

# **AGREEMENT**

**between**

**ITV STUDIOS LIMITED (ITVS)**

**and**

**SMG Productions Limited (STV)**

**and**

**ITV Network Limited (ITV Network)**

**and**

**THE WRITERS' GUILD OF GREAT BRITAIN (WGGB)**

**and**

**THE PERSONAL MANAGERS' ASSOCIATION (PMA)**

**for**

**DRAMA COMMISSIONED BY ITV NETWORK AND OTHER  
BROADCASTERS**

## **1. DATE OF COMMENCEMENT AND SCOPE OF THE AGREEMENT**

The provisions of this Agreement shall operate from 1<sup>st</sup> January 2010 and shall apply to writers commissioned by ITVS or STV (and "the Producer" or "a Producer" shall hereinafter mean either ITVS or STV as the context requires) to write television drama for adults and children and shall include original single drama, series, serials, soaps, narrative comedy, dramatised documentaries, dramatisations and adaptations.

## **2. DURATION OF AGREEMENT**

The Agreement shall continue until 31<sup>st</sup> December 2010 and then thereafter until terminated by either party giving six months' notice in writing of its termination. Such notice cannot be given before 1<sup>st</sup> June 2010.

### **3. FORUM**

- 3.1 With effect from the date of this Agreement a Forum shall be established with responsibility for the administration of this Agreement and all matters arising therefrom.

The Forum will comprise of up to four representatives each from ITVS, ITV Network, the WGGB and the PMA. Decisions of the Forum shall be unanimous. Additional representatives and further parties shall be invited by the Forum to attend specific meetings. ITVS will provide a secretary for the minutes and minutes of meetings of the Forum will be issued by ITVS within 14 days of the date of the meeting and approved by the parties of the Forum within a further 14 days. The Forum will sit quarterly on dates that will be agreed on the previous Forum meeting. The first Forum meeting will be in January 2010. ITVS, the WGGB or the PMA may call ad-hoc meetings subject to the provision of one week's notice. Should any meeting of the Forum relate to a particular production not produced by ITVS, then the producer of such production shall have the right to put forward a representative to attend that meeting. An agenda for each Forum meeting will be agreed by all parties no later than 48 hours before each meeting

- 3.2 The powers of the Forum in relation to this Agreement are:

- (a) To agree the minimum terms and conditions under which writers are engaged and payments that are to be made by ITVS and STV for exercising rights in relation to existing forms of exploitation of scripts as provided for in this Agreement;
- (b) To agree the minimum terms under which writers are engaged for new forms of exploitation for which rights have been granted to ITVS and STV under this Agreement, but for which no payment has yet been provided;
- (c) To approve any amendments to the standard terms of the Commissioning Agreement.

- 3.3 ITV will notify the Forum of any new service, venture or form of exploitation proposed by a Producer which will include the use of contributions by writers commissioned in accordance with this Agreement together with related commercial and other relevant information. It is the intention that the Forum will agree terms in good faith prior to the commencement of any new service which falls outside the scope of the Agreement.

- 3.4 It is agreed by the parties that the proper operation of this Agreement is dependent on the Forum and the parties shall therefore be obligated to manage the Forum in good faith.

- 3.5 Where the parties are unable to reach an agreement, a reference to arbitration will be made. The Forum shall appoint an arbiter who will agree the terms of

reference for the arbitration with ITVS, ITV Network, STV, the PMA and the WGGB. The decision of the arbiter will be final and binding.

#### **4. APPLICATION OF AGREEMENT**

Each of ITVS and STV undertakes to commission writers in accordance with this Agreement and under the terms of a standard Commissioning Agreement attached herewith as Schedule A. This Agreement shall not apply to scripts of a shorter duration than fifteen minutes, scripts for non-dramatised documentary programmes and scripts for programmes in a foreign language.

Each of ITVS and STV undertakes not to pay writers fees below the minimum terms as set out in Schedules B and D.

#### **5. COMMISSIONING**

5.1 The Writer will write and deliver the Script not later than the date specified in the Commissioning Agreement or, in the absence of such a date, in accordance with a schedule to be agreed between the Writer and the Producer. The "Script" shall mean an original dramatic work or works (including a script of scripts intending to form part of a series) described and at present known by the title or titles specified in the Commissioning Agreement and including all drafts and revisions.

5.2 The Writer will carry out the commission to the best of the Writer's ability (including adequate research and preparation where appropriate) in accordance with directions given by the Producer including as to the duration specified in the Commissioning Agreement and in consultation with such person or persons as the Producer may direct and including both rewrites and minor revisions requested by the Producer from time to time in accordance with this Agreement.

#### **6. RIGHTS**

6.1 In consideration of a payment of the Script Fee and various other payments as set out in this Agreement and the Commissioning Agreement (herein together called The Contract) the Writer with full title guarantee shall grant and assign to the Producer by way of assignment of present and future copyright the entire copyright and all other right title and interest of whatsoever nature whether vested or contingent in and to the Script for the full period of copyright during such period as such rights are protected by the laws of any jurisdiction and any extensions thereof and thereafter as far as possible in perpetuity throughout the Universe.

6.2 For the avoidance of doubt, the Producer shall not use the Script for any use other than television production without first notifying the Writer and agreeing in good faith an appropriate payment for such use

## **7. FORMAT RIGHTS**

- 7.1 A format is the expression of an original idea for a television programme recorded in writing or otherwise and consisting of such elements as its setting, characters and their relationships, its themes, and how the narrative might develop (the Format).
- 7.2 In situations where the Writer has provided, or contributed substantially to, a Format, or where the Producer wishes to acquire rights other than for a single television production based on the Script, then the Writer and the Producer shall negotiate a format agreement in good faith (a Format Agreement).
- 7.3 With the exception of long-running series/soaps, in situations where the Writer has not created the Format, but has created one or more characters which is/are to be spun off into its own series, then the Producer will negotiate in good faith with regard to the use of the character(s) in the new series and any related rights and payments which may be made to the Writer by the Producer for such use prior to any such exploitation.
- 7.4 ITVS and STV acknowledge that there may be occasional circumstances where a Writer is commissioned under this Agreement to dramatise or adapt a source work and the commission requires the addition of substantial original material or significant alteration to the narrative structure of the source work. In such circumstances there should be good faith negotiations to agree any contractual terms additional to the terms of this Agreement to reflect and protect such origination.
- 7.5 If the Script is designated in the Contract as one for which a Format Agreement is required then in the event of any conflict between the terms of this Agreement and the Format Agreement the latter shall prevail.

## **8. SCRIPT PAYMENT**

Payments shall be made to the Writer in the following stages:

- (a) 50 percent of the agreed script fee (“Script Fee”) within seven days of signing the contract.
- (b) A further 25 percent of the Script Fee on delivery of the first draft of the Script by the Writer to the Producer.
- (c) The balance of 25% of the Script Fee on Acceptance as that term is defined in clause 14.
- (d) On the first day of principal photography of the production a fee of 100% of the Script Fee as an advance in respect of all future uses including but not limited to television repeat fees and commercial exploitation including DVD and programmes sales in any media throughout the world. This payment is subject to the exceptions set out in Schedule B.

- (e) All sums payable to the Writer shall be paid so as to be received within 14 working days of the date on which they are stated to be due and in all other circumstances by no later than the first day of principal photography.
- (f) Repeat and other use fees including DVD/Video and extract fees shall be paid for as set out in Schedule B, C and D.

## **9. ADDITIONAL USES**

Having acquired the rights set forth in Clause 6 above, the Producer shall also acquire the exclusive right to use or license the additional use of the Script as incorporated in the Programme as follows and the Writer shall be entitled to the payments specified. The simultaneous transmission of a programme by a broadcaster on any platform within the UK and any transmission on a delayed service( being a service which is identical or substantially similar to that of the original broadcaster, but which is broadcast, transmitted or otherwise made available with a delay of a defined period, not exceeding three (3) hours, as against the original service) will be regarded as a single transmission (and hereinafter called a “Single Transmission”)

9.1 The Producer may use or permit the use of the Script incorporated in the Programme in any or all media in the UK (excluding broadcasts on BBC1 and BBC2, Channel 3 (the channel currently known as ITV1 and operated by ITV Network on behalf of the Channel 3 Companies), Channel Five, and Channel 4) and overseas on payment to the Writer of a royalty of 5.6% of gross receipts from the Programme sale(s).

- (a) In the case of any programme for which the Producer considers the application of the royalty payment set out above would be inappropriate , the Producer shall have a right to discuss with the Writer alternative arrangements (as set out in Schedule B)in advance of the production.
- (b) Where a script for a programme was commissioned from more than one writer, the individual payments to each writer will be calculated by dividing the total payment of 5.6% of gross receipts pro-rata to their original contract basis fee. Payment for additional uses shall be aggregated and made at reasonable intervals which shall not exceed three months in duration.

9.2 All royalties due under this clause shall be paid to the Writer no later than 30 days after the end of the quarter in which the Producer receives the gross receipts referred to therein. Any such payments shall be accompanied by a statement of account showing for each sale, the territory concerned, the royalty due and, in the case of sales paid in instalments, the proportion of total sales price represented by the quarter’s receipts. The information contained in such statements shall not be divulged to any third party, other than the Writer’s professional advisers, without the express permission of the Producer.

The Producer shall keep full and accurate accounts and records in respect of the work relating to the gross receipts and royalties payable thereon and the Producer shall issue statements of account bi-annually whether or not any sales or repeats have been made. The Producer agrees that in the event of a disagreement arising with a Writer which is not resolved through discussion between the parties, then on receipt of prior written notice from the Writer it will permit the Writer or a professional representative of the Writer to examine during normal hours of business, and take copies, and records of accounts relating to the exploitation of the Writer's work. The said examination shall be at the expense of the Writer unless errors to the disadvantage of the Writer exceeding 10% or £200 (whichever is the greater) are disclosed in which case the reasonable costs incurred in carrying out the examination shall be paid by the Producer. All shortfalls and any reimbursement of the cost of carrying out the examination shall be paid to the Writer with interest within 14 days of notification to the Producer.

NB: For the purposes of this Agreement 'all media' is defined as inclusive of any and all means of distribution, transmission or exploitation now known or hereafter developed including (but not by way of limitation) cable television, videogram, DVD, satellite broadcasting, terrestrial broadcasting, non-theatric, and showings by closed-circuit television\* to captive audiences whether in the UK or overseas, excepting only original transmissions and repeats on Channel 3 and Channel 4 plus BBC1, BBC2 & Channel 5 and theatrical rights. Payments in respect of transmissions on Channel 3, BBC1, BBC2, Channel 4, and Channel Five will continue to be made in accordance with the relevant clauses of this Agreement.

\* The definition of non-theatric and showing by closed-circuit television to captive audiences is set out below.

### 9.3 **Non-theatric Use and Showing of Programmes to Captive Audiences**

#### **Non-Theatric Use**

"Non-Theatric Use" or "Non-Paying Audience" rights shall be defined as the rights of exhibition of material to audiences not making any specific payment to see or hear the material in question and coming within the following categories of audience:

- (a) in educational institutions (e.g. universities, colleges, schools, evening institutes);
- (b) educational classes and gatherings held by companies and other bodies not being educational institutions;
- (c) in clubs or other organisations of an educational, cultural, religious, charitable or social nature (e.g. drama study groups, film societies, churches, professional associations, woman's institutes, The British Council and any other Government agencies.) Prints or tapes may be supplied either direct to users or through recognised film societies or film libraries.

### **Captive Audiences**

Captive Audiences shall mean visitors to hotels, personnel on construction sites including oil rigs and passengers on ships, aircraft, buses or trains, where no specific charge is levied for reception of the programme except for any change in respect of the use of apparatus needed to see and/or hear the programmes.

## **10. USE OF EXTRACTS**

The Producer may use a programme extract incorporating a Writer's work according to the provisions detailed in Schedule C to this Agreement

## **11. ALTERATION TO SCRIPTS**

11.1 Where script alterations are necessary it is the intention of the Producer to inform and to make every effort to reach agreement with the Writer for the Writer to carry out such work.

11.2 The Producer shall be entitled to make such reasonable alterations to a script as it shall consider necessary in the interests of good television production and such other alterations as may be required to enable it to comply with any legal or regulatory requirements to such extent as the Writer may be unwilling and/or unable to carry out such alterations him/herself.

## **12. STORY OUTLINES**

12.1 Should the Producer show an interest in a basic idea, but before commissioning that episode wishes to see the idea developed into a story outline, then a Story Outline (i.e. a complete development for the basic idea and the plot giving a clear indication of the leading characters, the progression of events and the overall style and outline of the settings) shall be commissioned. It is acknowledged that a Story Outline does not amount to either a treatment or full episode bible for a series of programmes for which the Producer will negotiate terms with the Writer in good faith.

12.2 If a Story Outline is commissioned the Writer shall be paid a deductible (but non-returnable) sum of no less than 10% of the Script Fee (payable half on signature and half on delivery), and the terms shall be set out in a letter agreement. Provided that Writer has not been provided with a brief by the Producer he will have a first refusal to write the Script based on the Story Outline, and the Producer shall inform the Writer as soon as possible whether a commissioned Story Outline is suitable for development as a Script

### **13. QUIT CLAUSE**

Nothing in this Agreement will prevent the Writer from being entitled to receive income under Collective Agreements negotiated by recognised foreign and/or domestic Collecting Societies under international law and the Producer will make no claim to any such income. In the event that the Producer and the Writer receive income under such a collective agreement, the Producer shall not be under any obligations to make any payment to the Writer from its share under the Collective Agreement.

The Writer will make no claim against the Producer in any circumstances whatsoever, whether payment or otherwise, which shall arise out of any failure by the Writer or any organisation which may represent him/her to enter into any Agreement with foreign collecting societies or any failure on the part of such a Society to make any payment to the Writer.

### **14. REWRITES AND ACCEPTANCE**

14.1 As soon as is reasonably practicable following delivery of the Script the Producer shall notify the Writer that it:

- (a) accepts the Script as having met the brief and of being an acceptable standard for broadcast television; or
- (b) requires a rewrite to be undertaken by the Writer in order for Acceptance to occur (such rewrite to be within the ambit of the original brief to the Writer); or
- (c) requires revisions to be undertaken by another writer or writers; or wishes to reject the Script, in which case the outstanding balance of the Script Fee shall not be due.

14.2 In the absence of notification in accordance with clause 14.1 the Script shall be deemed Accepted 70 days after delivery to the Producer and this time period shall apply in like manner with regard to a requested rewrite.

14.3 Where the Writer has delivered the Script in compliance with the brief given by the Producer but a rewrite is required as a result of a change to that brief, the Producer will negotiate an additional fee with the Writer in regard to their work on the rewrite.

14.4 If the Writer is entitled to sole Script credit the Writer shall receive the full repeat and royalty payments described in Schedule B but if more than one Writer is entitled to Script credit the share of such payments shall be agreed in good faith negotiations but in the event of non agreement the issue shall be referred to the Forum. Where a rewrite is required it is acknowledged that the entitlement to a shared credit will be decided upon completion of the rewrite. Following completion of the rewrite, if sufficient material from the original script still exists such that the original Writer is entitled to a shared credit, then the Producer agrees that the reduction in total payments due to that writer shall not exceed 50%.

## **15. MORAL RIGHTS**

- 15.1 The Writer asserts the Writer's right to be identified as the author of the Script but acknowledges that so long as the Producer has complied with its obligations in this Agreement then the Producer will have a valid defence to any claim that the Writer's moral rights have been infringed. Notwithstanding the foregoing, the Writer may require that the Writer is not credited in any situation where the Writer reasonably regards the version of the programme edited for UK transmission to be a derogatory treatment of the Script, in which circumstance, the Producer shall be entitled to assign a nom de plume to the programme.

## **16. TURNAROUND**

- 16.1 Where the Writer is the sole author of a single script which is not part of a series or serial or is the author of all of the scripts in a series or serial then if the Producer does not commence principal photography of a programme based on the Script(s) within 3 years from Acceptance of the Script, then the Writer shall be entitled to re-acquire the rights in the Script(s) assigned to the Producer under this Agreement on the conditions and the payment terms defined in Clause 16.4 and such re-acquisition by the Writer of the rights in the Script(s) will be referred to as turnaround.
- 16.2 the Producer shall not be obliged to use the Script in any way and if it does not do so it shall not be liable to the Writer for any loss or damage which may be suffered by the Writer for any failure to obtain publicity or for any loss of opportunity to enhance the Writer's reputation.
- 16.3 Where the Writer has not provided the Format (including for the avoidance of doubt any Long Running Series) there will be no turnaround except either where the Script is written to a Format provided by another writer who becomes entitled to turnaround in which case the Writer will be entitled to turnaround of the rights in the Script as part of the arrangements made with that other writer, or where the Script is an adaptation of a literary property in which the Producer no longer holds the underlying rights (where, for the avoidance of doubt it shall be the responsibility of the Writer to ensure such underlying rights are acquired prior to any further exploitation of the Script).
- 16.4 If turnaround applies the Writer may serve notice on the Producer to transfer back to the Writer the rights in the Script and shall formally reacquire the copyright by paying to the Producer a sum equal to all monies previously paid to the Writer under this Agreement, such sums to be payable no later than first day of principal photography of any programme based on the Script. Should the Writer require evidence of his rights in the Script during the turnaround period (but prior to formal reassignment) the Producer undertakes to provide the Writer with written evidence of the same.

16.5 the Producer shall have the right to extend the period within which the principal photography of a Pilot Script may be given so as to be co-terminous with the period applying to any later Script commissioned for a first Series ,provided that the Producer can demonstrate that there remains interest from a broadcaster.

## **17. LONG RUNNING SERIES**

17.1 Where the programme for which the Script is commissioned does not fall within the definition of a Long Running Series at the time of this commission but subsequent scripts are based on the same Format which do constitute a Long Running Series then the Script shall upon the first such subsequent commission become subject where applicable to the terms in this Agreement relating to Long Running Series provided that the Writer shall not be required to repay any advance under clause 8 (d) above.

17.2 If the programme for which the Script is commissioned would not fall within the definition of a Long Running Series at the time of this commission the Producer shall be entitled to designate it as subject to the provisions herein applying to a Script for a Long Running Series but if fewer than 13 programmes based on the same Format are commissioned for production of one series then the Producer will pay the Writer a sum equal to the advance payment for other Scripts pursuant to clause 8 (d) above.

17.3 Where the Script is for a Long Running Series if any character dimensionally created by the Writer is incorporated in the Script the Producer shall be entitled to use such character for other programmes in that Long Running Series whether or not the scripts for such programmes are written by the Writer.

17.4 If sub-clause 17.3 applies the Producer will make an ex gratia payment to the Writer the amount of which shall be discussed with the Writer should the Producer decide to make use of such character in any spin-off programme/series substantially based on that character.

## **18. CREDIT**

18.1 The Writer shall be entitled to a single card screen credit at the beginning or end of the programme based on the Script and such credit shall be either adjacent to the main title of the programme or to the credit for the producer or director and shall not be inferior to that given to the producer or director. If the Writer requests that the Writer's name is omitted from the credits, the Producer shall be entitled to invent a writing credit.

- 18.2 the Producer will use reasonable endeavours to ensure that the Writer shall also be credited in the billings column of the Radio and TV Times in respect of Transmissions on Channel 3 (except in cases of Narrative Repeats) and whenever reasonably possible and in any event wherever either the producer or the director are credited the Writer shall receive similar credit in any publicity handouts issued by the Producer or ITV Network to the press (except in the case of Long Running Series). Where either the producer or director receive a credit in any publicity handouts issued to the press by the Producer or ITV Network in respect of an individual episode of a Long Running Series the Writer shall receive similar credit.
- 18.3 If clause 14.1(c) applies the Producer will negotiate with the Writer as to whether the appropriate credit should be as Writer of the Script (being either a sole or shared credit) or as Writer of the storyline upon which the Script is based.
- 18.4 Any inadvertent failure on the part of ITVS, ITV Network or any third party to comply with clauses 18.1 and 18.2 shall not be deemed to be a breach of this Agreement.
- 18.5 A breach of clauses 18.1 and 18.2 shall not entitle the Writer to seek injunctive relief and the Writer's sole remedy shall be in damages.
- 18.6 the Producer will use reasonable endeavours to rectify any breach of 18.1 and 18.2.
- 18.7 Any dispute relating to credits will be determined in accordance with the Screenwriting Credits Agreement of 1974.

## **19. COPY OF SCRIPT AND PROGRAMME**

- 19.1 the Producer shall send the Writer at least one copy of every version of the script as soon as it is produced and shall inform the Writer of the rehearsal schedule.
- 19.2 The Writer shall be entitled to one DVD copy of the Programme based upon the Writer's Script.

## **20. ATTENDANCE AND EXPENSES**

- 20.1 The Writer shall have the right to attend the read-through of the Script, and the Writer shall be paid an attendance fee defined in Schedule B and expenses (including, for the avoidance of doubt, travel and, if necessary, accommodation if required more than 30 miles from home).
- 20.2 In addition to the above the Producer may request the Writer to attend rehearsals and recordings for which it will pay an attendance fee.
- 20.3 If the Producer requests the Writer to attend on other occasions for consultation, the Producer will pay expenses only.

- 20.4 Attendance fees and expenses shall not be payable in circumstances where the Writer is in any event contractually required to attend in another capacity.

## **21. CONFIDENTIALITY**

By signing the Commissioning Agreement the Writer agrees not to disclose to any person (other than professional advisors) confidential information relating to the contents of the Script or the Producer's plans for the development of the storyline of a Series and for the avoidance of doubt will not disclose (or allow the disclosure of) the Script to another producer or broadcaster prior to its first Transmission unless and until the Writer becomes entitled to turnaround of the Script.

## **22. WARRANTIES AND INDEMNITY**

By signing the Commissioning Agreement the Writer warrants that the Writer:

- 22.1 is or will be the sole author of the Script which is wholly original to the Writer (except to the extent that it is based on or relates to the work of third parties provided by the Producer) and does not infringe the copyright or any other right of any third party nor to the best of the Writer's knowledge and belief contain any defamatory statement or innuendo which if published in any form whatsoever might confer on any person firm or company a right of action or claim for damages (provided however that the Writer shall not be liable for any defamatory matter which in the reasonable opinion of the Producer was included in the Script without negligence or malice on the Writer's part)
- 22.2 is free to accept this engagement and has no commitments and will not make or accept any commitment which shall prevent the full rendering of the Writer's services required to the Producer in accordance with this Agreement
- 22.3 is a "qualifying person" within the meaning of the Copyright Designs and Patents Act of 1988.
- 22.4 will at the expense of the Producer do all such further acts and sign or execute all such further documents or deeds as the Producer may require to protect vest in or confirm to it the rights intended to be granted hereby
- 22.5 will indemnify the Producer against all actions proceedings costs claims and damages and any compensation agreed on the advice of Counsel arising from any breach or non-performance by the Writer of any warranty contained in this Agreement. The Producer will consult with the Writer prior to settling any claim against the Producer by a third party pursuant to this clause.

The Producer will indemnify the Writer against all actions proceedings costs claims and damages and any compensation agreed on the advice of Counsel arising from any claim by a third party that their rights are infringed by any element of the Programme or the Format not supplied by the Writer.

**23. THE PRODUCER'S LICENSEES**

The Producer shall be entitled to license or sub-license any of the rights granted to it by the Deal Memo and the benefit of the whole or any part of the agreement and the warranties and covenants of the Writer therein contained to any other person firm or company whatsoever PROVIDED THAT the Producer will remain liable in an ongoing manner for its obligations and undertakings as set out in its agreement with the Writer. The Producer agrees to give the Writer notice of any licence of the entire benefit of its agreement with the Writer within twenty-one days of its occurrence, except where the assignment is by way of an intra-group solvent transfer.

**24. TERM AND TERMINATION**

This Agreement between ITVS, ITV Network, STV, the PMA and the WGGB may be terminated by any party on giving 6 months' written notice of termination to the others, no such notice to be given prior to 1<sup>st</sup> June 2010. Termination of the Agreement shall have no effect on the subsistence of any agreement between a Producer and a Writer which incorporates its terms.

**25. INSTITUTION OF LEGAL ACTION**

The Writer hereby grants to the Producer the free and unrestricted right at the Producer's expense to institute in the Writer's name and on the Writer's behalf any and all suits and proceedings at law or in equity to enjoin and restrain any infringement of the rights herein granted and assigned and the Writer hereby assigns and sets over to the Producer any and all such causes of action arising or resulting by reason of or based upon such infringement and any and all recoveries obtained in any such action. The Writer agrees that the Writer will not compromise, settle or in any manner interfere with any such litigation.

**26. NOTICES**

- 26.1 Any notice required to be given pursuant to the Producer's agreement with the Writer shall be in writing, including e-mail and shall be delivered to the address of the other party set out in that agreement or such other address as may be notified in writing to the other party from time to time.
- 26.2 Any notice required to be given pursuant to the Agreement between ITVS, ITV Network, STV, the PMA and the WGGB shall be in writing (not email) and shall be delivered to the address of the relevant party set out in the Agreement or such other address as may be specified in writing to the relevant party from time to time.
- 26.3 Any such notice duly given shall be deemed to have been received: if delivered by hand at the time of delivery; or if sent by fax by the first working day next following the day of sending; or if sent by post two working days after posting.

**27. ASSIGNMENT**

The Writer shall not assign, transfer, charge or deal in another manner with the Writer's agreement with the Producer or any right of the Producer under it or sub-contract any or all of the Writer's obligations under it.

**28. NO AGENCY PARTNERSHIP JOINT VENTURE OR EMPLOYMENT**

28.1 Nothing in the agreement between the Producer and the Writer shall be deemed to constitute either party as the agent of the other party or to create a partnership joint venture or contract of employment between the parties and the Writer shall not have the power to obligate or bind the Producer in any matter whatsoever.

28.2 Nothing in the Agreement between ITVS, ITV Network, STV, the PMA and the WGGB shall be deemed to constitute one party as the agent of another party or to create a partnership or joint venture between any parties.

**29. VARIATION**

29.1 No amendment to the terms of the agreement between the Producer and the Writer shall be valid or binding unless made by prior written agreement between the parties to that agreement or as provided for in that agreement.

29.2 No amendment to the terms of the Agreement between ITVS, ITV Network, STV, the PMA and the WGGB shall be valid or binding unless made by prior agreement between the parties or as provided for herein.

**30. VALUE ADDED TAX**

All payments referred to in the Agreement are exclusive of Value Added Tax and the Producer agrees to pay Value Added Tax properly payable with respect to such payments on receipt of the appropriate invoice.

**31. SEVERABILITY**

The unenforceability of any single provision of the agreement between the Producer and the Writer shall not affect any other provision therein.

**32. HEADINGS**

The headings of the clauses of the Agreement are provided for reference only and shall not limit or affect the meaning or interpretation of the said clauses.

**33. PROPER LAW**

The agreement between the Producer and the Writer shall be deemed to have been made in the United Kingdom and shall be interpreted in accordance with the laws of England. Any dispute arising under that agreement shall be subject to the jurisdiction of the English Courts.

**34. NATURE OF THE AGREEMENT**

The Agreement between ITVS, ITV Network, STV, the PMA and the WGGB is not intended to and does not create a legally-binding contract between the organisations and is binding upon them only in honour. Similarly, any additions or amendments to the Agreement which may be agreed between ITVS, ITV Network, STV, the PMA and the WGGB will be binding upon them only in honour.

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For and on behalf of ITV Studios Limited

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For and on behalf of SMG Productions Limited

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For and on behalf of ITV Network Limited

.....  
For and on behalf of the Writers' Guild of Great Britain

.....  
For and on behalf of the The Personal Managers' Association

**Schedule A**

**COMMISSIONING AGREEMENT**

BETWEEN ITV STUDIOS LIMITED (hereinafter called “the Company”) whose registered office is at The London Television Centre, Upper Ground, London SE1 9LT [or] [SMG Productions (hereinafter called “the Company”) of Pacific Quay, Glasgow, G51 1PQ] and [ ] (hereinafter called “the Writer”) of [ ]

This Commissioning Agreement incorporates and is subject to the ITV/WGGB/PMA Agreement (as hereinafter defined) and is subject to the Company’s standard Terms and Conditions and the Deal Terms set out below.

**DEAL TERMS**

1. Programme Title:  
Running Time:  
Number of Acts:  
Programme/Episode No:
2. Delivery Date:
3. Script Fee:
4. Authorised Agent:
5. Special Stipulations (if any):  
Reference to Format Agreement if applicable  
In the event of any conflict between the terms of this Deal Memo and/or the Terms & Conditions and the Format Agreement then the terms of the Format Agreement shall prevail.
6. Date of Format Agreement (if any):
7. **GUILD MEMBERSHIP** (please delete/tick as appropriate)
  - (a) I am a member of the Writers’ Guild: Guild Number: \_\_\_\_\_  
Guild Pension Scheme Number: \_\_\_\_\_
  - (b) I am not a member of the Writers’ Guild and I intend to apply for membership
  - (c) I am not a member of the Writers’ Guild and I am unwilling to apply for membership

\*\*\*PLEASE PROVIDE HOME ADDRESS REGARDLESS OF MEMBERSHIP:

- .....
8. **CONTRIBUTORY PENSION SCHEME FOR MEMBERS OF WRITERS’ GUILD**  
(delete if not applicable)

The Company hereby agrees to contribute an additional sum equal to 7.5% of the contracted payment (subject to a maximum payment equal to 7.5% of the going rate specified in the relevant Agreement). This sum, together with a sum equivalent to 5% of the contracted payment (subject to a maximum payment equal to 5% of the going rate specified in the relevant Agreement), to be withheld from that contracted payment, shall be forwarded to the Writers' Guild of Great Britain or its appointed agent for the sole credit of the Writer as a contribution to his/her payments under the Writer's Guild of Great Britain Retirement Benefits Scheme as agreed between the Writers' Guild of Great Britain and ITV Studios Limited/SMG Productions Limited in [ ]2010.

9. **VAT REQUIREMENT** (complete if applicable)

The Company undertakes to issue a Tax Invoice on behalf of the Writer and it is a legal requirement that he/she should not issue a further Tax Invoice in connection with this Commissioning Agreement. The Writer is to notify the Company of any change of VAT registered details.

Registered Address:

Registered Number:

Writer's Signature .....

Date

On behalf of the Company .....

Date

## Terms and Conditions

1. These terms and conditions are deemed to incorporate the terms and conditions of the Agreement between ITV Network Limited (ITV) ITV Studios Ltd (the Company) the Writers Guild of Great Britain (the WGGB) and the Personal Managers Association (the PMA) from time to time in force (“the ITV/WGGB/PMA Agreement”).
2. In the event of any conflict between these terms and conditions and the Deal Terms, the latter shall prevail. In the event of any conflict between the Deal Terms and/or these terms & conditions and a Format Agreement then the terms of the Format Agreement shall prevail.
3. The Company hereby engages the Writer and the Writer agrees to render his/her services on these Terms and Conditions in writing a script for the Programme which script shall conform with the specifications detailed in the Deal Terms of the Commissioning Agreement to which these Terms and Conditions are annexed.
4. In consideration of the payments due to the Writer hereunder the Writer with full title guarantee hereby assigns to the Company by way of assignment of present and future copyright the entire copyright and all other right title and interest of whatsoever nature whether vested or contingent in and to the script for the Programme including any storylines, treatments, ideas and all drafts and other material written by the Writer in relation thereto (“the Work”) to hold the same unto the Company absolutely throughout the universe for the full period of copyright and all renewals, reversions and extensions thereof and thereafter (in so far as may be or may become possible) in perpetuity.
5. The Writer hereby grants to the Company the right at all times hereafter to use and authorise others to use the Writer’s name approved photographs and other approved reproductions of the Writer’s physical likeness and the approved biography of the Writer in whole or in part in connection with the advertisement publicity exhibition and commercial exploitation of the Programme and the Work and any rights therein as permitted hereunder provided that the same shall not be used in a manner to suggest that the Writer endorses any commercial goods, services or facilities publicised thereby but solely so that the Writer may be shown to recommend the Programme and/or the Work .
6. The Writer in recognising the needs of television production grants to the Company the absolute and unlimited right to use the Work for all purposes granted hereunder in any manner the Company may in its discretion think fit and, subject to the provisions of clause 15 of the ITV/WGGB/PMA Agreement, hereby waives all so-called moral rights relating to the Work to which the Writer may be entitled pursuant to Chapter IV of the Copyright Designs and Patents Act 1988 (“the Act”) or any amendment or modification thereto or any similar law in any country of the world and hereby agrees not to institute support maintain or permit any action or lawsuit on the ground that any audio-visual or other version of the Work produced and/or exploited by the Company in any way constitutes an infringement of any moral rights of the Writer or is in any way a distortion or mutilation of the Work or contains unauthorised variations alterations adaptations modifications changes additions deletions or translations SAVE THAT the Writer asserts the right not to have work falsely attributed to the Writer.

7. Without prejudice to the generality of Clause 4 above the Writer hereby further confirms and agrees that the assignment of rights in and to the Work includes any and all so-called “rental” and “lending” rights and all so-called rights of communication to the public by satellite and cable retransmission whether now or hereafter known or existing in any country of the world in and to the Work and/or copies thereof or the Programme and every part and version and adaptation of any of the foregoing. For the avoidance of doubt, nothing herein shall prevent the Writer from receiving any monies collected on the Writer’s behalf by any recognised collection societies in any jurisdiction in respect of rental and lending rights and the Company shall lay no claim to such monies it being acknowledged that the Company and its successors in title, assigns and licensees shall not be obliged to make any such payment to any such society under the laws of any jurisdiction or to collect the same on the Writer’s behalf.
8. The Writer confirms that the compensation detailed herein is full, equitable and adequate consideration for all services rendered, all rights granted and the exploitation of the Work by any manner and/or method in any media (including, without limitation, a prepayment of any entitlement the Writer may have to revenues from the exploitation of lending and rental rights, the rights of communication to the public by satellite and by means of cable retransmission of the Programme) now known or hereafter devised subject to any further revenues agreed by the Forum to the ITV/WGGB/PMA Agreement.
9. Subject to the provisions of these terms and conditions and the due compliance by the Writer of his/her obligations and undertakings the Company shall pay to the Writer the following sums:-
  - 9.1 In consideration of the writing services undertaken by the Writer and the first transmission of the Programme in the United Kingdom the Company shall pay to the Writer the Script Fee payable in accordance with Clause 8 of the ITV/WGGB/PMA Agreement.
  - 9.2 In respect of any repeat transmission of the Programme in the United Kingdom or any other exploitation of the Programme in any media throughout the universe the Company shall make such payments to the Writer as set out in the ITV/WGGB/PMA Agreement and the Schedules thereto, subject to the Company’s acceptance of the Work and the shared credit provisions set out in the ITV/WGGB/PMA Agreement.
  - 9.3 In the event that the Company shall sell or license the Work separately from the sale or licensing of the Programme for use in any so called changed format programme, the Company shall pay to the Writer a sum equal to fifty per cent (50%) of the net income from such sale or licensing of the Work. In the event that the Company shall sell or license the Work together with the format and/or other scripts for the Programme without apportioning the income therefrom, the Company shall apportion such income reasonably between the Work and the format and/or other script(s).
  - 9.4 In the event that the Company shall authorise the use of the Work within a novelisation based upon the Programme the Company shall pay to the Writer a sum equal to twenty five per cent (unless otherwise agreed in the Format Agreement) of the net income received for the use of the Work. In the event that the Company shall sell or license the Work together with the format and/or other scripts in the Programme without apportioning the income therefrom the Company shall be entitled to apportion such income reasonably between the Work and the format and/or other script.

- 9.5 For the purpose of these terms and conditions net income shall be all sums paid to the Company less all costs and expenses incurred and payments made directly for and in connection with such sale and licensing (including for the avoidance of doubt and without limitation all payments in the form of distribution or agency fees and commissions).
- 9.6 The Company shall have the right to make the Work available to bona fide educational establishments for non commercial academic study without additional payment to the Writer.
- 9.7 The sums payable to the Writer pursuant to clauses 9.3 and 9.4 above shall be paid by the Company to the Writer no later than 30 days after the end of the month in which the Company received the applicable monies for the use of the Work. Any such payments shall be accompanied by a statement of account.
10. The Writer warrants to and undertakes with the Company that:
- 10.1 the Writer will render services willingly and to the best of the Writer's creative ability and in accordance with the directions of the Company. Such services shall be on a first-call basis during any and all writing periods.
- 10.2 the Writer will be the first and sole author of the Work which will be wholly original to the Writer except to the extent that it incorporates any storyline or other material supplied by the Company and will not be copied adapted or reproduced from any literary dramatic artistic musical or other work (except as to matters within the public domain) and so far as the Writer is aware nothing contained in the Work nor any exercise by the Company of any of the rights in the Work herein assigned will infringe or violate the rights of any person firm or company including without limitation any rights of copyright moral rights or trademarks or privacy or publicity or confidentiality or any other common law or statutory rights whatsoever.
- 10.3 the Writer is owner with full title guarantee free from encumbrances of the copyright and all like rights in the Work throughout the world (except to the extent that the Work incorporates any material provided by the Company).
- 10.4 the Writer is entirely free to enter into this Agreement and to assign and grant the rights herein expressed to be assigned and has not previously assigned, granted, licensed or in any way encumbered the same so as to derogate from the grant hereunder and shall not hereafter do so.
- 10.5 the copyright in the Work will subsist or may be acquired in all countries of the world whose laws provide for copyright protection and that the Writer will not at any time hereafter knowingly do or omit to do or authorise anything in relation to the Work whereby the subsistence of copyright therein or any part of such copyright may be lost destroyed or otherwise impaired or become incapable of being obtained and that the Writer will do all in the Writer's power to obtain and/or maintain the copyright in the Work where such rights are capable of being obtained or maintained by the Writer for the full period thereof including all renewals and extensions thereof.
- 10.6 the Work upon delivery will not have been published in any country of the world.

- 10.7 the Work will not contain obscene matter of any kind nor violate any statute or constitute a contempt of court nor, to the best of the Writer's knowledge and belief having made all reasonable due and diligent enquiry, contain any defamatory matter.
- 10.8 the Writer will comply with all rules and regulations for the time being in force at any studios or other places at which the Writer is required to render services hereunder provided that the Writer has been made aware of such rules and regulations.
- 10.9 the Writer is and throughout the provision of the Writer's services hereunder will remain a "qualified person" within the meaning of the Act and a British subject ordinarily resident in the United Kingdom.
- 10.10 the Writer will not at any time without consent of the Company make any disclosure or supply any information to the public or to any third party (other than the Writer's professional advisers) in relation to the Work or to any matters arising under this Commissioning Agreement or any personnel engaged for any programme made based on the Work or to the general affairs of the Company. The foregoing shall not prevent the Writer from issuing personal publicity material which incidentally mentions the Programme or of making incidental reference to the Programme in interview provided that the same is of a non-confidential nature and does not mention the Programme or any such personnel or the Company in an unfavourable manner.
- 10.11 the Writer will indemnify and at all times keep the Company fully indemnified against all actions, proceedings, costs, claims and damages whatsoever incurred by and/or awarded against and/or compensation agreed by the Company in consequence of any breach or non-performance by the Writer of any of the representations, warranties, undertakings and agreements by the Writer in this Commissioning Agreement. If the Company receives a notice of such claim, demand or action, the Company shall promptly notify the Writer.
11. The Company hereby indemnifies and agrees at all times to keep the Writer fully indemnified from and against any and all losses, actions, proceedings, costs, claims, damages whatsoever incurred by and/or awarded against the Writer in consequence of any breach or non-performance by the Company of any of the representations, undertakings, warranties and agreements by the Company in this Commissioning Agreement. The Company hereby expressly acknowledges that this indemnity shall survive the completion of the Writer's services hereunder.
12. Any and all sums due to the Writer hereunder shall be paid to the Writer's Authorised Agent (if any) whose receipt shall be a valid and binding discharge therefor. Any notices required to be given to the Writer pursuant to this Agreement shall be delivered to the Writer's Authorised Agent (if any).
13. The Writer undertakes to do all such further acts and execute all such further documents at the Company's expense as the Company shall from time to time require to vest in it or further evidence the rights hereby granted.
14. The Company may charge, license or assign any and all rights granted to it hereunder provided that the Company shall remain liable for its primary obligations hereunder to the extent that the same are not performed by such assignee, licensee or chargee. The Producer shall notify the Writer in writing of any charge, licence or assignment of the entire benefit of this agreement made



## **Schedule B**

### **MINIMUM FEES REPEATS AND RESIDUALS**

#### **MINIMUM SCRIPT COMMISSIONING FEES**

Original Teleplay rate*	£11,500 per hour slot length (pro rata)
Series and Serials	£9,000 per hour slot length (pro rata)
Long Running Series**	£3,000 per half hour slot length (pro rata)

\*including as possible pilot for series/serial

\*\* Long Running Series are defined as:      having 13 + episodes; and  
  being pre-approved by the Forum

These rates will be reviewed annually on the anniversary of the Agreement (it being acknowledged that such rates may remain at the previous year's rates or be subject to an increase to be agreed), but if no such review takes place then they will be automatically increased in line with the latest available 12 month Headline RPI figures.

For the avoidance of doubt, current Long Running Series are: Coronation Street, Emmerdale, The Royal, Heartbeat, and The Bill.

NB: For the avoidance of doubt it is not intended that this should change existing arrangements for Coronation Street and Emmerdale which shall be subject to individual agreement between ITV and agents.

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#### **SUBSEQUENT USE ADVANCE (SUA)**

100% of the Script Fee to be paid on the first day of principal photography of the programme incorporating the script, against which income across all revenue streams may be offset. This would include revenue from DVD / DTO alongside new media, as well as more traditional subsequent income like UK repeats or UK / international programme sales.

The SUA would not apply to:      Long Running Series  
  Originations for Digital Channels\*  
  Regional commissions  
  Daytime commissions

\* Digital Channels comprise any channel except for BBC1, BBC2, ITV1, Channel 4 and Five.

Where an Origination for a Digital Channel is transmitted on a non-Digital Channel the SUA will be paid (exceptionally the Writer and the Producer may agree that the SUA is not payable in the event that transmission on a non-Digital Channel is considered in the interests of re-commission).

In the event that the script commissioned by the Producer is for a BBC commissioned production, then the Writer will also be entitled to a payment in consideration of the public service uses, as such are defined in the BBC terms of trade. The current payment (as at January

2010) is 15% of the Writer's script fee and may be altered from time to time as agreed between the BBC/WGGB and PMA.

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## **REPEATS**

<b>ITV1</b>	Peak:	18.00 – 22.30	50%
	Shoulder Peak:	22.30 – 23.30	25%
	Daytime:	09.25 – 18.00	25%
	Night-time:	23.30 – 09.25	15%

Narrative Repeat: A repeat taking place within 7 days of the first transmission to be discounted by 25% of the relevant repeat fee

## **ITV2, ITV3, ITV4, MEN & MOTORS and all other ITV digital channels**

It has been agreed that ITV's existing payment structure for repeats on digital channels, based on a 5.6% share of a percentage of the 'Programme Licence Fee' according to a rate card published by ITV, will remain but that this issue will be revisited by the Forum in September 2010. In the event that a Programme has originated on a Digital Channel, then the initial package of transmissions purchased shall, unless otherwise agreed on an individual basis, be 6 Exhibition Weeks (each Exhibition Week meaning 4 Single Transmissions in any given 7 day continuous period)("a Package"). The originating broadcaster may purchase a further Package of transmissions upon payment of a fee equal to 50% of the basic script fee. Where a programme is commissioned by another Digital Channel (i.e. other than ITV digital channels) and such channel has agreed a different package of rights with the WGGB and the PMA, then such terms will apply to that script commission.

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### **Daytime Long Running Series rate**

To qualify as a "daytime long running series", the following criteria would have to be met:

- 13 + episodes; and
- Commissioned for transmission between 9.30am and 6pm; and
- Pre-approved as qualifying by the Forum.

No SUA would apply to a daytime long-running series.

Script fee to pre clear two network transmissions.

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### **Regional Commissions**

For Regional commissions, the minimum rate for a Long Running Series would apply (by way of a minimum script fee only, open to negotiation).

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### **New Writers**

When a writer is commissioned who is a new writer, a reduction of 20% of the minimum rate would apply. A "new writer" is typically defined as having less than 2 hours (slot length) work on television or radio. However, it is agreed that writers with experience in a comparable media (such as theatre) will not be regarded as "new" writing talent when commissioned for TV for the first time.

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### **Foreign Co-Production Pre Purchases**

As an alternative to the multi-media royalty where part of the budget of the programme is provided by a) a foreign co-producer or b) a foreign co-financier or c) pre-sales to a foreign third party, for each additional use needed for co-production purposes the Producer may apply the following use fees.

The fees are calculated as percentages of the Writer's negotiated fee and in return for these payments the Producer shall be able to exercise the relevant rights for a period of fifteen years with no further payment. When the fifteen year period has expired the multi-media royalty shall apply.

*US Network Television: Prime Time	100%
*US Network Television: Non-Prime Time	50%
*PBS Network	25%
*US Premier Pay and Pay per View Television	35%
§*US Basic Cable	10%
§*US all Syndication and other Television	10%
Rest of World Free TV (excluding UK and US)	60%
Rest of World Pay TV (excluding UK and US)	20%
Rest of World Video (excluding UK and US)	7.5%

\* includes US video

§ both uses can be acquired at the same time for a combined payment of 15%

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### **Attendance Fees**

Attendance at any read-through, rehearsal or recording at studio or on location will normally be mutually agreed between the Producer and the Writer. An allowance of £100 shall be paid to the Writer in respect of each day's attendance by agreement and in addition the Writer shall be entitled to reimbursement of the reasonable cost of any travel in the UK and/or overnight accommodation which is necessarily incurred and agreed in advance by the Producer. In the absence of agreement the Writer may nominate days of attendance to provide for up to a maximum of three paid days attendance in total. The Producer shall not unreasonably reject such a proposal and shall nominate a named person or person to receive such requests. The payment and reimbursement of costs provisions above shall apply equally to such nominated days. In the event that a Writer attends of his/her own volition however there shall be no such entitlement to attendance, travel or overnight expense payments. Payment of the attendance allowance and reimbursement of expenses shall be made in full within 30 days of the end of the month of receipt of invoice.

### **New Media**

A short-term framework has been agreed to cover the period to 31 December 2009, whereby a blanket payment has been made to the WGGB to cover the 'catch up VOD' usage and the multi-media royalty will apply to the Producer's income from any programme sales for use outside the 30 day catch up window.

## **Schedule C**

### **EXTRACT USE**

ITV may include a programme extract across any of its services in all media incorporating a writer's work without additional payment as follows:

1. As permitted by the Copyright, Designs and Patents Act, 1988 (the Act) for the purposes of criticism or review; or
2. For the purpose of publicising or promoting the programme incorporating the Writer's work and/or ITV.

ITV may include a programme extract incorporating a writer's work in a new programme subject to the following:

1. obtaining the Writer's written consent where the use is derogatory or ridicules the Writer or the programme from which the extract is taken or where the context of the use may give rise to issues of Taste and Decency as described in the Ofcom Code.

The Forum will discuss Extract Fees in a separate working group, but for the avoidance of doubt, until any new agreement is reached in relation to the use of Extracts, the provisions of the 1997 ITV/Writers' Guild Agreement will apply.

## **Schedule D**

### **VIDEO/DVD Royalties**

For DVD released in the UK by Granada Ventures or by any other distributor representing or under licence from ITV the following percentages of gross revenue received by Granada Ventures or other distributor to apply:

Up to 29,999	2%
30,000 – 49,999	2.5%
50,000 and above	3%

An advance of £500 to be allocated against the Subsequent Use Advance in the event of a DVD release.

ITV shall keep full and accurate accounts and records in respect of the work relating to the gross receipts and royalties payable thereon and ITV shall issue statements of account quarterly for the first 12 months following release of the video/dvd and thereafter bi-annually whether or not any royalties are due.

This model will be reviewed in 2 years time. Additionally, there will be a review if ITV starts to offer permanent copies of content direct to consumers.

## **Schedule E**

### **MISCELLANEOUS PROVISIONS**

#### **Pension**

Agreed contribution is 7.5% of the applicable minimum script fee for any script commissioned following the date of this agreement.

ITV shall send a statement showing pension contributions to the writer on a yearly basis.

#### **Forum / Review Periods**

It has been agreed that the Forum meeting will take place quarterly and the next Forum meeting will take place in January 2010. The review of the payment structures for new media and ITV digital repeats will take place in September 2010.