



**“[TITLE]”**

**SCREEN NSW APPLICATION NUMBER [XXXX]**

**[PROGRAM]**

**[Production Finance Fund or Regional Filming Fund]**

**PRODUCTION GRANT AGREEMENT**

**between**

**SCREEN NSW**

**and**

**[PRODUCER]**

**and**

**[PRODUCTION COMPANY]**

# CORE CONDITIONS

## Parties

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This agreement is dated 2015 and binds the following parties:

1. **SCREEN NSW**, a branch of the 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, (**Screen NSW**);
2. **PRODUCER** (ABN XXXX) of ADDRESS (**Producer**); and
3. **PRODUCTION COMPANY** (ABN XXXX) of ADDRESS (**Production Company**)

References to the Producer include the Production Company if applicable and each is jointly and severally responsible for all obligations stated to be obligations of the Producer under this agreement.

## 1. Production

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1.1. The Producer agrees to:

- a. produce, Complete and deliver the Production in accordance with this agreement (including the Schedules);
- b. use the Grant for the Production in accordance with the Budget;
- c. ensure complete payment of the Budgeted Cost into the Bank Account by all Contributors in the Finance Plan in accordance with the Drawdown Schedule;
- d. ensure that the Production is of a technical quality suitable and fully acceptable for international theatrical release (if a film), television broadcast, video, video on demand and all media distribution;
- e. ensure the Deliverables and Reports are accurate, complete and delivered on time; and
- f. provide Screen NSW with information, documents and Records relating to the Production promptly on request.
- g. properly perform all Contributor Agreements, including by obtaining all Contributor approvals required under Contributor Agreements.

## 2. Grant

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2.1. Screen NSW 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 Instalment date.

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

2.3. Conditions Precedent to Screen NSW paying the first Instalment are:

- a. the Producer provides Screen NSW an opinion from a suitably qualified solicitor in a form approved by Screen NSW 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;

- b. the Producer provides Screen NSW written confirmation that it has executed the NFSA Deed and delivered it to the NFSA; and
  - c. the Completion Guarantee is fully executed in a form acceptable to Screen NSW.
- 2.4. Screen NSW is not required to pay Instalments that would otherwise be due if there is an Event of Default.
- 2.5. If any Contributor fails to provide any part of its contribution within two Business Days of the time for payment specified in the Finance Plan and Drawdown Schedule, the Producer will:
- a. immediately notify Screen NSW in writing;
  - b. meet the shortfall; and
  - c. provide copies of agreements with parties contributing to a shortfall (if any) to Screen NSW if requested.

### **3. Intellectual Property Rights and clearances**

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- 3.1. 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:
- a. 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:
    - i. the Underlying Work, before the start of principal photography;
    - ii. the Script, before the start of principal photography;
    - iii. a computer program created for the Production, before Completion;
    - iv. all musical works and sound recordings created for the Production, before Completion; and
    - v. any other works and subject matter not covered in i to iv created for the Production, before Completion.
  - b. a non-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 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 without limitation:
    - i. musical works and sound recordings;
    - ii. cinematograph films and stills; and
    - iii. computer programs,before Completion;
  - c. all Principal Participant releases, before the start of principal photography;
  - d. all Moral Rights consents, clearances, permits, interviewee and other releases, before Completion; and

- e. ownership of copyright (under section 86 of the *Copyright Act 1968*) in the Production on Completion.
- 3.2. 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.
- 3.3. The Producer agrees to provide Screen NSW with copies of any agreements or clearance documents relating to the warranties in this clause 3 within 2 Business Days of Screen NSW's written request.
- 3.4. The Producer grants (and warrants that it holds, or will hold prior to Completion, all necessary rights to grant) Screen NSW a perpetual, irrevocable, royalty-free, worldwide, non-exclusive licence to use, electronically store and reproduce the Production and Marketing Materials for Screen NSW's corporate or promotional purposes, including Screen NSW's promotion of the Australian and New South Wales screen industry, as follows:
  - a. screenings of the whole Production for members of Screen NSW's advisory committee, staff and invited guests and parliamentary screenings; and
  - b. still photographs and excerpts of the Production of no more than 3 minutes in aggregate for showreels and for any online use including, without limitation, Facebook and YouTube.
- 3.5. The Production will contain a complete and effective copyright notice. The Producer will take all necessary steps to protect its Intellectual Property Rights in the Production.

#### **4. Accounts**

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- 4.1. The Producer must keep the Bank Accounts open until Screen NSW accepts the Final Cost Report provided in accordance with clause 6.
- 4.2. The Producer agrees:
  - a. 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;
  - b. not to deposit its own money in a Bank Account other than its specified contribution to the Budgeted Cost (if any);
  - c. not to transfer money in a Bank Account to another account owned or operated by it; and
  - d. not to deposit any money required by this agreement to be deposited in the Bank Account in any other account.
- 4.3. The Producer agrees that it will not establish a bank account other than the Bank Accounts for the purposes of the Production without Screen NSW'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.
- 4.4. All interest that accrues on money in the Bank Accounts must be applied as follows:
  - a. first, towards the cost of producing the study guide for the Production;
  - b. second, towards the cost of producing the Production, which contribution shall not increase the Budgeted Cost; and
  - c. third, as Underage to be applied in accordance with clauses 4.8.a or 4.8.b.
- 4.5. Only the signatories specified in the Finance Schedule may operate the Bank Accounts.

- 4.6. If Screen NSW believes an Event of Default has occurred Screen NSW may, by written notice to the Producer and the relevant bank, terminate the authority of all or any of the Producer's signatories to operate the Bank Accounts.
- 4.7. The Producer must provide Screen NSW with copies of any or all of the bank statements for the Bank Accounts within 2 Business Days of Screen NSW's written request.
- 4.8. The Producer agrees to:
- a. repay any Underage to Screen NSW and the other Contributors in accordance with the percentages of their respective contributions to the Budgeted Cost specified in the Finance Plan;
  - b. in respect of an amount of Underage owing to Screen NSW under a., the Producer may request approval from Screen NSW to use the amount to market the Production, such approval being in Screen NSW's sole discretion and subject to Screen NSW's written consent,
  - c. pay any Overage; and
  - d. meet any shortfall arising from foreign currency movements.

## **5. Approvals**

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- 5.1. The Producer agrees to obtain Screen NSW's prior written approval in respect of any:
- a. change to the Principal Personnel, Principal Participants or Key Cast;
  - b. reallocation of more than 20% of any budget category in the Budget;
  - c. change to the Budgeted Cost or any element of the Finance Plan;
  - d. variation to the Budget which reduces or is likely to reduce QAPE or Producer Equity Program grant (if applicable);
  - e. change to the Production Schedule;
  - f. change of the Title; and
  - g. material amendment to the Script.
- 5.1A. Prior to exercising the approvals pursuant to clause 5.1(a) to (e) of this agreement, Screen NSW requires the Producer to provide it with written confirmation of the Producer Offset Lender's approval of the requested change
- 5.2. Subject to the rights granted to any broadcaster, exhibitor or online distributor, if the Production changes after Screen NSW views the Production on Completion, the Producer will ensure that Screen NSW has an opportunity to view the Production before its first broadcast or release.
- 5.3. Any approval under clause 5 is subject to clause 1.1.a and clause 20.5. Screen NSW will exercise its right to approve or not approve changes without unreasonable delay.

## **6. Reporting**

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- 6.1. The Producer agrees to:
- a. keep, organise and safely store adequate and proper Records;

- b. ensure its accounts are prepared according to the *Corporations Act 2001 (Cth)* and generally accepted Australian accounting principles;
  - c. 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 NSW and the Contributors; and
  - d. upon reasonable notice provide Screen NSW or its nominee with unrestricted access to and copies of Records.
- 6.2. The Producer agrees to provide a written cost report to Screen NSW:
- a. within 5 days of the start of Post Production – the report to cover the period from the date of this agreement to the last day of principal photography; and
  - b. within 5 days of Rough Cut – the report to cover the period from the start of Post Production to the last day of post-production.
- 6.3. Within 3 months of the Completion Date the Producer will deliver a Final Cost Report to Screen NSW 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 NSW.
- 6.4. Each report provided by the Producer under clauses 6.2 and 6.3 must be in a form acceptable to Screen NSW and must include:
- a. a cost report;
  - b. a trial balance;
  - c. a statement of the Grant identifying any interest earned on money in the Bank Accounts and any gain realised from foreign currency movements; and
  - d. any other matters that Screen NSW may require.
- 6.5. The Final Cost Report must address the following matters:
- a. a full statement of the total production costs of the Production in accordance with the classifications of the Budget;
  - b. income and expenditure including, without limitation, 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;
  - c. reconciliation of the Bank Accounts;
  - d. assets, liabilities and investments acquired or incurred by the Producer relating to the Production;
  - e. satisfaction of debtors and creditors of the Production;
  - f. that purchased Production Assets have been disposed of at an arm's length price;
  - g. any Overage or Underage; the name of each recipient of a share of Underage and the sum received;
  - h. interest accrued on money in the Bank Accounts;
  - i. any gain realised from foreign currency movements; and

j. any sums paid or payable under the Completion Guarantee (if applicable).

- 6.6. On acceptance by Screen NSW, the Final Cost Report shall be conclusive and binding on the parties to this agreement, unless there is manifest error.
- 6.7. The Producer agrees that Screen NSW may, at its own cost, appoint an auditor to carry out an audit of the Producer in relation to the Production.
- 6.8. The Producer agrees to provide Screen NSW or any auditor appointed by Screen NSW with unrestricted access to and copies of the Records for the purpose of an audit.

## **7. Deliverables**

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- 7.1. The Producer agrees to provide Screen NSW the Deliverables by the time specified in the Deliverables Schedule.
- 7.2. The Producer agrees to advise Screen NSW when delivery to each Marketplace Contributor occurs.
- 7.3. The Producer will provide to its chosen Study Guide Provider the Study Guide Deliverables on the Delivery Date specified in the Deliverables Schedule.

## **8. Indigenous requirements**

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- 8.1. The Producer 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 NSW website) in respect of indigenous content or filming of indigenous people.

## **9. Marketing**

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- 9.1. The Producer agrees to market the Production in a manner consistent with good business judgment and sound commercial practice.
- 9.2. The Producer will invite Screen NSW to attend any:
- a. viewing of the Production for any other Contributor;
  - b. test screening of the Production; and
  - c. premiere or festival screening.
- 9.3. The Producer must register and obtain an International Standard Audiovisual Number (ISAN) for the Production before the start of post-production.
- 9.4. The Producer agrees to:
- a. deliver a marketing report to Screen NSW upon request setting out the Producer's marketing activities in relation to the Production;
  - b. give Screen NSW reasonable prior notice of any festival screening of the Production;
  - c. keep Screen NSW informed about the organisation of, and invite Screen NSW to attend, the Australian premiere of the Production;
  - d. consult with Screen NSW to ensure that the New South Wales 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

- e. provide Screen NSW with details of all festival participation, nominations and awards related to the Production as soon as the information becomes available.

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

9.6. The Producer agrees to give Screen NSW copies of Marketing Materials on Completion of the Production as they become available, for the purposes of clause 9.

9.7. Screen NSW will comply with any reasonable restrictions on the use of Marketing Materials (which may include restrictions on the timing for release or the way in which they may be made available), which are notified by the Producer to Screen NSW.

## **10. Credits and acknowledgement**

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

10.2. Before the completion of the titles of the Production the Producer will provide Screen NSW the full credit roll with Screen NSW's credit for Screen NSW to approve. If Screen NSW does not approve the use of the Screen NSW credit the Producer agrees to remove all Screen NSW credits, name and logo from the Production, advertising and promotion material for the Production.

10.3. The Producer agrees to acknowledge Screen NSW's role in financing the Production in any interviews, press conferences, industry events including award nights, or other promotional or press meetings in which the Production is discussed by or under the authority of the Producer.

## **11. Insurance**

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11.1. The Producer agrees to:

- a. take out and keep current the Insurance policies specified in the Production Particulars Schedule; and
- b. provide proof of the Insurance to Screen NSW immediately on request.

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

## **12. Producer warranties**

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12.1. The Producer warrants and represents:

- a. 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 NSW's terms of trade applicable to the Production;
- b. it will produce the Production in accordance with first class professional standards;
- c. it will perform all of its obligations under this agreement in accordance with all applicable laws and regulations;
- d. the Budget and the Budgeted Cost are adequate to meet all costs and complete the Production;



- e. it will pay its contribution (if any) and ensure each payment of the Budgeted Cost in accordance with the Finance Plan and Drawdown Schedule;
- f. it has entered into enforceable and non-conditional agreements with each Contributor to make payments in accordance with this agreement and that all conditions precedent have been met (or will have been met at the time they are required to have been met);
- g. it will at all times fully comply with its obligations under each Contributor agreement;
- h. all requirements in clause 3 (Intellectual Property Rights and clearances) are met (or will be met by the times specified in clause 3);
- i. the Production does not include defamatory material;
- j. enforceable agreements have been entered with each of the Principal Personnel, Principal Participants and Key Cast;
- k. all information provided to Screen NSW is true, accurate and not misleading;
- l. no Event of Default has occurred;
- m. it will ensure safe storage and handling of all Production Assets;
- n. it holds all Insurance required under clause 11; and
- o. 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.

12.2. 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.

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

12.4. The Producer agrees to provide Screen NSW 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.

### **13. Indemnity**

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13.1. The Producer and the Production Company jointly and severally indemnify Screen NSW against any:

- a. loss, cost or liability incurred by Screen NSW; or
- b. loss, cost or expense incurred by Screen NSW 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 NSW,

arising from or in connection with:

- c. a breach by the Producer or Production Company of the agreement;
- d. without limiting 13.1.c, any Event of Default;
- e. any act or omission involving fault by the Producer or Production Company in connection with this agreement;
- f. the production, Completion or exploitation of the Production;

- g. the use by Screen NSW of the Production (in accordance with the licence in clause 3.) or
- h. any Claims by third parties in connection with Intellectual Property Rights or other clearances.

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

#### **14. Confidentiality**

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- 14.1. Subject to clauses 14.2 and 14.3 the parties agree that this agreement and all information disclosed to the parties in connection with this agreement is confidential information (Confidential Information) that must not be disclosed without the prior written consent of each party, except as required by law. Where a party considers that it is bound to disclose the Confidential Information by law, it must first inform each other party and comply with any reasonable request of each other party in relation to the disclosure.
- 14.2. Screen NSW may disclose the general details about the Grant (including the amount, title, recipient/s) to meet government reporting obligations. Screen NSW may also disclose the terms of this agreement to a responsible Minister, to another New South Wales Government department or in response to a request by a Committee of the Parliament of New South Wales.
- 14.3. The Producer may disclose the Confidential Information to its financiers, advisors, accountants and Contributors 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.

#### **15. Producer offset**

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- 15.1. The Producer agrees to produce and Complete the Production in accordance with the Provisional Certificate and obtain the Final Certificate as soon as possible after the Completion Date. The Producer will provide copies of the certificates to Screen NSW if requested.
- 15.2. 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:
- a. is in accordance with the Provisional Certificate;
  - b. will not reduce the qualifying Australian production expenditure (QAPE) for the Production; and
  - c. will not prevent the Producer from obtaining a Final Certificate.
- 15.3. The Producer agrees to pay the Producer Offset Proceeds in accordance with any producer offset loan agreement that it has entered and to meet any shortfall in the Producer Offset Proceeds payable to a lender.

***EITHER PRODUCER OFFSET OR PRODUCER EQUITY MAY APPLY BUT NOT BOTH.***

#### **16. Intentionally deleted.**

#### **17. Voluntary winding up**

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- 17.1. Despite any other provision of this Agreement, the Production Company, having given notice in writing to Screen NSW, 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.

## **18. Completion Guarantee**

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- 18.1. The Producer agrees to pay the fee due to the Completion Guarantor set out in the Completion Guarantee from the first Instalment.
- 18.2. The parties agree that the terms of the Completion Guarantee take precedence over the terms of this agreement to the extent of any inconsistency.
- 18.3. 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.

## **19. Default**

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- 19.1. It is an Event of Default if:
- a. the Conditions Precedent to the first Instalment are not satisfied within three (3) months of the date of this agreement;
  - b. the Production Company or Producer breach a warranty or term of this agreement;
  - c. the Producer or the Production Company does anything, or permits anything to be done, which prejudices the issue of the Final Certificate;
  - d. (where the Production is an official co-production) 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;
  - e. any Contributor Agreement is terminated for any reason or becomes void, illegal, invalid, unenforceable or of limited force and effect;
  - f. a Contributor fails to make a payment within 2 Business Days of the date for payment specified in this agreement;
  - g. the Producer does not hold the Insurance required under this agreement;
  - h. the occurrence of any Insolvency Event in relation to the Producer, the Production Company (other than as described in clause 17) or any Contributor; or
  - i. the Producer does not Complete the Production by the Completion Date.
- 19.2. If an Event of Default occurs which in Screen NSW's sole opinion can be rectified Screen NSW 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.
- 19.3. If in Screen NSW'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 NSW may immediately terminate this agreement by written notice to the Producer.
- 19.4. If this agreement is terminated by Screen NSW in accordance with clause 19.3, in addition to any other remedies available to Screen NSW at law or in equity, upon termination:
- a. any amount of the Grant not yet paid will not be payable; and
  - b. Screen NSW may issue a notice to the Producer requiring repayment of any amount of the Grant paid by Screen NSW prior to the date of termination and the Producer must repay the whole of that amount to Screen NSW within ten (10) Business Days of the date of the notice.

## **20. General provisions**

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- 20.1. The Producer will comply with all applicable laws relating to the Production including applicable industrial awards relevant to the employment or engagement of personnel.
- 20.2. Nothing in this agreement constitutes a partnership or joint venture between Screen NSW and the Producer or renders Screen NSW liable for any debt or obligation of the Producer.
- 20.3. Neither the Producer nor the Production Company may enter into any contract or incur any liability on Screen NSW's behalf, or represent that it has authority to do so.
- 20.4. 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.
- 20.5. This agreement (including any part of the Schedules) may only be varied in writing and signed by the parties.
- 20.6. 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.
- 20.7. This agreement may be executed in counterparts and all counterparts are taken together to constitute one and the same instrument.
- 20.8. This agreement supersedes all prior agreements, representations, negotiations and correspondence with respect to this agreement and comprises the entire agreement between the parties.
- 20.9. 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.
- 20.10. The Producer agrees to comply with the *Privacy Act 1988 (Cth)*.
- 20.11. 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 NSW immediately and take any steps Screen NSW reasonably requires to resolve or otherwise deal with that Conflict.
- 20.12. Where Screen NSW'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 NSW.

## **21. Governing law**

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- 21.1. 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 jurisdiction of the courts of that State.

## **22. GST and tax**

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- 22.1. The parties agree that all amounts referred to in this agreement are exclusive of GST.
- 22.2. 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 (the "Consideration"), the amount of GST imposed upon the Taxable Supply.

- 22.3. 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.
- 22.4. 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.

## **23. Interpretation**

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- 23.1. This agreement includes the Core Conditions and Schedules.
- 23.2. In this agreement except where the context otherwise requires:
- a. words importing the singular include the plural and vice versa;
  - b. 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)*;
  - c. words and expressions defined in the *Corporations Act 2001 (Cth)* have the same meaning;
  - d. clause headings and underlining are for reference purposes only;
  - e. 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;
  - f. references to a party includes that party's successors and permitted assignors;
  - g. references to a person include natural persons and any other entity regulated by the laws of Australia or any other country;
  - h. "Dollars" and "\$" refer to Australian dollars unless otherwise stated;
  - i. 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;
  - j. derivatives from a word given a certain meaning or interpretation, have a corresponding meaning or interpretation; and
  - k. if there is any inconsistency between the terms of the Core Conditions and the Schedule the terms of the Schedule prevail to the extent of the inconsistency.
- 23.3. This agreement records the entire agreement between the parties in relation to its subject matter.

## **24. Definitions**

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- 24.1. In this agreement, unless the context indicates otherwise:
- Bank Accounts** means the Production Account and the Investment Account 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 without limitation 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** 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]; and

**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;

**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 the conditions specified in the Conditions Precedent table in the Production Particulars Schedule;

**Contributor** means any person specified in the Finance Plan as providing funds for the Production;

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

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

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

**Drawdown Schedule** means the drawdown schedule in the Schedules;

**Event of Default** has the meaning in clause [19](#);

**Film Authority** has the meaning defined 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 NSW 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:

- a. 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;
- b. a liquidator or provisional liquidator is appointed to the person;
- c. an Administrator or Controller is appointed to the person or any of the person's assets;
- d. 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;
- e. 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;
- f. the person is or becomes insolvent or the person is presumed to be insolvent under an applicable law;
- g. 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)*;
- h. a notice in relation to the person is issued under sections 601AA or 601AB of the *Corporations Act 2001 (Cth)*;
- i. a writ of execution is levied against the person or the person's property;
- j. the person ceases to carry on business or threatens to do so; or
- k. 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;

capitalised terms in this definition have the meaning in the *Corporations Act 2001 (Cth)*;

**Instalment** means each instalment of Screen NSW's Grant as set out in the Drawdown Schedule;

**Intellectual Property Rights** means

- a. all copyright;
- b. all rights in relation to inventions, trademarks (including service marks), designs, circuit layouts;
- a. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;
- b. Moral Rights;

- c. Performers' Rights;
- d. rights in relation to Confidential Information; and
- e. 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 NSW;

**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 given in the *Copyright Act 1968 (Cth)*;

**Personal Information** has the meaning given in 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 Proceeds** means the proceeds paid by the Australian Taxation Office to the 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;

**Production Schedule** means the schedule so specified in the Production Particulars Schedule;

**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;

**Regional NSW** as outlined at <http://www.screen.nsw.gov.au/maps-list/nsw-state-council-map/>

**Regional Spend** as defined in the Regional Filming Fund Guidelines on the Screen NSW website as at the time of application.

**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 NSW, and includes any research materials created by the Writer for writing the Script;

**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;

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

**EXECUTED AS AN AGREEMENT**

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

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Authorised Officer

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Officer

**EXECUTED** for and on behalf of **PRODUCER** in accordance with s127(1) of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED** for and on behalf of **PRODUCTION COMPANY** in accordance with s127(1) of the Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

## SCHEDULES

### 1. PRODUCTION PARTICULARS SCHEDULE

Producer	
Name of company	XXXX
ABN	XXXX
Address	XXXX
Email	XXXX

Production Company	
Name of company	XXXX
ABN	XXXX
Address	XXXX
Email	XXXX

Production Details	
Title	XXXX
Underlying Work	[Details/Not Applicable]
Genre	[insert]
Format/Gauge	[XX]
Duration	[XX]
Form of Release	<b><i>[specify eg theatrical, television broadcast]</i></b>
NSW Regional Location(s)	<b><i>[Regional Filming Fund only]</i></b>
Regional Shoot Period	<b><i>[Regional Filming Fund only]</i></b>

Principal Participants /Key Cast <i>[Key Cast is for drama and Principal Participants for Documentary Projects]</i>	M/F	NSW-Based

XXXX		XXXX
XXXX		XXXX

Principal Personnel	Name	M/F	NSW-Based
Executive Producer	XXXX		XXXX
Physical Producer	XXXX		XXXX
Writer	XXXX		XXXX
Director	XXXX		XXXX

Production Schedule	
Start of Pre-Production	XXXX
Start of Principal Photography	XXXX
Start of Post Production	XXXX
Rough Cut	XXXX
Fine Cut	XXXX
Completion Date	XXXX
Delivery Date	XXXX
Final Cost Report and Statutory Declaration	3 Months from the Completion Date

Miscellaneous	
<b>Completion Guarantor</b>	[Insert name] OR Not Applicable
<b>Program</b>	Production Finance Fund OR Regional Filming Fund
<b>Authorised Officer of Screen NSW</b>	Manager, Development and/or Production Chief Executive Officer

Conditions Precedent	
<b>Solicitor's opinion letter - intellectual property rights</b>	(First Screen NSW Instalment) No later than 2 Business Days before the 1 <sup>st</sup> Screen NSW Instalment date specified in the Drawdown

<b>(clause 2.3.a)</b>	Schedule
<b>NFSA Deed (clause 2.3.b)</b>	(First Screen NSW Instalment) No later than 2 Business Days before the 1 <sup>st</sup> Screen NSW Instalment date specified in the Drawdown Schedule
<b>Completion Guarantee (clause 2.3.c)</b>	(First Screen NSW Instalment) No later than 2 Business Days before the 1 <sup>st</sup> Screen NSW Instalment date specified in the Drawdown Schedule

<b>Insurance</b>	
<b>Workers compensation insurance</b>	As required by law
<b>Public liability insurance</b>	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
<b>Errors and omissions insurance</b> <i>Generally only required for drama and not required for non-theatrical documentary or multiplatform productions.</i>	For a period of at least 3 years from the date of Delivery to the Marketplace Contributors
<b>Confirm whether other insurance is required eg for film: essential elements and/or film producers indemnity insurance may be required.</b>	

## 2. FINANCE SCHEDULE

Finance Plan			
Contributor	Type of Finance	Amount	Budget %
<b>Marketplace</b>			
[Name of Contributor]	Licence/DG/DA	\$XXXX	%
[Name of Contributor]	Licence/DG/DA	\$XXXX	%
[Name of Contributor]	Licence/DG/DA	\$XXXX	%
<b>SUB TOTAL:</b>		\$XXXX	%
<b>Screen NSW</b>			
Screen NSW	Grant		
<b>SUB TOTAL:</b>		\$XXXX	%
<b>Other</b>			
[Lender/Producer]	[Producer Offset Advance]	\$XXXX	%
[Producer]	[Producer Equity Payment]	\$XXXX	%
[Producer]	[Equity]	\$XXXX	%
<b>SUB TOTAL:</b>		\$XXXX	%
<b>BUDGETED COST:</b>		\$XXXX	100.00%

Production Account	
Name of Account	Producer to advise details NB where there is a Production Company this account should be held by and include the name of the Production Company]
Bank	
Branch address	
BSB	
Account Number	
Signatory	

<b>Investment Account</b>		
<b>NOTE: if there is no investment account the rest of this table should be deleted</b>		
Name of Account	Producer to advise details NB where there is a Production Company this account should be held by and include the name of the Production Company]	
Bank		
Branch address		
BSB		
Account Number		
Signatory		

**3. DELIVERABLES SCHEDULE***To be delivered to Screen NSW:*

<b>Qty</b>	<b>What</b>	<b>When</b>
2	DVD copies of the Production	Delivery Date
10	Production stills on CD Rom/USB	Delivery Date
1	electronic press kit and written publicity pack for the Production	Delivery Date
1	Final Cost Report and Statutory Declaration	3 months after the Delivery Date
1	NSW Production Report (Screen NSW to supply template)	3 months after the Delivery Date
1	copies of commercial DVD release of the Production if applicable	If and when available
2	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:*

<b>Qty</b>	<b>What</b>	<b>When</b>
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



#### **4. SCREEN NSW SPECIAL CONDITIONS**

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- 4.1. The Producer must spend at least \$XXXX representing approximately XX.XX% of the Budgeted Cost in New South Wales AND/OR The Producer must spend at least \$XXXX in Regional New South Wales, representing the Regional NSW Spend.
- 4.2. 100% of [production and/or post-production] of the Film must take place in New South Wales.
- 4.3. Screen NSW is under no obligation to meet any shortfall.
- 4.4. The Producer must obtain and deliver to Screen NSW copies of all necessary clearances from the New South Wales Office of Children's Guardian or related body for the involvement of any children employed in New South Wales in the production of the Film.
- 4.5. The following additional clauses are added to the Core Conditions as follows:

**New Clause 1.5 of the Core Conditions**

(a) In this clause, "**WHS Legislation**" means all applicable Commonwealth, State and Territory occupational and work health and safety laws in force, and includes without limitation, the Work Health and Safety Act 2011 (NSW), Work Health and Safety Act 2011 (Qld), Work Health and Safety (National Uniform Legislation) Act 2011 (NT), the Work Health and Safety Act 2011 (ACT)

(b) The Producer warrants to Screen NSW that they will at all times during production of the Film comply with WHS Legislation, and ensure that each person performing work for the Producer also complies with the WHS Legislation."

- 4.6. Screen NSW payments terms are 14 days from approval of invoice.

#### **ADDITIONAL SPECIAL CONDITIONS FOR REGIONAL FILMING FUND (if applicable)**

- 4.7. Within thirty (30) days of completing the shoot for the Film the Grantee shall provide the following (the "Regional Report"):
- (a) A cost report detailing the total actual regional production expenditure including a comparison against the Budget for Regional NSW Spend; and
  - (b) The number of shoot days in Regional NSW
  - (c) The total number of people employed and/or contracted living in Regional NSW; and
  - (d) Total number of people employed and/or contracted in a key creative role from Regional NSW.
- 4.8. Without limitation to any other rights of Screen NSW under this Agreement, Screen NSW may use the name and circumstances of the production for the purposes of promoting filming in regional New South Wales as well as generally promoting the screen industry in Screen NSW and state government publicity.

**5. ADDITIONAL SPECIAL CONDITIONS**

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1. For the purposes of this Agreement:

## **6. CREDITS SCHEDULE**

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### **PART A: CREDITS**

#### **Item I: Presentation credits**

Screen NSW 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 (as applicable):

First card:

**SCREEN NSW  
PRESENTS  
OR  
IN ASSOCIATION WITH  
SCREEN NSW**

#### **Item II: End credits**

Screen NSW must receive the following rolling credit (as applicable) to appear directly before the static end credits:

**FILMED AND/OR POST-PRODUCED IN NEW SOUTH WALES, AUSTRALIA**

Screen NSW must also receive a static full frame credit with logo in the end titles of all copies of the Film (whether positive or negative) appearing immediately before the copyright notice, in the following order and containing the following words (as applicable):

**DEVELOPED AND FINANCED WITH THE ASSISTANCE OF**

**[SCREEN NSW LOGO]**

**OR**

**PRODUCED WITH ASSISTANCE FROM THE SCREEN NSW REGIONAL FILMING FUND**

**[SCREEN NSW LOGO]**

**FINANCED IN ASSOCIATION WITH**

**[SCREEN NSW LOGO]**

**OR**

**FINANCED WITH THE ASSISTANCE OF SCREEN NSW  
AND ITS REGIONAL FILMING FUND**

**[SCREEN NSW LOGO]**

Each credit and logo must conform to standard artwork, to be supplied by Screen NSW.

**Item III: Credits in advertising and promotional material**

- (a) Each Contributor's logo, conforming to the standard artwork of each Contributor, must appear in advertising and promotional material for the Production, including websites, theatrical posters, theatrical trailers, press releases, DVD and video sleeves and soundtrack album covers.
- (b) There is no obligation to accord the Contributors credit 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 concerned in the making of the Production.

**Item IV: Credits and logos**

The credit and logo of each Contributor is to be no smaller than the credit and logo of any other Contributor or government film body.

## 7. NOTICES SCHEDULE

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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 NSW:**

Address: Level 5, 323 Castlereagh Street  
Sydney, New South Wales 2000

Email: [Business@screen.nsw.gov.au](mailto:Business@screen.nsw.gov.au)  
to the attention of: Business Affairs Manager

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

Email: [Business@screen.nsw.gov.au](mailto:Business@screen.nsw.gov.au)  
to the attention of: Business Affairs Manager

**Producer:**

Address: XXXX  
Email: XXXX  
To the attention of: XXXX

**Production Company:**

Address: XXXX  
Email: XXXX  
To the attention of: XXXX

- (b) may be served by hand, registered or certified post, facsimile transmission 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, 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.

**8. BUDGET SCHEDULE**

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(Attached)

**9. DRAWDOWN SCHEDULE***Production Grant*

<b>Instalment payment Date</b>	<b>Percentage</b>	<b>Amount</b>
Within 10 Business Days of signing this agreement (subject to receipt of an invoice)	60%	\$
Within 10 Business Days of Screen NSW's approval of the rough cut cost report	30%	\$
Within 10 Business Days of Screen NSW's approval of the Final Cost Report	10%	\$
<b>Total</b>	<b>100%</b>	<b>\$</b>

*Regional Filming Fund*

<b>Instalment payment Date</b>	<b>Percentage</b>	<b>Amount</b>
Within 10 Business Days of signing this agreement (subject to receipt of an invoice)	80%	\$
Within 10 Business Days of Screen NSW's approval of the Regional Report (and/or Delivery Materials)	20%	\$
<b>Total</b>	<b>100%</b>	<b>\$</b>