

BERTHA BRITDOC DOCUMENTARY JOURNALISM FUND

CONDITIONS OF FUNDING:

DEVELOPMENT / PRODUCTION / POST PRODUCTION FUNDING:

Our primary aim is to assist you in creating the best film you possibly can, raising finances and getting that film out into the world to be seen.

When we invest in a film, we will give you both a grant and the benefit of BRITDOC and Bertha's editorial experience, network and input.

The Bertha BRITDOC Documentary Journalism fund does NOT take any rights in your film.

Our grants are recoupable in a pro rata pari passu position with other funders where applicable and up to the amount of the grant only.

We do not seek to make a profit on our grants and we do not look to recoup until the full budget deficit is made up.

BRITDOC have agreed with Channel 4 to give them a first look on all films funded through the foundation if the UK TV rights are still available (if another broadcaster is already on board this is not a problem and the first look will be bypassed). This simply means that C4 have the opportunity to make an equivalent offer before the film goes to other UK broadcasters.

The Bertha BRITDOC Documentary Journalism Fund does require acknowledgement in both front and back end credits of the finished film in the form of a written credit or logo where appropriate.

The Bertha BRITDOC Documentary Journalism Fund requires reporting not limited to but including narrative descriptions of the film's status, activities and information on objectives and milestones consistent with the application.

NON PRODUCTION GRANTS (I.E. TRAINING)

These are straight grants which we do not take any rights or position on but do ask for the support to be acknowledged in the end credits of the film. The same reporting conditions apply.



BERTHA
FOUNDATION





BERTHA
FOUNDATION



BRITDOC

BERTHA BRITDOC DOCUMENTARY JOURNALISM FUND

PRODUCTION FINANCE AGREEMENT

AGREEMENT

BETWEEN

- (1) **BRITDOC Foundation**, a company limited by guarantee (Company Number: 05278207) of 50 Frith Street, London, W1D 4SQ (the "**Foundation**");

- and -

- (2) []

WHEREAS

- A. The Foundation has been charged with the creation and administration of an international film fund dedicated to supporting long form feature documentaries of a journalistic nature. This fund is entitled the "**Bertha BRITDOC Documentary Journalism Fund**" (the "**Fund**").
- B. The Producer has successfully submitted an application to the Fund in respect of the production and/or post-production of a documentary feature film of approximately 80-90 minutes duration provisionally entitled [] (the "**Film**"), as more particularly specified and defined in the Schedules to this Agreement.
- C. The Foundation wishes to contribute the Foundation Finance (as defined in Clause 3 hereunder) from the Fund towards the financing of the Film in accordance with the terms of this Agreement.

THE PARTIES HAVE AGREED AS FOLLOWS

1. AGREED SCHEDULES FOR PRODUCTION

- 1.1 In consideration for the Foundation advancing the Foundation Finance as set forth herein, and for other good and valuable consideration, the Producer agrees to procure that the Film is produced in accordance with:
- 1.1.1 a full and detailed Treatment (attached hereto as **Schedule 1**);
 - 1.1.2 a full and detailed Budget (attached hereto as **Schedule 2**); and
 - 1.1.3 a full and detailed Production Schedule (attached hereto as **Schedule 3**).
- 1.2 The Schedules have been pre-approved by the Foundation and any subsequent and significant changes to the Schedules (save for the Production Schedule) shall require the Foundation's prior written approval and amendment to this Agreement.

2. PRODUCTION BUDGET

2.1 The agreed budget for the production of the Film is [] ([]) (the "**Budget**").

3. FOUNDATION FINANCE

3.1 The Foundation hereby agrees to advance finance in the sum of [] () (the "**Foundation Finance**") in accordance with the agreed Payment Schedule (as defined in Clause 5 hereunder).

3.2 The Foundation Finance is a grant. No goods or services are being provided by the Producer to the Foundation, and therefore the Foundation Finance is outside the scope of VAT.

3.3 In the event that any other taxes or duties or similar deductions are (or may be) required to be paid by the Foundation by any applicable laws, then the Foundation shall be entitled to withhold from the Foundation Finance such sums as such government or fiscal authority may require to be deducted.

3.4 The Producer shall be responsible for converting the Foundation Finance into the appropriate currency(ies) as required by the Budget, and shall bear any exchange risk.

3.5 The Producer undertakes to use the Foundation Finance solely for the purpose of defraying the production costs of the Film in accordance with the Budget.

4. THIRD PARTY FINANCE

4.1 The Producer has secured the following third party finance:

4.1.1 [] shall be a co-producer of the Film and shall provide the sum of [].

4.1.2 [The Producer shall/has enter into pre-sale agreements with [] and [] for the [] Rights in the Film in the territories of [] and [].]

4.1.3 [OTHER]

4.2 There is a deficit in the Budget of [] ([]) and [the Producer is currently having on going discussions and/or existing negotiations with the following third party financiers: [].

4.3 In the event that the Producer secures any additional third party finance for the Film subsequent to signature of this Agreement (whether directly by the Producer or through the Foundation) and such funding shall result in recoupment by a third party financier of any sums or a payment of profit participation and/or royalty, such recoupment, profit participation and/or royalty shall be subject to the Foundations prior written approval.

5. PAYMENT SCHEDULE

5.1 The Foundation shall advance the Foundation Finance to the Producer as follows:

5.1.1 [] following signature of this Agreement; and

5.1.2 the final installment of **10%** (ten percent) shall be paid upon full delivery and acceptance by the Foundation of all Delivery Materials (as defined in Clause 13 hereunder).

5.2 The Foundation Finance shall be payable by wire transfer to the following account:

Name of Bank: []

Address: []

A/C Name: []

A/C No: []

Sort Code: []

IBAN No: []

5.3. Any and all banking costs incurred by the Foundation in advancing the Foundation Finance to the Producer shall be deducted by the Foundation from the Foundation Finance.

5.4 All payments made to the Producer shall be subject to receipt by the Foundation of a valid invoice.

6. UNDERSPEND/OVERSPEND

6.1 The Foundation Finance is a fixed amount and the Foundation shall have no obligation to fund any overspend and/or additional sums for the Film.

6.2 Subject to 19 and unless otherwise agreed by the parties, the Producer shall be entitled to retain any underspend from the Foundation Finance.

7. RECOUPMENT

7.1 The Producer hereby agrees that the Foundation Finance is recoupable from Gross Revenue (as defined in Clause 7.3.1 hereunder) in first position and/or on a pro rata pari passu basis with any third party financiers (as set out in Clause 4 and **Schedule 4** or as otherwise agreed in writing between the parties subsequent to signature of this Agreement).

7.2 For the avoidance of doubt, the Foundation shall not be seeking a share of any Net Profit (as defined in Clause 7.3.2 hereunder) received by the Producer from the distribution and exploitation of the Film.

7.3 For the purposes of this Clause 7, the following definitions shall apply:-

7.3.1 "*Gross Revenue*" means all revenues derived from the distribution and exploitation of the Film throughout the World in any and all media (now known or hereafter invented) in perpetuity (including without limitation distribution and exploitation of merchandising rights, all ancillary rights, any proceeds from a UK Tax Credit claim (where relevant); and any sales advances or minimum guarantees secured prior to completion of the Film).

7.3.2 "*Net Profit*" means Gross Revenue less any distribution commission and/or capped and agreed expenses and/or recoupment by the Foundation and third party financiers.

8. REPORTING

- 8.1 The Producer shall report to the Foundation and remit any monies due to the Foundation pursuant to Clause 7.1 above on a 6 (six) monthly basis within 30 (thirty) days of 31st March and September each year. The Producer shall include in such report full details of all Gross Revenue received and all deductions made together with details as to any payee/licensee, territories and rights sold.
- 8.2 The Producer shall retain all receipts and vouchers for all expenditures incurred in respect of the Film for inspection by the Foundation at any time (on reasonable prior notice).
- 8.3 The Producer shall upon the request of the Foundation, promptly supply to the Foundation copies of any agreements relating to third party finance, distribution or other exploitation of the Film or such other information or documentation that the Foundation may require relating to the Film, subject always to any confidentiality provisions.
- 8.4 The Foundation shall, on reasonable prior advance written notice and in any event during office hours, be entitled to audit the Producer's books and records relating to the Film which shall be made available to the Foundation at the offices of the Producer.

9. INTELLECTUAL PROPERTY

- 9.1 For the purposes of this Agreement, the Producer shall retain all rights (including without limitation copyright), title and interest in the Film.

10. EDITORIAL CONTROL

- 10.1 The Producer shall retain full editorial control of the Film.
- 10.2 Notwithstanding the above, the Producer shall fully consult with the Foundation in respect of all editorial aspects of the Film at all stages of production; and shall seek the Foundation's prior written approval with regard to any subsequent and significant changes to the agreed Schedules and/or any other key aspects of production.

11. DISTRIBUTION

- 11.1 The Producer shall consult with the Foundation in respect of all future strategy for distribution and festival screenings for the Film and agrees to keep the Foundation fully notified and updated in advance in respect of all such strategy and conversations.

12. CHANNEL FOUR FIRST LOOK OPTION

- 12.1 In the event that the UK and EIRE Television Rights ("**TV Rights**") (as defined in Schedule 5 attached hereto) in the Film has not been acquired by another UK and EIRE broadcaster and licensed independently by the Producer prior to the signature of a production finance agreement between BRITDOC and the Producer:
- (i) Channel Four Television corporation ("**Channel 4**") shall have an exclusive first look option to acquire the TV Rights, subject always to good faith negotiations between the Producer and Channel 4 (the "**First Look Option**"); and
 - (ii) Channel 4 shall have 8 (eight) weeks from the date of delivery by BRITDOC of a detailed treatment, budget (including finance plan) and production schedule (the "**First Decision Period**") to decide whether it wishes to exercise the First Look Option.

12.2 Following the First Decision Period, in the event that the TV Rights in any BRITDOC Funded Films have not been acquired by another UK and EIRE broadcaster/platform prior to the commencement of the rough cut of the Film:

- (i) Channel 4 shall have an exclusive First Look Option to acquire the TV Rights; and
- (ii) Channel 4 shall have until Picture Lock (the "**Second Decision Period**") to decide whether it wishes to exercise the First Look Option.

12.3. In the event that the Film is rejected by Channel 4 or Channel 4 fails to respond within the Decision Period(s) as set out in Clauses 12.1(ii) and 12.2(ii) above, the BRITDOC Funded Film shall be deemed a 'Released Film' and the Producer shall have the right to sell the TV Rights without further reference to Channel 4.

12.4 In the event that Channel 4 wishes to exercise its First Look Option and no agreement is reached with the Producer within 28 (twenty eight) days of exercising its First Look Option, the Producer shall be free to negotiate with a third party; provided, however, that the Producer shall not accept terms and conditions that are substantially the same as, or less favorable than, the last offer made by Channel 4.

12.5 Notwithstanding the above, in the event that during production and prior to the commencement of the rough cut a third party makes an offer for the TV Rights, Channel 4 shall have a right to match the terms of such offer. The Producer shall be bound to accept any offer from Channel 4 so long as there is no real or substantive difference between the offers and the Channel 4 offer is made within 7 (seven) days of Channel 4's receipt of notice of the third party offer.

13. DELIVERY MATERIALS

13.1 The Film shall be delivered to the Foundation on or before:

13.2 Delivery shall constitute the following elements:

13.2.1 a digibeta or ProRes digital export of the finished Film, 16:9 shot protected;

13.2.2 2 (two) x DVD copies of the finished film, 16:9 shot protected;

13.2.3 A release form for every contributor (including performers and writers);

13.2.4 A licence for each piece of music and if original music, a Composer's Agreement;

13.2.5 A licence with third party clearance details for each piece of archive or library material and each still;

13.2.6 A location release for filming on any property; and

13.2.7 A final and detailed cost report clearly detailing how the Budget was spent in such format as may be required by the Foundation.

14. CREDITS

14.1 The Producer shall or shall procure that the Foundation is credited, in the form of a logo to be supplied to the Producer, in the main titles of the Film both at the beginning and end of the

Film and in all paid advertising. For the avoidance of doubt and where the advertising is written, the Foundation should always be credited as the '**Bertha BRITDOC**'.

- 14.2 The Foundation may at any time prior to the online notify the Producer that the Foundation does not want to receive any credit on the Film and/or on any publicity or advertising materials and upon such notification the Producer hereby undertakes insofar as it is able to remove such credit from all copies of the Film and/or on any publicity or advertising materials with immediate effect.

15. PRODUCTION INSURANCE

- 15.1 It is a condition of the grant of the Foundation Finance by the Foundation that all appropriate and customary production insurances are in place in relation to the Film.
- 15.2 It is the responsibility of the Producer to obtain such insurances and the Producer shall use a recognised and reputable production insurance broker of its choice. The Producer shall make full policy details available to the Foundation upon request.
- 15.3 The Producer agrees to take out an appropriate errors and omissions policy ("**E & O Policy**") covering all screenings in all media in the relevant jurisdictions, with the Foundation and The Bertha Foundation being named on such E & O Policy as additional insured for 3 (three) years from the date of the E & O Policy.
- 15.4 The Producer shall not do or fail to do any act or thing as a result of which the insurance policies may in whole or in part lapse or become void or voidable or in any other way uncollectable, including complying with legal advice on errors and omissions policy issues.
- 15.5 The Producer shall observe and perform all warranties and conditions in such policies and shall ensure that all premiums are paid when due and the policies maintained in full force and effect for such period(s) as the Foundation may require.
- 15.6 The Producer shall keep the Foundation notified at all times of any information which may be relevant to a potential claim under an insurance policy, or which may impact one of the insurance policies.
- 15.7. The Producer shall immediately (and in accordance with the terms of the relevant insurance policy) notify the Foundation and the insurers on the happening of any event which may give rise to a claim under one or more of the insurances obtained for the Film. The Producer hereby fully indemnifies the Foundation from and against all claims, costs, proceedings, demands, losses, damages, expenses or liability whatsoever arising directly or reasonably foreseeable as a result of any negligence or other wrongful act or omission of any employee, agent or invitee of the Producer or any associate leading to any material breach by the Producer of its obligations under this sub-clause.

16. HEALTH AND SAFETY

- 16.1 In providing equipment and systems of work, or procuring the use of equipment and systems of work for the production of the Film, the Producer acknowledges its responsibility for health and safety (including without limitation and where relevant hostile environment training) in the working environment in accordance with current legislation.
- 16.2 In effecting and maintaining production insurance as required by this Agreement the Producer shall ensure that appropriate risk assessment to ensure compliance with relevant health and safety legislation is undertaken, and implemented, during the period in which the Film is produced.

17. UK TAX CREDIT [WHERE RELEVANT]

- 17.1 The Producer represents that the Producer is intending to claim a UK Tax Credit in respect of the Film, and that the proceeds therefrom shall be used in whole or in part towards the financing or as proceeds of the Film after deduction of any costs associated with the cash flowing of the UK Tax Credit.
- 17.2 The Producer hereby undertakes not to knowingly take any action in connection with the Film which would (i) materially prevent, hamper or otherwise impede or impair the ability of the Producer to timely claim the UK Tax credit and/or effect a successful application for the UK Tax Credit; and/or (ii) reduce the UK Tax Credit Estimated Value and/or (iii) cause the Film to fail the Cultural Test or prejudice the ability of the Film to qualify as a British Film, and/or (iv) materially impede or hamper the performance of any undertakings and obligations the Producer may have entered into for the benefit of any UK Tax Credit lender.
- 17.3 For the purposes of this Clause, the following definitions apply:
- 17.3.1 "*Cultural Test*" means the cultural test set out in the Cinema and Films statutory instrument 2006/3430 entitled "The Films (Definition of "British Film") (No. 2) Order 2006" as the same may be amended, which modifies the definition of 'British film' in Paragraph 4A Schedule 1 to the Films Act 1985 and the points based 'cultural test' which was inserted by statutory instrument 2006/643;
- 17.3.2 "*UK Tax Credit*" means the payable cash element constituting a tax credit pursuant to Part 15 of the Corporation Tax Act 2009 receivable by the Producer in respect of UK Qualifying Expenditure;
- 17.3.3 "*UK Tax Credit Estimated Value*" means the predicted amount of the UK Tax Credit in the auditor's opinion letter in respect of the Film.

18. WARRANTIES AND INDEMNITIES

- 18.1 The Producer hereby warrants, represents and undertakes to the Foundation that:
- 18.1.1 it has the right, power and authority to enter into and fully perform its obligations under the terms of this Agreement;
- 18.1.2 it will observe and comply with all of its acceptances, agreements, obligations, representations, undertakings and warranties specified in this Agreement;
- 18.1.3 during the production of the Film and the acquisition and/or licence of all rights therein, the Producer shall comply with all relevant union and industry agreements and all statutory obligations including, for the avoidance of doubt, all health and safety requirements;
- 18.1.4 unless the Foundation otherwise agrees in writing, all material incorporated into the Film will be original except insofar as it may be in the public domain;
- 18.1.5 to the best of the Producer's knowledge and belief having made reasonable enquiry (including without limitation appropriate legal and compliance review and sign off) nothing in the Film will be defamatory of any living person, firm or company and nothing will, if exhibited, infringe the copyright or any other personal proprietary right of any person, film or company or infringe any statutory obligation;

- 18.1.6 it shall enter into necessary agreements, assignments and licenses with any and all third parties involved in the Film to ensure that all consents and approvals have been granted to acquire all necessary rights to ensure that the Film can be broadcast, screened theatrically and at festivals and otherwise exploited throughout the world in all media (now known or hereafter invented) in perpetuity without further residuals and/or residuals becoming due;
- 18.1.7 it shall buy out all specially composed music and/or pay for all mechanical music licence fees and synchronisation licence fees to ensure that the Film may be exploited pursuant hereto without further residuals and/or royalties becoming due;
- 18.1.8 at the time of delivery of the Film, the Producer will have obtained a waiver of all moral rights where relevant to the contributors and will have obtained assignments from the contributors where relevant of all rental, lending and neighbouring rights for a remuneration contractually acknowledged as being equitable;
- 18.1.9 the Film will be produced and delivered in a first class manner;
- 18.1.10 all appropriate production insurances are in place with respect to the Film; and
- 18.1.11 there are no claims or proceedings pending or threatened which might adversely affect the exploitation of the Film.
- 18.2 The Producer shall indemnify and keep fully and effectually indemnified and hold harmless and keep held harmless the Foundation and its officers, servants and agents (and each of them) from and against any and all claims, losses, expenses, damages or liabilities, proceedings, demands and costs suffered or incurred by the Foundation as a result of the breach, non-performance and/or non-observance by the Producer of any of its obligations under this Agreement and/or these undertakings and/or warranties and/or representations and/or of any negligence and/or other wrongful act or omission on the part of the Producer or its servants, agents, employees and/or sub-contractors.

19. REMEDIES ON DEFAULT

- 19.1 In the event that the Foundation determines, in its sole discretion and sole opinion, acting reasonably and in good faith that:
- 19.1.1 The Producer is in material breach of any of its warranties, undertakings, representations or obligations under this Agreement;
- 19.1.2 Production has ceased prior to and/or during the Production Schedule for any reason;
- 19.1.3 The Producer is unable to pay its debts as they fall due within the meaning of section 123(i) Insolvency Act 1986 or becomes the subject of a winding up order of any type or an administration order or has an administrative receiver appointed (including under the Law Of Property Act 1925) or compounds with its creditors or enters into a company voluntary arrangement or scheme of arrangement or it ceases or threatens to cease to carry on its business;
- 19.1.4 An event of Force Majeure (as defined in Clause 19.2.1 hereunder) continues or in the Foundation's reasonable opinion is expected to continue for a period exceeding 6 (six) months;

the Foundation may, in addition to any other legal remedies it may have, including the termination of this Agreement, refuse to make any further payments to the Producer, and the

Foundation may demand in writing the return of all or part of the Foundation Finance, which the Producer shall immediately repay to the Foundation.

19.2 For the purposes of this Clause 19, the following definitions shall apply:

19.2.1 "*Force Majeure*" means where a Producer is unable to observe or perform its obligations in relation to the Film by reason of fire, flood, epidemic, earthquake, explosion, accident, industrial action (other than industrial action taken only against Producer or its servants or agents or taken only in relation to the Film), act of God or public enemy riot or civil disturbance, war (declared or undeclared) or armed conflict or any other thing or occurrence not within Producer's reasonable control.

20. ASSIGNMENT OF BENEFIT

20.1 This Agreement is personal to the Producer and shall not be assigned by it to any other person, firm or company without the prior consent of the Foundation.

21. APPLICABLE LAW

21.1 This Agreement shall be subject to and construed and interpreted in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England.

22. GENERAL

22.1 The headings to Clauses do not form part of and shall not be read into the construction of this Agreement.

22.2 This Agreement is neither a joint venture nor a partnership between the parties and no party shall hold itself out as the agent for another party.

22.3 Any person, firm or entity who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (the "**Act**") to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

22.4 This Agreement contains the full and complete understanding between the parties and supersedes any and all agreements and understandings, whether oral or written, entered into prior to the date of this Agreement and shall not be modified except in writing signed by both parties.

22.5 No waiver by either party of any breach of any of the provisions of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision.

22.6 No variation of any of the terms or conditions hereof may be made unless such variation is agreed in writing and signed by each of the parties hereto.

22.7 If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of the Agreement and the Agreement shall be construed as if such provision had not been part of the Agreement.

|

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be entered into on the day and year first before written.

Signed by:

.....
Duly authorized signatory
For and on behalf of
BRITDOC FOUNDATION

Signed by:

.....
Duly authorized signatory
For and on behalf of

EXAMPLE ONLY

SCHEDULE 1

TREATMENT

EXAMPLE ONLY

SCHEDULE 2

BUDGET

EXAMPLE ONLY

SCHEDULE 3

PRODUCTION SCHEDULE

EXAMPLE ONLY

SCHEDULE 4

THE RECOUPMENT SCHEDULE

Gross Revenue shall be applied as follows in the order set out below (it being agreed that each sum or commission to be paid or recovered shall only be paid or recouped once):

- (a) to the Collection Agent (if any; and as approved by the Foundation) in payment of its fee and expenses (to be pre-approved by the Foundation); and thereafter;
- (b) to the Sales Agent and/or Distributor in payment of its commission (not exceeding 25%/30%) and sales expenses (capped at 5% of Gross Revenue) (to be pre-approved by the Foundation); and thereafter; and
- (c) to the Foundation in payment of the Foundation Finance in first position and/or on a pro rata and pari passu basis with the other third party financiers as set out in Clause 4 (or as otherwise agreed in writing between the parties subsequent to signature of this Agreement).

The balance shall be treated as Net Profit and allocated as follows: **100% (one hundred per cent) to the Producer.**

EXAMPLE ONLY