**NFSA DELIVERY DEED**

**COVER NOTE TO PRODUCERS**

**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, producers contract with the NFSA, instead of Screen Australia, to deliver audio visual production materials to the NFSA. This requirement also extends to other state-based screen funding agencies.

**Drafting instructions:**

On receipt from Film Victoria, producers must populate this Deed in accordance with the following key:

[1] Producer company name

[2] Producer ABN

[3] Producer principal business address

[4] Producer email address

[5] Name of person to receive notices for the producer

[6] Title

[7] Production Type (eg Feature, TV Drama, Documentary, Short etc)

[8] Duration (e.g. 3 x 26 minutes)

[9] One Line Synopsis

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

[11] Scheduled date for delivering Material to the NFSA

Once the Deed has been populated with the above information, producers should sign, witness and date the Deed then scan and email the entire Deed (without this cover page) to the NFSA at the Relevant Address (see Schedule 2 of the Deed).

Unless any changes are required, the NFSA will email the producer to confirm its acceptance of the deed as executed by the producer and copy its response to Film Victoria at the following address:

productiondelivery@film.vic.gov.au

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

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



**Delivery Deed**

**between**

**National Film and Sound Archive of Australia**

ABN: 41 251 017 588

**and**

**[1] Pty Limited**

ABN: [2]

Agreement No: <NFSA …>

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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 Act (**NFSA**); and

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

# **BACKGROUND**

A. Film Victoria has approved funding for the Production and the Producer is the exclusive licensee of the rights to market the Production as that term is defined in the Funding Agreement.

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

C. In accordance with the Funding Agreement, the Producer 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 Producer and Film Victoria under which Film Victoria agrees to provide production finance for the Production.

**NFSA Contact** means the relevant NFSA employee specified in Schedule 2 or the person for the time being occupying the position of that contact or performing their duties;

**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.

**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 Producer 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 Producer 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.**  **PRODUCER REPRESENTATIONS AND WARRANTIES**

 The Producer represents and warrants to the NFSA that:

1. it has the corporate power to, and has taken all necessary corporate action to authorise it to, enter into and perform its obligations under this Deed;
2. without limiting clause 3(a), it has not entered into any agreement, and is not subject to any obligation to any person, which is inconsistent with the performance of the obligations of the Producer under this Deed;
3. the Producer is not aware of any Claim in relation to the Delivery Materials which has or could reasonably have any adverse effect on the ability of the Producer 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:

 **Producer:**

Address: [3]

Email: [4]

To the attention of: [5]

 **NFSA:**

The address specified as the Relevant Address in Schedule 2

(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; or

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

# **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 Producer in that regard.

# **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 Producer 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 Producer** under section 127 of the Corporations Act 2001 by Name of first signatoryin the presence of  Name of witness to first signatory’s signature Signature of witnessDate:  |  SignatureDirector/Sole Director(select applicable title)Date:  |
| and by Name of second signatoryin the presence of  Name of witness to second signatory’s signature Signature of witnessDate:  |  SignatureDirector/Secretary (select applicable title)Date:  |

# **SCHEDULE 1**

# **PRODUCTION SPECIFICATIONS**

|  |
| --- |
| **Item 1: Production Details** |
| **Title** | [6] |
| **Production Type** (eg Feature, TV Drama, Documentary, Short, Web-only series, Telemovie etc) | [7] |
| **Duration** | [8] |
| **One Line Synopsis** | [9] |

|  |
| --- |
| **Item 2: Completion and NFSA Delivery Date** |
| **Completion Date** | [10] |
| **NFSA Delivery Date**  | [11] |

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

# **SCHEDULE 2**

# **RELEVANT ADDRESS**

|  |  |  |
| --- | --- | --- |
| **Production/deliverable type** | **Delivery address** | **NFSA Contact details** |
| Features and related Delivery Materials  | **Street address:**McCoy CircuitActon ACT**Postal address:**GPO Box 2002Canberra ACT 2601 | **Phone:**(02) 6248 2159**Email:**features@nfsa.gov.au |
| Documentaries and all related Delivery Materials | **Street address:**McCoy CircuitActon ACT**Postal address:**GPO Box 2002Canberra ACT 2601 | **Phone:**(02) 6248 2253**Email:**documentary@nfsa.gov.au |
| Shorts and all related Delivery Materials | **Street address:**McCoy CircuitActon ACT**Postal address:**GPO Box 2002Canberra ACT 2601 | **Phone:**(02) 6248 2114**Email:**shorts@nfsa.gov.au |
| Television productions (other than documentaries) and all related Delivery Materials | **Street address:**Level 42 Kavanagh StreetSouthbank VIC 3006**Postal address:**GPO Box 4317Melbourne VIC 3000 | **Phone:**(03) 8638 1508**Email:**tv@nfsa.gov.au |

 ***For all parcels and delivery enquiries,***

***please quote your NFSA Delivery Deed agreement number.***

 ***This number can be found on the front cover page of your fully executed NFSA Delivery Deed.***

# **SCHEDULE 3**

# **NFSA DELIVERY MATERIALS**

|  |  |
| --- | --- |
| **Item No.** | **Requirements** |
| **1.1** | **PRODUCTIONS COMPLETED FOR BROADCAST &/OR NON-THEATRICAL RELEASE** |
| 1.1.1 | **Digital file master**: The completed Australian HD master version supplied in the highest resolution produced – e.g. ProRes HQ 422 or better.* *Please also supply the International master version (where produced) if different to Australian version, as per specs above*
* *Master(s) supplied must be seamless and not contain program breaks*
 |
| 1.1.2 | **Soundtrack:** The completed surround sound final mix (eg. 5.1) as WAV files (if also produced) |
| **1.2** | **PRODUCTIONS COMPLETED FOR THEATRICAL RELEASE** |
| 1.2.1 | **DCP** (Digital Cinema Package); supplied as a DCI compliant, **unencrypted** copy of the completed Production (Australian version)* *If no DCP is produced, the highest resolution format as delivered for theatrical release is to be supplied*
 |
| 1.2.2 | **DSM** (Digital Source Master); supplied as a mxf sequence of the highest resolution produced, delivered on hard drive or LTO 6 [NTFS or gnuTAR formatted] |
| 1.2.3 | **DCDM** (Digital Cinema Distribution Master); supplied in the highest resolution produced, delivered on hard drive or LTO 6 [NTFS or gnuTAR formatted] |
| 1.2.4 | **Soundtrack:** The digital Printmaster final mix (5.1 plus LTRT), delivered as uncompressed files (eg WAV). Both 24fps and 25fps versions to be supplied.* *All audio files should be time stamped and segmented according to the reel layout.*
* *LTRT tracks should not be encoded with Dolby SR.*
* *If a 5.1 mix was not created, please supply the next most complete final mix soundtrack.*
 |
| **For ALL items listed above in 1.1 and 1.2** | * + Please ensure the associated checksum(s) are provided
	+ Please do not supply in wrappers such as tar, axf, zip or similar.

***If in doubt, please contact the NFSA.*** |
| **1.3** | **ASSOCIATED ITEMS FOR ALL PRODUCTIONS** |
| 1.3.1 | **Extra materials:** The completed digital file master(s) of any extra materials, e.g. EPK, ‘making of’ documentary, webisodes, featurettes or microdocs made for online purposes, as per standards outlined in 1.1.1 and with checksum(s) |
| 1.3.2 | **Press Kit** for both Australian and international release – to be supplied as a PDF |
| 1.3.3 | **Cast and crew credits**, and **biographies of key production personnel**, if not already included within the above press kit – to be supplied as PDF(s) |
| 1.3.4 | **Statement of Technical Details**, complete with formats and file types, including details of the production and post production paths used for the project. * *See pro forma document below (Attachment A).*
 |
| 1.3.5 | **Scripts** 1. **Post production** **script(s).**
2. **Shooting script** and **marked-up continuity script** (where available)
* *Scripts are to include timings relevant to the screening platform – to be supplied as PDF(s)*
 |
| 1.3.6 | **Music cue sheets** – to be supplied as PDF(s) |
| 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, preferably with accompanying thumbnails, must be supplied as a PDF. This listing should also include the name and contact details of the photographer(s) and any relevant copyright information.*
 |
| 1.3.8 | **Posters: (a)** Digital master file(s)of the Australian (and international) versions when produced; **(b)** Five (5) printed copies of the Australian version (and international) versions when produced. |
|  | **POST-RELEASE ITEMS FOR ALL PRODUCTIONS** |
| 1.4.1 | **DVD/Blu-Ray:** Two copies of any commercially released DVD and/or Blu-ray(when produced). |
| 1.4.2 | **Original Soundtrack (CD/Digital File Release)**: Two (2) copies of any commercially released compact disc (CD) featuring the soundtrack music from the production (when produced). * If commercially released but not on CD, please supply an unencrypted digital copy in the actual format of release; e.g. MP3, m4a, WAV
 |
| 1.4.3 | **Publicity/Marketing:** Other items produced to promote the production may include subsequent promotional flyers, study guides, marked‑up continuity and shooting scripts, handbills, important research and production notes  |
| 1.4.4 | **Artefacts :** Subsequent to the completion of the production, the producer is required to offer, by negotiation, key associated artefacts created such as costumes, props, original artwork, storyboards and awards |

# **ATTACHMENT A**

# **STATEMENT OF TECHNICAL & PRODUCTION DETAILS**

#

|  |
| --- |
| **Please use open text boxes to provide information on how the production was undertaken and completed** |
| ***Main Details:*** |
| **Title:** |       |
| **Producer/s:** |       |
| **Copyright:** |       |
| ***Technical Details:***  |
| **Post Production Pathway:**       |
| **Duration:** |  |
| **Shooting Format:** |  |
| **Finished Format:** |  |
| **Aspect Ratio:** |  |
| **Audio Recording Format:** |  |
| **Finished Audio Format/ Track Information :** |  |
| **Post Production Facility:** |  |
| ***Production Details:*** |
| **Country of Production:** |  |
| **Locations of Shooting:** |  |
| **Language/s:** |       Subtitles? Y/N |
| **Shooting Start Date:** |  |
| **Shooting Finish Date:** |  |
| **Distribution /Broadcaster:** | Australia:       Overseas:        |
| **Release/To Air Date:** | Australia:       Overseas:        |