

THE BRITISH ACADEMY OF FILM AND TELEVISION ARTS

CONFIDENTIALITY AND DATA PROCESSING 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 BAFTA runs an annual awards event, which supports, develops and promotes British films, television and games.
- II Companies which enter the awards often wish to carry out promotional mailing activity, to raise awareness of their entries, including by means of postal mailing.
- III BAFTA wishes to appoint the Company as one of its approved mailing houses, for the carrying out of promotional mailing on behalf of and at the request of Awards entrants.
- IV To facilitate this, BAFTA will provide to the Company personal data relating to BAFTA's members, which the Company shall process solely for the purpose of carrying out promotional mailings relating to the Awards, following a request from an Awards entrant to do so.
- V 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 about BAFTA's membership to facilitate the mailing by film studios and other Awards entrants of promotional material to BAFTA members who will be voting to determine the results of the Awards.
- VI 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.

"Awards"	means the EE British Academy Film Awards in 2021.
"Awards Entrants"	means entrants to the Awards, who contract with the Company for the purpose of the Work.
"Controller"	has the meaning set out in Data Protection Legislation.
"Data Protection Legislation"	means all applicable data protection and privacy legislation, regulations and guidance including Regulation (EU) 2016/679 (the "General Data Protection Regulation" or the "GDPR") 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).
"Data Protection Regulator"	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.
"Data Subject"	has the meaning set out in Data Protection Legislation.
"List "	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 by BAFTA.
"Losses"	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).
"Personal Data"	has the meaning set out in Data Protection Legislation.
"Personal Data Breach"	has the meaning set out in Data Protection Legislation.
"Process", "Processing" and "Processed"	each has the meaning set out in Data Protection Legislation.
"Processor"	has the meaning set out in Data Protection Legislation.
"Restricted Information"	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.
"Rules"	means the rules and guidelines of the Awards, as published in the Rule Book of the Awards available at http://awards.bafta.org/entry , and any such guidelines as BAFTA may issue from time to time.
"Transferred Personal Data"	means the List as made available by BAFTA to the Company.
"Work"	means mailing (by post or email) BAFTA members with information about, and organising events related to, material entered into the Awards as permitted by the Rules.

- 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 APPOINTMENT AS AN MAILING HOUSE APPROVED FOR DATA SHARING

- 2.1 Subject to the Company's compliance with the terms of this Agreement, BAFTA shall regard the Company as a mailing house which has been approved to receive the List, for the purpose of the Awards.

3 PROVISION OF THE LIST TO THE COMPANY

- 3.1 BAFTA shall make the List available to the Company during the Access Period.
- 3.2 The parties intend that by making the List available to the Company, the Company shall act as BAFTA's processor, as well as the processor of each Awards Entrant which instructs the Company to Process the Transferred Personal Data for the purpose of the Work.

4 BAFTA OBLIGATIONS

- 4.1 BAFTA shall:
 - 4.1.1 ensure that the Transferred Personal Data has been collected, and disclosed to the Company, in accordance with Data Protection Legislation; and
 - 4.1.2 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 on a weekly basis.

5 THE COMPANY'S OBLIGATIONS

- 5.1 References in this clause to an Article or a Chapter are to an Article or Chapter of the GDPR.
- 5.2 To the extent necessary to fulfil its role as BAFTA's Processor, the Company shall, for the duration of the Access Period:
 - 5.2.1 Process the Transferred Personal Data in accordance with applicable Data Protection Legislation;
 - 5.2.2 Process the Transferred Personal Data within the European Economic Area (or, if the United Kingdom leaves the European Union, the United Kingdom);
 - 5.2.3 Process the Transferred Personal Data in accordance with this Agreement and in accordance with the documented instructions of BAFTA;
 - 5.2.4 unless prohibited by law, notify BAFTA:
 - 5.2.4.1 before Processing the Transferred Personal Data, if the Company is required by any law of the European Union or the law of one of the Member States of the European Union to act other than in accordance with the instructions of BAFTA; or
 - 5.2.4.2 immediately if, in the Company's opinion, any of BAFTA's instructions under clause 5.2.3 infringes Data Protection Legislation;
 - 5.2.5 not appoint any sub-processors without BAFTA's prior written consent. The Company shall respect the conditions referred to in paragraph 4 of Article 28 for any such

engagement. The Company shall be liable for the acts and omissions of its sub-processors, and the Company shall ensure that the sub-processor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this Agreement;

- 5.2.6 treat the Transferred Personal Data as confidential information;
- 5.2.7 take all measures required pursuant to Article 32;
- 5.2.8 taking into account the nature of the Processing, assist BAFTA by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of BAFTA's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the GDPR;
- 5.2.9 provide reasonable assistance to BAFTA on written request by BAFTA in ensuring compliance with BAFTA's obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to the Company. This shall include the prompt, accurate, and complete completion and return to BAFTA of an information security questionnaire provided by BAFTA;
- 5.2.10 at BAFTA's choice, delete or return all the Transferred Personal Data to BAFTA at the end of Access Period (or sooner, if so instructed by BAFTA), and delete existing copies unless Union or Member State law requires storage of the Personal Data;
- 5.2.11 following written agreement as to the details:
 - 5.2.11.1 make available to BAFTA all information necessary to demonstrate compliance with the obligations laid down in Article 28; and
 - 5.2.11.2 allow for and contribute to such audits, including inspections, conducted by BAFTA or another auditor mandated by BAFTA, as are mandated by Article 28(3)(h);
- 5.2.12 notify BAFTA without undue delay by contacting datacontroller@bafta.org / +44 (0) 20 7292 5859 if the Company becomes aware of a Personal Data Breach.

6 FURTHER RESTRICTIONS ON THE COMPANY'S USE OF THE LIST

- 6.1 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.
- 6.2 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.
- 6.3 The Company shall not accept any instructions from a third party in respect of Processing of Transferred Personal Data unless:
 - 6.3.1 those instructions are from a verified Awards Entrant (which the Company shall verify with BAFTA);
 - 6.3.2 the Awards Entrant has entered into a contract with the Company, containing data protection provisions which meet or exceed the requirements of Data Protection Legislation; and
 - 6.3.3 the Awards Entrant's instructions relate solely to the Work and do not entail the transfer of the Transferred Personal Data to, nor provision of access to the Transferred Personal

Data to, the Awards Entrant or any third party.

- 6.4 If the Company receives an instruction, or a purported instruction, from an Awards Entrant which is inconsistent with clause 6.3, the Company shall:
- 6.4.1 refuse to Process the Transferred Personal Data in accordance with that instruction or purported instruction, and shall notify the Awards Entrant of its refusal; and
 - 6.4.2 promptly notify BAFTA by contacting datacontroller@bafta.org, providing all relevant information.

7 GENERAL

- 7.1 This Agreement shall come into force upon signature and shall continue in force only for the Access Period.
- 7.2 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.
- 7.3 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 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.
- 7.4 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.
- 7.5 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.
- 7.6 Except as provided in clause 7.5, 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.
- 7.7 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.
- 7.8 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.
- 7.9 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 7.10 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.
- 7.11 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.

7.12 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 exclusive jurisdiction of the English Courts.

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

SIGNED by

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For and on behalf of the Company

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For and on behalf of BAFTA