



New Zealand Film
HERITAGE TRUST
Te Puna Ataata

FILM RIGHTS MANAGEMENT AGREEMENT

for

[FILM TITLE]

[(Year of release)]

between

[
([jointly and severally] **Rights Holder, You or Your**)

and

The New Zealand Film Heritage Trust – Te Puna Ataata
(**Trust, We, Us or Our**)

The New Zealand Film Heritage Trust – Te Puna Ataata is a charitable trust that filmmakers can appoint to become the manager or owner of their films to ensure the continued preservation and availability of those films into the future. As well as ensuring that films under the Trust’s guardianship continue to be accessible to audiences, the Trust focuses on increasing opportunities for New Zealanders to have access to New Zealand films, so that their appreciation of New Zealand films is heightened and the cultural heritage of the nation is preserved.

DETAILS SECTION

Film	[Film Title (Year of Release)]	
Effective Date of this Agreement		
Rights Holder's notice details <i>If these details change, please let us know.</i>	Address	
	Email address	
	Phone number	
Film Rights	All of Your rights, title or interest in relation to the Film, including the Film Materials and Your Film Income.	
Managed Film Rights	All of Your Film Rights, but excluding Your Film Income.	
Reserved Rights <i>(insert details of any rights that are to be retained by the Rights Holder)</i>		
Third Party Rights <i>Details of any other party having rights, including approval rights, that you are aware of in relation to the Film, e.g. other rights holders, financiers, management committees.</i>		
Your Film Income	Film Income means all money derived from exploitation of the Film which is received into the collection account for the Film ("Collection Account") from time to time, and Your Film Income means the share of Film Income to which You are entitled under the recoupment schedule for the Film.	
Your Reserved Film Income See clause 7	90 per cent of Your Film Income, which You will continue to receive.	
Gifted Film Income	10 per cent of Your Film Income, which You gift to Us.	

Commented [JC1]: The Film Rights Management Agreement template provides for 10 per cent of Your Film Income to be gifted to the Trust. This is entirely voluntary, and you are welcome to specify alternative arrangements.

Film Materials See clause 3	Any and all materials relating to the Film, including still and moving image, visual, audio, promotional, and marketing materials, and in particular, the following:	
	Description of Film Materials	Location where Film Materials are held
[Additional terms <i>(insert specific terms) if any]</i>		

TERMS OF MANAGEMENT

Trust's Purpose and Objects

The Trust receives ownership of, or is appointed as manager of, selected New Zealand films, in each case with a view to advancing education and ensuring the continued preservation and availability of New Zealand films into the future.

This will enable the Trust to increase the opportunities for New Zealanders to have access to New Zealand films so that their awareness, understanding and appreciation of New Zealand films is heightened and the cultural heritage of the nation is enriched and preserved and to create educational opportunities for New Zealanders to access and learn from New Zealand's film heritage. Supporting this, the Trust will work with other interested organisations to preserve and archive New Zealand films to create a resource for present and future generations.

1) Appointment of Trust to manage

- a) In consideration for Us agreeing to assume responsibility for making all decisions in respect of the Managed Film Rights, You appoint Us, and We accept the appointment, as the sole and exclusive manager of the Managed Film Rights on the terms set out in this Agreement.
- b) You acknowledge that the Managed Film Rights We are appointed to manage under (a) above includes all of Your rights, title and interest in the Film Materials, and under any depositor, archive or other agreements relating to the Film Materials.
- c) We acknowledge that Your appointment of Us as the sole and exclusive manager of the Managed Film Rights is subject to any **Reserved Rights or Third Party Rights** and excludes Your Film Income.
- d) For consideration of \$1, receipt of which is acknowledged by You, the parties agree that assignments of rights and title in and to the Film will occur as set out in clause 9.

2) Film Rights

- a) You warrant and represent that:
 - i) You own the Film Rights;
 - ii) You have specified all Third Party Rights in the Details Section;
 - iii) You hold all necessary rights, consents and waivers to enter into this Agreement; and
 - iv) the Film is not defamatory and does not infringe the intellectual property rights or privacy rights of any person.
- b) If, after the Effective Date of this Agreement, You become aware that one or more of the statements in clause 2(a) are or may be incorrect (or of any claim by another person that one or more of the statements are or may be incorrect) or You become aware of any additional Third Party Rights, You agree to promptly notify Us of the details of such awareness or claim.
- c) You agree to Indemnify Us against any claim, demand or expense (including legal fees) and actions arising directly out of, connected with, or as a result of any of the statements in clause 2(a) being incorrect.

3) Film Materials

- a) When reasonably requested by Us, You agree to deliver to Us, or to authorise or secure access for Us to, any Film Materials that We do not already have access to.
- b) If, after the Effective Date of this Agreement, You identify any Film Materials that are not set out in the Details Section, You agree to promptly notify Us of their description and location. To avoid doubt, all such materials are "Film Materials" for the purposes of this Agreement.
- c) You irrevocably and unconditionally assign to Us for the term of this Agreement any rights or benefits You have under any agreements relating to the Film Materials, including any depositor and/or archive agreements.

- 4) Trust's power to manage
 - a) You agree that We have the power and right to do all things and execute all documents necessary for the purpose of managing the Managed Film Rights on Your behalf, including (but not limited to) the power and authority to:
 - i) make decisions on Your behalf relating to the use and exploitation of the Managed Film Rights;
 - ii) enter into contracts or obligations relating to the Managed Film Rights on Your behalf;
 - iii) provide industry standard warranties, representations and indemnities on Your behalf; and
 - iv) commence or pursue legal action on Your behalf against any person We reasonably consider to be infringing or threatening to infringe the Managed Film Rights.
- 5) Trust may subcontract and delegate
 - a) You agree that We may:
 - i) appoint, to manage the Managed Film Rights; and/or
 - ii) delegate all or any of Our powers and authority to, the New Zealand Film Commission, or such successor organisation or other person as We reasonably consider is suitably qualified, and in each case on such terms as We consider appropriate.
 - b) You agree that We may deposit any Film Materials with Ngā Taonga Sound and Vision, or such successor organisation or other person as We reasonably consider is suitably qualified, and in each case on such terms as We consider appropriate.
- 6) Reporting
 - a) We agree to provide You with access to, or copies of, such reports and material information relating to the Film and the Managed Film Rights We receive from the New Zealand Film Commission (or such successor organisation or other person as We may appoint to manage the Managed Film Rights pursuant to clause 5 above).
- 7) Film Income
 - a) You will continue to receive Your Reserved Film Income (if any) and You agree that We are entitled to receive the Gifted Film Income (if any), set out in the Details Section, and that We may instruct any person acting as collection agent for the Film Income to pay Us our share of Your Film Income directly.
 - b) If either party receives Film Income that is not that party's share of Film Income, that party will promptly pay the Film Income to the Collection Account.
 - c) You acknowledge that there is no assurance that any Film Income will be generated as a result of Our appointment as the sole and exclusive manager of the Managed Film Rights.
- 8) Limitation of liability
 - a) To the extent permitted by law, neither We nor Our trustees, officers or employees will be liable for any loss or damage which You may suffer as a result of the means of exercise or performance by Us of any of Our rights or obligations under this Agreement. For the avoidance of doubt, this limitation of liability shall not apply in respect of any loss or damage which You may suffer as a result of the Trust acting beyond or other than in accordance with the provisions of this Agreement.
 - b) This Agreement will be signed for the Trust by one or more of Our trustees. Each trustee signs this Agreement only in his or her capacity as a trustee of the Trust (and not in any other capacity). Any liability arising under or in connection with this Agreement is limited to, and can be enforced against a trustee only to the extent that can be covered out of the assets of the Trust out of which the trustee is actually indemnified for the liability.

9) [Assignment of rights [where Rights Holder is a company]

- a) As referred to in clause 1(d), You agree that on the earlier of:
- i) You being removed from the Companies Register (pursuant to section 318 of the Companies Act 1993 or any equivalent or replacement of this provision); or
 - ii) the death of [either of] *[insert name(s) of individual(s)]*, [each] a [director and] [shareholder of the Rights Holder at the Effective Date,]
- all Your rights and title in and to the Film that have not yet been assigned to, and vested in, Us, including Your Film Income, will automatically, irrevocably and unconditionally be assigned to, and vest in, Us subject only to any current Third Party Rights.]

10) [Assignment of rights [where Rights Holder is a company + no key creatives]

- a) As referred to in clause 1(d), You agree that if You are removed from the Companies Register (pursuant to section 318 of the Companies Act 1993 or any equivalent or replacement of this provision), all Your rights and title in and to the Film that have not yet been assigned to, and vested in, Us, including Your Film Income, will automatically, irrevocably and unconditionally be assigned to, and vest in, Us subject only to any current Third Party Rights.]

11) [Assignment of rights [where Rights Holder is an individual]

- a) As referred to in clause 1(d), You agree that in the event of Your death, all Your rights and title in and to the Film that have not yet been assigned to, and vested in, Us, including Your Film Income, will automatically, irrevocably and unconditionally be assigned to, and vest in, Us subject only to any current Third Party Rights.

12) [Assignment of rights [where Rights Holders are multiple individuals with equal shares]

- a) As referred to in clause 1(d), You agree that:
- i) in the event of the death of *[insert name of individual]*, the share of rights and title in and to the Film held severally by *[insert name of individual]* that have not yet been assigned to, and vested in, Us will automatically, irrevocably and unconditionally be assigned to, and vest in, Us;
 - ii) in the event of the death of *[insert name of individual]*, the share of rights and title in and to the Film held severally by *[insert name of individual]* that have not yet been assigned to, and vested in, Us will automatically, irrevocably and unconditionally be assigned to, and vest in, Us; and
 - iii) in the event of the death of *[insert name of individual]*, the share of rights and title in and to the Film held severally by *[insert name of individual]* that have not yet been assigned to, and vested in, Us will automatically, irrevocably and unconditionally be assigned to, and vest in, Us.
- b) To avoid doubt, any assignment under (a) includes [the Rights Holder's share of] Your Film Income, and is subject only to any current Third Party Rights.]

13) [Assignment of rights [where Rights Holder is NOT a company and rights assigned in x years]

- a) As referred to in clause 1(d), You agree that on the earlier of:
- i) the date that is [#] years from the Effective Date; or
 - ii) the event of [Your death][the death of] [either of] *[insert name(s) of individual(s)]*, [[each] a [trustee of the] Rights Holder at the Effective Date,]
- all Your rights and title in and to the Film that have not yet been assigned to, and vested in, Us, including Your Film Income, will automatically, irrevocably and unconditionally be assigned to, and vest in, Us subject only to any current Third Party Rights.]

14) Term and Termination

- a) This Agreement will continue until terminated:

- i) by Us for any reason, by giving You three months' written notice;
 - ii) by You **[(acting jointly)]**, if We materially breach the terms of this Agreement, by giving Us one month's written notice;
 - iii) by Us, if **[any of]** You materially breach**[es]** the terms of this Agreement, by giving You one month's written notice; or
 - iv) automatically, on assignment of the Film Rights under clause 9 above.
- b) Consequences of termination:
- i) If this Agreement is terminated:
 - (1) where clauses 10(a)(i), (ii) or (iii) apply, We and You agree to co-operate to ensure an orderly transition of the Managed Film Rights back to You or to such other person as You may appoint to manage the Managed Film Rights following termination of this Agreement; and
 - (2) such termination shall not affect any transaction entered into by Us on Your behalf prior to termination.

15) General terms

- a) **Agreement legally binding:** Once signed by You and Us, both parties agree that this Agreement will be a legally binding agreement.
- b) **Notices**
 - i) Any notice, consent or other communication required by this Agreement must be in writing and:
 - (1) if to be sent to Us, be sent either by email to info@filmheritagetrust.co.nz or by registered post to PO Box 11565, Wellington, New Zealand; and
 - (2) if to be sent to You, be sent by either email or registered post to the address provided in the Details Section (or such other address as may be notified to Us in accordance with this clause).
- c) **Disputes:** If either of us have a dispute relating to this Agreement, then both of us agree to attempt to negotiate a resolution to the dispute for a period of at least 30 days. If the dispute is unresolved, then the procedure will be mediation and the chairperson for the time being of the Resolution Institute (or his or her nominee) will be requested to appoint a mediator within 14 days of the request and will determine the mediator's remuneration. The mediator will set the timetable (including the date by which the dispute resolution procedure will expire irrespective of whether or not the dispute has been resolved, which shall not be more than two months from the commencement of the dispute resolution process). If the dispute has not been resolved within the specified timeframe, unless the parties otherwise agree, the dispute resolution procedure will terminate and each of the parties will be entitled to pursue such legal remedies as it thinks fit.
- d) **Further action:** You agree to sign all documents and do all things reasonably requested by Us to give effect to the terms of this Agreement.
- e) **Entire Agreement:** This Agreement represents the entire agreement between us relating to the Film and Film Rights.
- f) **Amendment:** This Agreement may only be amended by the written agreement of both parties.
- g) **Assignment:** You may only assign Your rights under this Agreement with Our prior written consent.
- h) **New Zealand Law applies:** This Agreement shall be governed by New Zealand law and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- i) **Survival:** Clauses that are by their nature intended to survive the term and termination of this Agreement will continue in effect.

16) Definitions

- a) In this Agreement:

- i) Agreement means the Details Section and the Terms of Management.
- ii) the following capitalised terms have the meaning set out in the Details Section:
 - (1) Film;
 - (2) Effective Date;
 - (3) Film Rights;
 - (4) [Reserved Rights];
 - (5) Managed Film Rights;
 - (6) Film Income;
 - (7) Collection Account;
 - (8) Your Film Income;
 - (9) Your Reserved Film Income;
 - (10) Gifted Film Income; and
 - (11) Film Materials.

You acknowledge that You have had the opportunity to receive independent legal advice before entering this Agreement.

ACCEPTED AND AGREED ON _____ 20[#]

Signed for and on behalf of **New Zealand Film Heritage Trust** by

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

Signed [for and on behalf of [#]] by [#]

Signature of authorised signatory

Signature of authorised signatory

Name of authorised signatory

Name of authorised signatory

Please complete if applicable

Solicitor's certification:

I _____ certify here that before _____
(insert solicitor's name) *(insert [Rights Holder's][authorised signatory's] name)*
signed this Agreement I explained to him/her the effect and implications of this Agreement.

Signature of solicitor and/or barrister
of the High Court of New Zealand

Rights Holder's certification:

I _____ certify here that before I signed this Agreement
(insert [Rights Holder's][authorised signatory's] name)

_____ explained to me the effect and implications of this Agreement
(insert solicitor's name) and I agree to be bound by the terms of this Agreement.

Signature of [Rights Holder][authorised signatory]