



OPERATING EUROVISION AND EURORADIO

## **Agreement for Release of TV Programme Development Financing (the “Agreement”)**

### **BETWEEN**

Union Européenne de Radio Télévision - European Broadcasting Union, an organization duly established under Swiss law and with its registered seat at L’Ancienne Route 17A, 1218 Le Grand-Saconnex, Switzerland (the “**EBU**”)

### **AND**

**[TO INCLUDE]** (the “**Lead Broadcaster**”)

(each individually referred to as a “**Party**” and collectively as the “**Parties**”)

### **WHEREAS**

- A. The EBU’s governing television committee (the “**Television Committee**”), in its meeting of 29 November 2021, has agreed to allocate, as a loan, EBU funding up to a maximum total of CHF 500,000 (five hundred thousand Swiss Francs), which shall be used to finance the development of up to ten (10) Programmes (the “**Development Project(s)**”), with a maximum of CHF 50,000 (fifty thousand Swiss Francs) per Development Project (the “**Development Financing**”).
- B. The Television Committee has delegated to the Documentary Board the power to decide which Development Project(s) will receive Development Financing.
- C. During its meeting held on **[DATE TO INCLUDE]**, the Documentary Board has awarded Development Financing to the following Development Project:
- Name of the Development Project: **[TO INCLUDE]**
  - Name of the producer: **[TO INCLUDE]** (the “**Producer**”)
  - Expected delivery date for the development materials (the “**Deliverables**”, as defined under Annex 2): **[TO BE COMPLETED BY THE LEAD BROADCASTER]** (the “**Delivery Date**”)
- D. For the avoidance of doubt, it is acknowledged that the amount of Development Financing awarded by the EBU shall be deemed to be a loan to be reimbursed by the Lead Broadcaster to the EBU should the conditions set out in Clause 2.3 this Agreement be met.
- E. This Agreement describes the terms and conditions under which the EBU shall make available the Development Financing awarded by the Television Committee through the Documentary Board to the Development Project.

### **THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

#### **EUROPEAN BROADCASTING UNION**

L’Ancienne-Route 17A  
PO Box 45  
1218 Le Grand-Saconnex  
Geneva, Switzerland

## **1. PARTIES' RESPONSIBILITIES**

### **1.1 Lead Broadcaster**

The Lead Broadcaster shall:

- use the Development Financing solely for the purpose of funding the Development Project;
- be solely liable to reimburse the Development Financing to the EBU as per Clause 2.3 below;
- oversee the Development Project and regularly liaise with the Producer, in particular it shall be liable towards the EBU to ensure and guarantee that the Producer will use the Development Funding to develop and produce the Programme in accordance with the elements submitted to the Television Committee during the selection process of the Development Projects;
- supply the Deliverables (as described under Annex 2) to the EBU on the Delivery Date;
- report, upon request of the EBU, on the status (whether confirmed for production with or without involvement of EBU Members) of the Development Project until the Development Financing is entirely reimbursed, or the Agreement is otherwise fulfilled (as described under Section 2.3.).

### **1.2 The EBU**

The EBU shall:

- make available the Development Financing for the Development Project;
- and
- report to the TV Committee on the status of the Development Projects which have been awarded Development Financing.

For the avoidance of doubt, the EBU shall not be involved in the ongoing follow up of the Development Project with the Producer and shall not be involved in the negotiation of the agreement between the Lead Broadcaster and the Producer.

## **2. DEVELOPMENT FINANCING**

### **2.1 Amount Available**

The EBU agrees to make available the Development Financing in the amount of CHF [TO INCLUDE] to the Lead Broadcaster in consideration of the proper fulfilment by the Lead Broadcaster of its obligations under this Agreement.

### **2.2 Payment Terms**

The payment by the EBU to the Lead Broadcaster of the amount mentioned in Clause 2.1 above is subject to the signature by the Parties of this Agreement within a period of 3 months as from the date this Agreement is first submitted by the EBU to the Lead Broadcaster and the receipt by the EBU of a valid invoice from the Lead Broadcaster no later than six (6) months after the signature of the Agreement.

The Parties acknowledge and agree that if the Lead Broadcaster does not provide the invoice to the EBU within the above-mentioned six (6) months period, the EBU will no longer be liable

to make available the Development Financing.

The EBU shall pay the amount within [30 days] upon receipt of the invoice.

## **2.3 Reimbursement by the Lead Broadcaster**

The Lead Broadcaster having received Development Financing undertakes to and is solely liable for reimbursing in full to the EBU the amount of the Development Financing awarded to its Development Project if and when the necessary funding for the production of the Programme is secured (i.e. once sufficient financial commitment(s) from investor(s) to start the production of the Programme developed in the Development Project will have been obtained) and in any case by no later than the date of when principal photography starts.

For the sake of clarity, the Development Financing shall be reimbursed as soon as the production of the Programme is secured even if neither the Lead Broadcaster nor any EBU Member participate in the production.

The sum to be reimbursed to the EBU by the Lead Broadcaster shall amount to:

- **100%** of the Development Financing awarded if EBU Members are involved in the production of the Programme;
- or
- **120%** of the Development Financing if no EBU Members are involved in the production of the Programme.

For avoidance of doubt, the Development Financing shall not be reimbursed if the Programme is not produced. Should the Programme not eventually be produced, the Lead Broadcaster shall provide the EBU with all supporting documentation to that end, including an undertaking from the Producer to that end confirming that the production will not proceed failure to have obtain the required funding to produce the Programme.

The Lead Broadcaster shall inform the EBU as soon as the financing of the production is secured so that the EBU can issue its invoice with respect to such reimbursement. When reimbursing the Development Financing to the EBU, the Lead Broadcaster shall ensure that the EBU receives a net amount corresponding to the amount mentioned above in clause 2.2 and that no taxes or surcharges are deducted (including, but not limited to, any bank transfer fees or any other taxes, fees, or charges whatsoever).

The Lead Broadcaster shall reimburse the Development Financing within [30 days] upon receipt of the EBU's invoice.

## **3 INTELLECTUAL PROPERTY**

The Lead Broadcaster shall, in its development agreement with the Producer, secure from the Producer:

- 1) the right of first refusal for the Lead Broadcaster and the EBU Members listed in Annex 1 (the "EBU Option Members") to enter into agreements, e.g. license agreements, production agreement etc., for the production or broadcast of the Programme to be negotiated in good faith and under commercial terms comparable to those applicable in their country for similar television Programme;
- 2) that the Producer holds all the rights in the Development Project, including all copyrights, performing rights, neighbouring and other protective rights and all other rights required for

the exploitation of the Development Project in accordance with this Agreement and for the production of the Programme, and that none of these rights will under any circumstances revert to any third party.

- 3) that in consideration of the EBU's loan of Development Financing in the Development Project, all communications and promotional material about the Programme shall mention that the Programme has been developed with the support of the EBU, in a manner to be determined in good faith consultation between the EBU and the Lead Broadcaster. If logos of other supporting entities are included in promotional material, the EBU shall be offered the possibility to include its logo as well in a manner to be determined in good faith consultation between the EBU and the Lead Broadcaster.
- 4) Additionally, the Lead Broadcaster shall make best efforts, in its development agreement with the Producer, to secure from the Producer the same rights stated in 3.1 for all EBU Active and Associate Members (as mentioned on the EBU website at the time of the signature of the agreement: <https://www.ebu.ch/about/members>)

## **4 PRIVACY, DATA PROTECTION AND CONFIDENTIALITY**

### **4.1 Confidentiality**

The Parties agree, both during and after termination of this Agreement not to disclose any confidential information (including the terms of this Agreement) to any third party and not to use any confidential information, other than in the performance of their obligations under this Agreement, without the prior written approval of the other Party, in each case save for disclosure to their agents, legal advisers and auditors on a "need-to-know basis" or where disclosure is required by law or legal process. In case a disclosure by law or legal process is required, the receiving Party must first provide the disclosing Party with prompt notice of such request or requirement, unless notice is prohibited by law, in order to enable the disclosing Party to seek an appropriate protective order or other remedy or to waive compliance with the terms of this Agreement or both.

Without prejudice to the foregoing, the Parties agree to undertake whatever measures are reasonable and necessary to preserve the confidentiality of the content of this Agreement.

### **4.2 Personal Data Protection**

In relation to any personal data disclosed to either Party by the other, or otherwise accessed, collected or held by a Party in connection with this Agreement, the Parties, will each act as data controllers in their respective scope of competence and responsibility and mutually acknowledge that:

- each Party shall collect, use, disclose, store, transfer or handle the personal data only and exclusively for a purpose connected with this Agreement and strictly in accordance with applicable data protection and privacy laws, and in particular the EU General Data Protection Regulation 2016/679/EU ("**GDPR**")
- each Party shall be responsible for the processing it makes of such personal data and to inform its concerned data subjects about the processing of their personal data by the other Parties; for the avoidance of doubt, each Party shall be fully and solely responsible for complying with all applicable data protection and privacy laws (including the GDPR);
- each Party shall cooperate with any request or direction of the other Party which relates

to the protection of the personal data or any complaint concerning the use, disclosure, storage, transfer, or handling of the personal data;

- neither of the Parties shall be held responsible for any subsequent use, processing of personal data by the other Parties for their own purposes or for purposes other than those for which personal data were originally received;

- each Party shall indemnify and hold the other Parties harmless from any and all damages, charges, costs, expenses, disputes and/or claims that may be started by any interested parties and/or competent authorities arising from a violation of the undertakings under this Clause, the GDPR and/or other applicable local data protection laws and regulations;

- at the signature of this Agreement, that no personal data processing under article 28 of the GDPR is performed by one Party on behalf of the other ones in the framework of this Agreement. In the event a Party has to process personal data as a processor acting on behalf of the other Parties considered as controller, the conditions of Article 28 of GDPR shall be met and a data processing agreement negotiated and signed.

## **5**     **LIABILITY**

The EBU shall have no liability whatsoever under this Agreement, except to pay the Lead Broadcaster the Development Funding subject to the Lead Broadcaster complying with the terms of this Agreement.

The Lead Broadcaster shall indemnify and hold the EBU harmless from any claims, liabilities, demands, causes of action or damages (including reasonable lawyers' fees) and expenses arising out from a third-party claim (including from the Producer) in relation to the Development Project.

The Lead Broadcaster to which the Development Financing has been paid shall be solely liable towards the EBU to reimburse such Development Financing to the EBU according to the terms set out herein.

The EBU shall have no liability in case of disagreement between the Lead Broadcaster and the Producer.

The Lead Broadcaster shall be liable for the fulfillment of this Agreement.

## **6**     **DURATION AND TERMINATION**

This Agreement shall enter into force upon signature by the Parties and shall automatically terminate upon the entire reimbursement of the Development Financing by the Lead Broadcaster in accordance with Clause 2.3 above (the "**End Date**").

This Agreement shall be signed within the 3 months from the date this Agreement is first submitted by the EBU to the Lead Broadcaster otherwise it will be deemed that the allocation of the Development Financing is not needed anymore for the Development Project, and the Development Financing will no longer be available without a new successful application being filed for the Development Project following the above described process.



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This Agreement may be terminated at any time by the mutual agreement of the Parties, if the Parties agree in their respective reasonable opinion that the Programme will not eventually be produced, such non-production to be evidenced by the Lead Broadcaster as per clause 2.3.

If one Party breaches its obligations (the "**Defaulting Party**"), this Agreement may be terminated provided that the breach having been notified to the Defaulting Party has not been rectified by it within 30 days of such notification. For the sake of clarity, if the breach consists in the non-delivery of the Deliverables as per the terms of this Agreement, the Lead Broadcaster shall be liable to reimburse in full the Development Funding.

### **7** **ASSIGNMENT**

This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective successors and assigns. The Lead Broadcaster shall not be entitled to assign its rights and obligations under this Agreement but is allowed to sub-contract any of its rights or obligations hereunder. The Lead Broadcaster shall remain entirely liable towards the EBU for ensuring that any of the sub-contractors it may appoint comply with all the terms of the Agreement.

### **8** **NO PARTNERSHIP**

Nothing contained in this Agreement and no action taken by any Parties shall be deemed to create any partnership, agency, or other association between them, and none of the Party shall have any authority to bind the in any way.

### **9** **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with Swiss law. The courts of the Canton of Geneva, Switzerland, shall have exclusive jurisdiction.

### **10** **NOTICES**

All notices and communications made under this Agreement shall be addressed by email to:

- For the EBU: [tv@ebu.ch](mailto:tv@ebu.ch)
- For the Lead Broadcaster: **[TO INCLUDE]**



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The Parties agree that the Agreement may be executed in several counterparts by the Parties and each counterpart shall when executed and delivered be an original document, but all counterparts shall together constitute one and the same instrument. Executed copies (either by hand and/or digitally and/or by a scanned signature) of the Agreement transmitted electronically in “portable document format” (PDF) [or similar means of transmission, such as “tagged image format file” (TIFF)] shall be treated as originals, fully binding and with full legal force and effect, and the Parties waive any rights they may have to object such treatment.

**IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in 2 original copies by their duly authorized representative(s).**

**On behalf of the European Broadcasting Union**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: [DATE]  
Matthew Trustram  
Head of TV

Jean Philip De Tender  
Deputy Director General/Director Media

**On behalf the Lead Broadcaster [NAME OF ORGANISATION]**

Signature: \_\_\_\_\_

Date: [DATE]  
Name: [•]  
Title: [•]

## ANNEX 1 — EBU Option Members

The organizations mentioned below shall benefit from the option to produce the Programme resulting from the development work financed under this agreement in accordance with the terms of article 3 (Intellectual Property).

- **EBU Option Members:**

Oesterreichischer Rundfunk (ORF), an organization duly registered under the laws of Austria and with its seat at Würzburggasse 30, WIEN, Austria (“**ATORF**”)

Special Broadcasting Service (SBS), an organization duly registered under the laws of Australia and with its seat at 14 Herbert Street, ARTARMON NSW 2064, Australia (“**AUSBS**”)

Radio-Télévision Belge de la Communauté Française (RTBF), an organization duly registered under the laws of Belgium and with its seat at Boulevard A. Reyers, 52, BRUXELLES, Belgium (“**BERTBF**”)

Vlaamse Radio en Televisieomroep (VRT), an organization duly registered under the laws of Belgium and with its seat at Auguste Reyerslaan, 52, BRUSSELS, Belgium (“**BEVRT**”)

Radiotelevisione Svizzera (SRG/RSI), an organization duly registered under the laws of Switzerland and with its seat at Casella Postale, LUGANO, Switzerland (“**CHRSI**”)

Radio Télévision Suisse (SRG/RTS), an organization duly registered under the laws of Switzerland and with its seat at 20 Quai Ernest-Ansermet, GENEVE 8, Switzerland (“**CHRSTS**”)

Schweizer Radio und Fernsehen (SRG/SRF) an organization duly registered under the laws of Switzerland and with its seat at Fernsehstrasse 1-4, 8052 ZURICH, Switzerland (“**CHSRF**”)

Ceska Televize (CT), an organization duly registered under the laws of Czechia and with its seat at Kavci Hory, PRAHA 4, Czechia (“**CZCT**”)

Bayerischer Rundfunk (ARD/BR), an organization duly registered under the laws of Germany and with its seat at Rundfunkplatz 1, MUENCHEN, Germany (“**DEBR**”)

Norddeutscher Rundfunk (ARD/NDR), an organization duly registered under the laws of Germany and with its seat at Rothenbaumchaussee 132-134, HAMBURG, Germany (“**DENDR**”)

Südwestrundfunk (ARD/SWR), an organization duly registered under the laws of Germany and with its seat at Neckarstrasse 230, STUTTGART, Germany (“**DESWR**”)



Zweites Deutsches Fernsehen (ZDF), an organization duly registered under the laws of Germany and with its seat at ZDF- Str. 1, Mainz, Germany (“**DEZDF**”)

Danish Broadcasting Corporation (DR), an organization duly registered under the laws of Denmark and with its seat at DR Byen, Copenhagen, Denmark (“**DKDR**”)

Radiotelevision Espanola (RTVE), an organization duly registered under the laws of Spain and with its seat at Avenida de Radiotelevision, 4, 28223 Pozuelo de Alarcon, MADRID, Spain (“**ESRTVE**”)

Oy Yleisradio Ab (YLE), an organization duly registered under the laws of Finland and with its seat at Radiokatu 5, HELSINKI, Finland (“**FIYLE**”)

Arte (ARTE), an organization duly registered under the laws of France and with its seat at 4, Quai du Chanoine Winterer, STRASBOURG CEDEX, France (“**FRARTE**”)

France Télévisions (GRF/FT), an organization duly registered under the laws of France and with its seat at 7, Esplanade Henri de France, PARIS CEDEX 15, France (“**FRFT**”)

British Broadcasting Corporation (BBC), an organization duly registered under the laws of United Kingdom and with its seat at Broadcasting House, LONDON W1A 1AA, United Kingdom (“**GBBBC**”)

Raidio Telefis Eireann (RTE), an organization duly registered under the laws of Ireland and with its seat at Donnybrook, DUBLIN 4, Ireland (“**IERTE**”)

Teilifis na Gaeilge (TG4), an organization duly registered under the laws of Ireland and with its seat at Baile na hAbhann, CO. NA GAILLIMHE, Ireland (“**IETG4**”)

Ríkisutvarpid (Icelandic National Broadcasting Service) (RUV), an organization duly registered under the laws of Iceland and with its seat at Efstaleiti 1, REYKJAVIK, Iceland (“**ISRUV**”)

Radiotelevisione Italiana (RAI), an organization duly registered under the laws of Italy and with its seat at Viale Mazzini 14, 00195 Rome, Italy (“**ITRAI**”)

Vereniging AVROTROS (NPO/AVRO), an organization duly registered under the laws of Netherlands and with its seat at Witte Kruislaan 55, HILVERSUM, Netherlands (“**NLAVRO**”)

Vereniging De Evangelische Omroep (EO) (NPO/EO), an organization duly registered under the laws of Netherlands and with its seat at , HILVERSUM, Netherlands (“**NLEO**”)

NTR (NPO/NTR), an organization duly registered under the laws of Netherlands and with its seat at Wim T. Schippersplein 5 (Mediapark), HILVERSUM, Netherlands (“**NLNTR**”)

Omroepvereniging VPRO (NPO/VPRO), an organization duly registered under the laws of Netherlands and with its seat at , HILVERSUM, Netherlands (“**NLVPRO**”)



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Norsk Rikskringkasting AS (NRK), an organization duly registered under the laws of Norway and with its seat at Bjørnstjerne Bjørnsons Plass 1, OSLO, Norway (“**NONRK**”)

Sveriges Television Ab (STR/SVT), an organization duly registered under the laws of Sweden and with its seat at Oxenstiernsgatan 26-34, STOCKHOLM, Sweden (“**SESVT**”)

**EUROPEAN BROADCASTING UNION**

L'Ancienne-Route 17A  
PO Box 45  
1218 Le Grand-Saconnex  
Geneva, Switzerland

## ANNEX 2

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### Deliverables (TO BE COMPLETED BY THE LEAD BROADCASTER)

<b>Development plan</b>	<b>Development budget</b>	
	<b>Deliverables</b> <i>Lead Broadcaster to indicate the elements of the development dossier to be delivered to the EBU</i>	1/
		2/
		3/
		4/
		5/
		6/
		7/