

**CORE CONDITIONS TO PIA FOR
TELEVISION DRAMA PRODUCTION INVESTMENTS
(WITH A SPECIAL PURPOSE VEHICLE)
APRIL 2011**

The production investment agreement (PIA) will be made up of:

- the Schedules to be made available on approval of investment, being:
 - Production Particulars Schedule
 - Finance & Film Asset Schedule
 - Drawdown Schedule
 - Transaction Documents Schedule
 - Delivery Materials Schedule
 - Special Conditions Schedule
 - Budget Schedule
 - Recoupment Schedule
 - Marketing Expenses Schedule
 - Credits Schedule
 - Notices Schedule
- and the attached Core Conditions.

Variations to the Core Conditions (if any) will be negotiated in the Special Conditions Schedule.

On agreement by the parties on the content of the Schedules, the Schedules and the Core Conditions will be issued by Screen Australia for execution.

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 Underlying 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, Spin Off or Remake;
 - (ii) books in volume form developed from:
 - (A) the Script;
 - (B) the Film;
 - (C) any Sequel, Spin Off or Remake; 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 characters and situations in the Script and the Film;
- (c) 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;

Auditor means the person so named in the Production Particulars Schedule or such other person approved by the Investors;

Authorised Officer means:

- (a) in respect of Screen Australia, the Chief Executive Officer, the General Counsel, the Head of Production Investment, any Investment Manager or, in respect of approvals under Clause 19, the Manager, Recoupment and Disbursement, or any person authorised by any of the foregoing; and
- (b) in respect of any other Investor, any person nominated in writing to the Producer, the Production Company and the other Investors;

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 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;

Complete the Film:

- (a) in respect of Clause 4, has the meaning set out in Division 376 of ITAA; and
- (b) in all other respects, means to make the first full length, edited, synchronised, end-titled and credited copy of the Film suitable for exhibition to the public by way of television broadcasting.

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

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

Completion Guarantee means any agreement by which the Completion Guarantor agrees to Complete the Film and provide sufficient money for that purpose;

Completion Guarantor means the person so named in the Production Particulars or a replacement person approved by Screen Australia;

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;

Deliver means the provision of all delivery items as required by each Transaction Document and each other Marketing Agreement;

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

Event of Default means:

- (a) the conditions precedent to the first Instalment of the Screen Australia Investment are not satisfied within three (3) months of the date of this Agreement;
- (b) breach by the Production Company or Producer of any warranty or other term of any Funding Agreement or other Marketing Agreement;

- (c) the Producer or the Production Company does anything, or permits anything to be done, which prejudices the issue of the Final Certificate;
- (d) any Funding Agreement or other Marketing Agreement is terminated for any reason or becomes void, illegal, invalid, unenforceable or of limited force and effect;
- (e) 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;
- (f) any person becomes entitled to terminate, rescind or avoid any Transaction Document; or
- (g) the Film is not Completed by the Completion Date;

Film means the cinematograph film described in Item 1 of 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 the 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, the Investors, the Marketplace Contributors and the other contributors to the Budgeted Cost, 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) awards or prizes other than:
 - (i) those made to individuals for contributions to the production of the Film; and
 - (ii) those made to the Film but customarily paid to individuals for contributions to the production of the Film;

- (d) any amount payable to the participants in the Sequel Revenue Shares under Clause 21; and
- (e) interest accruing on money in the Collection Account,

but excludes:

- (a) Screenrights Income; and
- (b) 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 threatens 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 Assets 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 mean those persons listed under "Investment" in the Finance Plan who are a party to this Agreement;

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

Major Territory means any or all of:

- (a) Australia;
- (b) North America as one territory;
- (c) USA;
- (d) world as one territory including or excluding Australia;
- (e) Europe as one territory;
- (f) UK;
- (g) Italy;
- (h) France;
- (i) Spain;
- (j) Scandinavia as one territory;
- (k) Germany;
- (l) 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 the Marketing Expenses Schedule, or otherwise approved by Screen Australia for treatment as Marketing Expenses, which are incurred by the Producer or the Production Company in Marketing the Film and are substantiated to Screen Australia's reasonable satisfaction (except those provided for in the Budget);

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;

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;

NFSAA means the National Film and Sound Archive of Australia;

NFSAA 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 Cast means any person named as such in the Production Particulars Schedule or as approved by Screen Australia.;

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 the sum so specified in the Finance Plan, being the sum advanced to the Production Company against the benefit of the Producer Offset under the terms of the Producer Offset Cashflow Documentation;

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

Producer Offset Lender means the party identified as such in the Finance and Film Assets Schedule;

Producer Offset Proceeds means the proceeds paid by the Australian Taxation Office 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;

Provisional Certificate means a provisional 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;

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;

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;

Remake means any cinematograph film based upon the Work or the Film with substantially the same major characters and storyline as portrayed in the Film;

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;

Screenrights Income means money obtained from statutory licences according to the *Copyright Act 1968 (Cth)* including money obtained from collection agencies such as the Audio-Visual Copyright Society Limited (trading as Screenrights);

Script means the proposal, treatment, script outline and script (including revisions) for the Film written by the Writer and approved by the Investors, 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 leading characters in the Film taking part in events that are different from but related to and developed from the events of the Film, whether before or after;

Sequel Revenue Shares means the shares described as such in the Finance and Film Assets Schedule;

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;

Tape House means the person so named in the Production Particulars Schedule or such other entity approved by the Investors;

Tape House Agreement means the agreement between the Tape House and Screen Australia in relation to the Film;

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.

Underage Shares means the shares described as such in the Finance and Film Assets Schedule;

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 Underlying Work, Script, Music and other works created for the production of the Film to make and to authorise others to make any Sequel, Spin Off or Remake;
- (c) the exclusive right in the Underlying 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, Spin Off or Remake:
 - (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;

Underlying 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 or as approved, by Screen Australia.

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; and
- 1.4.11 derivatives from a word given a certain meaning or interpretation, have a corresponding meaning or interpretation.
- 1.5 Except as provided otherwise in this Agreement, each of the Investors' agreement, approval, notice or consent is ineffective unless in writing and provided by an Authorised Officer of the relevant Investor. No Investor shall unreasonably withhold or delay its agreement, approval or consent. If an Investor does not give its agreement, consent or approval, it must attempt to consult with the Producer or the Production Company (as the case may be) to reach agreement or to give approval or consent. Except as provided otherwise in this Agreement, Screen Australia will not act unreasonably in the exercise of rights and powers generally under this Agreement.

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 produce, Complete and Deliver the Film according to the Production Particulars Schedule and the Budget, using the Script 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 Production Account or the Investment 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 pay any Underage in accordance with the Underage Shares at the time of provision of the audit to the Investors under Clause 14.7 unless otherwise approved by the Investors;
- 2.1.6 obtain and maintain an exclusive licence of the Underlying Rights in the Music (excluding the Selected Music) before the Completion Date;
- 2.1.7 obtain and maintain a nonexclusive licence of the Underlying Rights in the Selected Music and any Archive Material before the Completion Date;
- 2.1.8 perform its obligations according to those Transaction Documents and other Marketing Agreements to which it is a party;
- 2.1.9 not change the title of the Film from the title set out in the Production Particulars Schedule without the prior approval of the Investors;
- 2.1.10 ensure diligent handling and safe storage of all Film Materials and, without limitation to the foregoing:
 - (a) use and pay all sums due to the Tape House to process all video recordings created in the production of the Film;
 - (b) store any Film Materials returned to it by the Tape House at a place and on terms approved by Screen Australia; and
 - (c) ensure that no person accesses the Film Materials without Screen Australia's prior consent;
- 2.1.11 maintain each Production Asset in good condition (allowing for fair wear and tear) having regard to its condition at the time of purchase, hire or lease and, without limitation to the foregoing, take all reasonable necessary precautions to guard against loss, dilapidation or theft of the Production Assets;
- 2.1.12 in respect of any hired or leased Production Asset:
 - (a) only enter into an agreement for the hire or lease on its own behalf and not for the Investors;
 - (b) ensure that the term of the hire or lease does not exceed the period for which that Production Asset is required for the production of the Film; and
 - (c) comply with the terms of each hiring or leasing agreement.

- 2.1.13 in respect of any purchased Production Asset:
 - (a) not sell any such asset acquired for more than \$10,000 except on terms approved by Screen Australia; and
 - (b) subject to subclause (a) above, sell or dispose of each asset when practicable after it is no longer required for production of the Film;
- 2.1.14 pay the proceeds of sale of any Production Asset into the Production Account immediately on receipt and treat such proceeds as part of the Budgeted Cost;
- 2.1.15 pay Principal Personnel, Principal Cast and the overhead item in the Budget as follows, unless Screen Australia otherwise agrees:
 - (a) 30% on commencement of pre-production;
 - (b) 30% on commencement of principal photography;
 - (c) 30% on commencement of postproduction; and
 - (d) 10% on completion of services;
- 2.1.16 not do or allow anything to be done which prejudices the interests of the Investors acquired by this Agreement;
- 2.1.17 not enter into any Marketing Agreement which is inconsistent with any of the rights or entitlements of any Investor set out in this Agreement without that Investor's prior approval; and
- 2.1.18 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 each of the obligations of the Producer and the Production Company 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 procured in respect of moral rights 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 and Principal Cast;

- 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 (including any Claim in relation to the title of the Film);
- 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 any Investor acquired by this Agreement and neither of them will do anything having such an effect without the prior approval of that Investor;
- 2.2.11 neither the Producer nor the Production Company has done or omitted to do anything which prejudices the interests of the Investors acquired by this Agreement;
- 2.2.12 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;
- 2.2.13 neither of 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 them to produce and Market the Film under this Agreement;
- 2.2.14 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;
- 2.2.15 each Transaction Document and other Marketing Agreement is valid, binding and enforceable according to its terms;
- 2.2.16 all information provided by the Producer or the Production Company concerning the Transaction Documents and other Marketing Agreements is true in all material respects and is not, by omission or otherwise, misleading;
- 2.2.17 no Event of Default has occurred;
- 2.2.18 neither the execution nor the performance of their obligations according to those 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 the assets of the Producer or the Production Company; or
- (b) accelerate or, subject to the giving of notice or otherwise, contingently accelerate, any obligation under any agreement relating to the indebtedness of the Producer or the Production Company;

2.2.19 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) it 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 FAVOUR OF THE INVESTORS

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

3.1.1 any Claim; and

3.1.2 any costs and expenses incurred by that Investor,

arising from or in connection with 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 produce and Complete the Film in accordance with the Provisional Certificate;

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

- 4.1.3 provide the Investors with a copy of the Final Certificate promptly on receipt; and
- 4.1.4 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.
- 4.4 If the indebtedness of the Producer or the Production Company under the Producer Offset Cashflow Documentation exceeds the amount of the Producer Offset Proceeds, any shortfall that is not provided for in the Budget shall be the sole liability of the Producer or the Production Company (as the case may be), and under no circumstances shall the Producer, the Production Company or the Producer Offset Lender have any right of recourse to Gross Receipts to extinguish such indebtedness.

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 PRECEDENT TO INVESTORS' PAYMENT OBLIGATIONS

- 6.1 It is a condition precedent to an Investor paying any Instalment that:
 - 6.1.1 each Transaction Document which is, in accordance with the Transaction Documents Schedule, due to be provided at the time such Instalment is due is provided to that Investor and, where such document requires execution for it to take effect, is fully executed by all parties on terms and in a form acceptable to that Investor;
 - 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 or the Production Company has cleared all Underlying Rights (other than Underlying Rights in respect of the Music, the Selected Music and the Archive Material) and that the Producer and the Production Company are in a position to give and comply with all of the warranties, representations and other obligations set out in this Agreement in relation to such rights, and the Investors will rely on that opinion;

- 6.1.3 there is no subsisting uncured Event of Default;
- 6.1.4 the insurances required by Clause 15 are in effect;
- 6.1.5 each party to each Transaction Document and any other Marketing Agreement has complied with all its obligations contained in that document; and
- 6.1.6 without limitation to Clause 6.1.5, each Investor, Marketplace Contributor and each other contributor to the Budgeted Cost has made such payments to the Producer or the Production Company (as the case may be) due at the date of the relevant Instalment.

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 (receipt of which is acknowledged).
- 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 interests of the Production Company acquired by Clause 8.4 are contractual only and do not create any proprietary interest in the Film Assets in favour of the Production Company.
- 8.6 The Production Company and 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.
- 8.7 The Producer and the Production Company must immediately notify the Investors 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 a Claim.
- 8.8 Neither the Producer nor the Production Company may settle any Claim relating to the Film Assets without Screen Australia's prior consent.
- 8.9 Screen Australia may assume control of any Claim commenced by or against the Production Company or the Producer relating to the Film Assets.

- 8.10 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 licences granted to the Production Company according to Clause 8 and to the Producer according to Clause 19 are not subject to any Security Interest other than as contemplated by the Transaction Documents;
 - 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 breach 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, subject to the giving of notice or otherwise, contingently accelerate, any obligation under 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. INVESTOR'S PRODUCTION APPROVAL RIGHTS

- 10.1 The Producer and the Production Company must obtain the Investors' prior approval in respect of any:
- 10.1.1 material amendment to any Transaction Document or the Script;
 - 10.1.2 change to the Principal Personnel or Principal Cast;
 - 10.1.3 reallocation of more than 10% of any budget category in the Budget;
 - 10.1.4 variation to the Budget which reduces or is likely to reduce QAPE; and
 - 10.1.5 change to the Production Schedule.
- 10.2 The Producer and the Production Company must, at any Investor's request, give that Investor and its nominees access to the sets and locations of the Film. The Investor and its nominees shall not interfere with production of the Film. Without limitation to the foregoing, the Producer or the Production Company (as applicable) must provide the Investors with a reasonable opportunity to view the Film confidentially at the following times:
- 10.2.1 rough cut;

- 10.2.2 fine cut;
 - 10.2.3 picture lock-off (before negative cutting or online editing);
 - 10.2.4 final mix; and
 - 10.2.5 Completion of the Film.
- 10.3 The Producer or the Production Company (as applicable) shall invite each Investor to attend any viewing of the Film for any other Investor.
- 10.4 If the Film changes after the Investors view the Film on Completion, the Producer or the Production Company shall ensure that the Investors shall have a further reasonable opportunity to view the Film before its first broadcast.

11. COMPLETION GUARANTEE

- 11.1 The Producer or the Production Company must 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.
- 11.3 The proceeds of any claim on the Completion Guarantee must be paid into the Production Account immediately on receipt and treated as part of the Budgeted Cost.
- 11.4 Any rebate that is paid to the Production Company or the Producer under the Completion Guarantee must first be applied by the Production Company in reduction of any Overage.

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 expended on the costs of production of the Film or otherwise as approved by Screen Australia. 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 PRODUCTION ACCOUNT AND THE INVESTMENT ACCOUNT

- 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 14.7.
- 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 or the Investment 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 Account 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 consent.
- 13.5 All interest that accrues on money in the Production Account and the Investment Account must be applied by the Production Company and the Producer, respectively, as follows:
 - 13.5.1 First, towards the cost of producing the study guide for the Film.
 - 13.5.2 Second, as a non-recoupable contribution towards the cost of producing the Film, which contribution shall not increase the Budgeted Cost.
 - 13.5.3 Third, as Underage to be disbursed in accordance with Clause 2.1.5.
- 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 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 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 Production Company and the Producer 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 the 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 The Production Company must provide written production reports to the Investors at the following times unless otherwise agreed by the Investors:
- 14.2.1 fortnightly during preproduction;
 - 14.2.2 weekly during principal photography; and
 - 14.2.3 monthly during postproduction.
- 14.3 The first report provided under Clause 14.2 must cover the period commencing on the earlier of the date of this Agreement and commencement of preproduction. The period for each subsequent report begins on the day after the last day of the period of the preceding report.
- 14.4 Each report provided by the Production Company under Clause 14.2 must be in a form acceptable to the Investors and must, without limitation to the foregoing, include in relation to the Film:
- 14.4.1 a cost report;
 - 14.4.2 a trial balance;
 - 14.4.3 a statement of Investors' investment funds identifying any interest earned on money in the Collection Account, the Investment Account and the Production Account and any gain realised from foreign currency movements; and
 - 14.4.4 any other matters that the Investors may require.
- 14.5 The Production Company must provide the Investors with a copy of each report provided to the Completion Guarantor including, without limitation, daily production reports.
- 14.6 Within 60 days after the Completion Date, the Production Company must give the Investors a final cost report in an acceptable industry standard format.
- 14.7 Within 3 months following the Completion Date the Production Company must promptly procure and deliver to the Investors the Auditor's audit of the total production costs of the Film in accordance with the Budget categories and in a form satisfactory to Screen Australia.
- 14.8 The Auditor must be independent of the Production Company and the Producer.

- 14.9 The audited statement shall, on acceptance by the Investors, be conclusive and binding on the parties to this Agreement, unless there is manifest error.
- 14.10 If the Production Company fails to provide an Investor with an audited statement in compliance with this clause:
- 14.10.1 the Production Company and Producer 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 at Screen Australia's demand;
- 14.10.2 the Production Company and Producer 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
- 14.10.3 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 insurances 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 and Marketing of the Film;
- 15.1.2 insurance known as "errors and omissions" insurance, with limits of not less than the equivalent of US\$1,000,000 for any single occurrence and the equivalent of US\$3,000,000 for all occurrences, effected from the Delivery Date for three years (renewed if required by any sub licensee); and
- 15.1.3 any other insurance that Screen Australia or a Marketplace Contributor may reasonably require.
- 15.2 All insurances must be:
- 15.2.1 in the name of the Production Company or Producer (as applicable), with the Investors named as interested parties;
- 15.2.2 on competitive terms and not subject to material exclusions or other unusual terms;
- 15.2.3 with reputable insurers;
- 15.2.4 for the full insurable value of the risk; and
- 15.2.5 for periods and risks for which it would be prudent to insure.
- 15.3 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.
- 15.4 If any circumstances arise which would enable a claim to be made on any insurance policy in relation to the Film, the Production Company or Producer (as applicable) must:
- 15.4.1 promptly make a claim; and

15.4.2 actively pursue that claim.

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 NFSAA the NFSAA Delivery 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 subject to the terms of this Agreement.
- 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 of the Investors consistent with good business judgment and sound commercial practice.
- 19.4 The interests of the Producer acquired by Clause 19.1 are contractual only and do not create any proprietary interest in the Film Assets in favour of the Producer.
- 19.5 The Producer must:

- 19.5.1 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;
 - 19.5.2 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
 - 19.5.3 register and obtain an International Standard Audiovisual Number (ISAN) for the Film by the commencement of post production.
- 19.6 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.
- 19.7 Subject to:
- 19.7.1 any limitations set out in the Transaction Documents or in any other Marketing Agreements approved by the Investors; and
 - 19.7.2 any contractual restrictions in relation to the use of any copyright work or other subject matter included in the Film, as notified by the Producer to the Investors in writing,
- the Producer agrees that:
- 19.7.3 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;
 - 19.7.4 the NFSAA may use excerpts of the Film not to exceed three (3) minutes in length for the purposes of the NFSAA services currently known as "Australian Screen Online" and "Digital Learning"; and
 - 19.7.5 Screen Australia may require access, and may require that NFSAA 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.
- 19.8 The Producer must give the Investors reasonable prior notice of any film festival screening of the Film.
- 19.9 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 1.1(a)(i), 1.1(a)(iii) and 1.1(a)(iv) 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 NSFAA set out in clause 19.7; and
- 20.4.2 a right for the Producer or its nominee to audit the books and records of each Marketing Licensee, with minimal restrictions upon the:
- (a) choice of auditor;
- (b) time for initiating an audit; and
- (c) reporting periods that may be the subject of an audit.
- 20.5 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.
- 20.6 The Producer must notify the Investors of any breach of a Marketing Agreement and, at Screen Australia's reasonable direction:
- 20.6.1 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
- 20.6.2 without limitation to the foregoing, exercise its right according to any Marketing Agreement to terminate that agreement.
- 20.7 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, SPIN-OFFS OR REMAKES

- 21.1 If a Sequel, Remake, or Spin Off in the form of an adult television drama series of 6 (six) or more episodes is commissioned, the participants in the Sequel Revenue Shares must together receive as Gross Receipts:
- 21.1.1 \$5000 per episode for the first such series; and
- 21.1.2 \$7500 per episode for each subsequent series.
- 21.2 If any other Sequel, Spin Off or Remake of the Film is commissioned, the participants in the Sequel Revenue Shares must together receive 2% of the production budget of each and every Sequel, Spin Off or Remake as Gross Receipts.
- 21.3 The Gross Receipts referred to in this Clause 21 must:
- 21.3.1 be apportioned in accordance with the Sequel Revenue Shares;
- 21.3.2 form part of the budget of each and every Sequel, Spin Off or Remake; and
- 21.3.3 be payable no later than commencement of principal photography of each and every Sequel, Spin Off or Remake.

22. MARKETING EXPENSES

- 22.1 Marketing Expenses may be recouped from Gross Receipts in accordance with the Recoupment Schedule.
- 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:
 - 23.1.1 Marketing Reports; and
 - 23.1.2 copies of all Marketing Agreements not previously delivered to the Investors, at the following times:
 - 23.1.3 at the end of the first calendar quarter after first Delivery, and thereafter
 - 23.1.4 at three (3) monthly intervals for two (2) years; and thereafter
 - 23.1.5 (subject to Clause 25.5.1) every six (6) months.

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 not close the Collection Account without the prior approval of the Investors.
- 24.3 The Producer must pay, and direct all Marketing Licensees to pay, all Gross Receipts directly into the Collection Account.
- 24.4 The Collection Account must be used solely for receiving and disbursing Gross Receipts from the Film.
- 24.5 The Producer must not:
 - 24.5.1 deposit its own money in the Collection Account;
 - 24.5.2 transfer money in the Collection Account to another account owned or operated by the Producer; or
 - 24.5.3 deposit any money required by this Agreement to be deposited in the Collection Account, in any other account.
- 24.6 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 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.
- 24.7 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.

- 24.8 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.
- 24.9 Subject to Clause 24.10, the Producer must disburse Gross Receipts at the same time as it sends each Marketing Report to the Investors under Clause 23.1.
- 24.10 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.
- 24.11 Any amount of Gross Receipts not disbursed pursuant to Clause 24.10 must be included in the first disbursement made by the Producer after Gross Receipts available for disbursement exceeds \$2,500.
- 24.12 Screen Australia assigns to the Producer its right to receive a share of any Screenrights Income.

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 Schedule 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 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 on which the notice is deemed sufficiently served in accordance with the Notices Schedule 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 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 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 those Investors whose Investments contributed up to the date

of termination represent a majority of the total Investments contributed to that date.

- 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 Marketing Licensees who have provided licence fees to the production, in proportion to their respective investments and licence fees, contributed up to the date of the notice given under Clause 27.1; 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 sub licences 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 or its nominee their interests in the Film Assets.
- 27.2.5 The Production Company and Producer 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 Production Company and Producer 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 their possession or control.
- 27.2.7 The Production Company and Producer must ensure that their signatories 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 completed forms to remove the relevant signatories from the Investment Account, the Production Account and the Collection Account .
- 27.2.8 The Production Company and Producer must deliver to Screen Australia, or Screen Australia's nominee, all Records, including 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 Production Company and Producer 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 terminated under this Agreement, which may include the novation, in favour of Screen Australia or its nominee, of any agreement related to the production of the Film that is not yet fully discharged by performance at the time of termination of this Agreement.

- 27.2.10 The Production Company and Producer irrevocably grant 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 Production Company and Producer irrevocably grant 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 Production Company and the Producer 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 and all confidential information disclosed to it concerning this Agreement (the 'Confidential Information') confidential and not disclose the Confidential Information without the prior consent of each other party, except as required by law. Where a party considers that it is bound to disclose the Confidential Information 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 Production Company and Producer may disclose the Confidential Information 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 Confidential Information confidential.
- 28.6 This Agreement may only be varied in writing and signed by the parties.
- 28.7 Neither the Production Company nor the Producer may 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 consent.
- 28.8 Each party must do everything necessary to give effect to this Agreement and the transactions contemplated by it and cause relevant third parties to do the same, at its own expense unless the cost is included in the Budget.
- 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 given to a party must be served or given in accordance with the Notices Schedule.
- 28.12 Each Investor, the Production Company and the Producer agree:
- 28.12.1 that each Transaction Document and Marketing Agreement to which it is a party is not inconsistent with this Agreement;
- 28.12.2 that, to the extent of any inconsistency, the terms of this Agreement prevail; and
- 28.12.3 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