

## STANDARD FUNDING AGREEMENT for Roles to Support Public Interest Journalism

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

Agreement	
<b>This agreement comprises</b>	Schedule 1 – Role Particulars Schedule 2 – General Terms Schedule 3 – Your Proposal Schedule 4 – Budget Schedule 5 – Recipient’s Health and Safety Confirmation Schedule 6 – Primary Platform Owner’s Covenants Schedule 7 – Additional Platform Owner’s Covenants Schedule 8 – Contractor Agreement Particulars Schedule 9 - Reporting Requirements
<b>[If NZ on Air does not have these covenants before signing...Condition precedent]</b>  <b>[No funding may be advanced until these covenants are provided]</b>	The commencement of this Agreement is conditional on you providing us with the following, within two months after both of us have signed this Agreement: <ul style="list-style-type: none"> <li>• <b>[If the Primary Platform Owner is not the Recipient...A Covenant to Publish</b> from the Primary Platform Owner, in the form of Schedule 6A and duly signed.]</li> <li>• <b>[If the Primary Platform Owner is not the Recipient...A Health and Safety Covenant</b> from the Primary Platform Owner, in the form of Schedule 6B, duly signed and demonstrating that health and safety risks are appropriately managed.]</li> <li>• <b>[If there are any Additional Platform Owners... A Covenant to Publish</b> from each Additional Platform Owner, in the form of Schedule 7 and duly signed.]</li> <li>• A copy of the executed Contractor Agreement between you and the Journalist.</li> <li>• Confirmation that you have agreed with NZ On Air prior to contracting the details of the Reporting Requirements outlined in Schedule 9 of this Agreement</li> </ul> If this condition is not met by then, this Agreement is of no effect.

Acceptance	
In signing this Agreement, each party acknowledges they have read and agree to be bound by it. Each party confirms that, as at the date of this Agreement, the effects of the coronavirus pandemic on that party are not currently a Force Majeure event.	
Agreement made this	2021
day of	
For NZ On Air	
Cameron Harland	Amie Mills

<b>Chief Executive</b>	<b>Head of Funding</b>
<b>For the Recipient</b>	
In signing this Agreement you confirm that you hold, or will hold, all intellectual property rights necessary to complete the Content and that you are registered in New Zealand as a company, charity or incorporated society.	
<b>Signature of Authorised person</b>	<b>Signature of Witness</b>
<b>Name and Position of Authorised person</b>	<b>Name of Witness</b>

## SCHEDULE 1 ROLE PARTICULARS

You will engage the Journalist(s) for the Role(s) during the Term set out below in accordance with this Agreement and otherwise as set out in your Proposal.		
<b>Role</b>	<b>Role Name(s)</b>	"[e.g. Senior Reporter"]
	<b>Nature of Role(s)</b>	[E.g. researching and writing about immigration and issues affecting NZ Asian communities]
	<b>Term</b>	[term of contract, e.g. 12 months from the date the Contractor Agreement is fully signed]
<b>Output Obligations</b>		
<p>Our funding is intended to help support New Zealand media entities to:</p> <ul style="list-style-type: none"> <li>• Seek to inform and engage the public about issues that affect a person’s right to flourish within our society and impact on society’s ability to fully support its citizens;</li> <li>• Provide accurate, accountable, and fair coverage that reflects and empowers all sectors of the community upholding the public’s right to know;</li> <li>• Actively promote the principles of Partnership, Participation and Active Protection under Te Tiriti o Waitangi acknowledging Māori as a Te Tiriti partner;</li> <li>• Reflect the cultural diversity of New Zealand; and</li> <li>• Encourage a robust and sustainable media sector.</li> </ul> <p>Accordingly, we require that the Journalist will, during the Term, produce the following (the “Content”):</p> <ul style="list-style-type: none"> <li>• [insert output requirements]</li> </ul>		
<b>Publishing Obligations</b>		
<p>Our aim is to ensure that great New Zealand content is valued and enjoyed by many New Zealand audiences. Accordingly, you agree to publish the Content, or arrange for the Content to be published, as set out in the following rows of this table (together, your Output Obligations). You will ensure that all necessary rights, licences, consents and other authorities required to meet your Output Obligations have been obtained and retained. Until completion of the Output Obligations:</p> <p>(a) If you license the Content, or make it available, exclusively for publication in New Zealand, you will ensure:</p> <p>(i) you have our prior written permission for the licence; and</p> <p>(ii) that the licence does not conflict with any of your obligations under this Agreement.</p> <p>(b) You will not dispose of (including assign, sell, transfer or make subject to any lien, trust, encumbrance or security interest) any of your rights or title in any Content without our prior written consent.</p> <p>Nothing in this section requires our consent for or prevents your licensing or distribution of the Content internationally. To the extent applicable to the Content, any reference in this Agreement to “publish” (in any of its grammatical forms) includes reference to “broadcast” (in its corresponding grammatical form).</p>		
<b>Primary Distribution Platform</b> <b>[Ensure this section distinguishes between the Main Content and the Other Content as required.]</b>	<b>Primary Platform Owner</b>	[PLATFORM COMPANY NAME] LIMITED
	<b>Channel / Publication</b>	[channel / name of text publication]
	<b>Platform Type</b>	[Pick one... Television, Radio, Online, text publication]
	<b>Platform Website</b>	[website URL]
	<b>Distribution Rights</b>	<p><b>[If the Recipient is NOT the Primary Platform Owner, use the following text...</b></p> <p>The Recipient confirms that it has agreed to the following rights with the Primary Platform Owner: [e.g. XX plays for XX years for free-to-air and Video on Demand]. If the Primary Platform Owner does not publish the Content in accordance with the <i>Covenant to Publish</i> in the form of Schedule 6A you will work with us to agree replacement publication(s), without breaching your third party obligations.]</p> <p><b>[If the Recipient IS the Primary Platform Owner...</b></p> <p><b>...delete Schedule 6 entirely</b></p> <p><b>...add the following text if broadcast is via TV or Radio...</b> You will broadcast the first play of the Content over the Channel [or use this alternative if the Content is text-only:] You will publish the Main Content prominently in the Publication within twelve months of its completion, or within the period of its topicality, whichever is the shorter [delete the following if the content is text-only:], with the broadcast:</p> <p>(a) [Either...commencing not earlier than 6pm and not later than 9.30 / Or...in an off-peak time slot / Or...[insert actual times if possible i.e. 10pm to 11pm]]; and</p>

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

Funding (excluding GST)			
Total Funding	From us	Our Role Funding	\$[A] under this Agreement
		<b>Total of our funding</b>	<b>[\$[Total of A]]</b>
		From all parties	
	Non-cash	[\$[B]]	
	Cash	[\$[C]]	
	<b>Total funding</b>	<b>[\$[Total A + B + C]]</b>	
Role Funding	You confirm that the following table includes all funding you have secured (both cash and non-cash) at any time in relation to the engagement of the Journalist throughout the Term. You confirm that the Journalist can be engaged in the Role for the Term in accordance with this Agreement within this amount. On our request, you must give us evidence that the above funding has been secured and will be provided to enable engagement of the Journalist for the Term in accordance with this Agreement.		
	<b>Funder</b>	<b>Cash</b>	<b>Non-Cash (itemised in the Budget)</b>
	Our funding	[\$[A]]	\$Nil
	You	\$ To insert	\$ To insert
	[Insert 3 <sup>rd</sup> Party]	\$ To insert	\$ To insert
	[Insert 3 <sup>rd</sup> Party]	\$ To insert	\$ To insert
	<b>Total Funding</b>	<b>[\$[B] - Total Cash]</b>	<b>[\$[C] - Total Non-Cash]</b>
	You must ensure that all cash and non-cash funding that isn't provided by us, is provided in time so as to enable you to engage the Journalist for the full Term in accordance with the Proposal. You must let us know immediately if you become aware of any circumstance that may result in funding not being provided as above.		

Drawdown Schedule [There may be additional or fewer drawdown points depending on amount of funding]	We will contribute our funding in accordance with the following drawdown schedule. We may, after consulting with you, vary drawdown dates or amounts where we reasonably consider you then hold excess or insufficient funds to meet immediate costs and expenses for the engagement of the Journalist in accordance with the Proposal. To receive our funding, you must meet each of the conditions specified in the drawdown schedule to our reasonable satisfaction.		
	<b>First Instalment</b>	After: <ul style="list-style-type: none"> <li>Both of us have signed this Agreement</li> <li><b>[If this Agreement has a condition precedent...The above condition precedent for this Agreement has been met.]</b></li> <li>Evidence that you have successfully installed the Google Analytics code on the Platform Website required to report online readership/viewership statistics under Schedule 8 of this Agreement</li> <li>Your invoice for this instalment.</li> </ul>	\$ To insert
	<b>Second Instalment</b>	After you give us: <ul style="list-style-type: none"> <li>Evidence of publication of [OUTPUT milestone] on the Primary Distribution Platform.</li> <li><b>[Move to first instalment if appropriate...Copies of any agreements related to the funding of the Role.] [If the Recipient is not the Primary Platform Owner...A health and safety confirmation from the Primary Platform Owner, in the form required by us, pursuant to their <i>Health and Safety Covenant</i> under Schedule 6B.]</b></li> <li>A signed health and safety confirmation as per Schedule 5.</li> <li>A cost report as our requirements outlined at <a href="https://www.nzonair.govt.nz/funding/journalism-funding/#resources-for-funded-applicants">https://www.nzonair.govt.nz/funding/journalism-funding/#resources-for-funded-applicants</a> at the time of your report (<b>Cost Report</b>)</li> <li>A PIJF Recipient report as per our requirements outlined at</li> </ul>	\$ To insert

		<a href="https://www.nzonair.govt.nz/funding/journalism-funding/#resources-for-funded-applicants">https://www.nzonair.govt.nz/funding/journalism-funding/#resources-for-funded-applicants</a> at the time of your report ( <b>PIJF Recipient Report</b> ). <ul style="list-style-type: none"> <li>Your invoice for this instalment.</li> </ul>	
	<b>Third Instalment</b>	After you give us: <ul style="list-style-type: none"> <li>Evidence of publication of [OUTPUT milestone] on the Primary Distribution Platform.</li> <li>A PIJF Recipient Report .</li> <li>A Cost Report.</li> <li>Your invoice for this instalment.</li> </ul>	\$ To insert
	<b>Fourth Instalment</b>	On [date, e.g. halfway through Term], and after you give us: <ul style="list-style-type: none"> <li>Evidence of delivery of [OUTPUT milestone] to the Primary Platform Owner.</li> <li>Evidence that you are meeting your Output Obligations.</li> <li>Evidence that you have conducted a performance review for the Role.</li> <li>A PIJF Recipient Report.</li> <li>A Cost Report.</li> <li>Your invoice for this instalment</li> </ul>	\$ To insert
	<b>Fifth Instalment</b>	After you give us: <ul style="list-style-type: none"> <li>Evidence of full delivery of all of the Content as listed in your Output Obligations to the Primary Platform Owner.</li> <li>At least [6] high resolution digital images from the Content for us to publish in any form free of charge.</li> <li>Your invoice for this instalment.</li> </ul>	
	<b>Completion Instalment</b>	At the end of the Term, and after you give us: <ul style="list-style-type: none"> <li>Evidence of completion of all Content (via a copy delivered to us on USB or DVD).</li> <li>A PIJF Recipient Report.</li> <li>Completed PIFJ Journalist Survey as set out in the “Your Obligations” section below</li> <li>A “final” Cost Report representing a true and fair view of the costs of the Role and accounting for all the expenditure of the Budget.</li> <li>Confirmation you have completed our diversity survey.</li> <li>A link that will persist for at least 1 year from the date of publication to all Content.</li> <li>Your invoice for this instalment.</li> </ul>	\$ To insert (subject to deductions for under-spend as below)
	<b>Our Total Funding</b>		<b>\$[B + E]</b> (under this Agreement)
<b>Invoices</b>	Your invoices must include the bank account for payment. If you are GST registered and provide us with a GST invoice, we will also pay GST in addition to each instalment.		
<b>Payment</b>	We will pay your invoices within 10 Business Days of all drawdown conditions being met to our reasonable satisfaction.		
<b>Your Bank Account</b>	[To insert]		
<b>Under-Spend</b>	If the cash costs of the engagement of the Journalist (incurred in accordance with the Budget in Schedule 4) are less than the cash funding provided by us or anyone else , the difference will be shared as follows: <p><b>[The following equity %s may only change if 3<sup>rd</sup> party funding is in the budget]</b></p> <ul style="list-style-type: none"> <li>80% for us</li> <li>20% for you (including any co-funders or other third parties)</li> </ul> We may deduct the amount of our share from any outstanding payments under this Agreement or require you to promptly pay our share to us. In calculating the cash costs of the Role, you will deduct the reasonable market value of any asset purchased out of the Budget that you retain or disposed of after the Term.		

<b>Income Sharing</b>	You (and your assignees) may retain all income related to any Content.
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<b>Your Obligations</b>							
<b>Engagement</b>	<p>You must engage the Journalist in the Role in accordance with your Proposal, and:</p> <ul style="list-style-type: none"> <li>• pay the Journalist the Fee;</li> <li>• in accordance with a written Contractor Agreement which complies with the Engagement Requirements (set out in Schedule 2 – General Terms) and the Contractor Agreement Particulars (in Schedule 8), and not materially vary that Contractor Agreement without our written consent;</li> <li>• be responsible for all engagement obligations of the Recipient, at no cost to NZ On Air beyond the Funding payment obligations;</li> <li>• ensure that you do not do anything that results in an employment relationship arising between the Journalist and NZ On Air;</li> <li>• if an existing staff member is appointed to the Role, provide evidence that you have backfilled that staff member's previous position for an equivalent amount of time at a similar salary or fee level;</li> <li>• if the Journalist's Contractor Agreement is terminated during the Term, engage a new Journalist as soon as possible on the terms set out in this Agreement;</li> <li>• not use the Journalist for duties outside of the Role or which are not directly related to the Output Obligations, such as general news reporting or covering other shifts of the Recipient's newsroom; and</li> <li>• complete and maintain, and ensure that the Journalist completes and maintains, an up-to-date declaration of potential conflicts of interest.</li> </ul>						
<b>Work Environment</b>	You must provide a safe, ethical and professional environment for the Journalist to work. You must provide suitably qualified supervising personnel and performance management for the Journalist.						
<b>Legality</b>	All parts of your engagement of the Journalist meet all applicable laws and regulations.						
<b>Personal Information</b>	<p>As a requirement of receiving our funding under this Agreement, NZ On Air requires a copy of the fully signed Contractor Agreement between you and the person filling the Role. NZ On Air agrees to review and retain any copies of the Contractor Agreement(s) only to the extent that is necessary for the purposes of this Agreement. This purpose is limited to reviewing the Contractor Agreement(s) to ensure it meets the requirements of this Agreement in respect of Fee, Term, and the Contractor Agreement Particulars in Schedule 8, and is in line with the Budget and the Proposal. Whilst in possession of the Contractor Agreement(s), NZ On Air agrees to keep all copies of this Contractor Agreement secure. Following NZ On Air's satisfaction with the requirements listed above in this clause, NZ On Air agrees to delete all copies of the Contractor Agreement(s).</p> <p>You agree that prior to providing NZ On Air with the Contractor Agreement, you will get the consent of the Role Journalist to disclose this information and explain to the Journalist why NZ On Air requires this information. You also agree to make the Journalist aware of their rights of access and correction under the Privacy Act 2020.</p>						
<b>Output Standards</b>	<p>You must exercise supervision, direction and control of the Journalist so as to ensure that the Journalist fulfils the Output Obligations during the Term.</p> <p>Although the editorial control of all Content is entirely at your discretion, you must ensure that all Content meets the following standards and use all reasonable endeavours to ensure that all subsequent owners or licensors of any Content do the same. These standards do not apply to any user generated content in a website that contains or references any Content.</p> <table border="1" data-bbox="400 1686 1481 2051"> <tr> <td><b>Legality</b></td> <td>All Content must meet all applicable laws and regulations.</td> </tr> <tr> <td><b>Technical Quality</b></td> <td>All Content must be of a technical quality that is appropriate for their intended audience and distribution platform(s), as set out in your Proposal. This standard will not have been met if any of any Content has not been made available on a Distribution Platform because of its technical quality.</td> </tr> <tr> <td><b>Media Standards</b></td> <td> <p>All Content must meet the following standards:</p> <p>(a) The standards set out in section 4(1) of the Broadcasting Act 1989 (as if the Content was a "programme" under the Act). This includes maintaining standards that are consistent with:</p> <ul style="list-style-type: none"> <li>○ the observance of good taste and decency;</li> <li>○ the maintenance of law and order;</li> </ul> </td> </tr> </table>	<b>Legality</b>	All Content must meet all applicable laws and regulations.	<b>Technical Quality</b>	All Content must be of a technical quality that is appropriate for their intended audience and distribution platform(s), as set out in your Proposal. This standard will not have been met if any of any Content has not been made available on a Distribution Platform because of its technical quality.	<b>Media Standards</b>	<p>All Content must meet the following standards:</p> <p>(a) The standards set out in section 4(1) of the Broadcasting Act 1989 (as if the Content was a "programme" under the Act). This includes maintaining standards that are consistent with:</p> <ul style="list-style-type: none"> <li>○ the observance of good taste and decency;</li> <li>○ the maintenance of law and order;</li> </ul>
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		<ul style="list-style-type: none"> <li>○ the privacy of the individual; and</li> <li>○ any approved code of broadcasting practice applying to the Content (see <a href="http://bsa.govt.nz/standards/overview">http://bsa.govt.nz/standards/overview</a>); and</li> <li>• (b) The standards set out by the New Zealand Media Council. This includes maintaining standards regarding: <ul style="list-style-type: none"> <li>○ accuracy, fairness and balance;</li> <li>○ the privacy of the individual;</li> <li>○ the interests of children and young people;</li> <li>○ discrimination and diversity; and</li> <li>○ conflicts of interest;</li> </ul> </li> </ul> <p>as well as further principles applying to the Content (see <a href="https://www.mediacouncil.org.nz/principles">https://www.mediacouncil.org.nz/principles</a>)</p>
	<b>Community Standards</b>	Any Content, in part or in whole, which is not either (a) subject to a New Zealand approved code of broadcasting practise or (b) published by an entity that has agreed to be bound by the principles of the NZ Media Council, must meet the “Don’t Cross the Line” rules in YouTube’s Community Guidelines (currently found at <a href="http://nz.youtube.com/t/community_guidelines">http://nz.youtube.com/t/community_guidelines</a> and in the “find out more” links on that page, as updated from time to time) as if it were posted on YouTube.
<b>New Zealand Identity and Culture and Public Interest requirements.</b>	<p>You will use best endeavours to ensure that the Content reflects and develops New Zealand identity and culture. In addition, where appropriate, you will use your best endeavours to ensure Content supports the following objectives:</p> <ul style="list-style-type: none"> <li>• reflects Māori issues in a way relevant to all New Zealanders;</li> <li>• reflects New Zealand’s ethnic and cultural diversity as well as the needs of other minorities and cultures in the community;</li> <li>• seeks to inform and engage the public about issues that affect a person’s right to flourish within our society and impact on society’s ability to fully support its citizens;</li> <li>• provides accurate, accountable, and fair coverage that reflects and empowers all sectors of the community upholding the public’s right to know;</li> <li>• actively promotes the principles of Partnership, Participation and Active Protection under Te Tiriti o Waitangi acknowledging Māori as a Te Tiriti partner; and</li> <li>• encourages a robust and sustainable media sector.</li> </ul>	
<b>People</b>	<b>Key People</b> [Exactly which roles and people are listed will change for each contract]	<p>You must use the following key people in your organisation to support the Journalist:</p> <ul style="list-style-type: none"> <li>• [insert key personnel as applicable, e.g. name of mentors/editors]</li> <li>• [redacted]</li> </ul> <p>You must obtain our prior written approval if you want to replace any of them with someone else.</p>
	<b>Equal Opportunities</b>	To the extent possible given the nature of the Role, you will operate an equal employment or engagement opportunities plan for all people applying for the Role.
	<b>Cast Engagement</b>	If applicable to the Content, we expect you will engage cast using the <i>Individual Performance Agreement</i> agreed between The Screen Production and Development Association and New Zealand Actors Equity for use on New Zealand based productions.
	<b>Crew Engagement</b>	NZ On Air expects that where you engage production crew, you and crew will adhere to the “Blue Book” (as published by the Screen Industry Guild of Aotearoa New Zealand Inc.).
<b>Contracts</b>	You must promptly provide us with copies of all contracts and arrangements in relation to the Content that you may have with any Platform Owner, funder, or anyone else involved in distributing any of the Content to the New Zealand public. In particular, this includes all contracts and arrangements relating to New Zealand distribution rights for the Content.	
<b>Completion Date</b>	<p>You must complete the Output Obligations and Publishing Obligations on or before [date]. If these Obligations are not complete by then, we may exercise our rights under clause 9 (Default) of Schedule 2. The Output Obligations and Publishing Obligations are complete when:</p> <p>(a) you meet all conditions required for the Completion Instalment to our reasonable satisfaction; and</p> <p>(b) all Content is finished and available for public access in accordance with this Agreement and your Proposal.</p>	
<b>Keeping us Informed</b>	You will keep us informed about the engagement of the Journalist, and their creation of the Content, and meet with us if we ask. We and our representatives may, at reasonable times and on reasonable notice,	



	visit any offices, newsroom, studio, location or elsewhere where the Journalist is working, to observe the progress of the Content. Any visitor will comply with your reasonable health and safety directions.
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<b>Other Activity</b>																	
<b>What you must do</b>	You must do the following, and use all reasonable endeavours to ensure that all subsequent owners and exclusive licensors of any Content do the same.																
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	<b>Captions and Audio Description</b>	<p>We support accessibility of funded content for all New Zealanders. If the Content is being broadcast, you will notify the Operations Manager of the Media Access Charitable Trust (Able) when the Content is delivered to your Primary Platform Owner. If captions or audio description files have been created as part of the Content, a copy of those files must be delivered to the Media Access Charitable Trust free of charge, for use in any New Zealand broadcast.</p>
	<b>Digital Media Trust and archive of Content</b>	<p>If the Content is produced for broadcast, then at the expiration of all Distribution Agreements, or earlier if agreed by the applicable rightsholders, you will make the Content (or reasonable excerpts) available to the Digital Media Trust on terms and conditions to be agreed between you and the Digital Media Trust (both acting reasonably).</p> <p>If the Content is created for text publication, you will deposit a copy of the Content with the National Library.</p>
<b>What we can do</b>	<b>Our own promotion</b>	<p>You grant us (free of charge) the nonexclusive, perpetual and worldwide right to exhibit, show, publish, or transmit extracts from the Content, the name and likeness of the Journalist, and the name and nature of the Role for our own promotion and publicity, but not for commercial exploitation.</p>

## SCHEDULE 2 GENERAL TERMS

### 1 Definitions and Interpretation

1.1 In this Agreement, unless the context requires otherwise:

- (a) **Agreement** means this Funding Agreement and all its Schedules.
- (b) **Budget** means the budget in Schedule 4, as varied with our prior written approval, which includes the Fee
- (c) **Business Day** means any day other than:
  - (i) a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington or Auckland; and
  - (ii) the period between 26 December in any year and 5 January the next.
- (d) **Content** means the material set out in the “Output Obligations” section of Schedule 1, which is produced, contributed to, written or created by the Journalist during the Term which the Recipient approves for publication/broadcast.
- (e) **Contractor Agreement** means the agreement between you and the Journalist regarding their engagement in the Role, which must be in writing and in accordance with this Agreement (including clause 7 and the Contractor Agreement Particulars set out in Schedule 8).
- (f) **Default Event** means:
  - (i) the Role becomes vacant for a period of longer than 8 weeks;
  - (ii) any funding (excepting NZ On Air funding) for any part of the Role is withdrawn in whole or in part, with the effect or likely effect that the ability to engage the Journalist for the Term as originally intended is prejudiced;
  - (iii) we reasonably believe you are unable to ensure the health and safety of all your workers, contractors and/or the Journalist;
  - (iv) you breach this Agreement or we reasonably believe you are likely to breach this Agreement, including if you fail to meet the Output Obligations or Publishing Obligations;
  - (v) you breach any other agreement, such that there is or is likely to be a material adverse effect on your ability to meet your obligations under this Agreement;
  - (vi) you become insolvent, stop or suspend payment of any debts, have a receiver appointed over any assets, or fail to satisfy any final judgement within 5 Business Days, or we reasonably believe any of you are at risk of doing any of those things. To avoid doubt, a notice received by us under section 157 of the Tax Administration Act 1994 or section 43 of the Goods and Services Tax Act 1985 in respect of any party, constitutes reasonable grounds to believe that that party is or is threatened with becoming insolvent; or
  - (vii) you, any of your employees, officers, contractors, or the Journalist is materially involved

in or associated with any activity or business which NZ On Air reasonably believes is immoral or could bring you or NZ On Air into disrepute. The publication of Content that relates to NZ On Air’s activities or the Public Interest Journalism fund and which could be considered as bringing NZ On Air or the Public Interest Journalism fund into disrepute, will not in itself be a Default Event.

- (g) **Digital Media Trust** means:
  - (i) the Digital Media Trust, a charitable trust board called incorporated under the Charitable Trust Act 1957; or
  - (ii) an alternative similar organisation with a non-profit media focus selected by NZ On Air from time to time.
- (h) **Distribution Agreement** means any agreement between you and any third party in relation to the sale, licensing or other exploitation of any Content.
- (i) **Distribution Platform** means the distribution platforms described in the “Distribution” section of Schedule 1. There:
  - (i) is one “Primary Distribution Platform”; and
  - (ii) may be one or more “Additional Distribution Platforms”.
- (j) **Distribution Rights** means the right to sell or license or otherwise exploit, and to authorise the sale licensing or exploitation of any Content.
- (k) **Fee** means the amount specified in the Budget as payable for the Role during the Term.
- (l) **Force Majeure** means:
  - (i) act of God, fire, earthquake, storm, flood, or landslide;
  - (ii) explosion or nuclear accident;
  - (iii) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
  - (iv) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity
 but does not include:
  - (v) any event which the party affected could have avoided, prevented or overcome by implementing reasonable precautions against the event;
  - (vi) any event which you could have prevented or overcome but for a prior failure to comply with your obligations under this Agreement;
  - (vii) any failure of a contractor to enable you to perform your obligations under this Agreement, except to the extent that the contractor’s failure is itself caused by Force Majeure; or
  - (viii) a lack of funds for any reason.

- (m) **[Please amend job title if funded role is not a Journalist...Journalist]** means the person (or any one of them if there is more than one Role) that is engaged by the Recipient in the Role. Where the context requires, Journalist includes the plural.
- (n) **Output Obligations** means the requirement for the Journalist to create the Content during the term, as set out in the “Output Obligations” section of
- (o) **Platform Owner** means the person described as owner of a Distribution Platform in the “Distribution” section of Schedule 1. There is:
  - (i) a “Primary Platform Owner” for the Primary Distribution Platform; and
  - (ii) an “Additional Platforms Owners” for any Additional Distribution Platform.
- (p) **Proposal** means your proposal in Schedule 3, as varied with our prior written approval.
- (q) **Publishing Obligations** means your obligations to ensure the publication or broadcast of the Content as set out in the “Publishing Obligations” section of Schedule 1.
- (r) **Role** means the position (or any one of them if there is more than one) described in the Proposal. Where the context requires, Role includes the plural.
- (s) **Term** means the period of engagement of the Journalist as set out in the “Role Particulars” section of Schedule 1.

1.2 In interpreting this Agreement, unless the context requires otherwise:

- (a) **Defined Terms:** Words or phrases appearing in this Agreement with capitalised initial letters are defined terms and have the meanings given to them in this Agreement.
- (b) **Documents:** A reference to any document, including this Agreement, includes a reference to that document as amended or replaced from time to time.
- (c) **Gender:** Reference to any gender include all genders.
- (d) **Headings:** Headings are for guidance only and do not affect interpretation.
- (e) **Inclusions:** Reference to “includes” means “includes without limitation”, and “include”, “included” and “including” have corresponding meanings.
- (f) **Negative Obligations:** A prohibition against doing something is also a prohibition against permitting, suffering or causing that thing to be done;
- (g) **Person:** Reference to a person includes:
  - (i) a corporation sole, a body of persons, whether corporate or unincorporated, and any national, state, regional or local government body or agency; and
  - (ii) that person’s representatives, successors and assigns.
- (h) **Related Terms:** where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (i) **Singular and Plural:** The singular includes the plural and vice versa;

- (j) **Statutes and Regulations:** A reference to any enactment, regulation or expression of Government policy is a reference to that enactment, regulation or policy as amended, or to any enactment, regulation or policy substituted for it, and any reference to an enactment includes all regulations made under that enactment.
- (k) **Writing:** A reference to “written” or “in writing” includes all modes of presenting or reproducing text in a form that is legible, permanently visible and capable of being retained and stored (which to avoid doubt may include email).

**2 Using our Funding**

- 2.1 We have no obligation to provide any additional funding for the Role and you have no expectation of the same.
- 2.2 You must use our funding only to meet reasonable costs of engaging the Journalist that are specified in the Budget. Subject to this Agreement, you must use all other funds secured for the Role in accordance with any agreement for the provision of those funds.
- 2.3 If our funding has been spent before the end of the Term, you will ensure sufficient additional funding is obtained to engage the Journalist(s) for the remainder of the Term in accordance with this Agreement.
- 2.4 You agree that the Journalist will be engaged by you as an independent contractor and not an employee. If, despite express agreement to the contrary, the relationship between the Journalist and Recipient is construed as one of employee/employer, you will be solely responsible for any additional payments due to the Journalist in the nature of unpaid PAYE tax or accident compensation levies, KiwiSaver contributions, holiday pay, sick pay or another similar payment. We will not be held responsible or liable for any additional payments, nor may the Funding be used in this regard.
- 2.5 We have no liability to you, or any third party, as a result of, or in any way in connection with, this Agreement or the engagement of the Journalist except only to the extent we have failed to pay an instalment of funding without reasonable excuse. You agree to indemnify us and keep us indemnified against all actions, claims, proceedings, costs (including legal costs and expenses properly incurred), damages, charges, losses, expenses, demands or liabilities brought against, suffered or incurred by us as a result of any liability to the Journalist owing to the Journalist’s and Recipient’s relationship;
- 2.6 You must perform your obligations under this Agreement:
  - (a) promptly with due diligence, care and skill; and
  - (b) with appropriately skilled, qualified, experienced and supervised personnel; and
  - (c) to the standard expected of a good employer operating a first-class quality newsroom.
- 2.7 You are not relieved of any obligation under this Agreement by subcontracting or delegating it to any third party (such as a recruitment agent), whether directly or indirectly. You are responsible for the acts and omissions of any such third party, as if they were your own acts or omissions.

**3 Accounting/Information**

- 3.1 If we make a request for information about your solvency and ability to engage someone in the Role, you agree to promptly make that information available to us and allow us, at reasonable times, to inspect your accounts, books and records relating to the Role.
- 3.2 You must retain all records relating to the Role for a period of seven years on the understanding that such records could be subject to review by us.
- 3.3 You will ensure that:
- you will comply with all applicable tax legislation and indemnify us against liability to any third party and any costs we reasonably incur as a result of any non-compliance including any costs associated with the collection of any taxes and any other incidental costs, expenses, penalties or claims. Applicable tax legislation includes all legislation relating to PAYE, withholding tax, fringe benefits tax, employer superannuation contribution tax, accident compensation levies, KiwiSaver deductions and contributions and any other tax or levies imposed upon an employer in respect of its personnel;
  - if you are a company, until the end of the Term there will be no change of your ownership or control by way of sale of the whole or substantial part of your assets without our prior written consent. Our consent will not be unreasonably withheld where such change or sale would not affect your ability to comply with your obligations under this Agreement;
  - the details you provided to us (including in any your Proposal and Budget) are true and correct in all respects; and
  - all reports you provide to us under this Agreement are true and correct and contain the required information.
- 3.4 Where our funding for the Role, under this Agreement together with any earlier agreement, is \$1,000,000 or more, you must report any interest earned on the total funding received for the Role in each cost report and such interest may only be used by you to meet any increase in the Budget. If there is no increase in the Budget, any such interest will form part of the under-spend described in the "Funding" section of Schedule 1.
- 3.5 We may deduct any withholding tax required to be deducted from our payments under this Agreement, and will forward that withholding tax to the New Zealand Inland Revenue as required by law.
- 4 Suspension**
- 4.1 If, during the Term, any of the Contractor Agreements are terminated for any reason, you will:
- notify us immediately;
  - seek to fill the vacancy in the Role(s) within 8 weeks for the remainder of the Term, in accordance with the Proposal (including paying the equivalent Fee). If you are unable or unwilling to do so, you must inform us immediately;
- 4.2 We may suspend any funding in relation to the vacant Role for the duration that the Role is not filled.
- 4.3 Where you have already received a drawdown of our funding in advance and a Role becomes vacant you will not

use any of that funding and, upon request, will return it to us. We may, at our sole discretion, allow our funding to be used to advertise and recruit for the Role. You will not use any of our funding to do so without our written permission.

- 4.4 If a vacancy in a Role is filled within 8 weeks, we will discuss with you what must be done with any funding that was unspent while the Role was vacant. We may reduce the amount of our total funding for the Role during the Term, or agree to extend the Term for the subsequent Journalist's engagement in the Role.

- 4.5 We may terminate this Agreement in accordance with clause 9 if the Role is not filled within 8 weeks.

## **5 Intellectual Property**

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

- 5.2 You covenant with us that:

- you have obtained and will retain all necessary rights, licences, consents or other authorities with respect to the Content, and which enable the completion of the Content, in accordance with this Agreement;
- the completion of the Content in accordance with this Agreement will not violate or infringe the copyright, right of privacy, moral rights nor any other rights of any third party and will not contain any defamatory material; and
- You will ensure that your respective agents, employees and sub-contractors, including the Journalist will do all things necessary, including obtaining all necessary rights, licences, consents or other authorities with respect to the Content, which enable the completion and publication or broadcast of the Content in accordance with this Agreement, and will execute any additional documents and/or instruments, to give full effect to the provisions of this Agreement.

## **6 Health and Safety**

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

- 6.2 You agree to comply with:

- the Health and Safety at Work Act 2015; and
- the COVID-19 Public Health Response Act 2020 and all orders under that Act;

You also agree to obtain an acknowledgement, from any person you contract to help in carrying out the Output Obligations or Publishing Obligations, that they will do the same.

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

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

- notifiable event (as defined in the Health and Safety at Work Act 2015) related to the Role or the creation of the Content;

- (b) incident relating to the Role or the creation of the Content which results (or could reasonably have resulted or could yet result) in death, serious injury or serious illness;
- (c) charge or infringement notice against you under the COVID-19 Public Health Response Act.

We may, at any time on reasonable notice, require a meeting with you or anyone affected by the event or notice, to obtain information and to discuss the event or notice and your planned responses to it.

- 6.5 You will provide such information as reasonably requested by us to demonstrate your compliance with your health and safety obligations under this Agreement, including providing updated Health and Safety Confirmations in the form of Schedule 5 (Recipient's Health and Safety Confirmation).
- 6.6 We may, from time to time, at our own cost and on written notice to you, audit your compliance with your health and safety obligations under this Agreement. You will do whatever is required to facilitate and assist the audit.

## 7 Engagement Requirements

- 7.1 You agree to comply with the relevant statutory obligations set out in the following legislation:
  - (a) the Human Rights Act 1993;
  - (b) the Health and Safety at Work Act 2015; and
  - (c) the Privacy Act 2020.

## 8 Force Majeure

- 8.1 Non-performance by either party of any of its obligations under this Agreement will be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure, with effect from the time that notice of the Force Majeure has been given in accordance with clause 8.2.
- 8.2 The party claiming the benefit of this clause 8 (Force Majeure) will, as soon as is practical and to the extent known to that party, give notice to the other party specifying:
  - (a) the nature of the Force Majeure;
  - (b) the extent of its inability to perform its obligations under this Agreement; and
  - (c) the likely duration of such non-performance.
- 8.3 The party claiming the benefit of this clause 8 (Force Majeure) will:
  - (a) take all reasonable steps to avoid or remove the Force Majeure and mitigate its effects on the other party;
  - (b) keep the other party fully informed of such steps as have been taken and are planned; and
  - (c) meet its obligations under this Agreement as far as is practical given the Force Majeure.
- 8.4 Where you are claiming the benefit of this clause 8 (Force Majeure), you will if requested by us in writing refund a reasonable proportion of the funding to us to reflect any reduction:
  - (a) in the period of engagement of the Journalist as a result of the Force Majeure; and/or

- (b) in the amount of Content the Journalist creates during the Term as a result of the Force Majeure.

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

## 9 Default

- 9.1 Our payment of funding does not constitute acceptance that you are complying with your obligations under this Agreement, and does not prevent us from exercising our rights arising from your breach of this Agreement at any time.
  - 9.2 If there is a Default Event, we may give you notice and at least 5 Business Days to remedy the Default Event. If you don't remedy it, then we can do any or all of the following without limiting our other remedies:
    - (a) Suspend funding under this Agreement and any other agreement for us to fund you.
    - (b) End this Agreement and stop funding at that time.
    - (c) Require repayment of any funding already provided under this Agreement (however we will negotiate with you about costs you have already incurred up to termination and we may, but are not required to, meet those costs).
    - (d) If you obtained our funding fraudulently, require interest calculated at 15% per annum from the date of payment to the date the funding is repaid.
  - 9.3 You indemnify us against all liability we may have to any third party as a result of any Default Event, and against all expenses (including legal fees) we incur in relation to that liability. Clause 12.5 applies to this indemnity.
  - 9.4 Termination of this Agreement will not affect any rights and obligations that are intended to survive termination, including clauses 3 (Accounting/Information), 5 (Intellectual Property), 6 (Health and Safety), 9 (Default), 1 (Takeover), 12 (Confidentiality), 13 (Disputes), 14 (Audit), 16 (Costs and Expenses), 17 (Notices) and 18 (General), your obligations and our rights in the "Your Obligations" and "Other Activity" sections of Schedule 1, and any obligation to return funding to us.
- ## 10 Ensuring Public Availability
- 10.1 You grant us a non-exclusive, transferable, irrevocable, sub-licensable and royalty free licence to copy, modify, publish and otherwise commercially exploit the Content in accordance with the Publishing Obligations following a Rights Notice being issued. This licence:
    - (a) is granted as at the date of this Agreement;
    - (b) is limited to New Zealand if the Publishing Obligations are limited to New Zealand; and
    - (c) ends when your Publishing Obligations have been fully completed to our satisfaction (without a Rights Notice being issued).

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



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

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

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

- (a) have not complied with your Publishing Obligations; and/or
- (b) will not be able to, or will not, comply with your Publishing Obligations,

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

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

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

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

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

10.5 If a Rights Notice is issued then:

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

## 11 Removal from Companies Register

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

## 12 Confidentiality

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

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

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

## 13 Disputes

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

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

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

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

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

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

## 14 Audit

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

## 15 Insurance

15.1 You will obtain, pay the premiums for, and maintain in force such insurance coverage as is prudent, whether the insurance is specific to the Journalist, the Content or general to your business, and such insurance will include public liability insurance and professional indemnity insurance. If

asked to do so by NZ On Air, you will add us as an additional insured party to any such insurance policies. We may require you to provide copies of any insurance policy at any time.

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

15.3 The proceeds of any claim under any policy of insurance will first be applied in payment of all reasonable costs and expenses in making the claim and secondly to defray the cost of replacing the property in respect of which the claim was made. The balance, if any, will be accounted for in the cost report, or if received after the Completion Instalment, will form part of Net Income.

## 16 Costs and Expenses

16.1 This Agreement contains our standard terms and conditions. If you require significant changes to this agreement, you agree to pay all our reasonable legal fees that may be incurred in connection with negotiating and amending this Agreement.

## 17 Notices

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

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

17.3 A notice will be considered to be received:

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

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

## 18 General

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

18.2 Subject to clause 18.3, you will not dispose of (including assign, sell, transfer or make subject to any lien, trust, encumbrance or security interest) any rights or obligations under this Agreement without our prior written consent.

18.3 After the Term, you may dispose of any or all of your rights or obligations under this Agreement without our prior written consent, provided you:

- (a) notify us of each disposal, in writing and in advance;

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

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

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

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

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

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

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

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

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

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

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

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



**SCHEDULE 3  
YOUR PROPOSAL**

**[Add Proposal]**

## **SCHEDULE 4 BUDGET**

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

The Budget is attached.

### **Internal and Related Parties**

You confirm that the Budget clearly identifies all:

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

### **Non-Cash Items**

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

[TBC]





Title:

**signed in the presence of:**

---

*Signature*

Name of Witness:

Occupation:

City of Residence:

## **6B. HEALTH AND SAFETY COVENANT**

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

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

### **PRIMARY PLATFORM OWNER'S HEALTH AND SAFETY COVENANT**

The Broadcasting Commission (“**NZ On Air**”) is planning to enter into a Funding Agreement with [Recipient] Limited (“**the Recipient**”) under which NZ On Air agreed to provide funding of \$[B] to enable the engagement journalist(s) to produce public interest content (the “**Content**”) to be published in New Zealand by [Platform Company Name] Limited (“**the Platform Owner**”)

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

- (a) agrees it is a PCBU for the purposes of the Health and Safety at Work Act 2015 (the “**Act**”);
- (b) confirms that, based on its enquiries to date as required under the Act, it has no current health and safety concerns in relation to the Content; and
- (c) agrees to promptly respond to NZ On Air requests for Health and Safety confirmations in relation to the Content and understands that these confirmations may be sought at any time.

**DATED** the                      day of                      2021

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

---

*Signature*

Name of Signatory:

Title:

**signed in the presence of:**

---

*Signature*

Name of Witness:

Occupation:

City of Residence:



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

## SCHEDULE 7 ADDITIONAL PLATFORM OWNER'S COVENANT TO PUBLISH

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

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

### ADDITIONAL PLATFORM OWNER'S COVENANT TO PUBLISH

The Broadcasting Commission ("NZ On Air") [is planning to enter/has entered] into a Funding Agreement with [Recipient] Limited ("the Recipient") under which NZ On Air agrees to provide funding of \$[B] to enable the engagement of journalist(s) to producer public interest content ) (the "Content") to be published in New Zealand by [Additional Platform Company Name] Limited ("the Platform Owner").

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

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

DATED the                    day of                    2021

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

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

Name of Signatory:

Title:

signed in the presence of:

---

*Signature*

Name of Witness:

Occupation:

City of Residence:



## SCHEDULE 8 CONTRACTOR AGREEMENT PARTICULARS

The Contractor Agreement must:

- (a) Include the job description for the Role as set out in the Proposal or as otherwise approved by NZ On Air.
- (b) Provide for a minimum working week of 37.5 hours, worked over five days of the week unless otherwise agreed between the Recipient, the Journalist and NZ On Air. The Journalist will work Monday to Friday but accept that, at times, they may need to work nights and weekends. The Journalist will work independently of the Recipient's Newsroom's roster.
- (c) Provide that the Journalist must use their best endeavours to promote and protect the interests of the Recipient and of public interest journalism in New Zealand generally.
- (d) Provide that the Journalist must refrain from acting in a manner which brings, or could bring, the Recipient, NZ On Air or the Public Interest Journalism Fund into disrepute. However, the publication of content that relates to NZ On Air's activities or the Public Interest Journalism fund and which could be considered as bringing NZ On Air or the Public Interest Journalism fund into disrepute will not in itself be a breach of this provision.
- (e) Be a written agreement between the Journalist and the Recipient and state that the Journalist has no employment relationship with NZ On Air.
- (f) Provide that the Journalist reports to the Key People.
- (g) Require the Journalist to make sure that they work in a safe manner and that no action or inaction on their part at work causes harm to them or any other person. Any act or omission by them that endangers the health and safety of either themselves or any other person may result in summary dismissal.
- (h) Require the Journalist to agree to comply with the requirements of Health and Safety at Work Act 2015, as well as all the Recipient's policies and procedures in respect of health and safety and to take all reasonable steps to ensure their own safety and the safety of others while at work; and to report all hazards and incidents identified by them in the workplace to the Recipient so that appropriate action can be taken.
- (i) Grant the Recipient the right to share the Journalist's personal information, including the Journalist's name and likeness with NZ On Air in order for the Recipient to comply with its obligation hereunder.
- (j) Require the Journalist to complete and maintain an up-to-date declaration of potential conflicts of interest and to warrant that the Journalist has, and will have, no other commitments that may interfere with the proper performance of their obligations to the Recipient.
- (k) Transfer to the Recipient on its creation all intellectual property rights including copyright in anything that the Journalist writes, invents, develops, designs, or creates during the course of their engagement, including all ideas, written material and sound and visual recordings so that the Recipient has the unlimited right to edit, copy, alter, add to, take from, adapt, translate, broadcast, publish and otherwise exploit in any form, any work of the Journalist.
- (l) Include a waiver of all of the Journalist's so-called "moral rights" they may have under the laws of any jurisdiction.
- (m) State that the Journalist's services must be performed personally and accordingly the Journalist may not sub-contract or delegate their obligations to any third party.
- (n) Require that the Journalist is responsible for payment of their own payroll, income tax and accident compensation levies and other records or payments required by law, and is not eligible for additional payments in the nature of holiday pay, sick pay or the like.
- (o) Require that the Recipient must pay GST in addition to the Fee, if the Journalist is registered for GST and submits valid GST invoices to the Recipient.
- (p) Require that the Journalist's work must be original and not copied or based upon any other party's work (except for material in the public domain or as provided by the Recipient) and not infringe upon the intellectual property rights or privacy rights of any third party or be defamatory of any person.

**SCHEDULE 9**  
**REPORTING REQUIREMENTS**