DIRECTORS' RIGHTS: ADMINISTRATION, PAYMENT AND REPORTING AGREEMENT

EXTRACT OF PRODUCER OBLIGATIONS

Sections and clause numbering reflect the full Agreement.

Customary clauses (such as termination and data protection) are included in the full document.

This document is provided as for information only and does not constitute advice. For more further information about the details of the Agreement, please contact PACT or your commissioning Broadcaster.
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INTRODUCTION

A. Under the terms of a Principal Director’s freelance engagement contract with a Producer, the copyright and all related rights in the Work are irrevocably assigned to the relevant Producer. The Parties acknowledge that there may be commercial provisions agreed in a specific freelance engagement contract between an individual Principal Director and Producer.

B. Since becoming a collecting society for the UK television directors in 2001, DUK has administered residual payments for use of Designated Works co-created by its Members.

C. DUK has entered into agreements with the Members under which the Members have granted to DUK certain rights to collect and distribute payment in respect of secondary uses of Designated Works by the Parties to this Agreement.

D. This Agreement provides for payment (i) by the Broadcasters for Tier 1 Secondary Uses and (ii) on behalf of the Producers for Tier 2 Uses (as such terms are defined under this Agreement).

E. Such payments are made in consideration of the agreements and undertakings on DUK’s part contained in this Agreement for the Term (or longer if extended in accordance with its terms) on the following terms.

1. DEFINITIONS

See SCHEDULE OF DEFINITIONS attached.

2. TERM

From 1 July 2019 until and including 30 June 2022 (unless terminated in accordance with the Agreement).

4. DUK OBLIGATIONS

4.1. DUK confirms that any and all rights held by DUK at any time prior to execution of and during this Agreement in any Designated Works of any Members have been re-assigned to the individual Member subject only to the Member’s right to any statutory remuneration from Foreign Collective Management Organisations who make payments in respect of the exploitation of any Designated Work outside the United Kingdom which are designated by law as entitlements of Members.

4.2. In consideration of the Payments due to DUK under this Agreement, DUK agrees to:

4.2.1. maintain in force a Collection Agreement with each Existing Member for as long as such person remains a Member;

4.2.2. enter into a Collection Agreement with each New Member immediately upon any person becoming a New Member and to maintain such Collection Agreement in force for as long as such person remains a Member; and

4.2.3. administer and collect the Payments and to make payments to Members therefrom in accordance with the Collection Agreements and the distribution scheme adopted by DUK from time to time.
4.3. DUK is not entering into this Agreement as an agent or representative for the Members.

4.4. DUK confirms that the Principal Director’s engagement fee secures the following Tier 1 uses of Works:

4.4.1. the first transmission, whether on a Television service or availability on a VOD service;

4.4.2. the subsequent transmission on a “+1” or other time shifted Television service;

4.4.3. the subsequent transmission on another Television service controlled by the Broadcaster and provided for under the Broadcaster’s commissioning arrangements with the Producers within 24 hours of the first transmission or availability in clause 4.4.1; and

4.4.4. availability on the Broadcaster’s VOD service for 12 months from the first transmission or availability in clause 4.4.1, collectively the “Tier 1 Primary Use”.

4.5. DUK will acquire and maintain for the Term a BARB licence for the purposes of understanding audience consumption of the Broadcaster’s uses of Works.

4.6. It is acknowledged and agreed that reference to Broadcaster in the context of the exhibition of rights on C5 linear and VOD services shall be deemed to include the exhibition of Programmes on linear and VOD services of services owned, operated or controlled by any company operating in the UK which is under common ownership or control with C5.

4.7. Nothing in this Agreement shall be construed to be an endorsement by the Parties other than DUK of the current DUK distribution policy.

5. PRODUCER OBLIGATIONS

Reporting

5.1. Each Producer shall report the Tier 2 Uses of Works to DUK in the form of Schedule 3 within 3 (three) months following the end of each June and in any event no later than 30 September in each year of the Term.

5.2. Each Producer agrees to respond within 10 (ten) Business Days to any specific queries relating to reporting issues raised by DUK.

5.3. In the event that there is a delay in the supply of any report (or if a report contains material inaccuracies or omissions or it is not in the form of Schedule 3) the relevant Producer shall enter into good faith discussions with DUK in order to resolve such inaccuracies or omissions and any such delay or defect within a timeframe agreed by all parties, which shall be no longer than 30 (thirty) days. Any dispute remaining unresolved at the end of such period shall be resolved in accordance with clause 15 (Dispute Resolution).
Commissioning Agreements

5.4. The Producers shall ensure they agree to terms substantially in the form of that in clause 6.7 in all new commissioning agreements with a Broadcaster during the Term.

In order to qualify as an Exempt Work:

5.4.1. when first submitting the proposed Editorial Specification or programme budget to the relevant commissioning Broadcaster, the Producer must submit the information in the email format below to their usual business contact at the commissioning Broadcaster, copied to DUK.

5.4.2. if either the Broadcaster or DUK should question its eligibility ahead of signature of the relevant commissioning agreement, the Producer shall urgently enter into good faith discussions with the Broadcaster and/or DUK about the programme’s qualification as an Exempt Work (consulting with PACT).

5.4.3. if there is a failure to agree the way forward, any party can refer the matter to the Disputes Procedure in the Agreement. Pending the outcome of the Disputes Procedure the commissioning Broadcaster will make the deduction of the appropriate Tier 2 Commercial Fee upon delivery of the programme but hold it in escrow until the Disputes Procedure reaches a resolution.

5.4.4. if DUK does not raise an objection, then the commissioning Broadcaster will make no deduction of Tier 2 Commercial Fees for the programme on its delivery.

Standard form email template:

| From: | [Producer] |
| Sent: | [Date] must be ahead of signature of commissioning agreement |
| To: | [Broadcaster] |
| Cc: | reporting@directors.uk.com; max@pact.co.uk |
| Subject: | Qualification as an Exempt Work under the DUK Agreement |

| 1 | Project title: |
| 2 | Commissioning broadcaster: |
| 3 | Independent Producer Name and Address: |
| 4 | Name of contact at production company: |
| 5 | Substantive Base: [complete which Nation or Region] |
| 6 | Name(s) of Principal Director: |
| 7 | Contract status of Principal Director(s): Delete as applicable: [Employed by Independent Producer named above] [Freelancer] |
| 8 | DUK Genre and sub-genre: Delete as applicable: (see here for categories: http://downloads.bbc.co.uk/commissioning/site/duk-2019.pdf) |
| 9 | Commercial profit of programme: [No prospect of generating profit from commercial exploitation on this programme] [Programme has potential to generate profit from commercial exploitation] |
Fee Deduction

5.5. Each Producer shall determine the correct Tier 2 Commercial Fee for any Work delivered during the Term.

5.6. The relevant Broadcaster shall ensure the correct Tier 2 Commercial Fee (as determined by the Producer) for any Work delivered during the Term is deducted by the Broadcaster from a relevant payment to the Producer.

5.7. In the case of any proven failure to pay, or underpayment by the Producer of the Tier 2 Commercial Fee for any Work, the Producer shall pay the shortfall to DUK plus interest on the amount for the period from the due date until the date of payment, such interest to be calculated on a daily basis at a rate of 1.5% (one and a half per cent) per annum above the base rate for the time being in force of HSBC Bank Plc in London.

PACT and TAC Obligations

5.8. PACT and TAC shall direct those Independent Producers who respectively are members of PACT and TAC to comply with the obligations of Producers in this Agreement and shall use all reasonable endeavours to ensure such Independent Producers do comply.

Accounting of Commercial Fee

5.9. It is acknowledged by the Parties that the Tier 2 Commercial Fee is a cost of distribution and Producers shall be entitled to recoup the Tier 2 Commercial Fee from the proceeds of exploitation of the Works as an uncapped distribution cost prior to paying away shares of net revenue under the Broadcaster’s commissioning agreements.

6. broadcaster obligations

Commissioning Agreements

6.7. Each Broadcaster shall ensure that it includes a clause to the following effect (as applicable) in all new commissioning agreements during the Term:

“X. The Producer shall ensure that:

X.1 the correct applicable commercial DUK fee (in accordance with published DUK commercial fee rate accessible at: http://downloads.bbc.co.uk/commissioning/site/duk-2019.pdf

a) is set out in the Cash Flow Schedule of this Agreement; and

b) shall be identified (if any) on the final invoice rendered to the [Broadcaster];

X.2 it shall provide, or shall procure that its distributor provides, the required reporting to Directors UK in relation to commercial uses of the Programme, as set out in the Agreement between Directors UK, PSBs, Sky, PACT and others; and
in the case of any proven failure to pay or underpayment of the fee by the Producer in X.1(a), it shall pay the shortfall to Directors UK plus interest on the amount for the period from the due date until the date of payment, such interest to be calculated on a daily basis at a rate of 1.5% (one and a half per cent) per annum above the base rate for the time being in force of HSBC Bank Plc in London.”

Fee Deduction

6.8. Each Broadcaster shall work with the relevant Producer to support the Producer in applying the correct Tier 2 Commercial Fee for any Work delivered during the Term.

6.9. Each Broadcaster shall ensure that in respect of a Work delivered during the Term the applicable Tier 2 Commercial Fee is deducted from a payment to the Producer.

7. RIGHT OF AUDIT REPORTS

7.1. At any time within 3 (three) years after any Report is supplied to DUK under this Agreement, DUK is entitled to give any Broadcaster or Producer written notice of its intention to appoint a chartered or certified accountant (either an individual or a firm) to commence an examination of the books and records (howsoever stored) of the relevant Broadcaster or Producer insofar as they relate to the matters which are the subject of one or more Reports during the Term and the following provisions shall apply:

7.1.1. the relevant Broadcaster or Producer shall allow the accountant to conduct the examination on reasonable notice and during normal business hours (no more than once per annum); and

7.1.2. if non-reporting or inaccurate or misleading reporting is found such that both:

7.1.2.1. 5% (five per cent) of uses reported under either the annual Tier 1 Secondary or Tier 2 secondary uses of works Report of Designated Works (provided that a recurring related inaccuracy in Member details fields shall only count as a single error); and

7.1.2.2. Tier 1 Secondary or Tier 2 Uses of at least 10 (ten) titles of Designated Works, were not reported accurately in respect of the period which is the subject of the examination, then the relevant Broadcaster or Producer responsible for the misreporting shall within 20 (twenty) Business Days of invoice, pay all of DUK’s reasonable, evidenced out-of-pocket expenses in relation to the examination. For the avoidance of doubt, if the title is reported but missing certain fields, this will not be considered non-reporting or inaccurate reporting for the purposes of this clause 7.1.2 if it does not lead to a misdistribution by DUK.

8. COPYRIGHT IN WORKS

8.1. The Parties acknowledge that the Producers covered by this Agreement (including PACT and TAC members) will in good faith continue to engage Members on standard freelance engagement contracts (which shall include an assignment of copyright in the Work to the relevant Producer), and that DUK shall facilitate Members doing this for both Designated Works and other similar works produced by a Producer for a UK commissioner who is not a Broadcaster, provided the BBC, ITV and PACT continue to engage with DUK in good faith in respect of the matters covered by clause 8.2.

8.2. In recognition of the terms of this Agreement (in particular clause the BBC, ITV Studios and PACT are currently discussing with DUK the possible use of the Tier 2 fee model (or a version of it) for works commissioned from Producers by UK commissioners that are not a party to this
arrangement. The BBC, ITV and PACT shall use reasonable endeavours to assist DUK’s engagement with UKTV (and any similar UK commissioners as agreed) to facilitate such commissioners’ endorsement of the proposed model, such that it is appropriately recognised in applicable commissioner/producer price negotiations and payment model.

10. TAXES AND WITHHOLDINGS

10.1. All payments to be made by or on behalf of the Broadcasters or Producers under this Agreement (except any deduction or withholding which is required by law) shall be paid free and clear of any deductions or withholdings for or on account of set-offs or counterclaims.

15. DISPUTE RESOLUTION

15.1. Any dispute, difference or disagreement between any 2 or more Parties hereto arising out of or in connection with this Agreement which the Broadcasters’ Nominated Representative or Producers’ Nominated Representative (as relevant) and the Chief Executive of DUK are unable to resolve between them within 20 (twenty) Business Days of raising such issue shall be referred to mediation by an expert to be appointed by agreement between the relevant parties or, failing agreement on such appointment being reached within one month of a request to agree such appointment being made, then by appointment by the Head of Mediation Services for the time being of the Arbitration, Conciliation and Advisory Service (ACAS), such person to act as expert and not as arbitrator and the resulting agreement shall be binding on the Parties to this Agreement.

15.2. Any dispute, difference or disagreement between DUK and an Independent Producer in connection with this Agreement which DUK and the Independent Producer are unable to resolve between them within 20 (twenty) Business Days of raising such issue shall be referred to mediation by an expert to be appointed by agreement between DUK and the Independent Producer (in consultation with PACT) or, failing agreement on such appointment being reached within one month of a request to agree such appointment being made, then by appointment by the Head of Mediation Services for the time being of the Arbitration, Conciliation and Advisory Service (ACAS), such person to act as expert and not as arbitrator and the resulting agreement shall be binding on DUK and the Independent Producer.

15.3. If the dispute remains unresolved under clause 15.1 or 15.2 within 20 (twenty) Business Days of the dispute being referred for resolution, the dispute shall be referred to the arbitration in London of a single arbitrator appointed by agreement between the Parties, or failing agreement between the Parties within 20 (twenty) Business Days after a request for a reference is made by either Party, nominated on the application by any Party by the President for the time being of The Law Society.

15.4. Nothing in this clause 15 shall restrict at any time any Party’s ability to seek any equitable remedy, including Injunction.

SCHEDULE 3

Producer/Distributor Tier 2 Commercial Uses Report

In respect of the reporting of Tier 2 Commercial Uses, the usage information shall be reported as follows for all sales/licenses of Completed Works (including sales made to online third party VOD or DTO services):

“Identifying Data” shall include all of the following (unless otherwise agreed with DUK):
- Unique Identifiers as held by the producer/broadcaster
- Series title
- If applicable, series number
- Episode title
- Episode number
- Episode duration
- Genre (e.g. Drama, Entertainment etc)
- Principal Director(s)
- Production Company
- Commissioning Broadcaster
- ISAN or EIDR numbers (if available)

Report 1: Sales

1) The Identifying Data
2) Territory of licensed uses
3) Media Details/End Use (e.g. TX Method and Reception)
4) Name of buyer or licensee (e.g. Customer)
5) Term Start
6) Term End

Report 2: For Videograms and other physical media carriers:

1) Identifying Data (where known)
2) Product ID
3) Product Description
4) Release Date
5) Number of units > 1,000 and format (including but not itemising DVD, Blu-Ray, UMD, DTO etc)
6) Revenue from sales where units are not known
7) Territory of sale (where known)

Tier 2 Commercial Fees are available here: http://downloads.bbc.co.uk/commissioning/site/duk-2019.pdf
SCHEDULE OF DEFINITIONS:


Acquisitions: means a Film which is a television programme acquired by a Broadcaster for broadcast via a licence from a third party producer and not commissioned by a Broadcaster.

Agreement: means this agreement and all schedules, annexures and exhibits attached to it or incorporated in it by reference.

Broadcaster: means each of the BBC, ITV, C4, C5, Sky and S4C and collectively, the “Broadcasters”.

Business Day: means Monday to Friday (inclusive), excluding days on which the banks in England are generally not open for business.

Collection Agreements: means agreements made from time to time between DUK and each Member under which DUK is entitled to collect payments on behalf of Members in respect of Rights and distribute them in accordance with the distribution scheme adopted by DUK from time to time, such agreements being in the form available at https://directors.uk.com/about/your-rights on the date of this Agreement.

Designated Work(s): means any Work of which a Member is the Principal Director and is engaged on a freelance engagement contract (and not a contract of employment) and does not otherwise receive payments for further use under a collective agreement with a different trade organisation.

Download To Own (DTO): means services where the Work (and audio versions thereof including audio from the Work) whether alone or in combination with other material is made available to the public for personal, private use in the following ways:

1. the delivery of the Work by distribution over the internet, or other cable, wire or wireless means, as a result of which the user is able to permanently access the Work and/or download, record, write or store the Work onto any product now known or hereafter invented, including a storage device, on a permanent basis; and

2. the Work is legally able to be retained or accessed by or on behalf of the user and played back on one or more playback devices for an indefinite time; and

any interactivity incorporated in the Work as accessed by the user is limited to search and play functionality and exploitation of the Work in any way that enables interactivity beyond search and play functionality shall be expressly excluded from Download to Own services.

Exempt Work(s): means Works (subject to an annual cap of 60 (sixty) titles per Payment Year, provided such titles are singles or a series of between 2 (two) and
6 (six) episodes and that no more than 5 (five) such titles are multi-episode series) which:

3. fall within the following sub-genres:

   (a) ‘Children’s Factual & Entertainment (excl Pre-School’); or

   (b) ‘Ents (incl Chat show, Panel Show, Fact-Ent’); or

   (c) ‘Factual: Documentary / Science / History / NHU / Docudrama’; or

   (d) ‘Factual: Leisure / Lifestyle’; and

4. are either:

   (a) produced by a small independent production company (where, under a side letter between DUK and PACT, “small” shall mean PACT Members, PACT Affiliate Members, or other production company with a proven (either by public record or by confirmation by PACT) annual aggregate turnover of less than five hundred thousand pounds Sterling (£500,000) from the previous year) and have no actual prospect of generating profit from commercial exploitation, or

   (b) produced by a Nations & Regions independent production company (in accordance with OFCOM definitions) using their own staff director(s) [because of the shortage of freelance directors in their area]; and

5. the Producer has followed the notification process set out in clause Error! Reference source not found..

DUK and PACT undertake in good faith to review the cap on Exempt Works ahead of each Payment Year.

**Existing Member:**

means a person who is a Member at the commencement of the Term.

**Film:**

shall have the meaning ascribed to it in section 5B(1) of the Act.

**Foreign Collective Management Organisations:**

means any collective management organisation collecting or administering statutory payments to which Members are entitled by law in respect of the exploitation of Designated Works outside the United Kingdom.

**Identifying Data:**

means the basic programme reporting information as set out in Schedule 3.

**Independent Producer:**

means a UK independent television production company (whether qualifying or not) and collectively, the “Independent Producers”.

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**New Member:** means a person who becomes a Member during the Term.

**Nominated Representative:** means a person from time to time appointed by either the Producers or the Broadcasters (as relevant) to represent them in discussions in accordance with [the Dispute Resolution provisions]

**Member:** means a member of DUK from time to time.

**Payment Year:** means each successive period of 12 calendar months commencing on the Effective Date and **Year 1** shall mean the first such Payment Year, **Year 2** the second such Payment Year and so on.

**Principal Director:** means the principal director of a Film in accordance with the Act.

**Producer:** means each of BBC Studios, ITV Studios and VIS UK, Sky Studios and each Independent Producer, and collectively the “**Producers**”.

**Report:** means a report or statement supplied by the Producers or Broadcasters to DUK pursuant to clause Error! Reference source not found., [and the Broadcaster reporting obligations].

**Television:** means any programme service, whether now known or in the future howsoever delivered that may be viewed via linear terrestrial broadcast as well as via satellite, cable and closed data networks.

**Territory:** means the universe.

**Term:** has the meaning in clause 2.

**Tier 1 Primary Use:** has the meaning in clause 4.4

**Tier 1 Secondary Use:** means uses by the Broadcasters covered in the commissioning agreement between the Broadcaster and Producer, excluding the Tier 1 Primary Uses.

**Tier 2 Commercial Fee:** As published here: http://downloads.bbc.co.uk/commissioning/site/duk-2019.pdf

**Tier 2 Use:** means uses which arise as a result of a separate transactional licensing arrangement entered into by the Producer (or their distributor) in respect of the Work.

**Videogram:** any physical device, storage medium, mechanism, set of techniques or technology, whether digital or analogue or a combination thereof, whether now known or hereafter invented, by which the programme or part of the programme, alone or in conjunction with other material or copyright works (whether audio visual or non-audio visual), with or without sound, may be perceived, reproduced, or otherwise displayed or communicated (whether encrypted or unencrypted), either directly or with the aid of a machine, computer, communications system, telecommunications system (wireless or non-wireless) or other system
or device (and including any combination or plurality thereof), whether or not remotely accessed, whether portable or not portable, irrespective of platform or format but always embodied in a physical product, including videocassette, VHS cassette, tape, videodisc, DVD, Blu-ray, DVDi, CDROM, CD Digital, laser disk, optical disk, compact disc, magnetic disk, card, smartcard, cartridge, computer, hologram, or any electronic or magnetic or other device whatsoever.

**VOD:** means video on demand, being the making available of the Work on a temporary basis via a service, irrespective of the means of delivery and the means of receipt (whether either is now known or subsequently developed), which allows the end user to access the Work on demand, i.e. at a time solely determined by the end user and not predetermined or scheduled by the service operator.

**Work(s):** means any Film commissioned for Television exploitation in the United Kingdom and which is directly or indirectly commissioned by, or made for, or in association with, a Broadcaster, including co-productions and co-financed productions involving a Broadcaster, but excluding Acquisitions.