

Terms of Trade for Independent Radio Productions Commissioned by the BBC

1. Introduction

The BBC have set out below a summary of the minimum terms proposed to apply to the vast majority of radio programmes commissioned by the BBC from Independent Producers. The full terms are contained in the documents detailed in section 2 below.

The new terms will apply to all programmes contracted from 7th December 2004, except commissions based upon BBC owned programme ideas that are tendered out to Independent Producers or any other BBC tenders and BBC commissions where rights are purchased by the BBC from a third party (including by way of example BBC acquired sports and events rights).

2. Standard Programme Production Agreement

The BBC have published a new standard Programme Production Agreement to be used by the BBC when commissioning programmes from Independent Producers. This Agreement is made up of the following sections:

- **the General Terms** that will apply to the commissions that cover the majority of detailed deal points;
- **the Special Terms** that will have been agreed between the BBC and Independent Producer in relation to the specific programme, in particular the BBC's clearance requirements in relation to underlying contributors to the programme (eg. presenters, composers, artists and writers) and the **Primary Rights Licence Fee** that has been agreed; and
- **the Commissioning Specification** which will set out the detailed requirements of the programme.

3. Finance

The finance and pricing structure under the previous Terms of Trade will remain. The agreed Primary Rights Licence Fee (previously the Total Programme Budget) will be the fixed price the BBC will pay for the programme after good faith negotiations between the parties.

As currently, the BBC will cash-flow the agreed licence fee on the basis of 50% on signature of agreement and 50% on full delivery and acceptance of the programme as defined in the Commissioning Specification, unless otherwise agreed. For example, the phasing of payments for a drama serial or a long running series will be considered on a case by case basis.

4. Licence Period

The BBC will acquire a **10 year licence** to use the programme on its licence fee funded services on payment of the Primary Rights Licence Fee.

For all programming except drama, comedy, music documentaries with the potential for further broadcast on 6Music and commissions including a significant proportion of live music performances specially commissioned for the BBC, there will be a provision for a “break” in the licence after 5 years from first transmission of the programme (or the transmission of the last episode of the programme in the case of a series). After 5 years have expired, Independent Producers will be able to approach the BBC and request early release of the BBC’s programme licence to enable the Independent Producer to fully exploit its rights. The BBC will not unreasonably refuse or delay a response to the request. If the BBC has the intention to continue to exploit its primary rights licence for the duration of the 10 year licence, this will be reasonable grounds for the BBC to refuse to grant an early release of rights.

As part of the BBC Public Service Rights, the BBC will have the exclusive right to broadcast/transmit the programme (see paragraph 6 below), exhibit/publicise/promote the programme (including weekly review programmes, for example ‘Pick of the Week’), exercise new media rights (see paragraph 10 below), and use clips (5 minutes per 30 minutes of programming during the Licence Period – consent is only required if the clip is being used in a new compilation, send up or “best of” programme).

5. Extension of Licence Period

The BBC has the right to renew its licence for a further period of five years.

If the BBC wishes to exercise this option it will make a payment of 15% of the Primary Rights Licence Fee as an advance against the further use payments set out in paragraph 6 below.

Further extensions to the Licence Period can be mutually agreed on individually negotiated terms if this is acceptable to both parties.

In the case of returning series, the BBC will have the opportunity to renew the exclusive licence for all previous series contracted under the Terms of Trade via further 5 year licence periods while the programme is still being commissioned. The extension fee shall operate as an advance against future use fee payments and shall be as follows:

Licence Period	Extension Fee (% of original licence fee)
Extension 1 Year 10 – 15	15%
Extension 2 Year 15 – 20	20%
Extension 3 Year 20 – 25	25%
Extension 4 Year 25 – 30	30%

The extension fee will increase by a further 5% in the same way every 5 years.

In respect of any renewals beyond the first licence renewal, the holdback relating to radio sales by the Independent Producer in the UK shall be limited to free-to-air broadcasters (see paragraph 9 below).

The option to recommission a series lapses after 9 months from transmission of the last episode.

6. Pre-paid broadcasts of the programme and payment for further broadcasts

This paragraph relates to payments to be made to Independent Producers in relation to their rights in programming. Please see paragraph 8 below concerning clearances required in underlying contributions or material.

(a) Network Radio

Payment of the Primary Rights Licence Fee entitles the BBC to exercise two “packages” of uses during the Licence Period, one from **Tier A** and one from **Tier B**.

- **Tier A** – 2 transmissions on the analogue networks **or** 6 Transmission Days on the digital networks
- **Tier B** – 1 transmission on the analogue networks **or** 4 Transmission Days on the digital networks

The BBC may elect at any time during its Licence Period which package it intends to use from Tier A and which from Tier B as part of the Primary Rights Licence Fee.

If, within its Licence Period, the BBC has exhausted the rights it has acquired in Tier A and Tier B, it may purchase further packages of rights from **Tier C** (below), upon payment to the Independent Producer of 10% of the Primary Rights Licence Fee, in respect of one “package” of uses from **Tier C**. For the avoidance of doubt, the payment to extend the licence described in paragraph 5 operates as an advance against the purchase of any further packages, if needed during the extension period.

- **Tier C** – 1 transmission on the analogue networks **or** 10 transmission days on the digital networks

(b) Nations Radio

Where a programme is originally commissioned for Nations Radio the Primary Rights Licence Fee covers unlimited transmissions on Nations Radio during the Licence Period. Should the Licence Period be extended as per paragraph 5, the right to unlimited transmissions shall continue for that period.

(c) Programmes commissioned for Network Radio, broadcast on Nations Radio

The BBC shall be entitled on payment of 10% of the Primary Rights Licence Fee to acquire the right to unlimited transmissions on Nations Radio during the Licence Period of a programme originally commissioned for Network Radio.

(d) Programmes commissioned for Nations Radio, broadcast on Network Radio

The BBC shall be entitled on payment of 10% of the Primary Rights Licence Fee to acquire the right to 1 transmission on the analogue networks or 10 transmission days on the digital networks during the Licence Period of a programme originally commissioned for Nations Radio.

Welsh or Gaelic Language Programming

In exercising the transmission rights above the BBC shall also have the right to reversion any programme from the Welsh or Gaelic languages to the English language and vice versa. Subject to Independent Producers having the requisite skills, the original programme producer shall have the first right to produce the reversioned programme.

7. Creative Archive

The BBC will hold further good faith discussions with Independent Producers about the Creative Archive – with a view to agreeing how the Creative Archive could be covered under these Terms of Trade and the standard Programme Production Agreement.

8. Contracting Talent

Subject to the general principles set out below, the BBC's clearance requirements in relation to underlying contributions in particular programmes will be discussed and agreed with Independent Producers as part of the negotiations leading up to agreement of the Primary Rights Licence Fee.

The BBC will make it clear what rights the BBC expects to be cleared and paid for as part of the Primary Rights Licence Fee, and what rights the BBC expects to be "clearable" i.e. the rights are cleared for use subject to a pre-agreed payment which would subsequently be made by the BBC, on exploitation of the relevant right. The requirements will vary according to the nature of the contribution and the prevailing working practices and standards of the radio production sector and will depend upon the nature of the programme, the contribution in question, the Primary Rights Licence Fee and the planned transmission packages. Notwithstanding the more limited rights that the BBC will be entitled to exploit under these Terms of Trade, where reasonable and in conformity with industry practice, the BBC would expect certain contributors to be contracted on an "all rights" basis.

Network Radio

As a general rule, for a commission for Network Radio, the Primary Rights Licence Fee will normally cover the cost of the clearance by the Independent Producer of the rights in any underlying material for 2 analogue network transmissions or 6 digital network transmission days unless otherwise agreed with the Independent Producer.

Nations Radio

As a general rule, for Nations Radio, the Primary Rights Licence Fee will cover the cost of 2 Nations transmissions, unless otherwise agreed with the Independent Producer.

For particular programmes, certain contributors may be contracted by the BBC direct, often as part of a long term, possibly exclusive, deal. Where the BBC will be contracting contributors direct for the project that the Independent Producer has been commissioned to produce, this will be explained to the Independent Producer by the BBC upfront, as part of the pre-contract discussions. Unless this has been highlighted to the Independent Producer, the Independent Producer will be responsible for contracting underlying contributors to its programme.

The BBC has a number of collective agreements for the engagement of contributors negotiated with trade unions and industry bodies. Currently, the independent radio sector does not have a similar set of collective agreements. The BBC recognises that it needs to work with the independent sector to provide assistance and support in ensuring that its rights expectations can be met by producers and will be rolling out a strategy to support Independent Producers in the contracting of contributors as part of the implementation of these Terms of Trade. In the meantime, contracts should not be entered into with contributors on terms significantly different to the BBC's standard agreements with the relevant bodies and unions applicable to the radio production sector, without BBC prior consent.

The BBC will be entitled to approve certain 'key agreements' before they are signed by the Independent Producer. These will be raised with the Independent Producer as part of the pre-contract discussions and will be listed in the Commissioning Specification in the Programme Production Agreement. The BBC may request that the Independent Producer include certain provisions in the agreements as part of the approval process (for example a requirement for the relevant 'key individual' to cooperate with various publicity initiatives relating to the programme).

9. Distribution Arrangements

The Independent Producer will retain distribution rights in the programme in the following manner:

9.1. Programme Sales

- (a) The programme cannot be sold to the UK radio or television market (including library sales or any reversion of the programme) during the Licence Period without the BBC's consent (this restriction to be limited to free-to-air broadcasters after the first licence renewal). On expiry of the Licence Period the Independent Producer can sell the programme to any radio or television network.
- (b) The programme can be sold to the international market from 1st transmission or 6 months from delivery whichever is the earlier. The BBC is to retain a limited right to sell the programme as part of a sale of the network as a whole – please see paragraphs 9.2 (a) and (b) below.
- (c) Any sale of the programme shall be subject to the limitation that should the programme contain frequent references to the network brand (Radio 1, Radio 2 etc.) throughout the content of the programme, such sale shall require the consent of the BBC unless the references are removed.

9.2. Programme Sales by the BBC as part of a Network Sale

- (a) The BBC will retain the right to sell the programme internationally where the programme is part of a sale of an entire radio network for live or approximating live distribution (whether broadcast, transmitted or streamed over any platform). For example, BBCWW may enter into an agreement to sell a stream for transmission as a network overseas, but time-shifted to reflect the difference in time zones between the UK and the country where the stream will be rebroadcast.

The Independent Producer will receive fair and equitable payment on the basis of a formula that BBCWW can devise and agree with the Radio Independents Group always taking into account the administrative effort required to support such mechanism.

- (b) For the avoidance of doubt, as part of the proposition of sale of the network, BBCWW shall retain the right to licence the programme to the British Forces Broadcasting Service on terms to be agreed.

9.3. Format Rights

The format rights are retained by the Independent Producer subject to the following:

- (a) The BBC shall have the exclusive option to re-commission the series for radio which will lapse after 9 months from transmission of the last episode.
- (b) Format rights cannot be exercised in the UK whilst the BBC still has a recommissioning right in the programme, except in relation to the potential for the programme to be commissioned for television broadcast (subject to the BBC's right to commission the format for its television services, set out in (d) below);
- (c) When format rights are exercised outside the UK, any resulting programme etc. cannot be exploited back into the UK without the consent of the BBC during its Licence Period;
- (d) The BBC has the exclusive first option to commission for its television services within 9 months of first transmission of the programme. Subject to the Independent Producer having the requisite skills, it is intended that the producer shall be commissioned to produce any TV programming based on the format. If the producer has not previously been commissioned for television by the BBC, the parties will discuss in good faith who should produce the programme and in the event that the Independent Producer does not produce the programme, the payment of an appropriate format fee.
- (e) On exercise of the format rights in relation to television commissioning, the BBC shall have the option to re-commission one further programme or series of the programme for its radio services.

Any pre-existing agreements (for example as a result of offers to other networks) that might preclude the exercise of these rights and consents by the BBC should be indicated to BBC Radio & Music Business Affairs as part of the pre-contract discussions.

9.4. Exploitation of Merchandising and Release of Products relating to the Programme

Commercial exploitation of the programme through products can take place after the earlier of either transmission of the first episode of the programme or 6 months from delivery provided that:

- (a) Books that are tied into the programme, CDs and audio cassettes of the programme and any other products containing programme material released within the UK during the Licence Period will be required to carry BBC branding and comply with the BBC's trademark licence and guidelines (including quality control and sample approval), unless the BBC decides that BBC branding would not be appropriate.
- (b) Any other commercial merchandise such as food stuffs, t-shirts, soft toys etc. will require BBC approval, such approval not to be unreasonably withheld and subject to good faith discussions. Approval is to be deemed to have been given if due consideration followed by a decision and a response has not been given to the Independent Producer within one month of a request.

10. New Media

10.1 Public Service New Media Rights

The primary licence fee covers the BBC's public service new media rights. These include:

- (a) The exclusive right to make use of the programme or any associated additional new media material in any public service on-line, interactive or other new media service for a period of 7 days from first transmission including live or near-live streaming, downloads (where a technological means exists to limit availability for that period eg. DRM timed-out downloads) and audio-on-demand (AOD).
- (b) Where the programme is a series, the above rights shall apply to each individual episode for 7 days. In the case of AOD, the BBC will be able to offer each episode of the series by AOD for the duration of the series plus 7 days, unless the Independent Producer is commercially exploiting the programme through the release of CDs or audio cassettes as per paragraph 9.4(a) above. In these circumstances the BBC will only be able to offer a limited catch-up window of AOD for 7 days per episode's transmission which will also include the preceding 4 episodes.
- (c) If the BBC repeats the programme or series, it shall be entitled to exercise the above rights during the Licence Period from each repeat transmission for further 7 day periods or longer (as applicable) but on a non-exclusive basis.
- (d) The ability to use without limitation of time, up to 5 minutes of extracts per 30 minutes of programme in any on-line or interactive service that is part of the BBC's public services, such use being exclusive for the Licence Period and non-exclusive thereafter (consent being required from the Independent Producer if for the purposes of a new compilation, send up, or "best of" feature).
- (e) The exclusive right for there to be a programme related website on bbc.co.uk throughout the Licence Period, subject only to the producer's Commercial Website Rights

Where an Independent Producer proposes a website or other interactive proposition as part of the programme proposal, and the BBC agrees that such a proposition should form part of the programme commission, the BBC and the Independent Producer will discuss in good faith who shall undertake this work. The Independent Producer shall have first option to produce these aspects of the commission provided that their proposal is editorially and technically acceptable, meets BBC guidelines and represents value for money.

10.2 Commercial New Media Rights

The Independent Producer will retain the commercial new media rights in the programme in the following manner:

- (a) A commercial website based on the format of the programme which is editorially acceptable to the BBC and does not conflict with the BBC's public service new media rights can be set up 7 days post transmission of the programme.
- (b) Up to 5 minutes per 30 minutes of programming can be featured on the Independent Producer's website for promotional purposes for up to 6 months.
- (c) Following expiry of the BBC's initial 7 day public service window, set out in paragraph 10.1 (a) above, the commercial download and audio-on-demand rights shall be exercisable by the Independent Producer subject to the BBC's prior consent. The BBC's consent shall not be unreasonably withheld or delayed and shall be provided within one month of receipt of the request by the BBC. By way of example of the BBC's criteria in granting or withholding approval, where the proposition is offered in an environment substitutional for a retail CD sale, this should normally be acceptable. However, where the proposition is offered in an environment which resembles a broadcast schedule rather than a retail sale, this is less likely to be acceptable to the BBC.
- (d) In accordance with paragraphs 9.2(a) and 10.1(a) above, the BBC shall retain the right to stream the programme itself as part of its public service rights or as part of a sale of an entire radio network for live or approximately live distribution internationally. Where sold, the Independent Producer will receive fair and equitable payment on the basis of a formula the BBC can devise and agree with the Radio Independents Group always taking into account the administrative effort required to support such mechanism.
- (e) Any other new media rights (falling outside of the BBC's public service new media rights above) cannot be exercised by the Independent Producer until 7 days after programme transmission (or the last episode of the series – where applicable) and without the BBC's consent during the Licence Period. The BBC will not unreasonably withhold or delay its consent.

11. Interactive Requirements

Certain additional materials for interactive radio services to be offered in conjunction with the programme will need to be delivered as part of the commissioning brief. These will be discussed and agreed with the Independent Producer upfront and will be set out in the Commissioning Specification, together with a timetable for delivery of these elements, but typically, these may include:

- (a) A requirement for the Independent Producer to supply and enter a description of the programme, the issues it covers, an outline of who features in it and metadata associated with the programme into BBC nominated computer systems and content productions systems as requested.
- (b) A similar requirement for the Independent Producer to enter track-listings for any music based programme and contact details of any relevant organisations featured in a programme.
- (c) A requirement to supply pictures or images to illustrate the programme where in the BBC's view it is appropriate.
- (d) A requirement to supply full length original interviews for use on-line where the audio file is available.

12. World Service

The BBC can acquire the non-exclusive right to broadcast the programme (or any part of it) on the BBC World Service on payment of 5% of the Primary Rights Licence Fee and the cost of clearing the rights in any underlying material. This option must be exercised within 2 years of the first transmission of the programme on the BBC's national radio networks.

The right to broadcast the programme in the World Service will consist of the right to broadcast the programme in cycles of 7 broadcasts in each World Service region provided those cycles of broadcasts take place within a period of 8 days. It will also consist of the right to make use of the programme through an audio-on-demand service for a period of 7 days from each transmission on the World Service.

The Independent Producer will be responsible for ensuring that the above rights are clearable, i.e. subject to payment by BBC World Service of a pre-agreed fee (where appropriate), underlying rights and contributions in the programmes may be exercised. The mechanism for this will be discussed as part of the pre-contract negotiations.

13. Disputes Resolution Process

The General Terms to the Programme Production Agreement will include a clear process by which Independent Producers may raise individual disputes that may arise in connection with these Terms of Trade.

Additionally, should the Independent Producer have any particular issues that they wish to raise informally with BBC Business Affairs, they should feel free to contact the Head of Business Affairs for Radio & Music or the BBC Director of Business Affairs.

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