

SEIRBHEIS NAM MEADHANAN GÀIDHLIG
PROGRAMME PURCHASE CONDITIONS
of the PROGRAMME PURCHASE AGREEMENT

These are the Programme Purchase Conditions, which together with the attached Confirmation Letter constitute the Programme Purchase Agreement between MG ALBA and the Producer.

1. DEFINITIONS AND GENERAL INTERPRETATION

1.1 The following words and phrases shall have the following meanings for the purpose of this Programme Purchase Agreement :-

"**Act**" means the Copyright, Designs and Patents Act 1988;

"**Author**" means in relation to any and all copyright works included in the Programme, the person or persons specified in Section 93A(2) of the Act;

"**Agreement**" means any Programme Purchase Agreement in which these Programme Purchase Conditions are incorporated and any and all schedules and annexures and exhibits attached to the foregoing or incorporated in the foregoing by reference;

"**Associate**" means any associated company or person within the meaning of s.25 of the Corporation Tax Act 2010;

"**BBC**" means the British Broadcasting Corporation operating under Royal Charter;

"**BBC Footage**" means the BBC footage and the use of the BBC footage as set out in Condition 11.1.;

"**BBC Guidelines**" means any BBC guidelines and policies applicable to the Producer and the Programme from time to time, which as at the date of this Programme Purchase Agreement are set out at www.bbc.co.uk/commissioning/tv/compliance-and-policy/bbc-policies.shtml;

"**BBC Health and Safety Guidelines**" means any BBC guidelines in relation to health and safety applicable to the Producer or the Programme from time to time, which as at the date of this Programme Purchase Agreement are set out at www.bbc.co.uk/commissioning/tv/compliance-and-policy/bbc-policies.shtml;

"**BBC Music**" means the use of the BBC music blanket as set out in Condition 11.2;

"**BBC Public Services**" means the BBC's publicly funded services howsoever delivered;

"**Budget**" means a complete bona fide accurate estimate of the total Cost of Production of the Programme including all costs incurred or required to be incurred in order to comply with the requirements of this Programme Purchase Agreement and being the amount specified in Part 1 of Part 1 of the Schedule to the Confirmation Letter;

"Budget Basis" means the funding arrangement whereby a Programme which meets certain criteria as determined by MG ALBA is purchased on the basis of an agreed budget for the Programme as set out in the Programme Purchase Agreement;

"Cashflow Schedule" means the cashflow schedule attached as part of the Schedule to the Confirmation Letter detailing payments and dates;

"Character" means any clearly identifiable, distinctive and named individual (whether real, fictional, human, animal, cartoon or otherwise) originating within the Format and/or Programme which can be precisely and objectively identified visually, audibly and/or graphically by virtue of their appearance, personality, background and/or relationship with other characters and is dramatically represented by likeness, speech, action and/or gestures;

"Commercial Download Rights" - means the right, from the period commencing thirty (30) days after first linear transmission of the Programme (or relevant episode thereof) by MG ALBA or a Sub-Licensee, to make the Programme (or relevant episode of the Programme) available, either itself or through its licensees (subject always to compliance by such licensees with Condition 13 as appropriate), as an individual discrete purchase by the general public for permanent download to own by any wire or wireless means (including but not limited to the internet) in such a manner as to permit access to, viewing and storage of copies of the Programme as a permanent download;

"Commercial New Media Rights" – means the right to use the Programme (or part thereof) in any online, interactive or other new media services in whatever format now known or invented in the future, excluding those rights granted to MG ALBA as part of the Primary New Media Rights (as defined in Part 2 of the Schedule);

"Commercial Website Rights" – means the right from the period commencing thirty (30) days after first MG ALBA (or Sub-Licensee) transmission of the Programme (or relevant episode thereof) to set up a commercial website based on the Format of the Programme (but not using the Programme itself) which is editorially acceptable to MG ALBA (MG ALBA approval not to be unreasonably withheld or delayed) and does not derogate from, undermine or otherwise conflict with the Primary New Media Rights;

"Commissioning Specification" means the commissioning specification setting out details of the Programme agreed between the BBC, MG ALBA and the Producer attached to the Confirmation Letter and forming part of this Programme Purchase Agreement;

"Confirmation Letter" means the letter from MG ALBA to the Producer attached to and forming part of this Programme Purchase Agreement and the Schedule annexed thereto;

"Control" means in relation to a body corporate, the power of a person to secure that its affairs are conducted in accordance with the wishes of that person:

- (a) by means of the holding of shares or the possession of voting power in or in relation to that or any other body corporate; or
- (b) by virtue of any powers conferred by the articles of association or any other document regulating that or any other body corporate;

and a "**Change of Control**" shall occur if a person who controls any company or undertaking ceases to do so, or if another person acquires control of it;

"**Cost of Production**" means the total direct and indirect cost of the pre-production, production, post production and delivery of the Programme including without limitation the cost of all development work and the acquisition of all underlying rights as are required to satisfy the Producer's obligations under this Programme Purchase Agreement;

"**Cost Report**" means a statement of costs in relation to the Programme in substantially the same format as the template set out in section 1 of Part 4 of the Schedule to these Programme Purchase Conditions;

"**Delivery**" means delivery by the Producer of the Programme including all Delivery Material in accordance with the provisions of the Programme Purchase Agreement;

"**Delivery Date**" means the date identified in the Commissioning Specification as being the date by which the Producer is required to have achieved Delivery;

"**Delivery Material**" means all deliverables required pursuant to the provisions of the Programme Purchase Agreement in order to constitute Delivery thereunder and comprising the items listed in Part 5 of the Schedule to these Programme Purchase Conditions;

"**Distribution Expenses**" means all fees and expenses of the Producer, the Distributor and their assignees and licensees, in relation to the distribution and/or exploitation of the Programme and all payments of whatever nature, whether in relation to rights owners, performers or other third parties of whatever description which may arise or require to be made in connection with the distribution and/or exploitation of the Programme including without limitation any and all cash and contingent gross deferrals and participation in gross receipts and net profits whether the same shall be in a definite amount or based on a percentage of gross receipts or net profits and whether the same are fixed obligations or are contingent on the receipts of the Programme;

"**Distribution Report**" means a report supplied by the Producer to MG ALBA detailing the Distribution Expenses, gross receipts, net income and details of recoupment due to MG ALBA in relation to exploitation of the Programme undertaken by the Producer or authorised by the Producer such report to be in a form agreed between MG ALBA and the Producer and based on industry standard documentation;

"**Distributor**" means any person who enters into any distribution or licensing arrangements in respect of the Programme;

"Educational Purposes" means all non-commercial purposes connected with education including in particular exploitation of the Programme: (a) by or for institutions or organisations not principally engaged in exhibiting motion pictures to the public including without limitation educational, social and religious institutions, churches, businesses, industrial and civic organizations, hospitals, libraries, prisons, convents, orphanages or marine and military installations; (b) in connection with events not primarily concerned with the film or television industry including fetes, festivals, shows, galas, plays and performances of all kinds, sporting or athletic events and community events of all kinds; (c) in connection with MG ALBA's own public affairs and communications needs; or (d) by way of making the Programme available to third parties for the purpose of research or private study at the discretion of MG ALBA;

"Effective Date" means the date specified in paragraph 5 of the Confirmation Letter;

"Essential Elements" means MG ALBA's material requirements for the personnel, talent and other elements of the Programme as identified in the Commissioning Specification as key approvals and the requirements set out in Condition 14.2.2 of these Programme Purchase Conditions;

"Event of Default" means any of the events specified in Condition 15.1;

"Event of Force Majeure" means any act or event which is beyond the reasonable control of the Producer or MG ALBA which interferes or is likely to interfere with production of any Programme;

"Fixed Price Basis" means the purchase arrangement whereby a Programme, if it meets certain criteria, is purchased without reliance on budget negotiation by way of agreement of a fixed price, such purchase being specified in the Programme Purchase Agreement;

"Format" means the characteristics including without limitation any or all of the structure, set and/or setting, Characters, Character relationships, themes, narrative development, concepts, situations, rules, questions, contestants, prizes, catchphrases, transmission title, and any other material factors which together comprise the distinctive elements of the Programme;

"General Contingency" means a sum of money, percentage or other means of deriving an amount set out and provided for in the Budget;

"Gross Receipts" means any and all amounts received by or on behalf of the Producer in connection with the exploitation of the Programme under Condition 13 less any VAT and any other government taxes, duties or levies;

"Group Company" means any holding company of the Producer, and any holding company or subsidiary of such holding company, and any subsidiary of the Producer (as these terms are defined in section 1159 of the Companies Act 2006);

"**HSE**" means the Health & Safety Commission, the Health & Safety Executive and any other or replacement non-departmental public bodies with specific statutory functions in relation to the management and enforcement of health & safety;

"**Intellectual Property Rights**" means any patents, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, rights in performances, moral rights and any trade or business names and other similar rights or obligations whether registerable or not in any country (including but not limited to the UK);

"**Licensee**" means any third party (including without limitation the BBC) granted a license of any rights granted to MG ALBA under this Programme Purchase Agreement;

"**Mandate**" means the bank mandate attached in the Schedule to the Confirmation Letter;

"**Marketing Plan**" means the Marketing Plan by which the Producer outlines the sales potential and plans for ongoing supply and exploitation of the Programme;

"**MG ALBA Editorial Representative**" means the editorial representative of MG ALBA or the BBC as set out at condition 12.2

"**MG ALBA Rights**" means the exclusive right for MG ALBA to exploit (either by itself or by means of sub-licence to a Sub-Licensee) the Programme as part of a Gaelic language television broadcasting and media service, which shall include the rights set out in Part 2 of the Schedule to these Programme Purchase Conditions;

"**MG ALBA Licence Period**" means 5 (five) years from the later of: (a) the Delivery Date applicable to the Programme; or (b) a date Delivery is actually achieved by the Producer as confirmed by MG ALBA to the Producer in writing;

"**Music Cue Sheet**" means the cue sheet of music recorded and included in the Programme (by sequence titles or by titles of composition if titled) and including timing on each piece of music and full details of composers lyricists arrangers publishers and other copyright holders and synchronisation licences authorising the exploitation in any and all media of all rights in the Programme throughout the world during the entire period of copyright of the Programme;

"**Net Profit**" means any and all amounts received by or on behalf of the Producer in connection with exploitation of the Programme under Condition 13 less any Distribution Expenses, VAT and any other government taxes, duties or levies;

"**OFCOM**" means Office of Communications, the independent regulator and competition authority for the UK communications industries as established by the Communications Act 2003;

"**PACT**" means Producer's Alliance for Cinema and Television;

"**Performer**" means an individual whose performance is visible or audible in the Programme or who though not performing otherwise participates in or is visible or audible in the Programme;

"Price" means all sums paid by MG ALBA to the Producer (excluding VAT) under this Programme Purchase Agreement;

"Production Account" means a separate bank account in the joint names of MG ALBA and the Producer established under a Mandate;

"Production Contracts" means any and all agreements entered into by the Producer in relation to any of the Essential Elements;

"Production Personnel" means all principal artists and all personnel who render services or supply goods facilities or finance in respect of the Programme or any other deliverable of the Producer under this Programme Purchase Agreement;

"Production Progress Report" means the reports to be supplied to MG ALBA by the Producer on agreed dates detailing production progress being in substantially the same format as the template set out in section 2 of Part 4 of the Schedule to these Programme Purchase Conditions;

"Production Schedule" means the relevant provisions of the Confirmation Letter (including without limitation the Commissioning Specification) setting out the deadlines and other applicable milestones to be met by the Producer in relation to the Programme;

"Programme" means the programme or programmes detailed in the Commissioning Specification (and complying with the Essential Elements) which are procured pursuant to the Programme Purchase Agreement;

"Programme As Completed Form" means the form of such name to be provided to the BBC on completion of the Programme or such other form as may be required under the Programme Purchase Agreement;

"Programme Purchase Agreement" means: (i) the Confirmation Letter executed by MG ALBA and the Producer and the Schedule annexed thereto; and (ii) these Programme Purchase Conditions and the Schedule annexed hereto;

"Programme Trade Marks" means the title of the Programme, the name or likeness of any Character, any trade mark, trade name, brand name or other word, any letters, numerals, logo or other sign, any location, place, building or other thing or feature which is used to identify or is otherwise connected with the Programme, or any part or combination of the foregoing;

"Promotional Online Rights" has the meaning given in Part 2 of the Schedule;

"Publicity Material" means copies of all publicity material, Publicity Stills and other material relating to the Programme which the Producer may be required to deliver to MG ALBA or a third party nominated by MG ALBA in accordance with Condition 2.1 including without limitation the material listed as being required by MG ALBA in Part 3 of the Schedule to these Programme Purchase Conditions;

"Publicity Stills" means any publicity stills delivered by Producer to MG ALBA or any party nominated by MG ALBA as one of the Delivery Materials;

"Regional Production" means a television production which meets two out of the following three criteria:

- (i) the production company must have a substantive business and production base based in the UK outside the M25. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions; and
- (ii) at least 70% of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent in the UK outside the M25; and
- (iii) at least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the UK outside the M25. Freelancers without a usual place of employment outside the M25 will nonetheless count for this purpose if they live outside the M25;

"Regional Programme" means a television programme which:

1. deals with subject matter of specific interest to people living in the region (and of less interest elsewhere); and
2. is clearly set within the region and/or features people known to be residents of, or have close connections with, the region; and
3. meets two out of the following three criteria:
 - (i) the Producer must have a substantive business and production base in the region. A base will be taken to be substantive if it is the usual place of employment of executives managing the regional business, of senior personnel involved in the production in question, and of senior personnel involved in seeking programme commissions;
 - (ii) at least 70% of the production budget (excluding the cost of on-screen talent, archive material and copyright costs) must be spent in the region; and
 - (iii) at least 50% of the production talent (i.e. not on-screen talent) by cost must have their usual place of employment in the region. Freelancers without a usual place of employment outside the region will nonetheless count for this purpose if they live in the region;

"Release Policy" means the policy to be developed and implemented by MG ALBA setting out the circumstances in which MG ALBA may consider and accept requests made by the Producer pursuant to Condition 13.7, which policy shall, during the period prior to any such implementation,

comprise as closely as practicable the principles set out in the BBC's Programme Release Policy set out at http://downloads.bbc.co.uk/commissioning/site/Programme_Release_Policy.pdf subject only to such amendments as MG ALBA, acting reasonably, considers necessary to reflect its own interests and circumstances where different to those affecting the BBC;

"Relevant Union Agreements" means any union agreement which may be relevant to the production of the Programme;

"Rental Right" means the entire rental and lending right in relation to any work and/or performance incorporated in the Programme within the meaning of Sections 18A(2) to (6), Section 178 and Section 182C of the Act;

"Rights Owner" means in relation to all performers property rights in respect of performances contained in the Programme the person or persons specified in Section 191A(3) of the Act;

"Specific Contingency" means an amount agreed in advance of production and as required to cover specific production needs that may arise during production and not otherwise provided for in the Budget or a Cashflow Schedule;

"Sub-Licensee" means any third party (including without limitation the BBC) granted a sub-licence of any rights granted to MG ALBA under this Programme Purchase Agreement pursuant to Condition 3.4;

"Surplus Funds" means any underspend in relation to the Budget or the Price as determined in accordance with the Underspend Guidelines;

"Technical Specifications" means any technical specifications set out in the Confirmation Letter;

"Third Party Material" means any and all material incorporated or proposed to be incorporated in the Programme in respect of which any rights of copyright, rights in performances, moral rights or any other Intellectual Property Rights of whatever nature are vested in or controlled by third parties;

"UK" means the United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man and its territories and waters;

"Underlying Material" means any material of whatever nature (whether specially commissioned for the Programme or pre-existing), including the Format, any Third Party Material, any literary, dramatic, artistic or musical material or library or other sound record or other material in which Intellectual Property Rights subsist, and which is incorporated into or synchronised with or forms part of, created, commissioned or otherwise produced in the course of production of the Programme or of which use is made in connection with the Programme;

"Underspend Guidelines" means the Guidelines annexed as Part 1 of the Schedule to these Programme Purchase Conditions for determining the amount of Surplus Funds, if any, to be remitted to the Producer; and

"Video-On-Demand Rights" means the exclusive right to include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near video-on-demand service excluding the Primary Video-On-Demand Rights (as defined in Part 2 of the Schedule).

- 1.2 Any reference in these Conditions to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended modified extended or re-enacted whether before or after the date of this Programme Purchase Agreement and to all statutory instruments orders and regulations modifying and/or extending such statute or provision.
- 1.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa.
- 1.4 The word "copyright" means the entire copyright and design right subsisting under the laws of the United Kingdom and all analogous rights subsisting under the laws of each and every jurisdiction throughout the world. Section 177 of the Act shall apply in relation to the interpretation of words and phrases in these Conditions.
- 1.5 The term "equitable remuneration" shall for the purposes of this Programme Purchase Agreement be construed in accordance with all relevant provisions of Directive 92/100 EEC.
- 1.6 Unless otherwise stated time shall be of the essence for the purpose of the performance of the Producer's obligations under this Programme Purchase Agreement.
- 1.7 Unless otherwise stated references to Conditions, sub-Conditions, sub-paragraphs, schedules, annexures and exhibits relate to this Programme Purchase Agreement.

2. PRODUCTION, DELIVERY AND ESSENTIAL ELEMENTS

- 2.1 The Producer undertakes:
 - 2.1.1 to produce the Programme incorporating all Essential Elements in accordance with the provisions of this Programme Purchase Agreement for the Budget or Fixed Price Basis in accordance with the Production Schedule; and
 - 2.1.2 to ensure that:

all Delivery Material is or has been delivered to MG ALBA (or MG ALBA's Sub-Licensee) or the appropriate recipient set out in Part 5 of the Schedule to these Programme Purchase Conditions by the Delivery Date; and
 - 2.1.3 the Publicity Material has been delivered to MG ALBA or such party as MG ALBA may nominate in writing to receive it by the Delivery Date or any earlier date specified in the

Commissioning Specification or otherwise specified in writing by MG ALBA to the Producer.

- 2.2 No substitution, amendment or alteration or subtraction from any of the Essential Elements of the Programme shall be made by the Producer without the prior written consent of MG ALBA and for the avoidance of doubt the Programme shall not be capable of Delivery for the purposes of this Programme Purchase Agreement unless it complies with the Essential Elements as set out in this Programme Purchase Agreement, unless the parties agree otherwise in writing.
- 2.3 The Producer agrees and acknowledges that no tie-in or sponsorship arrangement shall be entered into in relation to the Programme without the prior written consent of MG ALBA and the relevant Sub-Licensee of MG ALBA.
- 2.4 The Producer shall comply with all applicable laws and regulations relating to the production of television programmes and with all guidelines relating to the Gaelic language and other matters from time to time issued by MG ALBA following consultation with broadcasters (including without limitation the BBC), PACT and other interested parties.
- 2.5 Subject to the fulfilment of the terms of the Programme Purchase Agreement and provided no Event of Default shall have occurred MG ALBA undertakes to pay, in consideration for the rights granted to MG ALBA in connection with the Programme under this Programme Purchase Agreement (including without limitation the MG ALBA Rights), the Price specified in the Programme Purchase Agreement in accordance with the provisions of this Programme Purchase Agreement (including without limitation the Cashflow Schedule).
- 2.6 All money paid by MG ALBA in relation to the Programme shall be held upon trust for such purpose by the Producer in accordance with Condition 9 and shall be used solely in connection with the production of the Programme. Any money facilities or services not applied in full accordance with this provision without prejudice to any rights of MG ALBA at law or under this Programme Purchase Agreement shall be repayable and/or refundable to MG ALBA immediately on demand.
- 2.7 The Producer shall deliver Production Progress Reports and Cost Reports in support of each invoice which is submitted for payment to MG ALBA or in advance of each cashflow instalment in accordance in with the dates set out in the Commissioning Specification or at such other time as MG ALBA may request provided that the Producer shall have at least five days notice to prepare and present Production Progress Reports and Cost Reports to MG ALBA in such form as may be notified to the Producer on or before request.

3. RIGHTS

- 3.1 Subject to any assignment undertaken pursuant to Condition 10, upon and from the Effective Date, the Producer hereby grants to MG ALBA an irrevocable and royalty-free licence:

- 3.1.1 to use and exploit the MG ALBA Rights as set out in Part 2 of the Schedule to these Programme Purchase Conditions for the MG ALBA Licence Period subject to Condition 3.2 (and insofar as any such rights are not in existence as at the date of this Programme Purchase Agreement then such grant of rights shall operate as a present grant of such future rights); and
- 3.1.2 to use, exploit and sublicense to the BBC all rights in the Programme as required to allow the BBC first option to commission a radio programme or series of radio programmes based on the format of the Programme for broadcast on its radio services primarily made available to audiences in the UK on terms to be agreed in good faith between the BBC and/or MG ALBA and the Producer, such option to expire six (6) months after first televised transmission by the BBC of the first episode of the Programme.
- 3.2 MG ALBA and its Sub-Licensees shall be entitled to exercise the television broadcast and transmission rights granted by means of the MG ALBA Rights:
- (i) by means of broadcast and transmission on any digital terrestrial television channels (including SER by the BBC); and
 - (ii) within any agreed limits on the number of transmissions,
- set out in the Confirmation Letter or as otherwise agreed in writing with the Producer from time to time. Any broadcast by MG ALBA or its Sub-Licensees on any other television channel shall be subject at all times to MG ALBA, the relevant Sub-Licensee and the Producer agreeing the purchase from, or on behalf of, the Producer of any additional rights required to allow such broadcast (including without limitation any clearance payments required under any applicable union agreements the Producer is party to).
- 3.3 The Producer shall not broadcast or transmit the Programme in any way within the UK and subject to Condition 13.1 within Eire (or grant any third party any licence to do the same) during the MG ALBA Licence Period without the prior written consent of MG ALBA.
- 3.4 MG ALBA shall be entitled to grant sub-licences to third parties (including without limitation the BBC) ("**Sub-Licensees**") of any of the rights granted to MG ALBA under this Programme Purchase Agreement (including without limitation the MG ALBA Rights and the Programme Trade Marks).
- 3.5 MG ALBA shall not be deemed to be in breach of this Programme Purchase Agreement if any broadcast or transmission of the Programme under this Programme Purchase Agreement by MG ALBA or a Sub-Licensee is capable of being received outside of the UK provided the broadcast or transmission was intended for reception within the UK.
- 3.6 The Producer shall ensure that MG ALBA (and its Sub-Licensees) has the benefit of and is entitled to enforce all contracts (including licences) relating to the Programme entered into by or

on behalf of the Producer in order that MG ALBA (and its Sub-Licensees) can exercise, or sublicense the exercise of, the rights granted to it under this Programme Purchase Agreement, and the Producer shall at the request of MG ALBA or the relevant Sub-Licensee provide MG ALBA or the Sub-Licensee with documentary evidence of compliance with this Condition 3.6.

3.7 MG ALBA (or its Sub-Licensees) shall be entitled to make all such use of the Publicity Stills delivered to MG ALBA (or its Sub-Licensees) as part of the Delivery Materials as required for the purposes of exercising any of the rights granted to MG ALBA (or its Sub-Licensee) under this Programme Purchase Agreement.

3.8 At the request of MG ALBA (or its Sub-Licensees) the Producer shall reversion or re-edit the Programme as MG ALBA (or its Sub-Licensees) may require for the following purposes: (1) in pursuance of its programme policy governing the suitability of material contained therein and/or the demands of accurate timing on presentation; and (2) for adaptation in connection with the exercise of the MG ALBA Rights on non-television platforms; provided that (1) any such re-editing or reversioning is undertaken at MG ALBA's or the Sub-Licensee's expense (the level of which shall be pre-agreed in writing by the parties); and (2) any such editing or reversioning shall not impair continuity, and the definition of the Programme in this Programme Purchase Agreement is hereby varied to include any such re-versioned or re-edited version of the Programme.

3.9 The Producer warrants and undertakes to MG ALBA and the BBC that:

3.9.1 ownership of all Delivery Material and all other materials required in order to exploit the Programme and all Intellectual Property Rights subsisting in or to the Programme and such materials shall vest in and belong to the Producer with effect from their creation subject to the provisions of Conditions 10 and 13;

3.9.2 subject to Conditions 3.2, 4.3, 4.4 and 11 any Third Party Material included in the Programme shall have been so included having obtained such consent and permission from its owners as is necessary to enable MG ALBA and its Sub-Licensees to exercise its rights under this Programme Purchase Agreement to the fullest extent possible;

3.9.3 all Production Personnel shall have irrevocably and unconditionally waived all rights to which such persons may be entitled pursuant to the provisions of Sections 77, 80 and 85 of the Act and any other moral rights to which persons may be entitled under The Performances (Moral Rights, etc.) Regulations 2006 or any other any legislation now existing or in future enacted;

3.9.4 all consents pursuant to Part II of the Act and any other laws in any part of the world in relation to the Programme shall have been granted to the Producer and its successors, assignees and licensees on terms capable of enabling MG ALBA to freely exercise the MG ALBA Rights in accordance with this Programme Purchase Agreement ; and

3.9.5 all persons whose names, likenesses or biographies appear in the Programme or any material connected with it shall have consented to the exploitation of the Programme including the use of their voices, photographs, recording and performances contained therein and any processing of personal data relating to such persons by the Producer and /or MG ALBA,

to the extent required to ensure MG ALBA or any Sub-Licensee may freely exercise the MG ALBA Rights.

3.10 Unless otherwise agreed with MG ALBA in advance and in writing, the Producer warrants and undertakes to MG ALBA and the BBC that:

3.10.1 all Authors and Rights Owners shall transfer or licence to the Producer all Intellectual Property Rights and any other related rights (including all related Rental Rights) in relation to the copyright works and performances incorporated in the Programme which are necessary to permit the exploitation of the Programme by MG ALBA and any Sub-Licensees by means of exercising the MG ALBA Rights; and

3.10.2 full equitable remuneration is paid to such persons in relation to their contributions to the Programme out of all sums to which to the Producer is entitled pursuant to this Programme Purchase Agreement, subject only to the ongoing rights of collecting societies which shall be disclosed to and approved by MG ALBA in advance.

3.11 To the extent not provided as part of the Delivery Materials, on request from MG ALBA or the BBC the Producer shall provide such records and documentary evidence as MG ALBA may reasonably require to verify that the Producer has complied with its obligations under this Condition 3 and the other provisions of this Programme Purchase Agreement.

3.12 Subject to any outstanding consents being obtained and any use fees, repeat fees and residuals that may be due, MG ALBA (or any Sub-Licensee) may use any extracts from the Programme in any other programme which is funded in whole or in part by MG ALBA or the relevant Sub-Licensee (including as part of any other audio visual material) provided that:

3.12.1 MG ALBA and its Sub-Licensees shall not make any such use which is:

(i) before the Programme (or relevant episode thereof) has been first transmitted by MG ALBA or a Sub-Licensee (other than in the exercise or sublicensing by MG ALBA of its rights under this Programme Purchase Agreement to publicise the Programme by way of trails and extracts); or

(ii) designed to 'send-up' the Programme; or

(iii) for the purposes of creating a new compilation or 'best-of' programme.

without the Producer's consent; and

3.12.2 such extracts shall be no longer than 5 (five) minutes per 30 (thirty) minutes or less of Programme running time, and for the avoidance of doubt, where any such extract is included in such other audio visual material which is to be exploited commercially, the Producer will be paid for such exploitation.

4. PRODUCTION CONTRACTS AND COMMISSIONING BROADCASTER

4.1 The Producer shall ensure that all material Production Contracts shall be effected on the best reasonably obtainable arms length commercial terms and shall contain a provision permitting the exercise by MG ALBA or its nominee of the rights granted pursuant to Condition 16 and thereafter for the exercise of all rights exercisable by the Producer pursuant to such Production Contracts.

4.2 Where MG ALBA reasonably requests executed copies of any Production Contract or any other instrument, document or agreement relating to the Programme, the Producer shall provide such copies as soon as reasonably practicable and in any event within 14 days of the original request.

4.3 The Producer warrants and undertakes to the BBC and MG ALBA that no royalties or residual repeat, rerun, reuse or any other fees or payments are payable to any third parties in the course of: (i) MG ALBA exercising its right to use the Programme for Educational Purposes; or (ii) the BBC exercising any of the rights granted to MG ALBA under this Programme Purchase Agreement (including without limitation the MG ALBA Rights and Programme Trade Marks) as MG ALBA's Sub-Licensee, during the MG ALBA Licence Period provided such use is accordance with the terms of this Programme Purchase Agreement. The parties acknowledge and agree that any other exercise of the MG ALBA Rights by MG ALBA or any Sub-Licensee may require payment by the Producer of amounts pursuant to a Relevant Union Agreement or other underlying bona fide third party rights agreements, in which case the parties shall negotiate in good faith and acting reasonably in order to arrange and agree payment of such properly due and payable amounts by MG ALBA or its Sub-Licensee at fair market value. For the avoidance of doubt, no further amounts shall be payable to the Producer or any third party by MG ALBA or its Sub-Licensees for any use of any rights in or elements of the Programme which are owned by the Producer or its Group Companies, provided such use falls within the scope of the MG ALBA Rights and/or Programme Trade Marks as licensed in accordance with this Programme Purchase Agreement.

4.4 Where the Producer obtains synchronisation licences in relation to the exploitation of any music lyrics or sound recordings contained in the Programme such synchronisation licences shall not require any additional payment in relation to: (i) MG ALBA's use of the Programme for Educational Purposes; or (ii) any exercise by the BBC as a Sub-Licensee of the MG ALBA Rights or Programme Trade Marks in accordance with the terms of this Programme Purchase Agreement, other than such sums as may be required by the recognised collecting societies in the UK to be paid by broadcasters in relation to the manufacture of transmission copies of the Programme. The Producer shall not incorporate any lyrics, musical work or sound recording

where all required rights are not registered with a recognised collecting society in the UK without the prior written approval of MG ALBA, which approval shall not be unreasonably withheld or delayed.

- 4.5 The Producer shall not pledge the credit of MG ALBA or hold the Producer out as MG ALBA's agent in any of its dealings in connection with the Programme or otherwise.
- 4.6 The Producer shall co-operate with MG ALBA or its Sub-Licensees in relation to any and all matters relating to any broadcast or use of the Programme by MG ALBA or the relevant Sub-Licensee under this Programme Purchase Agreement and shall, at the request of MG ALBA, enter into and execute such documents and enter into such agreements as MG ALBA or the relevant Sub-Licensee may ordinarily require of independent producers in a form consistent with any applicable terms of trade or other standard commissioning arrangements agreed with PACT.

5. INSURANCE

5.1 Upon and from the Effective Date the Producer shall ensure it has arranged and maintained:

5.1.1 insurance against:

- (a) all risks normally insured against in accordance with the customary practice of prudent film and television producers; and
- (b) any additional risks as may be reasonably required by MG ALBA or the BBC to protect its legitimate interests in connection with the Programme; and
- (c) if applicable and required, film union insurance either under the BBC Film and Television Production Scheme arranged by AON ("the AON Insurance"); or with such other reputable insurance company or companies provided that:
 - (i) where the Producer elects to use another reputable insurance company, it shall secure MG ALBA's written approval of the terms of the policy to be taken out in respect of the production of the Programme (such approval not to be unreasonably withheld or delayed);
 - (ii) in the event that the Producer is also supplying online and/or interactive elements as part of the Programme, then the Producer must also have appropriate technical errors and omissions insurance from a reputable insurance company; and

5.1.2 with a reputable insurer, adequate public liability insurance and, where applicable, product liability insurance and/or professional indemnity insurance and/or errors and omissions insurance which shall be no less than three million pounds sterling (£3,000,000).

- 5.2 The Producer shall comply with all the conditions and warranties in the policies and shall not do or permit to be done anything which might result in any of the insurances set out in Condition 5.1 lapsing or becoming void or voidable.
- 5.3 Adequate insurance cover shall be effected for the Programme in relation to cast negative faulty stock/tape, props, sets, wardrobe, equipment, extra expense, third party property damage, office contents, errors and omissions and general liability in such amounts as shall be necessary to provide full cover to MG ALBA for all sums paid by MG ALBA in payment of the Price in relation to the Programme.
- 5.4 MG ALBA's interest shall be noted as named, assured and loss payee on all policies of insurance relating to the Programme.
- 5.5 Copies of all insurance policy documentation shall be provided to MG ALBA on request and the Producer shall notify MG ALBA of any claim relating to any policy of insurance, which claim shall not be settled without the consent in writing of MG ALBA.
- 5.6 The Producer shall comply with any BBC requirement for insurance cover in relation to the Programme.

6. CREDIT AND CONTENT

- 6.1 MG ALBA (or any Sub-Licensee) shall be entitled to approve all credits prior to their incorporation in the Programme (or the version of the Programme used by any Sub-Licensee of MG ALBA) in the UK including without limitation a production credit in accordance with any applicable BBC Guidelines, provided that the form size and position of such credits and logo shall be approved by the MG ALBA Editorial Representative (as defined in Condition 12.2) in advance of such incorporation and to this intent the Producer shall provide the MG ALBA Editorial Representative as soon as practicable after commencement of production with a list of all proposed credits indicating their size and position in relation to the Programme.
- 6.2 MG ALBA undertakes to honour all screen credit obligations agreed under Condition 6.1 incorporated in the transmission copy of the Programme but any inadvertent failure on the part of MG ALBA or a Sub-Licensee to comply with this undertaking shall not be deemed a breach of this Programme Purchase Agreement.
- 6.3 The Programme shall also contain such form of screen credit as may be specified by MG ALBA in the Programme Purchase Agreement and any other relevant credit required or added by MG ALBA. Such credits shall comply with all relevant BBC and/or OFCOM guidelines.
- 6.4 Where requested by MG ALBA, the audio-visual logo of MG ALBA or the BBC from time to time shall be inserted at the beginning of the opening credit sequence and at the end of the final credit sequence of the Programme or in such manner as MG ALBA and the BBC may agree.

- 6.5 The Programme shall comply with all contractual credit obligations owed towards third parties and shall also contain notice in accordance with the Universal Copyright Convention (as amended) naming the copyright owners, typically being MG ALBA and the Producer.
- 6.6 The Producer shall comply with all then current requirements and guidelines of OFCOM together with any statutory or contractual requirements of the BBC and shall perform its obligations in relation to the Programme in accordance with good industry practice to a high professional standard.
- 6.7 In the event that MG ALBA has reasonable concerns of reputational risk due to the distribution activities of the Producer and wishes its logo and/or name (or any logo and/or name of the BBC) to be removed from the Programme credits it shall be entitled to request this action from the Producer and the Producer shall perform such amendment at MG ALBA's cost subject to MG ALBA agreeing in advance to the costs of such amendment.
- 6.8 The Producer shall include on the transmission copies of the Programme a copyright notice in the form described in the Commissioning Specification.

7. PROGRAMME BUDGET BASIS – ARRANGEMENTS FOR PAYMENT OF THE PRICE

- 7.1 The amounts, times and other factors determining to what extent and at what times the Price shall be paid to the Producer by MG ALBA are set out in the Confirmation Letter.
- 7.2 This Condition applies in relation to any Programmes purchased on a Budget Basis.
- 7.3 Where MG ALBA and the Producer agree a Budget for a Programme requires a General Contingency such sum shall be included in the Budget for a Programme and Cashflow Schedule to cover any areas of unforeseen expenditure or optional expenditure where the Producer is provided with discretion as to its use. Any such amounts identified as General Contingency shall be used by the Producer, if at all, strictly for the purposes for which they have been reserved and applied by the Producer in the utmost good faith. Any portion of the General Contingency unused shall be returned to MG ALBA.
- 7.4 Where the Cost of Production of the Programme is less than the Budget and/or the Price any surplus including without limitation any money received from the sale of props or other physical materials shall be held on trust for MG ALBA pending the application of the Underspend Guidelines set out in Part 1 of the Schedule to these Programme Purchase Conditions which shall be applied to determine how any Surplus Funds are to be dealt with and to what extent they may be repayable to MG ALBA. MG ALBA agrees that after application of the Underspend Guidelines the Producer shall be entitled to retain 100% of any Surplus Funds. All unsold physical materials shall remain subject to the provisions of (i) Condition 14.2 and (ii) Part 14 of Schedule 1 to the Confirmation Letter.

- 7.5 If at any stage in production it appears likely that the Cost of Production of the Programme is likely to exceed the Budget and/or the Price or the production of the Programme is or is likely to fall materially behind the Production Schedule the Producer shall:
- 7.5.1 give immediate notice in writing of all relevant particulars to MG ALBA;
 - 7.5.2 prepare and submit to MG ALBA full particulars of all costs incurred and all liabilities likely to be incurred in order to complete the Programme together with detailed revisions to the Production Schedule and the Budget for the Programme; and
 - 7.5.3 shall meet with MG ALBA and follow all instructions of MG ALBA in relation to the production of the Programme.
- 7.6 Other than in any circumstance to which Condition 7.7 applies, the Producer shall pay all costs and liabilities incurred in connection with production and delivery of the Programme including without limitation the Cost of Production.
- 7.7 The Producer shall not be liable for any amount by which the Cost of Production exceeds the sums payable under the Budget in the following circumstances:
- 7.7.1 where the increased costs arise directly as a result of the BBC and/ or MG ALBA having made changes to the Commissioning Specification by way of a variation to this Programme Purchase Agreement to which MG ALBA has agreed; and
 - 7.7.2 where such changes and the variation to the Cost of Production resulting from such changes have been identified and agreed in writing by all parties and MG ALBA as an amendment to the relevant Production Contract,
and in such circumstances the Price shall be increased accordingly.
- 7.8 The Producer undertakes within 60 days of Delivery of the Programme to submit to MG ALBA a fully itemised detailed statement of the Cost of Production of the Programme certified at the request of MG ALBA by a firm of accountants approved by MG ALBA and containing a detailed itemisation of all sums actually expended for the production of the Programme. Where a Programme is part of a series of Programmes the period above referred to shall be calculated with effect from Delivery of the last Programme in the series or such part of the series for which MG ALBA paid the Price.
- 7.9 If the Producer shall fail to deliver to MG ALBA the statement of the Cost of Production of the Programme by the date specified in Condition 7.8 MG ALBA shall have the right to give the Producer notice in writing of the Producer's breach of this Programme Purchase Agreement requiring the Producer to remedy such breach within 30 days.
- 7.10 If the Producer shall have received notice in writing from MG ALBA under Condition 7.9 and shall not have remedied the breach within the time period required MG ALBA shall have the right to give notice to the Producer suspending all further payments to the Producer under any

agreements between MG ALBA and the Producer until full compliance by the Producer with all obligations owed towards MG ALBA.

8. FIXED PRICE FUNDING ARRANGEMENTS

8.1 This Condition applies in relation to any Programmes funded on a Fixed Price Basis. MG ALBA generally purchases Programmes on such a basis in the following circumstances:

8.1.1 where (in the case of a series) the Commissioning Specification is sufficiently detailed and has been agreed to in writing by MG ALBA in advance of pre-production;

8.1.2 where MG ALBA has previously made a payment to or made a grant available to the Producer and the Programme is a second or subsequent production (whether single or a series); or

8.1.3 where the Producer is an established programme supplier in the relevant programme genre.

8.2 Where this Condition applies, MG ALBA shall pay the Price to the Producer on a Fixed Price Basis and in accordance with the Cashflow Schedule.

8.3 The Producer shall be responsible for managing the Cost of Production and ensure that the Programme is produced and Delivery achieved within the constraints of the Cashflow Schedule. In the event that the Cost of Production exceeds the amount of the Price paid or to be paid pursuant to the Cashflow Schedule, the Producer shall be liable for such costs incurred in performing its obligations hereunder unless and to the extent that:

8.3.1 where the increased costs arise directly as a result of the BBC and/ or MG ALBA having made changes to the Commissioning Specification by way of a variation to this Programme Purchase Agreement to which MG ALBA has agreed; and

8.3.2 where such changes and the variation to the Cost of Production resulting from such changes have been identified and agreed in advance and in writing by all parties and MG ALBA as an amendment to the relevant Production Contract.

8.4 Where the Cost of Production exceeds the amount of the Price paid or to be paid pursuant to the Cashflow Schedule and in accordance with Condition 8.3 the Producer is not liable for such excess, said excess shall be met by MG ALBA by way of an increase in the Price.

8.5 Where part of the Cashflow Schedule has been designated to form a Specific Contingency, the Specific Contingency or part thereof will be released to the Producer by MG ALBA where the provision in the Cashflow Schedule for the relevant part or parts of the Programme has been fully utilised but monies are still outstanding in respect of that part or parts. Subject to the Underspend Guidelines, any unused Specific Contingency (or part thereof) shall on completion of the Programme be retained by or returned to MG ALBA.

- 8.6 Subject only to Condition 8.5 and to the Underspend Guidelines, the Producer shall be entitled to retain any sums arising where the Cost of Production of a Programme funded on a Fixed Price Basis is less than that set out in the Cashflow Schedule.

9. BANKING BOOKS AND RECORDS

- 9.1 In relation to the Programme the Producer shall establish a Production Account for each funded production identifying the Programme to which it relates and applying the conditions of the Mandate.
- 9.2 No money other than money to be paid by way of the Price shall be maintained in the Production Account and the Producer shall not permit money remitted to such account to be commingled with any other money belonging to the Producer or any third party, with the exception that any Value Added Tax paid by MG ALBA on the Price may be held in the Production Account but shall be removed by the Producer not later than the date of the deadline for the Producer to account to HM Revenue and Customs in respect of such payment of Value Added Tax by MG ALBA. The Producer shall not permit any money in the Production Account to be transferred into any other bank account except by way of payment for goods, services or facilities supplied or rights granted in respect of the Programme or other Delivery Material.
- 9.3 The Producer undertakes and agrees to maintain full accurate and proper records and books of account relating to the production of the Programme including full particulars of all props and sets and the locations they are stored in and full accurate and proper records and books of account relating to the distribution of the Programme together with all invoices, vouchers, receipts and other records evidencing expenses and charges incurred in the production of the Programme. The Producer shall also maintain complete and accurate records as required to evidence and substantiate any warranty and undertaking as set out in the Commissioning Specification as to whether the Programme qualifies as a Regional Production and/or Regional Programme. The Producer undertakes to keep and maintain such production records for the period of 5 years following delivery of the Programme or such longer period as may be requested by MG ALBA if such request is made before the expiry of such period.
- 9.4 MG ALBA shall have the right at any time on reasonable prior notice which shall not be less than 14 days to inspect audit and take copies of all books and records relating to the Programme.
- 9.5 Delivery of the Programme shall be accompanied by a completed Programme As Completed Form containing details of the identity addresses and details of relevant terms of contractual engagement of all persons who may be entitled to receive equitable remuneration in relation to the Programme, with any such sums payable by the Producer in accordance with Condition 3.10.2.
- 9.6 Within 60 days of Delivery, the Producer shall submit a report to MG ALBA setting out a reconciliation of the Budget against expenditure actually incurred.

10. REPAYMENT OF PRICE IN SPECIFIED CIRCUMSTANCES

- 10.1 Without prejudice to the licence granted to MG ALBA by the Producer under Condition 3, where the Programme Purchase Agreement contains specified circumstances for the repayment of the Price the Producer agrees that by way of security for such repayment all rights of copyright owned or controlled by the Producer in the Programme and all rights owned or controlled by the Producer in relation to any literary dramatic musical or artistic material or sound recording which is incorporated in the Programme or from which it is derived and all rights of action and all rights which are acquired by the Producer or any Associate in relation to the Delivery Material and all other rights of whatever nature in and to the Programme whether now known or in future created to which the Producer is now or may at any time after the date of this Programme Purchase Agreement be entitled by virtue of or pursuant to any of the laws in force in any part of the world are assigned by the Producer by way of present and future assignment of copyright to MG ALBA and the Producer TO HOLD the same to MG ALBA and the Producer and their permitted successors assignees and licensees absolutely in equal shares as jointly owned property for the whole period of such rights for the time being capable of being assigned together with all renewals reversions and extensions throughout the world SUBJECT TO the rights of MG ALBA and its any Sub-Licensees under this Programme Purchase Agreement.
- 10.2 On repayment of the Price MG ALBA undertakes to re-assign to the Producer the rights assigned pursuant to Condition 10.1.
- 10.3 Provided MG ALBA is in receipt of the Distribution Report in relation to the Programme, MG ALBA undertakes to supply the Producer with an annual statement detailing progress made towards repayment of the Price.

11. LIBRARY AND MUSIC RIGHTS

- 11.1 Subject to MG ALBA's prior written permission, the Producer shall be entitled (subject to any restrictions in respect of specific footage notified by the BBC or MG ALBA to the Producer) to incorporate BBC library footage in which the BBC owns or licenses the copyright (the "**BBC Footage**") into the Programme solely for use by the BBC as a Sub-Licensee in accordance with this Programme Purchase Agreement as part of the Programme without making a payment for such use of the BBC Footage. Any other use of the Programme by MG ALBA or the Producer shall be subject to MG ALBA or the Producer acquiring a licence of any rights in BBC Footage required to use such footage in the manner required by MG ALBA or the Producer.
- 11.2 Subject to MG ALBA's prior written permission, the Producer shall be entitled to incorporate BBC Music in the Programme. The BBC has acquired rights from the Mechanical Copyright Protection Society and the British Phonographic Industry to use many commercial recordings and production library music on the BBC ("**BBC Music**"), the Producer may therefore include such music in the Programme for use by the BBC at no cost. The Producer shall use the BBC's "Music

FastClear” system or clear with the BBC’s Music Copyright department any Commercial Recordings or Production library music it intends to use within the Programme. If the Producer is unable to obtain clearance within “Music FastClear” or directly from the BBC’s Music Copyright Department, or intends to exploit the Programme beyond use by the BBC then the cost of obtaining such rights shall be met by the Producer and the incorporation of such music into the Programme shall be subject to the prior written permission of MG ALBA.

12. EDITORIAL PROCESS

- 12.1 The Producer acknowledges and agrees that in using the Programme, MG ALBA and any relevant Sub-Licensee will retain full editorial control over the Programme at all times.
- 12.2 The Producer shall give MG ALBA or any third party nominated by MG ALBA (including without limitation a BBC editorial representative if the BBC is granted a sublicense of any MG ALBA Rights) (the "**MG ALBA Editorial Representative**") reasonable advance notice of the dates, times and venues of any principal production meetings and/or proposed viewings not otherwise set out in the Production Schedule.
- 12.3 The MG ALBA Editorial Representative shall at any time be entitled to view and inspect all rushes and cut sequences of the Programme and any sound-recording or soundtrack and to be present at principal production meetings and at any location or studio where the Programme is being made. The Producer shall take full account of all reasonable comments and representations made by the MG ALBA Editorial Representative and, provided that the MG ALBA Editorial Representative shall have given due regard to any representations made by the Producer, the Producer shall comply with any requests for retakes, re-edits or additional material to be included in the Programme.
- 12.4 Where any request made by the MG ALBA Editorial Representative under Condition 12.2 is to ensure compliance with the Commissioning Specification, any and all costs relating thereto shall be the Producer’s responsibility.
- 12.5 Where any such request constitutes a change to the Commissioning Specification, the Producer and the MG ALBA Editorial Representative will engage in timely good faith discussions regarding any additional cost arising from the request. The Producer shall not incur any such cost until the MG ALBA Editorial Representative has confirmed in writing:
 - 12.5.1 the nature of the request;
 - 12.5.2 whether any additional costs are agreed to be funded by compensatory changes to other items in the Budget or as an additional sum to be paid by MG ALBA or where relevant the BBC; and

- 12.5.3 the amount of any additional sum payable by MG ALBA or the BBC, which shall be paid by MG ALBA or the BBC at a time and in a manner agreed in writing between the Producer and MG ALBA.
- 12.6 If either MG ALBA, the BBC or the Producer becomes aware of any circumstances whereby it is either necessary or desirable to amend the Commissioning Specification, such party shall notify the other as soon as reasonably practicable. Following such notification, the procedure set out in Condition 12.5 shall be followed in relation to the payment of any additional costs arising.
- 12.7 Any consultations and requests for approvals addressed to either party under this Programme Purchase Agreement shall be made in sufficient time to enable the recipient to give consideration to and reply in respect of the matter in question within a reasonable period of time taking account of the Production Schedule.
- 12.8 For the avoidance of doubt, MG ALBA and the BBC shall not in any circumstances be under any obligation to fund any costs arising under this Condition 12 unless the MG ALBA Editorial Representative has confirmed the arrangement in writing in accordance with the terms of this Programme Purchase Agreement. Similarly the Producer is not under any obligation to make any changes requested by MG ALBA or the BBC that constitute an amendment to the Commissioning Specification until such confirmation has been received from the MG ALBA Editorial Representative.
- 12.9 Prior to preparing the final cut of the Programme, the Producer and the MG ALBA Editorial Representative shall agree a date and time when the MG ALBA Editorial Representative shall be able to view the Programme and the Producer shall give effect to all changes reasonably required by the MG ALBA Editorial Representative when editing the Programme provided that such changes are required in order to:
- 12.9.1 meet MG ALBA's or (to the extent applicable) the BBC's broadcasting standards from time to time in force; or
 - 12.9.2 comply with the provisions of this Programme Purchase Agreement; or
 - 12.9.3 comply with MG ALBA's or (to the extent applicable) the BBC's necessary scheduling exigencies; or
 - 12.9.4 conform with any obligations imposed by law or with legal advice received by MG ALBA or the BBC,
- and until such time as the MG ALBA Editorial Representative shall have notified the Producer that the final cut of the Programme is acceptable, all editing shall be carried out on positive copies of the Programme.
- 12.10 If at any time following acceptance of Delivery, MG ALBA requires further changes to comply with Conditions 12.9.1 to 12.9.4, the Producer shall be offered the opportunity to carry out such

changes at MG ALBA's cost but if it refuses or is unable to do so MG ALBA or the BBC shall be entitled itself to carry out or require a third party to carry out such changes.

12.11 Notwithstanding anything contrary contained in the provisions of this Programme Purchase Agreement, MG ALBA or the BBC shall be entitled to add sub-titles or signing or audio description to the Programme for the benefit of visually or hearing impaired viewers. For the avoidance of doubt, if the Producer is supplying any material or services to the BBC in connection with any Programme related website, the Producer shall comply with any web development guidelines provided in writing by the BBC to the Producer.

12.12 Notwithstanding the provisions of this Condition 12, the Producer agrees that MG ALBA or where relevant the BBC shall have final editorial control in connection with the production of the Programme (and the production of any publicity and promotional materials that MG ALBA or the BBC is entitled to produce) in accordance with the terms of this Programme Purchase Agreement.

13. DISTRIBUTION ADVERTISING AND PUBLICITY

13.1 The Producer shall have the exclusive right to exploit the Programme by any manner or means in all media subject at all times to the terms of, and the rights granted to MG ALBA (and its Sub-Licensees) under this Programme Purchase Agreement including without limitation the MG ALBA Rights and the rights in the Programme Trade Marks. The Producer acknowledges and agrees that during the MG ALBA Licence Period no exercise of any form of television rights shall take place in the UK and Eire or be targeted at the UK without MG ALBA's prior written consent (which may be withheld in its absolute discretion), save that in relation to Eire such consent shall be deemed given after expiry of twelve (12) months from the Delivery Date or first transmission of the last episode of the Programme by MG ALBA or MG ALBA's Sub-Licensees, (whichever is earlier). Any such television broadcast by or on behalf of the Producer in Eire shall be subject at all times to Condition 13.2.3.

13.2 In addition to the rights of the Producer under Condition 13.1, the Producer shall have the exclusive right to enter into arrangements with potential Distributors in respect of the distribution of the Programme on any platform and the exploitation of any other rights in the Programme owned or controlled by the Producer provided that:

13.2.1 the Producer's right to the foregoing is at all times subject to the terms of, and rights of MG ALBA (and any Sub-Licensee) under this Programme Purchase Agreement;

13.2.2 the Producer shall advise MG ALBA of all proposed distribution agreements or arrangements in such detail as MG ALBA might require to verify that the Producer is complying with its obligations hereunder and the Producer shall provide MG ALBA with a Distribution Report every six months from the Delivery Date detailing not by way of limitation, gross receipts and net income relating to the exploitation; and

13.2.3 the Producer shall apply all income derived from the exercise of its rights pursuant to this Condition 13.2 as follows:

- (a) first towards the payment of a distribution fee (inclusive of all expenses and sub-distributor's fees) incurred in connection with the exploitation of the Programme in any medium or by any means, which fee shall be set as a percentage of gross income such percentage to be in line with the industry standard for the genre;
- (b) second towards payment of any residual payment obligations including in particular repayment of any sums advanced by MG ALBA in excess of the Budget pursuant to Condition 7.7;
- (c) third towards the payment of any mechanical or synchronisation fees or payments; and
- (d) fourth the balance remaining shall constitute net profit and shall be shared between the parties on the basis of 15% to MG ALBA and 85% to the Producer save where MG ALBA has funded a pilot of the Programme when the profit shall be shared 20% to MG ALBA and 80% to the Producer.

13.3 The Producer and MG ALBA hereby acknowledge and agree that the Producer shall be entitled to exercise the Commercial New Media Rights only by way of the Commercial Download Rights, the Commercial Website Rights and the Promotional Online Rights and any other exercise of the Commercial New Media Rights during the MG ALBA Licence Period shall require prior written consent from MG ALBA (not to be unreasonably withheld or delayed).

13.4 The Producer and MG ALBA hereby acknowledge and agree that in relation to the Video-on-Demand Rights:

13.4.1 within the UK and Eire: the Video-On-Demand Rights shall be held "in suspension" and shall not be exercised during the MG ALBA Licence Period without MG ALBA's prior written consent, and the Producer shall hold good faith discussions with MG ALBA (and if the BBC is a Sub-Licensee shall also hold discussions with the BBC) in relation to any proposal by MG ALBA or the BBC to exercise such rights;

13.4.2 outside the UK and Eire: MG ALBA hereby consents to the Producer exercising (or authorising the exercise of) the Video-On-Demand Rights outside the UK and Eire PROVIDED THAT in relation to any such exercise the Producer (and any appointed licensee/service provider) undertakes that the exercise of such Video-On-Demand Rights:

- (i) is subject to any appropriate technological and commercially reasonable effective means of copy protection preventing the unauthorised viewing and onward download, broadcast, transmission, retransmission and/or access to the Programme by a recipient within the UK and Eire; and

- (ii) in the event the BBC is a Sub-Licensee, shall not take place prior to the BBC's first television transmission of the Programme in the UK (or six (6) months from the Delivery Date, whichever is the earlier) and accordingly other than in respect of the BBC, the Video-On-Demand Rights shall not be promoted or marketed as a "world premiere" and no marketing nor promotion of the exercise of such rights shall be specifically targeted at UK viewers;

13.5 Other than where the Price is repaid in full by the Producer to MG ALBA, the Producer shall not have the right to exploit any non-Gaelic language version of the Programme (including the exploitation of underlying format rights in the Programme) without the consent of MG ALBA unless all such exploitation (including any exploitation by way of so-called new media) takes place outside the UK (including any UK overspill areas) and all profits of such exploitation shall be shared between the parties on the basis of 20% to MG ALBA and 80% to the Producer. For the avoidance of doubt the provisions of this Condition 13.5 are without prejudice to the rights of MG ALBA (and its Sub-Licensees) under the MG ALBA Rights.

13.6 The Producer shall not undertake any marketing or promotional activity in connection with MG ALBA's (or its Sub-Licensees') use of the Programme without the prior written permission of MG ALBA or the relevant Sub-Licensee nominated by MG ALBA. The Producer agrees that any promotional, publicity and marketing materials that the Producer intends to produce for its own purposes (including any trails) shall only be used in the UK in such manner as shall coordinate with and compliment any promotional strategy that MG ALBA or the relevant Sub-Licensee may have for the Programme. For the avoidance of doubt, the Producer shall be entitled to carry out its own business-to-business promotional, publicity and marketing activities provided that such activities do not bring MG ALBA or the relevant Sub-Licensee into disrepute. Accordingly, the Producer shall consult with MG ALBA in relation to any promotional initiatives that it intends to undertake in the UK and shall not carry out or authorise any activity which MG ALBA reasonably determines would undermine any promotional strategy that it may have for the Programme. MG ALBA and the relevant Sub-Licensee shall have the right:

13.6.1 to publicise the Programme in any manner or means to support the rights granted to MG ALBA under these Programme Purchase Conditions and to publicise MG ALBA's involvement with the Programme generally; and

13.6.2 acting reasonably and in consultation with the Producer, to make arrangements for press and publicity personnel and photographers to take photographs, carry out interviews and perform other press and publicity related activities before, during and after the production of the Programme.

13.7 The Producer acknowledges that MG ALBA has a specific statutory remit in relation to the production and broadcasting of programmes and other content in the Gaelic language and shall be entitled to exercise the MG ALBA Rights. At any time after the first six months of the MG

ALBA Licence Period, the Producer shall be entitled to submit proposals that the MG ALBA Rights or any part of them ought to be amended to become non-exclusive in nature. MG ALBA shall consider any such proposals in good faith in accordance with the Release Policy and shall liaise with the BBC as appropriate, but subject to any express provisions of the Release Policy shall have absolute discretion as to the handling of any such proposals. In the event the parties are agreed upon any proposals the MG ALBA Rights in relation to the affected Programme(s) shall be deemed amended in accordance with the new agreement with effect from the date the same is recorded and signed on behalf of the Producer and MG ALBA.

- 13.8 Following the expiry of the MG ALBA Licence Period to the extent any rights granted to MG ALBA under this Programme Purchase Agreement (including without limitation the MG ALBA Rights) have expired MG ALBA shall have the non-exclusive right to exercise any such rights for further periods of 2 years upon payment to the Producer of any minimum standard residual or royalty or rights clearance payments which the Producer is contractually liable to pay in relation to such exploitation pursuant to any agreement between PACT and any guild or union representing actors, musicians or writers and the sum equal to 2.5% of the amount of the Price (exclusive of VAT). For the avoidance of doubt any such additional two year periods of non-exclusive rights may come into effect at any time after the expiry of the MG ALBA Licence Period, and shall be subject at all times to the terms of this Programme Purchase Agreement.
- 13.9 If requested to do so by MG ALBA and in order to facilitate exploitation of the Programme for Educational Purposes the Producer shall deliver a digi-beta or beta master tape of the Programme and the Programme As Completed Form and Music Cue Sheet to such facility house as MG ALBA may require to enable MG ALBA to make arrangements for the supply of the Programme to Gaelic medium schools and Gaelic playgroups. For the avoidance of doubt such exploitation if requested by MG ALBA shall be at MG ALBA's cost. MG ALBA shall also be entitled to make the Programme available to third parties at its discretion (and at its own cost and risk) for use in connection with research and/ or private study.
- 13.10 Without prejudice to its other rights and remedies pursuant to the Programme Purchase Agreement or otherwise, MG ALBA shall be entitled to re-edit or procure that any third party re-edits the Programme following its delivery where, acting reasonably, it considers that the Producer has breached Condition 6.6 or 14.1.3 or 14.1.6 or 14.1.7 of this Programme Purchase Agreement and that such breach may expose MG ALBA, the Producer or a Sub-Licensee to any liability or sanction as a result. Following such re-edit, MG ALBA (and its Sub-Licensees) shall be entitled to exercise in full all MG ALBA Rights in respect of such re-edited version of the Programme. MG ALBA shall use all reasonable endeavours to give the Producer first opportunity to carry out any re-editing which is required under this Condition.
- 13.11 The Producer acknowledges and agrees it shall not without MG ALBA's prior written consent use or authorise the use of any 'out-takes' or rushes from the Programme in the UK for the purposes

of producing and exploiting any compilation programme (such consent not to be unreasonably withheld).

14. OBLIGATIONS AND WARRANTIES

14.1 The Producer warrants and undertakes to MG ALBA and the BBC that:-

14.1.1 as at the date of this Programme Purchase Agreement, the Producer is an Independent Producer within the meaning of paragraph 3 of The Broadcasting (Independent Productions) Order 1991 as amended;

14.1.2 the Producer is and shall be the sole absolute unencumbered legal and beneficial owner of the Programme and the Delivery Material (subject to any assignment made pursuant to Condition 10.1) and has acquired (and shall retain throughout the MG ALBA Licence Period) all rights granted under this Programme Purchase Agreement (including the MG ALBA Rights, all rights in the Programme Trade Marks, Publicity Stills, Underlying Material and in the products of the services of Performers and other persons supplying rights services and facilities in respect of the Programme) in order to enable MG ALBA and its Sub-Licensees to fully exercise any and all such rights free from any and all liens claims and encumbrances without any restriction whatsoever and (subject to Conditions 3.2, 4.3, 4.4 and 11) without the obligation to make any further payment except in respect of:

- (i) such rights as are normally controlled by performing rights societies; and
- (ii) repeat fees or residuals to the extent (if any) that the Producer, is under this Programme Purchase Agreement not obliged to pay them as part of the Price;

and the Producer has not entered and will not during the MG ALBA Licence Period enter into any agreements licensing or assigning or purporting to licence or assign any rights to any third parties which are inconsistent with or would derogate from the rights granted to MG ALBA hereunder;

14.1.3 the exercise by MG ALBA or any of its Sub-Licensees of the MG ALBA Rights, Programme Trade Marks or any other rights granted under this Programme Purchase Agreement in accordance with this Programme Purchase Agreement shall not infringe the proprietary rights (including Intellectual Property Rights) of any third party anywhere in the world;

14.1.4 there are no security interests, mortgages, charges or other encumbrances over or affecting the rights granted to MG ALBA under this Programme Purchase Agreement and there is no agreement or commitment to give or create any such security interests, mortgages, charges or other encumbrances;

- 14.1.5 without prejudice to Conditions 14.1.3 and 14.1.4 above, the Producer will use its best endeavours to carry out all relevant searches, checks and negative checks (including for all unregistered rights) to ensure that no third party Intellectual Property Right exists that the exercise of the MG ALBA Rights may infringe;
- 14.1.6 nothing in the Programme or Delivery Material will:
- (a) contain material or information that is defamatory or otherwise unlawful or that may threaten, harass, disrupt or otherwise violate the legal rights (including rights of privacy and publicity) of third parties; or
 - (b) promote illegal or unlawful activities;
- 14.1.7 the Producer shall use its best endeavours to ensure that nothing in the Programme will contain material that is obscene, pornographic, or indecent;
- 14.1.8 no person other than MG ALBA (or its Sub-Licensees) is or will become entitled without MG ALBA's prior written consent to broadcast any programme based on any script material from the Programme during the MG ALBA Licence Period and any extensions thereof so as to conflict with or derogate from the rights granted to MG ALBA hereunder;
- 14.1.9 to the best of the Producer's knowledge and belief after all due and diligent enquiry, there are no claims or proceedings pending or threatened which might adversely affect the production or delivery of the Programme or the rights granted to MG ALBA hereunder;
- 14.1.10 the Producer shall comply with, and shall ensure the Programme complies with any applicable BBC Guidelines and all applicable laws, regulations and codes of practice;
- 14.1.11 the Producer shall not, and shall procure that its Sub-Licensees shall not, exercise any of its own rights in the Programme (including the Programme Trade Marks) or in producing or delivering the Programme in accordance with this Programme Purchase Agreement, whether during or beyond the MG ALBA Licence Period or whether in or outside the UK in any way which would bring the Programme, MG ALBA or the BBC into disrepute or infringe any applicable BBC Guidelines (it being acknowledged that a material breach of this warranty can be incapable of remedy where it involves a breach of trust);
- 14.1.12 any underlying contracts which are not delivered to MG ALBA or the BBC as part of the Delivery Materials do not require any additional payment whatsoever to any person or party in connection with the exercise of the rights granted to MG ALBA under the terms of this Programme Purchase Agreement;
- 14.1.13 the Producer has not stopped payment and is not insolvent nor unable to pay its debts according to section 123 of the Insolvency Act 1986 and no steps have been taken with

a view to the winding-up, administration or administrative receivership of the Producer or making any composition, assignment or arrangement with any creditors of the Producer;

- 14.1.14 in producing the Programme and generally carrying out its rights and obligations under the terms of this Programme Purchase Agreement, the Producer (and its staff and all persons engaged by it for the purposes of this Programme Purchase Agreement) shall ensure that its production staff are familiar with MG ALBA or BBC information, guidance and requirements notified to the Producer by MG ALBA or the BBC;
- 14.1.15 each of the Producer and principal director of the Programme shall at all material times during the production of the Programme remain a "qualifying person" within the meaning of Section 154 of the Act and the principal director has assigned to the Producer free from any encumbrances the principal director's entire interest in the copyright in the Programme;
- 14.1.16 the Producer shall promptly advise MG ALBA (and any Sub-Licensee under this Programme Purchase Agreement provided that the Producer is notified of such sublicense) of the occurrence of any event or the existence of any condition which will or might adversely affect the Programme and of any material claims or material proceedings threatened or commenced against the Producer and shall at all times comply with Conditions 14.1.17 and 14.1.18;
- 14.1.17 if the Producer becomes aware of any actual, threatened or suspected infringement by a third party of any of the rights granted to MG ALBA (as may be sublicensed to third parties including the BBC) under this Programme Purchase Agreement the Producer shall immediately provide MG ALBA with written notice of such activity. MG ALBA or the Producer shall liaise to agree within a reasonable period of time (or within any period of time stipulated to MG ALBA and/or the Producer by the BBC in the event the BBC is a Sub-Licensee of the relevant MG ALBA Rights) to take appropriate action to enforce and preserve the MG ALBA Rights;
- 14.1.18 in the event that MG ALBA or the Producer have not taken any action by the end of the period specified in the notice issued under Condition 14.1.17 the BBC and/or MG ALBA shall be entitled (but not obliged) to take any legal or other action against any such third party and the Producer shall provide such cooperation or assistance as may be reasonably required by the BBC and/or MG ALBA in pursuing such an action. The Producer acknowledges and agrees that it shall join the action as a party upon any such request by MG ALBA or the BBC and shall reimburse MG ALBA or the BBC (as appropriate) with the reasonable costs of taking such action;
- 14.1.19 the Programme and the Delivery Material shall be a high quality Gaelic language television programme and shall be of first class technical quality suitable for commercial

exploitation and shall comply with the Technical Specifications and all screen credit obligations (including any obligations to provide sufficient acknowledgment in respect of any so-called 'fair dealt' material) and other obligations to third parties;

- 14.1.20 the Producer shall make all payments due to any persons who are entitled to any payment in respect of services or goods or facilities rendered or provided or rights granted in respect of the Programme in a timely manner;
- 14.1.21 no fees shall be payable to organisations in respect of the public performance and broadcasting of the Programme in respect of any music contained in the Programme otherwise than to recognised collecting societies in the UK;
- 14.1.22 nothing shall be contained in the Programme which might breach any duty of confidence or constitute a contempt of court or contravene the provision of any statute including any provisions of the Broadcasting Acts 1990 and 1996, the Communications Act 2003 or regulations made pursuant to such Acts;
- 14.1.23 the Producer shall at all times before and after Delivery, comply with the provisions of all Relevant Union Agreements relating to the Programme;
- 14.1.24 the Producer shall fully comply with all current health & safety legislation and regulations and approved codes of practice as issued from time to time by the HSE in relation to the production of film, television, radio and on-line materials and the Producer as a first class supplier of television programmes shall use best practice as understood in the UK television industry in relation to Health & Safety issues in relation to the Programme and shall at all times comply with any BBC Health and Safety Guidelines;
- 14.1.25 the Producer will promptly report to MG ALBA if it becomes aware or suspects that any bribe or improper payment has been requested, demanded, offered, accepted, paid or received in relation to the Programme or any non-Gaelic language version of the Programme or their distribution. In such a circumstance, the Producer shall also cooperate in good faith with any investigation which MG ALBA may seek to initiate in order to determine whether any such bribe or improper payment has been requested, demanded, offered, accepted, paid or received;
- 14.1.26 the Producer, its officers, directors, employees and agency personnel have not been convicted of any offence involving bribery, corruption, fraud or dishonesty, and the Producer is not under investigation by the police, a regulator or other public authority for an offence involving bribery, corruption, fraud or dishonesty;
- 14.1.27 the Producer and its directors, officers, employees, contractors, agents, advisors and any other persons providing services to it will not engage in any activity, practice or conduct which could contravene the Bribery Act 2010 if such activity, practice or

conduct had been carried out in the UK, or which could cause MG ALBA or the BBC to contravene the Bribery Act 2010;

14.1.28 it has in place and will maintain adequate procedures to prevent any act of bribery (which have been prepared to comply with the Ministry of Justice's Guidance about procedures which relevant commercial organisations can put in place to prevent persons associated with them from bribing) being committed by it, and that its directors, officers, employees and agency personnel have had adequate training in the matters covered by its anti-bribery procedures; and

14.1.29 the Producer will keep books, accounts and records of all financial transactions made pursuant to this Agreement. The Producer will not make any off-the-book accounts, payments or expenditures.

14.2. The Producer warrants and undertakes to MG ALBA that:

14.2.1 the Producer shall not, otherwise than as required by the exigencies of production, alter or permit the alteration of any screenplay or shooting script or other literary material which has been approved by MG ALBA in any way which might materially alter the nature or character of the Programme or the title of the Programme without the prior written consent of MG ALBA;

14.2.2 the Programme shall be filmed or videotaped and recorded in the Gaelic language. The parties acknowledge and agree that the Programme may contain elements which are not in the Gaelic language where the creative criteria of the Programme renders this necessary but in all cases such elements shall be subject to a maximum of 20% of the Programme duration unless prior written approval of MG ALBA (which may be given or withheld in its absolute discretion) has been obtained. The Producer warrants and undertakes that the Programme shall comply with the requirements of this Condition 14.2.2;

14.2.3 the Budget (where the Programme is not contracted on a Fixed Price Basis) in the Programme Purchase Agreement is or shall be a complete bona fide accurate estimate of the total cost of production of the Programme to which it relates and includes adequate provision for all expenses relating to the Programme including without limitation any and all costs relating to music and other licenses, acquisition costs of Third Party Material (to the extent required to allow MG ALBA to use the Programme for Educational Purposes or sub-license the rights granted under this Programme Purchase Agreement to the BBC in accordance with Condition 3.4), pre-release publicity, public relations expenses and interest charges; and

14.2.4 following Delivery the Producer shall hold on trust for MG ALBA, all props, plant, machinery and other physical material of whatever nature acquired or created by the

Producer in relation to the Programme and undertakes that it shall deliver up and/or make such material available to any third party nominated by MG ALBA and undertakes to keep all such material in a safe and secure place and in good repair and condition and undertakes to permit any other person access to such material and agrees to keep all such material fully insured upon terms which provide that MG ALBA shall be the sole loss payee, it being understood that the approved cost of such insurance and all approved costs relating to storage shall be borne by MG ALBA.

- 14.3 The Producer undertakes to indemnify MG ALBA and the BBC and keep MG ALBA and the BBC at all times fully indemnified from and against all actions, proceedings, claims, demands, costs (including without prejudice to the generality of this provision legal costs of MG ALBA or the BBC on a solicitor and own client basis, settlement costs and payments made on the advice of Counsel) expenses, interest, fines, awards or damages howsoever arising directly or indirectly as a result of: (i) any breach or non-performance by the Producer of any of the Producer's undertakings, warranties or obligations under this Programme Purchase Agreement; or (ii) MG ALBA's (or its Sub-Licensees') use of the MG ALBA Rights granted under this Programme Purchase Agreement.
- 14.4 The Producer acknowledges that MG ALBA has a legal obligation as a public body to comply with the Freedom of Information (Scotland) Act 2002 in force from time to time, the Freedom of Information Act 2000 (as amended) and intends to comply with any guidance or best practice applicable thereto. Accordingly the Producer further agrees and acknowledges that no disclosure or other measures taken by MG ALBA to fulfil its obligations under such legislation shall constitute a breach of its obligations hereunder. The Producer agrees to use reasonable endeavours to assist MG ALBA in responding to any request arising in connection with the Programme or the Producer.
- 14.5 The Producer acknowledges and agrees that in exercising the MG ALBA Rights, MG ALBA and any relevant Sub-Licensee will retain full editorial control over the Programme at all times in accordance with Condition 12 (Editorial Process).
- 14.6 The Producer hereby grants to MG ALBA, for the MG ALBA Licence Period an exclusive, royalty-free licence to use any Programme Trade Marks (including use as part of a domain name) for the purpose of exercising any of the MG ALBA Rights. MG ALBA may grant sub-licences of the Programme Trade Marks to Sub-Licensees for the purposes of exercising any of the MG ALBA Rights.
- 14.7 MG ALBA acknowledges and agrees that: (i) the Producer is the proprietor of the Programme Trade Marks, any copyright, design rights and other Intellectual Property Rights subsisting in and the goodwill relating to the Programme Trade Mark; and (ii) the benefit of all use of the Programme Trade Marks and any additional goodwill accrued as a result of MG ALBA's (or its

sub-licensees') activities in connection therewith shall inure and is hereby assigned to the Producer.

- 14.8 MG ALBA may request for the Producer to apply for registration of the Programme Trade Marks or a domain name incorporating the Programme Trade Mark at any time. If the Producer has failed to apply for registration of the Programme Trade Mark or domain name within a reasonable period of time (such period to be according to the particular circumstances or as specified in any notice from MG ALBA to the Producer), and/or the Producer has failed to progress any application thereafter, the Producer hereby acknowledges and agrees that MG ALBA or the BBC may: (i) file such application in the Producer's name; or (ii) progress or engage a third party to file or progress such application the Producer's name. The Producer agrees to do any act or execute any document as required to give effect to this Condition.

15. TERMINATION

- 15.1 MG ALBA shall be entitled to terminate this Programme Purchase Agreement (and all other agreements between MG ALBA and the Producer) by written notice if :-

15.1.1 the Producer is in breach of any material term of this Programme Purchase Agreement which is incapable of remedy or if capable of remedy is not remedied within 30 days of receipt by the Producer of notice in writing from MG ALBA; or

15.1.2 any of the Producer's warranties, undertakings and/ or representations in relation to this Programme Purchase Agreement shall prove to have been incorrect when made or become materially incorrect if such representations would not have been made by any reasonable Producer with the same knowledge at that time; or

15.1.3 the Producer ceases to trade or carry on its business or transfers disposes of or threatens to transfer or dispose of any part of its assets which is likely in the reasonable opinion of MG ALBA to prevent or materially to inhibit the performance by the Producer of its obligations under this Programme Purchase Agreement; or

15.1.4 any indebtedness, guarantee, cautionary obligation or similar obligation of the Producer or of any guarantor or cautioner of the Producer becomes due or capable of being declared due before its stated maturity or is not discharged at maturity or the Producer or any guarantor or cautioner of the Producer defaults under or commits a breach of the provisions of any guarantee or other cautionary obligation (whether actual or contingent) of any agreement pursuant to which any such indebtedness, guarantee, cautionary obligation or other obligation was incurred all or any of which shall in the reasonable opinion of MG ALBA materially affect its rights and entitlements under this Programme Purchase Agreement; or

15.1.5 the Producer is declared or becomes insolvent; or

15.1.6 the Producer convenes a meeting of its creditors or proposes or makes any arrangement or composition with or any assignation for the benefit of its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Producer (save for the purpose of and followed by a voluntary reconstruction or amalgamation previously approved in writing by MG ALBA) or if an administrator is appointed over the Producer, or documents are filed with a court for the appointment of an administrator over the Producer, or a notice of intention to appoint an administrator is given by the Producer or its directors or by the holder of a qualifying floating charge (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or if an encumbrancer or heritable creditor takes possession of or a trustee receiver liquidator or similar officer is appointed in respect of all or any part of its business or assets or any diligence, distress, execution or other legal process or remedy is levied, threatened, enforced upon or sued out against any of such assets; or

15.1.7 Control of the Producer shall change without the prior approval of MG ALBA.

15.2 MG ALBA shall be entitled to terminate this Programme Purchase Agreement if an Event of Force Majeure shall have occurred and shall have continued for such duration as would in the reasonable opinion of MG ALBA determined after consultation with the Producer materially interfere with the production of the Programme.

15.3 The Producer shall be entitled to terminate this Programme Purchase Agreement by written notice if:

15.3.1 MG ALBA is in breach of any material term of this Programme Purchase Agreement which is incapable of remedy or if capable of remedy is not remedied within 30 days of receipt by MG ALBA of notice in writing from the Producer; or

15.3.2 an Event of Force Majeure shall have occurred and shall have continued for a period in excess of 3 months.

16. TAKEOVER

16.1 MG ALBA or any other third party nominated by MG ALBA shall have the right to take over and complete the making of the Programme and exercise the rights set out in Condition 16.2 by giving notice in writing to the Producer at any time where:-

16.1.1 MG ALBA believes in good faith after consultation with the Producer (or between the BBC and MG ALBA in the event the BBC is a Sub-Licensee under this Programme Purchase Agreement) that the production and/or delivery of the programme as outlined in the Commissioning Specification or the future viability of the Producer is in jeopardy;
or

16.1.2 the Programme Purchase Agreement is terminated for any reason; or

16.1.3 an Event of Default occurs.

16.2 Where Condition 16.1 applies, MG ALBA or its nominee shall have the right to take over and complete the making of the Programme and for that purpose to use all physical properties, facilities, supplies, equipment, documents and materials relating to the Programme and in such event:-

16.2.1 MG ALBA or its nominee shall have the right to assume supervision and control of the making of the Programme and/or to appoint and contract with any third party to complete the production of the Programme;

16.2.2 MG ALBA or any person it nominates shall be and is irrevocably appointed the agent of the Producer with absolute discretion and with power and on behalf of the Producer to exercise or assign any right of the Producer (whether under any contract or otherwise) which is relevant to the making of the Programme;

16.2.3 upon request the Producer shall execute a formal assignation in favour of MG ALBA or its nominee in respect of the benefit of any agreements made by the Producer and relevant to the making of the Programme; and

16.2.4 the Producer agrees to indemnify MG ALBA and the BBC against liability arising from any fraudulent or negligent act or omission by the Producer in the exercise of Producer's rights,

provided that if MG ALBA in its sole discretion determines that it is not economically feasible to effect completion of the Programme it may by notice in writing to the Producer declare abandonment of the production of the Programme.

17. CONSEQUENCES OF TERMINATION

17.1 Without prejudice to the legal rights of the parties (other than any which conflict with the following provisions) the consequences of termination of this Programme Purchase Agreement prior to the expiry of the MG ALBA Licence Period shall be:-

17.1.1 any sums held by the Producer for the purposes of this Programme Purchase Agreement as at determination shall be repaid by the Producer to MG ALBA on demand and the Producer shall supply to MG ALBA forthwith a detailed statement of income and expenditure up to the date of determination, with full details of all unpaid debts, and all outstanding commitments for which no invoices have been received; and

17.1.2 all parts of the Programme which have been completed and all documents and film and sound recordings, props, plant, machinery and other physical material of whatever nature acquired or created by the Producer in relation to the Programme up to the date of determination shall be delivered by the Producer to the nominee of MG ALBA on MG

ALBA's demand and all the MG ALBA Rights shall immediately become exercisable and shall survive such termination in respect of all such parts of the Programme.

- 17.2 Unless otherwise provided, termination of this Programme Purchase Agreement shall be without prejudice to the grants of rights and the warranties and undertakings given by either party and all other obligations and indemnities that have arisen or been given prior to termination, all of which shall continue in full force and effect after termination notwithstanding that termination has taken place.
- 17.3 The provisions of the Programme Purchase Agreement which by their nature are intended to survive termination or expiry of this Programme Purchase Agreement shall survive such termination or expiry, including without limitation the rights granted under the New Media Extract Rights (as defined in Part 2 of the Schedule) and Conditions 3.12, 9.3, 13.8, 14.1, 17 and 19 of these Programme Purchase Conditions and paragraph 9 (Confidentiality) of the Confirmation Letter.

18. DISPUTE RESOLUTION

- 18.1 If a dispute cannot be resolved by the Chief Executive of MG ALBA and the Director of the Producer, within a maximum of 14 days (or longer period if agreed between them) either party may refer it for determination by an appropriate expert (the "**Expert**"), who shall be deemed to act as expert and not as arbiter.
- 18.2 Any Expert shall be selected by mutual agreement or, failing agreement within 14 days after a request by one party to the other, shall be chosen at the request of either party by the President for the time being of The Law Society of Scotland.
- 18.3 The Expert shall be requested to deliver his determination to the parties within 14 days after appointment.
- 18.4 Any decision of the Expert shall be final and binding and not subject to appeal save in the case of manifest error.
- 18.5 The Expert shall have power to require a party to produce any documents or information to him and the other party and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce in court proceedings. The Expert shall, subject as provided in this Condition, regulate the manner of determination of the matter in dispute as he sees fit and, for the avoidance of doubt, shall have the power to award damages.
- 18.6 The fees and expenses of the Expert shall be borne by the parties in the proportion as may be determined by the Expert having regard (amongst other things) to the conduct of the parties and in the absence of such a determination shall be borne equally.

18.7 If either party does not agree to the dispute being referred for determination then the dispute shall be determined by the Scottish courts as contemplated by Condition 19.13 and the parties submit to the jurisdiction of those courts for that purpose.

18.8 The parties shall continue to fulfil their respective obligations under this Programme Purchase Agreement insofar as is possible notwithstanding of any outstanding dispute (without prejudice to the rights and obligations of either party).

19. GENERAL

19.1 Any notice or other document required to be given under this Programme Purchase Agreement or any communication between the parties with respect to any of the provisions of this Programme Purchase Agreement shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at or sent by pre-paid registered or recorded delivery post or by facsimile transmission or other means of telecommunication in permanent written form (including, for the avoidance of doubt, by email) to the address of the party receiving such notice as set out at the head of this Programme Purchase Agreement or as notified between the parties for the purpose of this Condition 19.

19.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:-

19.2.1 at the time the same is left at the address of or handed to a representative of the party to be served;

19.2.2 by post on the day not being a Sunday or public holiday in Scotland two days following the date of posting; and

19.2.3 in the case of a facsimile transmission or other means of telecommunication on the next following day.

19.3 In proving the giving of a notice it should be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

19.4 Communications addressed to MG ALBA shall be marked for the attention of the Chief Executive.

19.5 If any provision of this Programme Purchase Agreement shall be prohibited by or adjudged by a Court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Programme Purchase Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Programme Purchase Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Programme Purchase Agreement.

- 19.6 Neither party shall be liable to the other for any failure to perform any obligation pursuant to this Programme Purchase Agreement which arises as a result of the occurrence of an Event of Force Majeure and neither party shall incur any liability for any expenses or losses, direct or consequential or otherwise, which may be suffered by the other party as a result of the occurrence of such Event of Force Majeure.
- 19.7 This Programme Purchase Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Programme Purchase Agreement (except that nothing in this Condition excludes any liability for fraud) and may not be varied except by an instrument in writing signed by all of the parties to this Programme Purchase Agreement.
- 19.8 No failure or delay on the part of any of the parties to this Programme Purchase Agreement relating to the exercise of any right, power, privilege or remedy provided under this Programme Purchase Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other party to this Programme Purchase Agreement nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of such or any other right, power, privilege or remedy provided in this Programme Purchase Agreement, all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a party at law.
- 19.9 Conditions 3.9, 3.10, 4.3, 6, 12, 14.1 and 14.8 and Part 6 of the Schedule to the Confirmation Letter grant rights in favour of the BBC as a third party to this Programme Purchase Agreement. If the Producer breaches its obligations under such conditions and such breach causes the BBC loss then the BBC may recover such losses directly from the Producer by way of court action in its own name. This Condition 19.9 creates legal rights for the benefit of and is directly enforceable by BBC against the Producer under Scots Law.
- 19.10 Condition 19.9 is intended to create legal rights for the BBC as a third party. Other than as set out in Condition 19.9, this Programme Purchase Agreement does not create any legal rights, benefits, or causes of action for any party other than MG ALBA and the Producer. MG ALBA and the Producer may terminate this Programme Purchase Agreement in accordance with the provisions of Condition 15 without the consent of the BBC or any other third party. MG ALBA and the Producer may vary this Programme Purchase Agreement in accordance with Condition 19.7 without the consent of the BBC or any other third party.
- 19.11 This Programme Purchase Agreement shall not be deemed to constitute a partnership or joint venture or contract of employment between the parties.
- 19.12 These Conditions are being prepared in the English language and, at the option of MG ALBA, in the Gaelic language. In the event of any conflict between such language versions the version signed by the parties shall prevail and this Programme Purchase Agreement shall be construed

accordingly. MG ALBA warrants and represents to the Producer that the English language version of these Programme Purchase Conditions is in all respects (including terminology and nuance) the exact equivalent of the Gaelic language version.

19.13 This Programme Purchase Agreement shall be governed by and construed in accordance with the laws of Scotland the courts of which shall be courts of competent jurisdiction.

THE SCHEDULE

PART 1

UNDERSPEND GUIDELINES

In determining the amount of Surplus Funds to be remitted to the Producer or to MG ALBA pursuant to Conditions 7.4 or 8.5, the following criteria shall be applied:-

1. Specific Contingency funds are only made available by MG ALBA for a specific purpose and cannot be used for any further purpose or to offset overspends elsewhere in the Budget.
2. All sums identified as either General Contingency or Specific Contingency shall if unused in whole or part be retained as to 100% by MG ALBA or if already advanced by MG ALBA returned to MG ALBA.
3. Subject to paragraph 4, in the case of a Programme purchased on a Budget Basis, any underspend in the Budget shall be applied towards any necessary expenditure relating to the Programme before the use of General Contingency or Specific Contingency funds.
4. For the avoidance of doubt where a Programme is purchased on a Fixed Price Basis any underspend shall be retained entirely by the Producer save in the case of General Contingency or Specific Contingency amounts set out in paragraph 2.

PART 2

MG ALBA RIGHTS

“**MG ALBA Rights**” means the following irrevocable and royalty-free rights:

- (a) the exclusive right to broadcast, transmit, authorise the transmission of the Programme (without limitation in relation to the number of transmissions) and otherwise make available the Programme in television services whether now existing or developed in the future whether by analogue or digital or other means for general reception in the UK howsoever such services are delivered, including but not limited to delivery by means of terrestrial and satellite transmitters and by inclusion in cable programme services to transmit the Programme; and
- (b) the right to use or authorise the use of all or part of the Underlying Material and all other material whatsoever made or acquired in connection with the production of the Programme (including the title of the Programme and any design, trade mark or other similar rights connected with the Programme) as are necessary to enable MG ALBA to exercise the rights granted to it under this Programme Purchase Agreement; and
- (c) the right to exhibit and show the Programme at television or film festivals; and
- (d) the right to produce and distribute publicity and promotional materials (including publicity stills and poster shots) relating to the Programme in any media; and
- (e) the right to produce and broadcast by such means and in such manner and media and at such times as MG ALBA shall deem fit, trailers of the Programme and extracts of the Programme for publicity purposes; and
- (f) the exclusive right to exercise the Primary New Media Rights; and
- (g) the exclusive right to complete the Programme if for any reason the Producer fails to or is unable to complete the Programme; and
- (h) the exclusive right to exercise the SER; and
- (i) the right to use the Programme for internal purposes including without limitation any internal communications and correspondence; and
- (j) the right to comply with any statutory obligations; and
- (k) the right to deliver the Programme as part of the BBC's transmission service to the British Armed Forces and the Community Channel;
- (l) the right to exploit the Programme in the Gaelic language only by any means in any and all media for Educational Purposes on a non-commercial basis; and

(m) the right to grant sub-licences under paragraphs (a) to (l) above.

For the purposes of this Programme Purchase Agreement, in addition to the definitions set out in Condition 1, the terms set out in the definition of the above MG ALBA Rights and referred to in these Programme Purchase Conditions shall be interpreted by reference to the meanings set out below:

“**SER**” simultaneous relay rights, meaning the right to transmit and authorise the transmission of the Programme by all and any technical means in and to Belgium, the Netherlands and Eire (or such other territories as shall be notified to the Producer by MG ALBA) provided that:

- (a) such transmission is simultaneous with any transmission by the BBC in the UK of the Programme and utilises unaltered the same signals as are used for the UK transmission of one of the BBC's Home Services;
- (b) the Programme so transmitted is not cut, altered, amended or edited in any way;
- (c) the Programme does not include sub-titles nor dubbing except insofar as they are included in the Programme as delivered by the Producer to any Sub-Licensee of MG ALBA or MG ALBA;
- (d) except as herein provided any third parties authorised to transmit the Programme shall not be entitled to authorise others to exploit the Programme nor themselves to make copies thereof save to the extent that they are required to do so by law;
- (e) MG ALBA (or the relevant Sub-Licensee of MG ALBA) shall be solely liable in respect of any payments due to the owners of any underlying rights in the Programme in respect of the exercise of the rights described herein; and
- (f) appropriate payment is made for such use.

“**Primary New Media Rights**” means the right to exercise the Thirty-Day-New-Media Rights, the Streaming Rights; the New Media Extract Right; and the Primary-Video-on-Demand Rights subject to the New Media Rights Restrictions together with the right to re-format, programme or otherwise manipulate or adjust the Programme to the extent necessary to effect the efficient transmission of the Programme in the exercise of such rights;

“**New Media Rights Restrictions**” means the following restrictions which MG ALBA hereby agrees shall apply to MG ALBA (and its Sub-Licensee) in exercising the Primary New Media Rights:

- (i) the Streaming Rights shall only be exercised either simultaneously with any transmission of the Programme that MG ALBA (or its Sub-Licensees) is entitled to make under the terms of this Programme Purchase Agreement, or as a live stream (subject only to any short delay required for compliance purposes) as appropriate;

- (ii) the Thirty-Day-New-Media Rights shall only be exercisable provided that an appropriate technological means is used to limit the availability of the download for the period of its entitlement;

"Thirty-Day-New-Media Rights" means the right for the period of 30 days from the relevant transmission of the Programme (or relevant episode thereof) by MG ALBA or a Sub-Licensee of MG ALBA to use the Programme (or part thereof) in any online, interactive television, or other new media services in whatever format now known or invented in the future, which includes for the avoidance of doubt the right to:

- (i) download (the transfer and storage of a discrete data file) the Programme (or part thereof) by any wire or wireless means including but not limited to the internet and to permit access thereto, viewing thereof and storage of copies of the Programme so downloaded; and/or
- (ii) include or licence the Programme (or part thereof) for inclusion in a video-on-demand service or near-video-on-demand service;

"Streaming Rights" means the exclusive right to stream (the transfer of an apparently steady and continuous stream of data without a permanent copy of the material being made) the Programme (or parts thereof) by any wire or wireless means including but not limited to the internet (which, for the avoidance of doubt, may include a live stream of part of the Programme specifically commissioned for such purpose);

"New Media Extract Rights" means the exclusive right (subject always to the Producer's right to exercise the Promotional Online Rights (as defined below)) to use extracts or grabs of the Programme in any online or interactive television services in accordance with Conditions 3.12.1 and 3.12.2 in whatever format now known or invented in the future;

"Promotional Online Rights" means the Producer's right to either itself or to license distributors and/or broadcasters to feature footage from the Programme of up to 3 (three) minutes in duration in total on the Producer's/distributors'/broadcasters' websites provided that:

- (i) such use is solely for the purpose of publicity and promotion of the Programme and/or the Producer, and
- (ii) such material shall not remain on the relevant distributors'/broadcasters' websites for longer than 6 (six) months from transmission or end of distribution licence period as appropriate;

"Primary-Video-on-Demand Rights" means the exclusive right within the period of 30 days from the relevant transmission of the Programme (or relevant episode thereof) by MG ALBA or its Sub-Licensees to include or license the Programme (or part thereof) for inclusion in a video-on-demand service or near-video-on-demand service.

PART 3

PUBLICITY MATERIAL

The Publicity Material is as follows:

A Press Release for the Programme delivered bilingually and fully proofed;

Billings for each Programme (s) delivered bilingually and fully proofed;

A selection of digital images for the Programme, provided in accordance with the Commissioning Specification;

Programme trails and clips provided in accordance with the Commissioning Specification

Two Promotional preview DVD's.

Photography – by arrangement with the Producer.

PART 4

FORMAT of REPORTS

1. Cost Report
2. Production Progress Report

PART 5

DELIVERY MATERIAL

To MG ALBA or any third party stipulated in writing to the Producer by MG ALBA.

- (a) the Publicity Material;
- (b) A DPP file folder containing 1 x subtitled HD DPP (AS11 OP1A) completed programme file, AQC, Eyeball QC, PSE reports and an xml sidecar;
- (c) Programme subtitle file in PAC format to accompany the programme HD DPP file;
- (d) TV Compliance form;
- (e) Final paperwork for each episode or programme in the programme:
 - (i) Programme as completed Form fully completed with contributors and copyright information;
 - (ii) Music Reporting Form and Music Cue Sheet;
 - (iii) Schedule of Residuals;
 - (iv) the Ofcom Form;
 - (v) The BBC Vision On-screen Portrayal Form;
 - (vi) Certified copies of Production Agreements and any agreement with any third party not pre-paid as a part of the Cost of Production of the Programme

To Moving Image Archive, National Library of Scotland, Kelvin Hall, 1445 Argyle Street, Glasgow, G3 8AW or any other address stipulated in writing to the producer by MG ALBA.

- (a) 1 x uncompressed programme master file – FORMAT TO BE AGREED
- (b) 1 x copy of the Programme subtitles (PAC format, on CD, unless otherwise agreed); and
Copies the text of all subtitles included in the Programme