

## STANDARD TERMS AND CONDITIONS – IWI PLATFORM FUNDING

### 1. INTERPRETATION

1.1 Definitions: In this agreement unless the context indicates otherwise:

"Act" means the Broadcasting Act 1989;

"Agreement" means this agreement includes the background recitals and the schedules;

"Annual Narrative Report" means an annual report of the Platform's operations and performance after the end of the financial year, including details listed under clause 12.5 of this Agreement;

"APRA AMCOS NZ" means the Australasian Performing Right Association (APRA) and Australasian Mechanical Copyright Owners Society Limited (AMCOS) NZ, a duly incorporated company having its registered office in Unit 113, Zone 23, 23 Edwin Street, Mt Eden, Auckland, New Zealand;

"Approved Budget" means the budget prepared by the Platform for the operation of the Platform, including all costs related to the operation of the Platform and supplied as part of the Proposal;

"Approved Māori Language Plan" means the plan prepared by the Platform and supplied as part of the Proposal;

"Broadcast Window" means the twenty-four (24) hour period between midnight each day within which the Māori Language Hours will be broadcast;

"Business Day" means a day (other than Saturday or Sunday or a national statutory public holiday) on which banks are open for normal over the counter banking business in Wellington;

"Business Hours" means the hours of 8:30 am to 5:00 pm on any Business Day;

"Contract Period" means the period recorded in Schedule 1, Contract Management and Personnel;

"Deliverable" means in respect of each Milestone the deliverables required to be delivered by the Platform for that Milestone under Schedule 2;

"Delivery Date" means the date recorded in Schedule 2 as the date by which the completed deliverable is required to be delivered to Te Māngai Pāho by the Platform or such later date as may be approved by Te Māngai Pāho at its discretion;

"Event of Default" means any of the events described in clause 17;

"Frequency" means the radio frequency over which the Licence Holder has been granted a broadcasting licence by the Government and which the Licence Holder has agreed to make available to the Platform under the Licence Holder and Broadcaster Agreement;

"Funder" means the entity that is a party to this Agreement and referenced as Te Māngai Pāho;

"GST" means goods and services tax payable under the Goods and Services Tax Act 1985;

"Licence Holder and Broadcaster Agreement" means the agreement between the Licence Holder and the Platform setting out the terms under which the Licence Holder grants the Platform the use of the Frequency and the terms of use;

"Licence Holder" means the Licence Holder stated in the Licence Holder and Broadcaster Agreement;

"Māori Language Hours" means the agreed hours of 'fluent' te reo Māori content that the Platform agrees to deliver per day. The Māori Language Hours will comprise an agreed quantity of locally produced te reo Māori content and te reo Māori content from other sources ('fluent' te reo Māori content is content that is at least 70% in te reo Māori);

Māori Language Plan" means a plan prepared by the Platform setting out the broadcasting outcomes, targets, and outputs for the financial year, including details listed under clause 11 of this Agreement;

" Māori Language Report" means an annual report prepared by the Platform after the end of each financial year and delivered to Te Māngai Pāho no later than six (6) months after the end of that financial year, including details listed under clause 12.6 of this Agreement;

"Milestone" means a milestone recorded in Schedule 2;

"Network-based Sharing" is via a dedicated network wide content sharing system that links iwi radio stations and a centralised hub providing a means to distribute programmes on a common network feed and an internet streaming service. The current system designated 'Punga-net' will be replaced by a new system designated Te Paerangi during the term of this Agreement;

"Performance Data" is any information which supports the ability of Te Māngai Pāho to determine and analyse the distribution, audience or other performance aspect of the content created with this Funding.

"Platform" means the entity that is a party to this Agreement that is funded by Te Māngai Pāho and whose primary business is to operate an iwi radio station but may also include other channels of communication or distribution;

"Platform's Personnel" means all employees, agents and contractors of the Platform involved in operating its business;

"Producers" means all persons, companies or firms that are at the date of, and at any time during the term of, this Agreement specified as "Members" and "Participants" on Recorded Music New Zealand Limited's website (<http://recordedmusic.co.nz/>);

"Proposal" means the submission provided by the Platform as part of the funding application process;

"Radio Code of Broadcasting Practice" means Code of Broadcasting Practice, approved by the Broadcasting Standards Authority;

"Recorded Music New Zealand Limited" means a duly incorporated company having its registered office at Level 1, 2a Hakanoa Street, Grey Lynn, Auckland, New Zealand;

"Sound Recording" means any individual or aggregate sound recordings the copyright of which is owned or controlled by the Producers;

"Start Date" means the date recorded in Schedule 1, Contract Management and Personnel;

"Te Māngai Pāho Funding" or "Funding" means the funding for the operation of the Iwi Station as recorded in Schedule 1, Contract Management and Personnel;

"Te Reo Māori" means the Māori language;

"Vision, Values and Strategic Priorities of Te Māngai Pāho" means the Vision, Values and Strategic Priorities of Te Māngai Pāho as provided on page 1, Schedule 1; and

"Year" means twelve (12) consecutive months commencing 1 July and ending the following 30 June.

1.2 Rules of Construction: In this agreement, unless the context indicates otherwise:

- (a) Headings: clauses and other headings are for ease of reference only and will not affect the interpretation of this agreement;
- (b) Parties: references to any "party" means a party to this agreement;
- (c) Clauses and Schedules: references to clauses and Schedules are references to clauses in and schedules to this agreement, and the provisions and conditions contained in such schedules will have the same effect as if set out in the body of this agreement;
- (d) Persons: references to a person include references to an individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of the state, government department and any public, territorial, or regional authority, in each case whether or not having separate legal personality;
- (e) Defined Expressions: expressions defined in the main body of this agreement have the same meaning throughout this agreement including the background recitals and the schedules;
- (f) Negative Obligations: any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (g) Plural and Singular: the singular includes the plural and vice versa;
- (h) Gender: words importing one gender include the other gender;
- (i) Monetary Amounts: all monetary amounts are stated exclusive of GST and in New Zealand currency;
- (j) Statutes and Regulations: references to any statutory provision are to statutory provisions in force in New Zealand and include references to regulations, orders or notices made under such statutory provision and any statutory provision regulation or notice which amends or replaces it.

## 2. TERM

2.1 Contract Period: This agreement will commence on the Start Date and will continue until the expiry of the Contract Period unless terminated earlier under the provisions of this agreement.

## 3. PROVISION OF FUNDING

3.1 Te Māngai Pāho Funding: Subject to the terms and conditions of this agreement, Te Māngai Pāho agrees to make Te Māngai Pāho Funding available to the Platform for the Contract Period. The Platform acknowledges that nothing in this agreement will entitle the Platform to receive any additional money from Te Māngai Pāho and the Platform confirms it has no other expectation of funding from Te Māngai Pāho except as set out in this agreement.

3.2 Separate Books of Accounts: The Platform must keep separate books of accounts for the business operating under the terms of this agreement. The Platform must not combine accounts with any other station or any unrelated activities.

3.3 Funding Conditions: Notwithstanding anything in this agreement to the contrary, Te Māngai Pāho will not be liable to provide Te Māngai Pāho Funding or any part of Te Māngai Pāho Funding, if:

3.3.1 Restructuring: government restructuring leads to a reduction or cessation of funds made available to Te Māngai Pāho;

3.3.2 Te Māngai Pāho Funding: the funding allocated to Te Māngai Pāho by the Government for Māori radio ceases to be available or is reduced below the levels allocated, or agreed to be allocated, to Te Māngai Pāho as at the Commencement Date or during the Contract Period; or

3.3.3 Radio Licence Suspension and or Withdrawal: The Radio Licence granted to the Platform is suspended and or withdrawn by the Licence Holder; and

3.3.4 Non-Performance: The Platform fails to perform its obligations under this Agreement or defaults in this or another agreement/s it may have with Te Māngai Pāho during the Contract Period.

3.3.5 Other Circumstances: any other circumstances arise that, in Te Māngai Pāho's opinion, prevent it from providing to the Broadcaster Te Māngai Pāho Funding or any part of Te Māngai Pāho Funding.

3.4 Availability and Continuation of Payment: The availability of Te Māngai Pāho Funding and the continued payment of each instalment of Te Māngai Pāho Funding to the Platform are subject to:

3.4.1 Radio Licence: The Platform maintaining the Radio Licence granted by the Licence Holder;

3.4.2 Continued Broadcasting: the continued broadcast by the Platform, on the Frequency, of programmes for the promotion of Te Reo Māori (Māori language) and Tikanga Māori (Māori culture) throughout the Contract Period and at the levels of Te Reo Māori required by this agreement throughout the Contract Period;

3.4.3 Transmission Criteria: Te Māngai Pāho is satisfied that the transmission criteria recorded in clause 6 have been, and continue to be met;

3.4.4 Monitoring Results: the results of any monitoring conducted by Te Māngai Pāho under clause 8 showing that the Platform has maintained the required level of Te Reo Māori content; and

3.4.5 Compliance with Agreement: The Platform complying with and performing all of its other obligations under this agreement.

#### **4. PAYMENT OF THE FUNDING**

4.1 Payment of Te Māngai Pāho Funding by Instalments: Subject to clauses 3 and 4.1, Te Māngai Pāho Funding will be paid by Te Māngai Pāho to the Platform as per Schedule 2 of this agreement.

4.2 Tax Invoice Required: Instalments of Te Māngai Pāho Funding will only be paid by Te Māngai Pāho if the Platform has provided Te Māngai Pāho with a tax invoice in respect of the relevant instalment(s) as per Schedule 2 of this agreement. Tax invoices received with all deliverables will be paid by Te Māngai Pāho within five (5) Business Days of receipt of the original tax invoice provided that in no event will payment of any instalment of the Te Māngai Pāho Funding be required to be made earlier than the first day of the month in respect of which it is paid.

4.3 Income Tax Act: The Platform acknowledges that Te Māngai Pāho Funding constitutes a grant to the Platform in terms of sections DF1 and CX47 of the Income Tax Act 2007 and that Te Māngai Pāho Funding and any expenditure of Te Māngai Pāho Funding by the Platform can be treated for income tax purposes under the provisions of that section.

4.4 Use of Te Māngai Pāho Funding: The Platform must only use Te Māngai Pāho Funding to meet the Platform's expenses recorded in the Approved Budget. The Platform may alter the allocation of Te Māngai Pāho Funding between the different cost centres in the Approved Budget provided that Te Māngai Pāho Funding must not be used for any other purpose unless expressly provided for in this agreement.

#### **5. THE PLATFORM'S COVENANTS**

5.1 Covenants: The Platform must throughout the Contract Period:

5.1.1 Amount of Programming: provide both the agreed hours of locally produced te reo Māori content and the agreed hours of other te reo Māori content daily as agreed in the Schedule 1 of this Agreement;

- 5.1.2 Acknowledgement of Funding: provide acknowledgement of Te Māngai Pāho Funding as referred to in Schedule 1 and clause 10;
- 5.1.3 Increase Audience: increase the Platform's audience across the combined broadcast and digital platforms by the target agreed in Schedule 1 of this Agreement;
- 5.1.4 Licence Holder and Broadcaster Agreement: comply in all material respects with the Licence Holder and Broadcaster Agreement;
- 5.1.5 Broadcasting Standards: at all times comply with the Broadcasting Act 1989 and all other radio standards, codes of practice, rules, statutes, and regulations applicable to the Platform, in particular, the Platform must comply with the programme standards and formal complaints, Sections 4 and 6 of the Broadcasting Act, and the Broadcasting Standards Authority Radio Code;
- 5.1.6 Not Infringe Copyright: not violate nor infringe upon the copyright, right of privacy or any other rights of any third party;
- 5.1.7 Not Defamatory: not broadcast or publish any defamatory material;
- 5.1.8 Attract Other Revenue: use its best endeavours to attract other revenue in a manner that is consistent with the aims and objectives of the Māori Language Plan;
- 5.1.9 EEO Plan: run an appropriate equal employment opportunities plan;
- 5.1.10 Comply with Law: at all times comply with all laws and statutory or regulatory requirements applicable to the Platform's management and operation of its business and any actions the Platform undertakes;
- 5.1.11 Health and Safety at Work Act 2015: comply with its obligations under the Health and Safety at Work Act 2015 and take all practicable steps to ensure its safety, the safety of its employees, contractors or agents, and the safety of any other persons in the vicinity of its premises or business;
- 5.1.12 Safety Programme: operate a comprehensive safety programme that amongst other things provides systems for the identification of hazards in the workplace and the development of appropriate control measures, procedures for dealing with onsite emergencies, and appropriate training and supervision of staff;
- 5.1.13 Industry Standards: conducts its business efficiently with all due diligence and under the best industry standards; and
- 5.1.14 Report: within twenty-four (24) hours of an incident, report to Te Māngai Pāho details of any:  
(i) notifiable event (as defined in the Health and Safety at Work Act 2015) relating to any aspect of the Platform's business and any actions the Platform undertakes; or  
(ii) incident relating to the Platform's operation of its business and any actions the Platform undertakes which results (or could have resulted or could yet result) in serious injury or serious illness.
- 5.1.5 Te Māngai Pāho may, at any time, call a meeting with the Platform and any persons affected by the event, upon reasonable notice, to obtain information and to discuss the event and the planned responses to it.
- 5.1.16 Children's Act 2014: comply with its obligations under the Children's Act 2014 and take all practical steps to ensure the safety and protection of children who encounter the Platform through the course of its business operations.

5.1.17 Child Protection Policy: maintain a Child Protection Policy that accords with the requirements of Section 19 of the Children's Act 2014, including:

- (i) Adopting a Child Protection Policy as soon as practicable if one is not already in existence at the contract Start Date, and in any event no later than three months after the contract State Date.
- (j) Ensuring that the Child Protection Policy is reviewed on a regular basis so that at any time during the term of the Agreement it has been reviewed within the last three years.

5.1.18 Safety Checking: ensure that all people involved in delivery or running of activities involving children will be safety checked in accordance with Part 3 of the Children's Act 2014.

## **6. TRANSMISSION CRITERIA**

6.1 Transmission Criteria: During the Contract Period the Platform will meet the following transmission criteria:

6.1.1 Broadcast: the agreed hours of locally produced te reo Māori content by the Platform at 70% te reo Māori fluency plus the agreed hours of other te reo Māori content at 70% te reo Māori fluency per day for the period of this Agreement;

6.1.2 Transmission Quality: will use its best endeavours to preserve the extent and quality of the transmission coverage at all times; and

6.1.3 Network-based Sharing: maintain the connection between stations and the centralised hub to distribute programmes via a common network feed and an internet streaming service.

## **7. DATA COLLECTION**

7.1 Collection of Performance Data: The Platform acknowledges that Te Māngai Pāho (through its agents, contractors or employees) may collect data pertaining to the performance of content created with this funding, including but not limited to content distribution and audience.

7.2 Provision of Performance Data: The Platform will use its best endeavours to provide performance data to Te Māngai Pāho as and when requested and in the format required, including but not limited to via the installation of analytics software on the Platform website and provision of access to this by Te Māngai Pāho.

7.3 Notification of Results of Performance Data: Te Māngai Pāho will use reasonable endeavours to provide the Platform with an analysis of performance data collected by Te Māngai Pāho.

## **8. MONITORING**

8.1 Monitoring for Compliance: The Platform acknowledges that Te Māngai Pāho (through its agents, contractors or employees) may monitor the Platform's broadcasts during the Māori Language Hours with such frequency and at such intervals, as Te Māngai Pāho may elect, and without notice to the Platform, for compliance with the Platform's broadcasting obligations under this agreement, including but not limited to Te Reo Māori programming requirements recorded in clause 5.1.1.

8.2 Third Party Consent: The Platform acknowledges that such monitoring may involve the recording of broadcasts by the Platform for review by Te Māngai Pāho and the Platform agrees that it must ensure that it obtains all consents required to allow Te Māngai Pāho to record any third-party material which may be included in the Platform's broadcasts during the Māori Language Hours as part of the monitoring Te Māngai Pāho conducts under clause 8.1.

8.3 Notification of Results of Monitoring: Te Māngai Pāho will use reasonable endeavours to provide the Platform with the results of any monitoring conducted by Te Māngai Pāho within the quarterly period immediately following the quarter reported on.

8.4 Information and Meetings: In addition to the reports and records the Platform must provide under clause 13, Te Māngai Pāho may from time to time require the Platform to provide, at the Platform's cost, additional information relating to the operation of the Platform and to attend meetings and provide other assistance as Te Māngai Pāho may require concerning any additional information required by Te Māngai Pāho.

8.5 Failure to Comply: If in the opinion of Te Māngai Pāho the monitoring results for any monitoring that may be undertaken by Te Māngai Pāho from time to time show that the Platform has failed to meet the programming requirements of clause 5.1.1, and/or the programming requirements of the Platform the following will apply:

8.5.1 Platform to Rectify: The Platform must within thirty (30) days of receipt of notification of the results referred to in clause 8.3 demonstrate to the satisfaction of Te Māngai Pāho that it has taken all steps necessary to rectify the failure to comply;

8.5.2 Re-monitoring: Te Māngai Pāho will undertake such further monitoring as Te Māngai Pāho considers appropriate to confirm that the failure to comply has been rectified, the reasonable costs of such further monitoring to be met by the Broadcaster and that the Platform agrees may be deducted by Te Māngai Pāho from any Te Māngai Pāho Funding payments which may be payable to the Platform; and

8.5.3 Failure to Rectify: if the Platform is unable to satisfy Te Māngai Pāho that the Platform has rectified the failure to comply within the said thirty (30) days and/or the results of any further monitoring undertaken by Te Māngai Pāho under clause 8.5.2 show that the Platform's failure to comply with the programming requirements of clause 5.1.1, and/or the programming requirements of the Platform Te Māngai Pāho may:

- (i) reduce the amount of Te Māngai Pāho Funding under the agreement; or
- (ii) terminate this agreement immediately without further notice and terminate all further Te Māngai Pāho Funding payments with immediate effect.

## **9. NETWORK-BASED SHARING**

9.1 Platform to Share Content: The Platform will ensure that all content created by this Funding is made available on the network-based sharing platform specified by Te Māngai Pāho for the purposes of sharing content with other Iwi Radio Platforms; archiving by Ngā Taonga: Sound and Vision and complying with the requirements of the Broadcast Standards Authority. The sharing platform and uploading obligations may be changed from time to time at the discretion of Te Māngai Pāho.

## **10. ACKNOWLEDGEMENTS**

10.1 Platform to Acknowledge Funding: From the date of execution of this Agreement the Platform will ensure acknowledgements of Te Māngai Pāho Funding are made by way of announcements during on-air broadcasts as per the terms of this Agreement.

10.2 Wording of Acknowledgement: The wording and citing of the acknowledgements of Te Māngai Pāho Funding will be supplied to the Platform by Te Māngai Pāho. Such wording may be changed from time to time at the discretion of Te Māngai Pāho.

10.3 Timing of Acknowledgements: The Platform agrees to use its best endeavours to ensure that scheduled announcements of acknowledgements of Te Māngai Pāho Funding are made at the minimum frequency provided in Schedule 1, Performance Requirements.

## **11. MĀORI LANGUAGE PLAN**

11.1 Māori Language Plan: The Platform must complete and supply to Te Māngai Pāho for approval, a Māori Language Plan. The details of the Māori Language Plan must include identifying:

- 11.1.1 the Māori Language outcomes that are sought by the Platform;
- 11.1.2 the demographic characteristics of the target populations;
- 11.1.3 the broadcasting outputs that will be delivered to achieve the outcomes;
- 11.1.4 the interface between the broadcasting outputs and other Māori language outputs;
- 11.1.5 the Māori language monitoring arrangements that the Platform will put in place (quantity and quality); and
- 11.1.6 the funding arrangements in place with Te Māngai Pāho and the Māori language requirements that arise from these arrangements.

## **12. ACCOUNTS, REPORTS, AUDITS, AND INSPECTIONS**

12.1 Keep Books and Records: The Platform will keep proper books, records, accounts, and agreements containing full, true, correct, and timely details of all matters in connection with the operation of its business. The Platform must keep such of the books, records, accounts, and agreements as Te Māngai Pāho may require in electronic form utilising the software of the nature and type specified by Te Māngai Pāho. The Platform must not combine accounts for the radio station with any other station accounts or any other unrelated activities.

12.2 Report Dates: During the Contract Period, the Platform must complete and supply Te Māngai Pāho deliverables as set out in Schedule 2 and in accordance with the provisions of this Agreement.

12.3 Progress Reports: To submit their completed Progress Reports via Te Pūhatanga by the due dates agreed in Schedule 2:

12.4 Other Information: Any other information that may from time to time be required by Te Māngai Pāho.

12.5 Annual Narrative Report: The Platform must complete and deliver to Te Māngai Pāho a Narrative Report of the Platform's operations and performance for the Contract Period by the date agreed in Schedule 2;

12.6 Māori Language Report: The Platform must complete and deliver to Te Māngai Pāho by the date agreed in Schedule 2, a Māori Language Report for the Contract Period outlining the outputs and outcomes achieved as a result of the Māori Language Plan.

12.7 Audited Financial Statements: The Platform must complete and deliver to Te Māngai Pāho by the date agreed in Schedule 2, a copy of the Annual Audited Financial Report for the Contract Period. The annual financial statement must include a Statement of Financial Performance and Statement of Financial Position showing where appropriate prior years actual. The Annual Audited Report needs to include non-financial statements in the format set out in the Māori Language Plan. Where the Platform has any other business activities apart from operating a radio station funded by Te Māngai Pāho, the end of year audited financial statements must clearly distinguish the financial activities of the that other business.

12.8 Independent Audit: Notwithstanding the requirement for the Platform to provide audited financial statements, Te Māngai Pāho has the right to give not less than twenty-four (24) hours' notice, at its cost, to require all financial statements and reports to be independently audited, to set the scope of the audit and to appoint the auditor. The Platform shall do whatever is required to facilitate such audit and assist the auditor.



12.9 Inspection by Te Māngai Pāho: Subject to Te Māngai Pāho giving twenty-four (24) hours' prior notice, or such lesser time as may be reasonable in the circumstances Te Māngai Pāho, its representative and/or auditor may inspect and/or conduct a review of the Platform's books, records, accounts, agreements and premises relating to the use of Te Māngai Pāho Funding (including without limitation to ensure compliance with the warranties in clause 14) and take copies of such books, records, accounts and agreements. The Platform must ensure Te Māngai Pāho, its representative and/or auditor has full access to the books, records, accounts and agreements and the premises of the Platform and must ensure that the Platform's Personnel co-operate with Te Māngai Pāho, its representative and/or auditor and provides Te Māngai Pāho, its representative and/or auditor with such assistance as Te Māngai Pāho, its representative and/or auditor may reasonably require.

12.10 Advice of Concerns: Te Māngai Pāho will within thirty (30) days of receipt of any report from the Platform under this clause advise the Platform in writing of the matters in the report that Te Māngai Pāho considers requires further explanation and it will advise the Platform of any concerns Te Māngai Pāho may have relating to that report. The Platform will take such steps as may be necessary to provide any further explanations required by Te Māngai Pāho and to address any concerns raised by Te Māngai Pāho to the satisfaction of Te Māngai Pāho.

12.11 Suspension of Payments: If the Platform fails to:

12.11.1 Milestones: deliver to Te Māngai Pāho any milestone deliverables as per Schedule 2.

12.11.2 Information: provide further information or explanation requested by Te Māngai Pāho;

12.11.3 Address Concerns: address any concerns raised by Te Māngai Pāho to the satisfaction of Te Māngai Pāho.

12.12 Te Māngai Pāho may suspend the payment of Te Māngai Pāho Funding until compliance with clauses 12.1 to 12.11.3 (inclusive) by the Platform to the satisfaction of Te Māngai Pāho.

### **13. WARRANTIES**

13.1 Warranties: The Platform warrants that it:

13.1.1 Holds all Rights and Consents: has obtained and will retain absolutely all necessary rights, licences, consents, and other authorities to operate its business including a radio station;

13.1.2 Licence Holder and Broadcaster Agreement: will immediately notify Te Māngai Pāho in writing of any changes to the Licence Holder and Broadcaster Agreement including any variations, suspensions and or termination of the Licence Holder and Broadcaster Agreement and or any changes to the agreement between the Licence Holder and the Broadcaster in respect to the use of the licence;

13.1.3 Code of Practice: has a copy of and has ensured that all staff have read any applicable codes of practice relevant to the operation of its business including but not limited to any approved code of broadcasting practise in terms of the Act, and will observe the guidelines that are set out in any such codes;

13.1.4 Broadcasting Complaints Process: has a Broadcasting complaints process in place;

13.1.5 Solvency: is solvent, no receiver has been appointed over any of its assets and it has not entered into any compromise or arrangement with creditors;

13.1.6 Third Party Contracts: will not by entering into this agreement and performing its obligations under this agreement be in breach of any existing or future agreements or arrangements that the Platform has entered into or may enter into during the Contract Period;

13.1.7 No Awareness: The Platform is not aware of any information or circumstance which might materially adversely affect the operation of its business or the willingness of Te Māngai Pāho to provide Te Māngai Pāho Funding and enter into this agreement;

13.1.8 Authorities: before entering into this agreement the Platform has obtained all corporate and other authorities necessary to do so and there are no restrictions or other obligations known to the Platform which would or might impede the Platform from giving full effect to its obligations under this agreement;

13.1.9 Personnel Checks: the Platform has conducted appropriate checks concerning the Platform's Personnel and based on those checks, is satisfied that the Platform's Personnel are of good standing and character and can be entrusted with the management and custody of the business and Te Māngai Pāho Funding under this Agreement.

13.1.10 Related Party Disclosures: The Platform has and will provide separate disclosures of all payments to related parties:

- (i) Related party payments include all fees, payments or reimbursements paid to any directors or shareholders in the Platform or related companies of the Platform (as defined in section 2(3) of the Companies Act 1993); and
- (ii) Related party payments also include all fees, payments or reimbursements paid to agents, contractors or employees of the Platform or close family of the key personnel.

13.1.11 Comply with Law: The Platform will at all times comply with all laws and statutory or regulatory requirements applicable to the Platform's performance of the provisions of this agreement and any actions the Platform undertakes in relation thereto; and

13.1.12 Copyright Compliance and Copyright Reporting Obligations: The Platform will at all times comply with all copyright compliance and copyright reporting obligations, in particular, the Platform must comply with the obligations as follows:

- (i) The Platform will take all reasonable steps to announce the title of any Sound Recording(s) broadcast; the name of the relevant recording artist(s); and the title of the relevant album(s) from which an individual Sound Recording is extracted (if applicable).
- (ii) The Platform will maintain a system that captures the title of any Sound Recording(s) broadcast; the name of the relevant recording artist(s); and the title of the relevant album(s) from which an individual Sound Recording is extracted.
- (iii) The Platform will not do anything that may encourage or incite listeners to copy music illegally.
- (iv) The Platform acknowledges that all rights in the Sound Recordings remain the sole and exclusive property of the labels and artists and any advertising or programmes using music must first get permission from the specific label or copyright owner.
- (v) Music used by the Platform in the context of a current affairs item or critical review can be used without permission, of the specific label or copyright owner.
- (vi) Technical copies of music can be made provided that such copies are made by or on behalf of the Platform on the Platform's premises, and the copy is made to assist broadcasting (i.e., it is not copied for supply to any third parties).
- (vii) The Platform may not broadcast any music in any context which could be considered as an endorsement by the recording artist(s) for any of the products or services being advertised on the Platform without the prior written permission.
- (viii) The Platform may internet simulcast only (e.g., an unaltered and continuing transmission via the internet). This does not extend to on-demand simulcasting (e.g., archived shows that include music content) or interactive use (e.g., where listeners can create their playlists of music).

(ix) The Platform will be required to deliver playlist data to Recorded Music New Zealand Limited and APRA AMCOS NZ or their representatives, in a format and timeframe specified by Recorded Music New Zealand Limited and APRA AMCOS NZ or their representatives.

13.2 Warranties Ongoing: The Platform acknowledges that the warranties set out in this clause 13 are ongoing and will be deemed to be repeated by the Platform daily during the Contract Period.

#### **14. INDEMNITY**

14.1 Indemnity: The Platform hereby fully indemnifies Te Māngai Pāho against all claims, expenses, losses, and damage (including all legal costs, disbursements and expenses) suffered or incurred by Te Māngai Pāho directly or indirectly as a result of any breach of this agreement by the Platform or any act, negligent act or omission, fraud, dishonesty or wilful misconduct of the Platform, its employees, contractors or agents arising out of or in connection with the operation of its business including a radio station.

#### **15. CONFIDENTIALITY**

15.1 Confidentiality: The parties acknowledge that all matters relating to this agreement (including its terms and conditions) are considered commercially sensitive and, subject to clauses 15.2 and 15.3, all information generated or acquired under or under this agreement or received by a party to this agreement from the other will be held and kept confidential, will be used solely to implement this agreement, and will not be disclosed by the other party to any third party without the prior approval of the other party and upon such terms as may be stipulated by that party, provided that a party may, without such approval, disclose such matters or information:

15.1.1 Professional Consultants: to any outside professional consultants upon obtaining a similar undertaking of confidentiality from such consultants;

15.1.2 Banks etc.: to any bank or financial institution from whom such party is seeking to obtain finance, upon obtaining a similar undertaking of confidentiality from such bank or institution;

15.1.3 Public Domain: to the extent that the same has become available to the public other than as a result of unauthorised disclosure by either party or any of its employees, agents, or contractors; and

15.1.4 Required by Law: to the extent that the party is required by law to disclose such information.

15.2 Disclosure of Te Māngai Pāho Funding: The Platform acknowledges that Te Māngai Pāho publishes information from time to time about funding it has provided for broadcasting and the production of programmes for broadcast and may publish details relating to this agreement, including the name of the Platform and the amount of Te Māngai Pāho Funding.

15.3 Official Information Act: The Broadcaster acknowledges that Te Māngai Pāho is subject to the Official Information Act 1982 ("OIA") and:

15.3.1 Notify Platform: Te Māngai Pāho agrees to notify the Platform if it receives a request under the OIA for information that relates to this agreement;

15.3.2 Notify Te Māngai Pāho: the Platform agrees to notify Te Māngai Pāho, within five (5) Business Days of receiving notice from Te Māngai Pāho that a request has been made under the OIA if the Platform considers there are grounds for withholding the information under the OIA; and

15.3.3 Notification of Disclosure: Te Māngai Pāho agrees to notify the Platform as soon as reasonably possible as to whether the information requested has been disclosed.

15.4 Employees: Each party will be responsible for ensuring that its employees, agents, and contractors who are at any time in possession of confidential information of a kind referred to in clause 17.1 observe and comply with this clause 17.

15.5 Publicity: No party may issue any press release of information concerning this agreement or its subject matter to the news media without the prior approval of the other parties.

## **16. INSURANCE**

16.1 Insurance: The Platform must obtain, at its own cost and expense, insurance coverage in all respects as is prudent for the Platform's business, radio programme production and broadcast and its activities, including but not limited to comprehensive liability insurance for loss or damage arising out of the activities of the Platform under this agreement. The Platform must ensure that such insurance remains in force at all times during the Contract Period and for a further one (1) year beyond the Contract Period.

16.2 Certificate: A certificate must be maintained by the Platform as required by clause 16.1 confirming it has been obtained and requiring that the insurer will not terminate or materially modify such policy or certificate of insurance without giving not less than thirty (30) days prior written notice to Te Māngai Pāho.

16.3 Settlement Approval: The Platform must not settle any insurance claim without Te Māngai Pāho's prior written approval, not to be unreasonably withheld.

16.4 Application of Proceeds: The proceeds of any claim under any policy of insurance must be applied:

16.4.1 Expenses of Claim: first in payment of all reasonable expenses in making the claim; and

16.4.2 Costs: secondly to the cost of replacing the property or meeting any loss or damages, as the case may be, in respect of which the claim was made.

## **17. EVENTS OF DEFAULT**

17.1 Events of Default: The following will be events of default for this agreement:

17.1.1 Insolvency or Receivership: if the Platform:

- (i) becomes bankrupt or goes into liquidation, except for a solvent restructuring which has been previously approved in writing by Te Māngai Pāho (which approval may not be unreasonably withheld);
- (ii) is removed from the New Zealand Companies Register;
- (iii) has a receiver or statutory manager appointed in respect of itself or any material part of its assets;
- (iv) is the subject of any event analogous in nature to those listed in clauses (i) to (iv) (inclusive) under the laws of any relevant jurisdiction;
- (v) suspends, for ten (10) Business Days or longer, or ceases, or sells, its principal business undertaking or assets without Te Māngai Pāho's prior written approval (which may be withheld at its absolute discretion); or
- (vi) makes any assignment to, or enters into any arrangement for the benefit of, its creditors (other than for a solvent restructuring).

17.1.2 Platform's Breach: any breach of any term of this agreement by the Platform (including without limitation using Te Māngai Pāho Funding for any purpose other than the purpose set out in clause 4.4 and failure to comply with the programming requirements of clause 5.1.1) incapable of remedy or if capable of remedy, is not remedied within thirty (30) days of Te Māngai Pāho giving the Platform written notice requiring the Platform to remedy the breach.

17.1.3 Platform Agreement: Te Māngai Pāho receiving written notice from the Platform, the Licence Holder, or any other party of an event of default under any agreement between the Platform and the Licence Holder relating to the Licence, or any such agreement being terminated for any reason.

17.1.4 Broadcast Licence: Te Māngai Pāho becoming aware of either:

- (i) a variation to the Licence Holder and Broadcaster Agreement without Te Māngai Pāho's prior written consent;
- (ii) a default by the Platform of its obligations under the Licence Holder and Broadcaster Agreement; or
- (iii) the Licence Holder and Broadcaster Agreement is terminated for any reason.

17.1.5 Warranties: any warranty given or deemed to have been given by the Platform was or is, in the reasonable opinion of Te Māngai Pāho, incorrect in any respect when given or deemed to be given or repeated (whether such incorrectness is apparent at such time or becomes apparent at a later date);

17.1.6 Suspension of Use of Licence: The Licence Holder requires the Platform, under the Licence Holder and Broadcaster Agreement, to cease broadcasting on the Frequency for a period over thirty (30) consecutive days; or

17.1.7 Termination of Licence Holder and Broadcaster Agreement: the termination of the Licence Holder and Broadcaster Agreement for any reason.

## **18. DEFAULT AND REMEDIES**

18.1 Remedies: Upon the happening of any Event of Default:

18.1.1 Stop Payments: all obligations of Te Māngai Pāho under this agreement to advance to the Platform further instalments of Te Māngai Pāho Funding will immediately cease; and

18.1.2 Terminate: Te Māngai Pāho will be entitled to immediately terminate this agreement by notice in writing to the Platform and all obligations of Te Māngai Pāho under this agreement will cease from the date such notice becomes effective under clause 23.

18.2 Effect of Termination: Termination of Te Māngai Pāho obligations under this agreement will be without prejudice to, and will not be deemed a waiver of, any claims which either party may have against the other in respect of any breach or other failure to comply with any terms or conditions of this agreement before the date of termination.

18.3 No Waiver: Failure by Te Māngai Pāho to exercise an option it has under clause 18 will not constitute a waiver of that option or any other rights arising under this agreement or at law.

## **19. SUSPENSION**

19.1 Suspension by Licence Holder: If the Licence Holder requires the Platform to cease broadcasting on the Frequency under the Licence Holder and Broadcaster Agreement, Te Māngai Pāho may immediately suspend the payment of any instalment of Te Māngai Pāho Funding to the Platform for a period of up to thirty (30) days.

19.2 Platform to Resolve: During the period of the suspension, the Platform will use its best endeavours to consult and negotiate with the Licence Holder to restore broadcasting by the Platform on the Frequency under the Licence Holder and Broadcaster Agreement.

19.3 Suspension for More Than Thirty (30) Days: If the Platform is unable to recommence broadcasting with the consent of the Licence Holder after thirty (30) days the Platform will be in default and clause 19.1 will apply.

## **20. DISPUTE RESOLUTION**

20.1 Negotiation: The Platform and Te Māngai Pāho will actively and in good faith negotiate with a view to a speedy resolution of any dispute or difference which may arise between them concerning the interpretation of this agreement or relating to any other matter arising under this agreement.

20.2 Mediate: If the Platform and Te Māngai Pāho are unable to resolve their difference or dispute then that difference or dispute will be referred to a mediator agreed to by the Platform and Te Māngai Pāho within five (5) Business Days of either party electing to refer the difference or dispute to mediation. If the parties are unable to agree upon a mediator within five (5) Business Days of a party electing to refer the matter to mediation, either party may require the difference or dispute to be referred to a mediator nominated by the President of the Wellington District Law Society for the time being. The mediator will attempt to resolve the difference or dispute by mediation within five (5) Business Days of the referral. Any mediated agreement of the parties will be final and binding on both parties.

20.3 Urgent Interlocutory Relief: Nothing in this clause will prevent a party from taking immediate steps to seek urgent interlocutory relief before an appropriate court.

## **21. COSTS AND EXPENSES**

21.1 Each party bears its legal costs with the preparation and negotiation of this agreement. The Platform agrees to pay all reasonable legal fees of Te Māngai Pāho incurred in connection with the enforcement of this agreement.

## **22. NO PARTNERSHIP OR AGENCY**

22.1 No Partnership or Agency: Nothing in this agreement creates or constitutes or will be deemed to create or constitute a partnership or a relationship of agent or attorney between the Platform and Te Māngai Pāho.

22.2 Neither Party to Bind the Other: Neither the Platform nor Te Māngai Pāho has any authority or power whatsoever to bind or commit, act, or represent or hold itself out as having authority to act as an agent of, or in any way bind or commit the other to any obligation. In particular, the Platform will not be entitled to hold out or represent in any manner to any third party that:

22.2.1 Provision of Funding: funding other than Te Māngai Pāho Funding will be provided by Te Māngai Pāho beyond the end of the Contract Period or earlier termination of this agreement; and

22.2.2 Liabilities: Te Māngai Pāho will be or is under any obligation whatsoever to meet any liabilities of the Platform to any third party (whether such liability relates to the operations of the Platform or otherwise).

## **23. NOTICES AND APPROVALS**

23.1 In Writing: All notices or approvals arising out of this agreement will be given in writing.

23.2 Service of Notices: Any notice given under this agreement will be deemed to be validly given if in writing signed by an officer or agent of the party giving the notice and personally delivered, posted, or forwarded by facsimile transmission to the address of the party to be notified recorded on the entity's registered provider profile in Te Pūahatanga or to such other address as the party to be notified may designate by written notice given to the other party.

23.3 Time of Service: Any notice given under this agreement will be deemed to be validly given:

23.3.1 Delivery: in the case of delivery, when received;

23.3.2 Facsimile: in the case of facsimile transmission, when sent; and

23.3.3 Email: in the case of email, when the email leaves the communication systems of the sender, provided that the sender does not receive any error message relating to the sending of the email at the time of sending; and

23.3.4 Post: in the case of posting, on the third day following the date of posting.

23.4 Provided that any advice personally delivered or sent by facsimile after 5:00pm on a Business Day or on any day that is not a Business Day will be deemed to have been received on the next Business Day.

## **24. NO ASSIGNMENT**

24.1 The Platform must not mortgage, charge, encumber, assign, or otherwise dispose of any or all of its rights under this agreement, including any of its rights, duties or benefits under the Licence Holder and Broadcaster Agreement without the prior written approval of Te Māngai Pāho, such approval not to be unreasonably withheld. Where the Platform is a company, a change in the ownership or control of the Platform will be deemed to be an assignment for this clause.

## **25. GENERAL**

25.1 Governing Law: This agreement will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.

25.2 No Third-Party Rights: The parties do not intend to create rights in or grant remedies to any third party as a beneficiary of this agreement and all covenants, stipulations, promises, and agreements contained in this agreement are for the sole and exclusive benefit of the parties.

25.3 Entire Agreement: This agreement:

25.3.1 Constitutes Entire Agreement: constitutes the entire agreement between the parties regarding the subject matter of this agreement; and

25.3.2 Supersedes and Extinguishes Prior Agreements: supersedes and extinguishes all earlier negotiations, understandings, and agreements whether oral or written between the parties, relating to the subject matter of this agreement.

25.4 Variation: There will be no variation, amendment, or modification of the provisions of this agreement except by a written agreement between the parties.

25.5 Survival: Any obligation of the parties under this agreement that by its nature is intended to continue beyond the expiry or earlier termination of this agreement.

25.6 Further Assurances: The Platform will use its best endeavours to procure that any third party does and executes all such further documents, acts, and things as Te Māngai Pāho may by notice to the Broadcaster require to give full effect to the terms of this agreement.

25.7 Unenforceability: If any term or provision of this agreement is declared invalid or unenforceable or in breach of any Act of Parliament the validity of the remainder of this agreement will not be affected and will remain in force and effect as if this agreement had been executed with such invalid term of provision eliminated.

25.8 Delay: No delay, grant of time or other indulgences by either party in respect of any breach of the party's obligations under this agreement will:

25.8.1 No Waiver of that Breach: operate as a waiver of or prevent the subsequent enforcement of that obligation; or

25.8.2 No Waiver of Subsequent Breach: be deemed a delay, grant of time or other indulgences in respect of, or a waiver of, any subsequent breach.

25.9 Non-Merger: The agreements, obligations and warranties contained in this agreement will not merge on completion of the transactions contemplated by it but will remain in full force until satisfied.

25.10 Time of the Essence: Time will be of the essence in the performance by either party of its obligations under this agreement.

25.11 Rights Cumulative: The rights of the parties under this agreement are cumulative and are not exclusive of any other rights and remedies available to either party.