



Australian Government



---

# TERMS OF TRADE

---

Effective 11 August 2016  
(see page 15 for change log).

<b>TERMS OF TRADE</b> .....	<b>1</b>
<b>INTRODUCTION</b> .....	<b>2</b>
<b>TERMS OF TRADE</b> .....	<b>3</b>
1. <b>GENERAL MATTERS</b> .....	<b>3</b>
2. <b>Crediting Screen Australia</b> .....	<b>5</b>
3. <b>Indigenous content</b> .....	<b>5</b>
4. <b>Producer contributions and limits on Screen Australia funding</b> .....	<b>6</b>
5. <b>Terms of Funding</b> .....	<b>6</b>
6. <b>Rights for development and production funding</b> .....	<b>8</b>
7. <b>Reversion</b> .....	<b>9</b>
8. <b>Completion Guarantee</b> .....	<b>10</b>
9. <b>Accessibility of screen content</b> .....	<b>10</b>
10. <b>Delivery items for Screen Australia and NFSA</b> .....	<b>10</b>
<b>GLOSSARY</b> .....	<b>12</b>
<b>Schedule A: Fees</b> .....	<b>14</b>
<b>Change log</b> .....	<b>15</b>

## INTRODUCTION

### Screen Australia funding programs

Screen Australia is the Australian Government's primary funding body for the Australian screen production industry. Its functions are to support and promote the development of a highly creative, culturally relevant, innovative and commercially sustainable Australian screen sector. To this end, Screen Australia offers funding programs for projects, businesses and practitioners across film, television drama, documentary and multi-platform storytelling, as well as programs specifically targeting Indigenous screen practitioners and their projects.

Funding is typically provided by way of grant, loan or recoupable investment, depending on the type of project and program applied for.

Funding decisions are determined in accordance with these terms of trade, the applicable program guidelines and available funding for the relevant program, and, except in the case of Producer Equity payments, by the number and quality of competing qualifying applications. Eligibility requirements apply to both applicants and projects for which funding is sought.

For the purposes of its documentary funding programs, including the Producer Equity Program, Screen Australia will also have regard to the guidelines used by the Australian Communications and Media Authority (ACMA). These guidelines are available on the ACMA website.

### Application of Terms of Trade and program guidelines

These Terms of Trade broadly outline the core terms on which the organisation will transact its business. They apply to Screen Australia funding support including, to a limited extent, the Producer Equity payment. They do not apply to Screen Australia acting in the capacity of:

- (a) the film authority responsible for the administration of the Producer Offset under division 376 of the *Income Tax Assessment Act 1997* and the Producer Offset Rules; or
- (b) the competent authority for the purposes of Australia's official co-production program.

Successful applicants are required to enter into a legally binding contract with Screen Australia. Contracts reflect both these Terms of Trade and the specific requirements relating to each program as set out in program guidelines.

These Terms of Trade and Screen Australia program guidelines must not be relied upon as an offer capable of acceptance by any person or as creating any form of contractual, quasi contractual, restitutionary or promissory estoppel rights, or rights based on similar legal or equitable grounds, whether implied or otherwise.

Screen Australia reserves the right to vary its Terms of Trade and/or program guidelines at any time, to exercise its discretion to make an exception under the Terms of Trade or guidelines in exceptional circumstances, and to terminate any program at any time.

The Terms of Trade and program guidelines in effect at the time an application is received by Screen Australia apply to the application.

# TERMS OF TRADE

Except for the Introduction and section 1, these Terms of Trade do not apply to projects that seek Screen Australia funds only through the Producer Equity Program.

## 1. GENERAL MATTERS

This section applies to all Screen Australia funding programs, including the Producer Equity Program for low-budget documentaries.

### 1.1 General eligibility for Screen Australia funding

In the following provisions:

- (1) “broadcaster” means a company providing television broadcasting services in Australia (including subscription television services) under the *Broadcasting Services Act 1992 (Cth)*.
- (2) “related party” means:
  - (a) a director or other officer of an applicant company; or
  - (b) the holding company or a subsidiary of an applicant company; or
  - (c) any company of which an individual applicant is a director or other officer; or
  - (d) any other company of which a director or other officer of an applicant company is a director or other officer.

#### 1.1.1 Applicant eligibility

The following paragraphs set out eligibility provisions specific to individual applicants and company applicants, and then ‘common eligibility rules’ applicable to both individuals and companies (and, to the extent indicated, to related parties). It should be noted that the eligibility rules will also apply to the contracting entity or entities (if different from the original applicant), including any special purpose rights holding and/or production services companies.

**An individual applicant** must be:

- (a) an Australian citizen; or
- (b) an Australian resident, being a person who is lawfully domiciled in Australia, and who has actually been in Australia, continuously or intermittently, for more than one half of the year immediately preceding the application.

An individual applicant must not be:

- (a) an employee of a broadcaster;
- (b) enrolled full-time in a film, television or interactive digital media course at a film school or other tertiary educational institution. Applications from part-time students will be assessed on a case-by-case basis; or
- (c) acting in the capacity of a trustee of a trust.

**An applicant that is a company** must be:

- (a) incorporated and carrying on business in Australia, and have its central management and control in Australia.  
By way of exception to this provision, when applying for P&A funding (or similar marketing support), a company which would otherwise be ineligible may be funded where it is considered appropriate in all the circumstances to do so.

An applicant that is a company must not be:

- (a) a broadcaster;
- (b) a holding company or subsidiary of a broadcaster;
- (c) jointly owned by one or more companies referred to in (a) or (b); or
- (d) acting in the capacity of a trustee for a trust.

**All applicants must also:**

- (a) not be in breach of any obligation under any agreement they have with Screen Australia or any of Screen Australia's predecessors;
- (b) always act 'in good faith' in all their dealings with Screen Australia (see 1.2 below);
- (c) have the capacity and resources to carry out the project or proposal that is the subject of the application;
- (d) have the right to carry out the project or proposal that is the subject of the application (including any relevant copyright and appropriate clearances from all significant participants). If the application is based on an underlying work, Screen Australia will expect, at the least, an appropriate option; and

have meaningful creative control of the project that is the subject of the application. Where a related party to an applicant is in breach of an obligation under an agreement with Screen Australia or any of its predecessor agencies, Screen Australia reserves the right to regard the applicant as ineligible.

Screen Australia also reserves the right not to accept an application where a key principal on a project, such as a director or executive producer, is a person who would be ineligible by reason of a breach of agreement with Screen Australia or its predecessor agencies by that person or a related party.

### **1.1.2 Project eligibility**

In order to provide funding to any project, Screen Australia must be satisfied either that the project is an official co-production or that the project has significant Australian content. These tests will be applied having regard to the project's stage of development.

## **1.2 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.

In addition Screen Australia expects that communications between its staff and funding applicants will be courteous and respectful. Screen Australia reserves the right to not accept applications for funding from any person who Screen Australia forms the view persistently treats our staff in a discourteous, hurtful or intimidating fashion, nor will Screen Australia enter into correspondence with any such person.

Screen Australia also expects all recipients of funding support to act fairly and reasonably in relation to third parties involved in the funded project. Fairness and reasonableness include:

- (a) paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including key creatives, cast and crew;
- (b) respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property rights.

**1.3 Fees**

Screen Australia may charge fees for some services, as set out in Schedule A.

**1.4 Audit rights**

Screen Australia may require funding recipients to provide an independent audit report in relation to expenditure of Screen Australia funds. For example, where Screen Australia provides investment of one million dollars or more, a complete audit is required of all production expenditure at project completion.

Where an independent audit report is not required, Screen Australia may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, Screen Australia reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contract requirements.

**1.5 GST**

Generally, GST is payable on Screen Australia's funding and fees. Screen Australia requires the applicant to have an Australian Business Number (ABN), and to register for GST if required by law. Where GST is payable, Screen Australia will require the applicant to issue a Tax Invoice as a precondition to drawdown of the Screen Australia funds.

**1.6 ISAN**

All projects in which Screen Australia holds copyright are required to have an International Standard Audiovisual Number (ISAN).  
See [www.australasia-isan.org/](http://www.australasia-isan.org/)

**1.7 Reporting and information provision**

For all projects and activities with funding from Screen Australia (whether by way of recoupable equity investment, grant or loan), the recipient will be required to provide some form of reporting/acquittal.

For example, in the case of recoupable investment funding, the producer will be required to provide regular reporting in relation to the 'Marketing' of the project and 'Gross Receipts' (as those terms are defined in the relevant funding agreement).

In addition, funding recipients may also be required to provide information about the funded project or activity for the purposes of Screen Australia's strategy and research function.

The information requirements will be set out in the relevant funding agreement.

---

**2. CREDITING SCREEN AUSTRALIA**

---

Screen Australia requires acknowledgement of its support, for example by way of a credit on the project and its publicity materials. Credit requirements vary according to the nature of the support provided by Screen Australia and are detailed in the funding agreement.

---

**3. INDIGENOUS CONTENT**

---

Where there is Indigenous content or participation in any production, the producer is required to comply with Screen Australia'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 and *Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts* available from

[www.screenaustralia.gov.au/funding/business/Indigenous\\_Content.aspx](http://www.screenaustralia.gov.au/funding/business/Indigenous_Content.aspx)

---

## 4. PRODUCER CONTRIBUTIONS AND LIMITS ON SCREEN AUSTRALIA FUNDING

---

### 4.1 Limits on Screen Australia funding

There are limits on the amount of funding that Screen Australia can provide for an individual project.

In the case of projects eligible for the Producer Offset ("Offset projects") or documentaries eligible for Producer Equity ("Producer Equity projects"), the amount of direct support that Screen Australia can provide will be limited so that total Commonwealth Government funds, including the Offset or Producer Equity, are capped. These caps are set out in the relevant program guidelines.

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of the budget.

### 4.2 Producer contributions

Screen Australia expects the producer to make a contribution towards the production budget for Offset and Producer Equity projects.

For Offset projects, that contribution will be at least 90% of the projected value of the Offset for feature films and television, and at least 85% of the projected value of the Offset for documentaries.

Screen Australia will not cashflow the Producer Offset or any part of the Producer Offset.

For Producer Equity projects, the full value of the Producer Equity payment must be contributed to the production budget.

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

### 4.3 Producer's equity

The following Commonwealth Government contributions to the production budget are deemed to be the producer's equity:

- the portion of the Producer Offset contributed to the production budget (see 4.2), or the Producer Equity payment if applicable,
- all Screen Australia grant funding.

Screen Australia expects the producer's recoupment share and position to be commensurate with its equity share.

---

## 5. TERMS OF FUNDING

---

### 5.1 Screen Australia grants

Production funding will be provided as a grant where Screen Australia's total contribution (including any development funds) is \$500,000 or under. The amount of a grant will not exceed \$500,000.

Screen Australia does not require a share of copyright in productions that it funds under a grant.

Screen Australia does not take a share of receipts from projects funded under a grant. This means funding provided under a grant does not have to be repaid other than:

- (a) in case of breach by the producer;
- (b) where not all of the grant is required; or
- (c) where further funding is provided by way of a recoupable investment (equity) in relation to the same project.

The application and assessment process is the same where funding is provided as a grant as it is for other production funding. However, the contracting process for grants is generally faster and requires less contractual documentation than for equity investments.

Screen Australia will provide production grant funding to successful applicants subject to the terms and conditions of Screen Australia's standard production grant agreement (PGA). Screen Australia will not enter into negotiations with grant recipients in respect of the Core Conditions of the PGA other than in exceptional circumstances.

## **5.2 Screen Australia equity investments**

Screen Australia production funding over \$500,000 will be provided as a recoupable equity investment.

For production funding provided as a recoupable equity investment, Screen Australia requires an initial recoupment entitlement to participate in gross receipts commensurate with its investment. The recoupment structure for a project will be determined on a case-by-case basis taking into account Screen Australia's investment and the investment of others, both equity and non-equity investors.

If a related entity of the producer makes a financial contribution to the budget it must be made under an arm's length arrangement i.e. on standard market terms.

It is expected that Producers receive the recoupment position associated with their equity (see 4.3). Once all equity investment is repaid, the producer's profit share will be 50%. All equity investors (including the producer in relation to the Producer Offset equity and any other producer equity) will share the remaining 50% *pro rata, pari passu*.

Financial contributions to the production that are paid against a ROW territory sale, including distribution guarantees, advances, minimum guarantees, cashflow loans for those contributions, or gap loans, can only be recouped out of receipts from the applicable territory.

## **5.3 Development funding**

If a project has received development funding from Screen Australia and proceeds to production with Screen Australia finance, the previous funding must be recognised in the production budget (as an above-the-line cost) and will become part of Screen Australia's total investment in the project.

Where the project goes into production without Screen Australia funding, Screen Australia may require the producer to repay the development funding previously provided by Screen Australia in order to acquire any copyright interest held by Screen Australia, in which case see 6.1 below.

## **5.5 Subordination**

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.

## **5.6 Screenrights**

Screen Australia does not require Screenrights revenue to form part of Screen Australia's gross receipts.

## **5.7 Recoupment**

The producer is ultimately responsible for the collection and disbursement of all gross receipts. For feature films, Screen Australia will generally require the appointment of a collection account manager (CAM) for all territories other than

Australia and New Zealand; a CAM is not required for Australia and New Zealand but approval is required over the terms of any disbursement and collections agreement entered into.

### 5.8 Official co-productions

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

---

## 6. RIGHTS FOR DEVELOPMENT AND PRODUCTION FUNDING

---

### 6.1 Copyright and underlying rights

Screen Australia requires the producer to have, or be in a position to acquire on appropriate terms, an assignment of all underlying rights required to make and exploit the project and any sequels, spinoffs and remakes (including a format) as outlined in 6.2 below.

In relation to production funding, Screen Australia requires the producer to provide a satisfactory chain of title opinion letter from an appropriately qualified solicitor. This requirement may also apply in relation to film and television development funding where the chain of title is particularly complex or Screen Australia considers there to be exceptional circumstances.

For projects that Screen Australia funds through a recoupable investment, Screen Australia requires a 1% copyright interest for the duration of the project's copyright with the balance of copyright to be owned by the producer.

The producer may grant a share of its copyright to other equity investors but not to non-equity investors. Producers cannot assign their copyright in the film to another party unless the producer has the prior written approval of Screen Australia.

When a film or television project that has received development funding from Screen Australia does not proceed to production with Screen Australia funding, the producer may purchase any copyright held by Screen Australia subject to the terms of the relevant development agreement(s). Where there is no provision in the agreement(s) for purchase of copyright held by Screen Australia the producer may be required to repay the development funding in order to acquire the copyright.

### 6.2 Sequels, Spin-offs and Remakes

In the case of all recoupable funding, Screen Australia requires prior approval of every agreement granting a licence (or an option to acquire a licence) to make a Sequel, Spin-off, or Remake (including format sale). A Sequel includes a project based on the format of the original project. This approval right applies regardless of the identity of the licensing entity (for example, the licence to make the Sequel, Spin-off or Remake which requires Screen Australia's prior approval may be offered by the original producer or a marketing licensee such as a sales agent or distributor, and the marketing licensee may be related to the original producer or an arm's length entity).

In the case of all recoupable production funding of **documentary, TV drama and feature films**, where the right to make a Sequel, Spin-off or Remake (including a program based on the format of the original program) is optioned or acquired, the following principles apply:

- (a) If the Sequel, Spin-off or Remake is to be produced by the original producer or a Related Entity (see glossary for a definition of Related Entity), whether in Australia or elsewhere, Screen Australia requires the right to receive a fee in the production budget of each and every Sequel, Spin-off or Remake calculated as follows:



Feature films:	1.5% of budget uncapped
Adult TV and Documentary series (less than 6 episodes):	1.5% of budget capped at \$125,000
Adult TV and Documentary series (6 or more episodes):	1.25% of budget capped at \$125,000
Children's TV:	1.25% of budget capped at \$125,000.

This fee is paid directly to the investors, and is not subject to any deductions. The fee does not go through the recoupment waterfall. For the avoidance of doubt, single-episode Sequels, Spin-offs or Remakes for adult TV and documentary programs fall within the category of series that are less than 6 episodes.

- (b) In addition to the applicable fee payable as per paragraph (a), if the entity producing the Sequel, Spin-off or Remake pays a fee for the licence to make the Sequel, Spin-off or Remake which exceeds the applicable fee set out in paragraph (a), the excess amount forms part of gross receipts and goes through the recoupment waterfall.
- (c) If the Sequel, Spin-off or Remake is to be produced by an Unrelated Production Company (see glossary for a definition of Unrelated Production Company), the price paid for the right forms part of gross receipts and goes through the recoupment waterfall.
- (d) If a fee is paid on the grant of an option to purchase the right to make a Sequel, Spin Off or Remake, the fee forms part of gross receipts and goes through the recoupment waterfall.
- (e) The fee referred to in paragraph (a) above is payable at the latest on the first day of principal photography (or on the first day of production in the case of an animated program). Any amount payable under paragraphs (b), (c) or (d) is payable by the producer or the relevant third party (e.g., sales agent) in accordance with the terms of the PIA or relevant marketing agreement.

### 6.3 NFSA rights

Screen Australia will require the producer to enter into a Delivery Deed with the NFSA, whereby the producer agrees to deliver certain items to the NFSA.

### 6.4 Other rights

In addition, Screen Australia requires the following rights:

- (a) the right to use the project and promotional materials for corporate and promotional purposes, including promotion of the Australian film, television, and digital media industries (as applicable); Screen Australia's rights extend to online use of excerpts of the project including on Screen Australia's websites and YouTube channel;
- (b) approval or meaningful consultation rights as set out in the project's funding agreement;
- (c) in the case of recoupable production funding:
  - (1) of TV drama and feature films, prior approval over any Major Territory deal (see glossary for a definition of Major Territory);
  - (2) of feature films only, prior approval any non-Major territory deal which is under the take price for the relevant territory approved by Screen Australia (in the sales agency agreement).

---

## 7. REVERSION

---

Screen Australia will revert its entitlement to gross receipts to a producer seven years after the first to occur of the following:

- the date of the first theatrical screening, broadcast or other communication of the title to the public in a territory defined as a Major Territory in the funding agreement for the title
- the date of the first disbursement of gross receipts derived from marketing the title.

This will apply to all production investments (including investments under the multi-platform and Indigenous programs) approved by Screen Australia since 1 January 2009.

Screen Australia's approach to reversion for titles approved by Screen Australia and its predecessor agencies before 1 January 2009 is set out in guidelines available on the Screen Australia website.

Where there is reversion, Screen Australia will:

- retain a 1% copyright share in the project;
- require annual reporting on sales and exploitation of the project for the purposes of Screen Australia research and analysis.

In order to be eligible for reversion, the producer must provide any reports which are outstanding under the relevant funding agreement and Screen Australia must be paid any Gross Receipts which are outstanding up to the date on which reversion takes effect. Once reversion takes place, any Disbursement Administration Service Agreement will terminate. Subject to any relevant continuing agreement, the producer will take on all responsibility to disburse gross receipts to any other investor who still has an interest in the project after the Screen Australia reversion.

---

## **8. COMPLETION GUARANTEE**

---

Generally Screen Australia requires the appointment of a completion guarantor for film and television production investment projects. This requirement will depend on the experience and track record of the producer, on the nature of the project and on Screen Australia's assessment of the risk of completion of the project.

Generally a completion guarantor will not be required for a documentary, a multiplatform project or a low-budget (non-Offset) feature film or TV drama, or for post-production (completion) funding.

---

## **9. ACCESSIBILITY OF SCREEN CONTENT**

---

Screen Australia requires feature films that it funds to be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas and DVD. The producer will need to budget for these requirements. Feature film producers are also required by Screen Australia to use reasonable endeavours to ensure that all Australian distribution agreements include access for the hearing and/or visually impaired via captioned and audio-described theatrical screenings and DVDs.

Screen Australia also encourages producers of all non-feature film content to budget for captioning and audio description, and for accessible web design, to provide access to their projects for both hearing and visually impaired audiences.

---

## **10. DELIVERY ITEMS FOR SCREEN AUSTRALIA AND NFSA**

---

### **10.1 Deliverables for Screen Australia**

As a condition of funding, the producer must deliver the materials required in the funding agreement.

Screen Australia deliverables must be included in the project budget.

## **10.2 Deliverables for the NFSA**

For all film and television projects, the materials specified in the Delivery Deed between the Producer and the NFSA (see 6.3 above) are to be delivered directly to the NFSA (at the best quality available and at the completed resolution).

NFSA deliverables must be included in the project budget.

## GLOSSARY

### CASHFLOW

Funds provided by an investor, the producer, a distributor, broadcaster or lender 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 to produce and exploit the film or other funded project. Examples of chain of title documents include option agreements, extension of option agreements, writer's agreements, quitclaim deeds and co-development agreements.

### COLLECTION ACCOUNT MANAGER (CAM)

The organisation (usually overseas) appointed to collect international 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 or interparty agreement (as applicable).

### 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 project. This means that they will meet budget overages to ensure that the film is completed and delivered.

### COPYRIGHT

The exclusive right to copy, broadcast, perform, exhibit, communicate to the public 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.

### GROSS RECEIPTS

All revenue from sales of a film, and all 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 (for example, revenue from marketing a film) or only on the occurrence of a particular event.

### MAJOR TERRITORY

The term 'Major Territory' is used in the context of Screen Australia's recoupable investment funding only. In particular, it is used in the context of Screen Australia's right to pre-approve sales or licenses of the funded program and in relation to the distribution commission rates which will be acceptable to Screen Australia (Screen Australia expects distributors to charge a lower rate of commission in respect of Major Territory deals).

The following territories are designated by Screen Australia as Major Territories:

- a) Australia;

- b) North America as one territory;
- c) USA;
- d) China;
- e) world as one territory including or excluding Australia;
- f) Europe as one territory;
- g) UK;
- h) Italy;
- i) France;
- j) Spain;
- k) Scandinavia as one territory;
- l) Germany; and
- m) Japan.

### **NON-OFFSET PROJECT**

Describes projects where the producer cannot claim the Producer Offset (being, generally, projects which do not meet the Producer Offset's eligibility requirements in terms of budget, qualifying expenditure and/or format).

### **OFFICIAL CO-PRODUCTION**

A production between two or more countries that is officially approved as made under a treaty, or another form of government or quasi-government arrangement (typically, a Memorandum of Understanding or 'MOU'). In addition to meeting the requirements of the relevant treaty or MOU, in order to be approved as an Official Co-production, the project must comply with Screen Australia's International Co-production Guidelines.

### **OFFSET PROJECT**

Projects which would be eligible for the Producer Offset in terms of budget, qualifying expenditure and format.

### **PRODUCER EQUITY PAYMENT**

Payment under Screen Australia's Producer Equity Program, which provides direct, non-recoupable funding in lieu of the Producer Offset for eligible documentary projects with budgets of \$500,000 or less. The payment amounts to 20% of the approved production budget (noting that certain items such as deferred fees are excluded from the budget for these purposes). The program is administered by Screen Australia separately from its administration of the Producer Offset, and according to Producer Equity Program Guidelines.

### **PRODUCER OFFSET**

The Producer Offset is a tax-based incentive based on expenditure on goods and services provided in Australia. It is available to eligible feature films at 40% of Qualifying Australian Production Expenditure (QAPE) and for eligible formats other than feature films at 20% of QAPE, as set out in the *Income Tax Assessment Act 1997* (ITAA 1997). Screen Australia is the *film authority* for the purposes of the ITAA 1997 and administers the Producer Offset scheme separately from its development, production and marketing support functions.

### **PRO RATA AND PARI PASSU**

The expression relates to contributions to a project's budget and to recoupment of investments, and refers to the percentage and timing of contribution or recoupment. A *pro rata* contribution or recoupment is one that is provided or received in proportion to the contributor/recipient's interest in the project. *Pari passu* contributions or recoupment are made or received at the same time as contributions or recoupment of another party.

#### **RELATED ENTITY**

In the context of clause 6.2, this term refers to a related body corporate of the producer or any corporation of which the producer is a director.

#### **SUBORDINATION**

A subordinated investment is one in which the investor recoups on less favourable terms than other investors, e.g. an investor invests 40% of the budget with another who invests 60%, but on terms that the 40% investor recoups 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 in order to be able to produce and commercially exploit the project, such as rights in relation to the novel or play on which the script is based.

#### **UNRELATED PRODUCTION COMPANY**

In the context of clause 6.2, this term refers to an entity which is not the producer and not a Related Entity of the Producer.

### **Schedule A: Fees**

Unless otherwise indicated in the Program Guidelines, Screen Australia charges the following non-refundable fees (plus GST):

- Application fee for reversion of entitlement to gross receipts (see item 7):
  - \$100 – documentary projects
  - \$300 – all other project reversions.

## Change log

### 26 July 2016:

#### 1.1.1 Applicant Eligibility

Clarification that individuals and companies acting in the capacity of a trustee for a trust are ineligible for Screen Australia funding.

#### 5.2 Equity Investment

Clarification that related entity transactions must be at arm's length.

Financial contributions against a ROW territory sale to be recouped from that territory.

#### 6.1 Copyright

Clarification that only equity investors may hold copyright in the film.

Definition of 'Major Territory' now includes China

### 10 November 2015

#### 6.1 Copyright and underlying rights

Clarification regarding Producer to obtain an assignment of underlying rights.

### 9 December 2014:

#### Application of Terms of Trade and program guidelines:

Additional text: 'Screen Australia reserves the right to...exercise its discretion to make an exception under the Terms of Trade or guidelines in exceptional circumstances,...'

#### 4.1 Limits on Screen Australia funding

Removed specific percentages for caps on Commonwealth Government funding as a percentage of budget. Refer to program guidelines.

#### 4.2 Producer contributions

Clarification that for Producer Equity projects, producers must contribute 100% of the value of the Producer Equity payment to the project budget.

#### 4.3 Producer's equity

New point drawing together the terms that relate to the producer's equity and position.

#### 5.1 Grants

- Incorporation of grant threshold amount (previously incorporated into program guidelines)
- Clarification of application, assessment and contracting process for funding provided as a grant.
- Clarification that terms and conditions under Screen Australia's production grant agreement are not negotiable other than in exceptional circumstances.

#### 5.3 Development funding

Clarification of circumstances where development funding may need to be repaid.

#### 6.1 Copyright and underlying rights

Further clarification of circumstances where development funding may need to be repaid.

#### 7 Reversion

Reference to games deleted

**10.1 Deliverables for Screen Australia:**

Deletion of list of specific delivery materials.

**Schedule A: Fees**

Deletion of Screen Australia legal and administration fee for production funding, and discretionary legal and administration fee for variations to funding agreements.

**24 July 2014:****Introduction**

- Removal of reference to games funding.
- Addition of paragraph confirming that Terms of Trade and program guidelines do not constitute an offer.
- Amendment of provisions regarding changes to Terms of Trade and program guidelines to read "The Terms of Trade and program guidelines in effect at the time an application is received by Screen Australia apply to the application."

**1.1.1 General eligibility for Screen Australia funding**

- Addition of word 'lawfully' to: 'An individual applicant must be: (b) an Australian resident, being a person who is lawfully domiciled in Australia, ...'
- Addition of 'or its predecessor agencies' to final paragraph of 1.1.1

**5.1 Grants**

- Addition of statement regarding the contracting process for grants.

**5.3 Development funding**

Removal of reference to prototype funding.

**6.1 Copyright and underlying rights**

Removal of reference to Screen Australia requiring a copyright interest in projects where it provides grant funding in excess of \$100,000.

**6.2 Sequels, spin-offs and remakes**

- In paragraph 1, addition of '(including format sale)' after 'Sequel, Spin-off or Remake'
- Removal of reference to games.

**6.3 NFSA rights**

Removal of special requirements for National Documentary Program projects

**6.4 Other rights**

Removal of reference to games

**8 Completion guarantee**

Clarification that the requirement for a completion guarantor will depend on Screen Australia's assessment of the risk of completion of the project.

**9. Accessibility**

Removal of reference to games

**10.1. Deliverables for Screen Australia**

Removal of reference to games

**10.2. Deliverables for NFSA**

Removal of special requirements for National Documentary Program projects

**Schedule A: Fees**

Additional point regarding discretionary legal and administration fees for variations.

**17 February 2014:****5.6 Recoupment**

Deletion of reference to Screen Australia offering a disbursement administration service. Addition of clarification that for feature films: although a collection account manager (CAM) is not required for Australia and New Zealand, approval is required over the terms of any disbursement and collections agreement entered into.



**Schedule A Fees**

Deletion of reference to disbursement administration service.

For earlier changes, see change log available at  
[www.screenaustralia.gov.au/funding/business/Terms\\_of\\_trade.aspx](http://www.screenaustralia.gov.au/funding/business/Terms_of_trade.aspx)