



## COVID-19 Policy for Funding: Changes to Te Tumu Whakaata Taonga New Zealand Film Commission's (NZFC) Terms of Trade and Guidelines (COVID-19 Policy)

This **COVID-19 Policy** applies in addition to the **NZFC's Terms of Trade ('Terms of Trade')** and varies both the **Terms of Trade** and **Feature Film Production and Development Guidelines (as applicable)**, as set out below.

This policy will apply to applications up and until 31 December 2022 and will be reviewed at that point.

The NZFC may vary or waive any part of this COVID-19 Policy at any time or extend it without formal notice while government COVID-19 Alerts and/or COVID-19 Protection Framework levels remain in effect in Aotearoa New Zealand.

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## Australasian Distributor

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The **Terms of Trade** currently state (Australasian Distributor, page 32):

*“The [Australasian distribution] agreement must provide for a theatrical release in New Zealand”.*

Under the **COVID-19 Policy** the NZFC retains the ability to waive the requirement for a theatrical release in New Zealand if this becomes unviable at the time of the film’s release.

## Pre-Closing Advances

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The Terms of Trade currently state (Pre-Closing Advances, page 29):

*“We may offer up to a total of \$300,000 plus GST in the form of a pre-closing advance (this includes any previously advanced NZFC development funds).”*

The NZFC may require any pre-closing advances it pays to be restricted in how they are applied and what expenses this funding can be used for, depending on the circumstances in each case.

Due to COVID-19:

- NZ Lead Producer budgeted fees may now be included for up to 20% of any one pre-closing advance drawdown (but no more than 20% of the NZ Producer budgeted fee in total may be drawn down during the pre-closing advances).

The **Terms of Trade** state (at page 30):

*“When exercising our discretion around whether or not to agree to a pre-closing advance, we may have regard to... whether we are confident in all other respects that there are no impediments to closing.”*

A lack of clarity around production dates or other uncertainties regarding insurance and other financing matters, may still be regarded by NZFC as impediments to close, but will not be considered an “impediment to closing” for the sole purpose of determining whether or not to grant a pre-closing advance.



## **Commencement of Closing**

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As set out below, under the **COVID-19 Policy** the NZFC may approve contractual closings to commence where the production has not finalised principal photography, lock off or other dates ordinarily captured in a production schedule, or cashflow or drawdown schedules (as set out below) due to COVID-19 considerations.

- However, in order for a production to commence close, you must provide evidence of your intent and ability to be in physical production within 6 months from the date of your application.
- Such dates will need to be locked and approved before contractual close can occur, unless otherwise agreed by all parties to the closing transaction.

## **Test screenings**

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The Terms of Trade currently require each production to carry out a comprehensive test screening, at the NZFC's cost (except for the cost of the DCP which must be included in the budget), on terms to be approved by the NZFC (Production Schedule: Test Screening, page 10).

This COVID-19 Policy varies the Terms of Trade as follows:

- The NZFC will determine in its sole discretion whether it will require a production to carry out a comprehensive test screening.
- The NZFC's considerations in making such determination shall include whether it is safe and possible to carry out the test screening in the circumstances.
- All schedules and budgets should allow for test screening costs as per normal policy.

## **Finance Plan**

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This Policy varies the Terms of Trade Finance Plan section on page 15 as follows:

### COVID-19 Cost Contingency

Your finance plan must clearly lay out any COVID-19 cost contingency to be financed and indicate what entity/entities will be financing it. We anticipate that COVID-19 costs that are standard to operate at baseline levels will be part of the overall finance plan and



contributed to by all parties, however, we now expect an allowance or contingency for unanticipated COVID-19 costs in all budgets.

The Production Financing Agreement with NZFC will outline the approvals process and expectations around any unspent COVID-19 contingency if there are multiple finance sources. If NZFC is a sole financier of COVID-19 contingency then the expectation is that if there are no COVID-19 events:

- then any funds advanced will be fully returned; or
- if funds haven't been drawn down they will not be paid out.

The NZFC reserves the right to decline to enter into financing or go ahead on risk if we are not satisfied with the warranties from the production and other investors relating to COVID-19.

*N.B. COVID-19 Costs covered by government support mechanisms including, but not limited to, the Screen Production Recovery Fund (including Extended), and the Screen Sector Emergency Relief Fund need to be separately identified in the finance plan and supporting budget where applicable.*

## **Budget**

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Your production must be budgeted to operate in line with government mandated levels or protection frameworks as appropriate to your COVID-19 Risk Mitigation Strategy (including financial risk mitigation).

The Terms of Trade currently set out the elements that we expect to see appropriately covered in your production budget (Production Requirements: Budget, page 4).

This policy varies the Terms of Trade as follows:

COVID-19 Costs: The production budget must contain all costs of complying with Government guidance relating to COVID-19 and as set out within your COVID-19 Risk Mitigation Strategy.

The COVID-19 related costs should be clearly tagged as either:

- A specific COVID-19 related costs section within your budget, OR
- Separate lines within other categories but tagged as COVID-19 costs



The total amount assigned to COVID-19 related costs must be clearly indicated in your Budget sub totals.

COVID-19 contingency: You must also include an additional contingency specifically assigned to COVID-19 related events or government directed restrictions. This would need to be clearly noted as additional to the main contingency.

## **Insurance**

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The **Terms of Trade** currently state (Insurance, page 7):

*“All films with NZFC investment require insurance that is relative to the risks and the budget of the film.”*

The **Terms of Trade** then set out the comprehensive insurance requirements for films with higher budgets, and state that a scaled down schedule of insurances for lower budget films appropriate and proportional to the risk and budget are required and are to be agreed with the NZFC. A completion bond must also be in place for all projects with NZFC investment over \$500,000, and for all projects budgeted at over NZD1 million.

This Policy varies the **Terms of Trade** Insurance section on page 8 as follows :

All financiers will be required to acknowledge that they will be funding the production without insurance cover available for COVID-19 related events.

The NZFC requires you to provide evidence that each financier has acknowledged and agreed that the insurance and the completion guarantee (if applicable) do not cover any losses relating to the occurrence of a COVID-19 related event; and if a COVID-19 related event affects the film then that financier shall not have recourse against any other financier for any losses that it may suffer as a result of COVID-19.

## **Cast / Crew Contracts**

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This Policy varies the **Terms of Trade** Cast / Crew Contracts section on page 24 as follows:

Key cast and/ or Key personnel Agreements should contain a suspension clause that is acceptable to NZFC. Where possible, cast should be contracted on the SPADA/Equity Individual Performance Agreement.



Unless waived on a case-by-case basis, prior to the NZFC being required to advance any of the NZFC funding (excluding any pre-closing advances) the NZFC requires you to ensure that each member of the cast and crew agree to comply with guidance issued by the Ministry of Health or Worksafe New Zealand in relation to COVID-19; and industry guidelines issued in relation to COVID-19 issued by ScreenSafe.

You must ensure that any Key Elements who are entering New Zealand to provide services have returned a negative COVID-19 test and successfully completed any managed isolation quarantine requirements. Before commencement of the first day of principal photography the NZFC requires that all key cast and key personnel travelling from overseas are in New Zealand and cleared from quarantine or self-managed isolation (as applicable).

## **Health and Safety**

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The **Terms of Trade** require every film production to comply with all health and safety laws and regulations, and to provide the NZFC with a company health and safety report and an independently commissioned health and safety report which identifies specific hazards related to the script or treatment (Health and Safety Report, page 25).

Specifically, the **Terms of Trade** state:

*“Every film production must ensure they comply with all health and safety laws and regulations. When setting up the SPV you must provide a Company Health and Safety Report [www.screensafe.co.nz](http://www.screensafe.co.nz) As part of the documentation required for closing, you will need to provide the NZFC with an independently commissioned health and safety report identifying specific hazards related to the script or treatment. The report must outline the steps to be taken to avoid or mitigate those potential hazards during the production.”*

This Policy varies the **Terms of Trade** Health and Safety Report section on page 25 as follows:

The NZFC requires you to warrant and or/provide that you have a specific COVID-19 Health and Safety plan and that this plan aligns with the screen sector COVID-19 standards and protocols which have been endorsed by WorkSafe and can be found here [www.screensafe.co.nz](http://www.screensafe.co.nz), and/or provide certain warranties and undertakings to the NZFC in the NZFC’s production financing agreement, which are reasonable and relate to the



management of any risk related to COVID-19, or pandemics generally, for the purpose of contractual closing or subsequent to closing and during production.

## **Production Schedule**

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The **Terms of Trade** currently state (Production Schedule, page 10):

*“The production schedule must set out realistic timings for the various stages of production, from closing and pre-production, through to complete delivery.”*

For purposes of funding applications, NZFC may accept indicative dates in the production schedule where the production has not yet been able to finalise those dates due to COVID-19 related implications.

For the avoidance of doubt, as is currently required, it remains a condition precedent of contractual close that all dates in the production schedule must be locked and approved by the NZFC, the bond and all other financiers (as applicable), unless otherwise agreed by those parties.

## **Cash-Flow and Drawdown Schedules**

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The **Terms of Trade** currently state (Cash Flow & Drawdown Schedule, page 23):

*“Larger films may require drawdowns that are payable on fixed dates.”*

If the NZFC requires fixed dates in the cash-flow and drawdown schedule(s), those dates must be locked and approved by the NZFC, bond and all other financiers (as applicable) before contractual close, unless otherwise agreed by those parties.

## **Other Guideline and documentation variations**

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**The Feature Film Production Investment Guidelines, Feature Film Post Production Investment Guidelines and Development Guidelines** and other funding Guidelines as applicable are also varied and amended under this Policy to the extent that the **Terms of Trade** are varied (as set out above).



These changes will be reflected in various contracting documentation as relevant including, but not limited to, **Letters of Conditional Offer, Production Financing Agreements** and **Development Grant Agreements**.

### **Operational Variations**

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These will apply effective immediately for **Feature Film Production Investment Guidelines** and **Feature Film Post-Production Investment Guidelines**:

#### Applications:

- Only complete applications are to be accepted, and no further unsolicited information is to be provided after the published application deadline or considered.
- All applicants for Feature Film Production Investment will be required to meet with the Investment Executive or nominated D&P representative at least one week prior to submission. Applicants will be required to discuss their COVID-19 Risk Mitigation Strategy for the project as part of that meeting.
- The NZFC will not accept resubmissions of applications unless there have been significant changes and improvements since the previous application, these changes will need to be outlined in your application. Any project that has been declined twice cannot reapply without the advanced approval of the NZFC, which will only be considered if there is substantial change to the project.

CHANGE LOG – DECEMBER 2021

<b>Section</b>	<b>Summary of change(s)</b>
Market Partners	Removed from policy – revert back to Feature Film Production Investment Guidelines and Terms of Trade requirements for market partners
Sales Agent	Removed from policy – revert back to requirement for films with a budget greater than \$1M requiring sales agent agreement/deal memo offer
Australasian Distributor	Removed waiver for need for Australasian distributor, but allow for ability to waive requirement for theatrical release in NZ
Pre-closing Advances	Pre-closing advance amounts revert to NZFC Terms of Trade.
Commencement of Closing	Added requirement for a production to have evidence of intent and ability to be in physical production within 6 months, in order to commence closing.
Marketing and Publicity	Trailer and key art do not need to be included in production budget (if covered by distributor). Now standard policy in NZFC Terms of Trade.
Finance Plan	New section outlining contingency financing requirements.
Budget	New section outlining NZFC expectations of COVID-19 costs that must be included in budget and how to identify them.
Insurance	Updated wording to reflect updated NZFC Production Financing Agreement.
Health and Safety	COVID-19 Health and Safety Plan and Risk Mitigation Strategy is a requirement for all productions rather than a case-by-case requirement.
Production Schedule	NZFC will accept indicative dates at the stage of funding application, but for contractual close dates must be locked and approved.
Development Funding	Removed from policy – NZFC will not allow projects to be submitted for production funding concurrently with development funding.
Cast/Crew Contracts	COVID-19 Health and Safety and contractual requirements for cast/crew (new section to policy to reflect NZFC Production Financing Agreement).
Operational Variances	COVID-19 risk mitigation discussion required for the project as part of filmmaker meeting prior to production funding applications. Removed “Process After Applications Received” section.