

POW STUDIOS LIMITED – Standard Terms and Conditions

Definitions

“Agreement” means this Agreement and any amendments to this Agreement made by POW from time to time;

“Client” means the party recorded as the Client in any Estimate provided by POW;

“Confidential Information” means all information provided at any time by the Client to POW in connection with the Services (including, without limitation, all materials, information, digital images and video, trademarks, copyright, registered designs, trade secrets, and all other intellectual property and other data relating to the Client);

“Estimate” means an estimate price and timeframe for the Services which is provided by POW to a client;

“Force Majeure Event” means an event beyond the reasonable control of a party, which may include, for example:

- (a) acts of God, lightning strikes, earthquakes, tsunamis, volcanic eruptions, floods, storms, explosions, fires and pandemics;
- (b) acts of war (whether declared or not), invasion, actions of foreign enemies, military mobilisation, requisition or embargo; or
- (c) strikes or other industry disturbance, acts of public enemies, terrorism, riots, civil commotion, malicious damage, insurrection, revolution or military usurped power or civil war,

but does not include an increase in prices or other general change in economic conditions or a change in law;

“Handover Specifications” means the specifications set out in Schedule A;

“POW” means Pow Studios Limited (Company number 5549465);

“Production” means the specific project being undertaken by a Client and includes any Services to be performed and delivered by POW towards the completion of the Production;

“Services” means the services to be performed and delivered by POW and more specifically detailed in the Estimate which may specify the scope of services.

1. Acceptance

- 1.1. All Services carried out by POW are subject to the terms of this Agreement. This Agreement will apply to all Estimates and the performance and delivery of Services by POW where an Estimate has been accepted by a Client.
- 1.2. POW reserves the right to update, amend or replace the terms of this Agreement at any time in its sole discretion. The amended Agreement will apply to all Estimates and the performance and delivery of Services with effect from the date POW notifies the Client of such amendments.

2. Services

- 2.1. Prior to the commencement of a job, POW will not proceed to perform or deliver any Services without first providing an Estimate to the Client. The parties acknowledge and agree that the Services are defined and outlined in the Estimate. POW may also provide a separate document to the Client which sets out the scope of work and/or deliverables as agreed between the parties before the commencement of a job.
- 2.2. Upon acceptance of an Estimate by the Client, POW will perform and deliver or arrange for the performance and delivery of the Services professionally and in accordance with good industry practice.
- 2.3. The Client acknowledges that POW may subcontract certain parts of the Production and/or the Services to third parties and that the Client's consent is not required. POW will retain overall responsibility for the performance and delivery of Services by third parties.
- 2.4. The Client acknowledges and agrees that POW can only meet the timeframe (as set out in the Estimate) for the Production if the Client delivers its material and required information within the timeframes outlined in the Handover Specifications or Estimate and to an acceptable standard in compliance with the Handover Specifications.
- 2.5. For the purposes of this Agreement, "delivery" of material(s) shall be by physical hard drive delivery or by online downloadable link.

3. Fees

- 3.1. Where Services are delivered to the Client in accordance with the agreed Estimate, POW will invoice the client for the fees payable by the Client. The fees will be paid in full by the Client no later than the due date as stated in the invoice issued for the completed Services. The fees exclude GST (and any other relevant taxes and duties (if any)) which will be payable by the Client in addition to the fees.
- 3.2. Late payment of POW's invoice will result in interest being charged at a rate of 5% per annum calculated on a daily basis and invoiced monthly. Interest will be charged on all overdue amounts until full payment has been received by POW, but without prejudice to POW's other rights or remedies.
- 3.3. Any mutually agreed cost overruns will be invoiced at the end of the Production or on completion of the Services (whichever is applicable).
- 3.4. Subject to any provision to the contrary in this Agreement, the fees for the Services are an estimate and any variation will be based on actual hours completed and include all direct cost disbursements such as travel and materials incurred by POW in the course of delivering and performing the Services unless otherwise agreed by the Client.
- 3.5. The parties acknowledge that the fees outlined in the Estimate are based on the assumption that the Client's materials are of an acceptable standard and able to be worked on immediately and that the materials comply with POW's Handover Specifications.
- 3.6. The Client acknowledges that the costs of any additional work required to bring the materials up to an acceptable standard or in compliance with the Handover Specifications will be in addition to the fees set out in the Estimate and the Client is responsible to pay these additional fees.

4. Confidentiality

- 4.1. The Confidential Information is the trade secret and sole and exclusive property of the Client and except as provided by this Agreement does not confer on POW any interest or license in the Confidential Information.
- 4.2. POW will use the Confidential Information solely for the purposes of delivering the Services in

accordance with the terms of this Agreement.

- 4.3. POW will establish and maintain security measures and exercise such adequate control over the Confidential Information as is necessary to protect it from unauthorised disclosure.
- 4.4. POW shall not disclose, divulge or impart to any person any Confidential Information with respect to the Production or the Services (including but not limited to the existence of the same) except if:
- (a) to such of its employees, agents or subcontractors on a "need to know" basis where required to perform and deliver POW's obligations under this Agreement;
 - (b) the Confidential Information must be disclosed by law;
 - (c) the Confidential Information was known to the recipient on the date of its receipt; or
 - (d) the Confidential Information was in the public domain on the date of its receipt or entered the public domain after the date of its receipt other than by an unauthorised disclosure by a party or any other person.
- 4.5. If requested by the Client, POW will immediately return all Confidential Information to the Client (including all copies) and will destroy all documents prepared by POW or its employees, agents or subcontractors which incorporates any part of the Confidential Information, and POW will confirm in writing that such destruction has taken place.
- 4.6. In the event that POW gains knowledge of any breach or anticipated breach of the non-disclosure and confidentiality provisions under this clause in relation to the Confidential Information, it will promptly give written notice of such to the Client.
- 4.7. POW will remain bound by the non-disclosure and confidentiality provisions contained in this Agreement in perpetuity or until the Confidential Information enters the public domain.

5. Intellectual Property

- 5.1. POW warrants that all intellectual property rights which are created under the terms of this Agreement will be delivered to the Client free from any encumbrances, including but not limited to being free from infringements of third party rights in the intellectual property.
- 5.2. Subject to clause 6.6, POW agrees to transfer the ownership of all intellectual property rights created in the performance and delivery of the Services, together with the worldwide copyright in the same, to the Client for the sole purpose of being used by the Client for the Production or the Client's intended project.
- 5.3. POW acknowledges that the Client acquires all the intellectual property rights created under the terms of this Agreement for its commercial purposes and agrees not to object to any such use on the basis of any moral right.
- 5.4. Each party acknowledges that all information, documentation or data ("Information") which may be supplied or made available by one party to the other in the course of POW performing and delivering the Services, is the property of the party providing the Information and all intellectual property rights in such Information is the property of the person providing the Information.
- 5.5. The Client warrants that the materials and information provided to POW in relation to the Services and Production do not infringe any protected right, including any trademark, copyright or intellectual property rights. The Client agrees to indemnify POW against any loss or liability which may arise due to any breach of this clause.
- 5.6. The parties agree that POW retains a irrevocable licence in all intellectual property rights created in

the performance and delivery of the Services for the purpose of promoting and marketing POW's services to potential clients (including on POW's website) and the Client acknowledges that POW is not required to compensate the Client for any use of its intellectual property rights as permitted under this clause.

6. Liability

- 6.1. The parties agree that POW is only liable to the Client for reasonably foreseeable damages, losses, liabilities or expenses caused directly by POW's breach of this Agreement. In the event that POW has breached this Agreement, the Client's remedies will be limited to damages and under no circumstances will POW's liability exceed the total fees actually paid by the Client and received by POW under this Agreement.

Except as provided for under this clause, POW is not liable to the Client or any person or entity for any indirect, special or consequential damages whatsoever or any economic loss (including, without limitation, damages for loss of business, business interruption, lost profits or gains, or loss of reputation or business opportunity) arising out of or in relation to the performance or delivery of the Services delivered under this Agreement.

- 6.2. Any limitation of liability provided for under this clause does not apply to the extent that any legislation prevents the parties from limiting their liability.

7. Indemnity

- 7.1. POW agrees to indemnify the Client against all actions, claims, costs, demands, liabilities, losses, payments and proceedings incurred or suffered by the Client that may arise by or as a consequence of any breach of this Agreement by POW, including but not limited to unauthorised use or disclosure by POW of Confidential Information.
- 7.2. The Client agrees to indemnify POW against all actions, claims, costs, demands, liabilities, losses, payments and proceedings incurred or suffered by POW that may arise by or as a consequence of POW carrying out its obligations under this Agreement or due to any breach of this Agreement by the Client, including but not limited to the Client's warranty under clause 6.5.

8. Force Majeure Event

- 8.1. If the performance of either parties' obligations is prevented, restricted or interfered with because of a Force Majeure Event, neither party shall be liable to the other to perform its obligations under this Agreement.
- 8.2. A party who is unable to perform any obligation under this Agreement as a result of a Force Majeure Event must:
- (a) take reasonable steps to mitigate the effects of its non-performance on the other party; and
 - (b) give notice to the other party as soon as reasonably practicable after it becomes aware that there is a material risk that it will not be able to perform an obligation; and
 - (c) work together with the other party to best accommodate the effect of any Force Majeure Event.

9. Notices

- 9.1. All notices to POW shall be in writing and sent to the relevant address:

Full legal name:

POW Studios Limited

Business address:	Level 1, 13 – 15 Adelaide Road, Mt Cook, Wellington 6021
Mailing address:	10 Sutherland Crescent, Melrose, Wellington 6023
Telephone (business):	021 381 183
Mobile:	021 381 183
Email address:	john@powpost.co.nz
Contact person:	John McKay

9.2. All notices are deemed to have been effectively given or made:

- (a) if delivered personally, by handing the document to the person;
- (b) if by post, five (5) business days following postage in the mail; or
- (c) if sent by email, on the business day following the day on which it was sent,

provided, however, that a notice sent or delivered on a day which is not a business day shall be deemed to be received the next business day.

10. Dispute Resolution

10.1. If there is any dispute or difference which may arise between the parties in relation to this Agreement, the parties agree to use their best efforts and negotiate in good faith to resolve or settle the dispute or difference.

10.2. If the parties cannot resolve the dispute or difference between themselves within five (5) business days of the dispute or difference arising, either party may give written notice to the other party referring the dispute to a mediator to be appointed by the parties. If the parties are unable to agree on a mediator, the mediator will be appointed by the President (or his/her nominee) for the time being of the New Zealand Law Society.

11. General terms

11.1. **Entire Agreement:** This Agreement, together with the Schedules, represents the entire agreement between the parties and supersedes all prior negotiations, representations, discussions and agreements as to the subject matter of this Agreement.

11.2. **Severability:** If any provision of this Agreement is or becomes invalid or unenforceable, that provision shall be deemed deleted from this Agreement and such invalidity or unenforceability shall not affect the other provisions of this Agreement, all of which shall remain in full force and effect to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provisions.

11.3. **Waiver:** Any failure of POW to insist upon strict performance of any term of this Agreement shall not be taken to be a waiver of that term or of any of POW's rights in relation to that term and in any event, shall not be taken to be a waiver of the same term on any subsequent occasion.

11.4. **Variation:** No variation or modification to any terms of this Agreement will be effective unless made in writing and signed by all the parties.

11.5. **Governing law:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

11.6. **Client Warranty:** The Client warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so (where relevant), it is not insolvent, and that

this Agreement creates binding and valid legal obligations on the Client.

Schedule A

Handover Specifications

AVID

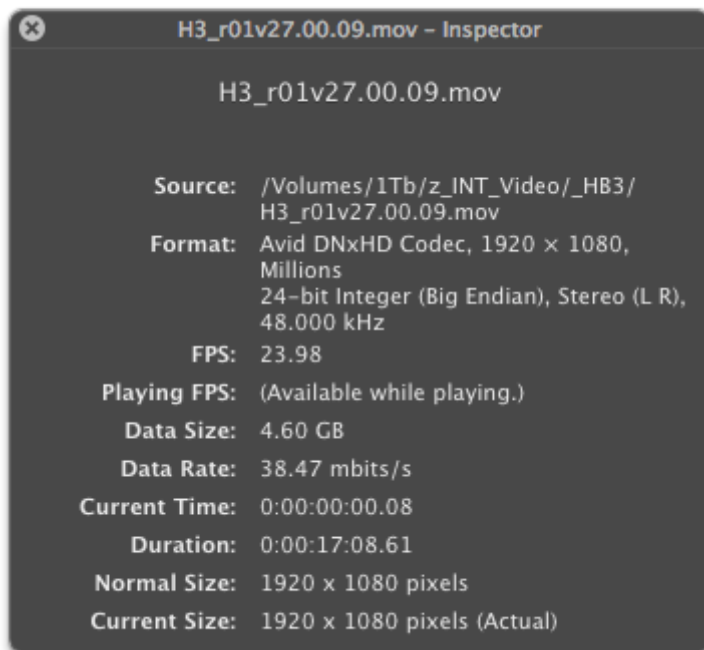
Specifications for delivering material to POW Studios for Sound Editorial and Sound Design completion. This Handover spec is for an AVID/Pro Tools interchange incorporating Field Recorder Workflow from sound files ingested as AVID MXF files. If you are working in another Editing System like Premiere, please contact us before preparing your Handover.

VIDEO

QUICKTIME .MOV File

AVID CODEC: Avid DNxHD Codec, 1080p (10 bit_36)

FCP CODEC :ProRes 422(LT) Codec,1080p



Example of Quicktime stream info:

A Feature film shot at 23.976 fps

Bit Rate: 37.68 Mbps

Video Tracks:

Avid DNxHD Codec, 1920 × 1080,
23.98fps, 36.14 Mbps

Audio Tracks:

24-bit Big Endian stereo, 48 kHz

Audio to be a mix track of Avid AAF Dialogue. Guide Tracks (DX, FX, MX) as separate audio .wav files.

COMMON TO ALL SHOWS

1. SMPTE HEAD AND TAIL LEADERS WITH SYNC POPS across all tracks - Can Supply Leaders
2. FIRST FRAME OF VIDEO = PIC START of SMPTE leader as per below pic.
3. BURN IN ORIGINAL SLATE and ORIGINAL TIMECODE per shot
4. BURN IN DATE OF OUTPUT and MASTER TIMECODE
5. BURNS IN sized and created similar to below example.
6. WATERMARKS as per Production legal Requirements

SERIES:

1. An INDIVIDUAL VIDEO PER episode for a TV or WEB series
2. VIDEO labelled as per OUTPUT VERSION: Show, episode, version, VFX update.

3. For example, the show title is NORI and the three letter shortened version is NOR. The output version would read: NOR_eXXvXX.XX if it was episode 3, version 2 the burn in would read: NOR_e03v02.00.

4. A VFX update to this episode, with no edit change, would be NOR_e03v02.01.

FILMS OR ONE OFF SHOW

5. The output version would drop the episode requirement and read like this: NOR_v02.00.

6. Please note if the output is in reels in the case of a film it would become: NOR_r01v02.00. Film reel output in the age of DCP has declined to the extent that POW have not worked in reels for some time.



ADDITIONAL HELPFUL BURN IN

A handy and helpful BURN IN is the Shoot Day as below - this enables the Dialogue Editor to easily access Alternative takes from the shoot. The Shoot Day in the top left of frame is Shoot Day 2 = SD2.



ADVANCED AUTHORING FORMAT (AAF) EDIT OUTPUTS

1. AUDIO BIT DEPTH : 24
2. AUDIO SAMPLE RATE: 48000
3. AUDIO FILE TYPE: BWF (.WAV)
4. TIMECODE FRAME RATE: FPS as specified by Production Standard
5. VIDEO FRAME RATE: FPS as specified by Production Standard
6. Dialogue tracks isolated from any temp effects or music added during the edit period.
7. TRACK LAYOUT: Dialogue 1-8, FX 9-16, Music 17-24
8. AAF export type = Link to media not embedded or consolidated
9. A separate sync AAF, where each shot has it's ACTUAL corresponding audio (just a single audio track) to cover any alts/sync cheats.

EDLS

Why EDLs? Video edls are a cornerstone requirement for conforming material in re-conform programmes like Conformalizer, EdiLoad and Virtual Katy. So, if your show is going through several versions EDLs are an essential item.

1. A red16 or file32 EDL for each VIDEO track, or flattened EDL for the sequence (tick box: merge selected tracks). Labelled as per the video file. (CMX3600 allows only 8 ASCII characters in the source name so use file32)
2. Include the 'source' and the 'clipname' as a comment line.
3. We rely on the source field and/or clipname for tracing shots. If you rename clips or rolls, we will fail to trace the shot.
4. Do not include any transitions or effects in the comments, only the 'from clip name' field.
5. Separate EDL for Dialogue tracks, FX tracks and Music Audio tracks.

PAPERWORK

1. Sound Recordist logs in PDF and CSV format - in CSV we can ingest into our online document system easily.
2. Marked up script

SOURCE AUDIO FILES

Original Audio files and all Avid MXF Audio Files including audio bins. MXF Files are vital for re-linking to Original file and accessing all the iso multitrack recordings. This is vital and the biggest headache in Sound Post (and consumes your budget and schedule) if not done correctly. This is the essential handover step in the Avid Field Recorder Workflow. Done right it is a thing of beauty.

FIELD RECORDER WORKFLOW REFERENCES

[How to keep your sound editor happy! REQUIRED READING](#)

[Production sound workflow video](#)

OTHER EDIT SYSTEMS

ADOBE PREMIERE PRO, APPLE FCX are all other professional systems utilised by Picture Editors. I would advise if you are shooting a drama with extensive multitrack recording - editing in AVID would be preferable so you can take full use of the Field Recorder Workflow. That said we have successfully completed post production on documentaries that have been edited on Premiere Pro. Below are the suggested AAF settings. Important that the whole file render is ticked this gives us the longest audio handles to work with.

AAF Export Settings

Mixdown video

Use tape sources when present

Breakout to Mono

Enable

Render audio clip effects

Include clip copies without effects

Sample Rate: 48000

Bits per Sample: 24

Files: Separate Audio

Preserve media directory name

Format: Broadcast Wave

Render: Copy Complete Audio Files

Handle Frames: 0

Cancel OK

John McKay
Supervising Sound Editor
POW Studios Limited
021 381 183
01/04/2020