

DATE: \_\_\_\_\_

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**THE GOVERNMENT OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION**

and

**(name of ProdCo)**

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**FILM PRODUCTION FINANCING SCHEME**

**CHARGE**

**“(English Film Title)”**

**《(Chinese Film Title)》**

**(Case No.: CCIB/CHK/FS 24/5/10/\_/20\_\_)**

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THIS DEED of CHARGE is made the        day of        20      

**PARTIES:**

- (1) **(name of ProdCo)** whose registered office is at **(address of ProdCo)** (“ProdCo”); and
- (2) **The Government of the Hong Kong Special Administrative Region of the People’s Republic of China** of 40/F., Revenue Tower, 5 Gloucester Road, Wanchai, Hong Kong (“the Government”).

**OPERATIVE PART:**

**1. Definitions and Interpretation**

1.1 Unless otherwise defined in Clause 1.2, terms defined and expressions used in the Master Definitions Schedule shall have the same meaning when used in this Charge.

1.2 The following terms when used in this Charge shall bear the meaning as set out below:-

“Accounts” means all the items referred to in Clause 2.1(d) of this Charge

“Charged Property” means all the property, assets and income of ProdCo which from time to time are the subject of the security created or expressed to be created in favour of Government by or pursuant to this Charge.

“Equipment” means all the tangible items referred to in Clause 2.1(b) of this Charge.

“Indemnified Parties” means the persons to be indemnified in accordance with Clause 17 of this Charge.

“Instruments” means all the drafts, cheques, certificates of deposit, promissory notes, notes, bills of exchange and other writings, whenever acquired, as referred to in Clause 2.1(e) of this Charge.

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights 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;

“Literary Property”	means all of the rights and property referred to in Clause 2.1(a)(i) of this Charge.
“Master Definitions Schedule”	means the Master Definitions Schedule of even date signed by or on behalf the Government and ProdCo.
“Physical Property”	means all of the rights and property referred to in Clause 2.1(a)(ii) of this Charge.
“Proceedings”	means any and all of the proceedings, procedures and/or processes referred to in Clause 6.1.21 of this Charge.
“Purchaser”	means any purchaser including any person acquiring for money or money’s worth any lease or security interest or any other interest or right in the Film.
“Receiver”	means a receiver and manager of the whole or any part of the Charged Property.
“this Charge”	means this deed of Charge.
“Working Day”	means a day other than a general holiday within the meaning of the General Holidays Ordinance (Cap.149), a black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1) or a gale warning day within the meaning of 71(2) of the Interpretation and General Clauses Ordinance (Cap.1).

## **2. Fixed Charge and Floating Charge**

2.1 ProdCo hereby charges in favour of the Government, as security for the discharge of the Secured Obligations, by way of first fixed charge all ProdCo’s right, title and interest from time to time in and to each of the following assets and property (subject to obtaining any necessary consent to such fixed charge from any third party):

- (a) The Film, under whatever title it may be released, and all collateral, allied, ancillary, subsidiary, merchandising and licensing rights therein and thereto, and all properties and things of value pertaining thereto, and all products and proceeds thereof, whether now in existence or hereafter made, acquired or produced, including without limitation:
  - (i) All Intellectual Property Rights and rights of every kind and nature in and to any literary, musical, dramatic or other literary material of any kind of nature upon which, the Film is or may be based, in whole or in part, or from which it is or may be adapted or inspired or which may be or has been used or included in the Film, all screenplays, scenarios, screenplays, stories, treatments, novels, outlines, books, titles, concepts, manuscripts or other properties or materials of any kind or nature, in whatever state of completion and all drafts, versions and variations thereof;
  - (ii) All physical properties of every kind or nature or relating to the Film and

all versions thereof, including without limitation, all physical properties relating to the development, production, completion, delivery, exhibition, distribution or other exploitation of the Film, and all versions thereof or any part thereof, including without limitation, the Literary Property, exposed film, developed film, positives, negatives, prints, answer prints, special effects, pre-print materials (including interpositives, negatives, duplicate negatives, internegatives, colour reversals, intermediates, lavenders, fine grain master prints and matrices, and all other forms of pre-print elements which may be necessary or useful to produce prints or other copies or additional pre-print elements, whether now known or hereafter devised), soundtracks, recordings, audio and video tapes and discs of all types and gauges, cutouts, trims and any and all other physical properties of every kind and nature relating to the Film in whatever state of completion, and all duplicates, drafts, versions, variations and copies of each thereof;

- (iii) All Intellectual Property Rights and rights of every kind or nature to any and all music and musical compositions created for, used in or to be used in connection with the Film and all rights to perform, copy, record, re-record, produce, publish, reproduce or synchronize any or all of the said music and musical compositions as well as all other rights to exploit such music including record, soundtrack recording and music publishing rights;
- (iv) All collateral, allied, ancillary, subsidiary, publishing, merchandising and licensing rights of every kind and nature, without limitation, derived from, appurtenant to or related to the Film or the Literary Property, including without limitation, all production, exploitation, reissue, remake, sequel, serial or series production rights by use of film, tape, video or any other recording devices now known or hereafter devised, whether based upon, derived from or inspired by the Film, the Literary Property or any part thereof; all rights to use, exploit and license others to use or exploit any all novelization, publishing, video game, interactive, multimedia, commercial tie-ups and merchandising rights of every kind and nature, including without limitation, all novelization, publishing, merchandising rights and commercial tie-ups arising out of or connected with or inspired by the Film or the Literary Property, the title or title of the Film, the characters appearing in the Film or the Literary Property and/or the names or characteristics of said characters, and including further, without limitation, any and all commercial exploitation in connection with or related to the Film, all prequels, remakes of or sequels to the Film and/or the Literary Property;
- (v) All rights of every kind or nature, present and future, in and to all agreements to which ProdCo is a party or in connection with which ProdCo has any rights relating to the development, production, completion, delivery and exploitation of the Film, including without limitation, all agreements for personal services, including the services of screenwriters, film directors, leading cast, film producers, special effects personnel, personnel, animators, cameramen, any other creative, artistic and technical staff and agreements for the use of studio space, equipment, facilities, locations, animation services, special effects services and laboratory contracts;
- (vi) All insurance and insurance policies heretofore or hereafter obtained in

- connection with and upon the Film or the insurable properties thereof and/or any person engaged in the development, production, completion, delivery or exploitation of the Film, and the proceeds thereof;
- (vii) All Intellectual Property Rights, domestic and foreign, heretofore or hereafter obtained upon the Film or the Literary Property or any part thereof, and the right (but not the obligation) to renew and extend such Intellectual Property Rights, and the right (but not the obligation) to sue or seek claims in the name of ProdCo or in the name of the Government for past, present and future infringements of any Intellectual Property Rights in respect of the Film or the Literary Property or any part thereof;
  - (viii) All rights to produce, acquire, release, sell, distribute, subdistribute, lease, sublease, market, license, sublicense, exhibit, broadcast, transmit, reproduce, publicize or otherwise exploit the Film, the Literary Property and any and all rights therein (including without limitation the rights referred to in subparagraph (iv) above) in perpetuity, without limitation, in any manner and in any media whatsoever, including without limitation, by projection, radio, all forms of television (including without limitation free, pay, toll, cable, sustaining, subscription, sponsored and direct satellite broadcast), in theatres, non-theatrically, on cassettes, cartridges, Blue-ray Disc, DVD, CD, CD-I, CD-ROM and discs and other similar and dissimilar video devices, and by any and all other scientific, digital, mechanical or electronic means, methods, processes or devices now known or hereafter conceived, devised or created;
  - (ix) All rights of any kind or nature, direct or indirect, contractual or otherwise, to acquire, produce, develop, reacquire, finance, release, sell, distribute, sub-distribute, lease, sublease, market, license, sublicense, exhibit, broadcast, transmit, reproduce, publicize, or otherwise exploit the Film, or any rights in the Film, including without limitation, pursuant to agreements between ProdCo and any of its affiliates which relate to the ownership, production or financing of the Film and all right, title and interest in and to any agreements that ProdCo has entered into or may hereafter enter into in connection with the Film, all accounts, accounts receivable and contract rights arising thereunder and all proceeds thereof;
  - (x) All rights, title and interest in and to all agreements licensing, granting or selling rights to distribute, broadcast, exhibit or otherwise exploit the Film or rights therein, including without limitation, any and all rights relating to merchandising, licensing, publishing, music and phonorecords derived from or connected with the Film, and the proceeds of all of said agreements;
  - (xi) All rent, revenues, income, compensation, products, increases, proceeds and profits or other property obtained or to be obtained from the production, sale, distribution, sub-distribution, lease, sublease, marketing, licensing, sublicensing, exhibition, broadcast, transmission, reproduction, publication, ownership, exploitation or other uses or disposition of the Film and the Literary Property (or any rights therein or part thereof), in any and all media, without limitation, the properties hereof and of any collateral, allied, ancillary and subsidiary rights and any and all merchandising and publishing rights therein and thereto, and amounts recovered as damages by reason of unfair competition, the infringement of any Intellectual Property Rights, breach of any contract or infringement of

- any rights, or derived therefrom in any manner whatsoever;
- (xii) Any and all documents, receipts or books and records, including without limitation, documents or receipts of any kind or nature issued by any pledgeholder, warehouseman, laboratory or bailee with respect to the Film or any element thereof;
  - (xiii) Any and all tangibles, equipment, chattel paper, inventory, documents of title, instruments, leases and goods not elsewhere included in this paragraph (a), which may arise in connection with the creation, production, completion, delivery, financing, ownership, possession or exploitation of the Film;
  - (xiv) All accounts receivable, all intangibles in connection with or relating to the Film including without limitation, all accounts receivable, all instruments and intangibles constituting rights to receive the payment of money, or other valuable consideration, all receivables and all other rights to receive the payment of money including without limitation, under present or future contracts or agreements (whether or not earned by performance), from the sale, distribution, exhibition, disposition, leasing, subleasing, licensing, sublicensing and other exploitation of the Film or the Literary Property or any part thereof or any rights therein in any medium, whether now known or hereafter developed, by any means, method, process or device in any market, including without limitation, all of ProCo's right, title and interest in, to and under any distribution agreement, as the same may hereafter from time to time be amended, renewed, modified, supplemented, extended or replaced, including ProdCo's rights to receive payments thereunder, and all other rights to receive film rentals, licence fees, distribution fees, producer's shares, royalties and other amounts of every description including without limitation, from:
    - (A) theatrical exhibitors, non-theatrical exhibitors, television networks and stations and airlines, cable television systems, pay television operators, whether on a subscription, per program charge basis or otherwise, and other exhibitors;
    - (B) Sales agent, sub-sales agent(s), Distributor(s), sub-distributor(s), lessee(s), sub-lessee(s), licensee(s), sub-licensee(s) (including any affiliate(s)); and
    - (C) any other person that distributes, exhibits or exploits the Film or the Literary Property or elements or components of the Film or the Literary Property or rights relating thereto; and
  - (xv) All proceeds, products, additions and accessions (including insurance proceeds) of the Film, as defined and referred to in subparagraphs (i)-(xiv) above.
- (b) All machinery, electrical and electronic components, equipment, fixtures, furniture, office machinery, vehicles, trailers, implements and other tangible personal property of every kind and description (including without limitation all wardrobe, props, mikes, scenery, sound stages, movable, permanent or vehicular dressing rooms, sets, lighting equipment, cameras and other photographic, sound recording and editing equipment, projectors, film developing equipment and machinery) and all goods of like kind or type now owned, hereafter acquired or created by ProdCo in substitution or replacement thereof, and all additions and accessions thereto and all rents, proceeds and products of the Equipment

- including without limitation the rights to insurance covering the Equipment.
- (c) The following personal property and the proceeds thereof, whether now owned or hereafter acquired, and the proceeds thereof: (i) all of the rights of ProdCo in and to the title or titles of the Film and all of ProdCo's rights to the exclusive use thereof including without limitation all rights protected pursuant to trademark, service mark, unfair competition and/or other laws, rules or principles of law or equity, and (ii) all Intellectual Property Rights, domestic and foreign, relating to the Film, and the accompanying goodwill and other like business property rights, and the right (but not the obligation) to renew and extend such rights and the right (but not the obligation) to sue or seek claims in the name of ProdCo or in the name of the Government for past, present or future infringement of any such rights.
  - (d) All deposits and other accounts including, without limitation the Production Account(s), and any extension or renewal of such accounts and all certificates and instruments, if any, from time to time representing or evidencing such accounts from time to time opened by ProdCo.
  - (e) All cash, cash equivalent and other funds of ProdCo including without limitation ProdCo's deposits in the Accounts, including without limitation, the production bank account and the location bank account, and all drafts, cheques, certificates of deposit, promissory notes, notes, bills of exchange and other writings which evidence a right to the payment of money and are not themselves security agreements or leases and are of a type which is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment whether now owned or hereafter acquired.
  - (f) All interest, dividends, cash, Instruments or other property from time to time received, receivable or otherwise distributable in respect of or in exchange for any or all of the items described in paragraphs (d) and (e) above.
  - (g) To the extent not included in the items described in paragraphs (a)-(f) above, all intangibles, equipment, documents of title, instruments, leases, chattel paper, goods and inventory now owned or hereafter acquired by ProdCo, and all other property, assets and things of value of every kind and nature, tangible or intangible, absolute or contingent, legal or equitable, which ProdCo may be possessed of or entitled to or that are now owned or may be hereafter acquired by it, and the proceeds and products thereof.

2.2 ProdCo hereby charges in favour of the Government, as security for the discharge of the Secured Obligations, by way of first floating charge the whole of ProdCo's undertaking and assets, present and future, other than any assets or property validly and effectively charged or assigned (whether at law or in equity) by way of fixed security under the laws of Hong Kong, or of the jurisdiction in which that asset or property is situated, in favour of the Government as security for the Secured Obligations.

### **3. Crystallisation of Floating Charge**

#### **3.1 Crystallisation: By Notice**

The Government may at any time by notice in writing to ProdCo convert the floating charge created by Clause 2.2 with immediate effect into a fixed charge as regards any property or assets specified in the notice if:

3.1.1 the Government reasonably considers that any of the Charged Property may

- be in jeopardy or in danger of being seized or sold pursuant to any form of legal process save as permitted by the Production Finance Agreement; or
- 3.1.2 the Government reasonably considers that it is desirable in order to protect the priority of the security created by this Charge.

### 3.2 **Crystallisation: Automatic**

Notwithstanding Clause 3.1 and without prejudice to any law which may have a similar effect, the floating charge will automatically be converted (without notice) with immediate effect into a fixed charge as regards all the assets subject to the floating charge if:

- 3.2.1 ProdCo creates or attempts to create any encumbrance (other than with the Government's prior written consent) over any of the Charged Property; or
- 3.2.2 any person levies or attempts to levy any distress, execution or other process against any of the Charged Property and any such execution or distress or taking of possession shall not have been effectively stayed pending any appeal or the claim to which such execution, distress or taking of possession relates shall not have been fully satisfied within, in each case, 90 days or any event occurs which under the laws of any jurisdiction has a similar or analogous effect; or
- 3.2.3 any corporate action is taken or any third party takes other steps or legal proceedings are started for the winding-up, dissolution, administration or re-organisation of ProdCo (whether by way of voluntary arrangement, scheme of arrangement or otherwise) or for the appointment of a liquidator, receiver, administrator, administrative receiver, conservator, custodian, trustee or similar officer of it or of any or all of its revenues and assets, save for any such steps or proceedings commenced by a third party which are frivolous or vexatious, have no reasonable cause of action or which are being contested in good faith by appropriate proceedings and, in each case, which are discharged or stayed within 180 days; or
- 3.2.4 ProdCo abandons the Production of the Film; or
- 3.2.5 there occurs an Event of Default.

## 4. **Enforcement**

- 4.1 The fixed charge and floating charge created under Clause 2 shall become immediately enforceable upon the happening of any Event of Default without prejudice to any of the Government's rights under the Production Finance Agreement.
- 4.2 Upon the security created by or pursuant to this Charge becoming immediately enforceable, the Government may, without notice to ProdCo or prior authorisation from any court, in its absolute discretion:
- (a) enforce all or any part of that security (at the times, in the manner and on the terms it thinks fit) and take possession of and hold or dispose of all or any part of the Charged Property; and
- (b) whether or not it has appointed a Receiver, exercise all or any of the powers, authorities and discretions conferred by this Charge on any Receiver or otherwise conferred by law on mortgagees or Receivers.
- 4.3 Section 51 of and the Fourth Schedule (except paragraph 11 thereof) to the Conveyancing and Property Ordinance, Cap.219 shall be deemed to apply to this

Charge as if references therein to land were to any Charged Property and the powers conferred on the Government and on any Receiver shall arise (and the Secured Obligations shall be deemed due and payable for that purpose) on execution of this Charge.

- 4.4 In addition to the foregoing provisions of this Clause the Government may at any time after the security interest created by this Charge shall have become enforceable appoint in writing a Receiver of the Charged Property upon such terms as to remuneration and otherwise as it shall think fit and may from time to time remove any Receiver and appoint another in his stead.
- 4.5 Without prejudice to Clause 4.3, if a Receiver is appointed such Receiver shall be the agent of ProdCo and have the power:
- (a) to take possession of get in and enforce the Charged Property;
  - (b) to take any steps that may be necessary or desirable to effect compliance with any or all of the agreements charged pursuant to this Charge and to carry on manage or concur in carrying on and managing the business of ProdCo or any part of the same in relation to the Film and for any of those purpose to raise or borrow any money that may be required upon the security of the whole or any part of the property or assets charged by this Charge;
  - (c) to institute proceedings and sue in the name of ProdCo and to appoint managers, agents, servants and workmen at such salaries as the Receiver may determine;
  - (d) to sell or license or concur selling or licensing the interest of ProdCo in the Film and all other property and assets charged by this Charge or otherwise deal therewith and on such terms in the interest of the Government as the Receiver thinks fit;
  - (e) to make any arrangement or compromise and enter into any contract or do any other act or make any omission which the Receiver shall think expedient in the interest of the Government PROVIDED ALWAYS THAT nothing contained in this Charge shall make the Government liable to such Receiver in respect of the Receiver's remuneration, costs, charges or expenses or otherwise.
- 4.6 All moneys received or recovered by the Government or any Receiver pursuant to this Charge or the powers conferred by it shall be applied first in the payment of the costs, charges and expenses incurred and payments made by the Receiver, the payment of his remuneration and the discharge of any liabilities incurred by the Receiver in, or incidental to, the exercise of any of his powers, and thereafter shall be applied by the Government (notwithstanding any purported appropriation by ProdCo) by paying to the Government for application in accordance with Clause 4 of the Special Terms of the Production Finance Agreement.
- 4.7 Upon any sale or other exploitation of the Charged Property, a statutory declaration made by the Government Representative that an Event of Default has occurred and that the security created by this Charge is enforceable and the power of sale or exploitation is exercisable shall be conclusive evidence in favour of any Purchaser or other person deriving title under sale or exploitation of the whole or any part of the property charged by this Charge.

- 4.8 Neither the Government nor the Receiver shall be liable in respect of any loss or damage which arises out of the exercise or the attempted or purported exercise of or the failure to exercise any of their respective powers.
- 4.9 Without prejudice to the generality of Clause 4.8, entry into or taking possession of the Film or any part of it shall not render the Government or any Receiver liable to account as mortgagee in possession and if and whenever the Government or any Receiver enters into or takes possession of the Film or any part of it they may at any time go out of or not take such possession.

## **5. Appointment and Powers of Attorney**

ProdCo by way of security irrevocably (within the meaning of Section 4 of the Powers of Attorney Ordinance (Cap.31)) appoints the Government and any Receiver severally to be its attorney and in its name, on its behalf and as its act and deed to execute, deliver and perfect all documents and do all things which the attorney may consider to be required or desirable for:

- (a) carrying out any obligation imposed on ProdCo by this Charge (including the execution and delivery of any deeds, charges, assignments or other security and any transfers of the Charged Property); and
- (b) enabling the Government and any Receiver to exercise, or delegate the exercise of, any of the rights, powers and authorities conferred on them by or pursuant to this Charge or by law (including, after the occurrence of an Event of Default, the exercise of any right of a legal or beneficial owner of the Charged Property).

## **6. ProdCo's warranties and undertakings**

- 6.1 ProdCo represents, warrants, undertakes and agrees with the Government that:
- 6.1.1 ProdCo shall not without the prior consent of the Government in writing (which shall not be unreasonably withheld) charge or assign or otherwise dispose of or purport to charge or assign or otherwise dispose of the Charged Property or any part of it or any money which ProdCo may receive in respect thereof in favour of any other person or use or suffer to be used the Charged Property or any part of it for purposes other than the Production of the Film and ProdCo shall if called upon to do so by the Government execute a legal assignment of the Charged Property to the Government;
  - 6.1.2 ProdCo shall not without the prior written consent of the Government sell, transfer, dispose of or part with possession or control of or attempt to sell, transfer or dispose of the Film or any part of it or any interest in it nor directly or indirectly create or permit to exist any security interest in the Film or any part of it;
  - 6.1.3 ProdCo shall maintain the Film in good and serviceable condition (fair wear and tear excepted) and shall not permit the same to be used handled or maintained other than by persons properly qualified and trained or to be used for any purpose other than that for which the Film was designed or suitable;
  - 6.1.4 ProdCo shall not without the prior written consent of the Government make any modification or permit any modification to be made to the Film if such modification may have an adverse effect on the security of the Government whether under this Charge or otherwise;

- 6.1.5 ProdCo shall not vary the terms of the Laboratory Pledgeholder's Agreement without the prior written consent of the Government;
- 6.1.6 ProdCo shall promptly pay all taxes, fees, licence duties, registration charges, insurance premia and other outgoings in respect of the Film or any part of it and on demand procure evidence of payment to the Government;
- 6.1.7 ProdCo shall obtain all necessary certificates, licences, permits and authorisations from time to time required for the protection of the rights in the Film and for the manufacture, use and operation of the Film and shall not do or permit to be done any act or omission whereby the Film or its manufacture, use or operation would contravene any laws rules and regulations for the time being in force;
- 6.1.8 ProdCo shall immediately notify the Government of any material loss, theft, damage or destruction to the Film or any part of it;
- 6.1.9 ProdCo shall give the Government such information concerning the location, condition, use and operation of the Film as the Government may require and shall permit any persons designated by the Government at all reasonable times to inspect and examine the Film and the records maintained in connection with it;
- 6.1.10 ProdCo shall do all in its power to protect and preserve the rights in the Film and as soon as possible to procure that one or more protection negatives of the Film be struck and that they are stored separately from the original negative;
- 6.1.11 ProdCo shall not allow any counterclaim or set-off or other equity in respect of any sum payable in relation to the Film and/or the rights in the Film;
- 6.1.12 ProdCo shall maintain all insurance policies in respect of the Film and apply any money received under any insurance policy in respect of the Film towards the cost of production of the Film or in accordance with the provisions of the Production Finance Agreement and further cause the interest of the Government to be duly notified to the underwriters. In the event of failure on the part of ProdCo to pay the premium in respect of any such policies the Government may pay such premium itself and the amount of the premium and all costs charges and expenses relating to the payment shall be repaid by ProdCo and until so repaid shall be added to this security;
- 6.1.13 ProdCo shall not create extend or permit to exist or be created or extended any mortgage, charge, lien, pledge, encumbrance or security on over or affecting the Charged Property or any part thereof without the prior written consent of the Government and that none of the Charged Property is at present the subject of any such mortgage, charge, lien, pledge, incumbrance or other security interest;
- 6.1.14 ProdCo shall execute all such documents and do all acts that the Government may reasonably require to record the interest of the Government in any registers relating to any registered Intellectual Property Rights that are subject to this Charge;
- 6.1.15 ProdCo shall during the subsistence of this Charge in respect of any Intellectual Property Rights which are subject to this Charge take all such steps and do all such acts as may be necessary to preserve and maintain the subsistence and the validity of any such Intellectual Property Rights, and not use or permit any such Intellectual Property Rights to be used in any way which may materially and adversely affect the value thereof;
- 6.1.16 ProdCo shall, from time to time on request of the Government, furnish the

Government with such information as the Government may reasonably require about the Charged Property and ProdCo's compliance with the terms of this Charge and ProdCo shall permit the Government, its representatives, professional advisers and contractors, free access at all reasonable times, on reasonable prior written notice and during normal working hours to view the Charged Property (without becoming liable as mortgagee in possession);

- 6.1.17 ProdCo shall discharge all of the Secured Obligations when due and payable in accordance with the terms of the Production Finance Agreement;
  - 6.1.18 ProdCo has the corporate power and capacity to enter into and has taken all necessary corporate action to authorize the execution, delivery and performance of this Charge to which it is a party;
  - 6.1.19 the Charge constitutes, or upon execution and delivery shall constitute, valid and binding obligations of the ProdCo and be enforceable against ProdCo in accordance with its terms;
  - 6.1.20 ProdCo has a good and marketable title to the Charged Property free and clear of any liens, charges or other security interests, other than as disclosed and agreed to by Government prior to the date of this Charge;
  - 6.1.21 Except as disclosed in writing to the Government, there is no court, administrative, regulatory or similar proceeding (whether civil, quasi-criminal, or criminal); arbitration or other dispute settlement procedure; investigation or inquiry by any governmental body; or any similar matter or proceeding against or involving ProdCo (whether in progress or threatened) which, if determined adversely to the ProdCo would materially adversely affect its business, property, financial condition or prospects or its ability to perform any of the provisions of this Charge or the Charged Property or which purports to affect the legality, validity and enforceability of this Charge; no event has occurred which might give rise to any Proceedings and there is no judgment, decree, injunction, rule or order of any governmental body outstanding against the ProdCo which has or may have a material adverse affect on its business, property, financial condition or prospects; and
  - 6.1.22 ProdCo has provided to the Government all material information relating to the financial condition, business and prospects of the ProdCo and all such information is true, accurate and complete in all material respects and omits no material fact necessary to make such information not misleading.
- 6.2 If ProdCo fails to pay any sum on the due date for payment of that sum ProdCo shall pay Late Interest on any such sum (before and after any judgment and to the extent Late Interest is not otherwise being paid on such sum in accordance with the terms of the Production Finance Agreement) from the due date until the date of payment calculated on a daily basis.
- 6.3 ProdCo acknowledges that the Government is relying on the above representations, warranties, undertakings and agreements in entering into this Charge. The parties agree that such representations, warranties, undertakings and agreements shall remain true and in full force and effect throughout the subsistence of this Charge and shall survive the termination of this Charge (howsoever occasioned).

## **7. Grant of time or indulgence**

The security created by this Charge shall not be affected or prejudiced in any way by

the Government giving time or granting any indulgence to ProdCo or accepting any composition from or compounding with or making any other arrangement with ProdCo in respect of the Secured Obligations and the Government may enforce the security created by this Charge and any other security it may hold in respect of such Secured Obligations in any order which it may in its absolute discretion think fit.

**8. Protection of third parties**

8.1 No Purchaser or other person dealing with the Government and/or any Receiver shall be concerned to enquire whether any of the powers which they have exercised or purported to exercise has arisen or become exercisable or whether the Secured Obligations remain outstanding or as to the propriety or validity of the exercise or purported exercise of any such power and the title of a Purchaser and the position of such a person shall not be prejudiced by reference to any of those matters.

8.2 The receipt of the Government or any Receiver shall be an absolute and conclusive discharge to a Purchaser and shall relieve such person of any obligation to see to the application of any money paid to or by the direction of the Government or any Receiver.

**9. Expenses and indemnity**

ProdCo shall upon demand fully indemnify the Government against all claims, proceedings, liabilities and expenditure which the Government may incur in connection with any payment or discharge in respect of the Secured Obligations (whether made by ProdCo or a third person) being impeached or declared void for any reason whatever.

**10. Further assurances**

ProdCo shall on demand execute any document and do any other act or thing which the Government may specify for perfecting any security created or intended to be created by this Charge.

**11. Cumulative Rights**

The security created by or pursuant to this Charge and the rights powers and remedies of the Government provided by or pursuant to this Charge or by law shall be cumulative, in addition to and independent of every other security which the Government may at any time hold for the Secured Obligations or any other obligations or any rights, powers and remedies provided by law. No prior security held by the Government over the whole or any part of the Charged Property shall merge into the security constituted by this Charge.

**12. Ratification**

ProdCo shall ratify and confirm all things done and all documents executed by any attorney in the exercise or purported exercise of all or any of his powers.

**13. Effectiveness of Security etc.**

### 13.1 **Continuing Security**

The security created by or pursuant to this Charge shall remain in full force and effect as a continuing security for the Secured Obligations unless and until discharged by the Government and shall not cease by reason of any intermediate payment or satisfaction of all or any of the Secured Obligations.

### 13.2 **No Prejudice**

The security created by or pursuant to this Charge and the rights, powers and remedies of the Government provided by or pursuant to this Charge or by law shall not be prejudiced by any unenforceability or invalidity of any other agreement or document granted to the Government or by any time or indulgence granted to ProdCo or any other person.

### 13.3 **No Liability**

None of the Government, its nominee(s) or any Receiver shall be liable by reason of (a) taking any action permitted by this Charge or (b) any neglect or default in connection with the Charged Property or (c) taking possession of or realising all or any part of the Charged Property, except in the case of gross negligence or wilful default upon its part.

### 13.4 **Rights to Implement the Project**

Nothing in this Charge is intended to obstruct, hinder, restrain or restrict the rights or powers of ProdCo to produce and complete the Film subject to compliance with the provisions of the Production Finance Agreement and all charges made hereunder are subject to this.

## 14. **Changes to Parties**

### 14.1 **No Assignment or Transfer by ProdCo**

ProdCo shall not assign or transfer all or any of its rights, benefits (if any) and obligations under this Charge.

### 14.2 **Assignment and Transfer by Government**

The Government may assign and transfer all or any of its rights, benefits and obligations under this Charge.

## 15. **Disclosure**

The Government shall be entitled to disclose such information concerning ProdCo and this Charge as the Government considers appropriate to any actual or proposed direct or indirect successor, assignee, transferee or sub-participant of it or to any person whom information may be required to be disclosed by any applicable law or the Legislative Council.

## 16. **Expenses and Stamp Taxes**

### 16.1 **Expenses**

ProdCo shall, from time to time on demand of the Government, reimburse the Government for all the costs and expenses (including legal fees) on a full indemnity

basis incurred by it in connection with:

- 16.1.1 the negotiation, preparation and execution of this Charge and the completion of the transactions and perfection of the security contemplated in this Charge; and
  - 16.1.2 the exercise, preservation and/or enforcement of any of the rights powers and remedies of the Government provided by or pursuant to this Charge or by law or the security contemplated by this Charge or any proceedings instituted by or against the Government as a consequence of taking or holding the security or of enforcing such rights powers and/or remedies,
- and shall carry Late Interest from the due date until the date of reimbursement calculated on a daily basis.

## 16.2 **Stamp Taxes**

ProdCo shall pay all stamp, registration and other similar taxes (excluding, for the avoidance of doubt, income taxes) to which this Charge, the security contemplated in this Charge or any judgment given in connection with it is or at any time may be subject and shall, from time to time, indemnify the Government on demand against any liabilities, costs, claims and expenses resulting from any failure to pay or delay in paying any such tax.

## 17. **Indemnity**

- 17.1 ProdCo shall, notwithstanding any release or discharge of all or any part of the security constituted by this Charge, indemnify the Government and its agents and attorneys and any Receiver against any demands, actions, proceedings, claims, losses, liabilities, costs and expenses which it or they sustain as a consequence of any breach by ProdCo of the provisions of this Charge, the exercise of any of the rights and powers conferred on it or them by this Charge or otherwise relating to the Charged Property.
- 17.2 The provisions in this Clause shall survive the termination of this Charge (howsoever occasioned).

## 18. **Miscellaneous**

### 18.1 **Registration of Charge**

ProdCo shall forthwith upon execution hereof provide all assistance to enable the Government to ensure that this Charge shall be duly and immediately registered with the Hong Kong Companies Registry and in any event not later than five weeks of the date of execution hereof.

### 18.2 **Consents**

ProdCo shall:

- 18.2.1 deliver to the Government promptly upon execution of this Charge, all consents necessary (if any) to enable the assets and property (which are in existence at the date of this Charge and expressed to be subject to a fixed charge or the floating charge pursuant to Clause 2) to be the subject of an effective fixed charge, or, as the case may be, floating charge pursuant to Clause 2; and
- 18.2.2 obtain and deliver to the Government, promptly after acquisition of any

assets or property or the coming into existence of any assets or property of ProdCo after the date of this Charge (which assets, in either case, are expressed to be subject to a fixed charge or the floating charge pursuant to Clause 2), all consents necessary to enable such assets and property to be the subject of an effective fixed charge or, as the case may be, floating charge pursuant to Clause 2. Immediately upon obtaining any such consent, the assets and property concerned shall become subject to such security.

**18.3 Right to Use or Occupy**

ProdCo undertakes that it shall not (and shall not agree to) at any time during the subsistence of this Charge, except as permitted pursuant to the Production Finance Agreement or this Charge, allow any person any right to use or occupy or to become entitled to assert any proprietary interest in, or right over, the Charged Property.

**18.4 Restrictions**

Any restrictions on the consolidation of encumbrances shall be excluded to the fullest extent permitted by law and the Government shall, so far as it shall be lawful, be entitled to consolidate all or any of the security interests constituted by this Charge with any other encumbrance(s) whether in existence at the date of this Charge or created thereafter.

**19. Notices**

19.1 Any notice or other document required to be given under this Charge or any communication between the parties with respect to any of the provisions of this Charge shall be in writing in English and be deemed duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and if left at or sent by pre-paid registered or recorded delivery post or by facsimile transmission to the address of the party receiving such notice as set out at the head of the Charge or as notified between the parties for the purpose of this Clause.

19.2 Any such notice or other communication shall be deemed to be given to and received by the addressee:

- (a) at the time the same is left at the address of or handed to a representative of the party to be served;
- (b) by post on the next Working Day following the date of posting;
- (c) in the case of a facsimile transmission on the day of despatch.

19.3 In proving the giving of a notice it should be sufficient to prove that the notice was left or that the envelope containing the notice was properly addressed and posted or that the facsimile transmission was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

19.4 Communications addressed to the Government shall be marked for the attention of Executive Officer (Film Development).

**20. Governing law**

This Charge shall be governed by and construed in accordance with the law of Hong

Kong and the parties irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.

TEMPLATE

IN WITNESS of which the parties have executed this Charge as a deed the day month and year first above written

SEALED with the Common Seal of )  
(name of ProdCo) )

and signed by )

\_\_\_\_\_  
(name of Company Director)

) \_\_\_\_\_  
(Common Seal + signatures of two directors  
or director and company secretary or  
such other signatories in accordance  
with the Articles of Association of

ProdCo)

in the presence of :-

\_\_\_\_\_ (Witness's signature)

Name: \_\_\_\_\_

Address: (address of ProdCo)

SIGNED, SEALED and DELIVERED BY)  
**Mr Gary MAK** )  
Assistant Head of Create Hong Kong (2) )  
for and on behalf of **the Government of the** )  
**Hong Kong Special Administrative Region** )  
**of the People's Republic of China** )

in the presence of :-

\_\_\_\_\_ (Witness's signature)

Name: \_\_\_\_\_

Address: 40/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong