



PRODUCT LICENCE TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 The following definitions shall apply in this Agreement:

“Advance”	means any amount specified as an “Advance” within the Minimum Guarantee definition set out in the Deal Terms;
“Affiliate”	means in relation to any Party, any person which, directly or indirectly, (i) is controlled by that Party; or (ii) controls that Party; or (iii) is under substantially common control with that Party, and for this purpose "control" means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes and "controlled" shall be construed accordingly;
“Business Day”	means the hours of 0930 to 1730 in the United Kingdom on any week day on which banks in London are generally open for business;
“Confidential Information”	means any information in any form (including all oral and visual information, and all information recorded in writing or electronically, or in any other medium or by any other method) emanating from the Licensee, the Licensor or its Affiliates, which may reasonably be considered to be confidential or which, if disclosed, would be liable to cause harm to the Party (or the Affiliate of the Licensor) whose information is disclosed and including (i) the existence and contents of this Agreement; (ii) any information relating to the business of the Licensee, the Licensor or its Affiliates including any know-how or other trade secrets; processes; marketing opportunities; matters connected with the products or services manufactured, marketed, provided or obtained by the Licensee, the Licensor or its Affiliates; information concerning actual or potential clients, customers or suppliers and the needs and requirements of the Licensee, the Licensor or its Affiliates and of such persons; and (iii) any information, design materials or data in any form produced by, for or on behalf of the Licensee, the Licensor or its Affiliates;
“Copyright Material”	means the copyright material listed in the “Licensed Property” section of the Deal Terms and any logos included in the Marks;
“Deal Terms”	means the agreed commercial terms that reference these Product Licence Terms and Conditions;
“Derivative Material”	has the meaning set out in clause 7.7;
“End Date”	means the end date set out in the Deal Terms;
“Guarantee Period”	has the meaning set out in clause 9.3.4;
“Insolvent”	means, in relation to any person, if: <ul style="list-style-type: none"> a) it is unable or admits inability to pay its debts as they fall due or is deemed to or declared to be unable to pay its debts under applicable law, suspends or threatens to suspend making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness

	<p>(except as part of a genuine refinancing); or</p> <p>b) any corporate action, legal proceedings or other procedure or step is taken in relation to it for:</p> <ul style="list-style-type: none"> (i) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); (ii) any composition, compromise, assignment or arrangement with any creditor; or (iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of it, any Affiliate or any of its assets;
“Intellectual Property Rights”	means trade marks, service marks, logos, brand names, company names, business names, domain names, copyright, patents, rights in computer software, moral rights, design rights, know how, database rights, confidential information, rights protecting goodwill, reputation and image and/or any other right of a similar nature whether or not registered or capable of registration and any applications for the protection or registration of any of these rights and all renewals, revivals and extensions thereof throughout the world;
“Licence Fee”	has the meaning given in the Deal Terms;
“Licensed Products”	means the products bearing the Licensed Property (or any element of it) that the Licensee is licensed to produce as specified in the “Licensed Products” section of the Deal Terms. In relation to Licensed Products that consist of software stored on a physical storage device or medium, the term “Licensed Product” shall be deemed to include both the software and the physical storage device or medium;
“Licensed Property”	has the meaning set out in the Deal Terms;
“Licensee”	has the meaning set out in the Deal Terms;
“Licensor”	has the meaning set out in the Deal Terms;
“Marks”	means the Registered Trade Marks and Unregistered Rights;
“MG Instalment”	has the meaning set out in clause 9.3.4;
“Minimum Guarantee”	means the amount set out in the Deal Terms;
“Net Revenue”	means the greater of all amounts received and all amounts invoiced by the Licensee from or in connection with uses, sales, or other supplies of the Licensed Products (including associated packaging where applicable) net of Value Added Tax (“VAT”) or its equivalent and other sales taxes. No deduction may be made for trade discounts, cash discounts, year-end rebates, early payment rebates, bank charges, exchange rate differentials, marketing contributions, returns, uncollectable amounts or for any other sums;
“Parties”	means the Licensor and the Licensee (each a “Party”);
“Payment Schedule”	means the payment schedule in the Deal Terms setting out the dates for payment of the Licence Fee and Minimum Guarantee;
“Permitted Channels”	has the meaning set out in the Deal Terms;
“Programme”	means the television programme set out in the ‘Programme’ section of the Deal Terms;

“Promotional Material”	means all promotional material relating to the Licensed Products, including but not limited to: (i) advertising material in any media (including but not limited to television, cinema, print, radio, online and direct marketing communications); (ii) point of sale material; (iii) packaging; and (iv) any ancillary products or services created for the purposes of promoting the Licensed Products;
“Registered Trade Marks”	means the registered trade marks and applications for registered trade marks listed in the “Licensed Property” section of the Deal Terms;
“Reporting Period”	has the meaning given in the Deal Terms;
“Required Legal Notice”	means the required legal notice set out in the Deal Terms;
“Royalty”	has the meaning set out in the Deal Terms;
“Satisfactory Quality”	means products or material shall be free and remain free from any material defects, material design and programming errors and be free from viruses, malware, malicious or harmful code and shall meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances and for the purposes of this Agreement, the quality of goods includes their state and condition and the following (among others) are in appropriate cases aspects of the quality of goods: (a) fitness for all the purposes for which goods of the kind in question are commonly supplied; (b) appearance and finish; (c) safety; and (d) durability;
“Special Conditions”	means the Special Conditions set out in the Deal Terms;
“Stages”	has the meaning set out in clause 6.2;
“Start Date”	means the start date set out in the Deal Terms;
“Style Guide”	means the document to be supplied by the Licensor to the Licensee (as amended from time to time) containing artwork reference material and descriptions defining and governing the use of the Licensed Property;
“Subcontractor”	has the meaning set out in clause 20.2;
“Term”	means the period from 00.00 on the Start Date to 23.59 on the End Date and any extensions and renewals thereof and subject to earlier termination in accordance with this Agreement;
“Territory”	has the meaning set out in the Deal Terms; and
“Unregistered Right(s)”	means the Unregistered Right(s) listed in the “Licensed Property” section of the Deal Terms.

1.2 In this Agreement, unless the context requires otherwise:

1.2.1 references to clauses and schedules are references to clauses and schedules to this Agreement;

1.2.2 the Schedules form part of and are incorporated into this Agreement;

- 1.2.3 the expression “person” shall include individuals, corporations, unincorporated associations and partnerships;
- 1.2.4 headings are included for ease of reference only and shall not affect the interpretation of this Agreement;
- 1.2.5 the expressions “other”, “including” and “in particular” shall not be construed so as to limit the generality of the foregoing words;
- 1.2.6 a reference to “writing” does not include email (except where expressly stated);
- 1.2.7 any reference to a provision of a statute, statutory instrument or code shall be construed as a reference to that provision as amended, modified, re-enacted or extended (whether before or after the date of this Agreement);
- 1.2.8 the singular shall include the plural and vice versa and references to any gender shall include references to the other genders; and
- 1.2.9 references to the sale of a Licensed Product (and equivalent terms) shall include the sale of licences to end users for use of the Licensed Products.

2 GRANT OF LICENCE

- 2.1 In consideration of the obligations, warranties and undertakings of the Licensee herein contained and subject to their full and timely performance and observance, the Licensor hereby grants to the Licensee a non-exclusive licence to use the Licensed Property on or in relation to the Licensed Products and Promotional Material in the Permitted Channels for the Term throughout the Territory on and subject to the terms and conditions in this Agreement.
- 2.2 The Licensee may not utilise the Licensed Property or any other material supplied by the Licensor for any purpose other than to fulfil its obligations or exercise its rights under this Agreement.
- 2.3 All rights not expressly granted are reserved to the Licensor (or, if applicable, any third party rights owner) absolutely.

3 LICENSEE’S OBLIGATIONS

- 3.1 The Licensee shall comply strictly with the directions of the Licensor regarding the form and manner of the use and application of the Licensed Property on and in connection with the Licensed Products and Promotional Material, including the directions contained in the Style Guide. The Style Guide shall at all times remain the property of the Licensor and shall not be copied, reproduced or used other than in accordance with the terms of this Agreement.
- 3.2 The Licensee shall not without the Licensor’s prior written consent use the name, likeness, image or voice of any person appearing in the Programme on or in any Licensed Products or Promotional Material or to endorse the Licensed Products.
- 3.3 The Licensee acknowledges and agrees that where any music from the Programme is used in the Licensed Products or Promotional Material, clearances for such music must be obtained by the Licensee directly from the owner thereof prior to the incorporation of such music into the Licensed Products and/or Promotional Material as applicable. The Licensee shall inform the Licensor of any proposed use of such music prior to approaching the owner. For the avoidance of doubt, no music is included in the Licensed Property under the terms of this Agreement.
- 3.4 The Licensee shall promptly provide the Licensor with details of any consumer or third party complaints it has received relating to the Licensed Products or Promotional

Material and with copies or transcripts of any communications relating to any complaint or investigation by any regulatory, industry or other authority that relates to the Licensed Property, the Licensed Products or Promotional Material together with reports on the manner in which such complaints or investigations are being, or have been, dealt with, and shall comply with any reasonable directions given by the Licensor in respect thereof.

- 3.5 The Licensee shall use its best endeavours to promote and expand the supply of Licensed Products throughout the Territory on the maximum possible scale, and shall provide such advertising and publicity as may reasonably be expected to bring the Licensed Products to the attention of as many potential users or purchasers as possible. The Licensed Products shall be given fair and equitable treatment and shall not be discriminated against in favour of any other products that the Licensee may develop, sell or distribute.
- 3.6 The Licensee shall bear all design, development, production, maintenance, support, distribution, operation, hosting, advertising, marketing and promotion costs for the Licensed Products and Promotional Material.
- 3.7 The Licensee shall ensure that the Licensed Products and the Promotional Material do not feature any third party advertisements, commercial, sponsorship, promotional material and/or external third party links without the prior written consent of Licensor.
- 3.8 The Licensee shall ensure that it has appropriate recall procedures in place to deal with any requirements to withhold, withdraw or return Licensed Products or Promotional Material in accordance with clauses 11 or 18 below.
- 3.9 The Licensee hereby acknowledges and agrees that it shall be solely responsible for the liability or risk of liability arising out of the distribution, sale, consumption or use of the Licensed Products and associated packaging, labelling and/or Promotional Material and any other materials issued or used in connection with the Licensed Products.

4 DEVELOPMENT, MANUFACTURE AND DISTRIBUTION OF LICENSED PRODUCTS

- 4.1 In developing, manufacturing and/or distributing any Licensed Products, the Licensee warrants it shall, and shall procure that any of its subcontractors under this Agreement shall:
 - 4.1.1 not use forced, imprisoned, indentured or child labour;
 - 4.1.2 comply with all local laws relating to employment and working conditions including that: (i) employees are all over the minimum age established by local law; (ii) employee working hours comply with local laws and are in any event are not more than 60 hours per week for full-time employment; and (iii) the Licensed Products are manufactured in a safe, hygienic working environment;
 - 4.1.3 perform all inspections and testing necessary to ensure that all Licensed Products meet or exceed all applicable safety, quality, performance and flammability requirements, and industry standards and guidelines, including, by way of example, affixing a CE mark where valid and applicable; and
 - 4.1.4 adopt ethical and responsible business practices including without limitation requiring a positive audit report for suppliers based in China and other countries with a similar or greater risk of exposure to unethical business practices.
- 4.2 Licensee shall sell and distribute the Licensed Products outright and not on an approval or consignment basis and shall not sell the Licensed Products to hawkers, peddlers or street vendors.

5 DATA

The Licensee hereby agrees, warrants, represents and undertakes that:

- 5.1 it has in place a privacy policy and cookie policy and shall comply with the same and provisions of all applicable data protection legislation (including without limitation the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003) when collecting, storing and processing personal data;
- 5.2 it has in place appropriate technical and organisational measures against the unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data;
- 5.3 it shall not re-sell, license, transfer or otherwise provide to any third party any personal data for any purpose whatsoever without user consent or in contravention of any applicable data protection or privacy legislation; and
- 5.4 in the event that the Licensee in performing its obligations under this Agreement processes any personal data in respect of which the Licensor is the data controller (as defined in the Data Protection Act 1998), it shall process such personal data solely in accordance with the Licensor's instructions from time to time.

6 APPROVALS

- 6.1 Prior to distribution of any Licensed Product or Promotional Material, the Licensee shall obtain the Licensor's approval of all uses of the Licensed Property on or in relation to the Licensed Products and/or Promotional Material. In obtaining such approval the Licensee shall comply with the procedures set out in this clause 6 or such other procedures to be notified to the Licensee by the Licensor from time to time.
- 6.2 Prior to sale or distribution the Licensee shall submit the Licensed Products and Promotional Material to the Licensor for approval via MEDIABOX (or as otherwise directed by the Licensor) in stages, as follows ("**Stages**"):

Stage 1:	design or concept including without limitation artwork or design of user experience;
Stage 2:	pre-production sample or, for digital products or material, alpha release (i.e. first functionally complete version);
Stage 3:	final production sample (in packaging) or, for digital products or material, beta release (i.e. release candidate version);
- 6.3 At Stages 2 and 3 the Licensee shall provide a version or samples of each Licensed Product or Promotional Material in a form which will allow the Licensor to review and (if applicable) test the same. The Licensee shall provide up to three (3) samples for Stage 2 and up to fifteen (15) samples for Stage 3. These samples shall be provided without charge to the Licensor. At the request of the Licensor, the Licensee shall provide further samples at cost price.
- 6.4 The approvals procedure may be subject to addition and/or variation (on notification to the Licensee) where in its sole discretion the Licensor considers additional approvals and/or variation of these Stages necessary.
- 6.5 The Licensor shall endeavour to give its approval or otherwise within 10 Business Days of receipt of submitted materials. The Licensee shall not proceed to the next Stage of development unless the Licensor has given written approval. If approval is not given, it shall be deemed withheld.

- 6.6 In the event that the Licensor requires changes, the Licensee shall effect such changes at each Stage and re-submit designs for the Licensor's approval. The Licensee shall not proceed with further development unless and until the Licensor approves the re-submitted material.
- 6.7 The Licensee shall not advertise, market, promote, sell, distribute or publicly release any Licensed Products and/or Promotional Material unless and until it has received approval from the Licensor in respect of the final Stage.
- 6.8 If at any time after receiving final approval the Licensee wishes to change a Licensed Product or any Promotional Material, the Licensee shall submit the revised Licensed Product and/or Promotional Material for approval in accordance with the procedure specified in clauses 6.1 to 6.7 above prior to sale or distribution.
- 6.9 Upon written request from the Licensee the Licensor may in the Licensor's sole and absolute discretion agree to waive the rights of approval herein stated at any or all Stages of the process provided that no such waiver shall constitute or imply a waiver of the rights of approval over any other Licensed Product or Promotional Material or over any other Stage not so specified, and may be withdrawn at any time.
- 6.10 The Licensee shall at all times ensure that the Licensed Products and Promotional Material developed, manufactured, promoted, sold or distributed (as applicable) shall conform in all respects with the designs and samples and uses of the same approved by the Licensor in accordance with this clause 6.
- 6.11 For the avoidance of doubt, any approval given by the Licensor under this clause 6 shall not absolve the Licensee from any of its other obligations under this Agreement.

7 TITLE, GOODWILL AND REGISTRATIONS

- 7.1 The Licensee shall procure that all Licensed Products and all Promotional Material relating to the Licensed Products bear the Required Legal Notice and/or any other statement as notified in writing by the Licensor to the Licensee (and shall not remove or authorise the removal of the same).
- 7.2 Any goodwill derived from the use by the Licensee of any Mark included in the Licensed Property shall accrue to the registered proprietor of the Mark. The Licensor may at any time call for a confirmatory assignment of that goodwill and the Licensee shall immediately execute it.
- 7.3 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may invalidate or jeopardise any registrations for any of the Marks.
- 7.4 The Licensee shall not apply for, or obtain, registration of the Marks (or any of them) and/or for any trade or service mark which consists of, or comprises, or is similar to, the Marks (or any of them) for any goods or services in any country.
- 7.5 The Licensee shall not apply for, or obtain, registration of any domain name which consists of, or comprises, or is similar to, the Marks (or any of them).
- 7.6 The Licensee shall, at the request of the Licensor, assist in obtaining registration of this Agreement as a licence of any Registered Mark at the appropriate trade mark registry.
- 7.7 The Licensee hereby assigns to the Licensor free of all liens, charges, encumbrances and third party rights of whatsoever nature (and by way of present assignment of future copyright where material has yet to be created) all rights including Intellectual Property Rights and accrued rights of action in any element of the Licensed Products or Promotional Material (or material created during the production or development of the same) that is based on or derived from the Licensed Property ("**Derivative Material**") (whether created as at the date of this Agreement or in the future) for the full duration

of such rights throughout the world, including any extensions, reversions and renewals thereof. Where such rights are not owned by the Licensee, the Licensee undertakes to obtain an assignment of rights in materially the same form as the assignment in this clause to the Licensor from any person who, on behalf of the Licensee, creates any Derivative Material.

- 7.8 The Licensee irrevocably and unconditionally waives and agrees to procure the irrevocable and unconditional waiver in perpetuity of any provision of law known as moral rights and, so far as is legally possible, any broadly equivalent rights in any territory of the world, in respect of any Derivative Material.
- 7.9 This Agreement shall not be construed as an assignment or grant to the Licensee of any title in the Intellectual Property Rights constituting or associated with the Licensed Property.

8 PROTECTION OF THE LICENSED PROPERTY

- 8.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:
- 8.1.1 any actual, suspected or threatened infringement of the Licensed Property (or any part of it);
- 8.1.2 any actual or threatened claim that use of the Licensed Property (or any part of it) infringes the rights of any third party;
- 8.1.3 any actual or threatened claim that any Mark is invalid or any actual or threatened opposition to any Mark;
- 8.1.4 any person applies for, or is granted, a registered trade mark by reason of which that person may be, or has been, granted rights which conflict with any of the rights granted to the Licensee under this Agreement; or
- 8.1.5 any other form of attack, charge or claim to which the Licensed Property (or any part of it) may be subject or anything else which may conflict with any of the rights granted under this Agreement.
- 8.2 In respect of any of the matters listed in clause 8.1:
- 8.2.1 the Licensor and/or the proprietor of the relevant part of the Licensed Property shall:
- 8.2.1.1 in their absolute discretion, decide what action if any to take;
- 8.2.1.2 have exclusive control over, and conduct of, all claims and proceedings; and
- 8.2.1.3 bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for their own account; and
- 8.2.2 the Licensee shall not make any admissions other than to the Licensor and/or the proprietor of the relevant part of the Licensed Property and shall provide them with all assistance that they may reasonably require in the conduct of any claims or proceedings.
- 8.3 The provisions of section 30 of the Trade Marks Act 1994 (and where applicable the rights of exclusive licensees to bring proceedings under article 22(3) of Council Regulation 207/09 on the Community Trade Mark) are expressly excluded.

9 PAYMENTS TO LICENSOR

The Licensee shall make payments to the Licensor as follows:

- 9.1 **Licence Fee.** The Licensee shall pay the Licence Fee in accordance with the Payment Schedule (subject to receipt of an invoice from Licensor). For the avoidance of doubt, the Licence Fee shall not be on account of or recoupable from Royalties falling due to the Licensor under this Agreement.
- 9.2 **Royalty.**
- 9.2.1 The Licensee shall pay the Royalty. The Royalty shall accrue on the date when the Licensed Product is downloaded, played, lent, leased, let on hire, used, sold, invoiced, paid for, installed, delivered or otherwise supplied (whichever is the earliest).
- 9.2.2 Within 30 days after the end of each Reporting Period (or the end of the Term if the end of the Term does not coincide with the end of a Reporting Period) the Licensee shall send to the Licensor a completed statement in the form of Schedule 1 to this Agreement recording the calculation of Royalties for that Reporting Period (or from the end of the last Reporting Period to the end of the Term (as applicable)). Upon receipt of the statement the Licensor shall issue an invoice for the Royalties due.
- 9.2.3 The amount payable to the Licensor in respect of any sales (or other supplies) made by the Licensee which are not at arms length will be deemed to be equivalent to such total amount as would have been payable by an independent arm's length purchaser under the terms of this Agreement and paid by the Licensee accordingly.
- 9.3 **Minimum Guarantee.**
- 9.3.1 The Licensee shall pay the Minimum Guarantee in accordance with the Payment Schedule (subject to receipt of an invoice from Licensor).
- 9.3.2 If no date for payment of the Minimum Guarantee is specified in the Payment Schedule the Minimum Guarantee shall become due on the End Date (or if payable in instalments on the last day of the relevant Guarantee Period). The Licensor shall issue an invoice for the Minimum Guarantee and the Licensee shall make payment within 30 days of the date of the invoice.
- 9.3.3 The Minimum Guarantee (including any Advance) shall be reduced at the time of payment by the sum of all Royalties actually paid to the Licensor and received by the Licensor at the date on which the Minimum Guarantee is due to be paid.
- 9.3.4 Notwithstanding the foregoing, where a Minimum Guarantee is stated in the Deal Terms to be payable in staged payments relating to discrete periods (each such period being a "**Guarantee Period**" and each such payment being an "**MG Instalment**"), each MG Instalment shall be reduced at the time of payment by the sum of all Royalties received by the Licensor during the relevant Guarantee Period. For the avoidance of doubt, for the purpose of this clause, if an Advance is paid prior to the commencement of the first Guarantee Period, it shall be deemed to have been paid within the first Guarantee Period.
- 9.3.5 On the early termination of this Agreement howsoever caused, save for the breach of a material term of this Agreement by the Licensor or termination under clause 17.3, any part of the Minimum Guarantee then unpaid (including any MG Instalments not yet due) shall be immediately due and payable in full, regardless of any payment date(s) specified in the Payment Schedule (subject to the deduction of the sum of all Royalties and Advances actually paid to the Licensor).
- 9.4 **Payment:** The Licensee shall make payment within 30 days of the date of an invoice.
- 9.5 **Late Payment:** If the Licensee fails to make any payment when due then, without prejudice to any other rights and remedies (whether provided by law, equity or this Agreement), the Licensor is entitled to:

- 9.5.1 suspend the licence in this Agreement until the relevant amount is paid; and/or
- 9.5.2 charge interest on any unpaid amount (inclusive of VAT) at a rate of two per cent per annum over Barclays Bank PLC base rate from time to time calculated on a daily basis for the period from the due date to the date of actual payment in full, both before and after any judgment. The parties agree that this clause 9.5.2 is a substantial remedy for late payment of any sum payable pursuant to or in connection with this Agreement in accordance with section 8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.6 **Currency:** All monies due to the Licensor under the terms of this Agreement are payable in the currency specified in this Agreement. Royalties earned in currencies other than the specified currency shall be converted into the specified currency at the published mid rate of exchange of Barclay's Bank PLC on the date on which each such payment is due.
- 9.7 **Taxes:** All monies due to the Licensor under this Agreement are exclusive of VAT, GST or their equivalent (the "**Taxes**"). Subject to the Licensor providing a tax invoice in an appropriate form, the Licensee shall pay to the Licensor an amount equivalent to the Taxes.
- 9.8 The Licensee shall at all times co-operate and comply with the requests of the Licensor (including for the completion and submission of official forms to the appropriate authorities) to ensure that no withholding taxes or charges are deducted from monies due or payable to the Licensor by the Licensee if such taxes or charges may be lawfully avoided or credited by way of example through the operation of terms incorporated in double taxation treaties. In each instance where such taxes or charges are required to be deducted from monies paid, the Licensee will provide to the Licensor, when paying the net amount, any appropriate official certification or other documentation the Licensor shall require in order to obtain refund of such deductions. If such documentation evidencing payment of the withholding tax is not provided to the Licensor in a timely manner, the Licensee shall immediately pay to the Licensor all amounts that were withheld. The Licensee shall indemnify the Licensor and its Affiliates for any taxes, interest or penalties imposed by any tax authority that may become payable as a result of the failure by the Licensee to pay any such withholding taxes in connection with payments made pursuant to this Agreement when due and required by applicable law.

10 AUDIT

- 10.1 During the Term and for a period of six years thereafter, the Licensor shall have the right (either itself or through its agents, accountants and/or professional advisors) on service of at least five Business Days' notice, to conduct an audit in relation to the Licensee's compliance with this Agreement. Such audit shall be undertaken during normal business hours and at Licensor's sole cost and expense (subject to clause 10.3). The Licensee will co-operate with the Licensor's representatives during such audit and will make available to the Licensor's representatives its books, records, documents and agreements and such personnel and facilities (including those of its Subcontractors) as may reasonably be required in connection with the examination to establish whether the Licensee has complied with its obligations under this Agreement (including without limitation the calculation of Royalties due to the Licensor). The Licensee shall (and ensure that its Subcontractors) keep full, accurate and proper records and accounts in connection with this clause.
- 10.2 The Licensor's representatives may take copies of the records and any other relevant information relating to this Agreement for the purpose of the audit provided that such information shall be treated as confidential to the Licensee under this Agreement.
- 10.3 If any audit reveals that the Licensor has not been paid any monies that were properly due to the Licensor, then the Licensee shall promptly pay the shortfall together with

interest to be calculated in accordance with clause 9.5.2 above and if the shortfall is greater than 5% then the Licensee will pay the reasonable costs of the audit.

11 WITHDRAWAL OF LICENSED PRODUCTS, PROMOTIONAL MATERIAL AND LICENSED PROPERTY

11.1 Upon giving five Business Days' written notice the Licensor shall have the right to require the Licensee to withhold the release (and, as applicable, the development or manufacture) of any Licensed Products and/or Promotional Material or to withdraw any Licensed Products and/or Promotional Material from distribution where in the reasonable opinion of the Licensor such Licensed Products and/or Promotional Material or the distribution of them breaches or would breach the Licensee's obligations or warranties under this Agreement. Following the receipt of such notice thereof from the Licensor the Licensee hereby agrees to promptly withhold or withdraw such Licensed Products and/or Promotional Material. In the event that the Licensed Products and/or Promotional Material pose any danger to health or safety, the Licensor may give less than five Business Days' notice.

11.2 The Licensor shall have the right at any time by giving notice in writing to the Licensee to withdraw the Licensed Property (or any element of it) from this Agreement if in the reasonable opinion of the Licensor the Licensed Property (or any element of it) becomes unavailable for distribution due to (i) actual or threatened litigation relating to the Licensed Property; (ii) the Licensor having been advised by its legal advisors to withdraw it for reasons including but not limited to restrictions imposed on the Licensor by any third party rights holders and/or creative participants in the Licensed Property; or (iii) any reason beyond the Licensor's control. Such notice of withdrawal shall be given as far in advance as reasonably possible and in any event with no less than five Business Days' notice. Following the receipt of such notice of withdrawal the Licensee hereby agrees to: (i) promptly withhold the release of or withdraw from distribution any Licensed Products and Promotional Material containing the Licensed Property (or, if applicable, the element of the Licensed Property that has been withdrawn); and (ii) accept a refund of the Licence Fee and/or a reduction of the Minimum Guarantee in each case on a pro-rata basis.

11.3 If the Licensed Property is withdrawn no other sums or compensation, other than that referred to in clause 11.2 above, shall be payable by the Licensor and the Licensee shall and does waive all claims against the Licensor that may arise from such withdrawal of the Licensed Property.

12 LICENSOR WARRANTIES

12.1 The Licensor hereby warrants and represents to the Licensee as follows:

12.1.1 it is a duly incorporated company pursuant to the laws of England and Wales;

12.1.2 it has the power and authority to enter into this Agreement and make the grant of rights to the Licensee contained herein;

12.1.3 provided that they are used in relation to a class for which they are registered (and in accordance with the terms of this Agreement), the use of the Registered Trade Marks on the Licensed Products or Promotional Material will not infringe the trade mark rights of any third party; and

12.1.4 the use of the Copyright Material on the Licensed Products or Promotional Material will not infringe the copyright of any third party (provided it is used in accordance with the terms of this Agreement).

13 LICENSEE WARRANTIES

13.1 The Licensee represents, warrants and undertakes to the Licensor that:

- 13.1.1 it is a duly incorporated company pursuant to the laws of England and Wales;
- 13.1.2 it has the power and authority to enter into this Agreement;
- 13.1.3 it has acquired (and shall continue to hold throughout the Term) all rights, consents and licences necessary for it to comply with its obligations under this Agreement;
- 13.1.4 it shall not do or permit to be done, anything that would or is likely to (and the Licensed Products and Promotional Material shall not) affect adversely the name, image or reputation of the Licensor or its Affiliates (or rightsholders) and/or its or their goodwill, brands, programmes, business names, trade marks;
- 13.1.5 it, the Licensed Products and Promotional Material shall comply with all applicable laws, regulations, industry standards and codes of practice (including the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing and the UK Code of Broadcast Advertising) and all legal compliance policies and procedures issued by the Licensor;
- 13.1.6 the Licensed Products and Promotional Material shall be of Satisfactory Quality and be of a quality equal to other products offered or developed by the Licensee;
- 13.1.7 the Licensed Products and the Promotional Material (i) do not infringe the rights of any third party including Intellectual Property Rights or privacy rights; (ii) are not defamatory; (iii) are not obscene; (iv) do not violate anti-discrimination laws or regulations; (v) do not constitute unfair competition; (vi) do not cause the Licensor to breach any statutory or regulatory duty or criminal law; and (vii) do not facilitate the commission of any crime, tortious, unlawful or illegal act or are in any other way unlawful;
- 13.1.8 it shall not use or allow the use of the Licensor's name for any purpose other than as specified in this Agreement and the Licensee shall make all solicitations, sales and collections solely in the Licensee's own name;
- 13.1.9 it shall not by any act or omission impair, prejudice or damage the copyright or any other rights in the Licensed Property or material supplied by the Licensor or violate any moral rights or deal with the Licensed Property or such material in any way such that a third party might obtain a lien or other right of whatever nature incompatible with the rights of the Licensor (or if applicable any third party rights owner);
- 13.1.10 it is not the nominee or agent of any undisclosed principal and will assume sole and complete responsibility for the performance of its obligations under this Agreement;
- 13.1.11 it shall not copy, use distribute or otherwise deal in the Licensed Property other than strictly in accordance with the terms of this Agreement;
- 13.1.12 it shall not actively market or seek orders for the Licensed Products outside the Territory; and
- 13.1.13 it shall not infringe, limit or adversely affect in any way the rights reserved to the Licensor under this Agreement.

14 INSURANCE AND INDEMNITIES

- 14.1 The Licensee shall at its own expense obtain and maintain during the Term, and for one year thereafter, insurance with an insurance office of repute to cover its respective liabilities related to this Agreement (including product liability, if applicable). The Licensee agrees to produce satisfactory evidence at the Licensor's request of the existence of the relevant insurance policy (or policies) and make available for inspection by the Licensor such policy's (or policies') relevant renewal receipts.

- 14.2 The Licensee shall indemnify and keep indemnified the Licensor and its Affiliates and third party rights holders against all liabilities, costs, expenses, damages or losses (including all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Licensor or its Affiliates or third party rights holders arising out of or in connection with:
- 14.2.1 any breach by the Licensee of its warranties in this Agreement including without limitation those in clauses 5, 13 and 19;
 - 14.2.2 any product or professional liability claim relating to Licensed Products developed, manufactured, supplied or put into use by the Licensee;
 - 14.2.3 any claim from a third party in respect of a breach or alleged breach of this Agreement or any regulation or infringement or alleged infringement of that person's Intellectual Property Rights (other than resulting from use of the Licensed Property in accordance with this Agreement).
- 14.3 The Licensor shall indemnify and keep indemnified the Licensee against all liabilities, costs, expenses, damages or losses (including all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Licensee arising out of or in connection with any breach by the Licensor of the warranties in clause 12 of this Agreement.

15 LIABILITY

- 15.1 Nothing in this Agreement shall exclude or limit any Party's liability:
- 15.1.1 for death and/or personal injury resulting from the negligence of such Party or its servants, agents and/or employees;
 - 15.1.2 for fraudulent misrepresentation or the tort of deceit; or
 - 15.1.3 to any extent not permitted by applicable law.
- 15.2 Except where expressly provided, neither of the Parties 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 this Agreement whether in contract, tort (including but not limited to negligence), breach of statutory duty or otherwise. For the avoidance of doubt this limitation also applies to the indemnities at clauses 14.2 and 14.3.
- 15.3 Except as expressly set out in this Agreement, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise in respect of the obligations of the parties under this Agreement are excluded insofar as it is possible to do in law.

16 CONFIDENTIALITY

- 16.1 Each Party shall throughout the Term and for a period of three years following expiry or termination of this Agreement preserve the confidentiality of all Confidential Information which is shared in relation to this Agreement and its subject matter (including any information shared prior to the Start Date), keep such Confidential Information secure and protected against theft, damage, loss or unauthorised access and not use or disclose such Confidential Information for any purpose except as contemplated by this Agreement. For the avoidance of doubt, Licensor shall be permitted to share any Confidential Information relating to this Agreement with any third party rights holder. Each Party shall ensure that these obligations are observed by its employees, officers, agents and contractors (and in the case of Licensor, any third party rights holders).
- 16.2 The confidentiality obligations imposed by clause 16.1 shall not apply to information to the extent that such information:

- 16.2.1 is already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors;
 - 16.2.2 is lawfully received by the recipient from a third party on an unrestricted basis; or
 - 16.2.3 is legally required to be disclosed by applicable law, regulation or court order or by the listing rules of any relevant stock exchange.
- 16.3 The Licensee shall not make any announcement relating to this Agreement or its subject matter without the prior approval of the Licensor, except as required by applicable law, regulation or court order or by any legal or regulatory authority.

17 TERMINATION

- 17.1 Notwithstanding any other provision in this Agreement, either Party may by written notice to the other terminate this Agreement immediately;
- 17.1.1 if the other Party (or in the case of Licensor, any Subcontractor) is materially in breach of any of the terms of the Agreement and (where such breach is capable of remedy) fails to remedy the breach within 14 days of receipt of notice from the other Party requiring such breach to be remedied; or
 - 17.1.2 if the other Party becomes Insolvent.
- 17.2 The Licensor may by written notice to the Licensee terminate this Agreement immediately if:
- 17.2.1 the Licensee fails to make any payment under this Agreement for thirty days after the same shall have become due;
 - 17.2.2 the Licensee fails to release, sell or distribute any Licensed Product by the Latest Product Release Date as set out in the Deal Terms;
 - 17.2.3 there shall be any change in the management or control (and for these purposes, "control" shall have the meaning ascribed to this term in Section 416 Income and Corporation Taxes Act 1988) of the Licensee where the changed management and/or new controlling entity is not of at least the same financial standing or repute as the current Licensee and/or where the company taking control is a competitor of the Licensor or any of its Affiliates; or
 - 17.2.4 the Licensee disputes the validity of any of the Licensor's Intellectual Property Rights.
- 17.3 If the Term of this Agreement is longer than one year, the Licensor may terminate this Agreement for any reason upon giving no less than three (3) months' written notice to the Licensee, such notice not to take effect prior to the first anniversary of the Start Date.

18 CONSEQUENCES OF TERMINATION

- 18.1 On expiry or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement:
- 18.1.1 all outstanding sums payable by the Licensee to the Licensor shall immediately become due and payable;
 - 18.1.2 all rights and licences granted pursuant to this Agreement shall cease and the Licensee shall immediately cease all use of the Licensed Property;

- 18.1.3 the Licensee shall co-operate with the Licensor in the cancellation of any licences registered pursuant to this Agreement and shall execute such documents and do all acts and things as may be necessary to effect such cancellation;
- 18.1.4 the Licensee shall at its own expense, and within fifteen Business Days, return or otherwise dispose of in accordance with the directions of the Licensor: (a) all remaining physical Licensed Products in its possession or control; and (b) all records and copies of (i) Copyright Material, (ii) Promotional Material and (iii) any Confidential Information in its possession or control, or communicated to it by the Licensor, either preparatory to, or as a result of, this Agreement to the extent such material remains confidential.
- 18.2 The Parties will have no further obligations or rights under this Agreement after the end of the Term, without prejudice to any obligations or rights which have accrued to either Party at the time the Term ends, save that clauses 1, 5, 7, 9, 10, 12 to 16, 18, 19, 20 and 21 together with any other provision the survival of which is necessary for the interpretation or enforcement of this Agreement, shall survive the termination of this Agreement and shall remain in effect in accordance with their terms.

19 ANTI-BRIBERY POLICY

- 19.1 The Licensee agrees and acknowledges that it has read and is in compliance with the Licensor's Anti-Bribery Policy as amended from time to time and available to download at <http://responsibility.itvplc.com/our-approach/governance-and-policy.aspx>. The Licensee warrants that it shall (and shall procure that persons associated with it shall):
- 19.1.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- 19.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
- 19.1.3 immediately notify the Licensor (in writing) if the Licensee or its employees, agents or other persons who perform or have performed services for or on behalf of the Licensee is investigated by any law enforcement agency or customer in relation corrupt practices and any breach of anti-bribery and anti-corruption laws.

20 SUBCONTRACTING

- 20.1 The Licensee shall not be entitled to assign, sub-license, sub-contract or otherwise dispose of any of its rights under this Agreement without Licensor's prior written consent (save that it may grant licences to use the Licensed Products to end users where applicable).
- 20.2 Any third party to whom the Licensee grants a sub-contract and/or sub-licence (including without limitation any manufacturers or third party distributors) in accordance with clause 20.1 shall be a "**Subcontractor**".
- 20.3 Notwithstanding the foregoing, the Licensee shall ensure that all Subcontractors comply with the provisions of this Agreement as if they were the Licensee (including, where applicable, the obligations of the Licensee in respect of the subcontracted rights or obligations and any restrictions within the licences granted pursuant to this Agreement). The Licensee shall remain liable for all of its obligations under this Agreement and shall be fully responsible and liable for the acts and omissions of its Subcontractors.
- 20.4 The Licensor may, without the Licensee's consent, at any time assign, transfer, charge or sub-contract all or any of its rights or obligations under this Agreement to any of its Affiliates.

21 GENERAL

- 21.1 The Licensee shall do all such further acts and execute or procure the execution of all such further documents and instruments as the Licensor may require from time to time under this Agreement.
- 21.2 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.
- 21.3 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.
- 21.4 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.
- 21.5 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.
- 21.6 Any amendment or variation to this Agreement must be in writing and signed by both Parties.
- 21.7 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.
- 21.8 Save for any Affiliate of the Licensor or third party rights holder in the Licensed Property, 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. Notwithstanding the foregoing, this Agreement may be rescinded or varied in any way and at any time by the parties to this Agreement without the consent of any of the other Affiliates of the Licensor or third party rights holders.
- 21.9 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.
- 21.10 Any notice given under the terms of this Agreement shall be given in writing except where expressly provided and addressed to the applicable Commercial Contact. Where a notice is sent to the Licensor, one copy shall also be sent to: Head of Legal, ITV Commercial and Marketing, ITV Broadcasting Limited, 200 Gray's Inn Road, London, WC1X 8HF.
- 21.11 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).

SCHEDULE 1 – ROYALTY STATEMENT

LICENSEE:

LICENSOR:

LICENSED PRODUCT:

ACCOUNTING PERIOD:

CONTRACT PERIOD:

<u>Current Accounting</u>	Licensed Product (including item name)	Period	Unit/Play/Licence Price	Units Sold/Played/Licensed	Gross Revenue	Net Revenue	Licensee Share	Royalty Rate
<u>Period Analysis</u>				0	0.00	0.00	0.00	0%

<u>Cumulative Accounting</u>	Licensed Product (including item name)	Period	Unit/Play/Licence Price	Units Sold/Played/Licensed	Gross Revenue	Net Revenue	Licensee Share	Royalty Rate
<u>Periods Analysis</u>				0	0.00	0.00	0.00	0%

ROYALTY SUMMARY

Royalties Earned this Accounting Period	£0.00
Cumulative Royalties	£0.00
Min Guarantee paid	£0.00
Net Royalty due	£0.00
Royalty previously paid	£0.00
Royalty payable this Accounting period	£0.00
VAT @ 20%	£0.00
TOTAL PAYMENT DUE	£0.00