



SCREEN
A U S T R A L I A

**CORE CONDITIONS FOR
DOCUMENTARY PRODUCTION INVESTMENT
(with a Special Purpose Vehicle company)**

25 FEBRUARY 2011

The Core Conditions together with the Schedules form the Production Investment Agreement.

Specific project requirements should be incorporated into the Schedules, as the Core Conditions are not negotiable.

On signing, a complete electronic version of the Production Investment Agreement (Schedules and Core Conditions) will be emailed to all parties.

Enquiries or comments about these core conditions should be directed to documentary@screenaustralia.gov.au

CORE CONDITIONS

1. DEFINITIONS

1.1 In this Agreement, (including the Schedules), except where the context otherwise requires, the following expressions are interpreted as follows:

Administrator has the meaning given to that term in the *Corporations Act 2001* (Cth);

Ancillary Rights means the following rights throughout the world:

- (a) the exclusive right in the Work, Script and Music, and a nonexclusive right in any Selected Music and Archive Material, to make and exploit and to authorise others to make and to exploit:
 - (i) cinematograph films about the production of the Film and about the production of any Sequel or Spin Off;
 - (ii) books in volume form developed from:
 - (A) the Script;
 - (B) the Film;
 - (C) any Sequel or Spin Off; or
 - (D) cinematograph films mentioned in (i) of this paragraph;
 - (iii) still photographs of the production, taken during production of the Film; and
 - (iv) recordings of the soundtrack of the Film;
- (b) the exclusive right to use and to authorise others to use the whole or part of the title of the Film as a trade mark, service mark, style or business name;
- (c) the exclusive right to use and to authorise others to use the characters and situations in the Script and the Film; and
- (d) all rights in the Film Materials, the Production Assets (other than hired or leased assets) and the Marketing Materials.

Archive Material means parts of cinematograph films or stills incorporated into the Film and not being footage or stills created for the production of the Film;

Budget means the budget for the production of the Film set out in the Budget Schedule as varied subject to the prior approval of Screen Australia in writing where required under this Agreement;

Budgeted Cost means the sum so specified in the Finance and Film Asset Schedule, and any variation agreed by Screen Australia;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in any of the cities in which the principal office of an Investor or the Producer is located;

Claim means any legally enforceable claim, action, proceeding, judgment, liability, loss, damage or cost incurred or suffered by, or brought, made or recovered against, a person;

Collection Account means the interest-bearing bank account specified as such in the Finance and Film Asset Schedule;

Completion Date means the date so specified in Item 4 of the Production Particulars Schedule or such other date as approved in writing by the Investors;

Completion Agreement means any agreement or deed between the Producer, the Production Company and the Completion Guarantor in respect of the Film;

Completion Guarantee means an agreement between *inter alia* the Investors in the Film and a completion guarantor in which the completion guarantor agrees to complete the Film and provide sufficient money for that purpose;

Controller has the meaning given to that term in the *Corporations Act 2001* (Cth);

Copyright means:

- (a) copyright in the Film according to Section 86 of the *Copyright Act 1968* (Cth);
- (b) copyright in the Film according to the law of a country other than Australia; and
- (c) rights in the Film in the nature of or analogous to the rights in (a) and (b) according to the law of Australia or any other country;

Cost Report means a report on the expenditure of the Investors' investments in an acceptable industry standard format and current at the times set out in Clause 14;

Delivery means the provision of all items as required by each Marketing Agreement;

Delivery Date means the date so specified in the Production Particulars Schedule;

Event of Default means:

- (a) breach by the Producer or the Production Company of any warranty or other term of this Agreement;
- (b) breach by the Producer or the Production Company of any warranty or other term of any Funding Agreement or other Marketing Agreement;
- (c) any Funding Agreement or other Marketing Agreement is terminated for any reason or becomes void, illegal, invalid, unenforceable or of limited force and effect;
- (d) the occurrence of any Insolvency Event in relation to the Producer or the Production Company (other than as described in Clause 4.3) or any Investor, Marketplace Contributor or any other party to a Funding Agreement;
- (e) any person becomes entitled to terminate, rescind or avoid any Transaction Document; or
- (f) the Film is not completed by the Completion Date.

Final Cost Report has the meaning given to that term in Clause 14.3;

Film means the cinematograph film described in the Production Particulars Schedule and includes all Film Materials and all versions of the whole or any part of the Film;

Film Assets means the Underlying Rights, the Film, the Copyright, the Production Assets (other than hired or leased assets) and the Marketing Materials;

Film Assets Split means the percentages described as such in the Finance and Film Asset Schedule.

Film Authority has the meaning defined in ITAA;

Film Materials means all masters in any format, negatives, positives, video and sound recordings created during the production of the Film, whether or not incorporated into the completed Film;

Final Certificate means a certificate issued by the Film Authority in respect of the Film according to Section 376-65 of the ITAA and Part 3 of the Producer Offset Rules;

Finance Plan means a complete statement of all sources of finance for the production of the Film in accordance with the Budget and as set out in the Finance and Film Asset Schedule;

Funding Agreement means any agreement in relation to the Film between any or all of the Producer, the Production Company and the Investors, the Marketplace Contributors and the other contributors to the Budgeted Cost (or any of them), including but not limited to this Agreement and the Marketplace Contribution Agreements;

Gross Receipts means all money resulting from Marketing the Film and received by the Producer or its nominee, and includes without limitation:

- (a) money received from insurances relating to Marketing the Film;
- (b) money obtained in connection with any Claim relating to the Film Assets;
- (c) interest accruing on money in the Collection Account,

but excludes:

- (a) awards and prizes;
- (b) money obtained from Screenrights; and
- (c) the Marketplace Contribution.

GST means the *Goods and Services Tax under A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any associated legislation and regulations;

Insolvency Event in relation to a person means the occurrence of any one or more of the following events:

- (a) an application is made to a court for an order that the person be wound up, or that a provisional liquidator be appointed to the person, and the application is not withdrawn, struck out or dismissed within 21 days of being made;
- (b) a liquidator or provisional liquidator is appointed to the person;
- (c) an administrator or Controller is appointed to the person or any of the person's assets;
- (d) the person enters into an arrangement or composition with one or more of the person's creditors, or the person enters into an assignment for the benefit of one or more of the person's creditors;
- (e) the person proposes, or resolves to enter into, a winding-up, dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of the person's creditors;

- (f) the person is or becomes insolvent or the person is presumed to be insolvent under an applicable law;
- (g) the person is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the *Corporations Act 2001* (Cth);
- (h) a notice in relation to the person is issued under sections 601AA or 601AB of the *Corporations Act 2001* (Cth);
- (i) a writ of execution is levied against the person or the person's property;
- (j) the person ceases to carry on business or threaten to do so; or
- (k) anything occurs in relation to the person under the law of any jurisdiction which has a substantially similar effect to any of the events or circumstances mentioned in any of the above paragraphs of this definition.

Instalment means each instalment of an Investment as set out in the Drawdown Schedule;

Investment means each Investor's contribution to the Budgeted Cost as specified in the Finance Plan;

Investment Account means the interest bearing bank account (if any) specified as such in the Finance and Film Asset Schedule;

Investor Delivery Materials means the items specified as deliverable to the Investors in the Delivery Schedule;

Investor Fees means the fees payable to the Investors as specified in the Finance and Film Assets Schedule;

Investors means those persons listed under "Investment" in the Finance Plan who are party to this Agreement;

ITAA means the *Income Tax Assessment Act 1997* (Cth);

Major Territory means any or all of Australia; North America as one territory; USA; world as one territory including or excluding Australia; Europe as one territory; UK; Italy; France; Spain; Scandinavia as one territory; Germany; and Japan.

Market the Film includes:

- (a) promotion and exploitation of the Copyright and the Underlying Rights;
- (b) securing the Copyright and the Underlying Rights;
- (c) protecting the Copyright and prosecuting infringements of the Copyright and the Underlying Rights;
- (d) obtaining any benefit from statutory licences according to the *Copyright Act 1968* (Cth) in relation to the Film and equivalent legislation in other jurisdictions;
- (e) enforcement and ensuring compliance with the terms of each Marketing Agreement; and
- (f) creation and use of the Marketing Materials;

Marketing Agreement means:

- (a) any agreement entered into by the Producer in respect of the Marketing of the Film, including a sales agreement, licence agreement, agency agreement and distribution agreement; and
- (b) any further agreement in respect of Marketing the Film in a Major Territory entered into by a licensee or agent appointed under an agreement described in (a) above;

Marketing Expenses means those costs and expenses described in Clause 22 and the Marketing Expenses Schedule incurred by the Producer or the Production Company in Marketing the Film (except those provided for in the Budget or recouped from interest on the Production Account or the Investment Account in accordance with Clause 13.5);

Marketing Licensee means any licensee or agent appointed under a Marketing Agreement;

Marketing Materials means materials created to Market the Film, including posters, still photographs and artwork;

Marketing Report means a report on the Producer's marketing activities in relation to the Film in a form and substance satisfactory to Screen Australia and current at the times set out in Clause 23, and includes each report received by the Producer from a Marketing Licensee;

Marketplace Contribution means each contribution by a Marketplace Contributor to the Budgeted Cost as set out in the Finance Plan;

Marketplace Contribution Agreements means each agreement between the Marketplace Contributors and the Producer, on terms approved by the Investors, under which each Marketplace Contributor agrees to contribute the sum specified against its name in the Finance Plan;

Marketplace Contributors means those persons listed under "Marketplace" in the Finance Plan;

Meaningful Consultation means that the party with the obligation to engage in meaningful consultation will:

- (a) ensure that the other party is involved , and consulted, in the decision making process, and
- (b) take the other party's opinion into consideration before the making of any decision,

provided always that the final decision rests with the party with the obligation to consult.

Music means the following created or made for use in the Film and incorporated into the soundtrack of the Film:

- (a) musical works and associated literary works; and
- (b) sound recordings.

NFSA means the National Film and Sound Archive;

NFSA Completion Materials means the items specified as such in the Delivery Schedule;

NFSA Delivery Materials means the items specified as such in the Delivery Schedule;

Overage means any sum over the Budgeted Cost required to complete, deliver and Market the Film as contemplated by the Budget and this Agreement, after deduction of any sum paid by the Completion Guarantor;

Principal Participants means any person named as such in the Production Particulars Schedule;

Principal Personnel means any person named as such in the Production Particulars Schedule;

Producer Offset means the refundable tax offset for qualifying Australian expenditure incurred in making an eligible Australian film, as provided for by Division 376 of ITAA;

Producer Offset Advance means an amount equal to the sum advanced to or by the Producer against the benefit of the Producer Offset for the Film as specified in the Finance Plan;

Producer Offset Cashflow Documentation means the documents approved by the Investors evidencing the Producer Offset Advance;

Producer Offset Proceeds means the proceeds paid to the Production Company in respect of the Producer Offset for the Film.

Producer Offset Rules means the rules made by the Film Authority under Sections 376-265 (1) and (2) of ITAA;

Production Account means the interest bearing bank account specified as such in the Finance and Film Asset Schedule;

Production Assets means any equipment, goods, materials, software and other tangible assets (other than the Film) bought, hired or leased for the production of the Film and paid for from the Budget;

Production Particulars means the particulars relating to the Film set out in the Production Particulars Schedule;

Production Schedule means the schedule so specified in the Production Particulars Schedule;

Profit Split means the percentages described as such in the Finance and Film Asset Schedule;

Provisional Certificate means a certificate issued by the Film Authority in respect of the Film according to the Producer Offset Rules;

QAPE means qualifying Australian production expenditure, as that term is defined in Division 376 of ITAA and applied by Film Authority;

Records means accounts, records, invoices, timesheets, bank statements, agreements and other documents relating to the production and Marketing of the Film whether in hard copy, electronic form or any other form;

Recoupment Split means the percentages described as such in the Finance and Film Asset Schedule;

Release shall mean either of the following events:

- (a) a theatrical screening, a broadcast or other communication of the Film in its entirety to the public in a Major Territory with or without charge to the viewer; or

- (b) a disbursement of Gross Receipts derived from Marketing the Film by or on behalf of the Producer in accordance with this Agreement.

Residuals means payments for the use of the Film (excluding payments for use capable of pre-purchase by the Producer or the Production Company in accordance with the relevant agreement) required to be paid by the Producer or the Production Company to creative contributors to the making of the Film according to the current Australian Television Repeats and Residuals Agreement; the Actors Feature Film Agreement and the Screen Producers' Association of Australia/Australian Writers' Guild Agreement (as applicable).

Screen Australia Retained Interest means 1% of the Copyright;

Screen Australia Reversion Date means the date which is seven (7) years from the first Release;

Script means the proposal, treatment, script outline and script (including revisions) for the Film written by the Writer and includes research materials created by the Writer for writing the Script;

Security Interest includes any:

- (a) mortgage, pledge, lien, charge, encumbrance, option or third party security;
- (b) contractual, proprietary or preferential interest or arrangement of any kind; and
- (c) right of or arrangement with any creditor to have its claims satisfied before other creditors from any asset;

Selected Music means the following not created or made for use in the Film and incorporated into the soundtrack of the Film:

- (a) musical works and associated literary works; and
- (b) sound recordings;

Sequel includes any cinematograph film featuring one or more of the Principal Participants taking part in events that are different from but related to and developed from the events of the Film, whether before or after;

Spin Off includes any cinematograph film that features and develops some or all of the participants, scenarios, events, sequences, names and titles of the Film or any other cinematograph film that is part of the same series as the Film;

Study Guide Delivery Materials means the items specified as such in the Delivery Schedule;

Study Guide Provider means a reputable and recognised provider of study guides and educational teaching materials;

Transaction Documents means the documents specified in the Transaction Documents Schedule;

Underage means any part of the Budgeted Cost not spent on production of the Film and includes any sum treated or applied as Underage under this Agreement.

Underlying Rights means the following rights throughout the world for the respective periods of copyright in the respective works and subject matter and subject to the rights of the Australasian Performing Right Association Limited in respect of the Music:

- (a) the Ancillary Rights;
- (b) the exclusive right in the Work, Script, Music and other works created for the production of the Film to make and to authorise others to make any Sequel or Spin Off;
- (c) (the exclusive right in the Work, Script, Music and any other works created for the production of the Film (referred to collectively below as the "works and subject matter") to do, and to authorise others to do, all the following in the production and Marketing of the Film and any Sequel or Spin Off:
 - (i) to reproduce the works and subject matter in any material form (whether visible or not);
 - (ii) to perform the works and subject matter in public;
 - (iii) to publish the works and subject matter;
 - (iv) to cause the Music to be heard in public;
 - (v) to communicate the works and subject matter to the public; and
 - (vi) to make an adaptation of any of the works and subject matter and to do all or any of the acts specified in paragraphs (i) to (v) above in relation to that adaptation; and
- (d) the nonexclusive right in any Selected Music, Archive Material and any other works and subject matter not created for the production of the Film and incorporated into the Film (referred to collectively below as the "independent works and subject matter") to do, and to authorise others to do, all the following in the production and Marketing of the Film:
 - (i) to reproduce the independent works and subject matter in any material form (whether visible or not);
 - (ii) to perform the independent works and subject matter in public;
 - (iii) to publish the independent works and subject matter;
 - (iv) to cause the Selected Music to be heard in public;
 - (v) to communicate the independent works and subject matter to the public; and
 - (vi) to make an adaptation of any of the independent works and subject matter and to do all or any of the acts specified in paragraphs (i) to (v) above in relation to that adaptation.

Work means the literary or dramatic work (including any revisions of that work) described as such in the Production Particulars Schedule.

Writer means the person or persons specified as such in the Production Particulars Schedule.

1.2 Where the Film is being produced or part produced on tape or hard drive, unless the context otherwise requires:

1.2.1 "answer print" or "print" means the full length, edited, synchronised, end-titled and credited copy of the Film; and

- 1.2.2 "fine cut stage" means completion of the off-line edit.
- 1.3 Any matter for which an Investor's agreement, approval or consent is required under this Agreement may be provided subject to conditions and is ineffective unless in writing. None of the Investors shall unreasonably withhold or delay its agreement, approval or consent.
- 1.4 In this Agreement (including the Schedules) except where the context otherwise requires:
- 1.4.1 words importing the singular include the plural and vice versa;
- 1.4.2 words and expressions used in connection with matters of copyright, unless defined in this Agreement, have the meaning attributed to them in the *Copyright Act 1968* (Cth);
- 1.4.3 words and expressions defined in the *Corporations Act 2001* (Cth) have the same meaning;
- 1.4.4 clause headings and underlining are for reference purposes only;
- 1.4.5 references to clauses are references to clauses of the Core Conditions and references to schedules are references to the Schedules to this Agreement, all of which form part of the Agreement;
- 1.4.6 references to a party includes that party's successors and permitted assignors;
- 1.4.7 references to a person include natural persons and any other entity regulated by the laws of Australia or any other country;
- 1.4.8 a reference to an interest of two or more persons confers that interest jointly and severally and a reference to an obligation imposed on any two or more persons imposes that obligation jointly and severally;
- 1.4.9 "Dollars" and "\$" refer to Australian dollars unless otherwise stated;
- 1.4.10 if any act is required to be done on a day which is not a Business Day, that act must be done on the next Business Day after that day.

2. UNDERTAKINGS, WARRANTIES AND REPRESENTATIONS OF THE PRODUCER AND THE PRODUCTION COMPANY

- 2.1 The Producer and the Production Company undertake, for the benefit of each of the Investors severally, that they will:
- 2.1.1 subject to the terms of this Agreement, produce, complete and deliver the Film according to the Production Particulars Schedule, the Budget Schedule, and otherwise in accordance with the Transaction Documents;
- 2.1.2 pay or procure payment of (as the case may be) the Budgeted Cost (less the Investments) in accordance with the Finance Plan:
- (a) according to the Drawdown Schedule; and
- (b) by deposit without deduction into the Investment Account or Production Account according to the Funding Agreements;
- 2.1.3 comply with all applicable laws relating to the production of the Film including all those relevant to the employment or engagement of personnel;

- 2.1.4 meet any Overage;
 - 2.1.5 apply any Underage in accordance with the Recoupment Split unless otherwise approved by Screen Australia;
 - 2.1.6 obtain an exclusive licence of the Underlying Rights in the Music (excluding the Selected Music) before the Completion Date;
 - 2.1.7 obtain a nonexclusive licence of the Underlying Rights in the Selected Music and any Archive Material before the Completion Date;
 - 2.1.8 obtain an interview release from each person interviewed for inclusion in the Film before the interview or as soon as practicable afterwards, whereby each interviewee agrees that his/her story may be included in the Film and grants the Producer or the Production Company the rights (including copyright) in the interview in all media throughout the world for the life of the Copyright;
 - 2.1.9 perform its obligations according to those Transaction Documents and other Marketing Agreements to which it is a party;
 - 2.1.10 not enter into any Marketing Agreement which is inconsistent with any of the rights or entitlements of Screen Australia granted under this Agreement; and
 - 2.1.11 on request, provide the Investors promptly with all information and documents relating to the production and/or the Marketing of the Film.
- 2.2 The Producer and the Production Company warrant and represent, for the benefit of each of the Investors severally, that:
- 2.2.1 each of the Producer and the Production Company is a corporation validly existing according to the laws of the place of its incorporation and is eligible to receive each Investor's Investment in accordance with its terms of trade published as at the date of this Agreement;
 - 2.2.2 each of the Producer and the Production Company has the full capacity and authority to enter into this Agreement, and to perform all of the obligations imposed on it under this Agreement;
 - 2.2.3 the Budget and the Budgeted Cost are adequate to make the Film based on the Script and to meet all costs incurred in performing its obligations according to the Transaction Documents;
 - 2.2.4 the Producer owns, or has the exclusive right to obtain, the Underlying Rights in the Work and the Script;
 - 2.2.5 the Producer or the Production Company has, in respect of moral rights, procured such consents and/or waivers as the Producer is obliged to procure under each Marketing Agreement;
 - 2.2.6 the Producer or the Production Company has entered into enforceable agreements with each of the Principal Personnel;
 - 2.2.7 if the Film is to incorporate a recording of a live performance, in respect of performers moral rights, the Producer or the Production Company has procured or will in a timely manner procure the consents of all of the performers included in each live performance in the Film to any treatment of the performance in the

Film which could amount to a derogatory treatment within the meaning of *Copyright Act 1968* (Cth);

- 2.2.8 the production and Marketing of the Film does not and will not:
- (a) infringe any person's copyright; or
 - (b) create any Claim;
- 2.2.9 neither the Producer nor the Production Company has allowed or will allow the creation of a Security Interest in the Film Assets, except as provided in the Transaction Documents;
- 2.2.10 neither the Producer nor the Production Company has done or omitted to do anything to allow or induce any person, except as provided in the Transaction Documents, to claim any entitlement that conflicts with the rights of the Investors acquired by this Agreement and neither of them will do anything having such an effect;
- 2.2.11 there is no material inconsistency between the terms of this Agreement, on the one hand, and any other Funding Agreement, Transaction Document, Marketing Agreement or the Completion Guarantee, on the other hand;
- 2.2.12 neither the Producer nor the Production Company has dealt with the Copyright or the Underlying Rights except as revealed by this Agreement, or entered any agreements or arrangements that are inconsistent with the exclusive licence granted to it to produce or Market the Film under this Agreement;
- 2.2.13 other than payments due according to any industrial instrument (including Residuals), each of the Producer and the Production Company has disclosed to the Investors all bonus entitlements, deferrals or other such payments due or which may become due to creative contributors to the making of the Film according to any agreement, arrangement or understanding;
- 2.2.14 each Transaction Document and other Marketing Agreement is valid, binding and enforceable according to its terms;
- 2.2.15 all information provided by the Producer or the Production Company concerning the Transaction Documents and other Marketing Agreements, including each Marketing Report, is true in all material respects and is not, by omission or otherwise, misleading;
- 2.2.16 no Event of Default has occurred;
- 2.2.17 neither the execution nor the performance of their respective obligations under the Transaction Documents or any other Marketing Agreement to which either or both of them is a party, or any transaction contemplated by those documents, will violate any provision of any document or agreement that is binding upon them or their assets and, except as provided by the Transaction Documents and other Marketing Agreements approved by Screen Australia, does not and will not:
- (a) create any Security Interest in any of their assets; or
 - (b) accelerate or cancel any obligation with respect to their indebtedness, or anything that is (or which, with the giving of notice or the lapse of time, or both, would be) an event of default, cancellation event,

repayment event or similar event (whatever called) according to any agreement relating to their indebtedness;

- 2.2.18 in relation to each of the Producer and the Production Company:
- (a) no Claim is current, pending or, to its knowledge, threatened against it for more than \$20,000;
 - (b) its can pay its debts as and when they fall due; and
 - (c) it is not the subject of an Insolvency Event.

2.3 Each warranty and representation set out in Clause 2.2 is given on and as of the date of this Agreement and deemed to be repeated as at the date on which each Instalment is payable, and survives termination of this Agreement for any reason.

2.4 The Producer and the Production Company must notify the Investors in writing immediately on becoming aware of any actual, potential or threatened breach of any of the provisions of Clause 2.1 or 2.2.

2.5 If requested in writing by an Investor, the Producer and the Production Company must promptly provide that Investor with duly executed copies of any and all documents or agreements listed in Clauses 2.1 and 2.2.

3. INDEMNITY IN FAVOR OF THE INVESTORS

3.1 The Producer and the Production Company must indemnify and keep each Investor indemnified against:

3.1.1 any Claim; and

3.1.2 any costs and expenses incurred by that Investor,

in respect of a breach by the Producer or the Production Company of any warranty, representation, undertaking or any other term of this Agreement and the occurrence of any Event of Default.

3.2 This indemnity survives the termination of this Agreement for any reason.

4. PRODUCER OFFSET AND PRODUCTION OF THE FILM AS AN AUSTRALIAN FILM

4.1 The Production Company must:

4.1.1 obtain and maintain the Provisional Certificate;

4.1.2 produce and complete the Film in accordance with the Provisional Certificate;

4.1.3 obtain the Final Certificate as soon as possible after the Completion Date;

4.1.4 provide the Investors with a copy of the Final Certificate promptly on receipt; and

4.1.5 on request by an Investor, provide that Investor with any information or documents relating to the issue or proposed issue of and compliance with the Provisional Certificate and the Final Certificate.

- 4.2 The Production Company must pay the amount of the Producer Offset Proceeds in accordance with the Producer Offset Cashflow Documentation.
- 4.3 Despite any other provision of this Agreement, the Production Company, having given notice in writing to the Investors, may commence a members' voluntary winding up following completion of the Film. Upon such winding up taking effect, any obligations of the Production Company under this Agreement that have not been fulfilled by the Production Company, shall become the obligations and liabilities of the Producer.

5. INVESTOR'S UNDERTAKING TO INVEST

- 5.1 Subject to the terms of this Agreement each Investor agrees to contribute its Investment to the Budgeted Cost and to pay its Investment into the Investment Account or, if there is no Investment Account, into the Production Account according to the Drawdown Schedule.
- 5.2 The Producer must transfer funds received in the Investment Account into the Production Account as and when required for expenditure on the production of the Film by the Production Company.

6. CONDITION PREDECENT TO INVESTORS' PAYMENTS

- 6.1 It is a condition precedent to an Investor paying any Instalment that:
- 6.1.1 each Transaction Document is provided to that Investor and is fully executed by all parties on terms and in a form acceptable to it;
- 6.1.2 for the first Instalment, the Producer provides the Investors with an opinion at the Producer's cost in a form approved by the Investors from a solicitor qualified in the Investors' opinion to give such an opinion, that the Producer has cleared all Underlying Rights and that the Producer is in a position to give and comply with all of the warranties, representations and other obligations in relation to the Underlying Rights set out in this Agreement;
- 6.1.3 there is no subsisting uncured Event of Default;
- 6.1.4 the insurances required by Clause 15 are in effect; and
- 6.1.5 each party to each Transaction Document and any other Marketing Agreement has complied with all its obligations contained in that document.

7. INVESTOR FEES

- 7.1 The Producer must pay each Investor Fee from the first Instalment of the applicable Investor's Investment.
- 7.2 The Producer irrevocably directs each Investor to deduct and retain its Investor Fee from the first Instalment of that Investor's Investment in satisfaction of the Producer's obligation to pay that Investor Fee.

8. OWNERSHIP OF FILM ASSETS

- 8.1 Immediately on execution of this Agreement, the Production Company assigns to the Producer all present and future right, title and interest in the Film Assets for \$1.

- 8.2 When each Investor pays (or contributes in kind, in the case of non-cash Investments) its first Instalment, the Producer assigns to that Investor the proportion of the present and future Film Assets as specified in the Film Assets Split.
- 8.3 Upon the assignment described in Clause 8.2 to each Investor, the Producer and the Investors own the Film Assets as tenants in common.
- 8.4 The Investors and the Producer grant the Production Company an exclusive licence to use the Film Assets throughout the world to produce and complete the Film subject to the terms of this Agreement.
- 8.5 The Producer must take, and ensure that all Marketing Licensees take, all reasonable steps to register, maintain, prosecute infringements of and defend Claims in respect of, the Copyright.
- 8.6 The Producer and the Production Company must immediately notify the Investors in writing if it becomes aware of any Claim with respect to the Film Assets and, upon an Investor's written request, provide that Investor with further information in relation to such Claim.
- 8.7 Neither the Producer nor the Production Company may settle any Claim relating to the Film Assets without Screen Australia's prior written consent.
- 8.8 The Producer or the Production Company must register and obtain an International Standard Audiovisual Number (ISAN) for the Film and must notify the Investors of that number as soon as practicable after registration.

9. INVESTOR WARRANTIES

- 9.1 Each of the Investors severally warrant to each other and to the Producer and the Production Company that:
- 9.1.1 it is a validly existing entity with the full capacity and authority to enter into and to perform all of the obligations imposed on it under this Agreement;
- 9.1.2 each Transaction Document to which it is a party is valid, binding and enforceable according to its terms;
- 9.1.3 the licence granted to the Producer according to Clause 19 is not subject to any Security Interest;
- 9.1.4 neither the execution nor the performance of its obligations according to those Transaction Documents to which it is a party, nor any transaction contemplated by those documents, will violate any provision of any document or agreement that is binding upon it or its assets and, except as provided by the Transaction Documents, does not and will not:
- (a) create any Security Interest in any of its assets; or
- (b) accelerate or cancel any obligation with respect to its indebtedness, or anything that is (or which, with the giving of notice or the lapse of time, or both, would be) an event of default, cancellation event, repayment event or similar event (whatever called) according to any agreement relating to its indebtedness;
- 9.1.5 it has sufficient funds to meet its obligations under this Agreement; and
- 9.1.6 it is not the subject of an Insolvency Event.

10. INVESTORS' PRODUCTION APPROVAL RIGHTS

- 10.1 The Producer and the Production Company must obtain the Investors' prior approval in respect of:
- 10.1.1 any material amendment to any Transaction Document;
 - 10.1.2 any change to the Principal Personnel;
 - 10.1.3 any reallocation of more than 20% of any budget category in the Budget;
 - 10.1.4 any variation to the Budget which reduces or is likely to reduce QAPE; and
 - 10.1.5 any changes to the Production Schedule.

11. COMPLETION GUARANTEE

- 11.1 The Producer or the Production Company will pay the fee due to the Completion Guarantor set out in the Completion Guarantee from the first Instalment.
- 11.2 The parties agree that the terms of the Completion Guarantee take precedence over the terms of this Agreement.

12. FOREIGN CURRENCY

- 12.1 If the Producer or the Production Company, on its own account or for the Investors, for the production of the Film:
- 12.1.1 is or may be required to make payments in a foreign currency; or
 - 12.1.2 will use money payable in foreign currency to meet the Budgeted Cost,
- it must, by insurance, hedging or otherwise, ensure that it has sufficient money to make those payments from the Budgeted Cost in the foreign currency or that the foreign currency is sufficient, when aggregated with other contracted investments, to meet the Budgeted Cost.
- 12.2 Any gain (which includes a saving or benefit) realised by the Producer or the Production Company from foreign currency movements in respect of transactions the subject of Clause 12.1 must be paid promptly into the Production Account and, with Screen Australia's prior consent, treated as part of the Budgeted Cost. To the extent that a gain is expended on the costs of production, the Budgeted Cost increases accordingly but without change to any share of the Film Assets and Gross Receipts.
- 12.3 The Producer and the Production Company must bear any loss arising from foreign currency movements in respect of transactions the subject of Clause 12.1 and promptly pay into the Production Account a sum equal to the loss.

13. THE INVESTMENT AND PRODUCTION ACCOUNTS

- 13.1 The Producer must keep the Investment Account open and the Production Company must keep the Production Account open until acceptance by the Investors of the audit provided to them in accordance with Clause 14.4.
- 13.2 The Investment Account and the Production Account must be used solely for the receipt and expenditure of the monies paid to the Producer and the Production Company,

respectively, for the purpose of producing, completing and Marketing the Film according to the Budget.

- 13.3 Neither the Producer nor the Production Company may:
- 13.3.1 deposit its own money in the Investment Account or the Production Account other than its contribution to the Budgeted Cost (if any);
 - 13.3.2 transfer money in the Investment Account or the Production Account to another account owned or operated by it; or
 - 13.3.3 deposit any money required by this Agreement to be deposited in the Investment or the Production Account, in any other account other than as described in Clause 5.2.
- 13.4 The Producer must not establish a bank account other than the Investment Account and the Collection Account, and the Production Company must not establish a bank account other than the Production Account, for the purposes of the Film without Screen Australia's prior written consent.
- 13.5 All interest that accrues on money in the Investment Account and the Production Account must be applied by the Producer and the Production Company, respectively, to the cost of the production and Marketing of the Film.
- 13.6 The Producer must, and Screen Australia may at any time and from time to time, nominate at least two signatories to the Investment Account. The Producer must obtain Screen Australia's prior approval in writing of its signatories and any replacement signatories. Any two signatories (provided that they are signatories nominated or approved by Screen Australia) may operate the Investment Account provided that both signatories must sign for each transaction.
- 13.7 The Production Company must, and Screen Australia may at any time and from time to time, nominate at least two signatories to the Production Account. The Production Company must obtain Screen Australia's prior approval in writing of its signatories and any replacement signatories. Any two signatories (provided that they are signatories nominated or approved by Screen Australia) may operate the Production Account provided that both signatories must sign for each transaction.
- 13.8 The Producer and the Production Company must, on an Investor's written request, provide that Investor with copies of any or all of the bank statements for the Investment Account and the Production Account.

14. PRODUCER'S AND PRODUCTION COMPANY'S ACCOUNTING AND REPORTING OBLIGATIONS

- 14.1 Each of the Producer and the Production Company must:
- 14.1.1 keep, organise and safely store adequate and proper Records;
 - 14.1.2 ensure its accounts are prepared according to the *Corporations Act 2001* (Cth) and generally accepted Australian accounting principles;
 - 14.1.3 ensure that the Records show a true and fair view of all of its transactions in relation to the production and Marketing of the Film and of its financial and contractual position including, where applicable, its financial and contractual

position in relation to Investors and the third parties listed as providing funding in the Finance Plan; and

- 14.1.4 upon reasonable notice from an Investor, provide that Investor or its nominee with unrestricted access to, and copies of, the Records.
- 14.2 Within 5 days of each of the dates specified for the start of post production and the rough cut of the Film in the Production Particulars Schedule, the Production Company must provide the Investors with a Cost Report.
- 14.3 Within 60 days after the Completion Date, the Production Company must give the Investors a final Cost Report.
- 14.4 Within 3 months following the Completion Date, the Production Company must promptly procure and deliver to the Investors a fully audited statement of the total production costs of the Film in accordance with the Budget categories and in a form satisfactory to Screen Australia.
- 14.5 The auditor responsible for the audited statement must be independent of the Producer and the Production Company and must be approved in writing by the Investors.
- 14.6 The audited statement shall, on acceptance by the Investors, be conclusive and binding on the parties to this Agreement, unless there is manifest error.
- 14.7 If the Production Company fails to provide an Investor with an audited statement in compliance with this clause:
 - 14.7.1 the Producer and the Production Company agree that Screen Australia may appoint an auditor to effect the audit and the Producer and the Production Company agree to reimburse Screen Australia for the costs of any such audit on Screen Australia's demand;
 - 14.7.2 the Producer and the Production Company agree to provide Screen Australia, any auditor appointed by Screen Australia and any other nominee of Screen Australia appointed for the purpose of this clause with unrestricted access to, and copies of, the Records for the purpose of this clause; and
 - 14.7.3 in addition to its other rights under this Agreement and at law, that Investor may cease any further scheduled payments of its Investment under this Agreement.

15. INSURANCE

- 15.1 The Production Company and the Producer must effect and maintain the following with reputable insurers in relation to the production and Marketing of the Film:
 - 15.1.1 all usual and customary insurances that it would be prudent to obtain concerning production of the Film; and
 - 15.1.2 any other insurance that Screen Australia or a Marketplace Contributor may reasonably require.
- 15.2 If requested in writing by an Investor, the Producer and the Production Company must promptly provide that Investor with receipts for payment of all the insurances required by this Agreement and all cover notes and policies upon issue.

16. CREDITS

- 16.1 The Investors must receive the credits set out in Part A of the Credits Schedule.
- 16.2 Before the completion of the titles of the Film, the Producer or the Production Company must provide in writing to each Investor the full credit roll for approval of the Investors' credits.
- 16.3 Before completion of the titles of the Film, any Investor may direct the Producer or the Production Company to remove its credits from the Film and not to use its name and logo in advertising and promotion of the Film.
- 16.4 The Producer and the Production Company must acknowledge the Investors' role in financing the Film in any interviews, press conferences, industry events including award nights, or other promotional or press meetings in which the Film is discussed by or under the authority of the Producer.

17. COPYRIGHT NOTICE

- 17.1 The Film must contain a complete and effective copyright notice in the form set out in Part B of the Credits Schedule.

18. DELIVERY MATERIALS

- 18.1 The Producer and the Production Company must provide to each Investor the respective Investor Delivery Materials on the Delivery Date or as otherwise specified in the Delivery Materials Schedule.
- 18.2 The Producer and the Production Company must provide to the NFSA the NFSA Delivery Materials and the Completion Materials within the time specified in the Delivery Materials Schedule.
- 18.3 The Producer and the Production Company must provide to its chosen Study Guide Provider the Study Guide Delivery Materials on the Delivery Date or as otherwise specified in the Delivery Materials Schedule.

19. MARKETING THE FILM

- 19.1 The Investors grant the Producer an exclusive licence of the Film Assets throughout the world to Market the Film.
- 19.2 The exclusive licence for Marketing the Film commences on the date of this Agreement and, subject to this Agreement, continues until the expiration of the term of the Copyright.
- 19.3 The Producer must Market the Film to maximum commercial advantage consistent with good business judgment and sound commercial practice.
- 19.4 The Producer must:
- 19.4.1 join and register the Film with Screenrights for the purpose of collecting statutory remuneration under the *Copyright Act 1968* (Cth) in Australia and New Zealand;
 - 19.4.2 appoint Screenrights International, or other collection agent approved by Screen Australia, as the Producer's agent for the purpose of joining and

registering the Film with all relevant collecting societies for the rest of world;
and

19.4.3 register and obtain an International Standard Audiovisual Number (ISAN) for the Film by the commencement of post production.

19.5 The Producer must not authorise any other person to join and register the Film with any collection agency or to collect any fees or royalties from any collection agency without Screen Australia's prior consent.

19.6 Subject to:

19.6.1 any limitations set out in the Transaction Documents or in any other Marketing Agreements approved by the Investors; and

19.6.2 any contractual restrictions in relation to the use of copyright work or other subject matter included in the Film, as notified by the Producer to the Investors in writing,

the Producer agrees that:

19.6.3 the Investors may use excerpts from the Film or the whole of the Film, and the Marketing Materials, for their own corporate or promotional purposes including, without limitation, for showreels and Parliamentary screenings;

19.6.4 the NFSA may use excerpts of the Film not to exceed three (3) minutes in length for the purposes of the NFSA services currently known as "Australian Screen Online" and "Digital Learning"; and

19.6.5 Screen Australia may require access, and may require that NFSA be given access, to the Marketing Materials (including, without limitation, still photographs) before or after completion of the Film for the purposes of this clause.

19.7 The Producer must give the Investors reasonable prior notice of any film festival screening of the Film.

19.8 The Producer agrees to keep the Investors informed about the organisation of, and invite the Investors to attend, the Australian premiere of the Film.

20. MARKETING AGREEMENTS

20.1 The Producer must not exercise, or authorise anyone else to exercise, all or any part of the Underlying Rights in the Film (except those rights described in paragraphs (a)(i), (a)(iii), (a)(iv) and (b) of the definition of Ancillary Rights), without Screen Australia's prior consent. Screen Australia's consent may be withheld at its discretion or given on terms, including a separate payment for the rights exercised.

20.2 The Producer may only enter into or vary a Marketing Agreement, and may only exercise any rights to approve further Marketing Agreements, in respect of a Major Territory if the Producer obtains Screen Australia's prior approval of the entire terms of the agreement.

20.3 Subject to Clause 20.1, the Producer may enter into Marketing Agreements in respect of territories other than Major Territories without Screen Australia's prior approval.

20.4 The Producer must ensure that each Marketing Agreement contains:

- 20.4.1 a reservation of the rights in the Film held by the Investors and the NFSA set out in Clause 19.6; and
- 20.4.2 a right for the Producer to audit the books and records of each Marketing Licensee, with minimal restrictions upon:
 - (a) the choice of auditor;
 - (b) the time for initiating an audit; and
 - (c) the reporting periods that may be the subject of an audit.

Each Marketing Agreement must also provide that the Marketing Licensee will be liable for the cost of the audit in the event that a significant underpayment is revealed. The Producer must exercise its rights of audit at the request of Screen Australia.

- 20.5 The Producer must notify the Investors of any breach of a Marketing Agreement and, at Screen Australia's reasonable direction:
 - 20.5.1 at the Producer's cost, take such steps as directed by Screen Australia to protect and enforce the Producer's rights set out in the relevant Marketing Agreement; and
 - 20.5.2 without limitation to the foregoing, exercise its right according to the Marketing Agreement to terminate that agreement.
- 20.6 The Producer must ensure that each Marketing Agreement provides for the Producer to receive a copy of further Marketing Agreements, all deal memos and other further sublicences.

21. SEQUELS AND SPIN-OFFS

- 21.1 If any Sequel or Spin Off of the Film is commissioned, the Investors, the Producer (where the Producer is a participant in the Recoupment Split) and any other participant in the Recoupment Split must receive 2% of the budgeted cost of that Sequel or Spin Off as Gross Receipts.
- 21.2 The Gross Receipts referred to in this Clause 21 must:
 - 21.2.1 be apportioned according to the Recoupment Split and applied in accordance with the Recoupment Schedule;
 - 21.2.2 form part of the budget of each and every Sequel or Spin Off; and
 - 21.2.3 be payable upon commencement of principal photography of each and every Sequel or Spin Off.

22. MARKETING EXPENSES

- 22.1 Marketing Expenses which have been substantiated to Screen Australia's reasonable satisfaction may be paid from Gross Receipts according to the Marketing Expenses Schedule or otherwise in accordance with a Marketing budget approved by Screen Australia.
- 22.2 The Producer must provide to Screen Australia and obtain Screen Australia's approval of any Marketing budget provided by a Marketing Licensee.

23. MARKETING REPORTS

- 23.1 The Producer must deliver to the Investors Marketing Reports, the first such report being due on 31 January or 31 July, whichever occurs first after first Delivery and thereafter (subject to Clause 25.5) future reports at six (6) monthly intervals.

24. COLLECTING AND DISBURSING GROSS RECEIPTS

- 24.1 The Investors appoint the Producer to receive Gross Receipts, to operate the Collection Account and disburse Gross Receipts according to the Recoupment Schedule. The Producer must not authorise any person to receive Gross Receipts without the prior approval of the Investors.
- 24.2 The Producer must establish a Collection Account, and pay all Gross Receipts directly into the Collection Account.
- 24.3 The Collection Account must be used solely for receiving and disbursing Gross Receipts from the Film.
- 24.4 The Producer must not:
- 24.4.1 deposit its own money in the Collection Account
 - 24.4.2 transfer money in the Collection Account to another account owned or operated by the Producer; or
 - 24.4.3 deposit any money required by this Agreement to be deposited in the Collection Account, in any other account.
- 24.5 The Producer must, and Screen Australia may at any time and from time to time, nominate at least two signatories each to the Collection Account. The Producer must obtain Screen Australia's prior approval in writing of its signatories and any replacement signatories. Any two signatories (provided that they are signatories nominated or approved by Screen Australia) may operate the Collection Account provided that both signatories must sign for each transaction.
- 24.6 The Producer must, on an Investor's written request, provide that Investor with copies of any or all of the bank statements for the Collection Account.
- 24.7 The Producer must disburse Gross Receipts according to the Recoupment Schedule and provide a detailed statement in a form approved by the Investors to accompany each disbursement of Gross Receipts.
- 24.8 Subject to Clause 24.9, the Producer must disburse Gross Receipts at the same time as it sends each Marketing Report to the Investors under Clause 23.1.
- 24.9 The Producer is not required to disburse Gross Receipts if the amount available for disbursement at the relevant time is less than \$2,500, unless an Investor calls for a disbursement.
- 24.10 Any amount of Gross Receipts not disbursed pursuant to Clause 24.9 must be included in the first disbursement made by the Producer after Gross Receipts available for disbursement exceeds \$2,500.

25. REVERSION OF SCREEN AUSTRALIA'S ENTITLEMENT TO GROSS RECEIPTS

- 25.1 Subject to and in consideration of the Producer complying with all the terms of this Agreement (including this Clause 25), Screen Australia acknowledges and agrees that the following provisions of this Clause 25 shall apply on and from the Screen Australia Reversion Date.
- 25.2 Screen Australia agrees to assign to the Producer:
- 25.2.1 Screen Australia's right to receive Gross Receipts set out in the Recoupment Schedule;
 - 25.2.2 Screen Australia's right to receive a share of Gross Receipts set out in Clause 21;
 - 25.2.3 Screen Australia's interest in the Film Assets other than the Screen Australia Retained Interest,
- in each case with effect on and from the Screen Australia Reversion Date. The parties acknowledge and agree that this clause will be sufficient to give effect to that assignment.
- 25.3 The parties acknowledge and agree that references to Screen Australia within the Recoupment Split and the Profit Split shall be deemed to be references to the Producer in respect of all entitlements to Gross Receipts arising as and from the Screen Australia Reversion Date.
- 25.4 Notwithstanding the foregoing and for the avoidance of doubt, Screen Australia will retain the right to receive, and to bring an action against the Producer to recover, Gross Receipts to which Screen Australia became entitled prior to the Screen Australia Reversion Date.
- 25.5 After the Screen Australia Reversion Date:
- 25.5.1 the Producer must provide Screen Australia with a Marketing Report no later than two (2) months after the end of each financial year;
 - 25.5.2 Screen Australia shall continue to be entitled to the benefit of all of its promotional and crediting entitlements under this Agreement;
 - 25.5.3 the Producer shall continue to be entitled to the exclusive licence granted by Screen Australia under Clause 19.1 and shall not be required to seek the prior consent or approval of Screen Australia with respect to any Marketing Agreement or any agreement in respect of the Underlying Rights;
 - 25.5.4 the Producer's obligations in respect of any representation, warranty and indemnity given by it under this Agreement shall remain in effect in accordance with this Agreement; and
 - 25.5.5 save as expressly provided for in this Agreement or as necessary to enable Screen Australia to exercise and enjoy the rights and entitlements on its part which are expressly preserved under this Clause 25, the Producer shall be released from all of its obligations to Screen Australia under this Agreement which have not yet been discharged by performance.
- 25.6 For the avoidance of doubt, nothing in this Clause 25 affects the rights or entitlements of any Investor other than Screen Australia, or the obligations of the Producer to any Investor other than Screen Australia.

26. REMEDY OF AN EVENT OF DEFAULT

26.1 If an Event of Default occurs which in Screen Australia's reasonable opinion can be rectified, Screen Australia in consultation with the other Investors may give written notice to the Producer and the Production Company specifying the Event of Default and requiring the Producer and the Production Company to rectify the Event of Default within fourteen (14) days of the date of the notice or within such longer period as is specified in the notice.

27. DEFAULT AND TERMINATION

27.1 If an Event of Default is incapable of rectification in Screen Australia's reasonable opinion or if an Event of Default is not rectified within the time required by any notice given in accordance with Clause 26.1, Screen Australia may, after consultation with the other Investors and by written notice to the Producer and the Production Company (and copied to the other Investors), terminate the:

27.1.1 Production Company's right to produce and complete the Film;

27.1.2 Producer's right to Market the Film; and

27.1.3 Producer's appointment under Clause 24.1.

27.2 If Screen Australia gives notice under Clause 27.1, in addition to any other remedies available to Screen Australia at law or in equity, Screen Australia may, by written notice to the parties to this Agreement, require that any of the following provisions apply:

27.2.1 The Investors, the Producer and the Production Company remain bound by this Agreement until the Investors retain another producer on terms satisfactory to most Investors and decided by reference to their respective investments contributed up to the time of termination.

27.2.2 If another producer is not retained within 60 days after the Producer's and the Production Company's rights are terminated:

(a) the Producer must return the balances of the Investment Account, and the Collection Account and the Production Company must return the balance of the Production Account, to the Investors and any sublicensees who have provided licence fees to the production, in proportion to their respective investments and licence fees, contributed up to the time of termination; and

(b) Screen Australia has the right to sell all the Film Assets and return the proceeds of sale to the Investors in the same proportions.

27.2.3 The Producer must, to the extent required by Screen Australia, assign to Screen Australia, or Screen Australia's nominee, its rights in all Marketing Agreements and any other sublicences granted under this Agreement.

27.2.4 The Producer and the Production Company, must to the extent required by Screen Australia assign to Screen Australia their interests in the Film Assets.

27.2.5 The Producer and the Production Company must deliver to Screen Australia, or Screen Australia's nominee, all Film Assets and any other materials relating to the production or Marketing of the Film in its possession or control.

- 27.2.6 The Producer and the Production Company must deliver to Screen Australia, or Screen Australia's nominee, all bank books, bank statements, cheque books, cash withdrawal cards and other materials relating to the Investment Account, the Production Account and the Collection Account in its possession or control.
- 27.2.7 The Producer's and the Production Company's signatories must cease to operate the Investment Account, the Production Account and the Collection Account and must deliver to Screen Australia, or Screen Australia's nominee, any necessary forms signed by the relevant signatories to remove its signatories from the Investment Account, the Production Account and the Collection Account.
- 27.2.8 The Producer and the Production Company must deliver to Screen Australia, or Screen Australia's nominee, all records, books, invoices, timesheets, accounts, agreements (whether finalised or under negotiation), deal memos and other documents relating to the production and Marketing of the Film in its possession or control.
- 27.2.9 The Producer and the Production Company must execute all documents and do everything necessary or required by Screen Australia to vest in and secure to Screen Australia or its nominee the rights granted to the Producer and Production Company and terminated under this Agreement.
- 27.2.10 The Producer and the Production Company are deemed to have irrevocably granted to Screen Australia and any persons authorised by Screen Australia a licence to have access to any premises to take possession of all Film Assets and to exercise its rights according to this Agreement.
- 27.2.11 The Producer and the Production Company are deemed to have irrevocably granted to Screen Australia and each of its officers severally, a power of attorney, as the attorney thinks fit, to exercise all rights, execute and deliver all documents and do all things that the Producer or the Production Company could have done according to any Transaction Document or other Marketing Agreement or otherwise in respect of the Film if the Producer's and the Production Company's rights acquired by this Agreement had not been terminated.

28. GENERAL PROVISIONS

- 28.1 Nothing in this Agreement constitutes a partnership or joint venture between the Investors, the Producer and the Production Company or renders one of them liable for any debt or obligation of another.
- 28.2 Neither the Producer nor the Production Company may enter into any contract or incur any liability on any Investor's behalf, or represent that it has authority to do so.
- 28.3 The failure of one of a party to rely on or enforce a provision of this Agreement must not be construed as a waiver by that party of its right to subsequently rely on or enforce that provision.
- 28.4 Subject to Clause 28.5, each party must keep the terms of this Agreement confidential and not disclose such terms without the prior written consent of each other party, except as required by law. Where a party considers that it is bound to disclose terms of this

Agreement by law, it must first inform each other party and comply with any reasonable request of each other party in relation to the disclosure.

- 28.5 Each of the Producer and the Production Company may disclose the terms of this Agreement to its financiers, advisors, accountants and Marketplace Contributors provided such parties are subject to an undertaking, on terms no less restrictive than those in Clause 28.4, to keep the terms of this Agreement confidential.
- 28.6 This Agreement may only be varied in writing and signed by the parties.
- 28.7 The Producer must not assign or agree to assign any of its benefits, rights, powers, duties or obligations under this Agreement, including its interest in the Film Assets, without the Investors' prior written consent.
- 28.8 The Producer and the Production Company must pay any stamp duty or other duty payable in respect of this Agreement promptly upon its execution, and give the Investors evidence of such payment on request.
- 28.9 This Agreement may be executed in any number of counterparts and all such counterparts taken together must be deemed to constitute one and the same instrument.
- 28.10 This Agreement supersedes all prior agreements, representations negotiations, and correspondence with respect to the transactions contemplated in this Agreement and comprises the entire agreement between the parties.
- 28.11 Any written notice, document, or other communication to be served or made to a party must be made in accordance with the Notices Schedule.
- 28.12 Each party undertakes to maintain in confidence the terms of this Agreement and all confidential information disclosed to them severally concerning this Agreement and to take reasonable precautions to ensure that each party's respective employees, agents, contractors, subcontractors, sublicensees, solicitors and other advisers keep that information confidential.
- 28.13 Each Investor, the Producer and the Production Company agree:
- 28.13.1 that each Transaction Document and Marketing Agreement to which it is a party is not inconsistent with this Agreement;
- 28.13.2 that, to the extent of any inconsistency, the terms of this Agreement prevail; and
- 28.13.3 not to amend any Transaction Document without the Investors' prior consent.

29. GOVERNING LAW

- 29.1 This Agreement will be governed by and construed in accordance with the law of the State of New South Wales and the parties agree to submit to the jurisdiction of the courts of that State in all such matters.

30. GST

- 30.1 The parties agree that all amounts referred to in this Agreement are exclusive of GST.
- 30.2 If GST is imposed upon any supply made under this Agreement (**Taxable Supply**) then the recipient of the Taxable Supply will pay to the supplier, in addition to any

consideration payable for that Taxable Supply under this Agreement (the "Consideration"), the amount of GST imposed upon the Taxable Supply.

- 30.3 Any increased amount under Clause 30.2 will be payable to the supplier in the same manner and at the same time as the Consideration is payable to the supplier, provided that the recipient has received from the supplier a tax invoice in the form required by the GST legislation, setting out the amount of GST payable by the supplier on the Taxable Supply, and evidence of the supplier's registration for the purposes of GST. In all cases, any increased amount under Clause 30.2 must be paid within 14 days of receipt of such tax invoice.

THIS IS THE END OF THE CORE CONDITIONS