



**INVESTMENT AGREEMENT**

**For**

**[EARLY / ADVANCED] DEVELOPMENT**

*between*

**Applicant**

*and*

**Screen NSW**

**SCHEDULE**

<b>1. Date of Agreement</b>											
<b>2. Screen NSW</b>	<b>Screen NSW</b> , a branch of the NSW Department of Justice for and on behalf of the Crown in right of the State of NSW (ABN 11 005 693 553) with its principal office at Level 5, 323 Castlereagh Street, Sydney in the State of New South Wales, 2000										
<b>3. Applicant(s)</b>	          <b>ABN:</b>										
<b>4. Project</b>	<p><b>Title:</b></p> <p><b>Type:</b> [feature/factual/tv series]</p> <p><b>Based on:</b> [if applicable]</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;">Key Creatives for the Project</th> <th style="width: 40%;">NSW-based</th> </tr> </thead> <tbody> <tr> <td><b>Producer</b> [INSERT NAME]</td> <td align="center">YES / NO</td> </tr> <tr> <td><b>Director</b> [INSERT NAME]</td> <td align="center">YES / NO</td> </tr> <tr> <td><b>Writer</b> [INSERT NAME]</td> <td align="center">YES / NO</td> </tr> <tr> <td><b>[Insert others as applicable]</b></td> <td></td> </tr> </tbody> </table>	Key Creatives for the Project	NSW-based	<b>Producer</b> [INSERT NAME]	YES / NO	<b>Director</b> [INSERT NAME]	YES / NO	<b>Writer</b> [INSERT NAME]	YES / NO	<b>[Insert others as applicable]</b>	
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<b>[Insert others as applicable]</b>											
<b>5. Contracts Annexed</b>											
<b>6. Screen NSW Development Investment</b>	<table style="width: 100%;"> <tr> <td style="width: 70%;"><b>Current</b> Investment</td> <td align="right">\$</td> </tr> <tr> <td><b>Previous</b> Investment</td> <td align="right">\$</td> </tr> <tr> <td><b>Total</b> Investment</td> <td align="right">\$</td> </tr> </table>	<b>Current</b> Investment	\$	<b>Previous</b> Investment	\$	<b>Total</b> Investment	\$				
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<b>8. Current Stage</b>	[DESCRIBE ACTIVITY TO BE CARRIED OUT USING THE CURRENT INVESTMENT]										
<b>9. Delivery Materials</b>	<p><u>Delivery Materials:</u></p> <p>(a) standard -Synopsis – 1 line, 1 paragraph &amp; 1 page</p> <p>(b) standard - Cross platform elements (if any)</p> <p>(c) standard - Completed Statement of Actual Expenditure (Attachment A – Part B)</p> <p>(d) Other Materials (<i>describe</i>)</p> <p><u>Delivery Date:</u> [insert]</p>										
<b>10. Screen NSW Credit</b>	Developed with assistance from Screen NSW <i>[Screen NSW LOGO]</i>										
<b>11. Special Conditions</b>											

## **GENERAL TERMS AND CONDITIONS**

This agreement is made on the date set out in the Schedule.

The parties agree as follows:

## **BACKGROUND**

Screen NSW agrees to pay the Current Investment to You to develop the Current Stage on the terms of this agreement.

## **AGREEMENT**

### **1. Definitions and Interpretation**

(a) All capitalised terms used in this agreement are as defined in this agreement including the Schedule and the General Terms and Conditions.

(b) In this agreement, except where the context otherwise requires, the following expressions are interpreted as follows:

**Budget** meant the estimated costs of the Current Stage as set out in Attachment A - Part A.

**Key Creative** means writer, producer or director.

**NSW-based Company** means a company registered in NSW having its principal place of business in NSW for at least six months immediately prior to Your application for the Current Stage.

**NSW-based Individual** means an individual based in and working from NSW for at least six months immediately prior to Your application for the Current Stage.

**NSW-based Key Creative** means a Key Creative based in and working from NSW for at least six months immediately prior to Your application for the Current Stage.

**Production Company** means the entity that owns copyright in the Work at the commencement of preproduction of the Project.

**Project** includes any cinematograph film or full-scale project based on or incorporating the Work.

**Significant NSW Elements** means:

(a) the Applicant is a NSW-based Key Creative, NSW-based Individual or NSW-based Company; or

(b) the Applicant is a party to a genuine co-production arrangement with a NSW-based Company or NSW-based producer; or

(c) at least one NSW-based Key Creative is attached to the Current Stage; or

(d) Screen NSW is satisfied that the Project offers outstanding benefits to the NSW screen industry.

**You** means the Applicant(s) named in the application for the Current Stage and a party to this agreement as described in the Schedule.

**Work** means the Current Stage and all underlying works on which it is based.

(c) In the event of any inconsistency between the Schedule and the General Terms and Conditions, the Schedule will take precedence over the General Terms and Conditions.

(d) In the interpretation of this agreement, where there are two or more parties specified as the Applicant, an obligation or a liability assumed by those parties, or a right conferred on those parties, binds or benefits all of them jointly and each of them severally.

### **2. Development of the Work**

(a) Screen NSW agrees to pay the Current Investment to You on the terms of this agreement.

(b) You agree to use the Current Investment to meet part of the costs of the Current Stage according to the Budget and to deliver the Delivery Materials according to the Schedule.

(c) You will develop the Work to the Current Stage professionally, in accordance with Australian industry practice and the details set out in the Schedule.

(d) Screen NSW will deposit the Instalments into Your nominated bank account within 14 days after receipt of Your valid invoice.

(e) You will consult with Screen NSW regularly throughout the development process and seek its prior consent to any changes in the Schedule details and/or the Budget.

(f) You will provide Screen NSW with such information and other reports in relation to the development of the Work as Screen NSW may from time to time reasonably require.

- (g) You will keep accurate financial records relating to the development of the Work and will allow Screen NSW to inspect or audit those records on reasonable notice.
- (h) Screen NSW will not unreasonably withhold or delay giving any consent or approval.

### **3. Rights**

- (a) Screen NSW does not acquire any copyright in the Work as a result of making the Current Investment.
- (b) You will obtain the prior written consent of Screen NSW to any change in the copyright ownership of the Work, and will give Screen NSW reasonable notice and details of any proposed change to enable Screen NSW to consider any proposed change.
- (c) You agree to notify Screen NSW on or about the date the production of the Project is fully financed.
- (d) If rights in the script for the Work may revert to the scriptwriter(s), each scriptwriter must provide a signed undertaking in the form of Attachment B.

### **4. Repayment; Retention by Production Company**

- (a) The Total Investment must be included in and repaid from the production budget of the Project on or before the commencement of principal photography, subject to this clause 4.
- (b) Up to \$45,000 of the Total Investment may be retained by the Production Company if:
  - (i) the Production Company is a NSW-based Company; and
  - (ii) the Project will be 100% produced and/or 100% post-produced in NSW; and
  - (iii) the Applicant is not in breach of any term of this agreement.
- (c) Any part of the Total Investment that exceeds \$45,000 must be repaid to Screen NSW according to this clause 4. The Production Company will request an invoice from Screen NSW for any repayment of the Total Investment.

### **5. Screen NSW Credit**

- (a) In consideration of the payment of the current Investment, You agree to provide and, if applicable, will undertake that the Production Company will provide Screen NSW with the Screen NSW Credit on the terms of this agreement.
- (b) The Screen NSW Credit must appear:
  - (i) on all copies of the Work;
  - (ii) as a static single frame credit in the closing credits or credit screen of the completed Project, followed by the Screen NSW logo in the same frame;
  - (iii) in all advertising and promotional material for the Project with the exception of theatrical trailers, television and radio commercials, newspaper, online and magazine advertisements under ten column centimetres, group, teaser or award advertising, or material dealing exclusively with the promotion of individuals involved in making the Project; and
  - (iv) wherever other development contributors receive a credit.
- (c) The Screen NSW Credit must be adjacent to and of a similar size and density as that accorded any other development contributor.
- (d) You agree to, and (if applicable) will ensure that the Production Company will, send Screen NSW a draft credit roll for approval and request a copy of the current Screen NSW logo before finalising the credits for the Project.
- (e) Screen NSW may, on reasonable notice, decline to be given the Screen NSW Credit.

### **6. Your Warranties to Screen NSW**

- (a) You warrant that:
  - (i) All details provided in Your application and this agreement are correct.
  - (ii) You are an Australian resident or citizen or an Australian company, with a valid ABN.
  - (iii) The Work/Project has and will continue to have Significant NSW Elements.
  - (iv) You have full capacity and authority to enter into and comply with these terms.
  - (v) You intend to produce and/or post-produce the Project in NSW.
  - (vi) You own or control copyright in the Work.
  - (vii) You will use your best endeavours to protect the copyright in the Work and will notify Screen NSW of any apparent or actual breach of copyright.

- (viii) If the Work includes Indigenous Cultural Intellectual Property (“ICIP”) material, You will use best efforts to respect and observe the rights of the owners of the ICIP material.
  - (ix) In the event that you wish to include ICIP material in the Work, You shall obtain a non-exclusive licence from the ICIP rights holder/s or custodian/s to include such ICIP material in the Work.
  - (x) If requested in writing by Screen NSW, you must promptly provide Screen NSW with duly executed copies of any and all documents or agreements relating to ICIP material.
  - (xi) The Work is original, is not defamatory and does not infringe copyright, trade mark, designs, or a person’s right of publicity, or constitute passing off, breach of confidence, contempt of court, unfair competition, misleading or deceptive conduct, or invasion of privacy, or infringe the rights of any other person, or infringe any applicable laws, anywhere in the world.
  - (xii) You are not aware of any legal proceedings or any threat of legal proceedings or any claim by any third party alleging that the Work infringes the rights of any other person, whether of copyright or otherwise.
  - (xiii) You have procured or will procure the consents of all scriptwriters, script editors, the individual producer and the director (if any) or You consent, (if applicable) to at least the material alterations to the Work in accordance with the provisions of the *Industry Accord on Moral Rights*, and as necessary to produce and market the Work and Project throughout the world.
  - (xiv) All third party contributions towards the Current Stage are outlined in the Budget and you will seek Screen NSW’s consent to any further third party contributions. All prior third party contributions towards development of the Work comprise the chain of title.
  - (xv) To the best of your knowledge after reasonable enquiry, as at the date of this agreement, neither You nor any of the Key Creatives for the Project are in breach of any contractual obligations to Screen NSW (whether or not the obligations relate to the Work).
  - (xvi) You have had a reasonable opportunity to obtain independent legal advice from an advisor with relevant industry experience in respect of these terms.
  - (xvii) You have provided the complete chain of title for the Work (including agreements with third party contributors to the Work) to Screen NSW and the contracts comprising the chain of title for the Work are true, correct and complete.
- (b) All your warranties survive termination or expiration of this agreement.

**7. Screen NSW May Terminate this agreement if Certain Events Occur**

- (a) If You breach any term of this agreement Screen NSW may at any time issue You with a notice specifying your breach and giving You 14 days to remedy it.
- (b) Screen NSW may terminate this agreement if:
  - (i) You do not remedy the breach to the reasonable satisfaction of Screen NSW; or
  - (ii) You cease to carry on business in NSW during the period of production of the Work and the Project; or
  - (iii) You commit an act of insolvency.
- (c) If Screen NSW terminates this agreement:
  - (i) any unpaid Instalment may, in the sole discretion of Screen NSW, cease to be payable; and
  - (ii) any part of the Total Investment paid to You may, in the sole discretion of Screen NSW, be immediately due and payable to Screen NSW; and
  - (iii) Screen NSW may notify you that it declines to be given the Screen NSW Credit.

**8. Notices**

Notices must be sent to the addresses specified in this agreement and will be deemed delivered:

- (i) in the case of hand delivery, on the next business day after delivery;
- (ii) in the case of express, registered or certified post, three business days after posting;
- (iii) in the case of email, on the date that the notice was transmitted, provided that the date of transmission is verifiable.

**9. Supersedes**

This agreement supersedes any previous agreements between You and Screen NSW relating to the Work and the Current Stage.

**10. Agreement**

This agreement is governed by and will be construed in accordance with the law of New South Wales.

**11. GST**

- (a) The parties acknowledge and agree that the consideration payable by Screen NSW for any supply made under this agreement and all other amounts referred to in this agreement (including, without limitation, the production budget for the Project) have been calculated without regard to, and are exclusive of, any GST.
- (b) If GST is imposed on any supply made under this agreement, then the supplier of the supply may recover from the recipient, in addition to any consideration due for the supply, the GST imposed on the supply calculated by multiplying the amount or value of the consideration for the supply by the prevailing GST tax rate as at the date the supply is made PROVIDED THAT the supplier has delivered to the recipient GST tax invoice(s) for that supply in a form that complies with the provisions of A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any associated legislation or regulations (as amended).
- (c) If the supplier recovers an increased amount pursuant to clause 11(b) and if this amount is greater than the GST imposed on the relevant supply for any reason, then the supplier must immediately repay to the recipient of the supply the difference between the two amounts.

By signing below the Applicant(s) and Screen NSW agree to be bound by the Schedule, the General Terms and Conditions and any annexures or attachments.

**EXECUTED** as an agreement on the date set out in the Schedule.

Signed for and on behalf of **SCREEN NSW**  
acting through the Department by its authorised  
signatory but not so as to incur personal liability:

.....  
Print Name

.....  
Signature

.....  
Title

.....  
Date

**EXECUTED** by the Applicant  
**in accordance with Section 127 (1)** of the  
Corporations Act 2001 by authority of its  
Directors in the presence of:

.....  
Director / Witness

.....  
Director

.....  
Print Name

.....  
Print Name

**Attachment A – Part A**

**BUDGET**

Category	Applicant(s) Contribution	3 <sup>rd</sup> Party Contribution	Current Investment	Actual Expenditure
<b>TOTALS</b>				
<b>TOTAL FOR CURRENT STAGE</b>				

**Attachment A – Part B**

**STATEMENT OF ACTUAL EXPENDITURE – part of Delivery Materials**

I hereby declare that the following represents a true and full accounting of the Current Investment.

[INSERT DETAILS OF EXPENDITURE OF CURRENT INVESTMENT AGAINST CATEGORIES IN BUDGET ABOVE]

Any amounts specified under "3rd Party Contribution" in the Budget have been or will be applied in accordance with the relevant 3<sup>rd</sup> Party contract.

.....  
For and on behalf of the Applicant(s)

.....  
For and on behalf of the Applicant(s)

.....  
Print Name

.....  
Print Name

Date:

**Attachment B**

**SCRIPTWRITER UNDERTAKING**

TO:

Screen NSW  
GPO Box 7060  
**SYDNEY NSW 2001**

PROJECT TITLE: .....

I will be the scriptwriter/one of the scriptwriters of the Current Stage\* of the Work as funded by the Current Investment\*.

In consideration of Screen NSW entering into the agreement (“the Agreement”) with ..... Pty Ltd (“the Applicant(s)”), I agree that:

1. If the Applicant(s) ceases to be involved in the Work and I (including any company in which I am a director or shareholder or any other entity in which I hold an interest) own or acquire rights in respect of the Work, I shall assume the obligations of the Applicant(s) pursuant to the Agreement.
2. I have read the Agreement.
3. On and from the date that I own/acquire the rights, I acknowledge that I shall not be liable for any prior breach of the Agreement by the Applicant(s).
4. I warrant that to my knowledge no person other than the Applicant(s) controls any present or future interest in the copyright in the Work and that the Current Stage will not infringe the rights of any person.

\* *Expressions as defined in the Agreement.*

.....  
Scriptwriter

.....  
Witness

.....  
Scriptwriter

.....  
Witness

.....  
Scriptwriter

.....  
Witness

Date:

*Note: Where there is more than one Scriptwriter this undertaking will be signed by each of them, and applies to each Scriptwriter severally.*