

**M-NET'S COMMISSIONING PROTOCOL
FOR INDEPENDENTLY PRODUCED
SOUTH AFRICAN PROGRAMMING**

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M-NET'S COMMISSIONING PROTOCOL FOR INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING

Introduction

- 1 We welcome initiatives to encourage the development of the independent production sector. We support the objectives of the Regulations, which are to ensure that commissioning practices in relation to independently produced South African programming –

"are conducted in a manner that is fair, transparent and non-discriminatory, without hampering –
 - (i) the flexibility of licensees to deal with pertinent commercial issues in any manner they deem appropriate,
 - (ii) independent producers' entrepreneurial, creative, managerial and financial flexibility and control".
- 2 We have drawn up this Protocol in terms of the Regulations. We will comply with it in our dealings with you in relation to the commissioning of independently produced South African programming to be broadcast on the M-Net broadcasting service, and we encourage you to similarly comply.
- 3 We may amend this Protocol from time to time in accordance with the Regulations, subject to the approval of the Authority.
- 4 A copy of the Protocol is available on our website (<http://www.mnet.co.za>). You may also request a copy by sending us an e-mail to Qama.Mase@mnet.co.za and we will e-mail a copy to you.

Definitions

5 In this Protocol the following terms will have the following meanings:

Term	Meaning
"The Authority"	The Independent Communications Authority of South Africa
"Broadcasting licence"	The subscription broadcasting service licence issued to us by the Authority
"M-Net broadcasting service"	The subscription broadcasting service which we provide in accordance with our broadcasting licence
"Production agreement"	An agreement to be entered into in writing between you and us in terms of which we appoint and commission you to produce programming and which records the terms and conditions agreed to by both of us
"Programming"	South African television programming commissioned by us to be produced by you and to be broadcast by us on the M-Net broadcasting service
"The Protocol" or "this Protocol"	Our commissioning protocol for independently produced South African programming to be broadcast by us on the M-Net broadcasting service which is set out in this document
"The Regulations"	The Regulations on the Commissioning of Independently Produced South African Programming, 2009 ¹

¹ Regulations on the Commissioning of Independently Produced South African Programming, Government Gazette No. 32767, Notice No. 1596, 1 December 2009

Term	Meaning
"Solicited proposal"	A proposal to develop independently produced South African programming submitted by you in response to a brief issued by us (either by way of a general tender or a closed tender)
"Unsolicited proposal"	A proposal to develop independently produced South African programming submitted by you of your own accord (i.e. not in response to a brief issued by us)
"We" or "us"	M-Net (Electronic Media Network Proprietary Limited)
"Writing"	Any hand written or typed form embodied in a hard copy, fax or e-mail delivered to the contact details set out in the Protocol or set out in a signed agreement entered into between both of us
"You"	An independent producer

Commissioning objectives

- 6 Our objective in commissioning independently produced South African programming is to ensure the creation of the most compelling and relevant content for the respective channels on the M-Net broadcasting service and their respective defined target markets.

Commissioning process: Unsolicited Proposals

- 7 The commissioning process will vary depending on whether your proposal is solicited or unsolicited.
- 8 You may submit an unsolicited proposal in writing in accordance with the Protocol and related information made available by us from time to time.

- 9 Unsolicited proposals must be submitted electronically. Your proposal must be no more than 4 MB in size and must be e-mailed to the following address:

Qama.Mase@mnet.co.za

Process for submission and handling of unsolicited programme proposals

- 10 All unsolicited proposals must be mailed to the address as set out in paragraph 9 above.
- 11 We will provide you with an initial response to an unsolicited proposal which we receive –
- 11.1 from 1 January to 30 June of each year by 31 August of that year;
and
- 11.2 from 1 July to 31 December each year by 28 February of the following year.
- 12 Our initial response will acknowledge receipt of the unsolicited proposal and indicate whether or not we have any initial interest therein.
- 13 If we are interested in the proposal, we will, within 20 business days from the date of our initial response, invite you to a pitch session, at a mutually convenient date and time, at which you will have the opportunity to pitch the proposal to our representatives.

Timetables for unsolicited proposals

- 14 The timetables for the commissioning process as regards an unsolicited proposal where we have invited you to pitch the proposal to us are set out below:

Stage/timeframe in commissioning process (unsolicited proposals)	Maximum number of business days
Interval between pitch and commissioning decision	45 days

Stage/timeframe in commissioning process (unsolicited proposals)	Maximum number of business days
Interval between commissioning decision and commencement of contractual negotiations	20 days
Interval between conclusion of contractual negotiations and notification to independent producer	Notification will take place upon signature of production agreement by all of the parties to the agreement
Timeframes for delivery of programmes	Delivery schedules will be set out in production agreement
Timeframes for payment for completed programmes	Payment schedules will be set out in production agreement
Desired response times to requests for progress reports	Broadcaster may request progress reports in production process which must be responded to within a maximum of 2 days

Commissioning process: Solicited Proposals

15 Solicited proposals are submitted in response to a brief which has been issued by us. The details of the person to whom your proposal should be submitted and the deadline for submission will be clearly set out in the brief.

16 In general, solicited proposals are submitted to M-Net General Entertainment:

Qama Mase

Tel: 011 686 7500

E-mail: Qama.Mase@mnet.co.za

Timetables for commissioning process

- 17 You may submit a solicited proposal in writing in accordance with the relevant brief, the Protocol and related information made available by us from time to time.
- 18 The closing date for the submission of solicited proposals will be set out in the brief. Thereafter, the following timetable will apply to solicited proposals, unless specified otherwise in the brief:

Stage/timeframe in commissioning process (solicited proposals)	Maximum number of business days
Interval between submission deadline and acknowledgement	10 days
Interval between acknowledgement and initial response, which will include an invitation to pitch	45 days
Interval between pitch and commissioning decision	45 days
Interval between commissioning decision and commencement of contractual negotiations	20 days
Interval between conclusion of contractual negotiations and notification to independent producer	Notification will take place upon signature of production agreement by all of the parties to the agreement
Timeframes for delivery	Delivery schedules will be set out in production agreement
Timeframes for payment for completed programmes	Payment schedules will be set out in production agreement
Desired response times to requests for progress reports	Broadcaster may request progress reports in production process which must be responded to within a maximum of 2 days

Technical standards

- 19 We strive to achieve the best technical standards and practices of the international film and television industry, and the pay-television industry in particular, and to keep apace with the rapid technological developments which characterise the industry.
- 20 The technical standards required for specific types of programmes will be set out in the production agreement.
- 21 As a minimum, you must submit programming in Betacam SP format together with additional DVD copies, or such other format set out in the production agreement.

Editorial standards

- 22 You must ensure that the programming produced by you is of the highest quality and meets the best standards and practices of the international film and television industry in general, and the pay-television industry in particular.
- 23 The editorial standards required for specific types of programmes will be set out in the production agreement.
- 24 In particular, you should be aware that we provide the M-Net broadcasting service in accordance with our broadcasting licence and the relevant provisions of the Electronic Communications Act and the applicable regulations and other regulatory instruments enforced by the Authority. We also subscribe and adhere to the Code of Conduct enforced by the Broadcasting Complaints Commission of South Africa (collectively "the regulatory framework"). We take our responsibilities under the regulatory framework very seriously. Accordingly, we are particularly concerned that the programming on the M-Net broadcasting service should not contravene any provision of the regulatory framework.
- 25 We will have final editorial and creative control over the content, format and presentation of the commissioned programming.

Process to be followed where independent producer seeks to deviate from agreed editorial specifications

- 26 If you seek to deviate from the agreed editorial specifications you must raise the proposed deviation with the relevant commissioning editor in writing.
- 27 We will consider the proposed deviation and, where we deem it appropriate, we will consult with you in that regard, and we will make a decision in that regard thereafter. The final editorial decision making as regards proposed deviations from the agreed editorial specifications will remain with us.
- 28 Further details on the process to be followed where you seek to deviate from the agreed editorial specifications will be set out in the production agreement and will require that any deviation from the editorial specifications must be reduced to writing and signed by both parties.

Guidelines on delivery of programming for viewing before broadcast

- 29 You must arrange for us to view and approve the programming before broadcast ("off line versions") in accordance with the delivery schedule in the production agreement.
- 30 You must liaise with us in order to set up a mutually suitable time for us to consider the off line versions of the programming.
- 31 If the programming or part thereof does not meet the agreed quality, editorial standards, technical standards or other specifications, we will afford you, on written notice, 72 hours to remedy the defect to our satisfaction. If you refuse and/or fail to remedy the defect we may reject the programming or any part thereof.
- 32 Further details on the delivery of programming for viewing before broadcast will be set out in the production agreement.

Programme fees

- 33 We will include in a brief an indication of the factors that we will take into account when determining programming prices. These could include –

- 33.1 the genre of the programme;
- 33.2 the relevant target market and LSM category;
- 33.3 the value of the programme to the schedule;
- 33.4 the expected budget of the programme;
- 33.5 the level of up-front third party investment, if any, that the programme could reasonably expect to attract in the marketplace;
- 33.6 whether we are required to provide development funding;
- 33.7 the inflation rate;
- 33.8 foreign exchange rates;
- 33.9 changes in technology and/or production techniques; and
- 33.10 any other relevant factors.

Distribution arrangements, archival usage and rights

- 34 The various contracting options pertaining to the creation of local content programming will depend on the financing model adopted in the particular circumstances.
- 35 The following financing models are available:
 - 35.1 A co-production, namely where both we and you contribute to the funding of programming (i.e. a production is jointly funded by both of us). Various contracting options may be considered pertaining to intellectual property rights in this instance.
 - 35.2 A producer-funded production, namely where you fund the production of programming yourself (i.e. we do not contribute to the funding of the production). In this instance we are likely to enter into a copyright licensing agreement with you.

- 35.3 A broadcaster-funded production, namely where we commission and fund the production of programming (i.e. you do not contribute to the funding of the production). That is the subject of this Protocol and is dealt with below.
- 36 The Regulations and the Protocol deal specifically with the last-mentioned option, namely the commissioning of independently produced South African programming.
- 37 In accordance with s21 of the Copyright Act, 1978, where we commission programming and pay (or agree to pay) for it in money or money's worth, and the work is made in pursuance of that commission, we will be the owner of all copyright subsisting therein. Accordingly, where we have commissioned and paid for the commissioning of a programme, we will acquire, for the price agreed to in the production agreement, all of the copyright in the programme, including, without limitation, rights to re-runs, the on-selling of programmes to other broadcasting service licensees, the exploitation of secondary rights through other platforms such as DVDs or merchandising, rights to make the programmes available for research, and broadcast archival.
- 38 The payment schedule will be set out in the production agreement.

Procurement and ethical standards

- 39 We strive to achieve a consistent and open approach to procurement and to ensure best practice in procurement and management.
- 40 The commissioning objectives and processes set out in this Protocol will apply to the sourcing of independent productions.
- 41 We require that, prior to the commencement of any negotiations, prospective independent producers must be profiled to determine their BEE status. To this end, we will require you to provide us with a current and valid BEE accreditation certificate.
- 42 It is important for selected suppliers to be effectively managed by us. We may require additional information to be submitted by you for this purpose. We will

strive to provide corporate focus in relation to procurement and facilitate the co-ordination of procurement activities at our management level.

- 43 We adhere to the highest ethical standards, which are set out in our code of ethics and our whistle blower policy.

Complaints handling mechanism

- 44 If you believe that we have failed to adhere to the Protocol, in respect of an unsolicited proposal, you may submit a complaint in writing to the e-mail address provided in paragraph 9 above.

- 45 If you believe that we have failed to adhere to the Protocol, in respect of a solicited proposal, you may submit a complaint in writing to the relevant commissioning editor identified in paragraph 16 above.

- 46 We will acknowledge receipt of a complaint as soon as possible after we receive it.

- 47 We will consider the complaint, and, thereafter, we will send you a response, in writing, indicating our response to the complaint and the steps to address the complaint which may be appropriate in the circumstances.

- 48 We will provide our response to the complaint within 10 business days from the date of the acknowledgement of receipt of the complaint by us.

- 49 If you are not satisfied with our response to the complaint, you may submit, in writing, a follow-up complaint to the following person:

The Channel Director for General Entertainment: Mr. Jan du Plessis

Tel: +27 11 686 6088

e-mail: Jan.duPlessis@mnet.co.za

- 50 Your follow-up complaint must –

50.1 briefly describe the initial complaint and attach a copy thereof;

- 50.2 attach our written response to the complaint; and
- 50.3 indicate the reasons why you are dissatisfied with our response to the complaint.
- 51 We will consider the follow-up complaint, and, thereafter, we will send you a response, in writing, indicating our response to the follow-up complaint and the steps to address the follow-up complaint which may be appropriate in the circumstances.
- 52 We will acknowledge receipt of a follow-up complaint as soon as possible after the receipt thereof.
- 53 We will provide our response to the follow-up complaint within 10 business days from the date of the acknowledgement of receipt thereof by us.

Production agreement

- 54 The Protocol does not constitute a binding agreement between you and us. If we commission you to produce programming, we will negotiate and enter into a production agreement which will record the agreed terms and conditions. In the event of any inconsistencies between the Protocol and a production agreement entered into between us, the production agreement will prevail.