

Film In Malaysia Incentive

GENERAL



Terms and Conditions



PERBADANAN KEMAJUAN FILEM NASIONAL MALAYSIA
National Film Development Corporation Malaysia

Private and Confidential

2022/2023 National Film Development Corporation Malaysia

2022/2023

1 OBJECTIVES

These Film In Malaysia Incentive General Terms and Conditions (“**Terms and Conditions**”) are to:

- 1.1 Specify how applications for FIMI Provisional Certificate and FIMI Final Certificate are to be made; and
- 1.2 Provide for the issuance of the FIMI Provisional Certificate and the FIMI Final Certificate.

Please note the following:

- These Terms and Conditions are subjected to review, amendments and additions at the discretion of FINAS; and
- Additional Terms and Conditions may be stipulated on the FIMI Provisional Certificate or FIMI Final Certificate at the discretion of the FIMI Approval Committee or on appeal, the FIMI Appeal Committee.

2 DEFINITIONS AND INTERPRETATIONS

In these Terms and Conditions, unless the context states otherwise or otherwise defined in the Film in Malaysia Incentive (FIMI) Guidelines (Domestic Production) and/or Film in Malaysia Incentive (FIMI) Guidelines (Foreign Production), the following expressions (organised alphabetically) shall have the following meanings: -

- 2.1 **Applicant Producer** means any of the following:
 - (a) The producer who applies for a Provisional Certificate; OR
 - (b) The producer who applies for a Final Certificate.
- 2.2 **Application** means the Application for Provisional Certificate and the Application for Final Certificate, collectively.
- 2.3 **Application Form** means the Provisional Certificate Application Form and the Final Certificate Application Form, collectively.
- 2.4 **Application for Final Certificate** means an application for Final Certificate as described under **Paragraph 4 (Application for Final Certificate)** of these Terms and Conditions.
- 2.5 **Application for Provisional Certificate** means an application for Provisional Certificate as described under **Paragraph 3 (Application for Provisional Certificate)** of these Terms and Conditions.

2.6 Co-production means a Project or Film activity that has been (or will be) made from an agreement where two or more different production companies have arranged (or planned to) work together. Co-production agreements provide information on the duties, services and responsibilities of each party involved and it also provides financial, equity and recoupment rights. If a co-production agreement has been entered to at the time of application for a FIMI Provisional Certificate, please attach a copy of the co-production agreement. If a co-production agreement has NOT been entered to at the time of application for a FIMI Provisional Certificate, please attach a copy of the co-production agreement to the FIMI Final Certificate Application Form instead.

2.7 Cultural Test refers to the test on Malaysian cultural elements in the Film/Project for the eligibility of additional cash rebate of up to 5%. The criteria and determination of percentage of such additional cash rebate shall be as provided in the Guidelines.

2.8 Development Expenditure for a Project means expenditure incurred in and paid for in Malaysia in meeting the development costs for said Project. The development expenditures include any of the following:

- (a) location surveys and recess;
- (b) casting actors; and
- (c) set construction

2.9 Domestic Producer refers to the Applicant Producer who has:

- (1) a company duly incorporated under the Malaysian Companies Act 2016 with a valid Malaysian Company Registration issued by the Companies Commission of Malaysia (CCM); **AND**
- (2) a valid and subsisting FINAS film production license

2.10 Domestic Production refers to the Project as belonging to the Domestic Producer.

2.11 Film/Project is a project in relation to a film, television and other relevant qualifying production or post production activity conducted in Malaysia.

- (a) ***Feature films, including theatrical documentary features, animated features and IMAX:***

A feature film is intended to mean a Film of at least **sixty (60) minutes** in length that is intended to be screened as the main attraction in commercial cinemas. For large-format projects such as IMAX it is intended that the Film be at least **forty-five(45) minutes** in length.

- (b) ***A single episode programme:*** This is a stand-alone programme of at least **sixty (60) minutes** in length that is exhibited commercially in a medium other than cinema. This category includes telemovies or movies-of-the-week, films released direct to DVD or films released on the internet, video-on-demand or a mobile phone delivery platform. A single episode programme other than a documentary may be an animated film.

- (c) **A single episode documentary:** A single episode documentary must be at least **twenty-two (22) minutes** in length. A documentary is defined as a programme that is a creative treatment of actuality other than news, current affairs, sports coverage, magazine, infotainment or light entertainment programme.
- (d) **A series or season:** A series or season of a series is a multiple-episode film that does not receive a cinema release but is exhibited commercially on another medium: e.g. straight to DVD or via the internet. A series or season of a series must be at least two (2) episodes. Each episode must be at least **twenty-two (22) minutes** in length, with the exception of animation programmes which must be at least **two (2) minutes** and above. A series or season of a series may be an animated film or a documentary. **Multiple seasons in one (1) application are not allowed.**
- (e) **Reality Shows & Game Shows:** A reality shows refers to programmes in which members of the public or celebrities are filmed living their everyday lives. News and sports programme are NOT classified as reality shows. Game shows refers to programmes in which members of the public or celebrities undertaking specific challenges as part of a contest or other situation where a prize is awarded. For the avoidance of doubt, the value of the prize as well as the expenditure incurred in relation to the prize shall not be calculated as part of QMPE.
- 2.12 Film in Malaysia Incentive (FIMI) Domestic Guidelines:** The Film In Malaysia Incentive (FIMI) Guidelines which is applicable to domestic production and/or post production applications for FIMI, as issued by and may be amended or supplemented from time to time at the discretion of FINAS.
- 2.13 Film in Malaysia Incentive (FIMI) Foreign Guidelines:** The Film In Malaysia Incentive (FIMI) Guidelines which is applicable to foreign production and/or post production applications for FIMI, as issued by and may be amended or supplemented from time to time at the discretion of FINAS.
- 2.14 FIMI** means the Film In Malaysia Incentive in the forms of 30% cash rebate and/or up to 5% additional cash rebate. The 30% cash rebate shall be based on the total amount of Qualifying Malaysian Production Expenditure (QMPE) for production and post-production activities in Malaysia where the QMPE must meet the criteria further elaborated upon in the Guidelines and these Terms and Conditions. The additional cash rebate of up to 5% shall be subject to the passing of the Cultural Test for production activities only in Malaysia where the criteria on the Cultural Test to be fulfilled will be further elaborated upon in the Guidelines (as defined below).
- 2.15 FIMI Appeal Committee** means FIMI appeal committee that convenes to give decision on appeals by the Applicant Producer relating to the decision made by the FIMI Approval Committee.
- 2.16 FIMI Approval Committee** means FIMI approval committee that convenes to give decisions (either to approve or refuse) the Application and to give any other approval related to FIMI.

- 2.17 FIMO** shall mean the Film in Malaysia Office being the relevant division in FINAS established to process all FIMI applications. FINAS and FIMO may be used interchangeably in these guidelines and refers to the same organization (i.e. FINAS).
- 2.18 FIMO's Auditor** means an independent external auditor appointed by FIMO who are also a member of FINAS's FIMI Audit Panel, to assist FIMO in assessing and evaluating the Application.
- 2.19 Final Certificate** shall mean a Final Certificate issued by FIMI Approval Committee that identifies a Project has met the requirements set out in the Provisional Certificate and pursuant to these Terms and Conditions, the Guidelines and the approval of the FIMI Approval Committee or on appeal, the approval of the FIMI Appeal Committee. Applicant producers are to submit the Final Certificate Application Form after the Project has been completed. This certificate will state the amount of the cash rebate of FIMI.
- 2.20 Final Certificate Application Form** means the application form for the Final Certificate submitted / to be submitted by the Applicant Producer to FIMO.
- 2.21 FINAS** shall mean the Malaysian statutory film corporation known as National Film Development Corporation Malaysia (*Perbadanan Kemajuan Filem Nasional Malaysia*), a statutory body incorporated under the National Film Development Corporation Act 1981 (Act 244). FINAS is the government agency under the Ministry of Communications and Digital of Malaysia (*Kementerian Komunikasi dan Digital*).
- 2.22 Foreign Producer** refers to the Applicant Producer who has:
- (a) A foreign production company who has appointed and commissioned a Malaysian production services company that:
 - (1) is a private limited company duly incorporated under the Malaysian Companies Act 2016 and registered with CCM; and
 - (2) has a valid and subsisting FINAS production license.

The appointment must be evidenced by a copy of the production services agreement or co-production agreement. Documentation evidencing the fulfilment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when FIMI is due to be paid; **OR**
 - (b) A private limited production company incorporated by a foreign production company under the Malaysian Companies Act 2016 and registered with CCM:
 - (1) with foreign shareholding; and
 - (2) has a valid and subsisting FINAS production license.

Documentation evidencing the fulfilment of these requirements is required to be produced by the production company when applying for the Provisional Certificate, the Final Certificate and when FIMI is due to be paid.

- 2.23 Foreign Production** refers to the Project as belonging to Foreign Producer.
- 2.24 Guidelines** shall mean either or collectively the Domestic Production and/or Foreign Production versions of the Film In Malaysia Incentive (FIMI) Guidelines as issued by and may be amended or supplemented, from time to time, at the discretion of FINAS.
- 2.25 Malaysian Government** in reference to the Film In Malaysia Incentive denotes all Ministries. This term excludes government-linked investment companies.
- 2.26 Malaysian Government Grants** refers to grant funding from the Malaysian Government that is non-repayable. Any Applicant Producer who is or will receive this grant will not be eligible. However, funding in the form of equity and loan funding which is subjected to profit-sharing and/or repayment of the funding is eligible. Applicant producers who may/will receive other forms of funding that are provided by non-ministerial organizations are eligible for FIMI.
- 2.27 Production Expenditure** in reference to the Film In Malaysia Incentive refers to expenses incurred in and paid for in Malaysia for either a production or post production activity attributable to goods and services provided in Malaysia; the use of land or locations in Malaysia; and/or the use of goods that are located in Malaysia at the time they are used in the making of a Project.
- 2.28 Provisional Certificate** shall mean a Provisional Certificate issued by FIMI Approval Committee that identifies a Project will meet the requirements set out in the certificate and pursuant to these Terms and Conditions, the Guidelines and the approval of the FIMI Approval Committee or on appeal, the approval of the FIMI Appeal Committee. This certificate does **NOT** guarantee the issuance of the Final Certificate or payment for FIMI. FIMI will be awarded provided that the Project meets the requirements set out in the Provisional Certificate and pursuant to these Terms and Conditions, the Guidelines and the approval of the FIMI Approval Committee. Applicant Producers are to submit the Provisional Certificate Application Form before the Project commences Production Expenditure. For avoidance of doubt, please refer to **Paragraph 2.8 (Development Expenditure)** and **Paragraph 2.27 (Production Expenditure)** for clarification.
- 2.29 Provisional Certificate Application Form** means the application form for the Provisional Certificate submitted / to be submitted by the Applicant Producer to FIMO.
- 2.30 QMPE** means Qualifying Malaysian Production Expenditure which is expenditure incurred in Malaysia for the purpose of producing and making the Project, and is a subset of the Production Expenditure as further described and set out in the Guidelines. The minimum QMPE Threshold is as follows:
- (a) For **domestic production**, the Project (as determined by FINAS):
- (i) spend QMPE with a minimum of **Malaysian Ringgit One Million**

(MYR1,000,000.00) in aggregate for production activity only in order to be entitled to **30%** cash rebate of FIMI; OR

- (ii) spend a combined QMPE for production work and post-production work with a minimum of **Malaysian Ringgit One Million (MYR1,000,000.00)** in order to be entitled to **30%** cash rebate of FIMI.

OR,

- (b) For **domestic post-production**, the Project (as determined by FINAS) spend a minimum of **Malaysian Ringgit Two Hundred and Fifty Thousand (MYR250,000.00)** of QMPE in order to be entitled to **30%** cash rebate of FIMI based on the QMPE for post-production activities only. Only QMPE that is incurred on or in relation to post-production counts towards either the expenditure threshold or the refunded amount.

- (c) For **foreign production** the Project, (as determined by FINAS):

- (i) spend QMPE with a minimum of **Malaysian Ringgit Five Million (MYR5,000,000.00)** in aggregate for production work only in order to be entitled to **30%** cash rebate of FIMI; OR
- (ii) spend a combined QMPE for production work and post-production work with a minimum of **Malaysian Ringgit Five Million (MYR5,000,000.00)** in order to be entitled to **30%** cash rebate of FIMI.

OR,

- (d) For **foreign post-production**, the Project (as determined by FINAS) spend a minimum of **Malaysian Ringgit One Million (MYR1,000,000.00)** in order to be entitled to **30%** cash rebate of FIMI based on the QMPE for qualifying post-production expenditure only. Only QMPE that is incurred on or in relation to post-production counts towards either the expenditure threshold or the refunded amount.

2.31 Related Corporation means corporation which is deemed to be related to each other based on the description given under **Section 7** of the Malaysian Companies Act 2016 as follows:

- (a) It is holding company of another corporation;
- (b) It is a subsidiary of another corporation; or
- (c) It is a subsidiary of the holding company of another corporation.

2.32 Statutory Declaration means a statutory declaration made under the Malaysian Statutory Declarations Act 1960.

2.33 Terms and Conditions means these terms and conditions, as may be amended or supplemented from time to time at the discretion of FINAS.

3 APPLICATION FOR PROVISIONAL CERTIFICATE

3.1 Application for the Provisional Certificate

An Applicant Producer may apply to FIMO for a FIMI Provisional Certificate for a Film / Project if it is either a Domestic Producer (as defined in **Paragraph 2** of these Terms and Conditions) OR a Foreign Producer (as defined in **Paragraph 2** of these Terms and Conditions).

To be eligible for FIMI, the Applicant Producer also must own the intellectual properties (IPs) of the Film. The Applicant Producer must provide the relevant documentations in respect of the Applicant Producer's ownership of the intellectual properties of the Film (including but not limited to the duly executed copy of the relevant agreement/contract) to evidence such ownership.

3.2 The Provisional Certificate Application Form must:

- (1) be made to FIMO;
- (2) include the information specified in **Appendix 1** of these Terms and Conditions; and
- (3) be signed by the Applicant Producer as an authorized representative for the Film/Project.

The following documents must also be attached to the application:

- (a) if the Applicant Producer is a Malaysian or Malaysian company – a copy of the FINAS production license and evidence of Malaysian residency that includes information on the Malaysian Company Registration Number, registered address as well as the names and addresses of directors;
- (b) if the Applicant Producer is NOT a Malaysian or Malaysian company – particulars and evidence of being a foreign entity that includes information on the Company Registration Number, registered address as well as the names and addresses of directors;
- (c) if the Film/Project is proposed as a co-production — a co-production agreement that provides information on the responsibility of the Applicant Producer for all the activities that were necessary for the making of the Film/Project;
- (d) if the Film/Project is proposed as an official co-production agreement between companies or government agencies from different countries that provides:
 - (i) evidence from the relevant foreign country (or the relevant authority) that the film is an official co-production; and
 - (ii) the responsibility of the Applicant Producer for all the activities that are necessary for the making of the Film;

- (e) an estimated expenditure statement, prepared in accordance with **Section 4** (Production Expenditure and Qualifying Malaysian Production Expenditure (QMPE)) of the Guidelines;
- (f) a soft copy of the Project or other proof/evidence acceptable to FIMO; and
- (g) other documents as identified in the Provisional Certificate Application Form.

An application for the FIMI Provisional Certificate must be delivered to FIMO in accordance with these Terms and Conditions and the Guidelines.

3.3 Actions and notifications that must be taken by the production company under the FIMI

- 3.3.1 The production companies must appoint an accountant production before production begins. The company need to submit a copy of the letter of appointment or any document support in this regards to FIMO ("**Letter of Appointment of Production Companies' Accountant**").
- 3.3.2 Production account shall be provided to FIMO's Auditor starting from the early stages of production until it is complete at least three (3) times until the completion of the Project ("**Audit Report**").
- 3.3.3 Domestic production companies are encouraged to take more than **80%** local crews in projects involving various stages of production / services in production.
- 3.3.4 Foreign production companies are encouraged to take more than **30%** local crews in projects involving various stages of production / services in production. Out of **30%** of local crew, **50%** shall be Bumiputera status.
- 3.3.5 Production companies are required to submit detailed information on production projects ("**Detailed Information on Projects**"). The format of the required information is provided in the attachments (**Appendix 3 – Crew and Cast List for FIMI**).
- 3.3.6 Production companies must submit soft copy of the completed Project or other proof/evidence acceptable to FIMO.

3.4 Processing procedures

- 3.4.1 On receiving a complete application, FIMO must:
 - (a) record the acknowledgement date (being date of receipt of the complete application by FMO);
 - (b) assess the application in accordance to the criteria as identified in these Terms and Conditions and the Guidelines and any other additional considerations; and
 - (c) carry-out an audit of the application and the cost of production by the FIMO's Auditor; and

- (d) present a written report in respect of its findings and recommendation in respect of the Application to the FIMI Approval Committee.

3.4.2 In relation to **Paragraph 3.5.1** below, FIMI Approval Committee, in considering the application:

- (a) may seek information or advice from any person or source;

- (b) may take into account the knowledge and experience of:
 - (i) the members of the board of FINAS; and
 - (ii) employees of FINAS;

- (c) must consider all relevant information, including:
 - (i) the application and attached documents;
 - (ii) any additional information provided by the applicant and/or written report requested by FIMO under **Paragraph 3.5** below and any written submission made by the applicant in response to said report; and
 - (iii) any other relevant information or advice obtained by FIMI Approval Committee.

3.5 Additional Information

3.5.1 If FIMO, FIMI Approval Committee (through FIMO) and/or FIMI Appeal Committee (through FIMO) requires additional information in order to decide for the issuance of the Provisional Certificate, FIMO's written request must specify:

- (a) the additional information required by FIMO, FIMI Approval Committee and/or FIMI Appeal Committee; and

- (b) the notification period within which the information must be provided to FIMO.

3.5.2 An Applicant Producer may ask FIMO to extend the notification period provided valid reasons are provided. This request must be made:

- (a) in writing; and

- (b) within fourteen (14) working days of the applicant's receipt of the request under **Paragraph 3.5.1** mentioned above.

FIMO may extend the notification period at its discretion. However, If an applicant does not provide the additional information within the notification period or within the extended notification period, the Application shall be deemed abandoned and/or FIMI Approval Committee may refuse to issue FIMI Provisional Certificate to the applicant.

3.6 Refusal to issue Provisional Certificate

FIMI Approval Committee may refuse the Application for Provisional Certificate if it is **NOT** satisfied that:

- (a) the conditions set out in these Terms and Conditions and the Guidelines will be met or are likely to be met; and/or
- (b) the Film/Project will be completed in accordance with the information supplied in the application; and/or
- (c) the Film/Project has complied with **Section 2.9** (Project/Content Guidelines) of the Guidelines.

3.7 Notice of refusal to issue Provisional Certificate

3.7.1 FIMI Approval Committee has the absolute discretion in making the decision in respect of the issuance of the Provisional Certificate. FIMI Approval Committee must give the applicant written notice of the decision.

3.7.2 The written notice is to be given within thirty (30) days after said decision.

3.7.3 The applicant may within fourteen (14) days from the receipt of FIMI Approval Committee's written notice, submit a written appeal to FIMI Appeal Committee (through FIMO) containing proposals, conditions, amendments, modifications or limitations in respect of FIMI Approval Committee's written notice in **Paragraph 3.7.2** mentioned above, in accordance with **Paragraph 4.9** below. If the applicant does not submit any written appeal within fourteen (14) days from the receipt of FIMI Approval Committee's written notice, the applicant shall be deemed to have abandoned his application.

3.7.4 Where, after taking into account any considered reply in writing provided in accordance with **Paragraph 3.7.3** mentioned above, FIMI Appeal Committee shall inform FIMO whether to accept or refuse the application. If accepted, FIMI Approval Committee shall issue the Provisional Certificate or if otherwise, FIMO shall inform the applicant on such refusal by FIMI Appeal Committee.

3.7.5 The applicant may submit the written appeal in the manner provided under **Paragraph 3.7.3** mentioned above, only once and such decision made by FIMI Appeal Committee shall be final and conclusive.

3.8 Issuance of Provisional Certificate

- 3.8.1 Provisional Certificate for the Film/Project will be issued to the applicant if FIMI Approval Committee or on appeal, FIMI Appeal Committee is satisfied that the conditions set out in these Terms and Conditions, and the Guidelines will be met, or are likely to be met.
- 3.8.2 Provisional Certificate is subject to all conditions specified by FIMI Approval Committee or on appeal, by FIMI Appeal Committee in the certificate.
- 3.8.3 Provisional Certificate is required as a certificate that identifies a Film/Project as having requirements to be met for the subsequent application of the Final Certificate.

3.9 Content of Provisional Certificate

- 3.9.1 In relation to **Paragraph 3.8.2** mentioned above, the Provisional Certificate must state that FIMI Approval Committee (or on appeal, FIMI Appeal Committee] is satisfied that the conditions set out in these Terms and the Guidelines will be met, or are likely to be met and, if the Film is completed in accordance with:
 - (a) the information supplied in the application; and
 - (b) the conditions specified in the Provisional Certificate.
- 3.9.2 Provisional Certificate must also state that it is **NOT** a guarantee that FIMI Approval Committee will issue a Final Certificate to the Applicant Producer and by that, also mean that the Provisional Certificate is **NOT** an automatic entitlement for FIMI.

4 APPLICATION FOR FINAL CERTIFICATE

4.1 The application for Final Certificate must:

- 4.1.1 be made to FIMO;
- 4.1.2 include the information specified in **Appendix 2**; and
- 4.1.3 be signed on behalf of the Applicant Producer by its authorized representative.

4.2 The Final Certificate Application Form

The following documents must also be attached to the application:

- 4.2.1 if the Applicant Producer is a Malaysian or Malaysian company – a copy of the FINAS production license and evidence of Malaysian residency that includes information on the Malaysian Company Registration Number, registered address as well as the names and addresses of directors.

- 4.2.2 if the Applicant Producer is **NOT** a Malaysian or Malaysian company – particulars and evidence of being a foreign entity that includes information on the Company Registration Number, registered address as well as the names and addresses of directors.
- 4.2.3 if the Film/Project is a co-production — a copy of the co-production agreement that provides information on the responsibility of the Applicant Producer for all the activities that are necessary for the making of the Film/Project.
- 4.2.4 if the Film/Project is an official co-production agreement between companies or government agencies from different countries that provides:
- a) evidence from the relevant foreign country (or the relevant authority) that the film is an official co-production; and
 - b) the responsibility of the Applicant Producer for all the activities that are necessary for the making of the Film.

Please note:

It is important to ensure that the Project's estimated total Malaysian Expenditure as stated in your Provisional Certificate Application Form does not incur costs over-runs exceeding 5% (for domestic FIMI application) **OR** 3% (for foreign FIMI application). In the event that a cost over-runs is likely to occur, the Applicant Producer must obtain FIMI Approval Committee's prior approval before committing to the additional cost. All unapproved cost over-runs will **NOT** count towards the QMPE calculation for FIMI. In the event that approval from FIMI Approval Committee on the cost over-runs is not obtained, the Applicant Producer may appeal to the FIMI Appeal Committee in accordance with **Paragraph 4.9** below.

- 4.2.5 If expenditure incurred to acquire copyright, or a licence in relation to copyright, in a pre-existing work for use in the Film is claimed, by the applicant, as QMPE, the following documents must also be attached to the application:
- (a) evidence that the copyright is held by an Malaysian resident; and
 - (b) proof of the acquisition of the copyright or the licence (including any agreement in relation to the acquisition); and
 - (c) Other documents as identified in the Final Certificate Application Form.
- 4.2.6 Further to the above, the Applicant Producer may include an audited expenditure statement, prepared in accordance with **Paragraph 5 (Expenditure Statement and Foreign Currency Statement)** of these Terms and Conditions, for the total Film expenditure, and the estimated QMPE of the Film/Project. All relevant receipts must be included for due diligence purposes. The audit (if any) must be prepared by a person who is:

- (a) a qualified independent auditor acceptable to FIMO with a valid and existing audit license granted by the Malaysian Minister of Finance and also a member of Malaysian Institute of Accountants (MIA); and
- (b) not an officer, partner or employee of the Applicant Producer company or a Related Corporation of the Applicant Producer company (but may be contracted by them from time-to-time on a non-permanent basis).

For the avoidance of doubt, the auditor's statement is provided at the Applicant Producer's expense with the name of the auditor and auditor's company or firm, qualifications and contact details provided in the relevant section of the Application Form.

4.3 Processing procedures:

4.3.1 On receiving a complete application, FIMO will:

- (a) record the acknowledgement date (being date of receipt of the complete application by FIMO);
- (b) assess the application in accordance to the criteria as identified in these Terms and Conditions and the Guidelines and, any other additional considerations;
- (c) carry-out an audit of the Application and the cost of production by the FIMO's Auditor; and
- (d) present a written report in respect of its findings and recommendation in respect of the Application to the FIMI Approval Committee.

4.3.2 In relation to **Paragraph 4.3.1** mentioned above, FIMI Approval Committee, in considering the application:

- (a) may seek information or advice from any person or source;
- (b) may take into account the knowledge and experience of:
 - (i) the members of the board of FINAS; and
 - (ii) employees of FINAS;
- (c) must consider all relevant information, including:
 - (i) the application and attached documents;
 - (ii) any additional information provided by the applicant and/or written report requested by FIMO under **Paragraph 4.4** below and any written submission made by the applicant in response to said report; and

(iii) any other relevant information or advice obtained by FINAS.

4.3.3 Applicant producers are requested to cooperate and provide information within specified time given by FIMO. If the information or advice from a third party indicates the potential for an application to be refused and if the Applicant Producer is dissatisfied with the resulting report, a reasonable opportunity of fourteen (14) days will be provided to comment on the substance of that information or advice.

4.4 Additional Information

4.4.1 If FIMO, FIMI Approval Committee (through FIMO) and/or FIMI Appeal Committee (through FIMO) requires additional information in order to decide for the issuance of the Final Certificate, FIMO's written request must specify:

- (a) the additional information required by FIMO, FIMI Approval Committee and/or FIMI Appeal Committee; and
- (a) the notification period within which the information must be provided to FIMO.

4.4.2 An Applicant Producer may ask FIMO to extend the notification period provided valid reasons are provided. This request must be made:

- (a) in writing; and
- (b) within thirty (30) days of the applicant's receipt of the request under **Paragraph 4.4.1** mentioned above.

FIMO may extend the notification period. However, if an applicant does not provide the additional information within the notification period or within the extended notification period, the Application shall be deemed abandoned and/or FIMO may refuse to issue a Final Certificate to the applicant.

4.5 Refusal to issue Final Certificate

FIMI Approval Committee may refuse the Application for Final Certificate if it is **NOT** satisfied that:

- (a) the conditions set out in these Terms and Conditions and the Guidelines were met; **OR**
- (b) the Film/Project was completed in accordance with the information supplied in the Provisional Certificate; **OR**
- (c) the Film/Project has complied with **Section 2.9** (Project/Content Guidelines) of the Guidelines.

4.6 Notice of refusal to issue Final Certificate

- 4.6.1 FIMI Approval Committee has the discretion in making the decision in respect of the issuance of the Final Certificate. FIMI Approval Committee must give the applicant written notice of the decision.
- 4.6.2 The written notice is to be given within thirty (30) days after said decision.
- 4.6.3 The applicant may within fourteen (14) days from the date of issuance of FIMI Approval Committee's written notice, submit a written appeal to FIMI Appeal Committee (through FIMO) containing proposals, conditions, amendments, modifications or limitations in respect of FIMI Approval Committee's written notice in **Paragraph 4.6.1** mentioned above, in accordance with **Paragraph 4.9** below. If the applicant does not submit any written appeal within fourteen (14) days from the date of issuance of FIMI Approval Committee's written notice, the applicant shall be deemed to have abandoned his application.
- 4.6.4 Where, after taking into account any considered reply in writing provided in accordance with **Paragraph 4.6.2** mentioned above, FIMI Appeal Committee shall inform FIMO whether to accept or refuse the application. If accepted, FIMI Approval Committee shall issue the Final Certificate or if otherwise, FIMO shall inform the applicant on such refusal by FIMI Appeal Committee.
- 4.6.5 The applicant may submit the written appeal in the manner provided under **Paragraph 4.6.2** mentioned above, once only and such decision made by FIMI Appeal Committee shall be final and conclusive.

4.7 Issuance of Final Certificate

- 4.7.1 Final Certificate for the Film/Project will be issued to the applicant if FIMI Approval Committee or on appeal, the FIMI Appeal Committee is satisfied that the conditions set out in the Provisional Certificate, these Terms and Conditions, and the Guidelines have been met.
- 4.7.2 Final Certificate is subject to all conditions specified by FIMI Approval Committee or on appeal, by FIMI Appeal Committee in the certificate.
- 4.7.3 All Film/Projects that successfully acquire Final Certificate must identify FINAS and FIMI in the end credit title. It is a requirement for all Film/Projects to indicate specifically the following in the credit title:



“Produced with Film in Malaysia Incentive (FIMI) Cash Rebate from the National Film Development Corporation Malaysia (FINAS)”

- 4.7.4 FINAS will only disburse the cash rebate of FIMI in Malaysian Ringgit and into a Malaysian bank account. If you are found to qualify for the FIMI, you will need to provide FIMO with your Malaysia bank account details and such bank account must be with a valid and licensed financial institution incorporated in Malaysia.

4.8 Content of Final Certificate

- 4.8.1 In relation to **Paragraph 4.7.2** mentioned above, FIMI Final Certificate must state that FIMI Approval Committee or on appeal, the FIMI Appeal Committee is satisfied that the conditions set out in the FIMI Provisional Certificate, these Terms and Conditions and the Guidelines have been met and the Film/Project is completed in accordance with:

- (a) the information supplied in the application; and
- (b) the conditions (if any) specified in the Provisional Certificate.

- 4.8.2 The Final Certificate will state the amount of the cash rebate of FIMI, in Malaysian Ringgit.

4.9 Appeal to FIMI Appeal Committee

- 4.9.1 Applicant Producer may only submit a written appeal to FIMI Appeal Committee (through FIMO) in case where:

- (a) FIMI Approval Committee refuses to issue the Provisional Certificate;
- (b) FIMI Approval Committee revokes the Provisional Certificate;
- (c) FIMI Approval Committee refuses to issue the Final Certificate;
- (d) FIMI Approval Committee refuses the Application because the Applicant Producer fails to meet the required minimum QMPE threshold as determined in the Guidelines. This ground of appeal is only allowed on case to case basis, as may be determined by FIMO at its absolute discretion;
- (e) Applicant Producer is not satisfied with the decision of FIMI Approval Committee on the determination of percentage for the additional cash rebate for passing the Cultural Test;
- (f) FIMI Approval Committee rejects the application on the cost overruns of the approved production costs indicated in the Provisional Certificate; or
- (g) FIMI Approval Committee revokes the Final Certificate,

such written appeal shall be submitted within fourteen (14) days from the date of the refusal or revocation notice by FIMI Approval Committee.

- 4.9.2 FIMI Appeal Committee's decision shall be issued in writing by FIMO to the Applicant Producer, within four (4) weeks from the date of the FIMI Appeal Committee's decision.
- 4.9.3 An appeal to FIMI Appeal Committee can only be submitted once and any decision made by FIMI Appeal Committee shall be final and conclusive. There shall be no further appeal in respect of FIMI Appeal Committee's decision.

5 EXPENDITURE STATEMENTS AND FOREIGN CURRENCY STATEMENTS

References to expenditure statement in this **Paragraph 5** shall apply to applications for both Provisional Certificate and Final Certificate.

5.1 Expenditure statements in both the Provisional Certificate Application Form and the Final Certificate Application Form must:

- (a) distinguish expenditure that has been or will be incurred on the production/post production activity in Malaysia from expenditure that has been or will be incurred outside Malaysia;
- (b) specify any estimated QMPE in relation to expenditure for travel to Malaysia and other countries;
- (c) total Film/Project expenditure and its estimated QMPE;
- (d) the amount of expenditure on each budgeted item. Please include a short description and details of each service provider per budgeted item;
- (e) details and time frame of the location in which each service or good has been or will be provided; and
- (f) details of the location and time frame of any Malaysian land or assets to be used in making the Film/Project.

5.2 All amounts in an expenditure statement must be expressed in Malaysian Ringgit.

5.2.1 An amount in foreign currency must be converted into Malaysian currency, especially when:

- (a) an item is identified as a QMPE; and
- (b) when principal photography or production of an animation commences.

5.2.2 Please include the exchange rate used to convert foreign currency into Malaysian Ringgit and furnish proof of foreign currency exchange and statements per official published exchange rates are available from Bank Negara of Malaysia.

- 5.3 If the Film/Project is a co-production, the expenditure statement must also specify the QMPE relevant expenditure incurred by the other entity.
- 5.4 If development expenditure or remuneration provided to the principal director, producers or the principal cast associated with the Film/Project is claimed as QMPE, please specify:
- (a) the total amount of said development expenditure;
 - (b) the total amount of remuneration claimed; and
 - (c) the sum of the amounts mentioned in paragraphs (a) and (b), expressed as a percentage of the total Film/Project expenditure.
- 5.5 If any of the expenditure of the Film/Project was paid for with funding in the form of equity and loan funding which is subjected to profit-sharing and/or repayment of the funding, the expenditure statement must also specify:
- (a) the specific item for which the funding was used for;
 - (b) the status of the funding (for example status of repayment for said item); and
 - (c) documentary proof of the said funding.

6 DUE DILIGENCE PROCESS

- 6.1 All application for FIMI will undergo a due diligence process. All audits will be conducted:
- (a) in accordance to all applicable accounting standards, including any standards relating to the independence of auditors; and
 - (b) on interim basis or final basis (whichever is applicable, based on the sole discretion of FIMO);
- which will be conducted by FIMO's Auditor.
- 6.2 All relevant professional fees for audits undertaken by FIMO as part of the due diligence process (including fee for FIMO's Auditor), shall be borne by the Applicant Producer. Payment for the audit fees shall deducted from the FIMI amount due to the Applicant Producer. The amount deducted shall be specified in an official document from FIMI Approval Committee (as 'Less Audit Fees').
- 6.3 This due diligence process may take between two (2) to four (4) months to complete. However, FIMO will strive to ensure that this process is completed expediently as possible.

7 LIABILITY

- 7.1 All applications are made entirely at the Applicant Producer's own risk. The Applicant Producer is responsible for securing all necessary funding for the Project. In the event where the
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applicants is no longer eligible for FIMI, unable to obtain Provisional Certificate or unable to obtain a Final Certificate, neither FIMO, FINAS nor FIMI Approval Committee shall be liable and/or held responsible for the applicant's debts, loans and/or any financial obligations relating to the Film/Project and/or or any loss or damage suffered (whether direct or indirect, foreseeable or unforeseeable) and howsoever arising in relation to or arising from their application for FIMI.

- 7.2 FINAS reserve the right in their sole discretion to revise these Terms and Conditions and/or vary the provisions in respect of FIMI including but not limited to withdrawing the funding for FIMI, at any time without notice. Without limiting the operation of any other Terms and Conditions herein, FIMO, FINAS or FIMI Approval Committee will not be held liable for any loss or damage arising from the exercising of these rights.

[End of Document]

APPENDIX 1: PROVISIONAL CERTIFICATE APPLICATION FORM

REQUIRED INFORMATION AND DOCUMENTS

SECTION 1: Information about the Applicant Producer

- Registered company name
 - Place of registration
 - Company registration number
 - Registered company address

 - Applicant producer's particulars with evidence that an Applicant Producer:
 - (a) is a Malaysian resident or
 - (b) is not a Malaysian resident but has:
 - (i) a permanent establishment in Malaysia; and
 - (ii) a company number.

 - Names of company directors, their nationality, places of residence for the past two (2) years if not Malaysia
 - Names of key shareholders, their nationality, places of residence for the past two (2) years if not Malaysia
 - The Applicant Producer's level of responsibility in making the Film/Project

 - Proposed production or co-production agreement(s) that provides:
 - (a) the responsibility of the Applicant Producer for all the activities that were necessary for the making of the Film/Project; and
 - (b) the transfer of any film production responsibility from an outgoing company to the applicant
- OR**
- Proposed official co-production agreement between companies or government agencies from different countries that provides:
- (a) evidence from the Commonwealth (or the relevant Commonwealth authority) and from the relevant foreign country (or the relevant authority) that the film is an official co-production,
 - (b) the responsibility of the Applicant Producer for all the activities that were necessary for the making of the film; and
 - (c) the transfer of any film production responsibility from an outgoing company to the applicant
-
- Information about creative control over the production
 - Proposed Chain of title and underlying rights
 - Proposed distribution of creative contributions, recoupment and returns

SECTION 2: Information about the Film/Project

- Working title of the Film/Project
- Filming format with details of episodes if the Film/Project is part of a series or season
- Estimated running time
- Estimated date of commencement for principal photography or animation activities
- Estimated date of completion of the Film/Project
- Estimated date of applying for the FIMI Final Certificate
- Synopsis of the Film
- Summary of production schedule
- Indications of offshore production, if applicable
- Information about the scriptwriter and script
- Information about key crew
- Information about key cast
- Information about key characters

SECTION 3: Information about Qualifying Malaysian Production Expenditure (QMPE)

- Information on the Film/Project Budget including details of the total estimated expenditure, expenses in Malaysia, offshore expenditure and QMPE.
- Proposed monetary valuation of services to be contracted in Malaysia.
- Related party expenditure

- Financial Sources which details:
 - (a) Financial Sources for cash flow
 - (b) Government grants, rebates, refund and/or other incentive/funding excluding loans
 - (c) Broadcaster investment (if applicable)
 - (d) Other film/television production company investment (if applicable)
 - (e) Distribution company or sales agent's investment (if applicable)
 - (f) Producer / Director / Writer's own funds (if applicable)
 - (g) Other production assistance (if applicable)
 - (h) Private, either equity or non equity, investment (if applicable)

SECTION 4: Distribution

Distribution plans for the Film/Project that identifies the distribution company/agent and market(s)

SECTION 5: Other information

- Information on plans for the Film/Project to participate in film festivals or relevant exhibits.

- A Statutory Declaration stating:
 - (a) that the Film/Project was made for the purposes of claiming for FIMI; and
 - (b) that:
 - (i) the information contained in the application for the Provisional Certificate; and
 - (ii) each document attached to the application;is correct and true in every particular.

APPENDIX 2 - FINAL CERTIFICATE APPLICATION FORM

REQUIRED INFORMATION AND DOCUMENTS

SECTION 1: Information about the Applicant Producer

- Registered company name
 - Place of registration
 - Company registration number
 - Registered company address

 - Applicant producer's particulars with evidence that an Applicant Producer:
 - (a) is a Malaysian resident or
 - (b) is not a Malaysian resident but has:
 - (i) a permanent establishment in Malaysia; and
 - (ii) a company number.

 - Names of company directors, their nationality, places of residence for the past two (2) years if not Malaysia
 - Names of key shareholders, their nationality, places of residence for the past two (2) years if not Malaysia
 - The Applicant Producer's level of responsibility in making the Film/Project

 - Production or co-production agreement(s) that provides:
 - (a) the responsibility of the Applicant Producer for all the activities that were necessary for the making of the Film/Project; and
 - (b) the transfer of any film production responsibility from an outgoing company to the applicant
- OR**
- Official co-production agreement between companies or government agencies from different countries that provides:
- (a) evidence from the Commonwealth (or the relevant Commonwealth authority) and from the relevant foreign country (or the relevant authority) that the film is an official co-production,
 - (b) the responsibility of the Applicant Producer for all the activities that were necessary for the making of the film; and
 - (c) the transfer of any film production responsibility from an outgoing company to the applicant
-
- Information about creative control over the production
 - Proposed Chain of title and underlying rights
 - Proposed distribution of creative contributions, recoupment and returns

SECTION 2: Information about the Film/Project

- Title of the Film/Project that is to be publicised
- Filming format with details of episodes if the Film/Project is part of a series or season
- Established running time
- Date of commencement for principal photography or animation activities
- Date of completion of the Film/Project
- Information about creative control over the production
- Proposed Chain of title and underlying rights
- Proposed distribution of creative contributions, recoupment and returns
- Synopsis of the Film
- Summary of production schedule
- Indications of offshore production, if applicable
- Information about the scriptwriter and script
- Information about key crew
- Information about key cast
- Information about key characters

SECTION 3: Information about Qualifying Malaysian Production Expenditure (QMPE)

- Audited Film/Project Budget including details of the total estimated expenditure, expenses in Malaysia, offshore expenditure and QMPE.
- Monetary valuation of services to be contracted in Malaysia.
- Related party expenditure
- Financial Sources which details:
 - (a) Financial Sources for cash flow
 - (b) Government grants, rebates, refund and/or other incentive/funding excluding loans
 - (c) Broadcaster investment (if applicable)
 - (d) Other film/television production company investment (if applicable)
 - (e) Distribution company or sales agent's investment (if applicable)
 - (f) Producer / Director / Writer's own funds (if applicable)
 - (g) Other production assistance (if applicable)
 - (h) Private, either equity or non equity, investment (if applicable)
- Supporting documents for all QMPE incurred, including but not limited to:
 - (a) All relevant agreements.
 - (b) Daily Production Reports.
 - (c) Call-sheets
 - (d) Production schedule(s)
 - (e) Invoices by suppliers
 - (f) Official receipts
 - (g) Individual audited expenditure statement (prepared by the Applicant Producers appointed auditors)
 - (h) Independent auditors' statement verifying the particulars of the production expenditure detailed in your application
 - (i) Production general ledger (electronic)

- (j) Travel spreadsheets
- (k) Contract of key personal, cast and crew

SECTION 4: Distribution

Distribution for the Film/Project that identifies the distribution company/agent and market(s). Please include a deal memorandum or an official letter of confirmation from the distributor.

SECTION 5: Other information

- Report of the Film/Project participating in film festivals or relevant exhibits.
- A Statutory Declaration stating:
 - (a) that the Film/Project was made for the purposes of claiming for FIMI; and
 - (b) that:
 - (i) the information contained in the application for the Final Certificate; and
 - (ii) each document attached to the application;

is correct and true in every particular.

[End of Appendix 2]

APPENDIX 3 - CREW AND CAST LIST FOR FIMI

PROJECT'S NAME	
TOTAL CAST & CREW	
TOTAL CAST & CREW (FOREIGN)	
TOTAL CAST & CREW (LOCAL)	
TOTAL CAST & CREW (BUMIPUTERA)	

No.	Name	Identification Card Number	Sex	Race	Age	PPFM Membership Number	Scope of Work	Salary (Package/Monthly)	Salary (Weekly)	Status of Employment
TOTAL										

[End of Appendix 3]