

Development General Terms

1. Payment

Payment in accordance with Clause 2.1 of the Special Terms above shall be made by the BBC provided that:

- 1.1 where reasonably requested in writing by the BBC prior to signature of this Agreement, the Company shall open a separate bank account in the name of the Development Work (or such other name agreed in writing by the BAM) into which all payments by the BBC under this Agreement shall be made; and
- 1.2 the Company shall use the BBC Funding solely for the purpose of funding the Development Work and the Company shall, within 30 days of the Delivery Date, return to the BBC any of the BBC Funding advanced to the Company and not spent on the Development Work; and
- 1.3 the Development Work is produced taking into account the appropriate Indicative Tariff or Programme Licence Fee (as defined in the Programme General Terms) as set out in the Special Terms; and
- 1.4 the Company shall keep reasonably detailed records for the Development Work for a period of two years commencing on Acceptance of Development Work and deliver the same to the BAM by such date(s) as the BBC shall reasonably request; and
- 1.5 the BBC shall be entitled to retain any sums from the BBC Funding which are payable by the Company to third parties for the acquisition of rights or facilities (for example but not by way of limitation payments to scriptwriters or owners of underlying source material such as novels or payments to secure access to film locations etc) where the terms of such acquisition may impact upon the rights and entitlements granted to the BBC under this Agreement or the Programme General Terms and the BBC has not provided its prior written consent thereto. To this end, it is the Company's responsibility to draw any such terms to the attention of the BAM in accordance with Clause 3.3 below.

2. Rights

- 2.1 As security and pending the BBC's decision whether to commission further development work or to commission the Programme, the Company hereby grants to the BBC:
 - 2.1.1 an exclusive licence in the UK and Eire of the copyright and all other rights including the Format (as defined below), insofar as such rights are not already held by the BBC such as by way of separate acquisition or development, owned created or acquired by the Company in the Development Work (including the proposed title) and all material written made or acquired in connection with the Development Work; and
 - 2.1.2 all rights and consents necessary to enable the Development Work to be carried out delivered and fully considered by the BBC in accordance with this Agreement;

and this shall operate as a present licence of the future rights in and to the Development Work in material not in existence at the date of this Agreement.
- 2.2 For the avoidance of doubt, the rights granted in 2.1 above do not include the right to make the Development Work available to the public or otherwise be exploited by the BBC.

For the purposes of this Agreement the "**Format**" shall be defined as the characteristics of the Development Work 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 Development Work including any changes and revisions to the same.

- 2.3 Notwithstanding that the licence above is granted to the BBC in the UK & Eire, unless previously informed and agreed in writing by the BBC, the Company confirms that it has not and undertakes it shall not agree or enter any arrangement anywhere in the world that might derogate from the rights and entitlements that would be granted to the BBC pursuant to the Programme Production Agreement as referred to in Clause 5 below

including (without limitation) the BBC's right to the world premier transmission of the Programme, and the BBC's exclusivity in the Programme and Format

- 2.4 For the avoidance of doubt, the Company shall be entitled to develop the Format for exploitation outside the UK and Eire ("**Foreign Version**") provided that if the Programme is commissioned by the BBC, the Foreign Version shall not be exploited prior to first transmission in the United Kingdom by the BBC of the first episode of the Programme. The Company shall not exploit or authorise any exploitation of any Foreign Version in any media in the UK and Eire during the Licence Period without the BBC's prior written consent.

Revisions and further scripts:

- 2.5 Where the Development Work is or includes a script(s):
- 2.5.1 The BBC, following prior consultation with the Company, shall have the right to cut-off at any stage of the Development Work following signature of the script agreement provided that such right is exercised in accordance with the terms of the PACT/WGGB Agreement. In the event the BBC exercises such right of cut-off, the BBC will pay such element of the Development Budget which is payable to the Writer up to the point of cut-off, in accordance with the terms of the PACT/WGGB Agreement or the terms of the Company's agreement with the Writer as approved by the BBC in accordance with Clause 3.3 hereunder. For the avoidance of doubt the licence granted under Clause 2 shall terminate provided that the funding contributed by the BBC at the point of cut-off shall be reimbursed upon signature of such third party arrangement in accordance with Clause 6.2 of these Development General Terms.
- 2.5.2 If reasonably requested to do so, the Company's representative(s) shall attend at such meetings and conferences in order to discuss/review the progress and conduct of the Development Work;
- 2.5.3 Should the BBC reasonably request, in accordance with the pre-approved terms of the writer's agreement, but in any event no later than 90 days following delivery of the Development Work, the Company shall procure the Writer to carry out reasonable revisions at no additional cost to the BBC;
- 2.5.4 Upon receipt of written notice from the BBC during the Development Period, the Company shall commission the Writer to write a revised further draft of the script for delivery to the BBC Editorial Representative by such date as the BBC shall reasonably request in accordance with the terms of the pre-approved writer's agreement (including as to the further payment payable, which shall be funded by the BBC). For the avoidance of doubt, any such further work shall form part of the Development Work for the purposes of this Agreement. In the event that the Company advises the BBC that such additional writing step cannot be delivered in a time frame which will not delay the agreed delivery date to the BBC and Company shall have good faith discussions about such additional writing.

3. Contributor Agreements

- 3.1 For the purposes of this Agreement, "Contributor Agreements" are those agreements between the Company and any party who is providing goods or access or rights or creative contributions or services in connection with the Programme, and includes Key Agreements as defined in the Programme General Terms and any chain of title documentation as reasonably required by the BBC.
- 3.2 For the avoidance of doubt, unless otherwise agreed with the BBC, every Contributor Agreement entered into in connection with the Development Work shall:
- 3.2.1 secure all copyright, similar rights and consents as are required to enable the Company to license the rights and entitlements to the BBC under Clause 2 of the Development General Terms above and under the Programme General Terms (as defined in Clause 5.1 below) including in particular Programme General Term 6; and

- 3.2.2 be concluded on the basis of the relevant collective agreements applicable to the independent television production sector or otherwise in accordance with normal practice in the independent television production sector; and
- 3.2.3 the Company will provide copies of Contributor Agreements to the BBC at any time if the BBC so reasonably requests.
- 3.3 Should the Company propose to enter into any Contributor Agreement on terms containing variations to the provisions outlined in Clause 3.2.2 above, to the extent that such variations affect the BBC's rights and entitlements; and/or the cost of production of the Programme or subsequent programmes, the Company shall notify the BAM of such proposed variations, and shall not conclude any such agreements prior to securing the BBC's prior written approval of such variations. The BBC shall review, and respond to, such proposed variations in a timely fashion.
- 3.4 In the event that there is no applicable collective agreement or standard industry practice in connection with any particular proposed Contributor Agreement, the Company shall notify the BAM who, without prejudice to the generality of Clause 3.2.1 above, may ask to review such proposed Contributor Agreement before it is entered into by the Company. Upon review (which shall be carried out in a timely fashion), the BBC shall be entitled to request changes and/or make comments in relation to any provisions of such proposed Contributor Agreement which may affect or impact in any way on the BBC, and the Company shall incorporate such changes or comments prior to concluding the relevant Contributor Agreement.
- 3.5 Whilst the BBC will often not ask for delivery of any Contributor Agreement, the BBC reserves the right (not to be exercised unreasonably) to request delivery of any Contributor Agreement for its review and/or approval at any time, and the Company agrees to produce such agreement to the BAM for this purpose in a timely fashion.

4. Notice of Commissioning Decision

- 4.1 The BBC will give the Company written notice of the BBC's decision to either commission further development work (which may include a pilot whether or not transmittable) which will be evidenced under a separate Development Agreement, as Side Letter extending the existing Development Agreement, or commission production of the Programme within 6 months of Acceptance (defined below) of the Development Work, unless such time period is extended by agreement in writing between the parties ("**Development Period**").

For the purposes of this Agreement, "**Acceptance**" by the BBC of all of the completed Development Work shall be communicated to the Company in writing by the BAM, (copied to the BBC Editorial Representative) in a timely fashion.

- 4.2 In the event that written Acceptance has not been sent by the BAM in accordance with Clause 4.1 above, Acceptance shall be deemed given at the end of 3 months from delivery of the Development Work or delivery of the further development work if commissioned under Clause 4.1 above, unless otherwise notified sooner.
- 4.3 In the event that the BBC fails to notify the Company in accordance with Clause 4.1 above then the Company may by written notice at any time after the date which is 2 weeks prior to expiry of the period set out in Clause 4.1 above, require the BBC within 2 weeks to notify the Company in writing of its decision. If the BBC has failed to provide its decision by the end of such 2 week period, then the Company may proceed as set out in Clause 6 below.

5. Commission

- 5.1 In the event that the BBC in its absolute discretion decides to commission the Programme it shall commission the Company provided that:
 - 5.1.1 the Company and the BBC shall enter into a programme production agreement ("**Programme Production Agreement**") which shall incorporate the BBC's General Terms for the Production of Television Programmes by Independent Producers ("**Programme General Terms**") as may be updated and amended from time to time by agreement between the BBC and PACT; and
 - 5.1.2 the Company and the BBC Editorial Representative agree and sign a further Commissioning Specification which shall form the agreed basis of any further stage of development or production which may be commissioned by the BBC.

For the avoidance of doubt and save as otherwise provided for in Clauses 10.4 to 10.6 below the BBC shall not commission any third party (or itself) to develop or produce the Programme.

- 5.2 On commission of the Programme in accordance with Clause 5.1 and execution of the Programme Production Agreement, the licence set out in Clause 2 of the Development General Terms above shall terminate immediately provided that the Development Work shall be deemed to be part of and subject to the terms of the Programme Production Agreement and any money paid to the Company under this Agreement shall form part of the agreed Programme Licence Fee.
- 5.3 In the event that the BBC and the Company conduct good faith negotiations for a reasonable period of time but fail to reach agreement to enter into a Programme Production Agreement for the Programme, then upon request by the Company, the BBC shall confirm in writing that the Programme has gone into turnaround in accordance with Clause 6 below.

6. Turnaround

- 6.1 Subject to Clauses 6.2 and 6.3, in the event that the BBC in its absolute discretion decides within the period specified in Clause 4 NOT to commission further development work or commission production of the Programme then the Company shall be entitled from the date of the BBC's notification, or as set out in Clause 4.3, to:
- (a) further develop the Development Work; and
 - (b) arrange funding for the production of one or more programmes based on the Development Work throughout the world.
- 6.2 The licence granted under Clause 2 of the Development General Terms above shall terminate and the BBC shall execute any documents required of it by the Company (at the Company's cost) to evidence such termination only upon full repayment to the BBC of such of the BBC Funding agreed in good faith save as otherwise provided for in Clause 6.3 below.
- 6.3 Where a third party wishes to acquire rights or certain elements in the Development Work but evidenced budgetary constraints prevent re-payment of the BBC Funding in its entirety the parties shall negotiate in good faith as to a reasonable amount to be repaid to the BBC and the Company and the BBC agree they shall not act unreasonably in agreeing the repayment amount nor in the case of the BBC, in a way which would restrict or prevent the acquisition of rights or certain elements in the Development Work by a third party. For the avoidance of doubt, it is acknowledged and agreed that any such repayment is not required in respect of a Foreign Version.
- 6.4 The foregoing provisions of this Clause 6.4 shall be without prejudice to the BBC's right to full repayment of the BBC Funding and it is hereby acknowledged by the Company that the BBC shall be under no obligation to accept a lesser sum than the BBC Funding that has been advanced to the Company at the relevant date and as set out in Clause 2 of the Special Terms of this Agreement.

7. Third Party Dealings

- 7.1 Save as otherwise provided for in Clause 2.3 of these Development General Terms, as to the use of the Foreign Version outside the UK and Eire, the Company confirms that it has not and undertakes it shall not at any time (without the prior written consent of the BBC) enter any agreement with third parties or assign license mortgage charge encumber exploit or otherwise deal with any physical material or rights whatsoever in connection with the Development Work in any manner which may affect the BBC's rights in the Development Work until the Company has repaid or has agreed terms of repayment of the BBC Funding to the BBC in accordance with Clause 6 of these Development General Terms.
- 7.2 Notwithstanding the above, it is understood and agreed that the Company may actively seek funding for production of the Programme and is fully entitled and authorised to distribute to potential funders or co-production partners proposals and treatments for the Programme and any other audio-visual material and is entitled also to negotiate proposed

terms for co-production or other participation in the funding of the Programme provided that such proposed terms would not derogate from the rights in the Programme and entitlements that would be granted to the BBC under the Programme General Terms.

8. Publicity

For the duration of the Development Period and, if the Programme is commissioned, for the period following notification of the commissioning decision until the parties enter into a Programme Production Agreement the Company shall not, without the prior written consent of the BBC, issue or authorise the publication of any publicity material relating to the Development Work and/or the Programme until the BBC has notified the Company that it does not wish to proceed with the production of the Programme or where the Development Work has gone into turnaround under Clause 6 of these Development General Terms. For the avoidance of doubt it is acknowledged and agreed that the Company shall not be in breach of this Clause 8 by virtue of the Company's legitimate activities consented to by the BBC under Clauses 2.3 and 7 of these Development General Terms.

9. Warranties and Indemnities

9.1 In addition to other undertakings and warranties contained in this Agreement, the Company warrants and undertakes that:

9.1.1 the Company is a company duly and properly organised and existing according to English or Scottish law and is a qualifying person in accordance with the CDPA and that it has the power and authority to enter into this Agreement and to perform its obligations under it and to grant the rights hereunder;

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

9.1.3 the Development Work shall be produced in a first class manner and, to the best of the Company's knowledge and belief after all due and diligent enquiry, shall be original except insofar as it may be in the public domain throughout the world;

9.1.4 the Company will comply with all relevant industry agreements/practices and all obligations imposed by English law and nothing in the Development Work will be defamatory or infringe third party rights or infringe any obligation imposed by English law;

9.1.5 to the best of the Company'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 exploitation of the Programme or the rights granted to the BBC hereunder;

9.1.6 subject to the provisions of Clause 7 above, the Company shall not and shall not permit a third party to (without the prior written consent of the BBC) disclose to any person (other than to the Personnel (as defined in the Programme General Terms but including, for the avoidance of doubt the Company's professional advisers) of the Company and the personnel of its associated companies) information relating to the Programme or the Development Work or matters arising hereunder or the general affairs of the BBC; and

9.1.7 at the date of this Agreement the Company is an Independent Producer within the meaning of Paragraph 3 of The Broadcasting (Independent Productions) Order 1991 as amended.

9.2 The Company shall indemnify and keep indemnified the BBC against all actions claims costs (including all reasonable legal costs and settlement costs and payments made on the advice of Counsel) proceedings damages expenses or fines arising directly out of any breach or non-performance by the Company of any warranty given by it or obligation undertaken by it in this Agreement.

9.3 For the avoidance of doubt, the Company may choose to defer carrying out non-key negative checks in relation to the Development Work, until commission of the

Programme, and by doing so, the Company will not be in breach of its warranties and obligations under this agreement, provided it has notified the BBC of the same.

10. Breach

- 10.1 The BBC shall, without prejudice to its remedies at law or in equity, have the right to terminate this Agreement upon giving written notice to the Company of its election to do so if:
- 10.1.1 the Company commits a material and irremediable breach of this Agreement or fails to remedy any material breach capable of remedy within 14 (fourteen) days of the BBC drawing the breach to the Company's attention by notice in writing; or
- 10.1.2 any Insolvency Event (as defined in the Programme General Terms) occurs; or
- 10.1.3 if the Company ceases or threatens to cease to carry on business.
- 10.2 On termination of this Agreement all rights licensed to the BBC hereunder shall remain vested in the BBC until all monies paid to the Company hereunder at the date of termination are repaid to the BBC (or an alternative agreement is reached in writing between the parties), whereupon the licence shall terminate immediately.
- 10.3 If the BBC commits a material and irremediable breach of this Agreement or fails to remedy any material breach capable of remedy within 14 (fourteen) days of the Company drawing the breach to the BBC's attention by notice in writing (in each case excluding a legitimate dispute over BBC Funding at Clause 2 of the Special Terms above) the Company shall be entitled to proceed in accordance with Clause 6 of the Development General Terms upon giving to the BBC fourteen days notice in writing.
- 10.4 Should any of the events in Clause 10.1.2 and/or 10.1.3 above occur, the BBC may in its absolute discretion elect to exercise its rights to takeover the Development Work and/or the Programme in accordance with Clauses 18.3 and 18.4 of the Programme General Terms.
- 10.5 For the purpose of Clauses 10.4 to 10.6 of this Agreement, the terms referred to in Clause 18 of the Programme General Terms shall be replaced as follows:
- | <u>Original Wording:</u> | <u>Replacement With:</u> |
|--------------------------|---|
| "production" | "development and or production" |
| "General Term 18.1" | "Clause 10.4 above" |
| "Special Terms" | "Development Agreement" |
| "Special Term 2.2" | "Clause 2.1 of the Special Terms to this Agreement" |
| "Licence Fee" | "BBC Funding" |
- 10.6 Without prejudice to the BBC's rights under Clause 10.4 above the BBC shall be entitled in its absolute discretion to waive such rights and to release the Company from any obligation under this Agreement that requires the Company to expend any material sums of money. In such case this Agreement shall continue in force subject to such waivers.
- 10.7 The BBC shall be entitled, at any time after takeover of the Development Work and or the Programme pursuant to Clause 10.4 above, to abandon the development of the Development Work and or production of the Programme and if it does so the provisions of Programme General Terms 18.3.1, 18.3.2, 18.3.4, 18.3.5, 18.3.6 and 18.4 shall nevertheless apply.

11. Inspection and Examination

- 11.1 The Company will for a period of two years commencing on Acceptance of the Development Work retain all receipts and vouchers for all expenditure incurred in respect of the Development Work for inspection by the BBC at any time during business hours (on reasonable notice).

11.2 The BBC may inspect and examine the Company's books and records and all other documents relating to the Development Work. Such inspection shall be made on reasonable prior notice and during normal business hours on a date or dates to be agreed between the parties.

12. General

12.1 Nothing in these terms shall be deemed to constitute a partnership between the Company and the BBC.

12.2 This Agreement is personal to the Company and shall not be assigned without the prior written consent of the BBC such consent not to be unreasonably withheld or delayed.

12.3 The BBC shall be entitled without the consent of the Company to assign this Agreement (or any of its rights or obligations under this Agreement) to any company which is directly or indirectly owned and/or controlled by the BBC (which for the avoidance of doubt is governed by the BBC's Royal Charter). The Company shall execute any documents as may be required by the BBC to novate this Agreement, where reasonably required by the BBC.

12.4 This Agreement does not create or confer any rights under the Contracts (Rights of Third Parties) Act 1999 enforceable by any person who is not a party to this Agreement.

12.5 No waiver by either party of a breach or default hereunder shall be effective unless in writing signed by both parties and no such waiver shall be deemed to be a waiver of any subsequent breach or default of the same or similar nature.

12.6 This Agreement shall be interpreted in accordance with English law and the parties agree to submit to the jurisdiction of the English courts.

12.7 This Agreement contains the entire understanding of the parties and shall be effective from the date of signature and can only be varied if such variation is in writing signed on behalf of both parties.

12.8 The headings and sub-headings in this Agreement are for identification and convenience only and shall not affect the construction or meaning of any provision in it.