

AGREEMENT dated 2010

Between:

**The British Documentary Film Foundation, a company limited by guarantee trading as
The Channel 4 BRITDOC Foundation** of 50 Frith Street, London, W1D 4SQ (the "Foundation"); and

..... **Full name of individual or company** of (the "**Producer**").

Whereas:

To facilitate production and/or post-production work for a documentary film of approximately ... minutes duration and provisionally entitled "....." (the "**Film**"), The Foundation hereby agrees to advance to the Producer the Finance (defined below) on the following terms and conditions.

1. Schedules, Finance, Revenues and Accounting

1.1 The Producer has submitted the following to the Foundation:

Film Treatment and Technical Specification (including key personnel, locations and contributors) (see attached Schedule 1);
Full Budget and Schedule (see attached Schedule 2);
Proposed funding arrangements (including details of any secured funds, any ongoing negotiations, any shortfall in the cost of production of the Film relative to secured funds (the "Budget Deficit") and the Producer's proposal as to how the Budget Deficit shall be covered) (see attached Schedule 3).

The attached Schedules have been approved by the Foundation and any subsequent changes shall require the Foundation's prior approval.

1.2 The Foundation hereby agrees to advance production finance in the sum of £[XXX] ([XXX] pounds sterling) (the "Finance**") to the Producer to allow the Producer to carry out production and post production work in respect of the Film in accordance with the Film Specification, Budget and Schedule.**

1.3 The Foundation shall advance XXX % (XXX percent) of the Finance to the Producer following signature of this agreement and upon receipt of the proper invoice and the balance of XXX % (XXX percent) will be released by the Foundation upon receipt of the proper invoice and following delivery and acceptance of all Delivery Materials by the Foundation. All amounts are exclusive of UK VAT which shall be payable, where applicable, on receipt of the appropriate invoice.

1.4 The Producer acknowledges and agrees that the Foundation shall be entitled to recover the Finance in first position from any revenues (as specified below) received by the Producer in respect of the Film after recovery by the Producer of the Budget Deficit (if any) approved by the Foundation ("Approved Budget Deficit"). Further, the Foundation shall be entitled to a share of the Net Profit (as specified below).

1.5 For the purposes of this agreement and subject always to the proviso set out in clause 1.6 below, Gross Revenues (being any and all sums secured by the Producer in respect of the Film from any source without deduction) shall be applied by the Producer as follows:

1.5.1 Firstly in payment of the following expenses reasonably incurred by the Producer in securing funding from the following sources:

1.5.1.1 in respect of any Gross Revenues derived from sponsorship funds, grants, or similar whether secured pre, during or post production of the Film, those expenses

(including the costs of compliance with any conditions attached to the provision of the funds) as may be pre-approved in writing by the Foundation;

1.5.1.2 in respect of any Gross Revenues derived from the all media exploitation of all rights in the Film (or any part of it including any ancillary rights such as music and merchandising rights) and including any sales advances or minimum guarantees and secured prior to completion of the Film, those expenses (including the costs of compliance with any conditions attached to the provision of the funds) as may be pre-approved in writing by the Foundation

1.5.1.3 in respect of any Gross Revenues derived from the all media exploitation of all rights in the Film (or any part of it including any ancillary rights such as music and merchandising rights) and including any sales advances or minimum guarantees and secured after completion of the Film, a distribution commission (whether payable to the Producer or any third party sales agent) not exceeding 25% of gross revenue (including any sub-agent or sub-distributor fees) together with any reasonable, direct and customary distribution expenses provided always such distribution expenses shall not exceed 5% of Gross Revenues unless otherwise pre-approved by the Foundation in writing.

For the avoidance of doubt, the provisions of clause 1.5.1.1 shall apply to any Gross Revenues which may fall outside the provisions 1.5.1.1-1.5.1.3 above.

1.5.2 Secondly, in payment to Producer of any unrecouped Approved Budget Deficit;

1.5.3 Thirdly, in payment to the Foundation of any unrecouped Finance;

1.5.4 Thereafter any sums shall constitute Net Profit and shall be shared as to 15% to the Foundation and 85% to the Producer.

- 1.6 If the Producer secures any other funding for the Film (whether directly by the Producer or through the Foundation) which involves recoupment by a third party of any sums or a payment of profit participation and/or royalty to a third party, such recoupment, profit participation and/or royalty shall be subject to the Foundations prior written approval.
- 1.7 The Producer shall report to the Foundation and remit any monies due to the Foundation pursuant to clauses 1.5.1.1 and 1.5.1.2 above within 14 days of receipt of any such funds by the Producer. The Producer shall report to the Foundation and remit any monies due to the Foundation pursuant to clauses 1.5.1.3 on a six monthly basis within 30 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.
- 1.8 The Producer undertakes to use the Finance solely for the purpose of defraying the production costs of the Film in accordance with the Budget.
- 1.9 The Producer will 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). Further the Producer shall upon the request of the Foundation, supply to the Foundation copies of any agreements relating to funding, distribution or other exploitation of the Film or such other information or documentation that it may require relating to the Film.
- 1.10 The Foundation shall, on reasonable prior notice, 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.
- 1.11 Any and all outstanding balance of the Finance not required by the Producer to enable it to complete and deliver the Film but which has been paid to the Producer by the Foundation, shall

be returned to The Foundation following delivery and acceptance of the Film.

2. **Producer's Obligations**

2.1 The Producer grants the Foundation full consultation rights in respect of:

2.1.1 all editorial aspects of the Film at all stages of production and will keep the Foundation fully notified and updated and seek the Foundation's prior approval with regard to any changes to the pre-agreed Film Specification and/or all other key aspects of the production; and

2.1.2 the inclusion of any and all additional financial partner(s) and agrees to keep the Foundation fully notified and updated in respect of any and all such conversations and proposed deal terms before any deal(s) is/are entered into (subject always to the Foundation's right of prior written approval specified in clause 1.6 above).

2.1.3 all future strategy for distribution and festival screenings for the Film and agrees to keep the Foundation fully notified and updated in respect of all such strategy and conversations.

2.4 The Producer shall enter into all necessary agreements, assignments and licences 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 (including providing proof of chain of title documentation) to ensure that the Film can be broadcast, screened theatrically and at festivals and otherwise exploited throughout the world without further residuals and/or royalties becoming due.

2.5 The Producer shall ensure that the Film is fully compliant in all respects with Channel 4 Television Corporation ("**Channel 4**") best practice as set out at www.channel4.com/corporate/4producers and shall work collaboratively with the Foundation in this regard.

2.6 The Producer shall provide the Foundation promptly upon request with copies of any documentation relating to the Film including (without limitation) any funding or distribution agreements and budgets.

3. **Delivery**

3.1 The Film shall be delivered to the Foundation on or before the **XXXX of XXXX 2010**. Delivery shall constitute the following elements:

3.1.1 A Digi Beta and 2 x DVD copy of the finished film, 16:9 shoot protected;

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

3.1.3 A licence for each piece of music and if original music, a composer's contract;

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

2.1.5 A location release for filming on any property; and

3.1.6 A cost report clearly detailing how the Finance was spent in such format as may be required by the Foundation.

4. **Production Insurance**

4.1 It is a condition of the grant of the Finance by the Foundation that all appropriate and customary

production insurances are in place in relation to the Film and the exact requirements of which are more particularly detailed in attached Schedule-4_.

- 4.2 It is the responsibility of the Producer to obtain such insurances and the Producer may use a recognised production insurance broker of its choice. The Producer shall make full policy details available to the Foundation upon request.
- 4.3 The Producer undertakes that no screenings of the Film will take place without written notification being given to the Foundation and unless an appropriate errors and omissions policy, with both the Foundation and Channel 4 each being named on such policy as an additional insured, is valid and in effect.
- 4.4 Any worldwide Festival screenings, distribution or transmission of the Film will require the Producer to take out its own errors and omissions insurance policy or to be covered by a blanket policy through its distributor or broadcaster. In the event that the Producer decides to distribute or transmit the Film without an errors and omissions policy being in place (i.e. where this is not a condition of sale by the distributor/broadcaster), the Producer undertakes to inform the Foundation who may stipulate that their logo is removed from the Film.

5. Credits

- 5.1 The Producer shall or shall procure that the Foundation is credited in the main titles of the Film both at the beginning and end of the Film and in all paid advertising in the form of a company logo which shall be supplied to the Producer, where the advertising is written, the Foundation should always be credited as "The Channel 4 BRITDOC Foundation".
- 5.2 The Foundation may at any time notify the Producer that it does not want to receive any credit on the Film and upon such notification the Producer hereby undertakes to remove such credit from all copies of the Film with immediate effect.

6. Channel 4 Option

- 6.1 As further consideration for the provision of the Finance by the Foundation, the Producer hereby agrees to grant Channel 4 an exclusive option in respect of the Film to purchase television rights in the Film in the United Kingdom and Eire (the "**UK Television Rights**") for the sum of £1.00 (one pound sterling) (and the sufficiency of the consideration is hereby acknowledged) (the "**Option**"). If Channel 4 exercises the Option, Channel 4 shall acquire 2 transmissions on the Channel 4 service and the Channel 4 plus 1 service and up to 8 (eight) Playdays on the More4 service over a licence period of 5 (five) years. The UK Television Rights shall include online simulcast rights and Channel 4 shall also acquire VOD catch up rights for a period of 30 (thirty) days following the transmission on either the Channel 4 or More4 service on terms consistent with the current PACT terms of trade agreement (as may subsequently be amended). The Producer may invoke a holdback period over such UK Television Rights of up to a maximum of 12 (twelve) months from completion of the Film in order to exploit all other rights including, without limitation, theatrical and DVD rights in the United Kingdom. In addition, the Producer has the right to sell the Film for exhibition by pay television services on a non-exclusive basis after 2 (two) years following the transmission of the Film on Channel 4 or More4. The current standard licence terms upon which Channel 4 will contract with the Producer are detailed on the Channel 4 website at <http://www.channel4.co.uk/corporate/4producers>.
- 6.2 Channel 4 shall have 10 (ten) weeks from delivery to, and acceptance of the Film by, the Foundation to decide whether it wishes to exercise the Option (the "**Option Period**"). If Channel 4 has not notified either the Foundation or the Producer of its decision within the Option Period, the Option shall be deemed to have expired and the Producer shall have no further obligation towards Channel 4 with regard to the Film.

7. Warranties and Indemnity

7.1 The Producer hereby warrants, represents and undertakes to the Foundation that:

- 7.1.1 it has the right, power and authority to enter into and fully perform its obligations under the terms of this agreement;
- 7.1.2 it will strictly observe and comply with all of its acceptances, agreements, obligations, representations, undertakings and warranties specified in this agreement;
- 7.1.3 during the production of the Film and the acquisition and/or licence of all rights therein, the Producer will comply with all relevant union and industry agreements and all statutory obligations including, for the avoidance of doubt, all health and safety requirements;
- 7.1.4 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;
- 7.1.5 nothing in the Film will be defamatory of any 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;
- 7.1.6 it shall obtain, and shall pay for, all necessary underlying rights' clearances of third party copyright owners and/or licensees and 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;
- 7.1.7 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;
- 7.1.8 the Film will be produced and delivered in a first class manner in complete compliance with the Film Specification;
- 7.1.9 all appropriate production insurances are in place with respect to the Film in accordance with Schedule 4; and
- 7.1.10 there are no claims or proceedings pending or threatened which might adversely affect the exploitation of the Film.

7.2 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.

8. Assignment of Benefit

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

10. Applicable Law

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts.

11. General

- 11.1 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.
- 11.2 Any person, firm or entity who is not a party to this Agreement other than Channel 4 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.

Signed by

.....
.....

Print name
Duly authorized signatory
For and on behalf of
THE CHANNEL 4 BRITDOC FOUNDATION

Signed by

.....
.....

Print name
Duly authorized signatory
For and on behalf of
.....**SPECIFY**.....

.../Schedules 1,2,3 & 4

SCHEDULE 1

FILM SPECIFICATION

SCHEDULE 2

BUDGET AND SCHEDULE

SCHEDULE 3

FUNDING ARRANGEMENTS

SAMPLE

SCHEDULE 4
PRODUCTION INSURANCE

The Foundation requires all of its productions to have a range of insurances in place to cover for losses, which may arise during the course of production. The cost of those insurances, subject to the exclusions set out below, is to be met by the Producer from the production budget.

The table below sets out the minimum requirements.

COVER REQUIREMENT SUMMARY

<u>Coverage</u>	<u>Limits of Liability</u>	<u>Deductible Each Claim</u>
1. Cast Insurance	up to £budget	10% of loss min £ 500, max £3,000
2. Videotape/Negative & Archive	up to £budget	Nil
3. Faulty Stock Camera And Processing	up to £budget	10% of loss min £ 500, max £ 2,000
4. Extra Expense	up to £budget	£750
5. Props, Sets, Wardrobe	up to £budget	£350
6. Technical Equipment	up to £budget	£500
7. Third Party Property Damage	up to £budget	£500
8. Money	up to £budget	£75
9. Office Contents On Location	up to £budget	£250
10. Public Liability	£10,000,000	£250
11. Employer's Liability	£10,000,000	Nil
12. Film Union Travel	up to £budget	Per Policy
13. Contingent PA	up to £budget	Nil

The limits of liability are dependent on the production budget and requirements but the limits for items 1, 2, and 3 above should not be less than the total budgeted direct costs of the production.

The cover should include bereavement, Objet D'Art and Civil Authority.

The Producer should ensure that any other additional cover which may be required, e.g. motor, additional public liability, aviation, is included within the production budget.

In the event that additional cover is required for Personal Accident this should be agreed with The Foundation and Channel 4. It is essential that all exposures are insured wherever possible and it is economically prudent to do so.