



For RNZ	
Paul Thompson <b>Chief Executive and Editor in Chief</b>	Alan Withrington <b>Head of Business Transformation and Strategy</b>
For Producer	
<b>Authorised Person</b>	<b>Witness</b>
Signature	Signature
Name Position	Name City of Residence

## SCHEDULE 1 PROJECT PARTICULARS

Content	
<p>NZ On Air funds the following content under this Agreement in co-operation with RNZ. If Producer wants to produce additional content using funding under this Agreement, it must have NZ On Air's and RNZ's prior written approval (such approval not to be unreasonably withheld).</p>	
<b>Content</b>	<p>Producer will produce the following Content in accordance with this Agreement and otherwise as set out in the Proposal.</p>
<b>Working Title</b>	"[Title]"
<b>Episodes</b>	[E.g. 10 x 24 minutes each]
<b>Total Minimum Duration</b>	[E.g. 240 minutes]
<b>[Other content, E.g. Short videos]</b>	[E.g. 9 x 1'00 to 3'00 minutes (longer videos will be cut down to 1 minute for promotional purposes)]

Content Rights	
<b>RNZ Rights</b>	<p>Except as otherwise agreed in writing between Producer and RNZ, Producer grants RNZ first-use rights and the non-exclusive right to exploit the Content in perpetuity, in all territories on all distribution platforms now known or invented in future that are controlled or used by RNZ for content distribution from time to time, including online, mobile, on-air, podcast platforms, visual and other third party distribution platforms</p> <p>First-use rights means that RNZ has the exclusive right to be the first to exploit the Content for one week, but thereafter its rights are non-exclusive.</p> <p>If RNZ agrees in writing to limited duration rights for the exploitation of Content for a specific distribution platform, Producer must give RNZ reasonable prior written notice to remove the Content from the applicable distribution platform prior to the expiry of those rights.</p> <p>RNZ has the right for promotion or review to promote the Content by using up to four-minute extracts in aggregate along with Content assets supplied as part of the Delivery Requirements in Schedule 6.</p> <p>RNZ may also exploit the Content in perpetuity for RNZ in-house, RNZ corporate, and RNZ non-commercial purposes.</p> <p>The Producer agrees RNZ may edit or modify the Content to the extent reasonably required to meet the technical requirements for exploitation on the distribution platforms permitted under these RNZ Rights.</p> <p>Producer may distribute the Content on any distribution platform not identified in this Agreement as an RNZ distribution platform with the prior written permission of RNZ (which won't be unreasonably withheld). Producer must report to RNZ the audience data for any such distribution of the Content.</p>
<b>Producer Rights</b>	<p>Subject to the RNZ Rights set out above, the Producer or its nominee(s) retain the Distribution Rights, Publishing Rights, Merchandising Rights, Home Video Rights, Format Rights and any other rights not provided for under this Agreement for the Content. The Producer agrees it will not exploit such rights within New Zealand without RNZ's prior written consent and always ensuring the exercise of such rights does not detract from the value of RNZ's Rights or damage the integrity of the Content in any way. The Producer shall distribute the receipts from the exercise of these reserved rights in accordance with this Agreement.</p>

Required Distribution	
<b>Producer Obligations</b>	<p>NZ On Air aims to ensure that great New Zealand content is valued and enjoyed by many New Zealand audiences. Accordingly:</p> <p>(a) Producer will ensure all Content is distributed in accordance with this "Required Distribution" section.</p> <p>(b) Producer will ensure it has obtained, and retains, all necessary rights, licences, consents and other authorities that are required by RNZ for on-air and online platforms and for additional distributions.</p> <p>(c) If Producer licences any Content for exclusive distribution in New Zealand, it will ensure that the licence does not conflict with any of its obligations under this Agreement.</p>

	(d) Producer will not dispose of any of its rights or title in any Content, other than in accordance with clause 14.4 of Schedule 2.
<b>Distribution by RNZ</b>	<p>RNZ agrees that:</p> <p>(a) Subject to the Content meeting RNZ’s normal standards, RNZ will publish the Content in a noticeable position on its website rnz.co.nz (the “Website”) on the launch of the Content, and ensure that the Content is freely accessible to the New Zealand audience via the Website for at least one year and preferably longer.</p> <p>(b) It will give NZ On Air at least two weeks’ prior notice of the date the Content first goes live.</p> <p>(c) It 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, such agreement not to be unreasonably withheld.</p> <p>(d) It will share audience data with the Producer as reasonably required to enable the Producer to report full audience statistics to NZ On Air in keeping with this Agreement.</p> <p>(e) It will publish the first play of the Content over RNZ Platforms within twelve months of completion of the Content, or within the period of topicality of the Content, whichever is the shorter, with the broadcast in a timeslot appropriate for the Content and consistent with the application for funding as approved by NZ On Air.</p>

<b>Funding (excluding GST)</b>			
<b>Total Funding</b>	<b>From us</b>	<b>Total of NZ On Air funding</b>	[\$NZOnAir] under this Agreement
	<b>From all parties</b>	Total Project (Non-Cash)	[\$Total Non-Cash]
		Total Project (Cash)	[\$Total Cash]
		<b>Total funding</b>	<b>[\$Total]</b>

<b>Project Funding</b>	<p>Producer confirms that the following table includes all funding it has secured (both cash and non-cash) at any time in relation to the Content. Producer confirms that all Content can be completed in accordance with this Agreement within this amount. On NZ On Air’s request, Producer must give NZ On Air evidence that the above funding has been secured and will be provided to enable completion of all Content in accordance with this Agreement.</p>		
	<b>Funder</b>	<b>Cash</b>	<b>Non-Cash</b> (itemised in the Project Budget)
	NZ On Air	<b>[\$NZOnAir]</b>	\$Nil
	Producer	\$ Nil	\$Nil
	RNZ	N/A	\$Nil
	<b>Total Project Funding</b>	<b>[\$Total Cash]</b>	<b>\$Nil</b>
	<p>Producer must ensure that all cash and non-cash funding that isn’t provided by NZ On Air, is provided in time to meet the Project Completion Date below. Producer must let NZ On Air and RNZ know immediately if Producer becomes aware of any circumstance that may result in funding not being provided as above.</p>		
<b>Drawdown Schedule</b> [There may be additional or fewer drawdown points depending on amount of funding]	<p>NZ On Air will contribute NZ On Air’s Project funding in accordance with the following drawdown schedule. NZ On Air may, after consulting with Producer, vary drawdown dates or amounts where NZ On Air reasonably considers Producer then holds excess or insufficient funds to meet immediate costs and expenses for the Project.</p> <p>To receive NZ On Air’s funding, Producer must meet each of the conditions specified in the drawdown schedule to NZ On Air’s reasonable satisfaction.</p>		
	<b>Signing Instalment (estimated date, [e.g. 28 Feb 2019])</b>	<p>After:</p> <ul style="list-style-type: none"> <li>This Agreement is signed by all parties.</li> <li>The above condition precedent for this Agreement has been met.</li> <li>Producer gives NZ On Air an invoice for this instalment.</li> </ul>	<b>\$ 20,000</b>

	<b>Production Instalment (estimated date, [e.g. 28 Feb 2019])</b>	After Producer gives NZ On Air (copied to RNZ): <ul style="list-style-type: none"> <li>Evidence of approval of Project Outline/talent selection by RNZ</li> <li>Evidence of first day of production.</li> <li>Copies of any agreements related to the funding of the Project.</li> <li>A signed health and safety confirmation as per Schedule 5.</li> <li>A producer report as per NZ On Air's requirements outlined at <a href="https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns">https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns</a> at the time of Producer's report (<b>Producer Report</b>).</li> <li>A cost report as NZ On Air's requirements outlined at <a href="https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns">https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns</a> at the time of Producer's report (<b>Cost Report</b>).</li> <li>An invoice for this instalment.</li> </ul>	\$20,000
	<b>Commencement of Post-Production Instalment (estimated date, [e.g. 28 Feb 2019])</b>	After Producer gives NZ On Air (copied to RNZ): <ul style="list-style-type: none"> <li>Evidence of commencement of post-production</li> <li>A Producer Report.</li> <li>A Cost Report.</li> <li>An invoice for this instalment.</li> </ul>	\$20,000
	<b>Offline approval Instalment (estimated date, [e.g. 28 Feb 2019])</b>	After Producer gives NZ On Air (copied to RNZ): <ul style="list-style-type: none"> <li>Evidence of RNZ Approval of Rough cuts of podcast and video elements, and sign off on roughs of any other element.</li> <li>A Producer Report.</li> <li>A Cost Report.</li> </ul> An invoice for this instalment.	\$10,000
	<b>Delivery Instalment (estimated date, [e.g. 28 Feb 2019])</b>	After Producer gives NZ On Air: <ul style="list-style-type: none"> <li>Evidence of full delivery of all episodes of the Content to RNZ.</li> <li>At least 6 high resolution digital images from the Content for NZ On Air to publish in any form free of charge.</li> <li>An invoice for this instalment.</li> </ul>	\$4,000
	<b>Completion Instalment (estimated date, [e.g. 28 Feb 2019])</b>	After Producer gives NZ On Air (copied to RNZ): <ul style="list-style-type: none"> <li>Evidence of completion of all Content (via a copy delivered to NZ On Air on USB or DVD).</li> <li>A Producer Report.</li> <li>A "final" Cost Report representing a true and fair view of the costs of the Project and accounting for all income received in relation to the Project and the expenditure of the Project Budget.</li> <li>A statistics report as per NZ On Air's requirements outlined at <a href="https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns">https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns</a></li> <li>Confirmation Producer has completed NZ On Air's diversity survey.</li> <li>A link that will persist for at least 1 year from the date of publication to all Content.</li> <li>An invoice for this instalment.</li> </ul>	\$5,825 (subject to deductions for under-spend as below)
	<b>NZ On Air's Total Project Funding</b>		<b>\$(NZOnAir) (under this Agreement)</b>
<b>Invoices</b>	Producer's and RNZ's invoices must include the bank account for payment. If Producer is GST		

	registered and Producer or RNZ provides NZ On Air with a GST invoice, NZ On Air will also pay GST in addition to each instalment.
<b>Payment</b>	NZ On Air will pay Producer's and RNZ's invoices within 10 Business Days of all applicable drawdown conditions being met to NZ On Air's reasonable satisfaction.
<b>Project Bank Account</b>	<b>38-9020-0063763-00</b> NZ On Air prefers that Producer uses a separate bank account solely for Project funding and expenses. If Producer's account includes non-Project funding and NZ On Air takes over the Project under clause 7 (Takeover) of Schedule 2, NZ On Air may make withdrawals from and otherwise deal with all funds in the account whether or not they are Project funds.
<b>Under-Spend</b>	If the cash costs of the Project (incurred in accordance with the Project Budget in Schedule 4) are less than the cash funding provided by NZ On Air or anyone else for the Project, the difference will be shared as follows: <b>[The following equity %s may only change if 3<sup>rd</sup> party funding is in the budget]</b> <ul style="list-style-type: none"> <li>• 80% for NZ On Air</li> <li>• 20% for Producer (including any co-funders or other third parties)</li> </ul> NZ On Air may deduct the amount of NZ On Air's share from any outstanding payments under this Agreement or require Producer to promptly pay NZ On Air's share to it. In calculating the cash costs of the Project, Producer will deduct the reasonable market value of any asset purchased out of the Project Budget that it retains or disposes of after the Project.
<b>Income Sharing</b>	<b>RNZ may retain any income it receives from any sources related to the Content.</b> <b>[For projects with less than \$200,000 of funding from NZ On Air...The Producer (and its assignees) may retain all income it receives related to any Content. ]</b> <b>[For all other projects... NZ On Air has a right to share in any income received by Producer and which is related to the Content, in accordance with Schedule 8.]</b>

<b>Production Activity</b>		
<b>Production</b>	Producer must complete production in accordance with the Proposal.	
<b>Production Standards</b>	RNZ has editorial control of all Content. While the Producer may exercise discretion within that control, Producer 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.	
	<b>RNZ Standards</b>	See Schedule 6
	<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 the 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>Broadcasting Standards</b>	All Content must meet the standards 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: <ul style="list-style-type: none"> <li>• the observance of good taste and decency;</li> <li>• the maintenance of law and order;</li> <li>• the privacy of the individual; and</li> <li>• any approved code of broadcasting practice applying to the programmes (see <a href="http://bsa.govt.nz/standards/overview">http://bsa.govt.nz/standards/overview</a>).</li> </ul> All Content must also meet the standards in the New Zealand Media Council's principles, (see <a href="http://www.mediacouncil.org.nz/principles">http://www.mediacouncil.org.nz/principles</a> )
	<b>Community Standards</b>	Any Content, in part or in whole, which is not subject to a New Zealand approved code of broadcasting practise 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>Health and Safety</b>	<b>Producer</b>	Producer confirms it is aware of its obligations under the Health and Safety at Work Act 2015. In the performance of the Project, Producer agrees to comply with: <ul style="list-style-type: none"> <li>• the Health and Safety at Work Act 2015; and</li> </ul>

		<ul style="list-style-type: none"> <li>the “New Zealand Screen Sector Health and Safety Guidelines” published by ScreenSafe.</li> </ul> <p>Producer also agrees to obtain an acknowledgement, from any person it contracts in connection with or relating to the production of the Content, that they will do the same.</p> <p>Producer must consult, co-operate with, and co-ordinate health and safety activities with all other persons that have health and safety obligations in respect of the production of any Content.</p> <p>Producer must report to RNZ and NZ On Air, within 24 hours of the incident concerned, details of any:</p> <ul style="list-style-type: none"> <li>notifiable event (as defined in the Health and Safety at Work Act 2015) related to the Project; or</li> <li>incident relating to the Project which results (or could reasonably have resulted or could yet result) in death, serious injury or serious illness.</li> </ul> <p>RNZ or NZ On Air may, at any time on reasonable notice, require a meeting with Producer or anyone affected by the event, to obtain information and to discuss the event and the planned responses to it.</p> <p>Producer will promptly provide such information as reasonably requested by RNZ or NZ On Air to demonstrate Producer’s compliance with its health and safety obligations under this Agreement.</p> <p>NZ On Air may, from time to time, at its own cost and on written notice to Producer, audit Producer’s compliance with its health and safety obligations under this Agreement. Producer will do whatever is required to facilitate and assist the audit.</p>
	<b>RNZ</b>	<p>Although detailed health and safety plans for the Project are yet to be prepared by the Producer, RNZ:</p> <ul style="list-style-type: none"> <li>agrees it is a PCBU for the purposes of the Health and Safety at Work Act 2015 (the “Act”);</li> <li>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 Project; and</li> <li>agrees to promptly respond to NZ On Air requests for Health and Safety confirmations in relation to the Project and understands that these confirmations may be sought at a number of drawdown stages, including, but not limited to, the first day of production.</li> </ul>
<b>New Zealand Identity and Culture</b>		<p>Producer will use best endeavours to ensure all Content reflects and develops New Zealand identity and culture. In addition, where appropriate, Producer will use its best endeavours to ensure all Content reflects:</p> <ul style="list-style-type: none"> <li>Māori issues in a way relevant to all New Zealanders; and</li> <li>New Zealand’s ethnic diversity as well as the needs of other minorities and cultures in the community.</li> </ul>
<b>People</b>	<b>Key People</b> [Exactly which roles and people are listed will change for each contract]	<p>Producer must use the following key people or organisations in the performance of the Project:</p> <ul style="list-style-type: none"> <li>Producer – [Producer Name]</li> <li>Director – [Director Name]</li> <li>Writers – [Writer 1 Name] and [Writer 2 Name]</li> <li>Presenter – [Presenter Name]</li> </ul> <p>Producer must obtain NZ On Air’s and RNZ’s prior written approvals if Producer wants to replace any of them with someone else.</p>
	<b>Equal Opportunities</b>	To the extent possible given the nature of the Project, Producer will operate an equal employment opportunities plan for all people engaged in association with the Project.
	<b>Cast Engagement</b>	NZ On Air expects Producer 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 the Producer and crew will adhere to the “Blue Book” (as published by the New Zealand Film and Video Technicians Guild Inc.).
<b>Contracts</b>		Producer must promptly provide NZ On Air and RNZ with copies of all contracts and arrangements in relation to the Project that Producer 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>Project Completion Date</b>	<p>Producer must complete the Project on or before [Date]. If the Project is not complete by then, NZ On Air and/or RNZ may exercise their respective rights under clause 6 (Default) of Schedule 2. The Project is complete when:</p> <ul style="list-style-type: none"> <li>• Producer meets all conditions required for the Completion Instalment to the reasonable satisfaction of NZ On Air and RNZ; and</li> <li>• all Content is finished and available for public access in accordance with this Agreement and the Proposal.</li> </ul>
<b>Keeping NZ On Air and RNZ Informed</b>	<p>Producer will keep NZ On Air and RNZ informed of the progress of the Project and meet with NZ On Air and RNZ from time to time if either asks. NZ On Air or RNZ and its representatives may, at reasonable times and on reasonable notice, visit any studio, location or elsewhere where production of any Content is being carried out, to observe the progress of the Project. Any visitor will comply with Producer's reasonable health and safety directions.</p>

<b>After Completion</b>	
<b>What Producer must do</b>	<p>Following completion of the Project, Producer must do the following, and use all reasonable endeavours to ensure that all subsequent owners and exclusive licensors of any Content do the same.</p>
	<p><b>Distribute the Content</b></p> <p>Distribute all Content as described in the "Distribution" section above, provided that the following will prevail if there is any conflict.</p>
	<p><b>Publicise the Content</b></p> <p>All publicity in relation to the production and content of the Content will be the prerogative of RNZ and on no account will the Producer release any Content-related information without the prior written approval of RNZ. RNZ will not unreasonably withhold its approval for the publication of Content information of a non-confidential nature being released to usual trade industry publications for promotional purposes.</p> <p>The Producer will credit RNZ and NZ On Air in any publicity and promotional material it issues.</p> <p>The Producer will comply with, and will ensure that Key People comply with, the publicity requirements.</p>
	<p><b>Provide the Content free online</b></p> <p>Make the Content (as modified or extended from time to time) freely available for at least a year to the New Zealand public in an online form as approved by NZ On Air (except Producer may charge a reasonable amount, as approved by NZ On Air, for modifications or extensions to the Content that NZ On Air didn't fund).</p>
	<p><b>Make the Content publicly available</b></p> <p>In addition to providing the Content free online, use best endeavours to enable public access for the Content consistent with the rights, licences, consents and authorities obtained for the Project.</p> <p>After 5 years, or earlier if agreed by the applicable rights owners, make the Content (or reasonable excerpts) available to Digital Media Trust on terms and conditions to be agreed between Producer and the Digital Media Trust.</p>
	<p><b>Crediting RNZ and NZ On Air</b></p> <p>Ensure the format and content of the credits have the prior written approval of RNZ and include an approved credit for RNZ. RNZ may reformat the credits at its discretion, provided it does not remove any credits.</p> <p>Ensure that NZ On Air is acknowledged in all Content as set out on NZ On Air's website under "NZ On Air/RNZ joint innovation fund logo" at <a href="https://www.nzonair.govt.nz/funding/resources-producers/#applying-our-logo">https://www.nzonair.govt.nz/funding/resources-producers/#applying-our-logo</a>.</p> <p>NZ On Air and RNZ reserve the right to change these acknowledgement requirements by agreement prior to full delivery of the Content to RNZ.</p>
	<p><b>Only use appropriate sponsorship</b></p> <p>Sponsorship is not allowed on or in relation to any Content. Sponsorship may be allowed by RNZ's distribution partners. The Producer must tell NZ On Air and RNZ before allowing any Content (as modified or extended from time to time) to include any sponsorship that could reasonably be considered inappropriate for RNZ or NZ On Air to be associated with (including but not limited to tobacco, alcohol, drug or sex products or services). RNZ or NZ On Air may veto or require Producer to remove any such sponsorship.</p>
	<p><b>Do not break the law</b></p> <p>Use best endeavours to ensure that the Content (as modified or extended from time to time) contains nothing that is defamatory, infringes intellectual</p>



		property rights, right of privacy or breaches any statute, regulation or other rule or law.
	<b>Report Content usage</b>	Give NZ On Air statistics reports as per NZ On Air’s requirements outlined at <a href="https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns">https://www.nzonair.govt.nz/funding/resources-producers/#drawdowns</a> covering the following periods after go live of the Content: <ul style="list-style-type: none"> <li>• 1 month;</li> <li>• 6 months; and</li> <li>• 12 months.</li> </ul> Each report must be given to NZ On Air within 1 month of the reporting period.
	<b>Make archive copies available</b>	Make the Content available to any archive approved by NZ On Air, if it is selected by them (the archive will pay reasonable copying costs).
	<b>Captions and Audio Description</b>	NZ On Air support accessibility of funded content for all New Zealanders. Where the Content is audio-visual, Producer will make online captions where possible.
<b>What NZ On Air can do</b>	<b>NZ On Air’s own promotion</b>	Producer grants NZ On Air (free of charge) the nonexclusive, perpetual and worldwide right to exhibit, show or transmit extracts from any Content for NZ On Air’s own promotion and publicity, but not for commercial exploitation.

## 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) **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.
- (c) **Content** means the content described in the “Content” section of Schedule 1, including:
  - (i) any additional content NZ On Air approves in accordance with that section.
- (d) **Default Event** means:
  - (i) Producer abandons or states its intention to abandon the Project;
  - (ii) RNZ withdraws its support to make available any Content through the RNZ Distribution Platforms, or any funding (excepting NZ On Air funding) for any Content is withdrawn in whole or in part, with the effect or likely effect that the ability to produce, broadcast and publish any Content as originally intended is prejudiced;
  - (iii) NZ On Air or RNZ reasonably believes Producer is unable to ensure the health and safety of all workers and other persons in relation to the Project;
  - (iv) Producer breaches this Agreement or NZ On Air or RNZ reasonably believes Producer is likely to breach this Agreement;
  - (v) Producer breaches any other agreement, such that there is or is likely to be a material adverse effect on any Content or its ability to meet its obligations under this Agreement, including where NZ On Air or RNZ reasonably believes:
    - (A) Producer is unable to deliver any Content by the Project Completion Date; or
    - (B) any Content differs materially from the Proposal; or
  - (vi) Producer becomes insolvent, stops or suspends payment of any debts, has a receiver appointed over any assets, or fails to satisfy any final judgement within 5 Business Days, or NZ On Air or RNZ reasonably believes Producer is at risk of doing any of those things. To avoid doubt, a notice received by NZ On Air 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.
- (e) **Distribution Agreement** means any agreement between Producer and any third party in relation to the sale, licensing or other exploitation of any Content.
- (f) **Distribution Platform** means the distribution platforms described in the “Distribution” section of Schedule 1. There:
  - (i) is one or more “RNZ Distribution Platform(s)”; and
  - (ii) may be one or more “Additional Distribution Platforms”.
- (g) **Distribution Rights** means the right to sell or license or otherwise exploit, and to authorise the sale, licensing or exploitation of any Content.
- (h) **Force Majeure** means:
  - (i) act of God, fire, explosion, earthquake, storm, flood, or landslide;
  - (ii) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
  - (iii) requirement or restriction of, or failure to act by, any government, semi-governmental or judicial entity,
 but does not include:
  - (iv) any event which the party affected could have avoided, prevented or overcome by implementing reasonable precautions against the event;
  - (v) any event which Producer could have prevented or overcome but for a prior failure to comply with its obligations under this Agreement;
  - (vi) any failure of a contractor to enable the party affected to perform its obligations under this Agreement, except to the extent that the contractor’s failure is itself caused by Force Majeure; or
  - (vii) a lack of funds for any reason.
- (i) **Platform Owner** means the person described as owner of a Distribution Platform in the “Distribution” section of Schedule 1. :
  - (i) RNZ is the Platform Owner for the RNZ Distribution Platform; and
  - (ii) There is an “Additional Platforms Owner” for each Additional Distribution Platform.
- (j) **Project** means the Project described in Schedule 1.
- (k) **Project Budget** means the budget in Schedule 4, as varied with NZ On Air’s and RNZ’s prior written approval.
- (l) **Project Completion Date** means the project completion date described in the “Production Activity” section of Schedule 1.

(m) **Proposal** means the proposal in Schedule 3, as varied with the prior written approval of NZ On Air and RNZ.

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 NZ On Air’s Funding

2.1 NZ On Air has no obligation to provide any additional funding for the Project and Producer has no expectation of the same.

2.2 Producer must use NZ On Air’s funding only to meet reasonable costs of the Project, that are specified in the Project Budget and incurred in accordance with this Agreement. Subject to this Agreement, Producer must use all other funds secured for the Project in accordance with any agreement for the provision of those funds.

2.3 If NZ On Air’s funding has been spent but all Content isn’t finished, Producer will ensure sufficient additional funding is obtained from third parties to finish the Project in accordance with this Agreement.

2.4 NZ On Air has no liability to Producer, RNZ or any third party, as a result of, or in any way in connection with, this Agreement or the Project, except only to the extent NZ On Air has failed to pay an instalment of funding without reasonable excuse. RNZ has no liability to Producer, NZ On Air or any third party, as a result of, or in any way in connection with, this Agreement or the Project, except only to the extent RNZ breaches an express obligation set out under Required Distribution in Schedule 1 without reasonable excuse.

2.5 Producer must perform its obligations under this Agreement:

- (a) promptly with due diligence, care and skill;
- (b) with appropriately skilled, qualified, experienced and supervised personnel.

2.6 Producer is not relieved of any obligation under this Agreement by subcontracting or delegating it to any third party, whether directly or indirectly. Producer is responsible for the acts and omissions of any such third party, as if they were its own acts or omissions.

2.7 The Producer must not use NZ On Air or RNZ funding provided under this Agreement to produce a different version of the Content, or to produce content other than the Content, for any distribution platform.

## 3 Accounting/Information

3.1 If NZ On Air or RNZ makes a request for information about Producer’s solvency and ability to complete the Project, Producer will promptly make that information available and allow the requesting party, at reasonable times, to inspect Producer’s accounts, books and records relating to the Project.

3.2 Producer must retain originals of all receipts and invoices for costs incurred for 2 years after the Project has ended, on the understanding that the Project could be subject to review by RNZ or NZ On Air.

3.3 Producer will ensure that:

- (a) it complies with all applicable tax legislation and will indemnify NZ On Air and RNZ against liability to any third party and any costs NZ On Air or RNZ reasonably incurs 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;
- (b) if Producer is a company, until the Project Completion Date there will be no change in its ownership or control by way of sale of the whole or substantial part of its assets without NZ On Air’s and RNZ’s prior written consent. NZ On Air’s and RNZ’s consents will not be unreasonably withheld where such change or sale would not affect

- Producer's ability to comply with its obligations under this Agreement;
- (c) the information it provides to NZ On Air and RNZ (including in any the Proposal and Project Budget) is true and correct in all respects; and
  - (d) all reports it provides to NZ On Air or RNZ under this Agreement are true and correct and contain the required information.
- 3.4 NZ On Air may deduct any withholding tax required to be deducted from NZ On Air's payments under this Agreement, and will forward that withholding tax to the New Zealand Inland Revenue as required by law.
- 4 Intellectual Property**
- 4.1 As between the parties, Producer will own on their creation all intellectual property rights in relation to the Content that arise under or in connection with this Agreement.
- 4.2 Producer covenants that:
- (a) Producer has obtained and will retain all necessary rights, licences, consents or other authorities with respect to the Project, and which enable the performance of the Project, and exploitation of all Content, in accordance with this Agreement and any Distribution Agreement; and
  - (b) the performance of the Project and exploitation of any 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.
- 5 Force Majeure**
- 5.1 Non-performance by any 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 5.2.
- 5.2 The party claiming the benefit of this clause 5 (Force Majeure) will, as soon as is practical and to the extent known to that party, give notice to the other parties 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.
- 5.3 The party claiming the benefit of this clause 5 (Force Majeure) will promptly:
- (a) take all reasonable steps to avoid or remove the Force Majeure and mitigate its effects on the other parties;
  - (b) keep the other parties 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.
- 5.4 Where Producer is claiming the benefit of this clause 5 (Force Majeure), it will if requested by NZ On Air or RNZ in writing:
- (a) refund a reasonable proportion of the funding to NZ On Air to reflect any reduction in the value of the Content to NZ On Air as a result of the Force Majeure; and
  - (b) discuss with NZ On Air and RNZ in good faith alternative ways of achieving NZ On Air's and RNZ's objectives for this Agreement (such as agreeing to vary the required Content in order to produce something of value despite the Force Majeure).
- 5.5 Performance of any obligation affected by Force Majeure will be resumed as soon as practicable after the termination or abatement of the Force Majeure.
- 6 Default**
- 6.1 NZ On Air's payment of funding does not constitute acceptance that Producer is complying with its obligations under this Agreement, and does not prevent RNZ or NZ On Air from exercising their rights arising from Producer's breach of this Agreement at any time.
- 6.2 If there is a Default Event, RNZ or NZ On Air may give Producer notice and at least 5 Business Days to remedy the Default Event. If Producer doesn't remedy it within that time, in addition to any other remedies available:
- (a) NZ On Air may suspend funding under this Agreement until the Default Event is remedied;
  - (b) RNZ or NZ On Air after consulting with each other may end this Agreement and all funding under it;
  - (c) NZ On Air may require repayment of any funding already provided under this Agreement (however NZ On Air will negotiate with Producer about costs it has already incurred up to termination and NZ On Air may, but is not required to, meet those costs);
  - (d) If Producer obtained funding under this Agreement fraudulently, NZ On Air will require interest calculated at 15% per annum from the date of payment to the date the funding is repaid; and
  - (e) NZ On Air may take over the Project in accordance with clause 7 (Takeover).
- 6.3 Producer indemnifies and holds RNZ and NZ On Air harmless against all liability they each (respectively) may have to any third party as a result of any Default Event, and against all expenses incurred by each of them (respectively) in relation to that liability, including any legal costs or expenses and any compensation costs (including any sum RNZ is ordered by the courts or the Broadcasting Standards Authority to pay in compensation/costs to any third party, and any damages and disbursements paid by RNZ on the advice of counsel and after consultation with the Producer to compromise or settle any claim). Clause 14.1 applies to this indemnity.
- 6.4 The indemnity in clause 6.3 does not apply to a claim that arises solely because of editorial changes to the Content required in writing by RNZ.
- 6.5 Termination of this Agreement will not affect any rights and obligations that are intended to survive termination, including clauses 3 (Accounting/

Information), 4 (Intellectual Property), 6 (Default), 7 (Takeover), 8 (Confidentiality), 9 (Disputes), 10 (Audit), 12 (Costs and Expenses), 13 (Notices) and 14 (General), Producer's obligations and NZ On Air's and RNZ's rights in the "Required Distribution" and "After Completion" sections of Schedule 1, and any obligation to share revenue with NZ On Air or return funding to NZ On Air.

6.6 If Producer is a company, NZ On Air wants to ensure that, should Producer be removed from the Companies Register, Producer's residual title or rights in all Content can continue to benefit New Zealanders. Accordingly, without limiting any of NZ On Air's or RNZ's rights under this Agreement and subject to the provisions of any existing agreements relating to any Content, when all the conditions of section 318 of the Companies Act 1993 have been met so that the Registrar must remove Producer from the Companies Register but immediately prior to such removal, the right to unlimited streaming on the website located at <http://www.nzonscreen.com> will be assigned to and vest in the Digital Media Trust (a charitable trust board incorporated under the Charitable Trust Act 1957). To the extent permitted by law, Producer irrevocably constitutes and appoints NZ On Air as Producer's 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 its consent.

## 7 Takeover

7.1 NZ On Air will give Producer written notice under clause 6 (Default) if NZ On Air takes over the Project. If NZ On Air so takes over the Project:

- (a) Producer will put at NZ On Air's disposal and under NZ On Air's control, all persons, contracts, equipment and other resources employed or used by Producer in connection with the Project, provided that NZ On Air may elect not to take over any contract or obligation of the Producer which NZ On Air considers to be unduly onerous (and any costs or liabilities arising in relation to such contracts or obligations as a result of NZ On Air exercising this right of election will be borne by Producer);
- (b) NZ On Air may, subject to written agreement with RNZ (such agreement not to be unreasonably withheld), arrange for the Project to be completed by a third party or by RNZ; and
- (c) NZ On Air may complete (or arrange for the completion of) or abandon the Project at NZ On Air's discretion following consultation with RNZ (and NZ On Air will be deemed to do so as Producer's agent on the terms of this Agreement).

7.2 To confirm NZ On Air's rights as Producer's agent:

- (a) For the purpose of this clause 7 (Takeover), Producer hereby irrevocably constitutes and appoints NZ On Air as Producer's attorney-in-fact with full power and authority to do any of the following in connection with the Project:
  - (i) make withdrawals from and otherwise deal with funds in the Project bank account;

- (ii) borrow money; enforce, modify, release, compromise or terminate any contract or other right or obligation of yours relating to the Project;
- (iii) engage and discharge Project personnel (subject to employment laws);
- (iv) enter into or terminate any contract relating to the Project;
- (v) acquire or lease or dispose of equipment and other real or personal property relating to the Project;
- (vi) make claims under any policy of insurance relating to the Project; and
- (vii) do all such other lawful acts and things as NZ On Air may determine are reasonably necessary to exercise its rights under this clause 7 (Takeover) (including executing any power of attorney contemplated by subclause (b) if Producer fails to do so); and

(b) Producer will, if requested by NZ On Air, execute a Power of Attorney in favour of NZ On Air or any of its officers in respect of the powers listed in subclause (a).

7.3 NZ On Air and RNZ will not be liable to Producer, and Producer will indemnify NZ On Air and RNZ against liability to any third party, as a result of any act or omission occurring prior to NZ On Air's exercising NZ On Air's right to take over the Project. Clause 14.1 applies to this indemnity.

7.4 Without prejudice to NZ On Air's remedies, if NZ On Air takes over the Project under clause 6 (Default), Producer's entitlement to share in the proceeds of any sale, licensing, distribution or other exploitation of any Content will be reduced in such proportion as is equitable in all the circumstances (having regard to the extent which Producer met its obligations under this Agreement prior to the takeover and the amount of Project Funding provided by Producer, if any).

## 8 Confidentiality

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

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

8.2 Producer acknowledges that NZ On Air and RNZ are each 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.

## 9 Disputes

9.1 If any dispute arises between any of the parties in relation to this Agreement, it will be referred for resolution to the Chief Executive (or equivalent position) of the parties to the dispute (or their nominee). If the dispute is not resolved within 5 Business Days of the issue being referred for resolution (or such longer



period as the parties to the dispute 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/>.

- 9.2 Each party will continue to perform their respective obligations under this Agreement whilst the dispute is referred to mediation, provided that, without prejudice to the other rights and remedies of NZ On Air and RNZ, where NZ On Air considers the dispute relates to Producer's material breach of any obligation under this Agreement, NZ On Air may elect to withhold payments due to Producer until the dispute has been resolved to NZ On Air's satisfaction.
- 9.3 Each party to the dispute will pay its own costs associated with this dispute resolution procedure unless the mediator or other dispute resolution co-ordinator determines otherwise.
- 9.4 Nothing in this Agreement will preclude any party from taking immediate steps to seek equitable relief before a Court.

## 10 Audit

NZ On Air has the right at NZ On Air's cost to require the cost reporting and processes be audited, to set the scope of the audit and to appoint an auditor. Producer will do whatever is required to facilitate and assist the audit.

## 11 Insurance

- 11.1 Producer will obtain, pay the premiums for, and maintain in force such insurance coverage for the Project as is prudent, whether the insurance is specific to the Project or general to its business. If requested to do so by NZ On Air or RNZ, Producer will add the requesting party as an additional insured party to any such insurance policies. NZ On Air or RNZ may require Producer to provide copies of any insurance policy covering the Project at any time.
- 11.2 The insurance will be for fully adequate sums having regard to the potential loss.
- 11.3 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.

## 12 Costs and Expenses

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

## 13 Notices

- 13.1 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.

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

- 13.3 A notice will be considered to be received:

- if delivered by hand or courier, on the date it is delivered;
- if sent by post within New Zealand, on the 3rd Business Day after the date it was sent;
- if sent by post internationally, on the 7th Business Day after the date it was sent; or
- 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.

- 13.4 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.

## 14 General

- 14.1 For each indemnity to which this clause applies, the indemnified party will:

- promptly notify Producer if the indemnified party becomes aware of any liability covered by the indemnity;
- not admit or settle any claim for such liability, without Producer's prior written consent (not to be unreasonably withheld);
- at Producer's request and expense:
  - allow Producer to conduct and settle all negotiations and litigation resulting from such claim, provided the indemnified party is consulted on, and may be represented at, the same and Producer effects the indemnified party's reasonable requirements for the same; and
  - provide reasonable assistance with any such negotiations or litigation; and
- use reasonable endeavours to minimise the liability and expenses covered by the indemnity.

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

- 14.3 Subject to clause 14.4, Producer 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 NZ On Air's and RNZ's prior written consent.

- 14.4 After the Project Completion Date, unless NZ On Air has an income share under Schedule 7 (Income Sharing Arrangements), Producer may dispose of any or all of its rights or obligations under this Agreement without NZ On Air's or RNZ's prior written consent, provided Producer:

- notifies NZ On Air and RNZ of each disposal, in writing and in advance;
- before disposing of any obligations under this Agreement, ensures that the person acquiring

those obligations agrees with NZ On Air and RNZ in writing (in a form approved by NZ On Air and RNZ) to perform those obligations; and

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

To avoid doubt, “dispose of” does not include changes to Producer’s directorships or shareholders.

- 14.5 NZ On Air may assign or novate all of NZ On Air’s rights and obligations under this Agreement to another Government agency that takes over NZ On Air’s functions in respect of this Agreement, effective on written notice to Producer.
- 14.6 This Agreement can only be amended as agreed in writing by the parties affected by the amendment.
- 14.7 This Agreement represents the entire agreement between the parties relating to the Content. This Agreement replaces all prior proposals or agreements and all communications between the parties relating to the subject matter of this Agreement.
- 14.8 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.
- 14.9 Nothing in this Agreement will create or constitute or be deemed to create or constitute a partnership between any of the parties, nor to constitute or create or be deemed to create or constitute any party as an agent of any other party for any purpose except as expressly provided in this Agreement. No party 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 any other party to any obligation except as expressly provided in this Agreement.
- 14.10 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.
- 14.11 Any delay or failure by any party 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.

- 14.12 Each party agrees 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.

- 14.13 Each party agrees to comply with all laws and regulations in relation to this Agreement.

## 15 Complaints

- 15.1 If a Complaint is made to RNZ in respect of the Content, the Complaint will be dealt with by RNZ in accordance with the procedures established by RNZ pursuant to s 6(c) of the Broadcasting Act and the **New Zealand Media Council’s Principles**.
- 15.2 The Producer will on request promptly make available to RNZ any information and material which RNZ considers necessary to consider the Complaint.
- 15.3 The Producer will fully assist in responding to all queries raised during the Complaint process.
- 15.4 If a Complaint is upheld by RNZ then the Producer will :
- (a) Abide by RNZ’s decision; and
  - (b) Comply promptly with any directions made by RNZ to ensure that the circumstances causing the Complaint to be upheld are not repeated.
- 15.5 If the Complaint is referred to the BSA pursuant to s 8 of the Broadcasting Act, or the Media Council under the **Media Council’s Principles**, the Producer will on request supply RNZ with such information and material as it may require to present a submission to the Authority including :
- (a) A video copy of the Content and access to copies of all relevant Field Footage;
  - (b) Content transcripts;
  - (c) Copies of any correspondence between the Producer and any relevant third party; and
  - (d) A written statement in answer to the Complaint.
- 15.6 The Producer authorises RNZ to make copies and transcripts of the Content and to make the Content available for viewing for the purposes of any Complaint proceedings under the Broadcasting Act or the **Media Council’s Principles**.
- 15.7 If the Broadcasting Standards Authority upholds the Complaint pursuant to section 13 of the Broadcasting Act, or the Media Council under the **Media Council’s Principles**, the Producer will comply with all requests of RNZ to carry out any order of the Broadcasting Standards Authority /Media Council.

**SCHEDULE 3**  
**YOUR PROPOSAL**



## **SCHEDULE 4 PROJECT BUDGET**

The Project Budget is attached.

### **Internal and Related Parties**

Producer confirms that the Project Budget clearly identifies all:

- (a) internal budget items; and
- (b) transactions between Producer 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 Project.

## SCHEDULE 5 PRODUCER'S HEALTH AND SAFETY CONFIRMATION

The following confirmation is to be completed by Producer during pre-production and provided to NZ On Air before production begins.

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

**Cc: The Chief Executive  
Radio New Zealand Limited  
PO Box 123  
Wellington 6140**

### PRODUCER'S HEALTH AND SAFETY CONFIRMATION

RNZ and NZ On Air entered into a Funding Agreement with [PRODUCTION CO] Limited ("**the Producer**") whereby NZ On Air agreed to fund the production of content provisionally called "[Title]" ("**the Project**").

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

- (a) to the extent reasonably practicable, the Producer has consulted, co-operated and co-ordinated with all PCBUs as defined in the Act (e.g. contractors) over all health and safety plans for the Project; and
- (b) the New Zealand Screen Sector Health and Safety Guidelines found at <http://screensafe.co.nz/> are being and will continue to be followed on the Project; and
- (c) to the extent reasonably practicable, all risks to health and safety on the Project have been assessed and identified risks have been entered in a hazard register along with how these will be eliminated or minimised; and
- (d) the current Project budget, including NZ On Air's funding, is enough to ensure the Producer meets its obligations for the health and safety of all persons connected with the Project.

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

**DATED** the \_\_\_\_\_ day of \_\_\_\_\_ 2019

**SIGNED** for and on behalf of [PRODUCTION CO] Limited by the Project's producer:

\_\_\_\_\_  
Signature

Name:

Title:

## SCHEDULE 6 RNZ EDITORIAL AND DELIVERY REQUIREMENTS

### Editorial:

1. Subject to the express requirements set out under “Production Activity” in Schedule 1, RNZ has full editorial control over the Content. The Producer will show the script to RNZ at a point in production when the treatment, style and content are clearly apparent and editing changes to the Content are still able to be achieved without difficulty and any checks and consents (if appropriate) can still be obtained. The Producer will reasonably consider any feedback received.
2. The Producer will make available to RNZ a first edit of the Content for review. The Producer will give RNZ at least 4 days’ advance written notice as to when the first edit will be available for viewing. RNZ will have at least 5 Business Days in which to comment on the first edit and to make directions to the Producer for improvements. The Producer will give full consideration in good faith to all directions made by RNZ, provided such directions are in accordance with the Proposal and the other specifications set out in the Project Particulars in Schedule 1.
3. RNZ and its representatives will have the right at any reasonable time and at its own cost to visit any studio or location where production of the Content is being carried out to observe such production, including in respect of health and safety practices.
4. At RNZ's request, the Producer will promptly carry out, and/or reimburse all costs incurred by RNZ in connection with carrying out, all changes to the Content required by RNZ as may be necessary to comply with:
  - (a) any representation or warranty contained in this Agreement;
  - (b) RNZ's Technical Standards;
  - (c) any legal advice received by RNZ;
  - (d) the standards of RNZ;
  - (e) any captioning requirements of RNZ;
  - (f) RNZ's obligations under the Broadcasting Act 1989 and the Broadcasting Codes approved from time to time by the Broadcasting Standards Authority, and the Media Council's Principles; and/or
  - (g) the duration requirements of the Content
5. The Producer will make available during the production period at no additional charge Key People and any additional key cast from the Content for RNZ's reasonable marketing and publicity purposes.

### Delivery

The Producer will provide RNZ with the following materials:

1. A master recording of the Content which will conform in every respect with the relevant RNZ Technical Standards. The Content must conform to the presentation, audio and digital style requirements of RNZ.
2. Where the Content is identified for International Distribution, one new digital videotape recording of the finished Content with separate M & E tracks (SD) or DolbyE (HD).
3. A full post-production script with timings (unless otherwise agreed) and which includes transcripts of all synch audio.
4. Background material including at least a one page synopsis plus profiles of key people appearing in the Content and any other relevant publicity information including contact details for the purposes of press interviews. The Producer will use its reasonable endeavours to assist in securing key personnel for such press interviews when required.
5. A generic 400-word synopsis of the Content. This should include quotes from the Producer, presenter(s), director(s) and writer(s).
6. A three sentence summary of all Episodes for publicity billings.
7. An undertaking (in a form satisfactory to RNZ) that all clearances, release forms, performers' consents, music, library and film clip licences and all other agreements necessary to enable RNZ to exercise the rights granted to it in this Agreement are held by the Producer. If requested, the Producer must promptly provide to RNZ copies of any or all of these documents.
8. For media use to publicise the Content:
  - (a) a selection of high resolution (300dpi) copyright-cleared images with captions including group and individual pictures of talent and episodic pictures shot on location, for each and every Episode
  - (b) if the Content is a documentary, at least six digital images from the Content;
  - (c) for all other Content, whether one-off or a series of episodes, then at least 3 digital images per Episode. Video grabs are NOT acceptable. For programmes filmed on location, these images should be taken by the production company *during filming*.
  - (d) Branded graphic assets as needed for website and promotional use
  - (e) Video content appropriate for social media promotional use
  - (f) All source code and assets for the website including code for any build processes shall be delivered to RNZ by uploading it to an RNZ provided Github repository.
9. A high resolution digital file of the Content logo.

10. The web content (text), which RNZ may edit/copyedit/sub for online use. The research will be written for the website in an accessible style.
11. Subject to RNZ providing the necessary technical information in a reasonable timeframe, all graphics required for RNZ's website and social platforms.

[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 [Producer] Limited ("the Producer") under which NZ On Air agrees to provide funding of \$[B] to enable production of content provisionally called "[Title]" and [describe any other 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 the Agreement with the Producer, the Platform Owner agrees with NZ On Air that:

- (a) 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 [URL] (the "Website") on the launch of the Content, and ensure that the Content is freely accessible to the New Zealand audience via the Website for a minimum of a year.
- (b) it 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.
- (c) it will share audience data with the Producer as required to enable the Producer to report full audience statistics to NZ On Air in keeping with the Agreement.
- (d) [Keep next section if broadcast...] It 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. ]

DATED the                      day of                      2019

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:

[Only use this Schedule for Projects with \$200,000 or more of total Government funding, including from NZ On Air]

## SCHEDULE 8 INCOME SHARING ARRANGEMENTS

### 1 DEFINITIONS

1.1 Terms defined elsewhere in this Agreement will have the same meaning in this Schedule.

1.2 Unless the context requires otherwise, in this Schedule:

(c) **Ancillary Rights** means:

(i) the right to produce (or authorise such production and exploitation of) projects based on any Content and/or the same themes, situations, concepts, incidents and principal characters and including the right to use the codebase, scripts and storylines for any Content adapted and varied for the audience;

(ii) the right to produce and exploit any audio-visual, computer-generated, electronic or mechanical work based on or derived from or inspired by any Content;

(iii) all merchandising, stage, music and soundtrack rights in relation to any Content; and

(iv) any right to exploit the Field Footage.

(d) **Content Rights** means all rights in any Content in any medium throughout the world (including video cassettes, videodiscs (including DVDs and Blu-rays) and any other devices for reproducing visual images and sounds which may be played back by the use of a playback device and intended for sale or hire to the public for home use), except for:

(i) the rights of any Platform Owner identified in this Agreement; and

(ii) the Ancillary Rights.

(e) **Combined Rights** means:

(i) all Content Rights; and

(ii) all Ancillary Rights.

(f) **Distributor** means a person authorised to sell, license, distribute and authorise the sale, licensing, distribution or other exploitation of any Combined Right.

(g) **Field Footage** means any material produced in the course of the production of any Content that is not included as part of any Content as distributed in any territory.

(h) **Net Income** is defined in clause 3.3 of this Schedule.

### 2 COMMERCIALISING THE CONTENT

2.1 Except to the extent required otherwise by this Agreement, Producer will:

(a) use its best endeavours to maximise Net Income; and

(b) only enter into Distribution Agreements that are consistent with proper business practice, on arm's length, commercial terms.

2.2 Within one month from signing any Distribution Agreement Producer will inform NZ On Air of the agreement. On NZ On Air's request from time to time, Producer will provide NZ On Air with:

(a) a copy of the agreement; and

(b) a report on the general sales prospects of the Content under the agreement.

In any event, Producer will distribute all Content properly and in good faith.

2.3 Producer will:

(a) make every effort to collect all receipts arising from the sale or licensing or other exploiting of the Combined Rights as is commercially reasonable; and

(b) not violate any rights of any third party by the entry into distribution, sales agency, or other agreements relating to the sale or licensing or other exploiting of the Combined Rights.

### 3 SHARING NET INCOME

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

(a) in respect of the Content Rights:

(i) until NZ On Air has fully recouped its funding for all Content under this Agreement and any other agreement:

Producer and permitted assignees: 75.0%

NZ On Air: 25.0%

(ii) thereafter:

Producer and permitted assignees: 90.0%

NZ On Air: 10.0%

(b) in respect of the Ancillary Rights:

Producer and permitted assignees: 90.0%

NZ On Air: 10.0%

[Default position – will change if other equity in content budget]

3.2 For the purposes of this Schedule, "Net Income" is the sum of the following items:

(a) Royalties.

(b) Gross Income less:

(i) Delivery Expenses;

(ii) Production Expenses;

(iii) Distribution Expenses; and

(iv) Distributor's Commission.

(c) The balance of any claim under any policy of insurance, as contemplated by clause 12 (Insurance) of Schedule 2.

- (d) The sale of any equipment or other tangible assets purchased out of the Project Budget for the purpose of the production of any Content.

Where:

- (e) **“Royalties”** means any payment made by a Distributor on a royalty basis (for example, a fixed percentage of the net wholesale price of a DVD or book or any payment made by collecting society, performers or authors rights organisations such as Screenrights) to Producer in connection with any Content. If at any time Producer has registered any Content with Screenrights or similar organisation, Producer will be deemed to have instructed the organisation to provide NZ On Air with copies of all financial reports in respect of that Content.
- (f) **“Gross Income”**:
- (i) means all moneys accruing from the sale, licensing, distribution or other exploitation of the Combined Rights; and
- (ii) excludes Royalties and the first \$5,000 of Gross Income accruing solely from the exploitation of Field Footage.
- (g) **“Delivery Expenses”**:
- (i) means Producer’s direct, actual and reasonable costs that are necessary to deliver any Content to a Distributor (or, to the extent Producer is acting as Distributor, necessary to distribute any Content) and which are consistent with proper business practice, incurred on commercial terms, properly allocated to any Content, and approved by NZ On Air on receipt of supporting documentation acceptable to NZ On Air, costs relating to errors and omissions insurance and clearance of music, archive and external footage will be deemed approved;
- (ii) excludes all salary and overheads, costs relating to attendance at markets, preparation of promotional materials for markets and legal costs relating to negotiating a Distribution Agreement.
- (h) **“Production Expenses”** means direct actual and reasonable out-of-pocket costs incurred by the Distributor or Producer (as applicable) in connection with the production of video cassettes, videodiscs (including DVDs), any other devices for reproducing visual images and sounds which may be played back by the use of a playback device intended for home use, books or other merchandise relating to any Content.
- (i) **“Distribution Expenses”** means direct, actual and reasonable out-of-pocket costs of a Distributor (exclusive of salary and overheads) properly incurred in connection with the sale, licensing or other exploitation of the Combined Rights on an arm’s length basis and properly allocated to any Content in accordance with the relevant Distribution Agreement up to a

maximum of 5% of Gross Income from that Distribution Agreement, unless otherwise approved by NZ On Air in writing provided that where a Distribution Agreement contains provision for uncapped costs of the Distributor, such costs will be deemed approved provided they have been properly incurred in accordance with the relevant Distribution Agreement. Where Producer is the Distributor, then Producer may claim Distribution Expenses up to a maximum of 5% of Gross Income and any further costs incurred by Producer as Distributor that are approved by NZ On Air on receipt of supporting documentation acceptable to NZ On Air.

- (j) **“Distributor’s Commission”** means an amount equalling up to 30% of Gross Income received by the relevant Distributor, or such other amount approved by NZ On Air in writing such approval not to be unreasonably withheld, from the sale, licensing, distribution or other exploitation of the Combined Rights from which will be deducted all sub-distribution fees and commissions applicable to the Gross Income which is the subject of the commission calculation.

#### 4 REPORTING NET INCOME

- 4.1 Producer will keep proper accounting records of all transactions carried out in relation to the sale, licensing and other exploitation of the Combined Rights and will produce such records for inspection as may reasonably be required by NZ On Air.
- 4.2 Unless NZ On Air agrees otherwise with Producer in writing, Producer will provide reports to NZ On Air:
- (a) where Producer is not a Distributor, within 10 Business Days following receipt by Producer of a report from a Distributor); or
- (b) where Producer is a Distributor, on a six monthly basis in the first two years with the first report due six months from the Project Completion Date and on a yearly basis thereafter,
- provided that:
- (c) Producer must report Net Income within 10 Business Days of it reaching NZ\$10,000 or more; and
- (d) from five years after the Project Completion Date, reports will only be due where there is Net Income to report.
- 4.3 The reports will include:
- (a) copies of any new Distribution Agreements or amendments to any Distribution Agreement;
- (b) copies of any statements received from the Distributor showing Gross Income and/or Royalties and all payments made by the Distributor out of Gross Income including Distribution Expenses (capped and uncapped) and Distributor’s Commission; and
- (c) a statement of receipts and payments detailing all Gross Income and/or Royalties received by

- Producer, and all payments made by Producer out of Gross Income including Delivery Expenses, Production Expenses, Distribution Expenses and Distributor's Commission along with a calculation of our share of Net Income.
- 4.4 NZ On Air may, at any time on reasonable notice, require Producer to meet to provide information and

to discuss the reports provided pursuant to clause 4.2 above.

**5 PAYING OUR SHARE**

- 5.1 NZ On Air will invoice Producer for NZ On Air's share of Net Income. Producer must pay NZ On Air's share of Net Income within 10 Business Days after receiving an invoice from NZ On Air.