

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

Memorandum of an Agreement made the **fourth** day of **October 2002** and as amended by agreement on 10<sup>th</sup> March 2004, 1<sup>st</sup> November 2004, 1<sup>st</sup> December 2005, 1<sup>st</sup> March 2006, 1<sup>st</sup> April, 4<sup>th</sup> July 2006 and 1<sup>st</sup> November 2007 BETWEEN THE BRITISH BROADCASTING CORPORATION whose principal office is at Broadcasting House Portland Place London W1A 1AA ("the BBC") and the Personal Managers' Association Limited whose registered office is at 83 Ebury Street, London, SW1 9QY ("the PMA") and the Writers' Guild of Great Britain of 15 Britannia Street, London, WC1X 9JN (the "WGGB") creating a model for good practice in the relations of the BBC with writers.

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## DEFINITIONS

The words set out below shall mean as follows and expressions defined in the Copyright, Designs and Patents Act 1988 as amended from time to time (“the Act”) shall have the meanings ascribed to them in the Act:

- A. “Acceptance”: acknowledgement that the draft of the Script in question is in accordance with the brief specified by the BBC and of a quality acceptable for television transmission by the BBC and “Accept” shall have a corresponding meaning
- B. “Audio Publication”: the manufacture sale licensing or distribution of any device contrivance or appliance (including without limitation gramophone discs, compact discs, DAT and audio tapes) now or hereafter known which is capable of bearing or emitting sound (unaccompanied by visual images) based on or derived from or consisting of a sound recording of the performance of the Script which may be abridged edited or adapted for the purpose notwithstanding other provisions of this Agreement
- C. “Deal Memo”: the agreement in writing between the BBC and the Writer based on the form set out in Schedule Eight specifying particulars of the commission which incorporates the terms set out in this Agreement and forms the contract for the commission
- D. “Download to Own Rights”: the right to sell copies of recordings making use of the Script in audiovisual format and made available by electronic transmission to any storage medium (now known or which may become known for reproducing visual images and sounds) in response to individual request and intended solely for private use by members of the public but not including Videogram Rights or so-called video on demand rights.
- E. “Educational Drama”: programmes identified and commissioned both as part of the BBC’s educational remit and by a commissioning unit with specific responsibility for educational programming
- F. “Fee”: the amount per Script specified in the Deal Memo as the Fee which is payable to the Writer for the Script in the manner set out in clause 6 of this Agreement except where the BBC requires a Script that results in a programme of a longer duration or where the BBC accepts a Script of a longer duration when in either case the amount shall be increased pro rata in accordance with the increase in the duration, unless such increase is insubstantial or payment of a rewrite fee has been agreed to cover the longer duration
- G. “Format”: 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
- H. “Format Agreement”: an agreement in form substantially similar to the model agreement of even date herewith which subject to being the minimum that the BBC shall offer to the Format creator may be varied by individual negotiation and which Agreement defines ownership of the Format and entitlements to the proceeds of the exploitation of such Format
- I. “Forum”: a forum established by the BBC the PMA and the WGGB for the purpose set out in clause 13 of this Agreement

- J. "Gross Receipts": the distributor's gross revenue from the world-wide distribution of the programme based upon the Script from all sources whether the distributor is the BBC an associated or subsidiary company a third party or a co-producer provided that in respect of a co-producer's entitlement to transmit a programme on its own service its gross revenue shall be deemed to be the average mean rate defined by the Forum on an annual basis or determined in accordance with clause 12.3
- K. "Long Running Series": a series of which a minimum of 13 episodes have been Transmitted or scheduled for Transmission in a single block by the BBC or another broadcaster in the twelve months before the date of signature of a Deal Memo commissioning further episodes or a series for which the commissioning of a minimum of 13 Scripts intended for continuous production has received financial approval within the same BBC financial year. The Forum will be notified at the first reasonable opportunity of a proposed series meeting the above criteria. While the BBC reserves the right to categorise a programme as a Long Running Series under this definition it undertakes to inform the members of the Forum of any intention to categorise a programme in the future as a Long Running Series. The BBC will seriously consider any representation in the Forum about whether a programme meets or will continue to meet the definition of a Long Running Series
- L. "Narrative Repeat": a repeat Transmission made within seven days of the first Transmission
- M. "Pilot Script": a Script envisaged as being the first in a possible Series based on a Format but commissioned on its own
- N. "Print and Publication": the publication of the Script or a work based on the Script in printed book magazine and/or periodical form and/or in electronic form and including without limitation any novelised version adaptation dramatisation narrative continuity or syndication based on the Script
- O. "Public Service": any BBC service which is primarily funded by the Licence Revenue (as defined in the Royal Charter for the continuance of the BBC) or in the case of BBC World Service (as also defined in such Royal Charter) from moneys paid to the BBC out of aids appropriated by the United Kingdom Parliament and/or is provided as a public service
- P. "Radio Transfer": the transmission by any form of radio distribution whether now or hereafter known of the recording of the Script originally made for television
- Q. "Script": an original dramatic work or works (including a script or scripts intended to form part of a Series) described and at present known by the title or titles specified in the Deal Memo and including all drafts and revisions
- R. "Series": a television series or serial based on a Format
- S. "Story Outline": a written outline of a story idea giving a clear indication of the leading characters, the progression of events and the overall style of the proposed programme with some indication of settings, but for the avoidance of doubt not containing scenes, scene structure or dialogue

- T. "Television Distribution": all forms of television distribution (and including any equivalent audiovisual distribution) however transmitted or delivered whether now or hereafter known and including without limitation all forms of standard non-standard non-theatric cable and/or satellite television distribution including by means of so-called video on demand
- U. "Television Distribution - BBC Interest": Television Distribution where the service (other than one in which the use of the Script is by way of Public Service use) is owned or controlled by the BBC or for which the BBC is editorially responsible and/or has an interest as a shareholder in the service
- V. "Transmission": a transmission of a performance of a Script by all televisual means and media whether now or hereafter known (including without limitation both broadcast and/or inclusion within a cable programme service and including without limitation by so-called on-line delivery on a television or any other receiver and whether by analogue or digital means) in the BBC's services (or any part of them) simultaneously or non-simultaneously in BBC 1 (including BBC Wales) or BBC 2 or in the case of Welsh language programmes for the Fourth Channel in Wales ("S4C") in that service or any part of it (and "Transmitted" shall have a corresponding meaning)
- W. "Videogram Rights": the right to distribute sell rent or lend physical recordings making use of the Script in audiovisual format (including but not limited to videocassettes videodiscs digital versatile discs (DVD) and every physical technical means or carrier now known or which may become known for reproducing visual images and sounds) intended solely for private use by members of the public but not including Download to Own Rights or so-called video on demand rights;
- X. "Writer": the person or persons named as such in a Deal Memo into which the terms of this Agreement are incorporated.

## **1. Application of Agreement**

The BBC undertakes to commission writers in accordance with this Agreement. This Agreement shall not apply to scripts of a shorter duration than fifteen minutes, scripts for documentary programmes and programmes in the Welsh or Gaelic languages.

## **2. Commissioning**

- 2.1 The Writer will write and deliver the Script not later than the date specified in the Deal Memo or in the absence of such a date in accordance with a schedule to be agreed between the Writer and the BBC.
- 2.2 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 BBC including as to the duration specified in the Deal Memo and in consultation with such person or persons as the BBC may direct and including both rewrites and minor revisions requested by the BBC from time to time in accordance with clause 16 below.
- 2.3 If a Story Outline is required, based on a Format by a third party, the terms shall be set out in a letter agreement. The Writer shall be paid 10% of the Writer's Fee for the Script (payable half on signature and half on delivery). The Writer will be required not to disclose the contents of that Story Outline to a third party during any period in which the BBC is entitled to commission the Script. The payment shall be non-returnable and shall be on account of the Fee. The BBC shall use its best endeavours to inform the Writer within six weeks from delivery whether a commissioned Story Outline is suitable for development as a Script, failing which the BBC shall be deemed to have decided against such development. However, if the Writer wishes to sell such Story Outline to a third party within a further four weeks the Writer shall first offer the Story Outline to the BBC which will have seven days from receipt of the offer in writing in which to commission the Script. All rights in a Story Outline remain vested in the Writer until such time as the BBC commissions the Script from the Writer.

## **3. Rights**

- 3.1 In consideration of the payment of the full Fee and various further payments as set out in this Agreement, the Writer shall by signing the Deal Memo grant to the BBC with full title guarantee an exclusive irrevocable licence of the copyright in the Script 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 to use and exploit the Script provided that (subject to clauses 3.2 and 3.3) principal photography of the first television programme based on the Script commences within eighteen months of the date of Acceptance of the Script or the last Script commissioned under the Deal Memo (except in the case of Long Running Series in which case the period will be two years).
- 3.2 Notwithstanding the provisions of clause 3.1 the BBC shall have the right to extend by eighteen months (or in the case of Long Running Series one year) the period within which commencement of principal photography of the first programme based on the Script may take place by giving notice to the Writer prior to expiry of the initial eighteen month or two year period as relevant and making payment to the Writer of an additional sum equal to 10% of the Fee.

- 3.3 If the BBC does not commence principal photography of a programme based on the Script in accordance with clauses 3.1 and 3.2 the Writer shall be entitled to re-acquire the rights in the Script licensed to the BBC under this Agreement on the conditions and the payment terms defined in clause 18 and such re-acquisition by the Writer of the rights in the Script will be referred to as turnaround.

#### **4. Format Rights and Characters**

- 4.1 If the Script is designated in the Deal Memo 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.
- 4.2 For the avoidance of doubt, a Format Agreement will be required where the Format has been provided by the Writer (or jointly by the Writer and the BBC) and the Script is intended as an episode of a Series for which it is contemplated that writers other than the Writer will write one or more episodes. The BBC acknowledges that the Writer also provides the Format where a single Script or Series entirely written by the Writer is commissioned based solely on the Writer's work even though there is no Format Agreement concluded at the time and that therefore circumstances may later require a Format Agreement to be put in place.
- 4.3 Whether or not a Format Agreement is required the Writer shall nevertheless retain all rights in any character dimensionally created by the Writer who appears in the Script and should the BBC wish to make use of that character in scripts written by other writers the BBC shall first come to an agreement with the Writer as to the basis upon which such usage may be made. The Writer shall not make use of any such character during any period in which the BBC has the right to continue to produce programmes based upon the Format for the Series.
- 4.4 If the Script is for a Long Running Series clause 19 shall apply.
- 4.5 The BBC acknowledges that there may be occasional circumstances where the 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 shall be a good faith negotiation to agree any contractual terms additional to the terms of this Agreement to reflect and protect such origination.

#### **5. Extracts**

The BBC agrees to comply with the provisions set out in Schedule One as regards use of extracts from the Script separately from the programme in which the Script is incorporated (but subject to uses permitted by law or by this Agreement including without limitation by clause 10 below).

#### **6. Payment**

In consideration of the licence of rights granted by the Deal Memo the BBC will pay the Writer entering into the Deal Memo and for the licence of rights thereby granted :

- 6.1 the Fee in respect of the first Transmission as to 50% on signature of the Deal Memo and as to 50% on Acceptance of the relevant Script by the BBC.

- 6.2 on the first day of principal photography of the production based on each Script 15% of the Fee in respect of the use on any Public Service excluding BBC 1 and BBC 2 for a period of five years from the date of first transmission of the programme, payment for such use thereafter being subject to determination by the Forum.
- 6.3 100% of the Fee on the first day of principal photography of the production based on each Script (except in the case of Long Running Series) as an advance in respect of all television repeat fees and commercial exploitation as set out in clauses 7 and 8 and Schedules Two, Four and Five.
- 6.4 In the case of Scripts commissioned for BBC channels other than BBC 1 and BBC 2 the payment set out in clause 6.2 will be made but the payment set out in clause 6.3 shall only be payable on the first occasion the programme is Transmitted on BBC 1 or BBC 2 whenever that shall be.
- 6.5 The BBC shall commission Scripts for BBC 3 (for the avoidance of doubt reference in this Agreement to BBC 3 shall also include reference to BBC Choice) or BBC4 at the same rate as for BBC 1 and BBC 2 but may commission scripts for other channels designated by the Forum ("Designated Channels") at a lesser rate in accordance with clause 6.6.
- 6.6 In the formative phase of Designated Channels (and subject to the review thereafter of the Forum), the BBC may commission Scripts for Designated Channels at up to 50% less than the Writer would have received had the programme been commissioned for BBC 1, BBC 2, BBC 3 or BBC4. In such cases, the Fee will be agreed on the understanding that if the programme based on the Script is at any time Transmitted on BBC 1, BBC 2, BBC 3 or BBC4 the disparity will be made good in full - i.e. so that the total sums paid to the Writer are the same as if the Script had first been Transmitted on BBC 1, BBC 2, BBC 3 or BBC4 and then repeated on a Designated Channel.
- 6.7 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 under clause 6.1 and in all other circumstances by no later than the first day of principal photography or the Transmission of the programme as relevant.

## **7. UK Network Repeat Fees**

The BBC will pay the Writer fees in consideration of the second and all subsequent Transmissions on BBC 1 and BBC 2 in accordance with the provisions set out in Schedule Two.

## **8. Commercial Exploitation**

- 8.1 The BBC shall pay to the Writer sums equal to the shares of its revenues from exploitation set out in Schedule Four subject to the provisions of clause 6.3 and the following sub-clauses of this clause 8.
- 8.2 Clause 8.1 and Schedule Four shall not apply to the first Transmission and repeat Transmissions use of extracts and Public Service uses where clauses 5 to 7 and the corresponding Schedules shall apply.

- 8.3 The minimum terms applicable to the exercise of Videogram Rights by the BBC are set out in Schedule Five to this Agreement.
- 8.4 By signing the Deal Memo, the Writer and the BBC agree and understand that the fee, residual or royalty for any usage of the Script for which a payment has not been specifically set out in this Agreement shall be subject to determination in accordance with the mechanism of the Forum.
- 8.5 Where the Writer has written the Script jointly with another writer or writers who have been separately commissioned then the Writer shall not be entitled to the royalties specified in Schedule One, Schedule Four and Schedule Five but only to a share thereof which in the absence of agreement to the contrary shall bear the same proportion to the full royalty as the Writer's Fee bears to the aggregate of the Writer's Fee and the other writers' Fees.
- 8.6 If any Script by another writer or other featured material is with the consent of the Writer (which shall not be unreasonably withheld) included in a product sold in exercise of the Download to Own Rights, the Writer shall receive such proportionate share of the royalties set out in Schedule Four as the Script (if written by the Writer alone) bears to the total number of scripts included in the product or such lesser amount as the Writer may agree.
- 8.7 In order to take account of the specific requirements of third party co-financiers or co-producers the BBC shall be entitled to negotiate in good faith with the Writer a buy-out of the Writer's right to receive any fee residual or royalty in place of the arrangements set out in this Agreement. In these negotiations the BBC will take into account the market value of the additional rights that it is seeking to buy out.

## **9. Collective Administration**

- 9.1 Where in respect of certain forms of exploitation listed in Schedule Three to this Agreement it has been agreed between the BBC and the Authors' Licensing and Collecting Society or any other collecting society competent to act on behalf of the Writer ("the Societies") that the Writer's rights to remuneration will be administered on behalf of the Writer by the Societies then the BBC shall at the request and expense of the Societies take such steps as may be reasonable to assist the Societies to lay claim to any monies to which they may be entitled or mandated to collect and administer in respect of the right in question PROVIDED ALWAYS that the BBC shall not be liable to the Writer for any failure on the part of the Societies to lay claim to such monies or to distribute any share thereof to the Writer and the Writer shall have no claim against the BBC for payment in respect of such exploitation.
- 9.2 Subject to clauses 12 and 13 any proposal to extend the rights specified in Schedule Three shall be subject to the procedures of the Forum. In this case while the form of exploitation can be undertaken in accordance with the terms of reference of the Forum no arrangement will be made for the collective administration of those rights until the issue has been determined through the Forum. The provisions of clause 9.1 are without prejudice to all or any other rights of the Writer to remuneration from such forms of exploitation as may now or hereafter exist or become known and are or shall be agreed between the BBC and the Societies or as are from time to time provided for by law to be so administered on behalf of the categories of writers of whom the Writer is or shall be one.

- 9.3 The Writer agrees that the BBC may disclose to the Societies information which the BBC holds about this Agreement and any previous Agreements between the Writer and the BBC which involve Scripts written by the Writer including the Writer's name and agent's address or if the Writer has no agent the Writer's home address so as to assist the Societies to identify those entitled to receive monies collected and held by the Societies as a result of their activities as collecting and licensing bodies.

## **10. Miscellaneous Uses**

The BBC will have the right without further payment to make and use (and authorise the making and use of) copies of the Script or recordings of the performance of the Script for

- 10.1 the private purposes of the BBC (including staff training) or for purposes necessary to give effect to this Agreement but without prejudice to the payment provisions hereof;
- 10.2 televising by the BBC of brief excerpts in programmes of an historic or reminiscent nature about the BBC;
- 10.3 deposit, if the recording is considered of permanent interest, with the National Film Archive (being part of the British Film Institute) and with similar archive-holding bodies for preservation purposes and for private study by bona fide students;
- 10.4 showing at television and film festivals and award ceremonies and in accordance with the Agreement from time to time between the Performers' Alliance and the British Film Institute;
- 10.5 publicity and promotional purposes in all media now known or hereafter devised or discovered;
- 10.6 making dubbings of the recordings into foreign languages and/or to add foreign language sub-titles for the purposes of effecting sales;
- 10.7 making and broadcasting adaptations in the form of English language teletext subtitles or sign language (by any means whether now known or hereafter invented) for the purpose of assisting those viewers with hearing disabilities;
- 10.8 making broadcasting and exploiting programmes incorporating the Script which contain descriptions of a performance of the Script on a separate audio channel (by any means whether now known or hereafter invented) in the form of an audio description of the visual elements of the programmes incorporating the Script for the purpose of assisting those who are visually impaired;
- 10.9 in the case of Educational Drama programmes during a period of five years from the date of first Transmission for educational demonstrations or study purposes throughout the world or at educational festivals or competitions and including the right to use an adaptation or translation of the Script for the purposes of this sub-clause 10.9.

## **11. Disputes Procedure**

If a dispute relating to a Script commissioned in accordance with by this Agreement arises between a Writer and the BBC which cannot be settled by direct discussion then either party will have the right to refer the issue to a panel which shall consist of the Head of Talent Rights Group the relevant head of production department and two of the Writer, the Writer's representative or a non-BBC member of the Forum. If the issue involves a general principle relating to the operation of this Agreement, the parties to the disputes procedure shall be entitled collectively to refer that principle to the Forum. This clause shall not however be invoked in a manner which might override any other clause in this Agreement or call into question the BBC's reasonable and proper discretion to accept or reject a Script.

## 12. Regulation

12.1 The parties hereto shall only amend this Agreement through the mechanism of the Forum (subject to 12.3 and clause 13 below). This provision does not limit the right of the BBC and the Writer to agree to amend the Deal Memo entered into between them.

12.2 If at any time after signature of a Deal Memo by or on behalf of a Writer and the BBC

- (a) any of the provisions for payments to a Writer set out in Schedule One , Schedule Two, Schedule Four and Schedule Five of this agreement are altered; or
- (b) the fee, residual or royalty for any usage of a Script for which a payment has not been specifically set out in this Agreement has been determined,

then payments to be made to the Writer shall reflect such alteration in respect of all relevant uses made of the Script after the date of such alteration or shall reflect such determination in respect of all relevant uses made of the Script whether before or after the date of such determination PROVIDED THAT such alteration or determination has been made

- (i) in accordance with the mechanism of the Forum or by agreement between the BBC and WGGB as provided for in clause 13;
- (ii) by arbitration as provided for in clause 13; or
- (iii) by an expert in accordance with clause 12.3.

12.3 It is agreed that if this Agreement between the BBC the PMA and the WGGB is terminated, with the consequence that the Forum ceases to function then

- (a) those matters that are to be defined or determined by the Forum shall instead be defined or determined (unless otherwise agreed between the BBC the PMA and the WGGB) by an expert to be appointed by agreement between the parties or, failing agreement on such appointment being reached within one month of a request to agree such appointment being made, 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 his decision shall be binding on the BBC and the Writer of any Script covered by this Agreement; or
- (b) if at any time the PMA or the WGGB has ceased to exist, sub-clause (a) above shall operate as if the BBC and the PMA and WGGB had failed to agree on the appointment of the expert.

## 13. Forum

13.1 With effect from the date of signature of this Agreement the Forum shall be established with responsibility for the Agreement in accordance with clause 13.4.

13.2 The Forum will be comprised of three representatives each from the BBC and the PMA and the WGGB. Each party is entitled to permit one further representative to attend in the role of observer and/or administrative assistant (in the case of the BBC

this will be the Secretary to the Forum). Decisions of the Forum shall be unanimous. Additional representatives and further parties may be invited by the Forum to attend specific meetings. The Forum shall have a secretary to be provided by the BBC and to be responsible for the administration of the Forum. Minutes of meetings of the Forum will be issued within seven days of the date of the meeting and approved by the parties to the Forum within a further seven days.

- 13.3 There will be four regular meetings of the Forum each year to be held on a quarterly basis. The date of a regular meeting will normally be agreed between the BBC and the PMA and the WGGB at least six months in advance. The BBC, the PMA or the WGGB may call ad-hoc meetings subject to the provision of one week's notice.
- 13.4 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 are to be made by the BBC for exercising rights in relation to existing forms of Public Service use and commercial exploitation of Scripts as provided for in this Agreement, subject to clause 13.5;
  - (b) to agree the minimum terms under which writers are engaged by the BBC for new forms of Public Service use and commercial exploitation for which the rights have been granted to the BBC under this Agreement but for which no payment has yet been provided;
  - (c) to have governance over landmark programming;
  - (d) to resolve disputes arising out of the operation of this Agreement.
- 13.5 Amendments to any of the following provisions in this Agreement will, subject to a failure to reach agreement on amending these provisions in the Forum, be matters which the BBC and the WGGB will determine:
- (a) Schedule Four
    - (i) Any amendment to any of the percentage figures set out in clauses A1, A2, A4 and A5.
    - (ii) An amendment to any of the percentage figures set out in clauses B1, B2, B4 and B5.
  - (b) Schedule Five
    - (i) Any amendment to any of the percentage figures or monetary sums set out in clauses 3, 6, 7 and 8. An amendment to the credit provision set out in clause 10.
  - (c) Schedule Six
    - (i) Any amendment to any of the minimum rates for Scripts set out in clause 1 and to the attendance fee set out in clause 4.
  - (d) Schedule Seven
    - (i) Any amendment to the Writer's Contribution, the BBC's Contribution and the Cash Ceiling relating to the Writers' Guild Pension Fund.
- 13.6 Amendments to any provision in this Agreement dealing with Format Agreement arrangements will, subject to a failure to reach agreement on amending any such provision in the Forum, be a matter which the BBC and the PMA will determine.

- 13.7 The BBC will notify the Forum of any new Public Service or commercial service, venture or form of exploitation proposed by the BBC which will include the use of contributions by writers commissioned in accordance with this Agreement together with related commercial and other relevant information. Where any new service, venture or exploitation involves a use for which the payment has not been dealt with by the existing agreement (“a New Use”), the Forum will agree any terms that will apply, in advance of the commencement of the New Use.
- 13.8 In the event of terms not being agreed through the Forum in respect of a New Use the issue will be referred to arbitration for determination but if it has not been possible for terms to be determined before the commencement of the New Use, the BBC shall be entitled to commence the New Use pending determination of the terms, provided the matter has been discussed at not fewer than two meetings of the Forum(including ad hoc meetings).
- 13.9 It is agreed by the parties that the proper operation of the Agreement is dependent on the Forum and the parties shall therefore be obligated to manage the Forum in good faith.
- 13.10 A reference to arbitration will be made in the event that the Forum cannot reach agreement on the terms to apply for the use of writers' contributions for a New Use which is not dealt with by the terms of the Agreement.
- 13.11 The Forum shall appoint an arbitrator who will agree the terms of reference for the arbitration with the BBC and the PMA and the WGGB. The decision of the arbitrator will be final and binding. In the event that agreement cannot be reached on the appointment of a single arbitrator, the Arbitration, Conciliation and Advisory Service (ACAS) shall appoint an independent arbitrator.
- 13.12 The period from the start of the process (i.e. between notification in writing to the secretary of the Forum of a reference to arbitration) to the end of the process (i.e. decision being made by the arbitrator) will be a maximum of eight weeks.

#### **14. Accounting**

- 14.1 The following accounting provisions shall apply to all exploitation specified in clause 8.1 except for clarity in relation to the Videogram Rights where the accounting provisions of Schedule Five shall apply and in relation to exploitation where the Writer's participation in the BBC's revenue is designated in Schedule Four as “to be agreed”.

- 14.2 The BBC shall account to the Writer for any royalties due under clause 8 and Schedule Four as follows: (a) Television Distribution royalties shall be paid to the Writer no later than the end of the month following the month in which the BBC receives the Gross Receipts if the BBC or an associated or subsidiary company is the distributor, or if a third party is the distributor no later than the end of the month following the month in which the BBC is notified of the exploitation; (b) Audio Publication and Print and Publication royalties shall be accounted for in respect of the six month periods to 30<sup>th</sup> June and 31<sup>st</sup> December following publication and the corresponding royalties shall be paid to the Writer no later than three months from the end of the period to which they refer. For (a) and (b) the payment shall be accompanied by an explanation of how the amount due to the Writer is calculated. Unless specifically requested no payments will be made in respect of any period in which the sum due to the Writer is less than £10 in which case the amount will be carried forward to the next accounting period but shall in any event fall due for payment within twelve months.
- 14.3 The BBC shall also send to the Writer a cumulative statement of account. This statement will show any advance payments paid to the Writer under clauses 6.2 and/or 6.3, any amounts in respect of repeat fees and royalties credited in recoupment of such advances under clauses 6, 7 and 8 and Schedules Two, Four and Five and the outstanding amount of any advances paid, or following the recoupment of all advances, the additional amount paid to the Writer. The cumulative statements will be sent initially in respect of the periods to 30<sup>th</sup> June and 31<sup>st</sup> December following principal photography of the production based on each Script and will continue to be sent in respect of any six month period in which any payment to the Writer is due. Statements will be sent to the Writer within three months of the end of the period to which they refer. Writers may in addition individually request a statement in respect of any such six month period.
- 14.4 The BBC will on receipt of a prior written notice from the Writer permit the Writer or a professional representative of the Writer to examine and take copies of its records of account relating to exploitation of the Script in accordance with clause 8 (but not more than once in any calendar year and during business hours only). The said examination shall be at the expense of the Writer unless errors to the disadvantage of the Writer exceeding 10% (but subject to a minimum of £150) are disclosed in which case the cost of such examination shall be paid by the BBC and if no notice requiring such examination has been given to the BBC within 12 months of receipt of any payments by the Writer and there is no other dispute relating to those payments then the Writer shall be deemed to have agreed that those payments are correct and to have waived any claim in relation to them.
- 14.5 The Writer shall keep any confidential information regarding the affairs of the BBC or any third parties which come to the attention of the Writer as a result of the examination or otherwise strictly confidential provided that the Writer may disclose such information to the Writer's professional advisers and the BBC reserves the right to require any professional representative of the Writer who examines the records of account to sign an undertaking of confidentiality in similar terms to that given by the Writer herein.

## **15. Publicity**

The BBC shall be entitled subject to clause 17.1 to use the Writer's name, approved biography and approved photograph or likeness in association with any use of the Script

licensed under this Agreement but not so as to suggest that the Writer approves or endorses any product other than the programme based on the Script itself.

## **16. Rewrites and Acceptance**

- 16.1 Within four weeks from delivery of the Script the BBC shall use its best endeavours to notify the Writer that the BBC:
- (a) Accepts the Script; or
  - (b) requires rewrites to be undertaken by the Writer in order for Acceptance to occur (such rewrites to be within the ambit of the original brief to the Writer or else the provisions of clause 16.3 shall apply); or
  - (c) wishes to take over the Script under the provisions of clauses 16.6 and 19.5; or
  - (d) wishes to abandon the Script (in which case all rights therein shall revert to the Writer and no further payment will be due from the BBC). Notification under this sub-clause (d) shall be in writing and may be by e-mail.
- 16.2 In the absence of notification in accordance with clause 16.1 the Script shall be deemed Accepted ten weeks after delivery to the BBC and this time period shall apply in like manner with regard to any requested rewrite.
- 16.3 Where the Writer has delivered the Script in compliance with the brief given by the BBC but a rewrite is required as a result of a change to that brief, the BBC will negotiate an additional fee with the Writer in regard to their work on the rewrite.
- 16.4 If the BBC has required rewrites in accordance with clause 16.1(b) and then requires further alterations after ten weeks from first delivery of the Script in order for Acceptance to occur the Writer shall be entitled to an advance payment of 25% of the Fee before undertaking such further alterations (provided that for the avoidance of doubt such payment shall be by way of an advance against and not in addition to the final 50% of the Fee).
- 16.5 Where a Format Agreement is required and the Script or any rewrite to the Script is not Accepted, the BBC may negotiate with the Writer in good faith as to whether and on what terms the BBC can if it so wishes have the Script rewritten.
- 16.6 Where a Format Agreement is not required and the Script is not Accepted, the BBC shall if it so wishes pay the outstanding balance of the Fee in order to take over the Script, or if the BBC wishes to take over only the Story Outline from that Script the BBC shall pay 50% of the outstanding balance of the Fee.
- 16.7 If the Writer is entitled to sole Script credit they shall receive the full repeat and royalty payments described in Schedules Two, Four and Five 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 dealt with under the Disputes Procedure in clause 11. For the avoidance of doubt the total payments due in these circumstances will not exceed the rates specified in the Schedules.

## **17. Moral Rights and Alterations**

- 17.1 The Writer asserts the Writer's right to be identified as the author of the Script but acknowledges that so long as the BBC has complied its obligations in this Agreement then the BBC 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 regards the version of the programme edited for UK transmission to be a derogatory treatment of the Script.
- 17.2 The BBC and persons the BBC authorises will have the right to edit up to seventeen percent of the programme length for the purposes of co-productions and effecting sales outside the UK, and ten percent of the programme length for the purposes of scheduling requirements only in the UK, in all media provided that edits over these limits shall be subject to the Writer's consent (not to be unreasonably withheld) unless the edit is undertaken by the original director of the programme.
- 17.3 The BBC shall have the right in all circumstances to make such changes as are necessary to avoid involving the BBC in legal action or bringing the BBC into disrepute.
- 17.4 In the case of a Script for a Long Running Series the BBC shall be entitled to make major and structural alterations as well as minor ones to the Script provided that the BBC shall subject to the availability of the Writer make every effort to inform and reach agreement with the Writer regarding such alterations and whenever practicable alterations other than minor alterations shall be made by the Writer.
- 17.5 In all cases not covered by clause 17.4 the BBC shall be entitled to make minor alterations but the BBC shall not without the consent of the Writer (which consent shall not be unreasonably withheld) make any structural alterations as opposed to minor alterations to the Script, provided that such consent shall not be necessary in any case where the Writer is not available upon reasonable notice for consultation at the time which in the BBC's opinion is the deadline dictated by the production schedule for such alterations to be made.

## **18. Turnaround**

- 18.1 The BBC 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.
- 18.2 Where the Writer has provided the Format the BBC undertakes in good faith to notify the Writer of the likelihood of production and undertakes not to extend the licence period in the Script(s) as set out in clause 3 in circumstances where the BBC has declined to produce the Script.
- 18.3 Where the Script is based upon another copyright work (including for the avoidance of doubt a Format) and the BBC relinquishes its rights in that underlying copyright work the Writer will thereupon become entitled to turnaround of the rights in the Script
- 18.4 If turnaround applies the Writer may serve notice on the BBC to transfer back to the Writer the rights in the Script and in the absence of written confirmation by the BBC turnaround shall be deemed to have taken place 14 days after the serving of such notice on the basis that the Writer shall repay to the BBC on the first day of principal photography of any programme based on the Script all monies previously paid to the Writer under this Agreement.

- 18.5 The BBC 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 subject to payment to the Writer on principal photography of an amount equal to any shortfall between the Fee for the Pilot Script and the highest fee paid to the Writer for any such later Script and the substitution of that fee as the Fee for the Pilot Script for all purposes.

## **19. Long Running Series**

- 19.1 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 6.3 above.
- 19.2 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 BBC 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 transmitted within 12 months from Acceptance of the Script the BBC will within 14 days of that event pay the Writer a sum equal to the advance payment for other Scripts pursuant to clause 6.3 above.
- 19.3 Where the Script is for a Long Running Series if any character dimensionally created by the Writer is incorporated in the Script the BBC 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.
- 19.4 If sub-clause 19.3 applies the BBC will make an ex gratia payment to the Writer the amount of which shall be discussed with the Writer bearing in mind the extent of the use which the BBC envisages making of the character or the Format elements in future episodes provided that if such use goes beyond that envisaged the BBC will make a further ex gratia payment to the Writer the amount of which shall also be discussed with the Writer.
- 19.5 Where the BBC has not accepted a Script for a Long Running Series it can buy out all rights in the storyline of that Script for 50% of the outstanding balance of the Fee and no further payments will be due to the Writer.

## **20. Credit**

- 20.1 The Writer shall be entitled to screen credit either 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 in size of type, duration and prominence to that given to the producer or director.

- 20.2 The BBC undertakes that the Writer shall also be credited in the billings column of the Radio Times in respect of Transmissions on BBC 1 and BBC 2 (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 BBC publicity handouts to the press (except in the case of Long Running Series). Where either the producer or director receive a credit in any BBC publicity handouts to the press in respect of an individual episode of a Long Running Series the writer shall receive similar credit.
- 20.3 If clause 16.5 applies the BBC 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.
- 20.4 Any inadvertent failure on the part of the BBC or any third party to comply with clauses 20.1 and 20.2 shall not be deemed to be a breach of this Agreement.
- 20.5 A breach of clauses 20.1 and 20.2 shall not entitle the Writer to seek injunctive relief and the Writer's sole remedy shall be in damages.
- 20.6 The BBC will use reasonable endeavours to rectify any breach of 20.1 and 20.2.

## **21. Copy of Programme**

The Writer shall be entitled to one videogram copy of the Programme based upon the Writer's Script

## **22. Attendance and Expenses**

- 22.1 The Writer shall have the right to attend the readthrough and all rehearsals and recordings of the Script (except for *Doctors* and *EastEnders*), except in circumstances where the producer has set out in writing reasonable grounds to request otherwise, and the Writer shall be paid an attendance fee and expenses for up to two such attendances.
- 22.2 In addition to the above the BBC may request the Writer to attend rehearsals and recordings for which it will pay an attendance fee.
- 22.3 If the BBC requests the Writer to attend on other occasions for consultation, the BBC will pay expenses only.
- 22.4 Attendance fees and expenses shall not be payable in circumstances where the Writer is in any event contractually required to attend in another capacity.

## **23. Confidentiality**

By signing the Deal Memo the Writer agrees not to disclose to any person (other than professional advisors) confidential information relating to the contents of the Script or the BBC'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 but nothing shall limit the ability of the Writer to show a Script as a writing sample to third parties with a view to obtaining further work as a writer except in circumstances where the showing of such Script would disclose sensitive or confidential programme information.

## **24. Warranties and Indemnity**

By signing the Deal Memo the Writer warrants that the Writer:

- 24.1 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 BBC) and does not infringe the copyright or any other right of any third party nor 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 BBC was included in the Script without negligence or malice on the Writer's part)
- 24.2 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 BBC in accordance with this Agreement
- 24.3 is a "qualifying person" within the meaning of the Act
- 24.4 will at the expense of the BBC do all such further acts and sign or execute all such further documents or deeds as the BBC may require to protect vest in or confirm to it the rights intended to be granted hereby
- 24.5 will indemnify the BBC 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 BBC will consult with the Writer prior to settling any claim against the BBC by a third party pursuant to this clause.

## **25. BBC's Licensees**

The BBC 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 BBC will remain liable in an ongoing manner for its obligations and undertakings as set out in its agreement with the Writer. The BBC 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.

## **26. Term and Termination**

This Agreement between the BBC 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 the fifth anniversary of the date of its signature. Termination of the Agreement shall have no effect on the subsistence of any agreement between the BBC and a Writer which incorporates its terms.

## **27. Notices**

- 27.1 Any notice required to be given pursuant to the BBC's agreement with the Writer shall be in writing (not 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.
- 27.2 Any notice required to be given pursuant to the Agreement between the BBC 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.
- 27.3 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.

## **28. Assignment**

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

## **29. No Agency Partnership Joint Venture or Employment**

- 29.1 Nothing in the agreement between the BBC 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 BBC in any matter whatsoever.
- 29.2 Nothing in the Agreement between the BBC 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.

## **30. Variation**

- 30.1 No amendment to the terms of the agreement between the BBC 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.
- 30.2 No amendment to the terms of the Agreement between the BBC the PMA and the WGGB shall be valid or binding unless made by prior agreement between the parties or as provided for herein.

**31. Value Added Tax**

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

**32. Severability**

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

**33. 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.

**34. Proper Law**

The agreement between the BBC 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.

**35. Nature of the Agreement**

The Agreement between the BBC 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 the BBC the PMA and the WGGB will be binding upon them only in honour.

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE ONE

#### A. EXTRACTS IN NEW PROGRAMMES

1. The BBC shall be entitled to make use of extracts from the Script as permitted by the Act and for incorporation in new programmes which may be exploited by the BBC on the same basis as described in clause 3.1 of this Agreement but subject to the following provisions, where not permitted by the Act.
2. Payment for extract use shall be calculated by dividing the Fee by the duration of the Script and multiplying by the duration of the extract on the basis of the calculation being per minute or part thereof (the "Extract Pro Rata Fee").
3. No extract use may be made which would infringe the Writer's right of integrity under Section 80 of the Act.
4. The Writer's consent shall be required for the use of extracts in programmes where the editorial principle for the selection of extracts is (a) the choice of a presenter in the role of celebrity rather than expert or interviewer or (b) the extract is a defining moment in the original programme.
5. Where the extract is used on-line in conjunction with BBC Public Services (excluding BBC1 and BBC2) intended to complement the original programme neither consent nor payment shall be required.
6. The BBC shall pay the Writer the following amounts in respect of use of extracts:
  - (a) incorporation of an extract in a new programme for first Transmission on BBC 1, BBC 2 or first Transmission on BBC 3 and all Transmissions on other Public Services for a period of five years from that first Transmission: 90% of the Extract Pro Rata Fee;
  - (b) repeat Transmissions on BBC 1 or BBC 2 of the new programme incorporating the extract: 100% of the Extract Pro Rata Fee;
  - (c) incorporation of an extract in a new programme for first Transmission on a Public Service other than BBC 1, BBC 2 or BBC 3 and subsequent Transmissions for a period of five years following that first Transmission: 50% of the sums payable under (a). If a new programme made under this paragraph is subsequently broadcast on BBC 1, BBC 2 or BBC 3 the balance of the extract fee will be paid in accordance with paragraph 6(a) above and repeats on these channels in accordance with 6(b) above;
  - (d) incorporation of an extract in a new programme commissioned from an educational unit forming part of the BBC's educational remit: 65% of the Extract Pro Rata Fee or 15% if first Transmission is made during the night for the purpose of enabling viewers to record the programme "off air" for viewing at a more convenient time (with the exception of the night time service for secondary schools where the rate shall be 65%). The payment for the right to repeat such a programme on BBC 1, BBC 2 or BBC 3 shall be 50% of the Extract Pro Rata Fee or in the case of programmes repeated during the night for such off air recording, 15% of the Extract Pro Rata Fee

- (e) distribution of the new programme incorporating the extract: that fraction of the Gross Royalties described in Schedules Four and Five as the duration of the extract bears to the duration of the programme. For the avoidance of doubt any royalty payable in respect of such extract will be additional to the royalty payable to any writer of the script for the new programme.
7. Payment under paragraphs 6(a)-(d) shall be made so as to be received within 14 days after transmission. Payments under paragraph 6(e) shall be made by the date they would be due under clause 14 for all distribution except Videogram where payments will be made by the date they would fall due under Schedule Five.
  8. In the event that the BBC wishes to purchase further five year licences in relation to paragraphs 6(a) and 6(c) above payments will be at the same percentages described in those sub-paragraphs.
  9. After a period of two years following the month of first Transmission of the programme containing the extract, the Extract Pro Rata Fee will be adjusted by the increase occurring between the RPI figure for the month in which the Extract Pro Rata Fee was calculated and the published figure for the most recent anniversary of that month.

## **B. COMMERCIAL EXPLOITATION OF EXTRACTS**

### **(I) Standalone Use of Extracts**

1. Under any Deal Memo entered into from 24 November 2005 the BBC shall be entitled to make available to the public on a commercial basis extracts from the programme based on the Script as single and separate products to members of the public via any platform (rather than for incorporation in another programme or product as set out in (II)).
2. Extracts may be made available in the form of (i)(a) programme clips or (b) so-called commercial minisodes comprising a narrative sequence of clips by way of a preview to promote sales of the programme and for either (a) or (b) of up to four (4) minutes duration; and (ii) so-called ringtones (where extracts are supplied for mobile telephony) consisting of an extract from the programme soundtrack of approximately 30 seconds duration.
3. Extracts may only be available if the following conditions are met:
  - 3.1 The extracts must be made available in accordance with the BBC's Editorial and Fair Trading Guidelines
  - 3.2 The extracts must be made available by service providers from within a BBC-branded area within the service providers platform and/or will always be in association with the BBC brand.
  - 3.3 Each extract must be made available as an individual item and extracted unaltered from the original programme (save for any editing of music or editing of a minisode).

3.4 The extract may be delivered to the consumer in any file or format, provided that appropriate DRM is used where the extract is offered for download.

4. The BBC shall pay the Writer the following amount in respect of the use of extracts: a royalty equivalent to the Writer's rate for Worldwide Television Distribution as set out in Schedule Four part A [or B] (1 & 2) of the Agreement, subject to the Deal Memo.

## **(II) Use of Extracts in another Programme or Product**

Where extracts are to be sold by the BBC's clip sales business (currently known as Motion Gallery) for incorporation in another programme or product such sales will require further written consent and agreement of terms with the Writer.

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE TWO

#### FEES FOR REPEATS ON BBC 1, BBC 2, ITV 1, C4 and C5

1. The BBC will pay the Writer or credit against the advance payable under clause 6.3 the following amounts in respect of repeat Transmissions within 14 working days of such Transmission taking place:
  - (a) for the first Peak repeat - 75% of the Fee (payable in accordance with clause 6.3 above)
  - (b) for each subsequent Peak repeat - 100% of the Fee
  - (c) for each Off-Peak A repeat - 25% of the Fee
  - (d) for each Off-Peak B repeat - 50% of the Fee
  - (e) for each Night repeat - 25% of the Fee
  - (f) for each Narrative Repeat - 75% of the Fee
  - (g) for each repeat Transmission of an Educational Drama programme given within 12 days of a repeat Transmission - 20% of the Fee PROVIDED that no fee will be payable for repeat Transmissions of Educational Drama programmes where the purpose of the repeat Transmission is to ensure that schools that have missed the first Transmission due to half term are given the opportunity to see the programme ("Half Term Repeats") and further provided that the percentages of the fees payable above shall be reduced to 15% of the Fee if the repeat is made during the night for the purpose of enabling viewers to record the programme "off air" for viewing at a more convenient time.
2. Peak, Off-Peak A, Off-Peak B and Night as used above shall refer to any Transmission commencing within the periods contained in the following table:

	<u>Peak</u>	<u>Off-Peak</u> <u>A</u>	<u>Off-Peak B</u>	<u>Night</u>
Monday to Friday	6:00pm - 10:30pm	9:25am - 6:00pm	10:30pm - 11:30pm	11:30p m - 9:25am
Saturday, Sunday, Public Holidays	6:00pm - 11:00pm	9:25am - 6:00pm	11:00pm - 11:30pm	11:30p m - 9:25am

Other than in relation to repeats of an Educational Drama programme the non-Peak repeat applies where the programme or, in the case of a Series, the last programme in that Series was first Transmitted in the Peak period.

The Peak repeat rate nevertheless applies to Children's programmes Transmitted in the Off-Peak A period.

3. After a period of two years following the month of first Transmission the Fee for repeat Transmissions will be adjusted by the increase between the RPI for the month of commencement of principal photography and the RPI for the month of the repeat Transmission.

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE THREE

#### COLLECTIVE ADMINISTRATION

1	2	3	4
COLLECTIVE ADMINISTRATIVE BODY	RIGHT ADMINISTERED	BBC SERVICE(S)	TERRITORY
ALCS	(i) simultaneous re-transmission by cable and by terrestrial and satellite broadcasting of the BBC's services identified in Column 3 of this Schedule.	BBC1, BBC2, BBC3, BBC4, CBBC, Cbeebies, BBC News 24 and BBC Parliament (BBC's Television Services)	Belgium Netherlands Republic of Ireland
	(ii) Transmission and re-transmission by any means of the BBC satellite-delivered service identified in Column 3 of this Schedule to the territories identified in Column 4	BBC Prime	All territories which are under the satellite footprint and in which distribution occurs.
	(iii) Transmission and re-transmission by any means of the satellite-delivered service identified in Column 3	BBC World BBC Learning Zone	World
	(iv) Simultaneous re-transmission by cable and by terrestrial and satellite broadcasting in any European country or in Canada of any overspill terrestrial broadcast signal from a neighbouring country containing BBC programmes (excluding the re-transmission in Canada of BBC programmes included in the US Arts & Entertainment service)		

For the avoidance of doubt any entitlement of a Writer to payment arising from a scheme established under s. 35 of the Copyright Act relating to off-air recording by educational establishments is administered by the ALCS

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE FOUR

#### WRITER'S PARTICIPATION IN COMMERCIAL EXPLOITATION

- A. Where Format for Script is provided by Writer
1. World-wide Television Distribution or Download to Own Rights: 5.5% of Gross Receipts excluding ITV 1 C4 & C5.\*
  2. Television Distribution or Download to Own Rights - BBC Interest: 5.6% of Gross Receipts
  3. Videogram Rights: as per Schedule Five
  4. Audio Publication: 6% of Gross Receipts for UK sales; 3% of Gross Receipts for overseas, record/book clubs & direct mail.
  5. Radio Transfer: if the Writer has a current writer's rate for radio then 100% of that rate or in the absence of such rate 35% of the television Script Fee for one transmission or 50% for two transmissions.
- B. Where Format for Script is not provided by Writer
1. World-wide Television Distribution or Download to Own Rights: 5.25% of Gross Receipts excluding ITV 1 C4 & C5.\*
  2. Television Distribution or Download to Own Rights - BBC Interest: 5.6% of Gross Receipts
  3. Videogram Rights: as per Schedule Five
  4. Audio Publication: 2% of Gross Receipts for UK sales; 1% of Gross Receipts for overseas, record/book clubs & direct mail.
  5. Radio Transfer: if the Writer has a current writer's rate for radio then 100% of that rate or in the absence of such rate 35% of the television Script Fee for one transmission or 50% for two transmissions.
  6. Print and Publication: to be agreed between the Writer and the BBC
  7. Remake: to be agreed between the Writer and the BBC
  8. Theatric: to be agreed between the Writer and the BBC.

\* Where a programme is distributed to ITV 1, C4 and/or C5 for broadcast on free terrestrial television in the UK payment to the Writer shall be in accordance with Schedule Two.

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE FIVE

#### VIDEOGRAM RIGHTS

1. The BBC will pay the Writer the following sums in respect of the exercise of Videogram Rights in the transmitted programme.
2. Upon first publication by the BBC of a videogram reproducing the performance of the Script for a Long Running Series the BBC shall pay a non-returnable advance which shall be on account of royalties payable to the Writer.
3. The advance shall be £750 or (if greater) 2% of the gross revenue (after deduction of any element included in such receipts as shall be payable by way of tax or other duty or levy) which would be received by the BBC or its distributor from sales of 1500 of the said videograms if issued in the form of videocassettes in the United Kingdom which shall be payable to the Writer if all the Scripts are by the Writer writing alone.
4. If any Script by another writer or other featured material is with the consent of the Writer (which shall not be unreasonably withheld) included in the videogram, the Writer shall receive such proportionate share of the videogram advance as the Script (if written by the Writer alone) bears to the total number of scripts included in the videogram or such lesser amount as the Writer may agree.
5. Royalties: The Writer shall be entitled to the same proportionate share of the full royalties as the Writer receives of the videogram advance, and the full royalties payable shall be as follows:-
6. Where videograms are distributed by a distributor licensed directly by the BBC the following percentages of gross revenue in respect of the following sales:

Units	Percentages
up to 30,000	2%
30,001 to 50,000	2.5%
50,001 to 100,000	3%
100,001 to 500,000	4%
Over 500,000	5%

7. Where videograms are distributed pursuant to any further sub-licence granted by the BBC's licensed distributor the royalty shall be 5% of gross revenue received by the BBC in respect of videograms of the work sold.
8. In respect of sales to hire libraries the Writer shall in addition to the royalties set out above be paid 3% of the net rental income which the BBC receives in respect of the hiring or renting of the said videograms.

9. Accounts: the BBC shall render to the Writer statements of all payments due and of the number of videograms sold during each six month period after its first issue for sale to the general public delivering each such statement within three months of the end of the relevant period together with a remittance in respect of all of sums shown to be due. Unless specifically demanded no statements need to be rendered nor payments made in respect of any six month period in which the sum due to the Writer is less than £25 in which case the amount will be carried forward to the next accounting date. The Writer or their authorised representative or agent shall upon giving the BBC prior written notice thereof but not more than once in any calendar year and during the business hours only be entitled to examine the records of account relating to exploitation of the Videogram Rights which examination shall be at the expense of the Writer unless errors to the disadvantage of the Writer exceeding 10% (but subject to a minimum of £150) shall be disclosed in which case the cost of such examination shall be paid by the BBC and if no notice requiring such examination has been given to the BBC within 12 (twelve) months of receipt of any statement of account and if at the end of that period there is no other dispute relating to such statement the Writer shall be deemed to have agreed such statement and to have waived any claim in relation to it.
10. The Writer shall be entitled to a credit on the packaging.
11. The Writer shall be entitled to three complimentary copies of the videogram on publication.
12. The BBC shall be entitled to set aside as a reserve against returns of videograms 20% (twenty per cent) of the royalties due as shown on its first statement of account and to withhold this sum for a period not exceeding the due date for rendering the second statement of account.
13. Nothing in this Agreement shall entitle the BBC to broadcast the videogram, perform it in public or authorise its performance or inclusion in a cable programme service except that the BBC shall be permitted:
  - a) to broadcast or authorise the broadcasting of a short excerpt from a videogram including the Script or authorise such an extract's inclusion in a cable programme service or its public performance if this is done solely to advertise such a videogram; or
  - b) to perform in public or authorise the public performance of a videogram including the Script before persons assessing such videogram with a view to selling or arranging for distribution of such videogram.
14. The Writer acknowledges that the payments set out above take account of all the circumstances including the right to equitable remuneration for rental.

**Signed for and on behalf of the  
British Broadcasting Corporation .....**

**Signed for and on behalf of the  
Personal Managers' Association .....**

**Signed for and on behalf of the  
Writers' Guild of Great Britain .....**





REF:

**SCHEDULE EIGHT****DEAL MEMO**

WRITER:  
 AGENT'S NAME:  
 ADDRESS:  
 TITLE OF SERIES:  
 TITLE OF PROGRAMME:  
 PROJECT NUMBER:  
 TYPE OF WORK:  
 WRITER PROVIDING FORMAT: [Yes/No]  
 FORMAT AGREEMENT: [Yes/No/TBA]  
 LONG RUNNING SERIES: [Yes/No]  
 NUMBER OF SCRIPTS COMMISSIONED:  
 DURATION:  
 FEE:  
 FIRST DRAFT DELIVERY DATE:  
 SERVICE:  
 COMMISSIONING EXECUTIVE:  
 OTHER CONDITIONS:

On signature by both parties of this Deal Memo :

- (a) The British Broadcasting Corporation (**'the BBC'**) commissions, and
- (b) the Writer commits to write and hereby grants a licence of the rights in

the dramatic work or works as specified above. The terms of this commission and the licence hereby granted are as set out in the Television Script Commissioning Agreement current at the date hereof between the BBC the Personal Managers Association Limited ('PMA') and the Writers' Guild of Great Britain (the "WGGB"), the terms of which are incorporated by reference into this Deal Memo. If any of the terms of this Deal Memo conflict with those of the Television Script Commissioning Agreement, a copy of which is available from the BBC on request, the terms of this Deal Memo shall prevail.

The Writer acknowledges that the provisions for payments to the Writer set out in the Television Script Commissioning Agreement can be altered from time to time (in which case the Writer will receive the updated payment in respect of a use of the Script made after the alteration) or determined as set out in that Agreement for uses for which a payment has not been determined at the time of signature of this Deal Memo and agrees that such alterations and determinations shall be binding upon the Writer in respect of relevant uses of the Script.

\_\_\_\_\_  
 For and on behalf of the BBC

\_\_\_\_\_  
 By or on behalf of the Writer

Date \_\_\_\_\_

Date \_\_\_\_\_

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE SEVEN

#### PENSION FUND

##### Pension Fund

A Writer who is a member of either The BBC Group Personal Pension Scheme or the Writers' Guild Pension Fund (and in this case is a member of The Writers' Guild of Great Britain) and is the Writer of a Script commissioned under this Agreement shall be entitled to require the BBC to set aside an amount ("the Writer's Contribution") from payments of the Fee, and to pay the Writer's Contribution together with a further amount additional to the Fee ("the BBC's Contribution") direct to the appropriate pension fund.

The Writer's Contribution and the BBC's Contribution shall be amounts equal to whichever is the lesser of the specified percentages of the Fee, or in each case a specified sum ("the Cash Ceiling"). The parties to this Agreement shall from time to time agree what the specified percentage of the Writer's Contribution, what the specified percentage of the BBC's Contribution, and what the Cash Ceiling shall be.

The Writer's Contribution, the BBC's Contribution and the Cash Ceiling currently agreed by the parties are set out below

Writer's Contribution	-	5% of the Fee
BBC's Contribution	-	7.5% of the Fee
Cash Ceiling	-	£13,593

## TELEVISION SCRIPT COMMISSIONING AGREEMENT

### SCHEDULE SIX

#### MINIMUM FEES AND ATTENDANCE PAYMENTS

1. The parties to this Agreement through the auspices of the Forum shall from time to time agree a minimum rate for writers which shall apply to all Scripts specified in clause 1 of this Agreement except in the case of a Writer who has had less than 2 hours transmitted in which case the BBC can offer a Fee of up to 20% less than the minimum rate. The current minimum rates for Scripts of the type specified are set out below.

	Per minute:
Teleplays	£151.03p
Series/Serials	£136.46p
Dramatisations	£98.07p
Adaptations	£59.70p
Educational Drama	£91.68p

2. The BBC shall be entitled to acquire the rights to make two broadcasts of any Script commissioned "back to back" for production in English and Welsh (one broadcast in English and one in Welsh) for 150% of the Fee
3. The rate for Scripts for *EastEnders* and *Doctors* shall be 85% of the rate for Scripts for Series.
4. Attendance Fees  
The daily attendance fee payable pursuant to clause 22 is £80.00

N.b The Fee is calculated by reference to the duration of the transmission slot of the programme.