

New Zealand Screen Production Grant

Criteria

for

New Zealand Productions

1 July 2017

Key changes to the NZSPG Criteria for New Zealand Productions 1 July 2017 relating to the Covid-19 Lockdown

Section 1 – Introduction

- Incorporation of Covid-19 Lockdown provisions and Post-Covid-19 Lockdown provisions – clause **6**

Section 2A – Specific Eligibility Criteria

- Covid-19 related provisions relating to New Zealand distribution requirements for Covid-19 Lockdown productions and Post-Covid-19 Lockdown productions
 - for feature films – clause **8.4**
 - for television and other non-feature films – clause **9.4**
- Covid-19 related provisions relating to Non-New Zealand Government Production Funding Threshold for Covid-19 Lockdown productions and Post-Covid-19 Lockdown productions
 - for feature films – clause **8.5**
 - for television and other non-feature films – clause **9.5**
- Covid-19 related provisions relating to Market attachments or Covid-19 Lockdown productions and Post-Covid-19 Lockdown productions for television and other non-feature films – clause **9.6**

Section 3 – Qualifying New Zealand Production Expenditure

- Changes to what is QNZPE to incorporate clause 16.2A – clause **16.1**
- Covid-19 related provision for Covid-19 Lockdown productions – clause **16.2A**
- Covid-19 related provision relating to expenditure thresholds for Covid-19 Lockdown productions – clause **16.6**
- Covid-19 related provision relating to expenditure thresholds for Post-Covid-19 Lockdown productions – clause **16.7**

Section 5 – Application Process

- Covid-19 related provision relating to the validity of a Provisional Certificate for Covid-19 Lockdown productions and Post-Covid-19 Lockdown productions – clause **27.4**
- Covid-19 related provision relating to final applications for Covid-19 Lockdown productions and Post-Covid-19 Lockdown productions – clause **29**
- Covid-19 related provision relating to interim applications by a Covid-19 Lockdown production – clause **29A**

Appendix 1 – Definitions and Interpretation

- Addition of definitions for Covid-19 Lockdown, Covid-19 Lockdown production, Covid-19 Lockdown provision, Post-Covid-19 Lockdown provision – **Appendix 1**

This document sets out the eligibility criteria for the New Zealand Screen Production Grant for New Zealand Productions and outlines the application process.

These criteria are subject to change from time to time. Before submitting an application, applicants are advised to check with the New Zealand Film Commission to ensure they are using the correct version of the criteria and the correct application form.

These criteria incorporate the Covid-19 Lockdown provisions and the Post-Covid-19 Lockdown provisions which appear in red text.

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SECTION 1 – INTRODUCTION

1 Introduction

Effective from 1 April 2014, the New Zealand Government introduced the New Zealand Screen Production Grant scheme. This scheme enhances and combines the Large Budget Screen Production Grant scheme and the Screen Production Incentive Fund. There are two sets of criteria – the NZSPG Criteria for International Productions and the NZSPG Criteria for New Zealand Productions.

These criteria are the NZSPG Criteria for New Zealand Productions and apply only to productions with significant New Zealand content (**New Zealand Productions**). Significant New Zealand content is defined in Section 18 of the *New Zealand Film Commission Act 1978*, and, for the purposes of these criteria, will be determined in accordance with the Significant New Zealand Content Guidelines in Appendix 3.

A visual overview of the eligibility criteria for the New Zealand Grant is provided at the end of this Section.

Productions that do not have Significant New Zealand Content are advised to refer to the NZSPG Criteria for International Productions to see whether they are eligible for an International Grant.

To be eligible to receive the New Zealand Grant, an applicant must comply with New Zealand law (including health and safety law) in respect of all the applicant's activities in New Zealand and in respect of any activities not undertaken in New Zealand but otherwise subject to New Zealand law.

By submitting an application in respect of the New Zealand Grant, the applicant agrees to be bound by the terms of the NZSPG Criteria for New Zealand Productions.

2 Definitions

Definitions of terms used in these criteria are set out in Appendix 1.

3 Purpose and intent

The New Zealand Grant is focused on industry development and cultural outcomes. The purpose of the New Zealand Grant is twofold:

- to build the sustainability, scale and critical mass of the domestic industry, and support the development of New Zealand creatives
- to provide cultural benefits to New Zealand by supporting the creation of New Zealand content and stories.

It is expected that only experienced producers will apply for a New Zealand Grant. Applications must be prepared to a high standard and in accordance with both the letter and intent of these criteria.

Applications that do not meet these standards or that technically meet the criteria but that, in the NZSPG Panel's opinion, are structured in a way that is inconsistent with the purpose or intent of the criteria, can be rejected by the NZSPG Panel in its sole discretion.

4 Exercise of discretion

Where in these criteria there is a reference to the exercise of a discretion by the NZFC or the NZSPG Panel, the exercise of that discretion by the NZFC or the NZSPG Panel (as the case might be) will be undertaken acting reasonably and in good faith, having regard to the circumstances of that application, all information about the applicant and the production available to the NZFC or NZSPG Panel (as applicable) and the purpose and intent of the criteria. Neither the NZFC nor the NZSPG Panel will be under any obligation to exercise its discretion in a manner favourable to the applicant. Nor will the NZFC or the NZSPG Panel be bound by previous exercise of the same discretion in respect of other applications.

5 Amount of New Zealand Grant

The New Zealand Grant is 40% of QNZPE. The New Zealand Grant is capped at \$6 million per production unless the production qualifies for an Additional Grant.

The Additional Grant is 40% of QNZPE from \$15 million to \$50 million. The Additional Grant is capped at \$14 million per production.

The total maximum New Zealand Grant is \$20 million per production.

6 Effective date, transitional provisions and historical costs

Effective date

These criteria are effective from 1 July 2017.

Transitional provisions

New Zealand Productions that start Principal Photography **before** 1 July 2017 will be assessed under the NZSPG Criteria for New Zealand Productions dated 1 August 2015.

New Zealand Productions that start Principal Photography **on or after** 1 July 2017 will be assessed under these criteria.

These criteria have some stricter requirements than the criteria dated 1 August 2015 and therefore transitional arrangements apply in the following circumstances:

If the applicant has applied to the NZFC for a Provisional Certificate and has received an acknowledgement letter confirming that the application is complete, on or before 30 June 2017, and that application for a Provisional Certificate is subsequently approved, the application will be considered under the NZSPG Criteria for New Zealand Productions dated 1 August 2015. There will be no extensions to a Provisional Certificate granted under this clause.

If a Provisional Certificate is granted under this clause and the applicant has started Principal Photography before the Provisional Certificate has expired, the final application in respect of that production will also be assessed under the NZSPG Criteria for New Zealand Productions dated 1 August 2015.

Covid-19 Lockdown provisions and Post-Covid-19 Lockdown provisions

Due to the significant disruption to the New Zealand screen sector arising from the Covid-19 Lockdown, the "Covid-19 Lockdown provisions" and the "Post-Covid-19 Lockdown provisions" have been incorporated into these criteria for a limited time. When the NZFC is satisfied that there are no Covid-19 Lockdown productions eligible to apply for the NZSPG, the Covid-19 Lockdown provisions will cease to have effect and can be removed from these criteria by the NZFC. When the NZFC is satisfied that there are no Post-Covid-19 Lockdown productions eligible to apply for the NZSPG, the Post-Covid-19 Lockdown provisions will cease to have effect and can be removed from these criteria by the NZFC.

The Covid-19 Lockdown provisions only apply to Covid-19 Lockdown productions.

The Post-Covid-19 Lockdown provisions only apply to Post-Covid-19 Lockdown Productions.

Historical costs

Any production that started Principal Photography prior to 1 July 2008 is not eligible for a New Zealand Grant. QNZPE only includes expenditure incurred on or after 1 July 2008, regardless of when any contractual obligation to undertake the expenditure was entered into.

In general, costs paid more than ten years prior to the start of Principal Photography cannot be claimed as QNZPE. If an applicant wishes to claim costs paid more than ten years prior to the start of Principal Photography, the applicant must apply for a Provisional Certificate and the NZSPG Panel will determine,

at its sole discretion, taking into account the current status of the production, whether there are exceptional circumstances that allow these costs to be claimed as QNZPE.

7 Eligibility for New Zealand Grant

To be eligible for a New Zealand Grant, productions and applicants must:

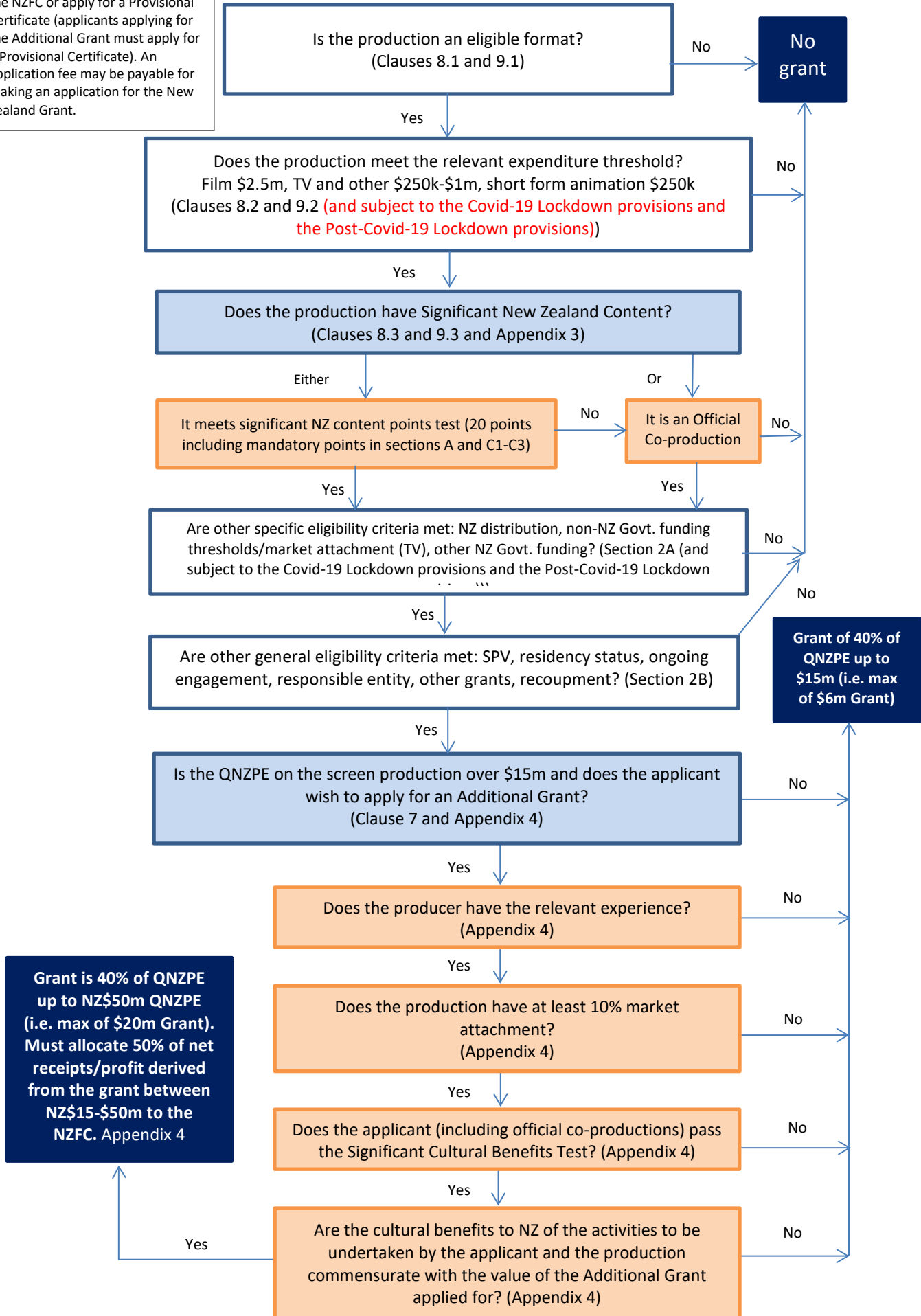
- (a) register with the NZFC, on the registration form, in the timeframe stated in clause 25 or apply for a Provisional Certificate;
- (b) satisfy all of the requirements of the criteria (except to the extent that the NZFC or NZSPG Panel exercise a discretion in the criteria to waive a requirement);
- (c) provide all information the applicant is required to provide to the NZFC or the NZSPG Panel under the criteria and the relevant application form; and
- (d) conform with the purpose and intent of the New Zealand Grant.

To be eligible for an Additional Grant, productions and applicants (including Official Co-productions) must be eligible for a New Zealand Grant and must also satisfy the additional requirements in Appendix 4.

Applicants should also refer to Section 5 of the criteria (Application Process)

Applicants should note the requirement to either register with the NZFC or apply for a Provisional Certificate (applicants applying for the Additional Grant must apply for a Provisional Certificate). An application fee may be payable for making an application for the New Zealand Grant.

Visual Overview of the New Zealand Grant



SECTION 2A – SPECIFIC ELIGIBILITY CRITERIA

8 Feature films

8.1 Format

- (a) An eligible feature film is a production that is not excluded under clause 8.1(b) and is:
- (i) commonly screened as the main attraction in commercial cinemas;
 - (ii) not less than 60 minutes, or in the case of a large format (IMAX) film not less than 40 minutes;
 - (iii) recorded, subtitled or dubbed in one of New Zealand’s official languages; and
- is shot and processed to commercial release standards primarily for exhibition to the public in cinemas. Feature length content that is not intended primarily for exhibition to the public in cinemas, e.g. telefeatures or home entertainment releases, can be eligible if the production meets the requirements of clause 9.
- (b) A production that fits into any of the following categories (or to a substantial extent fits into the following categories) is specifically excluded from eligibility:
- (i) an advertising programme or commercial;
 - (ii) a discussion programme, current affairs programme, news programme, panel programme, or a programme of a like nature;
 - (iii) pornography;
 - (iv) a training programme;
 - (v) an interactive digital game (other than transmedia content as per clause 16.3(b)(iv)); or
 - (vi) a production of a public event, including a sports event.

8.2 Expenditure threshold

A feature film must have QNZPE of \$2.5 million or more.

For Official Co-productions, the expenditure threshold is TPE of \$2.5 million or more.

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, this clause 8.2 is subject to clause 16.6.

Post-Covid-19 Lockdown provision: In the case of a Post-Covid-19 Lockdown Production, this clause 8.2 is subject to clause 16.7.

8.3 Significant New Zealand content

A feature film must achieve 20 points or more (including the minimum points required in sections A and C) in the Significant New Zealand Content Test.

An Official Co-production will be deemed to have significant New Zealand content for the purposes of a New Zealand Grant of up to \$15 million of QNZPE.

To be eligible for the Additional Grant, a feature film (including an Official Co-production) must also pass the Significant Cultural Benefits Test.

8.4 New Zealand distribution

A feature film must have secure confirmed commercial cinematic distribution in New Zealand, as evidenced by a genuine, legally binding deal memo or distribution agreement.

This means there must be a genuine intention from a recognised distributor (evidenced by a deal memo or agreement that is on normal commercial terms) to release the film as the main attraction in cinemas

in New Zealand where an admission fee is charged. This does not include a contrived arrangement for release on a single occasion, for an unacceptably short period of time, or any other non-commercial release. It excludes test screenings, free or charitable screenings, and in most cases film festival screenings (as such terms are commonly understood in the New Zealand screen production industry).

To be eligible for a Provisional Certificate, an application must include:

- an audience engagement plan setting out how the feature film will be seen by audiences in New Zealand; and
- a firm offer letter or deal memo from a recognised theatrical distributor (as determined by the NFZC in its sole discretion), with strong commitment for a New Zealand release that demonstrates that the audience reach will be commensurate with the expected amount of the New Zealand Grant. **Post-Covid-19 Lockdown provision:** In the case of a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
 - to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

To be eligible for a Final Certificate, an application must include:

- a current audience engagement plan setting out how the feature film will be seen by audiences in New Zealand. If an applicant has applied for a Provisional Certificate, the audience engagement plan provided with the application for a Provisional Certificate must be updated for the final application; and
- a fully-executed, bone fide, legally binding long form New Zealand distribution agreement from a recognised theatrical distributor (as determined by the NFZC in its sole discretion), with strong commitment for a New Zealand release, within 2 years of Completion, that demonstrates that the audience reach will be commensurate with the expected amount of the New Zealand Grant. Demonstration of audience reach can include, for example, a guaranteed cinema-release of a certain scale, **provided that in the case of:**
 - **Covid-19 Lockdown provision:** a Covid-19 Lockdown production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
 - to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown; and
 - **Post-Covid-19 Lockdown provision:** a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and

- the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
- to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

8.5 Non-New Zealand Government Production Funding threshold

The proportion of non-New Zealand Government Production Funding for a feature film must be 10% of the production budget or higher. See Appendix 1 for the definition of New Zealand Government Production Funding.

To satisfy this requirement, there must be *either*:

- (a) A genuine intention from one or more non-New Zealand Government entities or persons who have sufficient resources to fund, in aggregate, 10% or more of the production budget, evidenced by a signed letter of offer, deal memo or funding agreement; or
- (b) a written offer of funding from a New Zealand Government entity (or entities) that makes that funding conditional on 10% or more of the production budget being provided by non-New Zealand Government entities,

provided that in the case of:

- (c) **Covid-19 Lockdown provision:** a Covid-19 Lockdown production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - i. the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - ii. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
 - iii. the actual proportion of non-New Zealand Government Production Funding will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown; and
- (d) **Post-Covid-19 Lockdown provision:** a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - i. the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - ii. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
 - iii. the actual proportion of non-New Zealand Government Production Funding will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

The production budget must include all above-the-line and below-the-line items usually included in production budgets for similar productions in New Zealand plus a reasonable contingency.

If, after the NZFC has confirmed that this requirement has been satisfied, the circumstances of the production change and the proportion of non-New Zealand Government Production Funding drops below 10%, an applicant can apply to the NZSPG Panel for a waiver of this requirement. A waiver application will be determined at the NZSPG Panel's sole discretion, taking into regard any evidence as to whether or not the intention to fund was genuine.

8.6 Other New Zealand Government funding

A feature film can receive production funding (or any other funding in relation to the production) from a New Zealand Government agency (including, for example, funding through NZFC, NZ On Air or Te Māngai Pāho) and a New Zealand Grant.

9 Television and other non-feature films

9.1 Format

- (a) An eligible television or other non-feature film is a production that is not excluded under clause 9.1(b), is recorded, subtitled or dubbed in one of New Zealand's official languages, and is either:
- (i) **a single episode programme** (including a telefeature or feature length content that is not primarily intended for exhibition to the public in cinemas) of at least one commercial half-hour in length, whether scripted or unscripted and including but not limited to drama, documentary, factual, reality, children's and animation;
 - (ii) **a series or season of a series** whether scripted or unscripted including but not limited to drama, documentary, factual, reality, children's and animation being a programme with a common theme or themes consisting of at least two episodes that are intended for release together in a national market or markets. Each episode (with the exception of animation) must be a least one commercial half-hour in length; or
 - (iii) **a short form animation** which is a production that predominantly uses cell, stop motion, digital or other animation and where the total duration of all episodes is not less than one commercial quarter-hour; and

is shot and processed to commercial technical distribution standards and intended to be released on a distribution platform other than cinema. Distribution platforms include all forms of television, DVD/Blu-ray, internet, video-on-demand, mobile phone or any other public mass distribution medium device.

- (b) A production that fits into any of the following categories (or to a substantial extent fits into the following categories) is specifically excluded from eligibility:
- (i) an advertising programme or commercial;
 - (ii) a discussion programme, current affairs programme, news programme, panel programme, or a programme of a like nature;
 - (iii) pornography;
 - (iv) a training programme;
 - (v) an interactive digital game (other than transmedia content as per clause 16.3(b)(iv));
 - (vi) a production of a public event, including a sports event; or
 - (vii) a programme based on a format (as that term is commonly known in the screen industry) other than formats developed in New Zealand for initial distribution in New Zealand.

9.2 Expenditure thresholds

| Specific Format | Minimum QNZPE |
|---|--|
| Single episode programme – scripted | \$1 million total & No less than \$800,000 per hour |
| Single episode programme – unscripted | \$250,000 total |
| Series of programmes – scripted | \$1 million total & No less than \$500,000 per hour |
| Series of programmes – unscripted | No less than \$250,000 per hour |
| Short form animation – single episode or series | \$250,000 total & No less than \$400,000 per hour |

Expenditure per hour is determined using the following formula: total QNZPE/duration of production in hours

Where:

- (a) duration of production in hours means the total length of the production measured in hours; and
- (b) total QNZPE means the total of the applicant's QNZPE on the production.

For Official Co-productions, the relevant expenditure threshold is calculated by reference to TPE instead of QNZPE.

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, this clause 9.2 is subject to clause 16.6.

Post-Covid-19 Lockdown provision: In the case of a Post-Covid-19 Lockdown Production, this clause 9.2 is subject to clause 16.7.

9.3 Significant New Zealand content

A television or other non-feature film production must achieve 20 points or more (including the minimum points required in sections A and C) in the Significant New Zealand Content Test.

An Official Co-production will be deemed to have significant New Zealand content for the purposes of a New Zealand Grant of up to \$15 million of QNZPE.

To be eligible for the Additional Grant, a television or other non-feature film production (including an Official Co-production) must also pass the Significant Cultural Benefits Test.

9.4 New Zealand distribution

A television or other non-feature film production must have a secure confirmed commercial agreement for distribution on an appropriate platform, whereby access to the production is available in New Zealand. The commercial agreement for distribution must not be a contrived arrangement for the purposes of meeting these criteria.

Examples include New Zealand television broadcast (including free-to-air or pay television), commercial distribution on DVD/Blu-ray in New Zealand, or commercial distribution via a new media platform (such as online or mobile content) accessible to people in New Zealand.

To be eligible for a Provisional Certificate, an application must include:

- an audience engagement plan setting out how the television or other non-feature film production will be seen by audiences in New Zealand; and
- a firm offer letter or deal memo from a recognised broadcaster or commercial distributor (as applicable and as determined by the NFZC in its sole discretion), with strong commitment for a New Zealand release that demonstrates that the audience reach will be commensurate with the expected amount of the New Zealand Grant. **Post-Covid-19 Lockdown provision:** In the case of a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
 - to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

To be eligible for a Final Certificate, an application must include:

- a current audience engagement plan setting out how the television or other non-feature film production will be seen by audiences in New Zealand. If an applicant has applied for a Provisional Certificate, the audience engagement plan provided with the application for a Provisional Certificate must be updated for the final application; and
- a fully-executed, bone fide, legally binding long form New Zealand broadcast licence or distribution agreement from a recognised broadcaster or commercial distributor (as applicable and as determined by the NFZC in its sole discretion), with strong commitment for a New Zealand release, within 2 years of Completion, that demonstrates that the audience reach will be commensurate with the expected amount of the New Zealand Grant. Demonstration of audience reach might include, for example, a broadcaster covenant to screen a certain number of times on a certain channel, within a specified time-slot, **provided that in the case of:**
 - **Covid-19 Lockdown provision:** a Covid-19 Lockdown production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
 - to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown; and
 - **Post-Covid-19 Lockdown provision:** a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
 - the applicant's failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - the applicant has demonstrated that it has taken reasonably practicable steps to procure that the audience reach will be commensurate with the expected amount of the New Zealand Grant; and
 - to the extent that the commitment for a New Zealand release does not demonstrate that the audience reach will be commensurate with the expected amount of the New Zealand Grant, the commitment demonstrates to the Panel's satisfaction that the audience reach will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

9.5 Non-New Zealand Government Production Funding threshold

The proportion of non-New Zealand Government Production Funding for a television or other non-feature film production must be 25% of the production budget or higher.

To satisfy this requirement, there must be *either*:

- (a) A genuine intention from one or more non-New Zealand Government entities or persons who have sufficient resources to fund, in aggregate, 25% or more of the production budget evidenced by a signed letter of offer, deal memo or funding agreement; or
- (b) a written offer of funding from a New Zealand Government entity (or entities) that makes that funding conditional on 25% or more of the production budget being provided by non-New Zealand Government entities,

provided that in the case of:

- (c) **Covid-19 Lockdown provision:** a Covid-19 Lockdown production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:

- i. the applicant’s failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - ii. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
 - iii. the actual proportion of non-New Zealand Government Production Funding will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown; and
- (d) **Post-Covid-19 Lockdown provision:** a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:
- i. the applicant’s failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
 - ii. the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
 - iii. the actual proportion of non-New Zealand Government Production Funding will be sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

The production budget must include all above-the-line and below-the-line items usually included in production budgets for similar productions in New Zealand plus a reasonable contingency.

If, after the NZFC has confirmed that this requirement has been satisfied, the circumstances of the production change and the proportion of non-New Zealand Government Production Funding drops below 25%, an applicant can apply in writing to the NZFC for a waiver of this requirement. A waiver application will be determined at the NZSPG Panel’s sole discretion, taking into regard any evidence as to whether or not the intention to fund was genuine.

9.6 Market attachments

The production must have market attachments that comprise 10% or more of the production budget.

‘Market attachments’ are limited to international sales advances, distribution advances and licence fees, for the screening or broadcast of the production itself and where there is no entitlement to share in the net receipts from the production in respect of that sales advance, distribution advance or licence fee. Equity and loans cannot qualify as market attachments. Any market attachments must be from parties unrelated to the applicant and from bona fide screen production sales agents, distributors or broadcasters.

The production budget must include all above-the-line and below-the-line items usually included in production budgets for similar productions in New Zealand plus a reasonable contingency.

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:

- (a) the applicant’s failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
- (b) the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
- (c) the market attachments comprise a percentage of the production budget that is sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

Post-Covid-19 Lockdown provision: a Post-Covid-19 Lockdown Production, where the applicant is unable to satisfy this requirement, the NZSPG Panel can, in its discretion, waive this requirement provided that the NZSPG Panel is satisfied that:

- (a) the applicant’s failure to satisfy this requirement is due (whether wholly or to a significant extent) to ongoing market conditions following the Covid-19 Lockdown; and
- (b) the applicant has demonstrated that it has taken reasonably practicable steps to satisfy this requirement; and
- (c) the market attachments comprise a percentage of the production budget that is sufficient, having regard to the market conditions arising as a result of the Covid-19 Lockdown.

9.7 Other New Zealand Government funding

A television or other non-feature film production can NOT receive production funding (but can receive development or other non-production funding) from a New Zealand Government screen agency (including for example funding through NZFC, NZ On Air or Te Māngai Pāho) and a New Zealand Grant, unless it is an animated production or a children's drama production in which case it can receive both. Children's drama productions are scripted programmes made specifically for children or groups of children (industry-standard definitions will be applied).

The expenditure thresholds for television and other non-feature film productions are lower than those required for a feature film. The NZSPG Panel will reject any applications where the NZSPG Panel determines, in its sole discretion, that an application made in respect of a television or other non-feature film production ought properly be regarded as a feature film.

SECTION 2B – GENERAL ELIGIBILITY CRITERIA

10 Special Purpose Vehicle

10.1 Applicant to be SPV

An applicant must be a special purpose vehicle (SPV) established principally in relation to making the production. The applicant must have its own GST and payroll registration numbers and its own bank account. If the applicant is part of a group of companies, then the applicant's GST and payroll returns must not be grouped with any other company within that group for tax purposes. The requirement for separate GST registration is conditional on IRD accepting that the relevant production is eligible to be registered as a separate registered person under section 56(2) of the Goods and Services Tax Act 1985.

10.2 Exceptions

An applicant is not required to be a SPV if one of the following exceptions applies:

- (a) *Series*: the production is a series or a season of a series. In this case a new SPV is not required for each series or season of the production and the applicant's existing GST and payroll registration numbers and bank account can be re-used for the new series or season, **provided that** there is no overlap in QNZPE to be claimed on each series or season. It is expected that all GST and payroll returns from the start of the new series or season will predominantly include expenditure relating to that series or season. Minor expenditure relating to other series or seasons can be included in those returns but this expenditure must be clearly identified and excluded from QNZPE. If there is overlap in QNZPE to be claimed on each series or season, then a new SPV is not required for each series or season and the applicant's existing GST and payroll registration numbers and bank account can be re-used for each production **provided that** separate tax locations* and a separate bank account must be used for each series or season.
- (b) *Repurposing (non-concurrent use)*: the applicant has incurred all QNZPE to be claimed on a previous production and/or has applied for a New Zealand Grant (or a SPIF, LBSPG or PDV grant) in respect of that previous production. In this case, the applicant's existing GST and payroll registration numbers and bank account can be re-used for the new production. It is expected that all GST and payroll returns from the start of the new production will predominantly include expenditure relating to that production. Minor expenditure relating to the previous production can be included in those returns but this expenditure must be clearly identified and excluded from QNZPE.

*An applicant must contact IRD for information on the steps required to obtain a separate tax location number for an individual production. This number is a separate identifier within the applicant's principal GST and payroll registration number and enables the applicant to submit separate GST and payroll returns under that number without having to set up a separate entity.

Applicants who wish to rely on an exception under this clause 10.2 must apply to the NZFC for confirmation that the applicant meets the requirements of the exception relied upon. Applications must include such information as is reasonably required by the NZFC to make a determination under the exception.

11 Residency status

11.1 Residency of applicant

An applicant must be either:

- (a) a New Zealand company, which in this clause 11.1 means that the company:
 - (i) is incorporated in New Zealand; and
 - (ii) carries on business in New Zealand; and

- (iii) has either its central management or control in New Zealand, or its voting power controlled by shareholders who are New Zealand Residents, or in the case of individual shareholders, who are Citizens or New Zealand Permanent Residents; or
- (b) a New Zealand resident partnership (a partnership is a New Zealand resident if a majority of the partners in the partnership are New Zealand Residents).

11.2 Majority owner

Where the applicant is majority-owned by another company, the majority owner must also meet the criteria in clause 11.1.

11.3 Ongoing engagement

An applicant or, where the applicant is a SPV, the majority owner of that SPV, must satisfy the NZSPG Panel (in its sole discretion) that the applicant or the majority owner of the applicant SPV has been actively engaged in the business of film or television production in New Zealand to a significant extent for a period of at least 18 months prior to the date on which Principal Photography is scheduled to start.

Where the applicant or SPV is owned by an individual (rather than by a company), and the NZSPG Panel is satisfied (in its sole discretion) that the individual has been actively engaged in the business of film or television production in New Zealand to a significant extent for a period of at least 18 months prior to the date at which Principal Photography is scheduled to start, the NZSPG Panel can, at its sole discretion, accept an application as eligible under this clause 11.3.

12 Responsible entity

An applicant must be the entity responsible for carrying out, or making the arrangements for carrying out, all activities involved in making the production in New Zealand, and must have access to full financial information for the production worldwide, that can be provided to the NZFC upon request. For Official Co-productions, if the expenditure thresholds and business overhead cap for the production are met by QNZPE alone, then the requirement for access to the other co-producer's financial information is waived, unless that financial information relates to QNZPE.

Only one entity per production can be eligible for the New Zealand Grant.

Broadcasters are eligible for the New Zealand Grant, but where a production is made by an independent production entity the producer will be eligible for the New Zealand Grant, not the broadcaster.

For the purpose of this clause, 'making the production' means doing all things necessary to complete the production, and includes (but is not limited to):

- (a) pre-production activities in relation to the production;
- (b) production activities in relation to the production;
- (c) post-production activities in relation to the production; and
- (d) any other activities undertaken to bring the production up to the state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public.

13 Other grants

A production cannot receive a New Zealand Grant (including an Additional Grant) and an International Grant.

14 Producer's income

The applicant (or its parent company if the applicant is a majority-owned subsidiary) must be entitled to receive a share of the net receipts from the exploitation of the production that is commensurate with the expected value of the New Zealand Grant. The position for the recoupment of such share of net receipts must be similar to that of other equity investors in the production.

The NZSPG Panel can request evidence that the applicant is entitled to receive a share of income from the production that is commensurate with the expected value of the New Zealand Grant. If the NZSPG Panel is not satisfied that the applicant is entitled to a share of income commensurate with the expected value of the New Zealand Grant or is not satisfied that the production's recoupment structure is consistent with the purpose and intent of the New Zealand Grant, the NZSPG Panel can reject the application.

The requirements of this clause 14 apply regardless of whether the NZSPG is used in the production's budget.

Income earned by producers from successful productions helps create a sustainable New Zealand screen production industry. The New Zealand Government requires that all New Zealand Grant recipients have an equity share in the production so that they can reinvest in the New Zealand screen sector.

SECTION 3 – QUALIFYING NEW ZEALAND PRODUCTION EXPENDITURE (QNZPE)

15 Expenditure statement

All costs claimed as QNZPE must be presented in an audited expenditure statement attached to the final application. The audited expenditure statement must be in New Zealand dollars, with all foreign currency converted as per clause 19. Arrangements should be made as early as possible to separate expenditure that is QNZPE from expenditure that is not QNZPE. Where necessary, invoices from a supplier must be broken down to show New Zealand and non-New Zealand activity, with computerised accounts formatted to show this split. This will also facilitate the independent audit of the expenditure statements. You should familiarise yourself with the requirements of the relevant final application form as early as possible.

16 QNZPE

16.1 What is QNZPE?

QNZPE is expenditure incurred by the applicant on the production that:

- (a) falls within the definition in clause 16.2 (**General QNZPE**); or
- (b) **Covid-19 Lockdown provision: in the case of a Covid-19 Lockdown production, falls within the definition in clause 16.2A; or**
- (c) is listed as a specific inclusion in clause 16.3 (a **specific inclusion**); and
- (d) is not specifically excluded under clause 16.4 (a **specific exclusion**).

16.2 General QNZPE definition

Expenditure will qualify as General QNZPE if it is incurred by the applicant on the production, where that expenditure is incurred on, or is attributable to:

- (a) goods purchased, hired or leased in New Zealand where those goods are sourced from within New Zealand; or
- (b) the use of a good that is sourced from overseas, provided that:
 - (i) the NZSPG Panel reasonably considers that good is not otherwise available to the production in New Zealand; and
 - (ii) that good is located in New Zealand at the time that the good is used in the making of the production; and
 - (iii) that good is purchased, hired or leased in New Zealand from a New Zealand Resident who is a habitual supplier of those goods in New Zealand; or
- (c) services provided in New Zealand; or
- (d) the use of land located in New Zealand.

16.2A Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, expenditure will qualify as General QNZPE if it was contracted and budgeted for prior to the Covid-19 Lockdown, is incurred by the applicant on the production, and is incurred on, or is attributable to, services provided outside New Zealand by a person who is a member of the key cast or who performs a key production role, provided that the NZSPG Panel is satisfied that:

- (a) but for the Covid-19 Lockdown, the applicant would have incurred the expenditure in such a manner as to qualify as General QNZPE under clause 16.2; and
- (b) having regard to the Covid-19 Lockdown, it was not reasonably practicable for the expenditure to have been incurred in such a manner as to qualify as General QNZPE under clause 16.2; and

- (c) having regard to the Covid-19 Lockdown, it was not reasonably practicable for the applicant to make alternative arrangements so that the expenditure could be incurred in such a manner that it would have qualified as General QNZPE under clause 16.2;
- (d) the expenditure was essential or was otherwise reasonably necessary to enable the production to mitigate the effects of the Covid-19 Lockdown; and
- (e) if the NZSPG Panel did not exercise its discretion to allow the expenditure to qualify as QNZPE under this clause 16.2A, the exclusion could have a material adverse effect on the applicant and/or the production.

16.3 Specific inclusions

The following expenditure will qualify as a specific inclusion where expenditure is incurred by the applicant on the production:

(a) *New Zealand copyright acquisition*

- (i) If the original owner of copyright in a pre-existing work is, or was, a New Zealand Resident, then the cost of acquiring copyright or licensing copyright in that pre-existing work for use in the production if the cost is deductible under the *Income Tax Act 2007*, or the depreciation, if allowable under the *Income Tax Act 2007*.
- (ii) If a work is created in New Zealand for use in the production, then the cost of commissioning and purchasing copyright (or an interest in copyright) in that work if the cost is deductible under the *Income Tax Act 2007* or the depreciation if allowable under the *Income Tax Act 2007*.

(b) *Additional audiovisual content*

Costs incurred in New Zealand on audiovisual content that is intended to be released with the production in some form are QNZPE where they are incurred by the applicant prior to Completion of the production. Examples of additional audiovisual content for release with the production are:

- (i) director or cast commentary tracks;
- (ii) 'making of' documentaries;
- (iii) material for extended versions;
- (iv) any transmedia content released on a second screen where that content is developed and produced in conjunction with the production to be viewed contemporaneously with the production and shares a unified narrative with the production.

(c) *Travel to New Zealand*

The cost of each direct incoming journey to New Zealand undertaken for the purposes of the production is QNZPE. The cost of a direct incoming journey is equivalent to 100% of a one-way fare or 50% of a return fare on a commercial airline.

The cost of the direct outgoing and the direct incoming journey is QNZPE for New Zealand Residents who travel between New Zealand and another country for the purposes of the production.

If a journey is not direct (e.g. it includes a stopover or a dog-leg) the NZSPG Panel will determine the cost of an equivalent direct journey and the cost determined by the NZSPG Panel will be the QNZPE for that journey.

(d) *Production insurance*

The cost of production insurance, including errors and omissions insurance, is QNZPE if paid to a New Zealand Resident.

For co-productions (official and un-official), only the nominal New Zealand portion of the cost of production insurance is QNZPE. The nominal New Zealand portion is calculated by multiplying the total cost of production insurance by the New Zealand Financing Percentage.

(e) *Completion bonds*

Completion bond fees are QNZPE regardless of whether they are paid to an entity within New Zealand or outside New Zealand, but provided they are paid on an arm's-length basis to a third party who is a recognised completion guarantor (as determined by the NZFC).

For co-productions (official and un-official), only the nominal New Zealand portion of completion bond fees is QNZPE. The nominal New Zealand portion is calculated by multiplying the total cost of completion fees by the New Zealand Financing Percentage.

(f) *Principal Photography outside New Zealand*

The Remuneration and travel costs of New Zealand Residents and the costs of purchasing goods or services from New Zealand Residents are QNZPE where:

- (i) the Remuneration and travel costs relate to services provided during Principal Photography outside New Zealand or the costs relate to goods or services supplied and used during Principal Photography outside New Zealand; and
- (ii) the location being used for Principal Photography is reasonably required by the subject matter of the production (such as where a certain landscape or place is needed for a story); and
- (iii) if the cost relates to the purchase of goods or services from a New Zealand Resident, the New Zealand Resident provides the goods or services.

For the purposes of this clause 16.3(f), travel costs means only commercial airfares between New Zealand and another country, accommodation in another country and per diems, in each case for the purposes of the production.

(g) *Financing Expenditure*

Financing Expenditure that:

- (i) is paid to a New Zealand Resident that provides finance for the production; or
- (ii) is directly related to the cashflowing of the estimated amount of the New Zealand Grant on the production and is paid to an entity resident in Australia, the United Kingdom, the Republic of Ireland, the United States of America, France or Canada, or from another country as approved by the NZFC on a case-by-case basis;

is QNZPE subject, in either case, to the following caps:

- (iii) interest is capped at the 90-day Bank Bill Rate (as set by the Reserve Bank of New Zealand) plus 2% per annum; and
- (iv) financing fees (such as loan or arrangement fees and executive producer fees) are capped at 2% of the amount of the finance.

16.4 Specific exclusions

The following expenditure is a specific exclusion and will not qualify as QNZPE under any circumstances:

(a) *Remuneration of non-cast personnel for short-term visits*

Remuneration and all other costs relating to the services of non-cast personnel who are not New Zealand Residents and who have not worked on the production in New Zealand for 14 or more days in total.

(b) *Acquisition or licensing of copyright*

- (i) If the original owner of copyright in a pre-existing work is not, or was not, a New Zealand Resident, the cost of acquiring or licensing copyright in that pre-existing work.
 - (ii) If copyright in a work is not, or was not, created in New Zealand, the cost of commissioning and purchasing copyright (or an interest in copyright) in that work for use in the production.
 - (iii) The costs of stock or archive footage above 20% of QNZPE or \$500,000 whichever is the lesser, except in exceptional circumstances as determined by the NZSPG Panel, in its sole discretion and on a case-by-case basis.
- (c) *Publicity and promotional costs incurred after Completion*
Publicity and promotional costs incurred after Completion of the production.
- (d) *Additional audiovisual content incurred after Completion*
Costs incurred on additional audiovisual content after Completion of the production and/or on additional audiovisual content not intended to be released with the production.
- (e) *Advances*
Recoverable advance payments in respect of Guaranteed Deferments, Participation Payments or Residuals.
- (f) *Financing Expenditure cap*
Financing Expenditure above the caps in clause 16.3(g)(iii) and (iv).
- (g) *Business overheads cap*
Costs generally considered by the NZFC to be ‘business overheads’ above 5% of the QNZPE or \$400,000 whichever is the lesser (and not determined by how any particular expenditure is categorised within a production’s budget).
- (h) *Guaranteed Deferments, Participation Payments, Residuals*
Guaranteed Deferments, Participation Payments, and Residuals.
- (i) *Acquisition of depreciating asset*
Except for copyright acquisition expenditure that qualifies as QNZPE, the costs of acquiring a depreciating asset and any capital costs invested in that asset. See clause 23 for the definition and treatment of a depreciating asset.
- (j) *Legal*
Legal fees that are NOT related to:
- (i) the drafting and/or negotiation of production and financing documents; or
 - (ii) legal advice on issues arising in the normal course of the making of a production.
- Applicants must ensure that their legal advisors provide a breakdown of their fees.
- (k) *Unspent contingency*
Unspent contingency cannot qualify as QNZPE.
- (l) *Freight*
The cost of international freight (including excess baggage and freight within a country other than New Zealand).

(m) *Guild payments*

Any payment to a screen industry guild or association or to any fund, trust or plan administered by a screen industry guild or association.

(n) *Overseas taxes*

Except for payments to the New Zealand Government, any payments made towards an applicant's or a production's tax obligations.

(o) *Others*

Cast and Crew Perks, gifts, fines, Entertainment and Gratuities and any historical costs (see clause 6 for an explanation of historical costs).

(p) *Application fees*

Expenditure on any application fees in relation to the New Zealand Grant.

(q) *Costs involved in taking over the production from a prior entity*

Any costs incurred by the applicant in taking over the production from a prior entity or entities.

16.5 Priority

In the case of conflict, the exclusions will take priority. In other words, if any expenditure incurred by the applicant on the production:

- (a) could qualify as General QNZPE or could qualify as a specific inclusion; and
- (b) could also qualify as a specific exclusion,

then the expenditure will be excluded from QNZPE.

16.6 Covid-19 expenditure thresholds

Covid-19 Lockdown provision: For the purposes of clause 8.2 and 9.2, in the case of a Covid-19 Lockdown production, provided that:

- (a) at the time the applicant applied for its Provisional Certificate or registered the production in accordance with clause 25, the production's QNZPE or (in the case of an Official Co-production) TPE was anticipated to meet the relevant expenditure threshold; and
- (b) the production's actual QNZPE or TPE (as the case may be) is less than the minimum amount required to be eligible for the NZSPG; and
- (c) the NZPSG Panel is satisfied that the shortfall is due wholly or substantially to the disruption caused to the production by the Covid-19 Lockdown,

the NZPSG Panel can, at its discretion, waive the minimum threshold for the production so that the production's actual QNZPE or TPE (as the case may be) will be eligible for the NZSPG.

16.7 Post-Covid-19 Lockdown expenditure thresholds

Post-Covid-19 Lockdown Provision: For the purposes of clause 8.2 and 9.2, in the case of a Post-Covid-19 Lockdown Production, provided that:

- (a) at the time the applicant applied for its Provisional Certificate or registered the production in accordance with clause 25, the production's QNZPE or (in the case of an Official Co-production) TPE was anticipated to meet the relevant expenditure threshold; and
- (b) the production's actual QNZPE or TPE (as the case may be) is less than the minimum amount required to be eligible for the NZSPG; and
- (c) the NZPSG Panel is satisfied that:
 - i. the shortfall is due wholly or substantially to the disruption caused to the production by the Covid-19 Lockdown; and
 - ii. the production has taken reasonably practicable steps to incur QNZPE or TPE (as the case may be) that meets or exceed the relevant minimum threshold,

the NZPSG Panel can, at its discretion, waive the minimum threshold for the production so that the production's actual QNZPE or TPE (as the case may be) will be eligible for the NZSPG.

SECTION 4 – TREATMENT OF EXPENDITURE

17 Income tax

The New Zealand Grant will be given standard grant treatment for income tax purposes. That is, the cost base of the production will be reduced by the amount of the New Zealand Grant.

The New Zealand Grant is treated as excluded income for the purposes of income tax.

Where co-investment/co-funding is provided by a New Zealand Government agency, special tax rules will apply. In brief, the co-funding will be treated as if it were a grant, but any payments back will be tax deductible.

18 GST

All figures set out in these criteria are net of GST. As such, the New Zealand Grant is calculated in relation to amounts that are net of GST. However, New Zealand tax law requires that the New Zealand Grant is paid GST inclusive. For this reason, the New Zealand Grant will be made to eligible applicants on a GST plus basis with applicants having to return the GST component in their next GST return.

19 Currency exchange

All production expenditure incurred and paid in a foreign currency must be converted into New Zealand dollars on a monthly basis at the mid-month exchange rate published on the IRD website for the month in which the payment was made.

20 Non-arm's length expenditure

The basis of the arm's length principle is to ensure that amounts charged between the applicant and any associate entities (including parent and subsidiary entities) for the provision of goods or services are commercially reasonable.

Where the applicant incurs expenditure under a non-arm's length arrangement that inflates the cost of a particular good or service in relation to the production, then only the commercial rate for that good or service is QNZPE. The commercial rate will be taken to be the amount that would have been incurred if the parties were dealing at arm's length with each other charging what they would ordinarily charge to an unrelated party and/or paying what they would ordinarily agree to pay an unrelated party. Factors such as the length of the hire, supply and demand issues, any bulk discount that might reasonably be expected to apply, and overall cost-effectiveness will be taken into account when considering the commercial rate.

The arm's length principle applies to any act or transaction directly or indirectly connected with any expenditure incurred by the applicant - i.e. the principle still applies if a non-arm's length deal between other parties otherwise inflates the expenditure of a particular good or service purchased by the applicant.

Where there is significant non-arm's length expenditure in an application, the total budget will be considered against the total likely income earned by the production along with the overall feasibility of the production without the non-arm's length expenditure. If the NZSPG Panel then considers that any costs are calculated or that the production is structured in a way that is inconsistent with the purpose or intent of the criteria, the application may be rejected by the NZSPG Panel in its sole discretion as per clause 3.

Where parties providing goods or services to the production are also investing in the production, the charges for those goods or services must also be at commercial rates (taking into account any bulk discount that might reasonably be expected to apply) and be at a level consistent with the charges of other parties providing goods or services to the production who are not also investing in the production.

21 Non-accrual basis of expenditure

To be QNZPE a cost must have actually been incurred on the making of the specific production for which the application is made. In addition, the applicant must have actually discharged in full its liability to pay at the time of making a final application for the New Zealand Grant (for example, paid in cash, by

cheque or electronic transfer). Credits must not be off-set against any QNZPE to be claimed on the production.

This requirement does not apply where:

21.1 Fees or overheads held-back

Where:

- (a) part of the funding for the production (including any part of the expected New Zealand Grant that is not cashflowed to the applicant) is unpaid at the time of final application;
- (b) this funding is required to meet the cost of the production;
- (c) certain fees (that are otherwise QNZPE) have not been paid because they are being 'held back' pending receipt of such funding; and
- (d) such fees are payable to producers, director/s or as a production entity overhead,

the amount of the unpaid fees or overheads is QNZPE.

For example, if a bank cashflows 80% of the estimated value of the New Zealand Grant and the budget requires 100% of the New Zealand Grant, a producer might hold back his or her fees (that otherwise qualify as QNZPE) to cover the remaining 20% and then recover this part of their fee when the New Zealand Grant is received. In this case, the entire amount of the producer's fee is QNZPE.

21.2 Interest, auditor's fees and marketing or post-production costs

Interest for any loan cashflowing the New Zealand Grant, auditor's fees, marketing and/or post-production costs, in each case that are unpaid at the time of making a final application, can be included in QNZPE provided that:

- (a) the amounts have been agreed with the NZFC and are no more than 1% in aggregate (across all interest, auditor's fees, marketing and/or post-production costs in each case that are unpaid at the time of making a final application) of the total production budget;
- (b) invoices for those amounts are provided to the NZFC as soon as reasonably possible after submission of the final application; and
- (c) proof that the amounts have been paid is provided to the NZFC prior to payment of the New Zealand Grant relating to those amounts.

22 Expenditure by prior entities

An applicant that takes over the production from another entity (or entities) and completes the production (e.g. a completion guarantor), can be eligible for the New Zealand Grant. The applicant is taken to have incurred the production expenditure of the previous entity (or entities) for the purposes of the New Zealand Grant. Any costs incurred by the applicant in the takeover of the production are excluded from QNZPE. Costs incurred by entities prior to a SPV being set up must be reimbursed by the SPV to those entities in order to qualify as QNZPE, provided the expenditure also qualifies under clause 16.

23 Depreciating assets

Where an applicant purchases an asset for use in the production, uses it to make the production and sells or disposes of that asset at Completion of the production or at completion of QNZPE, the net cost of that asset can be claimed as QNZPE (provided the depreciation occurred in New Zealand).

Where an applicant holds a depreciating asset (other than copyright), uses it to make the production and retains it at the Completion of the production, then QNZPE (provided the depreciation occurred in New Zealand) can include so much of the decline in value over the effective life of the asset as is attributable to its use on the production (for tax purposes).

The definition of a 'depreciating asset' for the purposes of the New Zealand Grant is the same as that used by IRD.

Further information about the treatment of depreciating assets under Subpart EE of the Income Tax Act 2007 can be downloaded from the IRD website at www.ird.govt.nz.

24 Transfer pricing

When considering the issue of transfer pricing, it is difficult to be prescriptive as transfer pricing analysis is extremely fact-intensive. However, IRD would favour the use of cost plus methodology for a low risk production contract, the mark-up varying with the degree of risk assumed, and functions performed, by the applicant and the timing of payments received for services provided.

SECTION 5 – APPLICATION PROCESS

25 Registration

Applicants who do not make an application for a Provisional Certificate **must** use the then current version of the registration form provided on the NZFC website and have the production registered with the NZFC before the start of Principal Photography.

An applicant that has not either registered or applied for a Provisional Certificate **will not be eligible** to make a final application for the New Zealand Grant.

An application will only be considered registered when the applicant receives written confirmation of registration from the NZFC.

26 Notification of changes in estimated QNZPE

Applicants must inform the NZFC in writing as soon as practicable if, following registration or application for a Provisional Certificate, the estimated QNZPE for a production changes by \$1 million or more.

On a quarterly basis following registration or application for a Provisional Certificate, the NZFC and/or MCH may request information from the applicant, about the amount of estimated QNZPE incurred to date and forecast QNZPE to Complete.

27 Application for a Provisional Certificate

Before production has started, or at any time during production, an applicant can apply for provisional certification of eligibility for a New Zealand Grant (a **Provisional Certificate**).

It is not mandatory for applicants applying only for the baseline New Zealand Grant (and not an Additional Grant) to apply for a Provisional Certificate. However, applicants are encouraged to apply for a Provisional Certificate in all cases, but only when financing is sufficiently advanced. In any case, applicants who do not apply for a Provisional Certificate must register with the NZFC, as set out in clause 25.

Applicants (including Official Co-productions) who wish to apply for an Additional Grant **must apply** for a Provisional Certificate, using the then-current Additional Grant Provisional Certificate Application Form. Applicants who do not apply for a Provisional Certificate will not be eligible for an Additional Grant.

Applicants are strongly advised to engage with the NZFC during the financing of the production if intending to apply for an Additional Grant.

27.1 Application requirements

Applicants are eligible to apply for a Provisional Certificate where they are either:

- (a) the production entity responsible for the making of the production; or
- (b) the entity responsible for developing a project prior to the establishment of a production entity.

If the applicant is unsure as to whether its evidence of commercial distribution will be satisfactory or not, the applicant is encouraged to discuss this with the NZFC prior to lodging the Provisional Certificate Application Form.

27.2 Nature of Provisional Certificate

A Provisional Certificate is not a guarantee that a Final Certificate will be issued. It will, however, provide an indication of eligibility and the extent to which:

- (a) the production is an eligible format;
- (b) the production qualifies as having Significant New Zealand Content;
- (c) the production is likely to meet the minimum expenditure threshold;
- (d) the level of non-NZ government funding meets the minimum threshold;
- (e) the evidence of commercial distribution meets the criteria;
- (f) the application meets other relevant criteria; and
- (g) for applications for an Additional Grant, the additional criteria in Appendix 4 have been satisfied.

To apply, you must complete the relevant sections of the Provisional Certificate Application Form and submit it to the NZFC with all of the required attachments. The NZSPG Panel will assess the application and decide whether to issue a Provisional Certificate.

27.3 Fee

A fee, as determined by the NZFC from time to time and published on its website, may be payable for making an application for a Provisional Certificate. If a fee is payable, the NZFC will not begin processing an application for a Provisional Certificate until the NZFC has been paid the full amount of the fee. A fee may also be payable for making an application for an extension of a provisional certificate (see clause 27.4, below). The amount of any extension fee will be published on the NZFC website.

27.4 Validity of Provisional Certificate

A Provisional Certificate will lapse **six months** from the date of issue, unless the production has commenced Principal Photography within that time period. In exceptional circumstances, applicants can apply to the NZFC for an extension to their Provisional Certificate.

In any event, applicants can submit a new application for a Provisional Certificate. A re-application fee may be charged. The amount of any fee will be published on the NZFC website.

If an applicant holds a Provisional Certificate and a material element of the production changes (e.g. changes to creative personnel, cast, filming locations) the applicant **must** contact the NZFC to see if those changes might affect the eligibility of the production for a New Zealand Grant. This will be particularly important for matters affecting Significant New Zealand Content.

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, if an applicant applies to the NZFC for an extension to their Provisional Certificate, the NZFC can extend the period within which the production must have commenced Principal Photography, provided that the NZFC is satisfied that the extension is reasonably necessary due to the disruption caused to the production by the Covid-19 Lockdown.

Post-Covid-19 Lockdown provision: In the case of a Post-Covid-19 Lockdown Production, if an applicant applies to the NZFC for an extension to their Provisional Certificate, the NZFC can extend the period within which the production must have commenced Principal Photography, provided that the NZFC is satisfied that the extension is reasonably necessary due to the disruption caused to the production by the Covid-19 Lockdown.

28 Exchange rate fluctuation and pre-qualification

Applicants concerned that they might not meet the expenditure threshold for a New Zealand Grant solely due to fluctuations in exchange rates can 'pre-qualify' for the New Zealand Grant by following the process below.

The applicant must submit an application for a Provisional Certificate under clause 27 and at the same time must:

- (a) notify the NZFC that, solely for the purpose of meeting the expenditure threshold, they may require any non-New Zealand dollar QNZPE converted at the 'preset exchange rate' (defined below); and
- (b) nominate the relevant non-New Zealand dollar currency or currencies.

The application for a Provisional Certificate in respect of this paragraph 28 must be received by the NZFC no earlier than **three months** before the start of Principal Photography. In the event that the start date is delayed, the applicant can reapply.

On the date the NZFC receives the application for a Provisional Certificate it will obtain the relevant mid-month exchange rate/s published on the IRD website. This rate or rates will become the 'preset exchange rate/s'.

If at the time the applicant submits its final application for the New Zealand Grant, the QNZPE is below the relevant threshold, the NZFC will apply the 'preset exchange rate/s' against the QNZPE incurred in the nominated non-NZ dollar currency or currencies to recalculate the applicant's ability to meet the threshold.

In the event that the threshold is then met and the application is approved, the amount of the New Zealand Grant will be calculated and paid on actual QNZPE incurred (using the actual exchange rates as per clause 19 to convert any non-NZ dollar QNZPE).

29 Final Applications

An applicant must submit a final application within **six months** after Completion of the production.

Applications for a baseline New Zealand Grant only must be made on the then-current New Zealand Grant Final Application Form, provided on the NZFC website from time to time.

Applications for a New Zealand Grant that includes an Additional Grant must be made on the then-current Additional Grant Final Application Form, provided on the NZFC website from time to time.

All contracts provided by an applicant as part of a final application must be fully executed by all relevant parties and be in English or with a professional certified English translation provided.

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, the applicant can apply to the NZFC for an extension to their application, and the NZFC can extend the period within which the applicant must submit the final application, provided that the NZFC is satisfied that the extension is reasonably necessary due to the disruption caused to the production by the Covid-19 Lockdown.

Post-Covid-19 Lockdown provision: In the case of a Post-Covid-19 Lockdown Production, the applicant can apply to the NZFC for an extension to their application, and the NZFC can extend the period within which the applicant must submit the final application, provided that the NZFC is satisfied that the extension is reasonably necessary due to the disruption caused to the production by the Covid-19 Lockdown.

29A Covid-19 Lockdown provision – Interim Applications

Covid-19 Lockdown provision: In the case of a Covid-19 Lockdown production, the applicant for the New Zealand Grant can submit an interim application to the NZFC for QNZPE for the production, incurred and paid by the applicant at any time, provided that:

- (a) the amount of QNZPE under the interim application is not less than 50% of the relevant expenditure threshold for that format as specified in clause 8.2 or clause 9.2; and
- (b) the NZFC is satisfied that the production will be Completed.

If an applicant makes an interim application, a final application setting out the remaining QNZPE must also be submitted to the NZFC once all QNZPE for the production is completed.

The following information must be included with each final application and, in the case of a Covid-19 Lockdown production, any interim application (as applicable):

29.1 Fee

A fee, as determined by the NZFC from time to time and published on its website, may be payable for making a final application. If a fee is payable, the NZFC will not begin processing a final application until the NZFC has been paid the full amount of the fee.

29.2 Audited expenditure statement

All costs claimed as QNZPE (and TPE for Official Co-productions) must be presented in an audited expenditure statement. The audit must be prepared by a person who is:

- (a) qualified under the *Companies Act 1993* to audit companies;
- (b) not an officer, partner or employee of the applicant, or a related body corporate of the applicant (but can be contracted by them from time-to-time on a non-permanent basis). A related body corporate of an applicant would be a subsidiary of an applicant, the holding entity of an applicant or a subsidiary of the holding entity of the applicant; and
- (c) approved by the NZFC (as published on the NZFC website from time to time).

The auditor's report is provided at the applicant's expense, with the name of the auditor and auditor's company or firm, qualifications, and contact details to be provided in the relevant section of the application form.

29.3 Credit and promotional materials

All applicants must provide in the completed production, an on-screen end credit and an on-screen NZFC logo, each readable in ordinary circumstances.

Unless otherwise agreed by the NZFC in writing, the credit must be:

"The filmmakers acknowledge the assistance of the New Zealand Government's Screen Production Grant"

Unless otherwise agreed by the NZFC in writing, the logo must be the current version of the NZFC logo.

In exceptional circumstances, the NZFC can agree to waive the on-screen credit and/or logo requirement.

Unless specifically waived by the NZFC, applicants must provide promotional materials to the NZFC in accordance with the [Promotional Materials Schedule](#) available on the NZFC website.

From time to time the NZFC may request a licence or permission to use certain of the promotional materials. The applicant must consider any such request in good faith, having regard to any contractual restrictions in relation to such material.

The applicant must provide proof of compliance with the credit and logo requirements of this clause 29.3. This requirement can be met either by the applicant providing a screen grab or copy of the production that includes the credit and logo.

29.4 Copy of Production

If requested, the applicant must provide a copy of the completed production.

29.5 Statutory declaration

The information provided in a final application must be certified in a statutory declaration by an authorised person from the applicant - normally this would be the producer or a director of the applicant entity. Please note that under New Zealand law there are specific legal requirements for certification of statutory declarations.

29.6 English language documents

For official co-productions, if TPE is used for the purposes of assessing whether the expenditure threshold set out in clause 8.2 is met, the applicant must provide English-language copies of co-production partner financial records and contracts in relation to the production, requested by the NZFC and reasonably necessary to assess the TPE, QNZPE and whether the expenditure threshold is met.

29.7 Further information as requested

The NZFC reserves the right to require any further information the NZFC deems necessary to complete the assessment process. This information must be provided at the applicant's expense within 14 days of the NZFC's request, although the applicant can write to the NZFC seeking an extension of time. The period of time between the NZFC's request for information and the applicant providing a satisfactory response will not be counted towards the NZFC's processing times notified by the NZFC from time to time.

Applicants should familiarise themselves with the relevant final application form and the further information requested in that form.

30 Final application for Additional Grant

In addition to the requirements set out in clause 29, a final application for an Additional Grant must include supporting evidence that demonstrates that the applicant will meet all of the requirements of Appendix 4, including evidence that binding legal agreements (the form and substance of which are subject to the NZFC's approval) are in place, or will be put in place after approval by the NZFC, for the collection and disbursement of net receipts (including profit) from the production including the disbursement of the NZFC Equity Share.

An applicant who applies for an Additional Grant must provide all information that is reasonably requested during the application process by the NZFC or NZSPG Panel.

31 Confidentiality

Certain information supplied by the applicant to the NZFC or independent consultants will be provided to the NZSPG Panel IRD, MBIE, MCH and independent consultants where reasonably necessary during the application and approval process. Once the New Zealand Grant has been approved and paid, the NZFC or MCH can publish or announce the following information:

- the names of successful applicants;
- the amount of the QNZPE incurred by each applicant; and
- the amount of New Zealand Grant paid to each applicant.

Once the New Zealand Grant has been approved and paid, the amount of the QNZPE and the amount of a New Zealand Grant may be announced or published on the NZFC website and in any other publications selected by the NZFC or by any other part of the New Zealand Government.

Except where disclosure is permitted by clauses 31 to 33 (inclusive), the NZFC will use reasonable efforts to maintain the confidentiality of the information provided by the applicant. The NZFC, the NZSPG Panel, IRD, MBIE and MCH are government entities, which are subject to various disclosure requirements, for example disclosure of information under the *Official Information Act 1982*. None of them will be liable for any disclosure it believes (acting reasonably) it is required to make.

As such, applicants are advised to clearly indicate those parts of its application that the applicant regards as commercially sensitive and confidential. In processing a request under the *Official Information Act 1982*, the NZFC or relevant New Zealand Government agency will consult the relevant applicant prior to a decision on release of information.

32 Information for research purposes

Information provided by the applicant may be used by the NZFC and provided to other parts of the New Zealand Government for research purposes; for example, as part of a study on the broader

economic, industry development and cultural impacts of a production. Only non-identifying or aggregated information will be made public.

33 Exit survey

When making a final application, applicants will be required to complete a survey about their experience of making a production in New Zealand. This information will be used for research and marketing purposes and, unless the applicant agrees otherwise, it will be treated confidentially and only non-identifying or aggregated information will be made public.

The NZFC will not begin processing a final application until the NZFC has received a complete exit survey.

34 Further information

For further information on these criteria and the process of applying for a New Zealand Grant please contact the Incentives Executive on tel: +64 (0)4 382 7680, email: nzspg@nzfilm.co.nz.

For information about taxation and other obligations of entities commencing business in New Zealand, filing business activity statements and annual income tax returns consult the IRD website at www.ird.govt.nz, or IRD screen production desk's website at www.ird.govt.nz/industry-guidelines/screen-production/.

35 Application forms

Application forms can be found on the NZFC website at <http://www.nzfilm.co.nz>.

Applications, including all required documentation, must be submitted as specified on the NZFC website.

SECTION 6 – ASSESSMENT PROCESS

36 Assessment process

Once the NZFC receives an application, it is checked to ensure that it is complete and includes all relevant documents (as per the checklist at the back of the application form).

Once the application is complete, the applicant is sent an acknowledgement letter. The date of this letter is the start of the assessment process.

The complete application may be sent to an independent consultant contracted by the NZFC, or assessed internally at the NZFC. The independent consultant's role is to assess the application against the requirements of the criteria. All independent consultants are subject to a contractual duty of confidentiality.

If necessary, the independent consultant will contact the applicant or the applicant's auditor, to obtain further information about the application, production or applicant. A delay in providing further information on request may impact processing time.

If the request for information relates to non-arm's length issues, the independent consultant may seek information on the process and methodologies adopted to show that the amounts charged accord with the arm's length principle.

The NZFC will prepare a report, based on the independent consultant's report, for the NZSPG Panel to consider. It is NZSPG Panel's role to assess whether the application satisfies the criteria.

37 Processing time

The NZSPG Panel will process applications within the processing times notified by the NZFC from time to time. The processing time for an application will not begin until the NZFC has sent the applicant an acknowledgement letter, as per clause 36.

If the NZFC or an independent consultant requests further information from the applicant, the time between the request for information and the applicant providing a satisfactory response will not be counted towards the NZFC's stated processing time in respect of that application.

38 NZSPG Panel

The NZSPG is administered by the NZFC on behalf of MCH. Applications for a New Zealand Grant (including any Additional Grant) are assessed by the NZSPG Panel, a panel made up of industry practitioners and representatives from the NZFC and MCH. The NZSPG Panel will determine whether applications satisfy the criteria. A representative from each of IRD and MBIE is invited to attend all NZSPG Panel meetings.

39 IRD verification and payment of New Zealand Grant

Once a complete final application has been received, the NZFC will provide the application to IRD for IRD verification.

The NZFC will endeavour to process the application within three months.

Payment of the New Zealand Grant (including the Additional Grant) is dependent on:

- (a) IRD verifying the quantum of the potential claim for QNZPE against records held by IRD; and
- (b) approval by the NZSPG Panel.

Provided the requirements of this clause 39 are met, payment of the New Zealand Grant (including any Additional Grant) will be made in New Zealand dollars by the NZFC within ten business days of receipt of an invoice and formal verification of bank account details from the applicant.

APPENDIX 1 –DEFINITIONS AND INTERPRETATION

Where used in these criteria, the terms below shall have the meaning below:

\$ means New Zealand dollars.

Additional Grant refers to the grant available to eligible New Zealand Productions (including Official Co-productions) that meet the additional criteria in Appendix 4.

Cast and Crew Perks means benefits (for example; companion airfares, a personal chef, childcare) provided to a cast or crew member that are not part of the total Remuneration for that person.

Complete, Completed or Completion means when a production is first in a state where it could reasonably be regarded as ready to be distributed, broadcast or exhibited to the general public in any form or format. For different formats, this means:

- (a) feature film – when it is completed to Digital Cinema Package (DCP) format or any replacement format ready for distribution;
- (b) single episode programme – when the programme is finished to master video tape stage (or digital equivalent) with credits ready for broadcast;
- (c) series – when all of the episodes in the series are finished to master video tape stage (or digital equivalent) with credits ready for broadcast;
- (d) season of a series – when all of the episodes are finished to master video tape stage (or digital equivalent) with credits ready for broadcast, completed within one defined time period or “season” of a series.

Covid-19 Lockdown means the period beginning on 21 March 2020 and ending on 14 May 2020 and the restrictions in operation in New Zealand during this period giving rise to significant disruption to New Zealand screen production activity.

Covid-19 Lockdown production means a New Zealand Production that had started Principal Photography on or before 21 March 2020 and the Panel is satisfied that Principal Photography was disrupted to a material extent as a direct result of the Covid-19 Lockdown.

Covid-19 Lockdown provisions mean the provisions incorporated into these criteria for a limited time, in response to the Covid-19 Lockdown, each of which is entitled a “Covid-19 Lockdown provision”. The Covid-19 Lockdown provisions will only be available to productions, applicants and applications that meet the eligibility criteria for Covid-19 Lockdown productions.

Development Expenditure means expenditure incurred prior to official pre-production on development of the production, and includes expenditure on any of the following:

- location surveys and other activities undertaken to assess locations;
- storyboarding;
- scriptwriting / purchase of story rights;
- research;
- casting;
- budgeting; and
- scheduling.

Entertainment includes alcohol, wrap parties, and meals outside a production base unless such meals are in place of standard production catering for cast and crew.

Final Certificate means a certificate issued to an applicant by the NZFC that states whether or not, on the basis of the information included in a final application, a production has qualified for a New Zealand Grant and the amount of the New Zealand Grant.

Financing Expenditure includes expenditure connected with raising and servicing finance for the production, such as interest payments on loans to cashflow the New Zealand Grant, development loans and pre-sales or gap funding cashflowed to the production budget (but not deferrals). It does not include fees or premiums associated with the provision of any equity funding.

Gratuities includes tips, koha, vouchers and similar payments for which no invoice or receipt is provided.

Guaranteed Deferments means payments to personnel or the production entity (including payments for story rights) that are quantifiable prior to Completion of the production but are payable after Completion of the production.

International Grant means the grant available under the NZSPG to productions that meet the eligibility criteria under the NZSPG Criteria for International Productions. It includes the PDV Grant.

IRD means the Inland Revenue Department.

LBSPPG means the Large Budget Screen Production Grant scheme that was introduced by the New Zealand Government in 2003 and that was replaced by the NZSPG in April 2014.

MBIE means the Ministry of Business, Innovation and Employment.

MCH means the Ministry for Culture and Heritage.

New Zealand Citizen or Citizen means a natural person who has acquired New Zealand citizenship under the Citizenship Act 1977.

New Zealand Financing Percentage means:

- (a) in the case of Official Co-productions, the percentage of financing that is nominated as the New Zealand Financing Percentage in the Official Co-production application; or
- (b) In the case of a non- Official Co-production, the percentage of financing that is provided by New Zealand Residents.

New Zealand Government Production Funding means funding that is:

- (a) provided by the NZFC, the NZSPG (or by any entity cashflowing all or part of an estimated New Zealand Grant), the New Zealand Film Production Fund Trust, Creative New Zealand, NZ On Air, Te Māngai Pāho, or any predominantly New Zealand Government-funded entity but **does not** include funding provided by Television New Zealand, Maori Television or any other broadcaster that receives funding from the New Zealand Government or any funding that is a loan by the NZFC or any other New Zealand Government entity for the purpose of cashflowing funding other than the New Zealand Grant; and
- (b) to be cashflowed to the production budget of the production.

New Zealand Grant means the grant available under the NZSPG to New Zealand Productions (including Official Co-productions) only.

New Zealand Permanent Resident or Permanent Resident means a person who meets the definition of a permanent resident under the Immigration Act 2009.

New Zealand Production means a production with significant New Zealand content.

New Zealand Resident or Resident means:

- (a) in the case of a natural person, a person that the *Income Tax Act 2007* treats as a New Zealand resident under section YD 1; or
- (b) in the case of a company, a company that the *Income Tax Act 2007* treats as a New Zealand resident under section YD 2.

NZFC means the New Zealand Film Commission.

NZSPG means the New Zealand Screen Production Grant scheme introduced by the New Zealand Government effective from 1 April 2014.

NZSPG Panel means the New Zealand Screen Production Grant Panel.

Official Co-production means a production certified by the NZFC and the other country's competent authority as an official co-production pursuant to one of New Zealand's bilateral co-production treaties or agreements.

Participation Payments means payments to personnel or the production entity (including payments for story rights) that are contingent on gross and/or net receipts of the production.

Principal Photography means:

- (a) *for scripted productions*: the period of time during which the main shooting of the production takes place. It is expected that certain key shooting cast and crew (such as the director, director of photography, key cast, hair and make-up, continuity) will be present. The period of time is usually a fixed period, however, where a pick-up shoot, second unit shoot or re-shoot meets this criteria, it will also be considered principal photography.
- (b) *for unscripted productions and documentaries (whether scripted or unscripted)*: the period of time required to capture the image of the subject matter of the production where the director, or in some cases, the field director, is present for the shoot. The shoot does not need to occur over a fixed period of time. Interviews with key subjects and time critical photography will be considered principal photography. Where there is no shoot element for a documentary, the period of time during which the edit takes place.
- (c) *for animation*: the period from the day on which an ongoing schedule of production of the animated image commences until the day that the animated images are completed.

Post-Covid-19 Lockdown Production means a New Zealand Production that starts Principal Photography between 14 May 2020 and 30 June 2021.

Post-Covid-19 Lockdown provisions mean the provisions incorporated into these criteria for a limited time, in response to the Covid-19 Lockdown, each of which is entitled a “Post-Covid-19 Lockdown provision”. The Post-Covid-19 Lockdown provisions will only be available to productions, applicants and applications that meet the eligibility criteria for Post-Covid-19 Lockdown Productions.

Provisional Certificate means a certificate issued to an applicant by the NZFC that states whether or not, on the basis of the information included in an application for a Provisional Certificate, a production is likely to qualify for a New Zealand Grant.

Qualifying Person means a person who is a New Zealand Citizen or a New Zealand Permanent Resident at the time the production is made and who is credited in the production.

QNZPE means Qualifying New Zealand Production Expenditure, as defined in Section 3.

Remuneration means all contractual entitlements to fees, accommodation, per diems, childcare and other allowances but excluding travel.

Residuals means any residual payments due to personnel (including those distributed by guilds, unions or other collecting bodies) for exhibition and distribution of a production other than its original release (these are not classified as Participation Payments).

Significant Cultural Benefits Test means the test set out in Appendix 4 in relation to the Additional Grant, used to determine whether a production brings significant cultural benefits to New Zealand.

Significant New Zealand Content means significant New Zealand content for the purposes of the NZSPG Criteria for New Zealand Productions as determined in accordance with the Significant New Zealand Content Test.

Significant New Zealand Content Test means the points test set out in the Significant New Zealand Content Guidelines at Appendix 3.

SPIF means the Screen Production Incentive Fund that was introduced by the New Zealand Government in 2008 and that was replaced by the NZSPG in April 2014.

TPE means Total Production Expenditure, as defined in Appendix 2.

APPENDIX 2 – TOTAL PRODUCTION EXPENDITURE (TPE) FOR OFFICIAL CO-PRODUCTIONS

1 General TPE definition

TPE is the expenditure incurred in, or that is reasonably attributable to, actually making the production, whether in New Zealand or elsewhere, to bring the production up to the state that the production is ready to be distributed, broadcast or exhibited to the general public. TPE includes all expenditure that is QNZPE but excludes the expenditure set out in clause 2 of this Appendix.

2 Specific exclusions from TPE

The following expenditure items are excluded from TPE unless they are QNZPE:

- (a) Financing Expenditure
- (b) Development Expenditure
- (c) Acquisition or licensing of copyright, other than stock or archive footage
- (d) General business overheads
- (e) Publicity and promotion expenditure
- (f) Guaranteed Deferrals, Participation Payments, Residuals or advances thereof
- (g) Acquisition of a depreciating asset

All costs associated with Cast and Crew Perks, gifts, fines, Entertainment and Gratuities and any historical costs listed in clause 6 are also excluded from TPE.

APPENDIX 3 – SIGNIFICANT NEW ZEALAND CONTENT GUIDELINES

NEW ZEALAND SCREEN PRODUCTION GRANT

New Zealand Productions

Assessment of Significant New Zealand Content

Guidelines

1 July 2017

New Zealand Screen Production Grant

Assessment of Significant New Zealand Content – Guidelines

Introduction

The New Zealand Screen Production Grant (NZSPG) was introduced by the New Zealand Government on 1 April 2014.

All New Zealand Productions (including Official Co-productions) that meet the base eligibility criteria for the NZSPG are able to access a grant equivalent to 40% of Qualifying New Zealand Production Expenditure (QNZPE), up to \$15 million QNZPE. New Zealand Productions are those productions that have significant New Zealand content. Official Co-productions are deemed to have significant New Zealand content. Certain New Zealand Productions (including Official Co-productions) may also be entitled to a grant on additional QNZPE above \$15 million but no more than \$50 million if the applicant meets the requirements for an Additional Grant under Appendix 4.

These guidelines have been developed to provide information for producers on how assessment of a production's significant New Zealand content will be made.

This document must be read in conjunction with the full criteria and other documentation for the NZSPG.

The NZSPG is administered by the NZFC on behalf of MCH.

Significant New Zealand Content

The *New Zealand Film Commission Act 1978*, section 18 – Content of Films, provides that:

(1) In carrying out its functions, the Commission shall not make financial assistance available to any person in respect of the making, promotion, distribution, or exhibition of a film unless it is satisfied that the film has or is to have a **significant New Zealand content**.

'Film' is defined broadly under the Act, and includes television and any other format screen production.

For the purposes of determining whether or not a film has or is to have significant New Zealand content, the Commission is required under Section 18(2) of the Act to have regard to the following matters:

- (a) The subject of the film.
- (b) The locations at which the film was or is to be made.
- (c) The nationalities and places of residence of—
 - (i) The authors, scriptwriters, composers, producers, directors, actors, technicians, editors, and other persons who took part or are to take part in the making of the film.
 - (ii) The persons who own or are to own the shares or capital of any company, partnership, or joint venture that is concerned with the making of the film.
 - (iii) The persons who have or are to have the copyright in the film.
- (d) The sources from which the money that was used or is to be used to make the film was or is to be derived.
- (e) The ownership and whereabouts of the equipment and technical facilities that were or are to be used to make the film.
- (f) Any other matters that in the opinion of the Commission are relevant to the purposes of this Act.

Purpose of the guidelines

These guidelines have been developed to provide information for producers and others in the screen industry with regard to how it is intended that assessment of a production's significant New Zealand content will, in general terms, be made for the purposes of NZSPG applications.

As the NZSPG operates as a demand-driven production incentive, potentially with little government screen agency involvement during the development of the production, these guidelines have been developed to provide the maximum possible clarity for film-makers.

These guidelines include the matters specified under Section 18(2), and provide a clear indicative framework regarding how, in general terms, the measuring and weighting of these factors would be intended to take place for productions applying for a New Zealand Grant.

This document includes an indicative points framework for various production elements, and provides guidance on the awarding of points under each section.

NZSPG Panel discretion

These guidelines and the incorporated points framework are proposed to assist the NZSPG Panel in its decision-making and are published to provide information for the screen industry as to how assessments of significant New Zealand content are, in principle, intended to be made for the purposes of the NZSPG.

The guidelines and points framework are not fixed policy rules and the NZSPG Panel will in all cases bring to bear its judgment and discretion in assessing a production's level of significant New Zealand content.

Assessment of screen productions

As a guide, and subject to the discretion referred to above, it is intended that a screen production's significant New Zealand content for the purposes of eligibility for the NZSPG will be assessed on the following basis:

- a production that receives at least 20 points out of 32 will generally be considered to have significant New Zealand content for the purposes of the NZSPG, subject to there being no relevant factors that mitigate against eligibility.
- All productions will generally be expected to receive a minimum of 3 points related to New Zealand Subject Matter (Section A).
- All productions will generally be expected to receive at least 3 out of the total of 6 points available in sections C1 – C3 for Director, Producer and Scriptwriter.

Definitions and other eligibility requirements for screen productions for the purposes of NZSPG are included in the criteria.

As the expenditure thresholds for feature film and other formats differs, the NZSPG Panel retains the ability to reject applications where it is suspected that feature films are applying as other formats.

Official Co-productions

As stated in the criteria, any film (including television and other format screen productions) certified by the New Zealand Film Commission as an 'official co-production' pursuant to one of New Zealand's bilateral film co-production agreements will be considered to have significant New Zealand content for the purposes of eligibility for the New Zealand Grant (pursuant to section 18(2A) of the *New Zealand Film Commission Act 1978*).

Official Co-productions that intend to apply for an Additional Grant should note the following:
Official Co-productions will not automatically be considered to provide significant cultural benefits to New Zealand for the purpose of eligibility for the Additional Grant. An Official Co-production that wishes to apply for an Additional Grant must meet all of the requirements of Appendix 4, including passing the Significant Cultural Benefits Test.

Significant New Zealand Content Test

| Significant New Zealand Content Areas NB: Notes on each of the points below are summarised. | Points Available |
|---|-------------------------|
| A – New Zealand Subject Matter | |
| A1 – Setting | 3 (0 - 3) |
| A2 – Lead Characters <i>Documentaries, reality, lifestyle etc.:</i> presenter, narrator, subject | 3 (0 - 3) |
| A3 – Creative Material | 3 (0 - 3) |
| A4 – Contribution to New Zealand Culture/History | 2 (0 - 2) |
| Total – Section A (minimum: 3) | 11 |
| B – New Zealand Production Activity | |
| B1 – Shooting – Location/Studio (50% for 1, 75% for 2) | 2 (0 – 2) |
| B2 – Visual Post-Production, Digital or Visual Effects (50% for 1, 75% for 2) | 2 (0 – 2) |
| B3 – Music Recording, Voice Recording, Audio Post-Production (50% plus) | 1 |
| B4 – If applicable, Concept Design & Physical Effects (Period/Genre) (50% plus) | 1 |
| Total – Section B | 6 |
| C – New Zealand Personnel | |
| <i>To qualify, individuals must be a New Zealand Citizen or New Zealand Permanent Resident at the time the production is being made and be credited in the production (a Qualifying Person).</i> | |
| C1 – Director (2 points if the director is a Qualifying Person or where there are multiple directors, 1 point if more than 33% and 2 points if more than 66% or majority of episodes directed by a Qualifying Person) | 2 (0 - 2) |
| C2 – Producer (2 points if at least one of the producers is a Qualifying Person or if there are more than three, one of the three lead producers is a Qualifying Person) | 2 (0 <u>or</u> 2) |
| C3 – Scriptwriter (2 points if the writer is a Qualifying Person or where there are multiple writers, 1 point if more than 33% and 2 points if more than 66% or majority of episodes written by a Qualifying Person) | 2 (0 – 2) |
| C4 - Music Composer/Source Music (1 point if the composer is a Qualifying Person <u>or</u> if more than 50% of the source music is by Qualifying Persons) | 1 |
| C5 – Lead Actors (1 point if one of the lead actors is a Qualifying Person, 2 points if 2 of the lead actors are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> actors only (if significant dramatic recreations) <i>Animation:</i> voice actors | 2 (0 – 2) |
| C6 – Majority of Cast (50% plus) (1 point if 50% of the cast are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> presenters, narrators actors (if there are significant dramatic recreations) | 1 |
| C7 – Key Production Roles (1 point if 2 of the key production roles are Qualifying Persons, 2 points if 3 of the key production roles are Qualifying Persons) <i>Drama:</i> lead cinematographer, lead production designer or art director, lead editor, lead digital/visual/special effects supervisor <i>Documentaries, reality, lifestyle etc.:</i> lead camera, lead editor, lead researcher and one of lead/field sound recordist or sound designer or sound mixer or sound editor <i>Animation:</i> animation director, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor, lead modelling supervisor | 2 (0 – 2) |

| | |
|---|-----------------------|
| C8 - Majority of Crew (50% plus) | 1 |
| Total – Section C (minimum: 3pts from C1 – C3) | 13 |
| D – New Zealand Businesses | |
| D1 – Ownership of Intellectual Property | 1 |
| D2 – Business development outcomes including ownership of applicant company, rights of recoupment, sources of financing | 1 |
| Total – Section D | 2 |
| Total – minimum 20 points | __ (out of 32) |

General principles

Assessment of significant New Zealand content for the purposes of the New Zealand Grant is intended to support the objectives of the New Zealand Grant, while ensuring consistency with the requirements of the *New Zealand Film Commission Act 1978*.

The New Zealand Grant is focused on industry development and cultural outcomes. The purpose of the New Zealand Grant is twofold:

- to build the sustainability, scale and critical mass of the domestic industry, and support the development of New Zealand creatives
- to provide cultural benefits to New Zealand by supporting the creation of New Zealand content and stories.

The points framework and guidelines have been designed to reflect the special importance of on-screen New Zealand content – in terms of New Zealand characters, locations, stories, and historical and cultural elements – in defining a New Zealand Production.

Identifiable New Zealand on-screen elements are, in general, important to the uniqueness of New Zealand production. They are of particular significance in the expression and development of New Zealand’s culture and identity, and reflecting situations and experiences unique to New Zealand, for the benefit of both New Zealand and international audiences. It is intended that most New Zealand Productions in particular will display strong New Zealand on-screen elements.

It is, however, intended that a production could be considered to have significant New Zealand content for the purposes of the New Zealand Grant, while having no identifiable New Zealand setting, characters or other cultural elements. It is not the intention of assessment to restrict film-makers’ creativity by limiting them solely to New Zealand settings and situations. Where this is the case the production will need to have:

- strong New Zealand creative input or underlying material; and
- high levels of New Zealand production activity and film-maker input.

Additional Grant

Applicants who wish to apply for an Additional Grant should be aware that a higher threshold in respect of New Zealand cultural elements will apply. See Appendix 4 for more details.

Double counting

The following rule about double counting applies to sections A2, C5 and C6.

Within each of sections A2, C5 and C6, individuals can have points attributable to them in respect of one role only. If an individual can qualify for more than one role **within** a section, the applicant must choose what role it wants to claim points for in respect of that individual.

For example, in section A2 an applicant cannot claim 2 points in respect of an individual that is a narrator and a presenter. Instead, the applicant must choose whether to claim points for the individual as a narrator *or* as a presenter.

For the avoidance of doubt, this double counting rule does not limit the ability of an applicant to claim points where an individual qualifies for multiple roles across different sections. For example, an applicant can claim points where an individual is both a lead character (Section A2) *and* a lead actor (Section A5).

Section A – New Zealand Subject Matter

A1 – Setting

Up to 3 points will be awarded for the New Zealand setting of a screen production, on the following basis:

- 3 points can be awarded if at least 75% of the production is set in New Zealand.
- 2 points can be awarded if at least 50% of the production is set in New Zealand.
- 1 point can be awarded if at least 25% of the production is set in New Zealand.

A screen production is set in New Zealand if the story takes place in New Zealand (regardless of actual location of shooting). A fictionalised version of New Zealand (that is still clearly identifiable as a New Zealand setting) will be considered a New Zealand setting.

This will be measured by the proportion of the final production (in terms of number of minutes of on-screen content) that take place in New Zealand.

A2 – Lead Characters

Up to 3 points will be awarded depending on the number of lead characters that are New Zealand characters, as follows:

- 3 points can be awarded if two or more of the three lead characters are New Zealand characters, or if there are only two lead characters and they are both New Zealand characters.
- 2 points can be awarded if one of the two lead characters is a New Zealand character.
- 1 point can be awarded if one of the three lead characters is a New Zealand character.

A character is a New Zealand character if he or she is identifiable as a New Zealand Citizen or a New Zealand Resident in the screen production.

Where it is not immediately apparent from the film, applicants will be asked to explain why the character should be regarded as a New Zealand character. It is not enough that a person is technically a New Zealand character (e.g. via dual nationality or other artifice) - there must be other evidence in the film that the character is a New Zealand character, e.g. back-story, accent, residence etc.

Where the residency and/or citizenship of the character is shown to change in the course of the film, or the character is a past New Zealand Resident only, the applicant will be asked to justify why, on balance, the character should be considered a New Zealand character. In general, a character should be a New Zealand Citizen or New Zealand Resident for the majority of his or her time on screen in order to be considered a New Zealand character.

Whether a character is a lead character will be determined by taking account of centrality and prominence of the character in the story. Applicants will be asked to identify the lead characters and make the case for a character's centrality and prominence in the story.

For a documentary only: this can include the narrator, presenter and the subject/s or other contributors on screen.

An individual can have points attributed to them for one role only in this section A2. For example, where an individual is a presenter and is also a subject, the applicant can only claim points for one of the individual's roles.

A3 – Creative Material

This section refers to the creative material upon which the story of the production is based as opposed to the actual script, screenplay or teleplay (unless the story is only expressed in an original script, screenplay or teleplay).

3 points will be awarded if the production:

- is from an original screenplay by a New Zealand Citizen or New Zealand Permanent Resident; or
- is based on a book, story, article, play etc. written by a New Zealand Citizen or New Zealand Permanent Resident; or
- is based on an original concept by a New Zealand Citizen or New Zealand Permanent Resident.

Where it can be demonstrated that a project has a significant creative connection with New Zealand by originating in New Zealand and/or being developed by New Zealand Citizens, Permanent Residents or Residents (the applicant must demonstrate a meaningful and substantial New Zealand involvement in the development and where the story is an adaptation, the adapted screenplay is written by a New Zealand Citizen, Permanent Resident or Resident), then up to 3 points can be awarded depending on the level of involvement of New Zealand Citizens Permanent Residents or Residents. If the original concept for a screen production is not by a New Zealand Citizen or Permanent Resident or Resident, then the maximum points available in this section is 2 points.

Where there is more than one screenwriter for an original or adapted screenplay, or where other underlying creative material is co-authored, points will be allocated according to the proportion of New Zealand creative material, on the following basis:

- 1 point can be awarded if at least 25% of the total underlying material is written by a New Zealand Citizen or Permanent Resident;
- 2 points can be awarded if at least 50% of the total underlying creative material is written by a New Zealand Citizen or Permanent Resident;
- 3 points can be awarded if at least 75% of the total underlying creative material is written by a New Zealand Citizen or Permanent Resident.

In all cases, the guild-approved credits granted to the New Zealand Citizen or Permanent Resident and chain of title documents will be taken into account when determining the appropriate amount of points.

A4 – Subject Matter and Contribution to New Zealand Culture or History

The intention of this section is to reward and encourage film-making that reflects specific New Zealand issues, perspective, subjects, culture and/or historical context.

Up to 2 points will be awarded for the subject matter and contribution to New Zealand culture or history of a screen production, on the following basis:

- 1 point can be awarded to productions featuring high levels of historical content of specific relevance to New Zealand.
- 1 point can be awarded to productions featuring subject matter or issues of particular relevance to New Zealand or New Zealand Citizens, Permanent Residents or Residents.

Applicants claiming points in this section will be required to provide justification as to why they believe the points should be awarded.

Historical Content: This point will be awarded to productions that successfully show that, to a significant degree, they incorporate portrayals of historical events, issues or personalities that are of particular relevance to New Zealand. A production's story does not necessarily have to be set in New Zealand or feature New Zealand characters to be awarded a point in this sub-section. Stories or factual content featuring, for example, early Polynesian or European explorers or related to the historical experience of New Zealand Citizens, Permanent Residents or Residents internationally, might successfully claim a point for New Zealand historical content.

Subject Matter: This point will be awarded to productions featuring an investigation or thematic portrayal of issues, information or other subject matter considered to be of particular interest to New Zealand Citizens, Permanent Residents or Residents. In order to receive a point in this section, a production must do more than be simply set in New Zealand or feature New Zealand characters. There should be a portrayal of an issue of specific relevance to New Zealand/New Zealand Citizens, Permanent Residents or Residents. Examples might include: issues of ethnicity and diversity in a New Zealand context; depictions or exploration of cultural values

or situations of particular relevance to New Zealand Citizens or Permanent Residents or Residents; exploration of a specific environmental or political context or issue of particular relevance to New Zealand; etc. A production does not necessarily have to be set in New Zealand or feature New Zealand characters to be awarded a point in this sub-section. Stories featuring, for example, a New Zealand perspective on an international issue or event, might successfully claim a point for New Zealand subject matter.

A5 – Reaching New Zealanders - Audience Engagement Plan (Additional Grant Only)

The intention of this section is to reward productions that reach and engage New Zealanders. While it is acknowledged that every production is different and will have a different appeal, productions applying for the additional grant are expected to demonstrate:

1. Which target audience the production will appeal to;
2. An indication of the potential audience size; and
3. A marketing and release strategy outlining how the audience will be reached.

Up to 3 points will be awarded depending on the breadth and depth of the engagement with New Zealanders on the following basis:

- 1 point can be awarded to a production that demonstrates the reach and engagement with a primary audience;
- 2 points can be awarded to a production that demonstrates the reach and engagement with a primary and secondary audience;
- 3 points can be awarded to a production that demonstrates a four quadrant reach.

Section B – New Zealand Production Activity

Except for Principal Photography, the amount of work on a film-making activity in this section will be calculated by the amount of expenditure on that work. This will include: where a person works on a film, where goods are supplied from and/or where the services are performed.

Where expenditure on a film-making activity is split between activity inside and outside New Zealand then expenditure must be claimed in proportion to the location of that activity.

Information regarding the ownership of any equipment and technical facilities used by an applicant to claim points under this section may be requested.

Any New Zealand living expenses of persons directly engaged in a production's work and incurred for the purposes of production (e.g. staying in a hotel in New Zealand) should be counted towards activity inside New Zealand.

B1 – Shooting – Location/Studio

Up to 2 points will be awarded for the location and/or studio shooting carried out in New Zealand, on the following basis:

- 1 point can be awarded if at least 50% of the location and/or studio shooting is carried out in New Zealand.
- 2 points can be awarded if at least 75% of the location and/or studio shooting is carried out in New Zealand.

Location/Studio shooting includes Principal Photography at any studio, location, warehouse or other place where filming takes place. It does not include any shooting done by second or other units or any re-shoots that take place after so-called "wrap" of Principal Photography. It will be measured by reference to the number of days spent on the work as set out in the shooting schedule. In this instance, Principal Photography means the period of time during which the main shooting of the production takes place. It is expected that certain key shooting cast and crew (such as the director, director of photography, key cast, hair and make-up, continuity) will be present.

B2 – Picture Post-Production and Digital/Visual Effects

Up to 2 points will be awarded for picture post-production and digital/visual effects on the following basis:

- 1 point can be awarded if at least 50% of the picture post-production and digital/visual effects budget is QNZPE.
- 2 points can be awarded if at least 75% of the picture post-production and digital/visual effects budget is QNZPE.

Picture post-production includes the following activities. It does not include dailies or activities normally carried out on-set during the Principal Photography period:

- Picture editorial
- Digital Intermediates (including TV online/colour sessions)
- Graphics, idents, textless backgrounds
- Main, end and textless titles
- Master exports
- Creation of master picture delivery items (not including distribution copies), data management and movement (provided the cost of data movement is charged to a New Zealand Resident and the data originates from New Zealand)

- Film scanning/telecine
- Stereoscopic 3D conversion

Picture post-production also includes the following film laboratory activities:

- Film recording
- Film restoration and repair
- Titles, credits
- Stills manipulation
- Grading/colour timing
- Negative inspection, negative pulling, cutting, logging, assembly cutting and pulling and assembling of scan rolls
- Film/digital opticals
- Creation of master film delivery items, e.g. interpositives and internegatives (not including distribution copies)
- Digital negative developing, processing and print from digital negative

Visual Effects Production includes:

Visualisation

- Research and development for visual effects technology used by and charged to the production
- Visual effects design (including concept art and photographing and/or scanning of physical models by the VFX supplier to use as VFX reference)
- Visual effects planning, supervision, management and integration into production
- 3D storyboards outlining placement, movement, shape and elements needed for the completion of VFX shots including for pre-visualisation, technical visualisation or post-visualisation

VFX Photography and Data Capture

- Virtual camera including motion capture, performance capture or facial capture (see note 1 below)
- Creation, shooting and delivery of models and miniatures
- Creation, shooting and delivery of animatronics
- Aerial plates
- Green/blue screen photography not involving lead cast or the main unit director used for the purposes of supporting visual effects and other than Principal Photography
- Plates/elements including but not limited to background, crowd/extras, specialist prosthetics, pyrotechnics and fire, lightning, smoke, dust, water and clouds

- On-set data capture (including environment, prop, human and creature capture) such as 3D scanning and processing of captured data
- Virtual studio and sets

CGI/2D/3D

- 2D and 3D animation (see note 1 below)
- Digital creatures
- Digital doubles
- Digital environments
- Other digital effects
- Rotoscoping
- Digital matte painting
- Compositing
- Film treatment and restoration
- Wire effects removal
- Editing and grading

NOTE 1: For the avoidance of doubt, all costs relating to motion/performance/facial capture and animation activities are QNZPE even if they are incurred during Principal Photography.

For animation only: Work on shooting, visual design, and layout and storyboarding, will also be eligible.

B3 – Music Recording, Voice Recording, Sound Post-Production

1 point can be awarded if at least 50% of the total budget for music, voice recording activities and/or sound post-production is QNZPE.

Music includes composing, scoring, performing and recording but does not include source music. The performing and recording of the following qualify: a new piece of music composed for the film; or a new arrangement/score of an existing piece of music, created specifically for the film.

Sound post-production includes:

- Sound and music editorial
- ADR/voiceover recording including remote ADR/voiceover recording including but not limited to ISDN connections provided the cost is charged to a New Zealand Resident
- Sound design including any additional sound recording recorded by a sound editor
- Sound tracklay
- Foley effects and recording
- Sound mixing/re-recording (not including international versioning for distribution)
- Creation of master sound delivery items (not including distribution copies or international versioning)

NOT INCLUDED: Proprietary licence fees e.g. Dolby.

For animation only: Work on voice recording will also be eligible. 1 point will be awarded if at least 50% of the work on this activity is carried out in New Zealand.

B4 – Concept Design and Physical Effects

For productions where Concept Design and Physical Effects are a significant part of the production e.g. genre or period, 1 point can be awarded if at least 50% of the total budget for Concept Design and Physical Effects is QNZPE.

For the purposes of this section of the test, Concept Design and Physical Effects includes creature design, special effects, mechanical effects, specialist prosthetics, models, special props and costumes supplied by specialist companies rather than by the crew working on the production e.g. art department crew. It does not include fees for the production designer or for personnel in art department, wardrobe or hair and make-up.

Section C – New Zealand Personnel

C1 – Director

2 points can be awarded if the director is a Qualifying Person.

Where there are multiple directors (for example for a series of episodes):

- 1 point can be awarded if at least 33% of the directors are Qualifying Persons or 33% of the episodes are directed by Qualifying Persons;
- 2 points can be awarded if at least 66% of the directors are Qualifying Persons or 66% of the episodes are directed by Qualifying Persons.

Where there is more than one director for a feature film or single episode programme, applicants will be asked to make a case for who is the lead director, except where there are joint and equal directors in which case an applicant can choose either to be the lead.

The lead director will be determined by taking into account factors including: the person who takes the credit in the production, the creative input and time spent working on the film.

C2 – Producer

2 points can be awarded if at least one of the producers (or, if there are more than three, one of the three lead producers) is a Qualifying Person.

Where there is more than one producer, applicants will be asked to make a case for who are the lead producers. A producer is defined as an individual with decision-making authority who plays an active role throughout the pre-production, production and post-production of a production and assumes responsibility for the physical process of production and carrying through practical and financial arrangements for the making of the production. For feature films, executive producers and associate producers will generally not be considered lead producers. For television series, executive producers can be considered lead producers.

The lead producer will be determined by taking into account factors including: the person who takes the credit in the production, the creative input and time spent working on the production. Producers for television series, line producers and unit production managers are considered under C4.

C3 – Scriptwriter

2 points can be awarded if the scriptwriter is a Qualifying Person.

Where there are multiple scriptwriters (for example for a series of episodes):

- 1 point can be awarded if at least 33% of the scriptwriters are Qualifying Persons or 33% of the episodes are written by Qualifying Persons;
- 2 points can be awarded if at least 66% of the scriptwriters are Qualifying Persons or 66% of the episodes are written by Qualifying Persons.

Applicants will be asked to make a case for who are the scriptwriters.

A scriptwriter will be determined by taking into account factors including: the person who takes the credit in the film, creative input on the script and time spent working on the script.

C4 – Composer/Source Music

1 point can be awarded if:

- the composer is a Qualifying Person (or, if there is more than one composer, the lead composer) is a Qualifying Person; or
- more than 50% of the source music for the film is by Qualifying Persons.

Where there is more than one composer, applicants will be asked to make a case for who is the lead composer, except where there are joint and equal composers in which case an applicant can choose either to be the lead.

The lead composer will be determined by taking into account factors including: the person who takes the credit in the film, the creative input on the original music score (not including source music) and time spent working on the score.

If applicants wish to receive the point for source music for the film (rather than the composer), they will be asked for evidence as to the New Zealand status of the source music.

C5 – Lead Actors

2 points will be awarded for New Zealand lead actors, on the following basis:

- 1 point can be awarded if one of the lead actors is a Qualifying Person.
- 2 points can be awarded if two of the lead actors are Qualifying Persons.

Applicants will be asked to make a case for who are the lead actors.

The lead actors will be determined by taking into account factors including: the number of days worked in front of the camera and the centrality of the actor's role in the film.

For animations only: this will include actors voicing characters.

For documentaries, reality and factual series only: this will include actors that perform in any dramatic recreations provided the recreations form a significant part of the documentary and the actor's role is prominent in the recreations.

A maximum of 1 point can be claimed per individual.

C6 – Majority of Cast

1 point can be awarded if at least 50% of the cast are Qualifying Persons.

'Cast' means all the actors and performers (including stunt men and women) but not extras that appear in the film.

For the purposes of this test, 'extras' means: a person who appears in a film where a non-specific, non-speaking character is required, usually as part of a crowd or in the background of a scene.

For animations only: this will include actors voicing characters.

For documentaries, reality and factual series only, this will include:

- the narrator;
- the presenter; and
- actors that perform in any dramatic recreations provided the recreations form a significant part of the documentary and the actor's role is prominent in the recreations.

An individual can qualify in only one capacity or role when counting cast for the purposes of this section C6.

C7 – Key Production Roles

Up to 2 points will be awarded for key production roles, on the following basis:

- 1 point can be awarded if two of the key production roles are Qualifying Persons.
- 2 points can be awarded if three of the key production roles are Qualifying Persons.

Key production roles are: the lead cinematographer, the lead production designer or art director, the lead editor, and the lead digital/visual/special effects supervisor.

For documentaries only, the key production roles are: the lead camera person, the lead editor, the lead researcher and one of the lead/field sound recordist or the sound designer or the sound mixer or the sound editor.

For animations only, the key production roles are: the animation director, lead layout supervisor, the lead production designer, the lead character designer, the lead editor, the lead sound designer, the lead visual effects supervisor and the lead modelling supervisor.

C8 – Majority of Crew

1 point can be awarded if at least 50% of the production crew are Qualifying Persons.

Production crew means all the people directly involved in the production of a film that do not appear in the film. That is, people involved directly in the production and post-production of the film but not people involved in providing ancillary services e.g. caterers.

Whether a person is in the production crew will be determined by taking into account factors including: if he or she is contracted by the production company to perform services on the film; and if he or she have industry-standard on-screen credits.

Section D – New Zealand Businesses

D1 – Ownership of Intellectual Property

1 point can be awarded for New Zealand ownership of intellectual property, if at least 50% of the intellectual property in the production is owned by New Zealand Residents. Intellectual property includes copyright as well as the right to exploit the screen production or intellectual property associated with screen production.

D2 – Business Development Outcomes

1 additional point may be awarded, at the sole discretion of the NZSPG Panel, for business development outcomes based on:

- The extent to which New Zealand Citizens or Permanent Residents have management and control of the lead production company;
- The extent to which New Zealand equity investors, including producers with “NZSPG equity” have a recoupment position equivalent to other equity investors;
- The potential for the New Zealand producer to achieve significant business growth out of the production.

Applicants claiming points in this section will be required to provide justification as to why they believe the points should be awarded.

**APPENDIX 4 – ADDITIONAL GRANT AND SIGNIFICANT CULTURAL BENEFITS
GUIDELINES**

NEW ZEALAND SCREEN PRODUCTION GRANT

New Zealand Productions

Additional Grant and Assessment of Significant Cultural Benefits

Guidelines

1 July 2017

ADDITIONAL GRANT

Introduction

The New Zealand Screen Production Grant (**NZSPG**) was introduced by the New Zealand Government on 1 April 2014.

All New Zealand Productions that meet the relevant eligibility criteria are able to access a grant equivalent to 40% of QNZPE. The New Zealand Grant is capped at \$6 million per production unless the production qualifies for an Additional Grant under this Appendix 4. If the production qualifies, the Additional Grant is 40% of QNZPE from \$15 million to \$50 million. The Additional Grant is capped at \$14 million per production, making the total maximum New Zealand Grant per production \$20 million per production.

Application for New Zealand Grant and Additional Grant

Applicants may apply for an Additional Grant if:

- (a) the applicant is eligible for a New Zealand Grant in respect of the production; and
- (b) the applicant meets the eligibility requirements in this Appendix 4, including the requirement that the production demonstrates significant cultural benefits to New Zealand, by meeting the requirements of the Significant Cultural Benefits Test.

Applicants (including Official Co-productions) who wish to apply for an Additional Grant must follow the application process set out in Section 5 of the Criteria. If seeking an Additional Grant, applicants must apply for a Provisional Certificate in respect of the Additional Grant. An applicant who has not received a Provisional Certificate in respect of an Additional Grant will not be eligible to make a final application for an Additional Grant.

General

The NZSPG Panel has sole discretion to determine whether a production and applicant satisfy the eligibility requirements of the Additional Grant. The Additional Grant has a high threshold (having regard to the purpose and intent of the criteria, set out in clause 3).

Applicants are strongly advised to engage with the NZFC during the financing of the production if intending to apply for an Additional Grant.

Summary

In addition to meeting the requirements of the criteria, to be eligible for the Additional Grant an applicant (including an Official Co-production) must:

1. satisfy the QNZPE Threshold;
2. satisfy producer experience requirements;
3. satisfy market attachment requirements;
4. meet the requirements of the Significant Cultural Benefits Test; and
5. provide cultural benefit to New Zealand that is commensurate with the value of the Additional Grant applied for.

Eligibility

1 QNZPE Threshold

The production must have QNZPE of \$15 million or more.

Official Co-productions must also have QNZPE of \$15 million or more. TPE may not be used for this threshold as the Additional Grant is only payable on QNZPE over \$15 million.

2 Producer experience

'Producer' in this context means, in relation to the production applying for the New Zealand Grant, the person who acts as and is credited as the lead individual producer, or in the case of an Official Co-production, the person who acts as and is credited as lead individual New Zealand producer.

The applicant must demonstrate that the producer has the experience described below. If applying in respect of:

- (a) *A feature film*: the producer must have produced at least one feature film that has been released theatrically in New Zealand or overseas.
- (b) *TV*: the producer must have produced at least one production that has been broadcast on a major TV network in New Zealand or overseas.
- (c) *Other formats*: the producer must have produced a production of a similar genre or scale that has been exploited commercially.

3 Market attachment

The production must have market attachments that comprise 10% or more of the production budget.

'Market attachments' are limited to international sales advances, distribution advances and licence fees (other than for New Zealand only) for the screening or broadcast of the production to an audience where there is no entitlement to share in the net receipts from the production in respect of that sales advance, distribution advance or licence fee. Equity and loans cannot qualify as market attachments. Any market attachments must be from parties unrelated to the applicant and from bona fide screen production sales agents, distributors or broadcasters.

The production budget must include all above-the-line and below-the-line items usually included in production budgets for similar productions in New Zealand plus a reasonable contingency.

4 Significant Cultural Benefits Test

The production must meet or exceed the minimum points in the Significant Cultural Benefits Test (below).

Except for references to minimum or mandatory points, the explanatory notes to the Significant New Zealand Content Points Test, in Appendix 3, also apply to the Significant Cultural Benefits Points Test.

5 Cultural benefit to New Zealand is commensurate with value of Additional Grant

In addition to meeting the requirements set out in paragraphs 1-4 above, the NZSPG Panel must be satisfied that the production and/or applicant will provide cultural benefits to New Zealand commensurate with the value of the Additional Grant applied for.

Significant Cultural Benefits Test

| Significant Cultural Benefits Points Test NB: Notes on each of the points below are summarised. | Points Available |
|--|-------------------|
| A – New Zealand Subject Matter | |
| A1 – Setting | 3 (0 - 3) |
| A2 – Lead Characters <i>Documentaries, reality, lifestyle etc.:</i> presenter, narrator, subject | 3 (0 - 3) |
| A3 – Creative Material | 3 (0 - 3) |
| A4 – Contribution to New Zealand Culture/History | 2 (0 - 2) |
| A5 - Reaching New Zealanders - Audience Engagement Plan | 3 (0-3) |
| Total – Section A (minimum: 5) | 14 |
| B – New Zealand Production Activity | |
| B1 – Shooting – Location/Studio (50% for 1, 75% for 2) | 2 (0 – 2) |
| B2 – Visual Post-Production, Digital or Visual Effects (50% for 1, 75% for 2) | 2 (0 – 2) |
| B3 – Music Recording, Voice Recording, Audio Post-Production (50% plus) | 1 |
| B4 – If applicable, Concept Design & Physical Effects (Period/Genre) (50% plus) | 1 |
| Total – Section B (minimum: 3) | 6 |
| C – New Zealand Personnel | |
| <i>To qualify, individuals must be a New Zealand Citizen or New Zealand Permanent Resident at the time the production is being made and be credited in the production (a Qualifying Person).</i> | |
| C1 – Director (2 points if the director is a Qualifying Person or where there are multiple directors, 1 point if more than 33% and 2 points if more than 66% or majority of episodes directed by a Qualifying Person) | 2 (0 - 2) |
| C2 – Producer (2 points if at least one of the producers is a Qualifying Person or if there are more than three, one of the three lead producers is a Qualifying Person) | 2 (0 <u>or</u> 2) |
| C3 – Scriptwriter (2 points if the writer is a Qualifying Person or where there are multiple writers, 1 point if more than 33% and 2 points if more than 66% or majority of episodes written by a Qualifying Person) | 2 (0 – 2) |
| C4 - Music Composer/Source Music (1 point if the composer is a Qualifying Person <u>or</u> if more than 50% of the source music is by Qualifying Persons) | 1 |
| C5 – Lead Actors (1 point if one of the lead actors is a Qualifying Person, 2 points if 2 of the lead actors are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> actors only (if significant dramatic recreations) <i>Animation:</i> voice actors | 2 (0 – 2) |
| C6 – Majority of Cast (50% plus) (1 point if 50% of the cast are Qualifying Persons) <i>Documentaries, reality, lifestyle etc.:</i> presenters, actors, narrators (if significant dramatic recreations) | 1 |
| C7 – Key Production Roles (1 point if 2 of the key production roles are Qualifying Persons, 2 points if 3 of the key production roles are Qualifying Persons) <i>Drama:</i> lead cinematographer, lead production designer or art director, lead editor, lead digital/visual/special effects supervisor | 2 (0 – 2) |

| | |
|---|-----------------------|
| <i>Documentaries, reality, lifestyle etc.:</i> lead camera, lead editor, lead researcher and one of lead/field sound recordist or sound designer or sound mixer or sound editor <i>Animation:</i> animation director, lead layout supervisor, lead production designer, lead character designer, lead editor, lead sound designer, lead visual effects supervisor, lead modelling supervisor | |
| C8 - Majority of Crew (50% plus) | 1 |
| Total – Section C (minimum: 3pts from C1 – C3) | 13 |
| D – New Zealand Businesses | |
| D1 – Ownership of Intellectual Property | 1 |
| D2 – Business development outcomes including ownership of applicant company, rights of recoupment, sources of financing | 1 |
| Total – Section D (minimum 1 point) | 2 |
| Total – minimum 27 points | __ (out of 35) |

Share of net receipts (including profit)

NZFC Equity Share

In return for an Additional Grant, an applicant must provide the NZFC with a share of net receipts (including profit) from the production. This share shall be equivalent to 50% of the equity share in the production attributable to the value of the Additional Grant (the **NZFC Equity Share**). Clause 14 of the Criteria (Producer's income) applies to the remaining 50% equity attributable to the Additional Grant as well as the equity attributable to the New Zealand Grant up to \$15 million.

Generally, the NZFC Equity Share will be the proportion that the amount of the Additional Grant bears to the total amount of equity invested in the production. Equity does not generally include licence fees, gap funding, production loans, distribution or sales advances or other financing where the financier is not entitled to share in the net receipts from the production. In relation to profit only, the NZFC Equity Share may be reduced pro rata with other equity investors to allow for any agreed share of profit to be allocated to the applicant and/or any other producer.

A simple example of the calculation of the NZFC Equity Share is set out below.

Applicants are strongly advised to engage with the NZFC during the financing of the production to ensure that the NZFC agrees with the applicant's calculations of the NZFC Equity Share.

The recoupment and profit position of the NZFC Equity Share must not be inferior to the applicant's recoupment and profit position for its equity share attributable to the balance of the New Zealand Grant.

The NZFC will reinvest all income it receives from the NZFC Equity Share in the New Zealand screen industry.

| | |
|------------------------|---------------------|
| <i>Simple example:</i> | |
| Production Budget: | <u>\$25,000,000</u> |
| financed by: | |
| Additional Grant | 4,000,000 |
| Balance of Grant | 6,000,000 |
| Distribution advances | 5,000,000 |
| Other equity | 10,000,000 |

Total equity is \$20,000,000 (being the production budget less the distribution advances)

The equity share attributable to the Additional Grant is 20% (being 4,000,000/20,000,000); therefore the NZFC Equity Share is 10%. Where the producer is allocated 50% of the net profits from the production, the NZFC's share of the total net profits would be 5% (provided the other equity investors' profit share is also reduced pro rata).

Interpretation

For the purposes of this Appendix 4, net receipts shall be deemed to have the meaning given to that term (or any similar term such as 'Net Proceeds' or 'Net Income or 'Adjusted Gross Proceeds') in the primary financing and distribution agreements for the production provided that it shall not be defined less favourably for the NZFC and the applicant than for any other net receipts participant.

For the avoidance of doubt, the NZFC's entitlement to net receipts from the production subsists in perpetuity and is not limited to recoupment of the amount of the Additional Grant