

NEW MEDIA CO-PRODUCTION AGREEMENT

INTRODUCTORY COMMENTS: *This sample agreement assumes a certain fact scenario and is not meant to be representative of, or intended to create standards for, every possible co-production agreement entered into between a new media producer and a television producer to create an interactive new media project. The specific roles, duties and obligations of the parties, the main terms of the agreement, the nature of new media project, the financial structure, the revenue sharing arrangements and other provisions of such an agreement may vary widely from project to project depending on the circumstances. For the purposes of this Agreement it is assumed that the new media project is designed to be published on a website over the Internet, however readers should be aware that the deployment of an interactive new media project may take a variety of forms and use different modes of distributing content, such as text messaging, ITV application through set top boxes, cellular phones, email, gaming platforms, CDROM, DVDROM. In such situations the terms of a new media co-production agreement could differ considerably from the terms of the sample Agreement provided below. Therefore, the reader should not assume that the Agreement will be applicable to all situations. Although based on examples of real transactions, by no means should the reader conclude that the Agreement reflects commercial reality currently in existence in Canada or that either party will accept all the provisions as drafted. The comments provided herein are for educational purposes only and should not be construed as providing any legal advice whatsoever. Anyone contemplating using this sample agreement for commercial purposes should consult an experienced lawyer for advice and guidance. It should not be used as a substitute for consulting with legal counsel and receiving advice based on the circumstances of a particular transaction. Due to the pace of technological change, business practices, distribution methods and the law applicable to new media is constantly and rapidly changing. Many of the legal principles discussed below are subject to exceptions and qualifications that may not be mentioned and case law and legislation may vary from jurisdiction to jurisdiction.*

In the following Agreement, it is assumed that the “New Media Producer” is a new media producer with experience in developing and producing interactive properties. The “Television Producer” is in the business of producing television properties with expertise in its own field. The Television Producer is the developer and producer of the television program (the “Program”) to which it owns all right, title and interest. This Agreement reflects an arrangement whereby the New Media Producer and the Television Producer collaborate together to develop and produce an interactive, web based adaptation of the Program (the “Web Project”). Therefore the underlying creative property is the television Program from which the Web Project is adapted. That is not always the case, however. In some instances, the property is developed as an interactive new media project first and is adapted as a television production in which case a new media producer would either produce the television program itself, hire the production services of a television producer or enter into a co-production agreement with a television producer.

In contrast to the situation reflected in the New Media Production Agreement wherein the New Media Producer acquires the interactive rights from the Television Producer and solely owns the completed Web Project, in this fact scenario the New Media Producer and the Television Producer will both own the intellectual property rights in the Web Project. In some instances, the Co-Producers will incorporate a single purpose production company to which both will grant all rights they may or will have in the Web Project, and of which each will own a portion of the shares of the company. The benefits of using a separate corporation to co-produce a project include the limited liability offered by the corporate structure, the simple method of allocating ownership with shares and a means by which to settle disputes in a Shareholder Agreement.

In this instance, the Co-Producers have preferred not to go to the expense of incorporating a separate company and are satisfied with being joint owners of the copyright of the Web Project. As co-owners of the Web Project, the New Media Producer and the Television Producer will be co-applicants to the Bell Broadcast and New Media Fund and other sources of financing. That being said, due to its expertise in the field the New Media Producer will take a primary role in preparing the application, production budget and the overall project management of the production of the Web Project. The co-producers will share in the revenue from the exploitation of the Web Project on mutually agreed upon terms.

NEW MEDIA CO-PRODUCTION AGREEMENT

THIS AGREEMENT effective as of [DATE], [YEAR]

BETWEEN:

NEW MEDIA PRODUCTIONS INC. (“New Media Producer”)
a corporation incorporated under the laws of the Province of X,

THE FIRST PARTY,

- and -

TELEVISION PRODUCTIONS LTD. (“Television Producer”)
a corporation incorporated under the laws of the Province of X,

THE SECOND PARTY,

WHEREAS Television Producer is the producer of, and owns all right title and interest, including copyright, in and to, a television program tentatively entitled “Stranger Than Fiction” (the “Program”); and

WHEREAS Television Producer and New Media Producer wish to collaborate to co-develop and co-produce an interactive web-based adaptation based on the Program designed to enhance and complement the television broadcast of the Program tentatively entitled “Stranger than Fiction Interactive” (the “Web Project”); and

WHEREAS New Media Producer and Television Producer wish to set out in writing their respective rights and obligations with respect to the ownership, production, distribution and exploitation of the Web Project;

DISCUSSION: The “Whereas” clauses are known as “recitals” and are not considered technically part of the terms and conditions of the contract, unless expressly made so within the contract terms. The role of recitals is to provide some background and context to assist in explaining of the identity of parties and the objectives of the agreement. They are often used to include definitions of key terms that are defined and identified by capitalization. The question of whether recitals should be made part of the terms of the agreement will depend on their contents and drafting. For example, some recitals may include language that is overly broad,

vague or too optimistic in describing the objectives of the parties to be prudent to include as terms of the agreement. In this case, the recitals were expressly incorporated as part of the agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises, mutual covenants and agreements herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

DISCUSSION: The inclusion of this standard language is prudent, because it makes express mention of the fact that the Parties, by executing the contract, agree that some form of “valuable consideration” is passing between them and they acknowledge that it is sufficient to bind each of them to the terms of the agreement. “Valuable consideration” may consist of some right, interest, profit or benefit accruing to one party, or some detriment, loss or responsibility given suffered or undertaken by the other. A contract must include some form of “consideration” to be binding on its parties rather than be interpreted as a bare promise that is under law unenforceable.

1) Co-Production of Web Project

- a) New Media Producer and Television Producer (collectively the “Co-Producers” or the “Parties”) agree that the Web Project will be developed, produced, distributed and exploited in accordance with this Agreement.
- b) The Co-Producers shall collaborate and provide their respective services, assets, and materials to co-produce the Web Project pursuant to the terms of this Agreement and substantially in accordance with the approved production budget and project scope set out in the application for funding from the Bell Broadcast and New Media Fund (the “Fund”) and attached as schedule A.
- c) The Co-Producers shall apply to the Fund and all other potential financiers of the Web Project as co-applicants and work together to secure development and production financing sufficient to cause development and production of the Web Project and will have mutual approvals with regards to all development and production financing matters and creative decisions.
- d) The Co-Producers acknowledge and agree that, provided the application to the Fund for the funding of the Web Project is successful, the Television Producer shall receive from the Fund the top up contribution to be included in the Program production budget, provided the Television Producer is eligible.
- e) The services provided by each of the respective Parties hereunder shall be provided on a non-exclusive basis and nothing herein shall be construed as prohibiting either of the Parties from providing its services to third parties during the term of this Agreement, provided however that neither shall do so in a manner that would impair its ability to perform the Services and deliver the Deliverables described hereunder.

DISCUSSION: This provision generally states that the Agreement will govern how the Web Project will be co-developed and co-produced by the Parties. It specifically provides that the Web Project must be produced in accordance with the projects scope and production budget submitted to the Bell Broadcast and New Media Fund (the “Fund”) and those documents are incorporated into the terms of the Agreement and attached as a schedule to the agreement.

The project scope and description, along with the budget, assist both parties in defining as precisely as possible what the finished product will consist of. This is important in understanding the extent of the resources and assets that both parties will be required to contribute to successfully produce the Web Project and is also a requirement of the financiers, including the Fund. The provision expressly states that both parties will have the right of approval over financial and creative matters. Both parties may have a number of projects in production at the same time as the Web Project that is the subject matter of this Co-Production Agreement. Therefore, each of the Co-Producers will want it understood that its respective services are being provided on a non-exclusive basis during the term of the Agreement. However, both will want to ensure that neither party will be distracted by other projects that may impair their ability to produce and deliver a high quality product.

2) Services and Deliverables to be Provided by New Media Producer

- a) New Media Producer shall provide the following services, creative content, assets and facilities including but not limited to production and project management services to produce the Web Project, all in consultation and with the approval of the Television Producer, as follows:
 - i) Act as lead contact on behalf of the Co-Producers to potential financiers and investors to secure financing for the production of the Web Project, including but not limited to preparing and submitting applications for funding from potential financiers and funding agencies, including the Fund;
 - ii) Manage production budgets and all accounting and business affairs of the Web Project related thereto and reporting to all financiers;
 - iii) Provide and coordinate all services, personnel, materials, technology, and software required to design, program and produce the Web Project in accordance with this Agreement;
 - iv) Work collaboratively with the Television Producer to develop and produce original creative elements to be included in the Web Project;
 - v) Work collaboratively with the Television Producer to develop and produce or cause to be produced promotional and advertising campaigns and materials to promote the Web Project.
 - vi) Approve creative elements provided by Television Producer to be included in the Web Project on a timely basis.

DISCUSSION: Notwithstanding that the parties are Co-Producers and intend to work collaboratively, they nonetheless each have separate areas of expertise and will provide unique services and deliverables to the production of the Web Project. As mentioned, the New Media Producer will take the primary role in preparing the production budget, in designing the Web Project, hiring the personnel to create the elements to be incorporated into the Web Project (including creative and software developers). Also, given the New Media Producer has specific expertise in the new media industry and experience in raising financing and producing interactive products, it is probably the appropriate party to prepare the application(s) for funding and be the lead contact for all financiers with respect to the Web Project. In any case the Television Producer is likely to be focused on producing the television Program and may not

have the time, expertise, resources or desire to take on the additional responsibility of producing the Web Project. Although the New Media Producer will take the primary role in producing the Web Project, the New Media Producer will require considerable cooperation, attention, assets and services from the Television Producer and those contributions are set out below. However, as a co-producer, the Television Producer shall have rights of consultation and approval over all matters.

3) Services and Deliverables to be Provided by Television Producer

- a) Television Producer shall provide the following services, creative content, assets and facilities, all in consultation and with the approval of the New Media Producer, including but not limited to the following:
 - i) Grant all of the interactive rights in the Program that are necessary to produce the Web Project, in accordance with the grant of intellectual property rights set out in section 5 herein;
 - ii) Provide to New Media Producer certain creative content from the Program to be used and incorporated in the Web Project, including but not limited to images, outtakes, film clips, photographic and sound assets, access to talent, music and other materials, including shooting additional materials upon request, and the appropriate rights clearances thereof at no charge;
 - iii) Work collaboratively with New Media Producer to promote the Web Project in connection with any promotional activities undertaken for the Program and to produce or cause to be produced promotional campaigns and materials to promote the Web Project;
 - iv) Provide commercially reasonable efforts to sell or procure a license for the Web Project when selling or licensing the broadcast rights in the Program to any broadcasters;
 - v) Collaborate with New Media Producer on the creative development, writing and producing of the Web Project as necessary;
 - vi) Approve creative elements produced by New Media Producer to be included in the Web Project on a timely basis.

DISCUSSION: The above contributions will not always be required in all instances, nor will the Television Producer necessarily be willing to agree to all of the contributions listed. However, they are provided as a sample of what might be included. The two key contributions that the Television Producer will be required to make to the Web Project are the granting of the intellectual property rights necessary to produce the Web Project together with the delivery of the creative materials from the television Program to be incorporated in the Web Project and the grant of rights to do so. The actual grant of intellectual property rights is set out in a separate provision below.

Other contributions of the Television Producer may vary widely depending on the nature of the project and the business arrangement between the parties. For instance, the Television Producer may own an affiliated distribution company through which it distributes its television productions rather than rely on the services of a third party distribution company. In some

circumstances, the parties may wish to assign the distribution rights to the Web Project to the Television Producer's affiliated distribution company or a third party that distributes the television Program. This makes sense since the Web Project is designed to enhance the value of the television Program and they are integrally associated with each other. However, the Television Producer may not want to be contractually obligated to license the rights to the Web Project with every license agreement it enters into for the broadcast rights in the Television Program. This is not a consideration relevant to the Canadian market, as a key requirement for financing from the Fund is that there is a broadcaster who has agreed to license the Web Project. However, this is a concern in relation to foreign markets that may include broadcasters who are not interested in licensing an interactive enhancement, but only the broadcast rights to the Program for traditional media. Consequently in this provision the Television Producer is required to use "commercially reasonable efforts" to procure a license for the Web Project when licensing the broadcast rights to the television Program but is not contractually obligated to in all instances. This particular form of Agreement contemplates that the New Media Producer and the Television Producer as co-owners of the Web Project will each be required to enter into license agreements for the Web Project with the broadcasters who license the television Program directly from the Television Producer. Alternatively, the Co-Producers may, if it is commercially reasonable to do so, assign the distribution rights to a third party distributor, as expressly stated in section 7(a) below.

Another key concern for the New Media Producer is that the Television Producer agrees to use "commercially reasonable" efforts to promote the Web Project in association with the Program. It is important that viewers of traditional television programs become aware of the interactive enhancement to the Program not only to increase the perceived value of the interactive component to the viewers' experience and the broadcaster, but to educate the viewing public and the industry how to use new media. In this fact scenario, promotion of the Web Project will be integrated into the promotion of the Program.

Finally, the New Media producer will need the collaboration of the Television Producer in the development of the creative aspects of the Web Project and will want to make sure that the Television Producer gives its approval on a timely basis in order to maintain the production schedule.

4) Authority and Approval Rights

- a) New Media Producer shall prepare and submit all applications for production financing of the Web Project on behalf of the Co-Producers. The Co-Producers shall jointly approve all financial, technical, creative, promotional and business elements of the Web Project, including but not limited to the production budget, production schedule and distribution. All approvals and consents required by either Co-Producer for the purposes of this Agreement, including but not limited to developing, producing, promoting and commercially exploiting the Web Project, shall be provided on a timely basis and shall not be unreasonably withheld. All legal agreements, applications and other material documentation in relation to the Web Project shall be jointly executed by both Co-Producers in order to bind the Parties, and neither Co-Producer shall have the authority to bind the other except as expressly agreed to by both in writing.

DISCUSSION: This provision expressly states that as co-producers, the approval of both is needed for all matters relating to the production and exploitation of the Web Project. It is important to provide that the necessary approvals are required to be given on a timely basis and shall not "unreasonably withheld" to ensure the production schedule is adhered to and the Web

Project is not compromised by the neglect or delay of either party. Moreover, in this Agreement, all material agreements and document must jointly executed by both Co-Producers. In some instances, this co-approval and execution of all matters and documents can prove unwieldy in the rush to produce the Web Project, so the parties may wish to exclude certain documents from requiring co-signature such as the agreements for software and creative developers who are hired to work of the Web Project since these matters are in the control of the New Media Producer.

5) Grant of Rights and Copyright Ownership

- a) The New Media Producer acknowledges that the Program and all the intellectual property rights in and to the Program shall remain, in so far as New Media Producer is concerned and subject to the grant of rights herein, entirely vested in the Television Producer.

DISCUSSION: This provision states that the Television Producer remains the owner of the television production, notwithstanding the grant of certain rights in the Program necessary for the production of the Web Project. Such granted rights are set out in detail below.

- b) Television Producer hereby grants, for the use by Co-Producers in pursuance of the objectives set out in this Agreement, the exclusive, right to develop, adapt, produce, publish, distribute, promote and commercially exploit in all languages, in perpetuity and throughout the world a rich-media, digital, web-based interactive property as more specifically described in Schedule A hereto (the "Web Project") based in whole or in part on the Program, and Television Producer hereby waives its moral rights in the Program (collectively the "Interactive Rights") in accordance with this Agreement and subject to the rights of reversion on termination as set out in section 13 herein.

DISCUSSION: As owner of the television Program, it is critical that the Television Producer grants the necessary intellectual property rights to allow the Co-Producers to produce and exploit the Web Project and waives its moral rights therein to allow such adaptation. This license of the interactive rights is limited to the purposes set out in the Agreement and is subject to the rights of reversion on termination of the Agreement.

- c) Television Producer hereby grants, for the use by Co-Producers in pursuance of the objectives set out in this Agreement, the non-exclusive license to use and exhibit images, outtakes, film clips, photographic and sound assets, music and other materials including but not limited to characters, titles, trademarks and logos (the "Licensed Materials") from the Program in connection with the production, promotion and exploitation of the Web Project, and hereby waives its moral rights in such Licensed Materials, subject to the acquisition of the necessary clearances for such use in accordance with the terms of this Agreement and subject to the rights of reversion on termination as set out in section 13 herein.

DISCUSSION: The Web Project is an adaptation of the television program produced and owned by the Television Producer. In order for the Co-Producers to create the Web Project based on the Program, the Television Producer will be required to provide certain creative elements from the Program to be included in the Web Project and grant the intellectual property rights together with the waiver of moral rights in the materials to do so. This provision qualifies the grant of license somewhat by making it subject to the clearance of rights in each specific creative element incorporated into the Web Project.

- d) Television Producer acknowledges that New Media Producer shall own all right, title and interest, including but not limited to copyright, in and to all original and pre-existing source code, site files, applications, tools, methods, programs, software and know-how created or used by Co-Producers in the production of the Web Project (the “New Media Producer Technology”) and all original creative elements developed and produced by the New Media Producer (the “New Media Producer Content”) from the inception of the creation thereof and in perpetuity.

DISCUSSION: In the process of co-producing the Web Project, the New Media Producer may develop proprietary software and/or original creative content which the parties intend to be incorporated into or used in relation to the Web Project. The New Media Producer will want to retain ownership of the proprietary software and the right to use it in other projects and the original creative elements it produces.

- e) New Media Producer hereby grants, for the use by Co-Producers in pursuance of the objectives set out in this Agreement, a non-exclusive license to use the New Media Producer Technology and an exclusive license to use the New Media Producer Content in perpetuity throughout the world, to produce, promote and exploit the Web Project in accordance with the terms of this Agreement and subject to the rights of reversion on termination as set out in section 13 herein.

DISCUSSION: Similar to the contributions of the Television Producer, the New Media Producer must grant the rights to use both the proprietary software it develops and the original creative content it creates in association with the Web Project. The license to use the proprietary software is made on a non-exclusive basis to protect the New Media Producer’s right to use it in other projects. In contrast, since in this case the creative content is based on the television Program, the license to use the New Media Producer Content is made on an exclusive basis.

- f) The Co-Producers shall share ownership in all right title and interest, including copyright, in and to the completed Web Project as joint owners of the copyright in the compilation of the Licensed Materials, the New Media Producer Technology and the New Media Producer Content, as a separate copyrightable work as defined in the *Copyright Act of Canada*, from the inception of the creation thereof and in perpetuity.
- g) If Co-Producers mutually determine it is commercially advantageous to do so, the Co-Producer’s agree to incorporate a single purpose production company and grant all of their respective rights granted herein including their respective rights in the Web Project to the corporation, the share of which shall be owned in equal proportions by the Co-Producers.

DISCUSSION: The Web Project will be made up of many elements, including those owned by the Television Producer and those owned by the New Media Producer. However, Canadian law recognizes that a compilation consisting of many different copyright protected works can result in a new creative work entitled to separate copyright protection. Consequently, the parties acknowledge that the copyright in the Web Project, as a compilation, will be owned by both Co-Producers equally. Joint owners of copyright in a creative work must both give consent for any use or exploitation of the creative work. In some instances, this can prove unwieldy if there is a dispute between the parties as neither has the ability to make any decisions related to the exploitation of the work without the consent of the other. Some co-producers will incorporate a single purpose production company to which both will grant all rights they may or will have in the

Web Project, and of which each will own a portion of the shares of the company. Sometimes one co-producer will own the majority of shares in the company in order to have the ultimate control over decisions made about the company's assets. In other circumstances shareholders of the production company will enter into a shareholders agreement that contains specific provision to deal with any potential dispute. In this instance, the Co-Producers have decided to cope with the limitations of joint copyright ownership in the Web Project and have not incorporated a single purpose production company, but have agreed to do so if it becomes commercially advantageous to do so.

6) Credits

- a) Provided that the Web Project is produced, the parties agree as follows:
 - i) The following producer credit shall appear in the end credits of the Program and in the online credits in the Web Project in substantially the following form:
 - (1) "Stranger than Fiction Interactive co-produced by New Media Productions Inc. and Television Productions Ltd."
 - b) Each party's credit shall appear wherever the other party's credit appears in the Web Project and in the Program and in all advertising, publicity and promotion of the Web Project and the Program where such credits appear.
 - c) The parties agree to comply with all provisions related to credits to be provided to third party financiers and funding organizations in all financing agreements approved by the Parties.

DISCUSSION: It is prudent to set out the location and appearance of each of the parties' respective production credits as precisely as possible to avoid disputes later. In contrast to the credits provided to the respective parties in a production agreement where the New Media Producer owns the Web Project and the Television Producer owns the Program, in this instance as co-producers each are given the credit as co-producer of the Web Project in the credits of both creative properties. It should be noted that broadcasters often require approval over the credits provided in programs it licenses and materials published on their websites.

7) Net Profits and Distribution

- a) The Parties agree that if the Web Project is produced and provided the Parties mutually determine it is commercially advantageous to do so, the Parties agree to enter into a distribution agreement with a distribution company to provide its services to distribute the Web Project in connection with the distribution of the Program.
- b) The Parties agree that all Net Profits from the exploitation of the Web Project shall be shared as follows: 50% to New Media Producer and 50% to Television Producer.
- c) "Net Profits" shall be defined as meaning all gross revenues actually received by or on behalf of the parties from all sources worldwide of commercial exploitation of the Web Project produced hereunder, following the deduction of any distributor fees and expenses, hosting, installation or other fees and expenses and deferrals related to the Web Project including all financing costs and interest charges, provided that the

definition of Net Profits shall, in any event, be defined no less favourably for either party and shall apply to both parties equally.

DISCUSSION: In this provision, the parties agree to assign the distribution rights in the Web Project to a third party distributor if it is commercially reasonable to do so. The parties agree to share equally in the "Net Profits" which are defined as being all gross revenues received following the deduction of the various costs and expenses set out, including distribution fees.

8) Records and Accounts

- a) New Media Producer and Television Producer shall keep or cause to be kept at a mutually agreed upon location all books of account and records, and all contracts for the business and operations of the Web Project.
- b) Each of the parties shall have the right to inspect the books of account and records related to the business and operations of the Web Project upon one week notice to the other.

DISCUSSION: As co-producers each are obliged to keep proper records of account in relation to the Web Project and each is provided a right of inspection upon written notice to the other.

9) Representations and Warranties

- a) New Media Producer represents and warrants to Television Producer that:
 - i) It has the right and capacity to enter into this Agreement and fully perform all its obligations hereunder;
 - ii) It has not and will not encumber or sell any property in the Web Project or has not and will not loan any funds or extend the credit of the Web Project without the prior written consent of the Television Producer;
 - iii) It is a taxable Canadian corporation and shall at all material times continue to be resident in Canada and the province of _____, for the purposes of the *Income Tax Act* (Canada);
 - iv) The New Media Producer Content and the New Media Producer Technology shall be wholly original to New Media Producer or the New Media Producer has acquired or will acquire the necessary rights from third parties to contribute same for use in the Web Project;
 - v) The Web Project (other than the Licensed Materials and Interactive Rights which remain the sole and exclusive responsibility of Television Producer) and the New Media Producer Content and the New Media Producer Technology shall not violate any law or infringe upon or violate any right of any nature or kind of any person, firm, corporation or other entity, including without limitation rights of privacy, publicity, trademark or copyright and shall not constitute a libel or slander against any third party;
 - vi) It has obtained or shall obtain waivers for any and all moral rights and any rights of a similar nature in connection with the Web Project, the New Media Producer Content

and the New Media Producer Technology from and on behalf of its principles, employees, contractors and other contributors to the Web Project and any of its component parts;

vii) It shall not incur any cost, expense, liability or obligation in the name of the Web Project except in accordance with this Agreement and with the written approval of the Television Producer;

viii) It shall do everything in its control to cause the Web Project to qualify for and obtain the applicable provincial tax credits for the Project.

b) Television Producer represents and warrants to New Media Producer that:

i) It has the right and capacity to enter into this Agreement and fully perform all its obligations hereunder;

ii) It has not and will not encumber or sell any property in the Web Project or has not and will not loan any funds or extend the credit of the Web Project without the prior written consent of the New Media Producer;

iii) It is a taxable Canadian corporation and shall at all material times continue to be resident in Canada and the province of _____, for the purposes of the *Income Tax Act* (Canada);

iv) It owns all right, title and interest in and to the Program and the Licensed Materials, including but not limited to copyright and the Interactive Rights, and the Program and the Licensed Materials are or shall be wholly original to Television Producer or the Television Producer has acquired or will acquire the necessary rights from third parties to contribute same for use in the Web Project;

v) The Program, the grant of Interactive Rights and the Licensed Materials shall not violate any law or infringe upon or violate any right of any nature or kind of any person, firm, corporation or other entity, including without limitation rights of privacy, publicity, trademark or copyright and shall not constitute a libel or slander against any third party;

vi) It has obtained or shall obtain waivers for any and all moral rights and any rights of a similar nature in connection with the Program, the Licensed Materials and the Web Project from and on behalf of its principles, employees, contractors and other contributors to the Program, Licensed Materials and the Web Project and any of its component parts;

vii) It shall not incur any cost, expense, liability or obligation in the name of the Web Project except in accordance with this Agreement and with the written approval of the New Media Producer;

viii) It shall do everything in its control to cause the Web Project to qualify for and obtain the applicable provincial tax credits for the Project.

DISCUSSION: The representations and warranties that the each of the New Media Producer and the Television Producer may be required to make in a production agreement can be extensive and detailed. In this instance, the representations and warranties are fairly reciprocal and mirror each other. Since, as co-producers, both parties know that each will be named in any third party suit brought against the Web Project, the representation and warranties become a critical part of the negotiations since each agrees to indemnify the other for any costs or losses associated with a breach. Generally, the Television Producer wants to ensure that the New Media Producer has the right and authority to perform the Agreement, that the software and creative materials it creates or incorporates into the Web Project are original to the New Media Producer or have been properly licensed for inclusion in the Web Project and will not violate any legal rights of any third party or any law. The New Media Producer will want to ensure that the Television producer has the right to perform the Agreement, owns the intellectual property rights in the television program necessary to grant the interactive rights to produce the Web Project, and has obtained all necessary clearances for the creative materials from the television Program that will be incorporated into the Web Project. Both of them have an interest in ensuring that each will not incur any cost or debt in the name of the Web Project without the approval of the other and each will take the steps necessary to ensure it qualifies for tax credits.

10) Indemnifications

- a) Each party shall indemnify and save harmless the other party from and against all losses, damages and expenses, including reasonable legal fees, resulting from any claim, action or proceeding arising from a breach of any of the warranties made by the breaching party in section 9 (a) and (b) above.

DISCUSSION: A party that makes a representation and warranty will typically be required to "indemnify" or reimburse the other party for any losses the latter may suffer as a result of the first party breaching its representations and warranties. In this case, both parties made representations and warranties so the agreement to indemnify the other upon breach is reciprocal.

11) Special Damages and Loss of Profits

- a) Neither party shall be liable hereunder for any loss of profits or any special, indirect, incidental or consequential damages, whether arising in contract, tort or otherwise. Each party's liability and any of its respective employees, agents, independent contractors or representatives, to the other for claims arising out of or relating to this Agreement will be restricted to actual damages only.

DISCUSSION: Unless expressly disclaimed, the law may impose certain implied warranties so it is critical to explicitly disclaim all implied warranties other than those expressly stated in the contract. Likewise, the liability of each of the parties is limited to the actual damages cause by any breach by the other party of any representation and warranty.

12) Termination

- a) Subject to section 13, the parties shall be entitled to terminate this Agreement upon written notice given by the party initiating the termination and delivered to the other party, without further compensation or obligation to each other, if any of the following events occur:

- i) In the event that, at the date of the first broadcast of the Program, the Co-Producers are unable to secure financing for the production of the Web Project and the parties mutually agree not to proceed with production of the Project.
- ii) If there is any material breach of this Agreement by either party not cured within 15 days of the other party delivering written notice thereof to the party in breach; and/or
- iii) If either party becomes insolvent, or makes an assignment in bankruptcy, is liquidated or dissolved.

DISCUSSION: Termination clauses are critical to both parties to allow each to treat the contract as at an end upon the occurrence of a specified event, to cut its losses and avoid throwing good money and effort after bad. It is important that termination be for "material" or important breach, since a party who is generally complying with the terms of the Agreement does not want the other party to be able to treat minor or frivolous breaches as sufficient to terminate the entire Agreement and avoid its obligations. Also, it is prudent to include a "curing" period to allow a party notified of a breach to fix it to the satisfaction of the other party before the termination will be effective. Finally, adequate notice should be provided to allow the party in breach a meaningful opportunity to solve the problem before the termination takes effect.

13) Ownership and Reversion of Rights on Termination

- a) Upon termination of this Agreement, without prejudice to any other rights at law, each party shall continue to own its respective right, title and interest in and to the elements and materials it contributed in respect of the Web Project, and the copyright therein and thereto, subject to the following:
 - i) In the event this Agreement is terminated in accordance with the conditions in subsections 12(a)(i)-(iii) above, the parties agree as follows:
 - (1) The Program shall remain the sole and exclusive property of the Television Producer, including but not limited to copyright, subject to the limitations of applicable third party licenses.
 - (2) The Interactive Rights in the Program together with the rights to the Licensed Materials shall automatically revert to Television Producer without further agreement or written instrument being required.
 - (3) All New Media Producer Technology and New Media Producer Content originally created or licensed by New Media Producer for the development and production of the Web Project shall remain the sole and exclusive property of New Media Producer, including but not limited to copyright, subject to the limitations of applicable third party licenses.
 - (4) All rights granted by New Media Producer including but not limited to all rights related to the New Media Producer Technology and New Media Producer Content, shall automatically revert to New Media Producer without further agreement or written instrument being required.

- (5) The Television Producer shall be free to contract with a third party to develop and produce an interactive adaptation of the Program without the participation of the New Media Producer, provided however that the Television Producer shall not have the right to use any creative materials, technology or other contributions to the Web Project co-developed and co-produced by the Parties or produced by the New Media Producer without the written approval of the New Media Producer and unless and until the New Media Producer is reimbursed by the Television Producer for all bonafide out-of-pocket costs incurred not already covered by third-party broadcasters and/or financiers and any unpaid producer fees and overheads earned by the New Media Producer with respect to the Web Project and pursuant to this Agreement.
- b) The parties hereto expressly acknowledge and agree that the terms of this Section 13 are made without prejudice to any other right or remedy at law that either party may have for termination arising out of the other party's breach of this Agreement.

DISCUSSION: The purpose of this provision is to make clear that upon termination of the Agreement the respective parties shall retain ownership of all of the assets and intellectual property rights it had prior to entering into the Agreement with the other party and to set out how the various grants of rights and licenses made pursuant to this Agreement will revert automatically to the grantor upon termination. The provision expressly states that these rights of reversion shall not act to prejudice any claim made by either party for damages or other remedy arising out of a breach of the Agreement by the other party.

14) Confidentiality

- a) This Agreement and the business of the Parties with respect to the Web Project shall be treated by the Parties as strictly confidential other than as may be disclosed by either Party to mutually approved prospective and actual financial participants in the Web Project, accountants and lawyers giving advice to the Parties, or in the course of enforcement of any provision hereof.

DISCUSSION: Confidentiality clauses are common in almost all commercial Agreements, but in this case it is important to acknowledge that other parties crucial to the project, such as financiers or legal counsel, may require disclosure of what would otherwise be confidential information or even require a copy of the actual Agreement, otherwise such disclosure would put the disclosing party in breach. For example, applicants to the Bell Fund are required to submit a copy of all agreements related to the new media project it finances. Both Parties will want to ensure that the other party is obliged to keep any critical information confidential. Confidentiality clauses sometimes define information that is not to be considered confidential, such as information that becomes public knowledge through no act of the other Party, after which the information ceases being confidential for the purposes of the Agreement.

15) Notice

- a) Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given (i) when delivered personally to any officer of the party being notified; or (ii) on the third business day after being sent by registered or certified mail, postage prepaid, facsimile telecopier, addressed as follows:

To Television Producer: [Contact Name]
TELEVISION PRODUCTIONS LTD.
[Address]
[Phone & Fax Number]

To New Media Producer: [Contact Name]
NEW MEDIA PRODUCTIONS INC.
[Address]
[Phone & Fax Number]

DISCUSSION: The effective date of notice is critical for establishing when the clock will begin to tick for the curing period before termination for breach will be effective, among other contractual obligations for which notice is required. In this instance a personally delivered notice will be deemed to have been delivered on the date it was sent while a longer period is allowed if the notice is sent by less instantaneous means. The date of notice is also critical for the deadline to respond to a legal suit or any communication of import.

16) Independent Contractors

- a) The parties hereto are independent contractors and neither shall act as the other's agent, except as expressly agreed to in writing and only in relation to the production and exploitation of the Web Project, nor shall either party be deemed an employee of the other nor shall this Agreement be interpreted as creating an employment relationship, partnership or joint venture or otherwise. Neither party shall incur any obligation on the other's behalf, nor commit the other in any manner without the other's prior written consent.

DISCUSSION: This purpose of this provision is to expressly define the relationship between the Parties as being an agreement between independent contractors for reasons related to liability. Both parties could be exposed to greater liability if the Agreement is interpreted as an agreement creating a partnership or employment relationship.

17) Force Majeure

- a) Neither party hereto shall be responsible for any losses or damages to the other occasioned by delays in the performance or non-performance of any of said party's obligations when caused by Acts of God, strike, acts of war, inability of supplies or material or labor or any other cause beyond the reasonable control of the said party at any time for performance of any services or shall be extended by the period of such delay.

DISCUSSION: This clause is intended to protect both parties from their respective failure to perform its obligations as a result of an "act of God" over which it has no control.

18) Severability

- a) In the event any portion of this Agreement is deemed to be invalid or unenforceable, such portion shall be deemed severed and the parties agree that the remaining portions of this Agreement shall remain in full force and effect.

DISCUSSION: The purpose of this clause is to allow the Parties to have certainty that the Agreement will remain in effect and binding, notwithstanding one or more of its provisions is found to be unenforceable or illegal under law. Should one provision be found to be so, the Parties agree to “sever” that provision from the rest of the Agreement and remain bound by the surviving terms.

19) Assignment

- a) Neither party may assign or otherwise transfer this Agreement without the written consent of the other party. This Agreement shall enure to the benefit of and bind the parties hereto and their respective legal representatives, successors and assigns.

DISCUSSION: Neither party will want the other to be able to “assign” or sell the Agreement to another party with whom it has no knowledge, experience or prior relationship without prior approval.

20) Governing Law

- a) This Agreement shall be governed by and construed in accordance with the laws of the Province of X and the country of Canada.

DISCUSSION: The courts’ interpretation of law in Canada and the applicable provincial legislation can vary from jurisdiction to jurisdiction. Therefore each of the Parties wants to ensure it understands how the terms of the Agreement will likely be interpreted and what provincial law may apply to the circumstances. Consequently, the Parties expressly state which laws will apply to the contract. Also, in the event that there is a dispute that ends up in court, each of the Parties will want to ensure that the jurisdiction in which it will litigate is the most convenient to its head office and/or most favourable in terms of law. Most parties to agreements will prefer both the governing law and the jurisdiction of the province in which its head office is located since it is most likely to understand the local law and it is very expensive to travel and retain legal counsel for litigation taking place in a foreign jurisdiction.

21) Entire Agreement

- a) This Agreement, including the recitals and Schedules, sets forth the entire agreement between the parties with respect to the subject matter hereof and shall be amended only by a writing signed by the parties.

DISCUSSION: The purpose of this clause is to explicitly exclude any oral or written representations, agreements or communications that may have taken place between the Parties, from the binding terms of the written Agreement. This is important since there may have been extended negotiations between the Parties prior to them reaching a final meeting of the minds and reducing the terms to the written Agreement. It prevents either party from relying on anything external to the written Agreement, such as oral promises or inducements. It also specifies that any amendment to the Agreement must be made in writing and signed by both Parties.

22) Counterparts

- a) This Agreement may be executed in counterparts in the same form and such parts so executed shall together form one original document and be read and construed as if one copy of the Agreement had been executed. Execution and delivery of this Agreement by fax transmission shall constitute legal and binding execution and delivery of this Agreement.

DISCUSSION: Under ideal circumstances, it is best for both Parties to sign the same original document to have absolute certainty that it understands the agreement it is bidding itself to. However this clause contemplates the possibility that the Parties may prefer to sign the execution pages of the Agreement via fax transmission for reasons of expediency and convenience. It expressly states that the Parties have agreed that such form of execution will be considered valid and binding as if they had both signed the same document.

IN WITNESS WHEREOF the parties hereto have executed this Agreement effective this _____ day of _____, 20__.

TELEVISION PRODUCTIONS LTD.

Per: _____
Authorized Signatory

NEW MEDIA PRODUCTIONS INC.

Per: _____
Authorized Signatory

Schedule A – to the New Media Co-Production Agreement dated the ____ day of _____, 20__ . Between New Media Productions Inc. (“Producer”) and Television Productions Ltd. (“Client”)

SERVICES

1. Name and Description of Web Project:

2. Project Scope of Web Project and Specifications

PRODUCTION BUDGET