

Guide to the Draft Standard Funding Agreement – Scripted and Factual June 2017

Purpose

This document will guide you through changes to the way we will contract production through the new NZ Media Fund. It highlights how the Draft Standard Funding Agreement (the Contract) differs from previous contracts, and explains our thinking.

Introduction

In line with our aims for the NZMF, we are simplifying our contracts for successful NZMF projects. We will stop using the current contracts, which varied for different platforms, and use a standard template for all platforms with various options for schedules depending on the project.

How to read the Draft Standard Funding Agreement

- The yellow highlighted sections are details that will change for each contract.
- The red text sections are instructions to staff preparing the contract.

Key changes

- This Draft Agreement is similar to the Digital Funding Contract that NZ On Air has been using for past two years, in terms of its structure, and plain English wording.
- Much of the actual content of the clauses is closer to the previous Television Funding contract, however there have been key changes to keep the funding rules consistent across platform types.
- We have also made it easier to read by bringing many of the terms and conditions into Schedule 1.
- The Draft Agreement also better fits with the types of cross-platform content sharing arrangements which are already common with content we fund (e.g. *Media Take* via Māori Television and Fairfax). This means that the contract now has room for the involvement of multiple platforms with different content expectations.

About the Schedules

- All contracts will have the first five Schedules.
- Schedules 6 to 9 will be included depending on funding amount, and platform support.
- Generally only Schedule 1 is negotiable (NZ On Air contracts are standardised to reduce legal costs for both producers and NZ On Air). A template contract is always available on our website.

Schedule 2 General Terms

- This is essentially the same as it was in the previous Television contract, just expressed in plain English.
- There are fewer references to legislation, but slightly more boiler plate clauses.
- There are new *Remedial Plans* clauses to provide some clarity around expectations during disputes.
- There is a slight change to the *Default* clause to allow for repayment of funding plus 15% interest in the event of fraud.

Schedule 4 Budget

- There is now no *Facilities Schedule*. Instead *Schedule 4 Budget* will list *Non-Cash* items clearly.
- NZ On Air staff will enter the *Non-Cash* items in this schedule and confirm allocation of these costs during contracting.

Schedules 6-7 Platform Covenants

- We now require all *Primary Platforms* to sign a Health & Safety covenant as part of their commissioning process.
- Platforms must agree to share audience data with the producer so that producers can complete their reporting to us.
- The definition of the content available to each platform (i.e. *Main Content* or *Other Content*) will vary for each covenant depending on the specific details of the project.

Schedule 8 and 9

- There are only minor changes to these schedules to update language from television-centric terminology and to be more plain English.

The nitty gritty

Producer undertakings

- When signing the contract the producer is confirming that they have IP rights to complete the project, and that they are a NZ registered company, charity or society.

Content definition

- We now have two types of content: *Main Content* and *Other Content*.
- With most contracts we would expect all content to be *Main Content*, however by having these two sub-definitions it will be easier to distinguish between the content exclusively available on the *Primary Distribution Platform*, and the content which is to be shared with any *Additional Distribution Platform*.

Rights and Primary and Additional Distribution Platforms

- For the *Primary Distribution Platform* we ask for a short-form description of all platform rights.
- For *Additional Distribution Platforms* we are only asking for a short-form description of any exclusive rights. (This is so we can identify any rights clashes at the start of a production and resolve before contracting).
- If NZ On Air funds 95% or more of the production, then we expect our *Extended Platform Rights* to apply.
- We expect funded content to be provided free online to the NZ public for at least a year, whether on an exclusive or non-exclusive basis. This was already the case in the previous Digital contract but is an increase from 30 days in the previous Television contract. Geolocking to NZ is acceptable.

Platform Funding

- The term *Licence Fee* is not used in this contract as it is old language. Instead we refer to *Platform Funding*.

- There is a slight policy change in the contract at page 3. All *Platform Funding* (cash and non-cash) will not have an impact on NZ On Air's share of *Net Income*, although there is some scope of negotiation where a Platform contributes a large percentage of the total budget.
- NZ On Air's *Underspend Share* is also not expected to be impacted by the percentage of *Platform Funding*.

Income Sharing

- We have clarified that if NZ Government funding, including from NZ On Air, exceeds \$200,000 then NZ On Air will expect a right to share income. This will mainly impact NZ Film Commission and Te Mangai Paho co-funded productions.

Standards

- *Production Standards* requirements will now be consistent for all content types (so the same *Broadcasting Standards* and *Community Standards* clauses).
- This will mean that content which is first broadcast on TV and then available online is covered by *Community Standards* at least.

Reporting and other requirements

- We expect the producer to provide NZ On Air with figures for online views after the content has been live for 1 month, 6 months, and 12 months.
- We have included a Project Completion Date, adopted from the previous Digital Funding Contract. This allows for a drop dead day, and will assist us in terminating contracts which have failed to progress production.
- Any captions that are created as part of a project must be shared with ABLE. This is an extension of a clause previously in the Television Contract. This will impact co-productions where captions are often created within the production budget.