

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 title of the Film, any fictional characters and fictional situations in the Script and/or the Film, including in any game or application, which is made available (without limitation) via the internet, cable, wired or wireless means of delivery to handheld devices;
- (c) all rights in the Film Materials, the Production Assets (other than hired or leased assets) and the Marketing Materials; and
- (d) New Technology Rights;

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;

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 21.1 and 22.1 the Manager, Recoupment and Disbursement or, in respect of the notification, consultation and approvals under Clauses 19 and 22.2 the Manager, Marketing, 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 and the other Investors;

Bank Accounts means the Production Account, the Investment Account, the Collection Account and any other accounts established for the production and Marketing of the Film as set out in the Finance and Film Asset Schedule (if any) or in accordance with Clause 13.6;

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

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

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 broadcast and made in accordance with this Agreement.

Completion Agreement means any agreement or deed between the Producer 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 the Investors;

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;

Director has the meaning given to it in the *Corporations Act 2001* (Cth);

Drawdown Schedule means the schedule to this Agreement described as such, or as varied with the prior approval of the Investors;

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 Producer of any warranty or other term of any Funding Agreement or other Marketing Agreement;
- (c) the Producer does anything, or permits anything to be done, which prejudices the issue of the Final Certificate;
- (d) any Funding 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 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 Producer does not Complete the Film 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 for the purpose of the Film and paid for from the Budgeted Cost, 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;

Final Cost Report means the full statement of the total production costs of the Film in accordance with the classifications of the Budget required to be delivered to the Investors as set out in Clauses 14.7 and 14.8;

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;

Format means the distinctive and characteristic (and in the case of a series, repeated) elements and features of the Film, which may include its concept, title, brand, style, structure, theme, characters or participants, scenarios, sequences and narrative development, and any other elements and features which are distinctive of the Film;

Funding Agreement means any agreement in relation to the Film between any or all of the Producer, 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) amounts generated from exploitation of the Ancillary Rights;
- (e) any amount payable in accordance with Clauses 24.3, 24.4 and 24.5; and
- (f) interest accruing on money in the Collection Account,

but excludes:

- (a) Screenrights Income;
- (b) the Marketplace Contributions;
- (c) the Producer Offset Proceeds (which are the subject to the provisions of Clause 4);
- (d) money obtained from export market development schemes and export expansion schemes; and
- (e) any Sequel Fee payable to the Sequel Participants in accordance with Clauses 24.1 and 24.2;

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 equity 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;

Investment Manager means the person nominated by Screen Australia;

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)*;

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

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; and
- (l) Japan;

Market the Film includes:

- (a) promotion and exploitation of the Copyright and the Underlying Rights for the purpose of promoting and exploiting the Film;
- (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;
- (f) creation and use of the Marketing Materials; and
- (g) for the avoidance of doubt, does not include the right to make or exploit any Sequel, Spin Off or Remake;

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,

and for the avoidance of doubt, the term “agreement” includes long form agreements, terms sheets, deal memos and any other record of agreement;

Marketing Budget means the marketing and promotional budget for the Film identifying the budget for items, including but not limited to:

- (a) stills photography;
- (b) trailer;
- (c) poster key art and promotional materials;
- (d) EPK/DVD materials;
- (e) cross-platform elements; and
- (f) the cost of a test screening;

Marketing Expenses means those costs and expenses described in Part 1 of the Marketing Schedule, or otherwise approved by Screen Australia for treatment as Marketing Expenses, which are incurred by the Producer 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, paid for from the Budgeted Cost or otherwise acquired by the Producer from a Marketing Licensee;

Marketing Report means:

- (a) a report on the Marketing activities in relation to the Film prepared by the Producer, which must be in a form and substance satisfactory to the Investors. For the avoidance of doubt, a Marketing Report will not be in a form and substance satisfactory to the Investors if it does not include the Prescribed Marketing Information, except to the extent that Screen Australia is satisfied that it is beyond the control of the Producer to procure any of the Prescribed Marketing Information; and
- (b) 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;

New Technology Rights means the right to use, store and reproduce digitally all or any part of the Film, the Underlying Work, the Script, the Music and any other works and subject matter created for the production of or incorporated into the Film, by means of computer technology or any other technology now known or later brought into existence, in any format and to deliver it through any platform or on-line or internet service whether or not it is interactively presented;

NFSA means the National Film and Sound Archive of Australia;

NFSA Deed means the Deed between the Producer and the NFSA in relation to the Film, on terms approved by Screen Australia;

NFSA Delivery Confirmation means written confirmation from the NFSA that they have received the NFSA Deed.

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

Prescribed Marketing Information means the information set out in Part 2 of the Marketing Schedule.

Principal Cast means any person named as such in the Production Particulars Schedule or as approved by the Investors;

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 Producer 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 Producer 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 Budgeted Cost;

Production Particulars means the particulars relating to the Film set out in the Production Particulars Schedule or as varied with the prior approval of the Investors and the Completion Guarantor;

Production Schedule means the schedule so specified in the Production Particulars Schedule or as varied with the prior approval of the Investors and the Completion Guarantor;

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

Purposes means to:

- (a) edit the Film to meet time slots;
- (b) incorporate advertisements in to the Film to be broadcast on television or transmitted on a diffusion service;
- (c) meet the legal requirements of broadcasting authorities;
- (d) ensure that the Film meets any legal requirements or classification requirements or to avoid a breach of law;
- (e) to make foreign language versions by way of dubbing or subtitling the Film;
- (f) to make in-flight and / or on board versions of the Film;
- (g) to make non-interactive online versions of the Film; and
- (h) to use excerpts of the Film for the purposes of promotion of the Film including by way of teasers, advertisements and excerpts for promotion of copies.

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;

Related Entity means a Related Body Corporate of the Producer or any corporation of which a Director of the Producer is a Director;

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Cth);

Release shall mean the earlier of 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 Underlying Work or the Film with substantially the same major characters and storyline as portrayed in the Film and, for the avoidance of doubt, includes any film based on the Format;

Residuals means payments for the use of the Film and Ancillary Rights (excluding payments for use capable of pre-purchase by the Producer) required to be paid by the Producer to creative contributors to the making of the Film, including to cast, composers, musicians, writers, and/or any other creative participants, being additional compensation that becomes due as a result of Marketing the Film (other than net profits in the Film) provided always that any such payment is payable in accordance with a standard industry award or industrial agreement;

Screen Australia Facility Access Letter means the agreement/s between the Tape House and Screen Australia and the Laboratory and Screen Australia in relation to the Film, in a form approved by Screen Australia;

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 of the Copyright in Australia 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;
- (c) right of or arrangement with any creditor to have its claims satisfied before other creditors from any asset; and
- (d) an interest arising by operation of law including in accordance with the *Personal Property Securities Act 2009 (Cth)*;

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 means any earlier or later cinematograph film, including any prequel, which either:

- (a) features 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; or

(b) is based on the Format;

Sequel Fee has the meaning given to that term in Clause 24.1;

Sequel Participants has the meaning given to that term in Clause 24.1;

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. For the avoidance of doubt, a cinematograph film which is made available (without limitation) via the internet, cable, wired or wireless means of delivery to handheld devices may be a Spin Off;

Statutory Declaration means a written statement made in accordance with the *Statutory Declarations Act 1959 (Cth)*, in a form approved by Screen Australia, and by which the Producer declares that the contents of the Final Cost Report are true and accurate;

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 entity so named in the Production Particulars Schedule or such other entity approved by the Investors;

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 and the Selected 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; and
 - (v) to communicate the independent works and subject matter to the public;

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 the Investors.

- 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 In this Agreement (including the Schedules) except where the context otherwise requires:
 - 1.3.1 words importing the singular include the plural and vice versa;
 - 1.3.2 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)*;
 - 1.3.3 words and expressions defined in the *Corporations Act 2001 (Cth)* have the same meaning;
 - 1.3.4 clause headings and underlining are for reference purposes only;
 - 1.3.5 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;
 - 1.3.6 references to a party includes that party's successors and permitted assignors;
 - 1.3.7 references to a person include natural persons and any other entity regulated by the laws of Australia or any other country;

- 1.3.8 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;
 - 1.3.9 "Dollars" and "\$" refer to Australian dollars unless otherwise stated;
 - 1.3.10 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
 - 1.3.11 derivatives from a word given a certain meaning or interpretation, have a corresponding meaning or interpretation.
- 1.4 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. Any agreement, approval or consent given under this Agreement may be provided subject to conditions. If an Investor does not give its agreement, consent or approval, it must attempt to consult with the Producer to reach agreement or to give approval or consent. Except as provided otherwise in this Agreement, the Investors will not act unreasonably in the exercise of rights and powers generally under this Agreement.
- 2. UNDERTAKINGS, WARRANTIES AND REPRESENTATIONS OF THE PRODUCER**
- 2.1 The Producer undertakes, for the benefit of each of the Investors severally that it will:
- 2.1.1 produce, Complete the Film and Deliver the Film according to the Production Particulars Schedule and the Budget, using the Script and otherwise in accordance with the Transaction Documents and each other Marketing Agreement;
 - 2.1.2 procure payment of 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 pay its contribution to the Budgeted Cost (if any), as set out in the Finance Plan:
 - (a) according to the Drawdown Schedule; and
 - (b) by deposit without deduction into the Production Account or the Investment Account;
 - 2.1.4 comply with all applicable laws relating to the production of the Film including all those relevant to the employment or engagement of personnel;
 - 2.1.5 meet any Overage;
 - 2.1.6 pay any Underage in accordance with the Underage Shares at the time of provision of the Final Cost Report to the Investors under Clause 14.6 unless otherwise approved by the Investors;

- 2.1.7 obtain and maintain an exclusive licence of the Underlying Rights in the Music (excluding the Selected Music and Archive Material) before the Completion Date;
- 2.1.8 obtain and maintain a nonexclusive licence of the Underlying Rights in the Selected Music and any Archive Material before the Completion Date;
- 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 change the title of the Film from the title set out in the Production Particulars Schedule without the prior approval of the Investors;
- 2.1.11 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 and Laboratory to process all video recordings and film negatives created in the production of the Film;
 - (b) store any Film Materials returned to it by the Tape House or Laboratory at a place and on terms approved by Screen Australia;
 - (c) cause each of the Tape House and Laboratory to execute and deliver to Screen Australia the Screen Australia Facility Access Letter;
 - (d) immediately after completion of each filming session, deliver all Film Materials recorded during that session to the Tape House or Laboratory or, as applicable, and mark those materials with the name of the Producer; and
 - (e) ensure that no unauthorised person accesses the Film Materials without the Investors' prior consent;
- 2.1.12 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;
- 2.1.13 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.
- 2.1.14 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;

- 2.1.15 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;
 - 2.1.16 pay Principal Personnel, Principal Cast and the overhead item in the Budget no sooner than 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;
 - 2.1.17 not do or allow anything to be done which prejudices the interests of the Investors acquired by this Agreement;
 - 2.1.18 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;
 - 2.1.19 on request, provide the Investors promptly with all information and documents relating to the production and/or the Marketing of the Film;
 - 2.1.20 ensure that the Film is of a technical quality suitable and fully acceptable for international theatrical release (if applicable), television broadcast and video distribution; and
 - 2.1.21 all reports including, but not limited to, the cost reports, Final Cost Report and the Marketing Reports which it is required to provide to the Investors under this Agreement will be accurate and complete.
- 2.2 The Producer warrants and represents, for the benefit of each of the Investors, severally that:
- 2.2.1 it 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 it 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 its obligations of according to the Transaction Documents;
 - 2.2.4 it owns, or has the exclusive right to obtain prior to the Completion Date, the Underlying Rights in the Underlying Work and the Script;
 - 2.2.5 it has procured, or will in a timely manner procure, in respect of moral rights the consents of:
 - (a) each author of the Work to material alterations to the Work;
 - (b) each author of the Script to material alterations to the Script;
 - (c) each producer and director of the Film, and author of the Script to material alterations of the Film for each of the Purposes;

- (d) each author of the Music (but not the Selected Music) to material alterations to the Music,
- or moral rights waivers for the benefit of the Producer, its assignees, its licensees and all sublicensees;
- 2.2.6 it has entered into, or will in a timely manner enter into, written, 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 has procured, or will in a timely manner procure, the consents of all of the performers included in each live performance in the Film (other than as contained in Archive Material) 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 intellectual property rights; or
 - (b) create any Claim (including any Claim in relation to the title of the Film);
- 2.2.9 it has not allowed, nor will allow, the creation of a Security Interest in the Film Assets, except as provided in the Transaction Documents;
- 2.2.10 it has not done nor 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 it will not do anything having such an effect without the prior approval of that Investor;
- 2.2.11 it has not done nor 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 on the other hand any other Funding Agreement, Transaction Document or any Marketing Agreement to which the Producer is a party, or which the Producer has approved, unless otherwise approved by the Investors;
- 2.2.13 it has not dealt with the Copyright or the Underlying Rights except as revealed by this Agreement, nor entered into any agreements or arrangements that are inconsistent with the exclusive licence granted to it to produce and Market the Film under this Agreement;
- 2.2.14 other than payments due according to any industrial instrument (including Residuals), the Producer 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 except those payable from the Producer's share of Gross Receipts;
- 2.2.15 each Transaction Document, and other Marketing Agreement to which the Producer is a party, or which the Producer has approved, is valid, binding and enforceable according to its terms;
- 2.2.16 all information provided by the Producer 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 neither the execution nor the performance of its obligations according to the Transaction Documents or any other Marketing Agreement to which it is a party, or 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 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
- (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;

2.2.18 no Event of Default has occurred;

2.2.19 no Claim is current, pending or, to its knowledge, threatened against it for more than \$20,000;

2.2.20 it can, subject to the timely payment of Investments, pay its debts as and when they fall due; and

2.2.21 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 paid, and survives termination of this Agreement for any reason.

2.4 The Producer 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 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 must indemnify each Investor, and keep each Investor indemnified, against:

3.1.1 any Claim; and

3.1.2 any costs and expenses (including reasonable legal costs and expenses) incurred by that Investor,

arising from or in connection with:

3.1.3 a breach by the Producer of any warranty, representation, undertaking or any other term of this Agreement and the occurrence of any Event of Default; and

3.1.4 the use or sale of the Production Assets.

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 Producer 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 Producer must pay the amount of the Producer Offset Proceeds in accordance with the Producer Offset Cashflow Documentation.
- 4.3 If the indebtedness of the Producer 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, and under no circumstances shall the Producer or the Producer Offset Lender have any right of recourse to Gross Receipts to extinguish such indebtedness.

5. INVESTORS' 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.
- 5.3 If any Investor (other than Screen Australia) or the Producer fails to provide any part of its investment according to the Finance and Film Assets Schedule (or within two Business Days), the Producer must:
- 5.3.1 immediately notify each of the other Investors in writing; and
 - 5.3.2 use best endeavours to meet the shortfall.
- 5.4 No Investor is under any obligation to meet any shortfall.
- 5.5 The Producer must obtain the Investors' prior approval of the terms on which it meets any shortfall and the agreements incorporating those terms.

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 from a solicitor qualified in the Investors' opinion to give such an opinion, that:
 - (a) the Producer owns, or has the exclusive right to acquire all Underlying Rights (other than the Underlying Rights in respect of the Selected Music and Archive Material) necessary for the production, completion and Marketing of the Film and all Spin-Offs, Sequels and Remakes;

- (b) the Producer will, subject to the terms of this Agreement, own the exclusive Copyright in the Film (including the Film Materials) on the Film coming into existence; and
 - (c) is otherwise in a form approved by the Investors,
- 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, which are required to be in effect at the date that the Instalment is payable, 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;
- 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 due at the date of the relevant Instalment; and
- 6.1.7 the Completion Guarantor has received and approved each report required under the Completion Agreement up to the date that the Instalment is payable.
- 6.2 Any Investor may in its absolute discretion elect to extend the time for satisfaction of a condition precedent by notice in writing to the Producer.

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.
- 7.3 The Producer will provide to each Investor a tax invoice for the first Instalment payable by that Investor (notwithstanding the offsetting of the applicable Investor Fee against such first Instalment) and each Investor shall provide to the Producer a tax invoice in respect of its Investor Fee. Each party will then account to the Australian Tax Office for GST (less any available input tax credits).

8. OWNERSHIP OF FILM ASSETS

- 8.1 When each Investor pays (or contributes in kind, in the case of non-cash Investments) its first Instalment, the Producer assigns (or sub-licences in relation to the Selected Music and any Archive Material) to that Investor the proportion of the present and future Film Assets, as specified in the Film Assets Split.
- 8.2 Upon the assignment described in Clause 8.1 to each Investor, the Producer and the Investors own the Film Assets as tenants in common.
- 8.3 The Investors grant the Producer an exclusive licence to use the Film Assets throughout the world to produce and Complete the Film subject to the terms of this Agreement.
- 8.4 The Producer must take, and ensure that all Marketing Licensees under Marketing Agreements to which the Producer is a party take, all reasonable steps to register, maintain, prosecute infringements of and defend Claims in respect of the Copyright.

- 8.5 The Producer 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.
- 8.6 The Producer may not settle any Claim relating to the Film Assets without Screen Australia's prior consent. Screen Australia must not consent to the settlement of any Claim by the Producer under this Clause, without taking steps to consult with the other Investors, where reasonably practicable.
- 8.7 Screen Australia may, subject to any requirements of a relevant insurance policy, assume control of any Claim commenced by or against the Producer relating to the Film Assets, but will not settle any Claim without taking steps to consult with the other Investors, where reasonably practicable.
- 8.8 The Producer 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 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 Producer according to Clauses 8.3 and 19.1 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;
- 9.2 it has sufficient funds to meet its obligations under this Agreement; and
- 9.3 it is not the subject of an Insolvency Event.

10. INVESTOR'S PRODUCTION APPROVAL RIGHTS

- 10.1 The Producer must meaningfully consult with the Investors and obtain the Investors' prior approval in respect of any:
- 10.1.1 amendment to any Transaction Document;
 - 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 change to the Budgeted Cost;
 - 10.1.5 variation to the Budget which reduces or is likely to reduce QAPE;
 - 10.1.6 change to the Production Schedule; and
 - 10.1.7 any material amendment to the Script. When consulting and seeking approval on changes to the Script, the Producer must note the changes and provide an explanation for each change.
- 10.2 The Producer 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 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 shall invite each Investor to attend any:
- 10.3.1 viewing of the Film for any other Investor; and
 - 10.3.2 test screening of the Film,
- giving no less than seven days notice in each case.
- 10.4 Subject to the rights granted to any broadcaster under a Transaction Document, if the Film changes after the Investors view the Film on Completion, the Producer 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 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 to the extent of any inconsistency.
- 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 Producer under the Completion Guarantee must first be applied in reduction of any Overage.

12. FOREIGN CURRENCY

- 12.1 If the Producer, 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 from foreign currency movements in respect of transactions the subject of Clause 12.1 must be paid promptly into the Production Account and in the first instance is to be applied against any aggregate loss referred to in Clause 12.3 and the balance, if any, shall be expended on the costs of production of the Film or otherwise as approved by the Investors. 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 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. BANK ACCOUNTS

- 13.1 The Producer must keep the Investment Account and the Production Account open until acceptance by the Investors of the Final Cost Report 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 for the purpose of producing, Completing and Marketing the Film according to the Budget.
- 13.3 The Producer must not close the Collection Account without the prior approval of the Investors.
- 13.4 The Collection Account must be used solely for the receipt of the monies derived from Marketing the Film and disbursement of Gross Receipts in accordance with the Recoupment Schedule.
- 13.5 The Producer may not:
- 13.5.1 deposit its own money in a Bank Account other than its contribution to the Budgeted Cost (if any);
 - 13.5.2 transfer money in any Bank Account to another account which is not a Bank Account; or
 - 13.5.3 deposit any money required by this Agreement to be deposited in a Bank Account, in any other account other than as described in Clause 5.2.
- 13.6 The Producer must not establish a bank account other than the Bank Accounts, for the purposes of the Film without the Investors' prior consent.
- 13.7 All interest that accrues on money in the Production Account and the Investment Account must be applied by the Producer as follows:
- 13.7.1 first, towards the cost of producing the study guide for the Film.
 - 13.7.2 second, as a non-recoupable contribution towards the cost of producing the Film, which contribution shall not increase the Budgeted Cost.
 - 13.7.3 third, as Underage to be disbursed in accordance with Clause 2.1.6.

- 13.8 All interest that accrues on money in the Collection Account must be applied by the Producer in accordance with the Recoupment Schedule.
- 13.9 The Producer must, and Screen Australia may at any time and from time to time, nominate at least two signatories for each Bank 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 a Bank Account provided that both signatories must sign for each transaction.
- 13.10 If Screen Australia believes an Event of Default has occurred, Screen Australia may, by written notice to the Producer and the relevant bank, terminate the authority of all or any of the Producer's signatories to operate all or any of the Bank Accounts.
- 13.11 The Producer must, on an Investor's written request, provide that Investor with copies of any or all of the bank statements for the Bank Accounts.

14. PRODUCER'S ACCOUNTING AND REPORTING OBLIGATIONS

- 14.1 The Producer 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 Producer 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 Producer 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 Production Account and the Investment Account and any gain realised from foreign currency movements; and
 - 14.4.4 any other matters that the Investors may require.
- 14.5 The Producer must provide the Investors with a copy of each report provided to the Completion Guarantor including, without limitation, daily production reports.
- 14.6 The Producer must:
 - 14.6.1 provide each Investor promptly on request with an explanation of any matter related to the production of the Film; and
 - 14.6.2 at the request of any Investor, meet with that Investor to discuss any matters concerning the production of the Film. Meetings shall occur at convenient times and places and shall not interfere with the production of the Film. Any costs incurred by the Investor in attending the meeting shall be met by the Investor.
- 14.7 Within 3 months following the Completion Date, the Producer must promptly deliver to the Investors a Final Cost Report together with a Statutory Declaration.
- 14.8 The Final Cost Report must address the following matters:
 - 14.8.1 income and expenditure including, without limitation, sums payable and receivable concerning production of the Film (using the categories in the Budget) and a comparison of those sums with provisions in the Budget on an item by item basis;
 - 14.8.2 reconciliation of the Production Account and the Investment Account;
 - 14.8.3 assets, liabilities and investments acquired or incurred by the Producer and any Investors relating to production of the Film;
 - 14.8.4 satisfaction of debtors and creditors of the production;
 - 14.8.5 that purchased Production Assets have been disposed of at an arms length price;
 - 14.8.6 any overage or underage; the name of each recipient of a share of underage and the sum received;
 - 14.8.7 interest accrued on money in the Production Account and the Investment Account;
 - 14.8.8 any gain realised from foreign currency movements; and
 - 14.8.9 any sums paid or payable under the Completion Guarantee.
- 14.9 The Final Cost Report shall, on acceptance by the Investors, be conclusive and binding on the parties to this Agreement, unless there is manifest error.
- 14.10 The Producer agrees that Screen Australia may, at its own cost, appoint an auditor to carry out an audit of the Producer in relation to the Film.
- 14.11 The Producer agrees to provide Screen Australia or any auditor appointed by Screen Australia pursuant to Clause 14.10 with unrestricted access to, and copies of, the Records for the purpose of Clause 14.10.

15. INSURANCE

- 15.1 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 Marketing Licensee) ; and
 - 15.1.3 any other insurance that the Investors or a Marketplace Contributor may reasonably require.
- 15.2 All insurances must be:
- 15.2.1 in the name of the Producer, 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 The Producer must pay all insurance premiums from or prior to the first Instalment.
- 15.4 If requested in writing by an Investor, the Producer 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.
- 15.5 If any circumstances arise which would enable a claim to be made on any insurance policy in relation to the Film, the Producer must:
- 15.5.1 promptly make a claim; and
 - 15.5.2 actively pursue that claim.
- 15.6 Subject to the Completion Guarantee and the relevant insurance policy, the Producer must pay the proceeds of any insurance claim relating to the production of the Film, immediately upon receipt, into the Production Account or, if the Production Account has been closed, the Collection Account and apply those proceeds as follows:
- 15.6.1 first, subject to Clause 12.3, in payment of reasonable costs and expenses in making and processing the claim;
 - 15.6.2 second, in repayment of any advance made by the Investors beyond their obligations to invest in the Film (in proportion to their respective contributions to any advance), with any agreed interest;
 - 15.6.3 third, to meet the costs of production of the Film; and
 - 15.6.4 fourth, as Underage.

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 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 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 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

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 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 must make full and timely Delivery to each Marketing Licensee as required by each Marketing Agreement.
- 18.3 The Producer must advise Screen Australia when Delivery to each Marketplace Contributor occurs.
- 18.4 The Producer 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. The Producer may not receive any commissions for Marketing the Film without Screen Australia's prior written approval.
- 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 Except as provided for in the Marketing Agreements, 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 performers or 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 the Film and the Marketing Materials, for their own corporate or promotional purposes, provided such use is in accordance with the following:
 - (a) the whole Film may be used for screenings for members of the Board, staff and a limited number of invited guests and Parliamentary screenings;
 - (b) excerpts of the Film of no more than 3 minutes in aggregate may be used for showreels and for any online use. For the avoidance of doubt, online use includes, without limitation, websites, YouTube and Facebook;
 - (c) Screen Australia's promotional rights, extend to the promotion of the Australian screen industry; and
 - (d) Investors may require access to the Marketing Materials (including, without limitation, still photographs, trailers and promotional reels) before or after Completion of the Film for the purposes of this clause; and
 - 19.7.4 in addition to the rights contained in Clause 19.7.3(d), it shall provide to Screen Australia all Marketing Materials (including, without limitation, still photographs, trailers and promotional reels) as soon as they become available. Screen Australia agrees that it will comply with any restrictions on the use of such Marketing Materials (which may include restrictions as to the timing of release or the way in which they may be made available), which are notified by the Producer or a Marketing Licensee on the Producer's behalf to Screen Australia.

20. MARKETING MEETINGS, CONSULTATION AND REPORTS

- 20.1 The Producer must deliver to the Investors:
 - 20.1.1 Marketing Reports; and
 - 20.1.2 copies of all Marketing Agreements not previously delivered to the Investors,

at the following times:

- 20.1.3 quarterly for two (2) years after the Delivery Date; and thereafter
- 20.1.4 every six (6) months up until the Screen Australia Reversion Date; and
- 20.1.5 on the Screen Australia Reversion Date.

20.2 The Producer must:

- 20.2.1 give the Investors reasonable prior notice of any film festival screening of the Film;
- 20.2.2 keep the Investors informed about the organisation of, and invite the Investors to attend, the Australian premiere of the Film, and consult with Screen Australia to ensure, to the best of the Producer's ability, that the Australian Government's requirements (which may include access to tickets and invitations to functions) are incorporated into the marketing plan for such premiere screenings and for premiere screenings in any other Major Territory; and
- 20.2.3 provide Screen Australia with details of all festival participation, nominations and awards related to the Film as soon as the information becomes available.

20.3 The Producer will, at the request of Screen Australia:

- 20.3.1 provide information or an explanation of any matter related to the Marketing of the Film; and
- 20.3.2 facilitate meetings and procure that ongoing consultation takes place between Screen Australia, itself and any Marketing Licensee to discuss the Marketing of the Film.

21. MARKETING AGREEMENTS

Screen Australia's prior approval required

- 21.1 The Producer must obtain Screen Australia's prior approval before it enters into an agreement for the distribution or licensing of the Film where such agreement is wholly or in part in respect of a Major Territory.
- 21.2 Screen Australia's approval may be withheld at its discretion or given on terms, including a separate payment for the rights exercised.

Matters which must be included in each Marketing Agreement

21.3 The Producer must ensure that each Marketing Agreement contains:

- 21.3.1 a reservation of the rights in the Film held by the Investors set out in clause 19.7;
- 21.3.2 an obligation on the part of the Marketing Licensee to provide to the Producer or its nominee no less frequently than the Producer is required to report under this Agreement up to the Screen Australia Reversion Date:
 - (a) reports on the Marketing of the Film in an acceptable industry standard format;
 - (b) a copy of each further Marketing Agreement entered into by the Marketing Licensee; and

- (c) a copy of each report received by the Marketing Licensee in relation to the Marketing of the Film;
- 21.3.3 except where the consideration payable under the Marketing Agreement is a fixed fee, a right for the Producer or its nominee to audit the books and records of each Marketing Licensee (with the Marketing Licensee being liable for the cost of the audit in the event that a significant underpayment is revealed), with minimal restrictions upon the:
 - (a) choice of auditor;
 - (b) time for initiating an audit;
 - (c) reporting periods that may be the subject of an audit; and
- 21.3.4 in the case of a Marketing Agreement which is a sales agency agreement, an obligation on the part of the sales agent in favour of the Producer or its nominee in substantially the same terms as the Producer's obligations under Clauses 21.4 and 21.6.
- 21.3.5 an undertaking by the Marketing Licensee to use best endeavours to provide access for the hearing impaired and visually impaired by means of captioned and audio described theatrical screenings and DVDs; and
- 21.3.6 in the case of each Marketing Agreement to which the Producer is a party, an obligation on the part of the Marketing Licensee to communicate directly with Screen Australia and provide information about the Marketing of the Film (including, without limitation, details of Gross Receipts and Marketing Expenses) directly to Screen Australia, in each case as and when reasonably requested by Screen Australia. The Producer must to the extent reasonably possible facilitate Screen Australia having access to Marketing Licensees as referred to in this clause.

Exercise of audit rights under Marketing Agreements

- 21.4 The Producer must exercise its rights of audit under any Marketing Agreement at the request of Screen Australia (and Screen Australia must provide notification to the other Investors). Subject to Clauses 21.3.3 and 21.5, any audit undertaken at Screen Australia's request will be at the cost of Screen Australia and, in relation to any such audit, the Producer must comply with all reasonable directions of Screen Australia including as to the choice of auditor and the negotiation and resolution of any claims arising from the audit. Without limiting the foregoing, the Producer must not settle any such claim without Screen Australia's prior approval.

Recoupment of costs of an audit

- 21.5 Where Screen Australia pays the cost of any audit undertaken pursuant to 21.4, Screen Australia will be entitled to recoup such costs in first position out of the proceeds of any claim arising from the audit. Before any disbursement of the proceeds of any claim is made to the investors, Screen Australia is entitled to be repaid the costs of the audit.

Breach of Marketing Agreements

- 21.6 The Producer must immediately notify the Investors of any breach of a Marketing Agreement of which it becomes aware. If, as a result of a notification by the Producer or otherwise, Screen Australia becomes aware of a breach of a Marketing Agreement, Screen Australia may give, and the Producer must comply with, reasonable directions to

the Producer in relation to the breach, including directions that the Producer, at the Producer's cost:

- 21.6.1 take such steps as directed by Screen Australia to protect and enforce the Producer's rights set out in the relevant Marketing Agreement;
 - 21.6.2 without limitation to the foregoing, exercise its right to terminate that agreement;
 - 21.6.3 execute all such documents and take such other steps as Screen Australia reasonably requires, including in relation to any dispute resolution procedure or proceedings, in order to give effect to the Producer's obligations under this Clause; and
 - 21.6.4 where the Producer is not a party to the Marketing Agreement which has been breached, the Producer must comply with any reasonable directions by Screen Australia in relation to the Producer's rights under any related Marketing Agreement.
- 21.7 Screen Australia must not give directions to the Producer under Clause 21.6, without taking steps to consult with the other Investors, where reasonably practicable.
- 21.8 Without limiting Clause 21.6, the Producer must comply with Screen Australia's reasonable directions in relation to any negotiations with respect to a breach of a Marketing Agreement and must not settle a claim of breach without Screen Australia's prior approval.

22. MARKETING EXPENSES AND MARKETING BUDGET

- 22.1 The Producer must obtain Screen Australia's prior written approval of the Marketing Expenses set out at Part 1.2 of the Marketing Schedule. Subject to the foregoing, 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 prior written approval of any Marketing Budget provided by a Marketing Licensee.

23. USE OF UNDERLYING RIGHTS

- 23.1 The Producer must obtain Screen Australia's prior approval before it exercises, or authorises anyone else to exercise, all or any part of the Underlying Rights (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).
- 23.2 For the avoidance of doubt, any agreement which confers the right to:
- 23.2.1 exercise the Ancillary Rights described in paragraphs 1.1(a)(ii), 1.1(b), 1.1(c) and 1.1(d) of the definition of Ancillary Rights; and/or
 - 23.2.2 make or exploit (or authorise a third party to make or exploit) a Sequel, Spin-Off or Remake,
- requires Screen Australia's prior approval;
- 23.3 Screen Australia's approval may be withheld at its discretion or given on terms.
- 23.4 In the event that Screen Australia approves an exercise of the Underlying Rights which involves the right to make or exploit a Sequel, Spin Off or Remake, subject to Clause

23.5, the Investors grant to the Producer an exclusive licence in their share of the Film Assets throughout the world to make and exploit any such Sequel, Remake or Spin Off.

23.5 If the right to make a Sequel, Spin Off or Remake approved by Screen Australia is to be exercised by the Producer or a Related Entity:

23.5.1 the Producer shall be liable to pay a Sequel Fee in accordance with Clause 24; and

23.5.2 the licence set out in Clause 23.4 will only take effect upon payment of such Sequel Fee.

24. SEQUELS, SPIN-OFFS OR REMAKES

24.1 If any Sequel, Spin Off or Remake is commissioned and is to be produced by the Producer or a Related Entity, the participants in the Sequel Revenue Shares (**Sequel Participants**) must receive a fee, to be calculated as a percentage of the budgeted cost of each and every Sequel, Spin Off or Remake (**Sequel Fee**) as follows:

24.1.1 1.5% for feature films uncapped; and

subject to a cap of \$125,000:

24.1.2 1.5% for adult television or documentary series of less than six (6) episodes which includes, for the avoidance of doubt, single episode programs;

24.1.3 1.25% for adult television or documentary series of six (6) or more episodes; and

24.1.4 1.25% for children's television programs.

24.2 The Sequel Fee must:

24.2.1 be paid to the Sequel Participants in accordance with the Sequel Revenue Shares;

24.2.2 be applied toward the recoupment of each Sequel Participant's Investment;

24.2.3 form part of the budget of each and every Sequel, Spin Off or Remake; and

24.2.4 be payable no later than the commencement of principal photography or, where applicable, principal production of each and every Sequel, Spin Off or Remake.

24.3 If any Sequel, Spin Off or Remake is commissioned and is to be produced by the Producer or a Related Entity and the amount paid for the right to make such Sequel Spin Off or Remake is greater than the amount of the Sequel Fee then such additional amount shall form part of Gross Receipts and shall be disbursed in accordance with the Recoupment Schedule.

24.4 Where a Sequel, Spin Off or Remake is commissioned and is to be produced by an entity other than the Producer or a Related Entity (**Unrelated Production Company**), any licence fee or other consideration payable by the Unrelated Production Company for the rights to produce any such Sequel, Spin-Off or Remake shall form part of Gross Receipts and shall be disbursed in accordance with the Recoupment Schedule.

24.5 Where the right to make a Sequel, Spin Off or Remake is optioned by either the Producer, a Related Entity or an Unrelated Production Company, any option fee, advance or other consideration payable for such option shall form part of Gross Receipts and shall be disbursed in accordance with the Recoupment Schedule.

24.6 For the avoidance of doubt:

24.6.1 the entitlement to receive a Sequel Fee does not entitle the Sequel Participants to participate in any revenues generated by the exploitation of a Sequel, Spin Off or Remake; and

24.6.2 where the right to make a Sequel, Spin Off or Remake is licensed to an Unrelated Production Company under a Marketing Agreement or by the Producer, no Sequel Fee is payable and Clause 24.4 applies.

25. COLLECTING AND DISBURSING GROSS RECEIPTS

25.1 The Investors are entitled to a share of Gross Receipts in the proportions set out in the Recoupment Schedule.

25.2 The Investors appoint the Producer to receive Gross Receipts, to operate the Collection Account and to 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.

25.3 The Producer must pay, and direct all Marketing Licensees under Marketing Agreements to which the Producer is a party to pay, all Gross Receipts directly into the Collection Account.

25.4 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.

25.5 Subject to Clause 25.6, the Producer must disburse Gross Receipts at the same time as it sends each Marketing Report to the Investors under Clause 20.1.

25.6 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.

25.7 Any amount of Gross Receipts not disbursed pursuant to Clause 25.6 must be included in the first disbursement made by the Producer after Gross Receipts available for disbursement exceeds \$2,500.

25.8 Screen Australia assigns to the Producer its right to receive a share of any Screenrights Income.

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

26.1 Subject to and in consideration of the Producer complying with all the terms of this Agreement (including this Clause 26), Screen Australia acknowledges and agrees that the following provisions of this Clause 26 shall apply on and from the Screen Australia Reversion Date.

26.2 Screen Australia agrees to assign to the Producer:

26.2.1 its right to receive Gross Receipts as set out in Clause 25.1;

26.2.2 its right to receive a share of any Sequel Fee or other Gross Receipts as set out in Clause 23;

26.2.3 its 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.

- 26.3 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.
- 26.4 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.
- 26.5 After the Screen Australia Reversion Date:
- 26.5.1 Screen Australia shall continue to be entitled to the benefit of all of its promotional and crediting entitlements under this Agreement;
 - 26.5.2 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;
 - 26.5.3 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
 - 26.5.4 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 26, the Producer shall be released from all of its obligations to Screen Australia under this Agreement which have not yet been discharged by performance.
- 26.6 For the avoidance of doubt, nothing in this Clause 26 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.

27. REMEDY OF AN EVENT OF DEFAULT

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 specifying the Event of Default and requiring the Producer to rectify the Event of Default within ten (10) Business 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.

28. DEFAULT AND TERMINATION

- 28.1 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 27, Screen Australia may, after consultation with the other Investors and by notice to the Producer (and copied to the other Investors), terminate the:
- 28.1.1 Producer's right to produce and Complete the Film as set out in Clause 8.3;
 - 28.1.2 Producer's right to Market the Film as set out in Clause 19.1; and

- 28.1.3 Producer's appointment to collect and disburse Gross Receipts as set out in Clause 25.2.
- 28.2 If Screen Australia gives notice under Clause 28.1, 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:
- 28.2.1 the Investors and the Producer 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.
 - 28.2.2 if another producer is not retained within 60 days after the Producer's rights are terminated:
 - (a) the Producer must return the balances of the Bank Accounts 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 28.1; 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.
 - 28.2.3 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.
 - 28.2.4 The Producer must, to the extent required by Screen Australia, assign to Screen Australia or its nominee its interests in the Film Assets.
 - 28.2.5 The 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.
 - 28.2.6 The 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 Bank Accounts in its possession or control.
 - 28.2.7 The Producer must ensure that its signatories cease to operate the Bank Accounts and must deliver to Screen Australia, or Screen Australia's nominee, any completed forms to remove the relevant signatories from the Bank Accounts.
 - 28.2.8 The 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.
 - 28.2.9 The 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.
 - 28.2.10 The Producer irrevocably grants 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.

28.2.11 The Producer irrevocably grants 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 could have done according to any Transaction Document or other Marketing Agreement or otherwise in respect of the Film if the Producer's rights acquired by this Agreement had not been terminated.

29. GENERAL PROVISIONS

- 29.1 Nothing in this Agreement constitutes a partnership or joint venture between the Investors and the Producer nor renders one of them liable for any debt or obligation of another.
- 29.2 The Producer may not enter into any contract nor incur any liability on any Investor's behalf, or represent that it has authority to do so.
- 29.3 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.
- 29.4 Subject to Clause 29.5, 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.
- 29.5 The 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 29.4, to keep the Confidential Information confidential.
- 29.6 This Agreement may only be varied in writing and signed by the parties.
- 29.7 The Producer may not:
- 29.7.1 assign or agree to assign,
 - 29.7.2 create or agree to create any Security Interest over,
- any of its benefits, rights, powers, duties or obligations under this Agreement, including its interest in the Film Assets, without the Investors' prior consent.
- 29.8 No Investor may, without the consent of all Investors, register or seek to register any "Security Interest" within the meaning of the *Personal Property Securities Act, 2009 (Cth)* in relation to the Film Assets and Gross Receipts.
- 29.9 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.
- 29.10 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.

- 29.11 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.
- 29.12 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.
- 29.13 Each Investor and the Producer agree:
- 29.13.1 that each Transaction Document and Marketing Agreement to which it is a party is not inconsistent with this Agreement;
- 29.13.2 that, to the extent of any inconsistency, the terms of this Agreement prevail; and
- 29.13.3 not to amend any Transaction Document without the Investors' prior consent.

30. GOVERNING LAW

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.

31. GST

- 31.1 The parties agree that all amounts referred to in this Agreement are exclusive of GST.
- 31.2 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.
- 31.3 Any increased amount under Clause 31.2 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 31.2 must be paid within 14 days of receipt of such tax invoice.

THIS IS THE END OF THE CORE CONDITIONS