



British Broadcasting Corporation
Rights Legal and Business Affairs
BC3 B6 Broadcast Centre
201 Wood Lane
London, W12 7TQ
Payment enquiries - Tel: 020 7326 9760

Contract Ref.:/

Req. Ref.:

Date:

Contributor:
Type of Work: (a)
Initial Fee: (a)

BBC GENERAL PERMISSION AGREEMENT
FOR PHOTOS AND OTHER ARTISTIC WORKS

FORM: Images General Permission Agreement

INTRODUCTORY

A. NEGOTIATION OF AGREEMENT

The terms of the General Permission Agreement ("GPA") below have been negotiated with the BBC on behalf of picture libraries by the British Association of Picture Libraries and Agencies of 18 Vine Hill, London EC1R 5DZ ("BAPLA") and are mutually approved by the BBC and BAPLA. The terms are those which BAPLA recommends to picture libraries as their trade association in the UK.

B. REGULATION OF BBC

This new GPA is drawn up on the basis that the BBC Trust (or any other successor regulatory body appointed by the BBC's Royal Charter and Framework Agreement with the Secretary of State) regulates what services the BBC may offer either as public services or as commercial services. The GPA takes advantage of this by setting a fee for the use of artistic works in the public services or commercial services as a whole instead of by each individual use. However there is an option for the BBC to purchase rights for its websites alone in appropriate cases.

C. INDEPENDENT COMMISSIONS

The terms of this GPA can be applied by independent production companies (at their discretion) where they are commissioned by the BBC but may require restructuring where an independent production company is making programmes on its own behalf.

D. STATUS OF THIS DOCUMENT

This particular Agreement, which is made on the terms of the GPA (and referred to below as a GPA), is made between the picture library named above as the Contributor ("the Contributor") and THE BRITISH BROADCASTING CORPORATION whose principal place of business is at Broadcasting House, Portland Place, London W1A 1AA ("the BBC") and the expression "the BBC" shall where the context admits include any subsidiary or associated company of the BBC or the subsidiary of either, any assignee or licensee of any of the foregoing, and any other person, firm or company deriving title through or under any of the foregoing.

E. NB FOR PICTURE LIBRARIES

When the BBC sends a Notification that it wishes to use an artistic work in the Contributor's collection, the BBC will proceed on the assumption that all rights in the work covered by this GPA are available for exploitation unless the Contributor specifically informs the BBC to the contrary. See clause 1. below.

F. IMAGE FORUM

This GPA grants a mandate to BAPLA to represent picture libraries in an Image Forum. The Image Forum will have the ability to amend this GPA where appropriate in order to take account of new services and means of exploitation and the payments to be made for them, see clause 5 and Schedule 3.

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AGREEMENT

The BBC wishes to acquire from the Contributor and the Contributor has agreed to grant to the BBC certain rights in the artistic works either held in the collection or collections kept by the Contributor or syndicated on behalf of photographers and other authors of artistic works by the Contributor ("the Collection").

Terms and expressions used with an initial capital letter below are defined in Schedule Two to the Agreement.

IT IS HEREBY AGREED AS FOLLOWS:-

1. NOTIFICATION TO CONTRIBUTOR

- 1.1 The BBC will send a Notification that it wishes to reproduce a Work in its Public Services and/or its Commercial Services. The Notification may either be from the appropriate BBC production department and sent by means of the online or other system provided for by the Contributor or may be made in the form of a request from the BBC's Photo Unit. Notification sent by the Photo Unit will be in the form to be set out in Schedule One. The Notification may be in respect of a Work used in new output or an Archive Work which has previously already been reproduced in the BBC's programme archive. Where a Work is originally requested to be exploited in the Public Services only under this GPA or is an Archive Work and in either case rights for exploitation of the Work in the Commercial Services are then required, the notification to the Contributor of a sale by the BBC's Commercial Rights Department (with an accompanying remittance) shall be deemed to be the Notification.
- 1.2 The copy of the Work may be provided to the BBC for use by the Contributor. Alternatively, the BBC's Photo Unit may request use of a Work separately where the BBC has obtained the copy of the Work it wishes to use (for example where for editorial reasons the Work needs to be shown in the context of publication in a periodical).
- 1.3 Upon sending the Notification, the BBC will acquire a non-exclusive licence of the rights set out in clause 2. below in the Work or Archive Work unless the Contributor within 14 days of the date of the Notification notifies the BBC in writing or by email to the BBC's Photo Unit that either:

- 1.3.1 the Work or Archive Work is of a particular value and should be subject to a restricted repeat period in which case the right to give Repeat Broadcasts of a Programme in the BBC's Public Services (or any part of them) will be modified by agreement with the BBC's Photo Unit; or
- 1.3.2 The Contributor is only able to offer access to the Work but does not control the rights or all of the rights referred to in Clause 2., in which case the provisions of clause 7.3 will apply.

2. RIGHTS

- 2.1 In consideration of the BBC hereby undertaking to pay the fees specified in this GPA (to the extent that such use is not permitted by law or without a designated payment under the terms of this GPA) the Contributor hereby grants to the BBC with full title guarantee a non exclusive irrevocable licence of the copyright in the Work during such period as such rights are protected by the laws of any jurisdiction and any extensions of that period and after that as far as possible in perpetuity throughout the Universe to use and exploit the Work:

2.1.1 in the BBC's Public Services;

2.1.2 in the BBC's Commercial Services and in Non-BBC Commercial Services

Provided that in the case of an initial use within a Programme such use is made within a period of three years of the date of the BBC's Notification and that in the case of an initial Public Service Website Use or Commercial Services Website Use such use is made within a period of twelve months of the date of the BBC's Notification.

- 2.2 The BBC may also send a Notification in respect of an Archive Work and shall be entitled to a licence as set out above in the Archive Work subject to payment of the appropriate fee payable as also set out below.
- 2.3 The licence in clause 2.1 above shall apply to Programmes and to all forms of BBC editorial content whether now known or hereafter devised in the Public Services and the Commercial Services: if content is developed which does not fall within the provision of the GPA in the judgement of the Image Forum (as provided for in Schedule Three of this Agreement) or owing to subsequent developments the payment model provided for is deemed by the Image Forum to be insufficient, then Paragraph 1.7 and/or 1.8 of Schedule Three shall apply.
- 2.4 For clarity the licence granted under this GPA shall apply to Works incorporated in co-productions made by the BBC with another producer, broadcaster or distributor and a payment made under this GPA shall enable the use by or authorised by such a producer, broadcaster or distributor as it would enable the BBC to use or authorise the use of the Work in any form of production. A co-production shall include any production where a party other than (ie legally distinguishable from) the BBC itself invests in the production or delivers services to the production in return for rights in the production for which a Work is the subject of a Notification and payment under clause 3. of this GPA.
- 2.5 The rights licensed under clause 2.1 above shall not include Theatric Rights in the Work unless agreed under clause 3.9 below.
- 2.6 For the avoidance of doubt such licence shall be binding on any party who is entitled (by assignment, novation or otherwise) to the Contributor's rights under this GPA (or any interest in those rights) or who as administrator liquidator or otherwise is entitled to exercise those rights including (without limitation) a party to whom such rights are transferred or pass as a result of a merger or other reorganisation of the Contributor.

3. PAYMENTS

The BBC shall be entitled in return for each of the following single payments to make all uses of the Work or of an Archive Work within the Same Editorial Context within the categories of use set out below subject to payment of in each case a sum equal to one of the following percentages of the CIF or equal to the amount specified in pounds sterling in respect of the relevant use and payable as a once only buyout fee:

| <u>Category</u> | <u>Percentage of CIF</u> |
|---|--------------------------|
| 3.1 <u>Programmes</u> | |
| 3.1.1 Public Services Use | 300% |
| 3.1.2 Public Services Trailer Only Use | 300% |
| 3.1.3 Public Services Regional Broadcast Use | 150% |
| 3.1.4 Commercial Services Use | 425% |
| 3.1.5 Commercial Services Use (excluding Digital Permanent Ownership) | 390% |
| 3.1.6 Digital Permanent Ownership | 35% |
| 3.1.7 Product Only Use | 212.5% |
| 3.1.8 Public Services and Commercial Services Use (paid at same time) | 650% |
| 3.1.9 Non-BBC Commercial Service Use | 550% |
| 3.2 <u>Websites</u> | |
| 3.2.1 Public Service Website Use | 100% |
| 3.2.2 Commercial Services Website Use | 150% |

Provided that the payments in 3.2.1 and 3.2.2 shall only be made where there is no associated Programme use;

| <u>3.3 Archive Works</u> | <u>Fee (£ sterling)</u> |
|---|-------------------------|
| 3.3.1 Public Services Use | £125 |
| 3.3.2 Commercial Services Use | £175 |
| 3.3.3 Commercial Services excluding DTO/DPO | £145 |
| 3.3.4 Digital Permanent Ownership | £30 |

For the avoidance of doubt provided that the corresponding payments are made for them in each case, the uses specified in each sub-clause above may each be made in the BBC's discretion and where appropriate may be selected separately or in combination.

The BBC shall also be entitled to negotiate fees for the following:

3.4 Buyout Provisions

The Contributor agrees to consider in good faith requests from the BBC due to particular circumstances (for example use of multiple Works within a Programme or series of Programmes) to purchase buyouts in the categories set out in clause 3.1, 3.2, or 3.3 at prices other than those set out above and the parties will negotiate prices which reflect those particular circumstances.

3.5 Title Sequences

The Contributor agrees to consider in good faith requests from the BBC to agree a single fee which will permit use of a Work in title sequences over one or more series of Programmes. Where the Public Services Use or Commercial Services Use have been acquired for a single programme, use in the title sequence of that programme is included in the respective Public Services Use fee or Commercial Services Use fee.

3.6 Commercial Public Events

The parties agree to negotiate in good faith a separate fee to permit the BBC to include the Work in exhibitions, screenings or other events mounted as part of the BBC's Commercial Services.

3.7 Standalone Public Services or Commercial Services Promotional Use

Without prejudice to clause 4.2 below the parties agree to negotiate in good faith a fee to permit the BBC to reproduce the Work separately from any Programme to promote the Programme and/or the BBC's Public Services or Commercial.

3.8 Standalone Private Purposes of the BBC

Without prejudice to Clause 4.1, where the BBC wishes to reproduce a Work for its private purposes on a non-commercial basis where the Work has not been included in a recording of a Programme, the Contributor agrees that it will negotiate a fee on a "good will" basis to reflect such use.

3.9 Theatric Rights

The Contributor agrees to consider in good faith requests from the BBC to agree a single fee which will permit the BBC to exhibit and exploit by all means and media a film or Programme for cinematic release.

3.10 Payment Arrangements

Payments will be made quarterly in arrears of all sums owing to the Contributor in the amounts shown by the BBC's reporting systems as at the quarter days of 31st March, 30th June, 30th September and 31st December of each year of the Agreement. Payment will be made to the Contributor or the Contributor's notified agent no later than 14 days from each quarter day, or of the Contributor's or agent's invoice if later.

4. MISCELLANEOUS RIGHTS

The BBC shall have the right without further payment to make and use or so to authorise such making and use of Recordings (by means of film, videotape, electronic file or any other storage medium now or hereafter devised) of the Programme (or in clause 4.8 of the Work alone) for:-

- 4.1 the private purposes of the BBC (including staff training) or the purposes covered by this GPA;
- 4.2 televising brief excerpts of the Recordings in trailer programmes or programmes of an historic or reminiscent nature (defined as programmes about the BBC itself and not programmes whose primary editorial function is the entertainment value of the content) or use in all media for publicity and/or promotional services in or further to provision of the Public Services or of the Commercial Services and limited to the editorial context selected and paid for under Clause 3. above. The Contributor's consent is required where the Work is shown out of context to the BBC's editorial content;
- 4.3 deposit with the National Film Archive (being part of the British Film Institute) and with similar archive-holding bodies, if the Recording is considered of permanent interest, for preservation purposes and for private study by bona fide students;
- 4.4 showing at television and film festivals and award ceremonies;
- 4.5 the simultaneous and unaltered re-transmission by way of cable, satellite and foreign terrestrial broadcasting without limit of time of any BBC broadcast of the Work;

- 4.6 technology trials on a limited basis of new services for distribution without charge to the viewer for the service;
- 4.7 where the Open University has provided funding for the making of the Programme the provision of Recordings to registered Open University students without any separate charge to them on any secure platform or in any copy protected medium (including but not limited to a physical carrier such as a DVD or online via an appropriate secure environment);
- 4.8 display of the Work in an exhibition provided as part of the BBC's Public Purposes where the fee for Public Services Use has been paid under 3.1.1. and where there is no charge for entry to the exhibition.

5. REGULATION AND IMAGE FORUM

The BBC and the Contributor agree that this GPA shall be regulated and shall be subject to the provisions of Schedule Three of this GPA, which also provides for an Image Forum to review, determine or amend the operation of the GPA and the provisions under it.

6. REPORTING

The BBC will report initial use of Works to the Contributor under the following headings in all cases where the information is available to the BBC:

- 6.1 Programme Number
- 6.2 Image Supplier/Archive
- 6.3 Author of Work (eg Photographer)
- 6.4 Artistic Work
- 6.5 Image Reference Number
- 6.6 Rights Confirmed
- 6.7 Confirmation Date
- 6.8 Clearance by BBC Commercial Rights Department (CRD)
- 6.9 Date of CRD Licence
- 6.10 Requested Date of Notification
- 6.11 Requester

7. CONTRIBUTOR'S WARRANTIES AND INDEMNITY

- 7.1 The Contributor warrants as follows:-

7.1.1 it is entitled and will continue to be entitled so long as this GPA remains in force to grant to the BBC the rights granted in Clause 2;

7.1.2 the grant of rights to the BBC does not now and will not at any time so long as this GPA remains in force conflict with rights granted to or belonging to or to be granted to or hereafter belonging to any other party;

- 7.2 The Contributor will indemnify and keep the BBC indemnified against any actions, proceedings, claims, costs, damages and reasonable legal expenses incurred or given against the BBC or agreed on the advice of Counsel by reason of breach of warranty by the Contributor. If the Contributor is a public body which is unable to grant an indemnity or a full indemnity to the BBC, the Contributor shall only be liable under this clause to the extent that it is able to grant an indemnity. The BBC will consult with the Contributor prior to settling any claim against the BBC by a third party which would attract an indemnity under this sub-clause.

- 7.3 If upon receipt of a Notification that the BBC wishes to use a Work under this GPA the Contributor gives notice by email or in writing to the BBC's Photo Unit within 14 days (even if the Contributor has been given Notification that the BBC wishes to use the Work immediately) that it is only able to offer access to the Work but does not control the rights or all of the rights referred to in Clause 2. in the original Work then the warranty in 7.1.1 and 7.1.2 shall not apply. Instead it is agreed that in such "access only" or "limited rights" cases the Contributor gives no warranty or a correspondingly limited warranty in respect of the Work and will use all reasonable endeavours to assist the BBC in ascertaining the identity of the person or persons who own the copyright or the remaining rights in such Work. But the Contributor does warrant that it is entitled to grant the rights referred to in Clause 2. above in respect of such copyright as the Contributor represents that it does own. The Contributor also represents in all cases that the grant of rights in Clause 2. does not conflict with any rights granted by the Contributor to any third party or to the best of the Contributor's knowledge and belief with those rights belonging to any third party.
- 7.4 The Contributor warrants that the payments specified in return for the rights granted to the BBC in this GPA are a full and equitable consideration for such grant.

8. BBC'S INDEMNITY

The BBC agrees to indemnify, defend, and hold the Contributor and its agents harmless from any and all actions, causes of action, claims, demands, costs, liabilities, expenses and damages arising from any claim against the Contributor or its agents due to the context in which the Work is used by the BBC.

9. SCOPE OF AGREEMENT

- 9.1 The BBC and the Contributor agree that the terms and conditions governing the physical supply of the Work shall be dealt with separately from this GPA.
- 9.2 The BBC and the Contributor agree that, notwithstanding anything to the contrary (whether oral or written) contained in any other documentation relating to the supply, reproduction or payment for the Work including (without limitation) the Contributor's delivery notes or invoices, this Agreement contains the entire understanding of the parties in relation to the reproduction of the Work itself including the warranties and indemnities relating to the use of the Work (whether given by the BBC or the Contributor), the fees payable for reproduction, payment obligations, credits and the manner in which the Work will be used.

10. MORAL RIGHTS

Each party acknowledges that the needs of audiovisual production require Works to be presented in a manner which is suitable for that medium and that it is not presently always practicable to identify the author of the Work whenever an image of it is broadcast or otherwise communicated to the public, provided that the BBC (a) undertakes to observe the requirements of the Copyright, Designs & Patents Act 1988 with regard to the author's integrity right under section 80; and (b) will properly observe its Editorial Guidelines in relation to credits being given for significant creative contributions. The BBC confirms that it wishes and intends, when it is practicable for financial and other practical reasons, to use website

technology to identify for presentation by online means all authors of Works included in BBC Programmes and websites.

11. PREVIOUS AGREEMENTS

For the avoidance of doubt the parties agree that the terms of this GPA shall apply to the broadcast, making available, issue of copies to the public, rental or lending or other use or exploitation of any Work in any Programme or website whether or not the Work was incorporated into such Programme or website by virtue of this GPA and provided that where a Work was incorporated in a Programme or website under a prior agreement, to the extent that all or any of the rights referred to in Clause 2. have not previously been acquired, this GPA and in particular clause 2.2 shall supersede any pre-existing contractual terms between the BBC and the Contributor.

12. INDEPENDENT PRODUCTIONS

The parties agree that this GPA covers the originally contracted use of the Work in independent productions commissioned by the BBC provided that this Clause shall not take effect unless and until the BBC gives notice in writing to the Contributor which notice will give details of the way in which the administrative aspects of such an arrangement will operate.

13. VAT

All payments referred to in this Agreement are exclusive of Value Added Tax. The BBC agrees to pay Value Added Tax properly payable with respect to such payments on receipt by its Shared Service Centre of the Contributor's certificate of VAT registration, form of written authority for payment and appropriate invoice all as prescribed by HM Customs and Excise.

14. TERM AND TERMINATION

The General Permission Agreement between the Contributor and the BBC may be terminated by either party on giving [three] months' written notice of termination to the other, no such notice to be given prior to the [third] anniversary of the date of its signature. Termination of the GPA shall have no effect on the subsistence of any individual licence of rights in a Work between the BBC and a Contributor which incorporates its terms.

15. NOTICES

- 15.1 Any notice required to be given pursuant to the GPA shall be in writing (or where stated to be permissible, by 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. The requirement of writing is not applicable to Notifications under clause 2 which are to be sent by email.
- 15.2 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.

16. ASSIGNMENT

The Contributor shall not assign transfer charge or deal in another manner with the rights in the Works which are the subject of the Contributor's agreement with the BBC or any right of the BBC under it or sub-contract any or all of the Contributor's obligations under it in a manner which would adversely affect the rights granted to the BBC without obtaining the BBC's consent in writing.

17. NO AGENCY PARTNERSHIP JOINT VENTURE OR EMPLOYMENT

Nothing in the agreement between the BBC and the Contributor 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 and the Contributor shall not have the power to obligate or bind the BBC in any matter whatsoever.

18. ENFORCEABILITY

The unenforceability of any single provision in this GPA shall not affect any other provision herein.

19. HEADINGS

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

20. GOVERNING LAW

This GPA between the BBC and the Contributor shall be deemed to have been made in the United Kingdom and shall be subject to the jurisdiction of the English and Welsh courts. If the Contributor has a substantial connection with Scotland, the Contributor may request and the BBC shall agree that the laws and jurisdiction of Scotland may apply instead. Where the BBC on reasonable grounds considers it appropriate the BBC may request and the Contributor shall agree that the laws and jurisdiction of Scotland shall apply.

Signed by or on behalf of
the BBC:

Date:

Signed by or on behalf of
the Contributor:

Date:

IMAGES GENERAL PERMISSION AGREEMENT

SCHEDULE ONE

FORM OF NOTIFICATION BY THE BBC
FOR USE OF AN ARTISTIC WORK
(see clause 1. and 7.3)

Author of Work (eg Photographer):
Artistic Work:
Image Supplier/Archive:
CATEGORY for Initial Fee (ref Clause 3): [relevant sub-clauses from 3.1.1 to 3.3.2]
Image Reference Number:
Programme Title:
Programme Number:
Reference Number:
Requested Date of Notification:
Requester:

NOTIFICATION
Under Images General Permission Agreement
(ref Clause 1)

I am writing to give you Notification that the BBC wishes to use the Work(s) identified.

Please let us know as soon as possible but in any case no later than fourteen days from the Date of Notification, if you are unable to grant the rights in the Work(s) under our Images General Permissions Agreement, the final date for response being [DATE OF NOTIFICATION + 14 DAYS]. Otherwise, under this Notification, where the BBC then decides to make the corresponding use, the BBC hereby obtains a licence in the category or categories set out above, in return for the relevant fee.

The reporting details we currently have available are also listed above.

Notification from [BBC member of staff]
For BBC Photo Unit

IMAGES GENERAL PERMISSION AGREEMENT

SCHEDULE TWO

DEFINITIONS

1 **DEFINITIONS**

In this GPA unless the context otherwise requires the following expressions shall have the following meanings and expressions defined in the Copyright, Designs and Patents Act 1988 (as amended from time to time) shall have the same meanings as in that Act:

Fee and Editorial Definitions

- 1.1 "Archive Work" means a Work (as defined below) which has already been licensed under a previous agreement (a) between the Contributor and the BBC in the so-called Telpic format approved by BAPLA or other format individually agreed with the Contributor being a member of BAPLA, or (b) between a producer and the Contributor pursuant to any form of production commissioned or otherwise contracted to be broadcast by the BBC.
- 1.2 "the CIF" means the Current Initial Fee being:
 - 1.2.1 a fee to be negotiated in good faith between the parties as the Initial Fee during the calendar year or part thereof (ending 31st December) in which this GPA is signed and
 - 1.2.2 unless otherwise agreed between the parties, for each successive calendar year, the Initial Fee increased by an amount corresponding to the increase in the RPI (as defined below) over the previous twelve month period ending 31st December, such increase to take effect on the first working day of each successive calendar year (each such increase to be applied for the calendar year in question).
- 1.3 "Editorial Guidelines" means the BBC's editorial guidelines from time to time for its productions (including guidelines for both television and online productions) which set out its editorial requirements, including with regard to the crediting of contributions to those productions.
- 1.4 "the Initial Fee" means the basic fee negotiated between the Contributor and the BBC as the amount upon which the payments set out in clause 3. are based. The Initial Fee is specified above in the heading of this GPA.
- 1.5 "Notification" means the BBC's notification under clause 1. to a Contributor that the BBC wishes to use a Work in the Contributor's collection.
- 1.6 "Photo Unit" means the department within the BBC's Talent Rights Group responsible for the acquisition of rights in artistic works for use in BBC productions.
- 1.7 "a Programme" means any programme made for television existing at the date of this GPA or devised in the future (as the context requires) in which the Work is or an Archive Work has in the past been incorporated (other than those produced by the BBC's News department and programmes produced for the Open University) and including any extract of the Programme or any edited version or reversion of the Programme made for the purpose of exercising any right in the Public Services or the

Commercial Services, including so-called short-form or abridged programmes known as minisodes or mobisodes. The expression "television" as used above means transmission by all forms of television and by all delivery and viewing methods, platforms and devices whether now or hereafter devised and including equivalent audiovisual screen presentation to computer monitors, mobile phones and other hand-held devices and including without limitation by satellite or terrestrial broadcast and/or inclusion in a cable programme and whether by digital or analogue means.

- 1.8 "the Recording" means any recording of a Programme made by means of film, videotape, disc, electronic file or any other visual or audiovisual medium now or hereafter devised, and provided that such Recording may constitute a recording of the Programme or parts thereof as modified for the exercise of any rights granted under this GPA.
- 1.9 "RPI" means the average of the most recently available index figures published in the United Kingdom's Retail Price Index for each successive period of 12 months.
- 1.10 "Same Editorial Context" shall without limitation include (a) use in a Programme and an associated website (b) all uses within the same Programme or website (c) narrative or reminiscent references in a later Programme episode to use in an earlier episode other than use in a title sequence (d) in editorially related support materials (but not including any publication which is published in the BBC's Commercial Services with a view to making a profit on that publication unit separately from a profit made from exploiting a Programme or Commercial Services Website use).
- 1.11 "Work" means any photographic or other artistic work in the Collection, including without limitation and where applicable, paintings, illustrations and other graphic works and reproductions of sculptures. References in this GPA to a Work shall include an Archive Work (unless the context otherwise requires, as for example in clause 3.1 and 3.2).

Public Services Definitions

- 1.12 "BBC iPlayer" means the BBC service authorised by the BBC Trust and presently accessed via the bbc.co.uk website or hosted on third party platforms through a BBC iPlayer interface by way of Public Service Syndication and whose present remit is to simulcast the BBC's broadcast Public Services over fixed and mobile internet protocol networks and following broadcast to offer content from the broadcast Public Services for download and access on-demand within the limited time periods approved by the BBC Trust.
- 1.13 "BBCi Service" means the BBC digital Public Service made available to viewers by on-demand access from BBC channels broadcast for reception from satellite, cable or digital terrestrial platforms.
- 1.14 "BBC Trust" means the sovereign body of the BBC acting in the public interest established by clauses 7- 27 of the BBC's 2006 Royal Charter.
- 1.15 "the First Broadcast" means the first television or other audiovisual broadcast by or on behalf of the BBC of a Programme simultaneously or non simultaneously live and/or recorded in the BBC's services (or any part of them) including without limitation in BBC 1 (including BBC Wales), BBC 2 or in the case of Welsh Language programmes for the Fourth Channel in Wales in that service (or any part of it), BBC3 and/or BBC4 and at the time of First Broadcast to broadcast or to authorise the Programme to be broadcast simultaneously by the BBC by wired or cable (including internet) transmission or by wireless transmission or in either case by third parties without charge by the BBC as part of or in fulfillment of its Public Service provision.

- 1.16 "Public Purposes" means the public purposes of the BBC set out in Article 4 of the BBC's 2006 Royal Charter.
- 1.17 "Public Services" means any service or activity now existing or developed in the future which is provided or carried out for the purpose of promoting the Public Purposes of the BBC as set out in the BBC's Royal Charter, the Framework Agreement, the Operating Framework and the Operating Licence for the time being in force. (Use in such services is referred to in this GPA as "Public Service use"). Public Service use may include without limitation communication to the public by broadcast and on-demand services (including Public Service Syndication) accessed by satellite, terrestrial and cable means (including without limitation the BBC's services made available by internet or wireless transmission) and both on television, quasi television (such as computer monitors and hand-held devices) and non-television platforms or where Programmes are shown by the BBC without any separate charge in public by way of so-called big screen events. Such services may include by way of example only internet streaming of a programme simultaneously with the conventional wireless television broadcast and video on demand "catch-up" services and for some services a copy of the Work may be transferred for temporary or permanent private non-commercial use by members of the public or may be transferred by members of the public to the BBC for use as part of its Public Services. For clarity such use shall include but not be limited to First Broadcast and Repeat Broadcast of a Programme, availability on the BBC iPlayer, the BBCi Service, Public Service Website Use and the educational resource currently known as the Learning Zone.
- 1.18 "Public Services Regional Broadcast Use" means Public Services Use where the Programme is broadcast only in a regional rather than a national service being a Programme which deals with subject matter of specific interest to the region and of less interest elsewhere and is clearly set within the region and/or features people known to be residents of, or who have close connections with the region. For this purpose a region is one of the twelve BBC English regions or the Channel Islands. For the avoidance of doubt, this shall not restrict other uses in the Public Services such as in the BBC iPlayer.
- 1.19 "Public Service Syndication" means the provision of editorial content first transmitted in the BBC's Public Services on-demand by methods such as linking (where content is played from bbc.co.uk) and hosting (where content is played from third party platforms). Public Service Syndication is subject to both the BBC's normal Editorial Guidelines and Fair Trading framework and to the approval of the BBC Trust and the policies and principles set out as the conditions of that approval.
- 1.20 "Public Service Website Use" means the inclusion and display of a Work pursuant to this GPA in the BBC's Public Service websites available on the internet, the Worldwide Web or any other similar or analogous wired or wireless telecommunications system now known or devised in future by which material is transmitted for presentation to members of the public whether on a home page and/or a supplementary page either as an original editorial use or ancillary to use in a Programme and including allowing third parties to link to BBC websites and syndicating BBC websites to third parties by Public Service Syndication and without prejudice to the BBC's right to use the Work for publicity and promotional purposes (as set out in clause 4.).
- 1.21 "Repeat Broadcast" means the right to give repeat broadcasts of a Programme in the BBC's Public Services (or any part of them) as set out in the definition of First Broadcast above.

- 1.22 "Trailer Only Use" means inclusion of the Work in a promotional trailer made for the BBC's Public Services and where the Work does not also appear in a Programme promoted by the trailer.

Commercial Services Definitions

- 1.23 "Commercial Services" means any activity now or in future carried out as part of the BBC's commercial activities as provided for under the BBC's Royal Charter and the Framework Agreement with the Secretary of State for the time being in force and which are in particular but without limitation provided or undertaken with a view to generating profit and for clarity may include all or any of the acts restricted by copyright under section 16 of the Act and including but not limited to exploitation by Standard Television, Non-Standard Television, Non-Theatric Rights, Videogram Rights, Download Rights, Digital Permanent Ownership, Disc Rights, Games Console Rights and Commercial Services Website Use.
- 1.24 "Digital Permanent Ownership" means the license of an electronic, non-tangible copy of the Programme which may be made available for repeated private viewing by an authorised user over an indefinite period of time in accordance with the relevant user permissions.
- 1.25 "Commercial Services Website Use" means the inclusion and display of a Work pursuant to this GPA in the BBC's Commercial Services websites available on the internet, the Worldwide Web or any other similar or analogous wired or wireless telecommunications system now known or devised in future by which material is transmitted for presentation to members of the public whether on a home page and/or a supplementary page either as an original editorial use or ancillary to use in a Programme and including the authorisation of licensees of rights in Programmes and of websites syndicated to licensees based on the BBC's websites to include and display the Work in their own websites available on the Internet, the Worldwide Web or any other similar or analogous wired or wireless telecommunication system now known or devised in future by which material is transmitted for presentation to members of the public provided that both the use made of the Work and of the sub-licensed BBC website shall be unaltered (save in the latter case for changes necessary to identify the website with the sub-licensee in place of the BBC).
- 1.26 "Disc Rights" means the right throughout the world to make and authorise others to make Recordings and to sell, offer for sale, distribution and hire the Recording and authorise others to do the same in the form of any physical carrier supplied to purchasers and/or licensees for insertion in a playback device and incorporating (in the form of machine code) a recording constituting the source of the Programme licensed for interactive and/or linear use by the viewer and provided that such carrier may be a CD-ROM or DVD-ROM or any other physical carrier (including any video disc, laser disc and discs for use with a CD-I platform) which may include any variation, revision, update or enhancement or a carrier which is not yet devised, developed or distributed and provided further that such playback device may make use of any system including without limitation one which is analogue, digital, optical, mechanical, electrical, electronic or a combination thereof and including any such system now or hereafter devised, developed or distributed provided that a Disc shall not include a Games Console or Videograms as each term is defined herein.
- 1.27 "Download Rights" means the right throughout the world to sell, rent, lend, give or otherwise distribute copies of Recordings making use of the Work in audiovisual format and made available by electronic transmission to any storage medium (now known or which may become known for reproducing visual images and sounds) either in response to individual request or on the initiative of the sender (by way for example only of so-called "push" video recording (push-PVR)) and intended solely for private use by members of the public but not including Videogram Rights or so-called video on demand rights.

- 1.28 "Games Console Rights" means the right throughout the world to make and authorise others to make the Recording and to sell, offer for sale, distribution and hire the Recording and authorise others to do the same in the form of a dedicated proprietary platform which operates a software program (and which may or may not be for use with a separate controller and/or a visual display such as a computer monitor or television receiver) examples of which include without limitation the Sony PlayStation, Sega Saturn, Sega MegaCD, Sega MegaDrive, Nintendo 64 and Nintendo GameBoy) provided that a Games Console shall not include a Disc as defined above.
- 1.29 "Non-BBC Commercial Service Use" means a Commercial Service use, where the BBC produces editorial content for the primary benefit of a non-BBC service or activity (such as but not limited to, producing content for the purposes of another UK broadcaster).
- 1.30 "Non-Standard Television" means transmission by all forms of television and by all delivery and viewing methods, platforms and devices whether now or hereafter devised and including equivalent audiovisual screen presentation to computer monitors, mobile phones and other hand-held devices including without limitation by satellite or terrestrial broadcast and/or inclusion in a cable programme and whether by digital or analogue means and by any economic or technical model whether on a streaming, pay per view, on-demand, near video on-demand, push and pull video on-demand, download to rent, subscription, pay or basic cable, or any other basis without restriction as to the number of transmissions other than by Standard Television, use in the Public Services or by exercise of the Non-Theatric Rights.
- 1.31 "Non-Theatric Rights" means Trapped Audience Rights as defined in this GPA and also the right to sell or hire the Recordings by all forms of delivery and in all formats for viewing by audiences in all institutions, organizations, clubs or societies of a business, educational, cultural, religious, charitable or social nature and other like entities without restriction as to the number of showings except for places to which the general public is invited and admitted upon the payment of an admission fee charged primarily for such viewing (e.g. commercial cinema theatres).
- 1.32 "Product Only Use" means use of the Work for inclusion in any product exploited in the Commercial Services (such as but not limited to by display in so-called added value material as part of exploitation of the Videogram Rights) and where the Work was not first included in a Programme if the Commercial Services use is based on a Programme.
- 1.33 "Standard Television" means television broadcast for reception without charge (ignoring for this purpose any sums payable for a licence of a kind required by law for the installation and/or use of equipment for the reception of broadcast programmes) by means of conventional home roof-top or television set built-in or attached antennae in all forms now known or hereafter devised throughout the world in perpetuity without restriction as to the number of showings or the length of any licence period granted to a purchaser but other than (for avoidance of doubt) use in the Public Services.
- 1.34 "Theatric Rights" means the right to produce exhibit and exploit by all means and media a film for the cinema (as opposed to a film for television).
- 1.35 "Trapped Audience Rights" means the right to exploit Recordings by all forms of delivery and in all formats to closed circuit television systems for viewing by audiences in premises such as hotels, hospitals, educational institutions, military locations, apartment houses, condominiums, public houses, clubs and discotheques or in the transportation industry.

1.36 "Videogram Rights" means the right to make and authorise others to make Recordings and to sell, offer for sale, distribution and hire Recordings in the form of "Videograms" and authorise others to do the same and "Videograms" shall include videocassettes, digital versatile discs (DVDs) or other physical carriers now or hereafter known intended for reproducing visual images and synchronised sounds provided that the functionality of such discs or carriers substantially overlaps that of conventional videograms and which may be played by the use of a playback device and is primarily intended for private use.

IMAGES GENERAL PERMISSION AGREEMENT

SCHEDULE THREE

1. REGULATION AND IMAGE FORUM**Regulation**

- 1.1 This GPA shall only be amended through the mechanism of the Image Forum as provided for in Paragraph 1.4 to 1.13 below. This provision does not limit the right of the BBC and the Contributor to agree to amend the particular GPA entered into between them.
- 1.2 If at any time after signature of the GPA by or on behalf of the Contributor and the BBC:
- 1.2.1 any of the provisions for payments to the Contributor set out in Clause 3 are altered; or
- 1.2.2 the residual for any usage of a Work or for which a payment has not been specifically set out in this Agreement has been determined;
- then payments to be made to the Contributor shall reflect such alteration in respect of all relevant uses made of the Work after the date of such alteration or shall reflect such determination in respect of all relevant uses made of the Work whether before or after the date of such determination PROVIDED THAT such alteration or determination has been made
- 1.2.2.1 in accordance with the mechanism of the Image Forum; or
- 1.2.2.2 by arbitration as provided for in paragraph 1.9; or
- 1.2.2.3 by an expert in accordance with paragraph 1.3.
- 1.3 It is agreed that if the agreement to operate the Image Forum between the BBC and BAPLA is terminated, with the consequence that the Image Forum ceases to function then:
- 1.3.1 those matters that are to be defined or determined by the Image Forum shall instead be defined or determined (unless otherwise agreed between the BBC and BAPLA) 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 Contributor of any Work covered by this Agreement; or
- 1.3.2 if at any time BAPLA has ceased to exist, sub-clause 1.3.1 above shall operate as if the parties had failed to agree on the appointment of the expert.
- Image Forum**
- 1.4 Following signature of a letter of agreement between the BBC and BAPLA an Image Forum ("the Image Forum") shall be established in relation to picture libraries, which the Contributor now agrees shall have responsibility for the terms of the GPA between the BBC and the Contributor for the licensing of artistic works held in the collection of the Contributor in accordance with Paragraph 1.7.

- 1.5 The Image Forum will be comprised of two representatives each from the BBC and BAPLA. 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 Image Forum). Decisions of the Image Forum shall be unanimous. Additional representatives and further parties may be invited by the Image Forum to attend specific meetings. The Image Forum shall have a Secretary to be provided by the BBC and to be responsible for the administration of the Image Forum. Minutes of meetings of the Image Forum will be issued within three weeks of the date of the meeting and approved by the parties to the Image Forum within a further two weeks.
- 1.6 There will be two regular meetings of the Image Forum each year to be held on a six monthly basis. The date of a regular meeting will normally be agreed between the parties at least six months in advance. Any party may call ad-hoc meetings subject to the provision of one week's notice.
- 1.7 The powers of the Image Forum in relation to this GPA are:
 - 1.7.1 to agree the payments to be made by the BBC for exercising rights in relation to existing forms of Public Service use and exploitation of Works in the Commercial Services as provided for in this GPA;
 - 1.7.2 to agree the terms and payments under which Works are contracted by the BBC for new forms of Public Service use and exploitation in the Commercial Services for which the rights have been granted to the BBC under this GPA but for which no payment has yet been provided;
 - 1.7.3 to resolve disputes arising out of the operation of this GPA;
 - 1.7.4 to review the level of payments set out in clause 3 above in 2010 and after that on an annual basis.
- 1.8 The BBC will notify the Image Forum as soon as practicable of any new Public Services or Commercial Services which will include the use of artistic works held in the collection of the Contributor licensed under this GPA, 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 Image Forum will agree any terms that will apply, in advance of the commencement of the New Use.
- 1.9 In the event of terms not being agreed through the Image 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 Image Forum (including ad hoc meetings).
- 1.10 It is agreed by the parties that the proper operation of the GPA is dependent on the Image Forum and the BBC and BAPLA shall therefore be obligated to manage the Image Forum in good faith.
- 1.11 A reference to arbitration will be made in the event that the Image Forum cannot reach agreement on the terms to apply for the use of Works for a New Use which is not dealt with by the terms of the GPA.
- 1.12 The Image Forum shall appoint an arbitrator who will agree the terms of reference for the arbitration with the BBC and BAPLA. 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.
- 1.13 The period from the start of the process (i.e. between notification in writing to the Secretary of the Image 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.