



PRODUCTION SERVICES TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 This Agreement comprises the Deal Terms together with these Terms and Conditions including the Glossary at Schedule 1 and any additional annexes and schedules referred to in the Deal Terms.
- 1.2 In the event of a conflict between the provisions of the Deal Terms and the provisions of these Terms and Conditions, the provisions of the Deal Terms shall prevail.
- 1.3 For the avoidance of doubt, the schedules to these Terms and Conditions are incorporated into this Agreement only to the extent that they are referenced in the Deal Terms.
- 1.4 In this Agreement:
 - (a) words and expressions shall have their ordinary meaning unless defined in the Deal Terms, in these Terms and Conditions or the Glossary at Schedule 1;
 - (b) references to clauses and schedules and sub-divisions of them in these Terms and Conditions are references to the clauses of and schedules to these Terms and Conditions and sub-divisions of them respectively unless otherwise stated;
 - (c) references to any statute or statutory provision or regulatory code of practice shall include reference to any statute or statutory provision or regulatory code of practice which amends, extends, consolidates or replaces the same and shall include any directions, orders, regulatory codes of practice, instruments or other subordinate legislation made under any relevant statute or statutory provision;
 - (d) references to a person shall include any individual, company, corporation, firm, partnership, joint venture, association, organisation, institution, trust or agency whether or not having a separate legal personality;
 - (e) references importing a particular gender include all genders and references importing the singular include the plural and vice versa;
 - (f) any reference to "a party" or "parties" shall mean a party or the parties to this Agreement unless otherwise stated; and
 - (g) headings and sub-headings are inserted for convenience only and shall be ignored in construing this Agreement.

2. SUPPLY OF SERVICES

- 2.1. The Client hereby appoints ITV for the Term to supply the Deliverables in accordance with the Deal Terms on and subject to the terms of this Agreement and ITV hereby accepts such appointment.
- 2.2. ITV shall deliver the Services and the Deliverables in accordance with good industry practice and comply with the Client's reasonable instructions from time to time, subject to the terms and conditions of this Agreement.
- 2.3. ITV shall provide such information and up-dates as the Client may reasonably request from time to time.

3. PAYMENT

- 3.1. The Client undertakes and agrees to pay to ITV: (a) the Fee in accordance with the Payment Terms; and (b) the Agreed Expenses (if any) within 30 days of the date of invoice.
- 3.2. If any party fails to pay any amount due and payable by it under this Agreement or under any judgment in connection with this Agreement, such party shall pay interest on such overdue amount from the due date until the date of actual payment, after as well as before judgment, at a rate of three per cent (3%) above the base rate for the time being of Barclays Bank Plc per annum.
- 3.3. The payments payable pursuant to this Agreement shall be exclusive of any applicable value added tax ("VAT") which shall be payable in addition subject to receipt of a valid VAT invoice.
- 3.4. In the event that a withholding tax or deduction is required by applicable law to be paid by Client, Client will make any payments net of the required withholding or deduction to ITV. Client will supply to ITV evidence to the reasonable satisfaction of ITV that Client has accounted to the relevant authority for the sum withheld or deducted and will provide all such assistance as may be requested by ITV in recovering the amount of the withholding. In the event that a double taxation treaty applies which provides for a reduced withholding tax rate, Client shall only withhold and pay the reduced tax on behalf and for the account of ITV if an appropriate exemption certificate is issued by the competent tax authority.

4. PRODUCTION OF THE DELIVERABLES, APPROVALS AND ACCEPTANCE

- 4.1. The Client hereby acknowledges the timing requirements within the Approvals Process and shall comply with the Approvals Process. All Client approvals shall be given within one (1) Business Day unless otherwise specified in the Approvals Process.
- 4.2. The Client agrees and acknowledges that a failure to adhere to the agreed Approvals Process, any agreed timescales and/or the obligations on Client in this Agreement may result in delays to delivery and/or reduce the number of Deliverables and in such case, neither ITV nor its subcontractors shall be liable in any way for any such delay or reduction.
- 4.3. If the Client, acting reasonably, rejects anything for not complying with any specifications agreed between the parties, ITV shall submit a revised animatic/script of the demonstration Deliverables, first edit or final edit, as applicable, for approval as soon as reasonably practicable.
- 4.4. ITV or its subcontractors may propose the inclusion of materials that are time sensitive and/or subject to other restrictions (by way of example only, materials that are included under the so called "fair dealing" provisions of copyright law or footage of events / films that have been offered by third parties for use by the media for a limited period only). ITV (or its subcontractors) shall inform the Client of any applicable restrictions during the Approval Process. If the inclusion of such materials is agreed by the Client, the Client shall abide by such restrictions.
- 4.5. Where the parties agree in advance to include music in the Deliverables, ITV shall be responsible for obtaining and paying for synchronisation licences for the inclusion of musical compositions and/or sound recordings in the Deliverables for the Permitted Uses, unless otherwise expressly agreed in the Production Schedule. Other than such synchronisation licences, ITV is not responsible for clearing and/or paying for any licences relating to any musical composition and/or sound recording in the Deliverables and/or the exploitation of the same. For the avoidance of doubt, the Client agrees and acknowledges that ITV is not responsible for clearing communication to the public and performance in public rights in the musical composition and/or sound recording.
- 4.6. The Client acknowledges and agrees that ITV is in no way liable for the payment of any commission to its Agency or otherwise and if the Agency fails to perform any relevant obligation under this Agreement on the Client's behalf (including without limitation paying the Fee) then the Client shall remain liable for the full performance of such obligation.

5. WARRANTIES

- 5.1. ITV warrants, undertakes and agrees that:
 - (a) it has the full authority to enter into and perform this Agreement and that it is not bound by any previous agreement which adversely affects this Agreement; and

- (b) it shall comply with all laws regulations and codes in performance of the Agreement;
 - (c) it will comply with all applicable laws and/or regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;
 - (d) except for music (which is subject to the provisions of clause 4.5) and the Client Materials, it shall obtain and maintain all necessary consents, licences, permissions, and clearances (including without limitation paying any payments, royalties and/or fees) in order to supply the Deliverables and so that the Client and its authorised third parties may use and/or exploit the Deliverables for the Permitted Uses;
 - (e) except for music (which is subject to the provisions of clause 4.5) and the Client Materials, ITV is lawfully entitled to grant the rights granted to Client hereunder and the use of the Deliverables as contemplated hereunder will not violate, misappropriate or infringe the rights of any third parties; and
 - (f) except for the Client Materials, the Deliverables do not contain any material which is in any way defamatory, obscene, pornographic, unlawful, harmful, offensive or inappropriate.
- 5.2. The Client warrants, undertakes and agrees that:
- (a) it has the full authority to enter into and perform this Agreement and to authorise ITV to use the Client Materials as permitted hereunder and that it is not bound by any previous agreement which adversely affects this Agreement;
 - (b) it will comply with all applicable laws, regulations and codes and with its obligations as set out in the Deal Terms or otherwise agreed between the parties in writing;
 - (c) it will comply with all applicable laws and/or regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act 2010;
 - (d) it shall obtain and maintain all necessary consents, licences, permissions, and clearances (including without limitation paying any payments, royalties and/or fees) to the Client Materials necessary for ITV and its subcontractors to supply the Deliverables and/or Services and perform and comply with its obligations hereunder and so that the Client and its authorised third parties may use and/or exploit the Deliverables and the services as contemplated by this Agreement;
 - (e) Client is lawfully entitled to grant the rights granted to ITV hereunder (including use of any Client Materials) and the use of such materials as contemplated hereunder will not violate, misappropriate or infringe the rights of any third parties;
 - (f) the Client Materials do not contain any material which is in any way defamatory, obscene, pornographic, unlawful, harmful, offensive or inappropriate; and
 - (g) use of the Deliverables shall be subject to any restrictions on use set out in the Deal Terms, confirmed via the Approvals Process or otherwise notified by ITV to the Client.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. ITV hereby grants the Client a worldwide, sub-licensable licence to use the Deliverables only for the Permitted Uses for the Usage Term subject to any restrictions on third party materials within the Deliverables which ITV may reasonably specify from time to time. Such licence shall be exclusive for any deliverables produced by ITV or its subcontractors specifically for the Client as part of this project but non-exclusive in relation to any third party materials or pre-existing materials included within the Deliverables. The Client shall not use the Deliverables except as expressly permitted in this Agreement.
- 6.2. ITV agrees to procure the waiver of all moral rights in favour of the Client and its successors in title by all persons engaged or employed by ITV and who contribute to the Deliverables and to whom such rights may accrue. The Client hereby waives or shall procure the waivers of all moral rights in relation to the Client Materials to enable ITV and its subcontractors to perform its obligations under this Agreement and to enable the exploitation of the Deliverables as contemplated in this Agreement.
- 6.3. The Client hereby grants ITV a worldwide, royalty-free, sub-licensable licence to use the Client Materials for the Term for the purpose of applying the same to, or otherwise incorporating the same into and producing the Deliverables. ITV shall comply with Client's reasonable brand guidelines as provided in advance. Nothing contained in this Agreement will be deemed to grant to ITV any right, title or interest in or under any of the Client Materials, except as expressly provided in this Agreement. On expiry or termination of this Agreement ITV shall cease all use of the Client Materials, except to the extent permitted by clause 9.5.
- 6.4. The Client hereby agrees that it shall not (and shall not authorise any third party to) edit, alter, adapt, translate or otherwise amend the Deliverables, except as expressly agreed in advance with ITV.

- 6.5. ITV shall have the right at any time by giving notice in writing to the Client to withdraw the Deliverables (or any element of it) from this Agreement if in the reasonable opinion of ITV the Deliverables (or any element thereof) become unavailable for distribution due to (i) actual or threatened litigation relating to the Deliverables; or (ii) any reason beyond ITV'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 (5) Business Days' notice. Following the receipt of such notice of withdrawal, the Client agrees to immediately withhold the release of or withdraw from distribution any affected Deliverables. ITV may (in its sole discretion) either provide replacement Deliverables and/or refund the Client part of the Fee on a pro-rata basis (based on the amount of Deliverables withdrawn).

7. LIMITATION OF LIABILITY

- 7.1. Nothing in this Agreement shall limit either party's liability for death or personal injury resulting from its negligence or for fraud or for any other liability which may not be excluded or limited as a matter of law.
- 7.2. Neither party shall be liable to the other (whether in contract, tort or otherwise) for any consequential, indirect, incidental, economic or financial losses or loss of profits, goodwill, savings, business, wasted management, operation or other time.
- 7.3. Subject to clauses 7.1 and 7.2, the aggregate liability of ITV howsoever arising from or in connection with this Agreement and/or the supply or use of the Deliverables (whether for breach of contract, negligence, misrepresentation (except fraudulent misrepresentation) or otherwise) shall not in any circumstances exceed an amount equal to the Fee and any Agreed Expenses paid by the Client.

8. TERM AND TERMINATION

- 8.1. This Agreement shall remain in force for the period of the Term, unless terminated earlier in accordance with its terms.
- 8.2. Either party shall be entitled to terminate this Agreement forthwith by giving notice to the other party at any time if:
- (a) the other party materially breaches any of these terms and conditions, provided that where the material breach is capable of remedy, the defaulting party fails to remedy such material breach within 30 days of being notified of such breach; or
 - (b) if the other party, shall pass a resolution for winding-up or a court shall make an order to that effect, or any petition to wind up the company is presented, or (being a partnership) shall be dissolved, or if the other party shall cease, or threaten to cease, to carry on its business or substantially the whole of its business, or become or are declared insolvent or commit any act of bankruptcy or convene a meeting of or make or propose to make any arrangement or composition with its creditors or if a liquidator, receiver, administrator, trustee, manager or similar officer is appointed in respect of any of that party's assets or any analogous step is taken in connection with the other party's insolvency, bankruptcy or dissolution.
- 8.3. In the event of termination or expiry:
- (a) ITV shall cease production, performance and other preparations of work in respect of the Deliverables;
 - (b) the Client shall pay to ITV all Agreed Expenses incurred or irrevocably committed by ITV prior to the date of termination together with a pro-rated Fee, except where termination has occurred as a result of a default by ITV;
 - (c) all rights and licences granted pursuant to this Agreement shall cease (except for those granted pursuant to clause 9.5), provided that if the Usage Term is longer than the Term in the event of termination by the Client or expiry, the Deliverables which have been created to that point shall be delivered to the Client and the Client shall continue to be able to use the Deliverables until the end of the Usage Term.
- 8.4. Termination of all or part of this Agreement shall not affect any accrued rights or liabilities nor the coming into force of this Agreement which expressly or by implication is intended to come into force or continue in force on or after such termination.

9. CONFIDENTIALITY

- 9.1. Each party undertakes to use the other party's Confidential Information only for the purposes of fulfilling its obligations under this Agreement and agrees to keep confidential and not to disclose to any person any Confidential Information without the prior written consent of the disclosing party except as permitted by this Agreement.
- 9.2. The receiving party may disclose or permit the disclosure of Confidential Information:
 - (a) to persons employed or engaged by it only to the extent necessary to enable them to perform or cause to be performed or to benefit from and/or enforce any of its rights or obligations under this Agreement and provided that the receiving party shall ensure that all such persons shall comply with these confidentiality obligations in the same manner as if they were the receiving party; or
 - (b) when required to do so by law or regulation provided that the receiving party shall notify the disclosing party of any required disclosure as soon as reasonably practicable in the circumstances if permitted to do so and shall take reasonable action to avoid and/or limit such disclosure.
- 9.3. The provisions of this clause shall not prevent the receiving party from disclosing any information which is or subsequently comes into the public domain other than as a result of a breach of this section 9; or was independently developed by the receiving party; or was received from a third party which was free to divulge such information.
- 9.4. The parties agree that damages alone may not be an adequate remedy for the breach of this section 9 and without prejudice to any other rights and remedies it may have, the disclosing party shall be entitled to seek equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this section 9.
- 9.5. ITV shall be entitled to make public the fact that it has undertaken work for the Client and to use the Deliverables (or extracts from the Deliverables) for reasonable promotional and marketing purposes.
- 9.6. The Client shall not use or refer to the name and/or trademarks and/or logos of ITV or its subcontractors in connection with this Agreement and/or in any publicity, advertisement or other disclosure in relation to the same (except to the extent included within the Deliverables or as expressly granted herein) without ITV's prior written approval, not to be unreasonably withheld or delayed except as required by law or by any legal or regulatory authority.

10. GENERAL

- 10.1. The Client shall not be entitled to assign, sub-license or otherwise dispose of any of its rights under this Agreement without ITV's prior written approval. ITV may, without the Client's consent, at any time assign, transfer, charge, sub-contract, sub-license or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 10.2. 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.
- 10.3. 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.
- 10.4. This Agreement represents the entire agreement between the parties relating to this Agreement and shall be legally binding and shall supersede and replace all prior oral and written understandings regarding the subject matter.
- 10.5. Any amendment or variation must be in writing and signed by both parties. For the avoidance of doubt, the Client acknowledges that ITV's subcontractors are not authorised to bind ITV in respect of any change to this Agreement.
- 10.6. 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.

- 10.7. Excluding payment obligations neither party shall be liable for any failure to perform its obligations where such failure is caused by an act of God, act of government or state terrorism, war, strike, fire, flood, illness or injury to talent, breakdown of communications systems or any other event, circumstances or occurrence beyond either party's reasonable control.
- 10.8. Save for any ITV Group company, 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 members of the ITV Group of companies.
- 10.9. 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.
- 10.10. Any notice given under the terms of this Agreement shall be given in writing excluding email except where expressly provided and addressed to the applicable Client or ITV Commercial Contact (as set out in the Deal Terms). Where a notice is sent to ITV, one copy shall also be sent to: Head of Legal, ITV Commercial & Marketing, 200 Gray's Inn Road, London, WC1X 8HF.
- 10.11. 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 (including non-contractual disputes or claims).

SCHEDULE 1

Glossary

"Agreed Expenses"	means costs and expenses legitimately incurred by ITV in the performance of the Services that are approved in advance in writing by and chargeable to Client in addition to the Fee (such approval not to be unreasonably delayed or withheld) and which may include payments for third party consents for the use and exploitation of the Deliverables;
"Agreement"	means the written agreement between ITV and Client, comprising the Deal Terms and any other documents that are expressly incorporated into it including any annexes and schedules to the Deal Terms, and incorporating these Terms and Conditions;
"Approvals Process"	means any approvals process as set out in the Production Schedule annexed to the Deal Terms;
"Brand Material"	has the meaning given in the Co-Brand Licence (if any) annexed to the Deal Terms;
"Business Day"	means a day (other than Saturday or Sunday) on which banks in the City of London are open for ordinary business;
"Client"	has the meaning given in the Deal Terms;
"Client Materials"	means any Client/Client's client's marks, logos, documents, guidelines, or any other materials (including but not limited to music, archive materials and stills) provided by or on behalf of Client or Client's client to ITV for use in the course of providing the Services;
"Co-Brand Licence"	has the meaning given in the Co-Brand Licence (if any) annexed to the Deal Terms;
"Confidential Information"	means all information in written, oral or any other form relating to the disclosing party, its Group companies, subcontractors, licensors, customers, suppliers or service providers, disclosed to or otherwise obtained by the receiving party under or in connection with this Agreement (whether before or after the date of this Agreement) and which is designated in writing as being confidential or which may by its nature reasonably be considered confidential;
"Deal Terms"	means the agreed commercial terms which refer to and incorporate these Terms and Conditions;
"Deliverables"	has the meaning specified in the Production Schedule annexed to the Deal Terms;
"Fee"	means the fee agreed between the Client and ITV for the provision of the Services as set out in the Deal Terms;
"Group"	means (in relation to any company) that company and any holding company of that company and any subsidiary undertakings from time to time of that company or of any such holding company;
"Payment Terms"	has the meaning set out in the Deal Terms;
"Permitted Uses"	means the intended use(s) of the Deliverables as specified in the Production Schedule annexed to the Deal Terms;
"Production Schedule"	means the content, approvals and delivery schedule as annexed to the Deal Terms;
"Services"	means the services to be performed by ITV for Client in order to produce the Deliverables;
"Term"	has the meaning set out in the Deal Terms;
"Usage Term"	has the meaning set out in the Production Schedule annexed to the Deal Terms; and
"VAT"	means value added tax or any analogous tax in any relevant jurisdiction including but not limited to use, sales and local sales taxes of any kind.

SCHEDULE 2

Co-Brand Licence Terms

1. All rights not expressly granted are reserved to ITV absolutely and the Client may not utilise the Brand Material for any purpose other than to fulfil its obligations or exercise its Co-Brand Rights under this Agreement.
2. The Client represents, warrants and undertakes to ITV that:
 - 2.1. any uses of the Brand Material outside the Deliverables provided by ITV (including any revisions to previously agreed uses) shall be subject to ITV's prior written approval, shall comply with any brand guidelines and/or style guide provided by ITV and shall include the Required Legal Notice;
 - 2.2. all material containing the Brand Material (other than the Brand Material itself) shall (i) comply with all applicable laws, regulations and codes and all legal compliance policies and procedures issued by ITV; (ii) not violate, misappropriate or infringe the rights of any third parties; (iii) not contain any material which is in any way defamatory, obscene, pornographic, unlawful, harmful, offensive or inappropriate;
 - 2.3. it shall not without ITV's prior written consent use the name, likeness, image or voice of any ITV talent on or in any promotional material related to the Brand Material;
 - 2.4. it shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to any of the Brand Material or the reputation, goodwill or registrations associated with the Brand Material;
 - 2.5. ITV's right to withdraw Deliverables pursuant to clause 6.5 of the Terms and Conditions shall apply mutatis mutandis to the Brand Material; and
 - 2.6. 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.
3. The Client shall not apply for the registration in any country of any intellectual property right which is in any way identical to, similar to or which resembles or comprises any element of the Brand Material.
4. The Client shall promptly provide ITV with details of any consumer or regulatory or third party complaints it has received relating to its use of the Brand Material or its exploitation of the Co-Brand Rights 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 ITV in respect thereof.
5. The Client will indemnify and keep indemnified ITV against all actions, proceedings, costs, damages, expenses, penalties, claims, demands and liabilities suffered by ITV Commercial arising from any breach by the Client of any terms of this Co-Brand Licence (whether foreseeable or unforeseeable).
6. Notwithstanding any other provision in this Agreement, ITV may by written notice terminate the Co-Brand Licence immediately if the Client is materially in breach of any of the terms of the Co-Brand Licence and (where such breach is capable of remedy) fails to remedy the breach within 14 days of receipt of notice from ITV requiring such breach to be remedied.
7. On expiry or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement, the Client shall at its own expense, and within 15 Business Days, return or otherwise dispose of in accordance with the directions of ITV all records and copies of Brand Material and any material containing Brand Material.