

## PRODUCTION AND FUNDING AGREEMENT

### PARTIES

- A. **[PRODUCER] LIMITED**, a duly incorporated company having its registered office at [Reg Office] ('Producer')
- B. **BROADCASTING COMMISSION**, a statutory body corporate established by the Broadcasting Act 1989 ('NZ On Air').

### KEY TERMS

Programme Details		
<b>Programme Title</b>		[Title]
<b>Programme Specifications</b>	Programme Genre	e.g. Drama, Comedy, Documentary, Arts/Culture, Special Interest
	Number of Episodes	
	Duration of Episodes	e.g. 44'00" being 1 commercial hour (together, "the Programme")
	Delivery Medium	e.g. DigiBeta or HDCamSR
<b>Key Personnel</b>	Executive Producer	
	Producer	
	Director	
	Writer/ Other	e.g. CEO, Managing Director, etc
Rights Details		
<b>Broadcaster</b>		[Broadcaster]
<b>Broadcast Channel</b>		[channel]
<b>Broadcast Timeslot</b>		e.g. Peak/Off-peak
<b>Broadcaster's Broadcast Rights</b>	Includes: Repeat rights specified in Contract Initiation Form; List number of plays/ over number of years for Free Channel ____ / ____, and Pay Television ____ / ____ Video on Demand: Other: [Please specify]	
<b>Extended Broadcast Rights</b>		Applies [if 100% NZOA funded]/Does not apply
<b>Assignment of Copyright to NZ On Air</b>		Applies and is detailed in Schedule 6 [if NZOA funding over \$1m]/Does not apply
Budget & Funding Details		
<b>Budgeted Costs</b>	Budgeted Cash Costs	[\$[total]]
	Budgeted Non-Cash Costs	
	<b>Total Budgeted Costs</b>	[\$[total]]
<b>Funding</b>	NZ On Air Development Funding	
	NZ On Air Production Funding	[\$[NZOA]]
	<b>Total NZ On Air Funding</b>	<b>[\$[NZOA]]</b>
	Broadcaster Licence Fee	
	Broadcaster Equity	Nil
	<b>Total Broadcasters Funding</b>	
	<b>Producers Funding</b>	<b>Nil</b>
<b>Third Party Funding</b>	<b>Nil</b>	
	<b>Total Funding</b>	<b>[\$[total]]</b>

<b>Drawdown Schedule</b>		
<b>Summary of Conditions</b>	<b>Development Funding already advanced:</b>	<i>Delete if not applicable</i>
<i>Incorporation status, Chain of title, Related party costs, Broadcaster rights, Broadcaster's Covenants to Broadcast, Assignment of copyright (if required).</i>	<b>On execution of this Agreement</b> , provided the conditions in clause 2.3 of Schedule 1 has been satisfied:	
<i>Broadcaster's agreement, Other funding agreements, producer to inform us of any payment from Broadcaster, Producer's report, Cost report</i>	<b>On first day of pre-production</b> , provided the conditions in clauses 2.4 (a) & (b) of Schedule 1 has been satisfied:	
<i>Confirmation of first payment Producer's Health and Safety Confirmation, Health and safety confirmations from Broadcaster (and other funders if requested), Producer's report, Cost report</i>	<b>On first day of principal photography</b> , provided the condition in clauses 2.4 (c) and (d) of Schedule 1 have been satisfied:	
<i>Producer's report, Cost report</i>	<b>On first day of offline edit:</b>	
<i>Producer's report, Cost report</i>	<b>On approval of the offline of 1 episode by the Broadcaster:</b>	
<i>Producer's report, Cost report</i>	<b>On approval of the offline of all episodes by the Broadcaster:</b>	
<i>Confirmation of delivery from Broadcaster and delivery to NZ On Air of publicity materials</i>	<b>On full delivery of the Programme to the Broadcaster:</b>	
<i>Final cost report, , Diversity report and Producer report, DVD</i>	<b>On delivery of:</b> <ul style="list-style-type: none"> <li>• a final cost report pursuant to clause 11.6 of Schedule 1;</li> <li>• a DVD of the Programme to NZ On Air pursuant to clause 8.1(h) of Schedule 1:</li> </ul>	
	Total NZ On Air Funding	\$(NZOA)
<b>Production Account</b>		
<b>Underspend Shares</b>	NZ On Air	80% [unless other equity]
	Producer (including assignable)	20%
<b>Net Income Shares</b>		Detailed in Schedule 5 [if NZOA funding \$200k and over]/Does not apply
<b>Contact Details</b>		
<b>Specified Address – Producer</b>	Physical Address	
	Postal Address	
	Email	
	Phone	
	Fax	

	Attention	
<b>Specified Address – NZ On Air</b>	Physical Address	2 <sup>nd</sup> Floor, 119 Ghuznee Street, WELLINGTON 6011
	Postal Address	PO Box 9744, Marion Square WELLINGTON 6141
	Email	<a href="mailto:benedict@nzonair.govt.nz">benedict@nzonair.govt.nz</a>
	Phone	(04) 382 9524
	Fax	(04) 382 9546
	Attention	The Chief Executive

This Agreement consists of:

- (a) these Key Terms
- (b) the Additional Terms and Conditions of Funding (Schedule 1)
- (c) the Proposal (Schedule 2)
- (d) the Budgeted Costs (Schedule 3)
- (e) the Broadcaster's Covenants to Broadcast (Schedule 4A)
- (f) the Producer's Health and Safety Confirmation (Schedule 4B)
- (g) the Distribution of the Programme (Schedule 5)
- (h) the Assignment of Copyright (Schedule 6) [delete if not applicable]
- (i) the list of Broadcaster's facilities (Schedule 7) to be provided by way of investment in the Programme referred to in the Key Terms. [delete if not applicable]

**IN WITNESS WHEREOF** this Agreement has been executed on this \_\_\_\_\_ day of \_\_\_\_\_ 2016

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

\_\_\_\_\_  
Jane Wrightson  
Chief Executive

\_\_\_\_\_  
Glenn Usmar  
Head of Television

**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

## SCHEDULE 1

### 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 Terms”** means the additional terms and conditions of funding set out in this Schedule 1.
  - 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 excluding video cassettes, videodiscs (including DVDs) and any other devices for reproducing visual images and sounds which may be played back by the use of playback device and intended for sale or hire to the public for home use; and
    - (c) all merchandising, stage, music and soundtrack rights in relation to the Programme; and
    - (d) any right to exploit the Field Footage.
  - 1.3 **“Broadcaster Agreement”** means the agreement between the Producer and the Broadcaster relating to the production and/or licensing of the Programme dated on or about the date of this Agreement.
  - 1.4 **“Broadcaster Rights”** means the rights granted by the Producer to the Broadcaster under the Broadcaster Agreement, which shall include the rights to broadcast the Programme to free to air television in New Zealand and the rights to stream the Programme on free-access video on demand on the Broadcaster website for a minimum period of one month after each transmission.
  - 1.5 **“Budgeted Costs”** means the amount specified in the Key Terms and as further detailed in Schedule 3.
  - 1.6 **“Budgeted Cash Costs”** means that amount of the Budgeted Costs to be supplied in cash specified in the Key Terms and includes any amount paid in cash by the Broadcaster in lieu of providing any facilities referred to in the Key Terms.
  - 1.7 **“Delivery Date”** means the date or dates set out in the Broadcaster Agreement for delivery of the Programme or episode of a Programme (as applicable) to the Broadcaster or any amended date agreed between the Producer and Broadcaster.

- 1.8 **“Drawdown Schedule”** means the drawdown schedule specified in the Key Terms.
- 1.9 **“Extended Broadcast Rights”** means the right to:
- (a) up to six transmissions by any other free-to-air broadcaster in New Zealand on request, subject to the Producer’s prior written consent, not to be unreasonably withheld or delayed;
  - (b) unlimited streaming on the nzonscreen.com website and any other free-access website approved by the Producer;
- for a period of 12 months following the first play of the Programme or an episode of the Programme (as applicable) by the Broadcaster in accordance with the Broadcaster Rights.
- 1.10 **“Event of Default”** means an event described in clause 14.1 of these Additional Terms.
- 1.11 **“Field Footage”** 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.
- 1.12 **“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.
- 1.13 **“Key Terms”** mean the terms set out in the header of this Agreement.
- 1.14 **“Net Income”** has the meaning set out in Schedule 5.
- 1.15 **“Programme”** means the programme described in the Key Terms and based on the Proposal.
- 1.16 **“Programme Exploitation Rights”** means all rights in the Programme in any medium throughout the world, except the Broadcaster Rights and the Ancillary Rights.
- 1.17 **“Programme Rights”** means:
- (a) all Programme Exploitation Rights; and
  - (b) all Ancillary Rights.
- 1.18 **“Proposal”** means the funding proposal set out in Schedule 2 which sets out the overall nature of the Programme.
- 1.19 **“Specified Address”** means in relation to any party the address for that party set out in the Key Terms.

- 1.20 “**Underspend**” 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.
- 1.21 **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) any reference to a Business Day means a day other than a Saturday or Sunday on which registered banks are open for business in Wellington and Auckland;
  - (h) 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;
  - (i) 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;
  - (j) 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;
  - (k) any reference to a party includes that party’s successors and permitted assignees (as the case may be);
  - (l) all sums referred to in this Agreement are exclusive of goods and services tax; and
  - (m) 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 clauses 2.3 and 2.4 of these Additional Terms and on receipt of an original tax invoice and the reports specified in clause 11.1 of these Additional Terms, NZ On Air agrees to make the 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 the initial 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 Producer is a duly incorporated company registered and resident in New Zealand;
  - (b) 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;
  - (c) the Budgeted Costs detailed in Schedule 3 identify any items that will be payable to any related party (as that term is defined under generally accepted accounting practice) of the Producer;
  - (d) the Broadcaster Rights are consistent with the Broadcaster's relevant standard rights position, subject to any amendments negotiated in good faith with the Producer;
  - (e) the Broadcaster has executed the Broadcaster's Covenants in Schedule 4A in a form satisfactory to NZ On Air; and
  - (f) where required, the Producer has executed the Assignment of Copyright to NZ On Air.
- 2.4 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 those of the following items that the Drawdown Schedule lists as conditions of that NZ On Air Funding:
- (a) a copy of a validly executed agreement with the Broadcaster securing the Broadcaster's Funding for the production of the Programme, such agreement to be consistent with the terms and conditions of this Agreement;
  - (b) copies of validly executed agreements securing all of the Producer's Funding for the production of the Programme, such agreements to be on terms and conditions acceptable to NZ On Air; and



- (c) an executed copy of the Producer's Health and Safety Confirmation in Schedule 4B, in a form satisfactory to NZ On Air; and
  - (d) separate written confirmations in relation to the health and safety arrangements for the production of the Programme, in forms satisfactory to NZ On Air, from:
    - (i) the Broadcaster; and
    - (ii) each other funder of the Programme (if any), if such confirmation was requested by NZ On Air before the applicable payment date.
- 2.5 The time for satisfying the condition in clause 2.3 of these Additional Terms shall be within twenty Business Days of the date of execution of this Agreement.
- 2.6 The time for satisfying the condition in clause 2.4 of these Additional Terms shall be within forty Business Days of the date of execution of this Agreement.
- 2.7 In the event that the conditions in clauses 2.3 and 2.4 are not satisfied within the dates specified by clause 2.5 and 2.6 (as applicable) of these Additional Terms (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 clauses 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 clause 3.4 and clauses 2.3 and 2.4 of these Additional Terms, 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 shall use the NZ On Air Funding, Broadcaster's Funding, Producer's Funding and any Third Party Funding only to meet the costs of production of the Programme in accordance with this Agreement and the Budgeted Costs.
- 3.3 Where the amount of NZ On Air Funding is equal to or greater than one million dollars (\$1,000,000), the Producer must report any interest earned on the total funding received for the Programme in each cost report and such interest may only be used by the Producer to meet any increase in the Budgeted Costs. If there is no increase in the Budgeted Costs, any such interest will form part of

the Underspend and be shared by the parties in accordance with the Underspend Shares specified in the Key Terms.

- 3.4 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 Operations Manager of the Media Access Charitable Trust 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 the Programme Specifications and using the Key Personnel specified in the Key Terms. 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 written consent of NZ On Air alter the Budgeted Costs or increase the budgeted contingency or production company overhead or the rate used to calculate any costs payable to any related party (as that term is defined under generally accepted accounting practice) of the Producer. 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 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 to NZ On Air or jeopardise delivery of the Programme by the Delivery Date.
- 5.5 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 clause 5.5, it will be under no obligation to advance any further instalments of NZ On Air Funding.
- 5.6 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 overseas.
- 5.7 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.
- 5.8 NZ On Air expects that the Producer will engage cast using the Individual Performance Agreement agreed between The Screen Production and Development Association and New Zealand Actors Equity for use on New Zealand based productions.
- 5.9 NZ On Air expects that the Producer and crew will adhere to the “Blue Book” (as published by the New Zealand Film and Video Technicians Guild Inc.).
- 5.10 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 Programme masters necessary in order to exhibit, show or broadcast such extracts.

## 6. **BROADCAST OF PROGRAMME ON NEW ZEALAND TELEVISION**

- 6.1 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 in the Broadcast Timeslot.
- 6.2 The Producer shall grant to the Broadcaster the Broadcaster Rights in accordance with the Broadcaster Agreement.

6.3 Where NZ On Air has provided the entire funding for the Programme, the Extended Broadcast Rights will apply.

## **7. NEW ZEALAND IDENTITY AND CULTURE**

7.1 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.

## **8. PRODUCER'S ADDITIONAL COVENANTS**

8.1 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 Broadcaster Rights, 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, and will not sell, license, assign, encumber, grant a security interest in, charge or otherwise dispose of any of the rights in the Programme except in accordance with clause 6 of the Agreement and, where applicable, Schedule 5
- (e) it will provide the correct NZ On Air credits on its Programme. This means:
  - (i) it will provide NZ On Air Accreditation and provide a credit in all publicity material for the Programme in New Zealand using the wording agreed to in consultation between the Producer and NZ On Air

- (ii) for overseas publicity material the Producer shall use reasonable endeavours to provide a credit for NZ On Air using the wording agreed in consultation between the Producer and NZ On Air
  - (iii) 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" available to be broadcast at the end of each episode of the Programme in New Zealand, unless otherwise agreed by NZ On Air
  - (iv) where programmes include credits as part of the opening sequence a "made in association with NZ On Air's Platinum Fund" should also be included
  - (v) for Programmes funded from the Platinum Fund, a written end credit identifying the Programme as having been funded by NZ On Air's Platinum Fund should be included, along with the animated closing credit for each episode of the Programme
  - (vi) that it complies with any request from the Broadcaster for the NZOA logo to appear during the Programme, as long as such request is not inconsistent with the NZ On Air requirements in this clause 8.1(e),
  - (vii) for overseas broadcast the Producer shall use reasonable endeavours to provide the NZ On Air Accreditation or a credit within the end credits of each episode of the Programme, and
  - (viii) 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 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 high resolution digital images 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
- (k) it will comply with all applicable tax legislation and indemnify NZ On Air against liability to any third party 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
- (l) 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
- (m) prior to delivery of the Programme to the Broadcaster, there will be no change of ownership or control of the Producer by way of sale of the whole or substantial part of the assets of the Producer without the prior written consent of NZ On Air
- (n) all transactions (being transfers of resources, services or obligations) between the Producer and any related party (as that term is defined under generally accepted accounting practice) in relation to the Programme have been disclosed to NZ On Air in accordance with clause 2.3(c).

## **9. HEALTH AND SAFETY PROCEDURES**

- 9.1 The Producer confirms that it is aware of its obligations under the Health and Safety at Work Act 2015 and agrees to comply with that Act in the production of the Programme.
- 9.2 The Producer will also, in the production of the Programme, comply with the provisions of the New Zealand Screen Sector Health and Safety Guidelines (as amended from time to time).
- 9.3 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 a form consistent with that set out in clauses 9.1 and 9.2 above, to the extent relevant to those goods and services.
- 9.4 The Producer 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 the Programme.

9.5 The Producer shall provide such information as reasonably requested by NZ On Air to demonstrate the Producer's compliance with its health and safety obligations under this Agreement.

9.6 The Producer shall report to NZ On Air, within 24 hours of the incident concerned, details of any:

(a) notifiable event (as defined in the Health and Safety at Work Act 2015) relating to the production of the Programme; or

(b) incident relating to the production of the Programme which results (or could reasonably have resulted or could yet result) in serious injury or serious illness.

NZ On Air may, at any time, call a meeting with the Producer and any persons affected by the event, upon reasonable notice, to obtain information and to discuss the event and the planned responses to it.

9.7 NZ On Air may, from time to time, at its own cost and on written notice to the Producer, audit the Producer's compliance with its health and safety obligations under this Agreement. The Producer shall do whatever is required to facilitate and assist the audit.

## 10. **ARCHIVING**

10.1 The Producer shall make the Programme available for acquisition into an Approved Archive collection if selected by that Approved Archive. The Approved Archive shall be responsible for meeting all reasonable copying costs. "**Approved Archive**" means Nga Taonga Sound and Vision or any other archive approved by NZ On Air for depositing a copy of the Programme.

10.2 At the expiration of the initial Broadcast Rights the Producer will use best endeavours to enable online public access to the Programme consistent with the original rights, licences, consents and authorities obtained for the production and exploitation of the Programme Rights and Broadcaster Rights.

10.3 At the expiration of the initial Broadcast Rights or earlier if agreed the Producer will make the programme or reasonable excerpts of the programme available to NZ On Screen on terms and conditions to be agreed by the Producer.

## 11. **REPORTING AND ACCOUNTING PROCEDURES**

11.1 Where the Drawdown Schedule specifies "Producer's report, Cost report" as Conditions to drawdown, 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:

- (i) production progress, cashflow and budget progress and outlining reasons for any significant departure from production and/or financial targets; and
- (ii) details of all health and safety incidents and near misses, and all notices issued under the Health and Safety at Work Act 2015, in the reporting period and that relate to or affect the production of the Programme, whether or not they were previously reported to NZ On Air under clause 9.6.

All such reports must be true and correct and contain the detail required by NZ On Air.

11.2 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.

11.3 The Producer shall:

- (a) keep proper accounting 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 accounting records relating to the production of the Programme; and
- (d) account to NZ On Air for all recoveries in respect of the sale of any equipment or other tangible assets purchased out of the Budgeted Costs for the purpose of the production of the Programme, if any, in the final cost report provided pursuant to clause 11.6 of these Additional Terms. Any recoveries made following the delivery of the final cost report will be treated as Net Income.

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

11.5 NZ On Air or its representatives shall have the right at all reasonable times and on reasonable notice to visit studios, locations or elsewhere where production of the Programme is being carried out to observe production of the Programme. Any visitor will comply with the reasonable directions of the Producer regarding health and safety.



- 11.6 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.
- 11.7 Any Underspend shall be shared in accordance with the Underspend Shares set out in the Key Terms. NZ On Air may deduct the amount of its Underspend Share from any outstanding payments in the Drawdown Schedule of NZ On Air Funding.
- 11.8 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.
- 11.9 Any failure by the Producer to comply with the reporting and accounting obligations set out in this clause 11 shall be a material breach of this Agreement for the purposes of clause 14.1(d) of these Additional Terms.

## 12. **INSURANCE**

- 12.1 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.
- 12.2 The insurance shall be for fully adequate sums having regard to the potential loss.
- 12.3 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 be accounted for in the final cost report provided pursuant to clause 11.6 of these Additional Terms, or if received after the final cost report, will form part of Net Income.

## 13. **DISTRIBUTION RIGHTS**

- 13.1 The Producer shall have distribution rights for the Programme, being the right to sell or license or otherwise exploit, and to authorise the sale licensing or exploitation of the Programme Rights.
- 13.2 Where NZ On Air has a right to share in the Net Income for the Programme the provisions of Schedule 5 shall apply to and govern the distribution of the Programme.

## 14. **DEFAULT**

- 14.1 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 clause 5 of these Additional Terms; or
  - (iii) the Producer being, in the reasonable opinion of NZ On Air, unable to ensure the health and safety of all workers and other persons in relation to the production of the Programme.

14.2 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. Notice of termination must be provided to the Producer in accordance with clause 18.4.

- 14.3 If this Agreement is terminated by NZ On Air pursuant to clause 14.2 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 clause 14.3(a) above).
- 14.4 In the event that this Agreement is terminated pursuant to clause 14.2 of these Additional Terms, 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.
- 14.5 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 clause 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 clause 14.2 of these Additional Terms.
- 14.6 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 clauses 2 and 3 of these Additional Terms 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.
- 14.7 Without limiting any of NZ On Air's rights under this clause and subject to the Broadcaster's Rights, the Extended Broadcast Rights and to the provisions of any existing distribution agreements for the Programme, when all of the conditions in section 318 of the Companies Act 1993 have been met so that the Registrar must remove the Producer from the Register of companies but prior to such removal, the right to unlimited streaming on the website located at <http://www.nzonscreen.com> shall automatically be assigned to and vest in the Digital Media Trust (a charitable trust board incorporated under the Charitable Trusts Act 1957), and the Producer irrevocably constitutes and

appoints NZ On Air as the Producer's attorney in fact with full power and authority to enter into and execute any document giving effect to the assignment.

## 15. TAKEOVER

- 15.1 If NZ On Air takes over completion of the Programme pursuant to clause 14.5 of these Additional Terms, it shall be deemed to do so as agent of the Producer, subject to the terms of this Agreement.
- 15.2 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 clause 15, 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; enforce, modify, release, compromise or terminate any contract or other right or obligation of the Producer
  - (c) engage and discharge personnel
  - (d) enter into or terminate any contract for services
  - (e) acquire or lease or dispose of equipment and other real or personal property
  - (f) make claims under any policy of insurance in respect of the Programme
  - (g) do all such other lawful acts and things as NZ On Air may determine is reasonably necessary to exercise its rights under this clause 15 (including executing any power of attorney contemplated by clause 15.3 when the Producer has failed to do so).
- 15.3 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 clause 15.2 above.
- 15.4 If NZ On Air takes 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.
- 15.5 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.

- 15.6 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 clause 13.1 of these Additional Terms 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.

## 16. COSTS AND EXPENSES

- 16.1 This Agreement contains NZ On Air's standard terms and conditions. If the Producer requires significant changes to this Agreement, the Producer agrees to pay all reasonable legal fees of NZ On Air that may be incurred in connection with negotiating and amending this Agreement. These costs may be paid for out of the Budgeted Costs if there are sufficient funds.

## 17. RESOLUTION OF DISPUTES

- 17.1 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.
- 17.2 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.
- 17.3 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 clause 17, provided that where 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.

17.4 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, NZ branch, (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.

17.5 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.

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

## 18. GENERAL

### 18.1 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 clause 15 of these Additional Terms. 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 clause 15 of these Additional Terms.

### 18.2 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.

### 18.3 Amendment

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

### 18.4 Notices

All notices arising out of this Agreement shall be given in writing.

- (a) 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; or
  - (iv) Except in relation to notices given under clause 14.2 of these Additional Terms, by transmitting such notice to the Specified Address of the other party by email.
- (b) 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. If a party sends a notice by email to another party, it will be deemed to have been received by the other party at the time the email leaves the communication systems of the sender, provided that the sender does not receive any error message relating to the sending of the email.

### 18.5 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.

### 18.6 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.

### **18.7 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.

### **18.8 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.

### **18.9 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.

### **18.10 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. The Producer acknowledges that NZ On Air is subject to and bound by the provisions of the Official Information Act 1982 and is required to treat any request for information under the Official Information Act 1982 in accordance with the provisions of that act.

### **18.11 New Zealand Law**

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

### **18.12 Arbitration Act**

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

### **18.13 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 2**  
**PROPOSAL**  
**(ATTACHED)**

**SCHEDULE 3**  
**BUDGETED COSTS**  
**(ATTACHED)**

## SCHEDULE 4A part one

### BROADCASTER'S COVENANT TO BROADCAST (To be attached to and form part of NZ On Air's funding agreement)

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

### BROADCASTER'S COVENANT TO BROADCAST

**IN CONSIDERATION** of the Broadcasting Commission ("NZ On Air") entering into the Agreement with [PRODUCER] Limited ("the Producer") whereby NZ On Air agreed (subject to the terms and conditions of that Agreement) to provide funding of \$[NZOA] to enable production of a television programme provisionally called "[Title]" (the "Programme") to be broadcast in New Zealand by [Broadcaster] ("the Broadcaster"), the Broadcaster hereby covenants with NZ On Air that subject to the Programme meeting normal standards of the Broadcaster and provided that the Programme is delivered to the Broadcaster by the delivery dates specified in the Producer's agreement with the Broadcaster for the Programme, the Broadcaster shall use best endeavours to:

- (a) broadcast the first play of the Programme over [channel] within twelve months of the delivery of the Programme, or within the topicality of the Programme, whichever is the shorter, with the broadcast of the Programme [commencing not earlier than 6pm and not later than 9.30/10pm/in an off-peak time slot actual times if possible i.e. 6am to midnight]; and
- (b) broadcast the Programme at a time when, to the best knowledge of the Broadcaster, the Programme is not scheduled at the same time as a national free-to-air broadcast of any other similar programme or series funded by NZ On Air, without the prior agreement of NZ On Air.

The Broadcaster agrees that the rights granted by the Producer to the Broadcaster for the Programme include: [repeat Broadcast Rights specified in the Key Terms]

**Programmes funded from the Platinum Fund are to have specific credits identifying the Programme as having been funded by NZ On Air's Platinum Fund.** The Broadcaster shall use best endeavours to broadcast any such credits provided by the Producer and to ensure such Platinum Fund credit is in all publicity material for the Programme in New Zealand.

As the Programme is being funded out of NZ On Air's Platinum Fund, if the Broadcaster plans to broadcast the Programme at a time other than that specified in (a) above, the Broadcaster shall first consult with NZ On Air on the proposed scheduling change and give the reasons for the proposed change. No such change will be made without NZ On Air's prior written consent.

DATED the                      day of                      [ 2016]

Signed for and on behalf of [Broadcaster]:

\_\_\_\_\_  
*Signature*

Name of Signatory:

Title:

signed in the presence of:

\_\_\_\_\_  
*Signature*

Name of Witness:

Occupation:

City of Residence:

## SCHEDULE 4A part two

### BROADCASTER'S INITIAL HEALTH AND SAFETY COVENANT

Although detailed health and safety plans for the television programme provisionally called “[Title]” (the “Programme”) are yet to be prepared by the Producer, the Broadcaster confirms that, based on its enquiries to date, it has no health and safety concerns in relation to the production of the Programme [other than... list any risks of concern here, e.g. current WorkSafe prosecution or high risk activities].

The Broadcaster agrees to respond to requests for confirmation of Health and Safety approval from NZ On Air in a timely manner.

The Broadcaster understands that these approvals will be sought at a number of drawdown stages, including, but not limited to, the first day of production.

**DATED** the                      day of                      [ 2016]

**Signed for and on behalf of [Broadcaster]:**

---

*Signature*  
Name of Signatory:  
Title:

**signed in the presence of:**

---

*Signature*  
Name of Witness:  
Occupation:  
City of Residence:

## SCHEDULE 4B

### PRODUCER'S HEALTH AND SAFETY CONFIRMATION

(To be completed during pre-production before principal photography 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 Production and Funding Agreement with [PRODUCER] Limited ("the Producer") whereby NZ On Air agreed to provide a specific amount of funding for the production of a television programme provisionally called "[Title]" ("the Programme") to be broadcast in New Zealand by [Broadcaster] ("the Broadcaster").

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

- (a) the Producer has consulted, co-operated and co-ordinated with the Broadcaster and all PCBUs as defined in the Act (e.g. contractors) over all health and safety plans for the Programme; and
- (b) the New Zealand Screen Sector Health and Safety Guidelines found at <http://screensafe.co.nz/> are being and will continue to be followed on the Programme; and
- (c) all risks to health and safety on the Programme 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 Programme 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 Programme.

The Producer understands that in accordance with clause 9.6 of the Agreement, any notifiable event, serious health and safety incident or near miss must be reported to NZ On Air within 24 hours.

DATED the \_\_\_\_\_ day of \_\_\_\_\_ [2016]

SIGNED for and on behalf of [PRODUCER] Limited by the Programme's producer:

---

Signature

Name:

Title:

## SCHEDULE 5

### DISTRIBUTION OF THE PROGRAMME

#### 1. Definitions

- 1.1. **“Delivery Expenses”** means direct actual and reasonable costs of the Producer (exclusive of salary and overheads) that are necessary to deliver the Programme to a Distributor or, where the Producer is acting as Distributor, necessary to distribute the Programme and which are consistent with proper business practice, incurred on commercial terms, properly allocated to the Programme, and approved by NZ On Air on receipt of supporting documentation acceptable to NZ On Air excluding costs relating to attendance at markets, preparation of promotional materials for markets and legal costs relating to negotiating a Distribution Agreement. Costs relating to errors and omissions insurance and clearance of music, archive and external footage will be deemed approved.
- 1.2. **“Distribution Agreement”** means any agreement between the Producer and a Distributor in relation to the Programme in connection with the sale, licensing or other exploitation of the Programme Rights which is consistent with proper business practice, concluded on commercial terms and on an arm’s length basis.
- 1.3. **“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 Programme Rights on an arm’s length basis and properly allocated to the Programme 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 the Producer is the Distributor, then the Producer may claim Distribution Expenses up to a maximum of 5% of Gross Income and any further costs incurred by the Producer as Distributor that are approved by NZ On Air on receipt of supporting documentation acceptable to NZ On Air.
- 1.4. **“Distributor”** means the person authorised to sell, license, distribute and authorise the sale, licensing, distribution or other exploitation of the Programme Rights in a particular territory. For the avoidance of doubt, there may only be one Distributor per media per territory unless otherwise approved by NZ On Air in writing and the Producer may elect to act as Distributor in a particular territory.
- 1.5. **“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

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.

- 1.6. **“Gross Income”** means all moneys accruing from the sale, licensing, distribution or other exploitation of the Programme Rights excluding Royalties and amounts excluded under clause 2.6 of this Schedule.
- 1.7. **“Net Income”** means:
- (a) the balance of any claim under any policy of insurance, as contemplated by clause 12.3 of the Additional Terms;
  - (b) the sale of any equipment or other tangible assets purchased out of the Budgeted Costs for the purpose of the production of the Programme as contemplated by clause 11.3(d) of the Additional Terms;
  - (c) Royalties; and
  - (d) Gross Income less:
    - (i) Delivery Expenses;
    - (ii) Production Expenses;
    - (iii) Distribution Expenses; and
    - (iv) Distributor’s Commission.
- 1.8. **“Production Expenses”** means direct actual and reasonable out-of-pocket costs incurred by the Distributor or Producer (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 the Programme.
- 1.9. **“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 the Producer in connection with the Programme.

## 2. **DISTRIBUTION OF THE PROGRAMME**

- 2.1 The Producer shall notify NZ On Air within one month from signing a Distribution Agreement for the Programme and, on request by NZ On Air, provide NZ On Air with a report on the general sales prospects of the programme, and shall in any event distribute the Programme properly and in good faith.

- 2.2 Except in relation to the Extended Broadcast Rights (if applicable), 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) make every effort to collect all receipts arising from the sale or licensing or other exploiting of the Programme Rights as is commercially reasonable and distribute Net Income in accordance with clause 3 of this Schedule;
  - (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 clause 13.1 of the Additional Terms, 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.
- 2.3 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.
- 2.4 The Producer will provide reports to NZ On Air following receipt by the Producer of a report from a Distributor, or where the Producer is the Distributor, on a six monthly basis in the first two years with the first report due six months from the Delivery Date of the Programme and on a yearly basis thereafter. After five years, reports will only be due where there is Net Income to report. The reports will include:
- (a) copies of any Distribution Agreements;
  - (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 the Producer, and all payments made by the Producer out of Gross Income including Delivery Expenses, Production Expenses, Distribution Expenses and Distributor's Commission along with a calculation of the share of Net Income due to NZ On Air.
- 2.5 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 clause 2.4 above.



2.6 Notwithstanding the definition of Ancillary Rights, the Producer may retain aggregate proceeds derived from the exploitation of Field Footage, 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.

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

3.1 Net Income shall be shared between the Producer and NZ On Air as follows:

(a) in respect of the Programme Exploitation Rights:

(i) until NZ On Air has fully recouped the NZ On Air Funding:

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%.

**[Default position – will change if other equity in project]**

3.2 NZ On Air's share of Net Income shall be distributed to NZ On Air with the reports provided in accordance with clause 2.4 of this Schedule or following receipt of an invoice by NZ On Air where required. 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.

3.3 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.

3.4 The Producer may, at its discretion, assign part of the Producer's share of Net Income received in accordance with clause 3.1 above to other contributors to the production of the Programme.

## **SCHEDULE 6**

### **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 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 [Reg Office] ("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**" has the same meaning as in 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 held by the Producer.

#### 2. Assignment of Programme Rights

- (a) The Assignor (subject only to clauses 5 and 6 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:

- i. the details in respect of the Assignor contained in the Appendix to this Assignment of Copyright Agreement are true and correct;

- ii. 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;
- iii. it has the capacity to enter into this Assignment of Copyright Agreement; and
- iv. 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:

- i. 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;
- ii. 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;
- iii. 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;
- iv. that, before changing its name, it shall give the Assignee at least 10 Business Days prior written notice; and
- v. that it shall immediately advise the Assignee if any of the Assignor's details in the Appendix become inaccurate or incomplete.

#### **5. Licence**

In consideration of the Producer agreeing to produce the Programme, NZ On Air hereby irrevocably grants to the Producer an exclusive royalty free licence from the date of this Agreement, and where the licence is of copyright, by way of licence of present and future copyright, of NZ On Air's interest in and to the Programme Rights to the extent necessary to enable the Producer to produce, deliver and exploit the Programme in accordance with the Production and Funding Agreement.

#### **6. 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 without the need for any further documentation.

## 7. Costs and Expenses

This Assignment of Copyright Agreement contains the Assignee's standard terms and conditions. If the Assignor requires significant changes to this Assignment of Copyright Agreement, all costs and expenses, including reasonable legal costs, that may be incurred by the Assignee in connection with negotiating and amending this Assignment of Copyright Agreement, shall be payable by the Assignor. These costs may be paid for out of the Budgeted Costs for the Programme if there are sufficient funds.

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

**DATED** this                      day of    2016

**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  
Head of Television

## APPENDIX

### DETAILS OF THE ASSIGNOR

Organisation Name: \_\_\_\_\_

Incorporation No. (if applicable): \_\_\_\_\_

Trading name (if applicable): \_\_\_\_\_

Organisation Type:

Official name\* (if different):

company

trust

partnership

incorporated society

incorporated charitable trust board

industrial and provident society

building society

friendly society or credit union

other

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

\_\_\_\_\_  
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: \_\_\_\_\_

## **SCHEDULE 7**

### **FACILITIES**