

**THIS AGREEMENT** is made on XX day of xxxx of 2010.

**BETWEEN**

1. **The Government of the Hong Kong Special Administrative Region** of the People's Republic of China, as represented by the Director of Broadcasting of Radio Television Hong Kong with address at 30 Broadcast Drive, Kowloon, Hong Kong ("**RTHK**"); and
2. **XXX**, a company incorporated under the laws of Hong Kong whose registered office is XXX, with business registration number XXXX ("**Company**").

**WHEREAS**

RTHK wishes to engage the Company to produce a Programme in accordance with the terms and conditions in this Agreement and Schedules appended hereto.

**NOW IT IS HEREBY AGREED as follows:**

1. **Definitions and Interpretation**

- 1.1 In this Agreement, the following words and expressions shall have the following meanings, unless the context otherwise requires:

"Audited Report" means the report containing the figures of the final production costs of the Programme and is audited by a professional accountant holding practicing certificate or a corporate practice within the meaning of the Professional Accountants Ordinance (Cap. 50).

"Characters" means the cartoon characters appearing in the Programme.

"Commissioning Editor" means the person specified in paragraph 10 of Schedule I or any person nominated from time to time by RTHK as the Commissioning Editor.

"Cable Programme Service" means the provision of a television programme service that involves the transmission by cable or optic fibre (whether alone or in combination with a multipoint microwave distribution system or satellite mass antenna television) of television programmes that are made available to two or more premises simultaneously or the general public on payment of a subscription.

"Delivery Date" means any one of the dates as specified in paragraph 6 of Schedule I.

"Delivery Materials" means the materials specified in paragraph 8 of Schedule I.

"Fine Cut" means the assemblage of the footages of the Programme in consultation with the Commissioning Editor and with changes requested addressed and locked off to an agreed duration between the Company and Commissioning Editor.

“Free-to-Air Television Service” means the provision of a television programme service that involves the transmission by terrestrial radio communications of television programmes that are readily accessible to, and made available free of charge to the general public.

“Guidelines” means the Radio Television Hong Kong Producers’ Guidelines dated June 2003 and any update thereafter and is posted on <http://www.rthk.org.hk>.

“Home Entertainment Service” means the exploitation, distribution or sub-distribution of television programmes in the form of video compact disc (VCD) or digital video disc (DVD) or any other form of videogram which may be developed in the future.

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights of whatever nature and wheresoever arising, whether now known or hereafter created, and in each case whether registered or unregistered and including applications for the grant of any such rights.

“Internet” means an interconnected system of networks that connects computers around the world via the transmission control protocol / internet protocol.

“Programme” means a single television programme or a series of television programmes within the series specified in paragraph 1 of Schedule I to be produced by the Company in accordance with this Agreement, and the subtitled version thereof.

“Production Budget” means a budget detailing the expenditure items for the production of the Programme prepared by the Company and approved by RTHK and attached hereto as Schedule II.

“Production Schedule” means a schedule of events indicating the stages of production of the Programme specified in paragraph 6 of Schedule I.

“Production Team” means those persons specified in paragraph 9 of Schedule I, being the employees, agents or sub-contractors of the Company designated in different positions to produce and complete the Programme in accordance with this Agreement.

“Programme Service” means the provision of a television programme service that includes television programmes for transmission by terrestrial telecommunications on a point-to-point basis in response to a specific request, is available to two or more premises or to the general public and is made available on payment of a subscription.

“Rough Cut” means the assemblage of the footages of the Programme which accords with the Treatment as approved by the Commissioning Editor, which shall present clearly the structure and content of the Programme as the subject for Fine Cut.

“Satellite Television Service” means the provision of a television programme service that involves the transmission by satellite of television programmes that are made directly available to two or more premises simultaneously or the general public free of charge or on payment of a subscription.

“Sound Broadcasting Service” means the transmission of sound (otherwise than as part of a television broadcast) for general reception by means of radio waves.

“sub-contractors” includes sub-contractors at all tiers of sub-contracting;

“Sum” means the sum of money payable by RTHK to the Company as specified in paragraph 2 of Schedule I and in accordance to Clause 3 of this Agreement.

“Territory” means the country, territory or area specified in paragraph 7 of Schedule I.

“Third Party” (in upper case) means any person other than the Company or any of its employees, subcontractors or agents engaged for the purposes of or in connection with this Agreement. The term “third party” (in lower case) is a generic term and includes any person other than the Company.

“Treatment” means a document indicating the structure and content of the Programme that has been presented to RTHK by the Company before the signing of this Agreement as the same may from time to time be revised with the approval of RTHK pursuant to Clause 6.2(b).

- 1.2 In this Agreement, unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing a gender include any gender; unless stated otherwise, references to Clauses and Schedules are to clauses and schedules of this Agreement. References to any statute or ordinance shall be deemed to be references to that statute or ordinance as from time to time amended, re-enacted or substituted and includes all subsidiary legislation thereunder. Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

## 2. Engagement

- 2.1 RTHK engages the Company and the Company accepts the engagement regarding the production of the Programme in accordance with this Agreement.
- 2.2 The engagement shall commence on the date of this Agreement and shall continue until the earlier of:
- (a) completion of the Programme, delivery by the Company to RTHK of all the Delivery Materials, the submission of the Audited Report, and completion of all other obligations and duties under this Agreement, in all cases in accordance with the requirements of this Agreement and to the satisfaction of RTHK; or
  - (b) termination of this Agreement pursuant to the provisions of this Agreement.

## 3. Payment

- 3.1 Subject to the terms and conditions of this Agreement and the observance and performance by the Company of its duties and obligations under this Agreement, subject to Clause 3.2, RTHK shall pay the Company the Sum in accordance to the following schedule:
- (a) 20% of the Sum on signing of this Agreement;

- (b) 20% of the Sum on receipt and approval by RTHK an written confirmation from the Company regarding the treatment, storyboard, software to be used and production schedule on or before **Day, Month, Year**;
- (c) 20% of the Sum on approval by RTHK of the Rough Cut of the Programme on or before **Day, Month Year**.
- (d) 20% of the Sum on approval by RTHK of the Fine Cut of the Programme on or before **Day Month Year**; and
- (e) 10% of the Sum upon delivery of the Programme to the satisfaction of RTHK in accordance with Clause 11 and the Delivery Materials.
- (f) 10% of the Sum upon submission of an Audited Report to the satisfaction of RTHK on or before the Submission Deadline specified in paragraph 6 of Schedule I and completion of all the services and tasks under this Agreement to RTHK's satisfaction and that the Company has complied with all contractual requirements. The Company fully understands and agrees that all time stipulations set out in this Agreement are of essence of this Agreement including the Submission Deadline. RTHK shall not make any payment under this sub-clause or be responsible for any cost, money, disbursement or expense (if any) incurred by the Company for an Audited Report **not** submitted to the satisfaction of RTHK on or before the Submission Deadline as and for liquidated damages and not as a penalty for the losses incurred by RTHK arising from the Company's delay or failure to submit the Audited Report. The Company agrees to waive all its rights to claim for any payment, money, cost, disbursement or expense for an Audited Report **not** submitted to the satisfaction of RTHK on or before the Submission Deadline. RTHK expressly reserves all its rights to claim for any loss or damage suffered by RTHK as a result of or in connection with the late submission or non-submission of an Audited Report by the Company.

- 3.2 Notwithstanding anything in this Agreement to the contrary, each portion of the Sum specified in Clause 3.1 will only be paid within 30 days after RTHK is in receipt of an invoice for such portion which can only be issued after that portion becomes payable under Clause 3.1.
- 3.3 Without prejudice to any right or remedy to which RTHK may otherwise be entitled, RTHK shall not be obliged to make the payment referred above if any material defects in the Programme which have been identified to the Company in writing, to be corrected in accordance with Clause 4 below, remain uncorrected to the reasonable satisfaction of RTHK.
- 3.4 In the event that during the course of the production of the Programme, substantial and material changes have taken place which cause certain expenditure items in the Production Budget to be unnecessary, RTHK shall have the right to re-evaluate the Production Budget and reduce the Sum payable to the Company accordingly.
- 3.5 The Production Budget as attached in Schedule II is approved and accepted by RTHK, the fees budgeted for Executive Producer(s), Producer(s) and Director(s) or any positions in the "A" part of the Production Budget shall not be increased at any time even when the final production costs indicate an under-budget situation.

- 3.6 In the event that the Audited Report indicates that the total audited expenditure on the production of the Programme is less than the Sum, the Sum shall be deemed to have been reduced to an amount equal the total expenditure amount as audited in the Audited Report. If RTHK has already made an overpayment pursuant to the payment schedule under Clause 3.1, the Company shall immediately refund to RTHK the overpaid amount. Any outstanding installment of the Sum specified in Clause 3.1(f) shall either no longer be payable or be reduced according to the difference between the original amount of the Sum and revised amount of the Sum pursuant to this Clause.
- 3.7 The Sum constitutes the sole remuneration payable to the Company by RTHK for performing its obligations and duties under this Agreement. No other money or compensation whatsoever shall be payable by RTHK to the Company in respect thereof (whether by way of upfront payment or reimbursement). All costs and expenses incurred by the Company whether or not purportedly in discharge of its obligations and duties under this Agreement shall be deemed as costs and expenses incurred for performing such obligations and duties, and be compensated for in the form of the Sum only. The Company shall perform all of its obligations and duties at its own cost, and will receive no reimbursement or payment in advance from the Company, apart from in the form of the Sum.
- 3.8 In line with the Hong Kong government policy of promoting and rewarding excellence in creativity for independent producers and in the event that this Programme is awarded any prize money, testimonials or trophies at any film, television or animation festivals or competitions and where the Company act in accordance to Clause 9(k) of this Agreement, upon RTHK's receipt of the aforementioned items, RTHK shall provide to the Company an incentive of an amount of Hong Kong dollars equivalent to the prize money received for the Programme.

4. **Errors and Omissions**

Without prejudice and in addition to Clause 11 and any other claim, cause of action or remedy whatsoever which RTHK may otherwise have against the Company, in the event that the Programme or any of the Delivery Materials contains any errors or omissions or any part which RTHK considers is not suitable for broadcast, the Company shall correct the same forthwith upon being requested in writing by RTHK to do so or upon becoming aware of the same and such correction shall be effected without charge to RTHK and to the reasonable satisfaction of RTHK.

5. **Programme and the Conduct of Work**

The Company hereby agrees to:

- (a) complete the Programme in accordance to the Production Schedule and in a professional manner, carry out its duties and obligations hereunder with all due and reasonable diligence and perform to such standard generally observed in the industry for similar services;
- (b) ensure that any person employed or engaged or appointed by it shall use all proper and professional skill, care and diligence in the performance of its duties and obligations under this Agreement;

- (c) ensure that the Programme shall comply with the editorial and ethical standards of the Territory; and with the laws and television programme and technical standards stipulated by the relevant authorities of the Territory;
- (d) comply at all times with the Guidelines;
- (e) ensure that the Programme is based on the Treatment, made in accordance with the Production Schedule, shot in the format specified in paragraph 3 of Schedule I and completed with Chinese subtitles, opening title sequence and programme series title;
- (f) ensure that the Programme is delivered in the format specified in paragraph 4 and 5 of Schedule I; and
- (g) engage, maintain and use the Production Team or such replacements of equivalent status and qualification subject to prior written approval by RTHK, throughout the period of validity of this Agreement for the production of the Programme.

## 6. **Consultation**

- 6.1 RTHK as represented by the Commissioning Editor shall liaise with the Company during the production of the Programme. The Commissioning Editor, save to the extent inconsistent with or going beyond the Company's duties and obligations under this Agreement, may give directions and guidance to the Company in relation to the production of the Programme.
- 6.2 The Company shall consult the Commissioning Editor at all stages of the production of the Programme, including without limitation:
  - (a) the choice of stories prior to filming;
  - (b) finalization of the Treatment and Production Schedule;
  - (c) commencement of principal photography;
  - (d) completion of Rough Cut;
  - (e) prior to the locking-off of the Programme to the agreed duration;
  - (f) completion of Fine Cut;
  - (g) preparation of credits and graphics; and
  - (h) completion of audio mix.
- 6.3 Upon request by RTHK, the Company shall provide access to RTHK or its authorized representatives for the monitoring of all rushes, Rough Cut, Fine Cut and sound mix for the Programme.
- 6.4 In the event of a dispute between the Company and Commissioning Editor, the professional opinion of the Commissioning Editor shall rule and the Company has the right to

disassociate the Programme by not presenting itself in the credits of the Programme.

## **7. Intellectual Property Rights and Ownership**

- 7.1 Save as provided in Clauses 7.2 and 7.3, and save for the Characters, the ownership of, and all Intellectual Property Rights subsisting in, the Programme (finished or otherwise), the Delivery Materials (finished or otherwise) and all the other underlying works created, generated or acquired by the Company, its employees, contractors, subcontractors or agents (including the Production Team) in the course of the performance of this Agreement, including without limitation, any scripts, photographs, other literary or dramatic works, music, plans, software, source code and object code of all programming, data, models (computer models or otherwise), materials and drafts of all and any of the aforementioned items (save as excepted) (collectively, “Acquired Property”), shall be vested in and belong to RTHK upon creation or, to the extent they already exist as at the date of this Agreement, are hereby assigned in favour of RTHK, in each case free and clear of all rights, interests, encumbrances of whatsoever nature whether belonging to the Company or any other person.
- 7.2 On or before the Delivery Date or upon the early termination of this Agreement for whatever reason whichever is earlier, the Company shall provide RTHK with a list of underlying works (a) which exist as at the date of this Agreement, and (b) the Intellectual Property Rights in which belong to Third Parties as at the date of this Agreement. The Company shall specify in the list such additional details as RTHK may require. Subject to verification by RTHK of the items specified in the list, the provisions of Clause 7.1 shall not apply to the underlying works specified in the list provided by the Company under this Clause 7.2.
- 7.3 In relation to each item of underlying work as specified in the list as approved by RTHK under Clause 7.2, the Company shall procure the relevant Third Party which owns the Intellectual Property Rights in such underlying work to grant in favour RTHK, and each of its authorized users, successors and assigns, of a non-exclusive, sub-licensable, transferable, royalty-free, world-wide and irrevocable licence to exercise all and any of the rights specified in Clause 8 in respect of such underlying work whether on its own or as incorporated in the Programme or other Acquired Property for the full period of protection of the Intellectual Property Rights subsisting in such underlying work under the laws of all and any applicable jurisdiction of the Territory.
- 7.4 The Company hereby grants to RTHK and each of its authorized users, successors and assigns, a non-exclusive, sub-licensable, transferable, royalty-free, worldwide and irrevocable licence to exercise all and of the rights specified in Clause 8 in respect of the Characters for the full period of protection of the Intellectual Property Rights subsisting in the Characters under the laws of all and any applicable jurisdiction of the Territory.
- 7.5 All underlying work licensed to RTHK pursuant to Clause 7.3 and all Characters licensed to the RTHK under Clause 7.4 shall be collectively referred to as “Licensed Property”.
- 7.6 The Company hereby waives and will procure its employees, sub-contractors and agents (including members of the Production Team) to waive all moral rights (whether past, present or future) which any of them may have in the Acquired Property and/or any respective part thereof. The waiver shall operate in favour of RTHK, its assigns, authorized users and successors in title and shall take effect from the date of this Agreement.

A pro forma waiver is attached hereto as Schedule III and shall be signed by each member of the Production Team as listed in paragraph 9 of Schedule I and by other relevant employees, sub-contractors and agents of the Company and such replacements engaged in the production of the Programme.

- 7.7 The Company shall procure and before the fixation and / or recording of any performance or otherwise to be incorporated into or contained in the Programme and/or the Delivery Materials:
- (a) the grant by the performer of that performance to RTHK, its authorised users, assigns and successors in title a sub-licensable, non-exclusive, irrevocable, assignable, transferable and applicable throughout the Territory the right and licence to exercise all his performers' economic rights in relation to such performance;
  - (b) the consent of the performer and all other persons which may be necessary for each of RTHK and the Company to make fixations and/or recording of such performance; and
  - (c) the consent of the performer and clearance from that performer and all other persons as may be necessary for such fixation and/or recording of the performance and for performing any acts restricted by sections 203 to 205 of the Copyright Ordinance by RTHK and/or any of its successors in title, authorised users, and assignees (including the Company) in relation to such fixation or recording, or copies thereof, and at no additional cost to any of them.

The afore-mentioned grant, consent and clearance shall continue to subsist so long as the performer's economic rights and the performer's non-economic rights subsist in the relevant performance.

The terms "fixation", "performers", "performance", "performers' economic rights", "performers' non-economic rights" and other related terms in this Agreement including this Clause shall have the same meanings as those given to them in Part III (Rights in Performances) of the Copyright Ordinance.

- 7.8 For the purposes of Clauses 7.1, 7.3, 7.4, 7.6 and 7.7, the Company undertakes to execute or procure the execution of all such deeds and documents and take all such steps as RTHK may from time to time require for the purposes of assuring the performance of its duties and obligations hereunder and of securing the rights assigned or intended to be assigned under this Agreement.
- 7.9 Notwithstanding the exclusion of the Licensed Property from the vesting and assignment under Clause 7.1, the ownership of, and all Intellectual Property Rights which subsist in, all and any changes, modifications, adaptations, improvements and developments whether or not independent of this Agreement made to the Licensed Property or any part thereof by or for or on behalf of RTHK, or the Company in the course of performing this Agreement shall vest in RTHK absolutely upon creation.

## 8. **Rights of RTHK**

The manners in which RTHK may exploit the Programme and/or the Delivery Materials

and/or Characters and/or other Acquired Property and/or other Licensed Property (whether as the owner of the Intellectual Property Rights therein by virtue of Clause 7.1 or as a licensee by virtue of the licence specified in Clause 7.3 or 7.4, whichever is applicable) include, but are not limited to, the following:

- (a) the right to broadcast, transmit, exploit or include or authorize any person to broadcast, transmit, exploit or include the Programme and/or the Delivery Materials and/or the Characters and/or other Acquired Property and/or other Licensed Property and/or any respective part thereof, by all means and in all media, whether now or hereafter devised for any purpose whatsoever, including without limitation, the broadcast, transmission, exploit or inclusion of the Programme and/or the Delivery Materials and/or the Characters and/or other Acquired Property and/or other Licensed Property and/or any respective part thereof in any Free-to-Air Television Service, Cable Programme Service, Satellite Television Service, Programme Service, Sound Broadcasting Service, the Internet and Home Entertainment Service;
- (b) the right to advertise and publicize or authorize any person to advertise and publicize the title of the Programme, names and photographs of all or any of the Characters, the artistes, producer and director for the promotion of the Programme and/or RTHK;
- (c) the right to use or authorize any person to use the Programme and/or the Delivery Materials and/or the Characters and/or other Acquired Property and/or other Licensed Property and/or any respective part thereof (including without limitation, the excerpts of the Programme) in any manner it thinks fit for publicity purposes generally or for the promotion of the Programme;
- (d) the right to use, copy, adapt, change, revise, delete from, add to or rearrange the Programme and/or the Delivery Materials and/or the Characters and/or other Acquired Property and/or other Licensed Property and/or any respective part thereof, or authorize any person to do the same, for such purposes it thinks fit, including without limitation, for the purposes of re-subtitling, dubbing or programme scheduling; and
- (e) the right to make, produce, sell, publicly exhibit, lease, license, hire, market, reproduce mechanically, graphically, electronically, digitally or otherwise howsoever, exploit or authorize any person to do the same, in respect of the Programme and/or the Delivery Materials and/or the Characters and/or other Acquired Property and/or other Licensed Property and/or any respective part thereof in whole or in part, with or without adaptation.

## 9. **Warranties**

The Company warrants, undertakes and agrees that:

- (a) it has full power and authority to enter into this Agreement and to give effect to its terms;
- (b) except for the underlying works identified under Clause 7.2 and for those Acquired Property created after the date of this Agreement, immediately prior to the signing of this Agreement, the Company legally and beneficially owns the Acquired Property,

and has the right to assign to RTHK the Acquired Property on the terms set out in Clause 7.1;

- (c) unless they already exist as at the date of this Agreement, all Acquired Property and the Characters consist of original works created, developed or made by the Production Team for RTHK during the course of or in connection with this Agreement;
- (d) after the vesting and assignment under Clause 7.1, all of the Acquired Property is and will be owned by RTHK free from all rights, interests, encumbrances of whatsoever nature whether belonging to the Company or any other person;
- (e) in respect of the underlying works mentioned in Clause 7.2, the Company has a valid and continuing licence under which it is entitled to use the same to the extent necessary or desirable for performing its obligations and duties under this Agreement or for producing the Programme, the Delivery Materials and other underlying works in accordance with the requirements of this Agreement, and it has separately procured all necessary licenses, clearances and consents in favour of RTHK and each of its authorized users, assigns and successors-in-title on the terms set out in Clause 7.3;
- (f) in respect of the Characters, the Company legally and beneficially owns the Intellectual Property Rights subsisting in the same, and has the right to grant in favour of RTHK and each of its authorized users, assigns and successors-in-title the licence in respect of the same on the terms set out in Clause 7.4;
- (g) there are no claims, actions or proceedings (pending or threatened) which may adversely affect the rights of RTHK under this Agreement;
- (h) the provision of any services by the Company or the otherwise performance of this Agreement by the Company does not and will not infringe the Intellectual Property Rights of any person;
- (i) the exercise by RTHK, its authorized users, assigns and successors-in-title of any of the rights granted under this Agreement will not infringe any Intellectual Property Rights of any person;
- (j) none of the Acquired Property and the Licensed Property contains any material which is obscene, libelous or defamatory.
- (k) the Company shall seek RTHK's prior written approval before the submission of the Programme or any versions of the Programme to any television festivals or film festivals or otherwise public viewing for any purposes whatsoever; the Company shall bear all costs related to such submission and should the Programme or any versions of the Programme be awarded any prize money, testimonials or trophies, the Company shall hand over all such prize money, testimonials or trophies to RTHK immediately; and
- (l) the members of the Production Team as listed in paragraph 9 of Schedule I shall be the people who will carry out the production of the Programme save for any replacement from time to time approved by RTHK.

10. **Credits**

- 10.1 Credits as shown on the Programme shall be in the form provided by RTHK.
- 10.2 The closing credits of the Programme shall contain a credit for each of the Commissioning Editor and the directors and executive producers of the Company.

11. **Delivery**

- 11.1 Unless otherwise agreed by the parties to this Agreement, the Company shall deliver the Programme and the Delivery Materials (listed under paragraph 8 of Schedule I) on or before the Delivery Date specified in paragraph 6 of Schedule I.
- 11.2 Should RTHK find the Programme (or any part thereof) and the Delivery Materials (or any part thereof) delivered under this Agreement not of a technical standard suitable for television broadcast, RTHK shall by written notice inform the Company. The Company shall deliver replacement Programme and Delivery Materials to the satisfaction of RTHK within seven (7) days from the date of the notice or at such later date as determined by RTHK. All costs and expenses arising out of such replacement shall be borne by the Company.
- 11.3 The Company shall submit the Audited Report on or before the Submission Deadline specified in paragraph 6 of Schedule I.

12. **Indemnities**

- 12.1 In addition to and without prejudice to Clause 13, the Company shall indemnify and keep indemnified RTHK from and against:
- (a) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted against RTHK; and
  - (b) all liabilities and indebtedness (including without limitation liabilities to pay damages or compensation), losses, damage, costs and expenses incurred or suffered by RTHK (including all legal and other costs, charges, and expenses, on a full indemnity basis, which RTHK may pay or incur in initiating, defending, counter-claiming, settling or compromising any action or proceeding by or against RTHK).

which in any case arise directly or indirectly from, or in connection with, or out of, or which relate in any way to:

- (i) a breach of any provision of this Agreement by the Company;
- (ii) any warranty and representation given by the Company in this Agreement is incorrect, inaccurate, incomplete or misleading;
- (iii) the negligence, recklessness, or willful misconduct of the Company or of any member of the Production Team in performing this Agreement; or

- (iv) (whether or not involving any element of fault or negligence on the part of the Company) any act or omission of the Company, or of any member of the Production Team, in performing this Agreement.

(Each of the above is separate and shall be construed independently and shall not prejudice, or be limited by reference to or inference from, the other of them or other provisions of this Agreement.)

### 13. **Intellectual Property Rights Indemnities**

13.1 In addition to, and without prejudice to, Clause 12 and Clauses 13.2 to 13.5, the Company shall indemnify and keep indemnified the RTHK, its authorized users, assigns and successors-in-title (collectively “indemnified parties”) from and against:

- (a) all and any demands, claims, actions, arbitrations, proceedings, threatened, brought or instituted against an indemnified party; and
- (b) all liabilities and indebtedness (including without limitation liabilities to pay damages or compensation), losses, damage, costs and expenses incurred or suffered by an indemnified party (including all legal and other costs, charges, and expenses, on a full indemnity basis, which an indemnified party may pay or incur in initiating, defending, counter-claiming, settling or compromising any action or proceeding by or against an indemnified party).

which an indemnified party may sustain or incur, directly or indirectly as a result of or in connection with the infringement or alleged infringement of any Intellectual Property Right of a third party by the Company or an indemnified party arising from (each an “infringing act”):

- 13.1.1 the exercise by RTHK of any Intellectual Property Right subsisting in the Acquired Property; or the exercise of any right conferred on RTHK by virtue of the licences mentioned in Clause 7.3 or 7.4; or
- 13.1.2 the performance by the Company of this Agreement in the manner provided for or contemplated under this Agreement; or
- 13.1.3 the enjoyment or exercise by the RTHK of any of its right or powers under this Agreement; or
- 13.1.4 (whether or not involving any element of fault or negligence on the part of the Company) any act, omission or default by the Company in the performance of this Agreement; or
- 13.1.5 the breach of any warranties or representations set out in this Agreement concerning Intellectual Property Rights.

(Each of the above is separate and shall be construed independently and shall not prejudice, or be limited by reference to or inference from, the other of them or other provisions of this Agreement.)

13.2 In the event that there is an infringing act or an alleged infringing act, the Company shall

forthwith upon the first written request of RTHK, at its own costs and expenses, without prejudice to any other rights and remedies of an indemnified party:

- 13.2.1 procure the consent of all relevant parties on such terms to the satisfaction of RTHK to permit the infringing act or alleged infringing act; or
- 13.2.2 adapt, modify or replace the Acquired Property or Licensed Property so as to avoid infringement of any third party's Intellectual Property Rights (in which event the Company shall compensate RTHK for the full amount of any loss and damage sustained or incurred by RTHK arising from such adaptation, modification or replacement) provided always that any adaptation, modification or replacement must first be approved by RTHK in writing.
- 13.3 Without prejudice to any other rights and claims that the RTHK may have under this Agreement or at law, if neither Clause 13.2.1 nor Clause 13.2.2 can be accomplished, then:
  - 13.3.1 the Company shall forthwith abstain from performing the infringing act or alleged infringing act;
  - 13.3.2 refund the Sum paid by RTHK;
  - 13.3.3 the Company shall compensate RTHK for all costs and expenses incurred by the RTHK in procuring and implementing replacement services, equipment, software or facilities; and
  - 13.3.4 RTHK may, at its option, terminate this Agreement in accordance with Clause 14.1.
- 13.4 Whether during the continuance of this Agreement or thereafter, the Company shall forthwith notify RTHK in writing if any claim or demand is made or action brought against it for infringement or alleged infringement of any Intellectual Property Rights arising from any of the circumstances mentioned in any of sub-clauses of Clause 13.1 whether during the continuance of this Agreement or thereafter.
- 13.5 As and when RTHK may require whether during continuance of this Agreement or thereafter, the Company shall, at its cost, forthwith upon receiving written directions and instructions from time to time of RTHK, take all such actions (including initiating or defending a legal action in its name or in such other manner as RTHK deems fit), or provide to RTHK all such documents or information in the possession or under the control of the Company, to cause all and any claims, demands, or actions instituted against RTHK and/or the Company referred to in Clause 13.4 to be withdrawn, resisted, disputed, counter-claimed, settled or compromised in such manner as the RTHK may direct.

#### 14. **Termination**

- 14.1 Without prejudice to other rights and claims of RTHK under this Agreement or at law, RTHK shall be entitled to terminate this Agreement by serving a 14 days' notice in writing on the Company if:
  - 14.1.1 the Company persistently or flagrantly fails to carry out the whole or any part of this Agreement punctually or in accordance with the terms and conditions of this Agreement; or

- 14.1.2 the Company fails to observe or perform any of its obligations under this Agreement and (in the case of a breach capable of being remedied) has failed to remedy the breach to the satisfaction of RTHK within 14 days (or such longer period as RTHK may, in its sole discretion, allow) after the issuance by RTHK to the Company of a notice in writing requiring it to do so; or
- 14.1.3 any of the warranties or representations made or deemed to have been made by the Company to RTHK in this Agreement or otherwise during the continuance of this Agreement is untrue or incomplete or inaccurate; or
- 14.1.4 a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed for the winding-up, insolvency, bankruptcy, administration, reorganization, reconstruction, or dissolution of the Company otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by RTHK in writing, or the Company makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Company or all or any part of its business or assets; or
- 14.1.5 the Company abandons this Agreement in part or in whole;
- 14.1.6 the Company assigns or transfers or purports to assign or transfer all or any part of this Agreement or all or any of its rights or obligations thereunder without the prior written consent of RTHK; or
- 14.1.7 pursuant to Clause 13.3.4 or Clause 15.1.
- 14.2 RTHK may at any time or times prior to completion of the Programme at its option terminate this Agreement by giving the Company fourteen (14) days' written notice of such termination.
- 14.3 Upon early termination (howsoever occasioned) or expiry of this Agreement ("Termination"):
- 14.3.1 this Agreement shall be of no further force and effect, but without prejudice to:
- (a) RTHK's rights and claims under this Agreement or otherwise at law against the Company arising from antecedent breaches of this Agreement by the Company (including any breach(es) which entitle RTHK to terminate this Agreement);
  - (b) the rights and claims which have accrued to a party prior to the Termination; and
  - (c) the continued existence and validity of those provisions which are expressed to or which in their context appropriately survive Termination and any provisions of this Agreement necessary for the interpretation or enforcement of this Agreement including without limitation Clauses 1(Definitions and Interpretations), 4 (Errors and Omissions), 7 (Intellectual Property Rights and Ownership), 8 (Rights of RTHK), 9 (Warranties), 12 (Indemnities), 13(Intellectual Property Right Indemnities), 14(Termination), and 23 (Severability), 24 (Waiver) and 25 (Governing Law and Jurisdiction).
- 14.3.2 RTHK shall not be responsible for any claim, legal proceeding, liability, loss (including any direct or indirect loss, any loss of revenue, profit, business, contract or anticipated

saving), damage (including any direct, special, indirect or consequential damage of whatsoever nature) or any cost or expense, suffered or incurred by the Company due to the Termination;

- 14.3.3 RTHK may, without prejudice to any accrued rights and claims of RTHK for breach of the whole or any part of this Agreement, itself take up the uncompleted Programme (or any part thereof) or contract out the uncompleted Programme (or any part thereof) to another contractor(s) whereupon in the event of termination pursuant to Clause 14.1, the Company shall be liable for all costs and expenses thereby incurred by RTHK in excess of the Sum plus an administrative charge of 20% of the excess as and for liquidated damages and not as a penalty to compensate RTHK for its losses arising from the Termination;
- 14.3.4 unless and to the extent waived by RTHK taking into account the work which has actually been done by the Company, and the extent to which the work complies with the requirements of this Agreement, the Company shall refund to RTHK all portions of the Sum which have been paid under Clause 3.1;
- 14.3.5 the Company shall forthwith deliver to RTHK all Acquired Property and Licensed Property, stored in whatever media, which are in the possession or under the control of the Company. In the event that any of the aforesaid materials or items are located within the premises of the Company, RTHK and any person(s) authorized by it are hereby granted an irrevocable licence to, anytime and from time to time within one year after termination of this Agreement, enter such premises for the purpose of taking possession of such materials or items;
- 14.3.6 the Company shall compile and submit to RTHK a report of the work performed under this Agreement up to Termination;
- 14.3.7 subject only to Clause 14.3.8, regardless of the cause (the absence thereof) or basis for the Termination, RTHK shall have no obligation to pay to the Company any money whatsoever arising from the Termination; and
- 14.3.8 in the event that this Agreement is terminated pursuant to Clause 14.2, RTHK shall, subject to the right deductions, set-off and counter-claim which RTHK may have under this Agreement or at law, pay to the Company such portion of the Sum (taking into account such amount which has already been paid and not refunded pursuant to Clause 14.3.4) as is fairly and equitably payable to the Company for such work performed by the Company in the period up to the effective date of Termination (and which remains unpaid pursuant to the payment schedule under Clause 3), having regard to the work actually performed by the Company and the extent to which such work complies with the requirements of this Agreement. For the avoidance of doubt, RTHK is not obliged to pay any money under this Clause 14.3.8 to the Company after taking into account such portion of the Sum which has already been paid and not required to be refunded under Clause 14.3.4.

## 15. **Corrupt Gifts**

If the Company or any employee or agent of the Company shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to this

Agreement, RTHK may terminate this Agreement pursuant to Clause 14.1.

16. **Employment of Child Entertainers**

If the Company shall employ child entertainers or child actors for the production of the Programme, the Company shall comply with the Employment of Children Regulations, made under the Employment Ordinance (Cap. 57). For more detailed conditions and restrictions for the employment of children, please refer to "A Concise Guide to the Employment of Children Regulations" at <http://www.labour.gov.hk/eng/public/lid/ConciseGuideEmploymentChildrenRegulations.pdf>

17. **Relationship of the Parties**

- 17.1 The Company enters into this Agreement with RTHK as an independent contractor of RTHK and shall not represent itself as an employer, employee, servant, agent or partner of RTHK.
- 17.2 Neither party shall (without the prior consent in writing of the other) commit the other to any obligation whatsoever.

18. **Assignment**

The Company shall not assign or subcontract, in whole or in part, any of its interests, rights, benefits or obligations under this Agreement without the prior written consent of RTHK. Notwithstanding the assignment or the subcontract, as the case may be, the Company shall remain fully liable to RTHK for the performance and completion of its duties and obligations under this Agreement as if any assignment or subcontract has not taken place.

19. **Notice**

- 19.1 Any notice, demand or other communication required to be given or made under this Agreement shall be in writing and delivered or sent by personal delivery or by post, postage paid, to the relevant party its address set out in Schedule I, or by facsimile sent to the facsimile number set out in Schedule I (or such other address, facsimile number as the addressee has by 3 days' prior notice specified to the other party).
- 19.2 Any notice, demand or other communication given under this Agreement shall deemed to have been validly given and received:
- (a) if delivered personally, at the time of delivery;
  - (b) if by letter three (3) days after posting; and
  - (c) if by facsimile, on the production of a transmission report generated by the facsimile machine from which the facsimile has been sent. Such transmission report shall indicate that the facsimile has been sent in its entirety to the facsimile number of the recipient notified for the purpose of this Clause.

20. **Entire Agreement**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement hereof and shall supersede any prior agreements, expressions of intent or understandings with respect to this transaction.

21. **Time of the Essence**

Time shall be of the essence in all respects for the Company to undertake and perform its duties and obligations under this Agreement.

22. **Variation**

No waiver, cancellation, alteration, variation or amendment of or to the provisions of this Agreement shall be valid unless made by an instrument in writing and signed by the parties to this Agreement.

23. **Severability**

Any provisions of this Agreement which is or declared by any court or tribunal of competent jurisdiction to be illegal, invalid or unenforceable in any respect under any applicable law shall be severed from this Agreement to the maximum extent permissible by such law without in any manner affecting the legality, validity or enforceability of the remaining provisions of this Agreement, all of which shall continue in full effect.

24. **Waiver**

No failure or omission by either party to exercise and no delay by either party to exercise and no delay by either party in exercising any right or remedy available to it under this Agreement or in law or in equity shall operate as a waiver of such right or remedy; nor shall any single or partial exercise of such right or remedy preclude any other or further exercise thereof; nor shall any such failure to exercise, or delay in exercising, or single or partial exercise of any such right or remedy preclude the exercise of any other right or remedy; and the rights and remedies of either party contained herein shall be cumulative and not exclusive of any other rights or remedies provided by law or in equity.

25. **Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in all respects in accordance with the laws of Hong Kong and the parties hereof irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

**IN WITNESS WHEREOF**, this Agreement has been entered into as of the day and year first above written.

**SIGNED** by

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CHEUNG Man Sun  
Assistant Director of Broadcasting (Television)  
**RTHK**  
for and on behalf of  
**The Government of the Hong Kong Special Administrative Region**

in the presence of : \_\_\_\_\_  
Name: Clara CHOI

**SIGNED** by

---

Name:  
Title: Company Director

in the presence of : \_\_\_\_\_  
Name:  
HKID number:

## Schedule I

1. **The Programme** shall be a television program entitled XXX which has a duration of not less than 12 minutes.
2. **The Sum** is HK\$
3. **Shooting Format and Animation Software:**  
**Shooting Format of Live Footage:** 16:9 PAL Mode
4. **Output Format:** D1 PAL Widescreen 16:9
5. **Delivery Format:** SD Digital Betacam PAL
6. **Production Schedule:**  
Completion of Treatment and Storyboard:  
Completion of Rough Cut:  
Completion of Fine Cut:  
Delivery Date:  
Submission Deadline (for Audited Report):
7. **Territory:** Worldwide
8. **Delivery Materials** include:
  - (a) a texted master with full Chinese - Cantonese voice-over on channel 1; original sound or background sound on channel 2; sound bites of interviewees on channel 3 and music and effect sounds on channel 4; and a textless master with full Chinese - Cantonese voice-over on channel 1; original sound or background sound on channel 2; sound bites of interviewees on channel 3 and music and effect sounds on channel 4.
  - (b) a complete set of music cue sheet;
  - (c) a DVD disc containing at least five (5) color photographs for each episode (size: 800 KB or above), which shall be captioned and are suitable for publicity purposes, with no more than two (2) such photographs showing the production crew at work;
  - (d) a disc containing subtitles of each episode of the Programme in word file format;
  - (e) a disc containing the music created for each episode of the Programme;
  - (f) the resumes of the relevant key cast and crew;
  - (g) one page synopsis of each episode of the Programme in both English and Chinese;
  - (h) industry format release script;
  - (i) all raw tapes filmed for the production of the Programme;
  - (j) a full list of all credits for the Programme;
  - (k) all documents and proof of licence or consent for use of all works in relation to the underlying copyright of the Programme as specified in Clause 7.3 of this Agreement; and
  - (l) an audited final production cost report of the Programme.

9. **Production Team:**

	Name	Hong Kong Identity Card Number or Passport Number and Nationality
Executive Producer/ Producer/Director:		
<b>Scriptwriter:</b>		
Music& Sound Effect:		
Animators:		

10. **Commissioning Editor:** LEE Chin / Flora CHAN

11. **RTHK's contact details:**

Radio Television Hong Kong  
1A Broadcast Drive  
Kowloon, HONG KONG

Tel: 2339-7658

Fax: 2339-7753

12. **The Company's contact details:**

Address:  
Contact Person:  
Tel:

**Schedule II**  
**Production Budget**

### Schedule III

#### Waivers of Moral Rights of the Production Team

In consideration of the award of the Agreement to XXX

I, the undersigned, hereby waive in favour of the Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Government"), its authorised users, successors in title and assigns, all moral right subsisting in the Acquired Property.

Capitalised terms appearing herein have the meaning given to them in the agreement between XXX and the Government.

\_\_\_\_\_  
**Executive Producer/Producer/Director**  
- **Date:** \_\_\_\_\_

\_\_\_\_\_  
**Scriptwriter –**  
**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Music & Sound Effect –**  
**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Animator –**  
**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Animator –**  
**Date:** \_\_\_\_\_