

INVITATION TO TENDER

STAGE SPACE SUPPORT & DEVELOPMENT PROPERTY RESEARCH PARTNER

Reference:
Contact:
Submission Email:
Clarifications Email:
Issue date:
Contract Commencement:

BFCITT003
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18th January 2021
1st March 2021

I. BACKGROUND INFORMATION

I.1. Introduction

The British Film Commission (BFC) is the UK Government's national organisation responsible for supporting inward investment film and TV production in the UK, funded by the Department for Digital, Culture, Media, and Sport (DCMS) and the Department for International Trade (DIT). The BFC is the national division of Film London.

The BFC leads on encouraging and supporting the production of international feature film and high-end television in the UK, strengthening and promoting the UK's production infrastructure, and working with the UK Government to ensure film-friendly policies.

I.2. About the Stage Space Support & Development Project (SSSD)

In March 2020, HM Treasury announced that the British Film Commission (BFC) would receive additional funding over three years to expand its work promoting the UK as a destination of choice for studio space investment.

From a budget assigned to the BFC in July 2020, a significant proportion has been apportioned over three years for Stage Space Support & Development (SSSD) to assist and stimulate the creation of additional stage space capacity across the UK.

I.3. Aim & Objectives of the SSSD Project

It is intended that the BFC will act as a one-stop-shop, coordinating advice for investors and developers, as well as providing targeted support to facilitate an increased provision of studio facilities across the UK, including:

- Support for potential Investors, Developers, and Studio operators in the development of new and expansion of Stage & Alternative Build Space
- Assessing the feasibility of potential Stage & Alternative Build Space opportunities across the UK, assisting in the delivery of individual projects that meet relevant criteria
- Supporting Agency Partners in 'levelling up' options for Stage & Alternative Build Space, across the UK's devolved Nations and Regions
- To appraise key barriers to the development of Stage and Alternative Build Space developments, proposing opportunities for clarifications, further guidance, or possible interventions by Government that will encourage future development of Stage & Alternative Build Space
- To promote Foreign Direct Investment (FDI) opportunities to UK Studio and Stage development opportunities
- To assist in increasing the UK's Stage and Alternative Build Space capacity and growth thereof of Feature Film & High-End Television (HETV) inward investment projects

2. STATEMENT OF REQUIREMENT

2.1. Contract Specification

The British Film Commission (BFC) is seeking to award a Contract to one Research Practice to provide ongoing comprehensive research, analysis, an understanding and reporting on property matters, that impact upon the sourcing and development of sound stages across the UK.

The BFC will be conducting this Procurement directly and all communications relating to this Invitation to Tender should be directed to the BFC as per the contact details on Page 1.

This appointment is for a firm to manage a Research Programme lasting approximately two years. The appointed firm must have a strong track record of managing and delivering applied research within the Property and Construction Industry. We will expect the appointed firm to use the best data available in the industry and to be able to analyse it and provide BFC with clear and supported recommendations around research.

Research work commissioned may widen to other potential aspects of property and how these relate to the development of Studios and Stage Space, for example, Environmental, Social and Governance (ESG) research, etc.

Initial Research Projects

The initial scope of Research required is to focus on both Planning and Business Rates regulatory frameworks across the UK and how these impact upon Stage development.

Work undertaken will include, but not be limited to, potential implications arising from Planning and Business Rates upon the development of Stage space, as well as proposals for appropriate strategies that can mitigate obstacles (please see Appendices 1 & 2)

It will be a requirement that the Research Partner is proficient at providing comprehensive and comprehensible reports according to clear deadlines and we are seeking an organisation with the ability and commitment to communicate complex situations in a clear and succinct format, tailored for the intended audience of the BFC and key stakeholders.

The duration of the contract is anticipated to run until March 2023.

This Invitation to Tender invites research organisations to submit a Proposal by **15 February 2021** (the “closing date”). Proposals will be evaluated to select one applicant to become the BFC’s SSSD Research Partner.

2.2. Management of Contract

2.2.1. The Contract will take the form of an Agreement from which individual Call-Off Contracts will be entered into for each Research project subject to requirements determined by the BFC, and managed by the BFC’s Chief Operating Officer (COO), Head of Production UK, and Senior Stage Space Strategy Advisor, who shall report upwards to the BFC’s CEO, Senior Management Team, as well as into each BFC stakeholder organisation.

2.2.2. The Contract requires that the BFC, on behalf of the SSSD Stakeholders, be permitted to use all raw materials gathered for research undertaken, including any digital tools, databases, intellectual property, or networks developed under this Contract, under the

terms of a perpetual, royalty free, irrevocable, and non-exclusive licence granted by the Contractor. This is to enable the BFC to support further inward investment.

- 2.2.3. Please see the proposed Agreement and Call-Off Contract templates attached to this Invitation as Appendix 4. Upon award of the Contract, the BFC is intending to commission initial Research prior to 31st March 2021. In this event, there will be a requirement for pro-forma invoicing with a pre-agreed payment instalment programme for associated work undertaken.

2.3. Tender Submission

2.3.1. Introductory Statement & Credentials (Evaluation Weighting 15%)

- 2.3.1.1. Please provide a summary Statement introducing your Practice and appropriate credentials.
- 2.3.1.2. Please outline your Practice's familiarity and experience of working within the Property Sector, evidence of relevant previous commissioned research, including awareness of blockers and opportunities specifically linked to the built environment.
- 2.3.1.3. Please detail any involvement your practice may have had with similar Film & Media related property projects.
- 2.3.1.4. Please use this section to indicate your experience and appetite for ongoing research relating to other property related matters, ESG, technology, etc.

(1250 Words)

2.3.2. Research Project Proposal Overviews (Evaluation Weighting 30%)

- 2.3.2.1. With reference to Appendices 1 & 2, outlining the Aims, Objectives and Outcomes in relation to *Planning* and *Business Rates*, please provide an overview of how your practice would approach these initial two pieces of Research to be undertaken.
- 2.3.2.2. Provide evidence of your understanding of the UK's Planning & Business Rates regulatory frameworks and processes, identifying regional variances, if any exist.
- 2.3.2.3. Please outline your proposed methodology for progressing aspects of Research in relation to each Research project.
- 2.3.2.4. Please indicate your proposed methodology for gathering data and information relevant to the initial research project
- 2.3.2.5. Provide examples of Research Project timeframes, proposed reporting methods, including periodicity and method.

(1750 Words)

2.3.3. Case Studies & Testimonials (Evaluation Weighting 20%)

- 2.3.3.1. Include three (max) case studies of research projects completed within the last two years.
- 2.3.3.2. Provide client satisfaction responses to the case study projects.
- 2.3.3.3. Please confirm percentage of research projects completed within the agreed timescales against those commissioned.
- 2.3.3.4. Please give contact details of 3 x referees whom we may approach.

(Max 4 pages A4)

2.3.4. Key Personnel & Resourcing (Evaluation Weighting 15%)

2.3.4.1. Please provide a breakdown of your project team / key personnel for this Contract Research work, including abridged CVs (a maximum of one side of A4 per person) which detail relevant or similar experience, and that support confidence in your ability to deliver work undertaken fully.

2.3.4.2. For each researcher dedicated to this project, indicate in each case any regional or sector expertise.

(Max 1 page A4 per researcher)

2.3.5. **Research Project Budgets, Schedule of Fees & Financials (Evaluation Weighting 20%)**

2.3.5.1. With reference to Appendices 1 & 2, please propose your Practice's budgets and breakdown of costs for both the *Planning* and *Business Rates* research projects.

2.3.5.2. Please complete the attached pricing matrix (Appendix 3), indicating where applicable any anticipated third party sub-contracting or 'pay-aways' for research and data acquisition work undertaken. Where "data pack" is referred to on the Pricing matrix, this refers to any data you will need to acquire/purchase to fulfil the scope of this work.

2.3.5.3. Provide copies of the last 3 years' audited accounts

2.3.5.4. For initial pieces of work commissioned, there will be a requirement for pro-forma invoicing prior to 31st March 2021 with a pre-agreed payment instalment programme. Please confirm that this is acceptable.

2.4. **Performance Requirements**

All Research work performed in relation to this Contract must:

2.4.1. Be delivered on time and on budget.

2.4.2. Be delivered with skill, diplomacy, and respect for collaborative working.

2.5. **Value of Contract, Fees & Payment**

2.5.1. Initial Contract Value

The anticipated budget for relevant property focussed SSSD research up to March 2023 is in the region of £300k.

The provisional budget for initial SSSD Research into *Planning* and *Business Rates* required under this Contract will be no more than £120,000.

2.5.2. Research Fees

Further Research work commissioned under this Contract will be subject to requirements determined by the BFC. Associated Fees will be based upon the Pricing Matrix referenced under 2.3.5.2, on a project-by-project basis.

2.5.3. Invoicing & Payment Schedules

A requirement for initial Research commissioned under this Contract is that full invoicing will need to be submitted prior to the BFC's year end with staged payments for work delivered thereafter, subject to written sign-off of completion by the BFC.

3. INVITATION TO TENDER

3.1. Management

Proposals are requested for a Research Practice to deliver the above Contract and work.

Potential Suppliers are invited to complete a Proposal as per the Tender Packages outlined in section 2.3.

3.2. Requests for Further Information and Clarifications

3.2.1. A period of requests for further information and clarifications in respect of this document and the overall process is open between 18th January 2021 and 17h00 on 25th January 2021. Requests for further information or clarifications must be submitted to jeremy.pelzer@britishfilmcommission.org.uk who shall endeavour to respond within 5 working days. Any direct approach made to BFC other than through the specified route on Page 1 may result in removal from the Tender process.

3.2.2. Whilst a potential Tenderer submitting any query will always remain anonymous, please note that unless a request is specific to that potential Supplier or of a confidential nature it may be published online for the benefit of other tendering companies.

3.3. Receipt of the Tender

3.3.1. Tender Response must be received no later than 12pm (noon) on 15th February 2021.

3.3.2. Tender Response must be submitted via email to procurement@britishfilmcommission.org.uk

3.3.3. The BFC will not consider any late responses to this Invitation to Tender nor will it consider requests for extension of the time or date fixed for the submission of responses. It may, however, in its own absolute discretion extend the time or date fixed for submission.

3.3.4. The BFC may at its sole discretion change any aspect of, or stop, this procurement exercise at any point.

3.3.5. For the avoidance of doubt the BFC will not be held liable for any costs incurred in responding to this Tender.

3.4. Format & Content of Proposals

3.4.1. Submissions must not be password protected.

3.4.2. Tenderer proposals shall be clearly legible.

3.4.3. Applicants should not assume that the evaluators have any prior knowledge of a Tenderer's organisation, its capabilities, or the solutions it offers.

3.4.4. Tenderers are reminded that any Proposal should respond specifically to the Professional Property Support Services for which they are applying. Generic responses are unlikely to achieve good marks.

3.5. Evaluation Criteria

| | Criteria | Weighting |
|---|--|-----------|
| 1 | Introductory Statement & Credentials | 15% |
| 2 | Research Project Proposal Overviews | 30% |
| 3 | Case Studies & Testimonials | 20% |
| 4 | Key Personnel & Resourcing | 15% |
| 5 | Research Project Budgets, Schedule of Fees & Financing | 20% |

3.6. Selection Process

An evaluation team will consider all tenders correctly submitted.

- 3.6.1. The score for each criterion will be divided by the maximum possible score of five (5) and then multiplied by the individual weighting for that question to give a weighted score.
- 3.6.2. Tenderers will be scored on their responses to the Tender Submission at 2.3.
- 3.6.3. For the avoidance of doubt, Tenderers will be scored in relation to *Budgets* and *Schedule of Fees* as value for money, as opposed to a direct comparison of pricing costs.
- 3.6.4. All questions will be evaluated using the following scoring methodology.

| Interpretation | Score |
|---|-------|
| An excellent response that is realistic, appropriately detailed, and specific. There is no material weakness and the approach embodies accepted good practice in all material respects offering (as appropriate) excellent levels of functionality, performance, outcomes, ease of use, and other relevant characteristics. All material aspects of the question are fully answered and the approach described fully meets all material aspects of the requirement. | 5 |
| A good response that is realistic, appropriately detailed and specific and with only minor weaknesses, where the approach generally embodies accepted good practice and offers (as appropriate) good levels of functionality, performance, outcomes, ease of use, and other relevant characteristics. All material aspects of the question are fully answered and the approach described meets the material aspects of the requirement, with no or minor exceptions. | 4 |
| A satisfactory response that is realistic in all material respects, and that is at least sufficiently detailed and specific to give general clarity about what is to be delivered and how. There are some weaknesses, but the approach does not materially conflict with accepted good practice and generally offers (as appropriate) acceptable levels of functionality, performance, ease of use, and other relevant characteristics. | 3 |
| A deficient response where there is insufficient detail or specificity to be clear, wholly or for material aspects of the requirement, what is to be delivered and how. Where material parts of the question are not answered or material parts of the response are unrealistic or the approach described appears not to meet the requirement or to deliver (as appropriate) expected levels of functionality, performance, ease of use, or other relevant characteristics. | 2 |
| An inadequate response that is in part or in aggregate sufficiently unrealistic as to cast serious doubts over deliverability or efficacy or very materially lacking in detail or specificity or where, individually or in aggregate, there are very material weaknesses. | 1 |

4. PROCUREMENT TIMETABLE

The procurement timetable, outlined below, is for information and potentially subject to change. The BFC reserves the right to amend any aspect of the timetable during the procurement and evaluation process and furthermore reserves the right not to accept the lowest priced bid nor indeed any of the submissions.

| | | |
|----|------------------------------------|--------------------------------------|
| 1. | Invitation to Tender issued | 18 th January 2021 |
| 2. | Deadline for Clarifications | 25 th January 2021 |
| 3. | Deadline for completed submissions | 12 pm 15 th February 2021 |
| 4. | Anticipated Tenderer Notifications | w/c 22 nd February 2021 |
| 5. | Contract commencement | 1 st March 2021 |

5. TENDERER INFORMATION

Part 1 – Information relevant to the procurement.

| | |
|--|--|
| Name of Company tendering | |
| Trading as... | |
| PERSON MANAGING / OVERSEEING TENDER | |
| Mr/Mrs/Ms/Other | |
| Name | |
| Address | |
| Postcode | |
| Country | |
| Phone | |
| Mobile | |
| Email | |
| REGISTERED NUMBERS (as applicable) | |
| Company registration no. | |
| Charity registration no. | |
| VAT registration no. | |

Part 2 – information relevant to Contract management, if successful.

| | |
|-------------------------|--|
| CONTRACT MANAGER | |
| Mr/Mrs/Ms/Other | |
| Name | |
| Phone | |
| Mobile | |
| Email | |

| | |
|---|--|
| ACCOUNTS / INVOICING DETAIL & CONTACT(S) | |
| Company to be Invoiced | |
| Mr/Mrs/Ms/Other | |
| Name | |
| Phone | |
| Mobile | |
| Email | |

6. SUPPLIER DECLARATION

Tenderers may either print this declaration on plain white A4 paper, sign and date it with a pen, scan and then upload it as the final part of their submission or use an electronic signature.

6.1. Checklist

Please check each issue below and tick each box:

| We have provided the following forms: | |
|---|--|
| Tenderer Information | |
| Tenderer proposal | |
| This declaration, either printed then signed with an original signature, then scanned and uploaded as a .pdf, or signed electronically. | |

| We have: | |
|---|--|
| Made arrangements for the Tender to be uploaded and submitted on time, with adequate contingency for ICT failures, power outages etc. | |
| We have not: | |
| Annexed any document not specifically requested. | |

6.2. Declaration

We warrant, represent and undertake to the BFC that:

- a) neither we nor any employee or third party acting on our behalf has offered, promised or given any bribe or inducement or made any improper threat or colluded (or offered or agreed to collude) with any other person in connection with this procurement exercise
- b) we have complied in all respects with this Invitation to Tender
- c) all information, representations and other matters of fact contained in our Tender are true, complete, and accurate in all respects
- d) we have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Tender and have not submitted this Invitation to Tender response and will not have entered into the contract in reliance upon any information, representation, or assumption (whether made orally, in writing or otherwise) which may have been made by or on behalf of the BFC
- e) we have satisfied ourselves as to the correctness and sufficiency of the information we have inserted in the Tender
- f) we have full power and authority to enter into the contract and provide the services
- g) we are of sound financial standing and will have sufficient premises, working capital, skilled staff, and other resources available to us to provide the services in accordance with the contract
- h) we have obtained or are able to obtain all necessary consents, licences, and permissions to enable us to provide the services.

We hereby offer to provide the services relating to this Invitation to Tender which for the avoidance of doubt includes (but is not limited to) the prices and operational proposals set out in

this Tender, the Specification, and any written clarifications issued or received by the BFC prior to the written acceptance of the BFC of this Tender.

| | | | |
|------------------------------|--|---------------------------------|--|
| Name of bidding Organisation | | Signature of authorised officer | |
| Date | | Position of authorised officer | |
| | | Name of authorised officer | |

(To be completed by the BFC when the results of the evaluation are known.)

We, the BFC, hereby accept your offer for the provision of Research services, acting as Research Partner to the BFC.

| | | | |
|----------------------------|--|----------------------------|--|
| Name of authorised officer | | Name of authorised officer | |
| Position | | Position | |
| Signature | | Signature | |
| Date | | Date | |

APPENDIX I

PLANNING RESEARCH PROJECT

To provide an overview and information regarding relevant National and Devolved Frameworks in relation to Planning and associated processes across the UK, identifying similarities and variances between each of the four UK Nations in relation to Planning issues, including but not limited to:

- Planning Environments & Policy Contexts
- Planning Application Types
- Processes & Timescales
- Permitted Development Rights
- Use Classifications
- Planning Committees & Delegated Powers
- Section 106 considerations
- CIL considerations

Collation of information, including Data Pack, of actual and anecdotal evidence of Planning considerations and issues encountered in relation to Studio and Stage developments in each of the four Nations, including any Studio and Stage space Planning strategies or support initiatives that may be available, including but not limited to:

- Studios, Stages and Filming Planning Definitions
- Change of Use Considerations
- Impact of Use Classifications upon infrastructure
- Regional & Local Support and specific local authority Plans that support Film Production

An associated appraisal of the above together with a comprehensive study on key Planning issues and barriers facing the development of Studio and Stage space:

- UK Wide
- By Nation
- Regional & Local
- Recurrent issues or barriers to development
- Identified Proactive Planning Initiatives & Policies

Recommendations for appropriate Policy Interventions and / or clarifications that may be applied to existing regulations & guidance to encourage further increase and growth of Studio and Stage developments:

- Options for National or Devolved Policy interventions
- Legislative / Regulatory change
- Planning Authority guidance / clarifications
- Permitted Development Guidance
- Review of defined Use Classifications

APPENDIX 2

BUSINESS RATES RESEARCH PROJECT

To provide an overview and information regarding relevant National and Devolved Frameworks in relation to Business Rates and associated processes across the UK, identifying similarities and variances between each of the four UK Nations in relation to Business Rates issues, including but not limited to:

- Assessment Framework & Processes
- National Revaluation Dates
- Rates Payable Obligations Schedules
- National, Regional & Local Authority Agencies / Roles
- Transitional Relief Options
- Exempted Buildings
- Empty Buildings Relief(s)
- Enterprise Zone Relief(s)
- Development Dispensations
- Rates Mitigation Options & Processes
- Corrections / Appeal Processes

Collation of Evidence by Nation including engagement with Studio developers and operators in relation to Business Rates issues encountered, specific strategies or support initiatives that may be available, including but not limited to:

- Schedule of Studio Rateable Values
- Split / Reassessment Considerations
- Options for Regional / Local Relief
- Creation of a comprehensive Data / Reference Pack

An associated appraisal of the above together with a comprehensive study on key Business Rates issues and barriers facing the development of Studio and Stage space:

- UK Wide
- By Nation
- Regional & Local
- Recurrent issues or barriers

Recommendations for appropriate Policy Interventions and / or clarifications that may be applied to existing regulations & guidance. Based upon the work undertaken, identify potential options for Planning amendments that will encourage further increase and growth of Studio and Stage developments:

- Possible National or Devolved Policy interventions
- Asset Class Definition
- Assessments alternatives (Sale & Expenditure)

APPENDIX 3

PRICING MATRIX

(please complete the separately attached pricing Matrix, as per the sample below)

RESEARCH PARTNER ITT PRICING MATRIX



Confidential

Bidders are to complete only cells highlighted green

The BFC expects pricing indicated below to be inclusive of disbursements and expenses but exclusive of VAT at the prevailing rate

All pricing to include any proposed inflationary adjustment over the two year period

| | |
|----------|--|
| TENDERER | |
| DATE | |

TENDERER SCHEDULE OF FEES

It is accepted that without knowing the scope or quantum of future work, exact pricing will be impossible. Please provide indicative pricing which will inform negotiation on a case by case basis. Bidders have the option of proposing a fixed price or alternative tariff.

| Seniority (5 highest) | Role Title | Resource Model | |
|--------------------------|------------|----------------|-------------|
| | | Day Rate | Hourly Rate |
| 5 | | | |
| 4 | | | |
| 3 | | | |
| 2 | | | |
| 1 | | | |
| Total (as applicable) | | | |

| Alternative Pricing Structure | | | |
|-------------------------------|----------|-------|------------|
| Fixed Price | Retainer | Other | Commentary |
| | | | |
| | | | |
| £ - | £ - | £ - | |

INITIAL RESEARCH PROJECTS

| PLANNING | Overview | Information Collation (including Data Pack) | Appraisal & Study of Issues | Recommendations | Total Fee |
|-------------------|----------|--|--------------------------------|-----------------|-----------|
| Bidder Fees | | | | | £ - |
| Sub-Contract Fees | | | | | £ - |
| Totals | £ - | £ - | £ - | £ - | £ - |

| BUSINESS RATES | Overview | Information Collation (including Data Pack) | Appraisal & Study of Issues | Recommendations | Total Fee |
|-------------------|----------|--|--------------------------------|-----------------|-----------|
| Bidder Fees | | | | | |
| Sub-Contract Fees | | | | | |
| Totals | £ - | £ - | £ - | £ - | £ - |

APPENDIX 4

DRAFT RESEARCH PARTNER CONTRACT

Dated

2021

Research Services Agreement

- (1) British Film Commission (Film London operating as the British Film Commission)
- (2) [Name of Service Provider]

Harbottle & Lewis LLP
7 Savoy Court
London
WC2R 0EX

T + 44 (0)20 7667 5000
www.harbottle.com
DX 44617 Mayfair

Ref: 544/00312254.1

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THIS AGREEMENT is made the day of

2021

BETWEEN

- (1) **FILM LONDON OPERATING AS THE BRITISH FILM COMMISSION**, a company registered in England (Company No. 04699825) whose registered office is at The Arts Building, Morris Place, London N4 3JG (the **British Film Commission**); and
- (2) [•], a company registered in [England] (Company No. [•]) whose registered office is at [•] (the **Service Provider**).

RECITALS

- (A) The British Film Commission and the Service Provider wish to enter into a framework agreement which will enable the British Film Commission, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Service Provider for some or all of the Services.
- (B) The terms and conditions of this Agreement shall apply to the Services to be provided by the Service Provider under any Call-Off Contract.

THE PARTIES AGREE THAT:

In consideration of the payment by the British Film Commission to the Service Provider of £1 (one pound sterling) (the receipt and sufficiency of which is hereby acknowledged by the Service Provider) and the mutual promises and covenants set out in this Agreement, the Parties agree as follows:

1. Definitions and Interpretations

1.1 Unless the context indicates otherwise, the following expressions shall have the following meanings:

| | |
|--|---|
| Affiliate | in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time; |
| Agreement | this framework agreement, including the Schedules and all other documents referred to in this Agreement; |
| Agreement Commencement Date | the date on which this Agreement shall commence, as specified in Schedule 1; |
| Agreement Number | the reference number for this Agreement, as specified in Schedule 1; |
| Applicable Data Protection Laws | means: <ul style="list-style-type: none">(a) to the extent UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and(b) to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Service Provider is subject, |

which relates to the protection of personal data;

| | |
|---------------------------------|---|
| Applicable Laws | all laws, statutes, regulations and codes (including Acts of Parliament, statutory instruments, court orders, regulations, directives, bye-laws, treaties and other regulatory requirements) applicable to either or both of the Service Provider's business or the British Film Commission's business, from time to time in force; |
| BFC Representative | the person named as such in a Call-Off Contract or such other person as notified in writing to the Service Provider by the British Film Commission; |
| BFC Materials | all documents, information, items and materials in any form (whether owned by the British Film Commission or a third party), which are provided by the British Film Commission to the Service Provider in connection with the Services; |
| BFC Personal Data | any personal data which the Service Provider processes in connection with this Agreement and any Call-Off Contract, in the capacity of a processor on behalf of the British Film Commission; |
| Business Day | a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business; |
| Call-Off Contract | a call-off contract in the form set out in Schedule 5 that has been executed by the Service Provider and the British Film Commission, which incorporates the terms and conditions of this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract; |
| Call-Off Contract Number | the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract; |
| Call-Off Term | the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract; |
| Change Order | has the meaning given in 11.1; |
| Charges | the charges payable by the British Film Commission to the Service Provider, in consideration of the due performance of the Services, as specified in or calculated in accordance with this Agreement and the relevant Call-Off Contract; |
| Confidential Information | all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the British Film Commission |

(whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the British Film Commission or its Affiliates;

Contract Information

- (a) this Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and
- (b) data extracted from the invoices submitted pursuant to Clause 7, which shall consist of the Service Provider's name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;

control

the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of Control shall be construed accordingly;

Deliverables

any outputs of the Services to be provided by the Service Provider to the British Film Commission as specified in a Call-Off Contract and any other documents, drawings, computer software, products, materials or other works prepared or developed by or on behalf of the Service Provider or supplied to the British Film Commission in relation to the Services;

EU GDPR

the General Data Protection Regulation ((EU) 2016/679);

Force Majeure Event

means any circumstance not within a Party's reasonable control including:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;

- (e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;
- (f) collapse of buildings, fire, explosion or accident;
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause or its Affiliates); and
- (h) interruption or failure of utility service;

Holding Company

any company which from time to time directly or indirectly controls the Service Provider as set out by section 1159 of the Companies Act 2006;

Insolvency Event

any of the following:

- (i) the Service Provider and/or the Holding Company suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- (j) the Service Provider and/or the Holding Company commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors;
- (k) the Service Provider and/or the Holding Company applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (l) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Service Provider and/or the Holding Company (being a company, limited liability partnership or partnership);
- (m) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to

- appoint an administrator is given or an administrator is appointed, over the Service Provider and/or the Holding Company (being a company, partnership or limited liability partnership);
- (n) the holder of a qualifying floating charge over the assets of the Service Provider and/or the Holding Company (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
 - (o) a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other the Service Provider and/or the Holding Company;
 - (p) a creditor or encumbrancer of the Service Provider or the Holding Company attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - (q) either or both the Service Provider and/or the Holding Company ceases or threatens to cease to carry on all or a substantial part of its business for any reason;
 - (r) being an individual, the Service Provider becoming bankrupt or dying; or
 - (s) any similar event to those in (a) to (r) above occurring in relation to either or both of the Service Provider or the Holding Company under the law of any applicable jurisdiction for those purposes;

Intellectual Property Rights

any patent, utility model, trade mark or name, service mark, domain name, design right, copyright and neighbouring and related rights, moral rights, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in computer software, database right, rights in commercial or technical information, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secret)), any other rights in any invention, discovery or process and any other intellectual property rights, in each case

whether registered or unregistered and including all applications for and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all rights or forms of protection having equivalent or similar effect which subsist or will subsist now or in the future in any part of the world;

Key Personnel

the Service Provider's key personnel (including the Service Provider's Manager) named as such in Schedule 1 or in any relevant Call-Off Contract, or any replacement individuals appointed by the Service Provider pursuant to Clause 10.5;

Losses

all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), injuries, damages and losses (including any direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) and all interest and penalties;

Milestone

an event which is the completion of one or more of the specified activities as may be set out in the Project Plan;

Parties

the British Film Commission and the Service Provider (including their successors and permitted assignees) and **Party** shall mean either of them as the case may be;

Project Plan

the plan (if any) set out in a Call-Off Contract in relation to the performance and timing of the Services under a Call-Off Contract which may include Milestones;

Proposal

the Service Provider's offer to provide Services in response to a Request Form;

Request Form

a document produced by the British Film Commission pursuant to Clause 3, setting out its request for a Proposal, which document shall be in the form set out in Schedule 4 or in such other form as may be notified to the Service Provider by the British Film Commission from time to time;

Required Date

the date or dates on or by which each Milestone is required to be completed as set out in the Project Plan or, in the absence of any Milestones, the date or dates on or by which the Services are required to be provided as set out in the Project Plan;

| | |
|---------------------------------------|---|
| Review Date | the date on which this Agreement shall be reviewed by the Parties in accordance with Clause 4.2, as specified in Schedule 1; |
| Service Provider's Equipment | the equipment and materials of whatsoever nature used directly or indirectly by the Service Provider ,its agents, subcontractors or consultants in providing the Services which do not themselves form part of the Services and in which title is not intended to pass to the British Film Commission under any Call-Off Contract; |
| Service Provider's Manager | the person who is identified as the Service Provider's Manager in the Call- Off Contract for the relevant Services, or any replacement individuals appointed by the Service Provider pursuant to Clause 10.5; |
| Service Provider Personal Data | any personal data which the Service Provider processes in connection with this Agreement and any Call-Off Contract, in the capacity of a controller; |
| Service Provider's Personnel | all such persons as are engaged in the performance of any of the Services, including employees, officers, suppliers, sub-contractors and agents of the Service Provider and the Key Personnel; |
| Services | <p>(a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the British Film Commission by the Service Provider under a Call-Off Contract as detailed in such Call-Off Contract, and as detailed in such Call-Off Contract, including any variations to such services and/or activities as may be agreed to in writing by the British Film Commission; and</p> <p>(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract;</p> |
| Specification | the specification and other requirements set out in Attachment 1 of the Call-Off Contract; |
| Term | the period during which this Agreement continues in force as set out in Schedule 1; and |

VAT

means value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature.

1.2 The following rules of interpretation apply in this Agreement:

- 1.2.1 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.2.2 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it, whether replaced before or after the date of this Agreement;
- 1.2.3 headings are included in the Agreement for ease of reference only and do not affect the interpretation or construction of the Agreement;
- 1.2.4 references to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, the Agreement and any reference to a paragraph in any Schedule shall, in the absence of provision to the contrary, relate to the paragraph in that Schedule;
- 1.2.5 in the event, and only to the extent, of any conflict between the Clauses and the Schedules, the Clauses prevail, except where:
 - (a) the conflicting part of the Schedule is explicitly expressed to take precedence; or
 - (b) the conflict is with a provision in Attachment 3 (Draft Call-Off Contract), in which case the provisions in Attachment 3 shall prevail;
- 1.2.6 except as otherwise expressly provided in any Call-Off Contract, and subject to Clause 1.2.5, if there is any inconsistency between any of these Clauses, the Schedules, any Call-Off Contract or any other document referred to in or incorporated into this Agreement or any Call-Off Contract, the order of priority for the purposes of construction is:
 - (a) each Call-Off Contract;
 - (b) these Clauses;
 - (c) the Schedules;
 - (d) any other document referred to in or incorporated by reference into this Agreement or any Call-Off Contract;
- 1.2.7 the Schedules form part of the Agreement and will have the same force and effect as if expressly set out in the body of the Agreement;
- 1.2.8 the expression **person** means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture;
- 1.2.9 the words **including**, **includes** and **included** will be construed without limitation;

- 1.2.10 this Agreement shall be binding on, and enure to the benefit of, the Parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any Party shall include that Party's personal representatives, successors and permitted assigns;
- 1.2.11 unless the context otherwise requires, any reference to European Union law that is directly applicable or directly effective in the UK at any time is a reference to it as it applies in England and Wales from time to time (including as retained, amended, extended, re-enacted or otherwise given effect on or after 11pm on 31 January 2020); and
- 1.2.12 a reference to writing or written includes email.

2. **Framework Agreement**

2.1 The purpose of this Agreement is to:

- 2.1.1 provide a mechanism whereby the Parties may enter into Call-Off Contracts;
- 2.1.2 provide the framework to administer each Call-Off Contract; and
- 2.1.3 set out the obligations of the Parties.

2.2 The Services that may be requested by the British Film Commission and provided by the Service Provider are of the type described in Schedule 2 or as more particularly described in each Call-Off Contract. The British Film Commission's requirements may vary and this Agreement shall not place the British Film Commission under any obligation to procure the Services from the Service Provider at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the British Film Commission from engaging any other organisations or persons to provide services similar to or the same as the Services.

2.3 Clause 3 sets out the procedure by which the Parties may enter into a Call-Off Contract.

2.4 The Service Provider shall commence provision of the relevant Services in accordance with the Call-Off Contract. The Service Provider shall not commence any Services without an agreed Call-Off Contract.

2.5 All Charges in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the rates set out in Schedule 3.

3. **Call-Off Procedure**

3.1 At any time during the duration of this Agreement, the British Film Commission may identify Services which at its sole discretion it wishes to procure under the terms of this Agreement.

3.2 The British Film Commission will issue to the Service Provider a Request Form substantially in the form set out in Schedule 4, specifying the Services to be provided, in which event:

- 3.2.1 the Service Provider shall promptly confirm receipt of such Request Form;
- 3.2.2 the Service Provider shall respond to the Request Form by completing a Proposal (which must include a draft Call-Off Contract) as an offer capable of acceptance, or by notifying the British Film Commission in writing that it does not intend to submit a Proposal. The Service Provider shall so respond to the British Film Commission by the date specified in the Request Form or, if no such date is specified, within 5 (five)

Business Days of receiving the Request Form, or by such other date as may be agreed with the BFC Representative. A Proposal must remain valid for at least 90 (ninety) Business Days from the date it is submitted to the British Film Commission; and

- 3.2.3 after receipt of an acceptable Proposal and a draft Call-Off Contract that has been approved in writing by the British Film Commission, the British Film Commission will forward to the Service Provider two copies of the Call-Off Contract. The Service Provider shall sign both copies and return the same to the British Film Commission within 5 (five) Business Days of receipt. The British Film Commission will arrange for both copies of the Call-Off Contracts to be signed by the British Film Commission and will send a completed signed Call-Off Contract to the Service Provider.
- 3.3 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract, and such documentation shall together form a separate agreement between the Parties.
- 3.4 A Request Form and anything prepared or discussed by the British Film Commission shall constitute an invitation to treat and shall not constitute an offer capable of acceptance by the Service Provider. The British Film Commission shall not be obliged to consider or accept any Proposal submitted by the Service Provider.
- 3.5 A draft Call-Off Contract shall only become a Call-Off Contract upon execution of the draft Call-Off Contract by the British Film Commission.
- 3.6 The British Film Commission is not obliged to approve or sign any Call-Off Contract.
- 3.7 Unless otherwise expressly agreed in writing with the British Film Commission, the Service Provider shall not be entitled to charge under this Agreement for any work involved in any receipt and/or confirmation of any Request Form and/or any response to any Request Form as contemplated in this Clause 3.
- 4. Term of Agreement and Call-Off Contracts**
- 4.1 This Agreement (but not a Call-Off Contract) commences on the Agreement Commencement Date and continues in force for the Term unless terminated earlier, either in whole or in part, in accordance with this Agreement.
- 4.2 The Parties shall review this Agreement at the Review Date acting in good faith. Following the review process, and without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Agreement or otherwise), the British Film Commission may elect to terminate this Agreement without cause on 30 (thirty) days' prior written notice to the Service Provider.
- 4.3 Each Call-Off Term shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 4.4 A Call-Off Contract may expire or be terminated in accordance with its terms or pursuant to the terms of this Agreement, but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this Agreement.

5. The Services

5.1 The Service Provider:

- 5.1.1 shall provide the Services and the Deliverables specified in a Call-Off Contract to the British Film Commission in accordance with this Agreement and the terms of the relevant Call-Off Contract;
- 5.1.2 acknowledges that it has sufficient information about the British Film Commission and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the Services in accordance with the relevant Call-Off Contract;
- 5.1.3 shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement or the terms of the relevant Call-Off Contract due to any misinterpretation or misunderstanding by the Service Provider of any fact relating to the Specification or otherwise to the Agreement or relevant Call-Off Contract; and
- 5.1.4 shall promptly bring to the attention of the BFC Representative any matter that is not adequately specified or defined in the Call-Off Contract or any other relevant document;
- 5.1.5 shall comply with all lawful and reasonable directions of the British Film Commission relating to its performance of the Services under any Call-Off Contract;
- 5.1.6 shall ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
- 5.1.7 hold all BFC Materials in safe custody at its own risk, maintain such BFC Materials in good condition until returned to the British Film Commission, and not dispose of or use the BFC Materials other than in accordance with the British Film Commission's written instructions or authorisations; and
- 5.1.8 notify the British Film Commission in writing immediately upon the occurrence of a change of Control of the Service Provider.

5.2 The Service Provider shall provide the Services and the Deliverables under each Call-Off Contract:

- 5.2.1 with the high degree of skill, care and diligence in accordance with best practice in the Service Provider's industry, profession or trade and with sufficient resources including project management resources;
- 5.2.2 in conformance in all respects with the Specification and the Call-Off Contract and so that they shall be fit for any purpose expressly or implicitly made known to the Service Provider by the British Film Commission;
- 5.2.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner; and
- 5.2.4 so that they are properly managed and monitored and shall immediately inform the British Film Commission if any aspect of the Call-Off Contract is not being or is unable to be performed.

5.3 Time is of the essence in relation to Required Dates for the Service Provider. If the Service Provider fails to meet the relevant deadlines, then (without prejudice to the British Film Commission's right

to terminate this Agreement and/or the relevant Call-Off Contract and any other rights it may have), the British Film Commission may:

- 5.3.1 refuse to accept any subsequent performance of the Services under the relevant Call-Off Contract which the Service Provider attempts to make;
 - 5.3.2 purchase substitute services from elsewhere and reclaim from the Service Provider any additional costs incurred as a result of procuring such services from a third party instead of the Service Provider;
 - 5.3.3 hold the Service Provider accountable for any loss and additional costs incurred; and
 - 5.3.4 have any sums previously paid by the British Film Commission to the Service Provider in respect of the affected Services refunded by the Service Provider.
- 5.4 The British Film Commission shall:
- 5.4.1 provide the Service Provider with all necessary co-operation in all matters relating to the Services;
 - 5.4.2 provide to the Service Provider all documents, information, items and materials required under a Call-Off Contract; and
 - 5.4.3 inform the Service Provider of all health and safety and security requirements that apply at the British Film Commission's premises to which the Service Provider will require access.
- 5.5 Title to any Deliverables that are goods or in any physical media on which Deliverables are stored shall pass to the British Film Commission on the earlier of their delivery to the British Film Commission or payment of the Charges for them. The Service Provider warrants that it has full, clear and unencumbered title to all such items, and that at the date of the transfer of title, it will have full and unrestricted rights to transfer all such items to the British Film Commission.

6. Charges

- 6.1 The Service Provider shall invoice the British Film Commission in accordance with the procedures set out in Clause 7 and in consideration of, and subject to the due performance of the Services by the Service Provider in accordance with the relevant Call-Off Contract, the British Film Commission shall pay the Service Provider the Charges in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.
- 6.2 The Service Provider is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the British Film Commission, in which case the Service Provider shall supply appropriate evidence of expenditure in a form acceptable to the British Film Commission.
- 6.3 All Charges exclude any VAT which may be chargeable, which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

7. Payment Procedures and Approvals

- 7.1 Unless otherwise set out in a Call-Off Contract, the payment and approvals process are set out below.

- 7.2 The Service Provider shall invoice the British Film Commission in respect of the Charges:
- 7.2.1 at such dates or intervals specified in the Call-Off Contract, or on completion of each Milestone specified in the Call-Off Contract. It is a condition precedent of the submission of an invoice on completion of a Milestone that all preceding Milestones specified in the relevant Call-Off Contract have been completed; or
 - 7.2.2 if no such dates, intervals, or Milestones are specific in the Call-Off Contract, monthly in arrears during the Call-Off Term.
- 7.3 The Service Provider shall submit invoices to the address set out in the relevant Call-Off Contract or where an electronic format for submission of invoices is set out in the relevant Call-Off Contract, such electronic format shall be used, unless the British Film Commission requires otherwise. Each such invoice shall contain all information required by the British Film Commission including the Agreement Number, relevant Call-Off Contract Number or purchase order number, the British Film Commission account details, the Service Provider's name, address and bank account details to which payment should be made, a separate calculation of VAT and a brief description of the Services provided. Invoices shall be clear, concise, accurate, and adequately descriptive to avoid delays in processing subsequent payment.
- 7.4 In the event of an agreed variation to the Services in accordance with this Agreement or the relevant Call-Off Contract that involves the payment of additional charges to the Service Provider, the Service Provider shall identify these separately on the relevant invoice.
- 7.5 The British Film Commission shall consider and verify each invoice, which is submitted in accordance with this Clause 7, in a timely manner. If the British Film Commission considers that the Charges claimed by the Service Provider in any invoice have under the relevant Call-Off Contract:
- 7.5.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by bank transfer (Bank Automated Clearance System (BACS)) or such other method as the British Film Commission may choose from time to time within 30 (thirty) days of receipt of such invoice or such other time period as may be specified in the relevant Call-Off Contract; or
 - 7.5.2 not been calculated correctly and/or if the invoice contains any other error or inadequacy, the British Film Commission shall notify the Service Provider and the Parties shall work together to resolve the error or inadequacy. Upon resolution, the Service Provider shall submit a revised invoice to the British Film Commission.
- The British Film Commission shall not be entitled to treat any properly submitted invoice as disputed or incorrect solely due to its own undue delay in considering and verifying it.
- 7.6 No payment made by the British Film Commission (including any final payment) or act or omission or approval by the British Film Commission (whether related to payment or otherwise) shall:
- 7.6.1 indicate or be taken to indicate the British Film Commission's acceptance or approval of the Services or any part of them or any act or omission of the Service Provider, or otherwise prejudice any rights, powers or remedies which the British Film Commission may have against the Service Provider, or absolve the Service Provider from any obligation or liability imposed on the Service Provider under this Agreement or a Call-Off Contract; or
 - 7.6.2 prevent the British Film Commission from recovering any amount overpaid or wrongfully paid including payments made to the Service Provider by mistake of law or

fact. Without prejudice to Clause 20, the British Film Commission shall be entitled to withhold such amount from any sums due or which may become due to the Service Provider or the British Film Commission may recover such amount as a debt under this Agreement or a Call-Off Contract.

- 7.7 Except where otherwise provided in a Call-Off Contract, the Charges shall be inclusive of all costs of staff, facilities, equipment, materials and other expenses whatsoever incurred by the Service Provider in discharging its obligations under the Call-Off Contract.
- 7.8 If the British Film Commission fails to make a payment due to the Service Provider under this Agreement by the due date, the British Film Commission shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.
- 7.9 If the British Film Commission disputes a payment in good faith, including pursuant to Clause 7.5, then the interest payable under Clause 7.8 is only payable after the dispute is resolved, on sums found or agreed to be due, from 30 (thirty) days after the dispute is resolved until payment.

8. **Service Provider's Warranties**

- 8.1 Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Service Provider warrants, represents and undertakes that:

8.1.1 the Service Provider:

- (a) has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform the Agreement and any relevant Call-Off Contract;
- (b) is aware of the purposes for which the Services are required and acknowledges that the British Film Commission is reliant upon the Service Provider's expertise and knowledge in the provision of the Services; and
- (c) is entering into this Agreement, any relevant Call-Off Contract and all its contracts as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any relevant Call-Off Contract;

8.1.2 the Agreement and Call-Off Contract is executed by a duly authorised representative of the Service Provider; and

8.1.3 all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Service Provider shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Specification set out in the relevant Call-Off Contract.

9. **Contract Management**

- 9.1 The British Film Commission authorises the BFC Representative to act as the British Film Commission's representative in connection with this Agreement and the Service Provider shall deal with the BFC Representative (or their nominated representative) in respect of all matters arising under this Agreement, unless notified otherwise.

- 9.2 The Service Provider Manager shall act as the Service Provider's representative in connection with this Agreement. The Service Provider shall ensure that the Service Provider Manager has authority to contractually bind the Service Provider on all matters relating to the Services.
- 9.3 In respect of each Call-Off Contract, the Service Provider shall provide the Key Personnel.
- 9.4 The Service Provider shall procure that the Service Provider Manager and the Key Personnel:
- 9.4.1 diligently supervise the performance of the Services;
 - 9.4.2 attend all contract meetings with the British Film Commission (the location, frequency and time of which shall be specified by the BFC Representative from time to time); and
 - 9.4.3 be available to the British Film Commission to resolve any issues arising in connection with this Agreement or any relevant Call-Off Contract at such time periods as are specified in the relevant Call-Off Contract.
- 9.5 The Service Provider may only make any changes to the Service Provider Manager (except in the event of sickness, incapacity or resignation) with the prior consent of the British Film Commission (which shall not be unreasonably withheld).
- 9.6 No act of or omission by or approval from either the British Film Commission or the BFC Representative in performing any of their respective duties under or in connection with this Agreement or any relevant Call-Off Contract shall in any way operate to relieve the Service Provider of any its duties, responsibilities, obligations or liabilities under this Agreement and relevant Call-Off Contract.
- 10. Service Provider's Personnel**
- 10.1 The Parties agree that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) do not apply on the Agreement Commencement Date or on the expiry or termination of this Agreement.
- 10.2 Nothing in this Agreement or any Call-Off Contract will render the Service Provider's Personnel, an employee, agent or partner of the British Film Commission by virtue of the provision of the Services by the Service Provider under this Agreement or Call-Off Contract and the Service Provider shall be responsible for making appropriate deductions for tax and national insurance contributions from the remuneration paid to the Service Provider's Personnel.
- 10.3 The Service Provider shall provide the Service Provider's Personnel as necessary for the proper and timely performance and management of the Services in accordance with the relevant Call-Off Contract. All Service Provider Personnel deployed on work relating to the Call-Off Contract shall have the appropriate qualifications, competence and experience to enable them to perform the tasks assigned to them, be properly managed and supervised and in these and any other respects be acceptable to the British Film Commission.
- 10.4 Without prejudice to any of the British Film Commission's other rights, powers or remedies, the British Film Commission may (without liability to the Service Provider) deny access to such Service Provider's Personnel to any premises and/or require that any Service Provider's Personnel be immediately removed from performing the Services if such Service Provider's Personnel in the British Film Commission's view have not been properly trained in any way required by a relevant Call-Off Contract, are otherwise incompetent, negligent, guilty of misconduct or could be a danger to any person. The British Film Commission shall notify the Service Provider of such denial and/or requirement in writing and the Service Provider shall comply with such notice and provide a suitable replacement (with the BFC Representative's prior consent in the case of Key Personnel).

10.5 The Service Provider shall give the British Film Commission, if so requested, full particulars of all persons who are or may be at any time employed on the relevant Call-Off Contract and shall use its best endeavours to avoid changes to any of its staff designated as Key Personnel and obtain the prior written approval of the British Film Commission (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals. The Service Provider shall give the British Film Commission reasonable notice of any proposals to change Key Personnel and Clause 10.2 shall apply to the proposed replacement personnel.

10.6 The Service Provider shall indemnify, keep indemnified and hold harmless the British Film Commission and its Affiliates (including their respective employees, sub-contractors and agents) (the **Indemnified Party**) from and against all Losses which the Indemnified Party incurs or suffers in relation to the Service Provider's Personnel or any person who may allege to be the same (whenever such Losses may arise) or any failure by the Service Provider to comply with Clause 10.2.

11. **Change Control**

11.1 Either Party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both Parties. A Change Order shall be a document setting out the proposed changes and the effect those changes will have on:

11.1.1 the Services;

11.1.2 the Charges;

11.1.3 the timetable for the Works, including the Milestones and Required Dates; and

11.1.4 any of the other terms of the relevant Call-Off Contract.

11.2 If the British Film Commission wishes to make a change to the Services:

11.2.1 it shall notify the Service Provider, providing as much detail as is reasonably necessary to enable the Service Provider to prepare the draft Change Order; and

11.2.2 the Service Provider shall, within 10 (ten) Business Days of receiving the British Film Commission's request at Clause 11.2.1), provide a draft Change Order to the British Film Commission.

11.3 If the Service Provider wishes to make a change to the Services, it shall provide a draft Change Order to the British Film Commission.

11.4 If the Service Provider submits a draft Change Order in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or Charges for the Services, the British Film Commission shall not unreasonably withhold or delay consent to it.

11.5 If the Parties:

11.5.1 agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Call-Off Contract; or

11.5.2 are unable to agree a Change Order, either Party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in Clause 28.

12. Assignment, Other Dealings and Change of Ownership

- 12.1 The Service Provider shall not assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement or any Call-Off Contract (including all or any part of the Services) without the prior written consent of the British Film Commission, which may be refused or granted subject to such conditions as the British Film Commission sees fit.
- 12.2 Where the Service Provider sub-contracts all or any part of the Services to any permitted person in accordance with Clause 12.1, the Service Provider shall:
- 12.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Service Provider under this Agreement and the relevant Call-Off Contract insofar as they relate to the Services or part of them (as the case may be) which that sub-contractor is required to provide;
 - 12.2.2 be responsible for payments to that sub-contractor;
 - 12.2.3 remain solely responsible and liable to the British Film Commission for any breach of this Agreement and/or the relevant Call-Off Contract or any performance, non-performance, part-performance or delay in performance of any of the Services by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Service Provider;
 - 12.2.4 on or before the Agreement Commencement Date notify the British Film Commission in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier);
 - 12.2.5 promptly notify the British Film Commission in writing of any change to the information notified under Clause 12.2.4 and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Agreement Commencement Date;
 - 12.2.6 without prejudice to the provisions of Clause 15, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;
 - 12.2.7 include a term in each sub-contract (of any tier):
 - (a) requiring payment to be made by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract, to the sub-contractor within a specified period not exceeding 30 (thirty) days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements; and
 - (b) a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Service Provider, or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements.
- 12.3 The Service Provider shall give notice to the British Film Commission within 10 (ten) Business Days where:

- 12.3.1 there is any change in the ownership of the Service Provider where such change relates to 50% or more of the issued share capital of the Service Provider; and
- 12.3.2 there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company, and
- 12.3.3 (in the case of an unincorporated Service Provider) give notice to the British Film Commission if there is any change in the management personnel of the Service Provider, which alone or taken with any other change in management personnel not previously notified to the British Film Commission, equates to a change in the identity of 50% or more of the management personnel of the Service Provider.

Upon the occurrence of any of the events referred to at Clauses 12.3.1 to 12.3.3 above, the British Film Commission shall have the right to terminate the Agreement and any relevant Call-Off Contract.

- 12.4 The British Film Commission may at any time assign, novate, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement and any relevant Call-Off Contract (in whole or in part).
- 12.5 Within 10 (ten) Business Days of a written request from the British Film Commission, the Service Provider shall at its expense execute such agreement as the British Film Commission may reasonably require to give effect to any such transfer of all or part of its rights and obligations under this Agreement and any relevant Call-Off Contract to one or more persons nominated by the British Film Commission.

13. **Conflict of Interest**

- 13.1 The Service Provider warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services, the British Film Commission, or its Affiliates, save to the extent fully disclosed to and approved by the British Film Commission.
- 13.2 The Service Provider shall check for any conflict of interest at regular intervals throughout the Term and in any event not less than once in every 6 (six) months and shall notify the British Film Commission in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services, the British Film Commission, or its Affiliates and shall work with the British Film Commission to do whatever is necessary (including the separation of staff working on, and data relating to, the Services from the matter in question) to manage such conflict to the British Film Commission's satisfaction, provided that, where the British Film Commission is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 29.1.4.

14. **Access to Premises**

- 14.1 Any access to any premises made available to the Service Provider in connection with the proper performance of the Call-Off Contract (**Premises**) shall be used by the Service Provider solely for the purpose of performing the Services during the Call-Off Term. For the avoidance of doubt, the Service Provider shall be responsible for its own costs of travel including either or both of any congestion charging or low emission zone charging.
- 14.2 The Service Provider shall:

- 14.2.1 while present on any of the Premises, ensure that its personnel and any permitted sub-contractors shall observe at all times all rules and safety requirements applicable to the Premises notified to the Service Provider in relation to carrying out the Services;
 - 14.2.2 ensure that the Service Provider's Personnel carry any identity passes issued to them at all relevant times and comply with the security procedures as may be notified to the Service Provider's Personnel from time to time; and
 - 14.2.3 not damage any Premises or any assets on the Premises.
- 14.3 Nothing in this Clause 14 shall create or be deemed to create the relationship of landlord and tenant in respect of any Premises.
- 14.4 The British Film Commission shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the Service Provider except as may be specified in any Call-Off Contract.
15. **Compliance with Policies and Law**
- 15.1 The Service Provider, at no additional cost to the British Film Commission:
- 15.1.1 shall, and shall procure that all the Service Provider's Personnel shall, comply with all of the British Film Commission's policies and standards that are relevant to the performance of the Services and those relating to safety, security, business ethics, drugs and alcohol and any other on site regulations specified by the British Film Commission for personnel working with the British Film Commission. The British Film Commission shall provide the Service Provider with copies of such policies and standards on request;
 - 15.1.2 shall, and shall procure that all the Service Provider's Personnel shall, comply with all Applicable Laws. The Service Provider shall promptly notify the British Film Commission if the Service Provider is required to make any change to the Services for the purposes of complying with its obligations under this Clause 15.1.2;
 - 15.1.3 without limiting the generality of Clause 15.1.2, shall comply with all relevant enactments in force from time to time relating to discrimination in employment and the promotion of equal opportunities;
 - 15.1.4 acknowledges that the British Film Commission is under a duty under section 149 of the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination on the grounds of sex, marital or civil partnership status, race, sexual orientation, religion or belief, age, pregnancy or maternity, gender reassignment or disability (a **Relevant Protected Characteristic**) (as the case may be) and to promote equality of opportunity between persons who share a Relevant Protected Characteristic and persons who do not share it. In providing the Services, the Service Provider shall assist and cooperate with British Film Commission where possible in satisfying this duty;
 - 15.1.5 before the date on which the Services are to start, obtain and maintain during the Call-Off Term, all necessary licences and consents and comply with all relevant legislation in relation to:
 - (a) the Services; and
 - (b) the installation and use of the Service Provider's Equipment.

- 15.1.6 not do or omit to do anything which may cause the British Film Commission to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- 15.1.7 observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the British Film Commission's premises from time to time and that have been communicated to it under Clause 5.4.3; and
- 15.1.8 shall promptly notify the Service Provider's Personnel and the British Film Commission of any health and safety hazards that exist or may arise in connection with the performance of the Services.

In all cases, the costs of compliance with this Clause 15.1 shall be borne by the Service Provider.

- 15.2 Without prejudice to Clause 15.1, the Service Provider shall comply with the British Film Commission's workplace harassment policy as updated from time to time (copies of which are available on request from the British Film Commission).
- 15.3 In providing the Services, the Service Provider shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Service Provider's activities may impact on the environment) to the need to:
 - 15.3.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 15.3.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 15.3.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 15.3.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.

16. **Corrupt Gifts and Payment of Commission**

The Service Provider shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the British Film Commission or its Affiliates or favour any employee, officer or agent of the British Film Commission or its Affiliates with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the British Film Commission or its Affiliates other than as a representative of the British Film Commission, without the British Film Commission's prior written approval.

17. **Equipment**

- 17.1 Risk in:
 - 17.1.1 all Service Provider Equipment shall be with the Service Provider at all times; and
 - 17.1.2 all other equipment and materials forming part of the Services and the Deliverables (title to which will pass to the British Film Commission) (**Materials**) shall be with the Service Provider at all times until completion of the Services in accordance with the relevant Call-Off Contract.

regardless of whether or not the Service Provider's Equipment and Materials are located at the British Film Commission's premises.

- 17.2 The Service Provider shall ensure that all Service Provider's Equipment and all Materials meet all minimum safety standards required from time to time by law.

18. **Quality and Evaluation**

The Service Provider acknowledges that the British Film Commission has arrangements to monitor continuous improvement in the way it exercises its functions and as such, the Service Provider shall, where reasonably requested by the British Film Commission, participate in any relevant best practice review.

19. **Records, Audit and Inspection**

- 19.1 The Service Provider shall, and shall procure that its sub-contractors shall:

19.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Services and the Service Provider's obligations under this Agreement and the relevant Call-Off Contract and all transactions entered into by the Service Provider for the purposes of this Agreement and the relevant Call-Off Contract (including time-sheets for the Service Provider's Personnel where such records are material to the calculation of the Charges) (**Records**); and

19.1.2 retain all Records during the Term and Call-Off Term and for a period of not less than 6 (six) years (or such longer period as may be required by law), except Records containing personal data which shall only be retained for as long as necessary following termination or expiry of this Agreement or relevant Call-Off Contract (**Retention Period**).

- 19.2 The British Film Commission and any person nominated by the British Film Commission has the right to access the Service Provider's premises, personnel, and systems during Business Hours at any time during the Retention Period on reasonable notice to the Service Provider in order to audit any and all Records and inspect any aspect of the Service Provider's performance of the Services. The Service Provider shall give all reasonable assistance to the British Film Commission or its nominee in conducting such audit and/or inspection, including making available documents and staff for interview.

20. **Set-Off**

The British Film Commission may, at any time, without notice to the Service Provider, set off any liability of the Service Provider to the British Film Commission or its Affiliates against any liability of the British Film Commission or its Affiliates to the Service Provider, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement or a Call-Off Contract. If the liabilities to be set off are expressed in different currencies, the British Film Commission may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the British Film Commission of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

21. **Indemnity**

The Service Provider is responsible for and shall indemnify, keep indemnified and hold harmless the British Film Commission and its Affiliates (including their respective employees, sub-contractors and agents) (the **Indemnified Party**) against all Losses which the Indemnified Party incurs or suffers as a consequence of any direct or indirect breach or any negligent performance

of this Agreement or any relevant Call-Off Contract by the Service Provider (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement or any relevant Call-Off Contract) or of any breach of statutory duty, misrepresentation or misstatement by the Service Provider (or any of its employees or sub-contractors).

22. Insurance

22.1 The Service Provider will at its sole cost maintain employer's liability and motor insurance cover as required by law and insurance cover in the sum of £10 million (ten million pounds sterling) per claim in respect of each of the insurances listed below to cover the Services and all of the Service Provider's potential liabilities and obligations under the provisions of this Agreement any Call-Off Contract (the **Insurances**) and will ensure that any public liability, product liability or employer's liability insurance includes an indemnity to principal clause:

22.1.1 public liability to cover injury and loss to third parties;

22.1.2 insurance to cover the loss or damage to any item related to the Services;

22.1.3 product liability; and

22.1.4 professional indemnity or, where professional indemnity insurance is not available, a "financial loss" extension to the product liability insurance referred to in Clause 22.1.3 or, if applicable, the public liability insurance referred to in Clause 22.1.1.

22.2 The insurance cover will be maintained with a reputable insurer.

22.3 The Service Provider will produce evidence to the British Film Commission on reasonable request of the insurance policies set out in Clause 22.1 and payment of all premiums due on each policy and all such documentation as is necessary to provide the Service Provider's continuing compliance with its obligations to insure under this provision.

22.4 The Service Provider warrants that nothing has or will be done or be omitted to be done which may result in any of the insurance policies set out in Clause 22.1 being or becoming void, voidable or unenforceable.

22.5 In the event that any of the Insurances are cancelled or not renewed, the Service Provider shall immediately notify the British Film Commission and shall at its own cost arrange alternative Insurances with an insurer or insurers acceptable to the British Film Commission.

22.6 The Service Provider shall not compromise or waive any claim which the Service Provider may have under the above insurances without the prior written consent of the British Film Commission.

23. The British Film Commissions' Data

23.1 The Service Provider acknowledges the British Film Commission's ownership of any Intellectual Property Rights that may subsist in the British Film Commission's data. The Service Provider shall not delete or remove any copyright notices contained within or relating to the British Film Commission's data.

23.2 The Service Provider and the British Film Commission shall each take reasonable precautions (having regard to the nature of their other respective obligations under this Agreement) to preserve the integrity of the British Film Commission's data and to prevent any corruption or loss of the British Film Commission's data.

24. Intellectual Property Rights

24.1 In relation to the BFC Materials:

24.1.1 the British Film Commission and its licensors shall retain ownership of all Intellectual Property Rights in the BFC Materials; and

24.1.2 the British Film Commission grants to the Service Provider a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the BFC Materials for the term of this Agreement or the relevant Call-Off Contract for the sole purpose of providing the Services to the British Film Commission.

24.2 Subject to Clause 24.1, the Service Provider shall have no right (save where expressly permitted under the relevant Call-Off Contract or with the British Film Commission's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the British Film Commission.

24.3 In relation to the Deliverables:

24.3.1 the Service Provider hereby irrevocably and unconditionally assigns to the British Film Commission with full title guarantee, and where the assignment is of copyright, by way of assignment of present and future copyright, all Intellectual Property Rights, title and interest in the Deliverables throughout the universe for the full period of those rights wherever subsisting or acquired, and all renewals, reversions, revivals and extensions thereof, and thereafter in perpetuity;

24.3.2 the Service Provider shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction. Such waivers shall be in favour of the British Film Commission and its licensees, sub-licensees, assignees and successors in title to the Deliverables; and

24.3.3 the Service Provider shall provide the British Film Commission with copies of all materials relied upon or referred to in the creation of the Deliverables together with a perpetual, irrevocable, royalty-free and transferable licence free of charge to use such materials in connection with the use of the Deliverables.

24.4 The Service Provider shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Services have been paid and are included within the Charges.

24.5 The Service Provider warrants, represents, and undertakes that the Services and the Deliverables (including their receipt, use and onward supply by the British Film Commission) shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person or be in any other way contrary to law.

24.6 The Service Provider shall indemnify, keep indemnified and hold harmless the British Film Commission and its Affiliates (including their respective employees, sub-contractors and agents) (the **Indemnified Party**) from and against all Losses which the Indemnified Party incurs or suffers arising out of or in connection with any claim brought against the Indemnified Party for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with the Services and the Deliverables (including their receipt, use and onward supply by the British Film Commission).

25. **Data Protection**

- 25.1 For the purposes of this Clause 25, the terms **Commissioner, controller, data subject, personal data, personal data breach, processor and processing**, shall have the meaning given to them in the UK GDPR, and **supervisory authority** shall have the meaning given to it in the EU GDPR.
- 25.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This Clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 25.3 The Parties have determined that, for the purposes of Applicable Data Protection Laws:
- 25.3.1 the Service Provider shall process the personal data set out in Paragraph 1.1 of Schedule 6 (Processing, personal data and data subjects) as processor on behalf of the British Film Commission; and
- 25.3.2 the Service Provider shall act as controller of the personal data set out in Paragraph 1.2 of Schedule 6.
- 25.4 Should the determination in Clause 25.3 change, the Parties shall use all reasonable endeavours to make any changes that are necessary to this Clause 25 and Schedule 6.
- 25.5 This Clause 25.5 applies where the Service Provider acts as controller pursuant to Clause 25.3.2.
- 25.5.1 Without prejudice to Clause 25.2, the Service Provider:
- (a) shall process all Service Provider Personal Data strictly in accordance with its privacy policy in the form it appears at Schedule 6 (**Service Provider Privacy Policy**);
 - (b) shall not amend the Service Provider Privacy Policy without the British Film Commission's prior written consent;
 - (c) shall promptly comply with all reasonable instructions of the British Film Commission in connection with the Service Provider Privacy Policy, and any amendments, shall promptly provide copies of the same to the British Film Commission on request in a commonly available electronic format, and hereby consents to the British Film Commission making the Service Provider Privacy Policy available to any applicable data subjects;
 - (d) undertakes, warrants and represents that the Service Provider Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to the Service Provider Privacy Policy where this would be in contravention of Applicable Data Protection Laws;
 - (e) as between the parties, is solely responsible for ensuring that the processing of Service Provider Personal Data complies with Applicable Laws, including Applicable Data Protection Laws, and in particular, that all required fair processing information is provided to the relevant data subjects; and
 - (f) promptly comply with any reasonable instructions received from the British Film Commission to display or otherwise make available the British Film Commission's then-current version of its privacy policy via the goods or services provided by the Service Provider. Such instructions may include

implementing a reasonable process to certify that the data subject has acknowledged its terms.

- 25.5.2 If there are any inconsistencies or conflict between the terms of the Service Provider Privacy Policy and this Agreement, this Agreement shall take precedence.
- 25.6 In relation to the BFC Personal Data, Paragraph 2 of Schedule 6 sets out the scope, nature and purpose of processing by the Service Provider, the duration of the processing and the types of personal data and categories of data subject.
- 25.7 Without prejudice to Clause 25.2, the Service Provider shall, in relation to BFC Personal Data:
- 25.7.1 process that BFC Personal Data only on the documented instructions of the British Film Commission, set out in Paragraph 2 of Schedule 6, unless the Service Provider is required by Applicable Laws to otherwise process that BFC Personal Data. Where the Service Provider is relying on Applicable Laws as the basis for processing British Film Commission Processor Data, the Service Provider shall promptly notify the British Film Commission of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Service Provider from so notifying the British Film Commission on important grounds of public interest. The Service Provider shall immediately inform the British Film Commission if, in the opinion of the Service Provider, the instructions of the British Film Commission infringe Applicable Data Protection Laws;
- 25.7.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of BFC Personal Data and against its accidental loss, damage or destruction, including inter alia as appropriate:
- (a) the pseudonymisation and encryption of BFC Personal Data;
 - (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - (c) the ability to restore the availability and access to BFC Personal Data in a timely manner in the event of a physical or technical incident; and
 - (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. In assessing the appropriate level of security the Service Provider shall take into account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to BFC Personal Data transmitted, stored or otherwise processed;
- 25.7.3 ensure, and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 25.7.4 promptly assist the British Film Commission, at the Service Provider's expense, in responding to any request from a data subject and in ensuring compliance with the British Film Commission's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Service Provider shall promptly notify the British Film Commission if it receives any complaint, notice or communication (whether from the Commissioner, any data

- subject, supervisory authority or other third party) which relates to processing of BFC Personal Data;
- 25.7.5 notify the British Film Commission without undue delay (and no later than [insert timescale]) after becoming aware of a personal data breach and on suspecting the same, the Service Provider shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the British Film Commission under this Clause 25.7.5 and shall provide a copy of this initial assessment along with such notification;
- 25.7.6 at the written direction of the British Film Commission, delete or return to the British Film Commission all BFC Personal Data on termination or expiry of the Agreement, and certify to the British Film Commission in writing it has done so, unless the Service Provider is required by Applicable Law to continue to process that BFC Personal Data, in which case the Service Provider shall promptly notify the British Film Commission, in writing, of what that Applicable Law is and shall only be permitted to process that BFC Personal Data for the specific purpose so-notified, and all other requirements set out in this Clause 25 shall continue to apply to such BFC Personal Data notwithstanding the termination or expiry of this Agreement for as long as such BFC Personal Data is processed by the Service Provider. For the purposes of this Clause 25.7.6 the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
- 25.7.7 without prejudice to Clause 19, maintain adequate records, and, on the British Film Commission's request, make available such information as the British Film Commission may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the British Film Commission or the British Film Commission's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this Clause 25.
- 25.8 The Service Provider shall not, without the prior written consent of the British Film Commission (and in any event subject to the Service Provider providing the British Film Commission with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
- 25.8.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to BFC Personal Data or transfer any BFC Personal Data to the same; or
- 25.8.2 carry out, via itself or via any other processor, any processing of BFC Personal Data, or transfer any BFC Personal Data, outside of the UK, including processing BFC Personal Data on equipment situated outside of the UK.
- 25.9 Either Party may, at any time on not less than 30 (thirty) days' notice, revise Clause 25 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 25.10 The Service Provider shall indemnify, keep indemnified and hold harmless the British Film Commission and its Affiliates (including their respective employees, sub-contractors and agents) (the **Indemnified Party**) from and against all Losses which the Indemnified Party incurs or suffers arising from any claim or demand brought by any person, data subject, Commissioner or supervisory authority as a result of any breach or alleged breach by Service Provider of any Applicable Data Protection Law or its obligations under liability for losses arising from breaches of this Clause 25.

26. Confidentiality and Announcements

26.1 Subject to Clause 27, the Service Provider shall keep confidential:

26.1.1 the terms of this Agreement and all Call-Off Contracts; and

26.1.2 any and all Confidential Information that it may acquire.

26.2 The Service Provider shall not use the Confidential Information for any purpose other than to perform its obligations under this Agreement and any Call-Off Contract. The Service Provider shall procure that its officers, employees, agents, and sub-contractors comply with the provisions of Clause 26.1.

26.3 The obligations on the Service Provider set out in Clause 26.1 will not apply to any Confidential Information which:

26.3.1 either of the Parties can demonstrate is in the public domain (other than as a result of a breach of this Clause 26); or

26.3.2 a Party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure.

26.4 The Service Provider shall keep secure all materials containing any information in relation to the Agreement or to any Call-Off Contract and its performance.

26.5 The Service Provider shall not communicate with representatives of the general or technical press, radio, television, social media or other communications media in relation to the existence of the Agreement or any Call-Off Contract or that it is providing the Services to the British Film Commission or in relation to any matter under or arising from the Agreement or any Call-Off Contract unless specifically granted permission to do so in writing by the British Film Commission. The British Film Commission shall have the right to approve any announcement before it is made.

26.6 The provisions of this Clause 26 will survive any termination of this Agreement or Call-Off Contract for a period of 6 (six) years from termination.

27. Freedom of Information and Transparency

27.1 For the purposes of this Clause 27:

27.1.1 **FOI Legislation** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry for Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

27.1.2 **Information** means information recorded in any form held by the British Film Commission or by the Service Provider on behalf of the British Film Commission; and

27.1.3 **Information Access Request** means a request for any Information under the FOI Legislation.

27.2 The Service Provider acknowledges that the British Film Commission:

- 27.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the British Film Commission to enable the British Film Commission to comply with its obligations under the FOI Legislation; and
- 27.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Service Provider.
- 27.3 Without prejudice to the generality of Clause 27.2, the Service Provider shall and shall procure that its sub-contractors (if any) shall:
- 27.3.1 transfer to any person as may be notified by the British Film Commission to the Service Provider each Information Access Request relevant to this Agreement or a Call-Off Contract as soon as practicable and in any event within 2 (two) Business Days of receiving such Information Access Request; and
- 27.3.2 in relation to Information held by the Service Provider on behalf of the British Film Commission, provide the British Film Commission with details about and/or copies of all such Information that the British Film Commission requests and such details and/or copies shall be provided within 5 (five) Business Days of a request from the British Film Commission (or such other period as the British Film Commission may reasonably specify), and in such forms as the British Film Commission may reasonably specify.
- 27.4 The British Film Commission shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Access Request in accordance with the FOI Legislation.
- 27.5 The Service Provider shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the British Film Commission.
- 27.6 The British Film Commission may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the British Film Commission may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 27.7 The British Film Commission may in its absolute discretion consult with the Service Provider regarding any redactions to the Contract Information to be published pursuant to Clause 27.6. The British Film Commission shall make the final decision regarding publication and/or redaction of the Contract Information.
28. **Dispute Resolution**
- 28.1 The British Film Commission and the Service Provider shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract (**Dispute**) before commencing court proceedings.
- 28.2 If the Dispute is not settled through discussion between the BFC Representative and the Service Provider Manager within a period of 7 (seven) Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) (**Senior Personnel**) of each of the Parties for resolution.
- 28.3 If the Dispute is not resolved within 14 (fourteen) Business Days of referral to the Senior Personnel, the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a mediator. To initiate the mediation, a Party must serve notice in writing (**ADR Notice**) to the other Party to, requesting a mediation and identifying one or more proposed mediators.

- 28.4 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- 28.5 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 (forty) Business Days of the service of the Notice either Party may commence proceedings in accordance with Clause 40.
- 28.6 For the avoidance of doubt, the Service Provider shall continue to provide the Services in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 28.
- 28.7 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this Clause 28, and this Clause 28 shall not apply in respect of any circumstances where such remedies are sought.

29. Breach and Termination of Agreement

- 29.1 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Agreement or otherwise), the British Film Commission may terminate this Agreement and any Call-Off Contract immediately upon giving written notice to the Service Provider if:
- 29.1.1 the Service Provider has committed any material or persistent breach of this Agreement and/or any Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 5 (five) Business Days (or such other timeframe as specified in writing by the British Film Commission) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied; or
 - 29.1.2 the Service Provider is subject to an Insolvency Event; or
 - 29.1.3 in the event that there is a change of ownership referred to in Clause 12.3 or the Service Provider is in breach of Clause 12.3; or
 - 29.1.4 the British Film Commission is not satisfied on the issue of any conflict of interest in accordance with Clause 13; or
 - 29.1.5 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
 - 29.1.6 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015.
- 29.2 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Agreement or otherwise), if the Service Provider is in breach of any of its warranties and/or obligations under Clause 8 and/or any of its other warranties and/or obligations in respect of the Services under this Agreement or Call-Off Contract, the Service Provider shall, if required to do so by the British Film Commission promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 29.2 shall prevent the British Film Commission from procuring the provision of any Services or any remedial action in respect of any Services from an alternative service provider and, where the British Film Commission so procures any Services or any remedial action, the British Film Commission shall be entitled to recover from the Service Provider all additional cost, loss and expense incurred by the British Film Commission procuring such Services or remedial action from such alternative contractor.

- 29.3 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Agreement or otherwise), the British Film Commission may terminate this Agreement and any relevant Call-Off Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1, provided that this Clause 29.3 may be disapplied by notice to that effect in Schedule 1.
- 29.4 To the extent that the British Film Commission has a right to terminate this Agreement and any Call-Off Contract then, as an alternative to termination, the British Film Commission may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the British Film Commission's notice (**Change Date**) whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the British Film Commission's opinion a proportionate adjustment would not be reasonable in such manner as the British Film Commission may determine.
- 29.5 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Agreement or otherwise), the Service Provider acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement or any Call-Off Contract by the Service Provider. Accordingly, the British Film Commission shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement and/or any Call-Off Contract.
- 30. Consequences of Termination or Expiry**
- 30.1 On termination (or expiry) of this Agreement, howsoever arising, each Call-off Contract then in force at the date of such termination shall continue in full force and effect for the remainder of the term of such Call-Off Contract, unless such Call-Off Contract:
- 30.1.1 has been terminated pursuant to the terms to this Agreement; or
- 30.1.2 terminated earlier in accordance with its terms.
- 30.2 The termination of any Call-off Contract shall not affect any other Call-off Contracts or this Agreement.
- 30.3 The termination or expiry of this Agreement and/or any Call-Off Contract shall not prejudice or affect any right, power or remedy which has accrued or shall accrue to either Party prior to or after such termination or expiry, including the right to claim damages in respect of any breach of the Agreement and/or any Call-Off Contract which existed at or before the date of termination or expiry.
- 30.4 Upon expiry or termination of this Agreement or relevant Call-Off Contract (howsoever caused), the Service Provider shall, at no further cost to the British Film Commission:
- 30.4.1 immediately deliver to the British Film Commission all Deliverables whether or not then complete, and return all BFC Materials. If the Service Provider fails to do so, then the British Film Commission may enter the Service Provider's premises and take possession of them. Until they have been delivered or returned, the Service Provider shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Agreement;
- 30.4.2 take all such steps as shall be necessary to agree with the British Film Commission a plan for the orderly handover of Services to the British Film Commission (or its nominee), such that the Services can be carried on with the minimum of interruption and inconvenience to the British Film Commission and to effect such handover;

- 30.4.3 shall, if so requested by the British Film Commission, provide all assistance reasonably required by the British Film Commission to facilitate the smooth transition of the Services to the to the British Film Commission (or its nominee); and
- 30.4.4 on receipt of the British Film Commission's written instructions to do so (but not otherwise), arrange to remove all electronically held information by a mutually agreed date, including the purging of all disk-based information and the reformatting of all disks.
- 30.5 On termination of this Agreement and/or any relevant Call-Off Contract under Clause 29.1 or a cessation of any Services under Clause 29.4 (but in the case of the latter only insofar as the right to cease any Services arises as a result of a right for the British Film Commission to terminate under Clause 29.1), the British Film Commission may enter into any agreement with any third party or parties as the British Film Commission thinks fit to provide any or all of the Services and the Service Provider shall be liable for all additional expenditure reasonably incurred by the British Film Commission in having such services carried out and all other costs and damages reasonably incurred by the British Film Commission in consequence of such termination. The British Film Commission may deduct such costs from the Charges or otherwise recover such costs from the Service Provider as a debt.
- 30.6 Notwithstanding the provisions of Clause 26, wherever the British Film Commission chooses to put out to tender for a replacement service provider some or all of the Services, the Service Provider shall disclose to tenderers such information concerning the Services as the British Film Commission may require for the purposes of such tender. The Service Provider may impose upon any recipient of such information such obligations of confidentiality as it may require.
- 31. Force Majeure**
- 31.1 Provided it has complied with Clause 20.4, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement and/or a Call-Off Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement and/or the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever for any such failure or delay in performing its obligations under the Agreement and/or the relevant Call-Off Contract.
- 31.2 The Affected Party shall:
- 31.2.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement and/or the relevant Call-Off Contract; and
- 31.2.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 31.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 8 (eight) weeks from the date on which that Force Majeure Event first arose, the Party not affected by such Force Majeure Event may terminate this Agreement and/or the relevant Call-Off Contract (as applicable) immediately upon giving notice to the Affected Party.

32. Survival

Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement and/or Call-Off Contract shall remain in full force and effect.

33. Variation

Subject to Clause 11 (Change control), no variation of this Agreement or a Call-Off Contract shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

34. Waiver

34.1 No waiver of any of the provisions of this Agreement or any Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 37 and shall not be deemed a waiver of any subsequent right or remedy.

34.2 A failure or delay by a party to exercise any right or remedy provided under this Agreement or any Call-Off Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. The single or partial exercise of any right, power or remedy under this Agreement or any Call-Off Contract shall not in any circumstances preclude or restrict any other or further exercise of it or the exercise of any other such right, power or remedy.

35. Right and Remedies

The rights and remedies provided under this Agreement and/or any Call-Off Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

36. Severance

36.1 If any provision of this Agreement and/or any Call-Off Contract (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and/or the relevant Call-Off Contract and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provision.

36.2 If any provision or part-provision of this Agreement and/or any Call-Off Contract is deemed deleted under Clause 36.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

37. Notices

37.1 Any notice, demand or communication in connection with this Agreement and/or any Call-Off Contract will be in writing and may be delivered by hand, post or email (provided that any notice, demand or communication relating to breach or termination of this Agreement and/or a Call-Off Contract that is sent by email must also be sent by hand or post) addressed to the recipient at its registered office, or any other address (including email address) notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:

- (a) if delivered by hand, at the time of delivery;

- (b) if delivered by post, 2 (two) Business Days after being posted or in the case of Airmail 14 (fourteen) Business days after being posted; or
 - (c) if sent if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 37.1(c), business hours means 9.00am to 5.00pm on a Business Day.
- 37.2 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 38. Entire Agreement**
- 38.1 Subject to Clause 38.2:
- 38.1.1 this Agreement and any relevant Call-Off Contract and all documents referred to in this Agreement and any relevant Call-Off Contract, contain all of the terms which the Parties have agreed relating to the subject matter of this Agreement and such documents and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating to its subject matter; and
 - 38.1.2 without prejudice to the Service Provider's obligations under this Agreement and any relevant Call-Off Contract, the Service Provider is responsible for and shall make no claim against the British Film Commission in respect of any misunderstanding affecting the basis of the Service Provider's tender in respect of this Agreement and/or and any Call-Off Contract or any incorrect or incomplete information howsoever obtained.
- 38.2 Each Party agrees that it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or a Call-Off Contract.
- 38.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement or a Call-Off Contract.
- 38.4 Nothing in this Clause 38 excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.
- 39. Relationship of the Parties**
- 39.1 Nothing in this Agreement or any Call-Off Contract is intended to, or shall be deemed to, constitute a partnership or joint venture between the Parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 39.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 40. Third Party Rights**
- 40.1 Unless it expressly states otherwise, neither this Agreement nor any Call-Off Contract gives rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or the relevant Call-Off Contract.
- 40.2 The rights of the parties to rescind or vary this Agreement or any Call-Off Contract are not subject to the consent of any other person.

41. Further Assurance

The Service Provider shall, promptly at the British Film Commission’s request do, or procure to be done, all such further acts and things and shall execute, or procure the execution of, all such documents as the British Film Commission may from time to time require to give full effect to the provisions of this Agreement and any relevant Call-Off Contract.

42. Counterparts

42.1 This Agreement (and any Call-Off Contract) may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

42.2 Transmission of the executed signature page of a counterpart of this Agreement or any Call-Off Contract by email (in PDF, JPEG or other agreed format) shall take effect as transmission of an executed "wet-ink" counterpart of this Agreement or the relevant Call-Off Contract. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.

42.3 No counterpart shall be effective until each Party has delivered to the other at least one executed counterpart.

43. Governing Law

43.1 This Agreement, any Call-Off Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

43.2 Without prejudice to Clause 28, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) which may arise out of or in connection with this Agreement and/or any Call-Off Contract or their subject matter or formation, provided that the British Film Commission has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE AGREEMENT has been signed for and on behalf of the Parties the day and year written above.

SIGNED by [NAME AND POSITION])
for and on behalf of)
THE BRITISH FILM COMMISSION)
by [NAME OF SIGNATORY]

SIGNED by [NAME AND POSITION])
for and on behalf of)
THE SERVICE PROVIDER)
by [NAME OF SIGNATORY]

Schedule 1
Key Agreement Information

1. Agreement Reference Number: [•]
2. Name of Service Provider:
3. Agreement Commencement Date: [1st March 2021]
4. Term: [2 YEARS]
5. Review Date: [31st March 2022]
6. BFC Representative:
7. Service Provider's Key Personnel:
8. Notice period in accordance with Clause 29.3 (termination without cause): [90 days]

**Schedule 2
Services**

[This Schedule should address details of the services]

**Schedule 3
Charges**

[This Schedule should address Service Provider's Schedule of Charges]

**Schedule 4
Request Form**

Agreement Reference Number: [•]

Request Form Number:

To:

Address:

From:

Date:

This is a Request Form for the provision of Services in accordance with the Agreement referenced above. This is an enquiry document only, constituting an invitation to treat, and it does not constitute an offer capable of acceptance. Your Proposal must be submitted as an offer capable of acceptance by the British Film Commission; however such acceptance will not occur unless and until the British Film Commission posts notice of acceptance to you.

Attachment 1 of this Request Form sets out the Services required by the British Film Commission and other relevant information.

In your Proposal, you must respond to the information requested in Attachment 1 by completing Attachment 2.

Attached to this Request Form is a draft Call-Off Contract. The British Film Commission is under no obligation to award any Call-Off Contract as a result of this Request Form.

You must complete and return your Proposal by [•]. Please e-mail your Proposal to:

Name:

e-mail:

Any queries regarding this Request Form should be directed to the above.

Signed: _____

for and on behalf of the British Film Commission

Attachments:

Attachment 1: Services to be provided and other relevant information

Attachment 2: Service Provider's Proposal

Attachment 3: Draft Call-Off Contract

Attachment 1

[To be completed by the British Film Commission]

1. Services to be provided and associated information

[Detail here all (a) Services and (b) Deliverables with full descriptions of what is required. Include a Project Plan that clearly identifies the project milestones against which payments are to be made. This may be as simple as a plan that contains dates for acceptance and completion. If no plan is available, or if the milestones cannot be specified at this stage, you must request the Service Provider to include a proposed plan and milestones in their response. You should also define other requirements you wish the Service Provider to respond to such as:

- details of any technical and/or functional specifications and/or any service levels (as applicable) of any Deliverable or Service required by the British Film Commission to be delivered or achieved by the Service Provider;
- Working Hours;
- CVs of the Personnel to be working on the project; - Please note that only those CVs that were submitted at the ITT stage will be submitted as part of this exercise.
- estimated time-lines for each of the milestones and for the overall project;
- the Service Provider's best price offer based on charges (subject to Schedule 3);
- the Service Provider's proposal for staged payments or whether pro-rata monthly payments will apply;
- any materials, equipment or goods required to provide the Services, including Service Provider IPR deliverables and Third Party IPR deliverables;
- any material assumptions or facts relied upon by the British Film Commission in compiling it and any other material information which relates to the Services required to be provided and/or performed;
- Service levels, and measurement thereof;
- any warranties and/or representations required from the Service Provider.]

2. Acceptance Criteria

[If the British Film Commission requires any deliverable (whether in isolation or in combination with other deliverables (e.g. as a solution, package, or system)) and/or any Service to be subject to acceptance and/or service validation tests (as applicable), define the acceptance criteria which the Service Provider must ensure]

3. Timetable

Commencement Date:

Call-Off Term:

Attachment 2

Proposal [To be completed by the Service Provider]

1. Proposed Solution

The Service Provider should detail how it proposes to deliver the Services set out in Attachment 1, including (where requested) a Project Plan (this may be as simple as a plan that contains dates for acceptance testing and completion depending on the particular project), details of any equipment and materials required and service levels.

2. Charges

The Service Provider should set out the charges for the Services required, their provision and the contract model as set out in Attachment 1, taking into account that the rates used to calculate the Charges shall not exceed the Rates set out in Schedule 3 of this Agreement.

3. Service Team and Personnel

Details of the Service Provider's Manager, and Personnel, including grades and areas of responsibility. Please attach copies of CVs. – Please note that only those CVs that were submitted at the ITT stage will be submitted as part of this exercise. If you wish to use new CVs, you should high-light this to the British Film Commission in your submission.

4. Experience

An outline of relevant past work or projects including references;

5. Proposed sub-contractors (if any)

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work:

6. Proposed completion date

[Complete only if different from duration/expiry date stated in Attachment 1]:

7. Other Information

This Call-Off Contract commences on the date of this Call-Off Contract or such other date as may be specified in Attachment 1 and continues in force for the Call-Off Term stated in Attachment 1 unless terminated earlier, either in whole or in part, in accordance with the terms of the Agreement and/or this Call-Off Contract.

3. The Services

3.1 The British Film Commission hereby engages the Service Provider to provide, and the Service Provider shall provide, the Services and the Deliverables set out in Attachment 1 in accordance with the terms and conditions of the Agreement and this Call-Off Contract.

3.2 The Service Provider shall provide the Services and the Deliverables in accordance with the Project Plan and by the Required Dates set out in Attachment 1. Time is of the essence in relation to Required Dates for the Service Provider.

4. Charges

4.1 Subject to the due performance of the Services by the Service Provider in accordance with the Agreement and the relevant Call-Off Contract, the British Film Commission shall pay the Charges set out in Attachment 2 to the Service Provider. The Charges shall not be calculated in accordance with Schedule 3 of the Agreement and shall not increase during the Call-Off Term unless varied in accordance with the Agreement.

4.2 Unless otherwise specified in Attachment 2, the Service Provider shall invoice the Charges to the British Film Commission in accordance with Clause 7 of the Agreement.

5. Key Personnel

The Service Provider's Key Personnel in respect of this Call-Off Contract are named in Attachment 2.

6. Conflict of Interest

Without prejudice to its obligations pursuant to Clause 13 of the Agreement, the Service Provider warrants that, as of the commencement date of this Call-Off Contract, it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services, the British Film Commission, or its Affiliates, save to the extent fully disclosed to and approved by the British Film Commission.

7. [Special Conditions]

7.1 [Placeholder for specific terms and conditions in respect of the Services to be provided pursuant to this Call-Off Contract, for example:

7.1.1 Acceptance Criteria: [Set out any criteria for accepting the Deliverables or the Milestones]

7.1.2 Service Levels: [Include any service levels, if applicable]

7.1.3 Warranties and Indemnities: [Include any specific warranties and indemnities from the Service Provider in respect of the Services and the Deliverables]

7.1.4 Insurance: [Include any additional insurance requirements]

- 7.1.5 Intellectual Property Rights: [Consider the ownership of Intellectual Property Rights in the Deliverables and the background Intellectual Property Rights of each Party that will be used in the provision of the Services and include any necessary variations to the Intellectual Property provisions in the Agreement]
- 7.1.6 Data Protection: [Consider the personal data that will be processed in connection with the Services and include any necessary variations to the data protection provisions in the Agreement]
- 7.1.7 Exit assistance: [Set out details of the exit assistance which the Service Provider will provide to the British Film Commission]]

8. Breach and Termination of the Call-Off Contract

- 8.1 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Call-Off Contract, the Agreement or otherwise), the British Film Commission may terminate this Call-Off Contract immediately upon giving written notice to the Service Provider if:
 - 8.1.1 the Service Provider has committed any material or persistent breach of this Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 5 (five) Business Days (or such other timeframe as specified in writing by the British Film Commission) from the date of written notice to the Service Provider giving details of the breach and requiring it to be remedied;
 - 8.1.2 the Service Provider is subject to an Insolvency Event;
 - 8.1.3 in the event that there is a change of ownership referred to in Clause 12.3 of the Agreement or the Service Provider is in breach of Clause 12.3 of the Agreement;
 - 8.1.4 the British Film Commission is not satisfied on the issue of any conflict of interest in accordance with Clause 13 of the Agreement;
 - 8.1.5 the Service Provider or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
 - 8.1.6 the Service Provider commits any of the money laundering related offences listed in the Public Contracts Regulations 2015.
- 8.2 Without prejudice to any of the British Film Commission's rights, powers or remedies (whether under this Call-Off Contract, the Agreement or otherwise), the British Film Commission may terminate this Call-Off Contract at any time without cause subject to giving the Service Provider written notice of the period specified in Schedule 1 of the Agreement (unless disapplied by notice in Schedule 1 of the Agreement).
- 8.3 To the extent that the British Film Commission has a right to terminate this Call-Off Contract then, as an alternative to termination, the British Film Commission may by giving notice to the Service Provider require the Service Provider to provide part only of the Services with effect from the date specified in the British Film Commission's notice (**Change Date**) whereupon the provision of the remainder of the Services will cease and the definition of "the Services" shall be construed accordingly. The Charges applicable with effect from the Change Date will be adjusted proportionately or if in the British Film Commission's opinion a proportionate adjustment would not be reasonable in such manner as the British Film Commission may determine.

8.4 The termination of this Call-Off Contract pursuant to this Clause 8 or the expiry of this Call-Off Contract shall not affect the Agreement or any other Call-Off Contracts made pursuant to the Agreement.

8.5 Any provision of this Call-Off Contract or the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Call-Off Contract shall remain in full force and effect.

9. **Governing Law**

9.1 This Call-Off Contract, the Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

9.2 Without prejudice to Clause 28 of the Agreement, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) which may arise out of or in connection with this Call-Off Contract and/or the Agreement or their subject matter or formation, provided that the British Film Commission has the right in its absolute discretion to enforce a judgment and/or to take proceedings in any other jurisdiction in which the Service Provider is incorporated or in which any assets of the Service Provider may be situated. The Parties agree irrevocably to submit to that jurisdiction.

THE AGREEMENT has been signed for and on behalf of the Parties the day and year written above.

SIGNED by [NAME AND POSITION])
for and on behalf of)
THE BRITISH FILM COMMISSION)
by [NAME OF SIGNATORY]

SIGNED by [NAME AND POSITION])
for and on behalf of)
THE SERVICE PROVIDER)
by [NAME OF SIGNATORY]

Attachment 1

[To be completed by the British Film Commission]

I. Services and Deliverables to be provided

II. Specification

III. Timetable

Commencement date: [complete only if different from the date of the Call-Off Contract, otherwise delete]

Call-Off Term:

Attach Project Plan (including Milestones and Required Dates)

IV. Expenses

Expenses (if any) that the Service Provider may claim:

Attachment 2

[To be completed by the Service Provider]

I. Charges

[Charges to be specified on a time and materials or fixed fee basis. If time and materials fee, also specify maximum price for provision of the Services.]

II. Invoicing Procedure

III. Key Personnel

The Service Provider's Key Personnel (include grades and areas of responsibility):

III. Proposed sub-contractors (if any)

[Please note that any proposed sub-contractors are subject the prior written consent of the British Film Commission which may be refused or granted subject to such conditions as the British Film Commission sees fit in accordance with Clause 12.1 of the Agreement]

Name and contact details of proposed sub-contractor(s) and details of any proposed sub-contracted work:

Schedule 6
Processing, Personal Data and Data Subjects

[To be completed by the Parties]

1.ROLE OF THE PARTIES

- 1.1 Where the Service Provider acts as a processor
- 1.2 Where the Provider acts as a controller

2.PARTICULARS OF THE PROCESSING

- 2.1 Scope
- 2.2 Nature
- 2.3 Purpose of processing
- 2.4 Duration of the processing
- 2.5 Types of personal data
- 2.6 Categories of data subject

3.technical AND ORGANISATIONAL MEASURES

4.SERVICE PROVIDER PRIVACY POLICY