

PREMIUM PRODUCTIONS FOR INTERNATIONAL AUDIENCES FUND

Te Puna Kairangi (‘Premium Fund’)

TERMS OF TRADE

Version 1.1 – January 2021

1. INTRODUCTION.....	2
2. AUTHORISED BODIES AND THE SCOPE OF FUND	2
3. APPLICANT ELIGIBILITY	3
4. CONTENT ELIGIBILITY.....	4
5. NEW ZEALAND FILM COMMISSION ACT 1978.....	5
6. TE RAUTAKI MĀORI.....	6
7. PRODUCTION ELIGIBILITY	6
8. PREMIUM FUND PRODUCTION INVESTMENT	9
9. PRIVATE INTERNATIONAL INVESTMENT.....	10
10. OTHER INVESTMENT	10
11. OTHER GOVERNMENT INVESTMENT	12
12. CO-PRODUCTION	13
13. HEALTH AND SAFETY	13
14. APPLICATION ASSESSMENT PROCESS.....	14
15. PRODUCTION FUNDING OFFER AND CONTRACTING	14
16. PRODUCTION FUNDING CONDITIONS	16
17. DEVELOPMENT FUNDING	20
18. AUDIT AND REPORTING	21
19. GENERAL BUDGET REQUIREMENTS	22
20. GENERAL CONDITIONS	25
21. GLOSSARY	26
22. RESOURCES.....	28

1. INTRODUCTION

The Premium Productions for International Audiences Fund (**'Premium Fund'**) was established by Manatū Taonga Ministry for Culture and Heritage (**'MCH'**) in order to support the New Zealand production sector recovery and regeneration from COVID-19.

The funding was reallocated from the International New Zealand Screen Production Grant (**'SPG-International'**) which is overseen by Hīkina Whakatutuki Ministry of Business, Innovation and Employment (**'MBIE'**).

The stated purpose of the Premium Fund is to support the production of high-quality productions that tell New Zealand stories for global audiences.

2. AUTHORISED BODIES AND THE SCOPE OF FUND

Te Tumu Whakaata Taonga the New Zealand Film Commission (**'the NZFC'**), Irirangi Te Motu New Zealand On Air (**'NZ On Air'**) and Te Māngai Pāho (**'TMP'**) – collectively referred to in this document as **'The Agencies'** – have worked together to set-up the Premium Fund.

The Premium Fund has a total of up to NZD50 million to be allocated over two fiscal years, 2020/2021 and 2021/2022, and all offers must be accepted in writing within this period.

Within the total fund of NZD50 million, there has been \$2 million allocated to development funding and up to 2% allocated to administration of the Premium Fund. The balance is eligible for production funding.

Successful applicants will be required to enter into a legally binding financing agreement with NZFC (as administrator of the Premium Fund) and the agreement will reflect the *Premium Fund Terms of Trade* and the applicable *Premium Fund Guidelines*.

The Agencies may vary the *Premium Fund Terms of Trade* and the *Premium Fund Guidelines* (being the guidelines for the production financing or development financing, as applicable) at any time. When an application is received, the *Premium Fund Terms of Trade* and the applicable *Premium Fund Guidelines* that are current at the time of receiving the application will apply.

The *Premium Fund Terms of Trade* does not apply to:

- a) the NZFC 's actions in its capacity as:
 - i) Administrator of the Screen Production Grant; or
 - ii) Administrator of the Screen Production Recovery Fund; or
 - iii) The competent authority for the purposes of certifying official co-productions; and/or
- b) NZ On Air 's actions in its capacity as:
 - i) Authority for investments under the New Zealand Broadcasting Act 1989; and/or
- c) TMP 's actions in its capacity as:
 - i) Authority for investments under the New Zealand Broadcasting Act 1989.

A Panel is to be established to make Premium Fund production investment decisions. It will comprise of two Board members from each of the Agencies and to be supported by an independent Chair ('**Panel**'). Officials from MBIE and MCH will have observer status.

3. APPLICANT ELIGIBILITY

An applicant must:

- Be a NZ citizen or permanent resident; and
- Be (one of) the NZ producer/s of the project; and

Apply through a company incorporated and carrying on business in New Zealand ('NZ') and have its central management in New Zealand (at least one of the directors of the applicant company must be held by a NZ citizen or Permanent Residents); which must be **either**:

- an established screen business (active for more than three years with commercial credits in at least one of the eligible formats); **or**
- a Special Purpose Vehicle (SPV) where the applicant is a company director and majority shareholder with 'produced by' credit/s (or equivalent) in at least one of the eligible formats.

The NZFC (as administrator of the Premium Fund) may cap the number of applications that a production company and/or an individual producer, as a director of the applicant company, (even if the applications are made by different

entities) can make to any single round.

The Panel may also give regard to (as assessed by the Panel) that the applicant:

- not be in breach of any obligation under any agreement they have with any of the Agencies
- have the capacity and resources to carry out the project that is the subject of the application
- have all, or the ability to obtain all, necessary rights to develop, produce and distribute the project that is the subject of the application
- have meaningful creative control of the project that is the subject of the application

The eligibility rules for applicants will also apply to the contracting entity or entities (if different from the original applicant), including any special purpose rights holding companies.

4. CONTENT ELIGIBILITY

Eligible formats include feature films, single episode television or non-feature films and series productions including but not limited to drama, documentary, children's and animation.

Apart from the Significant New Zealand Content requirement (as detailed in Section 5. New Zealand Film Commission Act 1978), there are generally no restrictions on genre and content, but the following projects or formats are not eligible for the Premium Fund:

- Projects registered for, or intending to register for, NZSPG – International;
- Advertising programmes or commercials;
- News or current affairs programmes;
- Productions of a public event or live event, including sports events, stageplays, music concerts, dance performances or comedy shows;
- Lifestyle and reality TV;
- Interactive and gaming projects;
- Discussion programme, current affairs programme, news programme, panel programme, or a programme of a like nature;
- Pornography;
- Training programme; and
- Content exclusively for video sharing websites or social media.

5. NEW ZEALAND FILM COMMISSION ACT 1978

In order to be eligible for the Premium Fund, your project must also meet the criteria of the **New Zealand Film Commission Act 1978** (the “Act”) by:

- having significant New Zealand content as determined under the Act; and
- qualifying as a ‘film’ under the terms of the Act.

Significant New Zealand Content

Under the Act, the NZFC must give consideration to the following elements when deciding whether a project has or is to have a significant New Zealand content:

- the subject of the film;
- the locations at which the film was or is to be made;
- the nationalities and places of residence of
 - a) the authors, scriptwriters, composers, producers, directors, actors, technicians, editors, and other persons who took part or are to take part in the making of the film; and
 - b) the persons who own or are to own the shares or capital of any company, partnership, or joint venture that is concerned with the making of the film; and
 - c) the persons who have or are to have the copyright in the film;
 - d) the sources from which the money that was used or is to be used to make the film as or is to be derived;
 - e) the ownership and whereabouts of the equipment and technical facilities that were or are to be used to make the film;
- any other matters that, in the opinion of the Commission, are relevant to the purposes of this Act.

The NZFC, as administrator of the Premium Fund, will make the final determination as to whether a project has significant New Zealand content under with the Act.

Qualifying as a Film

‘Film’ is defined in the Act as “a photographic film, or a recording on magnetic tape or on any other material, from which a series of images, with or without associated sounds, may be produced.” For the purpose of the Premium Fund, ‘film’ therefore can mean feature films, a single episode programme and/or a series or season of a series whether scripted or unscripted.

The NZFC, as administrator of the Premium Fund, may (as applicable) also require evidence that the production has:

- been confirmed as eligible as an official co-production, or
- passed the Screen Production Grant- New Zealand (SPG-NZ) Significant NZ Content Test; or
- satisfied other cultural measures contained in the Premium Fund Objectives and Purpose as outlined in the Premium Fund Guidelines.

6. TE RAUTAKI MĀORI

Te Rautaki Māori Strategy considerations should be included and important advice obtained up-front in planning stages; especially if scripts are going to be in te reo or in locations involving Māori and/or their communities.

Productions with Māori content will be required to:

- demonstrate established consultation, engagement with or inclusion of Māori creative/s, Māori advisor/s and where applicable hapū and/or Iwi across the production to ensure authentic stories and representation
- provide insight into how they will benefit the Māori film making industry or local communities through the narrative or production in those regions or local tribal communities

When working with Māori stories, crew and talent, a consultant/s in te reo me ngā tikanga may be required to ensure cultural practice and support can be provided to all involved in the production.

7. PRODUCTION ELIGIBILITY

To be eligible for production funding from the Premium Fund, the project applied for must be 'production ready'. Factors used to determine production-readiness to the satisfaction of NZFC (as administrators of the Premium Fund) may include:

- having advanced script/s (this may include evidence of endorsement through market comment and attachment)
- attachment of key personnel (director, writer and producer) and key cast roles (as applicable)

- attachment of market partners, and provide evidence of the attachment by way of including but not limited to, international sales agent, distributor, broadcaster or streaming platform, and provide evidence of the attachment by way of letters of offer (LOO) or draft agreement
- attachment of financiers other than the Premium Fund, and no less than ten percent (10%) of the production's budget must be from Private International Investment (as detailed in section 8 below)
- having a viable production timeline
- having a viable shooting schedule
- having a viable cultural benefits strategy
- having necessary rights warranties
- having a current letter of intent from a completion bond that references the current finance plan and production details, or proposed alternative viable production and financial risk management plan
- having a viable budget incorporating Guild recommendations where applicable (there is no minimum budget level to be eligible for funding from the Premium Fund) that matches the finance plan
- having a viable cashflow and drawdown schedule which reflects draft terms of investors and Premium Fund requirements
- having a viable audience engagement plan for domestic and international audiences
- having a viable COVID-19 risk mitigation plan

The NZFC (as administrators of the Premium Fund) will require that all investment amounts in the finance plan are **either**:

Supported by written offers that clearly lay out the amount and terms of their investment, including but not limited to:

- Intended payment date (as a default, the Premium Fund requires full payment on closing)
- Cash-flow arrangements for portions not being paid on execution of the funding agreement
- Proposed recoupment structure and net profit position (if applicable) providing that any related party investment may not charge a premium;
- Proposed fee (if applicable)
- Proposed credit/s including format and position

- Additional production related approvals (if any)
- Details of any previous investment into the project and
- Any other requirements, **or**

In the case of other government or similar investment (if not already secured) details around the documentation to be supplied which lays out whether you have registered for funding, the intended full submission date and the expected date of decision. You should also provide any relevant supporting documentation associated to other funding including market attachments such as licence fees or commissioning offers.

Any supplied deal memos should be unsigned and the terms are subject to approval from NZFC (as administrator Premium Fund).

All financiers will be required to acknowledge that they will be funding the production in the event that there is no insurance cover available for COVID-19 related events.

If any finance and/or market elements required by the NZFC (as administrators of the Premium Fund) under these Terms of Trade or the applicable *Premium Fund Guidelines* are not in place at the time of application, they will need to be requested to be waived.

If the waiver is not accepted the application may be declined on the basis the application is ineligible.

If the waiver is accepted at eligibility stage, then the NZFC (as administrators of the Premium Fund) reserves the right to later decline any element that is not reflected in the *Premium Fund Terms of Trade* or the applicable *Premium Fund Guidelines*.

Also, any funding awarded by the NZFC (as administrators of the Premium Fund) may be conditional upon any element previously waived at eligibility stage to be satisfied before final contracting.

Notwithstanding the ability of the NZFC (as administrators of the Premium Fund) to grant waivers on a case by case basis, it may withdraw any offer of funding if it has reasonable concerns relating to any finance or market element.

8. PREMIUM FUND PRODUCTION INVESTMENT

Premium Fund production funding will be provided as an equity investment and will be cash-flowed to the applicant during production. The funding is recoupable without a premium from receipts from exploitation of the production and each applicant must outline how it is expected that the Premium Fund's investment will be recouped.

In addition, the NZFC (as administrators of the Premium Fund) expects that the Premium Fund production investment:

- will recoup in an amount that is commensurate with the value of its funding to the overall budget of the production.
- will recoup pro-rata and alongside (pari passu) with equity investors of a 'similar nature'*
- may not be converted to a producer equity position.

*Investors of a 'similar nature' may include but are not limited to:

- other government funding of a similar nature to the Premium Fund including international government funding agencies.
- private equity investment from Related Parties (by comparison private equity investment from unrelated parties may recoup ahead of the Premium Fund with a reasonable premium)
- Producer Equity from cash-flowing NZSPG-NZ.
- Producer Equity from other government funded grants.

If any other equity investors of a similar nature to the Premium Fund request to recoup ahead, and or charge a premium or interest, then the NZFC (as administrators of the Premium Fund) may require all or a portion of the Premium Fund investment to be on the same terms.

However, it may be acknowledged that the terms and conditions of other investors are complex, especially in regard to international finance, and in those circumstances the NZFC (as administrators of the Premium Fund) reserve the right to vary the Premium Fund's position.

There is no cap on the amount of funding you can apply for from the Premium Fund.

9. PRIVATE INTERNATIONAL INVESTMENT

Private International Investment includes genuine finance (including advances, minimum guarantees and equity) from market partners and investors including but not limited to Distributors, Sales Agents, Commissioners, Broadcasters, Streaming Services, Licensors and Private entities or individuals located outside of New Zealand.

To be eligible for Premium Fund production funding, a minimum of 10% of the total production budget must be financed by Private International Investment. If it is Series Production, the 10% requirement applies for the total production budget of a complete season.

All requirements of the Private International Investment should be clearly outlined in the private investor's letter of offer, including those points set out in **section 9 – Private International Investment** below.

Private International Investment from **Related Parties (as defined in section 10 OTHER INVESTMENT)** cannot be included as part of the 10% requirement unless there is also non-related international market attachment.

Producer (including internationally based) fee reinvestment will not be eligible to be part of the Private International Investment.

10. OTHER INVESTMENT

Any private investment (whether international or local), and provided it is not related party investment, may recoup ahead of the Premium Fund. Private equity investment can recoup with a reasonable premium (Industry norms are around 15%). There is no cap on the level of private investment that a production can have.

Related Party investments are investments from any persons that:

- are directors or shareholders of companies associated directly with the production; or
- Charge a fee to the budget; or
- Have individual producer credits (or similar).

Related party investments are not able to recoup ahead of the Premium Fund and are not entitled to any premium.

Any reinvestments by above the line key creatives including producer, director, cast and writers or production company overhead reinvestments are subject to approval by the Premium Fund.

Above the line fees or company overhead reinvestments must not exceed 25% of any budget line item.

Service Provider and Post-Production Facilities Provider reinvestment proposals will be assessed on a case-by-case basis and any offer must be accompanied by a full quote based on the submitted production details along with the terms and conditions of the offer.

Reinvestments cannot recoup with a premium but may be entitled to a proportionate share of net profits. Also, reinvestments cannot recoup ahead of Premium Fund, with the exception of reinvestments by:

- lead cast named by financiers and/ or market partners and supported by sales estimates or advances;
- distribution or sales entities that are vertically integrated companies associated with the applicant. NZFC (as administrator of the Premium Fund) will consider advances recouping ahead as per usual commercial practice.

Reinvestments are generally required to be paid in full on closing and may not be permitted to be cash-flowed by the budgeted payments to the party reinvesting.

In-kind deals and sponsorship with a recoupment or profit position are not to recoup or have a profit position. The NZFC (as administrator of the Premium Fund) may require verification by way of secondary quotes for comparable goods and/or services, or other documentation, to support the stated value of such arrangements.

Premium Fund investment will not be allowed to be used for capital expenditure.

All non-monetary transactions must be supported by contractual agreements recording the transaction and the value associated with it.

For NZSPG-NZ productions, NZFC (as administrators of the Premium Fund) generally expect this will be recouped alongside the recoupment of the Premium Fund's equity investment and may also attract a profit participation commensurate with the value of the NZSPG-NZ.

For films with more complex financial structures, the recoupment structure (including the position of the producer's NZSPG equity) will be negotiated on a case-by-case basis between the financiers and the producers.

Sales advances and distributor minimum guarantees sourced from offshore will usually be subject to a withholding tax. Your finance plan should be based on the net amount received, not the gross amount offered.

11. OTHER GOVERNMENT INVESTMENT

Investment from other government bodies such as NZFC, NZ On Air and TMP is permitted and the terms of that investment will be laid out by the Agency responsible for that funding.

If you are applying to NZSPG-NZ, you will need to fulfil those criteria in addition to the criteria of the Premium Fund. The NZSPG-NZ is administered by a separate team within the NZFC on behalf of the Ministry for Culture and Heritage.

The NZSPG team operates to separate criteria and timelines. If you are structuring the finance of your project to include the NZSPG it is critical that you review in detail what makes a project eligible for NZSPG, how the process of qualifying for the grant works and how long it takes.

You may wish to consider seeking expert advice regarding the details of your project's ability to qualify for the NZSPG-NZ.

Applications to the Premium Fund may also be eligible for other government COVID-19 funding, including the Screen Production Recovery Fund ('SPRF') but this is subject to the criteria of the SPRF and any other COVID-19 government fund applied to. Note, any COVID-19 related costs applied for and awarded from SPRF will not be eligible for NZSPG-NZ and must be separate to the main budget. SPRF funding is not recoupable.

12. CO-PRODUCTION

If you are applying to the Premium Fund as an Official Co-production, you will need to meet all the requirements of the applicable co-production treaty as well as all the requirements of the Premium Fund. The production will be required to apply for a Provisional Co-Production Certificate in New Zealand and any other co-producing territory.

While Above the Line roles will be determined by the Co-production structure, we note the Premium Fund intends to support New Zealand key creatives (writer, director and producer). If your application does not include all of these roles as New Zealanders, you will need to explain how allowing non-New Zealanders to take these key creative roles will support the key objectives of the Fund.

13. HEALTH AND SAFETY

Every production must ensure they comply with all health and safety laws and regulations. When setting up the SPV you must provide a Company Health and Safety Report (the form is accessed from www.screensafe.co.nz). As part of the documentation required for closing, you will need to provide the NZFC (as administrator of the Premium Fund) with an independently commissioned health and safety report identifying specific hazards related to the script or treatment. The report must outline the steps to be taken to avoid or mitigate those potential hazards during the production.

The NZFC (as administrator of the Premium Fund) may require you, at its sole discretion, to provide additional health and safety documents, comply with additional health and safety requirements (including any Government and industry directions and guidelines), and/or provide certain warranties and undertakings to the NZFC in the production financing agreement, which are reasonable and relate to the management of any risk related to COVID-19, or pandemics generally, for the purpose of contractual closing or subsequent to closing and during production.

The NZFC (as administrator of the Premium Fund) reserve the right to decline to enter into financing or go ahead on risk if they are not satisfied with the warrants from the production and other investors relating to COVID-19.

You will be required to warrant that you are not applying for funding that has been already covered by government COVID-19 funding. If you have already received government COVID-19 funding you must declare it as costs are not able to be claimed twice and will be required to be repaid if discovered on audit.

14. APPLICATION ASSESSMENT PROCESS

Applications will be assessed by the Agencies against the criteria as outlined set out in the applicable *Premium Fund Guidelines*.

The Agencies will also engage a range of local and international individuals who have various specialisations across the areas of development, finance, production and/or exploitation of screen content ('**External Assessors**') to provide an independent perspective on funding applications.

Any statistical or demographic information provided as part of your application is not available to External Assessors. The data collected is aggregated and used only in meeting the reporting requirements of the Agencies.

All information, including any conversations with you, will be taken into account alongside your formal application when the Agencies decide whether or not to submit a positive recommendation to offer financing to the project, to the Panel.

The Panel, comprising of two Board members from each of the Agencies supported by an independent Chair, will then make the funding decisions. Officials from MBIE and MCH will have observer status.

15. PRODUCTION FUNDING OFFER AND CONTRACTING

Once the Panel approve a production equity investment in a project, the NZFC (as administrator of the Premium Fund) will issue a conditional offer letter for the applicant's countersignature.

This letter will identify the conditions that apply to the investment including (but not limited to) the key people, the financial structure, the various approvals required, and a pre-closing document checklist. It will also identify any conditions specific to the film that need to be met prior to contractual close being able to commence – known as the **Pre-closing conditions**.

You will be required to contract through a SPV which is a New Zealand company established principally in relation to making the production. The applicant must have its own GST and payroll registration numbers and its own bank account. The Agencies require approval over the ownership and directors of the SPV.

Pre-closing conditions are specific to each project and could include approval of a further draft of the script(s), confirmation of finance plan elements and terms or any chain of title issues outstanding. If these pre-closing conditions are not met within the specified time-frame then the Premium Fund offer will expire.

If the pre-closing conditions are met and all elements of the finance plan are confirmed, the closing process can begin. NZFC (as administrator of the Premium Fund) will prepare a Financing Agreement to record the terms of the Premium Fund's equity investment in the project, based on the conditions in the *Premium Fund Production Guidelines* and these *Premium Fund Terms of Trade*.

The Financing Agreement will be between the NZFC (as administrator of the Premium Fund) and the SPV and may also need to include other financing parties, the completion bond and market partners (as applicable). We expect the producer's lawyer to lead this 'financial close' process. Depending on the complexity of the production and the number of parties involved, you should expect this contracting process to take between 8 to 12 weeks.

In order for a production to commence close, the NZFC (as administrator of the Premium Fund) may accept indicative dates in the production schedule where the production has not yet been able to finalise those dates due to COVID-19 related implications.

For the avoidance of doubt, as is currently required, it remains a condition precedent to financial close that all dates in the production schedule must be locked and approved by the NZFC (as administrator of the Premium Fund) unless otherwise agreed.

The NZFC (as administrator of the Premium Fund) will require delivery of a list of items. The delivery items required will be set out in individual Financing Agreement for each successful application to the Premium Fund. The costs of these delivery items must be included in the budget and, if there is a completion bond, certain of these delivery items will need to be bonded.

Generally, GST will be payable on funding from the Premium Fund. NZFC (as administrator of the Premium Fund) requires the applicant to have a New Zealand Business Number (NZBN), and to register for GST if required by law. Where GST is payable, the NZFC (as administrators of the Premium Fund) will require the applicant to issue a Tax Invoice as a precondition to drawdown of the funds from the Premium Fund.

The NZFC (as administrator of the Premium Fund) will not commence cashflow until it is satisfied that you have complied with certain conditions as set out in the financing agreement. At our discretion, and subject to specific conditions, we may provide an advance in the form of 'pre-closing cashflow', but there will be no automatic entitlement to this.

16. PRODUCTION FUNDING CONDITIONS

The Premium Fund Financing Agreement will include the following conditions:

All customary production insurances (including errors and omissions insurance) on which the NZFC (as administrator of the Premium Fund) must be named as an additional insured.

Clearance of worldwide rights in all media in perpetuity from all individuals or organisations who are contributing to, or whose material is to be featured in, the project (save only for music public performance rights).

Warrant clear title to the project i.e. demonstrate you have or can acquire all the rights necessary to produce and exploit the film.

You will be required to assign a share of all rights (including copyright) in the production to the NZFC (as administrator of the Premium Fund), which will be reassigned to the SPV at the time of completion of the film.

The NZFC (as administrator of the Premium Fund) will generally take security interest over the company producing the project and may take a security interest over any co-producer.

The financing agreement will include standard termination provisions, plus there will be specific provisions relating to COVID-19.

As part of the financing documentation, the SPV agrees to not assign or otherwise

dispose of its rights or obligations without the prior consent of NZFC (as administrator of the Premium Fund).

Where the NZFC (as administrator of the Premium Fund) consents to the SPV transferring its rights and obligations and being closed down, the NZFC will provide an agreement to be signed by the SPV, the company taking on the rights and obligations, and the NZFC. Once that agreement is fully signed, NZFC (as administrator of the Premium Fund) will not object to the removal of the SPV from the Companies Register (i.e. the closing down of the SPV).

The SPV will need to notify any interested parties (including the collection agent(s) for the film) of the transfer and the new notice and company details (including bank details for payment of receipts previously due to the SPV).

Please note that the following circumstances may impact on the decision of NZFC (as administrator of the Premium Fund) as to whether to approve a request to close the SPV:

- if a producer is self-distributing the production through the SPV (rather than through a parent company);
- if any gross receipts from exploitation of the film are payable to the SPV;
- if the SPV is in default under any agreement relating to the film;
- if the NZFC (as administrator of the Premium Fund) still has a general security interest over the SPV and any circumstances exist that require that the security interest remain in place; or
- if there are any other special circumstances which the NZFC (as administrator of the Premium Fund) considers may impact on whether the SPV should continue to be maintained.

The NZFC (as administrator of the Premium Fund) will require certain approvals over your project including in relation to the terms of all other finance, the identity and terms of appointment of any sales agent and all distributors, and all key production and financial documentation prepared in relation to the film. All cast and crew contracts should reflect that the SPV production company or assignee will have final cut.

The NZFC (as administrator of the Premium Fund) and The Agencies (as applicable) will have meaningful consultation rights over the assembly, fine cut, the final cut, and may additionally require a test screening. The NZFC (as administrator of the Premium Fund) and other parties may co-operate to organise and carry out a comprehensive test screening.

The credit requirements will be set out the Financing Agreement which will be specific to any Project that has Funding approved by the Fund.

Our general expectation is that your project will provide for the availability of closed captions, soft-subtitling and audio-description materials in cinemas and on any video-on-demand, DVD or Blu-ray disc release.

The NZFC (as administrator of the Premium Fund) will require pre-approval over replacement or renewal of distribution rights. If no commercial opportunity exists, then the applicant and NZFC (as administrator of the Premium Fund) may enter into the Terms Of Care in respect of the relevant territories and rights.

NZFC (as administrator of the Premium Fund) and The Agencies may require certain rights to use excerpts from the production for promotional purposes. We also may require certain rights to show the film in it's entirety for cultural events. Additionally, the NZFC (as administrator of the Premium Fund) may request that the production is available for viewing on the NZFC (or Agencies) VOD platform/s provided such arrangements are not detrimental to the commercial arrangements or prospects of the production.

The NZFC (as administrator of the Premium Fund) may conduct research into the audience of the production and may be free to use the outputs of such research at its discretion.

You may be expected, if asked and where feasible and within reason, to participate in any apprenticeship schemes or mentorships run.

You may also be asked to provide access to the production for other activities such as screen education or fundraising screenings and/or from time to time to make yourself, the writer and/or the director of your production available (subject to professional commitments), if the NZFC (as administrator of the Premium Fund) reasonably requests.

The drawdown schedule must be approved by the NZFC (as administrator of the Premium Fund). Our expectations are that the funding from the Premium Fund and other financiers are only contributed as and when those finances are required to meet production costs, with a bank account buffer of up to approximately NZ\$200,000.

The NZFC (as administrator of the Premium Fund) will make payments in tranches, usually weekly during production and monthly during post-production and pre-production.

You will be required to ensure that financial risks are mitigated in your cashflow of the production, and therefore payments to key creatives will be spread throughout.

Except where arrangements with co-financiers or the completion guarantor require otherwise, the NZFC (as administrator of the Premium Fund) may vary drawdown dates or amounts where NZFC considers on reasonable grounds that there are sufficient finances in the production account to enable the producer to meet its immediate production costs and expenses.

The NZFC (as administrator of the Premium Fund) will not unreasonably delay any drawdown payment if it would increase the cost of any budgeted item, or the overall cost of production.

On occasion the NZFC (as administrator of the Premium Fund) may accept that minimum guarantees are paid in tranches and not cash-flowed where they are from a known entity or where the amount of the minimum guarantee is below \$50,000. NZFC (as administrators of the Premium Fund) may also require approval over the party/parties cash-flowing any portion of a minimum guarantee or advance.

The Premium Fund will hold back 5% of its funding (capped at NZ\$50,000) until delivery to the Premium Fund of specified delivery materials and a final audited cost report certified by an independent auditor.

If there are holdbacks from related party fees for unbonded SPG-NZ these may be required be included within a related party reinvestment cap (see Other Investment).

The Premium Fund funding must be paid into a separate dedicated production account.

The general expectation is that any underspend of the project's budget to be allocated 50% to the producer and 50% to all financiers.

NZSPG-NZ overage is any amount remaining after repayment of any loan(s) used to cash-flow the NZSPG-NZ including any fees or interest relating to the loan(s). It is expected that any NZSPG overage will be paid to financiers as agreed between them subject to bond requirements.

17. DEVELOPMENT FUNDING

Any offer of Development Funding will be provided as a grant rather than an equity investment. Receiving development funding from the Premium Fund does not constitute an expectation that you will receive Production Funding.

Eligibility

All applicants must comply with the applicable Premium Fund Guidelines. If applications are found to be ineligible, they will be declined from consideration.

Offer and Contracting

If you are successful, you will be issued an offer letter by the NZFC (as administrator of the Premium Fund) via the NZFC online portal. Once the offer letter is signed, a development funding contract will be issued by the NZFC (as administrator of the Premium Fund) via the online portal. This will include agreed deliverables and dates for the development funding.

In most cases, 90% of the development funding will be paid on completion of the initial milestones, with the remaining 10% paid upon approval by NZFC (as administrator of the Premium Fund) of the contracted final deliverables.

Development Expenditures

You should only apply for actual and reasonable development costs involved in progressing your project. You must provide a detailed budget of intended costs. Your budget should also set out any contribution from other sources and how this will be spent.

Retrospective applications will not be considered; that is, you cannot apply for funding to cover costs you and/or the project have already incurred. However, actual monies paid to non-related parties for development costs of the producer that have not been covered by development financing to date may be included and sources of finance (and proposed terms) should be included in the finance plan for the development.

In general, the development funding support is intended to be spent on New Zealand-based development costs and/or New Zealanders working in New Zealand or internationally. Some of the funds can be spent on overseas elements that will help you fulfil the objectives of the Fund, but you must clearly identify this in your application and budget. It will also provide both potential opportunities for diverse talent including Māori screen businesses and support for proposals that may ultimately be progressed outside of this specific Fund.

Production financing agreements with the Premium Fund will require a warranty from the production company that any development grants were spent in accordance with development agreements with the Premium Fund.

The applicant must be a registered New Zealand company.

Premium Fund development investment will be provided as a non-recoupable grant. If the funding is incorporated into the production budget as a separate line item, it can be attributed as producer equity in the finance plan and any recoupment schedule. It may have a recoupment and profit position commensurate with its investment and pro-rata pari passu with equivalent equity investors including related parties finance plan for any subsequent application to Premium Fund.

This Producer Equity converted from Premium Fund Development grant investment will not be able to have a premium or interest reflected in the budget or finance plan for any subsequent application to Premium Fund.

18. AUDIT AND REPORTING

For all projects and activities with funding from the Premium Fund (whether by way of recoupable equity investment or grant), the recipient will be required to provide reporting to NZFC (as administrator of the Premium Fund).

During production, we will expect to be provided with information about the progress of the production including regular production reports and rushes, and to be able to attend any stages of production.

For feature films, all revenues for the film must be collected by a collection agent approved by NZFC (as administrator of the Premium Fund) and the sales agent and producer will be required to direct all distributors of the film to make payment of all minimum guarantees and overages in respect of the film to the collection account unless otherwise agreed.

For non-feature films and series, if a collection agent is not appointed then the NZFC (as administrator of the Premium Fund) must approve how it is expected that the Premium Fund funding will be recouped.

Funding recipients may also be required to provide information about the funded project or activity for the purposes of the Premium Fund's reporting. The information requirements will be set out in the relevant financing agreement.

The Premium Fund may require funding recipients to provide an independent audit report in relation to expenditure of the production.

Where an independent audit report is not required, The Premium Fund may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, the Premium Fund reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contract requirements.

19. GENERAL BUDGET REQUIREMENTS

All costs for delivery items required for the New Zealand release need to be included in the budget (except for any items that existing market partners (local and/or international) have agreed to pay for, and this must be clearly reflected in the deal memos or agreements).

Due to the varied nature of formats eligible for funding from the Premium Fund, the delivery items may vary. However, the producer must deliver the materials required in the financing agreement.

Māori/English translations should be budgeted to ensure that authentic essence

of the film is captured and also for sales and distribution in other countries.

Marketing and Publicity. Your marketing and publicity budget may include:

- unit publicist
- stills photographer
- cost of the trailer;
- key art e.g. poster design
- EPK/DVD footage

The NZ Above the Line ('ATL') fees must comply with NZ Guild minimum requirements and be consistent with industry norms. Writer and director fees must be clearly identified within previous development funding allocated.

Contingency: The NZFC and any completion guarantor will need to approve the level of contingency allowed in the budget. The industry norm for contingency is 10 % of the below-the-line budget.

Overheads and Fees. Please ensure your budget complies with the NZSPG requirements, particularly in regards to the caps on qualifying expenditure around financing costs and any fees related to financing the film.

Rights Acquisition: Any music and/or footage clearance fees, and any fees associated with the use of underlying materials, needs to be budgeted for. Where possible, all rights should be cleared and paid for worldwide, in all media, in perpetuity, and for in context and out-of-context use.

Legal Fees: You need to make adequate provision in the budget for the production's legal fees (generally no less than 2% of the production budget). This needs to cover the preparation and negotiation of Chain of Title documents and legal opinion, production contracts (e.g. cast and crew contracts, music licenses, footage licenses), leading and managing the closing process, negotiating the terms of the Financing Agreement and ancillary contracts on the producer's behalf for closing, and providing general legal advice to the production during production and delivery including negotiation of market agreements. Given the nature of the work involved, we recommend you engage an entertainment

lawyer for specialised advice.

Financing Fees: The budget must include provision for interest and any legal and/or administration fees charged by your financiers.

NZSPG-NZ: For NZSPG-NZ films, you will need an audit. You should allow at least \$15,000 in your budget for this. If you are seeking a Provisional NZSPG Certificate for your NZSPG Lender, the Lender will usually require an auditor's expenditure certificate, which may cost an additional \$1,500-\$3,000.

Insurance: For all productions comprehensive available insurance is required, as follows:

- General production package insurance, including:
 - content media cover (film negative and faulty camera stock and processing or digital equivalent);
 - film producers' indemnity;
 - extra expense;
 - money;
 - motor vehicles;
 - miscellaneous equipment;
 - costumes, sets and wardrobe (except where not applicable – e.g. documentary with no drama element);
 - employers' liability (if applicable); and
 - travel insurance (if applicable).
- Key Elements (if applicable)
- Public liability and statutory liability (during production)
- Errors and Omissions (E&O) including title clearance and coverage for plagiarism and defamation – with a term and amounts (deductibles, claim aggregates) that satisfy the requirements of your sales agent and/or distributor. You will need to consult with the NZFC (as administrator of the Premium Fund) about when coverage is required to start as it will be different for different projects. The NZFC will generally require that E&O coverage starts from the first day of principal photography, or on delivery, and in either case continues at least three years after the earliest delivery date (with an option to renew for one year).

Bond/Completion Guarantor Requirements: An independent completion guarantee (or 'bond') may be required as a condition of receiving funding from the Premium Fund. If required, a full letter of offer from the completion guarantor must be provided and the cost of engaging the completion guarantor must be covered in the budget.

Foreign Exchange Hedging: Where the budget or finance plan contains foreign currency items, we expect you to take out forward cover, if an exchange risk exists. The NZFC (As administrator of the Premium Fund) will not cover foreign exchange shortfalls.

Reallocation of Budget Items: The NZFC Financing Agreement contains restrictions on the reallocation of budget items, as follows.

The producer may reallocate below-the-line items (without the need for consent) to meet the requirements of production, provided:

- each reallocation does not exceed 1% of the total budgeted cost; and
- such reallocations do not affect the approved cash flow or reduce the estimated QNZPE (in the case of NZSPG films).

There must be no reallocation unless the NZFC (as administrators of the Premium Fund) and completion guarantor (if applicable) consent, of:

- above-the-line costs;
- company overheads; and
- delivery material costs.

20. GENERAL CONDITIONS

All applications are made at the applicant's own risk. The Agencies and NZFC (as administrators of the Premium Fund) are not liable for any loss, damage or costs arising directly or indirectly from the application process, any decision not to provide an offer of financing from the Premium Fund, or from dealing with the application in any manner.

Neither these *Terms of Trade* nor the *Premium Fund Guidelines* constitute an offer capable of acceptance by any person.

The application form does not necessarily cover all the information the NZFC (as administrators of the Premium Fund) uses to decide which applications to fund.

The NZFC (as administrators of the Premium Fund) may:

- ask applicants for extra information
- choose to extend published deadlines if required and for any reason it deems necessary
- review this funding scheme and/or change its policies, procedures, and assessment criteria
- not process applications which are incomplete or which do not comply with these *Terms of Trade* or the *Premium Fund Guidelines*
- not pay any funding until it has received a fully executed copy of the financing agreement and is satisfied that any conditions precedent to that agreement have been met or waived
- publicise information on the number of applications it receives and the awards made (this information may include the name of the successful applicant, award amount, project name and project details)

The Agencies, Panel and NZFC (as administrators of the Premium Fund) are subject to and bound by the provisions of the Official Information Act 1982 and are required to treat any request for information under the Official Information Act 1982 in accordance with the provisions of that legislation.

The Panel's decision is final. Inevitably applications will be turned down and applicants may be disappointed by this result. Formal appeals against the final decision will not be considered unless the applicant has good cause to believe that the procedures for processing the applications were not adhered to or applied in such a way as to prejudice the outcome of the application.

21. GLOSSARY

ATL means above the line fees which generally refer to writer, producer, director and key cast fees. Production Company Overheads are also usually considered ATL fees although will not typically be represented in the same section of the production budget.

Film Distribution Grants. NZFC offers financial support for the domestic

distribution of New Zealand feature films in New Zealand. These grants are normally applied for by the film's distributor when the film is completed. Please refer to the NZFC's website for more information.

Hīkina Whakatutuki The Ministry of Business, Innovation and Employment (MBIE) is the New Zealand Government's lead business-facing agency. It's contribution to improving the well-being of New Zealanders is summarised in its purpose, to grow New Zealand for all.

Investment can mean any funding provided by parties or individuals. These amounts make up the finance plan.

Key Creatives means Producer, Director, Script Writer, Series Creator, Showrunner and Animation Director.

Manatū Taonga, the Ministry for Culture and Heritage (MCH) is the New Zealand Government's agency that supports many of New Zealand's arts, media, heritage and sports organisations. It works to enrich the lives of all New Zealanders by promoting a confident and connected culture.

Market attachment is defined as written evidence of commitment from market partners which may include signed letters of offer, pre-sales, deal memo or full agreement.

Market partners are entities that have an interest tied to distribution rights of the project and may include but are not limited to distributors, sales agents, commissioners, broadcasters, streaming platforms and licensors.

New Zealand Film Commission Act 1978 (the "Act") sets out the NZFC's functions, powers and duties. In carrying out its functions, the NZFC must only make financing available to a person in respect of the making, promotion, distribution or exhibition of a film* if the NZFC is satisfied the film has or is to have a significant New Zealand content (clause 18(1) of the Act).

New Zealand Permanent Resident or **Permanent Resident** means a person who meets the definition of a permanent resident under the Immigration Act 2009.

New Zealand Resident or **Resident** means:

- a. in the case of a natural person, a person that the Income Tax Act 2007 treats as a New Zealand resident under section YD 1; or

- b. in the case of a company, a company that the Income Tax Act 2007 treats as a New Zealand resident under section YD 2.

New Zealand Screen Production Grant. This is a government screen incentive administered by the NZFC. Projects that access international incentives (NZSPG – International) are not eligible to apply for the Premium Fund.

Private International Investment includes genuine market money from but not limited to Distributors, Sales Agents, Commissioners, Licensors, Private Investors.

Production Company Overhead is to cover the general running costs of the production company for the duration of the project.

Recoupment The recoupment structure for a film determines to whom, and in what order, film income is distributed.

Related parties are any parties (or their companies, owners, families and associates) that are receiving financial or other benefit from the production including fees, in-kind payments or credits.

Related party investment includes any investment from Related Parties and may also include investment from above the line key creatives including producer, director and writers, production companies and service providers including camera suppliers and post-production facilities.

22. RESOURCES

MBIE <https://www.mbie.govt.nz/>

MCH <https://mch.govt.nz/>

NZFC: <https://www.nzfilm.co.nz/>

NZ On Air: <https://www.nzonair.govt.nz/>

Te Māngai Pāho: <https://www.tmp.govt.nz/>

Ngā Aho Whakaari – The Brown Book, Working with Māori in the Screen Industry/ Te Urutahi Kōataata. <https://ngaahowhakaari.co.nz/>

NZFC Rautaki Māori

Te Reo: <https://www.nzfilm.co.nz/resources/te-rautaki-m-ori-te-reo>

English: <https://www.nzfilm.co.nz/resources/te-rautaki-m-ori-english>

Screen Production Recovery Fund ('SPRF') was established to support NZFC-funded and NZSPG – New Zealand productions that have been shut down, delayed or otherwise impacted by COVID-19 restrictions subject to application eligibility. Any questions can be directed to screenrecovery@nzfilm.co.nz

The criteria of the funding can be reviewed.

<https://www.nzfilm.co.nz/resources/screen-production-recovery-fund-guidelines>

Official Co-production means a production certified by the NZFC and the other country's competent authority as an official co-production pursuant to one of New Zealand's bilateral co-production treaties or agreements.

<https://www.nzfilm.co.nz/incentives-co-productions/co-productions>

New Zealand Screen Production Grant. enquiries can be directed to nzspg@nzfilm.co.nz, or to the Incentives Executive on +64 4 382 7680.

www.nzfilm.co.nz/new-zealand/funding-and-support/new-zealand-screen-production-grant

Film Distribution Grants:

<http://www.nzfilm.co.nz/distribution/new-zealand/film-distribution-grants>.

CHANGE LOG: Updated 11 January 2021 to:

- Update with the revised Māori name of the Fund.
- Fix typos.