

SPONSORSHIP

Clauses 1 and 2 below apply if the Company is sponsoring content as described in a 'Sponsorship' section of the Key Terms.

1. CONTENT SCHEDULE

- 1.1 TVNZ may amend the Content Schedule and/or cancel the Sponsored Content (or any part thereof) at its sole discretion.
- 1.2 TVNZ may at any time make the Sponsored Content (or any part thereof) available outside the Content Schedule, or on any form of media where the Company Benefits do not apply (each a **Retransmission**). A Retransmission may be sponsored by a third party (provided the Company has first been offered to sponsor that Retransmission and has not accepted that offer within 14 days). TVNZ may also decide that the Retransmission is not to be sponsored. TVNZ will consult with the Company before making the Sponsored Content available via a Retransmission.
- 1.3 After the expiry or termination of the Sponsorship Period 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 Sponsored Content or remove all references to the Company and Company Materials, and further may incorporate references to any new sponsor.

2. EDITORIAL CONTROL AND OWNERSHIP

- 2.1 All editorial decisions concerning the Sponsored Content are entirely at the sole discretion of TVNZ.
- 2.2 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 Sponsored Content.

COMMERCIAL INTEGRATION

Clauses 3 and 4 below apply if the Company is receiving a commercial integration as described under a 'Commercial Integration' section of the Key Terms.

3. BROADCAST/TRANSMISSION

- 3.1 TVNZ may cancel or reschedule the time and/or date of the Commercial Integration if (i) (in its reasonable opinion) it considers necessary to do so due to any event of Force Majeure, travel disruption, or breaking news or other major event, or (ii) the Programme in which the Commercial Integration is scheduled to appear is cancelled or rescheduled. In the event that TVNZ cancels or reschedules in accordance with this clause 3.1, TVNZ will have no liability to the Company in connection with such rescheduling or cancellation except as described in clause 18.3(d).
- 3.2 After the first transmission of the Programme, TVNZ may exploit and use the Programme (or any part thereof) in any media at any time at its sole discretion. In respect of any such exploitation or use, 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 Programme or remove all references to the Company and Company Materials.

4. EDITORIAL CONTROL AND OWNERSHIP

- 4.1 All editorial decisions concerning the Programme are entirely at the sole discretion of TVNZ.

- 4.2 Subject to clause 16.4, 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 Programme.

CONTENT PRODUCTION

Clauses 5 to 7 below apply if the Company is engaging TVNZ to produce assets under a 'Content Production Partnership' section of the Key Terms.

5. PRODUCTION SERVICES

- 5.1 TVNZ will provide the Production Services to produce the Partnership Content.

6. BROADCAST/TRANSMISSION

- 6.1 TVNZ may cancel or reschedule the time and/or date of transmission of the Partnership Content if (in its reasonable opinion) it considers necessary to do so due to any event of Force Majeure, travel disruption, or breaking news or other major event, and will have no liability to the Company in connection with such rescheduling except as described in clause 18.3(d).

7. EDITORIAL CONTROL AND OWNERSHIP

- 7.1 All editorial decisions concerning the Partnership Content are entirely at the sole discretion of TVNZ.
- 7.2 Subject to clause 16.4, the parties agree that TVNZ is the sole and exclusive owner of the entire copyright and all other rights, title and interest in and to the Partnership Content.

BLACKSAND PRODUCTION

Clauses 8 to 9 below apply if the Company is engaging TVNZ to produce assets under a 'Blacksand Production' section of the Key Terms.

8. PRODUCTION SERVICES

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

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 Upon full payment of the Fee, TVNZ will assign all rights it has in and to the Deliverables (excluding the Format and any TVNZ logos, trade marks and branding) to the Company.
- 9.2 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.
- 9.3 TVNZ will have the non-exclusive royalty free right to use and store the Deliverables (including any Company Materials and references to the Company as incorporated into the Deliverables) for its 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.

COMPANY COMPETITION

Clause 10 below applies if the Company is running its own competition as described under a 'Competition' section of the Key Terms.

10. COMPETITION SERVICES

- 10.1 TVNZ, in consultation with the Company, will promote the Competition as described in the Company Benefits.
- 10.2 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 11 and 12 below apply if TVNZ is running a competition as described under a 'Competition' section of the Key Terms.

11. COMPETITION SERVICES

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

12. PARTIES' OBLIGATIONS

- 12.1 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.
- 12.2 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**).
- 12.3 Where TVNZ transfers Entrants' Information to the Company for the Company's own promotional and marketing purposes, the Company warrants that:
- 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
 - 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.
- 12.4 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.
- 12.5 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 12.
- 12.6 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 other party in connection with any breach by TVNZ of any of its warranties in this clause 12.

COMPANY BENEFITS

Clause 13 below applies if the Company is receiving any Company Benefit as described in the Key Terms.

13. GRANT OF COMPANY BENEFITS

- 13.1 TVNZ will provide the Company Benefits to the Company.
- 13.2 The Company Benefits do not apply to any Sponsored Content or Programme that is subject to third party commercial rights or restrictions as notified by TVNZ to the Company prior to its broadcast or transmission.
- 13.3 TVNZ reserves the right to withhold Company Benefits and any other advertising on commercial holidays as required by the Broadcasting Act 1989.

- 13.4 The Company Logo size and placement where it appears as part of the Company Benefits will be determined by TVNZ at its reasonable discretion.

GENERAL

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

14. ADVERTISING TERMS

- 14.1 The TVNZ 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/>). In the event of any conflict between these Commercial Terms and Conditions (the **Commercial T&Cs**) and the Advertising T&Cs, the Advertising T&Cs will apply.

15. FEE

- 15.1 In consideration of the Fee, TVNZ will provide the services and deliver the deliverables described under these Commercial Terms and Conditions. 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:
- 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;
 - the Company will procure that the Agency pays the Fee;
 - no commission will be payable by TVNZ to the Agency; and
 - 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.

16. COMPANY MATERIALS

- 16.1 Company will provide TVNZ with a company logo that it wishes to use in connection with the Company Benefits, Commercial Integration, Partnership Content, 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 The Company shall be solely responsible for any costs in connection with any change to the Company Logo or trade dress during the term of the Agreement.
- 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 Sponsorship Materials, Company Assets, Company Logo, campaign concepts, scripts, performances, and music (together, the **Company Materials**) to:
- the extent required for TVNZ to create, provide and deliver the Company Benefits, Commercial Integration, Partnership Content, 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, Partnership Content or Competition, transmit and exploit the Company Materials as they appear within the Commercial Integration, Partnership Content or Competition via all media and distribution methods worldwide in perpetuity.

16.4 As between the parties, the Company Materials used within the Company Benefits, Commercial Integration, Partnership Content, Deliverables and/or Competition (as the case may be) are owned by the Company.

16.5 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 Commercial Integration, Partnership Content, Deliverables and/or Competition (as the case may be).

17. AGENCY CONFIRMATION OF AUTHORITY

17.1 If a party to the Agreement, the Agency warrants it has all necessary rights and authority to act on the Company's behalf in all its dealings with TVNZ in relation to these Commercial Terms and Conditions and to sign and enter this Agreement 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 clause 12.4.

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 Sponsored Content, Programme, or Partnership 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 Commercial Integration, Partnership 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 Sponsored Content, Programme or Partnership Content or any talent or other participants in the Sponsored Content, Programme or Partnership Content; or

iii) use any Sponsored Content, Programme or Partnership 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 Partnership Content in accordance with the Content Licence; and
- j) it will not do or permit to be done anything which may infringe or endanger TVNZ's rights in the Sponsored Content, Programme or Partnership Content, including creating or registering any logo similar to the logo of the Sponsored Content, Programme or Partnership Content; and

18.3 TVNZ warrants to the Company that:

- a) subject to clause 18.2, the Commercial Integration, Partnership 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, the Company's use of the Partnership 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, Sponsorship, Commercial Integration, Partnership Content, 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, Partnership 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 portion of the Company Benefits, Commercial Integration, Partnership 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, 2, 3.2, 4, 7, 9, 12, 14, 15, 16.3-16.5, 17, 18, 19.2, 19.3, 20 and 21 will survive;
- b) all rights and opportunities (including the Company Benefits, Format Licence and Content Licence) 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 Sponsored Content and Programme, 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 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.