

STANDARD TERMS AND CONDITIONS – IWI PLATFORM

1. INTERPRETATION

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

"Act" means the Broadcasting Act 1989;

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

"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 Unit 113, Zone 23, 23 Edwin Street, Mt Eden, Auckland, New Zealand;

"Approved Budget" means the budget prepared by the Broadcaster for the operation of the Radio Station, including all costs related to the operation of the Radio Station and supplied as part of the proposal.

"Broadcaster's Personnel" means all employees, agents and contractors of the Broadcaster involved in operating the Radio Station;

"Broadcasting Licence Compliance Report" means an annual report of the Broadcaster's operations and performance after the end of the financial year, and delivered to Te Māngai Pāho by 20 January each year, a Broadcasting Licence Compliance Report, including details listed under clause 12.5 of this Agreement;

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

"Broadcasting Māori Language Report" means an annual report prepared by the Broadcaster 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 13.6 of this Agreement;

"Broadcast Window" means the twenty four (24) hour period between to 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;

"Commencement Date" means the date recorded in the Contract Details Schedule;

"Contract Details" means the schedule Contract Details Schedule attached as Schedule 1 to this Agreement;

"Contract Period" means the period recorded in the Contract Details Schedule;

"Deliverable" means in respect of each Milestone the deliverables required to be delivered by the Broadcaster for that Milestone in accordance with 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 Broadcaster or such later date as may be approved by Te Māngai Pāho at its discretion;

"External Māori Language Plan/Report" means the plan/report prepared for inclusion in the annual audited financial statements;

"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 Broadcaster under the Licence Holder and Broadcaster Agreement;

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

"Iwi Radio Station" means a broadcasting body provided with production funding by Te Māngai Pāho;

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

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

"Māori Language Hours" means the agreed hours of locally produced te reo Māori content by the Radio Station @ 70 % te reo Māori fluency plus the agreed hours of other te reo Māori content @ 70 % te reo Māori fluency per day;

"Milestone" means a milestone recorded in Schedule 2;

"Platform" means Broadcaster. The entity that is party to this Agreement and referenced as being a Station, Iwi Radio Station or Broadcaster that is provided with funding from Te Māngai Pāho and is also referred to as part of the Licence Holder and Broadcaster Agreement.

"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/>);

"Punga" is a dedicated wide-area network connectivity between stations and the Punga hub providing a means to distribute programmes on a common network feed and an internet streaming service.

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

"Radio Station" means the Broadcaster's studio and transmission facilities required to broadcast a radio service;

"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;

"Te Māngai Pāho Funding" means the funding for the operation of the Iwi Station as recorded in the Contract Details Schedule;

"Te Reo Māori" means the Māori language; and

"Year" means a period of 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 includes reference to an individual, company, corporation, firm, partnership, joint venture, association, organisation, trust, state or agency of 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 Commencement Date and will continue until the expiry of the Contract Period unless terminated earlier in accordance with 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 Broadcaster for the Contract Period. The Broadcaster acknowledges that nothing in this agreement will entitle the Broadcaster to receive any additional money from Te Māngai Pāho and the Broadcaster 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 Broadcaster must keep separate books of accounts for the Iwi Radio Station operating under the terms of this agreement. The Broadcaster 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 Broadcaster is suspended and or withdrawn by the Licence Holder; and

3.3.4 Non Performance: The Broadcaster failing to perform its obligations under this Agreement or defaulting 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 which, in Te Māngai Pāho's opinion, prevents 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 Broadcaster are subject to:

3.4.1 Radio Licence: the Broadcaster maintaining the Radio Licence granted by the Licence Holder;

3.4.2 Continued Broadcasting: the continued broadcast by the Broadcaster, 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 being 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 Broadcaster has maintained the required level of Te Reo Māori broadcasting; and

3.4.5 Compliance with Agreement: the Broadcaster 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 Broadcaster in accordance with Schedule 2.

4.2 Tax Invoice Required: Instalments of Te Māngai Pāho Funding will only be paid by Te Māngai Pāho if the Broadcaster 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 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 Broadcaster acknowledges that Te Māngai Pāho Funding constitutes a grant to the Broadcaster 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 Broadcaster is able to be treated for income tax purposes in accordance with the provisions of that section.

4.4 Use of Te Māngai Pāho Funding: The Broadcaster must only use Te Māngai Pāho Funding for the purposes of meeting the Broadcaster's expenses recorded in the Approved Budget. The Broadcaster 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 BROADCASTERS COVENANTS

5.1 Covenants: The Broadcaster must throughout the Contract Period:

5.1.1 Amount of Programming: provide the agreed hours of locally produced te reo Māori content by the Radio Station @ 70 % te reo Māori fluency plus the agreed hours of other te reo Māori content @ 70 % te reo Māori fluency per day within a 24 hour period, 7 days per week, 365 days per annum;

- (i) A Māori language content measurement system approved by Te Māngai Pāho that quantifies the amount of Te Reo Māori Content to be broadcast daily; and
- (ii) Acknowledgements of Te Māngai Pāho Funding as referred to in Schedule 1 and clause 10;

5.1.2 Increase Listenership: increase the radio listenership across the combined broadcast and digital platforms by >5%;

5.1.3 Licence Holder and Broadcaster Agreement: comply in all material respects with the Licence Holder and Broadcaster Agreement;

5.1.4 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 Broadcaster, in particular the Broadcaster must comply with the programme standards and formal complaints, Sections 4 and 6 of the Broadcasting Act;

5.1.5 Not Infringe Copyright: not violate nor infringe upon the copyright, right of privacy nor any other rights of any third party;

5.1.6 Not Defamatory: not broadcast or publish any defamatory material;

5.1.7 Attract Other Revenue: use its best endeavours to attract other revenue in a manner which is consistent with the aims and objectives of the Broadcasting Māori Language Plan;

5.1.8 EEO Plan: run an appropriate equal employment opportunities plan;

5.1.9 Comply with Law: at all times comply with all laws and statutory or regulatory requirements applicable to the Broadcaster's management and operation of the Radio Station and any actions the Broadcaster undertakes;

5.1.10 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 own safety, the safety of its employees, contractors or agents, and the safety of any other persons in the vicinity of the Radio Station;

5.1.11 Safety Programme: operate a comprehensive safety programme which amongst other things provides systems for the identification of hazards in the workplace and for the development of appropriate control measures, procedures for dealing with onsite emergencies, and appropriate training and supervision of staff;

5.1.12 Industry Standards: conducts its business efficiently with all due diligence and in accordance with best industry standards; and

5.1.13 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 the Broadcaster's operation of the Radio Station and any actions the Broadcaster undertakes; or

(ii) incident relating to the Broadcaster's operation of the Radio Station and any actions the Broadcaster undertakes which results (or could reasonably have resulted or could yet result) in serious injury or serious illness.

Te Māngai Pāho may, at any time, call a meeting with the Broadcaster and any persons affected by the event, upon reasonable notice, to obtain information and to discuss the event and the planned responses to it.

6. TRANSMISSION CRITERIA

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

6.1.1 Broadcast: the agreed hours of locally produced te reo Māori content by the Radio Station @ 70 % te reo Māori fluency plus the agreed hours of other te reo Māori content @ 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 Punga: maintain connection between stations and the Punga hub in order to distribute programmes via a common network feed and an internet streaming service.

7. MĀORI LANGUAGE HOURS

7.1 Māori Language Hours: means the agreed hours of locally produced te reo Māori content by the Radio Station @ 70 % te reo Māori fluency plus the agreed hours of other te reo Māori content @ 70 % te reo Māori fluency per day for the period of this Agreement.

8. MONITORING

8.1 Monitoring for Compliance: The Broadcaster acknowledges that Te Māngai Pāho (through its agents, contractors or employees) may monitor the Broadcaster'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 Broadcaster, for compliance with the Broadcaster'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 Broadcaster acknowledges that such monitoring may involve the recording of broadcasts by the Broadcaster for review by Te Māngai Pāho and the Broadcaster 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 Broadcaster'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 Broadcaster 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 Broadcaster must provide under clause 13, Te Māngai Pāho may from time to time require the Broadcaster to provide, at the Broadcaster's cost, additional information relating to operation of the Radio Station and to attend meetings and provide other assistance as Te Māngai Pāho may reasonably require in relation to 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

Broadcaster has failed to meet the programming requirements of clause 5.1.1, and/or the programming requirements of the Broadcaster the following will apply:

8.5.1 Broadcaster to Rectify: the Broadcaster 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 which the Broadcaster agrees may be deducted by Te Māngai Pāho from any Te Māngai Pāho Funding payments which may be payable to the Broadcaster; and

8.5.3 Failure to Rectify: if the Broadcaster is unable to satisfy Te Māngai Pāho that the Broadcaster 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 Broadcaster's failure to comply with the programming requirements of clause 5.1.1, and/or the programming requirements of the Broadcaster 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. PUNGA.NET

Punga: a dedicated wide-area network connectivity between stations and the Punga hub providing a means to distribute programmes on a common network feed and an internet streaming service.

10. ACKNOWLEDGEMENTS

10.1 Broadcaster to Acknowledge Funding: From the date of execution of this agreement the Broadcaster will ensure acknowledgements of Te Māngai Pāho Funding are made by way of announcements during on-air broadcasts in accordance with 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 Broadcaster 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 Broadcaster agrees to use its best endeavours to ensure that scheduled announcements of acknowledgements of Te Māngai Pāho Funding are as a minimum for linear channels is at least once every three-hours. Where the programme is for Event Coverage the frequency should be at least once every hour.

11. BROADCASTING MĀORI LANGUAGE PLAN

11.1 Broadcasting Māori Language Plan: The Broadcaster must complete and supply to Te Māngai Pāho for approval, a Broadcasting Māori Language Plan by 1 May. The details of the Broadcasting Māori Language Plan must include identifying:

- 11.1 the Māori Language outcomes that are sought by the Broadcaster;
- 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 Broadcaster 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 Broadcaster will keep proper books, records, and accounts and agreements containing full, true, correct and timely details of all matters in connection with the operation of the Radio Station. The Broadcaster must keep such of the books, records, accounts and agreements as Te Māngai Pāho may reasonably require in electronic form utilising software of the nature and type specified by Te Māngai Pāho. The Broadcaster 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 Broadcaster must complete and supply to Te Māngai Pāho deliverables as set out in Schedule 2 and in accordance with the clauses outlined in this Agreement.

12.3 **Quarterly Reports:** To submit their completed Quarterly Reports via Te Pūahatanga by the due dates outlined in Schedule 2;

12.4 **Other Information:** such other information as may be required from time to time by Te Māngai Pāho.

12.5 **Broadcasting Licence Compliance Report:** The Broadcaster must complete and deliver to Te Māngai Pāho by 20 January each year, a Broadcasting Licence Compliance Report of the Broadcaster's operations and performance for the Contract Period including:

12.6 **Broadcasting Māori Language Report:** The Broadcaster must complete and deliver to Te Māngai Pāho by 20 January each year, a Broadcasting Māori Language Report for the Contract Period on the outputs and outcomes achieved through and by the Broadcasting Māori Language Plan for the previous financial year.

12.7 **Audited Financial Statements:** The Broadcaster must complete and deliver to Te Māngai Pāho by 20 January each year, 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 External Reporting Māori Language Plan.

Where the Broadcaster has any other business activities apart from the Radio Station funded by Te Māngai Pāho, the end of year audited financial statements must clearly distinguish the financial activities of the Radio Station funded by Te Māngai Pāho.

12.8 Independent Audit: Notwithstanding the requirement for the Broadcaster to provide audited financial statements, Te Māngai Pāho has the right giving 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 Broadcaster shall do whatever is reasonably 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 Broadcaster'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 to take copies of such books, records, accounts and agreements. The Broadcaster must ensure Te Māngai Pāho, its representative and/or auditor has full access to the books, records, accounts and agreements and to the premises of the Broadcaster and must ensure that the Broadcaster's Personnel co-operate with Te Māngai Pāho, its representative and/or auditor and provide 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 Broadcaster under this clause 12.10 advise the Broadcaster in writing of the matters in the report which Te Māngai Pāho considers requires further explanation and it will advise the Broadcaster of any concerns Te Māngai Pāho may have relating to that report. The Broadcaster 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 Broadcaster 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.

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 Broadcaster to the satisfaction of Te Māngai Pāho.

13. WARRANTIES

13.1 Warranties: The Broadcaster 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 which enable the operation of the 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 the Radio Station including but not limited to any approved code of broadcasting practice 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 Broadcaster has entered into or may enter into during the Contract Period;

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

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

13.1.9 Personnel Checks: the Broadcaster has conducted appropriate checks in relation to the Broadcaster's Personnel and, on the basis of those checks, is satisfied that the Broadcaster's Personnel are of good standing and character and can be entrusted with the management and custody of the Radio Station and Te Māngai Pāho Funding to be provided under this agreement;

13.1.10 Related Party Disclosures: The Broadcaster 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 Broadcaster or related companies of the Broadcaster (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 Broadcaster, or close family of the key personnel.

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

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

(iii) The Broadcaster 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).

(iv) The Broadcaster 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.

(v) The Broadcaster will not do anything that may encourage or incite listeners to copy music illegally.

(vi) The Broadcaster 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.

(vii) Music used by the Broadcaster in the context of a current affairs item or critical review can be used without permission, of the specific label or copyright owner.

(viii) Technical copies of music can be made provided that such copies are made by or on behalf of the Broadcaster on the relevant Iwi Radio Station's premises; and the copy is made to assist broadcasting (i.e. it is not copied for supply to any third parties).

(ix) The Broadcaster may not broadcast any music in any context which could be reasonably considered as an endorsement by the recording artist(s) for any of the products or services being advertised on the Broadcasters without the prior written permission.

(x) The Broadcaster 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 own playlists of music).

(xi) The Broadcaster 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 Broadcaster acknowledges that the warranties set out in this clause 13 are ongoing and will be deemed to be repeated by the Broadcaster daily during the Contract Period.

14. INDEMNITY

14.1 Indemnity: The Broadcaster 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 Broadcaster or any act, negligent act or omission, fraud, dishonesty or wilful misconduct of the Broadcaster, its employees, contractors or agents arising out of or in connection with the operation of the 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 by virtue of this agreement or received by a party to this agreement from the other will be held and kept confidential, will be used solely for the purposes of implementing 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 generally available to the public other than as a result of an 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 Broadcaster acknowledges that Te Māngai Pāho publishes information from time to time in relation to 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 Broadcaster 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 Broadcaster: Te Māngai Pāho agrees to notify the Broadcaster if it receives a request under the OIA for information which relates to this agreement;

15.3.2 Notify Te Māngai Pāho: the Broadcaster 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 Broadcaster considers there are grounds for withholding the information in accordance with the OIA; and

15.3.3 Notification of Disclosure: Te Māngai Pāho agrees to notify the Broadcaster 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 Broadcaster must obtain, at its own cost and expense, insurance coverage in all respects as is prudent for the Broadcaster's business, radio programme production and broadcast and its activities generally, including but not limited to comprehensive liability insurance for loss or damage arising out of the activities of the Broadcaster under this agreement. The Broadcaster 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 Broadcaster 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 Broadcaster 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 the purposes of this agreement:

17.1.1 Insolvency or Receivership: if the Broadcaster:

(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 generally (other than for the purposes of a solvent restructuring).

17.1.2 Broadcaster's Breach: any breach of any term of this agreement by the Broadcaster (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 Broadcaster written notice requiring the Broadcaster to remedy the breach;

17.1.3 Broadcast Agreement: Te Māngai Pāho receiving written notice from the Broadcaster, the Licence Holder or any other party of an event of default under any agreement between the Broadcaster 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 Broadcaster of its obligations under the Licence Holder and Broadcaster Agreement; or
- (iii) the Licence Holder and Broadcaster Agreement being terminated for any reason.

17.1.5 Warranties: any warranty given or deemed to have been given by the Broadcaster 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 requiring the Broadcaster, in accordance with the Licence Holder and Broadcaster Agreement, to cease broadcasting on the Frequency for a period in excess of 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 Broadcaster 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 Broadcaster and all obligations of Te Māngai Pāho under this agreement will cease from the date such notice becomes effective in accordance with 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 prior to the date of termination.

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

19. SUSPENSION

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

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

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

20. DISPUTE RESOLUTION

20.1 Negotiation: The Broadcaster 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 Broadcaster 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 Broadcaster 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

Each party bears its own legal costs in relation to the preparation and negotiation of this agreement. The Broadcaster 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 Broadcaster and Te Māngai Pāho.

22.2 Neither Party to Bind the Other: Neither the Broadcaster 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 Broadcaster 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 Broadcaster to any third party (whether such liability relates to the operations of the Broadcaster 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 e mail, 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.

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

The Broadcaster 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 Broadcaster is a company, change in the ownership or control of the Broadcaster will be deemed to be an assignment for the purposes of 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 which by its nature is intended to continue beyond the expiry or earlier termination of this agreement.

25.6 **Further Assurances:** The Broadcaster 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 reasonably 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 indulgence 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 indulgence 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 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.