

NEW MEDIA PRODUCTION SERVICES 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 agreement whereby a new media producer is retained to provide new media production services to a client. The specific roles of the parties, the main terms of the agreement, the type of new media project, the financial structure, the fees 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 production services 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 the client retaining the services of the New Media Producer 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, the author assumes that the "Producer" is a new media producer with experience in developing and producing interactive properties whose services are being retained by a television producer (the "Client"). The Client is retaining the Producer's professional services on a "fee for services" basis to develop and produce an interactive, web based adaptation of a television program to which the Client owns all rights (the "Web Project"). In this fact scenario, the Client will own the work product of the Producer and all rights in the completed Web Project. The Producer will have no ownership interest in the Web Project, but will retain ownership in any proprietary software developed for the Web Project and will license to the Client the right to use the software in connection with the Web Project in perpetuity. This Agreement assumes that the Client, as owner of the Web Project, will be the applicant to the Bell Broadcast and New Media Fund (the "Bell Fund") for financing, but that the Producer may provide its professional assistance in preparing the application.

NEW MEDIA PRODUCTION SERVICES AGREEMENT

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

BETWEEN:

NEW MEDIA PRODUCTIONS INC. ("Producer")
a corporation incorporated under the laws of the Province of X,

THE FIRST PARTY,

- and -

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

THE SECOND PARTY,

WHEREAS Client 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 Client wishes to retain the services of the Producer to develop and produce an interactive web-based adaptation based on the Program designed to promote and complement the television broadcast of the Program tentatively entitled “Stranger than Fiction Interactive” (the “Web Project”); and

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 pursuant to section 18 below.

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. Services and Deliverables

- (a) The services to be provided by Producer, including but not limited to project specifications and scope document for the Web Project are described as set out in Schedule “A” attached hereto and incorporated into this Agreement (hereinafter referred to as the “Services”).

- (b) The deliverables, being the work product of the Services, to be delivered by Producer are set out in Schedule “B” attached hereto and incorporated into this Agreement (hereinafter referred to as the “Deliverables”).

DISCUSSION: Under this Agreement, the Producer will be required to provide certain professional services and to deliver certain products of its work to the Client in exchange for the payment of fees to the Producer. Both the Client and the Producer will want to try to define as precisely as possible the nature and scope of the services to be performed and the work product to be delivered. The Client will want to ensure it knows that it will get what it is paying for and the work product will fulfill its needs and expectations and those of its investors and licensees. The Producer wants to ensure that it will not suffer from project “scope creep”. In other words, the Producer wants to ensure it precisely describes the nature and extent of the services and work product it is agreeing to provide under the Agreement for the particular fee being paid. Failure to provide a detailed description of the expectations of the parties and the nature of the “Web Project” to be delivered could put the Producer in the disagreeable position of seeing the scope of the project grow beyond what was anticipated when it originally gave its quote for fees or the Client being disappointed to discover that the delivered Web Project does not live up to its expectations or needs. However, unless the description of Services and Deliverables are defined sufficiently precisely, it may be difficult for each party to enforce the obligations of the other. The most efficient way to describe the Services and the Deliverables is to attach them in separate schedules incorporated by reference into the terms of the Agreement. This will make the schedules binding provisions of the Agreement, but allows the parties to agree upon the deal points and the main terms of the services contract separately from hammering out the details of the description of the Services and Deliverables.

2. **Consideration**

- (a) In consideration for the Services provided and the delivery of the Deliverables, the Client agrees to compensate Producer on the terms and conditions set out in the “Payment and Delivery Schedule” attached hereto as Schedule “C”.
- (b) All payments due shall be due and payable at the time or times specified as set out in Schedule “C”. Any payment which is not made within thirty (30) days after the date of the invoice shall be deemed to be overdue. Interest on overdue accounts shall accrue at (X%) per cent per month (X%) per cent per annum).

DISCUSSION: Both parties will want to define precisely when each deliverable is to be delivered to the Client and when payment will be due. The Producer will need to know when the deliverables are due to be able to plan the production phases and cash flow the project. This Agreement adopts the method of paying the Producer upon the delivery of a series of deliverables as a good compromise between the interests of the parties. The Producer does not wish to perform all work to complete the entire Web Project on good faith alone to discover that the Client is unable or unwilling to pay for its services. The Client does not want to pay the entire fee up front for a Web Project that may be disappointing or never finished. The Producer will also want to include a penalty for late payment of fees by the Client to create an incentive for the Client to pay on time.

3. **Term of this Agreement**

- (a) The term of this Agreement shall commence on the date of this Agreement and shall continue until the Services are completed and all the Deliverables are delivered to and accepted by the Client, or in the event that this Agreement is terminated as hereinafter set out.

DISCUSSION: Unlike many contracts for services that may have a precise beginning and end date for the provision of services, the Client in this Production Services Agreement is ultimately paying for a completed work and the Agreement will not be considered completed until the completed final version of the Web Project is delivered to and accepted by the Client and the Client pays all fees due, even if circumstances occur during the course of the agreement that requires extensions to the delivery and payment schedule.

4. **Non-Exclusivity of Services**

- (a) The Client acknowledges and agrees that the Services provided by the Producer hereunder shall be provided on a non-exclusive basis and nothing herein shall be construed as prohibiting the Producer from providing its new media production services to third parties during the Term of this Agreement, provided however that Producer shall not do so in a manner that would impair Producer's ability to perform the Services and deliver the Deliverables described hereunder.

DISCUSSION: It is assumed that the Producer is in the business of providing its professional services to a variety of clients and will want to ensure that the Client does not expect the Producer to provide its services exclusively. However, the Client will also want to ensure that the Producer makes a commitment to complete the Web Project and meet certain quality standards and won't over tax its employees and resources by spreading itself too thin and neglecting the Web Project in order to meet the competing needs of other clients.

5. **Acceptance**

- (a) Unless the Client shall notify Producer within _____ (x) business days from the date of the completion of the Services or the delivery of the Deliverables to the Client for any phase of development that there is any default or deficiency in the Services rendered or the Deliverables delivered hereunder, the Client will be deemed to have accepted the Services and Deliverables as being completed fully and in accordance with the terms of this Agreement and the specifications set out in Schedules A and B.

DISCUSSION: In this fact scenario the Producer will not be paid until each deliverable is both delivered and accepted by the Client. However, in order to ensure that the Producer gets paid in a timely fashion and to ensure that Producer can maintain some control over the production schedule and its cash flow, this provision makes it incumbent upon the Client to notify the Producer of any deficiency in the deliverable delivered so that the Producer can take such steps as are necessary to remedy the deliverable as soon as possible. If the Client does not notify the Producer within a specified time frame, the deliverables is "deemed" to be accepted by the Client and the Producer can demand payment for the deliverable.

6. Confidentiality

- (a) Each of the parties hereto agrees not to divulge to any third party or to use except in connection with the matters set out in this Agreement:
 - (i) any confidential information of the other party's business, including without limitation, trade secrets, business plans and financial information, customer data, learned in the course hereof;
 - (ii) any confidential information, including without limitation, confidential information contained in any documents, computer programs, proprietary software or any other materials of any nature, provided by either party to the other in relation to the Web Project;
- (b) This obligation shall not apply to any information which is already disclosed to the public, is already known to the party receiving the confidential information or is not identified as confidential information by the disclosing party.
- (c) The parties hereto agree that the terms of this Agreement shall be treated as strictly confidential other than as may be disclosed by either party to prospective and actual financiers, accountants and lawyers giving advice to the party, or in the course of enforcement of any provision hereof or as required by force of law.

DISCUSSION: Although, in the normal course it is typically the Client who may be the party required to disclose confidential information to the Producer to enable the Producer to produce the Web Project, since the Producer may be required to develop proprietary source code to be incorporated into the Web Project, which it will wish to protect as confidential, the confidentiality provisions related to the respective parties' businesses are made reciprocal as between the parties. Subsection (c) specifies that the terms of the Agreement themselves are to be considered confidential and shall not be disclosed to anyone except those recipients who are identified as authorized to receive such information by the parties.

7. Change Orders

- (a) The Client shall have the right to issue change orders from time to time respecting the Producer's Services and Deliverables hereunder.
- (b) If any such change orders impact the cost of, or time required to perform and deliver, the Services and Deliverables, the parties shall negotiate in good faith and mutually agree in writing to an equitable amendment to the terms of this Agreement prior to Producer being required to comply with and perform the change order.

DISCUSSION: As a practical consideration, most new media projects are not made according to immutable plans. Issues related to design, architecture or the changing requirements of licensees and financiers of the project may arise which necessitate making modifications to the project scope and defined deliverables. This provision recognizes this possibility and gives the Client the right to request changes to the Services or the Deliverables. However, the Producer wants to ensure that any such change orders won't be of a nature or to such a great extent that making the changes will impact on the agreed upon payment or the production schedule in such a way that will unfairly tax the resources of the Producer in order to meet such obligations. This provision requires that if the change orders amount to material changes in the scope or design

of the Web Project, that the parties shall be required to make an amendment to the Agreement that is fair to each and mutually agreed upon or the Producer will be under no obligation to fulfill the change order.

8. Client Materials

- (a) The Client may, at Client's discretion, provide to the Producer certain creative content from the Program, including but not limited to, text, graphics, video, images, story line, concept, characters and data, for the development and production of, and inclusion in, the Web Project (the "Client Materials"). Client acknowledges that the Client Materials are the sole and exclusive responsibility of the Client and that Producer will not be held liable for the violation of any laws, including but not limited to infringement of copyright, trademark or any other right of any person or entity arising from or relating to the Client Materials.

DISCUSSION: The Web Project is an adaptation of the television program produced and owned by the Client. In order for the Producer to create the Web Project based on the Program, the Client may be required to provide certain creative elements from the Program to be included in the Web Project. The Producer, as a service provider, has no way of knowing whether the creative elements provided by the Client are cleared for use in an interactive web based adaptation or whether they otherwise could violate any third party rights or the laws of Canada. Consequently, this provision expressly requires the Client to acknowledge that it is solely responsible for such creative elements and that the Producer shall under no circumstances be held responsible for any violation of third party rights or laws.

9. Intellectual Property Rights

- (a) Client hereby grants to the Producer the non-exclusive right to adapt, modify, translate, exhibit, publish, reproduce, create derivative works from, and otherwise use Client Materials as necessary for the Producer to provide the Services and delivery the Deliverables pursuant to the terms of this Agreement and Client hereby waives its moral rights in Client Materials for such purposes.

DISCUSSION: This provision grants the necessary rights to the Producer to adapt the materials provided by the Client for use in the Web Project and waives its moral rights therein to allow such adaptation and inclusion.

- (b) Producer will retain ownership of any and all right, title and interest, including but not limited to copyright, in any programming, software, software code, delivery methods and/or propriety technology (collectively, the "Proprietary Technology") and any text, graphics and other material ("Producer Materials") developed or licensed for use in the Web Project as a result of the performance of the Services and delivery of the Deliverables.

DISCUSSION: In the process of producing the Web Project, the 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 Producer will want to retain ownership of the proprietary software and the right to use it in other projects, as described below. However, the Producer will be required to grant a license to the Client to use the proprietary software and the creative elements in connection with the Web Project. Such grant is provided below.

- (c) Conditional upon payment in full for the Services and Deliverables in accordance with this Agreement, Producer shall grant to Client the non-exclusive, fully paid-up, royalty free, license to use the Proprietary Technology together with the exclusive, fully paid-up, royalty free, license to use Producer Materials, solely in connection with the Web Project in perpetuity throughout the universe, and the right to sub-license such rights in connection with the distribution and exploitation of the Web Project.

DISCUSSION: This provision contains the grant of license that allows the Client to use the proprietary software and the creative materials developed by the Producer in connection with the Web Project in perpetuity. Note that the license to the proprietary software is non-exclusive, while the license to the creative materials is exclusive. The Producer will want to be able to use the software in other projects, hence the license is made non-exclusive. In contrast, the creative materials will be adapted from the television program owned by the Client and the Client has an interest in ensuring that the creative content is not replicated on some other web based project that is not associated with the program. Consequently, the license to the creative materials is made exclusive. Also note, that to protect the interests of the Producer, such licenses are made conditional on the payment in full of all fees due under the Agreement. Finally, the Client will require the right to sub-license such rights to broadcasters or other licensees to allow for the distribution and exploitation of the Web Project.

- (d) Conditional upon the payment in full for the Services and Deliverables, the Client shall own all right, title and interest in and to the compilation of the Web Project throughout the universe in perpetuity.

DISCUSSION: The Web Project will be made up of many elements, including those owned by the Producer and those owned by the Client. However, Canadian law recognizes that a compilation may consist of many different copyright protected works which can create a new creative work entitled to separate copyright protection. Consequently, the parties acknowledge that the Web Project, as a compilation, will be owned exclusively by the Client in this instance.

- (e) Notwithstanding the grants of rights described above, Producer shall not be prevented from using any software, technology, ideas, knowledge, information, concepts, know-how, skills or experience developed or obtained by it in the course of performing the Services and delivering the Deliverables hereunder in other new media productions, provided that in doing so the Producer does not disclose any confidential information about the Client, the Web Project and does not utilize any Client Materials or Producer Materials.

DISCUSSION: This provision expressly states that the Producer shall have the right to use proprietary software and "know-how" developed in the course of producing the Web Project in other projects, provided that the Client's confidentiality, the ownership and control of the Client Materials are not compromised, and the exclusive license to the Client of the Producer Materials customized for the Web Project is not violated

- (f) Any assignment or license of intellectual property rights granted by the Producer to the Client hereunder is conditional upon the payment in full of any and all sums due and payable for the provision of the Services and the delivery of the Deliverables and shall be deemed to occur at the conclusion of this Agreement and upon the condition precedent that the Client is not in breach of this Agreement.

DISCUSSION: This provision makes all grants of rights from the Producer to the Client conditional on the full payment of fees and the Client not being in breach of the Agreement. It also expressly states that the grants will not take effect until the Agreement is completed, to ensure that there is no ambiguity over ownership of deliverables that have been delivered and paid for prior to the completion of the Agreement.

- (g) In the event that Client refuses or otherwise fails to remit to Producer any portion of fees due hereunder or is otherwise in breach of this Agreement, no assignment or license of intellectual property rights shall occur and all intellectual property rights, including copyright and trademark rights in the Producer Material, Proprietary Technology and any work product arising from the provision of the Services hereunder shall remain vested in the Producer as the original author of same.

10. **Representations, Warranties and Indemnifications**

- (a) Producer represents and warrants to the Client that:
 - (i) It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;
 - (ii) it shall use commercially reasonable efforts to perform the Services and that the Deliverables will function, operate and perform in accordance with the specifications and descriptions set out in Schedules "A" and "B" attached hereto, or as modified by the parties from time to time by mutual agreement.
 - (iii) the Services and Deliverables provided by Producer hereunder are wholly original to the Producer or the Producer has acquired the necessary rights from third parties to contribute and include same in the Project, and the Service and Deliverables will not violate or infringe upon any other party's copyright, patent, trademark or other intellectual property right, however notwithstanding the forgoing Producer makes no representations or warranties of any kind whatsoever in respect to the Client Materials provided by the Client which are the sole responsibility of the Client;
 - (iv) Producer represents and warrants that any software developed hereunder as part of the Services and Deliverables does not contain any clock, timer, virus or other limiting or disabling code or program that would cause any Deliverables to be erased made inoperable or otherwise impair their use.
 - (v) Other than the express warranties stated above, producer makes no other representations or warranties hereunder of any kind, either express or implied, including but not limited to any warranty of merchantability and/or fitness for any particular purpose. In no event shall producer be liable, directly or indirectly, for any special or consequential or incidental damages including but not limited to loss of anticipated profits, loss of revenue or loss of data, or as a result of any interruption of service.
 - (vi) Producer represents and warrants that the Client will be added as an additional insured in Producer's insurance policy.

DISCUSSION: The representations and warranties that the Producer may be required to make in a production services agreement can be extensive and detailed. Generally, the Client wants to ensure that the Producer has acquired all the necessary intellectual property rights and clearances of content to produce the Web Project. The Client will license the Web Project to broadcasters who will publish the Web Project and will require in turn sufficient representations and warranties from the Client in the license agreement with the broadcaster. Hence, the Client needs to rely on the representations and warranties from the Producer to make the necessary representations and warranties to the broadcaster. The Client knows it will be included as a defendant in any litigation brought by third parties as a result of the Producer's negligence or failure to acquire the necessary intellectual property rights. If the new media Producer is a small company, the Client is aware that in the event of a serious breach that leads to litigation brought by a third party, the Producer may not have sufficient resources to indemnify the Client and its licensees against the damages it may suffer in defending itself. The Client will want the Producer's representations and warranties to be as strong and unequivocal as possible, because it has no way of knowing whether the Producer has acquired all the necessary rights and taken the appropriate steps. Generally speaking, the Producer should be in a position to make these representations and warranties. Representation and Warranties provisions are often the subject of considerable negotiation and the outcome may come down to which of the Parties has the greatest bargaining power in the transaction. The Client wants to have confidence that the Web Project will not contain any virus or time bomb that could corrupt its systems or otherwise fail to operate. Since subsection 10(a)(iv) deals with deliberate acts of sabotage rather than simple defects, and to the extent that the Producer includes such a representation and warranty in any license for software it incorporates into the Web Project or in any contract for the services of any developer it hires, the Producer should be in a position to make this representation and warranty. Finally, no software is 100% error free and it is risky for the Producer to make any representations or warranties that it will function perfectly, especially in a project involving new technology. 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, it is crucial that the liability of the Producer be limited to the actual damages caused by any breach by the Producer of any representation and warranty.

- (b) Client Represents and warrants to Producer that:
 - (i) It has the right and capacity to enter into this Agreement and fully perform all of its obligations hereunder;
 - (ii) All Client Materials provided hereunder shall be wholly original to the Client or the Client has acquired the necessary rights from third parties to contribute such Client Materials and include it in the Web Project, and shall not violate any laws of any country and shall not infringe any other party's copyright, patent, trademark or other intellectual property right.

DISCUSSION: The Client typically makes fewer representations and warranties than the Producer in these situations since the Client's obligations are often limited to the payment of a fee. However, in this case the Producer wants to ensure that the Client Materials provided by the Client for incorporation in the Web Project will not violate any laws or the rights of any third parties.

- (c) Each of the Parties hereto agree to indemnify and save harmless the other, and any of its respective successors, licensees and assigns, from any and all losses, costs,

liabilities, damages and expenses (including reasonable lawyers fees) resulting any breach of any representation, warranty and/or covenant under this Agreement.

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. Termination

- (a) Either party may terminate this Agreement in the event the other party is in material breach upon [X] business days' prior written notice, unless the party receiving notice corrects the default within such [X] business day period.
- (b) The bankruptcy, insolvency or placing into receivership of any party hereto shall constitute a default. In the event that termination occurs before the expiry of this Agreement, then Producer shall be paid for all Services performed and Deliverables delivered up to the date of termination in accordance with the terms of Schedule "C", without prejudice to any claim by Producer for damages in the event the Agreement is terminated due to the default of the Client.
- (c) In the event of termination due to a default or breach of the Client, Client shall retain all right and title in and to the Client Material and Producer shall retain all right and title in and to the Producer Material and Proprietary Technology and the grant of rights contemplated herein shall be deemed void in accordance with section 9(g), Intellectual Property Rights.

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. Adequate notice should be provided to allow the party in breach a meaningful opportunity to solve the problem before the termination takes effect. The Producer also wants to make sure that the grants of rights and licenses transferring ownership of the Web Project to the Client will not take effect if the Client is in breach of the Agreement, particularly arising out of a failure to pay its fees for services performed.

12. 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 the Client: [Contact Name]
 TELEVISION PRODUCTIONS LTD.
 [Address]

[Phone & Fax Number]

To 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.

13. **Independent Contractors**

- (b) Producer is an independent contractor and will not act as a Client agent, nor shall it be deemed an agent or employee of the Client nor shall this Agreement be interpreted as creating a 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.

14. **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.

15. **Severability and Waiver**

- (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. No waiver of any breach of any provision of this Agreement will be effective or binding unless in writing and signed by the party purporting to give the same, and will be limited to the specific breach waived unless otherwise provided in the written waiver.

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. This clause also contemplates the possibility of one party agreeing to waive or ignore a breach by the other party of any term of the Agreement and continue to treat the Agreement as in effect and binding on the Parties, so long as such waiver is in writing. However, this clause also operates to ensure that such a waiver cannot be construed as a waiver of any other breach and protects the waiving party’s right to enforce the non-waived provisions.

16. 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.

17. Governing Law

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

18. 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.

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

DELIVERABLES

Deliverable	Format	Delivery Date

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

PAYMENT AND DELIVERY SCHEDULE

Total Payment Amount: \$

Payment Schedule:

<u>% of Total</u>	<u>\$ Amount</u>	<u>Deliverable or Milestone</u>	<u>Estimated Date</u>