

**Elstree Film Studios Ltd Standard Terms & Conditions (v005-07/07/08)**

Note: Definitions of capitalised terms are in the last clause of these Standard terms & conditions.

**IT IS HEREBY AGREED** that these Standard Terms & Conditions shall apply as follows:

**1. INTRODUCTION**

- 1.1 "Elstree" means Elstree Film Studios Limited (company number 04975020) a company registered in England whose registered office is at Hertsmeare Borough Council, Council Offices, Elstree Way, Borehamwood, Hertfordshire WD6 1WA but whose business address is Shenley Road, Borehamwood, Hertfordshire, WD6 1JG.
- 1.2 These are the terms and conditions under which Elstree is willing to provide the Provision to Producer. Unless Elstree otherwise agrees in writing, the Contract is entered into on the basis of these Conditions, to the exclusion of any other terms and conditions set out or referred to in any document or other communication used by Producer in concluding the Contract.
- 1.3 Producer shall procure compliance with the Contract by Producer Personnel; and Producer remains at all times primarily liable to Elstree under a Contract for its acts and omissions and those of Producer Personnel.
- 1.4 Elstree and Producer do not intend to create between them the relationship of landlord and tenant. Possession and control of Use Areas shall at all times remain vested in Elstree and Producer shall not have any estate or interest in them or any part of them or the Elstree Premises.

**2. DEPOSIT**

- 2.1 Producer shall pay the Deposit to Elstree when requested by Elstree. Elstree shall hold the Deposit as security for: i) the payment of the Fees; and ii) performance of Producer's obligations.
- 2.2 Without prejudice to any other right or remedy Elstree may have, Elstree may retain the Deposit (or a part of the Deposit) in the event that:
  - 2.2.1 Producer does not at the End of the Provision Period (or End of Provision Sub-Periods, as relevant) or earlier Termination or termination of the Contract, vacate the Use Areas leaving them Vacant; or
  - 2.2.2 Producer has not paid any part of the Fees; or
  - 2.2.3 Elstree must make good any loss or damage suffered by Elstree pursuant to any act or omission of Producer or Producer Personnel.
- 2.3 Subject to Clause 2.2, Elstree shall return the Deposit to the Producer exclusive of any interest, 30 Working Days after the latest of: i) the expiry of the Contract; ii) the expiry of the End of Provision Period; iii) the date on which Producer ceased to receive the Provision and had left the Use Areas and the Services, Vacant; or iv) Termination.

**3. FEES**

- 3.1 Producer shall pay the Fees from time to time in accordance with the Payment Schedule or as otherwise reasonably specified by Elstree.
- 3.2 Fees shall be paid in full by Producer without set-off, reduction, counterclaim or withholding on any account whatsoever.
- 3.3 Fees shall be paid in full by Producer on or before the dates set out in the Payment Schedule or when otherwise due; and shall be deemed received only when received by Elstree in full in cleared funds.
- 3.4 If Producer is overdue with any payment due under any Contract (including the Fees) then, without prejudice to any other right or remedy available to Elstree:
  - 3.4.1 Elstree may charge Producer interest on the overdue amount at the rate specified by virtue of the Late Payment of Commercial Debts (Interest) Act 1998, which interest shall be payable by Producer forthwith on demand, from the due date

up to the date of actual payment, after as well as before judgment. Such interest shall accrue on a daily basis and be compounded quarterly; and

- 3.4.2 Elstree reserves the right to suspend the Provision under any Contract until Producer has rectified material matters, or to terminate any or all Contract(s).
  - 3.5 Subject to Clause 9.1, any plant, machinery, equipment or asset owned by Producer or its associates and used in connection with the use of the Provision shall be subject to a lien for the payment of Fees or any claim for any breach against Producer remaining outstanding.
  - 3.6 All sums payable by the Producer under a Contract are exclusive of any Value Added Tax, if applicable, which shall be added thereto and which shall be due and payable by the Producer to Elstree at the same time as the relevant sum is due or payable. (Elstree shall supply a VAT invoice upon payment of such VAT.)
  - 3.7 Fees for Services shall be as set out in the relevant Commercial Terms(s). (Fees are exclusive of Value Added Tax and any other applicable duties, taxes or imposts, all of which shall be for Producer's account and payable as if they were Fees under a Contract.)
  - 3.8 If the cost to Elstree of providing the Provision increases as a result of any breach of a Contract by Producer, or the supply of incorrect or inadequate information by Producer, or any change to the law, such increase shall be added to the Fees payable under the relevant Contract. Elstree shall notify Producer as soon as reasonably practicable in advance of any such increase.
  - 3.9 If the Provision is used for any purpose than that of making the Production or if the Provision is used for any purpose whatsoever beyond the End of Provision Period without a further Contract being entered into (either case being "Unauthorised Provision Use"), such Unauthorised Provision Use shall be a material breach of a Contract by Producer and, without prejudice to any other right or remedy of Elstree, Producer during such Unauthorised Provision Use shall pay to Elstree the Fees with respect to rates set out on Elstree's then-prevailing rate cards, in respect of such Unauthorised Provision Use.
  - 3.10 Any work which Elstree performs at the request or with the agreement of Producer which is additional to that specified in a Contract shall be separately charged for at Elstree's then-prevailing rates (unless otherwise specifically agreed in writing between the parties).
  - 3.11 All Fees shall be payable by Producer by BACS, wire transfer or cheque.
  - 3.12 All Fees shall be payable in the currency of England, from time to time.
- 4. USE OF THE PROVISION**
- 4.1 Provision: In consideration of the Fees, Elstree shall make the Provision available to Producer for the Production.
  - 4.2 Standard: Elstree warrants that:
    - 4.2.1 it will discharge the obligations in each Contract with reasonable care and skill; and
    - 4.2.2 The fabric of any building structure made available pursuant to the Provision will comply with all legal requirements in respect of that building structure; save in respect of any breach of a Contract by the Producer or Producer Personnel.
  - 4.3 Proviso: Subject to Clause 4.2, Elstree cannot guarantee that the Provision will meet Producer's requirements.
  - 4.4 General Behavioural Rules: Producer shall procure and ensure that:

- 4.4.1 the Provision is not used for any illegal purpose;
- 4.4.2 Producer and the Producer Personnel shall not engage in any noisy, noxious, dangerous or offensive act, activity or business which is or may become a nuisance to, or cause damage, disturbance, injury, annoyance, danger or inconvenience to Elstree or any other user of the Elstree Premises;
- 4.4.3 subject to the remainder of this Clause 4, until Termination, Producer shall maintain the Use Areas so that they are in no worse condition than that existing at Commencement;
- 4.4.4 no person has the use of the Provision or access to any part of the Elstree Premises other than Producer and Producer Personnel;
- 4.4.5 neither the Producer nor the Producer Personnel will enter onto, or authorise or permit anyone to enter onto any part of, the Elstree Premises other than the Use Areas and such areas as have been designated by Elstree for the purpose of giving access to and egress therefrom;
- 4.4.6 no damage is caused by the use of the Provision;
- 4.4.7 no alteration or redecoration is made of any kind whatsoever to the Elstree Premises, or Services or any Equipment, without the prior written consent of Elstree (save that redressing of a set on a generic basis shall always be permitted without such consent) and, in the event of such consent being granted by Elstree, any such alteration or redecoration shall be carried out by Elstree or Producer only (and then as stipulated by Elstree); and furthermore, in any event, unless Elstree directs otherwise, Producer shall then reinstate and make good such alteration, redecoration or re-dressing at its cost, before the expiry of the End of Provision Period (or End of Provision Sub-Periods, as relevant);
- 4.4.8 no refuse is allowed to accumulate anywhere in the Elstree Premises by Producer or Producer Personnel and refuse is removed regularly from Use Areas; and if refuse does accumulate in contravention of this, Producer shall pay on demand by Elstree the cost (at Elstree's then prevailing rates) incurred in removing such refuse when Elstree has given at least two days' notice of its intention to so remove such refuse;
- 4.4.9 the Use Areas are kept in a clean and tidy condition; cleaning of all Use Areas is the responsibility of Producer (because Elstree will clean only common areas and toilet facilities, unless otherwise agreed in writing);
- 4.4.10 it will not in using the Use Areas do or allow any act or thing which may be or become a nuisance, annoyance or disturbance to: i) Elstree; ii) other users of the Elstree Premises; iii) premises in the neighbourhood; or iv) the general public;
- 4.4.11 there shall not be displayed any sign or notice-board or advertisement on any part of the Elstree Premises connected in any way to Producer or the Producer Personnel, without the prior written consent of Elstree;
- 4.4.12 there shall be displayed, if requested by Elstree, in or in front of any Use Areas as specified in writing by Elstree, a sign of a type approved by Elstree, showing Producer's trading name and business;
- 4.4.13 Producer shall, promptly on Elstree's request and otherwise as required, provide Elstree with all reasonable assistance, facilities, information, resources (including including personnel resources) and materials to provide the Provision in accordance with the terms of a Contract. Producer shall be responsible for the completeness and (where applicable) accuracy of all such assistance, facilities, information, resources and materials provided, and shall ensure that it is and remains entitled to provide the same to Elstree for use in connection with the provision of the Provision;
- 4.4.14 no external productions, no external filming and no external construction of sets shall take place outside Business Hours unless and to the extent expressly permitted in the Commercial Terms and always subject to the following: i) Producer has given to Elstree at least 5 clear Working Days' prior notice before any of the same takes place; ii) Elstree's prior written consent has been obtained as to the timing and manner in which the same is to be carried out; iii) Producer bears the costs of employing any staff that need to be used by Elstree (at Elstree's reasonable discretion) in undertaking the same; iv) Producer shall have obtained any statutory, local authority or other regulatory consent and shall have supplied a copy of the same to Elstree; and v) Producer shall give a minimum of 12 hours' notice on each occasion that any such activity having been so approved is to take place;
- 4.4.15 any relevant meter readings are taken at Commencement and at the End of the Provision Period (or End of Provision Sub-Periods, as relevant);
- 4.4.16 if any Producer Personnel require that any heating be turned on, they shall follow any procedure stipulated by Elstree such that only Elstree can turn on the heating and Producer warrants that Producer Personnel shall never turn on heating themselves; nevertheless, for security purposes it is the responsibility of Producer to turn off the heating;
- 4.4.17 Producer and the Producer Personnel shall not deploy security staff or security devices about the Elstree Premises without the prior written approval of Elstree (such approval not to be unreasonably withheld); and
- 4.4.18 Producer and the Producer Personnel shall not impede or interfere with or give instructions to any employee or agent of Elstree.
- 4.5 Access to Use Areas: Elstree shall procure that Producer may have access to parts of the Elstree Premises (such as relevant roadways, entrances, passageways and stairs within the Elstree Premises) so as to allow the Producer Personnel ingress to and egress from the Use Areas; and Producer shall (and shall procure that the Producer Personnel) such use parts for this purpose only.
- 4.6 Radio Signals: If Producer wishes to use any radio or other equipment transmitting radio signals anywhere in the Elstree Premises, Producer shall in the first instance obtain the consent of Elstree. Elstree shall grant such consent if, in Elstree's opinion, there would be no interference of whatever nature, or risk of interference, with equipment being operated by or on behalf of Elstree or any other user or occupier of any other part of the Elstree Premises or neighbouring premises.
- 4.7 Services Availability: Elstree shall use its reasonable endeavours to make the Services available as far as it reasonably can (including: i) by undertaking its obligations to pay providers of Services what it may owe such providers; ii) by undertaking reasonable and necessary activities as would be expected of any primary recipient of such services, such as ensuring that any point of connection to any utilities are safe; and iii) by not undertaking unreasonable activities which would interrupt a smooth recipient flow of any such utilities); however all Services are subject to availability and, subject to the foregoing obligation to use reasonable endeavours, no warranty is given by Elstree that any of the Services will be available during the Contract, until the End of Provision Period (or End of Provision Sub-Periods, as relevant) or at all. Furthermore, no warranty is given by Elstree that any of the Services will be suitable for Producer's purposes.
- 4.8 Restriction to Use Areas: Subject to Clause 4.5, Producer shall not use any parts of the Elstree Premises which are not the Use Areas, without the prior express written consent of Elstree; and then only to the extent of that consent.
- 4.9 Structural Areas: Producer shall not use any structural parts of the Use Areas without:
- 4.9.1 the prior express written consent of Elstree; and then only to the extent of that consent; and
- 4.9.2 obtaining and supplying to Elstree at Producer's expense: i) a structural engineer's report; and ii) advice from a reputable and responsible structural engineer (carrying the appropriate level of professional indemnity insurance protection) experienced in the type of work required; in each instance addressed to Elstree, confirming that such use will not cause any damage, overloading or structural issues.
- 4.10 Substitution: The particular elements of the Provision are non-exclusive. Elstree shall be entitled to substitute from time to time for the Stages and Production Facilities initially supplied for the use of Producer, alternative stages and production facilities, provided such substitution does not interrupt the use of any sets already constructed or under construction in such Stages or Production Facilities and any such substitution is no less suitable for use by Producer than those used by it hitherto and provided any such alternatives are of reasonably comparable size and cost. In the event of such substitution, Producer shall not be entitled to any compensation in respect thereof.
- 4.11 Works on the Elstree Premises: Producer acknowledges that Elstree may, from time to time, repair, build, rebuild and carry out alterations and other works upon the Elstree Premises for

areas other than the Use Areas; although in the event Elstree undertakes such actions, Elstree shall use its reasonable endeavours to minimise any impact on the Provision.

4.12 **Access Right:** Without prejudice to any other right or remedy of Elstree, Elstree reserves the right for any person it may authorise to enter any part of the Elstree Premises (including the Use Areas) at any time: i) to establish if the provisions of a Contract have been properly observed; ii) to carry out any work to any facility or to adjoining premises but without interfering with Producer's use of the Use Areas; iii) to take schedules and inventories; iv) to exercise any right granted to or reserved to Elstree under a Contract; v) for any purpose connected with insurance; vi) to view the state and condition of any property; or vii) to remedy any breach of any of the Producer's obligations or undertakings; and Producer shall in any preceding event provide immediate access and shall pay and indemnify the Elstree against all losses, damages, demands, actions, costs, proceedings, expenses or other liability (including legal and other professional costs and expenses) incurred in Elstree so doing.

4.13 **Removal of Personnel:** Elstree may refuse entry to, or remove from, the Elstree Premises any person:

4.13.1 who is not Producer Personnel present in connection with the Production; or

4.13.2 who, in the opinion of Elstree, has behaved, or is likely to behave, in an unruly or unacceptable manner or who has failed to observe and perform any obligation, undertaking or restriction of or on Producer contained in the Contract.

4.14 **Indemnity:** Producer shall indemnify Elstree and keep Elstree indemnified against all losses, damages, demands, actions, costs, proceedings, expenses or other liability (including legal and other professional costs and expenses) arising from:

4.14.1 Producer's activities in respect of the Provision and any Contract (save to the extent of any of the same being directly due to: i) breach of a Contract with Producer by Elstree; or ii) the gross negligence by, or fraud of, Elstree);

4.14.2 any act or omission of Producer or any Producer Personnel; and

4.14.3 the death or injury of any person on the Elstree Premises (whether or not in the Use Areas) or the destruction of or damage to the Elstree Premises or any part of it or loss of or damage to any chattel (whether or not on the Elstree Premises); which is, in any preceding case caused in whole or in part by any act, neglect or default of Producer or Producer Personnel.

4.15 **Rules as to Consent:** Where, under this Clause 4, Elstree's prior consent must be obtained prior to any work or activity being undertaken, then:

4.15.1 such consent shall not be unreasonably withheld;

4.15.2 Producer shall give to Elstree at least 5 clear Working Days' written notice that such consent is required;

4.15.3 Producer shall have obtained any statutory, local authority or other regulatory consent and shall have supplied a copy of the same to Elstree;

4.15.4 Producer shall comply with any conditions attached to Elstree's consent or to any consent referred to in Clause 4.15.3; and

4.15.5 Producer shall reimburse Elstree with the cost of the grant of any such consent and shall indemnify Elstree for any claims, damages or expenses arising as a result of non-compliance with any of the conditions referred to in Clause 4.15.4.

## 5. INSURANCE

5.1 Producer shall at its own cost insure and keep insured with an insurance company of repute against all liability for death and injury, damage to any property (including the Use Areas and Equipment), any failure in the Provision, all events of force majeure (defined in Clause 12.2) and all liability generally under a Contract with a reputable insurer in the sum of £10 million per claim (or such other sum as Elstree and Producer shall agree in writing). Producer shall also procure the noting of Elstree's interest as beneficiary on such policy or policies of insurance. Producer shall, on request by Elstree, produce to Elstree the policy or policies so effected and evidence of payment of premiums.

5.2 Producer shall not (and shall procure that the Producer Personnel shall not) knowingly do or fail to do anything whereby any policy of insurance effected by Elstree is rendered void or

voidable and shall indemnify Elstree in respect of any increase in premium arising from the Producer's use of the Provision.

5.3 In the event that any of the policy or policies of insurance, when produced are unsatisfactory to Elstree, or in the event that Producer does not produce such policy or policies, Elstree Owner shall be entitled (but not obliged) to effect such insurance in the names of Producer and Elstree and Producer shall reimburse Elstree any premiums and associated costs in respect of the same, on demand.

5.4 Producer shall not (and shall procure that Producer Personnel shall not) do anything as a result of which any policy of insurance against damage to the Elstree Premises (or any part of it) may be prejudiced and shall give immediate notice to Elstree upon the happening of any event which might affect any insurance policy relating to the Elstree Premises.

## 6. HEALTH & SAFETY AND LEGAL OBLIGATIONS

6.1 **Legislation:** Producer shall comply with (and procure that all Producer Personnel shall comply with) all Legislation in respect of the Provision and in respect of the use of the Stages, Production Facilities and Services. Furthermore, Producer shall comply with all Elstree policies, procedures and practices with respect to Health & Safety, which are hereby incorporated by reference (and which, with respect to such policies and procedures, are available on request).

6.2 **Banned actions:** Producer shall not (and shall procure that its Production Personnel do not):

6.2.1 introduce or otherwise use Hazardous Materials on any Elstree Premises, unless necessary for the Production;

6.2.2 retain or accumulate on or about any on any Elstree Premises any Hazardous Materials in such quantity or in such manner as to be or likely to be a hazard to human or animal health or to any land, water, air, buildings or other property (and in any event Producer shall promptly remove or eliminate any such Hazardous Materials);

6.2.3 cause, suffer or permit any discharge, emission, escape, spillage, seepage or leaching of any Hazardous Materials retained or accumulated by or on behalf of the Producer at, upon, within or from any Elstree Premises (save for the proper discharge of normal domestic waste) (a "Hazmat Escape") and promptly upon becoming aware of the occurrence of any Hazmat Escape to notify Elstree of the Hazmat Escape in writing; to remove or eliminate such Hazardous Materials; and to restore the Elstree Premises and also any other land, water, buildings or other property affected by any Hazmat Escape (whether contiguous or not) to the same state and condition as prior to such Hazmat Escape;

6.2.4 use any of the Elstree Premises, equipment (including the Equipment), materials or conducting media for carrying out any work or activity in such a manner that poses a risk of danger or damage to the Elstree Premises or to people or the environment.

6.3 **Mandated actions:** Subject always to Clause 6.1, Producer shall:

6.3.1 ensure that any Hazardous Materials are labelled, handled and stored safely and securely and in accordance with Legislation;

6.3.2 ensure that all necessary licences, consents, permits, approvals and authorisations of any local or other competent authority necessary in connection with any Hazardous Materials are obtained and complied with;

6.3.3 at all times during any use of fire, explosive or Hazardous Materials, ensure that a properly qualified, properly and sufficiently trained and experienced standby fire fighter shall be provided by, and at the expense of, Producer; and

6.3.4 comply with all directions, instructions and management regulations of which it has received prior notice from Elstree from time to time in relation to the operation of the Elstree Premises. Furthermore, Producer shall at all times cooperate with Elstree in good faith and to the fullest extent possible.

6.4 **Notifications:** At least 5 clear Working Days prior to introducing or using Hazardous Materials in or on any Elstree Premises, Producer shall:

6.4.1 notify Elstree of the proposed introduction of Hazardous Materials onto any Elstree Premises;

6.4.2 supply to Elstree copies of the matters listed in Clause 6.3.2;

6.4.3 provide to Elstree in writing all such data, instructions and warnings as are required to comply with Legislation; and

- 6.4.4 obtain (and provide to Elstree on Elstree's request) formal evidence of training and experience of persons who are to use the Equipment.
- 6.5 **Equipment:** Producer shall ensure that any person using Equipment is properly and sufficiently: i) qualified; ii) trained; iii) instructed; and iv) experienced; in connection with the safe use of the Equipment; and that such person interacts with the Equipment in accordance with all relevant policies, rules, procedures and standards of the Equipment supplier and Elstree and all Legislation.
- 6.6 **Inspections:** Producer shall permit Inspectors to inspect without prior notice at any time: i) any part of the Elstree Premises; and ii) any equipment (including the Equipment) and materials used or proposed to be used or any work actively carried out, or proposed to be carried out, in connection with the Production, the Provision, the Elstree Studios or otherwise. Producer shall co-operate with Inspectors so as to facilitate such inspections.
- 6.7 **Safety Personnel:** Producer shall provide, at its cost, additional security, fire, safety or other specialised staff where any proposed activity makes it appropriate or prudent to do so in order to protect the Elstree Premises or persons within the Elstree Premises. Furthermore, if Elstree or an Inspector notifies Producer that he considers that any proposed activity requires the provision of any such additional staff, Producer shall provide such additional staff; and if it fails to do so, Elstree may provide the same and the cost thereof shall be repayable by the Producer. (For the avoidance of doubt, neither Elstree nor an Inspector shall be under any duty to so notify or so consider; the responsibility shall be that of Producer alone.)
- 6.8 **Indemnity:** Producer shall indemnify, defend and hold harmless Elstree, its parents, subsidiaries, affiliates, officers and employees, against all losses, damages, demands, actions, costs, proceedings, expenses or other liability (including legal and other professional costs and expenses) that arise from or is directly connected to Producer's failure to comply strictly in every respect with any matter in this Clause 6 unless the End of the Provision Period.

## **7. TERM AND TERMINATION OF A CONTRACT**

- 7.1 The term of any Contract shall start on Commencement.
- 7.2 Unless earlier terminated in accordance with the provisions of a Contract, the Contract shall continue until the later of the End of the Provision Period or Termination.
- 7.3 Either Elstree or Producer may terminate any Contract at any time forthwith by written notice to the other if the other party shall be unable to pay its debts within the meaning of the Insolvency Act 1986, if the other party becomes bankrupt, insolvent, enters into liquidation, whether voluntary or compulsory, passes a resolution for its winding up or an order is made or a resolution is passed for the winding-up of the other party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other party or a receiver and/or manager and/or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager and/or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or administration order; or the other party takes or suffers any similar or analogous action to the foregoing in consequence of debt.
- 7.4 Elstree may terminate any Contract at any time forthwith by written notice to Producer if:
- 7.4.1 the End of the Provision Period is reached with respect to that Contract;
- 7.4.2 Producer fails to pay any sums due within 14 days of the due date for payment;
- 7.4.3 Producer commits any material breach of that Contract which breach is irremediable, or if such breach is remediable: i) where the remedy is entirely within the control of Producer, Producer fails to remedy the breach within 3 Working Days of receipt or deemed receipt of a written notice requiring it so to remedy the breach; or (ii) where the remedy is partly or wholly outside the control of Producer, Producer fails to remedy the breach within 10 Working Days of receipt or deemed receipt of a written notice requiring it so to remedy the breach.
- 7.5 Furthermore, if any of the events in Clauses 7.4.1, 7.4.2 or 7.4.3 occur, Elstree may:

- 7.5.1 require that all sums due under a Contract become immediately due and payable (and Elstree may apply any sum paid by Producer (including the Deposit) in or towards satisfaction of all sums (including damages) due or to become due under the provisions hereof;
- 7.5.2 by notice in writing to Producer, suspend the rights of Producer under the Contract and, forthwith upon service of such notice, all the obligations of Elstree and rights of Producer hereunder shall be suspended until the payment of all sums due and the remedying of any breach (but without prejudice to any other right of Elstree and without varying or releasing in any way the obligations of Producer); and/or
- 7.5.3 in lieu of or at any time after giving such notice of suspension, terminate any Contract by written notice to Producer and, upon service of such written notice, the Contract shall terminate.
- 7.6 At the End of the Provision Period (or if earlier, at Termination):
- 7.6.1 Producer shall deliver up the Use Areas, shall cease to use the Provision and shall deliver up the subject of the Provision to Elstree in no worse condition than that existing at Commencement;
- 7.6.2 (or at the End of Provision Sub-Periods, as relevant), Producer shall, unless otherwise agreed with Elstree, remove any earth moving or engineering operation or other fabrication works for which Producer is responsible and reinstate any affected part of the Elstree Premises to their original state and condition; save that in the case of foliage, grass and vegetation disturbed or removed by or on behalf of Producer, this obligation shall be deemed satisfied by re-seeding or replanting of such areas in an appropriate manner.
- 7.7 Without prejudice to any of Elstree's other rights and remedies, Elstree shall be entitled (at its sole discretion) to store, remove, sell, dispose of, appropriate or destroy any property of, or left behind by, Producer or any Producer Personnel not removed by Producer from the Elstree Premises upon the expiry or sooner termination of a Contract (or in relation to any part of the Provision in respect of which an End of Provision Sub-Period has ended applicable thereto) and Producer shall pay to Elstree the full cost to Elstree of storing, removing, selling or disposing of and/or destroying such property and shall reimburse and indemnify Elstree in respect of and against all losses, damages, demands, actions, costs, proceedings, expenses or other liability (including legal and other professional costs and expenses) incurred in Elstree so doing loss or damage suffered by Elstree as a consequence of so doing. In the case of a sale, Elstree shall credit the proceeds against any sums owing to it from Producer (less any costs involved in such sale) but it shall be under no obligation to account to Producer for any excess receipts derived from such a sale or for any other benefits or receipts which Elstree may derive from the use or other disposal of such property.
- 7.8 Neither party shall have any remedy against the other based on or arising out of termination of a Contract, but termination shall be without prejudice to the rights of either party accrued at the date of such termination.
- ## **8. GENERAL WARRANTIES**
- 8.1 Each of Elstree and Producer warrants to the other that:
- 8.1.1 a Contract is executed by a duly authorised representative of the warranting party;
- 8.1.2 it is not insolvent or unable to pay its debts, no order has been made or petition presented or resolution passed for its winding up or for an administration order and no receiver, administrative receiver or administrator or manager has been appointed by any person of its business or assets or any part thereof nor has any equivalent event taken place.
- ## **9. INTELLECTUAL PROPERTY**
- 9.1 Elstree acknowledges and agrees that Producer shall own all copyright and all other rights of every kind (now or hereafter existing) in respect of the Production in and to all film and all audio and audio visual recordings and all photographs made by or on behalf of Producer in or about the Use Areas for the full period of copyright including all renewals, revisions, reversion and extensions thereto and thereafter (in so far as is or may be possible) in perpetuity.
- 9.2 Producer warrants that the use of the Provision and the Production and Producer's actions pursuant to a Contract shall not infringe the intellectual property rights of any third party.

9.3 Producer shall indemnify, defend and hold harmless Elstree, its parents, subsidiaries, affiliates, officers and employees, against all losses, damages, demands, actions, costs, proceedings, expenses or other liability (including legal and other professional costs and expenses) that arise directly from or in respect of defamation or the infringement of any intellectual property rights of a third party in, related to, or arising out of, the Production or information provided to Elstree by Producer or the Producer Personnel or any person so directed by Producer.

9.4 Producer shall not use any names or trade marks of Elstree or its associates without prior written consent of Elstree.

9.5 Producer shall use reasonable endeavours, at its own cost, to place in any film or other media of the Production made by the Producer, in the end titles (or such other reasonably acceptable place) a credit acknowledging "Elstree Studios" as having been related in some way either to the filming or production of the Production (as relevant). Failure to so provide shall not constitute a breach of Contract but Elstree expects Producer to act in good faith in this regard.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in any Contract shall exclude or limit any Liability for (i) the tort of deceit; (ii) death or personal injury caused by its Breach of Duty; (iii) any breach of the obligations implied by s.12 Sale of Goods Act 1979 or s.2 Supply of Goods and Services Act 1982; or (iv) any other Liability which cannot be excluded or limited by applicable law.

10.2 Subject to Clause 10.1, Elstree makes the Use Areas available on the basis of provision of space only and gives no warranty, express or implied, as to the fitness for purpose of the Use Areas or the Services and Producer takes the same in their present state of repair and condition; and

10.3 Subject to Clause 10.1, Elstree does not warrant the suitability for Producer's purposes of the Provision or accept any responsibility or Liability for the way in which the Producer uses the same so that the same are at the risk of the Producer in all respects and Elstree shall not be responsible in any way to Producer for any losses, claims, demands, damages, costs and expenses whatsoever, however arising.

10.4 Save as provided in Clause 10.1, Elstree does not accept and hereby excludes any Liability for Breach of Duty other than any such Liability arising pursuant to the terms of a Contract.

10.5 Save as provided in Clause 10.1, Elstree shall have no Liability for: i) loss of revenue; ii) loss of actual or anticipated profits; iii) loss of contracts; iv) loss of the use of money; v) loss of anticipated savings; vi) loss of business; vii) loss of opportunity; viii) loss of goodwill; ix) loss of reputation; (whether any of the foregoing are direct, indirect, consequential or otherwise); or for any indirect or consequential loss; and all such Liability is excluded whether it is foreseeable, known, foreseen or otherwise.

## 11. CONFIDENTIALITY

11.1 Each party agrees to keep the terms of each Contract confidential.

11.2 Each of Elstree and Producer agrees, during the continuance of a Contract and after its termination, to keep secret and confidential all information of a confidential nature obtained from the other party, whether pursuant to these Conditions or prior to it, ("Confidential Information"), to use the Confidential Information exclusively for the purposes of the Contract. Each party shall ensure that such obligations are observed by its employees, agents and sub-contractors.

11.3 The provisions of sub-clause 11.2 shall not apply to Confidential Information obtained which:

11.3.1 prior to receipt was in the possession of the recipient and at its free disposal; or

11.3.2 is subsequently disclosed to the recipient without any obligations of confidence by a third party who has not derived it directly or indirectly from the discloser or in breach of any obligation or duty of confidence; or

11.3.3 is or becomes generally available to the public in the United Kingdom through no act or default of the recipient.

11.4 Notwithstanding anything to the contrary in these Conditions, Elstree shall be entitled to pass any information to any relevant regulatory body or any other competent authority or public body who may require the same.

11.5 Notwithstanding the other provisions of this Clause 11, Elstree may publicise the Production (including its logo and name of

Production in the style used by the Production) in Elstree's promotion and marketing.

## 12. GENERAL PROVISIONS

12.1 Producer shall not assign, transfer or otherwise dispose of or encumber any of its rights and obligations under any Contract without the prior written consent of Elstree.

12.2 Elstree shall not be liable for any delay or failure to perform its obligations under a Contract to the extent that and for so long as such delay or failure results from circumstances beyond its control (an "event of force majeure"). In the event an event of force majeure occurs, Elstree shall notify Producer as soon as reasonably practicable of becoming aware of such event. If any event of force majeure continues for a period exceeding 7 consecutive days, the Fees shall cease to be payable for such period to the extent that Producer is unable to use the Provision and, subject to the Provision being available, the End of Provision Period (or End of Provision Sub-Periods, as relevant) shall be extended by an appropriate period provided that if any such cause continues for longer than a period of 14 consecutive days, either party shall be entitled to determine the Contract on written notice to the other.

12.3 Any notice or other communication served given or made under a Contract must be in writing in the English language and without invalidating any other method of service may be delivered personally or by courier or sent by facsimile transmission or by first class pre-paid letter (sent by air mail if addressed overseas) and addressed as follows: a) If to Elstree, to Elstree Film Studios Ltd, Shenley Road, Borehamwood, Hertfordshire, WD6 1JG or to fax number: +44 (0)20 8905 1135; in either case stating clearly the relevant Contract number and marking the communication "For the Attention of the Managing Director, Elstree Studios"; b) if to Producer, to the details set out in the Commercial Terms; or c) to any other address or facsimile transmission number in England or person mutually agreed by both parties in writing. Furthermore, any notice or other communication shall be treated as having been duly served given or made; i) if received 2 Working Days after posting; ii) when left at the relevant address provided receipt is acknowledged by valid signature; or iii) if sent by facsimile transmission when the addressee receives a substantially complete and legible text; provided always that in the case of delivery or facsimile transmission if such notice or communication is left or received outside Business Hours it shall be deemed to be served on the next Working Day.

12.4 Elstree's failure to enforce or exercise at any time or for any period of time any term of or any right pursuant to a Contract does not constitute, and shall not be construed as, a waiver of such term or right and shall in no way affect that party's right later to enforce or to exercise it.

12.5 If any term of a Contract is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms, be deemed omitted from that Contract and shall in no way affect the legality, validity or enforceability of the remaining terms.

12.6 These Conditions and the terms of any relevant Commercial Terms contain all the terms agreed between the parties regarding its subject matter and supersede and exclude any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to a Contract except as expressly stated in that Contract. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into a Contract (unless such untrue statement was made fraudulently or was as to a matter fundamental to a party's ability to perform that Contract) and that party's only remedies shall be for breach of contract as provided in that Contract.

12.7 The Provision is provided under and subject to Elstree's operating rules, policies, and procedures, available from Elstree.

12.8 The provisions of Clauses 1, 2.2, 2.3, 3, 7, 9, 10, 11, 12, 13 and 14, together with those provisions that either are expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination, shall survive termination of the Contract.

12.9 Elstree and Producer are independent contractors and nothing in any Contract will create any partnership, joint venture,

agency, franchise, representative status or employment relationship between the parties. Subject to Elstree's obligations in respect of the Services, neither party has authority to and shall not make any representations or incur any liability or cost or enter into any contracts or other arrangements involving the other party in financial or other commitments without that other party's express prior approval in writing; nor shall either party hold itself out as having authority to do the same.

- 12.10 The parties shall do and execute all such further acts and things as are reasonably required to give full effect to the rights given and the transactions contemplated by any Contract.
- 12.11 No variation to the to the Provision or scope or terms of any Contract shall take effect unless agreed in writing between the parties.
- 12.12 All Contracts shall be governed by and construed in accordance with English law, and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts.

### 13. INTERPRETIVE PROVISIONS

- 13.1 Where the context so admits or requires words denoting the singular include the plural and vice versa, words denoting any gender (or the neuter) include both genders and the neuter; and words denoting persons shall include partnerships, bodies corporate and unincorporated associations of persons and vice versa (including persons, individuals, companies, firms, governments, states, regional or local authorities, agencies of a state, joint ventures, trusts, charities, societies, funds, associations (whether or not having separate legal personality and whether incorporated or not)).
- 13.2 Clause headings are for ease of reference and do not form part of nor shall they affect the interpretation of these Conditions or any Contract which incorporates them.
- 13.3 In the Conditions, unless otherwise defined herein, terms defined in any relevant Commercial Terms shall have the meanings ascribed thereto therein.
- 13.4 References to "include" and "including" shall be deemed to mean respectively "include(s) without limitation" and "including without limitation".
- 13.5 Subject to Clause 12.1, references to Producer includes references to its successors in title, permitted assigns and novatees.
- 13.6 In case of any conflict between Commercial Terms and these Conditions, the order of priority shall be these Conditions, followed by any Commercial Terms.
- 13.7 Time shall be of the essence in a Contract, as regards, times, dates and periods specified in a Contract and as to any times, dates or periods that may by agreement between the parties be substituted for any of them.
- 13.8 No person (including, for the avoidance of doubt, any third party to whom any or all rights and/or obligations under a Contract are assigned, transferred or novated in accordance with the terms hereof or otherwise by written agreement of the parties) who is not a party to a Contract shall acquire any rights under it or be entitled to benefit from any of its terms even if that person has relied on any such term or has indicated to any party to a Contract its assent to any such term.
- 13.9 Except as expressly stated in these Conditions, all warranties, conditions and other terms, whether express or implied, by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 13.10 Any reference to a statute, statutory provision or subordinate legislation ("legislative provisions") shall (except where the context requires otherwise) be construed as referring to:
  - 13.10.1 such legislative provisions as amended and in force from time to time and to any legislative provisions which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislative provisions; and
  - 13.10.2 any former legislative provisions which it re-enacts, consolidates or enacts in rewritten form.
- 13.11 References to Clauses shall, unless indicated to the contrary, be references to clauses of these Conditions.

### 14. DEFINITIONS

- 14.1 In any Contract the following terms have the meanings set forth below.
  - 14.1.1 "**Breach of Duty**" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of

the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty).

- 14.1.2 "**Business Hours**" means 08.00 to 18.00 on a Working Day.
- 14.1.3 "**Commencement**" is specified in the Commercial Terms.
- 14.1.4 "**Commercial Terms**" means a Commercial Terms document executed by Elstree and Producer describing the Provision, subject to these Conditions;
- 14.1.5 "**Conditions**" means these standard terms and conditions (as the same may be amended by Elstree from time to time).
- 14.1.6 "**Confidential Information**" is defined in Clause 11.2.
- 14.1.7 "**Contract**" means a contract for the Provision between Elstree and Producer formed by the parties' execution of a Commercial Terms document.
- 14.1.8 "**Deposit**" means the amount specified in the Commercial Terms (if any).
- 14.1.9 "**Elstree Premises**" means any premises or land used or owned by Elstree including the Stages, Production Facilities and facilities related to the Services and any studios, walkways, grounds and backlots.
- 14.1.10 "**End of Provision Period**" (or "**End of Provision Sub-Period**") is specified in the Commercial Terms.
- 14.1.11 "**Equipment**" means plant, machinery and equipment made available or accessible to Producer (or Producer Personnel) as part of, or related to, the Provision.
- 14.1.12 "**Fees**" means any monies payable by Producer to Elstree in respect of the Provision (or otherwise) (including the Stages Fees, Production Facilities Fees and Services Fees - each of which is specified in the Commercial Terms).
- 14.1.13 "**Hazardous Materials**" means any hazardous, toxic, noxious, offensive, infectious, radioactive or other solids, liquids, gases, vapours, fumes, micro-organisms, wastes (including special wastes) or other materials or things which may be harmful to human or animal health or the environment; or any other material or thing which, by its use, may constitute a risk to human or animal health or the environment; or any material or thing which may be of an explosive, toxic, combustible or dangerous nature.
- 14.1.14 "**Inspector**" means : i) any person appointed by a regulatory body in respect of enforcing any Legislation related to Health and Safety or fire; or ii) any person nominated by Elstree.
- 14.1.15 "**Legislation**" means applicable laws (including any statutes, statutory orders, regulations and requirements of any authority), byelaws, codes of practice, licences, registrations, permits, authorisations (in respect of all of the foregoing, including any environmental laws and all regulations, recommendations and requirements of any authority relating to: (i) health and safety; including any codes of practice, guidance notes and recommendations for the time being in force and approved by the manufacturers, suppliers or published by the Health & Safety Executive; and (ii) fire precautions).
- 14.1.16 "**Liability**" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with any Contract, including liability expressly provided for under any Contract or arising by reason of the invalidity or unenforceability of any term of any Contract (and for the purposes of this definition, all references to "any Contract" shall be deemed to include any collateral contract).
- 14.1.17 "**Payment Schedule**" is specified in the Commercial Terms.
- 14.1.18 "**Producer**" is specified in the Commercial Terms.
- 14.1.19 "**Producer Personnel**" means the directors, employees, agents, contractors (including sub-contractors), licensees and invitees of the Producer and all others directly or indirectly under the control of or authorised by, or on behalf of, the Producer.
- 14.1.20 "**Production**" is specified in the Commercial Terms.
- 14.1.21 "**Provision**" is specified in the Commercial Terms.
- 14.1.22 "**Termination**" means the time when Producer has ceased to make use of the Provision.
- 14.1.23 "**Use Areas**" means such part of the Elstree Premises as Producer is permitted to use pursuant to the Provision.
- 14.1.24 "**Vacant**" means in relation to: (i) the Stages and the Production Facilities, undamaged and in their original condition, clean and clear of all plant, machinery and equipment (other than any belonging to Elstree or under Elstree's control); and ii) the facilities related to the Services, such that those facilities can be used (and, where relevant, connected to) by other persons under contract with Elstree in at least as good a state the Producer received them.
- 14.1.25 "**Working Day**" means Monday through Friday, excluding days when the clearing banks are shut in England.