



APPENDICES

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6.1 Standard RFP Format

Title	Brief ref
Channel	
Day	
Slot	
Rating	
Editorial guide	
Targeted audience	
Number of episodes that will be commissioned per series	
Duration	
Target price range	
Closing date for RFP	

6.2 Criteria for Proposal Evaluation

Criteria	Weighting
Editorial assessment	40%
Competence and capacity	20%
Revenue potential	10%
Cost assessment	15%
Empowerment profile	10%
General industry development	5%
TOTAL	100%

6.3 Terms and Conditions for Submitting a Proposal

6.3.1 General

- a. Submission of programme proposals is based on the unconditional acceptance of all the terms and conditions contained in this document, and the proposer undertakes to be bound by all terms and conditions stated in this invitation.
- b. Interested parties may respond to any of the programme needs set out in the commissioning briefs. When more than one proposal is submitted, each proposal must be clearly marked and must be separate from any other.
- c. Proposals submitted without the proposal submission form, submission agreement and a budget will not be processed for evaluation.
- d. Supporting video material is not required except in occasional and stated circumstances, such as RFPs for format genres.
- e. Late submissions will not be accepted.
- f. Proposals will not be returned to producers once the commissioning process is complete.

6.3.2 Costs of the proposal

All costs incurred in connection with the preparation and submission of programming proposals must be borne by the proposer. Under no circumstances will the SABC be liable for meeting any of these costs.

6.3.3 Confidentiality of information and proposals

Subject to the principle that the SABC may disclose such information as it considers necessary for the purpose of transparency and fairness, the Corporation will use its best endeavours to keep confidential the programming proposals that are submitted for consideration. However, the Corporation will not be liable for the disclosure of this information to any person who is not authorised to receive such information. Scriptwriters/authors may not, therefore, hold the Corporation liable if any other person uses their ideas or proposals. (See Proposal Submission Agreement, 6.7)

6.3.4 How to submit a proposal

In order for a programme proposal to be considered and evaluated, *all* documents requested and information required, *without exception*, must be provided by the deadline. The key documents and information required are stated below. Failure to give all the necessary information and documents or the furnishing of any false or misleading statement will disqualify the proposal from being considered.

- a. **Four copies** of the proposal must be submitted.

b. **All information must be typed.**

Hand-written submissions will not be accepted.

c. **Each copy of the proposal must contain the following:**

- Proposal submission form (6.4)
 - All details must be completed on the form.
 - Please note that the synopses of your proposal and company profile *do not replace* a fuller treatment within the body of the proposal.
 - The proposal submission form must be attached at the front of each copy of the proposal.
- Proposal

The proposal must not exceed *ten* pages and should contain

 - a statement of the goals that may be achieved with the programme/series;
 - an outline of the creative elements and treatment including presenter/s;
 - evidence that the programme subject has been well researched.
- Company profile
 - The company profile must not exceed *two* pages.
 - The successful producer will be able to prove his/her experience in the making of quality programmes, and a commitment to innovative and creative ideas.
- Budget
 - A one-page summary of the production budget is all that is required at this stage.
 - The costs per minute given for each programme in the commissioning briefs are a guide only and may change once SABC production budgets have been confirmed for the period.
- All programme budgets are subject to evaluation by SABC TV Production Finance.
- Producers who are offered contracts will be obliged to present comparative quotations for facilities and may be requested to do the post-production of their programme at SABC Henley.
- Proposal submission agreement
- *Video material only when stipulated in the brief.*

d. **Format**

- (i) Proposals must be presented on **A4 paper in portrait format**, stapled in the top left-hand corner.
- (ii) Do not waste money on expensive bindings, cardboard backings and plastic covers! These are simply removed as the proposals are collated by genre, photocopied and bound into book format for the shortlisting process.
- (iii) **Four copies** of each proposal must be sealed securely in **one A4 envelope**, with the identification label attached to the **outside** of the envelope (see 6.6).

6.3.5 **Returning submissions**

Please keep a duplicate of any material submitted. Enclose a self-addressed envelope so that your proposal can be returned after evaluation. If no self-addressed envelope is enclosed, unsuccessful proposals will be discarded after evaluation. The SABC will respond to every proposal in writing. However, if you receive no communication two months after the closure of the brief, then you can assume that your proposal has been rejected.

6.4 Proposal Submission Form

Brief Reference	
Working Title	
Company Name	
Contact Name	Position
Telephone	Cell
email Address	Fax
Postal Address	
Street Address	
Proposal synopsis	
No. of Episodes	Minutes per Episode
Total Minutes	
Total Budget: R	
Cost per Minute: R	
Synopsis of Company Profile	
(A) Number of permanent employees	
(B) Number of permanent Black (African, Indian, Coloured) employees	
(C) Number of permanent Black (African, Indian, Coloured) female employees	
(D) % of shareholders' equity owned by Blacks (African, Indian, Coloured)	
(E) % of shareholders' equity owned by Black females (African, Indian, Coloured)	
Company Registration Number	
VAT Registration Number	
Name	Date
Signature	Receipt Number: TVREL

6.5 Proposal Submission Agreement

1. Owner of New Idea

The SABC will only accept material that is submitted in written form in hard copy, i.e. on paper. Facsimiles and email submissions will not be considered. The SABC will consider your submission only at your request and only with your assurance that to the best of your knowledge you are the sole originator of the idea and that you have the legal right to submit it to the SABC for evaluation.

2. Conception by the SABC

The SABC and its employees have many ideas of their own for the development of programmes, some of which may be similar to yours. An idea that is new to you may be old to the SABC, or similar, or identical ideas may be conceived independently. Accordingly, you hereby waive any claim that the SABC misappropriated any ideas or portions of your submission in any activities in which the SABC may engage in the future.

3. Disclosure Not Confidential

You acknowledge that the SABC may disclose the idea to its employees, including freelance readers, to determine the value of the idea to the channel. You must understand that no confidential relationship is entered into when you submit your proposal to the SABC or when you have any oral discussions with the SABC about your proposal. The SABC does, however, undertake not to share your proposals with other independent producers.

4. Modification

The conditions above may not be modified or waived except in writing, and signed by an officer of the SABC.

5. Term

This release shall be valid for a period of five (5) years from the date of signature and shall apply to any further ideas submitted by you to the SABC during such term.

I HAVE READ THE PROPOSAL SUBMISSION AGREEMENT, AND I AGREE TO THE CONDITIONS CONTAINED THEREIN

Print Name

Signature

Date

6.6 Identification Label

Stick this label on the outside of the envelope containing the proposal.

Do not attach your submission form to the outside of the envelope as it contains confidential information about your proposal and your company!

SABC TV COMMISSIONING BRIEFS c/o The Commissioning Editors, SABC TV		
Brief Reference	Receipt No	TV
Working Title		
Company Name		
Contact Name	Position	
Telephone	Cell	
email Address	Fax	
Postal Address		

6.7 Proposal Delivery

Regardless of whether the proposal is hand-delivered or sent by courier or registered mail, the SABC will not accept proposals later than on the deadline date.

Address proposals to:

The Commissioning Editors
SABC TV Admin Block
Artillery Road
Auckland Park
2092

Private Bag X1
Auckland Park
2006

Please note

Proposals may not be faxed or emailed.

6.8 Confirmation of Receipt

- Producers must ensure that they receive a written receipt for each individual proposal.
- All proposals received by the SABC will be issued with a receipt number.
- The receipt number must be quoted at all times in future communications pertaining to the proposal between the SABC and the producer.

Confirmation of receipt	Receipt No: TV ... 0001
Brief Reference _____	
Working Title _____	
Company Name _____	
Contact Name _____	
Telephone _____	Cell _____
Received By _____	Date _____
Signature _____	

6.9 Registration Log Sample

Receipt Number	Brief Number	Working Title	Company Name	Contact Person	Position	Email	Fax	Telephone	Cell	Postal Address
0001	S1 Talk	Hot Air	TV CO	T. Bala	Producer					
0002	S1 Talk	Blue Funk	Funk TV	B. Smith	Director					

6.10 Letter of Acknowledgement

Ms T Bala
TV Co
Email address

Date

Dear Ms Bala,

Thank you for submitting a proposal in response to the recent SABC 1 Briefs.

There were ... proposals received for S1 Talk. Your proposal for S1 Talk has been received and we wish to confirm the following:

Brief No: S1 Talk
Receipt No: TV 0001
Working Title: Hot Air

Please quote the receipt number in any correspondence connected with your proposal.

A commissioning team will be reading through the proposals within the next three weeks and we shall contact you again by

Once again, thank you for your interest in our programme portfolio. We are looking forward to reading and engaging with your ideas.

Kind regards,

6.11 SABC Standard Production Agreement

STANDARD PRODUCTION AGREEMENT

FOR THE PRODUCTION OF

(Insert Programme Name)
("the Production")

BETWEEN

THE SOUTH AFRICAN BROADCASTING CORPORATION
("the SABC")

AND

(Insert Name of Production House)
("the Producer")

The SABC hereby commissions the Producer, who accepts the commission, to produce the Production in accordance with the SABC General Terms of Agreement attached.

SCHEDULES	
A. PRODUCTION	
1. Title:	
2. Genre:	
3. Number of episodes:	
4. Duration (per episode):	
5. Language:	
6. Medium in which the Production will be produced:	
7. Medium in which the Production will be delivered:	
B. THE PRODUCER	
1. State whether the Producer is a company or a close corporation or a trust or an individual:	
2. Registration number/Identity number:	
3. Artist number:	
4. VAT Registration number:	
5. Income Tax number:	
6. Address (<i>Domicilium citandi et executandi</i>):	
7. Contact person:	
8. Telephone number:	
9. email address:	
C. COMMISSIONING EDITOR	
1. Name:	
2. Channel/Genre Department:	
3. Telephone number:	
4. email address:	
D. BUDGET (comprising items 2 and 4)	
1. Contract amount (excluding VAT): (comprising item 2)	
2. External costs (excluding VAT):	
3. Production fee (excluding VAT):	
4. Internal costs (excluding VAT):	
E. SABC FACILITIES, EQUIPMENT AND STOCK	Value:
1. Videotape stock :	

2. Studio:	
3. Post-production:	
4. Video archive:	
5. Other:	
F. PRODUCTION BANK ACCOUNT	
1. Name:	
2. Bank:	
3. Account number:	
4. Branch code:	
G. PRODUCTION CONTROLLER	
1. Name:	
2. Telephone number:	
3. email address:	
H. DIRECTOR	
1. Name:	
2. Telephone number:	
I. ASSIGNED EXECUTIVE PRODUCER (if applicable)	
1. Name:	
2. Telephone number:	
J. SCRIPTWRITER(S)	
1. Name(s):	
2. Address:	
3. Telephone number(s):	
K. DELIVERABLES	Delivery date:
1. Transmission master:	
2. Trailers/promotional inserts:	
3. Music cue sheets:	
4. Artists contracts:	
5. Insurance policy:	
6. Final control sheet:	
7. Monthly cost and progress reports:	

8. Composer's agreement(s): _____
 9. All videotape stock, footage and sound recording(s): _____
 10. Release forms: _____
 11. Completion guarantee: _____
 12. Full international sound track: _____
 13. Transcript of dialogue/commentary: _____
 14. Publicity material: _____
 15. Facilities, equipment and stock: _____
 16. Final cost statement: _____
- L. GUARANTOR**
1. Name: _____
 2. Address: _____
 3. Contact person: _____
 4. Telephone number: _____
 5. Relationship of guarantor to Producer (if any): _____

Signed by the parties who by their signatures warrant that they are duly authorised to do so

THE PRODUCER:

(Authorisation to execute this agreement attached as Appendix A)

Capacity:

Full names:

Date:

Place:

THE SABC

Capacity:

Full names:

Date:

Place:

THE SABC LEGAL DEPARTMENT

Capacity:

Full names:

Date:

Place:

This agreement comes into force and effect on the effective date.

SABC GENERAL TERMS OF AGREEMENT

1. Interpretation and definitions

1.1 Rules of interpretation. This Agreement shall be subject to the following rules of interpretation:

- 1.1.1 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 1.1.2 **References.** Unless otherwise stated, references to clauses, sub-clauses, schedules or paragraphs are to be construed as references to clauses, sub-clauses, schedules or paragraphs of this Agreement. Clause headings and sub-headings are for convenience only and shall not affect the interpretation of this Agreement.
- 1.1.3 **Enactments.** References to any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
- 1.1.4 **References to persons.** References to persons shall include companies, corporations and partnerships and references to any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns.
- 1.1.5 **Survival of terms.** The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.1.6 **Substantive provisions.** If any provision in a definition is a substantive provision conferring rights or imposing duties on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in this Agreement.
- 1.1.7 **Calculation of days.** When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next Business Day.
- 1.1.8 **Definitions apply in parts.** Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this clause 1.
- 1.1.9 ***Contra proferentum* excluded.** The rule of construction that the Agreement shall be interpreted against the party responsible for the drafting or preparation of the Agreement, shall not apply.

- 1.1.10 **The term “including”.** The words “include”, “includes”, and “including” mean “include without limitation” and “including without limitation”. The use of the word “including” followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it.
- 1.2 Common meaning. Terms other than those defined within the Agreement will be given their plain English meaning, and those terms, acronyms, and phrases commonly known and utilised in specific industries will be interpreted in accordance with their generally accepted meanings.
- 1.3 Meanings of expressions and words. In this Agreement the following expressions and words have the meanings assigned to them below and derivative expressions and words will have a corresponding meaning:–
- 1.3.1 *“Agreement” means this agreement which consists of the front page, Schedules A to L, the SABC Standard Production Agreement, Annexure A (Budget), and Appendix A (Authorisation to execution of the Agreement by the Producer).*
- 1.3.2 *“Annual basis” means that time of each year by when the SABC will furnish the Producer with statements and payments due to the Producer in respect of the exploitation of the Production as contemplated in clause 7, which will be no later than 2 (two) months from the beginning of the SABC financial year.*
- 1.3.3 *“Artists” means performers, composers, lyric writers, scriptwriters and any other person in whose contribution to the Production intellectual property rights may vest.*
- 1.3.4 *“Broadcast” means a transmission via analogue and digital terrestrial and satellite means and any other means now known or hereafter devised consisting of sounds, images, signs or signals, intended for the public, sections of the public or subscribers to broadcasting services having appropriate facilities.*
- 1.3.5 *“Budget” means a line-by-line cost analysis and breakdown of the total amount required by the Producer to make the Production, and comprises the External Costs and the Internal Costs.*
- 1.3.6 *“Budget Line Item” means the individual amounts set out in the Budget, which the Producer will appropriate towards different items of expenditure.*
- 1.3.7 *“Business Day” shall mean each weekday, Monday to Friday, but excluding Saturdays, Sundays and any public holidays.*
- 1.3.8 *“Business Hours” shall mean from 8:00am to 4:30pm on a Business Day.*
- 1.3.9 *“Cash-Flow” means the projected schedule of cash to be advanced to the Producer.*
- 1.3.10 *“Cash-Flow Period” means each period reflected in the Cash-Flow for which period the SABC will advance cash to the Producer.*

- 1.3.11 *“Commercial Exploitation” means the exploitation by any means, of the rights in and to the Production, including but not limited to broadcasting rights, theatrical rights, prequel and sequel rights, character rights, multimedia variations and merchandising rights.*
- 1.3.12 *“Commissioning Editor” means the person appointed by the SABC to oversee the making of the Production and who shall represent the SABC for purposes of this Agreement.*
- 1.3.13 *“Contract Amount” means the cash payable to the Producer consisting of the External Costs.*
- 1.3.14 *“Deliverables” mean the individual items listed in Schedule K which are required to be delivered on the dates recorded in that Schedule.*
- 1.3.15 *“Distribution Commission” means the percentage calculated on the gross income made from the exploitation of the Production to be retained by the SABC for the distribution of the Production.*
- 1.3.16 *“Effective Date” means the date of signature of this Agreement by the party signing last in time.*
- 1.3.17 *“External Costs” means the Budget excluding Internal Costs.*
- 1.3.18 *“Final Cost Statement” means the document which reflects the total amount actually spent on the Production.*
- 1.3.19 *“Final Mix” means the process during which all soundtracks, music, effects and voice-overs are synchronised to meet the final edited version of the Production, and recorded for delivery to the SABC’s Technical Standards.*
- 1.3.20 *“Internal Costs” means the total amount of Budget Line Items comprising of SABC facilities, equipment, stock, archive material and such other items as the SABC may make available for use or application in the Production, the individual values of which are reflected in the Budget.*
- 1.3.21 *“Off-Line Edit” means the process during which an edited version of the Production is created. Such version is not the final version of the TX Master but represents a key stage at which changes to the edited version may be made and signed off before proceeding to the On-Line edit. An Off-Line edit typically consists of the raw narrative of a story/insert before the cutaways are added. The story content can therefore be assessed and amended before time, effort and expenses are incurred on building the visual part of the story.*
- 1.3.22 *“On-Line Edit” means the process during which the final edited version of the Production is created, inclusive of all visual sequences, effects and titles. Such version does not necessarily constitute the final TX Master, as it may not include all the soundtracks - music, sound effects and voice-overs.*
- 1.3.23 *“Producer” means the company, close corporation, trust or individual described in Schedule A.*

- 1.3.24 *“Production” means the television programme detailed in Schedule C and includes all literary, dramatic, artistic and musical material, all dialogue, commentary and video and sound recording(s) which are commissioned at the expense of the Producer for use in the Production or the exploitation thereof, and all videotape material (including unused takes, clips, trims and outtakes) produced in connection with the Production.*
- 1.3.25 *“Production Accountant” means the person appointed by the Producer to assist the Producer to make the Production in accordance with the Budget.*
- 1.3.26 *“Production Bank Account” means the dedicated bank account to be opened by the Producer at a recognised bank under the name of the Production.*
- 1.3.27 *“Production Controller” means the person appointed by the SABC to oversee compliance with the provisions of the Budget.*
- 1.3.28 *“Production Fee” means the amount recorded in Schedule D, which the Producer shall receive as a mark-up of the Budget.*
- 1.3.29 *“Production Proposal” means the document submitted by the Producer to the SABC prior to the commissioning of the Production which contains the idea or format of the Production, and which describes how the Producer intends to make the Production.*
- 1.3.30 *“Production Schedule” means the time periods within which the different phases of the Production will be completed.*
- 1.3.31 *“SABC” means the public broadcaster, a statutory body constituted in terms of the Broadcasting Act No 4 of 1999 as amended.*
- 1.3.32 *“SABC Producers’ Guidelines” mean that set of documents compiled by the SABC to assist Producers in complying with the SABC’s production requirements and standards, including:*
- 1.3.32.1 *Screen Credits; and*
- 1.3.32.2 *SABC Editorial Policies.*
- 1.3.33 *“Screen Credits” mean an acknowledgement of individuals and entities that participate in or contribute to the making of the Production.*
- 1.3.34 *“Scripts” mean the script for the Production approved by the SABC and includes any scripts already or subsequently prepared for the Production, and all drafts of such scripts.*
- 1.3.35 *“Technical Standards” mean the prescribed norms of technical quality in accordance to which the Production is to be made, as detailed in the SABC Technical Standards for Television Programme delivery (see Appendix 6.12).*
- 1.3.36 *“Trade Marks” mean all names, titles, symbols, designs, slogans, expressions, logos, drawings, character or personality images or likenesses or combinations thereof.*

- 1.3.37 *“Treatment” means a written description of the way in which a director will interpret and realise the Production concept or script. The treatment typically includes general production framework or style (e.g. documentary, insert, avante garde, cinema verite, etc); narrative approach, bias and agenda; shooting techniques (e.g. style, use of filters, special lighting, etc); approach to soundtrack (e.g. music choice, effects), etc.*
- 1.3.38 *“TX Master” means the tape on which the Production is recorded at broadcast quality inclusive of all visual sequences, effects, and titles as well as all soundtracks, music, effects and voice-overs.*

2. Making of the production

2.1 Commission

The SABC commissions the Producer to make the Production in accordance with the following criteria:

- 2.1.1 the agreed Production Proposal;
- 2.1.2 the Technical Standards;
- 2.1.3 the Budget;
- 2.1.4 the Production Schedule;
- 2.1.5 the Script;
- 2.1.6 the directions of and the artistic standard set by the Commissioning Editor;
- 2.1.7 the Editorial Policies of the SABC;
- 2.1.8 in the language and medium specified in Schedule C above.

The Producer accepts the commission.

2.2 Commissioning Editor

- 2.2.1 The Commissioning Editor shall oversee the making of the Production and shall be entitled to exercise the SABC’s rights in terms of this Agreement in relation to the content and quality of the Production, and in relation to the Deliverables. Any deviations from the SABC’s Technical Standards for Television Programme Delivery (see Appendix 6.12) must be approved by the Commissioning Editor.
- 2.2.2 The Commissioning Editor shall be entitled to approve the appointment of the contributors to the Production listed below, as well as such other contributors as the Commissioning Editor may deem necessary. The appointment of these contributors may not be terminated without the prior written consent of the Commissioning Editor:

- Director(s)
- Principal Actors
- Production Manager
- Production Accountant
- Director of Photography
- Editor(s)
- Consultant(s)
- Presenter(s)
- Animator(s)
- Composer(s)
- Scriptwriter(s)

As far as the appointment of Principal Actors is concerned, the Producer shall ensure that the prescribed artists' contracts reflect the names of the Principal Actors and their status as such.

- 2.2.3 The Commissioning Editor shall be entitled to approve any changes to the Production Schedule, which approval will be in writing.
- 2.2.4 The Commissioning Editor shall be entitled to exercise the take-over rights referred to in clause 2.6.13, should the Commissioning Editor at any stage of the Production hold the opinion that the Production is not made in accordance with the standard prescribed in clause 2.1.

2.3 Editorial Control

- 2.3.1 The SABC shall have editorial control of the Production.
- 2.3.2 The Commissioning Editor shall manage the editorial process through the approval of key creative aspects of the Production, and the editorial content through the approval of series outlines, treatments, scripts, off-line and on-line versions.
- 2.3.3 There are a minimum number of production stages or aspects of the Production which a Commissioning Editor shall approve before the making of the Production may continue:
- Treatment(s);
 - Set(s);
 - Off-line edit;
 - On-line edit and/or final mix.
- 2.3.4 The Commissioning Editor shall approve and accept the TX Master, which approval signifies compliance with editorial requirements, while the relevant SABC Quality Control Officer shall verify that the TX Master complies with the Technical Standards.

Final acceptance shall take place upon approval by both the Commissioning Editor and the SABC Quality Control Officer.

- 2.3.5 The Commissioning Editor may request the Producer to make reasonable changes to the Production at any stage between the approval of the Production Proposal and the final acceptance of the TX Master.
 - 2.3.5.1 Should these changes necessitate additional costs to be incurred, such costs will be for the account of the Producer where the changes were required as a result of the Producer's failure to make the Production in accordance with the standard particularised in clause 2.1. It will lie within the discretion of the Commissioning Editor whether this standard was met.
 - 2.3.5.2 Should the Commissioning Editor insist on changes to the Production and such changes will result in additional costs, such costs will be for the account of the SABC, subject to the prior written approval of these changes both by the Commissioning Editor and Production Controller.
- 2.3.6 In the event of a dispute between the Commissioning Editor and the Producer in respect of decisions made by the Commissioning Editor in terms of clauses 2.2 and 2.3, the decision of the Commissioning Editor will prevail. The Producer would under such circumstances be entitled to appeal to the Head of Genre, whose decision will be final and binding.

2.4 Clearance of Rights

- 2.4.1 The Producer shall clear and obtain on behalf of the SABC for the life of the copyright and any extension or renewal thereof throughout the world on any medium now known or hereafter devised, all copyright and performance rights in the contributions of the Artists, as well as clearances for literary works and trademarks used in the Production, to the extent that this may be required to enable the SABC to broadcast, exploit and exercise its rights in terms of this Agreement.
- 2.4.2 The Producer may use library music and/or music composed by commission in the making of the Production.
- 2.4.3 The Producer may only use commercial music in the Production subject to the prior written consent of the Commissioning Editor, in which case the Producer shall at its own cost clear the dubbing and synchronisation rights for the use of the commercial music to the extent required to enable the SABC to exercise its rights as contemplated in clause 2.4.1. Commercial music in this context includes music videos.
- 2.4.4 The SABC will pay the royalties for the broadcast of compositions used in the Production, as well as the fee for the synchronisation rights for library music.

- 2.4.5 Where music is composed for the Production by commission, the Producer shall obtain on behalf of the SABC, the permission of the composer(s) and lyric writer(s) to make and preserve an unlimited number of reproductions of the compositions and lyrics for use in the Production, as well as to make an unlimited number of transcription recordings of the music for use in other SABC radio and television programmes, against no consideration whatsoever.
- 2.4.6 The SABC is the owner of the copyright in various music soundtracks and may make such music available to the Producer for use in the Production. The Producer will under these circumstances be liable for the clearance of rights in respect of the reproduction of the composition.
- 2.4.7 The SABC may prescribe the contracts which, if prescribed, the Producer shall be obliged to conclude to clear and obtain the rights specified in this clause 2.4.
- 2.4.8 The Producer shall be required to deliver to the SABC a signed copy of each music cue sheet in order to serve as a record of the music usage in the Production. The SABC may prescribe the format of the music cue sheets.
- 2.4.9 The Producer shall deliver to the SABC the music cue sheets, release forms, consents and contracts referred to above in accordance with the provisions of clause 3.1.

2.5 Screen Credits

- 2.5.1 The Producer shall provide Screen credits in which, *inter alia*, the artists, performers, technical crew and the members of the production team are named and credited.
- 2.5.2 The Producer shall, as part of the Screen Credits, acknowledge that the Production is an SABC commission as instructed by the Commissioning Editor, and shall insert the SABC copyright notice in the Production by adding the wording "Copyright SABC" together with the year of the Production immediately below the aforementioned acknowledgement.
- 2.5.3 The Screen Credits and acknowledgements referred to in clauses 2.5.1 and 2.5.2 above, shall comply with the requirements contained in the SABC Producers' Guidelines, and be subject to the prior written approval of the Commissioning Editor at the on-line edit stage.
- 2.5.4 The Producer shall not negotiate any agreement with a third party for exposure in the Production, including but not limited to screen credits, sponsorships, trade exchanges or product placement, unless agreed to by SABC TV Resource Management and SABC Airtime Sales Unit in writing. The Producer shall refer any third party who is interested in exposure in, on or during the Production, to the SABC.
- 2.5.5 Should the Producer, contrary to the provisions of clause 2.5.4, afford exposure to a third party relating to the Production, be it intellectual property, merchandise or any other property whatsoever, and receive

consideration in turn, the Producer shall terminate the exposure upon notification by the SABC to do so.

2.5.5.1 The SABC shall in that instance be entitled to deduct that consideration from any outstanding payments due to the Producer.

2.5.5.2 Should there be no outstanding payments due to the Producer, the Producer shall pay to the SABC the consideration received for the exposure.

2.5.5.3 The SABC shall determine the value of that exposure in accordance with the SABC's standard rate card.

2.6 Production Finance

2.6.1 Production Controller and Production Accountant

2.6.1.1 The SABC shall appoint a Production controller in order to ensure that the Producer makes the Production in accordance with the Budget. The Production controller will, *inter alia*, monitor expenditure and release funds to the Producer as provided for in the Cash-Flow Schedule

2.6.1.2 The Producer shall appoint a Production Accountant for the Production.

2.6.2 Budget and Cash-Flow

2.6.2.1 In pursuance of its commission of the Production, the SABC will pay the Producer the Contract Amount recorded in Schedule D. The SABC will advance this amount to the Producer as provided for in the Cash-Flow Schedule.

2.6.2.2 The Producer will make the Production within the parameters of the Budget and in accordance with the Cash-Flow.

2.6.2.3 The SABC shall advance the Contract Amount to the Producer in instalments for the respective Cash-Flow Periods as provided for in the Cash-Flow Schedule subject to the following conditions:

2.6.2.3.1 The advance to the Producer in respect of the first Cash-Flow Period shall be made as soon as possible after signature of this Agreement and on presentation by the Producer of a valid tax invoice.

2.6.2.3.2 For purposes of the Cash-Flow Periods, which may follow the first Cash-Flow Period, the Producer shall submit a valid tax invoice to the SABC for the instalment to be advanced to the Producer for the subsequent Cash-Flow Period. Such invoice will be accompanied by all documentation verifying expenditure in respect of the preceding Cash-Flow Period. Documentation in this context

includes without limitation a Progress Report, Cost Report, Invoices received from third parties for goods supplied or services rendered, and Production Bank Account statements.

- 2.6.2.3.3 The Producer shall submit a hard copy of the tax invoice and substantiating documentation to the SABC at least 7 (seven) business days before the SABC freelance system closes for payroll purposes. The Commissioning Editor will make available to the Producer a list of these dates at the beginning of each financial year, and timeously inform the Producer of any amendments thereto.
- 2.6.2.3.4 In the event that the Producer is unable to substantiate the cash expenditure of the Production during the preceding Cash-Flow Period, the SABC shall be entitled to deduct from the cash advance to be made in respect of the subsequent Cash-Flow Period, any amounts which cannot be substantiated. In the event that the Producer cannot substantiate the cash expenditure for the final Cash-Flow Period, the SABC shall be entitled to claim from the Producer any amount that cannot be substantiated, which amount may be recovered from any monies due to the Producer.
- 2.6.2.3.5 In the event that the Production, at any stage thereof, fails to comply with the standard prescribed in clause 2.1, or should the Producer fail to deliver the Deliverables to the SABC in accordance with the provisions of clause 3, the SABC shall be entitled to withhold any cash advance due to the Producer until the required standard is met or until the Deliverables are received by the SABC.
- 2.6.2.3.6 The cash advance for any Cash-Flow Period may only be varied by written agreement between the parties.
- 2.6.2.4 The SABC will advance to the Producer, the amount for the relevant Cash-Flow Period, within 15 (fifteen) Business Days of submission of the tax invoice to the SABC.
- 2.6.2.5 The SABC shall be liable for the payment of interest accrued on an overdraft facility or alternative arrangement entered into by the Producer as a result of late payment by the SABC of the amount of the submitted tax invoice. Interest will be calculated on the outstanding amount at the prime rate for

overdraft accounts as charged by ABSA Bank Limited, alternatively the rate at which the Producer is actually charged, whichever may be the lower.

2.6.3 Production Bank Account

2.6.3.1 The Producer will open a separate bank account for this Production ("herein after referred to as the Production Bank Account").

2.6.3.2 The SABC will require the Production Bank Account to be opened either solely in the name of the Producer, or in the joint names of the Producer and the SABC. The Production Bank Account will bear the working title of the Production.

2.6.3.3 The Producer shall deposit all sums advanced by the SABC in the Production Bank Account.

2.6.3.4 The Producer may at this instance or on instruction by the SABC, place any short-term unused funds into an interest-bearing account in consultation with the Production Controller. Any interest earned on such account (after deduction of any tax payable to the extent that this may be applicable) shall first be applied towards the reduction of an overspend on any Budget Line Item. Alternatively, if not required to be applied in respect of an overspend, interest shall revert to the SABC, subject to the provisions of clause 2.6.5.4.

2.6.3.5 Where the Budget provides for items quoted in foreign currency, and the rate of exchange varies after the date on which the Budget was approved:

2.6.3.5.1 The SABC will carry the cost of any increase in the Budget Line Items resulting from any adverse movements and will benefit from any reduction in the Budget Line Items resulting from any beneficial movements.

2.6.3.5.2 A decrease in a Budget Line Item shall not be deemed to be an underspend but shall revert to the SABC, subject to the provisions of clause 2.6.5.4.

2.6.4 Overspend

2.6.4.1 The Producer may without the prior approval of the Production Controller, increase the amount allocated for any particular Budget Line Item (hereinafter the "increased Budget Line Item") by a maximum of 10% of the Budget Line Item or R5 000, whichever shall be the lower, but shall not in doing so exceed the Budget.

2.6.4.1.1 The Producer will notify the Production Controller of an adjustment of this nature within three (3) days of effecting same, and furnish the SABC

with written reasons in justification thereof as well as a detailed explanation as to how the overspend in respect of the increased Budget Line Item will be recovered from underspending on other Budget Line Items.

2.6.4.1.2 It will be within the discretion of the SABC to accept or reject the overspend in respect of an increased Budget Line Item.

2.6.4.1.3 The Production Controller will reject the overspend in respect of the increased Budget Line Item where:

2.6.4.1.3.1 The Production Controller anticipates that the amount of the overspend will not be recoverable from an underspend on any other Budget Line Items; or

2.6.4.1.3.2 The Production Controller objects to the overspend being recoverable from underspending in respect of other Budget Line Items for reasons that such underspending will result in the Production not meeting the standard set out in clause 2.1.

2.6.4.1.4 If the Production Controller rejects the overspend on the increased Budget Line Item, the amount of the overspend will be for the Producer's account, and the SABC will be entitled to recover such amount from any amount owing to the Producer.

2.6.4.2 The Producer may, subject to the prior written approval of the Production Controller and the Commissioning Editor, increase the amount allocated for any particular Budget Line Item (hereinafter the "increased Budget Line Item") by more than ten per cent (10%) of that Budget Line Item.

2.6.4.2.1 The Producer shall furnish the SABC with written reasons in justification of the adjustment as well as a detailed explanation as to how the overspend in respect of the increased Budget Line Item will be recovered from underspending on other Budget Line Items, without exceeding the Budget.

2.6.4.2.2 It will be within the discretion of the SABC to allow or refuse the overspend.

2.6.4.2.3 The Production Controller will refuse the overspend in respect of the increased Budget Line Item where:

2.6.4.2.3.1 The Production Controller anticipates that the amount of the overspend will not be recoverable from an underspend on any other Budget Line Items; or

2.6.4.2.3.2 If the Production Controller objects to the overspend being recoverable from underspending in respect of other Budget Line Items for reasons that such underspending will result in the Production not meeting the standard set out in clause 2.1.

2.6.4.3 Where the Production Controller identifies an overspend on any Budget Line Item, of which the Production Controller was not notified, or which was not accepted or approved by the Production Controller as provided for in clauses 2.6.4.1 or 2.6.4.2, such overspend will be for the Producer's account and the SABC will be entitled to recover such amount from any amount owing to the Producer.

2.6.4.4 If the Production Controller anticipates at any stage of the Production, that any overspend accepted or approved of by the Production Controller will not be recovered from underspends as presented by the Producer in its justification for overspending as aforesaid, and which overspend could cause the cost of the Production to exceed the Budget, the Production Controller will notify the Producer in writing to the effect that:

2.6.4.4.1 the amount by which the cost of the Production is anticipated to exceed the Budget, shall be for the Producer's account if the Production Controller considers the result of such excess to have been caused by the intentional or negligent conduct on the part of the Producer;

2.6.4.4.2 the SABC shall exercise its take-over rights contemplated in clause 2.6.13.

2.6.5 Underspend and Savings

2.6.5.1 In the event that Budget Line Items prove to be wholly or partially unnecessary during the course of the Production, or a reduction in the cost of Budget Line Items occurs as a result of a decrease of the time periods provided for in the Production Schedule, such reduction in the Budget Line Items shall be referred to as an underspend.

- 2.6.5.2 The Producer may not decrease the amount allocated in the Budget for any particular Budget Line Item without the prior written approval of the Production Controller. In exercising his discretion, the Production Controller shall consider whether any underspend in respect of a Budget Line Item adversely affects compliance with the standard prescribed in clause 2.1.
- 2.6.5.3 The Producer shall achieve a saving on the Production if the Producer manages to reduce the cost of Budget Line Items, by the implementation of good management and economical practices in respect of the Production.
- 2.6.5.4 In the event that the Producer completes the Production for less than the amount provided for in the Budget, determined by reference to the final cost statement delivered in accordance with Schedule K, it will be within the discretion of the SABC to share any savings made in respect of the Production with the Producer.
- 2.6.6 Production Monitoring
 - 2.6.6.1 The Producer is required to report to the Commissioning Editor and the Production Controller on the progress of the Production at such intervals as the Commissioning Editor and Production Controller may direct. The Producer will submit Monthly Cost and Progress Reports to the SABC in accordance with the provisions of clause 3.
- 2.6.7 SABC Facilities, Equipment and Stock
 - 2.6.7.1 The Producer shall use and apply the SABC facilities, equipment and stock referred to in Schedule E, towards the making of the Production, the cost of which is included in the Budget as an internal cost to the SABC.
 - 2.6.7.2 SABC shall remain the owner of the SABC facilities, equipment and stock made available to the Producer for purposes of the Production.
 - 2.6.7.3 The Producer shall bear the risk in and to the SABC facilities, equipment and stock, and shall be responsible for any damage or loss to such facilities, equipment and stock while in the Producer's possession or under the Producer's control.
 - 2.6.7.4 The Producer shall return the facilities, equipment and stock to the SABC on the delivery date as stipulated in Schedule K, or on such dates as agreed to with the Commissioning Editor. The facilities, equipment and stock shall be returned to the SABC in the same condition that they were at the date when same was made available to the Producer, subject to reasonable wear and tear.

2.6.8 Procurement and Disposal of Physical Material

2.6.8.1 The Producer shall maintain a complete and accurate asset register of all materials manufactured or acquired for purposes of the Production. Such register shall reflect the date of acquisition or manufacture of the material, the amount for which it was acquired or manufactured and the date on which it was disposed of.

2.6.8.2 The Producer shall, subject to the authorisation of the Production Controller, sell any material purchased for the purpose of the Production, as soon as possible after the material is no longer required, at the best price reasonably obtainable. The proceeds of such sale will accrue to the Production Bank Account, and the Producer will furnish the Production Controller with the corresponding documentary proof and enter the complete transaction into the aforementioned asset register.

2.6.8.3 It will be within the discretion of the SABC to take it upon itself to dispose of the material acquired for the Production.

2.6.9 Information, Accounting and Audit Rights

2.6.9.1 The SABC shall have access to information held by the Producer which relates directly to the making of the Production. The SABC undertakes to keep its information requirements to the minimum.

2.6.9.2 The SABC and its duly appointed auditors will be entitled to inspect all books of account and records of the Producer which relate to the Production during the making of the Production and for a period of 4 (four) years from the date of delivery of the Production. The SABC will gain access upon giving the Producer 48 (forty-eight) hours notice.

2.6.10 Completion Guarantee

2.6.10.1 Where the Budget exceeds R5 000 000.00, the Producer shall furnish the SABC upon request with a guarantee to the effect that the Production will be completed and delivered in accordance with the provisions of this Agreement. It will nevertheless be within the discretion of the SABC to request a guarantee where the Budget is less than R5 000 000.00.

2.6.10.1.1 The Production Controller shall be entitled to reject the guarantee should the identity of the guarantor and the contents of the guarantee not meet the approval of the Production Controller. Under these circumstances, the Producer shall be obliged to obtain a guarantee that meets the approval of the Production Controller.

2.6.10.1.2 Failure by the Producer to supply the guarantee within 14 (fourteen) days of request shall entitle the SABC to retain any payment due to the Producer hereunder until such time as the SABC is placed in receipt of the guarantee.

2.6.10.2 The premiums for the guarantee are provided for in the Budget and will be paid out of the Budget. The amount provided for these premiums is excluded from the calculation of the Production Fee.

2.6.10.3 The Producer shall maintain payment of the premiums in respect of the guarantee until final approval of the TX Master by the SABC as contemplated in clause 2.3.4, unless the Production Controller directs otherwise.

2.6.11 Personal Suretyship

In instances where the Producer is a legal entity, such as a company, a close corporation or a trust, it will lie within the discretion of the SABC to require the director, members or others in control of the legal entity, to bind themselves as sureties and co-principal debtors to the SABC for the due and successful performance by the Producer of its obligations in terms of this Agreement.

2.6.12 Reduction in Budget

2.6.12.1 The duration of a Production which consists of one episode, or of any episode of a Production where that Production is a series, may not deviate by more than 30 seconds from the duration recorded in Schedule A, unless approved in writing by the Commissioning Editor.

2.6.12.2 The SABC reserves the right to reduce the Budget *pro rata* if:

2.6.12.2.1 The duration of one or more episodes of a Production or of a Production as a whole is different from the duration recorded in Schedule A; or

2.6.12.2.2 The Commissioning Editor reduced the number of episodes or the duration of an episode or episodes (where the Production is a series) or the duration of a Production as a whole (where the Production consists of one episode) before filming on the episode concerned or the Production as a whole had begun.

2.6.13 Take-Over Rights

2.6.13.1 In the event that the SABC exercises its right to take over the Production in accordance with the provisions of this Agreement, it shall notify the Producer in writing of its intention to do so at the first available opportunity. The take-over shall be deemed to be effective on the date of delivery of such notice to the Producer.

2.6.13.2 The Producer shall, upon receipt of a notice of take-over, follow all instructions issued by the Commissioning Editor in order to place the Production entirely under the control of the Commissioning Editor. The SABC shall, from the date of notification of the take-over, act in the Producer's name and stead and be entitled to:

- 2.6.13.2.1 make withdrawals from the Production Bank Account and to expend funds from that account;
- 2.6.13.2.2 endorse, collect and deposit any cheques or other instruments payable to the Producer in pursuance of this Agreement and arising from the making of the Production;
- 2.6.13.2.3 perform in terms of any agreements relating to the Production to which the Producer is a party, and may modify, amend, or terminate any such agreements to the extent that this may be possible;
- 2.6.13.2.4 engage or discharge any person engaged or contracted by the Producer for purposes of the Production;
- 2.6.13.2.5 acquire, release and dispose of any equipment, and property relating to the Production;
- 2.6.13.2.6 perform such acts as the Producer would otherwise have been entitled to had the SABC not exercised its take-over rights.

2.6.13.3 Upon take-over of the Production, the Producer will have no further rights in respect of the Production and will no longer be entitled to the Production Fee and it shall be within the SABC's sole discretion to complete or abandon the Production.

2.6.13.4 The Producer agrees to take such steps and do such things as may reasonably be required to enable the SABC to exercise its rights of take over as provided for in this clause 2.6.13.

2.6.13.5 The SABC's take-over rights are in addition to any other rights that the SABC may have in terms of this Agreement or in terms of law.

3. Delivery

- 3.1 The Producer shall deliver each of the listed Deliverables to the SABC on the dates particularised in Schedule K (hereinafter the "delivery date").
- 3.2 The SABC shall be entitled to require delivery of all video material and sound recordings produced in the making of the Production.

- 3.3 Should the Producer fail to deliver any of the Deliverables to the SABC on the respective delivery dates, the SABC shall be entitled to withhold any payment due to the Producer as at the delivery date of the outstanding Deliverable until such time as the Producer makes delivery thereof.
- 3.4 If the Producer fails to deliver the TX Master, on the delivery date, the SABC will be entitled to recover the costs occasioned or damage suffered by the SABC arising from the late delivery from any money due to the Producer as at that delivery date. If no money is due to the Producer as at that date, the Producer shall be penalised with an amount equal to 2.5% of the Budget for every week that delivery of the TX Master is delayed.
- 3.5 The provisions of clauses 3.3 and 3.4 will not find application where the Commissioning Editor consented in writing to the late delivery of a Deliverable or the TX Master.

4. Intellectual Property

- 4.1 Copyright in the Production as a whole will vest in the SABC. Copyright in this context includes, without limitation, the concept or format of the Production, broadcast rights, theatrical rights, character rights, CD-Rom rights, multimedia rights as well as merchandising rights resulting from the Production or based thereon.
- 4.2 The Producer shall not be entitled to Produce for or on behalf of third parties or for itself any cinematograph or television film which is a sequel to, or is similar to, or is based upon the whole or parts of the story line of the Production and which portrays the same characters appearing in the script, scenario or story, nor shall the Producer co-operate in any way with third parties to do so.
- 4.3 All trade marks produced or created or caused to be produced or created for the Production or as a result of the Production shall vest exclusively in the SABC.

5. Ownership of Material

- 5.1 Ownership of all material produced or made by the Producer in pursuance of this Agreement shall vest in the SABC from the time that the Producer accepts the commission. Material in this context includes, *inter alia*, videotapes, publicity material, photographs, sound recordings, scripts, sets and props.
- 5.2 Notwithstanding the provisions of clause 5.1, any risk or liability in and to the TX Master, any of the other Deliverables and any material produced or made by the Producer in pursuance of this Agreement, will vest with the Producer until the date of delivery thereof to the SABC.

6. Insurance

- 6.1 The Producer will carry the risk in and to the Production from the date of acceptance of the commission until the date of delivery and acceptance of the TX Master by the SABC.

- 6.2 The Producer will secure a Public Liability Policy and Risk Policies against loss or damage to the Production, the TX Master or material and properties created in pursuance thereof.
- 6.3 The Producer, in consultation with the Commissioning Editor and the Production Controller, will decide whether any other insurance policies are required for purposes of the Production.
- 6.4 The Producer will be liable for payment of the premiums in respect of the policies as provided for in the Budget.
- 6.5 The Producer will nominate the SABC as the beneficiary of the policies secured in terms of this clause.
- 6.6 The Producer will lodge copies of the policies with the SABC on the delivery date provided for in Schedule K.
- 6.7 Should the Producer fail to take out the prescribed and identified insurance policies, the SABC will proceed to do so and may then recover the total of all premiums paid for by the SABC, from the Production Fee.

7. Commercial Exploitation

- 7.1 The Commercial Exploitation of the Production vests solely with the SABC.
- 7.2 The SABC will pay the Producer 15% of all net profit made by the SABC through the exploitation of the Production anywhere in the world.
 - 7.2.1 The provisions of this clause will only apply to the sale or licensing of broadcasting rights in and to the Production and not to any spinoff, merchandise, adaptation, prequel, sequel or serial thereof.

Any income made by the SABC from the exploitation of the Production save by way of the sale or licensing of broadcasting rights will be for the benefit of the SABC to the exclusion of the Producer.
 - 7.2.2 The term “net profit” in this context shall mean gross income derived from the exploitation of the Production minus:
 - distribution commission to a maximum of 35%;
 - marketing and promotional expenses to a maximum of 10%;
 - the direct costs associated with editing, dubbing and/or subtitling;
 - transport costs including courier services and shipment;
 - travelling expenses;
 - all payments relating to royalties, residuals and the like;
 - manufacturing and/or technical transfer costs.
 - 7.2.3 The determination of net profit by the SABC will be *prima facie* evidence of this amount.
- 7.3 The SABC will pay the Producer as a finder’s fee an additional 10% of net profit made from commercial exploitation, where the Producer initiates and first establishes contact between the SABC and another broadcaster for the sale or licensing of broadcasting rights in the Production.

- 7.4 It will be within the discretion of the SABC to share rights and/or further income or benefits derived from the exploitation of the Production with the Producer or a third party, where the Producer presents a sound business case to the SABC to do so. Each business case will be considered on an *ad hoc* basis.
- 7.5 If within two years from the date of delivery and acceptance of the Production by the SABC, the SABC fails to broadcast or commercially exploit the Production, the Producer and the SABC shall enter into negotiations to allow the Producer to exploit the Production.
- 7.6 The SABC will keep proper books of account of all income, revenue generated and expenses incurred, arising from the exploitation of the Production.
 - 7.6.1 The Producer will be entitled to have such books of account audited by a firm of recognised auditors upon notifying the SABC of its intention to do so at least 1 (one) calendar month in advance.
 - 7.6.2 The SABC will supply the Producer with statements compiled by its internal auditors on an annual basis, to the extent that the SABC succeeded in the exploitation of the Production.
 - 7.6.3 The SABC shall effect payments due to the Producer in terms of this clause on an annual basis.
- 7.7 The SABC will be responsible for the payment of repeat fees to performers and script writers as well as the percentage of net profit made from the commercial exploitation of the Production due to the Producer, performers and writers in terms of this Agreement and the prescribed Writers' and Freelance Artists' Agreement.
- 7.8 The simultaneous broadcast of the Production on any other SABC platform will not constitute a repeat broadcast or commercial exploitation of the Production. Where the SABC, however, packages a channel for broadcast purposes on any platform which is provided by a third party, of which the Production forms part of, the broadcast of the Production on that platform shall not constitute a repeat broadcast, but be deemed to be an instance of commercial exploitation.
- 7.9 The SABC may consider requests of Producers or third parties to use the Production or parts thereof for non-commercial purposes on an *ad hoc* basis. This will include using the Production for training/educational purposes, to assist the SABC to fulfil its mandate as public broadcaster, and other instances not for gain. The SABC will under these circumstances be credited in a manner deemed appropriate by the SABC.

8. Appointment of an Assigned Executive Producer

- 8.1 It will be within the discretion of the Commissioning Editor to assign an Executive Producer (hereinafter referred to as "the Assigned Executive Producer") to develop the skills of the Producer where this may prove to be necessary.
- 8.2 The Assigned Executive Producer may either be an SABC employee, or an external consultant.
- 8.3 The assignment will be done in consultation with the Producer when the Assigned Executive Producer is an external consultant.

- 8.4 The Assigned Executive Producer will take instructions from and report to the Commissioning Editor.
- 8.5 The fees of the Assigned Executive Producer will be provided for in the Budget.

9. General Obligations

- 9.1 All agreements and obligations in connection with the Production shall be made and entered into by the Producer. The Producer shall enter into such agreements and incur liability as principal and not as agent for the SABC. All such agreements or undertakings shall be consistent with the provisions of this Agreement and international industry custom and practice.
- 9.2 The Producer shall include in all agreements with third parties for the purchase of goods for purposes of the Production, a recordal that ownership of the goods will vest with the SABC.
- 9.3 The Producer will not cancel, modify or rescind the aforementioned agreements in any manner that may prejudice the SABC.
- 9.4 Should the Producer fail to execute any instrument or document which the SABC may reasonably require to perfect its rights in terms of this agreement, the SABC will be entitled to execute that document or instrument on behalf of the Producer.
- 9.5 The Producer will have all the responsibilities of an employer with respect to those personnel employed by the Producer.
- 9.6 The Producer shall not engage personnel of the SABC in the making of the Production save to the extent that this is provided for in this Agreement or where the Producer obtained the prior written consent of the Commissioning Editor.
- 9.7 The Producer will allow the Commissioning Editor, Production Controller and other designated SABC personnel unrestricted access to any premises or location where the Producer is engaged in the making of the Production.
- 9.8 Where required, the Producer shall supply the SABC, upon completion of the Production, with:
 - 9.8.1 a copy, in electronic format, of a transcript of and/or the commentary dialogue recorded on the final mix soundtrack for international sales or dubbing purposes. These scripts shall be time-coded for both factual and fictional programmes; and/or
 - 9.8.2 an international soundtrack on a separate audio channel.
- 9.9 The SABC may make available to the Producer archive material which may be used in the Production on such terms and conditions as the SABC may prescribe.

10. Warranties by the Parties

- 10.1 The Producer warrants the following:
 - 10.1.1 The Producer is duly authorised to enter into this agreement.
 - 10.1.2 The Production Proposal, Scripts and Production will be original and will not infringe the copyright or any rights of a third party.

- 10.1.3 The Producer will not include any material in the Production without obtaining the required permission, consent and authorisation of the owners and/or copyright holders of that material.
 - 10.1.4 Save as otherwise provided herein, the Producer shall secure irrevocable and unconditional rights of cession entitling the SABC and any person deriving title through the SABC, without further payment, to record, broadcast, transmit, perform and otherwise exploit throughout the world any and all intellectual property incorporated in the Production or derived from or based on it.
 - 10.1.5 The Producer shall before delivery of the TX Master, secure such consents as may be required to enable the SABC to publicise the Production and to use the names, photographs, biographies and voices of Artists for that purpose.
 - 10.1.6 The Producer shall effect payment of all sums due to any person who is or may be entitled to payments, royalties, gratuities or the like, monies due in respect of services or facilities rendered, goods supplied, or which may arise from the exercise by the SABC of its rights in terms of this Agreement.
 - 10.1.7 The Production shall not contain any matter that may be defamatory, racially prejudicial, offensive, blasphemous or illegal, or which may cause any embarrassment or injury to the SABC, or infringe the rights of any other person.
 - 10.1.8 There are and shall not attach at any material time hereto any claims, hypothecs, liens or other encumbrances to the Production or any episode thereof, the scripts and the rights vested therein, including without limitation the rights of broadcasting and exploitation.
- 10.2 The SABC warrants that it is duly authorised to enter into this agreement.

11. Indemnities and Legal Proceedings

11.1 Producer's Indemnity

- 11.1.1 The Producer shall at all times indemnify, defend, and hold harmless the SABC and all its successors in title against any and all claims, damages, liabilities, actions, causes of action, costs and expenses, including attorneys' fees, judgements, penalties of any kind or nature whatsoever arising out of a breach by the Producer of any representation, warranty, obligation, term or condition of this Agreement.

11.2 SABC's Indemnity

- 11.2.1 The SABC hereby indemnifies the Producer against any costs or damages that may be incurred by the Producer as a result of claims or charges made against Producer for breach by the SABC of a term or condition of this Agreement.

12. Assignment

- 12.1 The Producer will not, save as otherwise provided, cede or assign its rights or obligations under this Agreement without the prior written consent of the SABC.
- 12.2 The SABC will be entitled to cede and assign its rights and obligations to an Affiliate without the consent of the Producer. For the purposes of this clause, “an Affiliate” shall mean a company that is a holding company, a subsidiary or another subsidiary of the holding company of the Party concerned within the meaning of the Companies Act, 1973.
- 12.3 The entitlement of the SABC as contemplated above is occasioned by a statutory compulsion which governs the conversion of the SABC into the SABC Limited.

13. Confidentiality

- 13.1 The parties undertake not to divulge directly or indirectly to third parties any information whatsoever in connection with this Agreement, the financial terms thereof, or matters relating to the making of the Production, unless the third parties have been concerned with the making of the Production and both the SABC and the Producer consented to the disclosure.
- 13.2 The provisions of clause 13.1 above shall not apply to any confidential information which:-
- 13.2.1 Is or hereafter becomes part of the public domain (otherwise than as a result of a breach of the provisions of clause 13.1 above);
 - 13.2.2 Can be shown to have been lawfully in the possession of the party receiving such confidential information, prior to its disclosure;
 - 13.2.3 Is disclosed or released to satisfy an order of Court or otherwise comply with the provisions of any law or regulation in force at the time;
 - 13.2.4 Is disclosed to the legal or financial advisors of a party for internal or audit purposes.

14. Force Majeure

Neither party shall be liable in any way for failure to perform their respective obligations in terms of this Agreement, if the failure is due to causes beyond the reasonable control of the party which has failed to perform. In such event, the party who has failed to perform, shall notify the other party in writing and this Agreement shall be suspended from the date on which the event of *force majeure* occurred and shall resume with effect from the date on which the event giving rise to the failure to perform, ceases. Any period of suspension resulting from the event giving rise to the failure to perform, shall not be included in any calculation of time periods under this Agreement, provided that if the Agreement is suspended for a consecutive period of two (2) months, either party may terminate this Agreement forthwith by written notice to the other party.

In the event that the SABC terminates the Agreement under these circumstances, the SABC will be entitled to recover any amounts paid out or advanced to the Producer in terms of the Agreement as at date of termination, alternatively take delivery of the Production or that part of it which may have been completed as at date of termination.

15. Termination

15.1 Termination

Without prejudice to any of its rights and remedies in law or in terms of this Agreement, the SABC shall be entitled to terminate the agreement on fourteen (14) days written notice to the Producer under the following circumstances:

- 15.1.1 If the Producer fails to begin, make or complete the Production in accordance with the Production Schedule;
- 15.1.2 If the Commissioning Editor is of the opinion that the Producer is unable or unwilling to produce the Production, or cannot make the Production in accordance with the standard prescribed in clause 2.1;
- 15.1.3 If the Producer overspends on the Budget without the prior written approval of the Production Controller; or
- 15.1.4 If the making of the Production cannot be completed because the services of the director are not available as a result of his death, permanent or protracted temporary disability, provided that the SABC shall first afford the Producer an opportunity to obtain the services of an alternative director within a reasonable period of time, subject to the further condition that the SABC shall be consulted on the choice of the director and agree to his appointment.

15.2 Breach

Should any party (hereinafter the “defaulting party”) commit a material breach of this Agreement and fail to remedy such breach within 14 (fourteen) days of written demand from the other party, then such other party may, in addition to any other rights and remedies that it may have, including the right to recover damages:-

- 15.2.1 claim specific performance; or
- 15.2.2 terminate this Agreement by written notice to the defaulting party.

15.3 Should any party:

- 15.3.1 effect or attempt to effect a compromise or composition with its creditors; or
- 15.3.2 be provisionally or finally liquidated or be placed in judicial management, whether provisionally or final; or
- 15.3.3 cease to carry on its normal line of business in the Republic of South Africa or default in the payment of its liabilities generally, or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended); or

- 15.3.4 dispose of a material portion of its undertaking or assets,
the other party may terminate this Agreement forthwith on written notice to such party, in which event such termination shall be without prejudice to any claim which the other party may have for damages against the defaulting party occasioned by the termination of this Agreement in terms of this clause, notwithstanding that the damages shall only have arisen due to termination in terms of this clause.

15.4 Consequence of Termination

Should the SABC terminate this agreement in accordance with clauses 15.1 or 15.2, the SABC will be entitled, without prejudice to any rights or remedies which the SABC otherwise may have, to recover any amounts paid out or advanced to the Producer as provided for in the Budget.

16. Dispute Resolution

- 16.1 In the event of any dispute between the parties to this Agreement, the parties shall first attempt to resolve the dispute through their respective legal representatives at a meeting, which shall be convened at the instance of the party declaring the dispute.
- 16.2 If the parties fail to resolve the dispute at a meeting so convened, or such meeting fails to take place, the party declaring the dispute shall be entitled to refer the dispute either for arbitration or to a competent court of law.
- 16.3 Should the party declaring the dispute refer the dispute for arbitration, then the arbitration process shall be conducted in accordance with the arbitration rules and procedures of the Republic of South Africa, and in particular, by considering the following:
- 16.3.1 The parties shall agree to the appointment of an arbitrator who shall preferably be an attorney with at least 15 (fifteen) years of experience in the field of commercial litigation.
- 16.3.2 The arbitrator shall immediately after having been appointed, specify the time limits within which the parties must submit any written submissions or pleadings (if required) and also specify a time, date and place upon which and where the arbitration will take place.
- 16.3.3 The arbitrator shall be entitled to make such practical rulings as may be necessary to expedite the proceedings; the intention of the parties being to settle such dispute in the shortest possible time.
- 16.3.4 The finding of the arbitrator shall be final and binding upon the parties.
- 16.3.5 The arbitrator shall be paid by the parties in such proportions as the arbitrator may decide to be just and equitable under the circumstances and shall also be entitled to make a ruling on the share of the costs of the arbitration to be paid by each party.
- 16.4 Nothing in clause 16.3 above shall, however, prevent a party from approaching a court for an interdict or similar urgent temporary relief pending the decision of the arbitrator.

17. Notices and *Domicilium*

17.1 Addresses. The Producer selects as its *domicilium citandi et executandi* the address set out in Schedule A hereto. The SABC selects as its *domicilium* address:

Radio Park Building,
Henley Road,
Auckland Park,
Johannesburg 2092.
For attention: Chief Legal Advisor,
Fax number (011) 714-3873.

17.2 Change of Address. Any party may by giving written notice to the other change its *domicilium* address to any other physical address in the Republic of South Africa, and its fax number to any other South African number provided that such change shall take effect fourteen 14 (fourteen) days after receipt of such written notice.

17.3 Deemed Receipt. Any notice to be given by either party to the other shall be deemed to have been duly received by the other party

17.3.1 if delivered to the addressee's *domicilium* address by hand during Business Hours on a Business Day, on the date of delivery thereof; or

17.3.2 if sent by fax to the addressee, on the first Business Day following the date of sending thereof.

17.4 *Electronic Communication and Transactions Act, 2002 (ECATA) excluded.* Notwithstanding the provisions of ECATA, the parties agree that no formal notice in terms of this Agreement may be given by way of data message.

18. No Partnership

The parties hereto expressly agree, each for the other, that the relationship between them hereunder is that of two principals dealing with each other as for the sole and specific purpose that the Producer shall make the Production, subject to the terms and conditions of this Agreement. At no time, past, present or future, shall the relationship of the parties herein be deemed to constitute a relationship with the characteristics of an agency, partnership, joint venture, or of a collaboration for the purposes of ownership in common. Neither party shall have the right, power or authority at any time to act on behalf of, or represent, the other party, but each party hereto shall be separately and entirely liable for its own respective debts in all respects. This Agreement is not for the benefit of any person who is not a party signatory hereto or specifically named as a beneficiary hereunder.

19. General

19.1 Whole Agreement. This Agreement constitutes the entire Agreement between the parties in respect of the subject matter thereof and no party shall be bound by any undertakings, representations, warranties or promises not recorded in this Agreement.

- 19.2 Variation Cancellation and Waiver. No variation of this Agreement shall be effective unless reduced to writing and signed by or on behalf of the parties.
- 19.3 Waiver. No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the parties hereto, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of any party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 19.4 Severability. Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable. If any term or condition held to be invalid is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.
- 19.5 Applicable Law. This Agreement will be governed by and construed in accordance with the law of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with such law.
- 19.6 Jurisdiction. Subject to clause 19.5, the parties hereto hereby consent and submit to the jurisdiction of the High Court of South Africa, or division thereof, in any dispute arising from or in connection with this Agreement.
- 19.7 Survival. Notwithstanding the termination of this Agreement, any clause which, from the context, contemplates ongoing rights and obligations of the parties, shall survive such termination and continue to be of full force and effect.
- 19.8 Counterparts. In the event that the parties do not sign the same document, then this Agreement may be executed by each party signing a counterpart, which counterparts together shall constitute one and the same agreement.
- 19.9 Good Faith. The parties shall at all times owe each other a duty of good faith.
- 19.10 Costs. Each party shall bear that party's own legal costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

6.12 SABC Technical Standards for Television Programme Delivery (SABC 1, SABC2, SABC 3 and SABC Africa) Version 1.0

Technical Abbreviations

A-D	Analogue to digital conversion
Betacam SP	A videotape format
D-A	Digital to analogue conversion
DV	Digital video (video/video tape format)
DVC pro 25	A video format
DVCam	A digital videotape format
DV palmcorder	A domestic camera that records in the DV video format
FFOP	First frame of picture
IMX	The new Sony tape format
IRE	Institution of Radio Engineers – a measurement unit defined by the IRE
ITC	Independent Television Council
LTC	Longitudinal time-code
MPEG	Moving Picture Experts Group – a working group within SMPTE who set, among other things, specifications for compression schemes for audio and video transmission; a term commonly used when referring to their associated data compression technologies (MPEG)
OB	Outside broadcast
PAL system 1	The television standard used by the SABC (stands for “phase alternation line”)
PPM	Peak programme meters
RGB	Red, green and blue
SMPTE	Society for Motion Picture and Television Engineers
VBI	Video blanking interval
VITC	Vertical interval time-code