

**1. GRANT OF COMPANY BENEFITS**

- 1.1 Conditional upon the payment of the consideration pursuant to clause 2, TVNZ will provide the Company Benefits to the Company.
- 1.2 Any and all rights not expressly granted to the Company in this Agreement are reserved to TVNZ.
- 1.3 The size and placement of Company 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.
- 1.4 TVNZ reserves the right to withhold Company Benefits and any other advertising on commercial holidays as required by the Broadcasting Act 1989.
- 1.5 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 the Production Funding Terms and Conditions (the **Production Funding T&Cs**) and the Advertising T&Cs, the Advertising T&Cs will apply.

**2. CONSIDERATION**

- 2.1 In consideration of the Company Benefits, the Company will pay to TVNZ the Fee in accordance with the Payment Schedule.
- 2.2 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 this 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 if the Agency fails to pay the Fee, the Company will pay all such Fees due and owing on demand.
- 2.3 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.
- 2.4 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.
- 2.5 If specified in the Key Terms, as addition consideration for the provision by TVNZ of the Company Benefits to the Company, the Company will provide to TVNZ (at no cost to TVNZ, including in respect of delivery) the Product/Contra.
- 2.6 In respect of any Product/Contra consideration to be provided by the Company hereunder:
  - a) The Company will provide the Product/Contra 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.
  - b) The supply of the Product/Contra will be on the commercial terms and conditions ordinarily applying to the supply of those goods and services to any third party. In the event of an inconsistency between those

terms and conditions and this Agreement, the provisions of this Agreement will prevail. Any provision of any terms and conditions contrary to these provisions will be of no force or effect.

- 2.7 TVNZ will be entitled to all warranties and guarantees ordinarily applying to the goods and services which are supplied by the Company as Product/Contra.
- 2.8 If GST is levied or imposed on or in respect of any supply made under or in connection with this Agreement for which the consideration is a monetary payment, then the consideration payable for that supply is increased by the rate at which that GST is levied or imposed.
- 2.9 If GST is levied or imposed on or in respect of any supply made by the Company under or in connection with this Agreement for which the consideration is a non-monetary payment:
  - a) The parties agree that TVNZ may issue a 'Buyer Created Tax Invoice' ("BCTI") in respect of the product/contra consideration supply.
  - b) The Company agrees to provide TVNZ their GST number for the purposes of raising the BCTI
  - c) The Company must not issue a tax invoice in respect of any supply for which TVNZ issues a BCTI.
  - d) TVNZ will notify the Company if TVNZ ceases to satisfy any of the requirements which allow TVNZ to issue a BCTI.
  - e) TVNZ will not issue a document which would be a BCTI on behalf of the Company unless it is entitled to do so pursuant to the Goods and Services Tax Act 1985.

**3. PROGRAMME BROADCAST**

- 3.1 As at the date of this Agreement, TVNZ intends to first broadcast the Programme during the Broadcast Timeslot, but reserves the right to amend the Broadcast Timeslot or cancel the Programme at its sole discretion.
- 3.2 Should TVNZ cancel the Programme before all of the Company Benefits are delivered, TVNZ will (acting reasonably and in consultation with the Company), determine a make good or refund corresponding to the value of portion of the Company Benefits not provided.
- 3.3 TVNZ may at any time make the Programme (or any part thereof) available outside the Contract Period, 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.
- 3.4 After the expiry or termination of the Contract Period or this Agreement, the Company 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.

**4. EDITORIAL CONTROL**

- 4.1 As between TVNZ and the Company, TVNZ shall have sole and exclusive control over the content of the Programme, Assets created, and publicity associated with the Programme. The Company will have no right, and will make no attempt, to influence the editorial content of the Programme.

## 5. INTELLECTUAL PROPERTY

5.1 Subject to clause 6.4, the Company acknowledges and agrees that, as between TVNZ and the Company, TVNZ is the owner of the entire copyright and all other rights, title and interest in and to the Programme, including without limitation the name and logo, and all audio, visual and audio-visual content, other footage and any Assets created.

## 6. COMPANY MATERIALS

6.1 Company will provide TVNZ with a company logo that it wishes to use in connection with the Programme (**Company Logo**). The Company Logos must be provided to TVNZ in a format and within the deadlines reasonably specified by TVNZ.

6.2 In the event that the Company alters or changes the Company Logo or trade dress during the Contract Period, all costs relating to replacement of signage or Programme-related advertising and promotional material will be borne by the Company.

6.3 The Company hereby grants TVNZ the irrevocable right to use all materials and other elements provided to TVNZ under this Agreement, including the Company Logo, sales messaging, claims and representations, information and performances (together, the **Company Materials**), both during and after the Contract Period, in connection with the Programme (and any Re-Transmission of the Programme) and the provision of the Company Benefits as set out in this Agreement.

6.4 As between the parties, the Company Materials used within the Programme and within the Company Benefits are owned by the Company.

## 7. AGENCY CONFIRMATION OF AUTHORITY

7.1 If a party to this 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 this Agreement 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.

## 8. WARRANTIES

8.1 Each party warrants to the other that it has all authority to enter into this Agreement.

8.2 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, its licensors, or the Programme;
- b) all Company Materials, including the Company Logo, 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) 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;
- d) 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 Programme, or any talent or other participants in the Programme; or
  - iii) use any Programme logos, footage or other intellectual property associated with the Programme;

e) it will only use the Programme IP in accordance with the Sponsor Licence (if applicable);

f) it will not do or permit to be done anything which may infringe or endanger TVNZ's rights in the Programme including creating or registering any logo similar to the logo of the Programme; and

g) it will provide the Product/Contra (if applicable) in accordance with this Agreement.

8.3 TVNZ warrants to the Company that:

a) subject to clause 8.2, TVNZ's performance of its obligations under this Agreement will comply with all applicable laws, regulations and binding codes of practice; and

b) other than in connection with this Agreement (including in respect of the Programme and any Company Benefits) 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).

8.4 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. For the avoidance of doubt, a breach of warranty under this clause is a material breach of this Agreement.

## 9. LIABILITY

9.1 Notwithstanding anything else in this Agreement, but except in respect of fraud, wilful breach, and its obligations in clause 11.1 (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.

9.2 Except in respect of Company's liability for fraud, wilful breach, breach of warranty, indemnity, and its obligations in clause 11.1 (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.

9.3 In no event will either party be liable for any indirect, consequential loss or damage, or loss of profits, howsoever arising.

## 10. TERMINATION

10.1 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.

10.2 On termination or expiry of this Agreement:

- a) on expiry or termination of this Agreement, clauses 1.5, 2, 3.3, 3.4, 4, 5, 6.3, 6.4, 7, 8, 9, 10.2, 10.3 and 11 will survive;
- b) all rights and opportunities (including the Company Benefits and any use of the Programme 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.

10.3 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.

## 11. GENERAL

11.1 *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 or the 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.

11.2 *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.

11.3 *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**).

11.4 *Insurance*: The Company warrants that it has in place, and will maintain for the duration of the Contract Period, adequate product liability and general liability insurance with a limit of no less than NZ\$5,000,000 for any one claim throughout the world.

11.5 *Entire Agreement*: This Agreement contains all the terms of agreement between the parties and supersedes all prior arrangements and undertakings that are not consistent with this Agreement.

11.6 *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.

11.7 *Assignment*: The Company (or its Agency) may not directly or indirectly assign or otherwise dispose of any of its rights or obligations under this Agreement, without the prior written consent of TVNZ, such consent not to be unreasonably withheld.

11.8 *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.

11.9 *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.

11.10 *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.

11.11 *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.

11.12 *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](mailto: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.

11.13 *Change terms*: TVNZ may, at its discretion and without incurring any liability, change the Production Funding T&Cs for future Production Funding arrangements at any time by publishing any changes or new versions on its website.

11.14 *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.