



## Videography Service Agreement

This Agreement is made between [ ] of [ ] ("the Client") and **Total Video Productions Ltd**, a privately owned company based in England whose office is at 21 Lynwood View, (The Studios), Leeds, West Yorkshire, LS12 4AB ("the Producer")

The Client agrees to engage the services of the Producer for the purpose of filming, producing and editing the film and associated sound recording as detailed on the attached Booking Form ("the Programme") and the Producer agrees to film, produce and edit the Programme subject to the terms and conditions of this Agreement.

### 1. DEFINITIONS

- 1.1. "Acceptance" shall be any written acknowledgement or acceptance of the Programme by the Client to be provided by the Client at the relevant time in accordance with the Production Schedule;
- 1.2. "Artistes" shall mean any person required to appear in the Programme as a performer in any capacity;
- 1.3. "Budget" shall be the total cost of making the Programme which includes all direct or indirect costs and includes all costs associated with locations facilities and other items necessary for the development pre-production production or post-production of the Programme as detailed on the Booking Form
- 1.4. "Client Materials" shall mean those items and materials in any and all media and formats which are to be supplied by the Client or any third party on behalf of the Client to the Producer by the relevant date set out on the Booking Form and/or as agreed from time to time between the Client and the Producer;
- 1.5. "Institute of Videography" shall mean Institute of Videography a company limited by guarantee (#02623169);
- 1.6. "Media Rights" shall mean the right which (save for the retention of rights by the Producer set out at clause 6.5) shall be exclusive to the Client from the date of signature of the Acceptance by the Client and shall last for the entire duration of such rights to communicate to the public and/or to permit the communication to the public (in each case as defined at Section 20 of the Copyright, Designs and Patents Act 1988) of the Programme by any method, means or medium throughout the world and to play and/or to show the Programme in public in any part of the world;
- 1.7. "Production Schedule" shall be that list of dates times and locations for the making of the Programme including pre-production production post-production and delivery phases set out on the Booking Form;
- 1.8. "Programme Package" shall mean that number and format of copies set out on the Booking Form;
- 1.9. "Third Party Works" shall be any works not being Client Materials the rights (including but not limited to copyright and any other intellectual property rights) in which belong to third parties and which are to be licensed for the purposes of the Programme as specified on the Booking Form;

### 2. OBLIGATIONS OF THE PRODUCER

- 2.1. The Producer undertakes that it shall film, produce and edit the Programme in accordance with the Budget and Production Schedule subject to payment by the Client in accordance with the terms of this Agreement.
- 2.2. If there is any failure or delay by the Client and/or by any person other than the Producer to provide any Client Materials in their entirety by the due date set out in the Production Schedule or otherwise as agreed between the Client and the Producer the times set out in the Production Schedule for any step or stage of progress to be reached by the Producer shall be extended by the period of such failure or delay.
- 2.3. The Producer shall deliver the Programme Package to the Client in such way as may be agreed between the parties forthwith upon payment of all sums owing by the Client to the Producer in accordance with the terms of this Agreement.
- 2.4. The Producer confirms that it is or shall be the sole owner of or controls or will control all copyright and any other rights in the Programme which are made the subject of the grant of rights under this Agreement except that it shall have no rights in and in respect of the Artistes or of any performance by the Artistes and/or the Client Materials and/or any Third Party Works save for licensing and clearance of the same pursuant to clause 2.5.
- 2.5. In respect of the Programme the Producer undertakes that all copyright and any other rights (except for any such rights in and in relation to the Artistes the performance of the Artistes and the Client Materials and/or any element or component thereof) including consents required under the Copyright Designs and Patents Act 1988 shall be cleared and paid for so as to permit use by the Client of the Media Rights in the Programme for promotional purposes provided that the Producer shall only be responsible for such clearance payments as are set out in the Budget.
- 2.6. In the event of the Budget being exceeded by up to 10% (ten percent) the Producer agrees to inform the Client in advance of such increase being incurred and provide the Client with a statement of costs incurred to date and details of the additional costs but notwithstanding the Client shall be obliged to pay to the Producer the relevant excess in accordance with clause 3.1 and 3.2.



2.7. In the event of the Budget being exceeded by more than 10% (ten percent) the Producer agrees that the prior approval in writing by the Client shall be required in order to authorise any increase in the amount payable to the Producer.

2.8. By entering into this Agreement the Client approves the details set out on the Booking Form. If the Client subsequently wishes changes to be made then the Client shall make such requests to the Producer in writing. The Producer will consider such requests and, where practicable, include them as agreed variations. The Client accepts that late changes may not be possible without disruption to the Production Schedule which may result in additional costs. Where additional costs are likely to be incurred the Producer will inform the Client in writing and the Client must accept such additional costs in writing before the variation is effective.

2.9. The Producer will produce the Programme in accordance with the standards reasonably to be expected of a professional programme maker. It is agreed that the Producer shall be granted by the Client reasonable artistic licence regarding scenes, poses, locations etc. as applicable. Due to the vagaries of the weather and the willingness of subjects it may not be possible to capture all the images requested by the Client.

2.10. Whilst the Producer shall consult with and advise the Client in respect of the technical specification of the Programme the Client will be responsible for final determination of such matters. The Client should satisfy itself as to the final uses of the Programme or materials deriving from it before signing this Agreement.

2.11. Unless stated otherwise the Programme will be mastered to the UK PAL specification. The Client acknowledges that there are some anomalies associated with the duplication of DVD discs which render some un-playable in certain players. To avoid unnecessary complaints/returns the Client is recommended to have DVD discs replicated, at its cost, using a professional glass-mastering process.

2.12. When requested (and only after written assurance that any copyright permission required has been obtained) the Producer will duplicate or format transfer from the Client's own masters all Client Materials as provided by the Client in order to create one copy of the same. Unless requested and agreed by the Producer in writing errors or omissions in such material will not be checked for. The Client is fully responsible for checking such material before duplication or transfer.

### 3. OBLIGATIONS OF THE CLIENT

3.1. In consideration of the production of the Programme and of the rights granted under this Agreement the Client shall pay to the Producer the Budget in accordance with the Budget payment dates.

3.2. In the event of the Budget being exceeded by up to 10% (ten percent) the Client agrees to pay such additional costs provided that the Producer informs the Client in advance and provides upon request to the Client a statement of costs incurred to date and details of the additional costs.

3.3. In the event of the Budget being exceeded by more than 10% (ten percent) the Client agrees to pay such additional costs provided that it has provided prior written approval of the expenditure to the Producer.

3.4. The Client shall issue an Acceptance in respect of the Programme on the date provided for the same in the Production Schedule save only where the Programme is: i. not substantially in accordance with the Programme Outline (save where the provisions of clause 5.1 apply); or

ii. not of such quality that it is fit to be used for the purpose of exploitation of the Media Rights in respect of the same; or

iii. not produced with reasonable care and skill.

3.5. The Client confirms that it shall provide and/or procure the provision to the Producer of the Client Materials at its sole risk and cost for the purpose of the production of the Programme and shall ensure that any and all of the Client Materials are fully cleared for their use within the Programme and all costs and expenses in connection with such clearance paid by the Client and that it shall forthwith upon request provide to the Producer at the expense of the Client valid documentation authorising the Producer to make use of the Client Materials as required in order to discharge its duties and enjoy its rights pursuant to this Agreement.

3.6. The Client confirms that it shall be responsible for any payments due in respect of the performing and/or synchronisation rights in any music forming part of the Third Party Materials and the mechanical reproduction of the Programme which are not included in the Budget and agreed by the Producer to be payable by it.

3.7. The Client hereby agrees fully and effectively to indemnify and keep indemnified the Producer against any and all claims loss damage liability or prejudice of whatever nature and howsoever arising to the Producer and/or otherwise claimed against the Producer and/or any of its officers directors employees and contractors arising howsoever out of or in connection with any breach by the Client of any of its obligations set out in this clause 3.

### 4. RETENTION OF MATERIALS

4.1. The parties agree that the Producer shall be entitled to and shall keep the Programme and any and all audio-visual materials shot or produced by it pursuant to this Agreement in relation to the Programme for a period of twelve (12) months from the date on which the Acceptance is issued in such material form or format as the



Producer in its absolute discretion sees fit. Forthwith upon the expiry of the said twelve (12) month period the Producer shall be entitled to destroy the said materials or to retain the same at its absolute discretion. If the Acceptance is not issued by the Client the Producer shall be under no obligation to retain any such materials and may (but shall not be obliged to) destroy them forthwith without any liability of any nature to the Client in respect of the same.

## 5. ARTISTIC ISSUES

5.1. The Client and the Producer agree that the Producer will have reasonable artistic licence regarding scenes, locations edits and other matters of a subjective or artistic nature in relation to the Programme. Provided that the Programme fulfils the requirements set out on the Booking Form the judgement of the Producer in any such matters shall be a matter absolutely for the Producer and subject only to the express provisions of clause 3.4 the Client shall not be entitled to withhold issuing the Acceptance as a result of any such matters.

## 6. GRANT OF RIGHTS

6.1. In consideration of the payment by the Client of any and all sums set out in the Budget and subject to clauses 6.2 and 6.5 the Producer hereby grants (by way of present licence of future copyright pursuant to s91 of the Copyright, Designs and Patents Act 1988 where applicable) to the Client the Media Rights in the Programme.

6.2. For the avoidance of doubt the licence of the Media Rights takes effect from issue of the Acceptance in accordance with this Agreement and if for any reason the Acceptance is not issued by the Client the Client shall have no right to use or to perform any of the acts restricted by copyright in or in relation to the Programme or any part thereof in any circumstances at any time.

6.3. The Producer undertakes that it shall not grant or assign to any person save to the Client any rights to perform any of the acts restricted by the copyright in and in relation to the Programme and/or any part thereof save with the express consent of the Client.

6.4. If the Client wishes to purchase at any time the right to perform any of the acts restricted by the copyright in and in connection with the Programme and/or any part thereof not included within the Media Rights the Producer agrees that it will enter in good faith into negotiations with the Client in respect of the same always provided that nothing in this clause shall have the effect of obliging either the Producer or the Client to enter into any arrangement in respect of the same and the parties agree that the Producer shall be entitled to negotiate further fees in relation to the same.

6.5. The Client acknowledges that the Producer shall have the right to perform any of the acts restricted by copyright in and in relation to the Programme and/or any part of the same and/or any materials produced by the Producer pursuant to the terms of this Agreement for the reasonable advertising marketing promotional and development purposes of the Producer.

## 7. CONFIDENTIALITY

7.1. The Producer and the Client shall not disclose to any third party any confidential business information or future plans of the other party at any time acquired during the existence of this Agreement and no reference is to be made to the terms of this Agreement by either party in any advertising publicity or promotional material without the prior written consent of the other party.

## 8. LIMITATION OF LIABILITY

8.1. This clause and clauses 8.2 to 8.5 inclusive set out the Producer's entire liability (including any liability for the acts and omissions of its employee's agents and sub-contractors) to the Client in respect of:

- i. any breach (whether or not the same constitutes fundamental breach) of its contractual obligations arising under this agreement; and
- ii. any representation or tortious act or omission including without limitation for negligence arising under or in connection with this Agreement.

8.2. Any act or omission on the part of the Producer or its employees agents or sub-contractors falling within clause 8.1 above shall for the purpose of this clause 8 be known as an "Event of Producer's Default".

8.3. The Producer's liability to the Client for death or injury resulting from its own negligence or that of its employee's agents or sub-contractors shall not be limited nor shall any liability arising in respect of fraudulent misrepresentation.

8.4. Subject to the provisions of clause 8.3 the Producer's entire aggregate liability howsoever arising and of whatever nature in respect of any and all Events of Producer's Default shall be limited to the amount of the Budget payable by the Client pursuant to the terms of this Agreement.

8.5. The Producer shall not (to the extent permitted by law) be liable to the Client in respect of any Event of Producer's Default for loss of profits goodwill or any type of special indirect or consequential loss or damage



(including loss or damage suffered by the Client as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the Producer had been advised of the possibility of the Client incurring the same.

## 9. TERMINATION

9.1. In addition to any other rights and remedies at law the Producer or the Client may by giving written notice to the other party terminate this Agreement on the grounds that:

9.2. the other party has failed to account or make payments as required under this Agreement or has committed a serious material or repeated breach of its obligations and has in either case not rectified the position within seven (7) days of receiving notice of such breach from the other requiring the same to be remedied;

9.3. the other party has entered into administration receivership liquidation bankruptcy or has entered into any voluntary arrangement with its creditors has ceased to carry on business for any reason or has undergone any other event of insolvency or is unable to pay its debts as and when the same fall due.

## 10. CANCELLATION BY CLIENT

10.1. The Client may in addition to any other rights it may have under clause 9 hereof cancel this contract, in whole or in part, at any time by giving written notice to the Producer but in doing so shall forfeit any monies paid and shall remain liable for payment of any sums otherwise due to be paid to the Producer notwithstanding such cancellation subject to the terms of this clause 10.

10.2. Should any cancellation notice from the Client be received by the Producer less than two (2) weeks prior to the initial date of filming set out in the Production Schedule, or otherwise agreed between the parties, the Client shall in addition pay a sum equal to 40% (forty percent) of the Budget in respect of the cancelled item or items. The said sum shall be payable as compensation as an agreed estimate of the loss the Producer would suffer.

10.3. In the event of any cancellation by the Client, in addition to the above, the Client will be liable for any monies due to third parties resulting from cancellation of any event involving the hire of locations, equipment, Artistes, personnel, talent or any other goods or services booked by agreement on behalf of the Client by the Producer or the Producer's agents.

## 11. HEALTH & SAFETY AT WORK ACT and RISK ASSESSMENT

11.1. The Client shall provide copies of any local safety rules and procedures, detail any special hazards and provide any necessary safety training in precautions to be taken in order for the Producer to make a risk assessment in respect of any locations requested to be used by the Client in relation to the Programme.

## 12. SUB CONTRACT

12.1. The Producer shall be entitled to subcontract any or all of the production of the Programme in order to secure the appropriate expertise.

## 13. DISPUTES

13.1. In the event of any dispute between the parties arising from and/or in connection with this Agreement the parties will meet in good faith with a view to resolving any such dispute without recourse to legal proceedings.

13.2. If the dispute cannot be resolved as a result of such meeting the Institute of Videography's Arbitration Officer will be requested by the parties to act as a neutral advisor (or to appoint another officer of the Institute of Videography to so act) with a view to achieving a fair and amicable settlement between the parties.

13.3. The Chairman of the Institute of Videography (or his nominee) shall be invited by both parties to provide a non-binding but informative opinion on the dispute in question in writing. As between the parties, any fees payable to the "Institute of Videography" shall be met by the parties in equal shares regardless of the nature of the opinion provided.

13.4. If the parties fail to settle the dispute amicably within thirty (30) days of the Institute of Videography providing its opinion, the dispute may be referred by either party to the Courts of England and Wales which shall have exclusive jurisdiction in relation to any such dispute.

## 14. VARIATIONS

14.1. No variation, change, alteration or modification will be made to this Agreement without the written agreement of both parties.

## 15. SEVERABILITY

15.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.



**16. COMPLAINTS/SHORTFALLS**

16.1. The Producer shall not be liable for any shortfall (actual or alleged) in delivery of any numbers of copies of the Programme unless written notice is given to the Producer within five (5) Working Days of delivery.

16.2. The Client shall inspect any and all copies of the Programme on delivery and acceptance by the Client shall be deemed to have taken place unless any complaint is raised with the Producer within five (5) Working Days of delivery.

**17. APPLICATION OF THESE CONDITIONS**

17.1. These conditions shall govern the Agreement to the exclusion of any terms and conditions which the Client purports to apply under any order for services from the Producer and the Client waives any right which it might have to rely on such terms and conditions.

**18. FORCE MAJEURE**

18.1. If either party is unable to perform any of its obligations under this Agreement due to any circumstances arising as a result of an event which is out of the reasonable control of either party (including, without limitation, wars, governmental controls or restrictions, natural disaster, riot, civil commotion, act of terrorism or act of God) that party shall notify the other party in writing of the reason for the delay. In this case, the performance of that party's obligations under this Agreement shall be suspended whilst the circumstances of the force majeure exist.

18.2. All costs arising from the delay shall be borne by the party incurring those costs. If the delay continues for more than fourteen (14) days then either party may terminate the Agreement by giving notice in writing.

**19. THIRD PARTY RIGHTS**

19.1. A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

**20. ENTIRE AGREEMENT**

20.1. This Agreement, including for the avoidance of doubt the Booking Form, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Agreement.

**21. APPLICABLE LAW**

21.1. This Agreement shall be governed by, and construed in accordance with, English law. The Courts of England and Wales shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this Agreement and any matter arising from it.

We the undersigned accept the terms of engagement as set out in this Agreement

Signed ..... for and on behalf of the Client.

Dated: .....

Signed ..... for and on behalf of the Producer.

Dated: .....

*Terms and Conditions last updated on 1<sup>st</sup> September 2012.*