

PARTNERSHIP, SPONSORSHIP OR COMMERCIAL INTEGRATION

Clauses 1 and 2 below apply if the Company is a partner or sponsor of an Item and/or receiving an integration into an Item as described under a 'Partnership', 'Sponsorship' and/or 'Commercial Integration' section of the Key Terms.

1. RETRANSMISSION

- 1.1 The Company's connection to the Item is expressly set out in the Key Terms and Company Benefits. Unless expressly stated otherwise, TVNZ may exploit, use and retransmit the Item (or any part thereof) in any media at any time at its sole discretion, including making the Item available outside the time, date and/or media listed in the Key Terms and Company Benefits.
- 1.2 After the expiry or termination of the Benefits Period and/or this Agreement, the Company acknowledges and agrees that TVNZ may, at its sole option and discretion, either leave any references to the Company and Company Materials in place in the Item or remove all references to the Company and Company Materials, and further may incorporate references to any new partner or sponsor.

2. EDITORIAL CONTROL AND OWNERSHIP

- 2.1 All editorial decisions concerning the Item are entirely at the sole discretion of TVNZ. As between TVNZ and the Company, TVNZ shall have sole and exclusive control over the Item, Assets created, and publicity associated with the Item.
- 2.2 Subject to clause 16.5, the parties agree that, as between the parties, TVNZ is the sole and exclusive owner of the entire copyright and all other rights, title and interest in and to the Item, including without limitation the name and logo, and all audio, visual and audio-visual content, other footage and any Assets created.

CONTENT PARTNERSHIP

Clauses 3 to 5 below apply if the Company is engaging TVNZ to produce assets under a 'Content Partnership' section of the Key Terms.

3. PRODUCTION SERVICES

- 3.1 TVNZ will provide the Production Services to produce the Content.

4. RETRANSMISSION

- 4.1 After the expiry or termination of the Benefits Period and/or this Agreement:
 - a) TVNZ may exploit, use and retransmit the Content (or any part thereof) in any media at any time at its sole discretion; and
 - b) the Company acknowledges and agrees that TVNZ may leave any references to the Company and Company Materials in place in the Content.

5. EDITORIAL CONTROL AND OWNERSHIP

- 5.1 All editorial decisions concerning the Content are entirely at the sole discretion of TVNZ. As between TVNZ and the Company, TVNZ shall have sole and exclusive control over the Content and publicity associated with the Content.
- 5.2 Subject to clause 16.5, the parties agree that, as between the parties, TVNZ is the sole and exclusive owner of the entire copyright and all other rights, title and interest in and to the Content, including without limitation the name and logo, and all audio, visual and audio-visual content and other footage created.

PRODUCTION

Clauses 6 to 7 below apply if the Company is engaging TVNZ to produce assets under a 'Production' section of the Key Terms.

6. PRODUCTION SERVICES

- 6.1 TVNZ will provide the Production Services to produce the Deliverables.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Upon full payment of the Fee, TVNZ will assign all rights it has in and to the Deliverables (excluding the Format, any TVNZ logos, trade marks, branding and channel frames, and any logos, branding and content from programmes or programme promotions) to the Company.
- 7.2 The parties agree that the Format was conceived, originated and created by TVNZ and that TVNZ is the sole and exclusive owner of the entire copyright and all other rights, title and interest in and to the Format.

COMPANY COMPETITION

Clause 8 below applies if the Company is running its own competition as described under a 'Competition' section of the Key Terms.

8. COMPETITION SERVICES

- 8.1 TVNZ, in consultation with the Company, will promote the Competition as described in the Key Terms and Company Benefits.
- 8.2 The Company is solely liable for the Competition, and the Company indemnifies TVNZ against all actions, claims, liabilities, costs, expenses (including reasonable legal expenses), damages, penalties and losses howsoever arising, suffered or incurred by TVNZ in connection with the Competition.

COMPETITION RUN BY TVNZ

Clauses 9 and 10 below apply if TVNZ is running a competition as described under a 'Competition' section of the Key Terms.

9. COMPETITION SERVICES

- 9.1 TVNZ, in consultation with the Company, will promote and run the Competition as described in the Key Terms and Company Benefits.
- 9.2 TVNZ (acting reasonably) will have sole discretion over the Competition, including the Competition rules.

10. PARTIES' OBLIGATIONS

- 10.1 The Company is solely liable for the Competition prize(s). The Company warrants that it will provide the Competition prize(s) directly to the winner(s) at the Company's cost in accordance with the Company's Privacy Policy and all applicable laws and regulations.
- 10.2 Each party warrants that it will comply with the New Zealand Privacy Act 2020 in respect of its collection, use, treatment, storage and disclosure of any personal information provided by entrants of the Competition (**Entrants' Information**).
- 10.3 Where TVNZ transfers Entrants' Information to the Company for the Company's own promotional and marketing purposes, the Company warrants that:
 - a) it will only use the Entrants' Information for promotional and marketing purposes in accordance with its Privacy Policy, and it will be solely liable for any electronic messages sent by the Company to the entrants; and

- b) it will notify TVNZ if there is a data breach affecting the Entrants' Information, such notification to be within 72 hours of any such breach.
- 10.4 Where Agency receives Entrants' Information from TVNZ, Agency warrants it will only hold the Entrants' Information on behalf of the Company and will not use it for its own purposes.
- 10.5 The Company indemnifies TVNZ against all actions, claims, liabilities, costs, expenses (including reasonable legal expenses), damages, penalties and losses howsoever arising, suffered or incurred by TVNZ in connection with the Competition prize(s) and any breach by the Company of any of its warranties in this clause 10.
- 10.6 TVNZ indemnifies the Company against all actions, claims, liabilities, costs, expenses (including reasonable legal expenses), damages, penalties and losses howsoever arising, suffered or incurred by the Company in connection with any breach by TVNZ of any of its warranties in this clause 10.

COMPANY BENEFITS

Clause 11 below applies if the Company is receiving any Company Benefits as described in the Key Terms and/or Schedule 1 (Company Benefits).

11. GRANT OF COMPANY BENEFITS

- 11.1 TVNZ will provide the Company Benefits to the Company.
- 11.2 The Company Benefits do not apply to any Item that is subject to third party commercial rights or restrictions as notified by TVNZ to the Company prior to its broadcast or transmission.
- 11.3 The size and placement of the Company Logo and branding will be determined by TVNZ at its reasonable discretion. All artwork and copy for signage which is produced by the Company must be approved by TVNZ prior to publication.

GENERAL

The remaining clauses below apply to all engagements with TVNZ under this Agreement.

12. TERM

- 12.1 Unless terminated earlier in accordance with this Agreement, the term of this Agreement will commence when TVNZ is engaged to provide or deliver any services, benefits or deliverables described in this Agreement and will conclude 30 days after the provision or delivery of all such services, benefits or deliverables.

13. OTHER TERMS AND CONDITIONS

- 13.1 The Advertising Terms and Conditions (the **Advertising T&Cs**) apply to all advertising placement, booking, and Spend Commitment (the up-to-date version of the Advertising T&Cs is available at <https://sales.tvnz.co.nz/resources/advertising-terms-and-conditions/>). In the event of any conflict between these Commercial Partnership Terms and Conditions (the **Commercial T&Cs**) and the Advertising T&Cs, the Advertising T&Cs will apply.
- 13.2 Any and all rights not expressly granted to the Company in this Agreement are reserved to TVNZ.

14. TRANSMISSION AND PRODUCTION

- 14.1 TVNZ reserves the right to cancel, reschedule or delay the time and/or date of transmission of the Company Benefits, Item and/or Content (or any part thereof) at its sole discretion, and will have no liability to the Company in connection with such cancellation, rescheduling or delay except as described in clause 18.3(d).
- 14.2 TVNZ reserves the right to withhold Company Benefits and any other advertising on commercial holidays as required by the Broadcasting Act 1989 or its successors.
- 14.3 The Company acknowledges that TVNZ may use Artificial Intelligence (**AI**) tools in performing its obligations under

this Agreement, including in the production of any content or assets. TVNZ warrants that any outputs generated using AI tools will be reviewed by a human. Other than as expressly provided in this clause, TVNZ makes no representations or warranties (including any warranties in clause 18.3) in respect of the use of AI tools.

15. FEE

- 15.1 In consideration of the Fee, TVNZ will provide the services and deliver the deliverables described under these Commercial T&Cs. The Company will pay the Fee in accordance with the Payment Schedule.
- 15.2 The Fee is "net net", meaning net of all discounts and net of any applicable commissions (including Agency commissions) and excluding GST.
- 15.3 Subject to clause 15.4 below, invoices will be paid on or before the 20th of the month following the month in which the invoice is received.
- 15.4 Where an Agency is paying the Fee on behalf of the Company as described in the Key Terms:
- a) the Company agrees that it has appointed that Agency to pay invoices under the Agreement on the Company's behalf and instructs TVNZ to send such invoices direct to the Agency. The Agency will make payment in accordance with the Agency's standard payment terms agreed with TVNZ;
 - b) the Company will procure that the Agency pays the Fee;
 - c) no commission will be payable by TVNZ to the Agency; and
 - d) if the Agency fails to pay the Fee, the Company will pay all such Fees due and owing on demand.
- 15.5 The Company will pay interest on any overdue amount owing to TVNZ at the rate of 3% per annum above the NZ Official Cash Rate as at the due date. Interest will accrue on a daily basis from the due date until the date of payment.
- 15.6 If the Company fails to make any payment of the Fee within seven (7) days of the due date, the Company agrees that it shall forfeit its rights to all rights and benefits under this Agreement.

16. COMPANY MATERIALS

- 16.1 Company will provide TVNZ with a company logo that it wishes to use in connection with the Company Benefits, Partnership, Sponsorship, Commercial Integration, Content Partnership, Deliverables and/or Competition (as the case may be) (**Company Logo**). The Company Logo must be provided to TVNZ in a format and within the deadlines reasonably specified by TVNZ.
- 16.2 In the event that the Company changes the Company Logo or trade dress during the term of the Agreement, the Company will be solely responsible for any costs in connection with such change (including all costs relating to replacement of signage or programme-related advertising and promotional material).
- 16.3 The Company hereby grants TVNZ the irrevocable right to use all materials and other elements provided to TVNZ under this Agreement, including the Supplied Materials, Company Assets, Company Logo, Product, campaign concepts, scripts, performances, and music (together, the **Company Materials**) to:
- a) the extent required for TVNZ to create, provide and deliver the Company Benefits, Partnership, Sponsorship, Commercial Integration, Content Partnership, Deliverables, Production Services, Competition and any other goods and services under these Commercial T&Cs or as otherwise specified in these Commercial T&Cs; and

- b) where TVNZ has been engaged to deliver any Commercial Integration, Content or Competition, transmit and exploit the Company Materials as they appear within the Commercial Integration, Content or Competition via all media and distribution methods worldwide in perpetuity.
- 16.4 TVNZ will have the non-exclusive royalty free right to use and store any Company Materials and references to the Company, as incorporated in the Company Benefits, Item, Content, Deliverables and/or Competition (as the case may be) for TVNZ's own promotional use in internal and client and prospective client presentations, showreels, specific industry publications (online and print), trade shows, for awards, and on its websites.
- 16.5 As between the parties, the Company Materials used within the Company Benefits, Item, Content, Deliverables and/or Competition (as the case may be) are owned by the Company.
- 16.6 Where talent is required to be cleared under the Company Obligations, the Company is solely liable for the talent's participation, actions and omissions in relation to the Item, Content, Deliverables and/or Competition (as the case may be).
- 16.7 In respect of any Product to be provided by the Company:
- a) the Company (at no cost to TVNZ, including in respect of delivery and collection) will provide the Product to TVNZ and, if applicable, collect the Product from TVNZ after production;
 - b) the Company will provide the Product when requested by TVNZ in a timely and effective manner and will deliver to such location(s) and at such date(s) and time(s) specified by TVNZ;
 - c) the Product will comply with any warranties and guarantees ordinarily applying to the supply of the Product by the Company to any third party; and
 - d) TVNZ will not be responsible for any loss or damage to the Product. For the avoidance of doubt, the Company is responsible for insurance of the Product (if any) and for paying any excess amounts in the event of loss or damage to the Product while in TVNZ's possession.
- 17. AGENCY CONFIRMATION OF AUTHORITY**
- 17.1 If a party to the Agreement, the Agency warrants it will comply with its obligations under this Agreement and has all necessary rights and authority to act on the Company's behalf in all its dealings with TVNZ in relation to these Commercial T&Cs and to sign and enter this Agreement, and/or pay the Fee, on behalf of the Company (**Authority**), and indemnifies TVNZ from and against all actions, claims, liabilities, costs, expenses (including reasonable legal expenses), damages, penalties and losses howsoever arising, suffered or incurred by TVNZ in connection with any failure by the Agency to have the necessary Authority or any breach by the Agency of this clause 17.1 or clause 10.4.
- 18. WARRANTIES**
- 18.1 Each party warrants to the other that it has all authority to enter into this Agreement.
- 18.2 The Company warrants to TVNZ that:
- a) it will not conduct itself in a manner which is, or is likely to be, detrimental to the reputation of TVNZ or its licensors, the Item or Content;
 - b) all Company Materials are original and owned or licensed by the Company and TVNZ's use of the Company Materials will not infringe the rights of any third party;
 - c) it has obtained any necessary consents, licences, or waivers required to fulfil the Company Obligations;
 - d) the Company Materials, and the Company's performance of its obligations under this Agreement, will comply with all applicable laws, regulations and binding codes of practice;
 - e) any information, sales messaging, claims and representations provided by the Company to be incorporated in the Company Benefits, Item, Content, Deliverables and/or Competition is accurate and complies with all applicable laws, regulations and binding codes of practice;
 - f) other than as expressly provided in this Agreement, it will not without TVNZ's prior written approval:
 - i) make any announcements or conduct any marketing or promotional activity in connection with this Agreement;
 - ii) imply any association with the Item or Content or any talent or other participants in the Item or Content; or
 - iii) use any Item or Content (in whole or part);
 - g) it will only use the Deliverables in accordance with the Third Party Licences;
 - h) it will only use the Format in accordance with the Format Licence;
 - i) it will only use the Licensed Materials in accordance with the Company Licence; and
 - j) it will not do or permit to be done anything which may infringe or endanger TVNZ's rights in the Item or Content, including creating or registering any logo similar to the logo of the Item or Content.
- 18.3 TVNZ warrants to the Company that:
- a) subject to clause 18.2 and any other limitations expressly set out in this Agreement, the Content, Deliverables, and TVNZ's performance of its obligations under this Agreement, will comply with all applicable laws, regulations and binding codes of practice;
 - b) subject to clause 18.2 and any other limitations expressly set out in this Agreement, the Company's use of the Content and/or Deliverables in accordance with this Agreement will not infringe the intellectual property rights of any third party; and
 - c) other than in connection with this Agreement (including in respect of any Company Benefits, Partnership, Sponsorship, Commercial Integration, Content Partnership, Deliverables and Competition) or to the extent permitted by s 42 of the Copyright Act 1994, TVNZ will not without the Company's prior written approval:
 - i) imply any association with the Company; or
 - ii) use any Company Material (in whole or part).
 - d) To the extent that TVNZ does not deliver any Company Benefits, Commercial Integration, Content and/or Deliverables, TVNZ (acting reasonably and in consultation with the Company) will determine a make good or refund corresponding to the value of the portion of the Company Benefits, Commercial Integration, Content and/or Deliverables not delivered, provided that the Company is not in breach of its obligations under this Agreement.
- 18.4 Each party (**Indemnifying Party**) indemnifies the other party against all actions, claims, liabilities, costs, expenses (including reasonable legal expenses), damages, penalties and losses howsoever arising, suffered or incurred by the other party in connection with any breach by the Indemnifying Party of any of its warranties in this clause 18. For the avoidance of doubt, a breach of warranty under this clause 18 is a material breach of this Agreement.

19. TERMINATION

- 19.1 Either party may terminate this Agreement immediately on written notice to the other party if:
- a) the other party commits a material breach of this Agreement that is not capable of remedy, or fails to remedy a breach that is capable of remedy within 7 days of notice; or
 - b) the other party goes into receivership or has a receiver, trustee and/or manager appointed, or is the subject of liquidation or winding up proceedings or action or makes an assignment for the benefit of, or enters into or makes any arrangement or composition with, its creditors.
- 19.2 On termination or expiry of this Agreement:
- a) clauses 1, 2, 4, 5, 7, 8.2, 10, 13, 14.3, 15, 16.3–16.7, 17, 18, 19.2, 19.3, 20, 21, 22 will survive;
 - b) all rights and opportunities (including the Company Benefits, Format Licence, Company Licence, any use of TVNZ's logos or branding, and any use of the Item's name, logo or Assets) granted to the Company will automatically expire and the Company will cease all use of such rights and opportunities; and
 - c) each party will, at the other party's option, either return or destroy all copies of the other party's confidential information.
- 19.3 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach which existed before the date of termination or expiry.

20. LIABILITY

- 20.1 Notwithstanding anything else in this Agreement, but except in respect of fraud, wilful breach, and its obligations in clause 21.1 (Confidentiality), TVNZ's total liability (under the law of contract, tort, equity or otherwise) for any damages, losses, claims or liability, howsoever arising, in connection with this Agreement will be limited in aggregate to the total amount of the Fee.
- 20.2 Except in respect of Company's liability for fraud, wilful breach, breach of warranty, indemnity, and its obligations in clause 21.1 (Confidentiality), Company's total liability (under the law of contract, tort, equity or otherwise) for any damages, losses, claims or liability, howsoever arising, in connection with this Agreement will be limited in aggregate to the total amount of the Fee.
- 20.3 In no event will either party be liable for any indirect, consequential loss or damage, or loss of profits, howsoever arising.

21. MISCELLANEOUS

- 21.1 *Confidentiality*: TVNZ and the Company (in its own right and in respect of its Agency) will keep this Agreement and its terms, and any confidential information about the other party, and the Item and/or Content, confidential unless required by law or in connection with legal proceedings related to this Agreement or if such information becomes generally and publicly available otherwise than as a result of a breach of this clause.
- 21.2 *Force Majeure*: Except in respect of the Company's obligation to pay the Fee, neither party shall be in breach of this Agreement nor liable for any non-performance, or any delay in performing, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including without limitation, strike, lockout, labour

controversy, orders of court, technical issues or faults, live transmission issues or faults, inclement weather conditions or emergency (**Force Majeure**).

- 21.3 *Entire Agreement*: The Agreement contains all the terms of agreement between the parties and supersedes all prior arrangements and undertakings that are not consistent with this Agreement.
- 21.4 *Relationship of the parties*: The relationship of the parties is that of independent contractors, and nothing in this Agreement, or the relationship between the parties, shall be construed as a relationship of partnership or agency. Neither party may enter into binding commitments on behalf of the other.
- 21.5 *Assignment*: The Company (or its Agency) may not directly or indirectly assign or otherwise dispose of any or all of its rights or obligations under this Agreement without the prior written consent of TVNZ, such consent not to be unreasonably withheld.
- 21.6 *Waiver*: No delay or failure by a party to exercise any right or remedy under this Agreement or by law shall constitute a waiver of that or any other right or remedy. No waiver is effective unless it is in writing. No single or partial exercise of any right or remedy under this Agreement shall prevent or restrict the further exercise of that or any other right or remedy.
- 21.7 *Severability*: If one or more provisions of this Agreement are declared invalid or unenforceable, the remaining provisions will not be affected and will continue in full force and effect.
- 21.8 *Further Assurances*: Each party will, at its own expense and when requested by the other party, promptly do, sign and deliver everything reasonably required for the purposes of and to give full effect to this Agreement, its provisions and any transactions contemplated by it.
- 21.9 *Third Party Rights*: The provisions of this Agreement are for the benefit of, and are intended to be enforceable by, the parties to this Agreement only pursuant to the Contract and Commercial Law Act 2017, Part 2, Subpart 1 (Contractual Privity). Except as expressly stated, nothing in this Agreement is intended to confer a benefit upon any third party.
- 21.10 *Notices*: Notices required under this Agreement must be sent in writing to the registered company address or email of the recipient. For notices by email to TVNZ, the email address is legal@tvnz.co.nz. If sent by post, notices will be deemed delivered two (2) business days after posting, and if sent by email notices will be deemed delivered once a correct transmission confirmation is received.
- 21.11 *Change terms*: TVNZ may, at its discretion and without incurring any liability, change these Commercial T&Cs for future commercial arrangements on notice at any time by publishing any changes or new versions on its website.
- 21.12 *Announcements*: Neither party may issue press releases, announcements or other public statements about this Agreement, or anything related to the subject matter of this Agreement, without the prior written approval of the other party.
- 21.13 *Governing Law*: This Agreement is governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the New Zealand courts.

22. INTERPRETATION

- 22.1 Capitalised terms used but not defined in these Commercial T&Cs have the meaning given to them in the Key Terms and Company Benefits.