

## DEVELOPMENT FUNDING AGREEMENT

### PARTIES

- A. **[PRODUCER] LIMITED**, a duly incorporated company having its registered office at [insert address of registered office] ("Producer")
- B. **THE BROADCASTING COMMISSION** a statutory body established by the Broadcasting Act 1989 ("NZ On Air")

### KEY TERMS

Development Details		
<b>Content Provisionally called [Title]</b>		
<b>Development Specifications</b>	Content Genre	e.g. Drama, Comedy, Documentary, Children
	Number & Duration of Episodes	[Number & Duration]
	Delivery Date	
	Platform	[Platform]
	Platform Channel	[channel]
	Intended Distribution	(if known) e.g. broadcast timeslot, online release plan
<b>Key Personnel</b>	Commissioning Editor	
	Producer	
	Director	
	Writer/s	
	Researcher	
<b>Development Deliverables</b>	[list deliverables - e.g. Script, character notes, treatment, storylines, short pilot video, series bible]	
<b>Qualifications or Restrictions on Producer's Rights</b>		
Scriptwriter's right of reversion (if any) and date:		
Option Expiry Date:		
Other Rights/ Restrictions (if any):		
<b>Previous Development Funding already contracted and advanced (delete if N/A)</b>		
NZ On Air Funding		[\$[NZOA previous]]
Platform Funding		
Other Funding		
Total previous funding		[\$[Total previous]]
<b>Development Budget &amp; Funding Details</b>		
<b>Budgeted Costs</b>	Budgeted Cash Costs	[\$[Total]]
	Budgeted Non-Cash Costs	Nil unless otherwise specified
	<b>Total Budgeted Costs</b>	[\$[Total]]
<b>Funding</b>	<b>NZ On Air Development Funding</b>	[\$[NZOA]]
	Platform Development Funding	
	Producer Funding	Nil unless otherwise specified
	<b>Total Development Funding</b>	[\$[Total]]

<b>Drawdown Schedule</b>		
<b>Summary of Conditions</b>		
<i>Chain of title documents, Platform's Agreement, Platform confirms satisfaction with Health and Safety arrangements</i>	On execution of this Agreement, provided the condition in clause 4.1 has been satisfied:	[50%]
<i>Development Deliverables, Confirmation of payment from Platform, Confirmation you have completed our Diversity Survey, Final Cost and Producer Report</i>	On delivery of: <ul style="list-style-type: none"> <li>the Development Deliverables, and</li> <li>Final Cost report.</li> </ul>	[50%]
	<b>Total NZ On Air Funding</b>	[\$[NZOA]]
<b>Production Account</b>		
<b>Underspend Shares</b>	NZ On Air	80%
	Producer (including assignable)	20%
<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

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 Development Budget (Schedule 3).

**IN WITNESS** that this Agreement has been executed on this  
2018

day of

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

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

\_\_\_\_\_  
Amie Mills  
Head of Funding

**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

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

## SCHEDULE 1

### ADDITIONAL TERMS AND CONDITIONS OF FUNDING

#### 1. INTERPRETATION –

1.1 In this Agreement, unless the context otherwise requires:

- (a) “**Additional Terms**” means the additional terms set out in this Schedule 1;
- (b) “**Budgeted Costs**” means the amount specified in the Key Terms and as further detailed in Schedule 3;
- (c) “**Business Days**” means a day that banks are open for business in Wellington New Zealand;
- (d) “**Content**” means the content described in the Key Terms and based on the Proposal;
- (e) “**Delivery Date**” means the date set out in the Key Terms;
- (f) “**Development Deliverables**” means the deliverables set out in the Key Terms;
- (g) “**Drawdown Schedule**” means the drawdown schedule specified in the Key Terms;
- (h) “**Key Terms**” means the terms set out in the header of this Agreement;
- (i) “**Proposal**” means the proposal set out in Schedule 2 of this Agreement;
- (j) “**Specified Address**” means in relation to any party the address for that party set out in the Key Terms; and
- (k) “**Underspend**” means the amount calculated by deducting the actual cash costs of developing the Development Deliverables from the Budgeted Cash Costs provided that such sum shall not be less than 0.

1.2 Headings in this Agreement are for convenience only and shall not affect the interpretation of the provisions of this Agreement;

1.3 A reference in this Agreement to a clause or schedule shall be read as a reference to a clause or schedule of this Agreement;

1.4 All sums referred to in this Agreement are exclusive of goods and services tax; and

1.5 All references in this Agreement to dollars shall be references to New Zealand dollars.

## **2. THE DEVELOPMENT FUNDING**

- 2.1 Subject to satisfaction of the conditions set out in Clause 4.1 and on receipt of an original tax invoice, NZ On Air agrees to make the NZ On Air Development Funding available to the Producer on the terms and conditions of this Agreement for the purpose of assisting with financing the development of the Content.
- 2.2 NZ On Air Funding shall be advanced in accordance with the Drawdown Schedule.
- 2.3 NZ On Air shall be under no obligation to provide any further development funding other than specified in this Agreement, or to provide funding for production of the Content.
- 2.4 The Development Deliverables shall be delivered to NZ On Air by the Delivery Date, or such other date as agreed by NZ On Air under clause 7.1.

## **3. USE OF THE DEVELOPMENT FUNDING**

- 3.1 The Producer undertakes to use the NZ On Air Development Funding solely in the development of the Content in accordance with this Agreement, the Proposal and the Budgeted Costs.
- 3.2 No part of the NZ On Air Development Funding shall be used for any other purpose unless NZ On Air first gives its written consent.

## **4. CONDITIONS TO BE SATISFIED PRIOR TO DRAWDOWN**

- 4.1 The NZ On Air Development Funding may not be drawn down until:
- (a) the Producer:
- (i) delivers to NZ On Air copies of all contracts with the scriptwriter or any third party relating to the storyline, script or screenplay for the Content;
  - (ii) delivers to NZ On Air copies of any other contracts or licences which deal with copyright or other rights in the script or screenplay or other works from which the Content will be produced;
  - (iii) provides evidence to NZ On Air that the Producer holds, and will continue to hold during the development of the Content, all rights needed by the Producer for the development of the Content in accordance with this Agreement;
  - (iv) has identified any items in the Budgeted Costs that will be payable to any related party (as that term is defined under generally accepted accounting practice) of the Producer;
  - (v) delivers to NZ On Air copies of any contracts or undertakings with a Platform for development funding (if any); and

- (b) NZ On Air is satisfied the Producer has validly executed this Agreement.
- (c) Confirmation that the Platform is satisfied with the health and safety arrangements of the development of the Content.

## 5. PRODUCER'S UNDERTAKINGS

### 5.1 The Producer undertakes that:

- (a) all rights in the Content (including Development Deliverables) and also all ancillary rights relating to the Content (including publishing if held and merchandising rights) are unencumbered and may be dealt with in any manner without infringing the rights of any other person;
- (b) any options granted to or by the Producer for rights relevant to the Content and also all ancillary rights relating to the Programme and any limitations or qualifications affecting the Producer's rights relating to the Content have been disclosed to NZ On Air and are as set out in the Key Terms;
- (c) the Producer will from time to time exercise all options granted to it as and when required in accordance with the terms of those options referred to in (b) above. If prior to NZ On Air or the Platform confirming they will not support production or broadcast of the Content, the Producer contemplates, for whatever reason, not exercising the option(s), then NZ On Air must be notified in writing at least four weeks before the expiry date for the exercise of the option(s). NZ On Air may request the assignment to NZ On Air of the option(s) and all associated rights so that it may exercise the option(s) itself or it may, in writing, approve the option(s) not being exercised;
- (d) the Content will comply with the programme standards specified in section 4(l) of the Broadcasting Act 1989;
- (e) it shall utilise the Key Personnel set out in the Key Terms for development of the Content;
- (f) the Producer is aware of its obligations under the Health and Safety at Work Act 2015 and will comply with that Act;
- (g) the Producer will, in the production of the Content and/or Development Deliverables, comply with the New Zealand Screen Sector Health and Safety Guidelines (as modified from time to time); and
- (h) the Producer will report to NZ On Air, within 24 hours of the incident concerned, details of any incident relating to the production of the Content and/or Development Deliverables which results (or could reasonably have resulted or could yet result) in death, serious injury or serious illness.

5.2 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 clauses 5.1(f) to (g). The Producer shall do whatever is required to facilitate and assist the audit.

## **6. REPAYMENT OF DEVELOPMENT FUNDING**

6.1 The NZ On Air Development Funding shall be repaid to NZ On Air in the following circumstances:

- (a) If the Content or a cinematic film or a television programme derived from, or substantially based on, the Content is developed and produced exclusively for screening on any medium other than a New Zealand free-to-air television national network, or without additional NZ On Air funding, then the NZ On Air Development Funding shall be repaid to NZ On Air on the first day of principal photography for the Content; or
- (b) If the Content goes into production for screening on any of the New Zealand free-to-air television national networks then the NZ On Air Development Funding shall be calculated as part of NZ On Air's contribution to the production and recouped by NZ On Air on a pro-rata pari passu basis with other financial contributors to the production from the sale by the Producer of any of the rights to the Content, other than the right to broadcast on New Zealand free-to-air television; or
- (c) immediately if any of the following events occur;
  - (i) the rights needed by the Producer to complete the development and production of the Content expire prior to NZ On Air or the Platform giving their confirmation of whether they will or will not support the Content, or, if they have given their support of the Content, prior to a production funding agreement being entered into with NZ On Air; or
  - (ii) on the date of any settlement of any transaction where any other party takes over the Development Deliverables or any part of the development of the Content with or without the consent of NZ On Air.

## **7. GRANT OF EXTENSION**

7.1 NZ On Air may at its discretion grant an extension to the Delivery Date and thereby an extension of the NZ On Air Development Funding on such terms as it thinks appropriate. Any such extension shall be effective only by the written consent of NZ On Air.

## **8. DEFAULT IN REPAYMENT**

8.1 If the Producer fails to pay when due under clause 6 or 17, then:

- (a) Default interest shall be payable on the NZ On Air Development Funding at the rate of 10% per cent per annum calculated on a daily basis compounding from the date when payment was due until payment has been made of all money due under this Agreement;
- (b) NZ On Air may, at its discretion, by giving notice in writing to the Producer, take over the Development Deliverables in accordance with clause 9, at any time after payment of any money owing under clause 6 or 17 has become due and remains due.

## **9. NZ ON AIR'S RIGHT OF TAKEOVER**

- 9.1 The exercise by NZ On Air of its rights under clause 8.1(b) and this clause will discharge the obligation of the Producer to repay the NZ On Air Development Funding owing at the time of NZ On Air's exercise of its rights.
- 9.2 If NZ On Air exercises its option to take over the Development Deliverables under clause 8.1(b) then:
- (a) NZ On Air or its nominee will take over the obligations of the Producer under contracts relating to the Development Deliverables, provided that NZ On Air shall have the right to refuse to accept the assignment to it of any contracts whose terms NZ On Air does not approve of;
  - (b) the Producer hereby irrevocably appoints NZ On Air the true and lawful attorney of the Producer for the purpose of executing on behalf of the Producer all such assignments in the event of takeover of the Development Deliverables by NZ On Air, and the Producer agrees to ratify and confirm any acts of NZ On Air under this power of attorney;
  - (c) NZ On Air may offer the Development Deliverables to, and enter into contracts with, any persons or companies and on such terms as NZ On Air thinks fit;
  - (d) NZ On Air may at its discretion decide to carry forward and to make provision for reimbursement of, certain costs incurred by the Producer relating to the Development Deliverables.

## **10. NO ASSIGNMENTS**

- 10.1 The Producer will not assign or otherwise deal with the rights relating to the Content or its rights and obligations under this Agreement unless:
- (a) the NZ On Air Development Funding is repaid in full; or
  - (b) NZ On Air first consents in writing.

## **11. REPORTING AND ACCOUNTING**

- 11.1 The Producer will keep proper books and records of accounts in which full, accurate and timely entries are made of all income and expenditure in respect of the Development Deliverables. These books and records of account must be available for inspection by NZ On Air on request.
- 11.2 The Producer will provide NZ On Air with a report on expenditure on the Development Deliverables within 60 days of delivery.
- 11.3 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.

## **12. CREDITS**



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

"Development assistance from NZ On Air".

### 13. **USE OF NZ ON AIR'S NAME**

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

### 14. **NOTICES**

- 14.1 Any notice or other communication to be given to any party shall be deemed given on the date it is personally delivered, on the date of transmission of any tested facsimile transmission, on 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 (except in relation to notice given under clause 8) or 4 days after it is deposited in the mail, post-paid and addressed to the Specified Address of that Party

### 15. **RESOLUTION OF DISPUTES**

- 15.1 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.

- 15.2 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 most senior executive or 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.

- 15.3 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 15, provided that where NZ On Air in its sole discretion considers that the dispute relates to:

- (a) the viability of the Content; or
- (b) the perceived ability of the Development Deliverables to be completed within the Budgeted Costs; or
- (c) the perceived ability of the Development Deliverables 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, including any breach of the Producer's health and safety obligations; or

- (e) the Producer being, in the reasonable opinion of NZ On Air, unable to meet its obligations under the Health and Safety at Work Act 2015 in the production of the Content,

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

15.4 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 Resolution Institute, (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.

15.5 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.

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

## 16. **CONFIDENTIALITY**

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

## 17. **DEFAULT**

17.1 If the Producer breaches this Agreement or NZ On Air reasonably believes the Producer is insolvent or unable to fulfil its obligations under this Agreement or any other agreement that might adversely affect its ability to complete the Content (**Default**), NZ On Air may give the Producer notice and at least 5 business days to remedy the Default. If the Producer doesn't

remedy the Default in that period, then NZ On Air can do any or all of the following without limiting its other remedies:

- (a) suspend funding under this Agreement;
- (b) end this Agreement on further written notice to the Producer and stop funding at that time; and/or
- (c) obtain repayment of any funding already provided under this Agreement.

17.2 Termination of this Agreement will not affect any rights and obligations that are intended to survive termination, including clauses 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17.

**SCHEDULE 2**  
**THE PROPOSAL**  
**(ATTACHED)**

**SCHEDULE 3**

**DEVELOPMENT BUDGET**

(With related party costs identified)

**(ATTACHED)**