

Channel 4 Terms of Trade 2004

The purpose of the Terms of Trade is to supplement the Channel 4 Code of Practice for Commissioning Programmes from Independent Producers 24th November 2003 as approved by Ofcom 6th January 2004 and as amended from time to time ("the Code of Practice"). Channel 4's standard form of commissioning agreement is based on the principles set out in the Code of Practice and in these Terms of Trade.

The standard form commissioning agreement will constitute the terms for contracting the Core Rights.

CHANNEL 4: INDEPENDENT PRODUCTION

TERMS OF TRADE 2004

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CHANNEL 4: INDEPENDENT PRODUCTION TERMS OF TRADE – 2004

1. INTRODUCTION

Channel 4's Terms of Trade were originally introduced in 1982, the year in which Channel 4 first went on air, and reflected that part of Channel 4's broadcasting objective which sought to secure the growth of a stable independent production sector in the United Kingdom. That objective was further confirmed by the provisions in the Broadcasting Act 1990 ("The Act"), and by the Communications Act 2003 pursuant to which Channel 4 has issued its Code of Practice.

These Terms of Trade have evolved over the last two decades, both to reflect the changing requirements of Channel 4, and also to respond to a range of commercial and regulatory changes that have occurred in the wider market. They have set out the overall framework for Channel 4's dealings with independent production companies which best reflects market and regulatory conditions of the current time.

However, although the Terms of Trade have developed over time, they have been under-pinned by a set of guiding principles for Channel 4's relationship with the independent production sector, which reflect the unique purpose and structure of the Channel 4. Not only does Channel 4 have unique public service remit, it is also the only public service broadcaster in the United Kingdom which is required by legislation to fulfil this remit as a publisher broadcaster, without any in-house or affiliated production interests. Channel 4 therefore has a statutory duty to secure the growth of a strong independent production sector, alongside the ongoing fulfilment of its creative remit.

The core principles for Channel 4's relationship with independent producers, which formed the basis of the Channel 4's Code of Practice, are as follows:

- To support the commercial and creative strength of the independent production sector in order to help ensure its long-term vitality.
- To support a large and diverse production sector to ensure that Channel 4 is able to fulfil the terms of its remit to provide experimentation, innovation, diversity and originality in its programmes and services.
- To support a collaborative creative relationship between Channel 4 and its producers to maintain the highest standards of programme quality.
- To maintain the commercial viability and sustainability of Channel 4's financial model.

Channel 4, remains committed to supporting the independent production sector in the United Kingdom, and continues to see this as integral to its public service responsibility. The fulfilment of Channel 4's public service remit requires an independent production sector, which is both commercially healthy but also creatively diverse. Channel 4's Code of Practice, and these Terms of Trade, are focused on fulfilling these objectives.

The ITC's Programme Supply Review is one of the most significant regulatory interventions into the programme supply market in many years. Channel 4 fully supported the recommendations of the ITC's Review, and in particular the requirement on all public service broadcasters to introduce Codes of Practice. These Codes are required to give greater clarity to the relationship between broadcaster and producer. Channel 4 supported these regulatory changes because it firmly believes that a strong and competitive programme supply market is fundamentally important to the success of Channel 4, and its independent suppliers.

The statutory requirements of the Programme Supply Review as set out in the Communications Act were met by Channel 4's Code of Practice, which was approved by Ofcom in January 2004. Channel 4's Code outlines the basis for the Channel's ongoing relationship with independent production companies, including the following:

- Clarity over the different categories of rights that Channel 4 is seeking to secure in programmes it commissions from independent producers.
- Clarity over the duration for which Channel 4 seeks to secure these different categories of rights.
- Clarity over the prices that Channel 4 is willing to pay for these different categories of rights.
- A clear commissioning process with a reasonable timetable for negotiations.
- Provisions for monitoring the application of this Code and resolving any disputes.

Channel 4's new minimum Terms of Trade offer a clear framework for independent production companies wishing to work with Channel 4. The Terms also reflect a significantly different commercial relationship between Channel 4 and its Producers, reflecting the new requirements of broadcasters set out in the Communications Act. Channel 4 hopes that the benefits that should flow to the independent production sector, in terms of greater ownership of its intellectual property and the autonomy and independence that this should secure, will be welcomed by the independent production sector.

We believe that these Terms set out a solid foundation for ensuring that the production sector will continue to flourish, and that Channel 4 can continue to source the widest possible variety of ideas and talent in the market.

Reference in the text of these Terms of Trade to 'the Producer' shall mean the independent production company concerned.

2. PROJECT DEVELOPMENT

Channel 4 may be prepared to provide development finance for specific projects identified by the commissioning team, and the Commissioning Process referred to below and in the Code of Practice applies to such projects as much as to production commissions.

As with production commissions (paragraph 3 below) the issuing of a Project Form by the Commissioning Editor in relation to a proposal for development work to be funded in whole or in part by Channel 4 is not of itself a contract. The full commissioning procedure will apply. This includes consideration and approval by Channel 4's Programme Finance Committee and the agreement as to the terms of the contract. In every case care must be taken to ensure that an accurate description of any development work concerned is identifiable between the parties.

It may be that in some circumstances a Producer is encouraged to further develop or refine a project, or some elements of a project, without finance from Channel 4 before any commissioning decision may be made by the Commissioning Editor. Positive encouragement of this nature from a Commissioning Editor should not be confused with a contractual commitment by Channel 4. In providing development funding, Channel 4 is putting itself on risk and will therefore expect an assignment of the copyright and physical materials to be made to it by way of security. Channel 4 would not expect a project being funded in development by Channel 4 to be produced first outside the UK.

A contract between Channel 4 and a Producer for development finance will normally be negotiated on the following terms:-

- (i) the purpose and timescale of the development will be agreed; the Producer should in making plans for a development project, and in preparing a development budget and cashflow for approval, discuss with the Commissioning Editor, the Business Affairs Executive and the Programme Finance Manager, in detail, the timescales over which rights or services or facilities may be required, and whether pilots or programmes or series may anticipate sequels; no 'production fee' is paid on development projects save if a pilot is transmitted but an adequate overhead will be agreed.
- (ii) a development budget and a cashflow, if requested, will be prepared by the Producer and agreed by Channel 4. The Producer will be required to ensure that, so far as possible, the development work would lead to production (if commissioned) for which Channel 4's indicative tariff price could purchase its Core Rights as defined in the commissioning agreement (see also paragraph 18 below).
- (iii) Channel 4 will require the security of ownership of all rights and material acquired, commissioned, created, or provided as part of the development project funded by Channel 4, and adequate security of ownership or co-ownership in respect of rights and material funded by the Producer or other parties which are essential to the development project.
- (iv) Channel 4 will decide, within nine months after the completion of the delivery of the development work, whether or not to commission the production; the Producer will need to ensure that all properties or rights or services or facilities contracted as part of the development work will remain available (if subject to any revision or other time scale) for that purpose.
- (v) should Channel 4 decide not to commission the production, the Producer will have the right to reacquire the rights and material referred to in (iii) above (and the release of any security) in return for repayment of Channel 4's development finance no later than principal photography of a programme based upon the development. Where Channel 4 has commissioned a Pilot which is not transmitted Channel 4 recognises that repayment of the full cost of a non-transmittable programme may make a programme unfinancable. In such circumstances Channel 4 shall negotiate repayment in good faith.

3. THE COMMISSIONING PROCESS

The Commissioning Process is per the Code of Practice. Key to all commissioning is the preparation of a detailed Editorial Specification (paragraph 4 below).

Some projects require a long period of development, and in such cases initial development funding may be available (but the commissioning process and procedures reflected in the Code of Practice would in any event apply to securing that funding and a contract for that development).

There will always be a number of possible projects which will require commissioning and contractual decisions in a very short timescale. Channel 4 has procedures for dealing with those. However, in most cases the process should proceed in accordance with the Code of Practice but simply stated an Editorial Specification should be completed and agreed between the Producer and the Commissioning Editor prior to Channel 4 giving a price in accordance with its published tariff for the programme. It is however possible to give an indicative tariff price at any time in the process and one may be given at development stage.

Programme Finance Committee ("PFC") currently meets fortnightly and has the final approval over any development or commissioning expenditure.

Whilst the issuance of a Project Form is an important step forward, it is not a contract. Only when a contract is issued and signed is Channel 4 legally committed to a project (whether a development or a production), although there may be occasions when, following the approval of PFC, Channel 4 will be willing to advance limited funds against the security of a Trust Letter (noting the outstanding issues in the contract) or other security required by Channel Four's Business Affairs Executive to permit certain matters to proceed prior to the main contract being signed. Such a trust letter, or other security, will usually secure to Channel 4 by way of security, the ownership of rights and material acquired and created with the funds advanced by Channel 4, and may stipulate specifications as to the manner in which sums advanced are to be utilised.

Channel 4's standard form commissioning agreement for Core Rights, its technical standards and specifications and delivery requirements are attached and Core Rights will be acquired by Channel 4 upon that basis.

4. EDITORIAL SPECIFICATION AND PRODUCTION SCHEDULE

The commissioning agreement between Channel 4 and the Producer must contain a clear agreed description of the work to be undertaken. The Editorial Specification shall include a detailed statement of the proposed programme covering such matters as the individual producer, the director, principal cast, contributors, presenters, storyline/script, programme description, length, locations archive material, music, senior crew, and other details where agreed that they are appropriate. The Editorial Specification must be signed by the Producer and the Commissioning Editor prior to PFC approval and signature of the Commissioning Agreement. It will also include an agreed production schedule which Channel 4 will expect the Producer to meet, and will contain the agreed budget (if appropriate). Where prior to PFC approval any detail required by the Editorial Specification has not been ascertained or, in the case of engagement of principal personnel, is subject to terms being entered into, the Producer will provide Channel 4 with certain parameters of expenditure for those key personnel or items and Channel 4 agrees that it will not require the Producer to engage or contract for personnel or items if they fall outside those parameters. The contract will require production and delivery in accordance with the Editorial Specification, production schedule, and budget (if appropriate), and any material variations to any of them agreed by Channel 4 should be confirmed in writing whether by the Producer or the relevant representative of Channel 4. In all cases, the relevant Ofcom codes and Guidelines will apply, as will Channel 4's own guidelines and requirements on a wide range of matters including sponsorship, credits, technical specifications, delivery requirements. Producers must ensure that they are in possession of up to date copies of all such documents when planning a programme proposal, and can obtain such documents and information from Channel 4's Website: www.channel4.com/4producers. Channel 4 shall notify

the Producer of changes in its own guidelines if made during the course of production and if such changes have a bearing on the cost of production the parties shall negotiate in good faith the treatment of the costs.

The Channel will not enter into a Commissioning Agreement unless there is an agreed Editorial Specification.

5. COMMISSIONING PROCEDURES, APPROVALS

Channel 4, while respecting the creative integrity of those who make programmes for it, will wish to agree detailed Editorial Specifications with programme makers before offering commissioning agreements and will seek to ensure, within those contracts, that programmes are made to Channel 4's commissioning requirements.

Channel 4 may at its discretion, require approval of programme treatments, scripts and main production personnel (normally: individual producer, director, writer, principal artists, presenters, production manager, production accountant and lighting cameraman and composer), music, quantity and type of archive material and graphics as part of the commissioning process. Commissioning Editors and other Channel 4 representatives will require access to the programme makers during production. Commissioning Editors' approval must be sought if any departure from the agreed Editorial Specification is contemplated. Specifically, Commissioning Editors may also require access to rushes, rough and fine cut versions of programmes, and they and other Channel 4 representatives will require the opportunity to view programmes immediately before the delivery procedures for technical and contractual acceptance of delivery referred to in paragraph 16 are put into motion. It will be a condition of the commissioning agreement that changes required by the relevant Commissioning Editor, in order that the programme may be made to the agreed Editorial Specification, will be carried out by the Producer, within the agreed price at no extra cost or expense to Channel 4 (unless the agreed Editorial Specification is changed by the relevant Commissioning Editor in the course of production, please see paragraphs 7 and 8 below).

Channel 4 will indicate to the Producer at the commissioning stage the likely requirements for advertising breaks in the programme, but Channel 4 will retain the right to edit the material after delivery for the purpose of changing the positioning of advertising breaks. Producers must respect and comply with Channel 4's Credit Specifications (see paragraph 16 (iii)) which will be referred to in the standard form commissioning agreement and are found at www.channel4.com/4producers

6. SPONSORSHIP AND COMPLIANCE

Producers are required to comply with the Sponsorship Guidelines and Regulations issued from time to time by Ofcom, and also Channel 4's Sponsorship Code, and in particular to obtain the prior approval of Channel 4's Commercial Affairs and Marketing departments to any acknowledgements or benefits of any kind which may be required by any programme or event sponsor or other organisation connected with the programme. Producers should ensure that they have up to date copies of these Codes and Guidelines (which will be provided by Channel 4 on www.channel4.com/4producers).

Producers are reminded that 'product placement' is prohibited; product placement is defined in rule 15 of the ITC Code of Programme Sponsorship 2000 (as replaced from time to time) as 'the inclusion of, or reference to, a product or service within the programme in return for payment or other valuable consideration to the programme maker or ITC licensee (or any representative of either)'.

Producers are required to comply with the regulatory codes issued from time to time by Ofcom. The Communications Act 2003 allows for the Codes issued by the legacy regulators including The Independent Television Commission (ITC) and The Broadcasting Standards Commission (BSC) to remain in force until such time as Ofcom issues its own Codes. These are due to be published by Ofcom at the end of 2004.

The Codes currently in force and available from www.ofcom.org.uk are:

- The ITC Programme Code
- The ITC Code of Programme Sponsorship
- The BSC Code on Standards
- The BSC Code on Fairness and Privacy

Producers are also required to comply with Channel 4's own rules and procedures for best practice and compliance as set out in the Channel 4 Compliance Manual copies of which are available from www.channel4.com/4Producers.

Producers should ensure that they have up to date copies of all the regulatory codes and the Channel 4 Compliance Manual. Channel 4 shall provide regular updates alerting Producers of major changes to its guidelines and Ofcom's codes.

7. CIRCUMSTANCES IN WHICH FIXED PRICE DEALS WILL BE CONTRACTED

As stated in Channel 4's Code of Practice, Channel 4 wishes to contract more programming on a fixed price basis to avoid detailed 'line by line' negotiation of budgets. Therefore and, at its discretion, Channel 4 will consider offering a Producer the opportunity to contract on a fixed price in the following circumstances:

- a) series where the editorial specification is sufficiently detailed and agreed in advance of pre-production;
- b) for second and subsequent series: the criteria for re-commissioning are set out in paragraph 22 hereof;
- c) when commissioning a Producer that is an established programme supplier in that programme genre.

For the avoidance of doubt Channel 4 maintains the right to request a budget for all programming it intends to contract on a fixed price.

With fixed prices deals, Channel 4 would not expect to pay any overspend save in circumstances where the relevant Commissioning Editor has made changes to the Editorial Specification in the course of production. However, in these circumstances, such changes, in both the Editorial Specification and the price must be agreed in advance in writing by both parties as an amendment to the commissioning agreement prior to any costs being incurred. Channel 4 will expect such costs to be met in first position from any savings made as a result of such changes to the Editorial Specification by the relevant Channel 4 Commissioning Editor and Channel 4 may ask to review a statement of the applicable costs that relate to the editorial content of the Programme. Any increased costs paid by Channel 4 shall increase its Licence Fee accordingly and shall not be treated as overspend.

Save in the circumstances set out above, all underspend in fixed price deals will be retained by the Producer.

In some circumstances Channel 4 may consider fixed price deals with the addition of a specific contingency for a particular area(s) where the likely cost cannot be determined at the outset (eg archive, cast). In such cases the specific contingency will be released where the provision for that area within the main budget has been fully spent. Underspends in other areas of the budget will not be used prior to use of the specific contingency.

Channel 4 will require progress reports and the right of audit where Channel 4 deems it necessary on fixed price deals.

8. PROGRAMMES CONTRACTED ON A BUDGET BASIS

- a) If requested by Channel 4, the Producer will submit a budget for the production which will be reviewed and agreed with the Producer. The resultant budget and cashflow schedule, as agreed, will form the basis for the financing of the production. It will be the Producer's responsibility to work within that agreed budget and cashflow. The Producer shall provide

Channel 4 with cost reports and progress reports as required together with a final cost report. Channel 4 shall have the right to audit such productions. Channel 4 will pay the Producer following receipt and approval of a VAT invoice from the Producer.

- b) It is the Producer's obligation to bear and pay all costs and liabilities incurred in connection with Programmes and their production and delivery, subject only to Channel 4 advancing funds specified and agreed in the contract.

If an amendment to the Editorial Specification is made prior to the editorial approvals referred to in paragraph 5 the Producer will use its best endeavours to make such alteration within the price agreed by Channel 4 on signature of the commissioning agreement. If the amendment is made after editorial approval is given the cost will be agreed with the Programme Finance Manager and must be confirmed by him/her in writing and the Agreement shall be amended accordingly and will be treated as an increase to the Licence Fee.

Unless Channel 4 at its sole discretion agrees otherwise the Producer will be responsible for an overspend which will, unless otherwise stated in the commissioning agreement, be met firstly from any underspend in another budget area which is available for that purpose, secondly from bank interest earned on the production account, thirdly, from any contingency, if appropriate, in accordance with paragraph 10 below, and fourthly, (provided the overcosts is not incurred as a result of amendments made by the relevant Commissioning Editor after the editorial approvals referred to in paragraph 5) from the Production Fee and/or the Producer's other resources.

If Channel 4 at its sole discretion agrees to contribute towards the cost of the overspend which have occurred for reasons outside the Producer's direct control it will do so on contractual terms to be agreed. Channel 4 would normally expect that its contribution (if any) towards an overspend would rank for recoupment in first place from 100% of distribution revenues after deduction by the Distributor of its commission and expenses (see paragraph 21 below).

It is not Channel 4's intention to share in any underspend unless occasioned as a result of a substantive change to the Editorial Specification. It will, however, expect the return of any unspent Special Contingency and/or General Contingency (usually applicable to drama projects only).

9. PRODUCTION COST AND OVERHEADS

Where a production budget is requested by Channel 4 it shall be prepared to include: -

- (a) agreed development costs, where appropriate;
- (b) all approved direct costs of the production, including production overhead expenditure. Channel 4 will look for all reasonable economies of scale in budgeting for series or for pilots, or for programming from which series or sequels may arise, on the basis that costs per budget item or overall per hour may in certain circumstances be reduced. Producers should liaise closely with Business Affairs Executives and Programme Finance Managers over such matters including in relation to the possible need to secure options or other arrangements for rights or talent or facilities.
- (c) a Production Fee to be negotiated as referred to in paragraph 12 below.
- (d) Channel 4 will sometimes require a production auditing provision within the production budget, or ask for a production audit to be carried out at Channel 4's own separate cost. In either case the choice of production auditors will be at Channel 4's discretion.

10. CONTINGENCIES

Contingencies (which should not be included in the Producer's cashflow and are retained by Channel 4 until required) are normally divided into two categories:-

(i) Specific Contingency

A specific contingency is an agreed calculated amount to cover specific needs should they occur, which are not otherwise provided for in the budget and which may be outside the control of the Producer.

If it is not needed or the amount is unused, it is wholly returnable to Channel 4. Examples of areas requiring specific contingencies are: bad weather, archive material, travel and cast breakages.

The relevant Programme Finance Manager would normally authorise the utilisation of the specific contingency.

In respect of deals which are not contracted on a fixed price basis the first call to fund any expenditure in an area anticipated by a specific contingency is an underspend in another budget area which is not required to fund an overspend in any other budgeted area outside the specific contingency; only the second call is the specific contingency for that budget area.

Any unused specific contingency will be retained by/returned to Channel 4.

(ii) General Contingency

A general contingency is either a negotiated amount, or percentage, which is agreed where it is felt that a production budget is either extremely tight or is produced at such speed and without sufficiently detailed specification that it would not be prudent to proceed without one.

This general contingency provision can be used to fund acceptable overspends on any budget item, and if not used, either in total or part, is normally wholly retained by or (if already advanced) returnable to Channel 4.

General contingencies are more often found in budgets for which a Completion Guarantee is necessary and/or co-production and pre-purchase budgets where Channel 4 is contributing a share of the costs and generally affects drama projects only. Any general contingency would not normally exceed 10 per cent.

11. PRODUCTION BANK ACCOUNT AND FOREIGN CURRENCIES

- a) Channel 4 may require the Producer to use a Bank Mandate for its Production Account in the form to be found at www.channel4.com/4producers.
- b) The Producer may place short term surplus funds held in the Production Account into interest bearing deposit accounts. The amount of interest earned by the Producer on such deposit accounts will be credited to the Production Account and will be off set against any possible overspend which cannot be financed from any other underspend (other than by resort to the Production Fee — see paragraphs 8 above and 12 below). If applicable, any such interest-bearing deposit account shall share the same Bank Mandate (or have a separate Bank Mandate but in the same form) as the Production Account.
- c) Projects commissioned by Channel 4 sometimes involve dealings in foreign currencies. This is either because co-finance funds are to be received in a foreign currency, or because overseas locations are involved in the production. Channel 4 normally

contracts in sterling with Producers. Hence, it is the responsibility of the Producer unless such rate change is exceptional to accommodate movements in the rate of exchange from that budgeted, and the Producer has full responsibility for the effects of currency movements, (both in terms of gains and losses).

12. PRODUCTION FEES

(i) The Production Fee referred to in paragraph 9(c) above will be negotiated within the parameters set out below, less any Completion Guarantee element in the budget and shall also be calculated on any part of contingencies that are spent provided that the contracted tariff price shall not be exceeded. No Production Fee will be provided in budgets for development work, but approved development cost will be included in the subsequent analysis of the budgeted production cost when considering a Production Fee for a commissioned production.

(ii) Channel 4 will usually expect to pay the following Production Fees:

	<u>Per cent</u>
Production cost (less any Completion Guarantee element) up to £50,000	up to 25%
Production cost (less any Completion Guarantee element) from £50,001 up to £100,000	up to 20%
Production cost (less any Completion Guarantee element) from £100,001 to £500,000	up to 15%
Production cost (less any Completion Guarantee element) £500,001 to £1m	up to 12.5%
Production cost (less any Completion Guarantee element) over £1m	by negotiation

(iii) Channel 4 will wish to be satisfied as to the security of any funds to be provided by the Producer or any third party, and as to the Producer's resources and capacity to finance overspends if all or any part of a Production Fee is deferred or specially excluded from the budget to be funded out of any sales revenues.

(iv) The agreed production fee will be subject to a deduction (from the last instalment otherwise payable) of the independent producer's contribution to the Independent Production Training Fund – see paragraph 25 of these Terms of Trade.

Channel 4 requires Producers to effect normal production insurance to be in place on all productions. Producers may use an overall production insurance scheme which has been negotiated by Channel 4. Such scheme(s) will provide the usual production insurance covers. It is for the Producer to effect and maintain such insurance and premiums must be included within the production budget. Channel 4 will not advance any sum to a Producer until it has seen evidence that adequate insurance is in place.

The cover required shall be in accordance with the insurance guidelines as published at www.channel4.com/4producers.

Additional or special insurances, such as "producers' errors and omissions" insurance, or cover for risks associated with work in dangerous locations, may be arranged both under the Channel

4 schemes or through other brokers, but will be subject to Channel 4's prior approval in each case. The Producers should try to anticipate in the early stages of their production planning if special insurances may be necessary, and should discuss such matters with brokers and, with Channel 4's Business Affairs Executive and Programme Finance Manager.

If the programme, or any part of it, is transmitted outside the UK prior to Channel 4's transmission or thereafter the Producer should arrange "Producers errors and omissions" insurance and must inform Channel 4 in writing of any proceedings or threat of proceedings made against the Producer, a programme contributor, and/or the foreign broadcaster and/or the programme in relation to the programme. Within the UK as long as first transmission takes place within the UK, on the Channel 4 Service, the Programme will be covered by Channel 4's blanket errors and omissions policy provided that the Producer follows the requirements of Channel 4's Legal and Compliance lawyers, and complies with its warranties and undertakings.

14. COMPLETION GUARANTEES

Channel 4 shall have the right to require such completion guarantee arrangements as it considers appropriate and to approve any such arrangements. The cost of an agreed guarantee will be an accepted budget item but may fall outside the tariff price. In the absence of such completion guarantees, Channel 4 will have the right to take such other security as it considers appropriate. Any rebates on completion guarantee fees will be refunded to Channel 4 in full. Further information about completion guarantees in general, and about arrangements made from time to time between Channel 4 and completion guarantors, is obtainable from Channel 4's Commercial Affairs department.

15. PRODUCERS' UNDERTAKINGS

Channel 4 requires Producers to provide certain basic undertakings to ensure that all necessary legal obligations are observed and all rights are cleared to enable Channel 4 to exploit the Core Rights. Channel 4 expects to rely on all the contractual provisions and undertakings relating to a programme and its supply including the warranties and indemnities given by the Producer. Only in relatively few cases would Channel 4's own legal representation relieve a Producer of some of that burden (and only then if so provided in the Channel 4 commissioning agreement).

Channel 4 is an Equal Opportunities employer and is committed to avoiding discrimination in all aspects of employment on grounds of sex, marital status, race or religious belief. Channel 4 expects its programme suppliers to adopt positive employment policies on these important matters in conformity with the collective agreements appropriate to any engagement. To meet Channel 4's diversity requirements Producers will be required to complete the production and portrayal monitoring form to be found on www.channel4.com/4producers

Channel 4 is required by Ofcom to commission a certain level of regional programming each year. Channel 4 is committed to achieving this level but can only do so with the co-operation of the independent producers. Therefore, commissioning agreements where Channel 4 are commissioning a regional programme will contain warranties from the Producer to the effect that the programme qualifies as a regional programme and gives Channel 4/Ofcom the right to audit such programme to ascertain that it did in fact qualify. The current criteria to qualify as a regional production are at least two of the following:-

- The Producer must have a substantive business and production base outside the M25
- At least 70% of the production budget must be spent outside the M25
- At least 50% of the production staff should be working outside the M25

16. ACCEPTANCE PROCEDURE, EDITING, CREDIT SPECIFICATIONS

- (i) On delivery (and after the arrangements for Channel 4's review by Commissioning Editor and others, as referred to in paragraph 5, have been completed to Channel 4's satisfaction) Channel 4 will indicate to the Producer whether it requires changes to be made to the programme to ensure that the programme:-

- (a) conforms with the agreed technical specification and Editorial Specification including running length and Commercial Breaks;
- (b) complies with the ITC/Ofcom Programme Guidelines as issued and revised by the ITC/Ofcom from time to time; and
- (c) complies with any relevant legislation.

Any such changes will be at the Producer's expense unless the ITC/Ofcom Guidelines are amended after delivery.

- (ii) Channel 4 will not normally seek to make any further changes for purely editorial reasons at this stage, but reserves the right to invite the Producer, at Channel 4's expense, to do so. It is not Channel 4's intention to exercise these editorial rights without recognising the views of the Producer, who will be consulted unless this is impracticable. Channel 4 also reserves the right not to transmit the programme. Channel 4 does not in any event guarantee the transmission of commissioned programmes. In addition to a showprint or Digital Betacam videotape, the Producer will also be obliged to meet Channel 4's standard delivery requirements which include, inter alia, a completed transmission information form. The requirements of Channel 4's Technical Specifications and Presentation and Delivery Requirements should be studied in detail and provided for in budgets and other plans for production.
- (iii) A report to the Commissioning Editor on proposed credits is required during post production, before credits are made, and details are set out in the Credit Specifications. The relevant Commissioning Editor will respond to such reports in a timely fashion. The Credit Specifications, and credit report system, (which will continue to be updated from time to time, in consultation with PACT), represent another part of Channel 4's proper concern about the appropriate use of its air-time. Compliance with the Credit Specifications is a matter required by Channel 4's commissioning agreement. Failure to comply may cause delay in acceptance whilst changes are made or may lead to rejection of delivery. If for any reason, such as the imminence of planned transmission, programmes are accepted as delivered but contain unacceptable credits, Channel 4 will reserve the right to omit and/or change credits.

Whilst for a Producer, concern about credits may seem less of a priority in the early stages of production than other matters, a Producer should nevertheless ensure that it does not enter into any contractual obligation to any third party in relation to credits, or later create credits, which either individually or in groups or in total will be in contravention of the Credit Specifications. In such circumstances, a Producer is in danger of being in breach of its contractual arrangements both with Channel 4 and with the third parties with whom it contracts for credits. Channel 4 shall comply with the Producer's contracted credits provided they comply with Ofcom/ITC guidelines and Channel 4's guidelines.

17. SECURITY

In the absence of other adequate security if Channel 4 cash flows the production Channel 4 will wish to take in the UK both an assignment of copyright and physical ownership of the master tape or negative of the programme and an assignment of all rights owned or acquired by the Producer in copyright and other material and services upon which the production and exploitation of the programme depends until delivery and acceptance of the programme. This arrangement will not prohibit the Producer from exercising the rights it retains hereunder in the Programme in accordance with the terms hereof and of the Commissioning Agreement. It being acknowledged that when Channel 4 is partially cashflowing the production it will take such assignment by way of security in proportion to the level of production funding that Channel 4 is providing towards the budget to enable any third party deficit financier to take similar security in proportion to its own level of contribution to the cashflowing of the production where required

and where appropriate Channel 4 shall enter into an agreement with third party financiers dealing with the priority and release of their respective securities

18. CORE RIGHTS

The Channel 4 Core Rights as described in the Channel 4 Code of Practice are more particularly defined in the standard form commissioning agreement. The tariff price paid by Channel 4 shall include clearance for the Core Rights (including 2 transmissions on the Channel 4 Service), which shall be met and paid for by the Producer within the tariff price.

19. ARCHIVAL USAGE; EDUCATIONAL/NON-THEATRIC, AND OFF-AIR USAGE, LIMITED CABLE RELAY RIGHTS

- (i) Channel 4 will require the right to use commissioned programmes, and additionally to make such programmes or material included therein, available for research, non-broadcast archival and historic purposes.
- (ii) In accordance with Section 35 of the Copyright Designs and Patent Act 1988, Channel 4 participates in an Off-Air Educational Recording scheme to the benefit of educational establishments, and Channel 4 requires that rights acquired from Producers include those which will enable programmes to be recorded by such educational establishments under the scheme. Any income received by Channel 4 therefrom is retained either for payment into a training fund used for funding the training of freelance television personnel, or for use as additional monies available for future programme commissions; such income will not form part of any revenue referred to in paragraph 21 – Net Receipts.
- (iii) As a result of both United Kingdom and European legislation, Channel 4 will also require the right to include programmes in any cable programme service or multi-point microwave distribution system when such service or system provides simultaneous relay of a terrestrial free broadcast in the United Kingdom by cable programme service or other telecommunication system able to receive and relay such broadcasts within or outside the United Kingdom. Income received by Channel 4 arising from such 'limited cable relay rights' shall form part of gross distribution revenues.

20. REPEAT FEES

Channel 4 will pay a repeat fee to the producer per programme for the 3rd and subsequent transmission on the Channel 4 Service during the relevant transmission times of :-

Off peak	9:30 - 17:59	-	2%
Peak	18:00 - 23:29	-	5%
Night time	23:30 - 09:29	-	1%

of the PFC approved final cost for the Programme.

21. NET RECEIPTS

In respect of Secondary Rights (as defined in Schedule 2 of the Commissioning Agreement) Net Receipts will be defined as per the Commissioning Agreement but generally shall be gross distribution revenues less distribution and other expenses including:

- (i) all royalties and residual clearance payments not included in the agreed budget/Fixed Price, plus handling charges plus customary distribution costs;
- (ii) distribution/agents, commission
- (iii) any overspend recoverable by Channel 4 and/or the Producer
- (iv) approved deficit sums recoverable by a third party financier or the Producer

- (v) distribution advances may be recouped by the distributor but any distribution advance shall be treated as an advance of Net Receipts in the hands of the Producer insofar as it is not applied to (i) (ii) (iii) and (iv).

In respect of Core Rights (as defined in Schedule 1 of the Commissioning Agreement) excluding Interactive Rights (as defined in Clause 18 of the Commissioning Agreement) Net Receipts will be defined as per the commissioning agreement but generally shall be gross distribution revenues less distribution and other expenses including:

- (i) All residual/clearances payments not included in the agreed budget/fixed price plus customary distribution costs which in the case of interactive/telephony are set out in the Commissioning Agreement.
- (ii) 4 Ventures distribution commission (where applicable). (iii) Overspends recoverable by Channel 4/the Producer
- (iv) Any 4 Ventures Limited advance may be recouped by 4 Ventures Limited but shall be treated as an advance of Net Receipts in the hands of the Producer insofar as it is not applied to (i) (ii) (iii) and any approved deficit.

In respect of Interactive Rights Net Receipts shall be dealt with in accordance with Clause 18 of the Commissioning Agreement.

Channel 4 shall be entitled to shares of Net Receipts as follows:

- (a) In respect of Core Rights until expiry of the Licence Period or any extension thereof
50%
Thereafter
- (b) In return for waiving, at Channel 4's total discretion, the holdback relating to Core Secondary Transmission Rights (as defined in the commissioning agreement) until expiry of the Licence Period or any extension thereof
50%
Thereafter 15%
- (c) In respect of all Secondary Rights the share of Net Receipts shall be 15%

22. UK FORMAT RIGHTS

It is acknowledged that as part of its Core Rights Channel 4 acquires a licence in the Format in the Programme in the UK for a period of 5 years expiring from delivery and acceptance of the last programme commissioned by it based upon the Format. Such licence shall be exclusive during the period of recommissioning as detailed below and non-exclusive thereafter.

Channel 4 agrees that it will not warehouse the Format in the UK and will notify the Producer in writing ("Recommission Notice") within 2 months of first transmission of a programme or, in the case of a series, of the last episode or last programme in such series on the Channel 4 service whether or not it wishes to recommission the programme.

If Channel 4 wishes to recommission the programme/series and both parties agree to do so on a fixed price, non budgeted basis, the parties shall have a 30 day period from receipt of the Recommission Notice in which to agree the Channel 4 Licence Fee and the parties shall thereafter agree a mutually acceptable production schedule for the series/programmes.

If either party hereto does not agree that the programme/series should be contracted on a fixed price, non budgeted basis or the parties have agreed to contract on a fixed price, non budgeted basis but failed to agree what the Channel 4 Licence Fee should be then the Producer shall have a period of 2 months from receipt of the Re- commission Notice to prepare and submit a full budget for such

programme/returning series. The Channel 4 Licence Fee for such programme/returning series shall thereafter be negotiated in good faith for up to three months commencing on the date a full budget is received by Channel 4 ("the Negotiating Period"). The Channel 4 Licence Fee negotiations shall take into account the price paid for the preceding programme/series, the number of programmes being commissioned in comparison to the previous series, cast breakages (Channel 4 will expect ongoing options to be negotiated with cast/talent as appropriate), union rates, increases in national insurance and RPI. If, on expiry of the Negotiating Period, a price has not been agreed it may be extended by either side in writing in exceptional circumstances to allow for a further 3 months bona fide negotiation. Finally, on expiry of the Negotiating Period or the extension taking into account the factors above and provided that both parties have acted reasonably and have negotiated in good faith the Producer shall then be entitled to exploit the Format in the UK 12 months after expiry of the Negotiating Period or extension.

All such periods referred to above may be extended by Channel 4 and/or the Producer if it is necessary to wait for the availability of talent.

In the event that Channel 4 does not wish to recommission programmes based upon the Format, the Producer shall then be at liberty to exploit the Format in the UK following expiry of a 12 month period from first transmission of the programme or, in the case of a series, of the last episode or last programme in such series on the Channel 4 service.

In the event Channel 4 does not wish to recommission programmes based upon the Format Channel 4 shall be entitled, in perpetuity, to receive a 15 per cent share of net receipts (which shall either be the Format licence fee paid by the relevant production company, or, in the event the production is made by the Producer, or an affiliated company, the net receipts shall be deemed to be 3% of the Production Budget) derived from exploitation of the Format in the UK.

23. DEFICIT FINANCING, NON COMMERCIAL FUNDING

- (a) It may be necessary for deficit finance (excluding Sponsorship in respect of which the provisions of Channel 4's Sponsorship Code will apply) to be found in order for a commission to proceed. All such cases will be subject to individual negotiation, and in all cases Channel Four's Commercial Affairs Department will wish to ensure that the deficit financing is secured prior to advancing cash flow to a production.
- (b) Channel 4 is unwilling to cede to third party financiers any of its editorial control or input. Producers must also keep in mind the provisions of the ITC Code of Programme Sponsorship by virtue of which, for the purpose of that Code, a programme may be deemed to be 'sponsored' if funds are provided other than by a broadcaster or television producer. Such matters arising from the ITC Code are separate from and not to be confused with Channel 4's Sponsorship Code referred to in paragraph 6 and above.

24. DEFAULT

Unfortunately, there may be occasions when Producers will materially default upon the obligations contained in the Channel 4 commissioning agreement. Should such a situation arise, Channel 4 will normally have the option of either taking over the production or ceasing production and taking appropriate action in accordance with the terms of the commissioning agreement, which provide for Channel 4 to have adequate security for funds advanced to producers.

25. THE INDEPENDENT PRODUCTION TRAINING FUND

Both Channel 4 and PACT expect independent producers to contribute towards the training of the industry's production work force. Accordingly all independent producers commissioned, including those who are not members of PACT, are required, unless they specifically opt out in writing to PACT and Channel 4, to contribute a sum equivalent to 0.25% of total budgeted direct and overhead production costs (excluding production fees specific and general contingencies and completion guarantee fees) or the Licence Fee in the case of a Fixed Price deal up to a ceiling of £8,750 per production contract, to the Independent Production Training Fund to be used for television and feature film training purposes.

As requested by PACT Channel 4 will make the appropriate deduction from the final tranche of the agreed payment schedule and will remit this sum to the Independent Production Training Fund, which is administered by PACT, on behalf of the independent production sector.

26. PERIODIC REVIEW

The arrangements outlined in this document, which have been developed in consultation with the independent production sector, are aimed at meeting the mutual long-term requirements for both that sector and Channel 4, and will continue to be subject to periodic review and be subject to regular discussion and consultation.

27. INTERPRETATION

The contents of these Terms of Trade including the Introduction and the Appendices, are issued to illustrate Channel 4's approach to commissioning programmes and negotiating for the supply of commissioned programmes from the independent production sector. Nothing in these Terms of Trade may be used in interpreting the provisions of any contract or agreement exchanged between Channel 4 and the Producer as an outcome of the commissioning process.

APPENDIX I

List of other Documents, updated by Channel 4 from time to time as necessary and available to independent Producers on request:

1. STANDARD COMMISSIONING AGREEMENT - including
Schedule of Terms, Programme Specification,
Form of Laboratory/Facilities House Letter, Form of Inducement Letter,
Technical Requirements for Commissioned Programmes
and General Terms of Agreement
2. EDITORIAL SPECIFICATION
3. CREDIT GUIDELINES
4. SPONSORSHIP GUIDELINES
5. TECHNICAL REQUIREMENTS FOR PURCHASED PROGRAMMES
6. PROGRAMME AS COMPLETED FORM
7. COMPLIANCE MANUAL

Terms of Trade 2004

124 Horseferry Road, London SW1P 2TX Telephone: 020 7396 4444