

**THE BRITISH ACADEMY OF FILM AND TELEVISION ARTS**

**DATA TRANSFER AND CONFIDENTIALITY AGREEMENT**

**Access to BAFTA voter mailing lists for the EE British Academy Film Awards in 2021**

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

**BETWEEN**

Company name: \_\_\_\_\_

Company No: \_\_\_\_\_

whose registered office is at: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(the "**Company**")

The BRITISH ACADEMY OF FILM AND TELEVISION ARTS (a company limited by guarantee with No. 617869) whose registered office is at 195 Piccadilly London W1J 9LN, UK. ("**BAFTA**")

**WHEREAS**

- I In consideration of the sum of £1 (receipt of which is hereby acknowledged) BAFTA agrees to make available the Restricted Information and the List to the Company or the Company's appointed provider information about BAFTA's membership to facilitate the mailing by or on behalf of the Company of promotional material to BAFTA members who will be voting to determine the results of the Awards.
- II BAFTA only allows the Company to use the Restricted Information and the List for the Access Period.

**It is hereby AGREED as follows:**

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires.

**"Access Period"** means the period from the date on which the Company signs this Agreement until the earlier of:  
(a) 11 April 2021; and  
(b) termination of this Agreement.

**"Mailing Houses Approved for Data Sharing"** means providers of mailing services which are approved by BAFTA as suitable to receive the List.

**"Awards"** means the EE British Academy Film Awards in 2021.

<b>"Controller"</b>	has the meaning set out in Data Protection Legislation.
<b>"Data Protection Legislation"</b>	means all applicable data protection and privacy legislation, regulations and guidance including Regulation (EU) 2016/679 (the <b>"General Data Protection Regulation"</b> or the <b>"GDPR"</b> ) and the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and any guidance or codes of practice issued by any Data Protection Regulator from time to time (all as amended, updated or re-enacted from time to time).
<b>"Data Protection Regulator"</b>	means the Article 29 Working Party / European Data Protection Board, the Information Commissioner's Office, and, in each case, any successor body from time to time.
<b>"Data Subject"</b>	has the meaning set out in Data Protection Legislation.
<b>"Film Hub"</b>	means the online portal operated by BAFTA for the benefit of its members, to facilitate its members' access to film streaming services, which BAFTA may (in its discretion) make available to the Company.
<b>"List "</b>	means the postal and/or email addresses of the members of the British Academy of Film and Television Arts who are eligible to vote in the Awards, as made available to the Company or to the Company's Processor(s) by BAFTA. <b>"Postal List"</b> shall mean the list of postal addresses, and <b>"Email List"</b> shall mean the list of email addresses.
<b>"Losses"</b>	means all claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).
<b>"Personal Data"</b>	has the meaning set out in Data Protection Legislation.
<b>"Personal Data Breach"</b>	has the meaning set out in Data Protection Legislation.
<b>"Process", "Processing" and "Processed"</b>	each has the meaning set out in Data Protection Legislation.
<b>"Processor"</b>	has the meaning set out in Data Protection Legislation.
<b>"Restricted Information"</b>	means the form and any of the contents of the List and any information provided by or on behalf of BAFTA in connection with the same (whether oral, written, electronic or in any other form) which is identified as being of a confidential nature, or imparted in circumstances implying an obligation of confidentiality, or which the Company knows or should reasonably know that BAFTA wishes to keep confidential or private.
<b>"Rules"</b>	means the rules and guidelines of the Awards, as published in the Rule Book of the Awards available at <a href="http://awards.bafta.org/entry">http://awards.bafta.org/entry</a> , and any such guidelines as BAFTA may issue from time to time.
<b>"Transferred Personal Data"</b>	means the List as made available by BAFTA to the Company or to the Company's Processor(s) and, where relevant, Personal Data transferred by BAFTA to the Company for the operation of the Film Hub as described in clause 5.1.
<b>"Work"</b>	means mailing (by post or email) BAFTA members with information about, and organizing events related to, material entered into the

Awards as permitted by the Rules, on behalf of the Company itself or the company/individual who has entered the material.

- 1.2 Any reference in this Agreement to "writing", and any cognate expression, includes a reference to any communication effected by facsimile transmission, e-mail or similar means.
- 1.3 Any reference in this Agreement to a statute or any provision of a statute shall be construed as a reference to that statute or provision as amended or re-enacted at the relevant time.
- 1.4 The headings in this Agreement are for convenience only and shall not affect its interpretation.

## **2 OVERVIEW**

- 2.1 Subject to the Company's compliance with the terms of this Agreement, BAFTA shall make the List available to the Company during the Access Period in the following ways:
  - 2.1.1 BAFTA shall provide the Postal List to the Mailing Houses Approved for Data Sharing, for use on behalf of the Company for the Work. The Company shall not have, and shall not attempt to obtain, direct access to the Postal List.
  - 2.1.2 BAFTA shall provide the Email List:
    - 2.1.2.1 if the Company has agreed to use the Film Hub, through the Film Hub's interface, for use by the Company for the Work. Such access shall be limited in accordance with clause 5.1.1.; or
    - 2.1.2.2 to the Company directly, to carry out the Work.
- 2.2 The parties intend that by making the List available to the Company in the manners set out in clause 2.1, BAFTA is transferring any Personal Data contained in the List to the Company on a "controller to controller" basis, and that such transfer will be governed by clauses 3 and 4 of this Agreement.

## **3 TRANSFER TO THE COMPANY**

- 3.1 Each party:
  - 3.1.1 acknowledges that each party is a Controller of the Transferred Personal Data; and
  - 3.1.2 shall comply with its obligations as a Controller under the Data Protection Legislation.

### **BAFTA obligations**

- 3.2 Without prejudice to clause 3.1.2, BAFTA shall:
  - 3.2.1 ensure that the Transferred Personal Data has been collected, and disclosed to the Company, in accordance with Data Protection Legislation;
  - 3.2.2 ensure that the Film Hub affords appropriate technical and organisational security measures for the Transferred Personal Data; and
  - 3.2.3 for the duration of the Access Period, ensure the Transferred Personal Data is accurate and up to date, by way of providing an updated version of the List to the Company (in respect of the Email List, where that List is provided to the Company directly) and to the Mailing Houses Approved for Data Sharing (in respect of the Postal List) on a

weekly basis.

### **Company obligations**

- 3.3 Without prejudice to clause 3.1.2, Company shall:
- 3.3.1 process the Transferred Personal Data solely for the Work;
  - 3.3.2 process the Transferred Personal Data solely in accordance with the terms of this Agreement and the Rules;
  - 3.3.3 provide to Data Subjects any such information as is required by Data Protection Legislation, in the manner prescribed by Data Protection Legislation (if any);
  - 3.3.4 take all steps set out below in respect of its employees, agents, and sub-contractors who have access to the Transferred Personal Data ("**Personnel**"):
    - 3.3.4.1 ensure that only those Personnel who need to Process the Transferred Personal Data are permitted to do so solely for the Work;
    - 3.3.4.2 take all reasonable steps to ensure the reliability of its Personnel;
    - 3.3.4.3 ensure that all Personnel have completed training in Data Protection Legislation and in the care and handling of Personal Data;
    - 3.3.4.4 ensure that all Personnel are informed of the confidential nature of the Transferred Personal Data and are subject to appropriate contractual obligations of confidentiality; and
    - 3.3.4.5 ensure that all Personnel comply with the obligations set out in these clauses 3 and 4.
  - 3.3.5 in respect of any third party which the Company appoints to act as its Processor (including each Approved Mailing House used by the Company, if any):
    - 3.3.5.1 put in place a data processing agreement which meets or exceeds the requirements of Data Protection Legislation; and
    - 3.3.5.2 provide a copy of each such data processing agreement to BAFTA, promptly following the execution of that agreement.
  - 3.3.6 not disclose any Transferred Personal Data to any third party in any circumstances except as required or permitted by this Agreement or by Data Protection Legislation;
  - 3.3.7 in respect of the Transferred Personal Data forming the Email List, promptly delete, and procure that all Processors delete, the Transferred Personal Data once the Company no longer needs to Process it and, in any case, no later than the end of the Access Period unless otherwise agreed in writing with BAFTA;
  - 3.3.8 notify BAFTA promptly by contacting [datacontroller@bafta.org](mailto:datacontroller@bafta.org) / +44 (0) 20 7292 5859 if the Company becomes aware of a Personal Data Breach.
  - 3.3.9 notify BAFTA promptly by email to [datacontroller@bafta.org](mailto:datacontroller@bafta.org) if it receives a request or enquiry from either a Data Protection Regulator or Data Subject about the Transferred Personal Data itself or the transfer of the Transferred Personal Data under this Agreement, and shall keep BAFTA regularly updated as to the handling of such

request or enquiry.

#### **4 FURTHER RESTRICTIONS ON THE COMPANY'S USE OF THE LIST**

- 4.1 The Company shall hold the Restricted Information and the Transferred Personal Data in the strictest confidence using all due care and diligence and shall exercise a degree of care in preventing unauthorised disclosure of the same at least equal to the degree of care which it would use when protecting its own confidential information.
- 4.2 The Company may break down the Transferred Personal Data to send mailings only to members in a specific country, or only to members in specific voting groups as specified in the rules of the relevant Awards; otherwise all mailings must be sent to all voters except as expressly authorised in writing by BAFTA.
- 4.3 The Company shall ensure that all Work is carried out using the most recent version of the Transferred Personal Data as made available to the Company by BAFTA.
- 4.4 The Company shall undertake all Work in accordance with the Rules.
- 4.5 In respect of the Postal List:
  - 4.5.1 The Company shall only make use of the Postal List through an arrangement between the Company and one or more Mailing Houses Approved for Data Sharing.
  - 4.5.2 The Company shall not:
    - 4.5.2.1 attempt to obtain access to the Postal List; or
    - 4.5.2.2 instruct an Approved Mailing House to Process the Postal List for any purpose other than for the Work, or in any manner which is inconsistent with the obligations and restrictions imposed on the Company by this Agreement or the Rules.

#### **5 FILM HUB**

##### **5.1 Data transfer for platform operation**

- 5.1.1 If the Company and BAFTA have agreed to make the Company's films more easily accessible to BAFTA members through the Film Hub, BAFTA shall transfer to the Company, as part of a member's request to view a particular piece of content, such of the following information as is requested by the Company as being strictly necessary for the technical operation of the Company's own film streaming systems in respect of the particular requested content:
  - 5.1.1.1 email address of each member requesting to watch the content.
  - 5.1.1.2 mobile phone number of each member requesting to watch the content.
  - 5.1.1.3 BAFTA membership number of each member requesting to watch the content.

and, where transferred by BAFTA, these data shall form part of the "Transferred Personal Data", and BAFTA and the Company shall comply with clause 3 in respect of these data.

##### **5.2 Data transfer for anti-piracy purposes**

- 5.2.1 If the Company, acting reasonably, suspects that the Film Hub has been used by one or more BAFTA members in a manner which infringes the Company's copyright or other intellectual property rights in content which the Company has made available

through the Film Hub, the Company shall provide promptly to BAFTA (by email to [datacontroller@bafta.org](mailto:datacontroller@bafta.org)) all relevant information relating to the suspected infringement, including the BAFTA membership number of the member allegedly involved. The Company shall provide such further information as is reasonably required by BAFTA for the purpose of determining the validity of the Company's request.

5.2.2 Where BAFTA, acting reasonably, consider it appropriate and lawful to do so, BAFTA may transfer to the Company the name and postal address (in each case, as held by BAFTA at that time) of a BAFTA member which corresponds with that BAFTA membership number, and the Company shall:

5.2.2.1 process these data as a Controller;

5.2.2.2 use these data solely for the purpose of investigating, and taking action in respect of, the suspected infringement of copyright; and

5.2.2.3 comply with all applicable Data Protection Legislation.

## **6 LIABILITY**

The Company agrees that BAFTA shall have no liability to the Company for any special, indirect or consequential loss and BAFTA's maximum aggregate liability to the Company under or in connection with this Agreement shall be limited to £100. Nothing in this clause 5 excludes or limits BAFTA's liability for any matter for which, at law, a party cannot exclude or limit or to attempt to exclude or limit its liability. The Parties agree that, in the circumstances of this Agreement, this limitation of liability is fair and reasonable. This clause 6 survives termination or expiration of this Agreement.

## **7 OTHER COMPANY**

In this document, unless the context otherwise requires, each reference to the Company shall be deemed to include a reference to any other company which is at the relevant time a holding company or subsidiary of the Company or the subsidiary of any such holding company (within the meaning of Section 736 of the Companies Act 1985).

## **8 GENERAL**

8.1 This Agreement shall come into force upon signature and shall continue in force only for the Access Period.

8.2 BAFTA shall have the right, exercisable immediately on notice to the Company, to terminate this Agreement if the Company breaches any provision of this Agreement.

8.3 Any breach of the confidentiality of the Restricted Information or other contravention of this agreement may result in future lists being withheld from the Company, other penalties relating to the Awards (e.g. disqualification of an entry or restrictions on ticket purchase) and legal action. The Company acknowledges that damages would not be an adequate remedy for any breach by it hereunder and that BAFTA may be entitled to injunctive relief. The Company shall on demand indemnify BAFTA from and against all Losses incurred by BAFTA which may arise from the unauthorised disclosure or use of the Restricted Information or the List by the Company and/or any third party to whom the Company makes such information available.

8.4 Any failure or delay in exercising a right, power or privilege hereunder will not constitute a waiver by BAFTA. No waiver by either party of any right under or breach of this Agreement shall be effective unless it is in writing and signed by the waiving party and shall not be deemed to be a waiver of any subsequent or preceding breach or right.

8.5 The Company acknowledges and agrees that the British Academy of Film and Television Arts Los Angeles Inc ("BAFTA Los Angeles") and the British Academy of Film and Television

Arts New York ("BAFTA New York"), both non-profit membership organisations affiliated to BAFTA, may rely upon and enforce the terms of this Agreement with respect to that part of the List that contains details of their respective members.

- 8.6 Except as provided in clause 8.5, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this agreement and no term or condition of this agreement shall confer or be construed as conferring any right on any third party.
- 8.7 The Company shall not be entitled to assign or otherwise transfer the burden and/or benefits of the agreement in whole or in part to any third party without the prior written consent of BAFTA.
- 8.8 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 8.9 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 8.10 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.
- 8.11 No partnership or agency. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 8.12 This Agreement (including any non-contractual disputes arising out of or in connection with it) shall be governed by and construed in accordance with English law and the parties submit to the non-exclusive jurisdiction of the English Courts.

IN WITNESS whereof this Agreement has been executed on the day and year written above.

SIGNED by

.....  
For and on behalf of the Company

.....  
For and on behalf of BAFTA