

6. **“Development Funding”** means the amount of \$xxx advanced to the Producer by NZ on Air under the Development Agreement dated xxx in respect of the Programme/does not apply. [***delete one***]

7. **“Drawdown Schedule”** means:

1.	Development Funding already advanced: <i>[delete if not applicable]</i>	\$xxx
2.	On execution of this agreement, provided the condition in paragraph 2.3 of Schedule I has been satisfied:	\$xxx
3.	On first day of principal photography, provided the condition in paragraph 2.4 of Schedule I has been satisfied:	\$xxx
4.	On first day of post production:	\$xxx
5.	On approval of the offline by the Broadcaster:	\$xxx
6.	On full delivery of the Programme to the Broadcaster:	\$xxx
	On delivery of:	\$xxx
7.	<ul style="list-style-type: none"> • a final cost report pursuant to paragraph 9.6 of Schedule I; and • a DVD of the Programme to NZ On Air pursuant to paragraph 6.1(h) of Schedule I: 	
	TOTAL NZ On Air Funding	\$[total]

The above amounts plus GST will be paid on receipt of an original tax invoice and the reports to be provided in accordance with paragraph 9.1 of the Additional Terms and Conditions of Funding in Schedule I to this Agreement.

8. Funding

8.1 **“Broadcaster’s Funding”** means the amount of \$xxx
made up of licence fee of \$xxx

for the New Zealand Standard Television Rights and the New Zealand Non Standard Television Rights [~~delete if not applicable~~]

and equity of \$xxx

in total being xxx%

of the Budgeted Costs which the Broadcaster has agreed to provide towards the production of the Programme as follows:

- (a) \$xxx in cash; and
- (b) \$xxx in facilities (set out in Schedule V to this Agreement).

8.2 “**NZ On Air Funding**” means the amount of \$[total]

being xxx%

of the Budgeted Costs which NZ On Air has agreed to provide towards the production of the Programme on the terms and conditions of this Agreement.

8.3 “**Producer’s Funding**” means the amount of \$xxx

being xxx%

of the Budgeted Costs which the Producer has agreed to secure from xxx towards the production of the Programme /does not apply. [~~delete one~~]

9. “**Net Income Shares**” means the method of sharing income between the Producer and NZ On Air referred to in paragraph 12 of the Additional Terms and Conditions of Funding in Schedule I to this Agreement is:

[If NZ On Air Funding is under \$200,000:

the Producer (including assignable): 100%.

[For NZ On Air Funding of \$200,000 or over:

(a) in respect of the Programme Exploitation Rights:

(i) until Net Income totals \$[recoupment amount]:

the Producer (including assignable): 75.0%

NZ On Air: 25.0%

(ii) thereafter:

the Producer (including assignable):	90.0%
NZ On Air:	10.0%

(b) in respect of the Ancillary Rights:

the Producer (including assignable):	90.0%
NZ On Air:	10.0%.

10. **“NZ On Air Accreditation”** means the NZ On Air accreditation referred to in paragraph 6.1(e) of the Additional Terms and Conditions of Funding in Schedule I to this Agreement.

11. **“Production Account”** means the bank account of the Producer for the Programme: [].

12. **“Programme”** means a [genre] provisionally entitled **‘[Title]’** based on the Proposal.

13. **“Programme Specifications”** means:

Duration of Programme:	xxx commercial hours
Delivery Medium:	[digital betacam / HDCam SR]
Style:	[genre]
Executive Producer:	xxx
Producer:	xxx
Director:	xxx
Writer:	xxx

14. **“Proposal”** means the funding proposal set out in Schedule II to this Agreement which sets out the overall nature of the Programme.

15. **Broadcast of Programme on New Zealand Television**

15.1 The Producer shall use its best endeavours to ensure the Programme is broadcast by the Broadcaster over the Broadcaster’s national television network within twelve months of delivery of the Programme, or within the

topicality of the programme whichever is the shorter, with broadcast of the Programme commencing not earlier than xxx and not later than xxx. The Broadcaster's covenant to broadcast the Programme is attached as Schedule IV to this Agreement.

15.2 The Producer shall grant to the Broadcaster the New Zealand Standard Television Rights to:

- (a) transmit the Programme in accordance with clause 15.1;
- (b) broadcast extracts from the Programme on television, radio or via the internet for promotional or review purposes; and
- (c) transcribe or summarise extracts from the soundtrack of the Programme for publication for promotional or review purposes.

16. **New Zealand Identity and Culture**

16.1 The Producer will use its best endeavours to ensure the Programme reflects and develops New Zealand identity and culture. In addition, where appropriate, the Producer will use its best endeavours ensure that the Programme reflects:

- (a) Maori issues in a way relevant to all New Zealanders;
- (b) New Zealand's ethnic diversity as well as the needs of other minorities and cultures in the community; and
- (c) New Zealand's regional diversity.

17. **Further Exploitation of the Programme [only if 100% funded]**

17.1 The Producer will ensure that the Programme can be made available, without payment of a licence fee:

- (a) for up to six transmissions by any other broadcaster in New Zealand for a period of 12 months following the first play on **[channel]**; and

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:

Jane Wrightson
Chief Executive

Glenn Usmar
Television Manager

SCHEDULE I

ADDITIONAL TERMS AND CONDITIONS OF FUNDING

1. **DEFINITIONS AND INTERPRETATION** – In this Agreement unless the context otherwise requires the following words have the following meaning:
 - 1.1 **“Additional Material”** means any material produced in the course of the production of the Programme that is not included as part of the Programme as broadcast or transmitted in any territory.
 - 1.2 **“Ancillary Rights”** means:
 - (a) the Format Rights; and
 - (b) the right to produce and exploit any audio-visual, computer-generated, electronic or mechanical work based on or derived from or inspired by the Programme; and
 - (c) all merchandising, stage, music and soundtrack rights in relation to the Programme; and
 - (d) any right to exploit the Additional Material.
 - 1.3 **“Budgeted Cash Costs”** means that amount of the Budgeted Costs to be supplied in cash pursuant to clause 8 of the Agreement and includes any amount paid in cash by the Broadcaster in lieu of providing any facilities referred to in clause 8.1(b).
 - 1.4 **“Budget Cash Surplus”** means the amount calculated by deducting the actual cash costs of producing the Programme from the Budgeted Cash Costs provided that such sum shall not be less than 0.
 - 1.5 **“Business Day”** means a day other than a Saturday or Sunday on which registered banks are open for business in Wellington and Auckland.
 - 1.6 **“Distribution Expenses”** means direct actual out-of-pocket costs of the Producer properly incurred in connection with the sale, licensing or other exploitation of the Programme Rights by the Producer pursuant to paragraph 11 of this Schedule to the Agreement and which are consistent with proper business practice, incurred on an arm’s length basis and properly allocated to the Programme.
 - 1.7 **“Distributor’s Commission”** means an amount equalling up to 30 percent of Gross Income from the sale, licensing, distribution or other exploitation of the Programme Rights from which shall be deducted all sub-distribution fees and commissions applicable to the Gross Income which is the subject of the commission calculation.

- 1.8 “**Event of Default**” means an event described in paragraph 13.1 of this Schedule to the Agreement.
- 1.9 “**Format Rights**” means the right to produce (or authorise such production and exploitation of) programmes based on the Programme and/or the same themes, situations, concepts, incidents and principal characters and including the right to use the scripts and storylines for the programmes adapted and varied as necessary for the viewing audience in the country of production and initial exploitation.
- 1.10 “**Gross Income**” means, subject to paragraph 11.7 of this Schedule to the Agreement, all moneys accruing from the sale, licensing, distribution or other exploitation of the Programme Rights.
- 1.11 “**Net Income**” means:
- (a) the balance of any claim under any policy of insurance, as contemplated by paragraph 10 of this Schedule I to the Agreement;
 - (b) the sale of Production Assets; and
 - (c) Gross Income less:
 - (i) Distribution Expenses up to a maximum of 5 percent of Gross Income from the sale, licensing, distribution or other exploitation of the Programme Rights; and
 - (ii) Distributor’s Commission.
- 1.12 “**New Zealand Standard Television Rights**” means the Broadcaster’s right to exhibit the Programme within New Zealand, for xxx plays within xxx years, via the Broadcaster’s existing national free-to-air television networks by analogue or digital transmission and by terrestrial, satellite or cable dissemination. [means the Broadcaster’s right to exhibit the Programme within New Zealand for unlimited plays within one year via the Broadcaster’s distribution platforms – **for 100% funded programmes only**]
- 1.13 “**New Zealand Non Standard Television Rights**” means the Broadcaster’s right (not including the New Zealand Standard Television Rights) to exhibit the Programme over its television networks within New Zealand, for xxx plays within xxx years, via any form of television distribution whether now existing or developed in the future, however transmitted or delivered. [~~delete if not applicable~~]
- 1.14 “**Production Assets**” means any equipment or other tangible assets purchased out of the Budgeted Costs for the purpose of the production of the Programme.
- 1.15 “**Programme Exploitation Rights**” means all rights in the Programme in any medium throughout the world, except the New Zealand Standard

Television Rights, the New Zealand Non Standard Television Rights [~~delete if not applicable~~] and the Ancillary Rights.

1.16 “**Programme Rights**” means:

- (a) all Programme Exploitation Rights; and
- (b) all Ancillary Rights.

1.17 “**Specified Address**” means in relation to any party the address for that party set out on page one of this Agreement.

1.18 **Interpretation** – For the purposes of this Agreement, except where the context otherwise requires:

- (a) headings and sub-headings appear as a matter of convenience and do not affect the meaning of this Agreement;
- (b) references to a **clause** or a **Schedule** are to a clause of, or a Schedule to, this Agreement;
- (c) references to a person includes a company, a corporation and a body of persons (whether incorporated or unincorporated);
- (d) where words or expressions are defined, other parts of speech and grammatical forms of that word or expression have corresponding meanings;
- (e) where the singular is used, it will include the plural and vice versa;
- (f) any reference to any statute or regulation is a reference to that statute or those regulations as amended, consolidated, supplemented or replaced;
- (g) if a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next following Business Day;
- (h) if a period of time is specified and dates from, after, or before a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) any references to “including” will be not be construed so as to limit any other term but rather by way of clarifying matters which are within the term to which the reference is made;
- (j) any reference to a party includes that party’s successors and permitted assignees (as the case may be);
- (k) all sums referred to in this Agreement are exclusive of goods and services tax; and

- (l) all references to dollars means New Zealand dollars unless expressed otherwise.

2. PROVISION OF NZ ON AIR FUNDING

- 2.1 Subject to satisfaction of the conditions set out in paragraphs 2.3 and 2.4 of this Schedule to the Agreement, NZ on Air agrees to make NZ On Air Funding available to the Producer on the terms and conditions of this Agreement for the purpose of assisting with financing the production of the Programme in accordance with the Budgeted Costs and this Agreement.
- 2.2 The Producer hereby acknowledges and confirms that NZ On Air shall be under no obligation to provide any moneys over and above the amount of NZ On Air Funding.
- 2.3 It is a condition to NZ On Air's obligation to provide any NZ On Air Funding under this Agreement that NZ On Air first has received evidence satisfactory to it that the following conditions have been satisfied:
 - (a) the documents constituting the Producer's chain of title to the script and all other relevant rights for the Programme and to Ancillary Rights are satisfactory in all relevant respects; and
 - (b) the Broadcaster has executed Schedule IV in a form satisfactory to NZ On Air.
- 2.4 After drawdown of NZ On Air Funding on execution of this Agreement, it is a condition to NZ On Air's obligation to provide any further NZ On Air Funding that NZ On Air must have received:
 - (a) evidence satisfactory to it that the following have been satisfied:
 - (i) any contracts between the Producer and the Broadcaster, in respect of the Programme, are consistent with the terms and conditions of this Agreement;
 - (ii) the Producer has validly executed an agreement with the Broadcaster securing the Broadcaster's Funding for the production of the Programme; and
 - (iii) if the parties agree that the Producer is to provide Producer's Funding, the Producer has validly executed any necessary agreement securing the Producer's Funding for the production of the Programme on terms and conditions acceptable to NZ On Air;
 - (b) a copy of an executed agreement with the Broadcaster securing the Broadcaster's Funding;
 - (c) copies of validly executed agreements securing all of the Producer's Funding; and

(d) the abnormal hazardous situation report referred to in paragraph 7.4 of this Schedule.

- 2.5 The time for satisfying the condition in paragraph 2.3 of this Schedule shall be within twenty Business Days of the date of execution of this Agreement.
- 2.6 The time for satisfying the condition in paragraph 2.4(a) of this Schedule shall be within forty Business Days of the date of execution of this Agreement.
- 2.7 In the event that the conditions in paragraphs 2.3 and 2.4(a) are not satisfied within the dates specified by paragraph 2.5 and 2.6 (as applicable) of this Schedule (or within such extended time as NZ On Air may in its discretion agree) NZ On Air's obligations to provide NZ On Air Funding shall be at an end and any money previously paid to the Producer towards production of the Programme shall be repayable to NZ On Air upon demand.
- 2.8 The conditions in paragraphs 2.3 and 2.4 are inserted for the sole benefit of NZ On Air and may be waived in whole or in part (and with or without conditions) by NZ On Air. No waiver will be binding on NZ On Air unless it is clearly expressed as a waiver of a condition and is in writing.

3. DRAWDOWN OF NZ ON AIR FUNDING

- 3.1 Subject to paragraph 3.3 and paragraph 2.3 of this Schedule to the Agreement, NZ On Air Funding shall be advanced in accordance with the Drawdown Schedule. NZ On Air shall be under no obligation to advance any instalment of the NZ On Air Funding until the conditions or events specified for that and all earlier instalments in the Drawdown Schedule have been met or occurred (as the case may be).
- 3.2 The Producer may apply the NZ On Air Funding and any interest earned on the NZ On Air Funding only to meet the costs of production of the Programme in accordance with this Agreement and the Budgeted Costs.
- 3.3 Throughout the course of production of the Programme NZ On Air shall have the right, after consulting with the Producer to vary drawdown dates or amounts where NZ On Air reasonably considers that there are sufficient or insufficient funds, as the case may be, currently held by the Producer to enable the Producer to meet immediate production costs and expenses of the Programme.

4. COVENANT TO COMPLETE AND DELIVER PROGRAMME

- 4.1 The Producer shall produce and complete the Programme in accordance with the provisions of this Agreement and shall deliver the completed Programme to the Broadcaster in accordance with the delivery requirements of the Broadcaster by the Delivery Date.

- 4.2 In the event that NZ On Air Funding has been spent in the production of the Programme but the Programme has still not been completed and delivered to the Broadcaster then the Producer shall provide or procure on terms compatible with the provisions of this Agreement sufficient funds to complete and deliver the Programme to the Broadcaster as required by this Agreement.
- 4.3 The Producer shall notify the Captioning Manager of Teletext (Television New Zealand Limited) that the Programme has been delivered.

5. PRODUCTION SPECIFICATIONS FOR THE PROGRAMME

- 5.1 The Producer shall ensure that the Programme reflects the Proposal in all material respects and will not alter the tone, content, treatment, theme or genre of the Programme from that represented by the Proposal without the prior written consent of NZ On Air. In the case of a drama the Programme shall be based on the script and storylines approved by NZ On Air as part of the Proposal.
- 5.2 The Producer shall produce the Programme in accordance with, and using the personnel referred to in, the Programme Specifications. Changes to key personnel must be approved in writing by NZ On Air, such approval not to be unreasonably withheld.
- 5.3 The Programme shall be produced in accordance with the Budgeted Costs. The Producer shall not without the prior written consent of NZ On Air alter the Budgeted Costs or make any changes to the budgeted contingency or production company overhead or "above the line costs" as defined in the Budgeted Costs attached as Schedule III to this Agreement. The Producer may reallocate expenditure on the Programme between other individual classifications in the Budgeted Costs to meet the exigencies of television production.
- 5.4 No amount of NZ On Air Funding received by the Producer or any interest earned on the NZ On Air Funding shall be paid out other than for the production of the Programme in accordance with this Agreement and the Budgeted Costs.
- 5.5 The Producer shall not without the prior written consent of NZ On Air make changes to the shooting schedule for the Programme supplied by the Producer and approved by NZ On Air if those changes would increase the cost of the Programme or jeopardise delivery of the Programme by the Delivery Date.
- 5.6 If the Producer is requested by the Broadcaster to materially change the tone, content, treatment, theme or genre of the Programme then the Producer must immediately inform NZ On Air in writing and include a statement outlining the financial implications of the changes and how the Producer will fund any increase in the Budgeted Costs. NZ On Air may suspend payment of any further instalments of NZ On Air Funding while NZ On Air assesses whether to fund the Programme in its changed form.

NZ On Air will then notify the Producer in writing whether it will continue to provide the NZ On Air Funding or whether it wishes to terminate this Agreement. If NZ On Air terminates this Agreement pursuant to this paragraph 5.6, it will be under no obligation to advance any further instalments of NZ On Air Funding.

- 5.7 The Programme will be made in accordance with the highest technical and artistic standards so that the Programme is suitable for television broadcasting in New Zealand and also overseas.
- 5.8 The Producer covenants that, to the extent possible with regard to the nature of the Programme, it will operate an equal employment opportunities plan in respect of the people engaged in association with the Programme.
- 5.9 The Producer grants NZ On Air the right to exhibit, show or broadcast extracts from the Programme for NZ On Air's own promotional and publicity purposes, and agrees to provide NZ On Air with access, free of charge, to all film and video tape masters necessary in order to exhibit, show or broadcast such extracts.

6. PRODUCER'S ADDITIONAL COVENANTS

- 6.1 The Producer covenants with NZ On Air that:
- (a) it has obtained and will at all relevant times retain all necessary rights, licences, consents or other authorities with respect to the Programme, and which enable the production of the Programme, and exploitation of the Programme Rights and any rights to be granted under clause 15.2 of this Agreement, in accordance with this Agreement, including all necessary rights, licences, consents and other authorities in respect of the script and the music for the Programme absolutely;
 - (b) the Programme 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;
 - (c) the Programme will comply with the programme standards specified in section 4(1) of the Broadcasting Act 1989;
 - (d) it has not, nor will not sell, license, assign, encumber, grant a security interest in, charge or otherwise dispose of any of the rights in the Programme [(other than the New Zealand Non Standard Television Rights)] except in accordance with clause 15 of the Agreement and paragraph 11 of this Schedule to the Agreement;
 - (e) it will provide NZ On Air Accreditation and provide a credit in all publicity material for the Programme using the wording agreed to in consultation between the Producer and NZ On Air. As at the date of this Agreement, "NZ On Air Accreditation" means an animated

closing credit to be supplied by NZ On Air, including a voice over (which may be supplied by the Producer) which reads "This programme was made with funding from New Zealand On Air" to be broadcast at the end of each episode of the Programme. For overseas broadcast the Producer shall use best endeavours to provide the NZ On Air Accreditation or a credit within the end credits of each episode of the Programme. The Producer acknowledges that NZ On Air has the right to change the form, placement, substance and duration of the NZ On Air Accreditation from time to time as NZ On Air may in its sole discretion require;

- (f) the Programme can be completed in accordance with the provisions of this Agreement within the total Budgeted Costs;
- (g) prior to entering into this Agreement the Producer has obtained all corporate and other authorities necessary for that purpose, and that there are no restrictions or other obligations known to the Producer which would or might impede the Producer from giving full effect to the Producer's obligations under this Agreement;
- (h) it will from time to time at the request of NZ On Air supply to NZ On Air free of charge up to six colour transparencies of still or digital photographs from the Programme and upon completion of the Programme will supply to NZ On Air free of charge a DVD copy of the Programme;
- (i) all contracts and arrangements with the Broadcaster in relation to the Programme have been disclosed to NZ On Air. In particular the Producer will ensure it has disclosed to NZ On Air all contracts and arrangements with the Broadcaster regarding Programme Rights and distribution rights;
- (j) if, at any time, the Producer registers the Programme with Screenrights, the Producer will be deemed to have instructed Screenrights to provide NZ On Air with copies of all financial reports in respect of the Programme; and
- (k) where NZ On Air has made available Development Funding, the Producer has used the Development Funding for the cost of the development of the Programme only and the NZ On Air Development Funding is represented as a separate line(s) in the Budgeted Costs.

7. HEALTH AND SAFETY PROCEDURES

- 7.1 The Producer hereby acknowledges and confirms that it is aware of its obligations under the Health and Safety in Employment Act 1992 and covenants that it will comply with provisions of that Act in the production of the Programme.

- 7.2 The Producer hereby acknowledges that it holds a copy of the current Code of Practice for Safety and Health in the New Zealand Film & Video Production Industry ("Code") and will, in the production of the Programme, comply with the provisions of the Code.
- 7.3 The Producer shall obtain, from any person who contracts with the Producer for the provision of goods and/or services in connection with or relating to the production of the Programme, an acknowledgment by that person in the form set out in paragraph 7.1 above.
- 7.4 Prior to the start of production, the Producer shall provide a report to NZ On Air identifying any abnormal hazardous situations relating to the production of the Programme and an explanation of the measures to be adopted by the Producer to manage these hazardous situations.
- 7.5 The Producer shall report within 24 hours details of any occurrence which may impact upon the safety of the production of the Programme. NZ On Air may, at any time, call a meeting with the Producer and any persons affected by this occurrence, upon reasonable notice, to obtain information and to discuss the occurrence.
- 7.6 The Producer shall include a health and safety report containing details of any accidents in the production report required by paragraph 9.1 of this Schedule to the Agreement.

8. **ARCHIVING**

- 8.1 The Producer shall make the Programme available for acquisition into the NZ On Air-funded archive collection if selected by the New Zealand Film Archive. The New Zealand Film Archive shall be responsible for meeting all reasonable copying costs.

9. **REPORTING AND ACCOUNTING PROCEDURES**

- 9.1 Prior to each drawdown during production of the Programme the Producer will supply to NZ On Air:
- (a) a cost report and cashflow statement detailing all income, including any significant contra or sponsorship to date, and actual expenditure to date and expenditure to complete; and
 - (b) a production report describing production progress, cashflow and budget progress and outlining reasons for any significant departure from production and/or financial targets.

All reports must be accurate and contain the detail required by NZ On Air.

- 9.2 Without limiting the preceding reporting obligations the Producer shall at all times keep NZ On Air informed of the progress of production and the plans for continuing production of the Programme. NZ On Air may require

the Producer to provide complete and accurate information with respect to any matters relating to the production of the Programme. For this purpose the Producer shall if so requested, attend meetings with representatives of NZ On Air.

9.3 The Producer shall:

- (a) keep proper books and records in which full, true, correct and timely entries will be made of all dealings in connection with the production of the Programme in accordance with accounting procedures approved by NZ On Air;
- (b) provide any information that NZ On Air may reasonably request as to the Producer's solvency and ability to deliver the Programme by the Delivery Date;
- (c) allow NZ On Air, at reasonable times, to inspect the Producer's accounts, books and records relating to the production of the Programme; and
- (d) account to NZ On Air for all recoveries in respect of the sale of Production Assets, if any, in the final cost report provided pursuant to paragraph 9.6 of this Schedule to the Agreement. Any recoveries made following the delivery of the final cost report will be treated as Net Income pursuant to paragraph 1.11 of this Schedule to the Agreement.

9.4 The Producer shall promptly advise NZ On Air in the event it becomes reasonably foreseeable that the cost of the Programme may exceed the total of the Budgeted Costs.

9.5 NZ On Air or its representatives shall have the right at all reasonable times to visit studios, locations or elsewhere where production of the Programme is being carried out to observe production of the Programme.

9.6 Within 60 days after completion of production of the Programme the Producer shall prepare and deliver to NZ On Air complete financial statements representing a true and fair view of the costs of producing the Programme and accounting for all income received in relation to the programme and the expenditure of the Budgeted Costs. The Producer will make all necessary arrangements to enable the financial statements to be prepared.

9.7 The Budget Cash Surplus (if any) shall be shared in accordance with clause 4 of the Agreement. NZ On Air may deduct its share of the Budget Cash Surplus from any outstanding payments in the Drawdown Schedule of NZ On Air Funding.

9.8 NZ On Air shall have the right at its cost to require the financial statements to be audited, to set the scope of the audit and to appoint an auditor. The Producer shall do whatever is required to facilitate and assist the audit.

9.9 Any failure by the Producer to comply with the reporting and accounting obligations set out in this paragraph 9 shall be a material breach of this Agreement for the purposes of paragraph 13.1(d) of this Schedule to the Agreement.

10. **INSURANCE**

10.1 The Producer shall obtain, pay the premiums for, and maintain in force such insurance coverage for the Programme as is prudent for television production. If asked to do so by NZ On Air the Producer shall have NZ On Air named as a party to the insurance policies and deliver to NZ On Air copies of all insurance policies, and the receipts for premium payments.

10.2 The insurance shall be for fully adequate sums having regard to the potential loss.

10.3 The proceeds of any claim under any policy of insurance shall 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, shall form part of Gross Income.

11. **DISTRIBUTION RIGHTS FOR PROGRAMME**

11.1 The Producer shall have distribution rights for the Programme, being the right to sell or licence or otherwise exploit, and to authorise the sale, licensing or exploitation of the Programme Rights.

11.2 The Producer shall consult with NZ On Air from time to time concerning the distribution of the Programme, and shall at any event distribute the Programme properly and in good faith.

11.3 The Producer shall:

- (a) only enter into distribution, sales agency, or other agreements relating to the sale or licensing or other exploiting of the Programme Rights on arm's length, commercial terms;
- (b) use its best endeavours in selling, licensing or otherwise exploiting the Programme Rights to maximise Net Income;
- (c) collect all receipts arising from the sale or licensing or other exploiting of the Programme Rights and distribute Net Income in accordance with paragraph 12 of this Schedule to the Agreement;
- (d) 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 Programme Rights; and

- (e) subject to paragraph 11.1 above, the Producer will not dispose, assign, sell or transfer its title or its underlying rights in the Programme or the Programme Rights without NZ On Air's prior written consent, such consent not to be unreasonably withheld.
- 11.4 The Producer will keep proper accounting records of all transactions carried out in relation to the sale, licensing and other exploitation of the Programme Rights and will produce such records for inspection as may reasonably be required by NZ On Air.
- 11.5 The Producer will for as long as required by NZ On Air provide half-yearly reports to NZ On Air with the first report due six months from the Delivery Date of the Programme. The reports will include:
- (a) a statement summarising the terms of all contracts relating to the sale, licensing and other exploitation of the Programme Rights in respect of the Programme written to the date of the report together with copies of the contracts;
 - (b) a report on contracts being negotiated and the general sales prospects for the Programme; and
 - (c) a statement of receipts and payments detailing all Gross Income received by the Producer and all payments made by the Producer out of Gross Income including Distribution Expenses and Distributor's Commission.
- 11.6 NZ On Air may, at any time, call a meeting with the Producer upon reasonable notice, to obtain information and to discuss the reports provided pursuant to paragraph 11.5 above.
- 11.7 Notwithstanding the definition of Ancillary Rights, the Producer may retain aggregate proceeds derived from the exploitation of field footage, which is shot during production of the Programme but not included as part of the Programme as broadcast or transmitted in any territory, up to a total amount of \$5,000. For the avoidance of doubt, such proceeds do not form part of Gross Income. Any other proceeds derived from exploitation of field footage shall form part of Gross Income.

12. **DISTRIBUTION OF NET INCOME AND PAYMENT OF DISTRIBUTOR'S COMMISSION**

- 12.1 Net Income shall be shared between the Producer and NZ On Air in accordance with the Net Income Shares.
- 12.2 NZ On Air's share of Net Income shall be distributed to NZ On Air on a six monthly basis. However, if Net Income at any time totals more than NZ\$10,000.00 the Net Income shall be distributed by the Producer within 10 Business Days of the accumulated income reaching this figure.

- 12.3 The Producer shall calculate Distributor's Commission in respect of Gross Income and will be entitled to deduct the Distributor's Commission and Distribution Expenses from that Gross Income.
- 12.4 The Producer may, at its discretion, assign part of the Producer's share of Net Income received in accordance with paragraph 12.1 above to other contributors to the production of the Programme.

13. **DEFAULT**

13.1 There will be an Event of Default if:

- (a) the Producer or the Broadcaster becomes or, in the reasonable opinion of NZ On Air may become or is threatened with becoming, insolvent, or stops or suspends, or threatens to stop or suspend payment of some or all of its debts, or has a receiver appointed over any of its assets or fails to satisfy any final judgement within 5 Business Days; or
- (b) NZ On Air has reasonable grounds to believe that the Producer, is, or may be, insolvent and unable to fulfil all of its obligations under this agreement. For the avoidance of doubt, a notice received by NZ On Air under section 157 of the Tax Administration Act 1994 and/or under section 43 of the Goods and Services Tax Act 1985 in respect of the Producer shall constitute reasonable grounds to believe that the Producer is, or may be, insolvent; or
- (c) Notwithstanding any other term of this Agreement, at any time and for any reason, the Broadcaster's Funding or the Producer's Funding (where applicable) or any other third party funding identified in this agreement ceases to be available in whole or in part, or the Broadcaster withdraws its support to broadcast the Programme, with the effect or likely effect that the ability to produce and broadcast the Programme as originally intended is prejudiced; or
- (d) the Producer commits a material breach of any of its obligations under this Agreement, or any other relevant agreement that may have a material adverse effect on the Programme or the Producer's ability to comply with its obligations under this Agreement, including, but without limitation:
 - (i) being, in the reasonable opinion of NZ On Air, unable to deliver the Programme by the Delivery Date; or
 - (ii) the Programme differing materially from the Programme Specifications, and the production specifications in paragraph 5 of this Schedule to the Agreement.

13.2 If there is an Event of Default that:

- (a) is capable of remedy and the Producer fails to remedy the Event of Default within 7 Business Days of receiving written notice from NZ On Air requiring the Producer to remedy the breach; or
- (b) is not capable of remedy,

then NZ On Air shall be entitled to terminate its obligations under this Agreement, in particular all obligations of NZ On Air to advance any further instalments of NZ On Air Funding shall cease immediately.

13.3 If this Agreement is terminated by NZ On Air pursuant to paragraph 13.2 above, then the Producer shall, upon demand:

- (a) repay to NZ On Air its proportionate share of any moneys held in the Production Account - taking into account the respective amounts contained in the Production Account at the time of the event of default, of NZ On Air Funding, Broadcaster's Funding, Producer Funding, and any other third party funding identified in this agreement; and
- (b) repay to NZ On Air all payments of NZ On Air Funding already advanced to the Producer in relation to the Programme (less any amounts repaid under paragraph 13.3(a) above).

13.4 In the event that this Agreement is terminated pursuant to paragraph 13.2 of this Schedule to the Agreement, NZ On Air agrees to negotiate in good faith with the Broadcaster and the Producer regarding any costs reasonably incurred by the Producer in the production of the Programme, up to the time of termination, provided that NZ On Air is under no obligation to meet such costs.

13.5 If the Broadcaster has contributed Broadcaster's Funding, NZ On Air will consult with the Broadcaster (provided that the Broadcaster has not committed an event of default) to determine whether the Broadcaster wishes to take over production of the Programme. If the Broadcaster does not wish to take over production of the Programme NZ On Air may at its sole discretion, and without prejudice to any other remedy NZ On Air may have, take over and complete production of the Programme. If the Broadcaster takes over production pursuant to this paragraph the Broadcaster shall be required to enter into a Production and Funding Agreement with NZ On Air for the completion and delivery of the Programme on terms and conditions substantially similar to this Agreement. If the Broadcaster is unwilling to enter into any such agreement then NZ On Air retains the right to terminate this Agreement under paragraph 13.2 of this Schedule to the Agreement.

13.6 Termination of NZ On Air's obligations under this Agreement shall not affect such rights and obligations as are intended to survive such termination (in particular, the provisions of paragraphs 11 and 12 of this Schedule to the Agreement shall continue to apply), and furthermore such

termination shall be without prejudice to, and shall not be deemed a waiver of, any claims which NZ On Air may have against the Producer in respect of any breach or other failure to comply with any term or condition of this Agreement prior to the date of termination.

14. TAKEOVER

14.1 If NZ On Air takes over completion of the Programme pursuant to paragraph 13.5 of this Schedule to the Agreement, it shall be deemed to do so as agent of the Producer, subject to the terms of this Agreement.

14.2 In the event of takeover by NZ On Air, the Producer shall put at NZ On Air's disposal and under its control, all persons and equipment employed or used by the Producer in connection with the Programme. For the purpose of this paragraph 14, the Producer hereby irrevocably constitutes and appoints NZ On Air as the Producer's attorney-in-fact, with full power and authority to:

- (a) make withdrawals from and otherwise deal with funds in the Production Account;
- (b) borrow money;
- (c) enforce, modify, release, compromise or terminate any contract or other right or obligation of the Producer;
- (d) engage and discharge personnel;
- (e) enter into or terminate any contract for services;
- (f) acquire or lease or dispose of equipment and other real or personal property;
- (g) make claims under any policy of insurance in respect of the Programme; and
- (h) do all such other lawful acts and things as NZ On Air may determine is reasonably necessary to exercise its rights under this paragraph 14 (including executing any power of attorney contemplated by paragraph 14.3 when the Producer has failed to do so).

14.3 The Producer shall, if requested to do so on or after takeover of completion of the Programme by NZ On Air, execute a Power of Attorney in favour of NZ On Air or any officer of NZ On Air in respect of the powers listed in paragraph 14.2 above.

14.4 If NZ On Air should take over completion of the Programme, it shall have the right to elect not to take over any contract or obligation of the Producer which NZ On Air considers to be unduly onerous, and any costs or liabilities arising in relation to such contracts or obligations as a result of NZ On Air exercising this right of election shall be borne by the Producer.

- 14.5 NZ On Air shall not be liable to the Producer and the Producer shall indemnify NZ On Air against liability to any third party as a result of any act or omission occurring prior to NZ On Air exercising its right to take over production of the Programme.
- 14.6 Without prejudice to NZ On Air's remedies in respect of any breach, the entitlement of the Producer to share in receipts from the sale, licensing or other exploitation of the Programme pursuant to paragraph 11.1 of this Schedule to the Agreement shall, in the event of takeover of production by NZ On Air, be reduced in such proportion as is equitable in all the circumstances having regard to the extent which the Producer had prior to the takeover of production discharged its obligations under this Agreement.

15. **COSTS AND EXPENSES**

- 15.1 The Producer agrees to pay all reasonable legal fees of NZ On Air incurred in connection with the arrangement, preparation and execution of this Agreement.

16. **RESOLUTION OF DISPUTES**

- 16.1 The Producer and NZ On Air shall actively and in good faith negotiate with a view to a speedy resolution of any dispute or difference which may arise between them concerning the interpretation of this Agreement or relating to any other matter arising under this Agreement.
- 16.2 If any dispute arises between the Producer and NZ On Air in relation to this Agreement, it will be referred for resolution to NZ On Air's Chief Executive (or the Chief Executive's nominee) and the Producer's Managing Director. If these executives cannot resolve the dispute within 5 Business Days of the issue being referred to them (or such longer period as the executives agree), the dispute will be referred to the following dispute resolution procedure.
- 16.3 The Producer and NZ On Air will continue to perform all of their respective obligations under this Agreement whilst the dispute is referred to the dispute resolution procedure set out in this paragraph 16, provided that where the NZ On Air in its sole discretion considers that the dispute relates to:
- (a) the viability of the Programme; or
 - (b) the perceived ability of the Programme to be completed within the Budgeted Costs; or
 - (c) the perceived ability of the Programme to be delivered by the Delivery Date; or

- (d) a material breach, by the Producer, of any obligations under this Agreement or any relevant agreements,

NZ On Air may elect to withhold payments due to the Producer until the dispute has been resolved to NZ On Air's satisfaction.

16.4 If the Producer and NZ On Air do not reach agreement within 5 Business Days (or such further period as they may agree in writing) as to:

- (a) the dispute resolution procedure;
- (b) the timetable for all steps in that procedure (including the date by which the dispute resolution procedure will expire irrespective of whether or not the dispute has been resolved, which will not be more than two months from the commencement of the dispute resolution process); and
- (c) the selection and compensation of the independent person required for that procedure,

then the procedure will be mediation and the chairperson for the time being of LEADR New Zealand Inc. (or his or her nominee) will be requested to appoint a mediator within 5 Business Days of the request and will determine the mediator's remuneration. The mediator will set the timetable (including the date by which the dispute resolution procedure will expire irrespective of whether or not the dispute has been resolved, which will not be more than two months from the commencement of the dispute resolution process). If the dispute has not been resolved within the specified timeframe, unless the parties otherwise agree, the dispute resolution procedure will terminate and each of the parties will be entitled to pursue such legal remedies as it thinks fit.

16.5 Each of the Producer and NZ On Air will pay its own costs associated with this dispute resolution procedure unless the mediator or other dispute resolution co-ordinator determines otherwise.

16.6 Nothing in this Agreement will preclude the parties from taking immediate steps to seek equitable relief before a Court.

17. GENERAL

17.1 Exclusion of Partnership and Agency

Nothing in this Agreement shall create or constitute or be deemed to create or constitute a partnership between the Producer and NZ On Air, nor to constitute or create or be deemed to create or constitute a party as an agent of the other party for any purpose whatsoever except as expressly stated in paragraph 14 of this Schedule to the Agreement. Neither the Producer nor NZ On Air shall 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 stated in paragraph 14 of this Schedule to the Agreement.

17.2 No Assignment and Mortgaging

- (a) The Producer shall not mortgage, grant a security interest in, charge or encumber any or all of its rights under this Agreement.
- (b) Except where expressly permitted in this Agreement, the Producer shall not assign or otherwise dispose of any or all of its rights or obligations under this Agreement without the prior written consent of NZ On Air.

17.3 Further Assurance

The Producer shall, and shall use best endeavours to procure that any necessary third party shall, do and execute all such further documents and do all acts and things as NZ On Air may by notice to the Producer reasonably require to give full effect to the terms of this Agreement.

17.4 Amendment

This Agreement may be amended only by agreement in writing executed by both the Producer and NZ On Air.

17.5 Notices

- (a) All notices arising out of this Agreement shall be given in writing.
- (b) Any such written notice or demand may be served upon any party by:
 - (i) Leaving the same at the Specified Address of that party; or
 - (ii) Forwarding the same through the post in a prepaid letter (airmail if to an addressee in another city) addressed to the Specified Address of that party; or
 - (iii) By transmitting such notice to the Specified Address of the other party by facsimile transmission.
- (c) Evidence that any notice or demand has been posted shall be deemed to be conclusive evidence of service of the notice or demand on the day on which that notice or demand would have been delivered in the ordinary course of post.

17.6 Waiver

Any delay or failure by either party to use (in whole or in part) any right under this Agreement will not operate as a waiver of such right. A waiver by either party of any breach of this Agreement will not be effective unless that waiver is in writing and is signed by the party against whom

that waiver is claimed. A waiver of any breach will not be, or be deemed to be, a waiver of any other or subsequent breach.

17.7 Other Rights not Affected

The exercise by either party of any right set out in this Agreement will not affect any other rights available to that party under this Agreement, at law, or in equity, including any rights which would be available to that party if that express right was not set out in this Agreement.

17.8 Severability

If any part of this Agreement is illegal, void or unenforceable, the legality or enforceability of the rest of this Agreement will not be affected and will continue in full force and effect.

17.9 Entire Agreement

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

17.10 Further Assurances

Each party will, and will use all reasonable endeavours to procure that any necessary third party will, do and execute all such further documents, acts and things as may be reasonably necessary to give full effect to the terms of this Agreement.

17.11 Confidentiality

The contents of this Agreement are confidential. No party will disclose details otherwise than to persons who are directly involved in the transaction or as required by law without the prior written consent of all of the parties to this Agreement.

17.12 New Zealand Law

This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

17.13 Arbitration Act

The provisions of the Arbitration Act 1996 will not apply to any dispute between the parties.

17.14 Counterparts

This Agreement may be signed in one or more counterparts and this Agreement will be binding on all parties as if they had all signed the one document.

SCHEDULE II
PROPOSAL
(ATTACHED)

SCHEDULE III
BUDGETED COSTS
(ATTACHED)

SCHEDULE V

FACILITIES

SCHEDULE VI

ASSIGNMENT OF COPYRIGHT

1. In consideration of NZ On Air agreeing to enter into this Assignment of Copyright Agreement and to provide NZ On Air Funding the Producer undertakes contemporaneously with the execution of this Assignment of Copyright Agreement to assign to NZ On Air as an absolute assignment the copyright and all other ownership rights in and to the Programme and the Programme Rights on the terms and conditions of the formal assignment document presented to the Producer by NZ On Air.
2. The assignment document provides for the copyright to be reassigned to the Producer upon completion and delivery of the Programme in accordance with the requirements of this Assignment of Copyright Agreement.

ASSIGNMENT OF COPYRIGHT

BETWEEN

- (1) **[PRODUCER] LIMITED**, a duly incorporated company having its registered office at Auckland ("the Assignor"); and
- (2) **BROADCASTING COMMISSION**, a statutory body corporate established by the Broadcasting Act 1989 ("the Assignee")

The Assignor and the Assignee agree as follows:

1. Interpretation

In this Assignment of Copyright Agreement:

"**PPSA**" means the Personal Property Securities Act 1999.

"**Production and Funding Agreement**" means the Production and Funding Agreement dated on or about the date of this Assignment of Copyright Agreement between the Assignor and Assignee whereby (amongst other matters dealt with in the agreement) the Assignee agrees to provide funds to the Assignor for use in the production of the Programme.

"**Programme**" means a [genre] provisionally entitled '**[Title]**' as described in clause 12 of the Production and Funding Agreement.

"**Programme Rights**" means the entire copyright and all other rights of ownership in and to the script for the Programme (including all revisions of the script from time to time) together with all other rights relating directly or indirectly to the Programme (including music for the Programme) whether existing as at the date of this Assignment of Copyright Agreement or thereafter arising.

2. Assignment of Programme Rights

- (a) The Assignor (subject only to clause 5 of this Assignment of Copyright Agreement) hereby absolutely and unconditionally assigns to the Assignee with immediate effect the Programme Rights to provide security to the Assignee for the performance of the Assignor's obligations under the Production and Funding Agreement to complete and deliver the Programme.
- (b) The Assignor agrees and acknowledges that the assignment of the Programme Rights pursuant to this Assignment of Copyright Agreement constitutes the grant by the Assignor to the Assignee of a security interest in the Programme Rights for the purposes of the PPSA. The Assignor shall do all such things as are necessary to enable the Assignee to obtain and retain in respect of the

Programme Rights a security interest that is perfected under the PPSA with the priority required by the Assignee.

- (c) Without limiting the Assignee's rights under the Production and Funding Agreement, if the Assignor fails to perform the obligations secured by this Assignment of Copyright Agreement, then the Assignee may exercise any or all of the powers and rights the Assignee has pursuant to the PPSA in respect of the Programme Rights.
- (d) The Assignor:
 - (i) agrees that nothing in sections 114(1)(a), 117(1)(c), 133 and 134 of the PPSA will apply to this Assignment of Copyright Agreement;
 - (ii) waives (to the extent applicable, if any) the Assignor's rights:
 - (aa) to receive a verification statement pursuant to section 148 of the PPSA;
 - (bb) to receive a statement of account under section 116 of the PPSA;
 - (cc) to recover a surplus under section 119 of the PPSA;
 - (dd) to object to the Assignee's proposal to retain the Programme Rights under section 121 of the PPSA; and
 - (ee) to redeem the Programme Rights under section 132 of the PPSA.
- (e) The Assignor agrees that if it requests the Assignee to discharge or amend any financing statement which the Assignee has registered under the PPSA in respect of the Programme Rights, pursuant to section 162 of the PPSA, the Assignee will be entitled to charge the Assignor such fee as the Assignee may from time to time determine in respect of processing the request. The Assignee agrees that it will not charge the Assignor a fee in relation to the registration of a financing change statement discharging this security interest where, in the Assignee's opinion (acting reasonably), all of the obligations secured by this security interest have been performed.

3. Assignor's Warranties and Representations

The Assignor warrants and represents to the Assignee as follows:

- (a) the details in respect of the Assignor contained in the Appendix to this Assignment of Copyright Agreement are true and correct;
- (b) it is the sole and absolute owner of the Programme Rights and that the Programme Rights are not subject to any lien, trust, encumbrance or security interest of any kind;
- (c) it has the capacity to enter into this Assignment of Copyright Agreement; and
- (d) it is free to make the assignment of Programme Rights effected by this Assignment of Copyright Agreement and has obtained any necessary consents to the assignment.

4. Assignor's Covenants

The Assignor covenants with the Assignee as follows:

- (a) that it shall comply with all its obligations under the Production and Funding Agreement, in particular the obligations to complete and deliver the Programme by the time and in the manner stipulated by the Production and Funding Agreement;
- (b) that it shall, at the Assignee's request, give to the Assignee all assistance in the power of the Assignor to enable the Assignee to enjoy the full benefit of the rights assigned to it under this Assignment of Copyright Agreement;
- (c) that it shall, at any time at the request of the Assignee, execute all documents and do all acts as may be necessary in order to vest, secure or enforce any rights of the Assignee in respect of the Programme Rights;
- (d) that, before changing its name, it shall give the Assignee at least 10 Business Days prior written notice; and
- (e) that it shall immediately advise the Assignee if any of the Assignor's details in the Appendix become inaccurate or incomplete.

5. Reassignment of Programme Rights

The Assignee agrees that it shall reassign the Programme Rights to the Assignor upon completion and delivery of the Programme in accordance with the requirements (as to time, delivery items or otherwise) specified in the Production and Funding Agreement.

6. Costs and Expenses

All costs and expenses, including reasonable legal costs, incurred by the Assignee in the preparation, execution and implementation of this Assignment of Copyright Agreement, shall be payable by the Assignor.

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

DATED this day of 2009

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:

Jane Wrightson
Chief Executive

Glenn Usmar
Television Manager

APPENDIX

DETAILS OF THE ASSIGNOR

Organisation Name: _____	
Incorporation No. (if applicable): _____	
Trading name (if applicable): _____	
Organisation Type:	Official name* (if different): _____
<input type="checkbox"/> company	_____
<input type="checkbox"/> trust	*i.e. statutory or registered name or name appearing in constituting documents
<input type="checkbox"/> partnership	_____
<input type="checkbox"/> incorporated society	
<input type="checkbox"/> incorporated charitable trust board	
<input type="checkbox"/> industrial and provident society	
<input type="checkbox"/> building society	_____
<input type="checkbox"/> friendly society or credit union	
<input type="checkbox"/> other	If "other", specify 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: _____	