

**COMMISSIONING PROTOCOL FOR
INDEPENDENTLY PRODUCED SOUTH
AFRICAN PROGRAMMING**

MULTICHOICE (PTY) LTD

TABLE OF CONTENTS

Preamble	1
Definitions	2
Commissioning objectives	5
Commercial sustainability considerations	6
General terms of trade	7
Distribution arrangements, archival usage and rights	9
Programme fees	10
Technical standards	11
Editorial standards	11
Process to be followed where independent producer seeks to deviate from agreed editorial specifications	12
Guidelines on delivery of programming for viewing before broadcast	12
Commissioning process	13
Process for submission and handling of <i>unsolicited</i> proposals	13
Process for submission and handling of <i>solicited</i> proposals	14
Timetables for commissioning process	15
Procurement and ethical standards	16
Complaints handling mechanism	16

MULTICHOICE'S COMMISSIONING PROTOCOL FOR INDEPENDENTLY PRODUCED SOUTH AFRICAN PROGRAMMING

Preamble

- 1 MultiChoice encourages the development of the independent production sector.
- 2 MultiChoice has drawn up this Protocol in terms of the Regulations. 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".
- 3 The Protocol sets out the details required by the Regulations.
- 4 As required by the Regulations, we will comply with the Protocol when commissioning independently produced South African programming to be broadcast by MultiChoice on its broadcasting service.¹
- 5 MultiChoice has engaged MCSA to provide it with content commissioning services, including procuring independently produced programming in accordance with the Protocol. As the broadcasting licensee, MultiChoice is responsible for compliance with the Regulations and MCSA is required to carry out various commissioning functions for MultiChoice.

¹ The Protocol will apply where a commissioning protocol is required by applicable law. Nothing in the Protocol will preclude MCSA using the programming procured by MCSA in terms of a production agreement concluded between you and us as contemplated in the Protocol.

- 6 In the Protocol, "we" or "us" means MultiChoice and/or MCSA (jointly or separately). Where we refer to "MultiChoice", we mean MultiChoice (Pty) Ltd, the holder of the broadcasting licence.
- 7 MultiChoice may amend the Protocol from time to time in accordance with the Regulations, subject to approval by ICASA as required by the Regulations.
- 8 A copy of the Protocol is available on MultiChoice's website and is available upon request.
- 9 The Protocol does not constitute a binding agreement between you and us. If you are ultimately commissioned to produce programming, we will negotiate and, if successful, enter into a production agreement with you which will record the agreed terms and conditions in writing. In the event of any inconsistencies between the provisions of the Protocol and a production agreement entered into with you, the relevant provisions of the production agreement will prevail.

Definitions

- 10 In the Protocol the following terms will have the following meanings:

Term	Meaning
Affiliate	In relation to a person, means an entity which is directly or indirectly controlled by, in control of, or under common control with such person
B-BBEE	Broad-based black economic empowerment as defined in the B-BBEE Act
B-BBEE Act	The Broad-Based Black Economic Empowerment Act 53 of 2003
Broadcasting licence	The subscription broadcasting service licence issued by ICASA to MultiChoice (Pty) Ltd

Term	Meaning
Broadcasting service	The subscription broadcasting service which is broadcast by MultiChoice (Pty) Ltd, in accordance with the broadcasting licence, currently known as "DStv"
Day	A calendar day, unless indicated otherwise
ICASA	The Independent Communications Authority of South Africa
ICT Sector Code	The Code of Good Practice on B-BBEE – Information and Communication Technology Sector Code published under the B-BBEE Act and that applies to measured entities in the information and communication technology sector, including us
MCSA	MultiChoice South Africa (Pty) Ltd and its affiliates
MultiChoice	MultiChoice (Pty) Ltd (the holder of the 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 you and us
Programming	An independently produced South African local television content programme, including feature-length films, comedies, documentaries, children's programmes, drama and magazine programming, but <u>not</u> including advertisements, promotions, or any related marketing, promotional, publicity or other material, sporting events and compilations thereof, pre-match build-ups, post-match commentary, short clips and sports news bulletins

Term	Meaning
Protocol	This commissioning protocol, as set out in this document, setting out the set of policies that we will ordinarily apply when commissioning independently produced South African programming
Regulations	The Regulations on the Commissioning of Independently Produced South African Programming, 2009 ²
Solicited proposal	A proposal to develop independently produced South African programming submitted by you in response to a brief issued by us
Submissions portal	The online site/s on which proposals by independent producers must (unless indicated otherwise in a brief issued by us) be submitted to us, as updated by us from time to time, currently located at: https://submissions.mnetcorporate.co.za/ (for programming to be broadcast on the M-Net channels) and https://supersport.com/unsolicited-proposals (for programming to be broadcast on the SuperSport channels).
Unsolicited proposal	A proposal to develop programming submitted by you of your own accord (i.e. not in response to a brief issued by us)
We or us	MultiChoice and/or MCSA, and their successors and assigns

² Regulations on the Commissioning of Independently Produced South African Programming, Government Gazette No. 32767, Notice No. 1596, 1 December 2009

Term	Meaning
Writing	Any handwritten or typed form embodied in a hard copy or data message 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

- 11 Our objective in commissioning independently produced South African programming is to ensure the creation of compelling, distinctive and relevant content for MultiChoice's broadcasting service. We want to provide content that resonates with our target markets and ensure a reliable supply of quality local programming.
- 12 Any programming we commission must ultimately contribute to MultiChoice's commercial sustainability and objective to attract and retain subscribers and viewership amid competition among all forms of audio-visual service providers, including traditional broadcasters. As the industry undergoes rapid technological developments, consumer preferences are evolving and market dynamics are being reshaped in profound ways, including through the surge in online / digital content consumption and piracy. The programming which we commission must necessarily take these factors into account.
- 13 The Protocol strives to achieve the following commissioning objectives in a manner that achieves our commercial sustainability:
 - 13.1 improve the relationship between you and us;
 - 13.2 promote innovation and creativity in the production of South African programming;
 - 13.3 raise the quality of independently produced South African programming;

- 13.4 advance competition in the procurement of independently produced South African programming;
 - 13.5 promote diversity in the broadcasting and independent production sectors;
 - 13.6 promote development of skills and the creation of a sustainable independent production sector; and
 - 13.7 advance the transformation of the independent production sector.
- 14 We will assess proposals which we receive from you in accordance with the Protocol and with due regard to our commercial sustainability considerations.

Commercial sustainability considerations

- 15 When we assess proposals, negotiate commercial terms, and make decisions in respect of any proposals submitted to us in terms of the Protocol, we will have regard to the extent to which we consider that the programming and the terms of any production agreement to be concluded between you and us will contribute to the following non-exhaustive commercial sustainability considerations:
- 15.1 the anticipated demand or a lack of demand for programming;
 - 15.2 the reasonable expected revenue to be generated by MultiChoice from the programming, either directly or indirectly and relative to the cost of the programming in question;
 - 15.3 the reasonableness of the commercial, financial and technical terms on which you are proposing to make the programming available;
 - 15.4 the potential impact of the programming on our profitability;
 - 15.5 optimising efficiencies and profitability;
 - 15.6 subscriber acquisition and retention;
 - 15.7 the maintenance of competitiveness with alternative offers on the market; and

- 15.8 the extent to which the programming is responsive to the needs of the public.

General terms of trade

- 16 Unless provided otherwise in the production agreement, the minimum terms of trade set out in this document will ordinarily apply when we commission programming from independent producers in terms of the Protocol.
- 17 The terms of the production agreement will be negotiated, with due regard to:
- 17.1 the provisions of the Protocol, including as regards the commissioning objectives, programme fees, distribution arrangements, and archival usage and rights;
 - 17.2 the commercial sustainability considerations; and
 - 17.3 the budget and timeframes for delivery of commissioned programming.
- 18 Unless provided otherwise in the Protocol or in the production agreement, the following general terms of trade will ordinarily apply -
- 18.1 You will be responsible for co-ordinating all the arrangements for the production of the programming, and for the production itself, including the sourcing and acquisition of all resources and material (including the appropriate rights clearances and licences to use the relevant intellectual property) for incorporation into the programming.
 - 18.2 You must employ or contract, at your expense, all persons necessary for the research, completion, editing and production of the programming. You will select the director, your production heads of department, and members of the cast in consultation with us.
 - 18.3 You are responsible for all costs, expenses and risks arising in respect of or pertaining to the production.
 - 18.4 You must submit a production budget to us for approval. The approved production budget will be attached to the production agreement. We

will pay you the amounts set out in the production budget, according to the payment schedule set out in the production agreement. You must produce the programming strictly in accordance with the production budget. You may use the amounts which we pay you solely for purposes of production related costs incurred in connection with the relevant commissioned programming. Your production costs must not exceed the amount of the total production budget.

- 18.5 You must submit a full and accurate financial report and supporting documents relating to the production to us on a monthly basis or other intervals set out in the production agreement.
- 18.6 You must open a new separate bank account for each production. You must pay all production related costs from this bank account. You must also keep separate accounting records complying with generally accepted accounting standards and principles in relation to the production.
- 18.7 You will devise the programming credits in consultation with us. The relevant entities identified by us must be given credit in all programming, in a format specified by us.
- 18.8 Although MultiChoice's intention when commissioning programming is to broadcast it, we are not obliged to broadcast it wholly or at all. We will determine the date/s, time/s, scheduling and number of broadcasts, including repeats.
- 18.9 No third party, including actors, presenters, artists and performers engaged by you to render any services, may commence providing their services unless they have signed appropriate written contracts on terms which are acceptable to us.
- 18.10 You must obtain insurance cover with a reputable audiovisual media services industry insurance provider to cover all risks associated with the production of the programming.

18.11 You must indemnify MultiChoice and MCSA and its/their affiliates against any claims arising out of or in connection with -

18.11.1 your negligent and intentional acts and omissions; and

18.11.2 the production agreement, including but not limited to any infringement of our rights or any third party rights, non-compliance with applicable laws, and any failure to fulfil any of your obligations under the production agreement.

Distribution arrangements, archival usage and rights

19 The various contracting options pertaining to the creation of local content programming (whether solicited or unsolicited) will depend on the financing model adopted in the particular circumstances.

20 The following financing models are generally available -

20.1 A co-production, namely where both we and/or third-party funders, and/or you, contribute to the funding of programming (i.e. a production is jointly funded by the various parties). Various contracting options may be considered pertaining to intellectual property rights in this instance.

20.2 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.

20.3 A commissioner-funded production, namely where we commission and fund the production of programming (i.e. you do not contribute to the funding of the production).

21 The Regulations and the Protocol deal specifically with the last-mentioned option, namely the commissioning of independently produced South African programming.

- 22 It is generally our approach, within the framework of South African copyright legislation, to acquire, for the price agreed to in the production agreement, all of the copyright in the programming, where we have paid for the commissioning of that programming. This includes without limitation, rights to re-runs, the on-selling or licensing of programming to other audiovisual media services, the exploitation of secondary rights through other broadcasting, online, social media and other platforms, such as various types of on-demand services, rental services, catch up services, merchandising, rights to make the programming available for research, and archival.

Programme fees

- 23 Subject to the commercial sustainability considerations, we will take into account various considerations when determining programming prices, which could include –
- 23.1 the genre of the programming;
 - 23.2 the relevant target market and Living Standards Measure (LSM) / Socio-Economic Measure (SEM) category of that target market;
 - 23.3 the value of the programming to the schedule;
 - 23.4 the expected cost of the programming;
 - 23.5 the level of up-front third party investment, if any, that the programme could reasonably expect to attract in the marketplace;
 - 23.6 whether we are required to provide development or other funding;
 - 23.7 the historic and anticipated inflation rate;
 - 23.8 the historic and anticipated foreign exchange rates;
 - 23.9 changes in technology and/or production techniques; and
 - 23.10 any other relevant factors.

24 In the case of solicited programming, we may include in the brief an indication of the estimated programme fees and/or additional factors that we will take into account when determining programming prices.

25 The payment schedule will be set out in the production agreement.

Technical standards

26 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.

27 The technical standards required for specific types of programming will be made available to you as part of the contracting process.

Editorial standards

28 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.

29 The editorial standards required for specific types of programmes will be set out in the production agreement.

30 In particular, you should be aware that MultiChoice provides the broadcasting service in accordance with its broadcasting licence and the relevant provisions of the Electronic Communications Act and the applicable regulations and other regulatory instruments enforced by ICASA. MultiChoice also subscribes and adheres to the Code of Conduct enforced by the Broadcasting Complaints Commission of South Africa (collectively "the regulatory framework"). MultiChoice takes its responsibilities under the regulatory framework very seriously. Accordingly, we are particularly concerned that the programming on the broadcasting service should not contravene any provision of the regulatory framework.

- 31 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

- 32 If you seek to deviate from the agreed editorial specifications, you must raise the proposed deviation, in writing, with our relevant commissioning team, or such other persons indicated by us from time to time.
- 33 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.
- 34 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 you and us.

Guidelines on delivery of programming for viewing before broadcast

- 35 You must arrange with our relevant commissioning team, or such other persons indicated by us from time to time, to view and approve the programming before broadcast ("offline and online versions") in accordance with the delivery schedule in the production agreement.
- 36 You must liaise with us in order to set up a mutually suitable time for us to consider the offline versions of the programming.
- 37 If the programming or any part thereof does not meet our quality requirements, editorial standards, technical standards or other specifications, or any provision of the production agreement, we will afford you, on written notice, a specified time to remedy the defect to our satisfaction, taking into account the date of transmission. If you refuse and/or fail to remedy the defect, we may reject the programming or any part thereof.

- 38 Further details on the delivery of programming for viewing before broadcast will be set out in the production agreement.

Commissioning process

- 39 The commissioning process will vary depending on whether your proposal is solicited or unsolicited.

Process for submission and handling of *unsolicited* proposals

- 40 You may submit an unsolicited proposal in accordance with the Protocol and related information made available by us from time to time.
- 41 All unsolicited proposals must be submitted by upload via the relevant submissions portal.
- 42 The technical specifications, including file types and maximum file sizes, for submissions will be specified on the submissions portal.
- 43 Our initial response will acknowledge receipt of the unsolicited proposal. Thereafter, we will assess the submission. We may appoint a committee or members of our relevant content team to assess the proposal, as we consider appropriate from time to time. If we are interested in your proposal, we may invite you to a pitch session, at a mutually convenient date and time, to pitch the proposal to our representatives.
- 44 If, within 90 days from the successful upload of the proposal to the submissions portal, we have not invited you to a pitch session or communicated an in-principle decision to you, please consider your proposal unsuccessful.
- 45 You acknowledge that your submission of a proposal will not be construed as a representation or inference that we will not develop ideas or programming, or have ideas or programming developed for us, that, without reference to your submission, are similar to your proposal or any aspect thereof.

Process for submission and handling of *solicited* proposals

- 46 We may issue briefs to solicit programming. Briefs may invite proposals from the public or may be issued to identified producers.
- 47 The closing date for the submission of solicited proposals will be set out in the relevant brief.
- 48 All solicited proposals must be submitted via the upload tab on the submissions portal or via such other means specified in the brief.
- 49 The technical specifications, including file types and maximum file sizes for submissions will be specified in the brief or on the submissions portal.
- 50 Our initial response will acknowledge receipt of the solicited proposal.
- 51 Thereafter, we will assess the submission. We may appoint a committee or members of our relevant content team to assess the proposal, as we consider appropriate from time to time.
- 52 The time taken to assess proposals differs depending on the brief in question, having regard to the genre of the programming. Further information in this regard may be included in the brief.
- 53 If we are interested in your proposal, we may invite you to a pitch session, at a mutually convenient date and time, to pitch the proposal to our representatives.
- 54 If, within 90 days from the successful upload of the proposal to the submissions portal, we have not invited you to a pitch session or communicated an in-principle decision to you, please consider your proposal unsuccessful.
- 55 You acknowledge that your submission of a proposal will not be construed as a representation or inference that we will not develop ideas or programming, or have ideas or programming developed for us, that, without reference to your submission, are similar to your proposal or any aspect thereof.

Timetables for commissioning process

- 56 We will ordinarily acknowledge receipt of your proposal within 5 business days of successful upload of the proposal to the relevant submissions portal (subject to the requirements specified in the brief, in the case of solicited proposals).
- 57 Thereafter, the following timetable will ordinarily apply, unless specified otherwise on the submissions portal or, in the case of solicited proposals, in the brief:

Stage/timeframe in commissioning process	Number of business days
If a pitch meeting is to be held, the interval between the invitation to a pitch meeting and the pitch meeting	20 business days, at a mutually convenient date and time
If a pitch meeting is held, the interval between the pitch and the commissioning decision (in-principle decision)	20 business days
Interval between commissioning decision and commencement of contractual negotiations	20 business days
Contractual negotiations	Approximately 20 business days
Interval between conclusion of contractual negotiations and signature of production agreement (if negotiations are successful)	10 business days
Interval between signature of production agreement and provision of executed agreement copy	5 business days after the signature of the 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	We may request progress reports in the production process, which you must do within a maximum of 2 days

Procurement and ethical standards

- 58 We strive to achieve a consistent and open approach to procurement and to ensure best practice in procurement and management.
- 59 We adhere to the highest ethical standards, which are set out in our code of ethics and whistle blower policy as amended from time to time and which we will make available on request or on our website/s from time to time. You must familiarise yourself with these policies and you must adhere to the relevant provisions of such policies insofar as they apply to you. You must comply with all applicable laws and conduct yourself consistently with good governance and ethics.
- 60 We require that, prior to the commencement of any negotiations, prospective independent producers must be profiled to determine their B-BBEE status. To this end, we will require you to provide us with a current and valid B-BBEE accreditation certificate.
- 61 We may stipulate targets each year for programming to be procured in a financial year from independent producers that are 51% Black Owned, 30% Black Women Owned, Qualifying Small Enterprises and/or Exempted Micro Enterprises (as defined in the ICT Sector Code).
- 62 It is important for us to manage our supply chain effectively. We may require you to submit additional information from time to time for this purpose.

Complaints handling mechanism

- 63 If you believe that we failed to adhere to the Protocol when we engaged with you in respect of a proposal submitted by you, you may submit a complaint to us in terms of this section.
- 64 You must submit your complaint to us in writing, to the following contact details (as amended from time to time), within 30 days of the occurrence of the commissioning practice complained about.

- 64.1 General Entertainment programming: nicola.vanniekerk@mnet.co.za
- 64.2 Sports programming: CPCComplaints@supersport.com
- 65 Your complaint must set out the details and context giving rise to the complaint, the provision of the Protocol which you claim was not adhered to, and the basis for your claim that the practice in question failed to adhere to the Protocol.
- 66 We will consider and respond to your complaint.
- 67 If you are not satisfied with our response to the complaint, you may escalate the complaint, in writing, to ceoprotocolcomplaints@multichoice.co.za, or such other email address indicated in the relevant brief, or otherwise indicated by us from time to time. You must mark the complaint for the attention of the CEO of MultiChoice and must CC our relevant Head of Content. You must attach your initial complaint and our response to it and indicate the reasons why you are dissatisfied with our response to the complaint.
- 68 The office of the CEO of MultiChoice will consider and respond to your complaint.