

ITV/PACT Deal Terms - to take effect 1st January 2023

Between ITV Rights Limited (ITV) and PACT (the “Deal Terms”)

1. Overview

- 1.1 These Deal Terms set out specific agreed amendments to ITV’s General Terms and Conditions (agreed with PACT July 2009 and as amended by the Memorandum of Understanding dated 28 September 2018) (“**Terms of Trade**”). Defined terms used within this document shall carry the meaning ascribed to them in the Terms of Trade save where such defined terms are amended herein and the Terms of Trade shall be interpreted to reflect and give full effect to the Deal Terms set out below. In the case of any conflict between the Terms of Trade and these Deal Terms these Deal Terms shall take precedence.
- 1.2 For the purpose of these Deal Terms:
- 1.2.1 ITV Services shall mean any audio or audio-visual service from time to time owned or controlled or part owned or part controlled by ITV in the Territory that uses an ITV brand or a brand that is owned or controlled or part owned or part controlled by ITV in the Territory howsoever delivered (for the avoidance of doubt including but not limited to broadcast and streaming and any On Demand Service transmission) and including the Secondary ITV Services; and
- 1.2.2 On Demand Service shall carry the same meaning as under the Terms of Trade save that it shall incorporate the clarifications set out under the PACT Memorandum of Understanding being that availability of any Programme Episode may be communicated via an On Demand Service, whether individually or as part of a package or ‘box set’, (including so called ‘push VOD’ and/or ‘start over’/‘live rewind’ and similar on demand functionality which for the avoidance of doubt will include where relevant any so-called ‘Network PVR’ functionality and where, in order to enable such functionality, the Auxiliary Rights and specifically Clause 12.2 of the Terms of Trade will be read so as to allow ITV or for ITV to authorise others, to copy and/or undertake any other necessary acts to enable the viewer/consumer to access such functionality). “**FAST Channels**” meaning programming which may or may not include advertising at ITV’s election, including services delivered via connected televisions, internet and Broadcast Media in a scheduled and/or curated service is and shall be included within the definition of On Demand Service being a service that is transmitted for use at a selection of pre-established times scheduled by the operator of the service, but limited for the avoidance of doubt, to FAST Channels on the ITV Services¹.
- 1.3 These Deal Terms shall apply to any Programme commissioned from a Qualifying Independent Production Company² for any communication to the public, exploitation, transmission and/or delivery of the Programme in accordance with the Terms of Trade and as set out herein (“**Use**”) on the ITV Services save that it is acknowledged that if the commission is not made with an intended transmission on ITV1 (ITV Main Channel) i.e. where it is made on behalf of one of the Secondary ITV Services or solely for On Demand Services (a “**Non-ITV1 Programme**”) then such commission shall be contracted via the relevant non-regulated and/or prevailing ITV Digital Channels General Terms and Conditions, Digital Channels agreement or such other applicable agreement as negotiated with the relevant Producer.

2. Rights

¹ At longform stage the parties intend this definition to be given a standalone definition.

² As defined in Statutory Instrument “The Broadcasting (Independent Productions) Order 1991” (as amended from time to time or replaced)

- 2.1 ITV is granted all rights in the Programme during the Licence Period (as defined in paragraph 3) as are currently granted under the Terms of Trade and as were extended by the Memorandum of Understanding agreed in 2018 and as further supplemented herein for use across the ITV Services.
- 2.2 In accordance with the above Producer licenses to ITV a package of rights in the Territory within the Licence Period for ITV's unlimited Use on any ITV Service. Such unlimited Use shall allow ITV to exploit the Programmes in accordance with the terms set out herein (and the Terms of Trade) for Use and , premiere of the Programme on whichever of the ITV Services ITV elects (with for the avoidance of doubt no restriction on timings as to when it is released on the different ITV Services within the Licence Period).

3. Licence Period

- 3.1 Provided always that ITV, and Producer (subject to ITV's prior approval not to be unreasonably withheld or delayed), shall be entitled to promote the Programme in the Territory and have an unrestricted licence to do the same (whether through clips or otherwise) in advance of First Use, the period for which Producer licenses the Rights in the Programme to ITV shall start on the date of first Use of the Programme on any of the ITV Services ("**First Use**") and continue for five (5) years from the later of:

- 3.1.1 the First Use of the last Episode of the Programme in the initial series in the event that it is a one-off series ("**Series Licence Period**"); or

- 3.1.2 the First Use of the last Episode of the Programme in the last commissioned series of any Returning Series ("**Returning Series Licence Period**"),

(together the Series Licence Period and Returning Series Licence Period shall be the "**Initial Licence Period**")

For the avoidance of doubt in the event that First Use does not take place in respect of a Programme within twelve (12) months of Acceptance of all required deliverables for that Programme (the end of the twelve (12) month period being the "**Longstop Date**") then First Use shall be deemed to have taken place on the Longstop Date.

- 3.2 With respect to each individual series of the Programme the five (5) year period that commences from the First Use of the last Episode of that respective series of the Programme shall comprise the "**First Use Period**" and the period from the expiry of the First Use Period until expiry of the Returning Series Licence Period shall be known as the "**Further Use Period**". For the avoidance of doubt during the Further Use Period the Returning Series will remain licensed to ITV and ITV shall be free to continue to exploit the Programme save that any such exploitation during the Further Use Period shall require ITV to make a Further Use Payment to Producer in accordance with paragraph 4.1.
- 3.3 In relation to one off Programmes or the last of a Returning Series, ITV shall have the option to extend the Initial Licence Period one time only for a further two (2) years (the "**Licence Period Extension**") providing: a) such extension is exercised no later than six (6) months before the end of the Initial Licence Period; and b) ITV shall pay to Producer a total of two and a half percent (2.5%) of the Licence Fee (the "**Licence Period Extension Fee**") in consideration for such extension. Payment of the Licence Period Extension Fee will allow Use to continue without any need for any Further Use Payment during the Licence Period Extension meaning that ITV shall not need to make any Further Use Payment in addition to the Licence Period Extension Fee. Any further extensions to the Licence Period under this paragraph shall be subject to agreement with Producer.

- 3.4 The Initial Licence Period and any Licence Period Extension (if applicable) together being the **“Licence Period”**.
- 3.5 Without obligation to reduce the Initial Licence Period on any Programme, ITV agrees to consider any request from Producer to do so in good faith and the following non-exhaustive factors shall be considered as reasons in favour of such potential reduction: (a) whether the Programme is a one-off Programme and/or no longer being commissioned and/or exploited save that in the event it is part of an enduring strand albeit a one-off within the enduring strand this shall not usually be considered appropriate grounds for a reduction in the Initial Licence Period; and (b) the extent to which ITV has funded the Programme with particular consideration being given to reducing the Initial Licence Period for the Programme where ITV has funded less than seventy five percent (75%) of the Programme budget (save that tax credit shall not be included in the calculation of such Programme budget), and (c) the amount of ITV's investment.
- 3.6 ITV shall be able to elect to end the Initial Licence Period early by providing written notice (email not to suffice, signed under due authority of an officer of ITV) to the Producer stating clearly that it intends to do so whereupon ITV's right to Use the Programme on the ITV Services would end. In the event that ITV elects to such early termination of the Initial Licence Period then no Further Use Payments shall be required under clause 4.1. In the absence of such termination under this clause 3.6 Further Use Payments shall apply in accordance with clause 4.1.

4. Further Use and Scripted Programme Use on ITV Services

- 4.1 Further Use: In respect of the Further Use Period set out at paragraph 3.2 the parties acknowledge that the Programme remains in licence during this Further Use Period and during this Further Use Period ITV shall (unless they elect to terminate in accordance with 3.6) make payment to the Producer within a reasonable period following commencement of the relevant Further Use Period of one percent (1%) of the Licence Fee (the **“Further Use Payment”**), each such Further Use Payment covering further Use of the Programme by ITV for two (2) years (the **“Further Use Period Extension”**) from either expiry of the First Use Period or the immediately preceding Further Use Period Extension. During this Further Use Period Extension Use of the Programme may continue across the ITV Services. ITV may on a rolling basis continue to make as many Further Use Payments as necessary to continue rolling Further Use Period Extensions until the end of the Licence Period. For the avoidance of doubt the Further Use Payment is not to be pro-rata'd (for example in the event that further Use is only for a further one (1) year the full 1% shall remain payable). Each Further Use Period Extension shall also extend exclusivity in relation to linear transmissions (i.e. it will extend exclusivity in relation to all Broadcast Media but not in respect of On Demand Services save for FAST Channels where the exclusivity shall continue to apply) during the Further Use Period Extension. Any payments and/or clearances due to underlying rights holders during the Further Use Period Extension shall be made by Producer from the Further Use Payment for a full buy-out of rights in relation to the Further Use during the Further Use Period Extension unless otherwise agreed by ITV or save for in respect of additional ITV1 Uses (beyond those set out in the original clearance package) where there are specific residuals or payments due because it relates to ITV1 clearances such as, but not limited to, archive costs. In respect of the foregoing ITV will consider and discuss in good faith covering the same in addition to the Further Use Payment, provided that such potential clearance costs are flagged to ITV on Delivery. For the avoidance of doubt ITV will continue to pay for the relevant PACT/Equity/WGGB residuals.
- 4.2 Scripted Programme Use: It is agreed that ITV may at its sole discretion allow Use on any of the ITV Services without further payment during the Licence Period save for in respect of scripted programmes where it is agreed that if ITV would like Use of a scripted programme

to take place on the Secondary ITV Services (but not for the avoidance of doubt the On Demand Services) during the First Use Period then ITV shall be entitled to make such Use across the ITV Services at its sole discretion providing that it makes payment to Producer of a sales fee equivalent to one percent (1%) of the scripted programme Licence Fee (the **"Scripted Fee Payment"**) a reasonable time after initial Use on the Secondary ITV Services (the **"Scripted Programme Use"**). The Scripted Fee Payment shall purchase a full buy-out of rights for the Scripted Programme Use and Producer shall ensure that (save as otherwise provided in 4.1 above) third party rightsholders payments including those payable to writers and/or actors (including without limitation by way of the PACT/Equity multimedia royalty and any WGGB arrangements) are paid to the third party rightsholders from the Scripted Fee Payment. For the avoidance of doubt in respect of scripted programmes following the First Use Period paragraph 4.1 shall apply.

5. Exclusivity

5.1 Subject to paragraph 5.1.3, ITV shall have exclusivity in the Programme in the Territory in all media (including any material created in connection with or during the production of the Programme but with exclusivity in relation to the Reserved Rights being in accordance with the provisions of clause 14 of the Terms of Trade and these Deal Terms) (**"Exclusivity"**) to operate during the Licence Period as follows:

5.1.1 in respect of all Programmes save for those set out in sub-paragraph 5.1.2, a thirty (30) month period commencing on First Use of the Programme (**"Full Exclusivity Programmes"**); or

5.1.2 in respect of non-scripted one-off Programmes (**"One-Offs"**) an eighteen (18) month period commencing on First Use of the Programme (**"Reduced Exclusivity Programmes"**). A Programme shall be a One-Off until commission of a second series occurs, (in which case 5.1.1 applies in respect of both the first series and any subsequent series of that Programme) but for the avoidance of doubt One-Offs shall not include Programmes which form part of a strand including for example multi-episodic one-offs such as an investigative programme strand (for example 'Tonight' or an interview strand like 'Piers Morgan's Life Stories') and where strands include one-off specials within them these shall not constitute One-Offs;

(the above time periods at sub-paragraphs 5.1.1 and 5.1.2 shall be the **"Initial Exclusive Period"**)

5.1.3 The Initial Exclusive Period can be extended by the Exclusive Option Periods set out at paragraph 5.1.4;

5.1.4 Exclusive Option Periods:

- a. ITV to have the option to extend the Initial Exclusive Period on a one time only basis upon payment as follows (with payment to be made following commencement of the relevant extension):
 - i. of two and a half percent (2.5%) of the Licence Fee for a further thirty (30) month period in respect of the Full Exclusivity Programmes; or
 - ii. of three and a half percent (3.5%) of the Licence Fee for a further forty-two (42) month period in respect of the Reduced Exclusivity Programmes,
- b. ITV to notify Producer that it wants to exercise its option rights under paragraph 5.1.4 no later than six (6) months prior to expiry of the Initial

Exclusive Period, with the further periods set out at paragraph 5.1.4 a. i. and ii. to run from expiry of the relevant Initial Exclusive Period.

- c. Any further extensions to exclusivity under this paragraph 5.1.4 shall be subject to agreement with Producer,

(any extensions to exclusivity under paragraphs 5.1.4. a. and 5.1.4. c. (where applicable) shall together with the Initial Exclusive Period be the “**Exclusivity Period**”).

5.1.5 For the avoidance of doubt:

- i. the holdback against any Producer or Producer authorised exploitation during the Exclusivity Period set out under these Deal Terms shall extend to any On Demand Service; and
- ii. prior to First Use by ITV (i.e. from Delivery and Acceptance until First Use) Producer shall not be entitled to exploit and/or licence and/or release the Programme in any way and the confidentiality obligations under clause 26 of the Terms of Trade shall apply.

6. Programme Format Holdback

6.1 There will be no exploitation in the Territory of the Programme Format, other than as part of the Reserved Rights, in any form (including ‘making-of’, ‘spin-offs’, digital versions and extensions etc.) until expiry of the periods below, whereby Producer can exploit further programmes, changed format programmes etc. subject to current requirements around key contributors, talent exclusivity arrangements etc. The Programme Format holdback will operate as follows:

6.1.1 Where ITV wishes to recommission in accordance with the Future Programme Option under clause 15.2.1 (provided that references to ‘ITV Transmission’ shall be amended to ‘First Use’ within this clause) and the parties are unable to agree financial or other terms ITV’s exclusive Programme Format holdback period expires twenty four (24) months from date of First Use of the last Episode or (if earlier) the date that is one (1) month plus a further twenty four (24) months (being, notwithstanding the Longstop Date a total of twenty five (25) months) from the date of Acceptance by ITV of the last Episode and Producer can exploit the Programme Format including in further Programmes thereafter; save that

6.1.2 Where ITV does not wish to recommission in accordance with the Future Programme Option then ITV’s exclusive Programme Format holdback period expires twelve (12) months from date of First Use of the last Episode or (if earlier) thirteen (13) months from the date of Acceptance by ITV of the last Episode and Producer can exploit the format including further Programmes thereafter.

6.2 ITV agrees to act in good faith in this regard and not use the above Programme Format holdback as a backdoor means of warehousing (with warehousing to have the meaning as it is commonly understood in the industry).

7. Net Receipts

7.1 During the Licence Period in the Territory ITV to receive from Producer twenty percent (20%) of Net Receipts from any exploitation of the following rights set out under Part B ‘Net Receipts’: Exploitation of Programme Website, VOD, Download to Own Rights and UK Secondary Broadcast Rights.

- 7.2 Subject to paragraph 7.3 ITV to receive from Producer ten percent (10%) of Net Receipts from all other exploitation of the Programme and Programme Format Worldwide (excluding the UK) during the Licence Period and after expiry of the Licence Period (Worldwide including the UK).
- 7.3 In respect of a New Independent Producer who has not been commissioned by ITV previously the Net Receipts ITV shall be entitled to under paragraph 7.2 shall reduce to seven and a half percent (7.5%). For the purpose of this paragraph a New Independent Producer cannot include either:
- i. An entity that is not a Qualifying Independent Production Company and/or a Qualifying Independent Production Company who has more than 25% of their share capital owned by a production company which already has a commissioning history with ITV; or
 - ii. a member of a Production Group where 'Production Group' shall mean in relation to the relevant company any subsidiary and/or holding company as defined in section 1159 of the Companies Act 2006 and any subsidiary of such holding company in each case where the subsidiary and/or holding company is another production company entity.

8. Retention

ITV shall be entitled to retain a sum equal to five percent (5%) of the final instalment of the Licence Fee until receipt of all Delivery Materials (including relevant PasC forms and any metadata deliverables required) by ITV from Producer.

9. Miscellaneous

9.1 Tariffs to be amended with the new tariffs as attached at Schedule 1.

9.2 In clause 10.2 of the Terms of Trade the following amendments shall be made:

9.2.1 A second sentence shall be added to clause 10.2.1 as follows: “**Download to Own Blackout Period**” shall mean thirty (30) days after first ITV linear Transmission (which for the purposes of this clause 9.2.1 only excludes FAST Channels) of the Episode.”

9.2.2 Clause 10.2.2 shall be deleted and replaced with the following wording “During the Download to Own Blackout Period, the Producer shall not be entitled to exploit or permit or suffer the exploitation of the Download to Own Rights”.

9.2.3 Clause 10.2.3 shall be deleted in its entirety.

9.2.4 Throughout the remainder of the sub-clauses under 10.2 references to the 'Initial On Demand Period' shall be deleted and replaced with the 'Download to Own Blackout Period'.

9.3 Digital Strategy (including but not limited to social media and non-promotional clip use) to be mutually agreed at longform. Until such time as the longform provisions are agreed, in relation to each individual commission the parties agree they shall continue to discuss and agree in good faith a written joint strategy for the exploitation of all digital, web, mobile and social media rights and all directly related activity thereto (whether brand building, revenue generating or otherwise) in relation to the Programme in the Territory during the Term (the “**Digital Strategy**”), provided always that ITV may continue to exploit the broadcast and related rights expressly granted to it and exploit the VOD, it being acknowledged by the

parties that the Digital Strategy shall not extend to any of the aforementioned activity post-Term or early termination of the agreement. The Digital Strategy shall be without prejudice to the Producer's right to license the names, logos, marks and underlying formats associated with the Programme. During the Term the Producer agrees that it shall inform in advance ITV about its licensing activities relating to the Programme in the Territory and shall not engage in licensing arrangements which may materially conflict with sponsors of the Programme.

9.4 Transition:

9.4.1 The new Terms of Trade as amended by these Deal Terms will apply to all programmes contracted from 1st January 2023 ("**Effective Date**") save that the parties agree that programme commissions made before the Effective Date and which were agreed to be commissioned under the old terms shall not be affected;

9.4.2 Programmes contracted prior to this date to continue on existing terms, i.e. Net Receipts continue to be paid by Producer or ITV as applicable under the agreements entered into at the time ("**Pre-existing Agreements**") and for returning series where new series are commissioned after the Effective Date then the parties will discuss in good faith whether future seasons in that series will be contracted in accordance with these Deal Terms;

9.4.3 ITV to continue to pay a pot payment or on a ppv rate as set out in Schedule 2 until expiry of Licence Period of any Programme contracted under the Pre-existing Agreements.

9.5 All other terms under Terms of Trade save where amended herein retained.

9.6 It is agreed the Terms of Trade shall subsequent to signature of these Deal Terms be amended, redrafted and restated to more fully incorporate these Deal Terms.

Schedule 1

ITV Main channel tariffs (per hour)

Weekday Daytime

14.00-16.00 - £25k-£45k

16.00-18.00 - £35k-£55k

All other Daytime (incl. weekends)

£20k-£40k

Drama and Scripted Comedy

£300k-£950k

Entertainment

£200k-£1m

Factual Entertainment

£150k-£600k

Current Affairs

£50k-£250k

Night time

£0-£10k

Schedule 2

Pact Pot and ppv rate

2021 - £1.75m and 3.5p

2022 - £1.5m and 3.5p

2023 - £1.25m and 3.5p

2024 - £1m and 3.5p

2025 - £750k and 3.5p

2026 - £500k and 3.5p

2027 - £250k and 3.5p

Schedule 3

Co-Funding

If a programme is funded with third party investment which is predicated in whole or part on the exploitation of rights within the UK, any proposed UK windowing across ITV and such third party service shall be discussed and agreed at the point of commission, alongside any impact on the ITV Licence Period, with consideration given to amongst other things the respective funding contributions of both ITV and such third party and the scope of rights acquired therefor (for the purposes of this paragraph, third party investment relates to production funding directly or indirectly from a licensee with a global SVOD reach including the UK).

Signed by)
for and on behalf of)
Producers' Alliance for Cinema and Television Limited)

Max Rumney _____

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Signed by)
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Sarah Clarke _____

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