

Te Puna Kairangi (‘Premium Fund’)

TERMS OF TRADE

Version – September 2021_v2

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CHANGE LOG:

| Date updated | Notes |
|---------------------------------|--|
| September 2021 Interim Round | Section 3 – Eligibility requirements consolidated. Specific eligibility requirements updated in the respective Premium Fund guidelines. |
| | Section 7 – Updating the definition of Private International Investment to clarify: <ul style="list-style-type: none"> - that it does not include foreign government investment or tax incentives, even though temporary cashflow lending services. - how funding from Related Parties fits into the 10% minimum requirement for Private International Investment. |
| | Section 8 – clarifying the process for waiving certain requirements under the Premium Fund. |
| | Section 12 – clarifying the Te Rautaki Māori |
| | Section 15 – clarifying overall assessment process for Premium Fund. |
| | Section 17 – adding a requirement for clearly identified Covid costs. |
| | Section 17 – adding a requirement for New Zealand Labour Grouping to be identified in production budget. |
| | Glossary – added definition for “New Zealand Labour Grouping”. “Official Co-production”, “Multiparty financing experience” and Māori content” |

1. INTRODUCTION

The Premium Productions for International Audiences Fund (**‘Premium Fund’**) was established by Manatū Taonga Ministry for Culture and Heritage (**‘MCH’**) in 2020 in order to support the New Zealand production sector to recover 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 development and production of high-quality productions that tell New Zealand stories for global audiences.

This document sets out the terms under which Te Tumu Whakaata Taonga the New Zealand Film Commission (the **‘NZFC’**) (as administrator of the Premium Fund) will do business under the Premium Fund.

2. AUTHORISED BODIES AND THE SCOPE OF FUND

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 (**“Development Funding”**) and up to 2% allocated to administration of the Premium Fund. The balance is eligible for production funding (**“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 these *Premium Fund Terms of Trade* and the applicable *Premium Fund Guidelines* (being the respective funding guidelines for Production Funding or Development Funding, as applicable).

The Agencies may vary the *Premium Fund Terms of Trade* and the *Premium Fund Guidelines* 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 to that application.

The *Premium Fund Terms of Trade* do 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; or
 - iv) Authority for investments from NZFC's discretionary funds;
- 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 decision-making panel has been established to make decisions for Production Funding. It is comprised of two Board members from each of the Agencies and an independent Chair ('Panel'). Officials from MBIE and MCH will have observer status at the Panel meetings. The three Chief Executives of the Agencies have been delegated authority to make decisions for Development Funding.

3. APPLICANT ELIGIBILITY

The full eligibility requirements set out here are for the Premium Fund as a whole. Not all are applicable to each and every funding round so please see individual guidelines for specific requirements that apply to that funding round.

An applicant must:

- Be a NZ citizen or permanent resident; and
 - Be the (or one of the) NZ producer/s of the project
- For **Production Funding** the applicant must:

- be able to demonstrate prior experience in multiparty financed projects
- be able to demonstrate at least one:
 - ‘Produced by’ credit for feature films (Executive and Associate Producer credits are not considered a ‘Produced by’ credit) or
 - ‘Executive producer’ or ‘Produced by’ credit for non-feature films

in the producing team in the eligible **format and genre** (Factual or Fiction) you are applying under that has been commercially released (e.g. a Series Documentary credit does not qualify for a Series Drama submission.)

- For **Development Funding** the applicant must:
 - be able to demonstrate at least one ‘produced by’ credit in one of the eligible formats and genre. If this credit is not in the format and genre they are applying for, then they must have another member of the producing team with a ‘produced by’ credit in the format and genre they are applying for
- The applicant must:
 - Apply through a company incorporated and carrying on business in New Zealand (‘NZ’) and which has 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)
- For **Production Funding** the company must, in addition to what is set out above 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.

- Be able to demonstrate that you own or have the ability to own (or in the case of a co-production or partnership, share ownership of) the copyright in the production – this includes holding, or having the ability to obtain, all necessary rights to develop, produce and distribute the project.
- Not have any outstanding reports or deliverables or be in breach of any agreement with any of the Agencies.

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

The number of applications per production company is limited to **two** per round. An individual producer also can only submit up to two applications (even if they are with different entities). You can have up to two development applications and up to two production applications simultaneously.

4. CONTENT ELIGIBILITY

The full eligibility requirements set out here are for the Premium Fund as a whole. Not all are applicable to each and every funding round so please see individual guidelines for specific ones that apply to that funding round.

Eligible format information is laid out in the Guidelines for each funding round.

Your project must meet the requirements of the *New Zealand Film Commission Act 1978* (the “Act”) by:

- having significant New Zealand content as determined by section 18 of the Act; and
- qualifying as a ‘film’ as determined under section 2 of the Act.

“Significant New Zealand content”

Under the Act, the NZFC shall have regard 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;
- the sources from which the money that was used or is to be used to make the film as or is to be derived;
 - 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 NZFC, 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 a significant New Zealand content under 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. More details on these three eligible formats are provided below.

Eligible formats

Eligible formats each have conditions and restrictions to be aware of and need to be recorded in one of New Zealand's three official languages –Māori and/or English, and/or New Zealand Sign Language.

1. **feature films**, including but not limited to drama, documentary, children's and animation, are intended to be no less than 80 minutes (exclusive of credits), commonly screened as the main attraction in commercial cinemas.
2. **a single episode programme** (including a telefeature or feature length content that is not primarily intended for exhibition to the public in cinemas) is intended to be at least 52 minutes (exclusive of credits) in

length, including but not limited to drama, documentary, children’s and animation;

3. **a series or season of a series** including but not limited to drama, documentary, children’s and animation is a programme with a common theme or themes that consists of at least two episodes that are intended for release together

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.

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

- will be majority filmed in New Zealand
- is confirmed as eligible as an official co-production, or
- if applicable, has passed the Screen Production Grant- New Zealand (SPG-NZ) Significant NZ Content Test (please note that this test is different from the one under the Act – see the SPG-NZ criteria for more information); or
- satisfies other cultural measures contained in the Premium Fund Objectives and Purpose (which are outlined in the Premium Fund Guidelines).

5. PRODUCTION FUNDING – PROJECT ELIGIBILITY

The full eligibility requirements set out here are for the Premium Fund as a whole. Not all are applicable to each and every funding round so please see individual guidelines for specific ones that apply to that funding round.

Applicants must be able to demonstrate to the satisfaction of the NZFC (as administrator of the Premium Fund) the ‘production readiness’ of the project. These are the qualifying preconditions of the applications advancement to the assessment phase. Factors used to determine production-readiness may include:

- having advanced script/s or a documentary treatment that complies with industry standards;
- evidence of endorsement / sign off of script/s or documentary treatment/s from market partners or through market comment and attachment;
- If not all scripts are written at the time of your application, you will need to provide a narrative and timeline of the plan to write them and the personnel assigned to this process;
- attachment of key personnel and their bio / screen credits (Director, Producer and Writer or other key positions for your format type) and if they are travelling into NZ the plans / arrangements you have for this;
- attachment of key cast / documentary participants (as applicable) and if they are travelling into NZ the plans / arrangements you have for this;
- Viable finance plan (which equals the amount of your total budget) and details all of the financiers other than the Premium Fund;
- Project has a minimum of 10% of the total production budget financed by Private International Investment as defined in section 7;
- Supporting documentation / evidence of attachment and investment by way of letters of offer (LOO) or draft agreement from all parties in the finance plan. *(for detail on this see section 8)*;
- Status information on certification processes that maybe essential to the closing of your production such as NZSPG provisional certificates, Co-Production provisional certificates (in all territories) etc;
- having a viable production timeline (including a date for start and completion of closing, start of pre-production, start of Principal Photography and delivery date/s);
- having a viable shooting schedule;

- having a current letter of intent from a completion bond that references the current finance plan and production details, or a 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. The budget must include details of the New Zealand Labour Grouping (see definition in the Glossary below);
- having a viable cashflow and drawdown schedule which reflects proposed terms of investment and the Premium Fund requirements as outlined in these Terms of Trade (see section 8);
- A proposed recoupment structure that reflects the positions of all financiers and the Premium Fund requirements as outlined in these Terms of Trade (see section 8);
- Where applicable, (through the information required for assessment) demonstrate that cultural advisor/s are in place to assure the considerations, protocols, and cultural safety, for the project and personnel relating to Māori references or content;
- having a viable COVID-19 risk mitigation strategy.

6. PRODUCTION FUNDING – NATURE OF PREMIUM FUND INVESTMENT

Production Funding will be provided as an equity investment and will be cash-flowed by the NZFC (as administrator of the Premium Fund) during production. The investment is recoupable without a premium from receipts from exploitation of the production and each applicant must outline how it is expected that the investment will be recouped to the Premium Fund.

The NZFC (as administrators of the Premium Fund) expect that their investment:

- will recoup pro-rata and alongside (pari passu) with equity investors of a ‘similar nature’*; and
- 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 Production Funding 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 of the Premium Fund, and/or charge a premium or interest, then the NZFC (as administrator of the Premium Fund) may require all or a portion of the Premium Fund investment to be provided on the same terms.

However, the terms and conditions of other investors may be complex, especially in regard to international finance, and in those circumstances the NZFC (as administrator of the Premium Fund) reserves the right to vary the Premium Fund's requirements.

7. PRODUCTION FUNDING – PRIVATE INTERNATIONAL 10% MINIMUM INVESTMENT

To be eligible for Production Funding, a minimum of 10% of the total production budget must be financed by **Private International Investment**. Private International Investment includes genuine finance (including advances, minimum guarantees and equity) from, but not limited to distributors, sales agents, commissioners, broadcasters, streaming services, licensors and private investors located outside of New Zealand. Specifically excluded are foreign government investment or tax incentives, and entities providing temporary cashflow lending services to the production against these foreign government investment or tax incentives.

If it is series production (see eligibility requirements in applicable *Premium Fund Guidelines*), the 10% requirement applies to the total production budget of a single season.

Investment from internationally based **Related Parties** (as defined in PRODUCTION FUNDING - OTHER INVESTMENT REQUIREMENTS) cannot form

part of the 10% minimum requirement of Private International Investment. But it can still be included in the finance plan as Private International Investment (if it is internationally based) raised in **addition** to the 10% minimum.

International producer fee reinvestment cannot be included as part of the 10%.

All requirements of the Private International Investment should be clearly outlined in the investor's letter of offer.

8. PRODUCTION FUNDING - OTHER INVESTMENT REQUIREMENTS

The NZFC (as administrator of the Premium Fund) requires that all investment amounts in the finance plan are 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 for private equity investment the Premium Fund requires full payment on closing or execution of the funding agreement);
- Cash-flow arrangements for portions not being paid on closing or 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 or recoup ahead of the Premium Fund);
- Proposed fee (if applicable);
- Proposed credit/s including format and position;
- Production related approvals (if any);
- Details of any previous investment into the project; and
- Any other requirements.

In the case where you have not secured funding (e.g. from other government or similar investment) you need to provide details about whether you have registered or applied for that funding, the intended submission date (if applicable) and the expected date of decision or confirmation. You will also need to provide details of your back-up plan for alternative funding if you do not receive the intended funding. 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 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 without insurance cover available for COVID-19 related events.

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.

If any finance and/or market elements required by the NZFC (as administrator of the Premium Fund) under these *Terms of Trade* or the applicable *Premium Fund Guidelines* are not in place at the time of application, then you will need to request a waiver of that requirement.

If the waiver request is not granted then the application will be declined from consideration in that funding round on the basis the application is ineligible.

If the waiver is granted at eligibility stage, then the NZFC (as administrator 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 administrator 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 administrator 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. Please also note that any element waived as part of this process may not be considered a complete waiver of that requirement – it may still be required for assessment or contracting.

Any private investment (whether international or local), 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 (with the exception listed under Reinvestment); OR
- Have individual producer credits (or similar).

However, this definition excludes distribution or sales entities that are either arm's length or not vertically integrated companies associated with the applicant.

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

Reinvestments of Above The Line fees or production company overheads over 25% of any individual budget line item will need to be approved by NZFC (as administrator of the Premium Fund).

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

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 the Premium Fund, with the exception of reinvestments by:

- lead cast or director named by financiers and/ or market partners and supported by sales estimates or advances

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 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 cannot 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 projects 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.

Discretionary Investment from other government screen sector 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.

9. PRODUCTION FUNDING - OFFER AND CONTRACTING

If your application for Production Funding is successful, the NZFC (as administrator of the Premium Fund) will issue a conditional offer letter via the NZFC online portal for the amount of production funding approved by the Panel.

The offer 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 project 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 **Special Purpose Vehicle** ('SPV') which is a New Zealand company established principally in relation to making the production. The SPV 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 SPV'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.

On completion of the project, the NZFC (as administrator of the Premium Fund) will require delivery of the list of items. The delivery items are available on the NZFC website and 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.

10. PRODUCTION FUNDING – OTHER CONDITIONS

The Premium Fund Financing Agreement will set out all conditions to the Production Funding investment including, but not limited to, the following:

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 project.

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 project.

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

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).

The NZFC (as administrator of the Premium Fund) will require certain approvals over your project including in relation to the identity and terms of all other finance, the identity and terms of any sales agent and all distributors, and all key production and financial documentation prepared in relation to the project. All contracts should reflect that the SPV production company 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 and 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 Premium Fund's credit requirements will be set out in the Financing Agreement and NZFC (as administrator of the Premium Fund) will have approval over all credits for the project.

Our general expectation is that your project will provide and budget 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.

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 project in its 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 project.

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

You may be expected, if asked and where feasible, to participate in any apprenticeship schemes or mentorships funded by the Agencies.

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. You will also be required to ensure any foreign currency risks are mitigated.

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. Payments from the Premium Fund may be suspended if other financiers of the project stop cashflowing their investments.

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 production 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.

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 those loan(s). It is expected that any NZSPG overage will be paid to equity financiers in the same order as those equity investors are recouping their investments from the project's receipts or otherwise as agreed between them subject to any completion bond requirements.

11. DEVELOPMENT FUNDING

Any offer of Development Funding will be provided as a non-recoupable grant. Receiving Development Funding from the Premium Fund does not constitute an expectation that you will also receive Production Funding from the Premium Fund.

Eligibility

All applicants must meet the eligibility requirements set out in the applicable *Premium Fund Guidelines*. While discretion will be used in assessing projects

against the eligibility requirements, if applications are found to be ineligible, they will be declined from consideration in that funding round.

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 counter-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 grant.

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.

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. Premium Fund development funding is also intended to provide opportunities for diverse talent and also Māori screen businesses and support for proposals that may ultimately be progressed outside of this specific Fund.

If the grant is incorporated into the project's production budget as a separate line item, the Premium Fund will allow it to be attributed as “producer equity” in the project for any subsequent application to the Premium Fund for Production Funding. The “producer equity” may have a recoupment and profit position commensurate with the overall equity amount, to be recouped pro-rata pari passu with equivalent equity investors (including related parties) but with no premium or interest.

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.

12. GENERAL - TE RAUTAKI MĀORI

Te Rautaki Māori Strategy is in place to ensure responsible cultural representation is held by Māori with relevant experience or authority for the Māori content within a story or project. (*See glossary below for definition of Māori Content*) To have clear accountability, permission and leadership of the protocols, approach and inclusion of cultural practice or tikanga elements in the project or story; and to elevate the capacity and capability of Māori creatives, cast, crew and advisors as an asset and critical to making great films with Māori content.

The Premium Fund expects productions to demonstrate clear established involvement of Māori in the elements or content that is in the project.

- They have engaged with early and secured advisor/s and or creatives with the cultural competency, te reo me ona tikanga, and authority to the lead and assure the content as part of or alongside the creative team.
- The expectation to reflect Māori representation in the creative team, should be commensurate to the level of Māori content and capacity required for the production.
- demonstrate as a production a clear partnership of engagement with, or inclusion of, Māori creative/s, Māori advisor/s and where applicable, hapū and/or Iwi across the production to ensure genuine consultation and where necessary, permission for use.
- provide insight into how the production will benefit the Māori film making industry or local communities through the narrative or production in those regions or local tribal communities.

13. GENERAL – OFFICIAL CO-PRODUCTIONS

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/s, director/s, producer/s and others applicable to your format). If your production does not include all of these roles as New Zealanders, you will need to explain in your application how allowing non-New Zealanders to take these key creative roles will still support the key objectives of the Premium Fund.

14. GENERAL - HEALTH AND SAFETY

Every production must ensure they comply with all health and safety laws and regulations. If setting up an SPV you must have a Company Health and Safety Report (the form is accessed from www.screensafe.co.nz) and provide a copy of this to the NZFC (as administrator of the Premium Fund) as part of the documentation required for closing. You will also 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 as part of closing. 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 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) reserves the right to decline to enter into financing or go ahead on risk if they are not satisfied with the warranties from the production and other investors relating to COVID-19.

15. GENERAL - APPLICATION ASSESSMENT PROCESS

Applications will be assessed for eligibility and if an application is eligible, it will be assessed against the five key objectives of the Premium Fund in context, on its own merits and in light of the totality of all applications.

Key Objectives of the Premium Fund

1. Boost economic growth through the attraction of international investment and market partners.
2. Increase employment through providing jobs to New Zealanders.
3. Create cultural benefit through providing the resources to tell NZ screen stories at a scale not previously possible, and support Māori cultural aspirations.
4. ‘Speed to Market’. Respond to COVID-19 by distributing money quickly.
5. Develop the skills and capability of people in the NZ screen sector.

The final funding decisions will be made by the Panel having regard to the recommendations put forward by the Agencies, the five Key Objectives, the overall purpose and intended outcomes of the Premium Fund; the number of applications and call on the amount of funding available; and any other matters that the Panel, in their sole discretion, consider to be relevant in the circumstances.

The Premium Fund may engage a range of local and international assessors 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 will not be made available to External Assessors. The data collected is aggregated and used only in meeting the reporting requirements of the Agencies.

16. GENERAL – REPORTING AND AUDIT

For all projects and activities with funding from the Premium Fund (whether for production or development funding), the recipient will be required to provide

reporting to NZFC (as administrator of the Premium Fund) as set out in the applicable Funding Agreement.

Project progress reporting:

During production, we will expect to be provided with information about the progress of the production including Daily Progress Reports and Cost Reports.

Agencies will have the right to visit the production office and to observe the production on set, with appropriate notice.

Final Production Expenditure Reporting:

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.

Project revenue reporting:

For feature films, all revenues must be collected by a collection agent approved by NZFC (as administrator of the Premium Fund) and the collection agent must regularly report directly to NZFC (as administrator of the Premium Fund). All distributors will be required 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 the revenues will be collected and reported and how it is expected that the Premium Fund funding will be recouped.

Premium Fund reporting requirements:

Funding recipients may also be required to provide information about the project for the purposes of the Premium Fund's reporting obligations to the Agencies and MCH. These reporting requirements will be set out in the relevant financing agreement.

17. 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.

If the film has Te Reo elements, 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 should include, if not covered by market partners, the cost of:

- unit publicist
- stills photographer
- 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 already paid must be clearly identified within previous development funding allocated.

COVID-19 Costs: The budget should contain all costs of complying with your COVID-19 Risk Mitigation Strategy together with any additional contingency specifically assigned to COVID related events. The COVID related costs should be clearly tagged as either:

- A specific COVID related costs category within your budget
- Separate lines within other categories but tagged as COVID costs

The total amount assigned to COVID related costs including any COVID specific contingency must be clearly indicated in your Budget sub totals. This would need to be clearly noted as additional to the main contingency.

Contingency: The NZFC and any completion guarantor will need to approve the amount of contingency allowed in the budget. The industry norm for contingency is 10 % of the below-the-line budget for feature films and 5% for television.

Overheads and Fees. If you are applying for the NZSPG-NZ, please ensure your budget complies with the NZSPG-NZ 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. 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, you are expected to engage an experienced entertainment lawyer for specialised advice.

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

NZSPG-NZ: For NZSPG-NZ projects, 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).
- Essential 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 Financing Agreement will contain 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 administrator of the Premium Fund) and completion guarantor (if applicable) consent, of:

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

18. GENERAL – OTHER

All applications are made at the applicant's own risk. The Agencies 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 any of the *Premium Fund Guidelines* constitute an offer capable of acceptance by any person.

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

The NZFC (as administrator 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 for any future funding rounds

- not accept applications which are incomplete, or which do not comply with these *Terms of Trade* or the applicable *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 received and the funding commitments made (this information may include the name of the successful applicant, award amount, project name and some project details)

Please be aware the Agencies 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.

Funding decisions are final. Inevitably applications will be turned down and applicants may be disappointed by this result.

19. GLOSSARY

Above The Line (ATL) refers to roles represented in the top section of the budget and generally have a set or percentage-based fee including writer, producer, director and key cast.

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 Lead Producer, producer, director, script writer, series creator, showrunner and/or animation director.

Māori content is anything sourced and generated from a Māori world view, Te Ao Māori - including but not limited to:

- Māori kupu, proverbs, expression of language, dialect, geneological information, naming conventions

- reference to or inclusion of Māori names, people, places, characters, protocols
- anything based on Māori history, stories, myths & legends, songs, dance, cultural expressions that may or may not be in public domain
- Toi Māori – art, carving, tā moko, raranga, visual arts, games, both traditional and modern cultural expressions
- Taonga Māori - te reo, landmarks, whakapapa, photographs, heirlooms, tribal landmarks, museum artefacts, flora and fauna – native trees, birds, taonga species
- use of or reference to specific whānau, hapu, iwi tribal land, waterways, mountains, social systems and structures
- mātauranga Māori - anything that is sourced in the wide context of Māori knowledge, its expression and cultural practice.

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.

Multiparty financing experience describes active negotiation and control of building a production finance structure involving multiple parties where at least one of the financial parties is international.

New Zealand Film Commission Act 1978 (the "Act") sets out the NZFC's functions, powers and duties.

New Zealand Labour Grouping means a group entitled "NZ Labour" within your production budget that contains all local labour codes.

Include: Overtime, Production Company legals, freelance accountants / auditors, freelance post crew.

Don't include: NZSPG fees for interest or audits by large entities like Grant Thornton, packaged post quotes where labour and other costs are rolled into one.

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 (NZSPG-NZ) means the government screen incentive for New Zealand productions administered by the NZFC. Projects that access NZSPG – International are not eligible to apply for the Premium Fund.

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. Please find more information here: <https://www.nzfilm.co.nz/incentives-co-productions/co-productions>

Private International Investment includes genuine market money from but not limited to Distributors, Sales Agents, Commissioners, Licensors, Private Investors, State-owned International Broadcasters. It does not include foreign government investment or tax incentives, nor does it include entities providing temporary cashflow lending services against these tax incentives to the production if the source of investment is from foreign government investment or tax incentives.

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

Recoupment means the recoupment structure that determines to whom, and in what order, project income is distributed.

Related Parties – see definition under [section 8 and page 14](#).

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.

20. 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>

Please also consider applying for other funding avenues that the NZFC offers, such as:

Film Distribution Grants – Films with co-investment from the NZFC may be eligible for this. [Film Distribution Grants Guidelines \(nzfilm.co.nz\)](#) Enquiries to marketing@nzfilm.co.nz

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

Screen Production Recovery Fund ('SPRF') – enquiries can be directed to screenrecovery@nzfilm.co.nz and funding guidelines can be found on the NZFC website. <https://www.nzfilm.co.nz/funds/screen-production-recovery-fund>

Screen Production and Development Association of New Zealand ('SPADA')

<http://www.spada.co.nz/>

- Codes of Practices and Guidelines
<http://www.spada.co.nz/resources/codes-of-practice-guidelines/>
- COVID-19 Health & Safety Standard and Protocols
<http://www.spada.co.nz/resources/covid-19-health-and-safety-standard-and-protocols/>