albert Toolkit agreement

1. Definitions

1.1. In this agreement, the following terms have the following meanings:

"**albert**": BAFTA albert Limited, a company registered in England and Wales under number 13168781 with its registered office at 195 Piccadilly, London, W1J 9LN.

"**albert Toolkit**": the tools made available by albert to assist the Customer in calculating the carbon footprint of a media production, currently available at calc.wearealbert.org.

"**Broadcaster**": the person identified by a production company Customer, for each production, as being the person which is going to broadcast, or is funding, or commissioning, the production.

"**Customer**": the organisation named in the request for the creation of a albert Toolkit account.

"**Customer Data**": the data inputted to, processed, stored or generated as part of use of the albert Toolkit by the Customer, End Users, or albert on the Customer's behalf.

"**End Users**": the Customer's authorised users of the albert Toolkit.

"**Footprint Data**": Customer Data relating to the sustainability practices of the Customer.

1.2. Clause, schedule and paragraph headings do not affect the interpretation of this agreement.

1.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

2. Term

2.1. This agreement comes into force when albert sets up an account following a request made on behalf of the Customer, and continues until either albert or the Customer terminates it.

3. albert obligations

3.1. In consideration of the Customer's compliance with this agreement, albert grants the Customer, and the Customer's End Users, the right to use the albert Toolkit for the duration of the agreement.

4. Customer obligations

4.1. The Customer shall:

4.1.1. comply with albert's reasonable instructions, guidelines and directions about the use of the albert Toolkit;

4.1.2. co-operate with albert in all matters relating to the albert Toolkit, and do so in a timely manner;

4.1.3. provide any information required by albert accurately, comprehensively, in good faith, and in a timely manner;

4.1.4. procure that its End Users use the albert Toolkit in accordance with this agreement;

4.1.5. maintain such backups, disaster recovery, and resiliency, plans, as are appropriate to its situation;

4.1.6. use all reasonable endeavours to prevent any unauthorised access to, or use of, the albert Toolkit and, in the event of the Customer becoming aware of any such unauthorised access or use, notify albert; and

4.1.7. keep its access or security credentials for the albert Toolkit secret. If the Customer becomes aware of a compromise, it must

immediately change its account passwords.

4.2. The Customer shall not, and shall procure that its End Users do not:

4.2.1. provide any Personal Data (as defined in Schedule 1) to albert unless necessary for its use of the albert Toolkit;

4.2.2. permit any unauthorised person to access or use the albert Toolkit;

4.2.3. use the albert Toolkit to provide services to third parties;

4.2.4. used the albert Toolkit to derive a commercial benefit;

4.2.5. make, or attempt to make, any alteration to the albert Toolkit (other than through using specific facilities made available by albert in the albert Toolkit for this purpose), or create or attempt to create any derivative work of the albert Toolkit;

4.2.6. use the albert Toolkit in any way that is unlawful, illegal, fraudulent or harmful, or in connection with any activity which is any of these things; or

4.2.7. post anything to the albert Toolkit which is unlawful, illegal, fraudulent, discriminatory, or

harmful, or connected with such a purpose or activity.

4.3. The Customer warrants that the Customer Data will not infringe the intellectual property rights or other legal rights of any person, and will not breach the provisions of any law, statute or regulation, in any jurisdiction and under any applicable law.

5. Service access, suspension, and maintenance

5.1. albert will use its reasonable efforts to maintain and operate the albert Toolkit, but it does not warrant that it will always be available or functioning, nor that it will be fault-free.

5.2. albert may restrict or suspend access to all or part of the albert Toolkit if, in albert's reasonable opinion, the Customer is not using the albert Toolkit, the Customer fails to comply with its obligations under this agreement, or if albert consider it is necessary to do so:

5.2.1. to stop or mitigate any security or integrity incident, threat or vulnerability, or problem or attack affecting it network, equipment, or services (including any network, equipment, or services provided to another customer);

5.2.2. to deal with behaviour which, in its reasonable opinion, amounts to misuse of the services; or

5.2.3. to comply with a legal obligation.

6. Proprietary rights

6.1. albert and/or its licensors own all rights (including intellectual property rights), title and interest in and to the albert Toolkit.

6.2. The Customer owns all rights (including intellectual property rights), title and interest in and to the Customer Data.

6.3. The Customer grants to albert all such rights (including intellectual property rights) to the Customer Data as are required by albert to:

6.3.1. provide the albert Toolkit and its services to the Customer.

6.3.2. prepare and distribute anonymous comparisons and reports.

6.4. If the Customer or an End User provides feedback or suggestions for amendments or improvements to the albert Toolkit, the Customer agrees that:

6.4.1. albert may, but is not obliged to, implement any or all of the feedback or suggestions; and

6.4.2. it shall transfer all rights, (including intellectual property rights), title and interest in and to its feedback and suggestions to albert, and do all things necessary to give effect to that.

7. Confidentiality

7.1. albert shall:

7.1.1. keep the Customer Data strictly confidential;

7.1.2. not disclose the Customer Data to any person without the Customer's prior written consent, other than (a) to a relevant Broadcaster (provided that the Customer Data do not include budget data)or (b) in anonymous comparisons and reports;

7.1.3. use the same degree of care to protect the confidentiality of the Customer Data as it uses to protect its own confidential information of a similar nature; and

7.1.4. not use any of the Customer Data for any purpose other than the performing its obligations or exercising its rights under, or in connection with, this agreement.

7.2. Notwithstanding clause 7.1, albert may disclose the Customer Data to its officers, employees, professional advisers, insurers, agents and subcontractors who have a need to access the Customer Data for the performance of their work with respect to the purpose for which it is provided and who are bound by a written agreement or professional obligation to protect the confidentiality of the Customer Data.

7.3. This clause 7 imposes no obligations with respect to Customer Data that:

7.3.1. is known to albert before it was uploaded to the albert Toolkit and is not subject to any other obligation of confidentiality;

7.3.2. is or becomes publicly known through no act or default of albert; or

7.3.3. is obtained by albert from a third party in circumstances where albert has no reason to believe that there has been a breach of an obligation of confidentiality.

7.4. The restrictions in this clause 7 do not apply to the extent that albert is required to disclose any Customer Data by any law or regulation, by any judicial or governmental order or request.

7.5. The provisions of this clause 7 shall continue in force for a period of five years following the termination of

this agreement, at the end of which period they will cease to have effect.

8. Data protection

8.1. The parties shall comply with Schedule 1.

9. Liability

9.1. Nothing in this agreement limits or excludes either party's liability for death or personal injury caused by its negligence; fraud or fraudulent misrepresentation; or any other liability which cannot be limited or excluded by applicable law.

9.2. Subject to clause 9.1, albert shall have no total liability to the Customer in respect of any claims (connected or unconnected) arising out of or in connection with this agreement.

10. Termination

10.1. Either party may terminate this agreement immediately by notice to the other party at any time.

10.2. The following clauses survive termination of this agreement: 1, 6.3, 6.4, 7, 9, 11, 12, and 13.

11. Notices

11.1. The parties agree that day to day communications in respect of this agreement may be carried out by email.

11.2. Any notice required to be given under this agreement shall be in writing and shall be sent to the other party's email address:

11.2.1. If to albert, to albert@bafta.org.

11.2.2. If to the Customer, to an email address of an End User with administrative rights on behalf of the Customer, as held in the albert Toolkit.

12. Dispute resolution

12.1. In the event of a dispute, the parties shall follow the following:

12.1.1. either party shall give to the other written notice of the dispute, setting out its nature and full particulars, together with relevant supporting documents, and promptly after that, a senior manager of the Customer and a senior manager of albert shall attempt in good faith to resolve the dispute.

12.1.2. If the dispute is not resolved within 30 days of receipt of the written notice of the dispute, either party may litigate before

the courts of England and Wales, which have exclusive jurisdiction.

12.2. A party must bring any claim relating to the construction, validity and performance of this agreement and any dispute or collateral matter relating to its subject matter (including non-contractual disputes or claims) within 12 months of the date on which the cause of action accrued.

13. General

13.1. Except as expressly set out in this agreement, all other conditions, warranties or other terms which might have effect the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are excluded to the extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

13.2. No breach of any provision of this agreement shall be waived except with the express written consent of the party not in breach.

13.3. If any provision of this agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this agreement will

continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

13.4. The Customer shall not, without the prior written consent of albert, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

13.5. This agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this agreement are not subject to the consent of any third party.

13.6. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind

the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

13.7. albert may vary this agreement on 30 days' notice to the Customer.

13.8. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

13.9. This agreement constitutes the entire agreement between the parties in relation to the subject matter of this agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

13.10. The construction, validity and performance of this agreement and any dispute or collateral matter relating to its subject matter (including non-contractual disputes or claims) is governed by and construed in accordance with the laws of England.

Schedule 1 – data processing

1. Interpretation

1.1. References in this Schedule 1 to a Regulation are to regulation 2016/679/EC, also known as the "GDPR", for as long as the GDPR applies to albert's Processing of Personal Data. If the GDPR does not apply to albert's Processing of Personal Data, references to a Regulation are to the Applied GDPR. References to the "Applied GDPR" are to the GDPR as amended by the UK's Data Protection Act 2018.

1.2. References to an Article are to an Article of the Regulation and capitalised terms in this Schedule 1 have the meaning defined by the Regulation unless otherwise defined in the agreement.

1.3. "Data Protection Laws and Regulations" means all applicable data protection and privacy legislation including the Regulation and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (in each case, as amended, updated or re-enacted from time to time). In the event of any inconsistency between the Data Protection Laws and Regulations, the strictest provision shall prevail.

2. Applicability

2.1. In respect of any Personal Data contained in the Customer Data, the Customer is a Controller, and albert Processes the Personal Data as the Customer's Processor and shall do so in accordance with this Schedule 1.

2.2. The subject-matter of the processing is to provide the albert Toolkit to the Customer. The duration of the Processing is the duration of the agreement. The nature and purpose of the Processing is to provide the albert Toolkit. The type of Personal Data and categories of Data Subjects are information relating to the Customer's staff and contractors. The Customer shall notify albert promptly if it becomes aware that this information is incomplete or inaccurate, and the Customer shall provide albert with that notification the necessary updated information.

3. The Customer's obligations

3.1. The Customer shall, for the duration of the Processing, comply with its obligations under Data Protection Laws and Regulations. Without limiting the generality of this, the Customer shall, in particular:

3.1.1. not provide any Personal Data to albert unless necessary for its use of the albert Toolkit.

3.1.2. have a lawful basis for the Processing, and ensure that it is entitled to provide the Personal Data to albert for Processing, and the Customer shall notify albert promptly if either of these ceases to be true.

3.1.3. notify its Data Subjects of the Processing, to the standard required by Data Protection Laws and Regulations.

3.1.4. ensure that all Personal Data the Customer provides to albert are accurate and up to date, and the Customer shall make promptly any amendments necessary to ensure that the Personal Data remain accurate and up to date.

4. albert's obligations

4.1. albert shall:

4.1.1. Process Personal Data in accordance with all applicable Data Protection Laws and Regulations;

4.1.2. Process the Personal Data within either or both the UK and the European Economic Area and only as necessary to provide the albert Toolkit (this being the sole instruction of the Customer);

4.1.3. unless prohibited by law, notify the Customer before Processing the Personal Data, if albert is required to act other than in accordance with the Customer's instructions by:

4.1.3.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and

4.1.3.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.

4.1.4. obtain the Customer's prior written authorisation (not to be unreasonably withheld, conditioned, or delayed) before engaging another Processor (a "Sub-processor") and albert will respect the conditions referred to in paragraphs 2 and 4 of Article 28 for any such engagement. albert will be liable for the acts and omissions of its Sub-processors, and albert will 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 Schedule 1. The Customer hereby authorises albert to appoint as Sub-processors:

4.1.4.1. BAFTA Media Technology Limited.

4.1.4.2. Amazon Web Services.

4.1.4.3. MailChimp.

4.1.5. treat the Personal Data in accordance with clause 7;

4.1.6. take all measures required pursuant to Article 32;

4.1.7. taking into account the nature of the Processing, assist the Customer by appropriate technical and organisational measures, insofar as this is reasonably possible, for the fulfilment of the Customer's obligation to respond to requests for exercising the Data Subject's rights laid down in Chapter III of the Regulation;

4.1.8. provide reasonable assistance, at the Customer's cost, on the Customer's written request, in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36, taking into account the nature of Processing and the information available to us;

4.1.9. at the Customer's choice, delete or return all the Personal Data to the Customer after the end of the provision of the services relating to the Processing, and delete existing copies. If albert makes available to the Customer tools which enable the Customer to download the Customer's Personal Data, albert will only be required to assist where those tools are unable to meet the Customer's reasonable needs. albert is not required to delete Personal Data if albert is required to continue store those Personal Data by:

4.1.9.1. if the GDPR applies to the Processing, any law of the European Union or the law of one of the Member States of the European Union; and

4.1.9.2. if the Applied GDPR applies to the Processing, any law in the United Kingdom.

4.1.10.   at the Customer's cost, allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by it. Any audit or inspection shall be carried out on reasonable notice and avoid causing damage, injury or disruption to our premises, equipment, personnel or business;

4.1.11.   at the Customer's cost, provide reasonable assistance to the Customer with any data impact assessments; and

4.1.12.   in the event of a Personal Data Breach notify the Customer without undue delay.

5. Transfer of Personal Data outside the UK/EEA

5.1. albert shall not transfer (within the meaning of Chapter V of the Regulation) Personal Data to recipients (including Sub-processors) in jurisdictions outside of the United Kingdom or the European Economic Area unless the Customer provides the Customer's written consent (not to be unreasonably withheld, conditioned, or delayed). . The Customer hereby authorises albert to transfer Personal Data to:

5.1.1. Amazon Web Services (USA). (Method of protection: standard contract clauses.)

5.1.2. MailChimp (USA). (Method of protection: standard contract clauses.)

5.1.3. If the Customer is using the albert Toolkit as a production company, to the Broadcaster.