

COMMERCIAL RIGHTS-IN TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1. This Agreement comprises the Deal Terms together with these Terms and Conditions and any and all Appendices which are attached to the Deal Terms or which are otherwise agreed by the Parties from time to time to be incorporated into this Agreement.
- 1.2. In the event of a conflict between the terms of the Deal Terms and the terms of these Terms and Conditions, the terms of the Deal Terms shall prevail.
- 1.3. In this Agreement:

“Associate”	in relation to a person: (i) each parent undertaking of that person from time to time; and (ii) each subsidiary undertaking of that person or of any of that person's parent undertakings from time to time ("parent undertaking" and "subsidiary undertaking" having the meanings given to them in section 1162 of the Companies Act 2006);
“Business Day”	a day (excluding Saturdays and Sundays and public holidays in England) on which banks are open for business in London;
“Commercial Rights”	the rights granted in this Agreement including the rights listed in the Deal Terms, and the right to create and distribute Promotional Material;
“Claims”	any and all actions, claims or proceedings, and any and all damages, demands, expenses, fines, liabilities, or losses, including reasonable legal fees and costs and VAT thereon;
“Deal Terms”	Means the agreed commercial terms that reference these Commercial Rights-In Terms and Conditions;
“Insolvency Event”	the occurrence of any of the following events or circumstances (or any analogous event or circumstance in a jurisdiction other than England and Wales) in relation to the relevant entity: (i) being deemed unable to pay its debts as defined in section 123 Insolvency Act 1986 without any requirement to prove any matter stated in that section to a court; (ii) proposing a voluntary arrangement; (iii) steps being taken for a receiver, administrator or manager to be appointed over the whole or a material part of its business or assets; (iv) an order being made, a resolution passed or other steps being taken for its winding-up (except for the purposes of a bona fide solvent reorganisation), bankruptcy or dissolution; (v) otherwise proposing or entering into any composition or arrangement with its creditors or any class of them; or (vi) ceasing to carry on business or claiming the benefit of any statutory moratorium;
“Intellectual Property Rights”	patents, trade marks, service marks, brand names, copyright, rights in computer software, moral rights, design rights, domain names, registered designs, know how, database rights, confidential information and/or any other intellectual or industrial property rights of whatsoever nature whether or not registered or capable of registration and whether subsisting in

the Territory or elsewhere;

“ITV Group”	ITV and each Associate of ITV from time to time; and the phrase "member of the ITV Group" will be construed accordingly;
“ITV Indemnified Party”	ITV, the Commercial Client, their Associates and their respective officers, directors, agents and employees;
“Laws”	all applicable laws, statutes, ordinances, rules and regulations (including those contained in any relevant trade agreements) and requirements of all governmental agencies and regulatory bodies whether now or in the future in force;
“Parties”	means the parties listed in the Deal Terms and “Party” shall mean each of them;
“Programme”	the programme(s) listed in the Deal Terms, including all literary, dramatic, artistic, musical and computer generated material, the title, title sequence and any visual and/or audio element incorporated into or synchronised with or otherwise forming part of the programme(s); and
“Promotional Material”	advertising, marketing and promotional material created by the Commercial Client or ITV including but not limited to advertisements in any media in connection with the exploitation of the Commercial Rights.

- 1.4. In this Agreement, unless specified otherwise or the context otherwise requires:
 - 1.4.1. capitalised terms used but not defined in these Terms and Conditions shall have the meaning attributed to them in the Deal Terms;
 - 1.4.2. references in this Agreement to agreement, approval or consent by ITV shall mean agreement, approval or consent in writing obtained in advance. Save as expressly stated otherwise, any such approval shall be at ITV's sole discretion;
 - 1.4.3. any reference to a directive, statute, statutory provision, subordinate legislation, code or guideline ("legislation") shall be construed as including a reference to such legislation as the same may from time to time be amended, modified, extended, superseded, replaced, consolidated or re-enacted whether before or after the date of this Agreement, and to all statutory instruments, orders, regulations, instruments or other subordinate legislation for the time being made pursuant to such legislation; and
 - 1.4.4. references to clauses, schedules and sub-divisions of them are references to the clauses of, and schedules to, of this Agreement and sub-divisions of them respectively, unless otherwise stated.
- 1.5. Unless the context requires otherwise, in this Agreement words denoting the singular shall include the plural and vice versa.
- 1.6. Any reference in this Agreement to ITV's right to exploit or exercise any right shall be deemed to include a right to license, permit or authorise others to undertake such activity.
- 1.7. Any phrase in this Agreement introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.8. The headings in this Agreement are for convenience only and shall not limit, govern or otherwise affect the construction of any provision and any reference to a clause or appendix is to the relevant clause or appendix of or to this Agreement.

2. GRANT OF RIGHTS

2.1. This Agreement and the payment of any Fee shall be conditional on ITV entering into a sub-licence with the Commercial Client.

2.2. The Licensor agrees that ITV may exploit the Commercial Rights and hereby grants a licence to use the Licensed Property in connection with such exploitation on the Agreed Exclusivity basis during the Term throughout the Territory on and subject to the terms and conditions set forth in this Agreement. ITV may sub-license the Commercial Rights including to the Commercial Client.

2.3. For the avoidance of doubt, the rights acquired by ITV pursuant to this Agreement are acquired in addition and without prejudice to the rights acquired by ITV or any member of the ITV Group pursuant to any other agreement between Licensor and ITV or Licensor and another member of the ITV Group (including any agreement for the commissioning or acquisition of the Programme).

2.4. ITV shall be under no obligation to procure the exploitation of the Commercial Rights or any other rights granted herein, or any part of them.

3. APPROVALS

3.1. ITV shall comply with the reasonable directions of the Licensor regarding the form and manner of the application of the Licensed Property on and in connection with the Promotional Material. All Promotional Material and licensed products (if applicable) are subject to the prior written approval of the Licensor (not to be unreasonably withheld or delayed). For the purposes of this clause 3.1, prior written approval shall include prior written approval by email.

3.2. ITV shall submit requests for approval by email to the Licensor contact set out in the Deal Terms (or such other email address as is notified by Licensor to ITV from time to time). Licensor shall use reasonable endeavours to respond to all requests for approval within 5 Business Days. If Licensor does not respond to a request for approval within 5 Business Days, the request shall be deemed approved.

4. INTELLECTUAL PROPERTY RIGHTS

4.1. Where practicable, ITV shall cause to appear on any Promotional Material (and where applicable on any licensed products) that is/are produced pursuant to this Agreement the Required Legal Notice.

4.2. ITV shall not register or attempt to register the marks or other rights comprising the Licensed Property either as its own or in any other name. Any goodwill derived from the use of the Licensed Property pursuant to this Agreement shall accrue to the registered proprietor of the Licensed Property.

4.3. Without prejudice to clause 2.3, ITV may not use the Licensed Property for any purpose other than to fulfil its obligations or exercise its rights under this Agreement. All rights in the Licensed Property (with the exception of the rights granted in this Agreement) are reserved to the Licensor absolutely.

4.4. In respect of any form of attack, charge or claim to which the Licensed Property (or any part of it) may be subject including any actual, suspected or threatened infringement of the Licensed Property (or any part of it) or any actual or threatened claim that any trade mark is invalid or that the Licensed Property infringes third party

rights the Licensor shall in their absolute discretion, decide what action if any to take; have exclusive control over, and conduct of, all claims and proceedings; and bear the cost of any proceedings. ITV shall not make any admissions other than to the Licensor and shall, at Licensor's cost, provide them with such assistance as they may reasonably require in the conduct of any claims or proceedings.

5. FEE AND PAYMENT

- 5.1. In consideration of the grant of rights and the obligations, warranties and undertakings of the Licensor as set out herein and subject to their full and timely performance and observance ITV shall pay the Licensor the Fee set out in the Deal Terms.
- 5.2. The Licensor shall invoice ITV for the Fee in accordance with the Payment Terms. The relevant purchase order number provided by ITV must accompany invoices and failure to comply fully with this provision shall entitle ITV to reject the invoice.
- 5.3. Subject to receipt of monies from the Commercial Client, ITV shall pay any undisputed invoice that has been properly submitted in accordance with clause 5.2 by the later of: (i) the last day of the month following the month in which the invoice is dated; and (ii) the last day of the month following the month in which the invoice is received by ITV.
- 5.4. The Fee is exclusive of any VAT and similar taxes and duties that may be chargeable. Subject to receipt of a valid VAT invoice, ITV shall pay to the Licensor at the time the Fee becomes due an amount equal to the VAT properly chargeable on the Fee.
- 5.5. If any amount payable by either Party pursuant to or in connection with this Agreement is not paid when it is due then that amount will bear interest at the rate of two per cent (2%) above the base rate from time to time of Barclays Bank plc, accruing (but not compounding) on a daily basis from the due date until payment is made (after as well as before judgment).
- 5.6. The Licensor agrees that payment of the Fee is full, complete and equitable consideration for all rights, consents and benefits assigned and granted pursuant to this Agreement and the exploitation of the Commercial Rights and that such payment includes an equitable pre-payment of any sums that may become due to the Licensor in respect of such exploitation. The Licensor agrees that ITV and its authorised sub-licensees and assigns shall be entitled to exploit the Commercial Rights as set out in this Agreement without further payment to the Licensor.

6. WARRANTIES AND INDEMNITY

- 6.1. Each Party warrants, represents and undertakes that:
 - 6.1.1. it is a duly incorporated company pursuant to the laws of England and Wales;
and
 - 6.1.2. it has the power and authority to enter into this Agreement and to fulfil its obligations hereunder.
- 6.2. The Licensor warrants, represents and undertakes that:
 - 6.2.1. it has full power, rights and authority to make the grant of rights contained herein;
 - 6.2.2. it has obtained all necessary consents, grants, clearances, rights and waivers (including any waivers of moral rights) to enable ITV to exploit the Commercial

Rights as contemplated by this Agreement free from any liens, claims and encumbrances and the use of the Licensed Property and such exploitation of the Commercial Rights shall not infringe the rights of any third party (including any Intellectual Property Rights);

6.2.3.the Licensed Property shall be fully cleared for exploitation in accordance with this Agreement, without further payment other than the Fee;

6.2.4.it will promptly take such action and provide ITV with such assistance and information as ITV may reasonably require from time to time for the purposes of exercising its rights and perform its obligations under this Agreement; and

6.2.5.no claim or litigation is pending or threatened in respect of the Licensed Property or the Commercial Rights.

6.3. The Licensor shall indemnify and keep indemnified each ITV Indemnified Party from and against any and all Claims arising from any breach by the Licensor of the warranties given by the Licensor under this Agreement.

6.4. The Licensor will not at any time do or say anything which is or may be considered by ITV (acting reasonably) to be detrimental or prejudicial to or to affect adversely the name, image, reputation or business of ITV, any member of the ITV Group or the Commercial Client or otherwise to bring ITV, any member of the ITV Group or the Commercial Client into disrepute.

7. LITIGATION AND REGULATORY

7.1. The Licensor shall:

7.1.1.promptly notify ITV of any proceedings, litigation claims, complaints or other action made or threatened in respect of the Programme and/or the Licensed Property (or any part of it) and/or which may otherwise affect the exploitation of the Commercial Rights and provide ITV with full particulars of the same; and

7.1.2.disclose and supply to ITV in utmost good faith all facts, circumstances, information, documents and material which might reasonably be considered relevant or which ITV may reasonably request to enable ITV to satisfy itself that the Licensor is not in breach of any of its representations, undertakings and warranties set out in this Agreement.

8. LIABILITY

8.1. Nothing in this Agreement shall limit either Party's liability for death or personal injury resulting from its negligence or for fraud, fraudulent misstatement or fraudulent misrepresentation, or to any extent not permitted by applicable Laws.

8.2. Except where expressly provided, neither Party will be liable to the other for any indirect or consequential loss, cost, expense or damage of any kind in respect of any matter arising out of or in connection with this Agreement whether in contract, tort (including but not limited to negligence), for breach of statutory duty or otherwise.

9. TERMINATION

9.1. Either Party ("**Non-defaulting Party**") may terminate this Agreement (without prejudice to its other rights and remedies) with immediate effect by written notice to the other Party ("**Defaulting Party**") if:

9.1.1.the Defaulting Party commits a material breach of any of its obligation under this Agreement and, if the breach is capable of remedy, fails to remedy it during the

period of fourteen (14) days starting on the date of receipt of notice from the Non-Defaulting Party which specifies the breach and requires it to be remedied; or

9.1.2. the Defaulting Party suffers an Insolvency Event.

9.2. The following provisions of this Agreement survive its termination or expiry: 1, 4.2, 5.5, 6 to 9 inclusive, 11 to 13 inclusive and any other clause that expressly or impliedly survives termination or expiry.

10. ASSIGNMENT

10.1. ITV may at any time assign at law or in equity (including by way of a charge or declaration of trust) any rights under this Agreement, or sub-contract any or all of its obligations under it to any member of the ITV Group.

10.2. Save as expressly provided in this Agreement, neither Party shall without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed) assign at law or in equity (including by way of a charge or declaration of trust) any of its rights under this Agreement, or subcontract any or all of its obligations under it or purport to do the same. Any purported assignment in breach of this Agreement shall confer no rights on the purported assignee.

11. CONFIDENTIALITY

11.1. Each Party shall:

11.1.1. preserve the confidentiality of all confidential information concerning the business or affairs of the other Party which it receives (including the terms of this Agreement and any other information which it might reasonably expect to be considered confidential) and which is shared in relation to the subject matter of this Agreement (including any information shared prior to the commencement of the Term and any information related to the Commercial Client);

11.1.2. keep such information secure and protected against theft, damage, loss or unauthorised access;

11.1.3. not use or disclose such information for any purpose except as contemplated by this Agreement. For the avoidance of doubt, ITV may disclose confidential information to the Commercial Client for the purpose of allowing the Commercial Client to exploit any sub-licensed Commercial Rights; and

11.1.4. ensure that these obligations are observed by its employees, officers, agents and contractors;

in each case for a period of three years following receipt of the relevant information.

11.2. The confidentiality obligations imposed by clause 11.1 shall not apply to information to the extent that such information:

11.2.1. is approved for release (on a limited or general basis) by the disclosing Party;

11.2.2. is already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors; or

11.2.3. is lawfully received by the recipient from a third party on an unrestricted basis.

11.3 Each Party shall be entitled to disclose confidential information to the extent that it is legally required to be disclosed by applicable Laws or court order, or by the listing rules of any relevant stock exchange.

11.4 The Licensor shall not make any announcement relating to this Agreement or its subject matter without the approval of the Licensor, except as required by applicable Laws or by any legal or regulatory authority.

12. COMPLIANCE WITH ANTI-BRIBERY REQUIREMENTS

12.1. Each Party shall and shall procure that its Associates and any third parties performing services on behalf of such Party in connection with this Agreement shall comply with all applicable Laws and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and immediately notify the other Party (in writing) if it or any of its employees, agents or other persons who perform or have performed services for it or on its behalf is investigated by any law enforcement agency or customer in relation to corrupt practices and any breach of anti-bribery and anti-corruption laws.

13. GENERAL

13.1. Each Party shall do all such further acts and execute or procure the execution of all such further documents and instruments as the other may require from time to time to give full effect to this Agreement.

13.2. Nothing in this Agreement shall be construed as constituting a partnership between or joint venture by the Parties and neither shall be, or hold itself out to be, the agent of the other.

13.3. No waiver by any of the Parties of any breach of any term of this Agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other term.

13.4. In no event will any delay, failure or omission (in whole or in part) in enforcing, exercising or pursuing any right, power, privilege, claim or remedy conferred by or arising under this Agreement or by law, be deemed to be or construed as a waiver of that or any other right, power, privilege, claim or remedy in respect of the circumstances in question, or operate so as to bar the enforcement of that, or any other right, power, privilege, claim or remedy, in any other instance at any time or times subsequently.

13.5. Without prejudice to clause 2.3, this Agreement represents the entire agreement between the Parties relating to the subject matter of this Agreement and shall be legally binding and shall supersede and replace all prior oral and written understandings regarding the subject matter.

13.6. Any amendment or variation to this Agreement must be in writing and signed by both Parties.

13.7. If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision and everything else in this Agreement shall continue in full force and effect.

13.8. Each ITV Indemnified Party may rely upon and enforce any terms of this Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999 provided that ITV consents to such reliance and/or enforcement. Notwithstanding the foregoing, the Licensor and ITV may by agreement in writing rescind or vary any of the provisions in this Agreement in any way without the consent of any third party. Except as provided in this clause 13.8, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 13.9. This Agreement may be executed in any number of counterparts (each of which taken together will be deemed to constitute one and the same agreement and each of which individually will be deemed to be an original) with the same effect as if the signatures on each counterpart were the same original document.
- 13.10. Any notice given under the terms of this Agreement shall be given in writing and sent to the other Party's registered address, except where expressly provided. Where a notice is sent to ITV, one copy shall also be sent to: Head of Legal, UK Brands, ITV Broadcasting Limited, 200 Gray's Inn Road, London, WC1X 8HF.
- 13.11. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and will be construed in accordance with, the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales over any claim, dispute or other matter arising under or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).