

TERMS AND CONDITIONS OF POST PRODUCTION

1. Definitions and Interpretation

1.1 In the Contract:

"Background IPR" means Intellectual Property Rights owned, created or acquired by a party prior to entering into this Contract or created independently of this Contract. In respect of the Company's Background IPR, this shall include the Company's audio and audio-visual recordings and effects libraries. In respect of the Customer, this shall include the Customer's Voice Recordings.

"Booking" means the booking period for which the Company has agreed to provide the Facilities to the Customer, as set out in the Order and subject to extension or renewal as agreed by the parties in writing.

"Charges" means the charges payable by the Customer for the Company's provision of the Facilities.

"Company" means Films at 59 Ltd (Reg No. 02507861), whose principal place of business is 59 Cotham Hill, Bristol BS6 6JR.

"Contract" means the legal agreement between the Company and the Customer for the provisions of the Facilities, incorporating the Order and these terms and conditions of post production, and any other documents expressly incorporated by reference.

"Customer" means the person, persons or company purchasing the Facilities from the Company.

"Customer's Property" means any of the Customer's works, tapes, films, media or other materials, equipment or other property which is the subject of the Facilities and is provided to the Company.

"Facilities" means the pre/post-production equipment, personnel, creative and production facilities and services, including the Materials, and all other services provided by the Company to the Customer in accordance with the Contract.

"Intellectual Property Rights" means copyright, patents, rights in inventions, rights in confidential information, know-how, trade secrets, trade marks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing.

"Materials" means all tapes, memory cards, hard drives, films, recordings or other materials or physical property provided or created by the Company pursuant to a Booking.

"Order" means the Customer's order for the provision of the Facilities, which may be a document signed, endorsed or otherwise accepted by the parties, or other written confirmation (including by email) that the Customer wishes to receive the Facilities as per the Company's Quotation.

"Quotation" means the Company's quotation addressed to the Customer, which shall lapse 30 days from the date of such Quotation unless the Customer notifies the Company, in writing, that it wishes to place an Order based on the Quotation before the expiry of such 30 days.

"Voice Recordings" means any audio or audio-visual recordings of any or all of the performer(s), which has been commissioned or otherwise

provided by the Customer or on the Customer's behalf.

"Working Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Works" means any final outputs (including but not limited to recordings, designs or documents) of the provision of the Facilities as a whole in its final form delivered from the Company to the Customer.

2. Application of Terms and Conditions

2.1 All dealings between the Customer and the Company will be on these terms and conditions of post-production (the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document issued by the Customer) and excluding, to the fullest extent of the law, any term implied by law, trade, custom, practice or course of dealing.

2.2 The person placing the Order on behalf of the Customer warrants and represents that they have the requisite authority to bind the Customer.

2.3 The Company may issue Quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Facilities and are incapable of being accepted by the Customer.

2.4 The Order constitutes an offer by the Customer to receive the Facilities as set out in the Quotation, subject to the Charges specified therein and subject to these terms and conditions. This offer shall be deemed accepted by the Company and the Contract shall come into force on the earlier of (i) the Company countersigning or otherwise confirming acceptance of the Order in writing (including by email); or (ii) the Company commencing provision of the Facilities.

3. Rates, Fees and Charges

3.1 The Charges shall be calculated by the Company in accordance with the rates that are published from time to time in the Company's rate card. The Charges do not include VAT (or any analogous sales taxes or duties), all media stock, courier and delivery charges, meals and long distance telecommunications expenses, and any such VAT and expenses shall be paid by the Customer.

3.2 The Company reserves the right to change the rates quoted in the rate card at any time without prior notice.

4. Estimates

The Company may, from time to time, provide the Customer with written estimates in respect of the length of time and applicable Charges necessary for the provision of the Facilities. Whilst the Company will use its reasonable endeavours to adhere to such estimates, the Company will not be bound by such estimates, including where they are not met due to the Customer's changes or other circumstances outside the Company's control. The Company will not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure.

5. Payment

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5.1 The Customer shall pay the Charges for the provision of the Facilities in accordance with this Contract, including any payment schedule set out in the Order.

5.2 Unless the Customer has an approved credit account with the Company, all Charges must be paid prior to provision of any Facilities. Any Customer wishing to open a credit account with the Company must submit a completed credit account application form for consideration by the Company together with any documents requested by the Company. The Company may give credit (including any set credit limits) entirely at its discretion and may refuse, vary or withdraw credit without specifying any reason.

5.3 Where the Company has approved the Customer's credit account (unless otherwise agreed in writing) payment must be made within 30 days of the date of the Company's invoice in full without any deduction, set off, counterclaim or otherwise.

5.4 If the Customer fails to make payment on the due date then, without prejudice to any other right or remedy the Company will be entitled to, the Company may:-

5.4.1 charge the Customer interest on the amount unpaid at a rate of 4% per annum over Bank of England base rate from time to time or the rate specified in the Late Payment of Commercial Debt (Interest) Act 1988, as amended, whichever is the higher (such interest shall accrue daily from the due date until actual payment of the overdue amount, whether before or after judgment);

5.4.2 recover from the Customer any costs of recovery and enforcement associated with the payment default, including legal, court, and enforcement agent fees and disbursements claim, including compensation for debt recovery costs as specified in the Late Payment of Commercial Debt Regulations 2002 (or any amendment thereof) on each invoice;

5.4.3 cancel the Contract for provision of Facilities and any other contract it has with the Customer; and/or

5.4.4 withdraw any credit facilities (even if previously granted) resulting in all sums invoiced to the Company becoming immediately payable.

5.5 Payment to the Company shall not, in any circumstances, be dependent upon payment to the Customer from any third party.

5.6 Any queries on the invoice must be raised within 14 days of the date of the invoice.

5.7 The time for payment shall be of the essence.

6. Cancellation

6.1 In its absolute discretion, the Company may at any time permit cancellation by the Customer of a Booking or Order.

6.2 In the event of any such cancellation further to clause 6.1 or termination by the Company in accordance with clause 15:

6.2.1 within less than 24 hours of a Working Day before the start of the Booking, the Customer will be charged at the full rate for the Booking under the Company's current rate card as at the date of cancellation or termination (as applicable); and

6.2.2 between one and three Working Days before the start of the Booking, the Customer will be charged at 50% of the full rate for the Booking under the Company's current rate card at the date of cancellation or termination (as applicable).

6.3 In addition to the above-mentioned charges, the Company will be entitled to be reimbursed with any costs or expenses which it may have already been incurred with the knowledge and approval of the Customer.

7. Lien and Delivery

7.1 Until payment in cash or cleared funds of all monies (including the Charges) due from the Customer to the Company pursuant to a particular Booking:

7.1.1 the title and ownership (subject to clause 9) of the Materials shall, notwithstanding delivery, remain vested in the Company;

7.1.2 the Company shall have a general lien over any property of the Customer in the Company's possession; and

7.1.3 the licence granted by the Company to the Customer pursuant to clause 9 shall not take effect.

7.2 Furthermore, such property shall not pass to the Customer until the Company has also received payment in cash or cleared funds of all monies due from the Customer to the Company under any other Bookings or business transaction.

7.3 The Customer agrees that the Company (or its nominated agents or contractors) may enter upon the premises where any Materials are stored or where they are reasonably thought to be stored, during normal business hours on a Working Day, and repossess the same.

7.4 If the Customer fails to make payment within 14 days of such monies becoming due, the Company at its discretion shall be entitled to exploit or dispose of such Materials and apply any proceeds towards the monies due and any expenses in respect of such exploitation or disposal and shall, upon accounting to the Customer for the balance (if any) remaining, be discharged from all liability in respect of any such Materials.

7.5 The Company will endeavour to deliver any Materials as soon as practicable after receipt of all sums due to the Company from the Customer, but the Company shall not be responsible for any loss suffered by the Customer due to delay in delivery.

8. Insurance

8.1 Risk of damage to or loss of the Materials shall pass to the Customer on delivery, or if the Customer fails to take delivery, when the Company attempts delivery.

8.2 The Customer acknowledges that it is not possible for the Company to obtain insurance against any lost costs of production arising from loss or damage to the Customer's Property or the Materials.

8.3 Accordingly, the Customer shall take out and maintain such insurance cover against all risks as is necessary or usual in connection with production (including pre/post-production), including lost production costs caused on loss or damage to the Customer's Property (and its content) whilst under the custody or control of the Company.

9. Intellectual Property

9.1 Each party retains ownership of its own Background IPR.

9.2 The Company (or its licensors) shall own all Intellectual Property Rights vested in or associated with the provision of the Facilities,

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including its know-how.

9.3 Subject to the Company having received payment in cash or cleared funds of all monies due (including the Charges) from the Customer to the Company pursuant to a particular Booking, the Company:

9.3.1 agrees that the Customer owns legal title to the Works (and the Materials on which such Works are delivered to the Customer);

9.3.2 assigns to the Customer absolutely with full title guarantee all the present and future Intellectual Property Rights in and to the final Works as a whole in its final form as supplied by the Company (save for any of the Company's Background IPR); and

9.3.3 grants a fully paid-up, worldwide, royalty-free, non-exclusive, perpetual, licence to the Customer to use the Company's Background IPR as comprised within the Works to the extent necessary to receive, use and exploit the Works, provided that the Customer may not copy, extract, reverse-engineer, adapt, create derivatives of or disassemble the Company's Background IPR (or any part of it) from the Works and/or otherwise sell, lease, assign, sublicense, transfer, use or exploit the Company's Background IPR outside of the Works without the prior written consent of the Company.

9.4 Notwithstanding anything to the contrary contained herein, the Company shall retain ownership and possession of any skills, techniques or know-how acquired, developed or used prior to and/or during the Booking and the Company shall not be required to deliver to the Customer any tools, devices, workflows, techniques, processes, know how, audio/visual workstation timelines or session recordings which are used as tools or otherwise during provision of the Facilities.

10. Confidential Information

10.1 The Customer shall take proper steps to keep confidential all confidential information relating to the Company or its business or financial affairs or the Facilities or other services provided by it, including any computer programs, production techniques, databases and any original ideas and concepts, know-how, workflows, designs and processes incorporated in or inherent in the Booking, which information is disclosed to or obtained by the Customer pursuant to or as a result of the provision of the Facilities (other than information in the public domain other than by reason of a breach by the Customer of this provision) ("**Company Confidential Information**").

10.2 The Customer will not use or divulge any Company Confidential Information to any person (other than its professional advisers who are under a contractual or statutory duty of confidentiality) and upon the termination of the Booking, the Customer will return to the Company any Company Confidential Information (without retaining copies thereof) and any equipment or other provided by the Company (other than, for the avoidance of doubt, the Materials).

11. Liability

11.1 Nothing in this Contract shall exclude or limit either party's liability for death or personal injury caused by its negligence, fraud or

fraudulent misrepresentation or any other losses which cannot be excluded or limited by applicable law.

11.2 Save as otherwise expressly provided in the Contract and to the fullest extent permitted by law:

11.2.1 the supply to any Customer of Materials and Facilities are entirely at the Customer's risk; and

11.2.2 the Company shall be under no liability to the Customer or any other person for (i) any loss of profits, revenue, business, contracts, and/or anticipated savings; (ii) any loss of production time, delay in shooting, cost of re-shooting unusable footage, remedial and/or repair work on digital media; or (iii) any direct, indirect or consequential loss or damage.

11.3 Subject to the provisions of this clause 11, the Company's total aggregate liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise howsoever, shall in all circumstances be limited to an amount equal to 100% of the Charges paid or payable to the Company by the Customer pursuant to this Contract.

11.4 If the use of the Facilities for the Booking is delayed, postponed, curtailed, or cancelled for any reason beyond the Company's reasonable control, the Company shall not be liable for any loss or damage suffered by the Customer by reason thereof.

11.5 Except as expressly provided in this Contract, all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Contract.

11.6 Save as otherwise expressly provided in this Contract and to the fullest extent permitted by law, the Company will not be responsible for any damage to or loss of any Customer's Property or Materials held by the Company nor any loss (consequential or otherwise) arising in respect thereof, unless directly caused by the Company's negligence.

11.7 Subject to the above provisions of this clause 11, all of the Customer's Property and all Materials held by the Company will be held by the Company entirely at the risk of the Customer, irrespective of the cause of any loss or damage and the Customer should insure the Customer's Property to their full value against all risks and take and retain copies of all Customer's Property before providing them to the Company.

11.8 The Company shall make available its equipment and the personnel it deems necessary to operate such equipment, but the Customer shall satisfy itself that the Facilities are suitable for its purpose. Whilst the Company will use its reasonable endeavours to ensure that all equipment and Facilities perform in accordance with the specification for such equipment and Facilities as set out in the Order, unless expressly agreed in writing at the time of the acceptance of the Booking the Company shall not be responsible for ensuring that its equipment and the Facilities provided by it are suitable for the Customer's purpose.

11.9 The Company shall not be liable for any reduction in the quality of its Facilities due to full or partial failure of any internet connection used to provide those Facilities or of any internet

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connection used in the process of a Booking or employed in the use of Facilities by the Customer.

11.10 The Company shall not be liable for any reduction in the quality of its services that may be caused by the quality of the property and materials provided by the Customer or the Company's adherence to the Customer's instructions.

11.11 The Customer shall indemnify the Company, its directors, and employees, servants, sub-contractors and agents against all liabilities, actions and losses, claim, proceedings, judgment, damages, obligations, costs and expenses of any nature whatsoever incurred by the Company (including, but not limited to, legal fees, costs and expenses) arising directly or indirectly out of or in connection with: (i) the materials provided by the Customer, including any third party claims that such materials infringe any third party's Intellectual Property Rights or other rights; or (ii) the acts or omissions of the Customer, its servants, agents or representatives; or (iii) any breach by the Customer of any of its representations, warranties or other obligations in this Contract.

12. Non-Collection

The Company shall be entitled to destroy, erase or otherwise dispose of as it thinks fit any Materials or the Customer's Property in its possession and uncollected by the Customer after the expiration of six months from the end of the Booking, and whilst uncollected by the Customer, such Materials and Customer's Property shall be held by the Company at the Customer's risk as stated above.

13. Representation and Warranties

The Customer represents and warrants to the Company that:

13.1 before the commencement of the Booking, it will obtain all consents licences and clearances required from the performers, copyright owners and any other person having any right or interest in connection with any of the Customer's Property;

13.2 the Customer's personnel and any other persons using the Facilities on behalf of the Customer shall observe and comply with all health and safety notices and instructions whilst on the Company's premises; and

13.3 nothing contained in the Customer's Property will be defamatory, offensive, obscene or otherwise unlawful or in breach of any Intellectual Property Rights or any other right of any third party.

14. Force Majeure

14.1 The Company shall not be under any liability to the Customer as a result of the Company being unable to perform any of its obligations or comply with any of the Customer's instructions due to circumstances beyond its reasonable control, including but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of any suppliers or sub-

contractors. If the Company is so unable, it shall (at its option) either be entitled to perform such obligations or comply with such instructions as and when it is reasonably able to do so or to treat itself as wholly or partly released from all such obligations or instructions liability.

15. Termination

15.1 Either party shall be entitled to immediately terminate the Contract on giving written notice to the other if:

15.1.1 a party commits any material breach of the Contract which is either incapable of remedy or, in the case of such a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (for the avoidance of doubt any late payment or failure to pay by the Customer any sums due shall be a material breach); or

15.1.2 party is deemed unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986, makes any voluntary arrangement with its creditors or becomes subject to an administration order or serves notice of administration, or has a receiver, manager or administrative receiver appointed over its assets or (being an individual) shall become bankrupt or (being a company) shall have a winding-up order made against it or shall go into liquidation (except reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on the predecessor company under this Contract).

15.2 On termination of this Contract, the Customer shall pay to the Company all costs and expenses due under the Contract.

15.3 Expiry or termination of this Contract for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties under this Contract existing at expiry or termination.

16. Notices

Any notice to be given in accordance with this Contract shall be deemed to be properly given if delivered by hand or sent by prepaid post or email or facsimile to the party concerned at the address or email address as set out on the Order or to such other address, email as may be communicated from time to time in writing to the sender of the notice. Notices sent by prepaid post shall be deemed to have been received three Working Days after the date of posting. Notices delivered by hand shall be deemed to have been delivered upon receipt. Notices sent by email shall be deemed to have been received if sent before 4pm on any Working Day on that day and if sent after 4pm on any Working Day on the first Working Day following the date of sending as the case may be and in both cases provided the sender has retained a successful transmission receipt.

17. Governing Law and Jurisdiction

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

18. General

18.1 No variation to the Contract will be binding unless agreed in writing between the Company

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and the Customer.

18.2 This Contract is the entire agreement between the parties and supersedes any previous agreement in relation to its subject matter. The Customer acknowledges and agrees that in entering into this Contract it does not rely on and shall have no remedy in respect of any statement, representation, warranty, undertaking or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as expressly set out in the Contract.

18.3 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge or deal in any other manner with this Contract or its rights under it or part of it, or purport to do any of the same, nor sub-contract any or all of its obligations under this Contract. The Company may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

18.4 If any part of the Contract becomes invalid, illegal or unenforceable it shall be severed from the Contract and the remainder of the Contract shall remain in full force and effect. Any waiver under this Contract shall only be effective if given in writing.

18.5 A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that act.

18.6 This Contract does not constitute, establish or imply any partnership, joint venture, agency, employment or fiduciary relationship between the parties.

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