

TG4
TERMS OF TRADE

INTRODUCTION

These Terms of Trade are incorporated in all Programme Commissioning Contracts and are thereby legally binding on Producers, who enter into such contracts with TG4. Producers are referred to the TG4 Producers Guidelines which although of no legal effect, Producers may find useful as a background to these Terms of Trade. The Terms follow the order of TG4's Guidelines. The words and phrases used in these Terms of Trade are defined in paragraph 26.

1. PROGRAMME SPECIFICATION AND PRODUCTION SCHEDULE

1.1 The Producer undertakes to produce the Programme for the Budget in accordance with the provisions of the Programme Commissioning Contract in accordance with the Production Schedule and the Producer undertakes to deliver to TG4 the Delivery Material by the Delivery Date.

1.2 The Programme shall incorporate the Essential Elements and be produced at the Locations and Studios specified (if any) in the Programme Commissioning Contract in accordance with the Technical Specifications.

1.3 No substitution amendment or alteration or subtraction from any of the Essential Elements of the Programme or any contract with any person designated as an Essential Element shall be made without the prior written consent of TG4.

2. BUDGET AND CASHFLOW

2.1 Subject to the fulfilment of the terms of the Agreement and provided no Event of Default shall have occurred TG4 undertakes to pay the Producer on signature of the Agreement the percentage of the Budget specified as payable on signature in the Programme Commissioning Contract and to pay the balance in accordance with the Cashflow Schedule.

2.2 TG4 shall not be liable to pay any sums pursuant to the Cashflow Schedule if the Producer shall not have supplied cost reports detailing all expenditure up to the relevant date and detailed estimates of costs to completion of the Programme and a copy of the relevant statements relating to the Production Account.

2.3 The final instalment specified in the Cashflow Schedule shall not be payable until TG4 shall have received satisfactory delivery of all Delivery Material together with the final cost statements copies of reconciled and approved bank statements and any other documentation specified in the Programme Commissioning Contract.

2.4 The Producer warrants that the Budget includes agreed development costs where appropriate and with all direct costs of the Programme approved by TG4 which shall include by way of overhead only those reasonable overhead

costs permitted in accordance with paragraph 2.5 and shall include a production fee in accordance with paragraph 5 as well as insurance legal and other fees and contingencies in accordance with paragraph 6,7,8 and 9 and will be sufficient to enable the Producer to complete and deliver the Programme to TG4 in accordance with the obligations undertaken by it in the Agreement.

2.5 The Producer acknowledges that the calculation of overhead expenses has been effected so as to relate solely to the overhead expenses in relation to the production of the Programme and not the general overhead expenses of the Producer or the start-up general maintenance administration compliance and other expenses incurred by companies.

3. PRODUCTION ACCOUNT

3.1 The Producer shall establish a Production Account for the Programme which shall identify the Programme by name.

3.2 All withdrawals from the Production Account shall be made solely in connection with the production of the Programme in accordance with production reports delivered by the Producer to TG4 and shall be authorised only by an approved representative of the Producer or the Production Representative.

3.3 The Producer shall issue irrevocable directions in writing to the bank at which the Production Account is maintained requiring the bank to provide to TG4 or its Production Representative copies of bank mandate, statements and all other documents relating to the account. The Producer shall also ensure that the terms of the bank mandate permit the Production Representative to give notice to the bank and assume sole control of expenditure from the Production Account. The Producer shall ensure that such bank executes such form of letter or other confirmation as required by TG4:-

3.3.1 excluding such bank's exercise of any contractual right of set-off in relation to money in the Production Account;

3.3.2 agreeing to provide to TG4 and/or its Production Representative any information or documentation required in relation to the Production Account;

3.3.3 agreeing immediately on receipt of any request from TG4 or its Production Representative to suspend the operation of the Production Account and permit no further withdrawals without express written confirmation from TG4 or its Production Representative.

3.4 All sums made available by TG4 and/or maintained in the Production Account shall be held on trust for TG4 and the Production Account shall be operated in isolation from any other account of the Producer or its Associates. All payments from the Production Account shall be made solely in connection with the production of the Programme and shall be in accordance with the overall Budget and the Cashflow Schedule specified in the Programme Commissioning Contract. No payment shall be made to any Associate of the

Producer except as expressly provided in the Budget. Any money facilities or services not applied in full accordance with this provision shall without prejudice to any rights of TG4 at law or under the Agreement be repayable and/or returnable to TG4 immediately on demand.

3.5 No money other than money which is to be applied towards the production of the Programme shall be maintained in the Production Account and the Producer shall not permit money remitted to such account to be commingled with any other money belonging to the Producer or its Associates or transferred to any other account of the Producer or its Associates.

3.6 The Producer acknowledges and undertakes to procure that sums from time to time held to the credit of the Production Account are not and shall not constitute assets of the Producer and shall not be available to the Producer or its creditors in the event of cessation of trade liquidation insolvency appointment of receiver or liquidator or other officer in relation to the Producer.

4. PRODUCTION CONTRACTS

4.1 All Production Contracts shall be effected on the best reasonably obtainable arms length commercial terms and shall contain a provision permitting any party nominated by TG4 (such as for example a completion guarantor) to exercise all rights exercisable by the Producer pursuant to such Production Contracts. If TG4 requests executed copies of any Production Contract it shall be entitled to receive these within 14 days from request.

4.2 The remuneration payable pursuant to the Production Contracts shall not exceed the amounts allocated in the Budget and shall not be payable before the date specified in the Production Schedule.

4.3 Repeat fees residuals or rerun fees should be wholly exceptional and should be reserved only for professional performers and writers who are members of Actors Equity The Musicians Union and the Society of Irish Playwrights where Agreements made between TG4 and these professional organisations may provide for the payment of such residual fees.

4.4 All Production Personnel and the owners of all rights of copyright and other rights in and to any literary dramatic musical or artistic material used or produced in relation to the Programme shall have irrevocably and unconditionally waived all moral rights to which such persons may be entitled under any legislation now existing or in future enacted in any part of the world and all performers and other consents permissions and licences required pursuant to any laws in any part of the world in relation to the Programme in respect of the rights granted in the Agreement to TG4 shall have been irrevocably and unconditionally granted to the Producer and its or their successors assignees and licensees.

4.5 All persons whose names likenesses or biographies appear in the Programme or any material connected with it shall have consented to the exploitation of the Programme and all subsidiary ancillary and merchandising

material incorporated or derived from the Programme throughout the world without restriction or limitation other than the payment of residual and repeat fees and payments if any permitted pursuant to paragraph 4.3.

4.6 All agreements relating to the use of any copyright material which is owned by third parties and is to be used in or in relation to the Programme shall be on such terms as to permit the exploitation of the Programme in the Pre-Paid Media without further payment and in all other media by any manner or means throughout the world for the full period of copyright. The Producer agrees that all agreements relating to the use of commercial records tapes or CDs and any other material of whatever nature in the Programme shall be subject to the prior approval of TG4 before execution.

4.7 The Producer shall not pledge the credit of TG4 or hold the Producer out as TG4 's agent in any of its dealings in connection with the Programme or otherwise.

4.8 The Producer shall ensure that the Production Contracts for all individuals whose names are listed as Essential Elements shall contain provision requiring them subject to their notified prior professional commitments to make up to 2 personal appearances each at such events as may be designated by TG4 relating to the advertising and/or publicity of the Programme without fee and subject only to the reimbursement by TG4 of their reasonable pre-approved expenses. The Producer shall at the request of TG4 exercise the contractual rights of the Producer to secure the personal appearance of all relevant individuals at all such events designated by TG4.

5. PRODUCTION FEE

5.1 Subject to paragraphs 5.2 and 5.3 the Producer shall be entitled to deduct and retain the Production Fee out of sums forming part of the Budget in the instalments and on the dates specified in the Programme Commissioning Contract in accordance with the Cashflow Schedule.

5.2 The Producer acknowledges that the Production Fee specified has been fairly calculated with reference to a number of variable factors including the volume of work undertaken from time to time by the Producer for TG4 any financial contribution made by the Producer towards the Programme the complexity duration and scale of the Programme and the originator of the concept for the Programme.

5.3 The Producer shall not be entitled to receive any part of the Production Fee if it has not complied with the provisions of paragraph 2.2.

5.4 The final part of any Production Fee shall not be payable until TG4 shall have received all items referred to in paragraph 2.3 and if such items are not delivered to TG4 the Producer shall repay to TG4 on demand all sums paid to the Producer by way of Production Fee.

6. INSURANCE

6.1 The Producer undertakes to effect standard production insurance in relation to the Programme in accordance with these Terms of Trade. The Producer shall have the right to participate in any overall production insurance scheme arranged from time to time by TG4 but shall be free not to participate in such a scheme provided that the Producer shall obtain comparable cover for a comparable premium which shall in each case be subject to the prior approval of TG4. The cost of all approved insurance premiums shall be included in the Budget.

6.2 Adequate insurance cover shall be effected by the Producer for the Programme in relation to cast negative faulty stock/tape props sets wardrobe equipment extra expense third party property damage office contents together with such other insurances which might reasonably be required by TG4 or by law and general liability in such amounts as shall be necessary to provide full cover to TG4 for all sums advanced by TG4 in relation to the Programme.

6.3 TG4's interest shall be noted as named assured and loss payee on all policies of insurance relating to the Programme.

6.4 Copies of all insurance policy documentation shall be provided to TG4 on request and all premiums in relation to insurance policies shall be paid by the Producer which shall notify TG4 of any claim relating to any policy of insurance which claim shall not be settled without the consent in writing of TG4.

6.5 The Producer shall cooperate fully with TG4 and take all such actions as may be required by TG4 in relation to any insurance claim. No provision relating to any insurance policy may be varied or waived without the prior written consent of TG4.

7. LEGAL FEES

7.1 The Producer undertakes to consider the extent to which legal advice may be required in relation to the Programme and to obtain all necessary legal advice and act prudently in accordance with it.

7.2 To the extent the costs of obtaining legal advice exceed the amount provided in the Budget the Producer shall be responsible for paying the same out of the Production Fee or the Producer's other resources.

7.3 The Producer acknowledges that the amount allocated in the Budget towards legal fees is not intended to make full provision for all legal fees which may be incurred by the Producer. Some of these expenses form part of the Producer's general Programme-related expenditure and are payable out of the Production Fee and some of which fall to be paid out of the Producer's own resources (such as legal fees in relation to the incorporation of the Producer, or the Programme Commissioning Contract or assistance with general industry matters).

8. TRADE ASSOCIATION FEES

TG4 undertakes with the Producer that it will from time to time at its discretion provide reasonable assistance to trade associations in collecting fees payable to them or their members provided that such fees shall not be an additional charge on the Budget and provided further that the Producer shall sign and/or procure the signature by all relevant persons of all relevant directions required by TG4.

9. CONTINGENCIES

The Producer acknowledges that any contingency element of the Budget is not provided in the Cashflow Schedule and will not be made available unless it is needed. If the contingency element of the Budget is not needed it shall be retained entirely by TG4. The Producer undertakes to use its best endeavours to avoid expending contingency money.

10. OVERSPENDS

10.1 If at any stage in production it appears likely that the Cost of Production of the Programme is likely to exceed the Budget or the production of the Programme is or is likely to fall behind the Production Schedule the Producer shall give immediate notice in writing of all relevant particulars to TG4 which undertakes to meet with the Producer in order to examine how the situation might be resolved.

10.2 In the event of actual or potential overspend the Producer shall prepare and submit to TG4 full particulars of all costs incurred and all liabilities likely to be incurred in order to complete the Programme together with detailed revisions to the Production Schedule and the Budget for the Programme and shall meet with TG4 and follow all instructions of TG4 in relation to the production of the Programme.

10.3 The Producer shall pay all costs and liabilities incurred in connection with production and delivery of the Programme including without limitation the Cost of Production and if any costs are incurred in connection with the Programme which are in excess of the Budget then unless it is otherwise expressly stated in the Programme Commissioning Contract the Producer shall pay any overspend first from underspend in other areas of the Budget second from any contingency money advanced third from the Production Fee and the Producer's other resources.

10.4 In the event that TG4 agrees to contribute towards the cost of any overspend the Producer acknowledges that TG4 shall have the right to specify the manner in which such contribution is recouped from receipts or profits or other revenue derived from the Programme.

11. SHARE OF SAVINGS

11.1 The Producer acknowledges that where Surplus Funds arise in relation to any Programme such Surplus Funds may be due solely to the economy and good

management of the Producer or may be due to other matters. The Producer acknowledges that the Producer's entitlement to share in the percentage of Surplus Funds specified in the Programme Commissioning Contract shall be determined by TG4 at its discretion.

11.2 The elements to be applied by TG4 at its discretion in determining the Producer's entitlement to share in Surplus Funds may include the following:-

11.2.1 TG4 must be satisfied that there has been no unjustified reduction in the cost of any Budget item incurred or any reduction or change in the editorial and production value of the Programme as contained in the programme proposal;

11.2.2 TG4 may require a "cap" to be placed on the amount of the Producer's participation in Surplus Funds in the case of a large Budget or long-running production or where a Budget has been produced at speed or without sufficiently detailed programme specification or where there is potential for savings in excess of those which might normally be achieved solely by economy or good management;

11.2.3 any provision made for specific items which are anticipated in order to complete and deliver the Programme but which are not required will not form part of Surplus Funds;

11.2.4 any provision made in good faith in the Budget which proves to have been wholly unnecessary or substantially reduced due to matters other than the Producer's economy and good management shall not normally form part of the Surplus Funds.

11.3 Where the Cost of Production of the Programme is less than the Budget any Surplus Funds including without limitation any money received from the sale of props or other physical materials shall be held on trust for TG4 and be repaid to TG4 on the date of delivery or within 14 days from the date of such surplus arising if later. All unsold physical materials shall remain the property of TG4.

12. SPONSORSHIP

12.1 The Producer undertakes that it shall not approach or enter into discussions or reach any agreement with any sponsor without the prior written consent of TG4.

12.2 The Producer shall not accept the free provision of goods or services from any person in relation to the Programme or otherwise feature any goods or services in a prominent position in the Programme without the consent of TG4. Any such goods or services shall be the sole property of TG4 and the same (or their open market monetary value) shall be made available to TG4 on demand.

12.3 The Producer shall comply with TG4's Sponsorship Guidelines and Regulations as from time to time issued and amended and shall in particular obtain the prior approval of TG4 in relation to any acknowledgements or

benefits of any kind which may be required by any Programme or event sponsor or any other organisation connected with the Programme.

13. COMPLETION GUARANTEES

13.1 TG4 shall have the right to appoint a completion guarantor in relation to the Programme. The Producer undertakes promptly to enter into all contractual arrangements and security arrangements which the completion guarantor and/or TG4 may require and to co-operate fully with the completion guarantor and provide all information and assistance reasonably required in order to procure the timely completion and delivery of the Programme.

13.2 Any rebates in relation to completion guarantee fees shall not constitute Surplus Funds and shall be repaid to TG4 in full.

14. EDITORIAL CONTROL

14.1 Final editorial control of the Programme shall be the responsibility of TG4 which shall be entitled at its sole discretion and cost following consultation with the Producer (subject to the provisions of paragraph 16) to make such changes deletions or additions to the Programme as it may require. If the Producer objects to such changes its sole remedy shall be to require the production and the Producer's credit to be removed from the Programme.

14.2 The Programme shall comply with all applicable laws and regulations relating to the production of television programmes and with all guidelines relating to the Irish language and other matters from time to time issued by TG4.

14.3 The Producer undertakes as a material obligation to produce the Programme to the highest available standards so as to ensure that it is suitable for television exploitation.

14.4 The Programme shall be filmed or videotaped and recorded in the Irish language provided that the Programme may contain elements which are not in the Irish language where the creative criteria of the Programme reasonably so determine.

15. PRODUCTION MONITORING

15.1 TG4 shall have the right to monitor production of the Programme both editorially and financially and shall have the right to designate persons as Production Representatives in relation to the Programme. The Producer shall ensure that the Production Representatives shall be afforded access to all relevant personnel associated with the production of the Programme and all Locations and Studios and shall be provided with all information requested by such Production Representative or TG4 in relation to the production of the Programme. The Producer shall procure that all Production Personnel shall attend such reasonable number of meetings as TG4 or its representative may request at such reasonable venues to discuss any matters in relation to the Programme.

15.2 The Producer shall procure that each Production Representative is provided with copies of all documentation and information requested and shall provide details of all dates times and locations of screening of rushes rough cuts and previews of the Programme and shall respond within 24 hours to any requests from the Production Representative for information and shall within such period provide TG4 with all information that is available and indicate what steps are being taken to obtain additional information.

15.3 The Producer shall deliver cost reports and cashflow schedules in such form as TG4 or its Production Representative may require in support of each invoice which is submitted for payment to TG4 and at such other times as TG4 may request provided that the Producer shall have 5 days notice to prepare and present cost reports to TG4 in such form as may be notified to the Producer at the time or before the request is made.

16. COSTS OF EDITING CHANGES

If TG4 requires the Producer to carry out additional work as a result of TG4's editorial decisions communicated to the Producer after approval of the fine-cut/off-line edit of the Programme TG4 shall pay for all necessary costs of such additional work provided that the Programme as made otherwise complies with the provisions of the Agreement.

17. COPYRIGHT AND BROADCAST RIGHTS

17.1 All Delivery Material and all other material relating to the Programme shall vest in TG4 with effect from creation and shall remain in the ownership of TG4 its successors assignees and licensees in perpetuity. The Producer as the maker of the Programme hereby grants and assigns to TG4 (including where applicable by way of present assignment of future copyright) the copyright in the Programme in the Territory for a period commencing on the date of the Agreement and terminating 5 years and 7 days from the date of initial broadcast of the Programme. Thereafter the copyright shall revert to the Producer unless otherwise agreed between the parties hereto.

17.2 The Producer warrants that TG4 shall have unrestricted Television rights in the Programme in the Territory for a term of 5 years and 7 days from and including the date of initial broadcast of the Programme. The Producer agrees also to negotiate with TG4 at its request in regard to any proposed broadcast of the Programme after the expiry of the 5 year and 7 day term referred to.

17.3 Without prejudice to any other rights granted to TG4 the Producer agrees and acknowledges also that TG4 may at any time including after the expiry of the said term of 5 years and 7 days;

17.3.1 broadcast and televise or cause or authorise to be broadcast or televised extracts from the Programme provided the duration of each extract does not exceed 5 minutes. Without limitation such rights shall service pre programme publicity pre and post broadcast comment and review archival historic educational news and current events programmes.

17.3.2 broadcast and televise or cause or authorise to be broadcast the Programme or extracts thereof for use solely for the purposes of education or research.

17.4 For the purpose of calculating the liability if any of TG4 and or the Producer to make payments to Production Personnel of the type referred to in paragraph 4.3 a single broadcast shall be deemed to include all broadcasts of the Programme from transmitters controlled or available to TG4 whether simultaneous or non-simultaneous occurring within a 7 day period.

17.5 The Producer confirms that the use by TG4 of the Programme for test transmission purposes whether before or after TG4 commences broadcasting shall not constitute a broadcast for the purposes of the Agreement.

18. CREDIT CENSORSHIP AND CONTENT

18.1 The Programme shall contain such form of screen credit for the Producer as may be specified by TG4 in the Programme Commissioning Contract and any credit required by TG4 in relation to any executive producer. No other screen credits shall be permitted in relation to the Programme other than those expressly required pursuant to the Production Contracts and approved by TG4.

18.2 The audio-visual logo of TG4 from time to time shall be inserted at the beginning of the opening credit sequence and at the end of the final credit sequence of the Programme.

18.3 The Programme shall comply with all contractual credit obligations owed towards third parties and shall also contain notice naming TG4 as the copyright owner.

18.4 No casual or inadvertent failure on the part of TG4 or any third party to comply with the credit provisions of the Agreement shall constitute a breach of the Agreement and the Producer acknowledges that the only remedy for any other breach of any of the credit provisions of the Agreement shall be damages and that the Producer shall not be entitled to injunctive relief for any alleged failure on the part of TG4 or any third party to accord the credit provided for. The Producer further undertakes to procure that a similar provision shall appear in all Production Contracts between the Producer and the Production Personnel.

19. DISTRIBUTION ADVERTISING AND PUBLICITY

19.1 The Producer grants to TG4 the sole exclusive irrevocable right to distribute and exploit the Programme in the Territory for a period of 5 years and 7 days from the date of initial broadcast of the Programme in Ireland by any manner or means and in any and all media. The Producer agrees also to negotiate with TG4 at its request in regard to any proposed broadcast of the Programme after the expiry of the 5 year and 7 day term referred to above.

19.2 TG4 shall have the sole right to collect and receive 100% of receipts arising in respect of the Programme in the Territory and TG4 undertakes with the Producer to pay the Producer the percentage of Net Profits provided in paragraph 20.1 and to comply with the accounting provisions specified in paragraphs 20.2 and 20.3.

19.3 The Producer acknowledges that TG4 shall have complete authority and control over the distribution and exploitation of the Programme in all media throughout the world but TG4 undertakes to consult with the Producer and give good faith consideration to the Producer's views in relation to such exploitation.

19.4 Following Delivery of the Programme the Producer shall give all necessary assistance and directions to TG4 in order to enable TG4 to export the Programme and apply for industry subsidies or quotas or similar matters and to confirm title in the Programme and/or Delivery Materials.

19.5 The Producer shall not have the right to issue or make any arrangements for any advertising or publicity relating to the Programme nor shall the Producer have the right to engage any unit publicist press officer or other advertising or public relations personnel in respect of the Programme without the prior written consent of TG4.

19.6 TG4 shall have the right to make arrangements for press and publicity personnel and photographers to take photographs carry out interviews and perform other press and publicity-related activities during the production of the Programme at the Studios or in any other location and the Producer undertakes and agrees not to allow or permit any person to take any photograph or make any recording or interview or carry out any publicity or public-relations activity involving any of the Production Personnel whether in the Studios or otherwise without the prior written consent of TG4.

19.7 The Producer undertakes and agrees to render such advertising and publicity services in relation to the Programme as may reasonably be required by TG4 subject to reimbursement to the Producer of its reasonable pre-approved expenses.

20. NET PROFITS AND ACCOUNTING

20.1 Subject to the full and timely performance by the Producer of its obligations in the Agreement TG4 undertakes to pay the Producer that percentage of Net Profits derived by TG4 in relation to the Programme specified in the Programme Commissioning Contract.

20.2 TG4 will render to the Producer within 45 days after 31 March 30 June 30 September and 31 December in each year a statement of account relating to the preceding three-month period indicating all sums due to the Producer in accordance with the provisions of the Agreement and each statement shall be accompanied by the payment of the amount indicated by such statement to be owing.

20.3 The first of the accounting statements shall be rendered at the end of the first full period immediately following the first release of Programme and shall be deemed to be binding on the parties to the Agreement unless the Producer shall within 90 days from receipt of any statement request that it be certified by the auditors of TG4. Such certification shall be at the cost and expense of the Producer and shall be final and binding on the parties to the Agreement.

21. OBLIGATIONS AND WARRANTIES

The Producer warrants undertakes and agrees with TG4 that :-

21.1 the Agreement constitutes a legal valid and binding obligation enforceable against the Producer in accordance with its terms;

21.2 prior to the assignment of copyright and other rights granted in the Agreement to TG4 the Producer was the sole absolute unencumbered legal and beneficial owner of the Programme and the Delivery Material and had acquired all rights in and to the same free from any and all liens claims and encumbrances subject only to the rights in respect of the music and lyrics contained in the Programme of IMRO;

21.3 nothing contained in the Programme or the Delivery Material shall infringe any right of copyright right of trademark right of privacy right of publicity or any other right of any other nature of any person firm or company or be obscene or libellous or blasphemous or defamatory and all agreements relating to the use of commercial records tapes or CDs and any other material of whatever nature in the Programme shall be subject to the prior approval of TG4 before execution;

21.4 the Producer has acquired or shall on Delivery have acquired the irrevocable right to use the names professional names likenesses and biographies of all Production Personnel and to use their voices and any photographs or recordings of the Production Personnel in the Territory for the full period of copyright and all other rights in the same including all renewals reversions and extensions for the purpose of exploiting the Programme under the Agreement together with the sole and exclusive merchandising rights in and to the services and the product of the services of the Production Personnel in connection with the Programme;

21.5 the Budget referred to in the Programme Commissioning Contract shall be a complete bona fide accurate estimate of the total cost of production of the Programme to which it relates and includes adequate provision for all expenses relating to the Programme including without limitation any and all costs relating to music and other licences and pre-release publicity public relations expenses and interest charges and will be sufficient to enable the Producer to complete and deliver the Programme to TG4 in accordance with the obligations undertaken by it in the Agreement;

21.6 the Producer shall enter into Production Contracts in respect of the Studios and Locations and all other Production Contracts in a timely manner in accordance with the Production Schedule for the Programme;

21.7 the Producer undertakes to adopt and enforce employment policies consistent with equal opportunities legislation and to engage a professionally competent crew for the production of the Programme in accordance with normal industry arrangements and in compliance with relevant legislation and regulations;

21.8 the Producer shall on demand make available to TG4 copies of all contracts clearances agreements and other matters relating to the production of the Programme and acknowledges that TG4 is placing reliance on the Producer's warranties in the Agreement;

21.9 the Producer undertakes to ensure that TG4 is advised and appraised of any potential legal problems well in advance of transmission of the Programme and in advance of approval of final cut of the Programme in order that appropriate steps may be taken to avoid potential liability;

21.10 in the event of any claim dispute action writ or summons arising from or in connection with the Programme the Producer and TG4 agree to provide full details to the other party at the earliest opportunity and shall not settle any such matter without first consulting the other party provided however that in respect of an allegation of defamation or contempt of court being made then TG4 shall be entitled to deal with the matter as it may wish;

21.11 the Producer will be the sole "author" and maker of the Programme within the meaning of the Copyright Act 1963 and shall at all material times during the production of the Programme be a qualifying person within the meaning of such Act;

21.12 the Producer has acquired all rights of copyright and other rights necessary for the production distribution exhibition advertising and exploitation of the Programme in any and all media by any manner or means in the Territory for the full period of copyright protection and all fees and payments of whatever nature required to procure full exploitation of the Programme for the Pre-Paid Media (other than fees permitted pursuant to paragraph 4.3) have been paid save where expressly indicated in the Budget or where the approval of TG4 has been given;

21.13 the Programme and the Delivery Material shall be high quality Irish language television programme and shall be of first class technical quality suitable for commercial exploitation and shall comply with all screen and advertising credit obligations and other obligations to third parties;

21.14 each part of the Programme shall be protected under statutory and common law copyright in all countries adhering to the Berne Convention and the Universal Copyright Convention and any other relevant convention and prior to the assignment herein to TG4 the Producer was the sole and unencumbered

legal and beneficial owner of the Delivery Material and all rights in the Programme;

21.15 the Programme shall at all times during production contain and comply with the Essential Elements;

21.16 the Producer shall not alter or permit the alteration of any screenplay or shooting script or other literary material which has been approved by TG4 in any way which might materially alter the nature or character of the Programme or change the title of the Programme without the prior written consent of TG4 ;

21.17 the Producer shall make all payments due to persons who are entitled to payment in respect of services or goods or facilities rendered or provided or rights granted in respect of the Programme in a timely manner;

21.18 no fees shall be payable to TG4 in respect of any musical work contained in the Programme otherwise than to IMRO in respect of the broadcast by TG4 of the said musical work;

21.19 nothing shall be contained in the Programme which might breach any duty of confidence or constitute a contempt of court or contravene the provision of any statute including any provisions of Broadcasting Authority Acts 1960-1993 or regulations made pursuant to such Acts;

21.20 the Producer shall at all times before and after Delivery comply with the provisions of all Relevant Union Agreements relating to the Programme;

21.21 the Producer shall not without the prior written consent of TG4 disclose reveal or make public any information of whatever nature in connection with the business of TG4 the Programme or the Programme Commissioning Contract all of which shall be treated by the Producer on a strictly confidential basis and the Producer shall procure the strict observance of this paragraph 21.21 by the Production Personnel and all persons contracted by the Producer in relation to the Programme;

21.22 following Delivery the Producer shall hold on trust for TG4 all props plant machinery and other physical material of whatever nature acquired or created by the Producer in relation to the Programme and the Producer undertakes that it shall deliver and/or make such material available to any third party nominated by TG4 and undertakes to keep all such material in a safe and secure place and in good repair and condition and agrees to keep all such material fully insured upon terms which provide that TG4 shall be the sole loss payee it being understood that the approved cost of such insurance shall be borne by TG4.

21.23 the Producer undertakes to indemnify TG4 and keep TG4 at all times fully indemnified from and against all actions proceedings claims demands costs (including without prejudice to the generality of this provision legal costs of TG4 on a solicitor and own client basis) awards damages however arising directly or indirectly as a result of any breach or non-performance by the Producer of any of the Producer's undertakings warranties or obligations under the Agreement.

22. BOOKS AND RECORDS

22.1 The Producer warrants that it has made full and fair disclosure to TG4 of all financial and contractual arrangements relating to the Programme and in relation to all rights and interests of the Producer and its Associates in respect of property rights services or facilities used in relation to the Programme.

22.2 The Producer undertakes and agrees to maintain full accurate and proper records and books of account relating to the production of the Programme together with all invoices vouchers receipts and other records evidencing expenses and charges incurred in the production of the Programme. The Producer undertakes to keep and maintain such production records for the period of 3 years following delivery of the Programme or such longer period as may be requested by TG4 if such request is made before the expiry of such period.

22.3 TG4 shall have the right at any time on reasonable prior notice to inspect audit and take copies of all books and records relating to the Programme.

22.4 The Producer undertakes within 60 days of Delivery of the Programme to submit to TG4 a fully itemised detailed statement of the Cost of Production of the Programme certified at the request of TG4 by a firm of accountants approved by TG4 and containing a detailed itemisation of all sums actually expended for the production of the Programme. Where a Programme is part of a series of Programmes the period above referred to shall be calculated with effect from Delivery of the last Programme in each batch or group designated by TG4 for accounting purposes.

22.5 The statement of the Cost of Production of the Programme shall be accompanied by a completed Programme Information Archive Form containing details of the identity addresses and relevant terms of contractual engagement of all persons who may be entitled to receive equitable remuneration in relation to the Programme pursuant to the terms of all relevant legislation implementing European Community Directive 92/100.

23. DETERMINATION

It shall constitute the repudiation by the Producer of its obligations under the Agreement and TG4 shall be entitled to accept such repudiation determining TG4's obligations and the Producer's rights under the Agreement by written notice if :-

23.1 the Producer is in breach of any material term of the Agreement which is incapable of remedy or if capable of remedy is not remedied within 7 days of receipt by the Producer of notice in writing from TG4;

23.2 any of the Producer's representations in relation to the Agreement shall prove to have been incorrect when made or become materially incorrect if such

representations would not have been made by any reasonable Producer with the same knowledge at that time;

23.3 the Producer transfers disposes of or threatens to transfer or dispose of any part of its assets which is likely in the reasonable opinion of TG4 to prevent or materially to inhibit the performance by the Producer of its obligations under the Agreement;

23.4 any indebtedness guarantee or similar obligation of the Producer or of any guarantor of the Producer becomes due or capable of being declared due before its stated maturity or is not discharged at maturity or the Producer or any guarantor of the Producer defaults under or commits a breach of the provisions of any guarantee or other obligation (whether actual or contingent) of any agreement pursuant to which any such indebtedness guarantee or other obligation was incurred all or any of which shall in the reasonable opinion of TG4 materially affect its rights and entitlements under the Agreement;

23.5 the Producer is declared or becomes insolvent;

23.6 the Producer convenes a meeting of its creditors or proposes or makes any arrangement or composition with or any assignation for the benefit of its creditors or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Producer (save for the purpose of and followed by a voluntary reconstruction or amalgamation previously approved in writing by TG4) or if an encumbrancer takes possession of or a trustee receiver liquidator or similar officer is appointed in respect of all or any part of its business or assets or any distress execution or other legal process is levied threatened enforced upon or sued out against any of such assets;

23.7 before delivery of the Programme control of the Producer shall change without the prior approval of TG4;

23.8 an Event of Force Majeure shall have occurred and shall have continued for 14 days either consecutive or in the aggregate or in the reasonable opinion of TG4 is likely to continue for such period.

24. TAKEOVER

TG4 shall have the right to take over and complete the making of the Programme and exercise the rights set out in paragraph 25 by giving notice in writing to the Producer at any time after the occurrence of any of the following events :-

24.1 TG4 believes in good faith after consultation with the Producer but in TG4's sole discretion that the actual Cost of Production of the Programme is likely to exceed the Budget or the progress of production of the Programme is likely to fall materially behind the Production Schedule;

24.2 the total of the expenditure and liabilities incurred in connection with the production of the Programme at any time exceeds 110% of the budgeted cost (as specified in the Budget excluding the Production Fee and Contingency Funds if any) for the stage of production at which the Programme then is or the production of the Programme falls materially behind the Production Schedule;

24.3 the Producer fails to carry out any reasonable instructions given by TG4 or its Production Representative;

24.4 an Event of Force Majeure occurs and has continued for 14 days either consecutive or in the aggregate or in the reasonable opinion of TG4 is likely to continue for such period;

24.5 an Event of Default occurs or in the reasonable opinion of TG4 is likely to occur.

25. CONSEQUENCES OF TAKEOVER AND/OR DETERMINATION

25.1 Without prejudice to the legal rights of the parties (other than any which conflict with the following provisions) the consequences of determination of the Agreement or the exercise by TG4 of its rights of takeover pursuant to paragraph 24 shall be :-

25.1.1 any sums held by the Producer for the purposes of the Agreement as at determination shall be repaid by the Producer to TG4 on demand and the Producer shall supply to TG4 forthwith a detailed statement of income and expenditure up to the date of determination, with full details of all unpaid debts, and all outstanding commitments for which no invoices have been received;

25.1.2 all parts of the Programme which have been completed and all documents film and sound recordings props plant machinery and other physical material of whatever nature acquired or created by the Producer in relation to the Programme up to the date of determination shall be delivered by the Producer to TG4 or its nominee on TG4's demand;

25.1.3 TG4 or its nominee shall have the right to use all physical properties facilities supplies equipment documents and materials relating to the Programme;

25.1.4 TG4 or its nominee shall have the right to assume supervision and control of the making of the Programme an/or to appoint and contract with any third party to complete the production of the Programme;

25.1.5 TG4 or any person it nominates shall be and is irrevocably appointed the agent of the Producer with absolute discretion and with power for and on behalf of the Producer to exercise or assign any right of the Producer (whether under any contract or otherwise) which is relevant to the making of the Programme;

25.1.6 Upon request the Producer shall execute a formal assignment in favour of TG4 or its nominee in respect of the benefit of any agreements made by the Producer and relevant to the making of the Programme;

25.1.7 The Producer agrees to indemnify TG4 against liability arising from any fraudulent or negligent act or omission by the Producer in the exercise of the Producer's rights provided that if TG4 in its sole discretion determines that it is not economically feasible to effect completion of the Programme it may by notice in writing to the Producer declare abandonment of the production of the Programme.

25.2 In the event of determination following a breach by the Producer if the total cost of completing the Programme in accordance with the Agreement is increased the additional cost shall be paid by the Producer to TG4 either by deduction from any money payable by TG4 to the Producer or as an ordinary debt payable on demand provided nothing contained in this paragraph shall make the Producer liable to pay for any element in the Cost of Production of any Programme if the cost of such element is excessive and such cost was incurred unreasonably by TG4 or its nominee.

25.3 Unless otherwise provided termination of the Agreement shall be without prejudice to the grants of rights and the warranties and undertakings given by either party and all other obligations and indemnities that have arisen or been given prior to termination all of which shall continue in full force and effect after termination notwithstanding that termination has taken place.

26. DEFINITIONS

26.1 The words and phrases referred to in the Programme Commissioning Contract shall be construed in relation to the Programme in accordance with the material particulars set out in the Programme Commissioning Contract and the following words and phrases shall have the following meanings :-

"IMRO"

Irish Music Rights Organisation.

"Agreement"

Any Programme Commissioning Contract in which these Terms of Trade are incorporated and any and all schedules and annexures and exhibits attached to the foregoing or incorporated in the foregoing by reference.

"Associate"

Any company or person directly or indirectly associated with or controlled by the Producer including any subsidiary or holding company or other connected entity.

"Budget"

The Budget annexed as Exhibit 1 to the Programme Commissioning Contract.

“Cashflow Schedule”

The cashflow schedule annexed as Exhibit 2 to the Programme Commissioning Contract.

“Contingency Funds”

Money designated in the Budget as intended for use only in relation to the Contingency Items.

“Contingency Items”

Possible adverse eventualities identified in the Budget including without limitation by way of example only bad weather ill health unplanned travel.

“Cost of Production”

The total direct and indirect cost of the preproduction production post production and delivery of the Programme including without limitation the cost of all development work and the acquisition of all underlying rights.

“Delivery”

Delivery by the Producer of the Delivery Material in accordance with the provisions of the Agreement.

“Delivery Date”

The date specified in the Programme Commissioning Contract.

“Delivery Material”

Those materials in relation to the Programme specified in Exhibit 3 to the Programme Commissioning Contract.

“DIBOR”

Dublin Inter Bank Overnight Rate.

“Distribution Expenses”

All fees and expenses of the Distributor TG4 and their assignees and licensees in relation to the distribution and/or exploitation of the Programme and all payments of whatever nature whether in relation to rights owners performers and other third parties of whatever description which may arise or require to be made in connection with the distribution and/or exploitation of the Programme including without limitation the distribution fees of TG4 which shall not exceed 30% of gross receipts and any and all cash and contingent gross deferments and participations in gross receipts and net profits whether the same shall be in a definite amount or based on a percentage of gross receipts or net profits and whether the same are fixed obligations or are contingent on the receipts of the Programme.

“Distributor”

Any person who enters into any distribution or licensing arrangements with TG4 in respect of the Programme.

“Essential Elements”

Those elements specified in the Programme Commissioning Contract.

“Event of Default”

Any of the events specified in paragraph 23.

“Event of Force Majeure”

Any act or event which is beyond the control of the Producer or TG4 which interferes or is likely to interfere with production of any Programme.

“Locations”

Those locations (if any) specified in the Programme Commissioning Contract.

“Net Profits”

100% of Net Receipts remaining after Recoupment.

“Net Receipts”

100% of all sums actually received by TG4 in respect of the Programme after the deduction of the Distribution Expenses.

“Pre-Paid Media”

Those broadcast rights and other rights referred to in paragraphs 17.2 17.3 and 19.1.

“Producer”

The Producer means the “Producer” named in the Programme Commissioning Contract.

“Production Account”

A separate bank account in the name of the Producer and with the Programme identified by name established under a mandate which stipulates that all sums paid into the account shall be held on trust for TG4.

“Production Contracts”

Any and all agreements entered into by the Producer in relation to any of the Essential Elements the Production Personnel Location the Studio or in any other respect whatever in connection with the Programme.

“Production Fee”

That fee (or those fees) forming part of the Budget which may be specified in the Programme Commissioning Contract.

“Production Personnel”

All principal artists and all personnel who render services or supply goods facilities or finance in respect of the Programme or the Delivery Material.

“Production Representative”

Such person or persons in relation to any Programme as may be appointed by TG4.

"Production Schedule"

The schedule for production of the Programme annexed as Exhibit 4 to the Programme Commissioning Contract.

"Programme"

The programme or programmes which are the subject of the Programme Commissioning Contract.

"Programme Commissioning Contract"

The programme commissioning contract executed by TG4 and the Producer to which these Terms of Trade are attached and in which they are incorporated.

"Programme Information Archive Form"

Such information form as TG4 may from time to time specify.

"Publicity Material"

Publicity material and other material relating to the Programme which TG4 normally requires independent producers to deliver pursuant to commissioning agreements.

"Recoupment"

The recoupment by TG4 of all sums advanced by TG4 towards the production of the Programme together with interest at the relevant average DIBOR rate calculated over the relevant period plus 2½%.

"Relevant Union Agreements"

Any union agreement which may be relevant to the production of any Programme.

"Screen Credit"

Such credit (if any) as may be specified in the Programme Commissioning Contract.

"Studios"

Such studios (if any) as may be specified in the Programme Commissioning Contract.

"Surplus Funds"

Any underspend in relation to the Budget as determined by TG4 pursuant to paragraph 11.

"Technical Specifications"

The technical specifications attached as Exhibit 5 to the Programme Commissioning Contract.

"Television"

All television systems providing for the terrestrial satellite cable MMDS and other technical systems of distribution of television programmes to viewers on a free pay or subscription basis.

“Territory”

All countries of the World.

“Third Party Material”

Any and all material incorporated or proposed to be incorporated in the Programme in respect of which any rights of copyright or other rights of whatever nature are vested in or controlled by third parties.

26.2 Any reference in the Agreement to any statute or statutory provision shall be construed as including a reference to that statute or statutory provision as from time to time amended modified extended or re-enacted whether before or after the date of the Agreement and to all statutory instruments orders and regulations for the time being made pursuant to it or deriving validity from it.

26.3 Unless the context otherwise requires words denoting the singular shall include the plural and vice versa.

26.4 The word “copyright” means the entire copyright and design right subsisting under the laws of Ireland and all analogous rights subsisting under the laws of each and every jurisdiction throughout the world.

26.5 The word “Programme” shall be deemed to include any and all sound recordings included in the soundtrack of the Programme and any and all excerpts from sound recordings and/or other films incorporated in the Programme.

26.6 Unless otherwise stated time shall be of the essence for the purpose of the performance of the Producer’s obligations under the Agreement.

26.7 Unless otherwise stated references to clauses sub-clauses sub-paragraphs schedules annexures and exhibits relate to the Agreement.

27. GENERAL

27.1 Confidentiality

The Producer undertakes to maintain confidentiality in respect of the terms of the Agreement and the Programme Commissioning Contract. This duty of confidentiality shall not preclude the involvement of any professional organisation in representations being made to or discussions taking place with TG4.

27. Notice

27.2.1 Any notice or other document required to be given under the Agreement or any communication between the parties with respect to any of the provisions of the Agreement shall be in writing in Irish and be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at or sent by pre-paid registered or recorded delivery post or by telex telegram cable facsimile transmission or other means of telecommunication in

permanent written form to the address of the party receiving such notice as set out at the head of the Agreement or as notified between the parties for the purpose of this paragraph.

27.2.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:-

at the time the same is left at the address of or handed to a representative of the party to be served;

by post on the day not being a Saturday Sunday or Public Holiday in Ireland two days following the date of posting;

in the case of a telex telegram cable facsimile transmission or other means of telecommunication on the next following day.

27.2.3 In proving the giving of a notice it should be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

27.3 Severability

If any provision of the Agreement shall be prohibited by or adjudged by a Court to be unlawful void or unenforceable such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.

27.4 Force Majeure

Neither party shall be liable to the other for any failure to perform any obligation pursuant to the Agreement which arises as a result of the occurrence of an Event of Force Majeure and neither party shall incur any liability for any expenses or losses direct or consequential or otherwise which may be suffered by the other party as a result of the occurrence of such Event of Force Majeure.

27.5 No Obligation To Broadcast

Nothing contained in the Agreement shall be construed as imposing any obligation on TG4 to broadcast the Programme. In the event that TG4 does not broadcast the Programme then the term of 5 years and 7 days referred to in paragraphs 17.1 and 17.2 of these Terms of Trade and in paragraphs 5.1 and 6.1 of the Programme Commissioning Contract will terminate 5 years and 7 days from the date of the Agreement.

27.6 Entire Agreement

The Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understanding whether written or oral appertaining to the subject matter of the Agreement and may not be varied except by an instrument in writing signed by all of the parties to the Agreement.

27.7 Waiver

No failure or delay on the part of any of the parties to the Agreement relating to the exercise of any right power privilege or remedy provided under the Agreement shall operate as a waiver of such right power privilege or remedy or as a waiver of any preceding or succeeding breach by the other party to the Agreement nor shall any single or partial exercise of any right power privilege or remedy preclude any other or further exercise of such or any other right power privilege or remedy provided in the Agreement all of which are several and cumulative and are not exclusive of each other or of any other rights or remedies otherwise available to a party at law.

27.8 No Partnership or Agency

The Agreement shall not be deemed to constitute a partnership or joint venture or contract of employment between the parties. Nothing shall constitute the appointment of the Producer as TG4's agent and the Producer shall not enter into any contract or purport to enter into any contract on behalf of TG4.

27.9 Governing Law

The Agreement shall be governed by and construed in accordance with the laws of Ireland whose courts shall be courts of competent jurisdiction.

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