

DEVELOPMENT FUNDING AGREEMENT

1. PARTIES

- 1.1 **THE BROADCASTING COMMISSION** a statutory body corporate established by the Broadcasting Act 1989 ("NZ On Air")
- 1.2 **[PRODUCER] LIMITED**, a duly incorporated company having its registered office at XXX ("Producer")

2. PRELIMINARY

- 2.1 The Producer has requested development funding to be applied in the manner specified in Schedule I to this Agreement in the development of a programme presently known as '**[Title]**'.
- 2.2 Subject to the Producer satisfying the conditions precedent set out in this Agreement, NZ On Air has agreed to make funding available for the development of the Programme on the terms and conditions of this Agreement.

OPERATIVE TERMS

3. INTERPRETATION

- 3.1 In this Agreement the words and phrases listed below shall, unless the context otherwise requires, have the following meanings:
- (a) "**Delivery Date**" means **xxx** being the day on which the Producer shall complete and deliver the Programme in accordance with Part I and Part IV, Schedule I;
 - (b) "**Development Funding**" means the sum of **\$xxx** which is the total amount NZ On Air has agreed to advance to the Producer on the terms and conditions of this Agreement. The Development Funding will be advanced to the Producer in accordance with Part III of Schedule I;
 - (c) "**Interest**" means the interest payable on the Development Funding (subject to the terms and conditions of this Agreement) calculated at a rate of 10% per annum from the date of the advance of the Development Funding;
 - (d) "**Programme**" means the development of xxx, xxx, and xxx for a xxx x x x Programme for broadcast presently known as '**[Title]**.' The Programme will be developed under this Agreement in accordance with the provisions of Part I and Part IV of Schedule I and the budget in Schedule II.

- 3.2 Headings in this Agreement are for convenience only and shall not affect the interpretation of the provisions of this Agreement.
- 3.3 A reference in this Agreement to a clause or schedule shall be read as a reference to a clause or schedule of this Agreement.
- 3.4 All references in this Agreement to dollars shall be references to New Zealand dollars.

4. THE DEVELOPMENT FUNDING

- 4.1 NZ On Air agrees, at the request of the Producer, to advance to the Producer the Development Funding on the terms and conditions of this Agreement.
- 4.2 The Development Funding, or such portion of the Development Funding as drawn down from time to time, may bear Interest in accordance with clause 8 of this Agreement.
- 4.3 NZ On Air shall be under no obligation to advance any further development funding other than specified in this Agreement, or to provide funding for production of the Programme.

5. USE OF THE DEVELOPMENT FUNDING

- 5.1 The Producer undertakes to use the Development Funding solely in the development of the Programme in accordance with Part I and Part IV of Schedule I.
- 5.2 No part of the Development Funding shall be used for any other purpose unless NZ On Air first gives its consent in writing.

6. CONDITIONS TO BE SATISFIED PRIOR TO DRAWDOWN

- 6.1 The Development Funding may not be drawn down until:
- (a) the Producer:
- (i) delivers to NZ On Air copies of all contracts with the scriptwriter or any third party relating to the script or screenplay for the Programme;
 - (ii) delivers to NZ On Air copies of any other contracts or licences which deal with copyright or other rights in the script or screenplay or other works from which the Programme will be produced;

- (iii) provides evidence to NZ On Air that the Producer holds, and will continue to hold during the development of the Programme, all rights needed by the Producer for the development of the Programme in accordance with this Agreement;
 - (iv) provides evidence to NZ On Air of an expression of interest from a broadcaster in broadcasting the Programme; and
- (b) NZ On Air is satisfied the Producer has validly executed this Agreement.

7. PRODUCER'S UNDERTAKINGS

7.1 The Producer undertakes that:

- (a) all rights in the Programme and also all ancillary rights relating to the Programme (including publishing and merchandising rights) are unencumbered and may be dealt with in any manner without infringing the rights of any other person;
- (b) any options granted to or by the Producer in respect of rights relevant to the Programme and also all ancillary rights relating to the Programme and any limitations or qualifications affecting the Producer's rights relating to the Programme have been disclosed to NZ On Air and are as set out in Part II of Schedule I to this Agreement;
- (c) the Producer will from time to time exercise all options granted to it as and when required in accordance with the terms of those options referred to in (b) above. If the Producer contemplates, for whatever reason, not exercising the option(s), then NZ On Air must be notified in writing at least four weeks before the expiry date for the exercise of the option(s). NZ On Air may request the assignment to NZ On Air of the option(s) and all associated rights so that it may exercise the option(s) itself or it may, in writing, approve the option(s) not being exercised; and
- (d) the Programme will comply with the programme standards specified in section 4(l) of the Broadcasting Act 1989.

8. REPAYMENT OF DEVELOPMENT FUNDING AND INTEREST

- 8.1 The Development Funding together with the Interest accrued to the date of repayment, shall be repaid to NZ On Air in the following circumstances:

- (a) if the Programme or a programme derived from the development of the Programme is developed and produced exclusively for screening on any medium other than a New Zealand free to air television national network, then the Development Funding and Interest shall be repaid to NZ On Air on the first day of principal photography for the Programme; or
- (b) if the Programme goes into production for screening on any of the New Zealand free to air television national networks then the Development Funding only shall be recouped by NZ On Air on a pro-rata basis with other financial contributors to the production from the sale by the Producer of any of the rights to the Programme, other than the right to broadcast on New Zealand free to air television. (In this instance the Producer shall not be liable to pay to NZ On Air the Interest due);
- (c) immediately if any of the following events occur;
 - (i) on the date of expiry of any of the rights needed by the Producer to complete the development and production of the Programme; or
 - (ii) on the date of any settlement of any transaction whereby any other party takes over the Programme or any part of the development of the Programme with or without the consent of NZ On Air; or
 - (iii) after the Producer has committed some breach of, or has failed to comply with any term of this Agreement including (without limitation) failure to comply with the agreed timetable and specifications for the development of the Programme (including failure to deliver the Programme by the Delivery Date or any extension thereof) where the Producer has been advised of the breach by NZ On Air and has failed to remedy the breach within 14 days of notice of the breach from NZ On Air.

9. GRANT OF EXTENSION

- 9.1 NZ On Air may at its discretion grant an extension to the Delivery Date and thereby an extension of the Development Funding on such interest and repayment terms as it thinks appropriate, but unless otherwise agreed in writing the terms of this Agreement shall apply. Any such extension shall be effective only if agreed in writing by both parties.

10. DEFAULT IN REPAYMENT

- 10.1 If the Producer fails to repay the Development Funding and the Interest when due then:

- (a) Penalty interest shall be payable on the Development Funding at the rate of 10% per cent per annum calculated on a daily basis compounding from the date when payment was due until payment has been made of all money due under this Agreement;
- (b) NZ On Air may, at its discretion, by giving notice in writing to the Producer, take over the Programme in accordance with Clause 11, at any time after payment of any money owing under this Agreement has become due and remains due.

11. NZ ON AIR'S RIGHT OF TAKEOVER

11.1 The exercise by NZ On Air of its rights under clause 10.1(b) and of this clause will discharge the obligation of the Producers to repay the Development Funding and any Interest owing at the time of NZ On Air's exercise of its rights.

11.2 If NZ On Air exercises its option to take over the Programme under Clause 10.1(b) then:

- (a) NZ On Air or its nominee will take over the obligations of the Producer under contracts relating to the Programme, provided that NZ On Air shall have the right to refuse to accept the assignment to it of any contracts whose terms NZ On Air does not approve of;
- (b) the Producer hereby irrevocably appoints NZ On Air the true and lawful attorney of the Producer for the purpose of executing on behalf of the Producer all such assignments in the event of take over of the Programme by NZ On Air, and the Producer agrees to ratify and confirm any acts of NZ On Air under this power of attorney;
- (c) NZ On Air may offer the Programme to, and enter into contracts with, any persons or companies and on such terms as NZ On Air thinks fit;
- (d) NZ On Air may at its discretion decide to carry forward and to make provision for reimbursement of, certain costs incurred by the Producer relating to the Programme.

12. NO ASSIGNMENTS

12.1 The Producer will not assign or otherwise deal with the rights relating to the Programme or its rights and obligations under this Agreement unless;

- (a) the Development Funding and all Interest due is repaid in full; or
- (b) NZ On Air first consents in writing.

13. ACCOUNTING

13.1 The Producer will keep proper books and records of accounts in which full, accurate and timely entries are made of all income and expenditure in respect of the Programme. These books and records of account must be available for inspection by NZ On Air on request.

14. REPORTING

14.1 The Producer will provide NZ On Air with a report on expenditure on the Programme within 60 days of delivery of the Programme.

15. CREDITS

15.1 NZ On Air shall at its option, be entitled to receive a credit in the Programme in recognition of its assistance in the development of the Programme which shall be a line in the final on-screen credits as follows:

"Development assistance from NZ On Air".

16. USE OF NZ ON AIR'S NAME

16.1 No reference may be made to NZ On Air assistance by way of the Development Funding in any written material including, in particular, any prospectus seeking investment in the Programme without the prior written consent of NZ On Air.

17. NOTICES

17.1 Any notice or other communication to be given to any party shall be deemed given on the date it is personally delivered, on the date of transmission of any tested facsimile transmission, or 4 days after it is deposited in the mail, post-paid and addressed as follows:

(a) If to NZ On Air:

The Chief Executive
NZ On Air
PO Box 9744
Marion Square
WELLINGTON 6141
Telephone No: (04) 382 9524
Facsimile No: (04) 382 9546

(b) If to the Producer:

xxx
xxx
xxx
xxx
Telephone No: (0x) xxx
Facsimile No: (0x) xxx

18. ACKNOWLEDGEMENT OF RECEIPT

18.1 The Producer acknowledges that it received a copy of this Agreement at the time it executed this Agreement.

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

**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

Dated: 2009

SCHEDULE I

PART I

APPLICATION OF DEVELOPMENT FUNDING

Name of Programme	<i>[Title]</i>
Application of funds	The development of: <ul style="list-style-type: none">••• for a x x x hour xxx.
Budget	\$ xxx (see attached Schedule II) made up as follows: \$xxx from NZ On Air; and \$xxx from [Broadcaster].
Key Personnel	Executive Producer: Producer: Director: Writer:

PART II

QUALIFICATIONS OR RESTRICTIONS ON PRODUCER'S RIGHTS

Scriptwriter's right of reversion (if any):

Date:

Option Expiry Date:

Other Restrictions:

PART III
DRAWDOWN SCHEDULE

On execution of this Agreement and delivery of a copy of the agreement with the scriptwriters, Broadcaster and any other funding agreements to NZ On Air pursuant to clause 6.1(a) of this agreement:	\$XXX
--	--------------

On delivery of the Programme to NZ On Air pursuant to clause 3.1(d):	\$XXX
---	--------------

On delivery of a final cost report to NZ On Air pursuant to clause 14 of this agreement:	\$XXX
---	--------------

Total NZ On Air Development Funding:	<hr/> \$XXX <hr/>
---	--------------------------

The above amounts plus GST will be paid on receipt of an original tax invoice.

PART IV
THE PROPOSAL
(ATTACHED)

SCHEDULE II
DEVELOPMENT BUDGET
(ATTACHED)