

First Amendment to the Art Director Agreement

This Amendment is made on _____ day of _____ 2009 by

- (1) _____ (Name of ProdCo) of
_____ (Address);
and
- (2) _____ (Name of Art Director)
of _____
(Address) (“Art Director”)

(hereinafter individually “**Party**” and collectively “**Parties**”)

RECITALS

- (A) Whereas the Applicant and the Art Director are parties to the Art Director Agreement (“**Agreement**”) dated _____ (day/month/year).
- (B) Whereas the Applicant is seeking government funding and was asked to include terms and conditions regarding intellectual property rights set out herein.

Now, the Applicant and the Art Director wish to amend the Agreement and do mutually agree as follows:

OPERATIVE PARTS

In consideration of the payment of One Hong Kong Dollar by the Applicant to the Grantor, the Parties agree to amend the Agreement as follows:

1. The Parties agrees to add the following Clause __ to the Agreement:

“ __ **INTELLECTUAL PROPERTY RIGHTS**

__.**1 Interpretation**

In this Clause, unless the context requires otherwise, the following expressions have the following meanings:

- | | |
|--------------------------------|---|
| “ Applicant ” | means

(Name of ProdCo) and includes its authorized users, successors and assigns; |
| “ Copyright Ordinance ” | means the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong); |
| “ director ” | means director of a copyright film; |

“fixation”	has the meaning ascribed to it under Section 200 of the Copyright Ordinance;
“Grantor”	means the Art Director;
“Hong Kong”	means the Hong Kong Special Administrative Region of the People’s Republic of China;
“Intellectual Property Rights”	means patents, copyright, design rights, trademarks, service marks, trade names, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights (of whatever nature and wherever arising, whether now known or hereafter created) and in each case whether registered or unregistered and including applications for the grant of any such rights;
“Licensed Property”	means any property which is available publicly or which is or was specifically produced or created in relation to services other than services provided or to be provided by the Grantor to the Applicant under this Agreement and which is incorporated or used in the Works or otherwise used by the Grantor in the performance of this Agreement.
“moral rights”	means the rights set out in Division IV of Part II, and Part IIIA of the Copyright Ordinance;
“performance”	has the meaning ascribed to it under Section 200 of the Copyright Ordinance, provided the Grantor in relation to and/or in the course of the performance of the services of the Grantor under this Agreement;
“performer”	has the meaning ascribed to it under Section 200(2) of the Copyright Ordinance;
“person”	means any individual, corporation, firm or unincorporated body;
“Works”	includes but is not limited to all works of authorship, scripts, screenplay, music, lyrics, songs, soundtracks, sound recordings, diagrams, drawings, animated drawings, storyboards, pictures, photographs, films, images, set and costume designs and other designs, artworks, expressions of ideas, suggestions and information, themes, plots, stories, characterizations, dialogue, writings, rewrites, changes, additions, deletions, titles, subtitles, translation, synchronization, doubling, dubbing, performance, models, documents, and other things and materials collected, compiled, contributed, developed, produced, created or used by the Grantor (whether individually or jointly with the Applicant) in relation to and/or in the course of the

performance of the services of the Grantor under this Agreement.

- __1.2 Unless the context requires otherwise, words importing the singular include the plural and vice versa, and words importing a gender include every gender.
- __1.3 References to an enactment, order, regulation or similar instrument shall be construed as references to the enactment, order, regulation or instrument in force, as amended by any subsequent enactment, order, regulation or instrument.
- __1.4 In construing this Agreement and any other agreement or arrangement entered into for the purpose of and/or in relation to and/or in the course of the performance of the services of the Grantor under this Agreement, the provisions in this Clause shall be construed as unconditional and without qualification, restriction or diminution other than as expressed in this Clause __, and fundamental to and of the essence of the agreement(s) between the Parties hereto relating to the matters set out in this Clause __, and shall override a different intention arising from other terms or provisions (whether express or implied) in this Agreement or other agreements or arrangements (whether legally enforceable or not) affecting the Parties hereto or any other persons **PROVIDED** that if such other terms or provisions are more favourable or beneficial to the Applicant than the provisions in this Clause __, such other terms or provisions shall prevail but only to the extent they are more favourable or beneficial.

__2 **Vesting of Intellectual Property Rights**

- __2.1 All Intellectual Property Rights in the Works throughout the world shall be and shall remain the sole and exclusive property of the Applicant and shall be vested in the Applicant immediately upon creation.
- __2.2 In the event and to the extent that any of the Intellectual Property Rights in the Works is deemed for any reason not to vest in the Applicant pursuant to Clause __2.1, then, upon request by the Applicant, the Grantor shall forthwith, free of charge to the Applicant, assign or otherwise transfer or caused to be assigned or otherwise transferred the same to the Applicant free of any encumbrance or compensation to the Grantor.
- __2.3 Upon request by the Applicant or in the event of the expiration or termination (howsoever occurred) of this Agreement, the Grantor shall at its sole costs and expense promptly deliver to the Applicant all copies of the Works then in the Grantor's custody, control or possession (including any drafts thereof) whether in their completed forms or not.
- __2.4 The provisions of Clauses __2.1 and __2.2 shall not apply to the Licensed Property. The Grantor shall keep the Applicant informed in writing of any of the Works that are subject matter(s) of the Licensed Property or any pre-existing Intellectual Property Rights and any restrictions whatsoever affecting the use thereof.

__3 **Licence**

- __3.1 In the event that the Grantor is not at liberty to assign or otherwise transfer or caused to be assigned or otherwise transferred the Intellectual Property Rights to the Applicant free of any encumbrance or compensation to the Grantor or third party, the Grantor hereby grants and undertakes to procure at its own costs and expense the granting of, for the benefits of the

Applicant, an irrevocable, non-exclusive, worldwide, perpetual, sub-licensable, royalty-free, assignable and transferable licence to use the Licensed Property. Such licence to use shall include the following rights:

- (a) the right to use and broadcast the Licensed Property, and to include the Licensed Property in a cable programme service, and to perform, show and play the Licensed Property in public for all purposes contemplated by this Agreement;
- (b) the right to reproduce, issue and distribute the Licensed Property in any format or medium and the right to make available of copies of the Licensed Property, in full or in parts, to the public through the Internet for all purposes contemplated by this Agreement;
- (c) the right to rent, hire and loan copies of the Licensed Property to the public; and
- (d) the right to alter, cut, edit, adapt, enhance, modify, translate and combine with other things or materials in order to prepare other works for the use or benefits of the Applicant. All Intellectual Property Rights of whatever nature in such adapted, altered, cut, edited, enhanced, modified, translated or combined materials and things shall belong to and shall remain vested in the Applicant absolutely as soon as it is created.

__3.2 Within 7 days upon request by the Applicant, the Grantor shall submit to the Applicant for its inspection all licences in respect of the Licensed Property that are granted or procured to be granted by the Grantor under Clause __3.1.

__4 Moral Rights

__4.1 Unless otherwise stated, the Grantor hereby waives and undertakes to procure all moral right holders as set out in the Table A to waive all moral rights (whether past, present or future) in the Works and the Licensed Property, such waiver to operate in favour of the Applicant and to have effect upon the vesting of the Intellectual Property Rights or the grant of the licence (as the case may be).

Table A
Moral Rights Holders

Name	Address	Moral Rights

__5 Performer's Rights

__5.1 If applicable, the Grantor hereby grants to the Applicant to the exclusion of all other persons (including the Grantor) the exclusive right:

- (a) to make fixations of the performances or any part thereof;
- (b) to broadcast live, include live in a cable programme service and/or make available to the public live, the performances or any part thereof; and

- (c) to make fixations of the performances or any part thereof from a broadcast of, or cable programme including, the performances or from the performances that may have been made available to the public live,

for any purposes that the Applicant shall in its absolute discretion think fit.

__5.2 If applicable, the Grantor hereby grants and assigns to the Applicant absolutely:

- (a) all its following rights in respect of the fixations of the performances:

- (i) the right of reproduction;
- (ii) the right of distribution and
- (iii) the right of making available to the public; and

- (b) to the extent permitted by the Copyright Ordinance and any other relevant laws, all the other rights of the Grantor that may arise from the performances.

__5.3 In Clause __5.2, the terms “right of reproduction”, “right of distribution” and “right of making available to the public” shall have the meanings assigned to them under sections 203, 204 and 205 of the Copyright Ordinance respectively.

__6 Name and Likeness

__6.1 The Grantor hereby grants to the Applicant the perpetual right to use and license others to use the Grantor’s name, photographs, likeness, and biography in marketing, advertising, publishing, or otherwise exploiting the Works or any portion thereof in any manner or medium. The Grantor shall not issue or authorize the issuance of any publicity with respect to the services to be performed under this Agreement without first obtaining the Applicant’s written consent.

__7 Warranties

__7.1 The Grantor warrants to the Applicant that : -

- (a) the Grantor has full capacity, power and authority to enter into this Agreement;
- (b) subject to Clause __7.1(d), the Works are or shall consist of original works collected, compiled, contributed, developed, produced, created or used by the Grantor for the Applicant during the course of or in connection with this Agreement;
- (c) the provision of the Works or any of the services by the Grantor in performing this Agreement, and the use, reproduction, operation or possession by the Applicant of the Works or any part thereof for any of the purposes contemplated by this Agreement do not and will not infringe any Intellectual Property Rights of any person or violate the right of privacy or publicity, or constitute a defamation against, any person;
- (d) in respect of any Works used by the Grantor in the performance of this Agreement and in respect of which any Intellectual Property Right is vested in a third party, the Grantor has or shall have a valid and continuing licence under which it is entitled to use or grant for the benefits of the Applicant an irrevocable, non-exclusive, worldwide, perpetual, sub-licensable, royalty-free, assignable and transferable licence to use such Works for all purposes contemplated by this Agreement;

- (e) in respect of any Works which consist of or contain a film or films or any part thereof, all performances included in the film(s) or any part thereof were fixed with the consent of all the performers involved and the performing, showing and playing of the Works in public shall not infringe the rights of any person.

__8 Indemnities

- __8.1 The Grantor shall indemnify the Applicant, its employees, officers, directors, agents, authorized users, successors and assigns and keep them fully and effectively indemnified against any and all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses, and court costs, whether or not in connection with litigation) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where that settlement has first been proposed or approved in writing by or on behalf of the Grantor) and liabilities of whatsoever nature arising out of or in connection with any breach of this Agreement by the Grantor, or any allegation of or claim for infringement of the Intellectual Property Rights of any party arising from or in any way related to the performance of the services by the Grantor under this Agreement, or the provision, use, reproduction or possession at any time whether before or after the execution of this Agreement of the Works by the Applicant, or any taxes, withholding or similar sums (including any penalties or interest connected therewith) which the Applicant may hereafter be found to have been responsible for in connection with the engagement of the Grantor's services under this Agreement.
- __8.2 In the event that the Works or any part(s) of the Works are or become infringing or where an injunction (interim or final) restraining use by the Applicant of the Works is in the opinion of the Applicant likely to be granted by the court to a third party alleging or in respect of infringement of its Intellectual Property Rights, the Grantor shall promptly at its own costs and expense, without prejudice to any other rights or remedies the Applicant may have: -
 - (a) procure for the Applicant all the necessary rights to continue using and possessing the Works for all purposes contemplated by this Agreement upon the same terms and conditions of this Agreement; or
 - (b) adapt, modify or replace the infringing part(s) of the Works so as to avoid any infringement (in which event the Grantor shall compensate the Applicant for the amount of any loss and/or damages sustained or incurred by the Applicant during such adaptation, modification or replacement).

__9 Miscellaneous

- __9.1 Upon request by the Applicant, the Grantor shall, free of charge to the Applicant, do all such things and sign all such documents and instruments as may be reasonably necessary in the opinion of the Applicant to enable the Applicant to obtain, defend and enforce its rights in the Works.
- __9.2 The provisions of this Clause shall survive the termination of this Agreement (howsoever occasioned) and shall continue in full force and effect notwithstanding such termination.

__10 Remedies

- __10.1 The Grantor hereby agrees and acknowledges that the rights and remedies of the Grantor in the event of a breach of this Agreement by the Applicant shall be limited to the right to recover monetary damages at law, and in no event shall the Grantor be entitled by reason of any such breach to terminate or rescind this Agreement, or the rights granted to the Applicant under this Agreement, or to seek injunctive or equitable relief of any kind whatsoever, or to enjoin or restrain the use of the Works by the Applicant or the production, distribution, advertising, marketing or exploitation of the film contemplated by this Agreement.”
2. In the event the English version of this Amendment conflicts with the Chinese version of this Amendment, the English version shall prevail.
 3. This Amendment shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby irrevocably submit to the exclusive jurisdiction of Hong Kong courts.

