Terms Of Trade

Valid until 7 June 2014

The Terms of Trade set out below are those minimum terms agreed between PACT and the BBC on 30 July 2004 pursuant to the 'Code of Practice on BBC's dealings with Independent Producers for television programmes commissioned by the BBC', as approved by OFCOM on 6 January 2004 ("the Code"). PACT and the BBC recognise that these provide the terms that would be appropriate for the vast majority of BBC commissions under the Code.

Following the Ofcom TVPSR, Pact and BBC have been negotiating changes to the Terms of Trade. Heads of Agreement were signed on 31 May 2006, and amended on 6th December 2006. These terms have now been approved by Pact's membership and have been incorporated into the BBC Standard Production Agreement, which you can download from this page.

The BBC has also revised its Programme Release Policy which sets out the principles and process under which the BBC's consent can be requested to the exploitation of programming in the UK secondary television and video-on-demand markets during the BBC's licence period.

Published Tariff Ranges:

The BBC will publish annually a Tariff of indicative prices for each Genre of programming in accordance with paragraph 6 of the Code.

Standard Programme Production Agreement:

A standard programme production agreement to be used by the BBC when commissioning programmes from independent producers has been agreed with PACT. The Agreement sets out the General Terms that will apply to such commissions and provides for incorporation of the Special Terms that have been agreed between the independent and the BBC in relation to the programme, including the primary rights licence fee.

The Standard Programme Production Agreement, which includes the Commissioning Specification, now incorporates new provisions around Editorial Standards, agreed with Pact in April 2008. These changes are shown in red on the relevant documents available on the right of this page.

Answers to some FAQs on the Safeguarding Trust training introduced with these new clauses can be found on the Compliance page.

Standard Development Agreement:

The BBC has created one simple development agreement for all types of development work. This new form pulls together the previous three forms and will apply to all new development.

Finance:

The agreed licence fee will be the fixed price the BBC will pay for the programme after good faith negotiations between the parties.

The BBC will agree either to cash-flow the agreed licence fee according to agreed stage payments, or it will pay the agreed licence fee upon delivery. Pre-agreed stage payments are intended to remove the need in the majority of cases for detailed negotiation between the parties, whilst ensuring that they reflect the particular production schedule. Where staged payments are agreed, the stages will typically be as set out below.
However, where for instance the nature of the programme or the production schedule mean that these stages are inappropriate, the BBC and the independent will consider in good faith stages for cashflow that reflect the particular nature of the production whilst still retaining the two final 5% payments in respect of paper and tape delivery.

<table>
<thead>
<tr>
<th>Event</th>
<th>Entertainment</th>
<th>Drama</th>
<th>Factual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Receipt by BBC of signed agreement</td>
<td>15%</td>
<td>5%</td>
<td>15%</td>
</tr>
<tr>
<td>1st day of pre-production</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Commencement of Principal Photography</td>
<td>25%</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Mid point of filming and viewing of rushes by BBC Editorial Representative</td>
<td>20%</td>
<td>25%</td>
<td>N/A</td>
</tr>
<tr>
<td>1st day of Edit</td>
<td>10%</td>
<td>25%</td>
<td>20%</td>
</tr>
<tr>
<td>Approval of rough cut</td>
<td>N/A</td>
<td>N/A</td>
<td>10%</td>
</tr>
<tr>
<td>Approval of fine cut of episode 1</td>
<td>10%</td>
<td>5%</td>
<td>10%</td>
</tr>
<tr>
<td>Acceptance of Tape Delivery</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Acceptance of Paper Delivery (subject always to a cap of £100,000)</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

Where the BBC proposes to pay the Licence Fee on delivery, the BBC will ensure that contract documentation has been established with a minimum of two reputable banks. In addition to the primary rights licence fee (but not relevant for the purposes of the section below entitled "Funding above the Primary Rights Licence Fee"), the BBC will pay for the actual costs of cash-flowing the primary rights licence fee (e.g. interest, arrangement fees and legal fees) all of which have been pre-agreed with the BBC.

It is acknowledged that the BBC will keep the arrangements relating to Finance under review.

**BBC funding above Primary Rights Licence Fee:**

The BBC believes that if the BBC and the independents abide by both the principles and spirit of the Code of Practice, and undertake to operate them in good faith, then situations where it is necessary for the BBC to provide funding above the primary rights licence fee will be rare.

Any cases where the question of the BBC funding above the primary rights licence fee arises will be referred to the relevant Business Head or Director. For funding above the primary rights licence fee, in respect of any identified tranche of third party funding, the BBC would be able to negotiate for:
1. An increased licence period - up to an additional two years on top of the standard five year licence; or

2. An additional package of uses; or

3. An enhanced share of net profit, based on the formula of an additional 0.5% of net for each 1% of additional funding, up to a total maximum of 20% of additional net; or

4. Recoupment: Where the additional BBC funding above the primary rights licence fee is the BBC underwriting identified and mutually agreed third party funding, the BBC shall be entitled to recoup such amount - and such recoupment shall be set out in the Special Terms of the commissioning agreement.

The above provisions will be reviewed after 12 months.

**Further Use Payments:**

The number of uses covered by the primary rights licence fee depends on which services the programme is being used and are as set out in the standard programme production agreement.

If, within its licence period, the BBC wishes to make more uses of the programme than those covered by the primary rights licence fee, it may do so on payment to the independent producer as follows:

- 4% of the primary rights licence fee, in respect of each further "package" of rights set out in the standard programme production agreement
- where the programme transfers from network to regional opt-out, for the payment of 2% of the primary rights licence fee for the relevant package; or
- where the programme transfers from regional opt-out to network, for the payment of 10% of the primary rights licence fee for the relevant package subject always to a cap of £10,000 per episode

For the purposes of acquiring a further "package" of rights beyond those covered by the primary rights licence fee, payment listed above shall be for one transmission on BBC 2.

For the avoidance of doubt, the BBC may elect at any time during its licence period which two packages it intends to use as part of the primary rights licence fee.

It is agreed that after the period of seven days from first transmission, the video-on-demand rights and near-video-on-demand rights will be held in suspension, and any exercise of such rights by the BBC or the Producer shall be mutually agreed.

**Option Payment:**

Under Clause 3.2 of the Code the BBC has the right to renew its licence for a further period of two years.

If the BBC wishes to exercise this option it will make a payment of 3.5% of the primary rights licence fee as an advance against the further use payments set out in the section above.

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 while the programme is still being commissioned.
Additional Material

1 Definition:

"Additional Material" is material based on or related to the Programme and/or the Format (as defined in the General Terms) to include, by way of example only, material such as out-takes, behind the scenes footage, cast interviews, biographies, mini-episodes, highlight packages, preview packages, clips, applications and non-disc based games designed primarily to support and/or enhance the public service Programme offering etc (for the avoidance of doubt, this is not intended to include disc based/high production value commercial game propositions or other Merchandising Rights).

2 Key principles:

It is acknowledged that Additional Material is an integral part of the Programme, Format and brand in which the BBC is investing. Accordingly, the provisions below relating to the use of such Additional Material are designed to reflect the key principles regarding the rights in the Programme including with regard to the BBC’s exclusivity in the UK.

All exploitation of Additional Material and Programme clips must comply with the BBC Guidelines, carry appropriate BBC branding and adhere to any relevant compliance requirements (programme compliance, legal and regulatory compliance etc) for so long as the BBC is commissioning the Programme and/or has a subsisting re-commissioning right in the Programme.

3 Production and exploitation of Additional Material:

The independent producer is entitled to create Additional Material subject to the overarching principles set out below:

3.1 If the independent producer creates Additional Material, it may exploit the Additional Material in the manner set out in paragraph 4 below.

3.2 Whilst the BBC has a subsisting re-commissioning right in the Programme:

1. the independent producer must secure the BBC’s prior written consent in relation to any use or exploitation of the Additional Material in the UK other than as set out in paragraph 4 below; and

2. the BBC has the sole and exclusive option to commission, use and/or exploit Additional Material subject only to the independent producer’s rights under paragraph 4 below.

3.3 If the BBC wishes to exercise such option:

1. The relevant material would be commissioned and/or licensed for a separate licence fee to be agreed between the parties, and calculated by reference to the additional and reasonable costs of production. If the independent producer does not have the relevant technical expertise itself to produce the Additional Material and/or provide the necessary warranties, the parties shall identify in good faith a solution to enable the BBC to commission or license such Additional Material from the independent producer (which might include, for example, the independent producer sublicensing or sub-contracting parts of the commission to third parties or to the BBC).

2. The terms to apply to the exercise of such option and the rights granted to the BBC will be negotiated on a case by case basis, but for the avoidance of doubt, shall not be for any period
shorter than the licence period in the Programme, and shall as a minimum include the right to use the Additional Material on any of the BBC’s public services in the UK.

3.4 Accordingly, it is acknowledged that:

1. the independent producer should discuss its proposals and ideas to produce Additional Material with the BBC at the earliest opportunity and before investing its own resource in Additional Material propositions;

2. it is in both parties' interests for the BBC to communicate its intention to commission and/or license the Additional Material as early as possible in the Programme commissioning/production process and the BBC encourages independent producers to include any proposals for Additional Material as part of the proposal for the overall Programme commission;

3. should the BBC decide not to exercise its option under paragraph 3.2(b) above, the BBC will grant written consent under paragraph 3.2(a) above, provided that in the BBC's sole discretion, the BBC's public service offering in connection with the Programme and/or Additional Material is not thereby compromised, confused or undermined with regards to the audience.

4 Use of Additional Material by the independent producer:

Whether or not the BBC commissions or licences Additional Material as referred to in paragraph 3 above, the independent producer may, with prior notification to the BBC, exploit Additional Material in the following manner:

4.1 as part of the exploitation of the DVD and Commercial Download Rights in the Programme in accordance with the General Terms; and

4.2 as part of any permitted Programme sale to the UK secondary television and video-on-demand market in accordance with the BBC’s Programme Release Policy; and

4.3 as part of any international Programme exploitation (i.e. outside the UK) in accordance with the General Terms.

5 Commercial Exploitation of Programme Clips:

5.1 Programme Clips for Permanent Download-to-Own e.g. clips for sale to mobiles or other handheld devices:

The independent producer may sell Programme clips to end users (either itself or through its authorised licensees), provided that the end user is not able to access such clips from any service operated by any other public service broadcaster and/or its affiliated/subsidiary services or companies, by way of permanent download-to-own in the same way as it may exercise the Commercial Download Rights in the whole Programme (or episode thereof) as set out in the General Terms (including, for the avoidance of doubt, the provisions relating to the accounting for the BBC’s share of Net Revenue), subject to the following restrictions on volume:

1. The Programme clip(s) shall be no longer than five minutes in total per 30 mins of Programme or episode running time (i.e. for example, in relation to a 30 minute episode you could have two clips of two minutes in length and one of one minute; or one clip of four minutes); and

2. Subject to the five minute limit above, any individual comedy clip cannot exceed two minutes in length; and
3. In each instance the BBC's specific consent is required in relation to Children's programmes, NHU programmes, and serious factual programmes where the BBC's Licence Fee is more than £200,000 per hour.

("Clip Restrictions").

Where the independent producer is selling Programme clips as set out above, it is entitled to make available via a free stream to the end user a preview of the Programme Clip of no more than 20 seconds.

5.2 Programme clips commercialised in any other manner (i.e. excluding permanent download-to-own) e.g. making Programme clips available for streaming at no cost to the end user via a website carrying advertising:

The independent producer may make Programme clips commercially available for these purposes subject only to (a) the Clip Restrictions outlined in paragraph 5.1 above, and (b) after the period of six months from the BBC's first transmission of the last episode of the Programme; and (c) payment of 25% of the Net Revenue deriving from such exploitation to the BBC.

5.3 For the avoidance of doubt, the use or exploitation by the independent producer of clips comprising Additional Material is set out in paragraph 3.2 above.

6 Integrated commissions:

PACT acknowledge that the BBC may commission a limited number of projects per year as part of a knowledge based public service offering (e.g. parenting video-on-demand website, Shakespeare online), where a broader package of public service rights would need to be acquired. This would need to be done by individual negotiation with the independent production company, ideally at the time of commission of the programme.

Creative Archive:

The BBC and PACT will hold further good faith discussions 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.

Contracting Talent

1. Independent producers will contract talent on the basis of the relevant collective agreements applicable to the independent television production sector and in accordance with standard industry practice.

2. PACT have agreed to consult the BBC in connection with any discussion that it may have to vary the provisions of any such collective agreement in any manner which may impact on the rights granted to the BBC in programmes it commissions (or has commissioned) from independent producers. PACT agree to give good faith consideration to the BBC's views.

3. The BBC will be entitled to approve certain 'key agreements' before they are signed by the independent producer. In giving its approval, the BBC may request the independent producer to include certain provisions in the agreement (for example a requirement for the relevant 'key individual' to cooperate with various publicity initiatives relating to the programme).

Distribution arrangements:
1. The BBC shall be entitled to receive a standard share of net profit from all exploitation of the programme as follows:

1. 15% of net profit where the BBC has not funded a non-transmittable pilot; or
2. 20% of net profit where the BBC has funded a non-transmittable pilot

and the detailed provisions dealing with the distribution arrangements and the accounting of revenue to the BBC are set out in the standard programme production agreement. These arrangements shall be reviewed after 12 months.

2. Guidance notes setting out the standard industry distribution practices will be drawn up which both parties will be able to use for reference purposes.

General:

1. The services of the BBC Commercial Agency are available to the independent producer, at its request in writing, on commercial terms to be agreed.

2. PACT will maintain a database of its members which have a substantive business and production base outside the M25 and agree to give the BBC access to the information held on this database. (For these purposes, a substantive base has the meaning as prescribed by OFCOM Guidance on qualification for regional production and regional programme).

3. In line with Clause 10 of the Code of Practice, these Terms will be reviewed on a three-yearly basis.