

THIS AGREEMENT is made on the _____.

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 of 30 BROADCAST DRIVE, KOWLOON, HONG KONG (“**RTHK**”); and
- (2) **Participant Name**, a company incorporated in Hong Kong under the Companies Ordinance (Cap. 32/622 of the Laws of Hong Kong) whose registered office is at XXXXXX (Certificate of Registration number XXXX) (“**Participant**”).

OR

Participant Name, an approved charitable institution or trust of a public character which is exempt from tax under Section 88 of the Inland Revenue Ordinance (Cap. 112 of the Laws of Hong Kong) whose principal place of business is at XXXXXX (“**Participant**”).

OR

Individual Name (holder of Hong Kong Identity Card number XXXXX) of XXXX HONG KONG (“**Participant**”).

WHEREAS

The Participant has applied to RTHK for funding support under the Community Involvement Broadcasting Service and RTHK has agreed to provide the Sum to the Participant for producing the Programme and other deliverables in accordance with the terms and conditions of this Agreement.

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 or expressly provides otherwise:

“Approved Proposal” means the proposal regarding the structure and content of the Programme accepted and approved by RTHK, a copy of which is attached as Schedule III.

“Communications Authority” means the Communications Authority of the Government.

“Copyright Ordinance” means the Copyright Ordinance (Cap. 528 of the Laws of Hong Kong).

“Delivery Materials” means the materials specified in paragraph 6 of Schedule I.

“Government” means the Government of Hong Kong.

“Handbook” means the “Community Involvement Broadcasting Service Handbook” issued by RTHK and as may be amended, supplemented or replaced by RTHK from time to time.

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

“HK\$” means Hong Kong dollars, the lawful currency of Hong Kong.

“Intellectual Property Rights” means patents, trademarks, 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, whether now known or created in future (of whatever nature and wherever arising) 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.

“Limited Assurance Engagement Report” means the report prepared, signed and certified as being accurate and complete by a practice unit as defined under the Accounting and Financial Reporting Council Ordinance (Cap. 588) that is not in any way connected with the Participant and the Programme, in accordance with the “Hong Kong Framework for Assurance Engagements” published by the Hong Kong Institute of Certified Public Accountants in 2004 (as may be amended, supplemented or replaced by the Hong Kong Institute of Certified Public Accountants from time to time), which expresses an opinion about the evaluation of the financial statements in relation to the production of the Programme.

“Personal Data (Privacy) Ordinance” means the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong).

“Prevention of Bribery Ordinance” means the Prevention of Bribery Ordinance (Cap. 201 of the Laws of Hong Kong).

“Programme” means a series of radio programmes specified in paragraph 1 of Schedule I to be produced by the Participant in accordance with this Agreement.

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

“Production Schedule” means a schedule of due dates of completion of milestones of production of the Programme specified in paragraph 4 of Schedule I.

“Production Team” means those individuals being the contributors of the Participant designated in different positions to produce and complete the Programme in accordance with this Agreement.

“Radio Code of Practice on Programme Standards” means the code of practice on programme standards issued by the Communications Authority as may be amended, supplemented or replaced by the Communications Authority from time to time.

“RTHK Facilitator” means a RTHK officer acting for and on behalf of RTHK with contact details specified in paragraph 7 of Schedule I or any other person nominated from time to time by RTHK as the RTHK Facilitator for the production of the Programme.

“Sound Broadcasting Service” means the transmission of sound for general reception by means of analogue or digital radio waves.

“Sub-contractors” includes sub-contractors at all tiers of sub-contracting.

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

“Termination” has the meaning given to it in Clause 13.4.

“Territory” means the country, territory or area specified in paragraph 5 of Schedule I.

1.2 In this Agreement, unless the context requires otherwise:

- (a) words importing the singular shall include the plural and vice versa; words importing a gender shall include any gender; references to any person shall include references to an individual, firm, body corporate or unincorporated (wherever established or incorporated);
- (b) words importing the whole shall be treated as including a reference to any part of the whole;
- (c) the words “include” and “including” shall be construed without limitation to the words “following”;
- (d) all references to “any” shall be construed to mean “any and all”;
- (e) references to Clauses and Schedules shall be to clauses and schedules of this Agreement;
- (f) references to any statute, order, regulation or other similar instrument shall be construed as a reference to the same as it may have been, or may from time to time be amended, modified, extended, re-enacted, substituted or replaced (whether before or after the date of this Agreement) and shall include all subsidiary legislation;
- (g) any act, default, neglect or omission of any employee, licensee, agent or contractor of either party hereto shall be deemed to be the act, default, neglect or omission of that party; and
- (h) clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

1.3 This Agreement means this agreement, including all schedules hereto, which shall form and be read as an integral part of this Agreement.

- 1.4 In the event of any conflict or inconsistency between this Agreement and the Handbook, this Agreement shall prevail.
- 1.5 All rights and powers of the Government under this Agreement may be exercised by any public officer authorised by the Director of Broadcasting of RTHK.

2 Engagement

- 2.1 RTHK engages the Participant and the Participant 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 Participant to RTHK of all the Delivery Materials and completion of all other obligations and duties of the Participant under this Agreement, in all cases in accordance with the provisions 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 Participant of its duties and obligations under this Agreement, RTHK shall pay the Participant the Sum in accordance with the following schedule:
- (a) 100% of the Sum upon issue of notification by RTHK that (i) the Programme and all the Delivery Materials are acceptable to RTHK and (ii) the Participant has completed all of its obligations and duties in accordance with this Agreement and to RTHK's satisfaction ("**Notification**"). The Participant shall submit to RTHK a payment request form for payment of 100% of the Sum only after receipt of the Notification from RTHK.
- 3.2 Notwithstanding anything in this Agreement to the contrary, the Sum specified in Clause 3.1 will only be paid within 30 days after RTHK's due receipt of the payment request form from the Participant under Clause 3.1. The Participant shall not be entitled to charge any interest or claim any compensation or relief of whatever nature against RTHK in the event of any late or withholding of payment of any Sum by RTHK for any reason whatsoever.
- 3.3 Without prejudice to any claim, right or remedy to which RTHK may have, RTHK shall not be obliged to make any payment referred to in Clause 3.1 if the Participant fails to correct any material defects in the Programme identified to the Participant in writing in accordance with Clause 4 below.
- 3.4 In the event that during the course of the production of the Programme, any material changes in the sole opinion of RTHK have taken place which cause any 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 Participant accordingly.

- 3.5 Unless otherwise agreed by RTHK, the Production Budget, including the fees budgeted for Project Co-ordinator, Producer(s) and/or Script Writer(s), shall not be increased in any event.
- 3.6 Notwithstanding any provisions provided to the contrary in this Agreement, in the event that the Limited Assurance Engagement Report indicates that the total expenditure on the production of the Programme is less than the Sum, the Sum shall be taken to have been reduced to an amount equal to the total expenditure amount as indicated in the Limited Assurance Engagement Report.
- 3.7 The Sum constitutes the sole remuneration payable to the Participant by RTHK for performing its obligations and duties under this Agreement. No other money or compensation whatsoever shall be payable by RTHK to the Participant in respect thereof (whether by way of upfront payment or reimbursement). All costs and expenses incurred by the Participant 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 by the Sum only. The Participant shall perform all of its obligations and duties at its own cost, and will receive no reimbursement or payment apart from the Sum.
- 3.8 In line with the Government policy of promoting and rewarding excellence in creativity for independent producers and in the event that the Programme is awarded any prize money, testimonials or trophies at any festivals or competitions and where the Participant complies with Clause 9.1(k) of this Agreement, upon RTHK's receipt of the aforementioned items, RTHK shall provide to the Participant an incentive of an amount in Hong Kong dollars equivalent to the prize money received for the Programme.
- 3.9 RTHK is entitled to withhold the payment, or to take action for the repayment, of any portion of the Sum in the event that:
- (a) the Programme or any Delivery Materials are not provided to the satisfaction of RTHK;
 - (b) RTHK has reasonable grounds to believe that the Participant is or will be liable to RTHK under the indemnity clause for any loss or damage suffered by RTHK; or
 - (c) the withholding is required by any applicable law.
- 3.10 Notwithstanding any other provisions in this Agreement and RTHK's acceptance of the Programme or the Delivery Materials, any payment of any portion of the Sum shall be without prejudice to or any implication whatsoever for any rights or cause of action which has or may have accrued, or which may accrue, or any remedy available, to RTHK under this Agreement or the law in respect of any breach whatsoever of this Agreement by the Participant.

4 Errors and Omissions

Without prejudice and in addition to Clause 10 and any other claim, right or remedy which RTHK may have against the Participant, in the event that the Programme or any of the Delivery Materials contains any error or omission or any part which RTHK considers is not suitable for broadcast, the Participant shall correct the same forthwith upon being requested in writing by RTHK to do so or upon the Participant becoming aware of the same and such

correction shall be effected within seven (7) days (or such longer period as RTHK may specify in writing) without charge to RTHK and to the satisfaction of RTHK.

5 Programme and the Conduct of Work

5.1 The Participant hereby agrees:

- (a) to complete the Programme in accordance with the Approved Proposal and the Production Schedule and ensure that it and all persons employed, engaged or appointed by it have all the necessary qualifications, ability, experience, skill, expertise and capacity to carry out its duties and obligations on the terms and conditions set out this Agreement;
- (b) to ensure that the Programme shall comply with the editorial and ethical standards of Hong Kong; the Radio Code of Practice on Programme Standards and technical standards stipulated by the relevant governmental authorities of Hong Kong; the Charter of RTHK, Producers' Guidelines and the Editorial Policies and Processes of RTHK;
- (c) to rectify any violation of compliance by re-recording or editing the Programme even after the delivery of the Programme as specified in paragraph 4 of Schedule I;
- (d) to ensure that the Programme is delivered in the format specified in paragraph 3 of Schedule I;
- (e) not to use, solicit or receive any other form of funding, sponsorship or benefits of any kind from any other person for the production of the Programme and any related promotional activities of the Programme;
- (f) to ensure that it and the Production Team shall use the Sum in a prudent and cost-effective manner for the production of the Programme; use the Sum solely and exclusively for the production of the Programme; and upon request any production materials purchased for the production of the Programme shall be returned to RTHK as specified in paragraph 4 of Schedule I; and
- (g) to engage, maintain and use the Production Team or such replacements of equivalent qualification and experience subject to prior written approval by RTHK, throughout the term of this Agreement for the production of the Programme;
- (h) to keep full, proper and separate set of books and records relating to the Programme and Delivery Materials and the production thereof and this Agreement (including without limitation all transactions, receipts and expenditure relating thereto; all records of procurement of goods, services and equipment relating thereto; all records of salaries and other remuneration paid to the persons employed, engaged or used by the Participant for the purpose of this Agreement); to maintain the aforesaid books and records during the continuance of this Agreement and for a minimum period of seven years after the expiry or termination of this Agreement; to ensure that RTHK and their authorized representatives shall be allowed access to all or any of the aforesaid books and records for conducting audit (including value for money audit), inspection, verification and copying from time to time upon reasonable notice during the

continuance of this Agreement and the seven-year period mentioned above; and

- (i) to comply with the requirements in the Handbook and any other requirements and directives as may from time to time be prescribed by RTHK in writing in relation to the Programme.

6 Consultation

- 6.1 RTHK Facilitator or RTHK's authorized representatives shall upon request be given access by the Participant for monitoring the production of the Programme. RTHK Facilitator may give advice to the Participant in relation to the production of the Programme and the Participant shall follow such advice.
- 6.2 In the event of a dispute between the Participant and RTHK Facilitator in relation to the production of the Programme, the opinion of the RTHK Facilitator shall prevail.

7 Intellectual Property Rights and Ownership

- 7.1 Save as provided in Clauses 7.2 and 7.3, 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 Participant, its employees, contractors, Sub-contractors or agents (including the Production Team) in the course of the performance of this Agreement, including 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) and other materials and drafts of all and any of the aforementioned items, shall be vested in and belong to RTHK upon creation, or to the extent they already exist as at the date of this Agreement, shall hereby be assigned in favour of RTHK, in each case free and clear of all rights, interests, encumbrances of whatsoever nature whether belonging to the Participant or any other person.
- 7.2 On or before the final delivery date specified in paragraph 4 of Schedule I or upon the early termination of this Agreement for whatever reason (whichever is earlier), the Participant 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 party as at the date of this Agreement. The Participant 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 Participant under this Clause 7.2.
- 7.3 In relation to each item of underlying works as specified in the list as approved by RTHK under Clause 7.2, the Participant shall procure the relevant third party which owns the Intellectual Property Rights in such underlying work to grant in favour of RTHK, and each of its authorized users, successors-in-title and assigns, a royalty-free, non-exclusive, sub-licensable, irrevocable, transferable and world-wide 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) 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 Participant hereby irrevocably waives and undertakes to procure at its own cost and

expense all relevant authors of the items referred to in Clauses 7.1 and 7.3 (including members of the Production Team) to irrevocably waive all moral rights (whether past, present or future) in the respective items. The waiver shall operate in favour of RTHK, its assigns, authorized users and successors-in-title and shall take effect upon the vesting of the Intellectual Property Rights in RTHK pursuant to Clause 7.1 or upon the grant of licence to RTHK, its authorized users, assigns and successors-in-title pursuant to Clause 7.3 (as the case may be).

7.5 The Participant shall procure, at its own cost and expense and before the fixation and/or recording of any performance or otherwise the incorporation or use of any performance into or in relation to the Programme and/or the Delivery Materials:

- (a) the grant by the performer of that performance to RTHK, its authorized users, assigns and successors-in-title of a royalty-free, non-exclusive, sub-licensable, irrevocable, assignable, transferable and worldwide licence to exercise all the performers' economic rights in relation to such performance;
- (b) the consent of the performer of that performance and all other persons which may be necessary for each of RTHK, its authorized users, assigns and successors-in-title and the Participant to make fixations and/or recording of such performance;
- (c) the consent of and clearance from the performer of that performance 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 202 to 207A of the Copyright Ordinance by the Participant, RTHK and its authorized users, assigns and successors-in-title in relation to such fixation or recording, or copies thereof, and at no additional cost to any of them; and
- (d) the Participant shall procure at its own cost and expense the performers referred to in this Clause 7.5 to waive their moral rights over their performances in relation to the Programme and/ or the Delivery Materials, such waiver shall operate in favour of RTHK, its authorized users, assigns and successors-in-title and to have effect immediately upon each of the relevant performance is given.

The afore-mentioned licence, 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.

7.6 For the purposes of Clauses 7.1, 7.3, 7.4 and 7.5, the Participant undertakes, at its own cost and expense, 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.

8 Non-exhaustive Rights of RTHK

- 8.1 The purposes for which RTHK may exploit the Programme and/or the Delivery Materials and/or the items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof, 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, whichever is applicable, include 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 items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof, by all means and in all media, whether now or hereafter devised for any purpose whatsoever, including the broadcast, transmission, exploit or inclusion of the Programme and/or the Delivery Materials and/or the items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof in any Sound Broadcasting Service and making available the Programme and/or the Delivery Materials and/or the items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof on the Internet;
 - (b) the right to advertise and publicize or authorize any person to advertise and publicize the title of the Programme, names and photographs of the artistes, producer and script writer 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 items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof (including 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 items referred to in Clauses 7.1 and 7.3 and/or any respective part thereof, or authorize any person to do the same, for such purposes it thinks fit, including the purposes of voice-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, or exploit or authorize any person to do the same, in respect of the Programme and/or the Delivery Materials, and/or the items referred to in Clauses 7.1 and 7.3 and/or respective part thereof in whole or in part with or without adaptation.

9 Warranties

9.1 The Participant warrants, undertakes and agrees that:

- (a) it has full power and authority to enter into this Agreement and to give effect to its terms; and it has all the necessary authorizations and approvals in order to lawfully enter into and exercise its rights and perform its obligations under this Agreement;
- (b) the obligations expressed to be assumed by the Participant in this Agreement are legal and valid obligations binding on it and enforceable against it in accordance with the terms thereof;
- (c) except for the underlying works identified under Clause 7.2, the Participant legally and

- beneficially owns those items listed in Clause 7.1 and exist as at the date of this Agreement, and has the right to assign to RTHK those items on the terms set out in Clause 7.1;
- (d) except for the underlying works identified under Clause 7.2, all items listed in Clause 7.1 consist of original works created, developed or made by or on behalf of the Participant for RTHK during the course of or in connection with this Agreement;
 - (e) after the vesting and assignment under Clause 7.1, all of the items listed in Clause 7.1 is and will be owned by RTHK free from all rights, interests, encumbrances of whatsoever nature whether belonging to the Participant or any other person;
 - (f) in respect of the underlying works mentioned in Clause 7.2, the Participant 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 licences, 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;
 - (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 Participant or the otherwise performance of this Agreement by the Participant 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) the Programme does not contain any material which is obscene, libelous or defamatory or violate any applicable law (including the laws of Hong Kong);
 - (k) the Participant shall seek RTHK's prior written approval before the submission of the Programme or any versions of the Programme to any festivals or any other use for any purposes whatsoever; the Participant shall bear all costs relating to such submission; and should the Programme or any versions of the Programme be awarded any prize money, testimonials or trophies, the Participant shall hand over all such prize money, testimonials or trophies to RTHK immediately;
 - (l) the members of the Production Team shall be the persons who will carry out the production of the Programme save for any replacement from time to time approved by RTHK;
 - (m) all information supplied, and statements and representations made by or on behalf of the Participant in relation to the Programme, the Production Budget, the Approved Proposal or this Agreement are true, accurate and complete in all respects and are not misleading, whether by omission or otherwise; and
 - (n) RTHK may exercise its rights provided for in the Handbook.

10 Delivery

- 10.1 Subject to Clause 10.3, the Participant shall deliver the Programme and the Delivery Materials on or before their respective due delivery dates specified in paragraph 4 of Schedule I.
- 10.2 Should RTHK find the Programme (or any part thereof) or the Delivery Materials (or any part thereof) delivered under this Agreement not of a technical standard suitable for radio broadcast, RTHK shall by written notice inform the Participant. The Participant 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 may be determined by RTHK. All costs and expenses arising out of such replacement shall be solely borne by the Participant.
- 10.3 The Participant shall submit the Limited Assurance Engagement Report, the self-evaluation report (in such form as RTHK may specify) and upon request, any production materials purchased for the production of the Programme on or before the submission deadline as specified in paragraph 4 of Schedule I. The Participant shall ensure that the certified public accountant, who prepares and signs the Limited Assurance Engagement Report, is not connected in any way with the Participant or the Programme.

11 Indemnity

- 11.1 In addition to and without prejudice to Clause 12, the Participant shall indemnify and keep indemnified RTHK, its authorized users, assigns and successors-in-title from and against:
- (a) all and any demands, claims, actions, arbitrations and/or proceedings threatened, brought or instituted against RTHK, its authorized users, assigns and successors-in-title; and
 - (b) all liabilities and indebtedness (including liabilities to pay damages or compensation), losses, damage, costs and expenses incurred or suffered by RTHK, its authorized users, assigns and successors-in-title (including all legal and other costs, charges, and expenses, on a full indemnity basis, which RTHK, its authorized users, assigns and successors-in-title may pay or incur in initiating, defending, counter-claiming, settling or compromising any action or proceeding by or against RTHK, its authorized users, assigns and successors-in-title)

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 Participant (regardless of whether such breach was caused by the Participant, any member of the Production Team, any of the Participant's directors, employees, agents or contractors (or any person acting on its or their behalf) (each a "Relevant Person"));
- (ii) any warranty and representation given by the Participant in this Agreement is incorrect, inaccurate, incomplete or misleading;

- (iii) the negligence, recklessness, willful misconduct or unauthorized act of the Participant or of any Relevant Person in performing this Agreement;
- (iv) the use by the Participant or any Relevant Person of any personal data in contravention of the Personal Data (Privacy) Ordinance (Cap. 486); or
- (v) a breach of the duty of confidence under general law by the Participant or any Relevant Person.

12 Intellectual Property Right Indemnities

12.1 In addition and without prejudice to Clause 11 and Clauses 12.2 to 12.5, the Participant shall indemnify and keep indemnified RTHK, its authorized users, assigns and successors-in-title (collectively “indemnified parties”) from and against:

- (a) all and any demands, claims, actions, arbitrations and/or proceedings threatened, brought or instituted against an indemnified party; and
- (b) all liabilities and indebtedness (including 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 Rights of a third party by the Participant or an indemnified party arising from (each an “infringing act”):

- 12.1.1 the exercise by RTHK of any Intellectual Property Rights subsisting in those items listed in Clause 7.1; or the exercise of any right conferred on the indemnified parties by virtue of the licences mentioned in Clause 7.3;
- 12.1.2 the performance by the Participant of this Agreement in the manner provided for or contemplated under this Agreement;
- 12.1.3 the enjoyment or exercise by the RTHK of any of its right or powers under this Agreement;
- 12.1.4 whether or not involving any element of fault or negligence on the part of the Participant, any act, omission or default by the Participant in the performance of this Agreement; or
- 12.1.5 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.

- 12.2 In the event that there is an infringing act or an alleged infringing act, the Participant 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:
- 12.2.1 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
 - 12.2.2 adapt, modify or replace the affected items so as to avoid infringement or alleged infringement of any third party's Intellectual Property Rights (in which event the Participant 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.
- 12.3 Without prejudice to any other rights and claims that the RTHK may have under this Agreement or at law, if neither Clause 12.2.1 nor Clause 12.2.2 can be accomplished, then:
- 12.3.1 the Participant shall forthwith abstain from performing the infringing act or alleged infringing act;
 - 12.3.2 the Participant shall refund the Sum paid by RTHK; any remaining balance of the Sum shall cease to be payable by RTHK;
 - 12.3.3 the Participant shall compensate RTHK for all costs and expenses sustained or incurred by RTHK in procuring and implementing replacement services, equipment, software or facilities; and
 - 12.3.4 RTHK may, at its option, terminate this Agreement in accordance with Clause 13.1.
- 12.4 Whether during the continuance of this Agreement or thereafter, the Participant 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 12.1 whether during the continuance of this Agreement or thereafter.
- 12.5 As and when RTHK may require whether during continuance of this Agreement or thereafter, the Participant 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 Participant, to cause all and any claims, demands, or actions instituted against RTHK and/or the Participant referred to in Clause 12.4 to be withdrawn, resisted, disputed, counter-claimed, settled or compromised in such manner as RTHK may direct.

13 Termination

- 13.1 Without prejudice to other rights and claims of RTHK under this Agreement or at law, RTHK shall be entitled to terminate this Agreement immediately by serving a notice in writing on the Participant if:

- 13.1.1 the Participant 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;
- 13.1.2 the Participant 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 Participant of a notice in writing requiring it to do so;
- 13.1.3 any of the warranties or representations made by the Participant in or in relation to this Agreement is untrue, incomplete or inaccurate;
- 13.1.4 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 Participant otherwise than for the purpose of a solvent reconstruction or amalgamation previously approved by RTHK in writing, or the Participant makes any composition or arrangement with creditors; or a receiver, administrator, trustee or similar officer has been appointed in respect of the Participant or all or any part of its business or assets;
- 13.1.5 the Participant abandons this Agreement in part or in whole;
- 13.1.6 the Participant 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
- 13.1.7 RTHK opts to terminate this Agreement pursuant to Clause 12.3.4 or Clause 14.2.
- 13.2 RTHK may immediately terminate this Agreement upon the occurrence of any of the following events:
 - (a) the Participant has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
 - (b) the continued engagement of the Participant or the continued performance of the Agreement is contrary to the interest of national security; or
 - (c) RTHK reasonably believes that any of the events mentioned in Clauses 13.2 (a) or (b) is about to occur.
- 13.3 RTHK may at any time or times prior to completion of the Programme at its option terminate this Agreement by giving the Participant at least fourteen (14) days' written notice of such termination without cause.
- 13.4 Upon early termination (howsoever occasioned) or expiry of this Agreement ("Termination"):
 - 13.4.1 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 Participant arising from antecedent breaches of this Agreement by the Participant (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 Clauses 1 (Definitions and Interpretation), 4 (Errors and Omissions), 7 (Intellectual Property Rights and Ownership), 8 (Non-Exhaustive Rights of RTHK), 9 (Warranties), 11 (Indemnity), 12 (Intellectual Property Right Indemnities), 13 (Termination), 22 (Severability), 23 (Waiver), 24 (Confidentiality), 25 (Dispute Resolution) and 26 (Governing Law).

- 13.4.2 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 Participant due to the Termination;
- 13.4.3 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 Clauses 13.1 or 13.2, the Participant 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;
- 13.4.4 unless and to the extent waived by RTHK taking into account the work which has actually been done by the Participant, and the extent to which the work complies with the requirements of this Agreement, the Participant shall refund to RTHK all portions of the Sum which have been paid under Clause 3.1;
- 13.4.5 the Participant shall forthwith deliver to RTHK all items as listed in Clause 7.1 and the underlying works listed in Clause 7.2, stored in whatever media, which are in the possession or under the control of the Participant. In the event that any of the aforesaid materials or items are located within the premises of the Participant, 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;
- 13.4.6 the Participant shall compile and submit to RTHK a report of the work performed under this Agreement up to Termination;
- 13.4.7 subject only to Clause 13.4.8, regardless of the cause (the absence thereof) or basis for the Termination, RTHK shall have no obligation to pay to the Participant any compensation whatsoever arising from the Termination; and
- 13.4.8 in the event that this Agreement is terminated pursuant to Clause 13.3, RTHK shall,

subject to the right of deductions, set-off and counter-claim which RTHK may have under this Agreement or at law, pay to the Participant such portion of the Sum (taking into account such amount which has already been paid and not refunded pursuant to Clause 13.4.4) as is fairly and equitably payable to the Participant for such work performed by the Participant 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 Participant and the extent to which such work complies with the requirements of this Agreement. For the avoidance of doubt, RTHK shall not be obliged to pay any money under this Clause 13.4.8 to the Participant after taking into account such portion of the Sum which has already been paid and not required to be refunded under Clause 13.4.4.

14 Corrupt Gifts

- 14.1 The Participant shall observe the Prevention of Bribery Ordinance. The Participant shall not, and shall procure that its Production Team, directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the production of the Programme or this Agreement shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance) in relation to the production of Programme or this Agreement.
- 14.2 If the Participant or its Production Team, directors, employees, agents, consultants, contractors and other personnel who are in any way involved in the production of the Programme or this Agreement shall be found to have committed an offence under the Prevention of Bribery Ordinance 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 13.1 and hold the Participant liable for any loss or damages RTHK may thereby sustain.

15 Employment of Child Entertainers

If the Participant employs any child entertainer or child actor for the production of the Programme, the Participant shall comply with the Employment of Children Regulations (Cap. 57B of the Laws of Hong Kong).

16 Relationship of the Parties

- 16.1 The Participant 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.
- 16.2 Neither party shall (without the prior consent in writing of the other) commit the other to any obligation whatsoever.

17 Assignment

- 17.1 Save as provided in Clause 17.2 below, the Participant shall not assign, transfer, sub-contract or otherwise dispose of any or all of its interests, rights, benefits or obligations under this Agreement.

17.2 The Participant may, subject to the prior written approval of RTHK, engage the services of independent contractors of its own to assist it to carry out its duties and obligations under this Agreement, provided that the Participant:

- (a) shall not be relieved from any of its duties and obligations under this Agreement by engaging any such independent contractor and shall remain fully liable to RTHK for the performance of such duties and obligations;
- (b) shall remain liable for any act or omission of any such independent contractor as if such act or omission were its own; and
- (c) shall secure binding obligations from all such independent contractors so as to ensure that the Participant can comply with its duties and obligations under this Agreement.

18 Notice

18.1 Each 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's address set out in Schedule I, or by facsimile sent to the facsimile number set out in Schedule I (or such other address or facsimile number as the addressee has by at least three (3) days' prior notice specified to the other party).

18.2 Any notice, demand or other communication given under this Agreement shall be deemed to have been validly given and received:

- (a) if delivered personally, upon delivery at the address of the relevant party;
- (b) if by post, three (3) business days after the date of 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.

19 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and shall supersede all prior agreements (whether oral or in writing), expressions of intent or understandings with respect to the same. The parties confirm that they have not entered into this Agreement upon the basis of any statements, undertakings, warranties or representations that are not expressly stated in this Agreement.

20 Time of the Essence

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

21 Variation

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

22 Severability

Any provision 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 affecting the legality, validity or enforceability of the remaining provisions of this Agreement in any manner, all of which shall continue in full effect.

23 Waiver

No failure or omission 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.

24 Confidentiality

24.1 The Participant shall treat as confidential the contents of this Agreement and all personal particulars and Personal Data (as defined in the Personal Data (Privacy) Ordinance) (in or on whatever media) accessible by the Participant under this Agreement or which RTHK has for the purposes of or in the course of performing this Agreement disclosed, supplied, made available or communicated to the Participant. The restrictions on disclosure contained in this Clause 24.1 shall not apply:-

- (a) to the disclosure of any information which is already in the public knowledge (otherwise than as a result of a breach of this Clause); or
- (b) to the disclosure of any information in circumstances where such disclosure is required by law, or pursuant to any order of a court of competent jurisdiction; or
- (c) to the disclosure of any information to the Participant's directors, employees, contractors and agents who have a need to know such information for the performance or enforcement of this Agreement or the Participant's legal or other professional advisers for the purpose of seeking legal or professional advice, provided that prior to any such release or disclosure, the Participant shall ensure that such directors, employees, contractors and agents, legal or other professional advisers are under a legally binding duty of confidentiality to the Participant in respect of such information (whether by contract or pursuant to the capacity of the recipient); or

(d) to the disclosure of any information with the prior written consent of RTHK.

- 24.2 The Participant hereby agrees that it will use the confidential information described in Clause 24.1 solely for performing this Agreement and that it will not, at any time whether during or after the expiry or termination (howsoever occasioned) of this Agreement use or allow to be used the same for any other purposes without RTHK's prior written consent.
- 24.3 The Participant undertakes to take all such security measures for the protection of the information, documentation and materials which it is obliged by this Clause 24.1 to treat as confidential as it takes for the protection of its own confidential or proprietary information, documentation and materials.
- 24.4 The Participant shall ensure that each of its directors, employees, contractors, agents and any other persons engaged in any work in connection with this Agreement are aware of and comply with the provisions of this Clause 24.
- 24.5 The Participant shall procure each of the Participant's directors, employees, contractors, agents and any other persons engaged in any work in connection with this Agreement to whom any confidential information is to be disclosed to sign a separate confidentiality agreement (in a form prescribed by RTHK) if so requested by RTHK.
- 24.6 The Participant shall promptly notify RTHK of any breach of confidence or the Personal Data (Privacy) Ordinance by any of the persons referred to in this Clause 24 and give RTHK all reasonable assistance in connection with any proceedings which RTHK may institute against any such person for any such breach.

25. Dispute Resolution

- 25.1 The parties shall first refer any dispute or difference arising out of or in connection with this Agreement to mediation in accordance with The Government of the Hong Kong Special Administrative Region Mediation Rules prevailing at the time.
- 25.2 If the said dispute or difference is not settled by mediation according to Clause 25.1 above, a party may institute litigation in respect of the said dispute or difference. The parties agree that the courts of Hong Kong shall have exclusive jurisdiction in respect of the said dispute or difference.

26 Governing Law

This Agreement shall be governed by and construed in all respects in accordance with the laws of Hong Kong.

27 Chinese Translation of this Agreement

The Chinese translation of this Agreement is for reference only. In the event of any conflict or inconsistency between the English text and the Chinese translation of this Agreement, the English text shall prevail.

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

SIGNED by

XXXXX

Controller (Radio)

for and on behalf of the Director of Broadcasting of Radio Television Hong Kong

who is in turn representing **The Government of the Hong Kong Special Administrative Region of the People's Republic of China**

in the presence of : _____ (Signature)

Name: _____ (Print Name)

SIGNED by

Name:

HKID Card No.:

Title: (Applicable to organisation only)

Authorized signatory for and on behalf of **Organisation Name** (Applicable to organisation only)

in the presence of : _____ (Signature)

Name: _____ (Print Name)

HKID Card No.: _____

Schedule I

1. **The Programme (XXXXXX)** shall be a radio series entitled “XXXXXX (XXXXXX)” which shall consist of 13 episodes and each episode shall have a duration of XX minutes.
2. **The Sum** shall be HK\$ XXX,XXX.00, subject to Clauses 3.4 and 3.6.
3. **Delivery Format:** wav format, sampling at 48 kHz and 16 bit, or in any format which RTHK may request.
4. **Production Schedule:**

Delivery Item	Due Date (Or the date as agreed by RTHK)
Content Outline of episodes 1 and 2	
Completed recording of episodes 1 to 13	
Outstanding items of (a) to (h) under Delivery Materials in paragraph 6 below	

5. **Territory:** Worldwide

6. **Delivery Materials** include:

- (a) each episode of the Programme in wav format, sampling at 48kHz and 16 bit, or in any format which RTHK may request;
- (b) a complete set of Copyright of Music & Song Register;
- (c) 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 the Agreement, if applicable;
- (d) at least one photograph per each episode, which are suitable for publicity purposes and showing the Production Team at work;
- (e) a disc containing the original music created for each episode of the Programme, if applicable;
- (f) any production materials (e.g. CDs) purchased for the production of the Programme, if applicable;
- (g) a Limited Assurance Engagement Report on the final production cost of the Programme; and
- (h) a self-evaluation report.

7. **RTHK Facilitator's Contact Details:**

Address: RTHK CIBS, 30 BROADCAST DRIVE, KOWLOON, HONG KONG.
Tel: 2331 2334
Fax: 2339 7772

8. **The Production Team's Contact Details:**

Contact Person: XXXXX (Project Coordinator)
Address: XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX
Tel: XXXX XXXX
Fax: XXXX XXXX / N/A

Schedule II

Production Budget

Category	Post	Per Episode (HK\$)	Total Head-count		Total Amount (HK\$)
Production Crew List	Project Coordinator	300			
	Producer	300			
	Technical Producer	300			
	Scriptwriter	300			
	Researcher	300			
	Presenter / Actor	300			
	Sub-total				
	Item	Unit Rate (HK\$)	Quantity	Unit	Total Amount (HK\$)
Services and Goods	Studio Rental (one-hour episodes)			Hour(s)	
	Music CD			Piece(s)	
	Limited Assurance Engagement Report			Report	
Sub-total					
Total					

Schedule III
Approved Proposal

Format of Broadcasting

Programme Synopsis

Details of the 13-episode Programme