

within the physical premises of the Institution. For the avoidance of doubt, Walk-In Users may not be given access to the Licensed Work by any wireless network provided by the Institution unless such network is a Secure Network.

"Commercial Use"	means use of the Licensed Work for the purpose of monetary reward (whether by or for the Institution or an Authorised User) by means of the sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Work. For the avoidance of doubt, neither the recovery of direct cost by the Institution from Authorised Users, nor use by the Institution or Authorised Users of the Licensed Work in the course of research funded by a commercial organisation is deemed to constitute Commercial Use.
"Educational Purposes"	means for the purpose of education, teaching, distance learning, private study and/or research.
"Fee"	means the fee as set out in Schedule 1.
"HEFCE"	means the Higher Education Funding Council for England.
"Intellectual Property Rights"	means patents, trademarks, trade names, design rights, copyright (including rights in computer software and moral rights), database rights, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.
"JORUM Repository"	means the central repository of learning and teaching material funded by the UK funding bodies.
"Licensed Work"	means the product licensed in this Agreement known to the parties as the 'BBC Motion Gallery' being a collection of footage available to download on-line from the BBC archive which contains at least 30,000 clips, including both rights managed and royalty free stock footage material. New clips are to be added by the Licensor to the resource at a rate of between 500 and 1000 clips per month.
"Modify"	means to alter, add to, delete from, manipulate and/or modify parts of the Licensed Work.
"Modifications"	means alterations, additions to, deletion from, manipulations and/or modifications of parts of the Licensed Work.

"Offer" means the offer as agreed between JISC Collections and the Publisher in the BBC Motion Gallery Agreement which is attached in Annex 1 hereto.

"Secure Authentication" means access to the Licensed Work by Athens authentication or Security Assertion Mark-up Language (SAML) technology based authentication, Internet Protocol ("IP") ranges or by another means of authentication agreed in writing between the Publisher and the Institution from time to time.

"Secure Network" means a network which is only accessible by Secure Authentication.

1.2 Headings contained in this Agreement are for reference purposes only and shall not be deemed to be an indication of the meaning of the clause to which they relate.

1.3 Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

2. GRANT OF LICENCE

2.1 In consideration for the Fee, the Publisher hereby grants the Institution a non-exclusive non-transferable licence to access and use the Licensed Work and to allow Authorised Users to access and use the Licensed Work on the terms and conditions as set out in this Licence.

3. USE OF THE LICENSED WORK

3.1 Throughout the term of this Agreement, the Institution may for Educational Purposes only:

3.1.1 make such temporary local electronic copies of all or part of the Licensed Work as are necessary to ensure efficient use by Authorised Users, provided that such use is subject to all the terms and conditions of this Sub-Licence;

3.1.2 allow Authorised Users to access the Licensed Work by Secure Authentication in order to search, retrieve, view, display and otherwise use.

3.1.3 allow Authorised Users to Modify parts of the Licensed Work;

3.1.4 allow Authorised Users to electronically save parts of the Licensed Work and Modifications;

3.1.5 allow Authorised Users to print out copies of parts of the Licensed Work and Modifications;

3.1.6 use or allow Authorised Users to use parts of the Licensed Work and Modifications in any electronic or print media, including advertising and editorial use;

3.1.7 allow Authorised Users to use parts of the Licensed Work and Modifications in any audiovisual content in any media;

- 3.1.8 incorporate parts of the Licensed Work and Modifications for use by Authorised Users in printed and electronic course packs, study packs, resource lists and in any other material (including but not limited to multi-media works) to be used in the course of instruction and/or in virtual and managed environments (including but not limited to virtual learning environments, managed learning environments, virtual research environments and library environments) hosted on a Secure Network. Each item shall carry appropriate acknowledgement of the source, listing title and copyright owner. Course packs in non-electronic non-print perceptible form, such as Braille, may also be offered to Authorised Users;
 - 3.1.9 use parts of the Licensed Work and Modifications for any other uses provided such uses are approved in writing by the BBC Worldwide Limited;
 - 3.1.10 allow Authorised Users to incorporate parts of the Licensed Work and Modifications in printed or electronic form in assignments and portfolios, theses and in dissertations (“the Academic Works”), including reproductions of the Academic Works for personal use and library deposit, if such use conforms to the customary and usual practice of the Sub-Licensee. Reproductions in printed or electronic form of Academic Works may be provided to sponsors of such Academic Works. Each item shall carry appropriate acknowledgement of the source and copyright owner;
 - 3.1.11 allow Authorised Users to incorporate parts of the Licensed Work and Modifications in printed or electronic form in showreels, resumes and competition entries for the purposes of self promotion. Each item shall carry appropriate acknowledgment of the source and copyright owner.
 - 3.1.12 display, download and print parts of the Licensed Work for the purpose of promotion of the Licensed Work, testing of the Licensed Work, or for training Authorised Users;
 - 3.1.13 allow Authorised Users to publicly display or publicly perform parts of the Licensed Work and Modifications as part of a presentation at a seminar, conference, museum, gallery or workshop, including use in exhibit labels and other components of the exhibit . Each item shall carry appropriate acknowledgment of the source and copyright owner;
 - 3.1.14 make such copies of training material and network such training material as may be required for the purpose of using the Licensed Work in accordance with this Sub-Licence; and
 - 3.1.15 deposit in perpetuity the learning and teaching objects as referred to in Clause 3.1.8 in electronic repositories operated by the Sub-Licensee on a Secure Network and in the JORUM Repository. The access and use of such learning and teaching objects shall be governed by the terms and conditions of the applicable repository.
- 3.2 This Agreement shall be deemed to complement and extend the rights of the Institution and Authorised Users under the Copyright, Designs and Patents Act 1988 and the Copyright (Visually Impaired Persons) Act 2002 and nothing in this Licence shall constitute a waiver of any statutory rights held by the Institution and Authorised Users from time to time under these Acts or any amending legislation.

4. RESTRICTIONS

- 4.1 Save as provided herein, the Institution and Authorised Users may not:

- 4.1.1 sell or resell the Licensed Work unless the Institution or an Authorised User has been granted prior written consent by the Publisher to do so;
- 4.1.2 remove, obscure or modify copyright notices, text acknowledging or other means of identification or disclaimers as they appear;
- 4.1.3 alter, adapt or modify the Licensed Material, except to the extent necessary to make it perceptible on a computer screen, or as otherwise permitted in this Agreement. For the avoidance of doubt, no alteration of the words or their order is permitted;
- 4.1.4 display or distribute any part of the Licensed Work on any electronic network, including without limitation the Internet and the World Wide Web, and any other distribution medium now in existence or hereinafter created, other than by a Secure Network;
- 4.1.5 use all or any part of the Licensed Work for any Commercial Use or for any purpose other than Educational Purposes.

4.2 This Clause 4 shall survive termination of this Agreement for any reason.

5. RESPONSIBILITIES OF THE INSTITUTION

5.1 The Institution will:

- 5.1.1 issue passwords or other access information only to Authorised Users and use all reasonable efforts to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
- 5.1.2 use all reasonable efforts to ensure that only Authorised Users are permitted access to the Licensed Work ;
- 5.1.3 use all reasonable efforts to ensure that all Authorised Users are made aware of and undertake to abide by the terms of this Agreement;
- 5.1.4 use all reasonable efforts to monitor compliance and notify the Publisher immediately and provide full particulars on becoming aware of any of the following (a) any unauthorised use of any of the Institution's password(s); or (b) any breach by an Authorised User of the terms of this Agreement. Upon becoming aware of any breach of the terms of this Agreement the Institution further agrees promptly to fully investigate and initiate disciplinary procedures in accordance with the Institution's standard practice and use all reasonable effort to ensure that such activity ceases and to prevent any recurrence;
- 5.1.5 comply with all computer security procedures required by Publisher and take all reasonable steps to ensure the security of the Licensed Work; and
- 5.1.6 provide lists of valid IP addresses to the Publisher and update those lists on a regular basis the frequency of which will be agreed by the parties from time to time.

6. RESPONSIBILITIES OF PUBLISHER

- 6.1 The Publisher shall ensure access and use of the Licensed Work in accordance with the provisions as laid down in this Agreement.
- 6.2 The Publisher shall cause product support to be provided to the Institution and to Authorised Users.

7. USAGE DATA

- 7.1 The parties shall co-operate in gathering any data on usage of the Licensed Work that is available to them during the term of this Agreement, and shall provide such data to each other upon request. Notwithstanding the foregoing, the parties shall neither assemble nor provide data from which an individual user could be identified.

8. FEE

- 8.1 The Institution will pay the Fee to the Publisher for the rights granted to the Licensed Work in the amount and upon terms as set out in Schedule 1.

9. TERM AND TERMINATION

- 9.1 The term of this Agreement will commence upon the date of signature and will remain in full force and effect until [date], unless terminated earlier as provided for in this Clause 9.
- 9.2 Either party may terminate this Agreement at any time on the material breach or repeated other breaches by the other of any obligation on its part under this Agreement by serving a written notice on the other identifying the nature of the breach. The termination will become effective thirty days after receipt of the written notice unless during the relevant period of thirty (30) days the defaulting party remedies the breach forthwith by written notice to the other party.
- 9.3 Upon termination of this Agreement by the Institution due to a material breach or repeated other breaches by the Publisher, the Publisher will reimburse the Licensee a pro rata proportion of the Fee paid by the Institution for the unexpired period of this Agreement.
- 9.4 Upon termination of this Agreement, copies of parts of the Licensed Work made by the Institution or Authorised Users may be retained. Print copies may be used after termination of this Agreement subject to the terms of Clauses 3 and 4 of this Agreement, which terms shall survive any termination of this Agreement. Save as provided for in Clause 3.1.12, the use of electronic copies after termination of this Agreement requires the authorisation from the Publisher (and no such use shall be made without such authorisation) and the conditions of use are not subject to this Agreement.

10. ACKNOWLEDGEMENT AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Institution acknowledges that all Intellectual Property Rights in the Licensed Work are the sole and exclusive property of the Publisher or are duly licensed to the Publisher and that this Agreement does not assign or transfer to the Institution any right, title or interest therein except for the right to use the Licensed Work in accordance with the terms and conditions of this Agreement.

11. REPRESENTATIONS, WARRANTIES, INDEMNIFICATION AND LIMITATIONS OF LIABILITY IN RESPECT OF THE LICENSED WORK

- 11.1 The Institution represents and warrants that it has sufficient authority and rights to enter into and perform its obligations under this Agreement.
- 11.2 The Publisher warrants to the Institution that the Licensed Work and all Intellectual Property Rights therein are owned by or licensed to the Publisher and that the Licensed Work used as contemplated in this Agreement does not infringe any Intellectual Property Rights of any natural or legal person. The Publisher agrees that Institution shall have no liability and the Publisher will indemnify, defend and hold Institution harmless against any and all damages, liabilities, claims, causes of action, legal fees and costs incurred by Institution in defending against any third party claim of Intellectual Property Rights infringements or threats of claims thereof with respect of Institution's use or an Authorised User's use of the Licensed Work, provided that: (1) the use of the Licensed Work has been in full compliance with the terms and conditions of this Agreement; (2) Institution provides the Publisher with prompt notice of any such claim or threat of claim; (3) Institution co-operates fully with the Publisher in the defence or settlement of such claim; and (4) the Publisher has sole and complete control over the defence or settlement of such claim.
- 11.3 Nothing in this Agreement shall make the Institution liable for breach of the terms of this Agreement by any Authorised User provided that the Institution did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
- 11.4 Save as provided for in Clause 11.2, neither the Institution nor the Publisher will be liable to the other in contract or negligence or otherwise for (i) any special, indirect, incidental, punitive or consequential damages (ii) loss of direct or indirect profits, business, contracts, revenue or anticipated savings or for any increased costs or expenses.
- 11.5 No party limits its liability for (i) death or personal injury to the extent it results from its negligence, or of its employees or agents in the course of their engagement; and (ii) its own fraud or that of its employees or agents in the course of their engagement.
- 11.6 The Publisher reserves the right to change the content, presentation, user facilities or availability of parts of the Licensed Work and to make changes in any software used to make the Licensed Work available at their sole discretion. The Publisher will notify the Institution of any substantial change to the Licensed Work.
- 11.7 The Publisher makes no representation and gives no warranty express or implied with regard to the accuracy of the information contained in or in any part of the Licensed Work and the fitness of such information or part for any purposes whatsoever and the Publisher accepts no liability for loss suffered or incurred by the Institution or Authorised Users as a result of their reliance on the Licensed Work or for any loss suffered or incurred as a result of pages being omitted from the Licensed Work in error provided the Publisher will rectify such omissions as soon as reasonably practical on being made aware of them.
- 11.8 The Institution agrees to notify the Publisher within 48 hours and provide full particulars in the event that it becomes aware of any actual, suspected or threatened claims by any third party in connection with works contained in the Licensed Work and do all things reasonably required to assist the Publisher in such claims. It is expressly agreed that upon such notification, or if the Publisher becomes aware of such a claim from other sources, the Publisher may remove such work(s) from the Licensed Work. Failure to report knowledge of any actual or threatened claim by any third party shall be deemed a material breach of this Agreement. At the request of the

Publisher, the Institution will make all reasonable efforts to remove such work(s) from any copies of the Licensed Work maintained by the Institution.

- 11.9 The Institution represents to the Publisher that its computer system through which the Licensed Work will be used is configured, and procedures are in place, to prohibit access to the Licensed Work by any person other than an Authorised User; that it shall inform Authorised Users about the conditions of use of the Licensed Work; and that during the term of this Agreement, the Institution will continue to make all reasonable efforts to bar non-permitted access and to convey appropriate use information to its Authorised Users.

12. FORCE MAJEURE

- 12.1 Either party's failure to perform any term or condition of this Agreement as a result of circumstances beyond the control of the relevant party (including without limitation, war, strikes, flood, governmental restrictions, and power, telecommunications or Internet failures or damages to or destruction of any network facilities) ["Force Majeure"] shall not be deemed to be, or to give rise to, a breach of this Agreement.
- 12.2 If either party to this Agreement is prevented or delayed in the performance of any of its obligations under this Agreement by Force Majeure and if such party gives written notice thereof to the other party specifying the matters constituting Force Majeure together with such evidence as it reasonably can give and specifying the period for which it is estimated that such prevention or delay will continue, then the party in question shall be excused the performance or the punctual performance as the case may be as from the date of such notice for so long as such cause of prevention or delay shall continue.

13. ASSIGNMENT

- 13.1 Neither this Agreement nor any of the rights under it may be assigned or sub-licensed by either party without obtaining the prior written consent of the other party. In any permitted assignment, the assignor shall procure and ensure that the assignee shall assume all rights and obligations of the assignor under this Agreement and agrees to be bound to all the terms of this Agreement.

14. GOVERNING LAW AND DISPUTE RESOLUTION

- 14.1 This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.
- 14.2 The parties agree to use best efforts to resolve disputes in an informal manner, by decision of the Managing Director of the Publisher and the [Vice Chancellor] of the Institution. Where the parties agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, they will agree upon the nature of the expert required and together appoint a suitable expert by agreement. In default of agreement upon whom to appoint as a suitable expert, such expert shall upon the request of either party be appointed by the Chair for the time being of Universities UK (<http://www.universities.co.uk>).
- 14.3 Any person to whom a reference is made under Clause 14.2 shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

- 14.4 Each party shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.
- 14.5 The costs of the expert shall be borne by the parties in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by the parties in equal proportions.

15. NOTICES

- 15.1 All notices required to be given under this Agreement shall be given in writing in English and sent by courier or special delivery to the relevant addressee at its address set out below, or to such other address as may be notified by either party to the other from time to time under this Agreement, and all such notices shall be deemed to have been received three days after posting where sent by special delivery or on despatch in the case of despatch by courier

if to the Institution:

[insert details]

if to the Publisher

Paul Maidment
BBC Worldwide Limited,
80 Wood Lane,
London
W12 OTT
paul.maidment@bbc.co.uk

16. GENERAL

- 16.1 This Agreement, Schedules and Annexes constitute the entire agreement between the parties relating to the Licensed Work and supersede all prior communications, understandings and agreements (whether written or oral) relating to its subject matter and may not be amended or modified except by agreement of both parties in writing.
- 16.2 The Schedules and Annexes shall have the same force and effect as if expressly set in the body of this Agreement and any reference to this Agreement shall include the Schedules and Annexes.
- 16.3 The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.
- 16.4 The rights of the parties arising under this Agreement shall not be waived except in writing. Any waiver of any of a party's rights under this Agreement or of any breach of this Agreement by the other party shall not be construed as a waiver of any other rights or of any other or further breach. Failure by either party to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.