for all purposes under this Agreement and to make all uses of the Work permitted under the Act.

## **4. Options and Reserved Rights**

### **4.1 Further Programmes**

For commissioned and submitted Works which are original contributions not based on another source work the BBC shall have the exclusive first option to commission the Writer to write further Works for radio or other sound programmes on an exclusive basis throughout the world on terms to be agreed in good faith for a programme or series including any character(s) created by the Writer on the basis that the option will expire either one year after first Broadcast of any first programme featuring the character(s) or one year after Acceptance of the Work if earlier.

### **4.2 Television Transfer Rights**

For all Works Television Transfer rights are reserved to the Writer provided that the Writer hereby grants to the BBC the exclusive first option to acquire such rights throughout the world on terms to be agreed in good faith during the period ending one year following first Broadcast of any first programme based upon the Work or in the case of a series, first Broadcast of the last programme in the series.

The Writer shall procure that the BBC shall be contractually entitled to a credit in any third party production made in exercise of such rights.

### **4.3 Print and Publication Rights**

Print and Publication rights in all Works (except where and to the extent that Print and Publication rights have been granted to a third party) are reserved to the Writer provided that the Writer hereby grants to the BBC the exclusive first option to acquire such rights throughout the world on terms to be agreed in good faith during the period ending one year following first Broadcast of any first programme based upon the Work or one year after acceptance of the Work if earlier.

The Writer shall procure that the BBC shall be contractually entitled to a credit in any third party publication made in exercise of such rights.

#### **4.4 Stage/Theatric Rights**

Stage Rights and Theatric Rights in the Work are reserved to the Writer provided that the Writer hereby grants to the BBC the exclusive first option to acquire such rights throughout the world on terms to be agreed in good faith during the period ending one year following first Broadcast of any first programme based upon the Work or one year after Acceptance of the Work if earlier.

### **5. Holdback and Turnaround**

In the case of both commissions and submissions, the Writer undertakes not to authorise any commercial broadcast, on-demand transmission (or other communication to the public) or public performance of the Work before the first Broadcast licensed under clause 3.1 above or the end of three years from Acceptance, whichever first occurs. If the first Broadcast does not occur within such period all rights will revert to the Writer. This shall be without prejudice to the Writer's reserved rights.

### **6. Programme Trade Mark**

#### **6.1 Registration**

6.1.1 The Writer acknowledges and agrees that the BBC shall be entitled to register the title of the programme as a trademark in the name of the BBC. The parties shall consult in good faith how best to maximise the protection of the programme trade mark, but the BBC shall be entitled to decide whether to apply for registered trade mark protection and registration shall be at its cost. The Writer shall promptly provide the BBC and its agents with such assistance as the BBC (or its agents) may reasonably request in respect of such trade mark application, at the BBC's cost.

6.1.2 The BBC hereby grants to the Writer an exclusive royalty-free, irrevocable licence to use the programme trade mark in respect of the exclusive rights retained by the Writer under this Agreement for the duration of such rights. Where the Writer has granted the BBC an option in rights reserved to the Writer and the BBC has then subsequently acquired a licence to exploit the reserved right under option the Writer's trademark licence in that reserved right shall be suspended for the period in which the BBC is exploiting the right under licence from the Writer and following expiry of the BBC's licence of the right the Writer's licence shall be restored but subject to the BBC's right continuing right to exploit programmes produced hereunder.

6.1.3 If the Writer has reasonably requested the BBC by written notice to file an appropriate application to register the title of the programme as a trade mark and the BBC has, without good reason, failed to do so within the period of time specified, the Writer shall be entitled to make such application in the joint name of the Writer and the BBC. (Such period shall expire no sooner than the earlier of expiry of the BBC's right to make a first Series or of a second Series or of expiry of the date of first Transmission of the first episode of the second Series.) The BBC shall promptly provide the Writer and their agents with such assistance as the Writer (or their agents) may reasonably request in respect of such trade mark application, at the Writer's cost.

6.1.4 The Writer shall not exercise any of the Writer's own rights in the programme title trade mark in any way which would bring the programme or the BBC into disrepute or infringe BBC guidelines as notified to the Writer or as available on the BBC's public internet website (at URL [www.bbc.co.uk](http://www.bbc.co.uk)).

#### **6.2 Infringement and right to take action**

6.2.1 In the interests of protecting the programme title if the Writer becomes aware of any actual,

threatened or suspected infringement by a third party of the trade mark, the Writer shall use best endeavours to give the BBC notice of such infringement.

- 6.2.2 The BBC shall consult with the Writer about what action to take, if any, in respect of such infringement and shall in its discretion but following consultation with the Writer, have the right to commence proceedings or to take any such other action in relation to such infringement as it deems appropriate. The provisions of section 30 of the Trade Marks Act 1994 are excluded.
- 6.2.3 The Writer shall provide such co-operation or assistance as may be reasonably required by the BBC in order to pursue or defend such proceedings or take such other action, including joining the action as a party; and the BBC shall reimburse the Writer with their costs of providing any such assistance co-operation and action.

## **7. Disputes Procedure**

- 7.1 If a dispute relating to a Work covered by this Agreement arises between a Writer and the BBC which cannot be settled by direct discussion then either party will have the right to refer the issue to a panel which shall consist of the Head of Talent & Rights Negotiation Group the relevant head of the production department and two of the Writer, the Writer's representative or representative of the Society, the WGGB or the PMA, at the Writer's election. This clause shall not however be invoked in a manner which might override any other clause in this Agreement or call into question the BBC's reasonable and proper discretion to accept or reject a Work .
- 7.2 Any dispute regarding the interpretation of this Agreement or the interpretation of an individual contract between the BBC and a writer of a Work covered by this Agreement which cannot be resolved by discussion between the parties shall be referred to an Arbitration Committee consisting of two representatives of the BBC and any two of the Writer or Writer's representative or representative of the Society, the Guild or the PMA as the case may be. Failing settlement it shall then be referred to a single Arbitrator mutually acceptable to both sides who shall determine the issue and whose decision shall be binding on both parties.

## **8. Regulation and Radio Forum**

### **Regulation**

- 8.1 The parties hereto shall only amend this Agreement through the mechanism of the Radio Forum as provided for below. This provision does not limit the right of the BBC and the Writer to agree to amend the Deal Memo entered into between them.
- 8.2 If at any time after signature of a Deal Memo by or on behalf of a Writer and the BBC
- (a) any of the provisions for payments to a Writer set out in Schedule One and Schedule Two of this agreement are altered; or
  - (b) the fee, residual or royalty for any usage of a Script or for which a payment has not been specifically set out in this Agreement has been determined,

then payments to be made to the Writer shall reflect such alteration in respect of all relevant uses made of the Script after the date of such alteration or shall reflect such determination in respect of all relevant uses made of the Script whether before or after the date of such determination PROVIDED THAT such alteration or determination has been made

- (i) in accordance with the mechanism of the Radio Forum;
- (ii) by arbitration as provided for in clause 8.11; or
- (iii) by an expert in accordance with clause 8.3.

- 8.3 It is agreed that if this Agreement between the BBC, the WGGB, the Society and the PMA is terminated, with the consequence that the Radio Forum ceases to function then
- (a) those matters that are to be defined or determined by the Radio Forum shall instead be defined or determined (unless otherwise agreed between the BBC, the Society, the WGGB and the PMA) by an expert to be appointed by agreement between the parties or, failing agreement on such appointment being reached within one month of a request to agree such appointment being made, by the Head of Mediation Services for the time being of the Arbitration, Conciliation and Advisory Service (ACAS), such person to act as expert and not as arbitrator and his decision shall be binding on the BBC and the Writer of any Script covered by this Agreement; or
  - (b) if at any time the WGGB, Society or PMA has ceased to exist, sub-clause (a) above shall operate as if the parties had failed to agree on the appointment of the expert.

### **Radio Forum**

- 8.4 With effect from the date of signature of this Agreement the Radio Forum shall have responsibility for this Agreement in accordance with clause 8.7.
- 8.5 The Radio Forum is comprised of two representatives each from the BBC, WGGB, the Society and PMA. Each party is entitled to permit one further representative to attend in the role of observer and/or administrative assistant (in the case of the BBC this will be the Secretary to the Radio Forum). Decisions of the Radio Forum are reached unanimously. Additional representatives and further parties may be invited by the Radio Forum to attend specific meetings. The Radio Forum has a Secretary provided by such of the parties as may be agreed from time to time who is responsible for the administration of the Radio Forum. Minutes of meetings of the Radio Forum are issued within three weeks of the date of the meeting and approved by the parties to the Radio Forum within a further two weeks.
- 8.6 There are two regular meetings of the Radio Forum each year held on a six monthly basis. The date of a regular meeting is normally be agreed between the parties at least four weeks in advance. Any party may call ad-hoc meetings subject to the provision of one week's notice.
- 8.7 The powers of the Radio Forum in relation to this Agreement are:
- (a) to agree the minimum terms and conditions under which writers are engaged and payments are to be made by the BBC for exercising rights in relation to existing forms of Public Service use and commercial exploitation of Scripts as provided for in this Agreement,;
  - (b) to agree the minimum terms under which writers are engaged by the BBC for new forms of Public Service use and commercial exploitation for which the rights have been granted to the BBC under this Agreement but for which no payment has yet been provided;
  - (c) to resolve disputes arising out of the operation of this Agreement.
- 8.8 The BBC will notify the Radio Forum as soon as practicable of any new Public Service or commercial service, venture or form of exploitation proposed by the BBC which will include the use of contributions by writers commissioned in accordance with this Agreement together with related commercial and other relevant information. Where any new service, venture or exploitation involves a use for which the payment has not been dealt with by the existing agreement ("a New Use"), the Radio Forum will agree any terms that will apply, in advance of the commencement of the New Use.

- 8.9 In the event of terms not being agreed through the Radio Forum in respect of a New Use the issue will be referred to arbitration for determination but if it has not been possible for terms to be determined before the commencement of the New Use, the BBC shall be entitled to commence the New Use pending determination of the terms, provided the matter has been discussed at not fewer than two meetings of the Radio Forum (including ad hoc meetings).
- 8.10 It is agreed by the parties that the proper operation of the Agreement is dependent on the Radio Forum and the parties shall therefore be obligated to manage the Radio Forum in good faith.
- 8.11 A reference to arbitration will be made in the event that the Radio Forum cannot reach agreement on the terms to apply for the use of writers' contributions for a New Use which is not dealt with by the terms of the Agreement.
- 8.12 The Radio Forum shall appoint an arbitrator who will agree the terms of reference for the arbitration with the BBC, the Society, WGGB and PMA. The decision of the arbitrator will be final and binding. In the event that agreement cannot be reached on the appointment of a single arbitrator, the Arbitration, Conciliation and Advisory Service (ACAS) shall appoint an independent arbitrator.
- 8.13 The period from the start of the process (i.e. between notification in writing to the Secretary of the Radio Forum of a reference to arbitration) to the end of the process (i.e. decision being made by the arbitrator) will be a maximum of eight weeks.

## **9. Collective Administration and Data Protection**

### **Collective Administration**

- 9.1 Where a foreign or domestic collecting society (“the Collecting Society”) grants or administers a licence of the right to use the Script (in particular but not by way of limitation) by inclusion of the work in a service transmitted by satellite, cable or other terrestrial means then the BBC shall at the request and expense of the Collecting Society take such steps as may be reasonable to assist the Collecting Society to lay claim to any monies to which it may be entitled or mandated to collect and administer in respect of the right in question PROVIDED ALWAYS that the BBC shall not be liable to the Writer for any failure on the part of the Collecting Society to lay claim to such monies or to distribute any share thereof to the Writer and the Writer shall have no claim against the BBC for payment in respect of such exploitation.
- 9.2 The Writer agrees that the BBC may disclose to the Collecting Society information which the BBC holds about this Agreement and any previous Agreements between the Writer and the BBC which involve Scripts written by the Writer including the Writer's name and agent's address or if the Writer has no agent the Writer's home address so as to assist the Collecting Society to identify those entitled to receive monies collected and held by the Collecting Society as a result of its activity as a collecting and licensing body.

### **Data Protection**

#### **9.3 Data Protection Act Notice**

Personal information will be held by the BBC and will only be held and used to manage the relationship between the contributor and the BBC, including making payments, giving notices, purposes connected with the exploitation of the contribution hereunder and further offers to write material or carry out engagements for the BBC. Personal details will only be shared by the BBC with BBC Worldwide and with the relevant public authorities to enable the BBC to fulfil its statutory, regulatory and compliance obligations and will not be passed to any other third party without first obtaining the contributor's consent (except as may already be



provided for hereunder). Further information on the BBC's privacy policy can be found at <http://www.bbc.co.uk/privacy/>

## **10. Warranties and Indemnity**

The Writer warrants that the Writer:

- 10.1** is or will be the sole author of the Work which is or will be wholly original to the Writer (except to the extent that it is based on or relates to the work of third parties provided by the BBC or a third party work which is otherwise agreed for inclusion in writing by the Writer and the BBC) and does not infringe the copyright or any other right of any third party nor contain any defamatory statement or innuendo which if published in any form whatsoever might confer on any person firm or company a right of action or claim for damages (provided however that the Writer shall not be liable for any defamatory matter which in the opinion of the BBC was included in the Work without negligence or malice on the Writer's part)
- 10.2** is free to accept this engagement, and has no commitments and will not make or accept any commitment which shall prevent the full rendering of the Writer's services required to the BBC in accordance with this Agreement;
- 10.3** is a "qualifying person" (for the purpose of ensuring that the Work qualifies as a copyright work) within the meaning of the Act ;
- 10.4** has not granted and, for so long as this Agreement remains in effect, will not grant or attempt to grant to any other person, firm or corporation any rights the exercise of which would in any way derogate from or be inconsistent with the rights granted under this Agreement;
- 10.5** will at the expense of the BBC do all such further acts and sign or execute all such further documents or deeds as the BBC may require to protect vest in or confirm to it the rights intended to be granted hereby;
- 10.6** will indemnify the BBC against all actions proceedings costs claims and damages and any compensation agreed on the advice of Counsel arising from any breach or non-performance by the Writer of any warranty contained in this Agreement.

## **11. Moral Rights**

- 11.1** The Writer recognizing the needs of radio production waives all the Writer's moral rights under sections 77 and 80 of the Act.
- 11.2** Notwithstanding clause 11.1 above the BBC undertakes to credit the Writer in accordance with its editorial guidelines.
- 11.3** A breach of clause 11.2 shall not entitle the Writer or the author of the Work to seek injunctive relief and the sole remedy shall be in damages or by the BBC's own complaints process (set out on the BBC's website at [www.bbc.co.uk/complaints](http://www.bbc.co.uk/complaints)). The BBC shall use reasonable endeavours on a prospective basis to rectify any breach of clause 11.2 above.

## **12. Dates For Payment**

Payments to be made shall:

- (a) In the case of payments under Clause 2.1, 2.2, 3.1 or 3.3 above become due for payment 30 days after the event giving rise to the payment obligation;

- (b) In the case of payments under Clause 3.4.1 above become due for payment ninety days following the date on which the BBC receives the Gross Receipts if the BBC or an associated or subsidiary company is distributing, or if a third party is distributing from the date on which the BBC is notified of the exploitation. The payment will be accompanied by an explanation of how the amount due to the Writer is calculated. If the sum due is less than £10 the amount due will be carried forward to the next payment date unless otherwise specifically requested by the Contributor;
- (c) In the case of payments under clause 3.4.2 as set out in Schedule Three below.

### **13. Editorial Control**

For the avoidance of doubt the BBC shall have editorial control over the Programme and shall not be bound to make a Programme or use the Work or any part thereof in any way and if it does not do so shall not be liable to the Writer in any way for any loss or damage suffered by the Writer thereby or any failure to obtain publicity or any opportunity to enhance the reputation of the Writer.

### **14. BBC's Licensees**

The BBC shall be entitled to license or sub-license any of the rights granted to it by the Deal Memo and the benefit of the whole or any part of the agreement and the warranties and covenants of the Writer therein contained to any other person firm or company whatsoever PROVIDED THAT the BBC will remain liable in an ongoing manner for its obligations and undertakings as set out in its agreement with the Writer and that any licence of the right to make the Recording will be agreed in good faith consultation with the Writer. The BBC agrees to give the Writer notice of any licence of the entire benefit of its agreement with the Writer within twenty-one days of its occurrence.

### **15. Term and Termination**

The Agreement between the BBC the Society the WGGB and the PMA may be terminated by any party on giving 6 months' written notice of termination to the others, no such notice to be given prior to the fifth anniversary of the date of its signature. Termination of the Agreement shall have no effect on the subsistence of any agreement between the BBC and a Writer which incorporates its terms.

### **16. Notices**

- 16.1 Any notice required to be given pursuant to the BBC's agreement with the Writer shall be in writing (not e-mail) and shall be delivered to the address of the other party set out in that agreement or such other address as may be notified in writing to the other party from time to time.
- 16.2 Any notice required to be given pursuant to the Agreement between the BBC the Society the WGGB and the PMA shall be in writing (not email) and shall be delivered to the address of the relevant party set out in the Agreement or such other address as may be specified in writing to the relevant party from time to time.
- 16.3 Any such notice duly given shall be deemed to have been received: if delivered by hand at the time of delivery; or if sent by fax by the first working day next following the day of sending; or if sent by post four working days after posting.

**17. Assignment**

The Writer shall not assign transfer charge or deal in another manner with the Writer's agreement with the BBC or any right of the BBC under it or sub-contract any or all of the Writer's obligations under it.

**18. Publicity**

The BBC shall be entitled to use the Writer's name, approved biography and approved photograph or likeness in association with any use of the Script licensed under this Agreement but not so as to suggest that the Writer approves or endorses any product other than the Programme based on the Script itself.

**19. Variation**

19.1 No amendment to the terms of the agreement between the BBC and the Writer shall be valid or binding unless made by prior written agreement between the parties to that agreement or as provided for in that agreement.

19.2 No amendment to the terms of the Agreement between the BBC the Society the WGGB and the PMA shall be valid or binding unless made by prior agreement between the parties or as provided for herein.

**20. Value Added Tax and Receipt of Payment**

All payments referred to in the Agreement:

20.1 are exclusive of Value Added Tax and the BBC agrees to pay Value Added Tax properly payable with respect to such payments on receipt of the appropriate invoice.

20.2 shall be paid to the Writer or to the Writer's authorised representative whose receipt shall be deemed to be authorised receipt of the payment by the Writer

**21. Severability**

The unenforceability of any single provision of the agreement between the BBC and the Writer shall not affect any other provision therein.

**22. Writer's Agent**

The Writer hereby authorises their agent, if named at the head of this Agreement to receive on the Writer's behalf any and all sums of money due to the Writer under this Agreement and hereby accepts that the Agent's receipt thereof shall constitute a good and valid discharge for the BBC of all such due sums.

**23. No Agency Partnership Joint Venture or Employment**

Nothing in this Agreement shall be deemed to constitute either party as the agent of the other party or create a partnership joint venture or contract of employment between the parties.

**24. Whole Agreement**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter and supersedes all prior arrangements negotiations and discussions (whether oral or written) between the parties relating thereto.

**25. Proper Law**

This Agreement shall be deemed to have been made in the United Kingdom shall be governed by English law and the parties hereto agree to submit to the exclusive jurisdiction of the English Courts.

**26. Headings**

The headings of the Clauses of the Agreement are provided for reference only and shall not limit or affect the meaning or interpretation of the said clauses.

## RADIO COMMISSIONING AGREEMENT

### SCHEDULE ONE

#### REPEAT FEES FOR BBC PUBLIC SERVICE USES

1. The BBC will pay the Writer the following amounts in respect of repeat Broadcasts within thirty days of such Broadcast taking place:

#### Service or Genre for which Commissioned

A.	<b><u>Domestic and World Services</u></b>	
	<b><u>1</u></b>	<b><u>2</u></b>
<b>Broadcast</b>	<b><u>Single Broadcast Fee Option</u></b>	<b><u>Two Broadcasts Fee Option</u></b>
First Domestic, Regional or World Service Broadcast	Included in Single Broadcast Fee  <b>Extensions</b> Included in the Single Broadcast Fee	Included in Two Broadcasts Fee
First repeat in original service	Narrative Repeat: <ul style="list-style-type: none"> <li>• 65% of Single Broadcast Fee</li> </ul> Other repeats: <ul style="list-style-type: none"> <li>• 75% of Single Broadcast Fee if Domestic Broadcast</li> <li>• 50% of Single Broadcast Fee if World Service Broadcast</li> </ul> <b>Extensions</b> Narrative/Other Repeat – 100% of Single Broadcast Fee World Service – 50% of Single Broadcast Fee	Included in Two Broadcasts Fee
Further repeat if as Domestic Broadcast	Narrative Repeat: <ul style="list-style-type: none"> <li>• 65% of Single Broadcast Fee</li> </ul> Other repeats: <ul style="list-style-type: none"> <li>• 75% of Single Broadcast Fee</li> </ul> <b>Extensions</b> Narrative/Other Repeat – 100% of Single Broadcast Fee	Additional 45% of Two Broadcasts Fee
Repeat as Regional Broadcast	Narrative Repeat: <ul style="list-style-type: none"> <li>• 65% of Single Broadcast Fee</li> </ul> Other repeats: <ul style="list-style-type: none"> <li>• 75% of Single Broadcast Fee if Domestic Broadcast</li> </ul> <b>Extensions</b> Narrative/Other Repeat – 100% of Single Broadcast Fee	Additional 30% of Two Broadcasts Fee

Further Repeat as World Service Broadcast	50% of Single Broadcast Fee  <b>Extensions</b> 50% of Single Broadcast Fee	Additional 30% of Two Broadcast Fee
Repeat in Foreign Language on World Service (2 Broadcasts)	25% of Single Broadcast Fee  <b>Extensions</b> 25% of Single Broadcast Fee	Additional 15% of Two Broadcasts Fee
All repeats on BBC Digital Services for five years from first transmission	Included in New Public Service Use Fee	Included in New Public Service Use Fee
Repeats on Radio 4 Extra upon expiry of five year period above	Additional 5% of Single Transmission Fee for three year package of uses set out in clause 3.1.4 a) i)	Additional 5% of Single Transmission Fee for three year package of uses set out in clause 3.1.4 a) i)
Repeats/Uses covered by the New Public Services Fee (excluding Radio 4 Extra) upon expiry of initial five year licence	Additional 10% of Single Transmission Fee per additional five year licence as per Clause 3.1.4 (a) (ii)	Additional 10% of Single Transmission Fee per additional five year licence as per Clause 3.1.4. (a) (ii)

**Payments for BBC Public Services Uses**

<b>B.</b>	<b><u>Service for which Originated</u></b>
<b>Broadcast</b>	<b>BBC Digital Services</b>
First Digital Service Broadcast	Included in Single Broadcast Fee
All repeats on Digital Services for five years from first Transmission/Broadcast	Included in New Public Service Use Fee
Repeats on Radio 4 Extra upon expiry of five year period above	Additional 5% of Single Broadcast Fee for three year package of uses as set out in clause 3.1.4 a) i)
Repeats/Uses covered by the New Public Services Fee (excluding Radio 4 Extra) upon expiry of initial five year licence	Additional 10% of Single Transmission Fee per additional five year licence as per Clause 3.1.4 (a) (ii)
Further repeat if as Domestic Broadcast	75% of Single Broadcast Fee
Repeat as Regional Broadcast	50% of Single Broadcast Fee
Further Repeat as World Service Broadcast	50% of Single Broadcast Fee
Repeat in Foreign Language on World Service (2 Broadcasts)	25% of Single Broadcast Fee

<b>C.</b>	<b><u>Service for which Originated</u></b>
<b>Transmission</b>	<b>Podcast</b>
First Podcast Transmission	Included in Fee
All podcast exploitation for five years from first being made available	Included in Fee
Repeats on Radio 4 Extra	Additional 5% of Single Transmission Fee for three year package of uses in clause 3.1.4
Further repeat if as Domestic Transmission	75% of Single Transmission Fee
Repeat as Regional Transmission	50% of Single Transmission Fee
Further Repeat as World Service Transmission	50% of Single Transmission Fee
Repeat in Foreign Language on World Service (2 Transmissions)	25% of Single Transmission Fee
Repeats/Uses covered by the New Public Services Fee (excluding Radio 4 Extra) upon expiry of initial five year licence	Additional 10% of Single Transmission Fee per additional five year licence as per Clause 3.1.4

2. For all Broadcasts after a period of two years following the month of first Broadcast for the purpose of calculating the residual payable for repeat Broadcasts the Fee will be adjusted by the RPI Adjustment.



## RADIO COMMISSIONING AGREEMENT

### SCHEDULE TWO

Contribution Type	Required Payment Terms See also clause 3.4 and Schedule Three														
<p><b>Commissioned/submitted Sketches, questions Poetry/Prose and Short Stories</b></p> <p><b>(In the case of Extensions – original plays and Dramatisations)</b></p>	<p><b>1. Worldwide Radio Distribution and Non-Theatric</b></p> <p style="text-align: center;">5.6% Gross Receipts</p> <p><b>2. Audio Publication:</b></p> <p><b>Physical Product:</b></p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Unit Sales</th> <th style="text-align: left;">% of Gross Receipts</th> </tr> </thead> <tbody> <tr> <td>Up to 20,000</td> <td>6%</td> </tr> <tr> <td>20,001– 40,000</td> <td>6.5%</td> </tr> <tr> <td>Over 40,000</td> <td>7%</td> </tr> </tbody> </table> <p><b>Electronic Sales:</b></p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Unit Sales</th> <th style="text-align: left;">% of Gross Receipts</th> </tr> </thead> <tbody> <tr> <td>n/a</td> <td>7%</td> </tr> </tbody> </table>	Unit Sales	% of Gross Receipts	Up to 20,000	6%	20,001– 40,000	6.5%	Over 40,000	7%	Unit Sales	% of Gross Receipts	n/a	7%		
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n/a	7%														
<p><b>Non-Substantial Adaptations of Stage Plays, Translations and Abridgements for Reading</b></p>	<p><b>1. Worldwide Radio Distribution and Non-Theatric</b></p> <p style="text-align: center;">5.6% Gross Receipts</p> <p><b>2. Audio Publication:</b></p> <p><b>Physical Product:</b></p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Unit Sales</th> <th style="text-align: left;">% of Gross Receipts</th> </tr> </thead> <tbody> <tr> <td>Up to 15,000</td> <td>2%</td> </tr> <tr> <td>15,001 - 25,000</td> <td>2.5%</td> </tr> <tr> <td>25,001 - 40,000</td> <td>3%</td> </tr> <tr> <td>Over 40,000</td> <td>3.5%</td> </tr> </tbody> </table> <p><b>Electronic sales:</b></p> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Unit Sales</th> <th style="text-align: left;">% of Gross Receipts</th> </tr> </thead> <tbody> <tr> <td>n/a</td> <td>3.5%</td> </tr> </tbody> </table>	Unit Sales	% of Gross Receipts	Up to 15,000	2%	15,001 - 25,000	2.5%	25,001 - 40,000	3%	Over 40,000	3.5%	Unit Sales	% of Gross Receipts	n/a	3.5%
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## RADIO COMMISSIONING AGREEMENT

### SCHEDULE THREE

#### FURTHER TERMS APPLICABLE TO AUDIO PUBLICATION

#### 1. Definitions

The following expressions shall have the following meanings and where defined in the Copyright, Designs and Patents Act 1988 as amended from time to time (“the Act”) and expressions used in this Agreement shall bear the meanings given to them in the Act unless otherwise defined in this Agreement:

- 1.1** “Audio Publication”: the issue of copies of a sound recording of a performance of the Work in the Programme to the public and/or the making available to the public of copy of a sound recording of a performance of the Work in the Programme by electronic transmission and in either case by all means now known or hereafter devised or discovered and whether in the form of Recordings, Compilations or Sets. This may include without limitation the manufacture sale, rental, lending, licensing and distribution of a commercial product comprising any device contrivance or appliance (including without limitation gramophone discs, compact discs, DAT and audio tapes) and every technical means or carrier now or hereafter known or devised which is capable of bearing or emitting sound based on or derived from or consisting of a sound recording of such a performance of the Work and including without limitation the right to sell electronic copies via the internet or other on-line or wireless electronic means to members of the public but excluding Radio Distribution. The Work may be abridged edited or adapted for the purpose subject to a limit of ten percent of the Programme and provided that edits over that limit shall be subject to the Contributor’s consent (not to be unreasonably withheld). If the Contributor is not reasonably available then the edit can be undertaken by the original producer of the programme. Distribution will be of a product intended solely for private use by members of the public;
- 1.2** “Compilation” means the inclusion for the purpose of exploitation by Audio Publication of the Recording of the Work (or part or parts of it) together with recordings of works by other authors or with other material;
- 1.3** “Recording” means a sound recording of the Programme (edited if required as provided for in this Agreement) to exploit Audio Publication rights;
- 1.4** “Set” means a single sales unit comprising two or more titles within it at least one of which will contain the Recording whether or not each title is a Compilation;
- 1.5** "Support Material" means the sleeves, inlay cards, packaging, advertising, publicity and/or promotional material relating to the Recordings Sets or Compilations;

#### 2. Payment

- 2.1** In consideration of the rights granted in the Agreement, the BBC shall pay to the Writer the sums set out in Schedule Two to this Agreement subject to the following provisions of clause 2 if applicable.
- 2.2** Where Compilation rights are exploited by the BBC a proportion of the royalty on Gross Receipts or other payment specified in the Schedule shall be payable, such proportion to be based on the ratio of the playing time of the Work used and the overall playing time of the Compilation in which the Recording is incorporated;
- 2.3** Where any Recording is sold as part of a Set, a proportion of the royalty on Gross Receipts or other payment specified in the Schedule shall be payable, such proportion to be based on the ratio of the

playing time of the Work to the overall playing time of the Set.

**2.4** No royalties shall be payable by the BBC on copies of Recordings, Compilations or Sets:

**2.4.1** distributed to reviewers for promotional purposes or to promote or stimulate sales;

**2.4.2** sold at a "salvage" or "close-out" which shall mean at a price no greater than the manufacturing cost either before or after deletion from records catalogues;

**2.4.3** distributed free in reasonable quantities as "bonus" or "free" records.

**2.5** Notwithstanding any other provision of this Agreement the BBC may, upon a royalty free basis, use and/or permit the use in any media now known or hereafter invented of excerpts of the Recording of up to a maximum of ten (10) minutes duration for the purpose of promotion, advertising and/or trade or in-store-demonstrations for promoting exploitation by sale, rental and/or loan.

**2.6** Where the Work has been jointly written or a translation of the Work is also contracted and in either case is contracted from contributors separately any payment shall be shared equally between the contributors. If more than one Work is included in an Audio Publication based on a Programme contracted from writers separately then the royalties above shall be shared in the same proportion as the Writer's contribution bears to the duration of the whole Programme

**2.7** The Contributor acknowledges that such payment takes account of all the circumstances including the right to equitable remuneration for rental.

### **3. Publicity and Support Material**

**3.1** The BBC may use, print and/or publish the names of the Contributor and/or the author of the Work (including any adopted professional names), photographs, likenesses and biographic material for advertising and trade purposes in connection with the Recording and/or the exercise of any of the rights granted to the BBC in this Agreement.

**3.2** The BBC shall have the right to manufacture and distribute, or authorise others to manufacture and distribute Support Material.

### **4. Accounting**

**4.1** The BBC will send to the Writer within ninety (90) days after the thirtieth day of June and the thirty-first day of December in each year a statement showing for the preceding six (6) month period:

**4.1.1** the royalties (if any) due to the Writer from exploitation of the single Recording after deduction of returns;

**4.1.2** the royalties (if any) due to the Writer from exploitation of the Recording by Compilations after deduction of returns;

**4.1.3** the royalties (if any) due to the Writer from exploitation of the Recording in Sets after deduction of returns;

**4.1.4** the Gross Receipts and net sales applicable to such exploitation of the Work by Recordings, Sets and Compilations.

**4.2** The BBC shall remit to the Writer, with each statement, the amount of the royalties shown to be due

on such statement.

- 4.3** The BBC shall not be required to send payments to the Writer in respect of any six-month period in which the sum due to the Writer is less than ten pounds sterling (£10), in which case such sum shall be carried forward to the next six-month period.

**5. Editorial Control**

- 5.1** The BBC shall have sole control over the production and manufacture of the Recording, Compilation or Set or of any electronic format, specification or delivery and of the design and layout of the Support Material.

- 5.2** The BBC shall have sole control over the release dates and distribution of the Recording, Compilation or Set hereunder.

**6. BBC Warranties**

The BBC warrants that the BBC shall ensure that each Recording, Compilation or Set produced pursuant to this Agreement carries the appropriate copyright notice, contractual credits and any other notice (which said notices shall be notified to the BBC by the Writer upon signature of this Agreement) as may be required in any territory to preserve all of the Writer's rights in and to the Work. A breach of this warranty shall not entitle the Writer or the author of the Work to seek injunctive relief and the sole remedy shall be in damages or by the BBC's own complaints process (set out on the BBC's website at [www.bbc.co.uk/complaints](http://www.bbc.co.uk/complaints)). The BBC shall use reasonable endeavours on a prospective basis to rectify any breach.

**7. Condition Precedent Relating to Other Rights Owners**

Any payment obligation in relation to Audio Publication shall not come into operation unless and until the BBC has commissioned the Audio Publication having entered into agreements with rights owners of the Work and any other agreements required with contributors to the Recording, Compilation or Set.

**RADIO COMMISSIONING AGREEMENT  
SCHEDULE FOUR**

**DEAL MEMO**

REF:

WRITER:

AGENT'S NAME:

ADDRESS:

TITLE OF SERIES:

TITLE OF PROGRAMME:

PROJECT NUMBER:

TYPE OF WORK:

LONG RUNNING SERIES: [Yes/No]

NUMBER OF WORKS COMMISSIONED:

DURATION:

FEE:

FIRST DRAFT DELIVERY DATE:

SERVICE:

COMMISSIONING EXECUTIVE:

OTHER CONDITIONS:

On signature by both parties of this Deal Memo –

- (a) The British Broadcasting Corporation (**'the BBC'**) commissions, and
- (b) the Writer [commits to write and hereby grants rights in][hereby grants rights in],

an original dramatic work or works as specified above. The terms of [this commission and the licence hereby granted] [the licence hereby granted] are as set out in the Radio Commissioning Agreement current at the date hereof between the BBC, the Society of Authors ("the Society"), the Writers' Guild of Great Britain (the "WGGB") and the Personal Managers' Association Limited ("the PMA"), the terms of which (and any terms subsequently agreed) are incorporated by reference into this Deal Memo. If any of the terms of this Deal Memo conflict with those of the Radio Commissioning Agreement, a copy of which is available from the BBC on request, the terms of this Deal Memo shall prevail.

The Writer acknowledges that the provisions for payments to the Writer set out in the Radio Commissioning Agreement can be altered from time to time (in which case the Writer will receive the updated payment in respect of a use of the Work made after the alteration) or determined as set out in that Agreement for uses for which a payment has not been determined at the time of signature of this Deal Memo and agrees that such alterations and determinations shall be binding upon the Writer in respect of relevant uses of the Work.

\_\_\_\_\_  
For and on behalf of the BBC

\_\_\_\_\_  
By or on behalf of the Writer

Date \_\_\_\_\_

Date \_\_\_\_\_

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

**Signed for and on behalf of the  
Writers' Guild of Great Britain .....**

**Signed for and on behalf of the  
Society of Authors .....**

**Signed for and on behalf of the  
Personal Managers' Association Limited .....**