

STANDARD FUNDING AGREEMENT for Scripted and Factual Content

Project Title	
Title	[Title]

Parties		
NZ On Air (us, we or our)	Full Legal Name	BROADCASTING COMMISSION
	Physical Address	2 nd Floor, 119 Ghuznee St, Wellington 6011
	Postal Address	PO Box 9744, Marion Square WELLINGTON 6141
	Email	contracts@nzonair.govt.nz (for notices) communications@nzonair.govt.nz (for informing us of release plans) fundingpayments@nzonair.govt.nz (for invoices and reports)
	Phone	(04) 382 9524
	Attention	Associate Head of Funding
Producer (you or your)	Full Legal Name	[PRODUCER] LIMITED
	Physical and Postal Address	To insert
	Email	To insert
	Phone	To insert
	Attention	To insert

Agreement	
This agreement comprises [Delete any Schedules that don't apply to this Project]	Schedule 1 – Project Particulars Schedule 2 – General Terms Schedule 3 – Your Proposal Schedule 4 – Project Budget Schedule 5 – Producer’s Health and Safety Confirmation Schedule 6 – Primary Platform Owner’s Covenants Schedule 7 – Additional Platform Owner’s Covenants Schedule 8 – Income Sharing Arrangements Schedule 9 – Security Agreement
[If NZ On Air does not have these covenants before signing...Condition precedent] [No funding may be advanced until these covenants are provided]	The commencement of this Agreement is conditional on you providing us with the following covenants, within two months after both of us have signed this Agreement: <ul style="list-style-type: none"> • [If the Primary Platform Owner is not the Producer...A Covenant to Publish from the Primary Platform Owner, in the form of Schedule 6A and duly signed.] • [If the Primary Platform Owner is not the Producer...A Health and Safety Covenant from the Primary Platform Owner, in the form of Schedule 6B, duly signed and demonstrating that health and safety risks are appropriately managed.] • [If there are any Additional Platform Owners... A Covenant to Publish from each Additional Platform Owner, in the form of Schedule 7 and duly signed.] If this condition is not met by then, this Agreement is of no effect.

Acceptance		
In signing this Agreement, each party acknowledges they have read and agrees to be bound by it. Each party confirms that, as at the date of this Agreement, the effects of the coronavirus pandemic on that party are not currently a Force Majeure event.		
Agreement made this	day of	2020
For NZ On Air		

Cameron Harland Chief Executive	Amie Mills Head of Funding
For the Producer	
In signing this Agreement you confirm that you hold all intellectual property rights necessary to complete the Project and that you are registered in New Zealand as a company, charity or incorporated society.	
Signature of Authorised person	Signature of Witness
Name and Position of Authorised person	Name of Witness

SCHEDULE 1 PROJECT PARTICULARS

Content	
Under this Agreement we fund the following content. If you want to produce any additional content using our funding under this Agreement, you must have our prior written approval.	
Main Content	You will produce the following Content in accordance with this Agreement and otherwise as set out in your Proposal.
	Working Title “[Title]”
	Episodes [E.g. 10 x 24 minutes each]
	Total Duration [E.g. 240 minutes]
Other Content	You will produce the following Content in accordance with this Agreement and otherwise as set out in your Proposal.
	Series Website [E.g. A stand-alone website to promote the episodes.]
	Articles [E.g. Two articles of at least 500 words to promote the episodes.]
	Audio Features [E.g. Two audio features to promote the episodes.]

Publishing Obligations		
Our aim is to ensure that great New Zealand content is valued and enjoyed by many New Zealand audiences. Accordingly, you agree to publish the Content, or arrange for the Content to be published, as set out in the following rows of this table (together, your Publishing Obligations). You will ensure that all necessary rights, licences, consents and other authorities required to meet your Publishing Obligations have been obtained and retained. Until completion of the Publishing Obligations:		
<p>(a) If you license the Content, or make it available, exclusively for publication in New Zealand, you will ensure:</p> <p>(i) you have our prior written permission for the licence; and</p> <p>(ii) that the licence does not conflict with any of your obligations under this Agreement.</p> <p>(b) You will not dispose of (including assign, sell, transfer or make subject to any lien, trust, encumbrance or security interest) any of your rights or title in any Content without our prior written consent.</p>		
Nothing in this section requires our consent for or prevents your licensing or distribution of the Content internationally. To the extent applicable to the Content, any reference in this Agreement to “publish” (in any of its grammatical forms) includes reference to “broadcast” (in its corresponding grammatical form).		
Primary Distribution Platform [Ensure this section distinguishes between the Main Content and the Other Content as required.]	Primary Platform Owner	[PLATFORM COMPANY NAME] LIMITED
	Channel	[channel]
	Platform Type	[Pick one...Television, Radio, Online]
	Platform Website	[website URL]
	Distribution Rights	<p>[If the Producer is NOT the Primary Platform Owner, use the following text...] The Producer confirms that it has agreed to the following rights with the Primary Platform Owner: [e.g. XX plays for XX years for free-to-air and Video on Demand]. If the Primary Platform Owner does not publish the Main Content in accordance with the <i>Covenant to Publish</i> in the form of Schedule 6A you will work with us to agree replacement publication(s), without breaching your third party obligations.]</p> <p>[If the Producer IS the Primary Platform Owner...] ...delete Schedule 6 entirely</p> <p>...add the following text if broadcast is via TV or Radio...You will broadcast the first play of the Main Content over the Channel within twelve months of its completion, or within the period of its topicality, whichever is the shorter, with the broadcast:</p> <p>(a) [Either...]commencing not earlier than 6pm and not later than 9.30 / Or...in an off-peak time slot / Or...[insert actual times if possible i.e. 10pm to 11pm]; and</p> <p>(b) at a time when, to the best knowledge of the Broadcaster, the Main Content is not scheduled at the same time as a national free-to-air broadcast of any other similar content or series funded by us, without our prior agreement.]</p> <p>...and use the following text ...You will make each [episode] of the Main Content available free of charge, in a noticeable position on your website [website name], for at least [12 months] after the [episode] was first released on the Primary Distribution Platform.</p>
Additional Distribution Platform	Additional Platform Owner	[ADDITIONAL PLATFORM COMPANY NAME] LIMITED
	Platform	[additional platform channel]

<p>[Add or delete rows depending on how many additional platform owners there are.] [Ensure this section distinguishes between the Main Content and the Other Content as required.]</p>	Description	
	Platform Type	[Pick one...Television, Radio, Online]
	Platform Website	[URL]
	Exclusive Distribution Rights	[Only list rights if exclusive, so NZ On Air can check for overlaps with any other exclusive licensee] [TBC - adapting wording from Primary Platform Owner above but referring to "Additional Platform Owner" instead]
	Additional Platform Owner	[ADDITIONAL PLATFORM COMPANY NAME] LIMITED
	Platform Description	[additional platform channel]
	Platform Type	[Pick one...Television, Radio, Online]
	Platform Website	[URL]
	Exclusive Distribution Rights	[Only list rights if exclusive, so NZ On Air can check for overlaps with any other exclusive licensee] [TBC - adapting wording from Primary Platform Owner above but referring to "Additional Platform Owner" instead]
<p>Extended Platform Rights In rare circumstances we will consider longer periods of exclusive use by the Primary Distribution Platform.]</p>	<p>[Either...Do not apply.] [Or if NZ On Air provides 95-100% of funding excluding any Platform Contribution Reduction Support...</p> <p>During the Extended Platform Period (defined below), you will use all reasonable endeavours to make the Content (including each episode where there are multiple episodes) available for:</p> <p>(a) no more than six transmissions in New Zealand, by each free-to-air broadcaster (except the Primary Platform Owner) who requests such transmission rights from you; and</p> <p>(b) unlimited streaming:</p> <p>(i) by the Digital Media Trust; and</p> <p>(ii) any other free access, New Zealand website.</p> <p>The "Extended Platform Period" is a period of 12 months immediately following the earlier of:</p> <p>(a) [2 weeks, 12 months, etc] after the Content (or, where there are multiple episodes of the Content, the episode concerned) was first broadcast on the Primary Distribution Platform; and</p> <p>(b) the Primary Distribution Platform ceasing to broadcast content generally.]</p>	
<p>Free Online Access</p>	<p>If the Publishing Obligations are not complied with, you will ensure the Main Content (as modified or extended from time to time) is available to the New Zealand public:</p> <p>(a) in an online form approved by us;</p> <p>(b) without charge to the public (except you may charge a reasonable amount, as approved by us, for modifications or extensions to the Main Content that we didn't fund); and</p> <p>(c) promptly following completion of the Main Content (and in any event within 12 months of that date) for a consecutive period of at least one year.</p>	

Funding (excluding GST)			
[Delete if no Development Funding Agreement... Development Funding]	We agreed to provide \$[A - Total NZOA Development Funding] of funding for the Content under our development contract with you, executed on [date] (the Development Funding Agreement).		
Total Funding	From us	Our Development Funding	\$[A] under the Development Funding Agreement
		Our Project Funding	\$[B] under this Agreement
		Our Platform Contribution Reduction Support	\$[E] under this Agreement
		Total of our funding	\$(Total of A + B + E)
	From all parties	Total Project (Non-Cash)	\$[C]
		Total Project (Cash)	\$[D]
Total funding		\$(Total)	
Project Funding [No funding by a Platform Owner will reduce NZ On Air's share of Net Income as stated in Schedule 8, although there is some scope for negotiation where Platform Owners contribute a large %. Funding by third parties may reduce NZ On Air's share.]	You confirm that the following table includes all [Delete if no Development Funding Agreement...other] funding you have secured (both cash and non-cash) at any time in relation to the Content. You confirm that all Content can be completed in accordance with this Agreement within this amount. On our request, you must give us evidence that the above funding has been secured and will be provided to enable completion of all Content in accordance with this Agreement.		
	Funder	Cash	Non-Cash (itemised in the Project Budget)
	Our equity	\$(Total of A + B)	\$Nil
	Our non-equity (Platform Contribution Reduction Support)	\$[E]	\$Nil
	You	\$ To insert	\$ To insert
	Primary Platform Owner	\$ To insert [including previous dev funding]	\$ To insert
	Additional Platform Owner	\$ To insert	\$ To insert
	[Insert 3rd Party]	\$ To insert	\$ To insert
	[Insert 3rd Party]	\$ To insert	\$ To insert
	Total Project Funding	\$(D) - Total Project Cash	\$(C) - Total Project Non-Cash
	You must ensure that all cash and non-cash funding that isn't provided by us, is provided in time to meet the Project Completion Date below. You must let us know immediately if you become aware of any circumstance that may result in funding not being provided as above.		

Drawdown Schedule [There may be additional or fewer drawdown points depending on amount of funding]	We will contribute our Project funding in accordance with the following drawdown schedule. We may, after consulting with you, vary drawdown dates or amounts where we reasonably consider you then hold excess or insufficient funds to meet immediate costs and expenses for the Project. To receive our funding, you must meet each of the conditions specified in the drawdown schedule to our reasonable satisfaction.		
	First Instalment	After: <ul style="list-style-type: none"> Both of us have signed this Agreement [If this Agreement has a condition precedent...The above condition precedent for this Agreement has been met.] [If any payments are still to be made under a Development Funding Agreement...All payments under the Development Funding Agreement have been made.] Your invoice for this instalment. 	\$ To insert
Second Instalment	After you give us: <ul style="list-style-type: none"> Evidence of first day of pre-production. 	\$ To insert	

	<ul style="list-style-type: none"> • [Move to first instalment if appropriate...Copies of any agreements related to the funding of the Project.] • A producer report as per our requirements outlined at https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns at the time of your report (Producer Report). • A cost report as our requirements outlined at https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns at the time of your report (Cost Report) • Your invoice for this instalment. 	
Third Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of first day of production. • Confirmation of first payment from Primary Platform Owner (and other funders if requested). • [If the Producer is not the Primary Platform Owner...A health and safety confirmation from the Primary Platform Owner, in the form required by us, pursuant to their <i>Health and Safety Covenant</i> under Schedule 6B.] • A signed health and safety confirmation as per Schedule 5. • A Producer Report. • A Cost Report. • Your invoice for this instalment. 	\$ To insert
Fourth Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of first day of post-production. • A Producer Report. • A Cost Report. • Your invoice for this instalment 	\$ To insert
Fifth Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of offline approval of one episode of the Main Content by the Primary Platform Owner. • A Producer Report. • A Cost Report. • Your invoice for this instalment 	\$ To insert
Sixth Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of offline approval of all episodes of the Main Content by the Primary Platform Owner. • A Producer Report. • A Cost Report. • Your invoice for this instalment 	\$ To insert
Seventh Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of full delivery of the Main Content to the Primary Platform Owner. • At least 6 high resolution digital images from the Main Content for us to publish in any form free of charge. • Your invoice for this instalment. 	\$ To insert
Completion Instalment	<p>After you give us:</p> <ul style="list-style-type: none"> • Evidence of completion of all Content (via a copy delivered to us on USB or DVD). • A Producer Report. • A “final” Cost Report representing a true and fair view of the costs of the Project and accounting for all income received in relation to the Project and the expenditure of the Project Budget. • A statistics report as per our requirements outlined at https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns 	\$ To insert (subject to deductions for under-spend as below)

	<ul style="list-style-type: none"> Confirmation you have completed our diversity survey. A link that will persist for at least 1 year from the date of publication to all Content. Your invoice for this instalment. 	
	Our Total Project Funding	\$(B + E) (under this Agreement)
Invoices	Your invoices must include the bank account for payment. If you are GST registered and provide us with a GST invoice, we will also pay GST in addition to each instalment.	
Payment	We will pay your invoices within 10 Business Days of all drawdown conditions being met to our reasonable satisfaction.	
Project Bank Account	<p>[To insert]</p> <p>We prefer you use a separate bank account solely for Project funding and expenses. If your account includes non-Project funding and we take over the Project under clause 8 (Takeover) of Schedule 2, we may make withdrawals from and otherwise deal with all funds in the account whether or not they are Project funds.</p>	
Under-Spend	<p>If the cash costs of the Project (incurred in accordance with the Project Budget in Schedule 4) are less than the cash funding provided by us or anyone else for the Project, the difference will be shared as follows:</p> <p>[The following equity %s may only change if 3rd party funding is in the budget]</p> <ul style="list-style-type: none"> 80% for us 20% for you (including any co-funders or other third parties) <p>We may deduct the amount of our share from any outstanding payments under this Agreement or require you to promptly pay our share to us.</p> <p>In calculating the cash costs of the Project, you will deduct the reasonable market value of any asset purchased out of the Project Budget that you retain or disposed of after the Project.</p>	
Income Sharing	<p>[For projects with less than \$200,000 of NZ Government funding, including from NZ On Air...You (and your assignees) may retain all income related to any Content.]</p> <p>[For all other projects...We have a right to share in any income related to the Content, in accordance with Schedule 8.]</p>	

Production Activity		
Production	You must complete production in accordance with your Proposal.	
Production Standards	Although the editorial control of all Content is entirely at your discretion, you must ensure that all Content meets the following standards and use all reasonable endeavours to ensure that all subsequent owners or licensors of any Content do the same. These standards do not apply to any user generated content in a website that contains or references any Content.	
	Legality	All Content must meet all applicable laws and regulations.
	Technical Quality	All Content must be of a technical quality that is appropriate for their intended audience and distribution platform(s), as set out in your Proposal. This standard will not have been met if any of any Content has not been made available on a Distribution Platform because of its technical quality.
	Broadcasting Standards	<p>All Content must meet the standards in section 4(1) of the Broadcasting Act 1989 (as if the Content was a “programme” under the Act). This includes maintaining standards that are consistent with:</p> <ul style="list-style-type: none"> the observance of good taste and decency; the maintenance of law and order; the privacy of the individual; and any approved code of broadcasting practice applying to the programmes (see http://bsa.govt.nz/standards/overview).
	Community Standards	Any Content, in part or in whole, which is not subject to a New Zealand approved code of broadcasting practise must meet the “Don’t Cross the Line” rules in YouTube’s Community Guidelines (currently found at http://nz.youtube.com/t/community_guidelines and in the “find out more” links on that page, as updated from time to time) as if it were posted on YouTube.
New Zealand Identity and Culture	<p>You will use best endeavours to ensure all Content reflects and develops New Zealand identity and culture. In addition, where appropriate, you will use your best endeavours to ensure all Content reflects:</p> <ul style="list-style-type: none"> Māori issues in a way relevant to all New Zealanders; and New Zealand’s ethnic diversity as well as the needs of other minorities and cultures in the community. 	
People	Key People	You must use the following key people or organisations in the Project:

	[Exactly which roles and people are listed will change for each contract]	<ul style="list-style-type: none"> • Producer – To insert • Writer – To insert • Editor – To insert • Director(s) – To insert • Developer/Interaction Designer – To insert <p>You must obtain our prior written approval if you want to replace any of them with someone else.</p>
	Equal Opportunities	To the extent possible given the nature of the Project, you will operate an equal employment opportunities plan for all people engaged in association with the Project.
	Cast Engagement	We expect you will engage cast using the <i>Individual Performance Agreement</i> agreed between The Screen Production and Development Association and New Zealand Actors Equity for use on New Zealand based productions.
	Crew Engagement	NZ On Air expects that the Producer and crew will adhere to the “Blue Book” (as published by the Screen Industry Guild of Aotearoa New Zealand Inc.).
Contracts		You must promptly provide us with copies of all contracts and arrangements in relation to the Project that you may have with any Platform Owner, funder, or anyone else involved in distributing any of the Content to the New Zealand public. In particular, this includes all contracts and arrangements relating to New Zealand distribution rights for the Content.
Project Completion Date		You must complete the Project on or before [date]. If the Project is not complete by then, we may exercise our rights under clause 7 (Default) of Schedule 2. The Project is complete when: <ul style="list-style-type: none"> • you meet all conditions required for the Completion Instalment to our reasonable satisfaction; and • all Content is finished and available for public access in accordance with this Agreement and your Proposal.
Keeping us Informed		You will keep us informed of the progress of the Project and meet with us if we ask. We and our representatives may, at reasonable times and on reasonable notice, visit any studio, location or elsewhere where production of any Content is being carried out, to observe the progress of the Project. Any visitor will comply with your reasonable health and safety directions.

Other Activity	
What you must do	On completion of the Production Activity, you must do the following, and use all reasonable endeavours to ensure that all subsequent owners and exclusive licensors of any Content do the same.
Ongoing Public Assess	In accordance with your Publishing Obligations, you will use all reasonable endeavours to give the New Zealand public such access to the Main Content as is consistent with: <ul style="list-style-type: none"> (a) the rights, licences, consents and authorities obtained for the Project; and (b) your Distribution Agreements.
Notify us of public release	Give us at least two weeks prior notice of the date the Main Content will first go live via email at communications@nzonair.govt.nz
Acknowledge our funding	Ensure that we are acknowledged in all Content, as set out on our website at https://www.nzonair.govt.nz/funding/resources-producers/#applying-our-logo We reserve the right to change those acknowledgement requirements at any time
Only use appropriate sponsorship	Tell us before allowing (to the extent this is within your control) any brand, product or service that could reasonably be considered inappropriate for us to be connected with (including but not limited to tobacco, alcohol, drug or sex products or services) to be associated with the Content (as modified or extended from time to time) by way of advertising, sponsorship or similar commercial arrangement. We may veto or require you to remove any such sponsorship, provided that our consent is not required for the use of props in the normal course of production of the Content. For clarity, this clause does not apply to general advertising sold by a platform including scheduled commercial breaks, display or banner ads.
Do not break the law	Use all reasonable endeavours to ensure that the Content (as modified or extended from time to time) contains nothing that is defamatory, infringes intellectual property rights, right of privacy or breaches any statute, regulation or other rule or law.
Report Content usage	Give us statistics reports as per our requirements outlined at https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns covering the following periods after go live of the Main Content: <ul style="list-style-type: none"> (a) 1 month; and (b) 6 months;

		Each report must be given to us within 1 month of the reporting period.
	Make archive copies available	Make the Main Content available to any archive approved by us, if it is selected by them (the archive will pay reasonable copying costs).
	Captions and Audio Description	We support accessibility of funded content for all New Zealanders. If the Main Content is being broadcast, you will notify the Operations Manager of the Media Access Charitable Trust (Able) when the Main Content is delivered to your Primary Platform Owner. If captions or audio description files have been created as part of the Project, a copy of those files must be delivered to the Media Access Charitable Trust free of charge, for use in any New Zealand broadcast.
	Digital Media Trust	At the expiration of all Distribution Agreements, or earlier if agreed by the applicable rightsholders, you will make the Main Content (or reasonable excerpts) available to the Digital Media Trust on terms and conditions to be agreed between you and the Digital Media Trust (both acting reasonably).
What we can do	Our own promotion	You grant us (free of charge) the nonexclusive, perpetual and worldwide right to exhibit, show or transmit extracts from any Content for our own promotion and publicity, but not for commercial exploitation.

SCHEDULE 2 GENERAL TERMS

1 Definitions and Interpretation

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Funding Agreement and all its Schedules.
- (b) **Business Day** means any day other than:
- (i) a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington or Auckland; and
 - (ii) the period between 26 December in any year and 5 January the next.
- (c) **Content** means the content described in the “Content” section of Schedule 1, including:
- (i) the “Main Content”;
 - (ii) any “Other Content”; and
 - (iii) any additional content we approve in accordance with that section.
- (d) **Default Event** means:
- (i) you abandon or state your intention to abandon the Project;
 - (ii) the Primary Platform Owner or any Additional Platform Owner withdraws its support to publish any Content, or any funding (excepting NZ On Air funding) for any Content is withdrawn in whole or in part, with the effect or likely effect that the ability to produce and publish any Content as originally intended is prejudiced;
 - (iii) we reasonably believe you are unable to ensure the health and safety of all workers and other persons in relation to the Project;
 - (iv) you breach this Agreement or we reasonably believe you are likely to breach this Agreement;
 - (v) you breach any other agreement, such that there is or is likely to be a material adverse effect on any Content or your ability to meet your obligations under this Agreement, including where we reasonably believe:
 - you are unable to deliver any Content by the Project Completion Date; or
 - any Content differs materially from the Proposal; or
 - (vi) you, the Primary Platform Owner or any Additional Platform Owner become insolvent, stop or suspend payment of any debts, have a receiver appointed over any assets, or fail to satisfy any final judgement within 5 Business Days, or we reasonably believe either of you are at risk of doing any of those things. To avoid doubt, a notice received by us under section 157 of the Tax Administration Act 1994 or section 43 of the Goods and Services Tax Act 1985 in respect of any party, constitutes reasonable grounds to believe that that party is or is threatened with becoming insolvent.
- (e) **Digital Media Trust** means:
- (i) the Digital Media Trust, a charitable trust board called incorporated under the Charitable Trust Act 1957; or
 - (ii) an alternative similar organisation with a non-profit media focus selected by NZ On Air from time to time.
- (f) **Distribution Agreement** means any agreement between you and any third party in relation to the sale, licensing or other exploitation of any Content.
- (g) **Distribution Platform** means the distribution platforms described in the “Distribution” section of Schedule 1. There:
- (i) is one “Primary Distribution Platform”; and
 - (ii) may be one or more “Additional Distribution Platforms”.
- (h) **Distribution Rights** means the right to sell or license or otherwise exploit, and to authorise the sale licensing or exploitation of any Content.
- (i) **Force Majeure** means:
- (i) act of God, fire, earthquake, storm, flood, or landslide;
 - (ii) explosion or nuclear accident;
 - (iii) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
 - (iv) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity
- but does not include:
- (v) any event which the party affected could have avoided, prevented or overcome by implementing reasonable precautions against the event;
 - (vi) any event which you could have prevented or overcome but for a prior failure to comply with your obligations under this Agreement;
 - (vii) any failure of a contractor to enable you to perform your obligations under this Agreement, except to the extent that the contractor’s failure is itself caused by Force Majeure; or
 - (viii) a lack of funds for any reason.
- (j) **Platform Owner** means the person described as owner of a Distribution Platform in the “Distribution” section of Schedule 1. There is:
- (i) a “Primary Platform Owner” for the Primary Distribution Platform; and
 - (ii) an “Additional Platforms Owners” for any Additional Distribution Platform.
- (k) **Project** means the Project described in this Agreement, including in the following sections of Schedule 1:
- (i) “Publishing Obligations”.
 - (ii) “Funding”.

- (iii) "Production Activity".
 - (iv) "Other Activity".
 - (l) **Project Budget** means the budget in Schedule 4, as varied with our prior written approval.
 - (m) **Project Completion Date** means the project completion date described in the "Production Activity" section of Schedule 1.
 - (n) **Proposal** means your proposal in Schedule 3, as varied with our prior written approval.
 - (o) **Publishing Obligations** has the meaning given to it in the "Publishing Obligations" section of Schedule 1.
- 1.2 In interpreting this Agreement, unless the context requires otherwise:
- (a) **Defined Terms:** Words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement.
 - (b) **Documents:** A reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time.
 - (c) **Gender:** Reference to any gender include all genders.
 - (d) **Headings:** Headings are for guidance only and do not affect interpretation.
 - (e) **Inclusions:** Reference to "includes" means "includes without limitation", and "include", "included" and "including" have corresponding meanings.
 - (f) **Negative Obligations:** A prohibition against doing something is also a prohibition against permitting, suffering or causing that thing to be done;
 - (g) **Person:** Reference to a person includes:
 - (i) a corporation sole, a body of persons, whether corporate or unincorporated, and any national, state, regional or local government body or agency; and
 - (ii) that person's representatives, successors and assigns.
 - (h) **Related Terms:** where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (i) **Singular and Plural:** The singular includes the plural and vice versa;
 - (j) **Statutes and Regulations:** A reference to any enactment, regulation or expression of Government policy is a reference to that enactment, regulation or policy as amended, or to any enactment, regulation or policy substituted for it, and any reference to an enactment includes all regulations made under that enactment.
 - (k) **Writing:** A reference to "written" or "in writing" includes all modes of presenting or reproducing text in a form that is legible, permanently visible and capable of being retained and stored (which to avoid doubt may include email).
- 2 Using our Funding**
- 2.1 We have no obligation to provide any additional funding for the Project and you have no expectation of the same.
- 2.2 You must use our funding only to meet reasonable costs of the Project that are specified in the Project Budget and incurred in accordance with this Agreement. Subject to this Agreement, you must use all other funds secured for the Project in accordance with any agreement for the provision of those funds.
- 2.3 If our funding has been spent but all Content isn't finished, you will ensure sufficient additional funding is obtained to finish the Project in accordance with this Agreement.
- 2.4 We have no liability to you, or any third party, as a result of, or in any way in connection with, this Agreement or the Project, except only to the extent we have failed to pay an instalment of funding without reasonable excuse.
- 2.5 You must perform your obligations under this Agreement:
 - (a) promptly with due diligence, care and skill;
 - (b) with appropriately skilled, qualified, experienced and supervised personnel.
- 2.6 You are not relieved of any obligation under this Agreement by subcontracting or delegating it to any third party, whether directly or indirectly. You are responsible for the acts and omissions of any such third party, as if they were your own acts or omissions.
- 3 Accounting/Information**
- 3.1 If we make a request for information about your solvency and ability to complete the Project, you agree to promptly make that information available to us and allow us, at reasonable times, to inspect your accounts, books and records relating to the Project.
- 3.2 You must retain originals of all receipts and invoices for costs incurred for 2 years after the Project has ended, on the understanding that the Project could be subject to review by us.
- 3.3 You will ensure that:
 - (a) you will comply with all applicable tax legislation and indemnify us against liability to any third party and any costs we reasonably incur as a result of any non-compliance including any costs associated with the collection of any taxes and any other incidental costs, expenses, penalties or claims. Applicable tax legislation includes all legislation relating to PAYE, withholding tax, fringe benefits tax, employer superannuation contribution tax, accident compensation levies, KiwiSaver deductions and contributions and any other tax or levies imposed upon an employer in respect of its personnel;
 - (b) if you are a company, until the Project Completion Date there will be no change of your ownership or control by way of sale of the whole or substantial part of your assets without our prior written consent. Our consent will not be unreasonably withheld where such change or sale would not affect your ability to comply with your obligations under this Agreement;
 - (c) the details you provided to us (including in any your Proposal and Project Budget) are true and correct in all respects; and
 - (d) all reports you provide to us under this Agreement are true and correct and contain the required information.
- 3.4 Where our funding for the Content, under this Agreement together with any earlier agreement, is \$1,000,000 or more,

you must report any interest earned on the total funding received for the Project in each cost report and such interest may only be used by you to meet any increase in the Project Budget. If there is no increase in the Project Budget, any such interest will form part of the under-spend described in the “Funding” section of Schedule 1.

- 3.5 We may deduct any withholding tax required to be deducted from our payments under this Agreement, and will forward that withholding tax to the New Zealand Inland Revenue as required by law.

4 Intellectual Property

4.1 As between you and us, you will own on their creation all intellectual property rights in relation to the Content that arise under or in connection with this Agreement.

4.2 You covenant with us that:

- (a) you have obtained and will retain all necessary rights, licences, consents or other authorities with respect to the Project, and which enable the performance of the Project, and exploitation of all Content, in accordance with this Agreement and any Distribution Agreement; and
- (b) the performance of the Project and exploitation of any Content in accordance with this Agreement will not violate or infringe the copyright, right of privacy, moral rights nor any other rights of any third party and will not contain any defamatory material.

5 Health and Safety

5.1 You confirm you are aware of your obligations under the Health and Safety at Work Act 2015 and COVID-19 Public Health Response Act 2020.

5.2 In the performance of the Project you agree to comply with:

- (a) the Health and Safety at Work Act 2015;
- (b) the “New Zealand Screen Sector Health and Safety Guidelines” published by ScreenSafe;
- (c) where applicable, the “Child Safety Guidelines” published by ScreenSafe; and
- (d) the COVID-19 Public Health Response Act 2020 and all orders under that Act.

You also agree to obtain an acknowledgement, from any person you contract to help in the production of the Content, that they will do the same.

5.3 You must consult, co-operate with, and co-ordinate health and safety activities with all other persons that have health and safety obligations in respect of the production of any Content.

5.4 You must report to us, within 24 hours of the incident concerned, details of any:

- (a) notifiable event (as defined in the Health and Safety at Work Act 2015) related to the Project;
- (b) incident relating to the Project which results (or could reasonably have resulted or could yet result) in death, serious injury or serious illness;
- (c) charge or infringement notice against you under the COVID-19 Public Health Response Act.

We may, at any time on reasonable notice, require a meeting with you or anyone affected by the event or notice,

to obtain information and to discuss the event or notice and your planned responses to it.

5.5 You will provide such information as reasonably requested by us to demonstrate your compliance with your health and safety obligations under this Agreement, including providing updated Health and Safety Confirmations in the form of Schedule 5 (Producer’s Health and Safety Confirmation).

5.6 We may, from time to time, at our own cost and on written notice to you, audit your compliance with your health and safety obligations under this Agreement. You will do whatever is required to facilitate and assist the audit.

6 Force Majeure

6.1 Non-performance by either party of any of its obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure, with effect from the time that notice of the Force Majeure has been given in accordance with clause 6.2.

6.2 The party claiming the benefit of this clause 6 (Force Majeure) will, as soon as is practical and to the extent known to that party, give notice to the other party specifying:

- (a) the nature of the Force Majeure;
- (b) the extent of its inability to perform its obligations under this Agreement; and
- (c) the likely duration of such non-performance.

6.3 The party claiming the benefit of this clause 6 (Force Majeure) will:

- (a) take all reasonable steps to avoid or remove the Force Majeure and mitigate its effects on the other party;
- (b) keep the other party fully informed of such steps as have been taken and are planned; and
- (c) meet its obligations under this Agreement as far as is practical given the Force Majeure.

6.4 Where you are claiming the benefit of this clause 6 (Force Majeure), you will if requested by us in writing:

- (a) refund a reasonable proportion of the funding to us to reflect any reduction in the value of the Content to us as a result of the Force Majeure; and
- (b) discuss with us in good faith alternative ways of achieving our objectives for this Agreement (such as agreeing to vary the required Content in order to produce something of value despite the Force Majeure).

6.5 Performance of any obligation affected by Force Majeure will be resumed as soon as practicable after the termination or abatement of the Force Majeure.

7 Default

7.1 Our payment of funding does not constitute acceptance that you are complying with your obligations under this Agreement, and does not prevent us from exercising our rights arising from your breach of this Agreement at any time.

7.2 If there is a Default Event, we may give you notice and at least 5 Business Days to remedy the Default Event. If you

don't remedy it, then we can do any or all of the following without limiting our other remedies:

- (a) Suspend funding under this Agreement and any other agreement for us to fund you.
- (b) End this Agreement and stop funding at that time.
- (c) Require repayment of any funding already provided under this Agreement (however we will negotiate with you about costs you have already incurred up to termination and we may, but are not required to, meet those costs).
- (d) If you obtained our funding fraudulently, require interest calculated at 15% per annum from the date of payment to the date the funding is repaid.
- (e) Take over the Project in accordance with clause 8 (Takeover).

7.3 You indemnify us against all liability we may have to any third party as a result of any Default Event, and against all expenses (including legal fees) we incur in relation to that liability. Clause 12.5 applies to this indemnity.

7.4 Termination of this Agreement will not affect any rights and obligations that are intended to survive termination, including clauses 3 (Accounting/Information), 4 (Intellectual Property), 5 (Health and Safety), 7 (Default), 8 (Takeover), 9 (Ensuring Public Availability), 11 (Confidentiality), 12 (Disputes), 13 (Audit), 15 (Costs and Expenses), 16 (Notices) and 17 (General), your obligations and our rights in the "Publishing Obligations" and "Other Activity" sections of Schedule 1, and any obligation to share revenue with us or return funding to us.

8 Takeover

8.1 We will give you written notice under clause 7 (Default) if we take over the Project. If we so take over the Project:

- (a) you will put at our disposal and under our control, all persons, contracts, equipment and other resources employed or used by you in connection with the Project, provided that we may elect not to take over any contract or obligation of yours which we consider to be unduly onerous (and any costs or liabilities arising in relation to such contracts or obligations as a result of our exercising this right of election will be borne by you);
- (b) we may at our discretion arrange for the Project to be completed by a third party and, if the Primary Platform Owner is listed in Schedule 1 as contributing funding to the Project, we will consult with them to see if they wish to complete the Project; and
- (c) we may complete (or arrange for the completion of) or abandon the Project at our discretion (and we will be deemed to do so as your agent on the terms of this Agreement).

8.2 To confirm our rights as your agent:

- (a) For the purpose of this clause 8 (Takeover), you hereby irrevocably constitute and appoint us as your attorney-in-fact with full power and authority to do any of the following in connection with the Project:
 - (i) make withdrawals from and otherwise deal with funds in the Project bank account;

- (ii) borrow money; enforce, modify, release, compromise or terminate any contract or other right or obligation of yours relating to the Project;
- (iii) engage and discharge Project personnel (subject to employment laws);
- (iv) enter into or terminate any contract relating to the Project;
- (v) acquire or lease or dispose of equipment and other real or personal property relating to the Project;
- (vi) make claims under any policy of insurance relating to the Project; and
- (vii) do all such other lawful acts and things as we may determine is reasonably necessary to exercise our rights under this clause 8 (Takeover) (including executing any power of attorney contemplated by subclause (b) if you fail to do so); and

(b) you will, if requested by us, execute a Power of Attorney in favour of us or any of our officers in respect of the powers listed in subclause (a).

8.3 We will not be liable to you, and you will indemnify us against liability to any third party, as a result of any act or omission occurring prior to our exercising our right to take over the Project. Clause 12.5 applies to this indemnity.

8.4 Without prejudice to our remedies, if we take over the Project under clause 7 (Default), your entitlement to share in the proceeds of any sale, licensing, distribution or other exploitation of any Content will be reduced in such proportion as is equitable in all the circumstances (having regard to the extent which you had met your obligations under this Agreement prior to the takeover and the amount of Project funding provided by you, if any).

9 Ensuring Public Availability

9.1 You grant us a non-exclusive, transferable, irrevocable, sub-licensable and royalty free licence to copy, modify, publish and otherwise commercially exploit the Content in accordance with the Publishing Obligations following a Rights Notice being issued. This licence:

- (a) is granted as at the date of this Agreement;
- (b) is limited to New Zealand if the Publishing Obligations are limited to New Zealand; and
- (c) ends when your Publishing Obligations have been fully completed to our satisfaction (without a Rights Notice being issued).

This clause only applies to third party owned content in the Content, to the extent your licence for that third party content permits use by us (provided you entered into the licence in good faith and not in order to avoid the application of this clause).

9.2 You will give us copies of all Content requested in writing by us at any time. Copies must be provided within 10 Business Days of request. We may only use that Content:

- (a) following a Rights Notice; and
- (b) pursuant to the licence granted in clause 9.1.

9.3 If at any time we consider, acting reasonably, that you:

- (a) have not complied with your Publishing Obligations; and/or

(b) will not be able to, or will not, comply with your Publishing Obligations,

we may give you written notice (a **Notice to Fix**) that requires you to:

- (c) remedy that non-compliance; and/or
- (d) evidence to our satisfaction that you will be able to, and will, so comply,

within two weeks or any longer period specified in the Notice to Fix or subsequently agreed by us in writing.

9.4 We may at any time give written notice to you (a **Rights Notice**) you have not complied with a Notice to Fix to our satisfaction within the period referred to in the Notice to Fix. The Rights Notice must:

- (a) specify that it is a Rights Notice under this Agreement;
- (b) describe the Content concerned; and
- (c) specify the next steps (if any) that we require you to take in accordance with this Agreement.

9.5 If a Rights Notice is issued then:

- (a) the license in clause 9.1 permits us to copy, modify, publish and otherwise commercially exploit the Content in accordance with the Publishing Obligations; and
- (b) if requested in writing by us, you will promptly give us copies of all Content that is in your possession or control.

10 Removal from Companies Register

If you are a company and are removed from the Companies Register under section 318 of the Companies Act 1993 then, immediately before the Registrar removes the Producer from the Companies Register, and subject to the provisions of any existing agreements relating to any Content, the right to unlimited streaming on the internet subject to any restrictions or obligations imposed by a Distribution Agreement will be assigned to and vest in the Digital Media Trust. To the extent permitted by law, you irrevocably constitute and appoint us as your attorney in fact with full power and authority to enter into and execute any document giving effect to the assignment. This clause is for the benefit of, and enforceable by, the Digital Media Trust, however this Agreement can be amended without their consent.

11 Confidentiality

11.1 The contents of this Agreement are confidential and will not be disclosed by either party except:

- (a) to people who need to know for the purpose of the Project or this Agreement, and who maintain the same level of confidentiality;
- (b) with both parties' prior written consent; or
- (c) as required by law.

11.2 You acknowledge that we are subject to and bound by the provisions of the Official Information Act 1982 and are required to treat any request for information under the Official Information Act 1982 in accordance with the provisions of that Act.

12 Disputes

12.1 If any dispute arises between you and us in relation to this Agreement, it will be referred for resolution to our Chief

Executive (or the Chief Executive's nominee) and (if you are an organisation) your Managing Director or equivalent. If the dispute is not resolved within 5 Business Days of the issue being referred for resolution (or such longer period as we both agree), the dispute will be referred to mediation and the chairperson for the time being of the Resolution Institute (or his or her nominee) will be requested to appoint a mediator. For contact details see <https://www.resolution.institute/>.

12.2 You and we will continue to perform all of our respective obligations under this Agreement whilst the dispute is referred to mediation, provided that where we consider that the dispute relates to your material breach of any obligation under this Agreement, we may elect to withhold payments due to you until the dispute has been resolved to our satisfaction.

12.3 You and we will each pay our own costs associated with this dispute resolution procedure unless the mediator or other dispute resolution co-ordinator determines otherwise.

12.4 Nothing in this Agreement will preclude you or us from taking immediate steps to seek equitable relief before a Court.

12.5 For each indemnity to which this clause applies, we will:

- (a) promptly notify you if we become aware of any liability covered by the indemnity;
- (b) not admit or settle any claim for such liability, without your prior written consent (not to be unreasonably withheld);
- (c) at your request and expense:
 - (i) allow you to conduct and settle all negotiations and litigation resulting from such claim, provided we are consulted on, and may be represented at, the same and you effect our reasonable requirements for the same; and
 - (ii) provide reasonable assistance with any such negotiations or litigation; and
- (d) use reasonable endeavours to minimise the liability and expenses covered by the indemnity.

13 Audit

We have the right at our cost to require the cost reporting and processes be audited, to set the scope of the audit and to appoint an auditor. You will do whatever is required to facilitate and assist the audit.

14 Insurance

14.1 You will obtain, pay the premiums for, and maintain in force such insurance coverage for the Project as is prudent, whether the insurance is specific to the Project or general to your business. If asked to do so by NZ On Air, you will add us as an additional insured party to any such insurance policies. We may require you to provide copies of any insurance policy covering the Project at any time.

14.2 The insurance will be for fully adequate sums having regard to the potential loss.

14.3 The proceeds of any claim under any policy of insurance will first be applied in payment of all reasonable costs and expenses in making the claim and secondly to defray the cost of replacing the property in respect of which the claim was made. The balance, if any, will be accounted for in the

cost report, or if received after the Completion Instalment, will form part of Net Income.

15 Costs and Expenses

15.1 This Agreement contains our standard terms and conditions. If you require significant changes to this agreement, you agree to pay all our reasonable legal fees that may be incurred in connection with negotiating and amending this Agreement. These costs may be paid for out of the Project Budget if there are sufficient funds.

16 Notices

16.1 All notices to a party must be delivered by hand or sent by post, courier, or email to that party's address for Notices on the front page of this Agreement.

16.2 Notices must be signed or in the case of email sent by the appropriate manager or person having authority to do so.

16.3 A notice will be considered to be received:

- (a) if delivered by hand or courier, on the date it is delivered;
- (b) if sent by post within New Zealand, on the 3rd Business Day after the date it was sent;
- (c) if sent by post internationally, on the 7th Business Day after the date it was sent; or
- (d) if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.

16.4 A notice received after 5pm on a Business Day or on a day that is not a Business Day will be considered to be received on the next Business Day.

17 General

17.1 This Agreement can be validly signed by each party signing a separate, identical copy of this Agreement and sending it to the other party. The signed copies can be printed documents or emailed copies.

17.2 Subject to clause 17.3, you will not dispose of (including assign, sell, transfer or make subject to any lien, trust, encumbrance or security interest) any rights or obligations under this Agreement without our prior written consent.

17.3 After the Project Completion Date, unless NZ On Air has an income share under Schedule 7, you may dispose of any or all of your rights or obligations under this Agreement without our prior written consent, provided you:

- (a) notify us of each disposal, in writing and in advance;
- (b) before disposing of any obligations under this Agreement, you ensure that the person acquiring those obligations agrees with us in writing (in a form approved by us) to perform those obligations; and

(c) you remain jointly and severally liable with them for any failure to do so.

To avoid doubt, "dispose of" does not include changes to your directorships or shareholders.

17.4 We may assign or novate all of our rights and obligations under this Agreement to another Government agency that takes over our functions in respect of this Agreement, effective on written notice to you.

17.5 This Agreement can only be amended as agreed in writing by both you and us.

17.6 This Agreement represents the entire agreement between the parties relating to the Content. This Agreement replaces all prior proposals or agreements and all communications between the parties relating to the subject matter of this Agreement.

17.7 Any invalid, illegal or unenforceable provision of this Agreement will be amended to the minimum extent necessary to ensure that it is not unlawful and, as far as is possible, to ensure that it is consistent with the intent and effect of the provision. The remaining provisions will be enforceable as if such unlawful provision had not been included in this Agreement. If the provision is unable to be amended without materially altering the intent and effect of the provision, it will be severed, and the remaining provisions enforceable, but only if the severance does not frustrate this Agreement.

17.8 Nothing in this Agreement will create or constitute or be deemed to create or constitute a partnership between you and us, nor to constitute or create or be deemed to create or constitute a party as an agent of the other party for any purpose except as expressly provided in this Agreement. Neither you nor we will have any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other to any obligation except as expressly provided in this Agreement.

17.9 Except as expressly provided in this Agreement, this Agreement will not and is not intended to confer any benefit on or create any obligation enforceable by any person not a party to this Agreement.

17.10 Any delay or failure by us to use any right under this Agreement will not operate as a waiver of such right. A waiver of any breach (which must be writing) will not be or be deemed to be a waiver of any other or subsequent breach.

17.11 You and we agree to use all reasonable endeavours to execute all such further documents and do all other things necessary to give effect to the terms of this Agreement.

17.12 You agree to comply with all laws and regulations in relation to this Agreement.

**SCHEDULE 3
YOUR PROPOSAL**

[Add Proposal, including marketing/distribution plan]

SCHEDULE 4 PROJECT BUDGET

[Add Project Budget, with Internal and Related Party costs identified]

The Project Budget is attached.

Internal and Related Parties

You confirm that the Project Budget clearly identifies all:

- (a) internal budget items; and
- (b) transactions between you and any related party (as that term is defined in For-profit accounting standards set out by the NZ Accounting Standards Board – currently NZ IAS 24) in relation to the Project.

Non-Cash Items

You confirm that the non-cash items in the Project Budget are as follows:

[TBC]

**SCHEDULE 5
PRODUCER'S HEALTH AND SAFETY CONFIRMATION**

The following confirmation is to be completed by you during pre-production and provided to us before production begins.

**To: The Chief Executive
NZ On Air
PO Box 9744
Wellington 6141**

PRODUCER'S HEALTH AND SAFETY CONFIRMATION

The Broadcasting Commission ("NZ On Air") entered into a Funding Agreement with [Producer] Limited ("the Producer") whereby NZ On Air agreed to fund the production of content provisionally called "[Title]" ("the Project").

The Producer now confirms to NZ On Air, in the context of the Health and Safety at Work Act 2015 ("the Act"), that:

- (a) to the extent reasonably practicable, the Producer has consulted, co-operated and co-ordinated with all PCBUs as defined in the Act (e.g. contractors) over all health and safety plans for the Project; and
- (b) the New Zealand Screen Sector Health and Safety Guidelines found at <http://screensafe.co.nz/> and where applicable, the Child Safety Guidelines found at <http://screensafe.co.nz/>, are being and will continue to be followed on the Project; and
- (c) to the extent reasonably practicable, all risks to health and safety on the Project have been assessed and identified risks have been entered in a hazard register along with how these will be eliminated or minimised; and
- (d) the current Project budget, including NZ On Air's funding, is enough to ensure the Producer meets its obligations for the health and safety of all persons connected with the Project.

The Producer also confirms to NZ On Air that it will comply with the COVID-19 Public Health Response Act 2020 and all orders under that Act.

The Producer understands that in accordance with clause 5.4 of Schedule 2 of the Funding Agreement, any notifiable event, or any serious health and safety incident or near miss, and any COVID-19 related charge or infringement notice, must be reported to NZ On Air within 24 hours.

DATED the _____ day of _____ 2020

SIGNED for and on behalf of [Producer] Limited by:

Signature

Name:

Title:

[Only use this Schedule if the Producer is not the Primary Platform Owner]

SCHEDULE 6
PRIMARY PLATFORM OWNER'S COVENANTS

6A. COVENANT TO PUBLISH

[The following covenant is to be completed and signed by the Primary Platform Owner, and the signed version attached to this Agreement before it is signed]

To: The Chief Executive
NZ On Air
PO Box 9744
Wellington 6141

PRIMARY PLATFORM OWNER'S COVENANT TO PUBLISH

The Broadcasting Commission ("NZ On Air") is planning to enter into a Funding Agreement with [Producer] Limited ("the Producer") under which NZ On Air agrees to provide funding of \$[b] to enable production of content provisionally called "[Title]" and [describe any other content] (the "Content") to be published in New Zealand by [Platform Company Name] Limited ("the Platform Owner").

In consideration of NZ On Air entering into an agreement with the Producer (the "Agreement"), the Platform Owner agrees with NZ On Air that:

- (a) **[Either Contribution.** The Platform Owner will contribute at least \$[XXXX] in the production of the Content. **Or Extended Platform Rights.** The Platform Owner acknowledges it has [2 weeks] exclusivity to distribute the content before the NZ On Air Extended Platform Rights apply.]
- (b) **Distribution and marketing.** The Platform Owner will follow the distribution and marketing plan which it approved at the time the Producer applied to NZ On Air for funding for the Content, as amended with NZ On Air's agreement.
- (c) **Notice of first publication.** The Platform Owner will give NZ On Air at least two weeks' prior notice of the date the Content is scheduled to be first published.
- (d) **[Keep next section if broadcast...First broadcast.** The Platform Owner will broadcast the first play of the Content over [channel] within twelve months of completion of the Content, or within the period of topicality of the Content, whichever is the shorter, with the broadcast:
 - (i) [commencing not earlier than 6pm and not later than 9.30pm/in an off-peak time slot actual times if possible i.e. 6am to midnight]; and
 - (ii) at a time when the Content is not scheduled at the same time as a national free-to-air broadcast of any other similar content or series funded by NZ On Air, without the prior agreement of NZ On Air.]
- (e) **Free website access.** Subject to the Content meeting the Platform Owner's normal standards, the Platform Owner will use its best endeavours to publish the Content in a noticeable position on its website [website URL] (the "Website") on the launch of the Content, and ensure that the Content is freely accessible on the Website by the New Zealand public free of charge for at least one year.
- (f) **Share audience data.** The Platform Owner will share audience data with the Producer as required to enable the Producer to report full audience statistics to NZ On Air in keeping with the Agreement.

DATED the day of 2020

Signed for and on behalf of [Platform Company Name] Limited:

Signature

Name of Signatory:

Title:

signed in the presence of:

Signature

Name of Witness:

Occupation:

City of Residence:

6B. HEALTH AND SAFETY COVENANT

We may require you to provide us with the following covenant from the Primary Platform Owner from time to time.

To: **The Chief Executive**
 NZ On Air
 PO Box 9744
 Wellington 6141

PRIMARY PLATFORM OWNER'S HEALTH AND SAFETY COVENANT

The Broadcasting Commission ("NZ On Air") is planning to enter into a Funding Agreement with [Producer] Limited ("the Producer") under which NZ On Air agreed to provide funding of \$[B] to enable production of content provisionally called "[Title]" (the "Production") to be published in New Zealand by [Platform Company Name] Limited ("the Platform Owner").

Although detailed health and safety plans for the Production are yet to be prepared by the Producer, the Platform Owner:

- (a) agrees it is a PCBU for the purposes of the Health and Safety at Work Act 2015 (the "Act");
- (b) confirms that, based on its enquiries to date as required under the Act, it has no current health and safety concerns in relation to the Production; and
- (c) agrees to promptly respond to NZ On Air requests for Health and Safety confirmations in relation to the Production and understands that these confirmations may be sought at a number of drawdown stages, including, but not limited to, the first day of production.

DATED the day of 2020

Signed for and on behalf of [Platform Company Name] Limited:

Signature

Name of Signatory:

Title:

signed in the presence of:

Signature

Name of Witness:

Occupation:

City of Residence:

[Only use this Schedule if there is an Additional Platform Owner]

SCHEDULE 7 ADDITIONAL PLATFORM OWNER'S COVENANT TO PUBLISH

[The following covenant is to be completed and signed by each Additional Platform Owner, and the signed version attached to this Agreement before it is signed. The covenant must be replicated for each Additional Platform Owner]

To: The Chief Executive
NZ On Air
PO Box 9744
Wellington 6141

ADDITIONAL PLATFORM OWNER'S COVENANT TO PUBLISH

The Broadcasting Commission ("NZ On Air") [is planning to enter/has entered] into a Funding Agreement with [Producer] Limited ("the Producer") under which NZ On Air agrees to provide funding of \$[B] to enable production of content provisionally called "[Title]" and [describe any other content] (the "Content") to be published in New Zealand by [Additional Platform Company Name] Limited ("the Platform Owner").

In consideration of NZ On Air entering into an agreement with the Producer (the "Agreement"), the Platform Owner agrees with NZ On Air that:

- (a) **Distribution and marketing.** The Platform Owner will follow the distribution and marketing plan which it approved at the time the Producer applied to NZ On Air for funding for the Content, as amended with NZ On Air's agreement.
- (b) **[Keep next section if broadcast... First broadcast.** The Platform Owner will broadcast the first play of the Content over [additional platform channel] within twelve months of completion of the Content, or within the period of topicality of the Content, whichever is the shorter, with the broadcast:
 - (i) [commencing not earlier than 6pm and not later than 9.30pm/in an off-peak time slot actual times if possible i.e. 6am to midnight]; and
 - (ii) at a time when the Content is not scheduled at the same time as a national free-to-air broadcast of any other similar content or series funded by NZ On Air, without the prior agreement of NZ On Air.]
- (c) **Free website access.** Subject to the Content meeting the Platform Owner's normal standards, the Platform Owner will use its best endeavours to publish the Content in a noticeable position on its website [website URL] (the "Website") on the launch of the Content, and ensure that the Content is freely accessible on the Website by the New Zealand public free of charge for at least one year.
- (d) **Share audience data.** The Platform Owner will share audience data with the Producer as required to enable the Producer to report full audience statistics to NZ On Air in keeping with the Agreement.
- (e) **[Only if applicable Contribution.** The Platform Owner will contribute at least \$[XXXX] in the production of the Content.]

DATED the day of 2020

Signed for and on behalf of [Additional Platform Company Name] Limited:

Signature

Name of Signatory:

Title:

signed in the presence of:

Signature

Name of Witness:

Occupation:

City of Residence:

[Only use this Schedule for Projects with \$200,000 or more of total Government funding, including from NZ On Air]

SCHEDULE 8 INCOME SHARING ARRANGEMENTS

1 DEFINITIONS

1.1 Terms defined elsewhere in this Agreement will have the same meaning in this Schedule.

1.2 Unless the context requires otherwise, in this Schedule:

(c) **Ancillary Rights** means:

- (i) the right to produce (or authorise such production and exploitation of) projects based on any Content and/or the same themes, situations, concepts, incidents and principal characters and including the right to use the codebase, scripts and storylines for any Content adapted and varied for the audience;
- (ii) the right to produce and exploit any audio-visual, computer-generated, electronic or mechanical work based on or derived from or inspired by any Content;
- (iii) all merchandising, stage, music and soundtrack rights in relation to any Content; and
- (iv) any right to exploit the Field Footage.

(d) **Content Rights** means all rights in any Content in any medium throughout the world (including video cassettes, videodiscs (including DVDs and Blu-rays) and any other devices for reproducing visual images and sounds which may be played back by the use of a playback device and intended for sale or hire to the public for home use), except for:

- (i) the rights of any Platform Owner identified in this Agreement; and
- (ii) the Ancillary Rights.

(e) **Combined Rights** means:

- (i) all Content Rights; and
- (ii) all Ancillary Rights.

(f) **Distributor** means a person authorised to sell, license, distribute and authorise the sale, licensing, distribution or other exploitation of any Combined Right.

(g) **Field Footage** means any material produced in the course of the production of any Content that is not included as part of any Content as distributed in any territory.

(h) **Net Income** is defined in clause 3.3 of this Schedule.

2 COMMERCIALISING THE CONTENT

2.1 Except to the extent required otherwise by this Agreement, you will:

- (a) use your best endeavours to maximise Net Income; and

- (b) only enter into Distribution Agreements that are consistent with proper business practice, on arm's length, commercial terms.

2.2 Within one month from signing any Distribution Agreement you will inform us of the agreement. On our request from time to time, you will provide us with:

- (a) a copy of the agreement; and
- (b) a report on the general sales prospects of the Content under the agreement.

In any event, you will distribute all Content properly and in good faith.

2.3 You will:

- (a) make every effort to collect all receipts arising from the sale or licensing or other exploiting of the Combined Rights as is commercially reasonable; and
- (b) not violate any rights of any third party by the entry into distribution, sales agency, or other agreements relating to the sale or licensing or other exploiting of the Combined Rights.

3 SHARING NET INCOME

3.1 Net Income will be shared between the both of us as follows:

(a) in respect of the Content Rights:

- (i) until we have fully recouped our funding for all Content under this Agreement and any other agreement:

You and permitted assignees: **75.0%**

Us: **25.0%**

- (ii) thereafter:

You and permitted assignees: **90.0%**

Us: **10.0%**

(b) in respect of the Ancillary Rights:

You and permitted assignees: **90.0%**

Us: **10.0%**

[Default position – will change if other equity in content budget]

3.2 **[If the Producer is not the Primary Platform Owner...]** You may not assign all or any of your share of Net Income to the Primary Platform Owner.]

3.3 For the purposes of this Schedule, "**Net Income**" is the sum of the following items:

- (a) Royalties.
- (b) Gross Income less:
 - (i) Delivery Expenses;
 - (ii) Production Expenses;
 - (iii) Distribution Expenses; and
 - (iv) Distributor's Commission.

- (c) The balance of any claim under any policy of insurance, as contemplated by clause 14 (Insurance) of Schedule 2.
- (d) The sale of any equipment or other tangible assets purchased out of the Project Budget for the purpose of the production of any Content.

Where:

- (e) **“Royalties”** means any payment made by a Distributor on a royalty basis (for example, a fixed percentage of the net wholesale price of a DVD or book or any payment made by collecting society, performers or authors rights organisations such as Screenrights) to you in connection with any Content. If at any time you have registered any Content with Screenrights or similar organisation, you will be deemed to have instructed the organisation to provide us with copies of all financial reports in respect of that Content.
- (f) **“Gross Income”**:
 - (i) means all moneys accruing from the sale, licensing, distribution or other exploitation of the Combined Rights; and
 - (ii) excludes Royalties and the first \$5,000 of Gross Income accruing solely from the exploitation of Field Footage.
- (g) **“Delivery Expenses”**:
 - (i) means your direct, actual and reasonable costs that are necessary to deliver any Content to a Distributor (or, to the extent you are acting as Distributor, necessary to distribute any Content) and which are consistent with proper business practice, incurred on commercial terms, properly allocated to any Content, and approved by us on receipt of supporting documentation acceptable to us costs relating to errors and omissions insurance and clearance of music, archive and external footage will be deemed approved;
 - (ii) excludes all salary and overheads, costs relating to attendance at markets, preparation of promotional materials for markets and legal costs relating to negotiating a Distribution Agreement.
- (h) **“Production Expenses”** means direct actual and reasonable out-of-pocket costs incurred by the Distributor or you (as applicable) in connection with the production of video cassettes, videodiscs (including DVDs), any other devices for reproducing visual images and sounds which may be played back by the use of a playback device intended for home use, books or other merchandise relating to any Content.
- (i) **“Distribution Expenses”** means direct, actual and reasonable out-of-pocket costs of a Distributor (exclusive of salary and overheads) properly incurred in connection with the sale, licensing or other exploitation of the Combined Rights on an arm’s length basis and properly allocated to any Content in accordance with the relevant Distribution Agreement up to a maximum of 5% of

Gross Income from that Distribution Agreement, unless otherwise approved by NZ On Air in writing provided that where a Distribution Agreement contains provision for uncapped costs of the Distributor, such costs will be deemed approved provided they have been properly incurred in accordance with the relevant Distribution Agreement. Where you are the Distributor, then you may claim Distribution Expenses up to a maximum of 5% of Gross Income and any further costs incurred by you as Distributor that are approved by NZ On Air on receipt of supporting documentation acceptable to NZ On Air.

- (j) **“Distributor’s Commission”** means an amount equalling up to 30% of Gross Income received by the relevant Distributor, or such other amount approved by NZ On Air in writing such approval not to be unreasonably withheld, from the sale, licensing, distribution or other exploitation of the Combined Rights from which will be deducted all sub-distribution fees and commissions applicable to the Gross Income which is the subject of the commission calculation.

4 REPORTING NET INCOME

- 4.1 You will keep proper accounting records of all transactions carried out in relation to the sale, licensing and other exploitation of the Combined Rights and will produce such records for inspection as may reasonably be required by NZ On Air.
- 4.2 Unless we agreed otherwise with you in writing, you will provide reports to NZ On Air:
 - (a) where you are not a Distributor, within 10 Business Days following receipt by you of a report from a Distributor); or
 - (b) where you are a Distributor, on a six monthly basis in the first two years with the first report due six months from the Project Completion Date and on a yearly basis thereafter,
 provided that:
 - (c) you must report Net Income within 10 Business Days of it reaching NZ\$10,000 or more; and
 - (d) from five years after the Project Completion Date, reports will only be due where there is Net Income to report.
- 4.3 The reports will include:
 - (a) copies of any new Distribution Agreements or amendments to any Distribution Agreement;
 - (b) copies of any statements received from the Distributor showing Gross Income and/or Royalties and all payments made by the Distributor out of Gross Income including Distribution Expenses (capped and uncapped) and Distributor’s Commission; and
 - (c) a statement of receipts and payments detailing all Gross Income and/or Royalties received by you, and all payments made by you out of Gross Income including Delivery Expenses, Production Expenses, Distribution Expenses and Distributor’s Commission along with a calculation of our share of Net Income.

4.4 We may, at any time on reasonable notice, require you to meet to provide information and to discuss the reports provided pursuant to clause 4.2 above.

5 PAYING OUR SHARE

5.1 We will invoice you for our share of Net Income. You must pay our share of Net Income within 10 Business Days after receiving an invoice from us.

[Only use this Schedule if (a) NZ On Air funding is \$1M+ or (b) required by the NZ On Air Board or CE]

SCHEDULE 9 SECURITY AGREEMENT

[The following agreement is to be completed and signed by the Provider and NZ On Air, and signed together with this Agreement]

SECURITY AGREEMENT

BETWEEN

- (1) **[PRODUCER] LIMITED**, a company at [address of registered office] ("the Producer"); and
- (2) **BROADCASTING COMMISSION**, a statutory body corporate established by the Broadcasting Act 1989 ("NZ On Air")

BACKGROUND

- A. The parties plan to enter into a Funding Agreement under which NZ On Air will provide the Producer with funding for the production of content provisionally called "[Title]".
- B. In order to help secure those deliverables, under this Agreement:
 - (a) the Producer assigns its title and rights in the deliverables to NZ On Air; and
 - (b) NZ On Air reassigns such title and rights back to the Producer following completion and delivery of content in accordance with the Funding Agreement.
- C. This transaction is a "security interest" under the Personal Property Securities Act 1999.

AGREEMENT

1. Interpretation

In this Security Agreement:

"PPSA" means the Personal Property Securities Act 1999.

"Funding Agreement" means the Funding Agreement dated on or about the date of this Agreement under which NZ On Air agrees to provide funds to the Producer for use in the production of the Content.

"Content" has the meaning given to it in the Funding Agreement.

"Content Rights" means the entire copyright and all other rights of ownership in and to the script for any Content (including all revisions of the script from time to time) together with all other rights relating directly or indirectly to any Content (including rights the Producer has for music for any Content) whether existing as at the date of this Agreement or thereafter arising held by you.

"Primary Platform Owner" has the meaning given to it in the Funding Agreement.

2. Initial Assignment

2.1 The Producer absolutely and unconditionally assigns all Content Rights to NZ On Air:

- (a) with immediate effect, all Content Rights as at the date of this Agreement; and
- (b) as a present assignment of future copyright, all Content Rights arising after the date of this Agreement.

2.2 The Producer warrants that it will, at any time at the request of NZ On Air:

- (a) execute all documents and do all acts as may be necessary in order to vest, secure or enforce any rights of NZ On Air in respect of the Content Rights.
- (b) give NZ On Air all assistance in the power of the Producer to enable NZ On Air to enjoy the full benefit of all Content Rights.

2.3 The Producer agrees and acknowledges that the assignment of the Content Rights pursuant to this Agreement constitutes the grant by the Producer to NZ On Air of a security interest in the Content Rights for the purposes of

the PPSA. The Producer will do all such things as are necessary to enable NZ On Air to obtain and retain in respect of the Content Rights a security interest that is perfected under the PPSA with the priority required by NZ On Air.

- 2.4 Without limiting NZ On Air's rights under the Funding Agreement, if the Producer fails to perform all its obligations under the Funding Agreement, in particular the obligation to complete and deliver all Content in accordance with the Funding Agreement, then NZ On Air may exercise any or all of the powers and rights NZ On Air has pursuant to the PPSA in respect of the Content Rights.
- 2.5 The Producer:
- (a) agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to this Agreement;
 - (b) waives (to the extent applicable, if any) the Producer's rights:
 - (i) to receive a verification statement pursuant to section 148 of the PPSA;
 - (ii) to receive a statement of account under section 116 of the PPSA;
 - (iii) to recover a surplus under section 119 of the PPSA;
 - (iv) to object to NZ On Air's proposal to retain the Content Rights under section 121 of the PPSA; and
 - (v) to redeem the Content Rights under section 132 of the PPSA.
- 2.6 The Producer agrees that if it requests NZ On Air to discharge or amend any financing statement which NZ On Air has registered under the PPSA in respect of the Content Rights, pursuant to section 162 of the PPSA, NZ On Air will be entitled to charge the Producer such fee as NZ On Air may from time to time determine in respect of processing the request. NZ On Air agrees that it will not charge the Producer a fee in relation to the registration of a financing change statement discharging this security interest where, in NZ On Air's opinion (acting reasonably), all of the obligations secured by this security interest have been performed.
- 2.7 The Producer warrants that:
- (a) the details in respect of the Producer contained in the Appendix to this Agreement are true and correct, that the Producer will immediately advise NZ On Air if any of those details become inaccurate or incomplete;
 - (b) before changing its name, it will give NZ On Air at least 10 Business Days prior written notice;
 - (c) it is the sole and absolute owner of the Content Rights; **[If International Co-Pro, change wording to... at the date of this Agreement, the sole and absolute owner of the Content Rights are [Insert Names];]**
 - (d) the Content Rights are not subject to any lien, trust, encumbrance or security interest of any kind;
 - (e) it has the capacity to enter into this Agreement; and
 - (f) it is free to make the assignment of Content Rights effected by this Agreement and has obtained any necessary consents to the assignment.

3. **Licence Back**

NZ On Air irrevocably grants the Producer an exclusive, royalty-free licence to NZ On Air's interest in all Content Rights under this Agreement:

- (a) to the extent necessary to enable the Producer to produce, deliver and exploit the Content Rights in accordance with the Funding Agreement; and
- (b) for the term of the Funding Agreement.

To avoid doubt, this exclusive licence does not limit NZ On Air's rights to the Content Rights under the Funding Agreement.

4. **Reassignment**

- 4.1 The Producer will notify NZ On Air in writing once it has delivered to the Primary Platform Owner all Content that the Producer agreed to deliver to the Primary Platform Owner. When NZ On Air is satisfied the Producer has delivered such Content to the Primary Platform Owner, it will provide the Producer with written confirmation (which may be by email) that the Content Rights are reassigned to the Producer in accordance with this Agreement.
- 4.2 From the date of NZ On Air's confirmation under clause 4.1, NZ On Air absolutely and unconditionally reassigns the Content Rights to the Producer with immediate effect and without the need for any further documentation.

IN WITNESS WHEREOF this Agreement has been executed on the date specified below.

DATED this day of **20XX**

SIGNED for and on behalf of
[PRODUCER] LIMITED
by its duly authorised signatory in the presence of:

Signature of Authorised Person

Signature of Witness

Name of Authorised Person

Name of Witness

Office Held

Office Held

City/town of residence

EXECUTED by **THE**
BROADCASTING COMMISSION
by its duly authorised representatives:

Cameron Harland
Chief Executive

Amie Mills
Head of Funding

**APPENDIX
DETAILS OF THE ASSIGNOR**

For any options that do not apply to you, please put "N/A"

Organisation Name: _____

Incorporation No. (if applicable): _____

Trading name (if applicable): _____

Official name* (if different): _____

*i.e. statutory or registered name or name appearing in constituting documents

Selecting from the list below, please specify your Organisation Type:

- company
- trust
- partnership
- incorporated society
- incorporated charitable trust board
- industrial and provident society
- building society
- friendly society or credit union
- other (If "other", please specify type)

Organisation Type: _____

Contact address: _____

City/town: _____

Telephone: _____ Facsimile: _____

e-mail address: _____

Person acting on behalf of organisation:

Full Name: _____

Address: _____

City/Town: _____

Telephone: _____ Facsimile: _____

e-mail address: _____