

GRANT AGREEMENT

GENERATOR: EMERGING FILMMAKERS FUND

BETWEEN

SCREEN NSW

AND

[NAME OF GRANTEE]

**Level 5 323 Castlereagh Street
SYDNEY NSW 2000**

TEL: 9995 0555

(GEFF: XXXX)

NOTES TO THIS AGREEMENT

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

THIS AGREEMENT is made on the

BETWEEN **Screen NSW, 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 (**Screen NSW**);

AND **THE PRODUCTION COMPANY SPECIFIED IN ITEM 1 OF THE TERM SHEET** ("the Grantee")

INTRODUCTION

- A. The Grantee has applied to Screen NSW for a grant under the Generator: Emerging Filmmakers Fund for the purpose of assisting the Grantee to make the film specified in Item 2 of the Term Sheet ("the Film").
- B. Screen NSW has agreed to make a grant to the Grantee on the terms and conditions set out in this Agreement.

IT IS AGREED:

1. Grant

- 1.1 Subject to the terms of this Agreement, Screen NSW agrees to pay to the Grantee the sum specified in Item 4 of the Term Sheet ("the Grant").
- 1.2 The Grant shall be paid to the Grantee at the times specified in Item 5 of the Term Sheet ("Payment Dates").
- 1.3 Provided the Grantee complies with all the terms and conditions set out in this Agreement the Grantee shall have no obligation or liability to repay the Grant to Screen NSW.

2. Condition Precedent to Screen NSW's Payment Obligations

- 2.1 It is a condition precedent to Screen NSW paying the first instalment of the Grant that:
 - (a) the Grantee has delivered to Screen NSW each transaction document listed in Annexure B ("Transaction Documents") fully executed by the parties on the terms and in a form acceptable by Screen NSW.
- 2.2 It is a condition precedent to Screen NSW paying the second instalment of the Grant that:
 - (a) the Grantee has delivered to Screen NSW copies of all receipts for the payment of all of the Insurance premiums and copies of all cover notes and policies required under clauses 4.2 and 4.3 ("Insurance Documentation").
- 2.3 It is a condition precedent to Screen NSW paying the third instalment of the Grant that:
 - (a) the Grantee has delivered to Screen NSW a rough cut of the Film, for Screen NSW approval.
- 2.4 It is a condition precedent to Screen NSW paying the fourth instalment of the Grant that:
 - (a) the Grantee has delivered to Screen NSW a fine cut of the Film, for Screen NSW approval.
- 2.5 It is a condition precedent to Screen NSW paying the fifth instalment of the Grant that:

- (a) the Grantee has delivered to Screen NSW the items described in clauses 6.1, 7.1 and 7.2 of this Agreement on the terms and in a form acceptable by Screen NSW.

3. Purpose of Grant

- 3.1 The Grantee shall use the Grant for the sole purpose of producing the Film and shall not use the Grant for any other purpose whatsoever.
- 3.2 The Grantee shall apply the Grant in payment of the expenditure listed in the budget set out in Annexure A ("the Budget").
- 3.3 The Grantee agrees and undertakes to:
- (a) make and produce the Film in accordance with the approved Script, the approved Budget, utilising the approved key principals specified in Item 8 of the Term Sheet ("the Key Principals") and key elements specified in the Grantee's application for the Grant previously lodged with Screen NSW ("the Application");
 - (b) shoot the principal photography of the Film and undertake all production of the Film in New South Wales;
 - (c) commence principal photography of the Film no later than three (3) months from the date of approval of the Grant;
 - (d) complete the Film by the date specified in Item 6 of the Term Sheet ("Completion Date") unless otherwise agreed by Screen NSW in writing;
 - (e) comply with all Union awards, government regulations and applicable laws concerning the production of the Film and relevant to the employment or engagement of personnel;
 - (f) deliver a detailed Final Shooting Schedule and safety report at least two (2) weeks prior to the commencement of principal photography.
- 3.4 The Grantee agrees and acknowledges that the Grantee will not accept third party contributions to the cost of production, post production or completion of the Film without Screen NSW's prior approval. Screen NSW will only consider approval of the following forms of financing:
- (a) sponsorship contributions and/or product placement in the form of a non-recoupable grant;
 - (b) certain third party investment on the condition that the recoupment structure dictates that such third parties may only recoup their investment after any cast and crew deferrals have been paid; and/or
 - (c) a grant from a third party following completion of the Film for the purposes of travel or marketing in connection with the Film.
- 3.5 Screen NSW must be provided with a fully executed copy of an agreement approved under the conditions of clause 3.4.

4. Insurances

- 4.1 Screen NSW has taken out public liability insurance for the insured sum of \$20,000,000 for the period specified in Item 9 of the Term Sheet ('Screen NSW Public Liability Insurance') and during this period the Grantee shall be noted on the Screen NSW Public Liability Insurance as an additional insured. Screen NSW shall deduct a pro-rata contribution to the cost of the

Screen NSW Public Liability Insurance from the Grant, and the Grantee directs Screen NSW to deduct the amount from first drawdown of the Grant as specified in Item 4 of the Term Sheet. The grantee will be liable for a \$1,000 excess should any property damage claims be made against the policy.

- 4.2 The Grantee shall take out (in the joint names of the Grantee and Screen NSW as co-insured and to the full insurable value of the risk and not subject to any exclusion) within fourteen (14) days of payment of the first instalment of the Grant, but in any event before commencement of principal photography, the following insurances:
- (a) Public liability insurance to the sum of \$20,000,000 for any period up to completion of the Film which is not covered by the Screen NSW Public Liability Insurance; and
 - (b) Any other insurance (in addition to workers compensation insurance required by clause 4.3) if necessary to ensure that all persons involved in the production of the Film, including volunteers, are adequately covered for personal accident and injury ("Insurance").
- 4.3 The Grantee shall immediately take out workers compensation insurance as required by law until the completion of the Film, to the full insurable value of the risk and not subject to any exclusion.
- 4.4 Screen NSW will require the Grantee to produce a safety report at Screen NSW's expense at least two weeks before commencement of principal photography by a licenced safety officer approved by Screen NSW.

5. Copyright Ownership, Marketing and Promotional Use

- 5.1 Upon payment of the first instalment of the Grant, the Grantee assigns to Screen NSW the proportion of the present and future copyright in the Film equal to the percentage set out against the Screen NSW name in Item 7 of the Term Sheet to hold absolutely by Screen NSW throughout the world for the full period of copyright in the Film.
- 5.2 Upon the assignment described in clause 5.1, the Grantee and Screen NSW shall own copyright in the Film as tenants in common in the proportions specified in Item 7 of the Term Sheet.
- 5.2 Screen NSW grants to the Grantee a licence of its copyright in perpetuity to produce, complete and exploit the Film in any manner or media whatsoever at the sole discretion of the Grantee provided that prior to completion of the Film, the Grantee shall not enter into any agreement to exploit or market the Film in any manner without the prior written consent of Screen NSW.
- 5.3 Screen NSW must be named as a copyright owner in all notices of copyright for the Film.
- 5.4 The Grantee must immediately notify Screen NSW in writing if the Grantee becomes aware of any legal proceedings with respect to the Film and provide Screen NSW with further information in relation to such legal proceedings upon Screen NSW's written request.
- 5.5 The Grantee must not settle any claim arising out of the legal proceedings described in clause 5.4 without Screen NSW's prior written consent.
- 5.6 Screen NSW shall be entitled to screen, exhibit or communicate to the public, the Film (or any part of the Film) including marketing materials and stills for Screen NSW promotional and non-commercial corporate/government purposes including Parliamentary screenings and in showreels.

6. Credit and Delivery Items

6.1 On the Completion Date the Grantee shall deliver to Screen NSW the following delivery items:

- (a) 2 DVD copies of the Film
- (b) 1 commercial release of the Film (if available)
- (c) One line shooting schedule
- (d) Where cross-platform or website - URL address and or one copy of the relevant element on DVD
- (e) A range of 10 stills on USB
- (f) 1 Media kit and written publicity pack
- (g) 1 copy of any posters that may be produced
- (h) 1 soundtrack CD when first available
- (i) NSW Production Report (Screen NSW will supply template) and Statutory Declaration.

6.2 Screen NSW shall receive a static full frame credit in the opening credits as follows:

“Screen NSW presents Generator: Emerging Filmmakers Fund Film”

6.3 The Executive Producer of the Emerging Filmmakers Fund shall receive a static full frame end credit, the placement of which is to be determined in good faith along with other key creatives:

Generator: Emerging Filmmakers Fund
Executive Producer
Aquarius Films

Needs to change to Aquarius (check correct name of production company) No logo

6.4 The Grantee shall include the following rolling location credit immediately prior to the static full frame end credits:

“Filmed and post produced in New South Wales, Australia”

6.5 Screen NSW shall receive a static full frame end credit ahead of the copyright line (the logo to be supplied by Screen NSW):

“Produced with the assistance of Screen NSW
(followed by the Screen NSW Logo)”

6.6 Copyright Notice: © 2016 [insert Grantee name] and Screen NSW

6.7 Before the completion of the titles of the Film, the Grantee must provide in writing to Screen NSW the full credit roll for approval of Screen NSW credits.

7. Accounts, Film Revenues and Reports

7.1 The Grantee shall, on the Completion Date, provide to Screen NSW the NSW Production Report containing such information and in such form as shall be reasonably required by Screen NSW together with a full and complete statement of the entire chain of title to the Film.

- 7.2 On the Completion Date the Grantee shall send to Screen NSW a report detailing the following:
- (a) the manner in which the Grant has been disbursed, detailing where applicable specific expenses or costs which have been disbursed from the Grant funds;
 - (b) without limitation to clauses 3.4 and 8.1(i), details of the source of all funds, including amounts, used by the Grantee in the production of the Film;
 - (c) an expenditure statement detailing all expenses incurred by the Grantee in producing the Film;
- 7.3 The Grantee shall keep full and complete accounts with respect to the receipt and disbursement of the Grant funds and all expenses incurred and payments made in relation to the production of the Film and the receipt and disbursements of revenues and profits from the Film.
- 7.4 Screen NSW shall have the right to inspect the Grantee's books and records for the purpose of verifying compliance by the Grantee of all terms and conditions set out under this Agreement.

8. Grantee's Warranties and Indemnity

- 8.1 The Grantee represents and warrants to Screen NSW that:
- (a) all the information contained in the Application is true and correct, and does not contain any false or misleading information;
 - (b) the Grantee does, and will continue to, comply with all of the eligibility requirements in the Emerging Filmmakers Fund guidelines;
 - (c) the Grantee owns, or will on the first day of principal photography of the Film own all rights necessary to make and produce the Film and to exploit it through any and all media whatsoever throughout the world;
 - (d) the Grantee has entered into, or prior to the Completion Date will enter into enforceable agreements:
 - i. with the Key Principals, cast and crew and any other relevant person;
 - ii. for the use of location(s);
 - iii. for the clearance of all material incorporated into the Film (including any Music, Selected Music, and any work specified in Item 3 of the Term Sheet ("Work")); and
 - iv. for the use of all material incorporated into the marketing material as is necessary for the production and marketing of the Film throughout the world;
 - (e) in respect of moral rights, the Grantee has procured or prior to the Completion Date will procure, the consents of the author(s) of the any Work, the author(s) of the Script, the individual producer and director of the Film and author(s) of the Music (but not the Selected Music) to material alterations to the Script, the Film and the Music in accordance with the provisions of the *Industry Accord* and as necessary to produce the Film, and market the Film throughout the world;
 - (f) if the Film incorporates Indigenous Cultural Intellectual Property ("ICIP") material of a particular Indigenous community, the Grantee has obtained or prior to the Completion Date will obtain:

- i. a release from the appropriate representative of the Indigenous community whereby the representative agrees that the ICIP may be included in the Film;
 - ii. any other permissions, consents or releases from the appropriate representative of the Indigenous community where required having regard to the content of the Film (e.g. due to the inclusion of images and or footage of a deceased Indigenous person); and
 - iii. an acknowledgment by the appropriate representative that the relevant Indigenous community does not have any rights (including copyright) or interest in the Film;

- (g) if the Film is to incorporate a recording of a live performance, in respect of performers moral rights, the Grantee has procured or prior to the Completion Date will procure the consents of all of the performers included in each live performance in the Film to any treatment of the performance in the Film which could amount to a derogatory treatment within the meaning of *Copyright Act 1968* (Cth);

- (h) the Film is not being produced for the purposes of assessment at any educational institution;

- (i) (unless otherwise agreed by Screen NSW in writing) the Grantee has not received any development or production investment funding for the Film and the Grant is the sole source of finance for the production, post production and completion of the Film in accordance with this Agreement;

- (j) the Grantee has read and understands the Office of the Children’s Guardian (“OCCG”) Code of Practice for Child Employment in New South Wales, and will comply with the conditions of the Screen NSW Authority to Employ Children, which includes:
 - i. complying with the *Children and Emerging Persons (Care & Protection) Act 1998* and the *Children and Emerging Persons (Care and Protection – Child Employment) Regulation 2005*
 - ii. complying with the requirements of the Code of Practice
 - iii. using his or her best endeavours to ensure that all persons under his or her control (whether directly employed or contracted) comply with the requirements of the Code of Practice
 - iv. giving a copy of the Code of Practice to a parent of each child that he or she employs under the Screen NSW authority, and
 - v. furnishing the OCCG with such information concerning the employment of children as the OCCG may reasonably require, including sending pre-employment and post-employment information

- (k) the Grantee must obtain Screen NSW’s prior written approval in respect of the following:
 - i. any amendment to any Transaction Document
 - i. any change to the approvals outlined at Clause 3.3 (a)
 - iii. the circumstances outlined in clause 3.3(d), 3.4 and the credit requirements at Clause 6.

- (l) the Film, Script, Music 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;

- (m) the Grantee is not aware of any legal proceedings or any threat of legal proceedings or any claim by any third party alleging that the Film, Script or Music infringes the rights of any other person, whether of copyright or otherwise;

- (n) the Grantee will give Screen NSW immediate written notice of any such legal proceeding described in 8.1(m);
- (o) the Grantee has full capacity, power and authority to enter into this Agreement, and to perform all of the obligations imposed on the Grantee under this Agreement; and
- (p) the Grantee will meet any overage.

8.2 All your warranties survive termination or expiration of this Agreement.

8.3 The Grantee indemnifies, and agrees to keep indemnified, Screen NSW against any claims, costs, damages or expenses incurred by Screen NSW arising out of a breach by the Grantee of any of the warranties set out in clause 8.1 or any other term of this Agreement.

9. Screen NSW's Right to Terminate

9.1 If the Grantee breaches these terms Screen NSW may at any time issue the Grantee with a notice specifying your breach and give the Grantee fourteen (14) days to remedy it.

9.2 Screen NSW may terminate this Agreement if :

- (a) the Grantee does not consult with and obtain the approval of Screen NSW in relation to any proposed changes to the Key Principals; or
- (b) the Grantee does not remedy the breach to the reasonable satisfaction of Screen NSW;
or
- (c) the Grantee ceases to carry on business in NSW during the period of production of the Film; or
- (d) the Grantee commits an act of insolvency.

9.3 If Screen NSW terminates this Agreement:

- (a) any unpaid instalment of the Grant may, in the sole discretion of Screen NSW, cease to be payable;
- (b) any part of the Grant already paid to the Grantee may, at the sole discretion of Screen NSW, be due and payable to Screen NSW promptly upon receiving a demand in writing for repayment to Screen NSW; and
- (c) Screen NSW may issue a notice that it no longer wishes for the credit requirements listed at clauses 6.2, 6.3 and 6.4 to appear in the Film.

10. Miscellaneous

10.1 The Grantee may not assign or transfer any of his/her rights or obligations under this Agreement without the prior written consent of Screen NSW. Screen NSW may assign or transfer any or all of its rights or obligations under this Agreement at any time.

10.2 This Agreement shall be governed and construed according to the law of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales at any Courts competent to hear appeals from those Courts.

10.3 Any notice, consent or approval to be given by any party to the other shall be in writing and may be hand delivered or sent by registered post or to the address set out following the name

of that party at the commencement of the Agreement (or such other addresses that the party may advise the other party in writing) and shall be deemed to be sufficiently given:

- (a) in the case of hand delivery, on the date of such delivery;
- (b) in the case of registered post, three days after having been sent by registered post; or
- (c) In the case of Screen NSW approvals within five (5) business days.

- 10.4 This Agreement constitutes the entire agreement between the parties relating to the subject matter set out in this Agreement and shall not be varied except by written instrument signed by both parties.
- 10.5 For the purposes of this Agreement, "Film" means the cinematograph film referred to in Part A of the Introduction to this Agreement and includes all masters, negatives, positives, video, cinematograph film, sound and other recordings whether or not incorporated into the Film and all versions of the whole or part of the Film.
- 10.6 For the purposes of this Agreement, "GST" means any goods and services tax or any tax or imposts of a like or analogous nature that is imposed, assessed or levied in relation to any supply made of goods, services or of any other thing.
- 10.7 For the purposes of this Agreement, "Music" means the musical works, associated literary works and sound recordings created or made for use in the Film and incorporated into the soundtrack of the Film.
- 10.8 For the purposes of this Agreement, "Script" means the proposal, treatment, script outline and script (including revisions) for the Film written by writer the specified in Item 8 of the Term Sheet ("the Writer") and includes research materials created by the Writer for writing the Script.
- 10.9 For the purposes of this Agreement, "Selected Music" means the musical works, associated literary works and sound recordings not created or made for use in the Film and incorporated into the soundtrack of the Film.
- 10.10 In the interpretation of this Agreement, where there are 2 or more parties specified as the Grantee in Item 1 of the Term Sheet, 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.
- 10.11 It is a precondition of this Agreement that where 2 or more parties are specified as the Grantee in Item 1 of the Term Sheet, the Grantee shall provide a Partnership Agreement in accordance with Annexure B and as approved by Screen NSW.

11. GST

- 11.1 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) have been calculated without regard to, and are exclusive of any GST.
- 11.2 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).

11.3 If the supplier recovers an increased amount pursuant to clause 11.2 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.

12. Australian Business Number

12.1 Screen NSW will pay the Grant according to clause 1.2 only if at each date specified in Item 5 of the Term Sheet the Grantee has provided to Screen NSW an invoice for payments due quoting the Grantee's Australian Business Number ("ABN").

12.2 For the avoidance of doubt Screen NSW will not enter into this Agreement unless the Grantee has, and provides the details of, a valid ABN.

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:

Name Signature

Title Date

SIGNED by the Grantee in the presence of:

Witness Grantee

Name of Witness (please print) Name of Grantee

Term Sheet

Item 1	Grantee:	[NAME OF GRANTEE] [insert address] ABN: [insert details]
Item 2	The Film:	[insert name] Genre: Format: Length:
Item 3	Underlying Work:	
Item 4	Grant Amount:	Grant (\$30,000)
Item 5	Payment Dates:	<u>Drawdown 1</u> \$14,600 calculated as \$15,000 less \$400 (public liability insurance contribution) (50% of the Grant), upon execution of this Agreement; It is a condition of the First Drawdown that Screen NSW is provided with evidence of a Producers Agreement, Directors Agreement and Writers Agreement <u>Drawdown 2</u> \$10,500 (35%) upon commencement of principal photography It is a condition of the Second Drawdown, that the Delivery of the Final Shooting Schedule; Safety Report (if applicable) and Insurance Documentation is provided to Screen NSW. The grantee must provide a production image on set on or before the first day of principal photography. <u>Drawdown 3</u> \$1,500 (5%) upon Screen NSW approval of rough cut; <u>Drawdown 4</u> \$1,500 (5%) upon Screen NSW approval of Fine Cut; and <u>Drawdown 5</u> \$1,500 (5%) upon Delivery and acceptance by Screen NSW of the items described in clauses 6.1, 7.1 and 7.2 of this Agreement.
Item 6	Production Schedule:	Pre-production: Shoot: Post Production: Deliver:
Item 7	Copyright Share:	Screen NSW: One Percent (1%) Grantee: Ninety-nine Percent (99%)

ANNEXURE A

BUDGET

Budget Required for approval

ANNEXURE B

**TRANSACTION DOCUMENTS TO BE PROVIDED TO SCREEN NSW BEFORE FIRST
DRAWDOWN**

<u>1</u>	<u>Producer Agreement</u>
<u>2</u>	<u>Director Agreement</u>
<u>3</u>	<u>Writer Agreement</u>

**TRANSACTION DOCUMENTS TO BE PROVIDED TO SCREEN NSW BEFORE SECOND
DRAWDOWN**

<u>1</u>	<u>Delivery of final shooting schedule</u>
<u>2</u>	<u>Safety Report (if applicable)</u>
<u>3</u>	<u>Insurance Documentation</u>
<u>4</u>	<u>One production image on set on or before the day of principal photography</u>

**TRANSACTION DOCUMENTS TO BE PROVIDED TO SCREEN NSW BEFORE FINAL
DRAWDOWN**

<u>1</u>	<u>Items as specified in clause 6.1</u>
<u>2</u>	<u>Items as specified in clause 7.1</u>
<u>3</u>	<u>Items as specified in clause 7.2</u>
<u>4</u>	<u>Composers Agreement (if applicable)</u>
<u>5</u>	<u>Provide Screen NSW the full credit roll for approval of Screen NSW Credits</u>