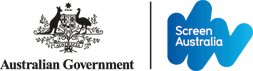
**THIS IS AN IMPORTANT DOCUMENT. IT CONTAINS BINDING LEGAL OBLIGATIONS. READ IT CAREFULLY AND CONSULT YOUR SOLICITOR BEFORE SIGNING IT.**



**“WORLD’S BEST DOCUMENTARY”**

**SCREEN AUSTRALIA APPLICATION NUMBER 1234**

**SCREEN AUSTRALIA TITLE ID 4455**

**PRODUCER PROGRAM**

**PRODUCTION GRANT AGREEMENT**

**between**

**SCREEN AUSTRALIA**

**and**

**WORLDS BEST DOCUMENTARY HOLDING COMPANY PTY LTD**

**and**

**WORLDS BEST DOCUMENTARY PRODUCTION COMPANY PTY LTD**

**DATED 2015**

SCHEDULES

1. PARTIES TO THIS AGREEMENT

This agreement binds the following parties:

|  |  |
| --- | --- |
| **Screen Australia** | |
| ABN | ABN 46 741 353 180 |
| Address | Level 7, 45 Jones Street, Ultimo, NSW 2007 |

|  |  |
| --- | --- |
| **Producer** | |
| Name of company | Best Doco Holding Company Pty Ltd |
| ACN | 123 567 888 |
| ABN | 55 123 456 899 |
| Registered office | 1 Production St, Brisbane Qld, 6054 |
| Email | Fred@bdc.com.au |

|  |  |
| --- | --- |
| **Production Company** | |
| Name of company | Best Doco Production Company Pty Ltd |
| ACN | 183 567 989 |
| ABN | 55 789 456 899 |
| Registered office | 1 Production St, Brisbane Qld, 6054 |
| Email | Fred@bdc.com.au |

1. PRODUCTION PARTICULARS SCHEDULE

|  |  |
| --- | --- |
| **Production Details** | |
| Title | World’s Best Documentary |
| Underlying Work | Not applicable |
| Genre | Documentary |
| Format/Gauge | HDCam |
| Duration | 55 minutes |
| Form of release | Television |

|  |  |  |
| --- | --- | --- |
| **Principal Participants** | **M/F** | **Nationality** |
| Jane Smith | **F** | Australia |
| Christina Chringle | **F** | Finland |

|  |  |  |  |
| --- | --- | --- | --- |
| **Principal Personnel** | **Name** | **M/F** | **Nationality** |
| Executive producer | Mary Mullane | F | Australian |
| Physical producer | Sam Hedgwick | M | Australian |
| Writer | Solange Hanley | F | Australian |
| Director | Eloise Franks | F | Australia |

|  |  |
| --- | --- |
| Production Schedule | |
| Start of Pre-Production | 1 December 2015 |
| Start of Principal Photography | 1 January 2016 |
| Start of Post Production | 1 April 2016 |
| Rough Cut | 1 July 2016 |
| Fine Cut | 1 August 2016 |
| Completion Date | 1 October 2016 |
| Delivery Date | 15 October 2016 |
| Final Cost Report and Statutory Declaration | 3 Months from the Delivery Date |

or other dates as approved by Screen Australia pursuant to clause 5.1 of the Core Conditions.

|  |  |
| --- | --- |
| **Miscellaneous** | |
| **Completion Guarantor** | The Friendly Bond Company Ltd |
| **Screen Australia funding  program** | Producer Program |
| **Authorised Officer of Screen Australia** | [Insert name of Investment Manager responsible for the production];  Head of Production Investment; and / or  Head of Legal Services |

|  |  |
| --- | --- |
| **Conditions Precedent** | |
| **Solicitor’s opinion letter - intellectual property rights (clause 2.3.a)** | (First Screen Australia Instalment) No later than 2 Business Days before the 1st Screen Australia Instalment date specified in the Drawdown Schedule |
| **NFSA Deed (clause 2.3.b)** | (First Screen Australia Instalment) No later than 2 Business Days before the 1st Screen Australia Instalment date specified in the Drawdown Schedule |
| **Completion Guarantee (clause 2.3.c)** | (First Screen Australia Instalment) No later than 2 Business Days before the 1st Screen Australia Instalment date specified in the Drawdown Schedule |
| **Special Conditions** | Any additional Conditions Precedent set out in the Special Conditions Schedule |

|  |  |
| --- | --- |
| **Insurance** | |
| **Workers compensation insurance** | As required by law. |
| **Public liability insurance** | To the value of at least $20 million for each and every claim or occurrence giving rise to a claim in respect of activities undertaken under this agreement. |

1. FINANCE SCHEDULE

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Finance Plan** | | | | | | |
| **Contributor** | **Type of Finance** | **Amount** | | **Budget %** | | |
| **Marketplace** | | | | | | |
| FTA Broadcaster Pty Ltd  ACN 123 456 789 | Licence | | $60,000 | | 4.76% | |
| Distributor Pty Ltd  ACN 223 456 789 | DA | | $500,000 | | 39.68% | |
| **SUB TOTAL:** |  | | $560,000 | | 44.44% | |
| **Grant** | | | | | | |
| Screen Australia | Grant | | $350,000 | | | 27.78% |
| **SUB TOTAL:** |  | | $350,000 | | | 27.78% |
| **Other** | | | | | | |
| Deep Pockets Lending Pty Ltd  ACN 345 678 956 | Producer Offset Advance | | $300,000 | | | 23.81% |
| Producer | Equity | | $50,000 | | | 3.97% |
| **SUB TOTAL:** |  | | $350,000 | | | 27.78% |
| **BUDGETED COST:** |  | | $1,260,000 | | | 100.00% |

|  |  |  |
| --- | --- | --- |
| **Production Account** | | |
| Name of account | World Best Documentary Production Account Pty Ltd | |
| Bank | ZBA | |
| Branch address | 14 Smith St, Brisbane, QLD 5034 | |
| BSB # | 111-222 | |
| Account # | 11-22-33-44 | |
| Signatory | Mary Mullane | Sam Hedgwick |

|  |  |  |
| --- | --- | --- |
| **Investment Account** | | |
| Name of account | World Best Documentary Investment Account Pty Ltd | |
| Bank | ZBA | |
| Branch address | 14 Smith St, Brisbane, QLD 5034 | |
| BSB # | 111-222 | |
| Account # | 22-22-33-44 | |
| Signatory | Mary Mullane | Sam Hedgwick |

DELIVERABLES SCHEDULE

*To be delivered to Screen Australia:*

|  |  |  |
| --- | --- | --- |
| Qty | What | When |
| 3 | DVD copies of the Production | Delivery Date |
| 1 | Copy of the master set of production stills on USB | Delivery Date |
| 1 | Final Cost Report and statutory declaration | 3 months after the Delivery Date |
| 3 | Copies of commercial DVD release of the Production, if applicable | If and when available |
| 1 | ProRes file / HDProRes QTHQ4.2.2 file with 5.1audio and stereo tracks of the Production or other equivalent technical specification suitable for HD digital exploitation. | Delivery Date |
| 1 | Electronic press kit and written publicity pack for the Production | If and when available |
| 3 | Theatrical posters for Australia and overseas suppliers, if applicable | If and when available |
| 1 | Copy of the soundtrack on CD | If and when available |
| 1 | Copy of each cross platform element of the Production at the same time as such element is delivered under any funding agreement or other marketing agreement | If and when available |
| 1 | Written confirmation from the NFSA that the Producer has delivered all delivery items set out in the NFSA Deed. | Delivery Date |

*To be delivered to the Study Guide Provider:*

|  |  |  |
| --- | --- | --- |
| Qty | What | When |
| 3 | DVD copies of the Production | Within 30 days of the Completion Date |
| 1 | PDF of final post-production script, if applicable | Within 30 days of the Completion Date |
| 1 | Electronic press kit (if available) and written publicity pack | Within 30 days of the Completion Date |

1. SPECIAL CONDITIONS SCHEDULE

***Completed on a case by case example***

1. CREDITS SCHEDULE

***Note to Producer: For contracting expediency, only credits for the Producer and Screen Australia are set out in this credit schedule.***

***However under clause 10.2 of the Core Conditions the Producer is required to seek the written approval of Screen Australia to the full credit roll for both front and end credits. If there are third party credits that you wish Screen Australia to approve at the contracting stage, please send your proposal in writing directly to the Investment Manager.***

**Item I Presentation credits**

Screen Australia must receive a full frame presentation credit in the opening titles of all copies of the Production and in the title block of any posters, in the following order and containing the following words:

First card:

**SCREEN AUSTRALIA**

**AND**

**WORLDS BEST DOCO HOLDING COMPANY**

**PRESENT**

**Item II: End credits**

(a) Additional anti-piracy protection

The following anti-piracy note (included to encourage people not to illegally download and watch the Production) must appear immediately prior to commencement of the end credit roll sequence:

*“By watching this film legally, you have supported thousands of jobs – of creatives, distributors and crew – as listed below.”*

(b)End credit cards

Last Card:

**PRINCIPAL PRODUCTION FUNDING**

**FROM**

**[SCREEN AUSTRALIA LOGO]**

1. NOTICES SCHEDULE

Any written notice, document or other communication to be served or made to a party:

(a) must be sent to the address shown below for that party or to such alternative address as one party may notify to the other in writing:

**Screen Australia:**

Address: Level 7, 45 Jones Street

Ultimo New South Wales 2007

Email: [headoflegal@screenaustralia.gov.au](mailto:headoflegal@screenaustralia.gov.au)

to the attention of: Head of Legal Services

*Deliverables and Reports should be provided by way of email to:*

Email: [deliveries@screenaustralia.gov.au](mailto:deliveries@screenaustralia.gov.au)

to the attention of: Contracts Administrator

**Producer:** to the address of the registered office or email address as set out in the Production Particulars Schedule.

**Production Company:** to the address of the registered office or email address as set out in the Production Particulars Schedule.

(b) may be served by hand, registered or certified post or electronic mail and shall be deemed sufficiently served or delivered:

(i) in the case of hand delivery, on the next Business Day after delivery;

(ii) in the case of registered or certified post, 3 Business Days after posting;

(iii) in the case of electronic mail, at the time it is sent as evidenced by a record at the sender’s computer provided that is sent during a Business Day, otherwise the following Business Day.

1. BUDGET SCHEDULE

(Attached)

1. INSTALMENT SCHEDULE

|  |  |  |
| --- | --- | --- |
| **Instalment payment Date** | **Percentage** | **Amount** |
| Within 5 Business Days of signing this agreement and completion of all Conditions Precedent. | 60% | $210,000 |
| Within 5 Business Days of Screen Australia’s approval of the rough cut approval and rough cut cost report required pursuant to clause 6.2.c. | 35% | $122,500 |
| Within 5 Business Days of Screen Australia’s approval of the Final Cost Report. | 5% | $17,500 |
| **Total** | **100%** | **$350,000** |

**EXECUTED AS AN AGREEMENT**

|  |  |  |
| --- | --- | --- |
| **EXECUTED** for and on behalf of **SCREEN AUSTRALIA** by its authorised officer in the presence of: |  |  |
| Witness |  | Authorised Officer |
| Name of Witness |  | Name of Authorised Officer |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** for and on behalf of **WORLDS BEST DOCUMENTARY HOLDING COMPANY PTY LTD** in accordance with s127(1) of the *Corporations Act 2001* (Cth): |  |  |
| Signature of Director/Secretary |  | Signature of Director |
| Name of Director/Secretary | Name of Director |

|  |  |  |
| --- | --- | --- |
| **EXECUTED** for and on behalf of **WORLDS BEST DOCUMENTARY PRODUCTION COMPANY PTY LTD** in accordance with s127(1) of the *Corporations Act 2001* (Cth): |  |  |
| Signature of Director/Secretary |  | Signature of Director |
| Name of Director/Secretary | Name of Director |

CORE CONDITIONS

1. Undertakings of the Producer

The Producer agrees to:

* + - 1. produce, Complete and deliver the Production in accordance with this agreement (including the Schedules);
      2. use the Grant for the Production in accordance with the Budget;
      3. ensure complete payment of the Budgeted Cost into the Bank Account by all Contributors in accordance with the Contributor Agreements, the Finance Plan;
      4. ensure that the Production is of a technical quality suitable and fully acceptable for international theatrical release (if a film), television broadcast, video, online and all other media distribution;
      5. ensure the Deliverables and Reports are accurate, complete and delivered on time;
      6. provide Screen Australia with information, documents and Records relating to the Production promptly on request; and
      7. properly perform all Contributor Agreements, including by obtaining all Contributor approvals required under Contributor Agreements.

1. Grant

Screen Australia agrees to pay each Instalment of the Grant into the Bank Account subject to the Producer having completed all Conditions Precedent required to be completed before the due date of the Instalment.

The Producer agrees to complete each Condition Precedent before the time specified in the Conditions Precedent table in the Production Particulars Schedule.

Conditions Precedent to Screen Australia paying the first Instalment are:

* + - 1. the Producer providing Screen Australia an opinion from a suitably qualified solicitor in a form approved by Screen Australia that the Producer holds (or where a time is specified in clause 3, will hold before the time specified) all necessary Intellectual Property Rights and clearances in accordance with clause 3;
      2. the Producer providing Screen Australia with written confirmation from the NFSA that it has received a copy of a fully executed NFSA Deed for the Production; and
      3. the Completion Guarantee is fully executed in a form acceptable to Screen Australia.

Screen Australia is not required to pay Instalments that would otherwise be due if there is an Event of Default.

If any Contributor fails to provide any part of its contribution within 2 Business Days of the time for payment specified in the Contributor Agreement the Producer agrees to:

* + - 1. immediately notify Screen Australia in writing;
      2. meet the shortfall; and
      3. provide copies of agreements with parties contributing to a shortfall (if any) to Screen Australia if requested.

1. Intellectual Property Rights and clearances

The Producer warrants that on entering this agreement it holds (or where a time is specified in this clause 3, will hold before the time specified) all Intellectual Property Rights and clearances necessary to produce, Complete and exploit the Production, including as a minimum:

* + - 1. an exclusive, worldwide, licence (including the right to sublicense), for the full duration that copyright continues to subsist, subject to any rights granted to a Collecting Society, to use, electronically store, reproduce, perform, publish, communicate, adapt, exploit, make sequels, spin-offs and remakes and exploit the Format, in all media now known or created in the future, in respect of:
         1. the Underlying Work, before the start of principal photography;
         2. the Script, before the start of principal photography;
         3. a computer program created for the Production, before Completion;
         4. all musical works and sound recordings created for the Production, before Completion; and
         5. any other works and subject matter not covered in i to iv created for the Production, before Completion.
      2. a non-exclusive, worldwide, licence (including the right to sublicense), as embodied in the Production, for the full duration that copyright continues to subsist, subject to any rights granted to a Collecting Society, to use, electronically store, reproduce, perform, publish, communicate, adapt and exploit all works and subject matter not created for the Production but incorporated into the Production, in all media now known or created in the future, including:
         1. musical works and sound recordings;
         2. cinematograph films and stills; and
         3. computer programs,

before Completion;

* + - 1. all Principal Participant releases and Key Cast agreements, before the start of principal photography;
      2. all clearances, Moral Rights consents, permits, interviewee and other releases, before Completion; and
      3. ownership of copyright (under section 86 of the *Copyright Act 1968*) in the Production on Completion.

The Producer warrants that it will not infringe the Intellectual Property Rights of any person by producing, Completing and exploiting the Production and performing this agreement.

The Producer agrees to provide Screen Australia with copies of any agreements or clearance documents relating to the warranties in this clause 3 within 2 Business Days of Screen Australia’s written request.

* 1. The Producer grants (and warrants that it holds, or will hold prior to Completion, all necessary rights to grant) to Screen Australia a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence to use, electronically store and reproduce in all media:
     + 1. excerpts of the Production up to 3 minutes in aggregate (including “in-context” usage of any licensed copyright material); and
       2. the Marketing Materials;

to promote the Production; and

* + - 1. screenings of the whole Production to Screen Australia’s board, staff and a limited number of invited guests of Screen Australia and parliamentary screenings.

3.5 The Producer must provide Screen Australia with Marketing Materials before or after Completion of the Production for the purposes of clause 3.4.

3.6 The Production will contain a complete and effective copyright notice. The Producer agrees to take all necessary steps to protect its Intellectual Property Rights in the Production.

1. Bank Accounts

The Producer must keep the Bank Accounts open until Screen Australia accepts the Final Cost Report provided in accordance with clause 6.

The Producer agrees:

* + - 1. to use the Bank Accounts solely for the receipt and expenditure of the monies paid to the Producer by the Contributors, for the purpose of producing and Completing the Production according to the Budget;
      2. not to deposit its own money in a Bank Account other than its specified contribution to the Budgeted Cost (if any);
      3. not to transfer money in a Bank Account to another account owned or operated by it other than through the ordinary course of expenditure of the Budget; and
      4. not to deposit any money required by this agreement to be deposited in a Bank Account in any other account.

The Producer agrees that it will not establish a bank account other than the Bank Account/s for the purposes of the Production without Screen Australia’s prior written consent, with the exception that the Producer may establish a collections account for Production receipts and a separate bank account to receive the Producer Offset Proceeds.

All interest that accrues on money in the Bank Accounts must be applied as follows:

* + - 1. first, towards the cost of producing the study guide for the Production;
      2. second, towards the cost of producing the Production, which contribution shall not increase the Budgeted Cost; and
      3. third, as Underage to be applied in accordance with clauses 4.7.a or 4.7.b.

Only the signatories specified in the Finance Schedule may operate the Bank Accounts.

The Producer must provide Screen Australia with copies of any or all of the bank statements for the Bank Accounts within 2 Business Days of Screen Australia’s written request.

The Producer agrees to:

* + - 1. repay any Underage within 30 days of the date of the Final Cost Report, as a debt owing to Screen Australia in accordance with the percentages of its respective contribution to the Budgeted Cost specified in the Finance Plan;
      2. in respect of an amount of Underage owing to Screen Australia under a. above, the Producer may request approval from Screen Australia to use the amount to market the Production, such approval being in Screen Australia’s sole discretion and subject to Screen Australia’s written consent;
      3. pay any Overage; and
      4. meet any shortfall arising from foreign currency movements.

1. Approvals

The Producer agrees to obtain Screen Australia’s prior written approval in respect of any:

* + - 1. change to the Principal Personnel, Principal Participants or Key Cast;
      2. reallocation of more than 20% of any budget category in the Budget;
      3. change to the Budgeted Cost or any element of the Finance Plan;
      4. variation to the Budget which reduces or is likely to reduce QAPE or Producer Equity Program grant (if applicable);
      5. change to the Production Schedule;
      6. change of the title of the Production; and
      7. material amendment to the Script

If the Production changes after Screen Australia views the Production on Completion, the Producer agrees to ensure that Screen Australia has an opportunity to view the Production before its first broadcast or release.

Any approval under clause 5 is subject to clause 1.1 (a) and clause 20.5.

Screen Australia agrees to exercise its rights under this agreement to approve or not approve any changes without unreasonable delay.

1. Reporting

The Producer agrees to:

* + - 1. keep, organise and safely store adequate and proper Records;
      2. ensure its accounts are prepared according to the *Corporations Act 2001* (Cth) and generally accepted Australian accounting principles;
      3. ensure that the Records show a true and fair view of all of its transactions in relation to the production and marketing of the Production and of its financial and contractual position including, where applicable, its financial and contractual position in relation to Screen Australia and the Contributors; and
      4. upon reasonable notice provide Screen Australia or its nominee with unrestricted access to and copies of Records.

The Producer agrees to provide a written cost report to Screen Australia:

* + - 1. within 5 days of the start of Principal Photography– the cost report to cover the period from the start of Pre-Production to the end of Pre-Production;
      2. within 5 days of the start of Post Production – the cost report to cover the period up to the last day of Principal Photography; and
      3. within 5 days of Rough Cut– the cost report to cover the period up to and including to the date of completion of Rough Cut.

Within 3 months of the Completion Date the Producer agrees to deliver a Final Cost Report to Screen Australia together with a statutory declaration in which the Producer declares that the contents of the Final Cost Report are true and accurate. The statutory declaration must be in accordance with the *Statutory Declarations Act 1959* (Cth) and in a form approved by Screen Australia.

Each report provided by the Producer under clauses 6.2 and 6.3 must be in a form acceptable to Screen Australia and must include:

* + - 1. a cost report;
      2. a trial balance/statement showing Contributor funds received;
      3. a statement of the Grant identifying any interest earned on money in the Bank Accounts and any gain realised from foreign currency movements; and
      4. any other matters that Screen Australia may require.

The Final Cost Report must address the following matters:

* + - 1. a full statement of the total production costs of the Production in accordance with the classifications of the Budget;
      2. income and expenditure including, sums payable and receivable concerning the Production (using the categories in the Budget) and a comparison of those sums with provisions in the Budget on an item by item basis;
      3. reconciliation of the Bank Accounts;
      4. assets, liabilities and investments acquired or incurred by the Producer relating to the Production;
      5. satisfaction of debtors and creditors of the Production;
      6. that purchased Production Assets have been disposed of at an arm’s length price;
      7. any Overage or Underage; the name of each recipient of a share of Underage and the sum received;
      8. interest accrued on money in the Bank Accounts;
      9. any gain realised from foreign currency movements; and
      10. any sums paid or payable under the Completion Guarantee (if applicable).

On acceptance by Screen Australia, the Final Cost Report shall be conclusive and binding on the parties to this agreement, unless there is manifest error.

The Producer agrees that Screen Australia may, at its own cost, appoint an auditor to carry out an audit of the Producer in relation to the Production.

The Producer agrees to provide Screen Australia or any auditor appointed by Screen Australia with unrestricted access to and copies of the Records for the purpose of an audit.

1. Deliverables

The Producer agrees to provide Screen Australia the Deliverables by the time specified in the Deliverables Schedule.

The Producer agrees to advise Screen Australia when delivery to each Marketplace Contributor occurs.

The Producer agrees to provide to its chosen Study Guide Provider the Study Guide Deliverables on the Delivery Date specified in the Deliverables Schedule.

1. Indigenous requirements

To the extent there is any indigenous content in the Production or filming of indigenous people, culture and concepts, the Producer acknowledges and agrees that it has read, and will comply with, *Pathways and Protocols: A filmmaker’s guide to working with Indigenous people, culture and concepts* (available on the Screen Australia website) in respect of indigenous content or filming of indigenous people.

1. Marketing

The Producer agrees to market the Production in a manner consistent with good business judgment and sound commercial practice.

The Producer agrees to invite Screen Australia to attend any:

* + - 1. viewing of the Production for any other Contributor;
      2. test screening of the Production; and
      3. premiere or festival screening.

The Producer must register and obtain an International Standard Audiovisual Number (ISAN) for the Production before the start of Post-Production.

The Producer agrees to:

* + - 1. provide information to Screen Australia upon request setting out the Producer’s marketing activities in relation to the Production;
      2. give Screen Australia reasonable prior notice of any festival screening of the Production;
      3. keep Screen Australia informed about the organisation of, and invite Screen Australia to attend, the Australian premiere of the Production;
      4. consult with Screen Australia to ensure that the Australian Government’s requirements (which may include access to tickets and invitations to functions) are incorporated into the marketing plan for premiere screenings and for premiere screenings in any other major territory; and
      5. provide Screen Australia with details of all festival participation, nominations and awards related to the Production as soon as the information becomes available.

The Producer is entitled to retain all receipts from the Production and Screen Australia has no entitlement to receipts.

The Producer agrees to give Screen Australia copies of Marketing Materials on Completion of the Production as they become available, for the purposes of clause 3.4.

1. Credits and acknowledgement

The Producer agrees to provide the credits set out in the Credits Schedule.

At the time of providing the Rough Cut cost report:

* + - 1. the Producer agrees to seek the written approval of Screen Australia for the full front and end credit rolls (which must include Screen Australia’s credit as set out in the Credit Schedule);
      2. Screen Australia may request the Producer to remove the Screen Australia credit, in which case the Producer agrees to remove all Screen Australia credits, name and logo from the Production and Marketing Materials for the Production.

The Screen Australia logo, conforming to the standard artwork as supplied by Screen Australia, must appear in all advertising and promotional material for the Production, including websites, theatrical posters, theatrical trailers, press releases, DVD and video sleeves and soundtrack album covers.

There is no obligation to include Screen Australia’s credit as set out in the Credit Schedule in television and radio commercials, newspaper and magazine advertisements less than ten column centimetres in length and materials dealing exclusively with the promotion of individuals who participated in the making of the Production.

The credit and logo of Screen Australia is to be no smaller than the credit and logo of any other Contributor.

The Producer agrees to:

* + - 1. acknowledge Screen Australia’s role in financing the Production;
      2. display Screen Australia branding, where practicable and as reasonably requested by Screen Australia;

in any Promotional Activities; and

* + - 1. collaborate with Screen Australia in connection with the Promotional Activities (including first press releases, first cast announcements, media opportunities on site at first day of production of the Film etc) in order to jointly identify the best publicity opportunities for the Production for the purpose of generating high media coverage and to proactively shape the public awareness and promotion of the Production.

1. Insurance

The Producer agrees to:

* + - 1. take out and keep current the Insurance policies specified in the Production Particulars Schedule; and
      2. provide proof of the Insurance to Screen Australia immediately on request.

This clause 11 continues to operate as long as any obligation remains in connection with this agreement.

1. Producer warranties

The Producer warrants and represents that:

* + - 1. the Producer and the Production Company are each a corporation validly existing according to the laws of the place of its incorporation and are fully entitled to enter into this agreement and are eligible to receive the Grant in accordance with Screen Australia’s terms of trade applicable to the Production;
      2. it will produce the Production in accordance with first class professional standards;
      3. it will perform all of its obligations under this agreement in accordance with all applicable laws and regulations;
      4. the Budget, the Budgeted Cost and the dates of payment of the Contributors set out in the Contributor Agreements are adequate to meet all costs and complete the Production;
      5. it will pay its contribution (if any) and ensure each payment of the Budgeted Cost is made in accordance with the Contributor Agreements, and Finance Plan;
      6. the Drawdown Schedule meets the cashflow requirements to produce the Production;
      7. it has entered enforceable agreements with each Contributor to make contributions as specified in the Finance Plan and that all conditions precedent to those payments being made have been (or will at the time they are required to have been) met;
      8. it will at all times fully comply with its obligations under each Contributor Agreement;
      9. all requirements in clause 3 (Intellectual Property Rights and clearances) are met (or will be met by the times specified in clause 3);
      10. the Production does not and will not include defamatory material;
      11. enforceable agreements will be entered with each of the Principal Personnel, Principal Participants and Key Cast by the commencement of principal photography:
      12. all information it provides or has provided to Screen Australia is true, accurate and not misleading;
      13. no Event of Default has occurred;
      14. it will ensure safe storage and handling of all Production Assets;
      15. it holds all Insurance required under clause 11;
      16. no Claim is current, pending or threatened against it for more than $20,000 and it can pay its debts as and when they fall due and it is not the subject of an Insolvency Event; and
      17. it has obtained independent legal advice as to the obligations arising under this agreement.

Each warranty and representation set out in clause 12.1 is given on the date of this agreement and deemed to be repeated on the date of each Instalment paid and survives termination of this agreement for any reason.

The Producer agrees to notify Screen Australia in writing immediately on becoming aware of any actual, potential or threatened non-compliance with any provision in clause 12.1.

The Producer agrees to provide Screen Australia with copies of agreements referred to in clause 12.1 or any other Records that evidence compliance or non-compliance with clause 12.1 promptly on request.

1. Indemnity

13.1 The Producer and the Production Company jointly and severally indemnify Screen Australia against any loss, cost, expense or liability incurred by Screen Australia including loss, cost or expense incurred by Screen Australia in dealing with any Claim against it (including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by Screen Australia), arising from or in connection with:

* + - 1. a breach by the Producer or Production Company of this agreement;
      2. without limiting clause 13.1.a, any Event of Default;
      3. any act or omission involving fault by the Producer or Production Company in connection with this agreement;
      4. the production, Completion or exploitation of the Production;
      5. the use by Screen Australia of the Production (in accordance with the licence in clause 3.4); and
      6. any Claims by third parties in connection with Intellectual Property Rights or other clearances.

This indemnity survives the termination of this agreement for any reason.

Confidentiality

Subject to clause 14.2, neither party may make public or disclose any Confidential Information of the other party/ies (as applicable), unless the other party/ies (as applicable) has given its prior written approval.

Notwithstanding anything to the contrary in clause 14.1, the parties acknowledge and agree that:

* + - 1. Screen Australia may disclose:
         1. the general details about the Grant (including the amount, title, recipient) to meet government reporting obligations; and
         2. the terms of this agreement to a responsible Minister, to another Australian Government department or in response to a request by a House or Committee of the Parliament of the Commonwealth of Australia; and
      2. Screen Australia and the Producer may disclose the Confidential Information to its financiers, advisors, accountants Contributors and/or Completion Guarantor, provided such parties are subject to an undertaking, on terms no less restrictive than those in clause 14.1, to keep the Confidential Information confidential.

1. Producer offset

The Producer agrees to:

* + - 1. produce and Complete the Production in accordance with the Provisional Certificate and obtain the Final Certificate as soon as possible after the Completion Date; and
      2. provide copies of the certificates to Screen Australia if requested.

The Producer acknowledges that it is the applicant for the Producer Offset and is solely responsible for ensuring that any change to any aspect of the Production (including where the Producer requests any approval under or change to this agreement):

* + - 1. is in accordance with the Provisional Certificate;
      2. will not reduce the qualifying Australian production expenditure (QAPE) for the Production; and
      3. will not prevent the Producer from obtaining a Final Certificate.

The Producer agrees to pay the Producer Offset Proceeds in accordance with any Producer Documentation Producer that it has entered and meet any shortfall in the Producer Offset Proceeds payable to the Producer Offset Lender.

1. Intentionally Deleted

1. Voluntary winding up

Despite any other provision of this agreement, the Production Company, having given notice in writing to Screen Australia, may commence a members’ voluntary winding up following Completion of the Production. Upon such winding up taking effect any obligations of the Production Company under this agreement that have not been fulfilled by the Production Company, shall become the obligations and liabilities of the Producer.

1. Completion Guarantee

The Producer agrees to pay the fee due to the Completion Guarantor set out in the Completion Guarantee from the first Instalment.

The parties agree that the terms of the Completion Guarantee take precedence over the terms of this agreement to the extent of any inconsistency.

The proceeds of any Claim on the Completion Guarantee must be paid into the relevant Bank Account immediately upon receipt and treated as part of the Budgeted Cost.

1. Default

It is an Event of Default if:

* + - 1. the Conditions Precedent to the first Instalment are not satisfied within 3 months of the date of this agreement;
      2. the Production Company or Producer breach a warranty or term of this agreement;
      3. the Producer or the Production Company does anything, or permits anything to be done, which prejudices the issue of the Final Certificate;
      4. the Producer does not comply with the terms of a provisional co-production approval or does anything that prejudices the issue of a final co-production approval;
      5. any Contributor Agreement is terminated for any reason or becomes void, illegal, invalid, unenforceable or of limited force and effect;
      6. a Contributor fails to make a payment within 2 Business Days of the date for payment specified in the Contributor Agreement;
      7. the Producer does not hold the Insurance required under this agreement;
      8. the occurrence of any Insolvency Event in relation to the Producer, the Production Company (other than as described in clause 17) or any Contributor;
      9. the Producer does not comply with clause 7.1 of this Agreement; or
      10. the Producer does not Complete the Production by the Completion Date.

If an Event of Default occurs which in Screen Australia’s sole opinion can be rectified Screen Australia may give notice to the Producer specifying the Event of Default and requiring the Producer to rectify the Event of Default within 10 Business Days of the date of the notice.

If in Screen Australia’s sole opinion an Event of Default is incapable of rectification or an Event of Default is not rectified within the time required by a notice under clause 19.2, Screen Australia may immediately terminate this agreement by written notice to the Producer.

If this agreement is terminated by Screen Australia in accordance with clause 19.3, in addition to any other remedies available to Screen Australia at law or in equity, upon termination:

* + - 1. any amount of the Grant not yet paid will not be payable; and
      2. Screen Australia may issue a notice to the Producer requiring repayment of any amount of the Grant paid by Screen Australia prior to the date of termination and the Producer agrees to repay the whole of that amount to Screen Australia within 10 Business Days of the date of the notice.

1. General provisions

The Producer agrees to comply with all applicable laws relating to the Production including applicable industrial awards relevant to the employment or engagement of personnel.

Nothing in this agreement constitutes a partnership or joint venture between Screen Australia and the Producer or renders Screen Australia liable for any debt or obligation of the Producer.

Neither the Producer nor the Production Company may enter into any contract or incur any liability on Screen Australia’s behalf, or represent that it has authority to do so.

The failure by a party to rely on or enforce a provision of this agreement is not a waiver by that party of its right to subsequently rely on or enforce that provision.

This agreement (including any part of the Schedules) may only be varied in writing and signed by the parties.

Each party must do everything necessary to give effect to this agreement and the transactions contemplated by it and cause relevant third parties to do the same, at its own expense unless the cost is included in the Budget.

This agreement may be executed in counterparts and all counterparts are taken together to constitute one and the same instrument.

This agreement supersedes all prior agreements, representations, negotiations and correspondence with respect to this agreement and comprises the entire agreement between the parties.

Any written notice, document, or other communication to be served or given to a party must be served or given in accordance with the Notices Schedule.

The Producer agrees to comply with the *Privacy Act 1988* (Cth).

The Producer warrants that, to the best of its knowledge after making diligent inquiry, no Conflict exists or is likely to arise in the performance of its obligations under this agreement. If during the agreement a Conflict arises, the Producer agrees to notify Screen Australia immediately and take any steps Screen Australia reasonably requires to resolve or otherwise deal with that Conflict.

Where Screen Australia’s agreement, approval, notice or consent is required under this agreement it will be ineffective unless in writing and provided by an Authorised Officer of Screen Australia.

1. Governing law

This agreement is governed by and construed in accordance with the law of the State of New South Wales and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

1. GST and tax

The parties agree that all amounts referred to in this agreement are exclusive of GST.

If GST is imposed upon any supply made under this agreement (**Taxable Supply**) then the recipient of the Taxable Supply will pay to the supplier, in addition to any consideration payable for that Taxable Supply under this agreement (**Consideration**), the amount of GST imposed upon the Taxable Supply.

Any increased amount under clause 22.2 will be payable to the supplier in the same manner and at the same time as the Consideration is payable to the supplier, provided that the recipient has received from the supplier a tax invoice in the form required by the GST legislation, setting out the amount of GST payable by the supplier on the Taxable Supply, and evidence of the supplier's registration for the purposes of GST. In all cases, any increased amount under clause 22.2 must be paid within 14 days of receipt of such tax invoice.

The Producer agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this agreement.

1. Interpretation

This agreement includes the Core Conditions and Schedules.

In this agreement, except where the context otherwise requires:

* + - 1. references to the Producer include the Production Company and each is jointly and severally responsible for all obligations stated to be obligations of the Producer under this agreement;
      2. words importing the singular include the plural and vice versa;
      3. words and expressions used in connection with matters of copyright, unless defined in this agreement, have the meanings as under the *Copyright Act 1968* (Cth);
      4. words and expressions defined in the *Corporations Act 2001* (Cth) have the same meaning;
      5. clause headings and underlining are for reference purposes only;
      6. references to clauses are references to clauses of the Core Conditions and references to schedules are references to the Schedules to this agreement, all of which form part of the agreement;
      7. references to a party includes that party’s successors and permitted assignors;
      8. references to a person include natural persons and any other entity regulated by the laws of Australia or any other country;
      9. "Dollars" and "$" refer to Australian dollars unless otherwise stated;
      10. if any act is required to be done on a day which is not a Business Day, that act must be done on the next Business Day after that day;
      11. words capitalised in the Core Conditions that are also capitalised terms in the Schedules have the meaning given in the Schedules;
      12. derivatives from a word given a certain meaning or interpretation, have a corresponding meaning or interpretation; and
      13. the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions.
  1. The Core Conditions and Schedules form part of this Agreement and record the entire agreement between the parties in relation to its subject matter. If any conflict arises between these parts the following order of precedence applies to the extent of the inconsistency:
     + 1. the Special Conditions Schedule;
       2. the Core Conditions; and
       3. the remainder of the Schedules.

1. Definitions

In this agreement, unless the context indicates otherwise:

Bank Accounts mean the Production Account and, if used, the Investment Account, as specified in the Finance Schedule;

Budget means the budget for the Production set out in the Budget Schedule;

Budgeted Cost means the budgeted cost specified in the Finance Plan;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales or the state in which the Producer’s registered office is located;

Claim means any claim, action, proceeding, judgment, liability, loss, damage or cost, including legal costs incurred or suffered by, or brought, made or recovered against, a person;

Collecting Society means the Australasian Performing Rights Association, the Australasian Mechanical Copyright Owners Society, the Copyright Agency Limited, the Audio-visual Collection Society Limited trading as “Screenrights,” and other comparable organisations in Australia or overseas;

Complete or Completion means to make the first full length, edited, synchronised, end-titled and credited copy of the Production suitable for exhibition to the public by way of television broadcast or other form of release specified in this agreement; except in respect of clause 15 where it has the meaning in division 376 of ITAA;

Completion Date means the completion date specified in the Production Particulars Schedule;

Completion Guarantee means any agreement by which the Completion Guarantor agrees to Complete the Production and provide sufficient money for that purpose;

Completion Guarantor means the person named as the completion guarantor in the Production Particulars Schedule;

Confidential Information means this agreement and any non-public information pertaining to a party’s business and/or funding activities disclosed to the other party/ies in connection with this agreement, including information marked as confidential or information which by its nature is confidential but excludes information that:

1. is trivial or obvious;
2. was already in the receiving party's possession at the time of receipt from the other party;
3. has become public knowledge (other than through a breach of an obligation of confidence imposed under this agreement);
4. was published or otherwise becomes part of the public domain (other than through a breach of this agreement by the disclosing party);
5. was independently developed by the receiving party without reference to the confidential information of the furnishing party; or
6. was disclosed as a result of a legal obligation under law, provided that the disclosing party must first inform the other party/ies of such obligation and comply with any reasonable request/s of the other party/ies in relation to such disclosure.

Conflict means any matter, circumstance, interest or activity involving or affecting the Producer or Production Company, its personnel or subcontractors which may or may appear to impair the ability to perform the agreement diligently and independently;

Conditions Precedent means those conditions to payment of the first Screen Australia Instalment specified in the Conditions Precedent table in the Production Particulars Schedule, clause 2.3 and, to the extent specified, in the Special Conditions Schedule;

Contributor means any person specified in the Finance Plan as providing funds for the Production including, a Producer Offset Lender (if applicable);

Contributor Agreement means any agreement in relation to the Production between the Producer and a Contributor;

**Core Conditions** means this document entitled ‘Core Conditions’, forming part of this agreement;

**Deliverables** means the items specified in the Deliverables Schedule;

Delivery Date means the delivery date specified in the Production Particulars Schedule;

Event of Default has the meaning in clause 19;

**Film Authority** has the meaning given to that term in the ITAA;

**Final Certificate** means a certificate issued by the Film Authority in respect of the Production according to Section 376-65 of the ITAA;

**Final Cost Report** means the final cost report specified in clauses 6.3 and 6.5;

Finance Plan means the statement of all sources of finance for the Production set out in the Finance Schedule;

**Format** means the distinctive and characteristic (and in the case of a series, repeated) elements and features of the Production which may include its concept title, brand, style, structure, theme, characters or participants, scenarios, sequences and narrative development, and any other elements and features which are distinctive in the Production;

**Grant** means the total amount paid by Screen Australia pursuant to this agreement, as specified in the Finance Plan;

**GST** means the Goods and Services Tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated legislation and regulations;

**Insolvency Event** in relation to a person means the occurrence of any one or more of the following events (capitalised terms in this definition have the meaning given to them in the *Corporations Act 2001* (Cth)):

1. an application is made to a court for an order that the person be wound up, or that a provisional liquidator be appointed to the person, and the application is not withdrawn, struck out or dismissed within 21 days of being made;
2. a liquidator or provisional liquidator is appointed to the person;
3. an Administrator or Controller is appointed to the person or any of the person’s assets;
4. the person enters into an arrangement or composition with one or more of the person’s creditors, or the person enters into an assignment for the benefit of one or more of the person’s creditors;
5. the person proposes, or resolves to enter into, a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of the person’s creditors;
6. the person is or becomes insolvent or the person is presumed to be insolvent under an applicable law;
7. the person is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the *Corporations Act 2001* (Cth);
8. a notice in relation to the person is issued under sections 601AA or 601AB of the *Corporations Act 2001* (Cth);
9. a writ of execution is levied against the person or the person’s property;
10. the person ceases to carry on business or threatens to do so; and
11. anything occurs in relation to the person under the law of any jurisdiction which has a substantially similar effect to any of the events or circumstances mentioned in any of the above paragraphs of this definition;

Instalment means each instalment of Screen Australia’s Grant as set out in the Instalment Schedule;

Intellectual Property Rights means

1. all copyright;
2. all rights in relation to inventions, trademarks (including service marks), designs, circuit layouts;
3. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
4. Moral Rights;
5. Performers’ Rights;
6. rights in relation to Confidential Information; and
7. any other present and future intellectual property right of any kind throughout the world;

**Insurance** means the insurance policies specified in the Production Particulars Schedule;

**Investment Account** means the investment account (if any) specified in the Finance Schedule;

**ITAA** means the *Income* *Tax Assessment Act 1997* (Cth);

**Key Cast** means any person specified as key cast in the Production Particulars Schedule;

**Marketing Materials** means materials created to market the Production, including posters, digital advertisements, still photographs, trailers, promotions reels and artwork, paid for from the Budgeted Cost or otherwise acquired by the Producer or the Production Company;

**Marketplace Contributors** means the persons specified under “Marketplace” in the Finance Plan;

**Moral Rights** has the meaning given under the *Copyright Act 1968* (Cth);

**NFSA** means the National Film and Sound Archive of Australia;

**NFSA Deed** means the deed between the Producer and the NFSA in relation to the Production in the form approved by Screen Australia;

**Overage** means any sum over the Budgeted Cost required to Complete, Deliver and market the Production after deduction of any amount paid by the Completion Guarantor (if applicable);

**Performers Rights** has the meaning under the *Copyright Act 1968* (Cth);

**Personal Information** has the meaning under the *Privacy Act 1988* (Cth);

**Principal Participants** means any person specified as such in the Production Particulars Schedule;

**Principal Personnel** means any person specified as such in the Production Particulars Schedule;

**Producer Equity Payment** means the producer equity payment specified in the Finance Plan;

**Producer Offset** means the refundable tax offset under division 376 of ITAA;

**Producer Offset Advance** means the sum specified in the Finance Plan, being the sum contributed to the Budget under the terms of the Producer Offset Documentation;

**Producer Offset Documentation** means all agreements and other documents entered into by the Producer and the Production Company in respect of the Producer Offset Advance and the Producer Offset Proceeds;

**Producer Offset Lender** means the person providing the Producer Offset Advance as stated in the Finance Plan or otherwise;

**Producer Offset Proceeds** means the proceeds paid by the Australian Taxation Office to the Producer or Production Company in respect of the Producer Offset for the Production;

Production means the screen production described in the Production Particulars Schedule, based on the Script and includes all masters in any format, negatives, positives, video and sound recordings created for the purpose of the Production including all material paid for from the Budgeted Cost, whether or not incorporated into the completed Production and all versions of the whole or any part of the Production;

**Production Account** means the production account specified in the Finance Schedule;

**Production Assets** means any equipment, goods, materials, software and other tangible assets (other than the Production) bought, hired or leased for the Production and paid for from the Budgeted Cost;

**Promotional Activity** means any activity in which the Production is discussed by, or under the authority of, the Producer, including cast announcements, media calls, interviews, pre-screenings, premieres, press conferences award ceremonies, press meetings, media set visits and other industry events;

**Provisional Certificate** means a provisional certificate under the Producer Offset;

QAPE means qualifying Australian production expenditure under Division 376 of the ITAA;

**Records** means records, invoices, timesheets, bank statements, financial statements, agreements and other documents relating to the production, finance and marketing of the Production whether in hard copy, electronic form or any other form;

**Schedules** mean the:

1. Production Particulars Schedule;
2. Finance Schedule;
3. Deliverables Schedule;
4. Special Conditions Schedule ( if any);
5. Credit Schedule;
6. Notices Schedule;
7. Budget Schedule; and
8. Instalment Schedule,

forming part of this agreement;

**Script** means the concept document, proposal, treatment, script outline and script (including all drafts, versions and revisions) for the Production written by the Writer (or any other contributor) in the form approved by Screen Australia, and includes any research materials created by the Writer for writing the Script;

**Special Conditions** means the special conditions specified in the Special Conditions Schedule in the Schedules;

**Study Guide Deliverables** means the study guide deliverables specified in Deliverables Schedule;

**Study Guide Provider** means a reputable and recognised provider of study guides and educational teaching materials;

**Underlying Work** means any underlying work or subject matter (including any revisions) for the Production, other than the Script, and includes the material specified as such in the Production Particulars Schedule;

**Underage** means any part of the Budgeted Cost not spent on production of the Production and includes any sum treated or applied as Underage under this agreement; and

**Writer** means the person or persons specified as the writer in the Production Particulars Schedule or as otherwise approved by Screen Australia.