**NFSA DELIVERY DEED**

**COVER NOTE TO PRODUCTION COMPANIES**

**Background**

On 1 July 2011, Screen Australia’s library and sales functions were transferred under legislation to the National Film and Sound Archive of Australia (NFSA).

Consistent with this transfer, Production Companies contract with the NFSA, instead of Screen Australia, to deliver audiovisual production materials to the NFSA.

**Drafting instructions**

On receipt from Screen Australia, the Production Company must populate this Deed in accordance with the following key:

[1] Production Company name

[2] Production Company ABN

[3] Production Company principal business address

[4] Production Company email address

[5] Key contact/s for receiving notices

[6] Title of production

[7] Production type

[8] Duration

[9] Brief synopsis

[10] Scheduled date for completion of the Production as specified in the Funding Agreement

[11] Scheduled date for Delivery Materials to the NFSA

Once the Deed has been populated with the above information, it must be signed in accordance with the *Corporations Act 2001* (Cth) on page 8. The completed Deed (without this cover page) is to be emailed to:

[Deliverables@nfsa.gov.au](mailto:Deliverables@nfsa.gov.au)

Unless any changes are required, the NFSA will email the Production Company to confirm its acceptance of the completed deed and copy its response to Screen Australia at the following address:

[contracts@screenaustralia.gov.au](mailto:David.Smith@screenwest.wa.gov.au)

**As this document will give rise to legally binding obligations, please read it carefully**

**and consult your legal advisor before signing.**

Icon

Description automatically generated

**Delivery Deed**

**between**

**National Film and Sound Archive of Australia**

ABN: 41 251 017 588

**and**

**[1] Pty Limited**

ABN: [2]

NFSA Agreement No: 202

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**DEED** **BETWEEN:**

1. **NATIONAL FILM AND SOUND ARCHIVE OF AUSTRALIA** (ABN 41 251 017 588) of McCoy Circuit, Acton, Australian Capital Territory, a Commonwealth statutory authority established under the *National Film and Sound Archive of Australia Act 2008* (Cth) (**NFSA**); and

2. **[1] PTY LIMITED** (ABN [2]) with its principal office at [3] (**Production Company**).

# **BACKGROUND**

A. Screen Australia has approved funding for the Production, and the Production Company is the exclusive licensee of the rights to market the Production as set out in that Funding Agreement.

B. The NFSA collects, preserves and makes available Australia’s audiovisual collection.

C. In accordance with the Funding Agreement, the Production Company has agreed to enter into this Deed and to deliver the Delivery Materials to the NFSA on the terms set out in this Deed.

**THE PARTIES AGREE** as follows:

# **1. DEFINITIONS AND INTERPRETATION**

## **1.1 Definitions**

In this Deed:

**Act** means the *National Film and Sound Archive of Australia Act* 2008 (Cth).

**Business Day** means a day on which banks are open for business in New South Wales and the Australian Capital Territory.

**Claim** means any legally enforceable claim, action, proceeding, judgment, liability, loss or cost incurred, suffered or brought by, or made against, any person.

**Completion Date** means the scheduled date for completion of the Production, as specified in Item 2 of Schedule 1.

**Delivery Materials** means the materials listed in Schedule 3.

**Excerpts** means excerpts from the Production, up to a maximum of three excerpts, with each excerpt being no more than three minutes in total.

**Funding Agreement** means the agreement dated on about the date of this Deed between inter alia the Production Company and Screen Australia under which Screen Australia agrees to provide production finance for the Production.

**Indigenous Cultural and Intellectual Property** (ICIP) refers to the rights of Australian Aboriginal and Torres Strait Islander people to their cultural heritage. This includes all tangible and intangible knowledge including traditional knowledge, traditional cultural expression, objects, sites, language, song, dance, music, stories, ceremonies and the secret/sacred.

The Material may incorporate or make reference to ICIP. The Production Company will, to the best of their knowledge, identify any ICIP incorporated or referenced in the Material, and inform the NFSA of any cultural protocols or restrictions concerning appropriate use of the Material.

The parties acknowledge and agree that any ICIP rights in the Material will remain with the Traditional Owners or Custodians of that ICIP.

To the extent that the Production Company is authorised to speak for the ICIP in the Material, and unless otherwise indicated, the Production Company grants the NFSA licence to use the ICIP in relation to the Material in the course of its general operations.

The parties agree to comply with the NFSA’s Indigenous Cultural and Intellectual Property Protocol and any cultural protocols or restrictions when dealing with and in any use of the Material.

The NFSA will attribute the Traditional Owners or Custodians of the Material where known and where possible, unless advised otherwise.

Further details about NFSA’s ICIP rights guidelines are available upon request.

**NFSA Contact** means the NFSA Deliverables Officer, or any NFSA employee authorised to act on their behalf, responsible for taking receipt of the Production and the Delivery Materials.

**NFSA Delivery Date** means the date specified in item 2 of Schedule 1 for the delivery of Material to the NFSA, being 30 days after the Completion Date.

**NFSA Websites** means websites controlled by the NFSA and on third party websites or platforms (including social media) on which the NFSA operates any account or subscription, including but not limited to NFSA profiles, webpages, channels and feeds on Facebook.com, YouTube.com, Twitter.com and Soundcloud.com (audio) which are controlled by third parties and offer access to content subject to the respective terms and conditions of the third parties, whether existing now or in the future*.*

**Production** is the completed audiovisual work produced by means of motion picture film, video tape or digital media.

**Production Company** is theregistered corporate entity that produces the Production.

**Production Company Contact** means the Production Company’s representative for the purposes of this Deed, and who will deliver to the NFSA Contact the Production and the Delivery Materials

**Relevant Address** means the contact details for the relevant NFSA Contact responsible for receiving the Production and the Delivery Materials, as identified in Schedule 2.

## **1.2 Interpretation**

In this Deed, except where the context otherwise requires:

1. capitalised terms which are not otherwise defined have the meanings ascribed to them in the Funding Agreement;
2. references to legislation or to any provision of legislation include modifications or re-enactments of, substitutions for, and all statutory instruments issued under, that legislation;
3. references to documents or agreements (including this Deed) include references to amendments, novations, replacements and supplementary documents or agreements;
4. words denoting the singular include the plural and vice versa;
5. references to clauses and schedules are to clause and schedules of this Deed;
6. headings do not affect interpretation;
7. if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day;
8. references to a quarter are to a calendar quarter; and
9. undefined terms relating to copyright have the meanings ascribed to them in the *Copyright Act* 1968 (Cth).

# **2. DELIVERY TO THE NFSA**

2.1 The Production Company must deliver the Delivery Materials to the Relevant Address in accordance with the following:

|  |  |  |
| --- | --- | --- |
|  | **Type of material** | **Due date for delivery** |
|  | Delivery Materials | 30 days from completion |

* 1. The Production Company agrees that it will negotiate a further agreement in good faith with the NFSA at the time of delivery of the Delivery Materials to grant such non-commercial, non-exclusive rights in the Production and associated materials to the NFSA as the NFSA reasonably requires to perform its functions set out in the Act including, but not limited to, rights to use available still images from the Production and Excerpts on NFSA Websites.

# **3.** **PRODUCTION COMPANY REPRESENTATIONS AND WARRANTIES**

The Production Company represents and warrants to the NFSA that:

1. it has not entered into any agreement, and is not subject to any obligation to any person, which is inconsistent with the performance of its obligations under this Deed;
2. it is not aware of any Claim in relation to the Delivery Materials which has or could reasonably have any adverse effect on its ability to comply with its obligations under this Deed.

# **4. GOVERNING LAW**

This Deed and the transactions contemplated by it will be construed and take effect in accordance with the laws for the time being in force in the Australian Capital Territory.

# **5. FURTHER ASSURANCES**

Each party must at its own expense do all such acts and things and execute all such documents as may be reasonably necessary to carry out and give full effect to the provisions of this Deed and the transactions contemplated by it and will use all reasonable endeavours to cause or procure relevant third parties to do likewise.

# **6. SEVERABILITY**

If any provision of this Deed is or becomes invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions, are and continue to be valid and enforceable in accordance with their terms.

# **7. COSTS**

Each party must bear its own legal costs and other expenses incurred in connection with the entry into this Deed.

# **8. NOTICES**

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:

**Production Company Contact:**

Address: [3]

Email: [4]

To the attention of: [5]

**NFSA Contact**

The address specified as the Relevant Address in Schedule 2.

(b) may be served by hand, registered or certified post or electronic delivery 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; or

(iii) in the case of electronic delivery on the next Business Day after transmission (as evidenced by a record at the sender’s computer or other electronic delivery confirmation).

# **9. ENTIRE AGREEMENT**

The terms and conditions of this Deed constitute the whole agreement of the parties with respect to its subject matter and supersede any prior agreement or understanding between the NFSA and the Production Company in that regard.

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# **10. AMENDMENTS OR VARIATION**

No variation, modification or waiver of any provision of this Deed will be of any force or effect unless in writing.

# **11. WAIVER**

No failure on the part of a party to exercise, and no delay by a party in exercising, any right under this Deed will operate as a waiver thereof, nor will any single or partial exercise of any right under this Deed preclude any other or further exercise thereof or the exercise of any other right.

# **12. NON-MERGER**

No act, matter or thing done under or in connection with, this Deed will operate as a merger of any of the rights, remedies and warranties of NFSA or the Production Company under this Deed or otherwise. All such rights, remedies and warranties will continue in full force and effect.

**EXECUTED as a deed** on the last date written below

|  |  |
| --- | --- |
| **Signed for and on behalf of the Production Company** under section 127 of the *Corporations Act 2001* (Cth) by      Name of Director / Sole Director and Company Secretary / Sole Director (Select One)      Signature  Date: | Name of Director/Company Secretary      Signature  Date: |

**SCHEDULE 1**

# **PRODUCTION SPECIFICATIONS**

|  |  |
| --- | --- |
| **Item 1: Production Details** | |
| **Title** | [6] |
| **Production Type** (e.g. Feature, TV drama, TV comedy, Documentary, Short, Web series, Telemovie, VR, action RPG video game, etc.) | [7] |
| **Duration**  (e.g. 1 x 90 mins; 3 x 26 mins,  if applicable) | [8] |
| **Brief Synopsis** | [9] |

|  |  |
| --- | --- |
| **Item 2: Completion and NFSA Delivery Date** | |
| **Completion Date** | [10] |
| **NFSA Delivery Date**  (30 days from completion date) | [11] |

***Please note:   
Upon receipt of all agreed Delivery Materials as per Schedule 3, the NFSA will endeavour to issue the receipt of material within ten (10) business days.***

# **SCHEDULE 2**

# **DELIVERY**

|  |  |  |
| --- | --- | --- |
| **Street address** | **Postal address** | **NFSA Contact details** |
| NFSA, Attn: Deliverables  Delivery Deed No:\_\_\_  McCoy Circuit  Acton ACT 2601 | NFSA, Attn: Deliverables  Delivery Deed No:\_\_\_  GPO Box 2002  Canberra ACT 2601 | Deliverables Officer  Email:  [Deliverables@nfsa.gov.au](mailto:Deliverables@nfsa.gov.au)  Telephone:  (02) 6248 2077 |
| **To deliver material by digital upload or file transfer, please contact:**  [**Deliverables@nfsa.gov.au**](mailto:Deliverables@nfsa.gov.au) | | |

***Your NFSA Delivery Deed agreement number can be found on the front cover page of this document once it is fully executed by the NFSA.***

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# **SCHEDULE 3**

# **NFSA DELIVERY MATERIALS**

|  |  |
| --- | --- |
| **Item #** | **Requirements** |
| **1.1** | **PRODUCTIONS FOR BROADCAST OR NON-THEATRICAL RELEASE** |
| 1.1.1 | **Digital file master**: The completed Production for Australian release supplied at highest video resolution with embedded high quality audio   * *Please also supply the* ***International master version*** *(if produced) if different to the Australian version, as per specifications above* * *Master(s) supplied must be seamless and not contain program breaks* * *Closed Caption (CC) and Audio Description (AD) files should be supplied separately if not embedded within the master (where produced).* * *Please supply a summary of editorial differences between International and Domestic versions.* |
| 1.1.2 | **Digital audio master:** The completed final mix supplied as synchronous discrete audio files representing each audio channel of the completed production (if not already embedded within 1.1.1) |
| **1.2** | **PRODUCTIONS FOR THEATRICAL RELEASE** |
| 1.2.1 | **Digital file master**: The completed Production for Australian release supplied at the highest video resolution with embedded high quality audio   * *Please also supply the* ***International master version*** *(if produced) if different to the Australian version, as per specifications above* * *Master(s) supplied must be seamless and not contain program breaks* * *Closed Caption (CC) and Audio Description (AD) files should be supplied separately if not embedded within master (if produced).* * *Please supply a summary of editorial differences between International and Domestic versions.* |
| 1.2.2 | **DCP** (Digital Cinema Package): supplied as a DCI compliant, **unencrypted** copy of the completed Production (Australian version) at the highest resolution and frame rate produced   * *If no DCP is produced, the highest resolution format as delivered for theatrical release is to be supplied* |
| 1.2.3 | **DSM** (Digital Source Master): supplied as sequential lossless DPX or TIFF images at the highest resolution produced   * Please provide the total number of reels; number of frames; and the start and end sequence numbers for each reel provided. * Please deliver on hard drive [NTFS file system preferred] or LTO [Uncompressed LTFS (preferred) or gnuTAR formatted] * NFSA prefers to receive DSM files in reel format |
| 1.2.4 | **DCDM** (Digital Cinema Distribution Master): supplied as sequential lossless images at the highest resolution produced   * Please provide the total number of reels; number of frames; and the start and end sequence numbers for each reel provided. * Please deliver on hard drive [NTFS file system preferred] or LTO [Uncompressed LTFS (preferred) or gnuTAR formatted] * NFSA prefers to receive DCDM files in reel format |
| 1.2.5 | **Digital audio master**: The final mix delivered as discrete uncompressed, synchronous audio files representing each audio channel |
| **For ALL items listed above in 1.1 and 1.2**   * + Please ensure the associated checksum(s) are provided   + Please supply quality control verification reports (if available)   + Please do **not** supply in wrappers such as tar, axf, zip or similar.   + Screener/browser files are **not** required   ***If in doubt, please contact the Deliverables Officer via***  [Deliverables@nfsa.gov.au](mailto:Deliverables@nfsa.gov.au) *or* 02 6248 2077***.*** | |
| **1.3** | **ASSOCIATED PRODUCTION ITEMS** |
| 1.3.1 | **Extras:** The completed digital file master(s) of any additional content produced for publicity purposes, or as bonus material for online platforms or commercial release.  Examples include trailers; teasers and promos; web-only series; ‘making of’ featurettes; documentaries; exclusive interviews; and behind the scenes clips produced for an EPK.   * To be supplied as per specifications provided in 1.1/1.2 and with checksum(s). |
| 1.3.2 | **Press kit:** Australian and international releases (PDF preferred) |
| 1.3.3 | **Cast and crew credits**, and **biographies of key production personnel**, if not already included within the above press kit (PDF preferred) |
| 1.3.4 | **Statement of Technical and Production Details:** complete with formats; file types; post production pathway; etc. *See separate pro forma document* |
| 1.3.5 | **Scripts:**   1. **Post production** **script(s)** 2. **Shooting script(s)** 3. **Marked-up continuity script(s)** (if available) 4. **Storyboards and/or animatics** (if available) |
| 1.3.6 | **Music cue sheets**: (PDF preferred) |
| 1.3.7 | **Still Images**: A minimum of twenty (20) key still images to be supplied, in the highest resolution completed for the Production, with at least one still image each of the director; producer; director of photography; and key cast members.   * *A separate caption list, with accompanying thumbnails is requested. This listing should also include the name and contact details of the photographer(s) and any relevant copyright information.* |
| 1.3.8 | **Posters:**   1. Australian (and international) digital version/s in highest resolution 2. Three (3) printed copies of Australian (and international) version/s (if produced) |
| **1.4** | **POST-RELEASE PRODUCTION ITEMS** |
| 1.4.1 | **Artefacts:** Subsequent to the completion of the Production, the producer is invited to offer, by negotiation, key associated artefacts created such as costumes; props; original artwork; and awards. |
| 1.4.2 | **Artwork:** Material created for any commercially released DVD, Blu-ray, CD and/or similar(if produced). |
| 1.4.3 | **Original Soundtrack (Digital/Physical)**: Any commercially released soundtrack from the Production (if produced) and/or original composition(s)   * Please supply an unencrypted digital copy in the actual format of release * Please provide two (2) copies of any physical soundtrack release (if available). * Sheet music for the original composition(s) – PDF preferred (if available) |
| 1.4.4 | **Publicity/Marketing:** Other items produced to promote the Production may include subsequent promotional flyers; study guides; handbills; important research; and production notes. |

|  |  |  |
| --- | --- | --- |
| **Item #** | | **Requirements** |
| **2.1** | **VIDEO GAMES, SOFTWARE AND INTERACTIVE MEDIA** | |
| 2.1.1 | **Final or launch version of the video game or Production:** Delivered digitally as a DRM-free release build. | |
| 2.1.2 | **Gameplay or walkthrough footage:** At least thirty (30) minutes of gameplay or walkthrough footage of the final version of the video game or Production supplied in the highest resolution format available. | |
| 2.1.3 | **Soundtrack:** The video game or Production soundtrack delivered as uncompressed files (e.g. WAV) if produced. | |
| **2.2** | **ASSOCIATED PRODUCTION ITEMS** | |
| 2.2.1 | **Publicity material:** Published publicity material e.g. trailers; Dev diaries; production documentaries; high-resolution game; and box art (if produced) | |
| 2.2.2 | **Press kit:** (PDF preferred)(if produced) | |
| 2.2.3 | **Credits and biographies of key development personnel:** If not already included within the above press kit (PDF preferred) | |
| 2.2.4 | **Statement of Technical Details:** *See separate pro forma document* | |
| **2.3** | **POST-RELEASE PRODUCTION ITEMS** | |
| 2.3.1 | Two (2) copies of any commercially released physical versions of the video game/Production or related soundtrack released subsequent to the completion of the Production. | |
| 2.3.2 | **Source materials**: The NFSA is interested in the long-term preservation of games and interactive media and the stories behind their development**.** Subsequent to the completion of the Production, the developer is invited to offer, by negotiation, source materials (e.g. source code and assets including development tools; raw art; prototypes and pre-launch builds; pitch and Game Design Documents; concept/storyboard art); or any physical materials relating to the game or production’s development (e.g. storyboards; sketchbooks; design and development documentation). | |