

# Standard Terms and Conditions of Funding

## 1. INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context indicates otherwise:

**Agreement** means this Agreement including the background recitals and the Contact Details Schedule, Drawdown Schedule and the Production Schedule;

**AMCOS** means the Australasian Mechanical Copyright Owners Society Limited;

**Ancillary Rights** means broadcasting and narrow casting rights, rights to transmit on demand, merchandising and promotional rights, stage and theatrical rights, music publishing rights in any media and all performance rights in relation to the Programme and the right to produce and exploit any audio, visual, audio and visual, computer generated, multimedia, electronic or mechanical work based on, or derived from, or inspired by the Programme and includes the Format Rights;

**Approved Budget** means the budget prepared by the Producer for the production of the Programme including all the costs related to the production of the Programme as set out in Schedule 2;

**Approved Māori Language Plan** means the plan prepared by the Producer and supplied as part of the funding proposal;

**APRA** means the Australasian Performing Right Association;

**Platform Agreement** means the licence to broadcast, transmit digitally or make available online and any agreement and/or agreements between the Platform and the Producer confirming the terms on which the Platform is granted the right to broadcast or make available the Programme for the Licence Period;

**Platform Commitment** means a signed commitment in favour of Te Māngai Pāho from the Platform to broadcast or make available the Programme, being in a form approved by Te Māngai Pāho;

**Business Day** means a day (other than Saturday or Sunday, or a national statutory public holiday) on which registered banks are open for normal over-the-counter banking business in Wellington;

**Condition** means a condition (if any) recorded in paragraph 9 of the Contract Details Schedule; **Condition Date** means one (1) week after execution of this Agreement by both parties;

**Contract Details Schedule** means Schedule 1 fo this Agreement;

**Contract Period** means the period recorded in Schedule 1, Contract Management and Personnel;

**Deliverable** means in respect of each Milestone a deliverable required to be delivered by the Producer for that Milestone in accordance with the Drawdown Schedule;

**Delivery Date** means the date recorded in the Drawdown Schedule by which the completed Programme is required to be delivered or such later date as may be approved by Te Māngai Pāho in its discretion and for the avoidance of doubt where the Programme is comprised of a number of episodes, the Delivery Date means the date by which the last episode of the Programme is required to be delivered in accordance with the Drawdown Schedule;

**Distribution Rights** means the right to promote, use, sell, license or otherwise exploit and to authorise the promotions, use, sale, licensing distribution or exploitation of all or any part of the Programme, the Television Rights and all the Ancillary Rights including Internet and Mobile platforms;

**Drawdown Schedule** means the schedule titled Drawdown Schedule attached as Schedule 2 to this Agreement;

**Event of Default** means any of the events described in clause 15;  
**Field Material** means footage and all materials produced by the Producer during the production of the

**Final Report** means the final production report to be delivered to Te Māngai Pāho by the Producer under clause 9.2;

**Format Rights** means the right to produce and exploit (or to authorise the production and exploitation of) programmes based on the Programme and/or the same themes, situation, concepts, incidents and principal characters and including the right to use the scripts and storylines for the Programme adapted and varied as necessary for the viewing audience in the country of production and initial exploitation;

**Funder** means the entity that is a party to this Agreement and referenced as Te Māngai Pāho;

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985;

**High Quality** means a quality which ensures that all elements of the Programme, including all te reo Māori elements of the Programme, the fidelity of the soundtrack, all visual images, the theme, tone and ethos are of high quality in every respect and in accordance with the highest technical and artistic standards so that the Programme is suitable for distribution in New Zealand and overseas, the standard will not have been met if the operator of an intended platform refuses to make any of the content available on that platform because of its technical quality.

**Initial Payment** means the instalment of Te Māngai Pāho Funding identified in the Drawdown Schedule as the Initial Payment (if any);

**Instalment** means an instalment of the Te Māngai Pāho Funding recorded in the Drawdown Schedule and in respect of each Milestone, the instalment of the Te Māngai Pāho Funding recorded alongside that Milestone in the Drawdown Schedule;

**Intellectual Property Rights** means patents, registered designs, innovation patents, utility models, trademarks (including logos and trade dress), domain names, copyright, circuit layouts, rights in computer software and databases, rights in inventions, confidential information, know-how and trade secrets, all rights in the notes, score and lyrics of music or songs and in treatments and scripts and all other intellectual property rights, in each case whether registered or unregistered (including applications for the grant of any of the foregoing) and all rights or

forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;

**Key Production Personnel** means a person identified as a key person in paragraph 4 of the Contract Details Schedule; Milestone means a milestone listed in the Drawdown Schedule;

**Licence Period** means the licence period recorded in paragraph 6 of the Contract Details Schedule; Platform means the platform recorded in paragraph 6 of the Contract Details Schedule;

**Māori Language Plan** means a plan prepared by the Platform setting out the language outcomes, targets, and outputs for the financial year, including details listed under clause 11 of this Agreement;

**Milestone** means a milestone recorded in Schedule 2;

**Moral Rights** means the rights created by Part IV of the Copyright Act 1994, and includes any similar or equivalent rights anywhere in the world;

**Performance Data** is any information which supports the ability of Te Māngai Pāho to determine and analyse the distribution, audience or other performance aspect of the content created with this Funding.

**Pilot Programme** means a standalone episode of a television series that is used to sell a show to a television network or other distributor.

**Producer** means the entity that is a party to this Agreement that is funded by Te Māngai Pāho and oversees and/or coordinates one or more aspects of audio or visual content production.

**Producer's Personnel** means all employees, agents and contractors of the Producer involved in producing, marketing, selling or distributing the Programme including the Key Personnel;

**Production Account** means the Producer's bank account recorded in Schedule 1;

**Production Assets** means any equipment or other tangible assets purchased in accordance with the Approved Budget for the purpose of the production of the Programme;

**Programme Specifications** means the specifications recorded in 2. Description of Funding and Deliverables, Schedule 1;

**Programme** means the television programme product based on the Proposal having the programme specifications recorded in paragraph 2 of the Contract Details Schedule and where the programme comprises a number of episodes, each episode of that programme;

**Programme WIP** means, at any time prior to completion of the Programme and delivery to the Platform in accordance with the Drawdown Schedule, the Programme (in its then current state) together with all treatments, scripts, film and other materials produced or acquired by the Producer in relation to the Programme and the Intellectual Property Rights comprised in, or relating to, the Programme;

**Progress Report** means a progress report to be delivered to Te Māngai Pāho by the Producer under clause 9.1;

**Proposal** means the submission provided by the Producer as part of the funding application process;

**Recorded Music New Zealand Limited** means a duly incorporated company having its registered office at Level 1, 2a Hakanoa Street, Grey Lynn, Auckland, New Zealand;

**Requestor** means the entity that is a party to this Agreement requesting sponsorship contributions from Te Māngai Pāho.

**Screenrights** means The Audio Visual Copyright Society (a society incorporated in Australia);

**Special Conditions** means the special conditions (if any) recorded in paragraph 9 of the Contract Details Schedule;

**Script Development** means the process by which a script is initially drafted, edited and then developed into a final shooting script.

**Sponsor** means the entity that is a party to this Agreement providing a financial contribution to a sponsored event or activity.

**Sponsorship** means that Te Māngai Pāho will contribute to the cost of an event or activity in exchange for publicity and promotion of Te Māngai Pāho.

**Sponsorship Package** means the document provided by the Requestor outlining the amount of financial contribution requested from potential sponsors, sponsorship levels and benefits and details about the event or activity.

**Standard Terms and Conditions of Funding** means these standard terms of funding;

**Start Date** means the date recorded in Schedule 1, Contract Management and Personnel;

**Television Rights** means the right to broadcast or transmit the Programme by way of television, televisual exhibition, closed circuit video, or any other audio-visual transmission (in all forms now known or as may be developed in the future) either on a free or pay basis or any other electronic manner, including transmission by means of cable, satellite, SMATV, microwave, MMDS, digital territorial television, DSL, ADSL, xDSL, fibre, internet, IPTV delivery and mobile wireless technology; and

**Te Māngai Pāho Funding** means the funding recorded in Schedule 1.

**Te Reo Māori** means the Māori language;

**Vision, Values and Strategic Priorities of Te Māngai Pāho** means the Vision, Values and Strategic Priorities of Te Māngai Pāho as provided on page one (1) of this Agreement; and

**Year** means twelve (12) consecutive months commencing 1 July and ending the following 30 June.

**1.2. Rules of Construction:** In this Agreement, unless the context indicates otherwise:

- (a) **Headings:** clause and other headings are for ease of reference only and will not affect the interpretation of this Agreement;

- (b) **Plural and Singular:** the singular includes the plural and vice versa;
- (c) **Parties:** references to any party means a party to this Agreement;
- (d) **Clauses and Schedules:** references to:
  - (i) clauses are clauses in the Standard Terms of Funding; and
  - (ii) schedules and attachments are references to schedules and attachments to this Agreement with each such schedule and attachment forming part of this Agreement and the provisions and conditions contained in such schedules have the same effect as if they were set out in the body of this Agreement;
- (e) **Persons:** references to a person includes reference to an individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of state, government department and any public, territorial or regional authority, in each case whether or not having separate legal personality;
- (f) **Defined Expressions:** expressions defined in the main body of this Agreement have the same meaning throughout this Agreement including the background recitals and all other schedules;
- (g) **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (h) **Inclusive Opinions:** the terms includes or including (or any similar expression) is deemed to be followed by the words without limitation;
- (i) **Control:** references to one person being controlled by another person mean that the other person (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) has the power:
  - (i) to appoint and/or remove the majority of the members of the governing body of that person;
  - (ii) to appoint a member or members of the governing body of that person, with the power to exercise, or control the exercise of, more than 50% of the maximum number of votes that might be cast at a meeting of the governing body or the members of that person; or
  - (iii) to control, by any other means, the affairs and policies of that person, and control and change in control have corresponding meanings;
- (j) **Gender:** words importing one gender include the other gender;
- (k) **Monetary Amounts:** all monetary amounts are stated exclusive of GST and in New Zealand currency; and
- (l) **Statutes and Regulations:** references to any statutory provision are to statutory provisions in force in New Zealand and include any by law, references to regulations, statutory instruments, determination or subordinate legislation, orders or notices made under such statutory provision and any statutory provision regulation order or notice which amends or replaces it.

## 2. CONDITIONS AND SPECIAL CONDITIONS

2.1. **Conditions Precedent:** If there are any Conditions the obligations of Te Māngai Pāho under this Agreement are subject to those Conditions being satisfied on or before the Condition Date or the Conditions being waived by Te Māngai Pāho in accordance with clause 2.2.

2.2. **Benefit of Condition:** The Conditions are inserted for the sole benefit of Te Māngai Pāho and may be waived in whole or in part (and with or without conditions) by Te Māngai Pāho. No waiver will be binding on Te Māngai Pāho unless it is clearly expressed as a waiver of a condition of this Agreement and is in writing signed by the Chief Executive or a person with delegated authority for that purpose.

2.3. **Non-Satisfaction:** If the Condition is not satisfied by the Condition Date then Te Māngai Pāho may terminate this Agreement with immediate effect by written notice to the Producer, in which case this Agreement will end with the exception of clauses 9, 18, 19, 20, 21, 23.1, 23.3, 23.6 and the parties will be released from all future obligations under all other provisions of this Agreement. If any part of the Te Māngai Pāho Funding has then been paid to the Producer it must be held by the Producer on trust for Te Māngai Pāho and returned by 5pm on the next Business Day following termination of this Agreement by Te Māngai Pāho. For the avoidance of doubt Te Māngai Pāho will be under no obligation to provide any further funding to the Producer.

2.4. **No Deemed Approval:** Notwithstanding the delivery to Te Māngai Pāho of any documents or contracts or agreements entered into by the Producer, the Producer expressly acknowledges and agrees that Te Māngai Pāho's receipt and any review of such documents, contracts or agreements does not constitute approval of the arrangements or agreements by Te Māngai Pāho and does not in any way relieve the Producer from any of its obligations under this Agreement including securing all rights in the script to the Programme, Ancillary Rights and all Intellectual Property Rights and the waiver of Moral Rights, nor does it in anyway qualify the warranties given by the Producer under clause 11.1.

### 3. SPECIAL CONDITIONS

3.1. **Special Conditions:** If there are any Special Conditions, those Special Conditions will be binding on the parties in addition to these Standard Terms and Conditions of Funding and in the event of any inconsistency between Special Conditions and these Standard Terms and Conditions of Funding, the Special Conditions will prevail to the extent of the inconsistency.

### 4. TE MĀNGAI PĀHO FUNDING, DRAWDOWN AND EXPENDITURE

4.1. **Instalments:** Te Māngai Pāho will pay the Te Māngai Pāho Funding to the Producer by direct credit to the Production Account in the Instalments with each Instalment to be paid no later than five (5) Business Days following the completion date for the Milestone corresponding to that Instalment as recorded in the Drawdown Schedule, provided that:

- (a) **Deliverables:** the Producer has completed and delivered all Deliverables for the relevant Milestone;
- (b) **Reports:** except in the case of the Initial Payment, if any, the Producer has provided to Te Māngai Pāho:
  - (i) a completed Progress Report for the relevant Milestone, the Final Report, in a form which is as the case may be, satisfactory to Te Māngai Pāho in all respects, by the completion date recorded in the Drawdown Schedule for the relevant Milestone and such report complies with and has been approved by Te Māngai Pāho in accordance with clause 9; and

(ii) such access and additional information as Te Māngai Pāho may have requested under clauses 5.3, 5.4 and 9.7 from time to time;

(c) **No Events of Default:** there are no unremedied Events of Default; and

(d) **GST:** the Producer has provided Te Māngai Pāho with an appropriate tax invoice complying with the Goods and Services Tax Act 1985 for the relevant Instalment.

**4.2. No Entitlement To Additional Funding:** The Producer acknowledges that nothing in this Agreement will entitle the Producer to receive any additional money from Te Māngai Pāho and the Producer confirms it has no expectation of funding from Te Māngai Pāho except as is set out in this Agreement.

**4.3. Use of Funding:** The Producer must only use the Te Māngai Pāho Funding for the purposes of meeting the Producer's expenses recorded in the Approved Budget. The Producer may alter the allocation of expenditure on the Programme between the different cost centres in the Approved Budget provided that any changes to the Producer's fees or director's fees have the prior written approval of Te Māngai Pāho before any part of the Te Māngai Pāho Funding may be used to meet the cost of any increased Producer's fees or director's fees.

**4.4. Other Funding:** The Te Māngai Pāho Funding is the only money that may be deposited into the Production Account and the Producer agrees it must not mix any of the Te Māngai Pāho Funding received under this Agreement with any Producer funding or other funding. All unexpended amounts of Te Māngai Pāho Funding must be kept separate and identifiable at all times until the obligations of the Producer under this Agreement are completed.

**4.5. Ahead of Approved Budget:** If at any time that an Instalment is payable under this Agreement Te Māngai Pāho, (acting reasonably) considers that there are sufficient funds held in the Production Account to enable the Producer to meet immediate expenses identified in the Approved Budget, Te Māngai Pāho may stop, withhold, suspend, or delay the payment of any Instalment or alter the amount of any instalment payable.

**4.6. Funding Conditions:** Notwithstanding anything in this agreement to the contrary, Te Māngai Pāho will not be liable to provide Te Māngai Pāho Funding or any part of Te Māngai Pāho Funding, if:

4.6.1. Restructuring: government restructuring leads to a reduction or cessation of funds made available to Te Māngai Pāho;

4.6.2. Te Māngai Pāho Funding: the funding allocated to Te Māngai Pāho by the Government for the purpose of the contract ceases to be available or is reduced below the levels allocated, or agreed to be allocated, to Te Māngai Pāho as at the Commencement Date or during the Contract Period; or

4.6.3. Non-Performance: The Producer fails to perform its obligations under this Agreement or defaults in this or another agreement/s it may have with Te Māngai Pāho during the Contract Period.

4.6.4. Other Circumstances: any other circumstances arise that, in Te Māngai Pāho's opinion, prevent it from providing Te Māngai Pāho Funding or any part of Te Māngai Pāho Funding.

## 5. COMPLETION AND DELIVERY

5.1. **Completion of Programme:** The Producer must produce and deliver the Programme to the Platform and Te Māngai Pāho in accordance with the provisions of this Agreement.

5.2. **Drawdown Schedule:** Without limiting clause 6.1, the Producer must complete each Milestone and deliver all of the Deliverables for that Milestone in accordance with the Drawdown Schedule.

5.3. **Access to Observe:** Te Māngai Pāho or its representatives have the right (in addition to the rights set out in clause 9.7) at all reasonable times to visit any location where production of the Programme is being carried out to observe production of the Programme.

5.4. **Information and Meetings:** In addition to the reports and records the Producer must provide under clause 9, Te Māngai Pāho may from time to time require the Producer to:

- (a) provide at its own cost, additional information relating to the conduct and progress of the production of the Programme; and
- (b) attend meetings and provide such clarification and other assistance as Te Māngai Pāho may reasonably require in relation to any additional information required by Te Māngai Pāho.

5.5. **Delivery to Platform:** The Producer must deliver the Programme to the Platform by the Delivery Date in accordance with this Agreement, the Drawdown Schedule and the Platform Agreement between the Producer and the Platform and otherwise in accordance with the reasonable delivery requirements advised to the Producer by the Platform.

5.6. **Delivery to Te Māngai Pāho:** The Producer must deliver to Te Māngai Pāho:

- (a) **USB/External HD/Digital:** one (1) USB format copy or one (1) External HD copy or One (1) Digital Delivery of the Programme on or before the Delivery Date; and
- (b) **Digital Images:** an agreed number of digital images from the Programme from time to time, at Te Māngai Pāho's request.

The Producer acknowledges and agrees that all USBs, HDs, Digital and other media delivered to Te Māngai Pāho under this Agreement belong to Te Māngai Pāho on delivery to Te Māngai Pāho.

## 6. PRODUCTION AND PROGRAMME SPECIFICATIONS

6.1. **Standards:** The Producer must ensure that the Programme:

- (a) **Proposal:** reflects the Proposal in all material respects, is based on the treatment and the format set out in the Proposal, or otherwise approved in writing by Te Māngai Pāho. The Producer must not, without the prior written consent of Te Māngai Pāho, alter the tone, theme or genre of the Programme from that described in the Proposal.
- (b) **Programme Specification:** is produced in accordance with the Programme Specifications in Schedule 1.



- (c) **Quality of Programme:** is produced so that all editorial, visual and audio elements of the Programme, including the fidelity of the soundtrack, are of a High Quality in every respect and the Programme is suitable for distribution in New Zealand and overseas.
- (d) **Māori Language:** incorporates Māori language content that is of a quality and standard acceptable to Te Māngai Pāho or its nominee, and complies with the Performance Requirements in Schedule 1.
- (e) **Broadcasting Standards:** complies with the Broadcasting Act 1989, (in particular the programme standards specified in section 4(1) of the Broadcasting Act 1989 and all other television standards, codes of practice, rules, statutes and regulations applicable to the broadcast of the Programme and to the Broadcaster, including but not limited to:
  - (i) **Films, Videos and Publications Act 1993:** If the content could reasonably be classified as a “restricted publication” under the Films, Videos and Publications Act 1993 the content must include an adequate, prior, age-related warning; and the Producer must use best endeavours to ensure the age-related warning is maintained at all times;
  - (ii) Where applicable the content must meet the ‘Don’t Cross the Line’ rules in YouTube’s Community Guidelines, and as updated from time to time, as if the content were posted on YouTube.
- (f) **Credit:** includes credits acknowledging the funding and assistance provided by Te Māngai Pāho, such credit being in te reo Māori and otherwise comply with the Performance Requirements in Schedule 1.

6.2. **Subtitles:** The Producer agrees that if requested by Te Māngai Pāho, the Producer must ensure that the Programme, or a version of the Programme, is produced with subtitles in the English and/or Māori languages subject only to agreement upon any additional funding to be paid by Te Māngai Pāho to meet the reasonable costs of the Producer to include the subtitles requested, such agreement not to be unreasonably withheld or delayed on the part of either party.

6.3. **Key Personnel:** The Producer must ensure that the Programme is produced using the services of the Key Persons. The Producer must not change or replace any Key Person or the primary duties they are to perform, as recorded in the Proposal, without the prior written approval of Te Māngai Pāho. In the event that any Key Person is unable or unavailable to perform the services to be provided by that person as recorded in the Proposal, the Producer must notify Te Māngai Pāho immediately. The Producer will, if requested by Te Māngai Pāho, cease production of the Programme until a replacement person approved by Te Māngai Pāho is appointed. The Producer acknowledges that Te Māngai Pāho wishes to enhance employment opportunities for Māori in content production and distribution. The Producer agrees to provide enhanced opportunities for Māori to the fullest extent possible both in casting personnel and in engaging production crew.

6.4. **EEO Plan:** The Producer must run an appropriate equal employment opportunities plan throughout the production of the Programme and the subsequent marketing and distribution of the Programme.

6.5. **Health and Safety:** The Producer must comply with the Health and Safety at work Act 2015:

**Health and Safety at Work Act 2015:** The Producer must comply with its obligations under the Health and Safety at Work Act 2015 and will take all practicable steps to ensure its own safety, the safety of its employees, contractors, subcontractors, agents, and the safety of any other persons in the vicinity of the place of work; **Safety Programme:** The Producer operates a comprehensive safety programme which amongst other things provides systems for the identification of hazards in the workplace and for the development of appropriate control measures, procedures for dealing with on-site emergencies, and appropriate training and supervision of staff; and **Industry Standards:** The Producer conducts its business efficiently with all due diligence and in accordance with best industry standards.

**Report:** The Producer shall within twenty four (24) hours of an incident, report to Te Māngai Pāho details of any:

- (a) notifiable event (as defined in the Health and Safety at Work Act 2015) relating to the production of the Programme; or
- (b) incident relating to the production which results (or could reasonably have resulted or could yet result) in serious injury or serious illness. Te Māngai Pāho may, at any time, call a meeting with the Producer and any persons affected by the event, upon reasonable notice, to obtain information and to discuss the event and the planned responses to it.

**6.6. Alterations to the Programme:** The Producer must not, without the prior written consent of Te Māngai Pāho, make any material change to any aspect of the production of the Programme if the change would increase the cost of producing the Programme above the cost set out in the Approved Budget or if the change would materially alter the content of the Programme.

**6.7. No Material Deviations to the Production Schedule:** The Producer agrees that it will not materially deviate from the Production Schedule without the prior written consent of Te Māngai Pāho. The Producer acknowledges that Te Māngai Pāho's approval to such change, may be subjected to a change to the Drawdown Schedule, provided that in no event will Te Māngai Pāho be required to pay any amount of the Te Māngai Pāho Funding earlier than provided in the Drawdown Schedule as at the date of this Agreement.

**6.8. Quality of Te Reo Māori:** If at any time Te Māngai Pāho considers that the quality and standard of the Māori language content of the Programme does not meet the requirements of clause 6.1(d), it may give notice of this to the Producer and the Producer must take all steps necessary to ensure that the Māori language content of the Programme meets the required quality and standard. If the Producer fails to do so within a reasonable period of time or the Producer dispute Te Māngai Pāho's opinion on the quality and standard of the Māori language content, Te Māngai Pāho may give notice under clause 16.2 of an Event of Default.

**6.9 Children's Act 2014:** The Producer must comply with the Children's Act 2014:

**Children's Act 2014:** The Producer will comply with its obligations under the Children's Act 2014 and take all practical steps to ensure the safety and protection of children who encounter the Platform through the course of its business operations. The producer will:

- (a) **Maintain a Child Protection Policy:** this must accord with the requirements of Section 19 of the Children's Act 2014, including:
  - (i) Adopting a Child Protection Policy as soon as practicable if one is not already in existence at the contract Start Date, and in any event no later than three months after the contract State Date.

- (ii) Ensuring that the Child Protection Policy is reviewed on a regular basis so that at any time during the term of the Agreement it has been reviewed within the last three years.
- (b) **Safety Checking:** ensure that all people involved in delivery or running of activities involving children will be safety checked in accordance with Part 3 of the Children's Act 2014.

## 7. INTELLECTUAL PROPERTY AND DISTRIBUTION RIGHTS

7.1. **Ownership and Rights:** The parties agree that as between the Producer and Te Māngai Pāho:

- (a) **Ownership:** the Producer owns all Intellectual Property Rights relating to the Programme that it creates under or in connection with this Agreement; and
- (b) **Ancillary Rights, Distribution Rights and Intellectual Property Rights:** subject to clause 7.2 the Producer shall have the Ancillary Rights, the Distribution Rights and the Intellectual Property Rights.

7.2. **Te Māngai Pāho Licence and Distribution Rights:** The Producer grants Te Māngai Pāho, and must ensure that Te Māngai Pāho has:

- (a) **Licence:** a perpetual, non-exclusive, royalty free licence to use, broadcast and otherwise make available to audiences, and to sublicense the right to use and broadcast, any and all footage from the Programme; and
- (b) **NZ Distribution Rights:** perpetual non-exclusive Distribution Rights for New Zealand.

7.3. **Te Māngai Pāho Acknowledgements:** Te Māngai Pāho acknowledges and agrees that:

- (a) **Licence Period:** that the right to use or broadcast the whole Programme in New Zealand during the Licence Period will be subject to the agreement of the Platform such agreement not to be unreasonably or arbitrarily withheld; and
- (b) **No Editing:** the rights granted to Te Māngai Pāho do not allow Te Māngai Pāho to edit or permit portions of the Programme to be included in other programmes, other than for the purpose of promoting te reo Māori and tikanga Māori as described in Schedule 1 of the Agreement.

7.4. **Producer Distribution Rights:** The Producer shall have all Distribution Rights outside of New Zealand and shall be entitled to all income generated from the Distribution Rights outside of New Zealand.

7.5. **Marketing and Distribution:** The Producer must keep Te Māngai Pāho informed of the marketing and distribution activities undertaken by the Producer in relation to the Programme. The parties agree that Te Māngai Pāho may from time to time notify the Producer of potential marketing and distribution opportunities for the Programme outside of New Zealand (including but not limited to licensing the Television Rights). The Producer agrees to consider such opportunities in good faith and to pursue them unless the Producer, acting reasonably, considers that such opportunities would not promote Māori language or culture or produce net income for the Producer.

7.6. **Field Material:** The Producer must not destroy any Field Material except with the express prior written approval of Te Māngai Pāho. The Producer may, at its own cost, sell footage produced by the Producer during the production of the Programme which is not included in the Programme as delivered to the Platform (field footage).

## 8. MEMBERSHIP OF INDUSTRY ORGANISATIONS

8.1. **Music:** In the event that the Programme includes music or songs, the Producer agrees that:

- (a) **Composer and Lyricists:** the Producer must ensure:
  - (i) that all composers or lyricists whose works are incorporated in the Programme are individual members of APRA, AMCOS and Recorded Music New Zealand Limited in their own names (if each of them is not an existing member); and
  - (ii) each of the works on the Programme is registered with APRA, AMCOS and Recorded Music New Zealand Limited in the name of the composer(s) and lyricist(s);
- (b) **Music Publisher:** where the Producer is a music publisher the Producer must also join APRA, AMCOS and Recorded Music New Zealand Limited and register each work in its own name; and
- (c) **Royalties:** for the avoidance of doubt, any royalties paid to the Producer by any industry association set out in this clause 8.1(c) and by Screenrights will be included in the calculation of Gross Income.

8.2. **Written Confirmation:** The Producer must provide Te Māngai Pāho with such written evidence as Te Māngai Pāho may reasonably require confirming that the Producer has complied with clauses 8.1(a) to 8.1(c).

## 9. REPORTS, AUDITS, RECORDS AND INSPECTIONS

9.1. **Progress Reports:** The Producer must complete and deliver to Te Māngai Pāho a Progress Report for each Milestone on completion of that Milestone and in accordance with the Drawdown Schedule. Each Progress Report must set out details of the progress to date on the production of the Programme including progress against the Drawdown Schedule and the Production Schedule, and otherwise include such other information and comply with such reporting guidelines as Te Māngai Pāho may require or issue from time to time.

9.2. **Final Report:** The Producer must complete and deliver the Final Cost Report to Te Māngai Pāho within thirty (30) Business Days after delivery of the final episode of the Programme. The Final Cost Report must include:

- (a) **Financial Report:** final financial cost report for the Programme and an analysis of this report against the Approved Budget; and
- (b) **Production Narrative Report:** a final production report including any areas identified by Te Māngai Pāho as being of particular interest.
- (c) **Language Report:** a final production report including any areas identified by Te Reo Consultant as being of particular interest.

**9.3. Approval of Reports:** Each Progress Report and the Final Report prepared by the Producer and delivered to Te Māngai Pāho must be approved by Te Māngai Pāho before any Instalment for the Milestone to which the Instalment relates is payable to the Producer. Te Māngai Pāho will notify the Producer if it does not approve a Progress Report or Final Report within ten (10) Business Days of receiving the relevant report from the Producer. If a Progress Report or Final Report is not approved by Te Māngai Pāho, Te Māngai Pāho will inform the Producer of those aspects of the report which are unsatisfactory or which require further explanation or action on the part of the Producer. The Producer must then take all steps reasonably required to address the matters raised by Te Māngai Pāho to the satisfaction of Te Māngai Pāho.

**9.4. Marketing and Distribution Reports:** The Producer must, if requested by Te Māngai Pāho, provide half-yearly reports to Te Māngai Pāho on 30 June and 31 December of each year. These reports must include:

- (a) **Initiatives:** a report on marketing and distribution initiatives undertaken by the Producer during the period to which the report relates;
- (b) **Contracts Report:** a summary of the contracts being negotiated by the Producer and the general sales prospects for the Programme; and
- (c) **Receipts and Payments:** a statement of receipts and payments detailing all gross income received by the Producer in relation to distribution of the Programme.

**9.5. Reports Meeting:** Te Māngai Pāho may, at any time upon reasonable notice, call a meeting with the Producer to discuss the reports provided under clause 9.4.

**9.6. Keep Records and Accounts:** The Producer must keep proper books, records and accounts containing full, true, correct and timely details of all matters in connection with the production of the Programme and the sale, licensing, distribution and exploitation of the Distribution Rights. The Producer must keep such of the books, records, accounts and agreements as Te Māngai Pāho may reasonably require in electronic form utilising software of the nature and type specified by Te Māngai Pāho.

**9.7. Inspection by Te Māngai Pāho:** Subject to Te Māngai Pāho giving twenty four (24) hours prior notice, or such lesser time as may be reasonable in the circumstances, Te Māngai Pāho or its representative may inspect and/or conduct a financial review of the Producer's books, records, accounts, agreements and premises relating to the production of the Programme (including to verify the contents of any Progress Report or Final Report and to ensure compliance with the Producer's warranties set out in clause 11) and to take copies of such books, records, accounts and agreements. The Producer must ensure that Te Māngai Pāho or its representative has full access to all books, records, accounts, agreements and to the premises of the Producer and any contractor engaged by the Producer in relation to the Programme for the purposes of this clause 9.7 and must ensure that the Producer's personnel co-operate with Te Māngai Pāho and its representative and provide Te Māngai Pāho and its representative with such assistance as Te Māngai Pāho and its representative may reasonably require.

**9.8. Anticipated Cost Overruns:** The Producer must promptly advise Te Māngai Pāho if it is likely that the cost of the Programme could exceed the total expenses set out in the Approved Budget and of the steps that the Producer will take to address and avoid or minimise the excess expenses.

**9.9. Cost Savings:** If the actual costs of producing the Programme as set out in the Final Report are less than the total costs set out in the Approved Budget (creating a saving) then:

- (a) **No Further Payments:** Te Māngai Pāho may elect not to pay to the Producer the balance of the Te Māngai Pāho Funding still to be paid to the Producer; and/or
- (b) **Repayment:** the Producer must, if required by Te Māngai Pāho, repay to Te Māngai Pāho a proportion of that saving equal to the proportion that the Te Māngai Pāho Funding bears to the total funding for the Programme within five (5) Business Days of receipt of notice from Te Māngai Pāho requiring repayment.

## 10. ARCHIVING

10.1. **Programme:** The Producer will arrange for the archiving of the Programme and Field Footage with the Ngā Taonga Sound & Vision or another archive approved by Te Māngai Pāho. The parties agree that the Producer will be liable for all costs incurred with respect to archiving the master copy of the Programme and Field Footage.

10.2. **Access and Use:** The Producer acknowledges and agrees that archiving of the Programme and other material in accordance with clause 10.1 will be on the terms agreed between the Producer and the approved archive but the terms of archiving must not restrict the rights of Te Māngai Pāho (or its successor) to access or use the Programme or other material in accordance with the rights of Te Māngai Pāho under this Agreement.

## 11. PRODUCER'S WARRANTIES

11.1. **Warranties:** The Producer covenants with and warrants to Te Māngai Pāho that:

- (a) **Holds all Rights and Consents:** the Producer has obtained and will retain absolutely all necessary rights, licenses, consents or other authorities with respect to the Programme which enable the production of the Programme and sale or licensing of the Distribution Rights in accordance with this Agreement, including:
  - (i) all necessary rights, licenses, consents and other authorities regarding the treatment, script and the music for the Programme;
  - (ii) all applicable Intellectual Property Rights;
  - (iii) The assignment of all Performers' Rights must be obtained prior to release this includes featured artist(s) and session musicians; and
  - (iv) Te Māngai Pāho may request evidence that you hold all the necessary rights including copyright clearance for the composition and master recording for any samples inherent in work produced and funded under this funding as a condition of this funding;
- (b) **Not Infringe Copyright:** the Programme will not violate nor infringe upon the copyright, trade mark, or any other intellectual or personal property right, right of privacy nor any other rights of any third party;
- (c) **Not Defamatory:** the Programme will not contain any defamatory material;
- (d) **No Liability:** the Programme may be broadcast or made available by the Platform and any person distributing or making available the Programme pursuant to the Platform Agreement or Licence Agreement without the Platform or that other person incurring liability of any kind whatsoever by reason of the content of the Programme;
- (e) **Disclosure of Funding:** the Producer has disclosed to Te Māngai Pāho full details of any funding sought or received (other than from Te Māngai Pāho) by the Producer in relation to the production of the Programme;

- (f) **Disclosure of Contracts:** the Producer has fully disclosed to Te Māngai Pāho all contracts and arrangements with the Platform or any other person in relation to the production, marketing and distribution of the Programme and the terms of any such contracts are consistent with, or subordinated to, the terms and conditions of this Agreement;
- (g) **Authorities:** before entering into this Agreement the Producer has obtained all corporate and other authorities necessary to do so and there are no restrictions or other obligations known to the Producer which would or might impede the Producer from giving full effect to the Producer's obligations under this Agreement;
- (h) **Information True:** all information which has been or will be, prior to the Delivery Date, provided by or on behalf of the Producer to Te Māngai Pāho was or will be true, complete and accurate in all respects;
- (i) **No Awareness:** the Producer is not aware of any information or circumstance which might materially adversely affect the production of the Programme, the willingness of the Platform to broadcast or make available the Programme or the willingness of Te Māngai Pāho to decide to provide the Te Māngai Pāho Funding and to enter into this Agreement;
- (j) **Solvency:** the Producer is solvent, no receiver has been appointed over any of its assets and it has not entered into any compromise or arrangement with creditors;
- (k) **Personnel Checks:** the Producer has conducted appropriate checks in relation to the Producer's Personnel and, on the basis of those checks, is satisfied that the Producer's Personnel are of good standing and character and can be entrusted with the management and custody of the production funding and assets to be provided, acquired or developed as contemplated by this Agreement; and
- (l) **Performance Criteria:** the Producer will ensure that the Programme is of High Quality;
- (m) **Not Assign:** the Producer will not mortgage, charge, encumber, or otherwise dispose of, transfer or assign or attempt to dispose of, transfer or assign (in part or in whole) any of its rights including the Intellectual Property, the Ancillary Rights or the Distribution Rights, duties or benefits under this Agreement without the prior written consent of Te Māngai Pāho; and
- (n) **Comply with Law:** the Producer will at all times comply with all laws and statutory and regulatory requirements applicable to the Producer's performance of the provisions of this Agreement.
- (o) **Health and Safety:** The Producer is aware and will comply with its health and safety obligations under the Health and Safety at Work act 2015 and;
  - (i) Has or will consult, co-operate and co-ordinate with all PCBUs as defined in the Act (e.g. contractors) over all health and safety obligations with the production and of the programme; and
  - (ii) has and will comply with the provisions of New Zealand Screen Sector Health and Safety Guidelines found at <http://screensafe.co.nz/>.
  - (iii) All risks to health and safety have or will be assessed and identified risks have or will be entered in a hazard register along with how these will be eliminated or minimised;

- (iv) The current budget including Te Māngai Pāho's funding, is enough to ensure the Producer meets its obligations for the health and safety of all persons connected with the production of the programme; and
- (v) The Producer shall upon request, provide Te Māngai Pāho with such reasonable information to demonstrate the Producer's compliance with its health and safety obligations under the Health and Safety at Work act 2015 and this Agreement for the production of the programme.

## 12. INSURANCE

12.1. **Insurance:** The Producer must obtain, at its own cost and expense, insurance coverage satisfactory to Te Māngai Pāho in all respects as is prudent for the Producer's business, content production, broadcast and/or other distribution, and its activities generally, including comprehensive liability insurance for loss or damage arising out of the activities of the Producer under this Agreement and for non-completion of the Programme. The Producer must ensure that such insurance remains in force at all times during the production of the Programme and that the insurer agrees it will not terminate the insurance cover without giving Te Māngai Pāho not less than thirty (30) days prior written notice.

12.2. **Settlement Approval:** The Producer must not settle any insurance claim without Te Māngai Pāho's prior written approval, which will not be unreasonably withheld.

12.3. **Application of Proceeds:** The proceeds of any claim under any policy of insurance must be applied:

- (a) **Expenses of Claim:** first in payment of all reasonable expenses in making the claim; and
- (b) **Costs:** secondly to the cost of replacing the property or meeting any loss or damages, as the case may be, in respect of which the claim was made.

Where a claim is paid in respect of non-completion of the Programme all resulting insurance proceeds from such a claim must be deposited in the Production Account and, if required by Te Māngai Pāho, applied in repayment of the Te Māngai Pāho Funding.

## 13. INDEMNITY

13.1. **Producer Indemnifies Te Māngai Pāho:** The Producer hereby fully indemnifies Te Māngai Pāho against all claims, expenses, losses and damage (including all legal costs, disbursements and expenses) suffered by Te Māngai Pāho directly or indirectly as a result of:

- (a) **Breach of this Agreement:** any breach of this Agreement by the Producer, or by a negligent act or omission, fraud, dishonesty or wilful misconduct of the Producer, its employees, contractors or agents arising out of or in connection with the production of the Programme or the exercise of the Distribution Rights; or
- (b) **Intellectual Property Rights:** an infringement, or an alleged infringement, of the Intellectual Property Rights of any person which occurs by reason:
  - (i) of the performance or non-performance by the Producer of its obligations under this Agreements; or
  - (ii) the exercise by Te Māngai Pāho of any of the licence and/or Distribution Rights granted to Te Māngai Pāho under clause 6.2.



## 14. PLATFORM AGREEMENT

14.1. **Acknowledgement:** The Producer acknowledges and agrees:

- (a) **Default:** that a default on the part of the Producer under any Platform Agreement is an Event of Default under this Agreement;
- (b) **Notification by Platform:** it must ensure each Platform Agreement includes a term requiring the Platform to notify Te Māngai Pāho if the Producer is in default under the Platform Agreement;
- (c) **Variations:** the Producer must give written notice to Te Māngai Pāho of any amendment or variation to, or the termination of, any Platform Agreement within two (2) Business Days of such amendment or variation being agreed, or the termination occurring (as applicable);
- (d) **Approval:** the Producer must not agree any material amendment or variation to any Platform Agreement without Te Māngai Pāho's prior written approval; and
- (e) **Conflict:** in the event that there is any conflict between the provisions of this Agreement and any Platform Agreement, the Producer will work with Te Māngai Pāho and the Platform in good faith to resolve the conflict.

## 15. EVENTS OF DEFAULT

15.1. **Events of Default:** The following are Events of Default for the purposes of this Agreement:

- (a) **Producer's Breach:** any breach of any term of this Agreement by the Producer that is incapable of remedy or if capable of remedy, is not remedied within thirty (30) days of Te Māngai Pāho giving the Producer written notice requiring the Producer to remedy the breach;
- (b) **Impact on Ability to Perform:** any event which in the reasonable opinion of Te Māngai Pāho may have a materially adverse impact on the Producer's ability to perform its obligations under this Agreement;
- (c) **Failure to Deliver:** without limiting the provisions of clause 15.1(a), the Producer failing to:
  - (i) **Milestone or Deliverable:** complete a Milestone and deliver all of the Deliverables for that Milestone by the due date recorded in the Drawdown Schedule;
  - (ii) **Reports:** deliver a Progress Report, Monthly Report or Final Report to the satisfaction of Te Māngai Pāho on the due date recorded in the Drawdown Schedule; or
  - (iii) **Delivery Date:** deliver the Programme on the Delivery Date;
  - (iv) **Specifications:** produce the Programme in accordance with the specifications recorded in clause 6;
- (d) **Insolvency or Receivership:** if the Producer:
  - (i) **Bankruptcy or Liquidation:** becomes bankrupt or goes into liquidation, except for a solvent restructuring which has been previously approved in writing by Te Māngai Pāho (which approval may not be unreasonably withheld);

- (ii) **Likely to go into Liquidation:** is, in the reasonable opinion of Te Māngai Pāho, reasonably likely to go into liquidation which may include where a notice is received by Te Māngai Pāho under Section 157 of the Tax Administration Act 1994 and/or Section 43 of the Goods and Services Act 1985 in respect of the Producer;
  - (iii) **Removal From Companies Register:** being a company or other incorporated entity, the Producer, is removed from the New Zealand Companies Register or other applicable register;
  - (iv) **Receiver or Manager Appointed:** has a receiver or statutory manager appointed in respect of itself or any material part of its assets;
  - (v) **Similar Event:** is the subject of any event analogous in nature to those listed in clauses 15.1(d)(i) to 15.1(d)(iv) (inclusive) under the laws of any relevant jurisdiction;
  - (vi) **Suspends or Ceases Business:** suspends, for five (5) Business Days or longer, or ceases, or sells, its principal business undertaking or assets without the other party's prior written consent (which may be withheld at its absolute discretion); or
  - (vii) **Assignment for Creditors:** makes any assignment to, or enters into any arrangement for the benefit of, its creditors generally (other than for the purposes of a solvent restructuring);
- (e) **Warranties:** any warranty given or deemed to have been given by the Producer was or is, in the reasonable opinion of Te Māngai Pāho, incorrect in any respect when given or deemed to be given or repeated (whether such incorrectness is apparent at such time or becomes apparent at a later date);
- (f) **Quality of Te Reo Māori:** the quality and standard of the Māori language content of the Programme not being acceptable to Te Māngai Pāho or its nominee;
- (g) **Non Release:** the Platform stating or indicating in any way that it will not broadcast or make available the Programme such that in the opinion of Te Māngai Pāho the Programme is unlikely to be broadcast or released within the Licence Period; and
- (h) **Loss of Key Person:** the Producer failing to obtain the services of a replacement for any Key Person who becomes unable or unavailable to perform the services or role to be provided or performed by that Key Person as recorded in the Contract Details Schedule and which replacement:
- (i) is approved by Te Māngai Pāho (such approval not to be unreasonably withheld); and
  - (ii) will commence service with the Producer within one (1) month (or such longer period as may be agreed by the Producer and Te Māngai Pāho) of the loss of the Key Person;
- (i) **Cost Overrun:** the cost of the Programme exceeding the total cost set out in the Approved Budget;
- (j) **Default under other Agreement:** the Producer being in default under the terms of any other funding agreement between the Producer, Te Māngai Pāho and or any other third party in relation to the Programme; and
- (k) **Platform Agreement:** Te Māngai Pāho receiving written notice from the Platform of a matter or an event of default under any agreement between the Platform and the

Producer relating to the Programme, or any such agreement being terminated for any reason.

## 16. DEFAULT AND REMEDIES

16.1. **Notification by Producer:** The Producer must notify Te Māngai Pāho within two (2) Business Days of becoming aware of an Event of Default and must provide reasonable details as to the nature of the default, any proposals which the Producer may have to remedy the default and the timeframe within which the Producer will remedy the default.

16.2. **Notice by Te Māngai Pāho:** Without in any way limiting any other rights Te Māngai Pāho may have, including its rights under clause 16.3, upon Te Māngai Pāho becoming aware of an Event of Default in respect of which Te Māngai Pāho has not already received the details described under clause 16.1, Te Māngai Pāho must notify the Producer of the nature of the default and the Producer must provide to Te Māngai Pāho any proposals which the Producer may have to remedy the default and the timeframe for remedying the default within five (5) Business Days of receiving a notice under this clause 16.2.

16.3. **Te Māngai Pāho Options:** Notwithstanding clauses 16.1 and 16.2 Te Māngai Pāho may, where it becomes aware of an Event of Default and while any Event of Default has not been remedied to the reasonable satisfaction of Te Māngai Pāho, take all or any of the following actions:

- (a) **Give Time for Remedy:** If the Event of Default is in Te Māngai Pāho's opinion capable of remedy, allow the Producer such time to remedy the Event of Default and impose such terms and conditions in respect of that remedy as Te Māngai Pāho may decide in its absolute discretion.
- (b) **Alter Instalments:** Stop, suspend, adjust or otherwise alter the payment amount or the timing of any or all of the Instalments without any obligation to give prior notice to the Producer. Where any such action is taken Te Māngai Pāho will, within a reasonable time advise the Producer of the action taken and whether there are any steps the Producer can take or terms and conditions the Producer can satisfy for all or any of the Instalments to be reinstated. The form and timing of any such advice and the content of any steps or terms and conditions imposed on the Producer will be at the sole discretion of Te Māngai Pāho.
- (c) **Appoint Manager:** Appoint a manager and/or producer selected by Te Māngai Pāho to undertake all or any part of the production of the Programme. The Producer must cooperate fully with the person or persons so appointed in all respects relating to the financial management and the production of the Programme until the Programme is completed and delivered in accordance with clause 5. Te Māngai Pāho may appoint such persons for a specified time or indefinitely and may also remove such persons as the case may require.
- (d) **Require Delivery:** Require the Producer to deliver to Te Māngai Pāho the Production Assets, the Programme WIP. The Producer agrees to allow Te Māngai Pāho and its agents to enter onto the Producer's premises and the Producer agrees to assist Te Māngai Pāho and its agents to obtain access to any other person's premises to take delivery of the Programme WIP.
- (e) **Terminate this Agreement:** Terminate this Agreement with immediate effect by giving written notice to the Producer.

- (f) **Recover Te Māngai Pāho Funding:** Require the Producer to repay all or any amounts of the Te Māngai Pāho Funding already advanced to the Producer in relation to the Programme.

16.4. **No Waiver:** Failure by Te Māngai Pāho to exercise any option it has under clause 16.3 will not constitute a waiver of that option or of any other rights arising under this Agreement or at law.

16.5. **Termination:** Termination of this Agreement under clause 16.3(e) will not extinguish or adversely impact on any property right, right to damages, right to delivery, or any other right relating to the Programme, the Intellectual Property, the Television Rights or the rights to share in the Net Income which Te Māngai Pāho may be entitled under this Agreement.

16.6. **Te Māngai Pāho May Complete:** In any case where Te Māngai Pāho requires delivery under clause 16.3(d) the Producer acknowledges that Te Māngai Pāho may make such arrangements as it thinks fit in relation to the completion of the Programme either in conjunction with the Platform or otherwise, and Te Māngai Pāho will have full power and authority to:

- (a) **Make withdrawals:** make withdrawals from and otherwise deal with funds in the Production Account;
- (b) **Borrow:** borrow money;
- (c) **Contracts:** enforce, modify, release, compromise or terminate any contract or other right or obligation of the Producer;
- (d) **Personnel:** engage and discharge personnel;
- (e) **Contract for Services:** enter into or terminate any contract for services;
- (f) **Equipment and other Property:** acquire, lease or dispose of equipment and other real or personal;
- (g) **Insurance:** make claims under any policy of insurance in respect of the Programme; and
- (h) **Other Acts:** do all such other lawful acts and things as Te Māngai Pāho may determine is reasonably necessary to exercise its rights under this clause 16.6.

16.7. **Right not to Elect:** If Te Māngai Pāho takes over completion of the Programme, it will have the right to elect not to take over any contract or obligation of the Producer which Te Māngai Pāho considers to be unduly onerous, and any costs or liabilities arising in relation to such contracts or obligations as a result of Te Māngai Pāho exercising this right of election shall be borne by the Producer.

16.8. **Not Liable:** Te Māngai Pāho will not be liable to the Producer and the Producer will indemnify Te Māngai Pāho against liability to any third party arising as a result of or in relation to any act or omission occurring prior to Te Māngai Pāho exercising its right to take over production of the Programme.

16.9. **Consequences of Default:** If Te Māngai Pāho exercises any of its rights under clauses 16.3(d) or 16.3(e):

- (a) **Production Account and Production Assets:** Te Māngai Pāho will be entitled to all unexpended amounts of Te Māngai Pāho Funding held in the Production Account and all Production Assets and the Producer will hold the same on trust for Te Māngai Pāho and must immediately take all steps required by Te Māngai Pāho to pay or deliver the same to Te Māngai Pāho; and
- (b) **Assignment:** the Producer will, at the option of Te Māngai Pāho:

- (i) assign to Te Māngai Pāho (including as appropriate by way of present and future rights), with full title guarantee, absolutely and free from encumbrances, its right, title and interest in the Programme WIP, and shall provide Te Māngai Pāho with all assistance, execute all documents and do such things as Te Māngai Pāho may reasonably require to give effect to this assignment; or
- (ii) grant to Te Māngai Pāho a perpetual, non-exclusive, worldwide, royalty free license to use, copy, modify make derivative works from and broadcast and otherwise exploit all or any part of the Programme WIP.

6.10. **Attorney:** The Producer appoints Te Māngai Pāho to be its attorney in the Producer's name and on the Producer's behalf to do all such acts and things and to exercise all the powers that may in the opinion of Te Māngai Pāho be required or deemed proper, necessary or desirable for the purpose of Te Māngai Pāho acting in the Producer's name, to give effect to the provisions of clause 16.9(b) and for exercising any rights the Producer may have in respect of the Programme WIP. The Producer agrees to, if requested by Te Māngai Pāho, execute all such documents as Te Māngai Pāho may reasonably require to ensure that Te Māngai Pāho is able to act as the Producer's attorney in accordance with this clause 16.10.

## 17. DISPUTE RESOLUTION

17.1. **Negotiate:** The Producer and Te Māngai Pāho will actively and in good faith negotiate with a view to a speedy resolution of any dispute or difference which may arise between them concerning the interpretation of this Agreement or relating to any other matter arising under this Agreement.

17.2. **Referral for Resolution:** If any dispute arises between the Producer and Te Māngai Pāho in relation to this Agreement, it will be referred for resolution to the Chief Executive of Te Māngai Pāho (or the Chief Executive's nominee) and the Producer's Managing Director. If these executives cannot resolve the dispute within five (5) Business Days of the issue being referred to them (or such longer period as the executives agree), the dispute will be referred to the dispute resolution procedure in clause 17.4.

17.3. **Continued Performance:** The Producer and Te Māngai Pāho will continue to perform all of their respective obligations under this Agreement whilst the dispute is referred to the dispute resolution procedure set out in this clause 17.3, provided that where the Te Māngai Pāho in its sole discretion considers that the dispute relates to:

- (a) **Viability:** the viability of the Programme; or
- (b) **Completion within Budget:** the ability of the Producer to complete the Programme within the Approved Budget; or
- (c) **Delivery by Delivery Date:** the ability of the Producer to deliver the Programme to be delivered by the Delivery Date; or
- (d) **Material Breach:** a material breach, by the Producer, of any obligations under this Agreement or any relevant agreements; Te Māngai Pāho may elect to withhold payments of the Te Māngai Pāho Funding otherwise due to the Producer until the dispute has been resolved to the satisfaction of Te Māngai Pāho.

17.4. **Mediate:** If the Producer and Te Māngai Pāho are unable to resolve their difference or dispute in accordance with clause 17.2 then that difference or dispute will be referred to a

mediator agreed to by the Producer and Te Māngai Pāho within five (5) Business Days of either party electing to refer the difference or dispute to mediation. If the parties are unable to agree upon a mediator within five (5) Business Days of a party electing to refer the matter to mediation, either party may require the difference or dispute to be referred to a mediator nominated by the President of the Wellington District Law Society for the time being. In the event that a matter is submitted to mediation:

- (a) **Not an Expert:** the mediator will not be acting as an expert or as an arbitrator;
- (b) **Procedure and Timetable:** the mediator will determine the procedure and timetable for the mediation;
- (c) **Costs:** the parties will share equally in the cost of mediation; and
- (d) **Timing:** the mediator will attempt to resolve the difference or dispute by mediation within five (5) Business Days of the referral. Any mediated agreement of the parties will be final and binding on both parties.

If the dispute is not resolved within the specified timeframe, and the parties do not agree to an extended timeframe for resolution, each party will be entitled to pursue such legal remedies as it thinks fit.

17.5. **Urgent Interlocutory Relief:** Nothing in this clause 17 will prevent a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

17.6. **Arbitration Act:** The provisions of the Arbitration Act 1996 will not apply to any dispute between the parties arising under this Agreement.

## 18. CONFIDENTIALITY

18.1. **Confidentiality:** The parties acknowledge that all matters relating to this Agreement (including its terms and conditions) are considered commercially sensitive and subject to clauses 18.2, 18.3 and 18.5, all information generated or acquired under or by virtue of this Agreement or received by a party to this Agreement from the other will be held and kept confidential, will be used solely for the purposes of implementing this Agreement, and will not be disclosed by the other party to any third party except with the prior consent of the other party and upon such terms as may be stipulated by that party, provided that a party may, without such consent, disclose such matters or information:

- (a) **Professional Consultants:** to any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;
- (b) **Banks etc.:** to any bank or financial institution from whom such party is seeking to obtain finance, upon obtaining a similar undertaking of confidentiality from such bank or institution;
- (c) **Public Domain:** to the extent that the same has become generally available to the public other than as a result of an unauthorised disclosure by either party, or any of its employees, agents or contractors; and
- (d) **Required by Law:** to the extent that the party is required by law to disclose such information; or
- (e) **Required by this Agreement:** to the extent reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose such information

only to those of its officers, employees or professional advisers, on a need to know basis, as is reasonably required for the implementation of this Agreement.

**18.2. Disclosure of Te Māngai Pāho Funding:** The Producer acknowledges that Te Māngai Pāho publishes information from time to time in relation to funding it has provided for the production of content and may publish details relating to this Agreement, including the name of Producer and Key Persons, the amount of Te Māngai Pāho Funding and an outline of the Programme and the Drawdown Schedule.

**18.3. Official Information Act:** The Producer acknowledges that Te Māngai Pāho is subject to the Official Information Act 1982 (OIA) and:

- (a) **Notify Producer:** Te Māngai Pāho agrees to notify the Producer if it receives a request under the OIA for information which relates to this Agreement;
- (b) **Notify Te Māngai Pāho:** the Producer agrees to notify Te Māngai Pāho, within five (5) days of receiving notice from Te Māngai Pāho that a request has been made under the OIA, if the Producer considers there are grounds for withholding the information in accordance with the OIA; and
- (c) **Notification of Disclosure:** Te Māngai Pāho agrees to notify the Producer as soon as reasonably possible as to whether the information requested has been disclosed.

**18.4. Platform:** The Producer acknowledges that the Platform may from time wish to see a copy of this Agreement and copies of reports, correspondence or other documentation provided by the Producer to Te Māngai Pāho and that the Platform may request such information from Te Māngai Pāho. The Producer acknowledges and agrees that Te Māngai Pāho may, if Te Māngai Pāho considers it appropriate, provide the Platform with copies of the same.

**18.5. Employees:** Each party will be responsible for ensuring that its employees, agents or contractors who are at any time in possession of confidential information of a kind referred to in clause 18.1 observe and comply with clause 18.1.

**18.6. Publicity:** No party may issue any press release of information concerning this Agreement or its subject matter to the news media without the prior approval of the other parties.

## 19. NOTICES AND CONSENTS

**19.1. In Writing:** All notices or consents arising out of this Agreement must be given in writing.

**19.2. Service of Notices:** Any notice given under this Agreement will be deemed to be validly given if in writing signed by an officer or agent of the party giving the notice and personally delivered, posted, or forwarded by facsimile transmission to the address of the party to be notified recorded in the Contract Details Schedule or to such other address as the party to be notified may designate by written notice given to the other party.

**19.3. Time of Service:** Any notice given under this Agreement will be deemed to be validly given:

- (a) **Delivery:** in the case of delivery, when received;
- (b) **Facsimile:** in the case of facsimile transmission, when sent; and
- (c) **Post:** in the case of posting, on the third Business Day following the date of posting, provided that any notice personally delivered or sent by facsimile after 5pm on a

Business Day or on any day that is not a Business Day will be deemed to have been received at 9am on the next Business Day.

## 20. NO ASSIGNMENT

**20.1. No Assignment without Prior Written Consent:** The Producer must not mortgage, charge, encumber, assign or otherwise dispose of any or all of its rights under this agreement including any Intellectual Property Rights, Ancillary Rights or Distribution Rights, without the prior written consent of Te Māngai Pāho, such consent not to be unreasonably or arbitrarily withheld. Where the Producer is a company, change in the immediate shareholder of the Producer will be deemed to be an assignment for the purposes of this clause. For the avoidance of doubt, it will be a condition of any consent to assignment being granted by Te Māngai Pāho that the Producer procures any prospective assignee to grant to Te Māngai Pāho a licence granting Te Māngai Pāho rights equivalent to that set out in clauses 7.2 and 7.4.

**20.2. Effect of Purported Assignment without Consent:** If the Producer purports or takes steps to assign to any third party any rights under this agreement, including any Intellectual Property Rights, Ancillary Rights or Distribution Rights, without the prior written consent of Te Māngai Pāho, the Producer shall be deemed to have assigned such rights to Te Māngai Pāho.

## 21. COSTS AND EXPENSES

21.1. The Producer agrees to pay all reasonable legal fees of Te Māngai Pāho incurred in connection with the enforcement of this Agreement.

## 22. NO PARTNERSHIP OR AGENCY

**22.1. No Partnership or Agency:** Subject to clause 16.8, nothing in this Agreement creates or constitutes, or will be deemed to create or constitute, a partnership or a relationship of agent or attorney between the Producer and Te Māngai Pāho for any purpose whatsoever.

**22.2. Neither Party to Bind the Other:** Subject to clause 16.10, neither the Producer nor Te Māngai Pāho has any authority or power whatsoever to bind or commit, act or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other to any obligation. In particular the Producer will not be entitled to hold out or represent in any manner to any third party that:

- (a) **Provision of Funding:** funding other than the Te Māngai Pāho Funding will be provided by Te Māngai Pāho or that any funding will be provided by Te Māngai Pāho after termination of this Agreement for any reason; or
- (b) **Liabilities:** that Te Māngai Pāho will be or is under any obligation whatsoever to meet any liabilities of the Producer to any third party (whether such liability relates to the operations of the Producer or otherwise).

## 23. GENERAL

**23.1. Governing Law:** This Agreement will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.



23.2. **No Third Party Rights:** The parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this Agreement and all covenants, stipulations, promises and agreements contained in this Agreement are for the sole and exclusive benefit of the parties.

23.3. **Entire Agreement:** This Agreement:

- (a) **Constitutes Entire Agreement:** constitutes the entire agreement between the parties; and
- (b) **Supersedes and Extinguishes Prior Agreements:** supersedes and extinguishes all earlier negotiations, understandings and agreements whether oral or written between the parties, relating to the subject matter of this Agreement.

23.4. **Variation:** There will be no variation, amendment or modification of the provisions of this Agreement except by a supplementary written agreement between the parties.

23.5. **Further Assurances:** The Producer must use its best endeavours to procure that any necessary third party does and executes all further documents, acts and things as Te Māngai Pāho may by notice to the Producer reasonably require to give full effect to the provisions of this Agreement.

23.6. **Unenforceability:** If any term or provision of this Agreement is declared invalid or unenforceable or in breach of any Act of Parliament the validity of the remainder of this Agreement will not be affected and will remain in force and effect as if this Agreement had been executed with such invalid term or provision eliminated.

23.7. **Delay:** No delay, grant of time or other indulgence by either party in respect of any breach of any other party's obligations under this Agreement will:

- (a) **No Waiver of Subsequent Breach:** be deemed a delay, grant of time or other indulgence in respect of, or a waiver of, any subsequent breach.

23.8. **Non Merger:** The agreements, obligations and warranties contained in this Agreement will not merge on completion of the transactions contemplated by it but will remain in full force until satisfied.

23.9. **Time of the Essence:** Time will be of the essence in the performance by either party of its obligations under this Agreement.

23.10. **Rights Cumulative:** The rights of the parties under this Agreement are cumulative and are not exclusive of any other rights and remedies available to either party.

23.11. **Survival:** Any obligation of the parties under this Agreement which by its nature is intended to continue beyond the expiry or earlier termination of this Agreement, including clause 9 (reports, audits, records and inspections), clause 17 (dispute resolution), clause 18 (confidentiality) and clause 19 (notices and consents), and this clause 23.11 will survive the expiry or earlier termination of this Agreement.

## 24. DATA COLLECTION

**24.1 Collection of Performance Data:** The Producer acknowledges that Te Māngai Pāho (through its agents, contractors or employees) may collect data pertaining to the performance of content created with this funding, including but not limited to content distribution and audience.

**24.2 Provision of Performance Data:** The Producer will use its best endeavours to provide performance data to Te Māngai Pāho as and when requested and in the format required, including but not limited to via the installation of analytics software on the any website or platform and the provision of access to this for Te Māngai Pāho.

**24.3 Notification of Results of Performance Data:** Te Māngai Pāho will use reasonable endeavours to provide the Producer with access to the results of any analysis of performance data collected by Te Māngai Pāho.

## **25. NETWORK-BASED SHARING**

**25.1 Producer to Share Content:** The Producer will ensure that when required by Te Māngai Pāho content created by this Funding is made available on the network-based sharing platform specified by Te Māngai Pāho for the purposes of promoting content; archiving by Ngā Taonga: Sound and Vision or other approved entity; and complying with the requirements of the Broadcast Standards Authority. The sharing platform and uploading obligations may be changed from time to time at the discretion of Te Māngai Pāho.