

DATED

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PROGRAMME PRODUCTION AGREEMENT

BETWEEN

(1) THE BRITISH BROADCASTING CORPORATION

(2) []

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Schedule 1 Special Terms

1. **BBC Representatives:**

	Name	Telephone	Email
BBC Editorial Representative			
BBC Business Affairs Manager			
BBC New Media Representative			
Producer's Nominated Representative for purposes of Special Term 6.6.2 and General Term 16.3			

2. **Licence Fee:**

2.1 The Licence Fee of a total of £[] () is made up as follows:

2.1.1 Primary Rights licence fee:	£[]
[2.1.2 Funding above Primary Rights licence fee:	£[]]
[2.1.3 Prize fund as set out in the Commissioning Specification:	£[]]
[2.1.4 Other specific production element(s) as set out in the Commissioning Specification:	£[]]

The above figures do not include the Independent Production Training Levy. This will be collected separately from the Producer by PACT directly.

The Primary Rights Licence Fee includes the cost of one technical review of the Programme master tape by the BBC, the cost of subsequent technical reviews will also be deducted from the cashflow.

2.2 [either

The Producer has elected to obtain insurance under the BBC/AON scheme and the insurance costs shall be deducted by the BBC from the cashflow set out in Special Term 2.3 below.

Or

If the Producer elects to obtain insurance under the BBC/AON scheme, insurance costs shall be deducted by the BBC from the first cashflow stage payment following confirmation from AON of such costs for the Programme. If the Producer elects not to obtain insurance under the BBC/AON scheme, the Producer will provide the Business Affairs Manager with a copy of the insurance schedule and policy for the Programme.

Or

The Producer has elected not to obtain insurance under the BBC/AON scheme and has provided the Business Affairs Manager with a copy of the insurance schedule and policy for the Programme.]

2.3 Payable:

If cash-flowing:

In accordance with the [following Stage Payments:] [agreed Cash-Flow Schedule]

Stage	% of Licence Fee	Event on which Stage is Payable	Estimated date of payment (for <u>information only</u>)	Other conditions of Payment (if applicable)	Amount (£s)	Progress Report Required? Please send to BAM where required	Invoice to be sent to:
1		Receipt by BBC of signed Agreement		[Eg. 1. Signature of Key Agreement 2. Not before 1 st April 2010]	£ [Less (where applicable): a) £xxx (Development already paid) (where known) b) £yyyy (Insurance paid directly by the BBC)]	No	Business Assistant
2		1 st day of pre-production:			£	Yes	Steria
3		Commencement of Principal Photography			£ [(where applicable): Less a) WGGB Uplift of 15% (to be invoiced separately)]	Yes	Steria
4		Mid-point of filming and viewing of rushes by BBC Editorial Representative					
5		First day of edit			£	Yes	Steria
6		Approval of rough cut of all episodes			£	Yes (please include confirmation that all Production Personnel have completed the designated Safeguarding Trust modules.)	Steria
7		Approval of fine cut of episode 1			£	Yes	Steria
8		Acceptance of Tape Delivery of all episodes (Tape Delivery being due on xx/xx/20xx)		1. Delivery of clip in accordance with Commissioning Specification	£	Yes	Steria
9	5	Acceptance of Paper Delivery (subject always to a cap of £100,000)			£ Less: a) Directors UK £xxxx (please note that VAT does not apply to Directors UK deductions; this amount may vary if	Yes	Business Assistant

					the Licence Fee for the Programme changes) 0.055% of PRLF, save for Religion, Arts and Music, Current Affairs		
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If paying on delivery:

Stage 1	Stage 2
Acceptance of Tape Delivery	Acceptance of Paper Delivery
95%	5%
£ 0.00	£ 0.00 (less any appropriate deduction as referred to in Special Term 6.4)

[2.4 In addition to the Licence Fee, the BBC shall pay the sum of £[] ([] pounds sterling), (“the New Media Fee”) for the supply of the New Media Deliverables (as defined in Schedule 9), in accordance with Part B and Part C of Schedule 9. A full breakdown of the New Media Fee is also set out at Part B of Schedule 9.

3. Contributor rights – pre-paid uses:

3.1 The Producer shall contract contributors to the Programme within the Licence Fee on the minimum basis as set out in General Term 6 save only as may be varied in Special Term 3.2 or as otherwise agreed in writing by the BBC.

3.2 The minimum pre-payment required to be made within the Licence Fee in relation to the following contributors is as set out below:

Equity Artists	<p>[[1/2] UK Network TV transmissions on BBC One/Two] [OR] [9 Transmission Days on BBC [Four/Three] in accordance with Clause T23 of the agreement between Equity and PACT dated 1 August 2004 as amended and updated.]</p> <p>IF APPROPRIATE</p> <p>Artists to be optioned for series [2] and [3] under terms pre-approved by the BBC insofar as it is legally possible to do so.]</p>
Writers	<p>[If BBC One or Two commission [1/2] UK Network TV transmission (on BBC One or Two) in accordance with Clause 26(i) of the agreement between the Writers’ Guild of Great Britain and PACT dated 1 February 2003 [(“WGGB/PACT Agreement”)] and a further sum (payable on the first day of principal photography) equal to 15% of the script fee for a 5-year licence for BBC Public Service uses (excluding repeats on BBC One and BBC Two) (“the BBC Public Service Uses”)]</p> <p>[OR] [If BBC Three or Four commission – if this reflects the agreement reached Unlimited uses on all BBC Public Services (in respect of which 15% of the script fee shall be payable on the first day of principal photography), excluding repeats on BBC One and BBC Two.</p> <p>The Producer acknowledges that the Programme has been commissioned by the BBC as a commission primarily for BBC [Three][Four] and the minimum clearance requirements for BBC [Three][Four] within the Licence Fee do not require pre-clearance of the writer’s Subsequent Use Advance as defined under the WGGB/PACT Agreement. [The Producer shall inform the BBC in the event that it pays such advance for the purposes of exercising the Distribution Rights].</p>
Archive & Stills	Unlimited use on all BBC Public Services for the Licence Period (renewable subject only to payment of an approved rate) and for all promotional use permitted under this Agreement.
Music	Composers In relation to members of all relevant Collecting Societies covered by the BBC blanket licensing arrangements, General Term 6.2 in relation to music is un-amended.

	<p>In all other cases (where composers are not members of the relevant societies) their contribution must be acquired for unlimited use on all BBC Public Services for the Licence Period (renewable subject only to payment of an approved rate) and for all promotional use permitted under this Agreement.</p> <p>Musicians Unlimited use on all BBC Public Services excluding repeats on BBC1, BBC2 and BBC Radio which would attract further payment in line with the contributors' PACT / MU Agreement and which shall be set out clearly in the schedule of residuals.</p>
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4. **Agreed Recoupments (as referred to in the definition of Net Revenue)**

None

[OR]

It is agreed that the [sum][advance] of £ [] may be recoupable from gross revenue arising in connection with the exercise of the Distribution Rights, as follows:

[]

The Producer warrants that it will pass on to its third party investors any rights and/or obligations arising in relation to the foregoing in its contractual arrangements with such third party investors.

For the avoidance of doubt, the above is always without prejudice to compliance with the principles set out in the definition of Agreed Recoupment at General Term 1 (as amended).

5. **Variations to General Terms:**

5.1 The **Seven-Day-New-Media Rights, Primary-Video-on-Demand Rights** and **BBC Primary New Media Rights** shall be extended include a new media (temporary download or streamed) premiere/preview of the Programme which may be made available from 7 days prior to the first linear broadcast ("the Preview"); plus a "Floating" window; and Series Stacking as follows:

(a) "Floating" window

Upon download of the Programme (or any episode thereof) by the audience within the 7 day window from any linear transmission by the BBC of the episode/programme, the episode/programme can remain on the users hardware until first accessed (or 13 weeks from download whichever is sooner), then the user has 7 days to view the episode/programme after which the episode/programme expires.

(b) Series Stacking

Such rights in each episode of the Programme shall extend to seven days after the linear transmission of the final episode of the Programme – "a series stack" subject to the following:

- (i) Such series stack shall be capped at a total of 13 weeks programming available on demand at any one time (excluding for the avoidance of doubt the 7 day Preview period).
- (ii) During the time that it is made available on-demand by the BBC, each episode of the series can be temporarily downloaded for viewing with a "floating" window as set out in (a) above.

- (iii) Series stacking will not apply to repeats.

All such use will be copy protected and will only be exercised provided that appropriate technological means are used to limit the availability of the download to the period of the BBC's entitlement and the UK territory.

- 5.2 The following amendments shall apply to the General Terms:

- 5.2.1 The following definition shall be amended to read as follows:

"BBC Guidelines" – all relevant BBC guidelines and policies published or linked to at the date of this Agreement from the following website: www.bbc.co.uk/commissioning/tv/compliance-and-policy and any others specifically notified to the Producer prior to the first day of principal photography

- 5.2.2 The definition of "Relevant BBC Websites" and Schedule 8 to the Agreement shall be deleted.

- 5.3 The references to Special Term 2.2 at General Terms 7.2.1, 7.6, 18.3.6 (i) and 20.2 shall be amended to read "Special Term 2"

6. Special Provisions:

- 6.1 [The Producer warrants that the Programme shall not qualify as a Regional Production.]

Or

[The Producer warrants that, in compliance with the OFCOM Regional Production qualification criteria, the Programme shall qualify as a Regional Production and that the information set out at Section 8 of the Commissioning Specification in relation to the OFCOM Regional Production qualification criteria is true and accurate.]

- 6.2 The BBC confirms that the Licence Fee shall not be secured by a Charge.

- 6.3 In the event that the BBC in its discretion grants its prior written consent pursuant to General Term 16.2.3 and/or 12.8.2(i) in accordance with its published Programme Release Policy for the time being in force, the Net Revenue payable to the BBC in relation to the exercise of such rights shall be 25% during its exclusive Licence Period, thereafter reverting to the relevant percentage as set out in General Term 16.1.2.

- 6.4 The Producer accepts that in accordance with the PACT Framework for Recharging Directors & Producers Rights Society payments to Independent Producers effective from 1 January 2005, a sum may be payable by the Producer to the BBC in relation to the Programme in accordance with this Framework. The Producer agrees that the BBC shall be entitled to withhold this sum from the final Stage Payment set out in Special term 2.2 above and accordingly the Producer shall deduct the appropriate sum (if relevant) from the final invoice rendered to the BBC.

6.5 Telephony Services

In the event that as part of production of the Programme the Producer proposes to arrange for the supply of telephony services in connection with the Programme, without prejudice to the generality of the terms of this Agreement, in connection with such services it is specifically acknowledged and agreed as follows:

- 6.5.1 all arrangements for the supply of telephony services shall be made in accordance with the BBC's **Guidance Notes to Independent Production Companies for the Use of Interactivity in BBC Commissioned Programmes**, published here: <http://www.bbc.co.uk/commissioning/tv/production/business-and-production-guide.shtml#audience-interaction>;
- 6.5.2 the agreement for the supply of such services is identified in the Commissioning Specification as a Key Agreement and accordingly shall not be entered into by the Producer without the prior approval of the proposed terms and conditions by the BBC ("Telephony Services Agreement");
- 6.5.3 As set out in the Commissioning Specification, the Producer shall appoint an individual employee of the Producer to be responsible and accountable for the operation of the telephony services in connection with the Programme in accordance with the Phone Pay Plus, OFCOM, and the relevant BBC Guidelines, and any other specific instructions of the BBC.
- 6.6 Without prejudice to the generality of the General Terms:
- 6.6.1 The Producer confirms and undertakes that the Programme and all materials supplied to the BBC (or its authorised representatives or agents) for publication including any promotional purposes in connection with the Programme, such as but not limited to material for online listings and audience navigation applications, (whether such material is delivered pursuant to the terms of this Agreement or pursuant to an additional or subsequent agreement with the BBC or its authorised representative or agent) have been created, obtained, and produced in compliance with:
- (i) the BBC Guidelines (in particular the BBC Editorial Guidelines, available at <http://bbc.co.uk/guidelines>); and
 - (ii) the provisions of all relevant underlying agreements, and
 - (iii) cleared in accordance with the relevant terms of this Agreement (or by subsequent agreement between the parties, where applicable).
- 6.6.2 Where the BBC creates, produces, or adapts any material relating to the Programme for promotional purposes, the BBC Editorial Representative may ask the Producer's Nominated Representative to review such material and inform the BBC whether or not the Producer's Nominated Representative considers in good faith that the proposed use (including timings where relevant) is (or could be) inconsistent with the BBC Guidelines or in breach of any third party contract, and in executing the BBC's overall responsibility to finalise and comply such material, the BBC shall be entitled to rely on the response(s) or information provided by the Producer.
- 6.7 **Safeguarding Trust Training:**
- Without prejudice to General Terms 5.3 and 17.16:
- 6.7.1 The Producer warrants and undertakes that:
- (i) the Key Production Personnel listed in part 7 of the Commissioning Specification entitled "Training Requirements" have completed the training requirements as set out in that part 7 as of the date of signature of this Agreement;

- (ii) all Production Personnel will by the first day of principal photography (or the date of their engagement if later) have completed the training requirements as set out in part 7 of the Commissioning Specification.
- 6.7.2 The Producer shall as part of the Production Report delivered to the BBC in accordance with this Agreement prior to payment of "*Stage Payment 6 (Approval of rough cut)*" set out the names of all Production Personnel who have completed the training requirements as set out in part 7 of the Commissioning Specification in accordance with Special Term 6.7.1(ii) above, such Production Report to be verified and signed by the Executive Producer.
- 6.7.3 The Producer shall maintain complete and accurate records as required to evidence and substantiate the Producer's warranty as set out in Special Term 6.7.1 above, and shall deliver as part of Paper Deliver a copy of such records for each of the Production Personnel.
- 6.7.4 An additional definition for "Production Personnel" shall be inserted into General Term 1 as follows:
"Production Personnel" means any person carrying out the following roles on the Programme (irrespective of their contracted job title and unless specifically excluded for legitimate reasons by agreement with the BBC Editorial Representative): executive producer, producer, associate producer, assistant producer, director, editor, programme researcher, writer if the Programme is a factual programme or other programme genre involving the portrayal of factual matters, production manager, head of production, and any other senior editorial and senior production management roles on the Programme.

6.8 Bribery Clause

The Producer is aware that the Bribery Act has come into force and undertakes to comply with the provisions of the Act. A pan-industry working group (including the BBC, ITV, ITN, Channel 4, and PACT) has been convened to engage with the SFO with a view to agreeing an industry Code of Practice or an SFO Statement of Recognition. Until the outcome of such discussions is known, the Producer acknowledges that the BBC has made available its own Anti-Bribery Policy, and the Producer confirms that it has established and implemented an equivalent policy within its organisation.

[6.9 New Media provisions

6.9.1 New Media Deliverables

- [(i) The BBC hereby commissions the Producer to provide the New Media Deliverables as defined in Schedule 9.
- (ii) The provision of such New Media Deliverables shall be subject to the terms and conditions and all other information set out in this Special Term 6.9 and Schedule 9 attached. For the avoidance of doubt, the BBC shall have final editorial control in relation to the New Media Deliverables.
- (iii) In the event of any conflict between Schedule 9 or the General Terms of this Agreement in relation to the New Media Deliverables, the provisions of Schedule 9 shall prevail.]

[6.9.2 BBC Created Material

- [(i) The Producer and the BBC agree that the BBC shall create a [website on bbc.co.uk/ interactive television application/WAP site] for the Programme (“BBC Created Material”).
- (ii) The Producer hereby grants to the BBC for the Licence Period an exclusive, royalty-free, irrevocable licence to use or incorporate the Format of the Programme within the BBC Created Material.
- (iii) All rights, including without limitation all IPR in and to the BBC Created Material (excluding any Format of the Programme used or incorporated), and the BBC Assets (as defined in Schedule 9) are expressly reserved by the BBC.
- (iv) The Producer shall have an option to obtain a non-exclusive, worldwide (excluding the United Kingdom and Eire) licence of the BBC Created Material from the BBC, at a price and on terms to be agreed by the parties in good faith.]

[6.10 The Producer acknowledges that for the purposes of General Term 7.8.5 below, the previous series of the Programme encountered significant problems relating to the financing and/or management of the production.]

[End of Schedule 1]