



## **DIGITAL PRODUCT LICENCE TERMS AND CONDITIONS**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 The following definitions shall apply in this Agreement:

<b>“Advance”</b>	means the amount set out in the Deal Terms;
<b>“Affiliate”</b>	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;
<b>“Business Day”</b>	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;
<b>“Confidential Information”</b>	<p>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, including:</p> <p>(a) the existence and contents of this Agreement;</p> <p>(b) any information relating to the business of the Licensee, the Licensor or its Affiliates including any ideas; business methods; finance; prices; business, financial, marketing, development or manpower plans; programmes or projects in development or production; customer lists or details; computer systems and software; products or services; know-how or other trade secrets; processes; marketing opportunities; other matters connected with the products or services manufactured, marketed, provided or obtained by the Licensee, the Licensor or its Affiliates; information concerning the relationships of the Licensee, the Licensor or its Affiliates with their respective actual or potential clients, customers or suppliers and the needs and requirements of the Licensee, the Licensor or its Affiliates and of such persons;</p> <p>(c) any compilation of individual pieces of such information which are or subsequently become published or publically available for use or otherwise in the public domain where such compilation has not been published or publically available for use or otherwise in the public domain;</p> <p>(d) any information, design materials or data in any form produced by, for or on behalf of the Licensee, the Licensor or its Affiliates during the Term of and pursuant to this Agreement; and</p> <p>(e) any other information which, if disclosed, would be liable to cause harm to the Party (or the Affiliate of the Licensor) whose information is disclosed;</p>

<b>“Copyright Material”</b>	means the copyright material listed in the “Licensed Property” section of the Deal Terms and any logos included in the Marks;
<b>“Deal Terms”</b>	means the agreed commercial terms that reference these Digital Product Licence Terms and Conditions;
<b>“End Date”</b>	means the end date set out in the Deal Terms;
<b>“Insolvent”</b>	<p>means, in relation to any person, if:</p> <ul style="list-style-type: none"> <li>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 (except as part of a genuine refinancing); or</li> <li>b) any corporate action, legal proceedings or other procedure or step is taken in relation to it for: <ul style="list-style-type: none"> <li>(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);</li> <li>(ii) any composition, compromise, assignment or arrangement with any creditor; or</li> <li>(iii) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any Affiliate or any of its assets;</li> </ul> </li> </ul>
<b>“Intellectual Property Rights”</b>	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;
<b>“Licensed Products”</b>	means the products bearing the Licensed Property (or any element of it) that the Licensee is licensed to produce in accordance with this agreement, the types of products to which the Licensed Property may be applied being 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;
<b>“Licensed Property”</b>	has the meaning set out in the Deal Terms;
<b>“Licensee”</b>	has the meaning set out in the Deal Terms;
<b>“Licensor”</b>	has the meaning set out in the Deal Terms;
<b>“Marks”</b>	means the Registered Trade Marks and Unregistered Trade Marks set out in the “Licensed Property” section of the Deal Terms;
<b>“Minimum Guarantee”</b>	means the amount set out in the Deal Terms;
<b>“Net Revenue”</b>	means all amounts received by the Licensee from downloads, plays, 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;
<b>“Parties”</b>	means the Licensor and the Licensee (each a ‘Party’);
<b>“Payment Schedule”</b>	means the payment schedule in the deal terms setting out the dates for payment of the Licence Fee, Advance and Minimum Guarantee;
<b>“Permitted Channels”</b>	has the meaning set out in the Deal Terms;
<b>“Programme”</b>	means the television programme set out in the ‘Programme’ section of the Deal Terms;
<b>“Promotional Material”</b>	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; and  (iii) packaging.
<b>“Quarterly Period”</b>	means each of the four periods of three consecutive calendar months ending on 31 March, 30 June, 30 September and 31 December respectively;
<b>“Registered Trade Marks”</b>	means the registered trade marks and applications for registered trade marks listed in the “Licensed Property” section of the Deal Terms;
<b>“Required Legal Notice”</b>	means the required legal notice set out in the Deal Terms
<b>“Royalty”</b>	has the meaning set out in clause 8.4;
<b>“Royalty Rate”</b>	means the percentage rate set out in the Deal Terms;
<b>“Start Date”</b>	means the start date set out in the Deal Terms;
<b>“Special Conditions”</b>	means the Special Conditions set out in the Deal Terms;
<b>“Style Guide”</b>	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;
<b>“Term”</b>	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;
<b>“Territory”</b>	has the meaning set out in the Deal Terms; and
<b>“Unregistered Trade Marks”</b>	means the unregistered trade marks 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**

In consideration of the obligations, warranties and undertakings of the Licensee herein contained and subject to their full and timely performance and observance, the Licensors hereby grants to the Licensee a non-exclusive licence to use the Licensed Property on or in relation to the Licensed Products (including in connection with the development, manufacture, promotion, sale and/or distribution of the Licensed Products) in the Permitted Channels for the Term throughout the Territory and upon the terms and conditions set forth in this Agreement. All rights not expressly granted are reserved to the Licensors absolutely.

## **3. LICENSEE'S OBLIGATIONS**

- 3.1 The Licensee shall comply strictly with the directions of the Licensors regarding the form and manner of the 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 Licensors and shall not be copied, reproduced or used other than in accordance with the terms of this Agreement.
- 3.2 The Licensee shall, in exercising its rights under this Agreement, comply with all applicable laws, regulations, industry standards and codes of practice.
- 3.3 The Licensee shall ensure that each Licensed Product sold or otherwise supplied by the Licensee complies with all applicable laws, regulations, industry standards and codes of practice.
- 3.4 The Licensee shall, in marketing, advertising and promoting the Licensed Products, comply with, and shall ensure that all Promotional Material complies with, all applicable laws, regulations, industry standards and codes of practice, including but not limited to the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (“CAP Code”) and the UK Code of Broadcast Advertising (“BCAP Code”).
- 3.5 The Licensee shall ensure that the Licensed Products and the Promotional Material (i) do not infringe the Intellectual Property Rights of any third party; (ii) are not defamatory; (iii) are not an infringement of rights to privacy; (iv) are not obscene; (v)

are not a violation of anti-discrimination laws or regulations; (vi) do not constitute unfair competition; (vii) do not cause the Licensor to breach any statutory or regulatory duty or criminal law; and (viii) are not in any other way unlawful.

- 3.6 The Licensee shall ensure that (i) the Licensed Products, (ii) the Promotional Material, and (iii) the Licensee's manner of advertising, marketing and/or promoting the Licensed Products, shall in no way reduce or diminish the reputation, image or prestige of the Licensor, the Licensed Property or the Programme.
- 3.7 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.
- 3.8 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.
- 3.9 The Licensee shall not use any modification, abbreviation or adaptation of the Licensed Property on or in the Licensed Products or Promotional Material except where previously agreed by the Licensor in writing.
- 3.10 The Licensee shall permit, and shall use its best endeavours to obtain permission for, the Licensor at all reasonable times and on reasonable notice to enter any place used for the manufacture, storage and/or distribution of any Licensed Products to be distributed in physical form to inspect the methods of manufacture, storage and/or distribution.
- 3.11 The Licensee shall promptly provide the Licensor 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.
- 3.12 The Licensee shall, on the Licensor's request, provide the Licensor with details of any complaints it has received relating to the Licensed Products or Promotional Material together with reports on the manner in which such complaints are being, or have been, dealt with and shall comply with any reasonable directions given by the Licensor in respect thereof.
- 3.13 The Licensee shall not advertise, promote, sell, distribute or use for any purpose any Licensed Product which is rejected by the Licensor pursuant to clause 5, or which contains errors, is damaged or defective.
- 3.14 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.
- 3.15 The Licensee shall bear all development, production, maintenance, support, distribution, operation, hosting, advertising, marketing and promotion costs for the Licensed Products (including the costs of designing and producing Promotional Material).

- 3.16 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 under clauses 10 or 17 below.

#### **4. TECHNICAL AND DATA**

The Licensee hereby agrees, warrants, represents and undertakes that

- 4.1 the Licensed Products shall be of satisfactory design, technical and creative quality, fit for purpose, free and remain free from any material defects, material design and material programming errors and free from all viruses, malware, malicious or harmful code, programs or internal components;
- 4.2 participation in the Licensed Products shall neither damage, corrupt or degrade nor impair the operability of users' devices, hardware, firmware, networks, systems, data and/or software, nor interfere with any content protection, security, digital signing, digital rights management, verification or authentication mechanisms; and
- 4.3 in operating the Licensed Products the Licensee shall not facilitate the commission of any crime, tortious, unlawful or illegal act;
- 4.4 the Licensed Products will offer a quality user experience and be of a quality equal to other products offered or developed by the Licensee;
- 4.5 any Licensed Products operating on any third party controlled platforms (such as iOS or Android) shall comply with all applicable platform terms and conditions, guidelines, and policies and shall pass any applicable platform testing and approval processes;
- 4.6 it has in place a privacy policy and cookie policy and shall comply with the same and provisions of all applicable data protection legislation when collecting and storing personal data;
- 4.7 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;
- 4.8 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
- 4.9 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.

#### **5. APPROVALS**

- 5.1 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 5 or such other procedures to be notified to the Licensee by the Licensor from time to time.
- 5.2 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**"):
- 5.3 For Licensed Products:

- Stage 1: design of user experience interface graphics;
- Stage 2: alpha release (i.e. first functionally complete version);
- Stage 3: beta release (i.e. release candidate version);

At stages 2 and 3 the Licensee shall provide a version of each Licensed Product in a form which will allow the Licensor to test the same to determine whether each Licensed Product is of a satisfactory design, technical and creative quality and offers a quality user experience.

- 5.4 For Promotional Material (and any physical elements of the Licensed Products such as games console discs or cartridges):

- 5.4.1 Stage 1: initial artwork or concept;
- 5.4.2 Stage 2: detailed artwork layout;
- 5.4.3 Stage 3: pre-production sample, strike off or colour proof;
- 5.4.4 Stage 4: final production sample.

At Stages 3 and 4 the Licensee shall provide 2 samples of any hard copy Promotional Material. In relation to any Licensed Products to be distributed in physical form (including but not limited to games console discs and cartridges), the Licensee shall provide 2 samples at Stage 3 and 10 samples at Stage 4 .

- 5.5 The samples referred to above shall be provided without charge to the Licensor. At the request of the Licensor, the Licensee shall provide further samples at cost price.
- 5.6 The approvals procedure may be subject to addition and/or variation in relation to specific Licensed Products or Promotional Material (on notification to the Licensee) where in its sole discretion the Licensor considers additional approvals and/or variation of these stages necessary.
- 5.7 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.
- 5.8 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.
- 5.9 If final approval (Stage 3 for Licensed Products and Stage 4 for Promotional Material and physical elements of Licensed Products) shall be withheld in respect of any Licensed Product or Promotional Material the Licensee shall not proceed with further development, manufacture, promotion, sale or distribution thereof unless and until the Licensee has re-submitted a revised beta release or final production sample (as applicable) and obtained the written approval of the Licensor in accordance with these provisions.
- 5.10 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 5.1 to 5.8 above prior to sale or distribution.
- 5.11 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.

- 5.12 Except as otherwise provided herein all detail as to the manner of development, manufacture, release, promotion, sale and distribution of the Licensed Products shall be at the sole discretion of the Licensee.
- 5.13 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 approved by the Licensor in accordance with this clause 5.
- 5.14 For the avoidance of doubt, any approval given by the Licensor under this clause 5 shall not absolve the Licensee from any of its other obligations under this Agreement (including its obligations under clause 3, the warranties in clauses 4 and 12 and any Special Conditions).

## **6. TITLE, GOODWILL AND REGISTRATIONS**

- 6.1 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).
- 6.2 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.
- 6.3 The Licensee shall not do, or omit to do, or permit to be done, any act that will or may weaken, damage or be detrimental to the Marks (or any of them) or the reputation or goodwill associated with the Marks (or any of them), the Licensor or the registered proprietor of the Marks, or that may invalidate or jeopardise any registrations for any of the Marks.
- 6.4 The Licensee shall not apply for, or obtain, registration of the Marks (or any of them) for any goods or services in any country.
- 6.5 The Licensee shall not apply for, or obtain, registration of any trade or service mark in any country which consists of, or comprises, or is similar to, the Marks (or any of them).
- 6.6 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).
- 6.7 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.
- 6.8 All rights in the Licensed Property with the exception of rights granted under this Agreement are reserved to the Licensor (or, if applicable, any third party rights owner) absolutely and nothing in this Agreement shall prevent the Licensor from dealing with them in any way or for any purpose whatsoever, without restriction or limitation and without further obligation of any kind or nature to the Licensee.
- 6.9 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.



- 6.10 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 copyright and any other 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. The Licensee undertakes to obtain an assignment of copyright to the Licensor from any person who, on behalf of the Licensee, creates any Derivative Material, where such copyright is not owned by the Licensee (for example, where the Licensee uses a freelance designer). Such copyright assignment shall be in materially the same form of the copyright assignment from the Licensee to the Licensor contained in this clause. Where no written copyright assignment is obtained from an individual contributing to the creation of any Derivative Material, the Licensee undertakes, warrants and represents that that individual is an employee of the Licensee.
- 6.11 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.
- 6.12 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.

## **7. PROTECTION OF THE LICENSED PROPERTY**

- 7.1 The Licensee shall immediately notify the Licensor in writing giving full particulars if any of the following matters come to its attention:
- 7.1.1 any actual, suspected or threatened infringement of the Licensed Property (or any part of it);
  - 7.1.2 any actual or threatened claim that any Mark is invalid;
  - 7.1.3 any actual or threatened opposition to any Mark;
  - 7.1.4 any claim made or threatened that use of the Licensed Property (or any part of it) any Mark or Copyright Material infringes the rights of any third party;
  - 7.1.5 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
  - 7.1.6 any other form of attack, charge or claim to which the Licensed Property (or any part of it) may be subject.
- 7.2 In respect of any of the matters listed in clause 7.1:
- 7.2.1 the Licensor and/or the proprietor of the relevant part of the Licensed Property shall:
    - 7.2.1.1 in their absolute discretion, decide what action if any to take;
    - 7.2.1.2 have exclusive control over, and conduct of, all claims and proceedings; and

- 7.2.1.3 bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for their own account; and
- 7.2.2 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.
- 7.3 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.

## 8. PAYMENTS TO LICENSOR

The Licensee shall make payments to the Licensor as follows:

- 8.1 **Licence Fee.** The Licensee shall pay to the Licensor the Licence Fee set out in the Deal Terms in accordance with the Payment Schedule. 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. The Licensor shall issue an invoice for the Licence Fee and the Licensee shall make payment within 30 days of the date of the invoice.
- 8.2 **Advance.** The Licensee shall pay to the Licensor the Advance in accordance with the Payment Schedule. If no date for payment of the Advance is specified in the Payment Schedule the Advance shall become due and payable upon the signing of this Agreement by the Licensee. The Licensor shall issue an invoice for the Licence Fee and the Licensee shall make payment within 30 days of the date of the invoice. The Advance shall be on account of and recoupable from Royalties falling due to the Licensor under this Agreement. The Advance shall not be repayable to the Licensee in any event. On the early termination of this Agreement howsoever caused, save for the breach of a material term of the Agreement by the Licensor or termination by the Licensor in accordance with clause 16.3, any part of the Advance then unpaid (including any Advance Instalments not yet due) shall be immediately due and payable, regardless of any payment date(s) specified in the Payment Schedule.
- 8.3 Where an Advance is stated in the Deal Terms to be payable in staged payments relating to discrete periods (each such period being an "Advance Period" and each such payment being an "Advance Instalment") each Advance Instalment shall only be on account of and recoupable from Royalties falling due in the relevant Advance Period.
- 8.4 **Royalty.** The Licensee shall pay to the Licensor a royalty of a percentage equal to the Royalty Rate on the Net Revenue ("the Royalty").
- 8.5 In respect of any Licensed Product manufactured, used or supplied, only a single Royalty shall be payable, and the Royalty accrues on the date when the Licensed Product is downloaded, played, used, sold, invoiced, paid for, installed, delivered or otherwise supplied (whichever is the earliest).
- 8.6 Within 30 days after the end of each Quarterly 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 Quarterly Period. Upon receipt of the statement the Licensor shall issue an invoice for the Royalties due and the Licensee shall make payment within 30 days of the date of the invoice.
- 8.7 Should the end of the Term not coincide with the end of a Quarterly Period, the Licensee shall send to the Licensor an additional statement in the form of Schedule 1 recording the calculation of Royalties for the period from the end of the last Quarterly

Period to the end of the Term. Upon receipt of the statement the Licensor shall issue an invoice for the Royalties due and the Licensee shall make payment within 30 days of the date of the invoice.

- 8.8 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.
- 8.9 On the early termination of this Agreement howsoever caused, save for the breach of a material term of this Agreement by the Licensor, all accrued Royalties that are unpaid shall be immediately payable in full, notwithstanding the provisions of clause 8.6.
- 8.10 **Minimum Guarantee.** The Licensee shall pay to the Licensor the Minimum Guarantee in accordance with the Payment Schedule. 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. 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.
- 8.11 The Minimum Guarantee shall be reduced at the time of payment by the sum of all Royalties and Advances actually paid to the Licensor and received by the Licensor at the date on which the Minimum Guarantee is due to be paid.
- 8.12 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 and Advances 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. If no date for payment of any MG Instalment is specified in the Payment Schedule, the MG Instalment shall become due and payable on the last day of the relevant Guarantee Period.
- 8.13 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 by the Licensor under clause 16.3, 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. ACCOUNTING AND REPORTING**

- 9.1 The Licensee shall keep full, accurate and proper records and accounts in connection with the Licensed Products.
- 9.2 The Licensor shall have the right during the Term and for a period of six years thereafter, at its sole cost and expense (subject to clause 9.4), on service of at least five Business Days' notice, to conduct an audit in relation to the Licensee's compliance with this Agreement. The Licensor (or, if the Licensor elects, its agents, accountants and/or professional advisors) may conduct the audit, during normal business hours, at the offices of the Licensee and the Licensee will make available to the Licensor (and its agents, accountants and/or professional advisors) its books, records, documents and agreements relating to this Agreement 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 will co-operate with the Licensor or its duly authorised representatives during such

examination and shall make available such personnel and facilities as may reasonably be required in connection with the examination.

- 9.3 The Licensors representatives may take copies of the records and books of account and any other relevant information relating to this Agreement for the purpose of auditing all or any information and/or procedures used to compile such reports and such information shall be treated as confidential to the Licensee under the terms of the confidentiality obligations contained within this Agreement.
- 9.4 If any such 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 9.6.2 below and if the shortfall is greater than 5% then the Licensor will pay the reasonable costs of the audit.
- 9.5 All monies due to the Licensor under the terms of this Agreement are payable to the Licensor in the currency in which they are expressed in this Agreement (the "Contractual Currency"). Royalties earned in currencies other than the Contractual Currency shall be converted into the Contractual Currency at the published mid rate of exchange of Barclay's Bank PLC on the date on which each such payment is due.
- 9.6 If the Licensee fails to make any payment which is due to the Licensor pursuant to or in connection with this Agreement to the Licensor when due then, without prejudice to any other rights and remedies (whether provided by law, equity or this Agreement) which the Licensor may have, the Licensor is entitled to:
- 9.6.1 suspend the licence set out in this Agreement until the relevant amount is paid; and/or
- 9.6.2 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 9.6.2 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.
- 9.7 All monies due to the Licensor under this Agreement are exclusive of VAT, GST or their equivalent (together, the "Taxes"). The Licensee shall pay to the Licensor the Taxes on monies paid or payable where required to do so by statute or other enforceable regulation, and the Licensor will provide the Licensee with a tax invoice in an appropriate form.
- 9.8 The Licensee shall at all times co-operate and comply with the requests of the Licensor including but not limited to 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 approved systems and compliance with local regulation and 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 refund 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. WITHDRAWAL OF LICENSED PRODUCTS, PROMOTIONAL MATERIAL AND LICENSED PROPERTY**

- 10.1 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 or to withdraw any Licensed Products from distribution where in the reasonable opinion of the Licensor such Licensed Products or the distribution of them infringe(s) or would infringe the provisions of clause 3.1, 3.3, 3.5, 3.6, 3.7, 3.9, 3.13, 4.1 to 4.5, 5.1, 5.9, 5.10, 5.13, 6.1 or any Special Conditions. Following the receipt of such notice thereof from the Licensor the Licensee hereby agrees to withhold or withdraw such Licensed Products. In the event that the Licensed Products pose any danger to health or safety, the Licensor may give less than five Business Days' notice.
- 10.2 Upon giving five Business Days' written notice the Licensor shall have the right to require the Licensee to withhold the release of any Promotional Material or to withdraw any Promotional Material from distribution where in the reasonable opinion of the Licensor such Promotional Material or its distribution infringes or would infringe the provisions of clause 3.1, 3.4, 3.5, 3.6, 3.7, 3.9, 5.1, 5.9, 5.10, 5.13, 6.1 or any Special Conditions. Following the receipt of such notice thereof from the Licensor the Licensee hereby agrees to withhold or withdraw such Promotional Material.
- 10.3 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 the terms of this Agreement in the event that 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 owners 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 no less than five Business Days' notice shall be given. Following the receipt of such notice of withdrawal the Licensee hereby agrees to (i) 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 Advance and/or a reduction of the Minimum Guarantee on a pro-rata basis.
- 10.4 If the Licensed Property is withdrawn no other sums or compensation, other than that referred to in clause 10.3 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.
- 10.5 The Licensee shall ensure that it has appropriate recall procedures in place to deal with any requirements to withhold or withdraw Licensed Products or Promotional Material under this clause 10.

**11. LICENSOR WARRANTIES**

- 11.1 The Licensor hereby warrants and represents to the Licensee as follows:
- 11.1.1 it is a duly incorporated company pursuant to the laws of England and Wales;
- 11.1.2 it has the power and authority to enter into this Agreement and make the grant of rights to the Licensee contained herein;

- 11.1.3 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
- 11.1.4 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).
- 11.2 Nothing in this Agreement shall constitute any representation or warranty that:
  - 11.2.1 any Registered Trade Mark is valid; or
  - 11.2.2 any Registered Trade Mark (if an application) shall proceed to grant or, if granted, shall be valid.

## **12. LICENSEE WARRANTIES**

- 12.1 The Licensee represents, warrants and undertakes to the Licensor that:
  - 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;
  - 12.1.3 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;
  - 12.1.4 it shall not do anything that would or is likely to affect adversely the name, image or reputation of the Licensor, its brands, programmes, business names, trade marks (whether owned or licensed by it) or Affiliates;
  - 12.1.5 it shall comply with all applicable laws and all legal compliance policies and procedures issued by the Licensor;
  - 12.1.6 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;
  - 12.1.7 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);
  - 12.1.8 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;
  - 12.1.9 it shall not copy, use distribute or otherwise deal in the Licensed Property other than strictly in accordance with the terms of this Agreement;
  - 12.1.10 it shall not actively market the Licensed Products outside the Territory; and
  - 12.1.11 it shall not infringe, limit or adversely affect in any way the rights reserved to the Licensor under this Agreement.

### **13. INSURANCE AND INDEMNITIES**

- 13.1 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. 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.
- 13.2 The Licensee shall indemnify and keep indemnified the Licensor and its Affiliates 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 arising out of or in connection with:
- 13.2.1 the Licensee's exercise of its rights under this Agreement;
  - 13.2.2 any breach by the Licensee of the terms of this Agreement, including the warranties in clauses 4 and 12;
  - 13.2.3 any product or professional liability claim relating to Licensed Products developed, manufactured, supplied or put into use by the Licensee;
  - 13.2.4 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.
- 13.3 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 11 of this Agreement.

### **14. LIABILITY**

- 14.1 Nothing in this Agreement shall exclude or limit any Party's liability:
- 14.1.1 for death and/or personal injury resulting from the negligence of such Party or its servants, agents and/or employees;
  - 14.1.2 for fraudulent misrepresentation or the tort of deceit; or
  - 14.1.3 to any extent not permitted by applicable law.
- 14.2 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 13.2 and 13.3.
- 14.3 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.

### **15. CONFIDENTIALITY**

- 15.1 Each Party shall:



- 15.1.1 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);
- 15.1.2 keep such Confidential Information secure and protected against theft, damage, loss or unauthorised access;
- 15.1.3 not use or disclose such Confidential Information for any purpose except as contemplated by this Agreement; and
- 15.1.4 ensure that these obligations are observed by its employees, officers, agents and contractors

in each case for a period of three years following expiry or termination of this Agreement.

- 15.2 The confidentiality obligations imposed by clause 15.1 shall not apply to information to the extent that such information:

- 15.2.1 is already in or subsequently comes into the public domain through no fault of the recipient, its employees, officers, agents or contractors;
- 15.2.2 is lawfully received by the recipient from a third party on an unrestricted basis; or
- 15.2.3 is legally required to be disclosed by applicable law, regulation or court order.

- 15.3 The Licensee shall not make any announcement relating to this Agreement or its subject matter without the approval of the Licensor, except as required by applicable law, regulation or court order or by any legal or regulatory authority.

## **16. TERMINATION**

- 16.1 Notwithstanding any other provision in this Agreement, either Party may by written notice to the other terminate this Agreement immediately;

- 16.1.1 if the other Party 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
- 16.1.2 if the other Party becomes Insolvent.

- 16.2 The Licensor may by written notice to the Licensee terminate this Agreement immediately if:

- 16.2.1 the Licensee fails to make any payment under this Agreement for thirty days after the same shall have become due;
- 16.2.2 the Licensee fails to release, sell or distribute any Licensed Product by the Latest Product Release Date;
- 16.2.3 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



16.2.4 the Licensee disputes the validity of any of the Licensor's Intellectual Property Rights.

16.3 If the Term of this Agreement is longer than one year, the Licensor may terminate this Agreement for any reason upon giving three months' written notice to the Licensee, such notice not to be given prior to the first anniversary of the Start Date.

## **17. CONSEQUENCES OF TERMINATION**

17.1 On expiry or termination of this Agreement for any reason and subject to any express provisions set out elsewhere in this Agreement:

17.1.1 all outstanding sums payable by the Licensee to the Licensor shall immediately become due and payable;

17.1.2 all rights and licences granted pursuant to this Agreement shall cease;

17.1.3 the Licensee shall cease all use of the Licensed Property;

17.1.4 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;

17.1.5 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

17.1.5.1 all remaining physical Licensed Products in its possession;

17.1.5.2 all records and copies of (a) Copyright Material, (b) Promotional Material and (c) any Confidential Information in its possession or communicated to it by the Licensor, either preparatory to, or as a result of, this Agreement to the extent such material remains confidential.

17.2 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, 4, 9, 11, 12, 13, 14, 15, 17, 18 and 19 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.

17.3 The termination of this Agreement for any reason shall not prejudice any claim which any Party may have against the other in respect of any antecedent breach of any provision hereof nor shall it prejudice the continuance in force of any such provision which is expressly or by implication intended to come into or continue in force on or after such termination.

## **18. ANTI-BRIBERY POLICY**

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):

a) 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;

b) 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

c) 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.

## **19. GENERAL**

- 19.1 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.
- 19.2 The Licensee shall not be entitled to assign, sub-license or otherwise dispose of any of its rights under this Agreement (save that it may grant licences to use the Licensed Products to end users where applicable). 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.
- 19.3 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.
- 19.4 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.
- 19.5 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.
- 19.6 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.
- 19.7 Any amendment or variation to this Agreement must be in writing and signed by both Parties.
- 19.8 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.
- 19.9 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.
- 19.10 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.

- 19.11 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, On Demand, Interactive, Online and Brands, ITV Broadcasting Limited, 200 Gray's Inn Road, London, WC1X 8HF.
- 19.12 This Agreement 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.

## SCHEDULE 1 – ROYALTY STATEMENT

**LICENSEE:**

**LICENSOR:**

**LICENSED PRODUCT:**

**ACCOUNTING PERIOD:**

**CONTRACT PERIOD:**

**Current Accounting**

**Period Analysis**

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

**Cumulative Accounting**

**Periods Analysis**

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

### **ROYALTY SUMMARY**

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