



TERMS OF TRADE AND CONTRACTING

Overview

Please note: As of June 1st 2019, these Terms of Trade are under review.

Screen NSW terms of trade align with Screen Australia's unless otherwise stated. For clarity, any requirements specific to Screen NSW are highlighted in **shaded bold**.

These terms of trade broadly set out the core terms on which the agency will transact its business. Contracts entered into between Screen NSW and funding applicants reflect both these terms of trade and the specific requirements for each program set out in the program guidelines, including eligibility requirements, assessment criteria, funding caps and other matters specific to a program.

Screen NSW reserves the right to vary its terms of trade and/or program guidelines at any time, to exercise its discretion to make 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 NSW apply to the application.

See the [Funding & Incentives](#) webpage for program information

1. GENERAL MATTERS

This section applies to all Create NSW funding programs.

1.1. General eligibility for Screen NSW 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 (if different from the original applicant).

An individual applicant must be:

- a) an Australian citizen who has legal capacity;
- b) an Australian resident, being a person who is 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;
- c) A NSW-based applicant must be based in and working from NSW, and ordinarily have lived in NSW for at least six months immediately prior to the date of the application;**
- d) A NSW-based Key Creative must be based in and working from NSW, and ordinarily have lived in NSW for at least six months immediately prior to the date of the application.**

An individual applicant may 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.

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;
- b) a NSW-based company must be registered in NSW and have its principal place of business in NSW for at least six months immediately prior to the date of the application; and**
- c) for applicants seeking development or production finance, a company must be active in the film/TV/interactive media business.**

An applicant that is a company may not be:

- a) a broadcaster;
- b) a holding company or subsidiary of a broadcaster; or
- c) jointly owned by one or more companies referred to in (a) or (b).

All applicants must also:

- a) not be in breach of any obligation under any agreement they have with Screen NSW;
- b) always act 'in good faith' in all their dealings with Screen NSW (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 NSW will expect, at the least, an appropriate option (Refer Item 5.3 below for development projects); and
- e) 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 NSW or any of its predecessor agencies, Screen NSW reserves the right to regard the applicant as ineligible.

Screen NSW 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 NSW by that person or a related party.

1.1.2. Project eligibility

Applicants must be able to demonstrate that their 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.

In some cases Screen NSW may fund projects not meeting the budget eligibility requirements of the Producer Offset.

Screen NSW will use its discretion as to whether an applicant may need to apply for provisional Producer Offset certification in order to demonstrate compliance.

1.2. Acting in good faith

Screen NSW acts in the public interest and must exhibit the highest levels of propriety in its dealing with applicants. Screen NSW requires applicants to act in the same way in their dealings with Screen NSW. Applicants must be honest and open in all dealings with Screen NSW. They must not mislead or deceive Screen NSW by act or omission.

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

Screen NSW 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:

- ♦ 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;
- ♦ 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 NSW does not charge fees.

1.4. Audit rights

Screen NSW will require funding recipients to provide an independent audit report in relation to expenditure of Screen NSW funds in line with Screen Australia requirements.

The report from the auditor must also confirm the actual eligible dollar amount spent in NSW. The report must comply with the definition of eligible NSW spend at Clause 7 of these Terms of Trade.



Where an independent audit report is not required, Screen NSW will require the funding recipient to provide a statutory declaration verifying compliance with the contracted eligible NSW Spend.

In all cases, Screen NSW 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 NSW funding. Screen NSW requires the applicant to have an Australian Business Number (ABN), and to register for GST if required by law. Where GST is payable, Screen NSW will require the applicant to issue a Tax Invoice as a precondition to drawdown of the Screen NSW funds.

1.6. ISAN

All projects in which Screen NSW holds copyright are required to have an [International Standard Audiovisual Number \(ISAN\)](#).

1.7. Reporting and information provision

For all projects and activities with funding from Screen NSW (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).

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

2. CREDITING SCREEN NSW

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

For more information, see 'Screen NSW Style Guide'

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 guidelines [Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts](#).

4. PRODUCER CONTRIBUTIONS

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4.1. Intentionally Deleted

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4.2. Producer Contributions

Screen NSW expects the producer to make a contribution towards the production budget for Producer Offset Projects.

For Offset Projects, that contribution will be at least 90% of the projected value of the Producer Offset for feature films and television, and at least 85% of the projected value of the Producer Offset for documentaries. That proportion of the Producer Offset that becomes a contribution to the production budget will be deemed to be the producer's equity in the project (in addition to any other equity contributed by the producer).

Where the producer intends to cashflow the value of the Producer Offset into the production, Screen NSW will require documentation to substantiate that the funds are available and (as applicable) will require a loan agreement outlining any fees or interest to be charged to the production, together with evidence that all associated fees and charges have been included in the 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. Intentionally Deleted

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5. TERMS OF FUNDING AND GROSS RECEIPTS

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5.1. Grants for Production

Production funding will be provided as a grant where the Screen NSW contribution is \$100,000 or less and where Screen Australia is also contracting its contribution as a grant.

Screen NSW does not require a share of copyright in productions that it funds under a grant and does not take a share of receipts.

This means funding provided under a grant does not have to be repaid other than:

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

5.2. Equity Investment for Production

Screen NSW production funding over \$100,000 will be provided as a recoupable equity investment.

Screen NSW requires an initial 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 the investment by Screen NSW and by other equity and non-equity investors.

Producers will 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.

Refer to the [Screen NSW Finance Plan Templates](#) for the preferred Recoupment Structure.

5.3. Screen NSW Development funding

Investment or Grant

Development funding is generally provided by way of investment. Development funding for interactive projects may be provided by way of a grant where circumstances require that funds are contracted as a grant and this will be determined on a case-by-case basis.

Festival Travel and Business Plan funding of \$5,000 or less is generally contracted as a grant.

Cashflow for Development

On execution of the agreement 80% On delivery of the Delivery Materials 20% Payment terms: 14 days

Option Agreement

Screen NSW generally requires that the applicant has acquired or is in a position to acquire, prior to contracting, an option in relation to Underlying Rights with an initial option period of at least 18 months and an option to extend for at least a further 12 months.

Trusts

Screen NSW will not contract with applicants under a trust arrangement.

Contracting timeframe for development

Screen NSW generally requires applicants for development funding to complete contracting within four weeks of the date of approval of the funding application. This is to ensure that Screen NSW development funds are available to support the NSW industry in a timely manner. Screen NSW retains the right to withdraw an offer of funding if contracting requirements are not met within this timeframe.

Screen NSW development reinvestment

To encourage and support increased production activity in NSW and to support NSW-based businesses, Screen NSW offers a reinvestment of development funding to NSW-based producers for projects going into production in NSW or into the producer's production business.

The reinvestment amount is capped at \$45,000 of the development investment provided by Screen NSW (without any premium).

Reinvestment is available at the time the project is financed. Producers wishing to invest the development funding in the project will include it in the finance plan as part of the production company's total investment in the project.

This support is available:

- ♦ to production companies that are both registered in NSW and have their principal place of business in NSW;
- ♦ where the production is 100% produced and/or 100% post produced in NSW (for international coproductions the percentage refers to the Australian component of the production); and
- ♦ to production companies that have complied with their obligations under all current agreements, including development agreements, with Screen NSW.

The Screen NSW Development Investment Agreement sets out the mechanism for this support and the obligations to repay development investment where reinvestment is not available.

Screen NSW may agree to rollover development investment up to \$45,000 in a project that is not 100% produced or post produced in NSW if the reinvestment would strategically assist a NSW producer. In such cases, the reinvestment would be treated as Screen NSW equity rather than producer equity.?

5.4. Subordination

Generally, Screen NSW will not subordinate its recoupment right to other equity investors. Screen NSW expects to participate in gross receipts pro rata and pari passu with other equity investors.

Screen NSW wishes to support producers who secure private investment in their projects and reserves the right to review its position in relation to private investment recoupment on a case-by-case basis.

5.5. Screenrights

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

5.6. Recoupment

The producer is ultimately responsible for the collection and disbursement of all gross receipts. Screen NSW will generally require the appointment of a collection account manager for feature films for all territories other than Australia and New Zealand. Screen NSW does not require the appointment of a third party to disburse gross receipts generated in Australia and New Zealand.

5.7. 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.

5.8. Rushes

Screen NSW may request that the producer deliver rushes from a project to Screen NSW daily during the first week of principal photography of the project, and weekly thereafter.

5.9. Cashflow for Regional Filming Fund and Production Finance

Regional Filming Fund

Screen NSW generally requires two drawdowns:



On the later of executed agreement/start of shoot 80%

Receipt and approval of Regional Report 20%

Production

Screen NSW generally requires three drawdowns for grants: Execution of agreement / commencement of Pre 60% Approval of rough cut [and r/cut cost report] 30% Delivery of marketing materials and reports 10% Screen NSW generally requires five drawdowns for investment: Execution of agreement / commencement of Pre 30% Commencement of shoot 40% Commencement of post 25% Delivery of DVDs and marketing materials 3% Delivery of audit and NSW production report 2% Payment terms: 14 days upon receipt and approval of a valid tax invoice

Where the project has a completion guarantee and Screen Australia is the major agency investor, Screen NSW will generally align drawdown percentages with those of Screen Australia.

5.10. Contracting time frame for production

Screen NSW generally requires applicants for production funding to commence contracting within three months of the date of approval of funding applications, to complete contracting within six months of the date of approval and to draw down all funds within a further twelve months. This will ensure that Screen NSW funds are available to support the industry in the State in a timely manner.

5.11. Insurances

The production company must take out and maintain the following insurance unless otherwise agreed by Screen NSW:

- ♦ public liability (not less than \$20,000,000);
- ♦ workers' compensation insurance;
- ♦ negative all-risks insurance;
- ♦ multi-risk insurance;
- ♦ FPI; and
- ♦ errors and omissions insurance

Plus any other insurances that the investors may reasonably require having regard to the nature of the production of the project.

6. RIGHTS FOR DEVELOPMENT AND PRODUCTION FUNDING

6.1. Copyright and underlying rights

Screen NSW requires the producer to have, or be in a position to acquire on appropriate terms, all underlying rights required to make and exploit the project. In relation to production funding Screen NSW will generally require the producer to provide a satisfactory chain of title opinion letter from an



appropriately qualified solicitor. This requirement may also apply in relation to development funding where the chain of title is particularly complex or Screen NSW considers there to be exceptional circumstances.

Should you require assistance with template agreements, Screen Producers Australia has a set of negotiated agreements and template agreements that you may wish to use and which can be accessed at: screenproducersaustralia.org.au

Screen NSW requires a 1% Copyright interest, for the duration of the project's Copyright in all projects for which it provides recoupable production investment (equity).

Screen NSW does not take a Copyright interest in projects where it is providing development funding.

6.2. Sequels, spin offs and remakes

In the case of all recoupable funding, where Screen Australia is not an investor, Screen NSW requires prior approval of every agreement granting a licence (or an option to acquire a licence) to make a Sequel, Spin-off, or Remake. 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 NSW'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 arms' length entity).

In the case of all recoupable production funding, 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 NSW 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

In the case of all funded film and television projects, Screen NSW 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 NSW requires the following rights:

(a) the right to use the project and promotional materials for corporate and promotional purposes, including promotion of the NSW film, television and digital media industries (as applicable); Screen NSW's rights extend to online use of excerpts of the project including on the Screen NSW website 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 of TV drama and feature films (where Screen Australia is not providing equity investment), prior approval over: (1) any Major Territory deal (see glossary for a definition of Major Territory); and (2) any non-Major territory deal which is under the approved take price for the relevant territory (in the sales agency agreement).

7. NSW SPEND; 100% POST PRODUCTION IN NSW; PRODUCTION ATTACHMENTS

NSW Spend

This means all services provided by and invoiced by a NSW-based contractor or supplier.

Specific exclusions to note include application fees for the Producer Offset, screen agency administration fees, SPA fees and financing costs (administration and interest).

The contingency may only be included where the whole production takes place in NSW.

The eligible NSW Spend is presented in the production investment agreement (PIA) or grant agreement (PGA) as both a dollar amount and as a percentage of the budgeted cost. This is determined at the time of application and is a contractual obligation under the funding agreement. The producer must provide an audited statement of NSW Spend as part of the final audit (per the PIA) OR provide a statutory declaration of NSW Spend for grants (per the PGA) together with a NSW production report at final delivery.

100% Post Production in NSW

In some cases, a project may be eligible for Screen NSW funding on the basis that it is conducting 100% of its post- production in NSW. In general, to claim eligibility on this basis,

all post production heads of department should be NSW-based and all post production from picture edit to delivery should be conducted in NSW facilities.

Screen NSW recognises that sometimes it may not be possible to expend certain post production line items in NSW, resulting in the intention to conduct 100% of postproduction from picture edit to delivery being subsequently compromised.

In these instances Screen NSW may still consider post to be conducted 100% in NSW. Those line items will be “Allowable Post Exclusions” for the purposes of calculating 100% Post Production in NSW.

Carrying out these services in NSW wherever possible increases the eligible NSW Spend and may increase the amount of Screen NSW funding that can be provided for the project.

Allowable Post Exclusions are post production costs that cannot feasibly be carried out in NSW and include the following:

- film Lab services that are not available in NSW;
- location editing costs during the shoot;
- non-NSW ADR/post sync costs where international or interstate cast must conduct that work out of NSW because of their availability;
- music licences where the rights to an international track that adds value to a production are owned by a non-NSW based publisher;
- marketing costs that cannot be spent in NSW;
- delivery items that are not available through a NSW based company.

Please note that generally the composer, like other post-production heads of department, is expected to be NSW based. In exceptional circumstances, such as where the composer is organic to the material, this cost may be an Allowable Post Exclusion.

Production Attachments

Where Screen NSW provides production finance between \$100,000 and \$200,000, producers are required to provide for one NSW based production attachment to any above or below the line position from within the production budget. Where Screen NSW provides \$200,000 or more, two NSW based attachment positions will be required.

Attachments must be employed at no less than industry award rates (for 40-hour weeks, Level 1 MPPA rate, not including scheduled or standard overtime) and must be of a duration that is at least equivalent to the number of scheduled shooting weeks (a minimum of 6 weeks). Applicants for production finance must allow for the fulfilment of this obligation in their production budgets and provide the proposed position of each attachment at the time of application, and the name if available.

8. COMPLETION GUARANTEE

Generally, Screen NSW requires the appointment of a completion guarantor for film and television projects that receive production finance.

Applicants may submit a request a waiver of this requirement. Requests must be made in writing at the time of application and will be considered on a case-by-case basis.



In considering for waiver of completion guarantee requests Screen NSW will take into consideration:

- a) the level of Screen NSW finance;
- b) the experience and delivery history of the producer;
- c) whether other agencies or broadcasters co-financing the project have agreed to waive the requirement for a completion guarantee for the project.

In circumstances where a request is approved Screen NSW will generally require:

- a) a minimum contingency of 10% below-the-line costs;
- b) budgeted insurances appropriate to the proposed project;
- c) demonstrated capacity of the producer or production company (or nominated party) to cover any overages and meet delivery requirements;
- d) adequate budget provision for currency fluctuations (where applicable);
- e) adequate budget provision for delivery items to all overseas entities; and
- f) agreement to provide additional cost reports as required by Screen NSW.

For projects that do not have completion guarantees, Screen NSW:

- a) may require its funds to be cashflowed into the production later than other funds
- b) reserves the right to commission its own budget assessment on a case by case basis, and
- c) may take other steps to address any potential risk including requiring the applicant to provide an independent budget assessment from a suitable third party.

Screen NSW expects that any overages incurred in the absence of a completion guarantee will be recouped in the “completion guarantor” position, irrespective of which party meets the overages.

For supplementary funding rounds, eligible applications will require a completion guarantee and applicants should discuss with Screen NSW the specific form of the completion guarantee required.

9. ACCESSIBILITY OF SCREEN CONTENT

Screen NSW requires that feature films it finances 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 NSW 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 NSW also encourages producers of all non-feature film content to budget for captioning and audio description, and for web or game design to provide access to their projects for both hearing and visually impaired audiences.

10. DELIVERY ITEMS: SCREEN NSW, NFSA, STUDY GUIDE PROVIDER

Deliverables for Screen NSW

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



Screen NSW deliverables must be included in the project budget.

Where a producer seeks to substitute DVD deliverables with alternative access (online screeners), Screen NSW must have continued access to the project from the time of the DVD milestone payment and, in all cases, requires delivery of a DVD on request, and no later than first release within the home entertainment window anywhere in the world.

Deliverables for the NFSA

For all projects, the materials specified in the Delivery Deed between the producer and the National Film and Sound Archive of Australia (NFSA) 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.

Deliverables for the Study Guide Provider (*documentary)

Screen NSW requires the producer to supply an approved study guide publisher with three DVDs of the finished project, a electronic press kit and written publicity pack, and a post-production script.

The cost of the study guide must be included in the production budget as a line item of \$2500. If the publisher decides not to create a study guide, the \$2500 can be applied to marketing expenses.

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.

DEVELOPMENT PLAN

The applicant's strategy for the project's progression through the various stages of development. Applicants should consider how they envisage making the project and how this will impact on the script, personnel choices, marketing, financing and target audience.

FINANCE PLAN

The financial contributions that will be made to meet 100% of the proposed budget and the sources of those contributions. Proposed contributions may include agency investment, licence fees, loans, presales, equity and gap.

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.

KEY CREATIVES

Writer, director or producer

LETTER OF OFFER

A short form letter from a broadcaster, sales agent or distributor outlining the intention to provide finance to the project and the key deal terms of that proposed finance.

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 TERRITORIES

North America (as one territory), USA, Europe (as one territory excluding the UK), Italy, France, Spain, Scandinavia as one territory, Germany, Japan, Australia, United Kingdom (UK), the Republic of Ireland and the world as one territory including or excluding Australia.

MARKETING PLAN

A document outlining the specific efforts that the producer will make to penetrate the target market and describing the path that the project needs to travel to screen. The producer must identify the partners/companies/distributors they will be / hope to be affiliated with to bring the project to fruition. The Plan should also include key markets and festivals at which the producer intends to represent the project.

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 NSW International Co-production Guidelines..

PRODUCER OFFSET PROJECT

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

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 NSW 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.

PRODUCTION REPORT

A delivery item for all Screen NSW production finance projects containing information about the shoot, locations, employment, post-production and markets. This information is used to inform government, industry and the greater community about the NSW screen industry. A [template](#) is available on the Screen NSW website.

PRODUCTION SCHEDULE

A schedule detailing all key commencement / completion dates as the project moves through various stages of production from pre-production to final delivery.

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.

RECOUPMENT STRUCTURE

An outline of the recoupment arrangements, which includes the percentages due to the investors, and stages of recoupment, plus the net profit entitlement to the investors and other participants.

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.

SYNOPSIS

A brief and succinct description of the screenplay / project. The purpose of the synopsis is to highlight the plot and motivation of characters. Projects should have a one line, one paragraph and a one-page synopsis. It should be written in a way that is dynamic and grabs the attention of the reader, as this is often the first thing read by assessors, producers, distributors or network executives. Along with a good script, the synopsis is a powerful selling tool for a project.

TRAVEL REPORT

A two to three page report outlining the results of a market trip identifying all the companies and their representatives that the applicant met with, and the outcomes of the meetings. The report should also identify the specific highlights and focus of the market and the agents and distributors in attendance.

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 that is not the producer and not a Related Entity of the Producer.

WRITER'S STATEMENT

A one to two page statement outlining how the writer will progress the project during the development period. It should address the expectations for the stage of development, the benefits to the project and the professional development of the applicant, and the target market and audience.

CHANGE LOG

Change log effective 8 May 2015

6.1 Copyright and underlying rights: Additional text:



Should you require assistance with template agreements, Screen Producers Australia has a set of negotiated agreements and template agreements that you may wish to use and which can be accessed at: screenproducersaustralia.org.au

Change log effective 1 January 2015

Application of terms of trade and program guidelines: Additional text: 'Screen NSW reserves the right to ..exercise its discretion to make an exception under the Terms of Trade or guidelines in exceptional circumstances,..'

Change log effective for applications received after 1 July 2014

1.4 Audit rights

Now in line with Screen Australia requirements

5.1 Grants

Minimum and maximum funding clarified

5.3 Development

When funding is treated as grant or investment.

5.9 Drawdowns

Standard drawdowns for Regional Filming Fund and Development.

8. Completion Guarantees

Supplementary round requirements.

Change log effective 31 March 2014

Contracting timeframe for development – projects must be contracted within 30 days or Screen NSW retains the right to withdraw its offer of funding.

Applicants seeking development or production finance must be active in the film/TV/interactive media business.

Change log effective 13 September 2013

5.9 Payment terms

14 days

Previous change log effective 1 July 2013

1.4 Audit rights

Removal of references to 'production' and 'development' investment.

1.7 Reporting and information provision

Minor edits for clarity.

2 Crediting Screen NSW

Replacement of the word 'film' with 'project'.

6.1 Copyright

Addition of 'and underlying rights' to heading Amendments to clarify references to development funding as applying to film and television projects.

6.2 Sequels, Spin-offs and Remakes

New clause relating to approvals and fees for sequels, spin-offs and remakes

6.4 Other rights

Revisions to include reference to digital media.

8. Completion guarantee

Amendment to limit completion guarantee provisions to film and television projects.

Glossary: Major Territory – new definition, Pro rata and pari passu – edits for clarity, “Related Entity – new definition, “Unrelated Production Company – new definition

Previous change log effective 23 April 2013

COMPLETION GUARANTEE - overages

It is expected that any overages incurred in the absence of a completion guarantor be recouped in the “completion guarantor” position, irrespective of which party meets the overages.

CASHFLOW - drawdowns

Where the project has a completion guarantor attached and Screen Australia is the major agency investor, Screen NSW will match the drawdown % of Screen Australia.

GENERAL ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Amendment to definition of Australia permanent resident to:

An Australian permanent resident who holds a valid permanent residency visa, and is domiciled in Australia, and has been in Australia, continuously or intermittently, at least 6 months immediately prior to the application;

CREDITING SCREEN NSW

Amendment to the location credit to remove the requirement for a Screen NSW logo (where the logo is appearing in the final end credit):

All projects that receive production finance from Screen NSW must also include one of the following in the rolling end credits (dependent on the circumstances of each project):

Filmed on location in New South Wales, Australia or

Post-produced in New South Wales, Australia or

Filmed and post-produced in New South Wales, Australia

Draft credits must be pre-approved by the relevant Screen NSW representative.

TERMS OF FUNDING AND GROSS RECEIPTS

Administration Fees:

For projects approved on or after 25 July 2012, Screen NSW abolished administration fees for production investment of \$150,000 or more.

Investments under \$150k did not previously attract an administration fee.

COMPLETION GUARANTEE

Further qualification regarding the circumstances and requirements where Screen NSW is asked to waive the need for a completion guarantee.

In considering requests for the waiver of a completion guarantee Screen NSW will take into consideration:

(i) the level of Screen NSW finance;

(ii) the experience and delivery history of the producer; and

(iii) whether other agencies or broadcasters co-financing the project have agreed to waive the



requirement for a completion guarantee for the project.

In circumstances where a request is approved Screen NSW will generally require:
A minimum contingency of 10% Below-The-Line costs;

Budgeted insurances appropriate to the proposed project;

C. Demonstrated capacity of the Producer or production company (or nominated party) to cover any overages and meet delivery requirements;

D. Adequate budget provision for currency fluctuations (where applicable);

E. Adequate budget provision for delivery items to all overseas entities; and

F. Agreement to provide additional cost reports as required by Screen NSW.

DELIVERY MATERIALS FOR PRODUCTION FINANCE

Reduction in number of Delivery Items required by Screen NSW and the option to provide online screeners instead of DVDs, subject to certain conditions.

Additional delivery item

For feature films an approved trailer must be made available to Screen NSW for non-commercial use and for upload onto its website (as soon as available).

SOLICITOR'S OPINION

Addition to ensure consistency with the existing requirement in funding agreements:

Prior to the first drawdown of Screen NSW funds under the PGA or PIA, Screen NSW generally requires the Producer to provide it with an opinion, at the Producer's cost, in a form approved by Screen NSW from a solicitor qualified to give such an opinion, that the Producer or the Production Company has cleared all Underlying Rights (other than Underlying Rights in respect of the Music, the Selected Music and the Archive Material), and Screen NSW will rely on that opinion

NSW SPEND

Amendment to definition by including financial legal fees and approved development costs in the eligible NSW Spend.

Amendment to definition regarding the inclusion of the contingency in the eligible NSW Spend.

The contingency is only included for projects where the entire production including shoot and post production occurs in NSW.

Amendment to definition regarding payments to foreign entity.

Screen NSW cannot include costs as where the applicant has contracted with a NSW based company but the payment is made to a foreign entity or foreign bank account.