

INDUSTRY SUPPORT PROGRAMS
TERMS OF TRADE

2009

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Australian Government

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SCREEN AUSTRALIA INDUSTRY SUPPORT PROGRAMS

TERMS OF TRADE

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About this document

Screen Australia's Terms of Trade provide guidance on how the agency will transact its business. It supplements the **guidelines** applying to particular Screen Australia programs and its terms are reflected in Screen Australia's **contracts**.

This document is structured to reflect Screen Australia's principal activities, ie development and production investment, and marketing support. (Note that Screen Australia's marketing support activities and associated terms of trade will be reviewed in the first quarter of 2009.)

For production financing, producers are encouraged to contact Screen Australia for advice on projects at an early stage, especially before negotiations commence with potential co-financing and distribution partners.

Screen Australia reserves the right to vary these terms of trade in exceptional circumstances.

1. General matters

Fees

- 1.1. **What fees does Screen Australia charge?** Unless otherwise indicated in the program guidelines, Screen Australia charges fees only for production investment. There is an application fee and if the application is successful, a legal and administration fee, calculated on the value of Screen Australia's investment. The fee will be equal to 2% of the value of the Screen Australia investment, capped at \$100k.

General eligibility for Screen Australia funding

- 1.2. What conditions must applicants satisfy for their applications to be eligible for consideration by Screen Australia?

Applicants must:

- be Australian citizens or residents (see 1.3 below)
- not be in breach of any obligation under any arrangement they have with Screen Australia or any of Screen Australia's predecessors (the Australian Film Commission, Film Finance Corporation Limited or Film Australia Limited); this requirement also applies to all persons likely to financially benefit from the application if it is approved
- always act 'in good faith' (see 1.5 below) in all their dealings with Screen Australia
- have the capacity and resources to carry out the project that is the subject of the application
- have the right to carry out the project that is the subject of the application (including any relevant copyright and clearances). If the application is based on an underlying work, there must be a total option period of not less than three years for first draft funding. Where the production is considered to be at an advanced stage of development, Screen Australia will expect an appropriate option period. In relation to production applications, the option period should have at least 12 months remaining.

- have meaningful creative control of the project that is the subject of the application
- demonstrate that their application is consistent with the purpose of the program applied to
- in relation to applications for development or production investment, be able to demonstrate that their project has Australian content (see 1.6 below)
- not be an employee of a broadcaster or a company owned or controlled by a broadcaster
- not be a student at a film school or similar tertiary film, television or interactive digital media course.

Applicants must provide such information as Screen Australia reasonably requires.

1.3. ***What is Screen Australia's definition of an Australian resident?***

An Australian resident is a person:

- who is domiciled in Australia
- who has actually been in Australia, continuously or intermittently, during more than one half of the year immediately preceding the application.

1.4. ***What if the applicant is a company?*** If the applicant is a company it must be a company that is incorporated in Australia, carries on business in Australia, and has its central management and control in the hands of Australian citizens or residents, who are not students at a film school or similar tertiary film, television or interactive digital media course. Shareholders who are citizens or residents of Australia must also control its voting power. The company must not be owned or controlled by a broadcaster.

1.5. ***What do you mean by applicants always acting 'in good faith'?*** Screen Australia acts in the public interest and must exhibit the highest levels of propriety in its dealing with applicants. Screen Australia requires applicants to act in the same way in their dealings with Screen Australia. Applicants must be honest and open in all dealings with Screen Australia. They must not mislead or deceive Screen Australia by act or omission.

Screen Australia also expects all successful applicants to act fairly and reasonably to third parties involved in their project. Fairness and reasonableness includes (a) paying market rates for all work performed by third parties on their project; (b) complying with policies of Screen Australia as advised from time to time; (c) respecting intellectual property rights of all relevant persons whether those rights be copyright, moral rights or Indigenous rights.

1.6. ***How much 'Australian content' must a project have in order to attract Screen Australia investment?***

To be eligible for **production investment**, the project must have sufficient Australian content to satisfy the 'Significant Australian Content' test used to determine eligibility for the Producer Offset. Screen Australia will use its discretion as to whether a project needs to apply to the Producer Offset and Co-production Branch for a Provisional Certificate in order to demonstrate compliance with this requirement.

To be eligible for **development investment** the project must have sufficient Australian content to satisfy the components of the 'Significant Australian Content' test relevant to the project's stage of development.

Applicants should be aware that 'Australian content' may also be further assessed comparatively and on a qualitative basis to determine whether the project will be supported by Screen Australia.

In relation to [Offset projects](#) (see Glossary), Screen Australia is required by the Minister's Statement of Expectation to provide supplementary funding to Offset projects of cultural merit only. This will be evaluated holistically, across all the assessment criteria applying to the particular program.

Television projects must also be quota-eligible programs in relation to commercial broadcasters' compliance with the Australian Content Standard, as detailed on the ACMA website or the equivalent requirements applying to Australian subscription TV.

Audit rights

- 1.7. **What audit rights does Screen Australia require?** Screen Australia requires the right to audit expenditure of its investment to ensure compliance with contract requirements. Screen Australia requires the right to audit costs and receipts. A full audit is required of all production expenditure at project completion. An audited statement of receipts should be provided quarterly. Screen Australia also requires the right to undertake audits of receipts when reasonably required.

GST

- 1.8. **Is GST payable on Screen Australia's investment?** Generally, GST is payable on Screen Australia's investment. Screen Australia requires the applicant to have an Australian Business Number (ABN) and register for GST. Where the applicant is registered or required to be registered for GST, Screen Australia will require the applicant to issue a Tax Invoice as a precondition to drawdown of the Screen Australia Investment.

If the applicant does not have an ABN, Screen Australia is required to withhold PAYG tax from the Screen Australia investment.

Crediting Screen Australia

- 1.9. **How does Screen Australia want to be credited for its support?** Credit requirements vary according to the nature of the support. For more information, see www.screenaustralia.gov.au/credits

Indigenous content

- 1.10. **Does Screen Australia have any particular requirements in relation to Indigenous content?** Where there is Indigenous content or participation in any production, Screen Australia requires that the producer comply with the agency's protocols, including those related to treatment of 'Indigenous Cultural and Intellectual Property Rights'. For more information, see 'Indigenous Content and Participation' in Screen Australia's program guidelines.

2. Development investment

2.1. **What development investment does Screen Australia provide?**

Screen Australia provides investment to assist with the development of screen businesses and project slates; feature film, documentary and digital media projects; talent; and innovative ideas and projects that benefit Australia's screen industries.

2.2. **How much development investment can Screen Australia provide?**

The amount Screen Australia will invest depends on the available funding and terms of the particular program, the number of applicants satisfying the program's requirements, and the quality of the application.

2.3. **How does Screen Australia determine what to fund?**

Applications which meet Screen Australia's eligibility requirements are qualitatively assessed taking into account the range of criteria relevant to the particular program applied to. Details of each program's eligibility requirements and assessment criteria are set out in the program's guidelines.

Screen Australia's general eligibility criteria are found at point 1.2 of these Terms of Trade. Every applicant must satisfy these criteria in addition to the program's particular eligibility criteria before any qualitative assessment is made of their application.

Screen Australia's funding is not unlimited. If available funding is insufficient to meet all eligible applications which address Screen Australia's assessment criteria to a satisfactory level, applications will be further assessed on a comparative basis.

2.4. **What does Screen Australia require in return for its development investment?**

Screen Australia requires acknowledgement for its support (see 1.9 *Crediting Screen Australia*). In some instances Screen Australia will also require a copyright interest in the developed work. Generally this will only be the case where the Screen Australia investment is in excess of \$100k. The owner of the developed work may acquire any Screen Australia copyright interest on repayment of the Screen Australia development investment.

2.5. **How does Screen Australia make its development investment?**

Investments are made by way of grant and limited recourse loan. Industry fellowships are provided in the form of a grant; non-slate components of the Enterprise Program will be funded by way of grant. Unless otherwise noted in the program guidelines, all other development programs are funded by way of limited recourse loan.

Recoupment

2.6. **Does Screen Australia's development investment have to be repaid?**

Investment provided by grant does not have to be repaid. Investment provided by limited recourse loan must be repaid in accordance with the terms of the loan agreement.

2.7. **What is a limited recourse loan and when does it have to be repaid?**

A limited recourse loan is a loan that has to be repaid only if

certain conditions are satisfied. Generally, the only time a Screen Australia limited recourse loan has to be repaid is if a project proceeds to production with Screen Australia production investment. In these circumstances the limited recourse loan will be added to the Screen Australia production investment and recouped on the same terms as the production investment.

- 2.8. ***Does Screen Australia's loan funding attract interest?*** Unless the terms of the particular program expressly provide otherwise, Screen Australia development loans do not attract interest.

Delivery items

- 2.9. ***What delivery items does Screen Australia require for development investment?*** These are set out in the relevant program guidelines.

3. Production financing

- 3.1. **What types of production does Screen Australia provide finance for?** Screen Australia provides finance for feature films, short animation, documentaries, children's television, some categories of adult television drama, Indigenous films and documentaries, projects produced under the Innovation Program and some other types of production.

All production finance is provided by way of recoupable investment unless the program's guidelines provide otherwise.

- 3.2. **How much will Screen Australia invest?** The amount Screen Australia will invest in a production depends on the available funding for the particular program, the number of applicants satisfying the program requirements, and the quality of the projects.

In addition, Screen Australia will usually cap the amount it invests in any one project as follows:

<i>Production type</i>	<i>Cap as proportion of budget*</i>	<i>Cap per project on SA finance</i>
<i>Feature films</i>	Screen Australia investment plus Producer Offset (where relevant) must not exceed 75% of production budget, other than for low-budget projects in exceptional circumstances	\$3 million (\$3.5 million in exceptional circumstances)
<i>Short animation production</i>	Nil	\$120k
<i>TV drama (Offset)**</i>	Screen Australia investment plus Producer Offset must not exceed 40% of production budget	\$4 million (total of SA investment + Offset)
<i>Low-budget television drama (non-Offset)**</i>	Nil	\$100k per one-hour ep. Or \$50k per half-hour ep., to max. of \$400k
<i>Children's TV drama (Offset)**</i>	Screen Australia investment plus Producer Offset must not exceed 43% of production budget	\$4.5 million (total of SA investment + Offset)
<i>NDP documentaries</i>	Screen Australia investment plus Producer Offset (where relevant) must not exceed 75% of production budget, other than for low-budget projects in exceptional circumstances	
<i>Special Documentary Program (non-Offset)**</i>	Nil	Up to \$300k (generally \$150k)
<i>Documentaries – Domestic</i>	Screen Australia's investment must remain equal to the broadcaster's contribution as a percentage of budget	\$200k for 'one off' program; \$500k for a program series (total of SA investment + Offset)
<i>Documentaries – International</i>	Screen Australia investment plus Producer Offset must not exceed 50% of production budget	
<i>Innovation Program projects</i>	Nil	\$250k

* In the context of official co-productions the cap relates to the Australian component of the budget.

** 'Offset' and 'non-Offset' refer to whether or not the project would be eligible for the Producer Offset in terms of qualifying expenditure and format.

3.3. **How does Screen Australia determine what it will finance?**

Applications which meet Screen Australia's eligibility requirements are qualitatively assessed taking into account the range of criteria relevant to the particular program applied to. Details of each program's eligibility requirements and assessment criteria are set out in the program's guidelines.

Screen Australia's general eligibility criteria are found at point 1.2 of these Terms of Trade. Every applicant must satisfy these criteria in addition to the program's particular eligibility criteria before any qualitative assessment is made of their application.

Screen Australia's funding is not unlimited. If available funding is insufficient to meet all eligible applications which address Screen Australia's assessment criteria to a satisfactory level, applications will be further assessed on a comparative basis.

- 3.4. **What does Screen Australia require in return for its production investment?** Unless noted otherwise in the guidelines for a particular program, Screen Australia requires a copyright interest in the production (see *Rights* below); equity in the production (see *Equity* below); recoupment of its investment (see *Recoupment* below); and credit for its investment (see 1.9 *Crediting Screen Australia*). Screen Australia reserves the right to vary these requirements depending on the circumstances of the particular project.

Rights

- 3.5. **What copyright interest does Screen Australia require in the production?** Screen Australia requires a copyright interest in the production. This interest should be commensurate to Screen Australia's equity investment in the project, both development investment (if any) and production investment.
- 3.6. **For how long does Screen Australia require its copyright interest?** Screen Australia retains its copyright interest in the production for the duration of the production's copyright.
- 3.7. **What additional rights does Screen Australia require in relation to the production?** Screen Australia requires the following additional rights:
- A right to use the production and promotional materials (in whole or part) for its corporate, promotional and educational purposes.
 - In the case of National Documentary Program productions Screen Australia requires a right to retain the production in its documentary collection and a non-exclusive right for non-commercial exploitation of the production for educational and learning purposes. Screen Australia also requires a right to make up to 10 minutes of the production and 40 stills available to other documentary makers for the purpose of documentary production.
 - Approval rights as set out in the project's Production Investment Agreement (PIA).

- A right to grant a licence to the National Film and Sound Archive to use excerpts from the production for the purposes of *australianscreen* online.
- A right to participate in revenues generated by further exploitation of the production including sequels, spin-offs and remakes. Screen Australia would expect that licence fees for sequels, spin-offs and remakes would be in the following order:

Genre	Fee
feature film; television drama; children's television; documentary	2% of the production budget
adult television (6 or more episodes)	\$5,000 per episode for the first series; \$7,500 per episode for each subsequent series

- 3.8. **What underlying rights should the producer obtain?** Screen Australia requires the producer have all underlying rights (preferably by way of ownership) to make and exploit the production. Screen Australia also prefers that producers have all underlying rights to exercise the ancillary rights, or grant rights in relation to the ancillary rights, without the need to obtain any further consents from the rights owners.

Equity

- 3.9. **What equity entitlement does Screen Australia require?** Screen Australia requires an equity position in the production commensurate with its investment.
- 3.10. **Does Screen Australia require the producer to have equity in the production?** Screen Australia prefers that the producer have equity in the production. The nature and extent of the producer's equity will depend on the extent of the producer's investment.

In the case of [Offset projects](#), Screen Australia would expect the producer to make a contribution toward the costs of the production not less than the value of the Offset (or that part of the Producer Offset that is able to be cashflowed), and have a financial interest in the production, whether by way of equity or some other interest commensurate to the value of the Producer Offset.

Recoupment

- 3.11. **What recoupment entitlement does Screen Australia require?** For finance provided by way of recoupable investment, Screen Australia requires an initial recoupment entitlement to participate in gross receipts commensurate with its investment. Once all equity investment is repaid, Screen Australia prefers that further revenue be shared between the producer and investors on a 50/50 basis. The producer's entitlement is to be calculated taking into account the producer's equity in the film. Screen Australia will use its reasonable endeavours to work with other investors to ensure that this occurs.

(If the producer is entitled to the Producer Offset in relation to the film, the value of the Producer Offset will be deemed to be contributed toward the production budget and the producer will be deemed to have an equity in the production equal to the value of the Producer Offset.)

In relation to official co-productions, the above provisions only apply to the Australian producer and only in regard to Australian revenue.

Screen Australia will revert its entitlement to gross receipts in favour of the producer, 7 years after delivery of the project, for all production investments approved by Screen Australia after 1 January 2009. For all pre-1 January 2009 investment approvals, the producer will have the right to buy out Screen Australia's recoupment entitlement 7 years from first delivery on agreed terms and conditions. With respect to the slates of Screen Australia's predecessors:

- a) In relation to AFC titles, Screen Australia will revert its recoupment entitlement on application, which may be made at any time after 7 years have elapsed from the date of last payment by the AFC of its production investment;
- b) In relation to FFC titles, the producer will have the right to buy out Screen Australia's recoupment entitlement 7 years from first delivery on agreed terms and conditions;
- c) In relation to Film Australia titles, there will be no reversion of recoupment.

3.12. **Will Screen Australia subordinate its recoupment entitlement to other equity investors?** Generally, Screen Australia will not subordinate its recoupment right to other equity investors. Screen Australia expects to participate in gross receipts pro rata and pari passu with other equity investors. The recoupment structure for a project will be determined on a case-by-case basis taking into account Screen Australia investment and the investment of others, both equity and non equity investors.

3.13. **What recoupment entitlements does Screen Australia expect the producer to have?** It is Screen Australia's preference that all producers have a recoupment entitlement of 35%, ranking equally with other equity investors. Screen Australia will use its reasonable endeavours to work with other investors to ensure that this occurs.

In relation to Offset projects (see glossary), the 35% recoupment entitlement will be calculated as if the total value of the Producer Offset is contributed toward the production budget and the producer has an equity in the production equal to the value of the Producer Offset.

In relation to official co-productions, the above provisions only apply to the Australian producer and only in regard to Australian revenue.

3.14. **How is Screenrights revenue to be dealt with?** For all production investment approved after 1 January 2009, Screen Australia will cease the practice of requiring that Screenrights revenue form part of Screen Australia's gross receipts.

- 3.15. **What about 'Export Market Development Grants'?** Screen Australia requires no interest in any 'Export Market Development Grant' the producer may be entitled to as a result of the production.

Producer Offset

- 3.16. **Will Screen Australia invest with the Producer Offset?** Screen Australia can invest in projects that are also entitled to the Producer Offset. There are limits on the amount and/or proportion of the production budget that can be financed by a combination of the Producer Offset and Screen Australia production investment. These limits are detailed in 3.2 above, as well as in Screen Australia's Guidelines for Production Financing.
- 3.17. **Will Screen Australia [cashflow](#) the Producer Offset?** Screen Australia will not cashflow the Producer Offset or any part of the Producer Offset.

Sales and distribution

- 3.18. **Who is responsible for negotiating sales and distribution agreements?** It is the responsibility of the producer to negotiate all sales and distribution arrangements. The distributor and sales agent and the terms of the distribution arrangements and sales agency must be acceptable to Screen Australia.
- 3.19. **Must sales and distribution agreements be in place before Screen Australia will provide production investment?** Generally Screen Australia requires maximum [market participation](#) in the projects it supports. In relation to Offset projects, Screen Australia will generally require Australian distribution and appointment of an international [sales agent](#) and/or [distributor](#). The extent of these requirements differs depending on the particular program and the nature of the project; refer to the program guidelines for details.
- Although desirable, market participation is not required for [non-Offset](#) projects.
- 3.20. **Does Screen Australia have any particular sales and distribution requirements?** Screen Australia requires approval rights over the appointment of all 'major territory' sales agents and distributors. It also requires approval rights to all distribution commissions and sales expenses in major territories, whomever they are paid to. Screen Australia will generally require foreign sales agents or distributors to pay an advance no later than delivery, or for the producer to cashflow the advance by delivery.
- 3.21. **What sales commissions will Screen Australia permit in relation to production sales?** Generally, Screen Australia will not permit payment of commissions to the producer on sales. The only exceptions to this rule are when a producer assumes responsibility for sales on expiry of a distributor or sales agent's licence, or in the case of non-theatrical and ancillary rights that Screen Australia has agreed the Producer can retain. If the producer has the expertise and experience to exploit these rights, Screen Australia will permit the producer to receive an appropriate commission.

Delivery items

3.22. **What delivery items does Screen Australia require for production investment?** Except where otherwise noted in the program guidelines, the following Screen Australia delivery items must be included in each approved budget:

- 3 x DVD copies of all programs on delivery
- 3 copies of the commercial release DVD
- Electronic press kit and written publicity pack
- a copy of the master set of production stills on CD ROM
- Soundtrack on CD (where available)
- 3 x theatrical posters when first available
- a copy of any cross-platform elements.

The appropriate National Film and Sound Archive (NFSA) items listed below must be of first class professional quality and must also be included in the budget:

- For projects finished on videotape - Digital Betacam videotape.
- For projects finished on 16mm - *either* a Digital Betacam videotape, *OR* a 16mm release print sent direct from the laboratory to NFSA as a preservation print.
- For projects finished on 35mm - a fresh 35mm release print sent direct from the laboratory to the NFSA as a preservation print.

For National Documentary Program projects, the following items are required for the Screen Australia Library:

1	Program masters in HD or Digital Betacam format* as specified in the Production Investment Agreement or as agreed with Screen Australia
1	Audio premix components*
1	Textless master*, if the program is heavily subtitled
1	DVD of completed program with burnt in timecode
1	DVD of completed program without burnt in timecode
All	All the camera tapes delivered in their native videotape format, OR if the camera generates video files directly (eg P2 or XDCAM), all original video files delivered on Hard Drive (in DV, HDV, Quicktime, or MXF format, or other format if approved in writing)
All	One DVD viewing copy with timecode display of each and every camera originated material
All	Camera or editing logs in electronic or hard copy
All	Separate audio recordings, if available, delivered as tapes or audio files
All	Sound sheets/logs in electronic or hard copy
1	Complete edit project backup (no media) delivered on DVD ROM or CD ROM
1	Complete compositing project backup where applicable, delivered on DVD ROM or CD ROM or Hard Disk
1	Separate Final Edit Decision List file delivered on CDRom or DVD Rom
All	Transcripts in Word format delivered electronically
1	Complete Post-production Script using the Filemaker Pro template (provided by Screen Australia), delivered electronically
1	Archival footage cue sheet using the Filemaker Pro template (provided by Screen Australia), delivered electronically

1	APRA music cue sheet delivered electronically as PDF file or in hard copy
1	Principal Cast and Crew list
1	Proofread and Approved final credit listing
All	Originals of cast and crew contracts, including the service agreements for above-the-line crew
All	Originals of copyright clearances and release forms, filed in order of first appearance with a relevant timecode reference for each. For ABC programs, a duplicate set of these is required.
All	Chain of title documents

Other matters

- 3.23. **Does Screen Australia require a [Completion Guarantor](#) in relation to the projects it invests in?** Where relevant, Screen Australia generally requires the appointment of a Completion Guarantor for all production investment. Depending on the experience and track record of the producer, a completion guarantor may not be required in relation to domestic documentaries, special documentary program productions or low-budget (non-Offset) films.
- 3.24. **Does Screen Australia have any particular requirements in relation to the payment of cast and crew?** Screen Australia requires that all directors, writers, crew and actors be paid fees not less than relevant industry standards.
- 3.25. **Will Screen Australia permit deferral of fees?** Generally, Screen Australia will not permit the deferral of producer, cast or crew fees.
- 3.26. **Does Screen Australia require the appointment of a [collection account manager](#)?** The producer is responsible for the collection and disbursement of all gross receipts. Screen Australia does not require the appointment of a collection account manager for Australia and New Zealand. Screen Australia will generally require the appointment of a collection account manager for all other territories.
- 3.27. **Does Screen Australia require all production to be captioned?** It is a legislative requirement that feature films financed by Screen Australia (a Federal Government agency) be captioned to provide access for the hearing impaired, for cinemas and DVD. Feature films are the only type of production subject to this requirement. Feature film producers are also required by Screen Australia to use their best endeavours to ensure that all Australia distribution agreements include access for the hearing impaired via captioned theatrical screenings and DVDs.

4. Marketing support

Please note: Screen Australia's marketing support activities and associated terms of trade will be reviewed in the first quarter of 2009.

- 4.1. **What marketing support funding does Screen Australia provide?** Screen Australia currently provides several types of marketing support:
- *Travel Grants*: Assistance for filmmakers to attend major international festivals, markets, digital media events and pitching competitions.
 - *Festival Support*: providing support for marketing and/or screening materials for projects accepted into key international festivals.
 - *Alternate Distribution Support*: for projects that have attracted a distributor and require marketing and/or screening materials.
 - *Theatrical P&A support*: in exceptional circumstances, on a case-by-case basis, for completed drama and documentary projects looking to enhance their proposed theatrical release.

For details see www.screenaustralia.gov.au/marketing

- 4.2. **How much marketing support funding does Screen Australia provide?** The amount of funds Screen Australia can provide depends on the available funding for the particular program and the number of applicants satisfying the program's requirements.
- 4.3. **How does Screen Australia determine what to fund?** Applications which meet Screen Australia's eligibility requirements are qualitatively assessed taking into account the range of criteria relevant to the particular program applied to. Details of each program's eligibility requirements and assessment criteria are set out in the program's guidelines.

Screen Australia's general eligibility criteria are found at point 1.2. of these *Terms of Trade*. Every applicant must satisfy these criteria in addition to the program's particular eligibility criteria before any qualitative assessment is made of their application.

Screen Australia's funding is not unlimited. If available funding is insufficient to meet all eligible applications which address Screen Australia's assessment criteria to a satisfactory level, applications will be further assessed on a comparative basis.

- 4.4. **What does Screen Australia require in return for marketing support funding?** Requirements vary depending on the type of marketing support provided and will be set out in the relevant letter of agreement.
- Recipients of travel grants, festival and alternate distribution support are required to deliver a detailed written report, answering a series of questions included in the letter of agreement.
 - Recipients of alternate distribution and theatrical P&A support must credit Screen Australia on publicity material such as printed promotional materials, display advertising and publications relating to the project (see 1.9 *Crediting Screen Australia*).

Recoupment

- 4.5. **Does Screen Australia's marketing support funding have to be repaid?** Travel grants, festival support and alternate distribution support are in the form of a grant and do not have to be repaid. Support for theatrical P&A is recoupable on terms negotiated as part of the application, in concert with both the producer and the distributor. Recoupment of Screen Australia funds is usually on a [pro rata and pari passu](#) basis.

Glossary

ANCILLARY RIGHTS

The following rights in relation to the script and the production:

- To write and present a stage play.
- To make a film about the production of the film.
- To write and publish a book based on the script.
- To make soundtrack records.
- To use the film's title.
- To use the characters, etc in the script and the film.
- To use and reproduce digitally the film, or any part of it, by means of computer or any new technology, in any format and delivered through any platform or online service.

CASHFLOW

Funds provided by an investor, the producer, a distributor or broadcaster during production to meet the day-to-day costs of production.

CHAIN OF TITLE

The set of documentation that establishes the producer's ownership of the rights in the script (and novel or stage play, if relevant), which entitles the producer to make and market the film. The set of documents will typically include scriptwriters' agreements, development agreements with funding agencies and options or rights assignments. In some cases the set comprises many documents, especially where a project has been in development over a long period of time or where the script has been adapted from other sources or where a number of writers have contributed to the script. In others, the set may simply be one document.

COLLECTION ACCOUNT MANAGER (CAM)

The organisation (usually overseas) appointed to collect licence fees, distribution advances, etc directly from a sales agent's sub-licensees, administer the collections account, pay the sales agent's commissions and expenses and distribute the remaining gross receipts in accordance with the recoupment/disbursement schedule in the production and investment agreement for the film.

COMPLETION GUARANTOR

For either a flat fee (in the case of most documentaries) or a percentage of the below the line budget of a film, a completion guarantor will guarantee or "bond" a production. This means that they will meet budget overages to ensure that the film is completed. Overages in some areas of the budget are not covered by the completion guarantor. These include: above the line principal cast, below the line cast, music, delivery items not listed in the budget, publicity, legal fees, interest, foreign exchange and financing. Also, anything interpreted as "enhancement" to a production is not covered by the guarantor. What constitutes enhancement rather than a legitimate overage is usually negotiated on a case-by-case basis by the producer and guarantor.

COPYRIGHT

The exclusive right to copy, broadcast, perform, exhibit and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings. Copyright is personal property and can only be transferred in writing. Copyright assignments and licences relating to the script form part of the chain of title.

DEFERRAL

A fee – or part fee – for services performed during production that is payable from revenue generated from sales of the film rather than payable from the budget. Deferrals may constitute investments in the film.

DISTRIBUTOR

This is a term used broadly and often with distinct meanings. Essentially it is any party who sells or services a market. In television a distributor with rest of world (ROW) sales rights will be performing exactly the same function as a feature film sales agent, ie selling to third parties such as broadcasters, video companies, etc but may also sell rights to a sub-distributor such as a German distributor who can then sub-distribute to broadcasters, etc in a territory.

It is important when sub-distributors are used to clarify the commissions as all the interceding parties will charge commission, eg a German sub-distributor sells television and takes a 25% commission; the distributor then seeks to take 25% of its gross receipts and remit the rest to the producer. In this situation where a distributor uses a sub-distributor, the sub-distributor's commission should be absorbed within the distributor's commission.

In feature films in general usage a distributor refers to a territorial distributor who takes a bundle of rights some of which it exploits directly, others through sub-distributors. Roadshow Films, Hopscotch, Icon are examples of feature film distributors in Australia.

GROSS RECEIPTS

All revenue from sales of a film including receipts from exploitation of ancillary and other underlying rights, any claims relating to the film and its underlying rights, statutory licences under the *Copyright Act* and interest on the collections account.

LIMITED RECOURSE LOAN

A loan repayable only from a defined source of revenue or the occurrence of a particular event. As such, there is an element of risk for the lender that revenues will be sufficient to retire the loan obligation. Loans from film agencies may be limited recourse, ie limited to film revenues.

MARKET PARTICIPATION/MARKET ATTACHMENT

Contributions towards the budget of a film or television program in the form of pre-sales, distribution advances and distribution guarantees. Screen Australia aims to secure maximum market participation in films which it supports. Where applicable, the levels of participation are described in the current Screen Australia guidelines.

NON-OFFSET PROJECT

Describes projects where the producer cannot, or agrees not to, claim the Producer Offset. (Generally used in Screen Australia's guidelines and these *Terms of Trade* to refer to projects which do not meet the Offset's eligibility requirements in terms of qualifying expenditure and/or format.)

OFFICIAL CO-PRODUCTION

A production by producers from two or more countries that is made under a treaty or another form of government or quasi-government arrangement. The eligibility criteria for official co-productions are determined by Screen Australia using policy guidelines developed with a panel of industry unions and guilds.

OFFSET PROJECT

Describes projects which would be eligible for the Producer Offset in terms of qualifying expenditure and format.

PRINTS AND ADVERTISING EXPENDITURE (P&A)

Expenditure on prints and advertising – the launch costs of cinema release.

PRODUCER OFFSET

The Offset is a tax-based incentive principally relative to goods and services provided in Australia. It is available to feature films at 40% of Qualifying Australia Production Expenditure (QAPE) and for non-feature films at 20% of QAPE as set out in the legislation and guidelines. See www.screenaustralia.gov.au/producer_offset

PRO RATA AND PARI PASSU

The expression relates to contributions to a budget and to recoupment of investments and refers to the percentage of contribution or recoupment. A *pro rata* contribution/recoupment is one which is provided/received at the same rate or in the same proportion as the other party. *Pari passu* contributions or recoupment are made at the same time as the other party.

QUALIFYING AUSTRALIAN PRODUCTION EXPENDITURE

Means expenditure defined as such for the purpose of the Producer Offset; see www.screenaustralia.gov.au/producer_offset

SALES AGENT

Sales agents sell films in international markets to territorial distributors or broadcasters. For example, a sales company may have world rights to sell a film; it sells to a German distributor, which may take "all rights" and release the film theatrically, then release it on video through its own label and sell television rights to broadcasters.

SUBORDINATION

A subordinated investment is one in which the investor recoups on less favourable terms than other investors, eg an investor invests 40% of the budget with another who invests 60%, but the 40% investor wants to recoup

all its money first. In this case, the 60% investor would be 'fully subordinated' to the 40% investor.

UNDERLYING RIGHTS

The bundle of rights that must be acquired to execute the project and get access to the ancillary rights.