



Screenwest Term of Trade Summary of Changes

Screenwest (Australia) Ltd
ABN 43 620 492 300

Addition, Deletion, Update	Terms of Trade: Effective from 1 January 2021	Terms of Trade: Effective 15 August 2018
Addition	<p>Overview (Prologue & Overview Merged)</p> <p>Successful Applicants are required to enter into a legally binding contract with Screenwest. These contracts will reflect both these Terms of Trade and the specific requirements relating to each program as set out in the relevant Program Guidelines.</p> <p>The Terms of Trade and Program Guidelines in effect at the time an application is received by Screenwest shall apply to that application.</p>	<p>Prologue</p> <p>N/A</p>
Addition	<p>1. Minimum Eligibility Requirements</p> <p>An applicant that is an individual must:</p> <ul style="list-style-type: none"> • Not be a present employee of Screenwest 	<p>2. Minimum Eligibility Requirements</p> <p>N/A</p>

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Deletion & Update	<p>1. Minimum Eligibility Requirements</p> <p>An Applicant that is a company must be a Western Australian Resident Company that is registered under the Corporations Act 2001 (Cth) applying either:</p> <ul style="list-style-type: none"> a. in its own capacity as sole producer; or b. as a co-producer in a Genuine Co-Production or an Official Treaty Co-Production relationship; <p>and must not be a:</p> <ul style="list-style-type: none"> i. a broadcaster, government agency, distributor, telecommunications company; or ii. a holding company or subsidiary of any of the companies referred to in (i); or iii. be jointly owned by one or more of the companies referred to in (i) or (ii). 	<p>2. Minimum Eligibility Requirements</p> <p>Production company's eligible for funding must be:</p> <ul style="list-style-type: none"> • A Western Australian Resident Company that is registered under the <i>Corporations Act 2001 (Cth)</i>; or a Western Australian Resident Business that is registered under the Business Names Registration Act 2011 (<i>Cth</i>); • In a Genuine Co-Production or Official Treaty Co-Production Partnership with a Western Australian Resident Company (which will be the applicant); <p>3. an independent entity i.e. not a government agency, distributor, telecommunications company or any other organisation involved with a broadcast platform.</p>

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Addition & Update	<p>1. Minimum Eligibility Requirements</p> <p>The Applicant, whether as an individual or a company, must not:</p> <ul style="list-style-type: none"> • be currently engaged in any legal proceedings or dispute in relation to the project; • be declared bankrupt or have committed an act of bankruptcy; 	<p>2. Minimum Eligibility Requirements</p> <p>‘The applicant may not...’</p>
Addition & update	<p>Co-Productions (Genuine and Treaty with a Western Australian Resident Producer)</p> <p>Funding may be provided to a Western Australian Resident Producer entering into either a Genuine Co-Production or an Official Treaty Co-Production provided that:</p> <ul style="list-style-type: none"> • the Western Australian Resident Producer must have a producer credit on a minimum of: <ul style="list-style-type: none"> ○ two (2) broadcast hours of television; or ○ one (1) feature film; or 	<p>7. Business Terms</p> <p>Co-productions</p> <p>In a Genuine Co-production or Official Treaty Co-Production Partnership with a Western Australian Resident Company Screenwest requires the Credited non-WA Resident Company to share reasonable and material share of ownership of copyright and gross receipt entitlements with the Western Australian Resident Company unless exceptional circumstances arise.</p>

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	<ul style="list-style-type: none"> ○ two (2) hours of digital screen production; or ○ an equivalent to the above ● Western Australian Producers that do not meet the minimum credits or equivalent may still be considered where the project brings demonstrated strong economic and/or cultural opportunities to the State, or that favour the Western Australian screen industry or Screenwest’s position. ● The Western Australian Resident Producer must be the Applicant and a party to the Screenwest funding agreement. ● the Western Australian Resident Producer is credited on the project as a producer in line with the non-Western Australian Resident Producer; ● the Western Australian Resident Producer is entitled to a copyright interest that is at least in proportion to the total funding provided from Western Australian sources in the project’s total budget, including but not limited to, 	<p>8. Glossary of Terms</p> <p>Genuine Co-Production or Official Treaty Co-Production Partnership with a Western Australian Resident Company</p> <p>A genuine co-production relationship with a Western Australian Resident Company must be evidenced by both co-producers sharing reasonable and material share of creative involvement, copyright and profit entitlements and sharing credit entitlements. Variations may be considered in exceptional circumstances.</p>

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	<p>funding from Screenwest and the WA Regional Film Fund (WARFF);</p> <ul style="list-style-type: none"> • the Western Australian Resident Producer is entitled to a profit share that is at least in proportion to the total funding provided from Western Australian sources in the project’s total budget, including but not limited to from Screenwest and the WA Regional Film Fund (WARFF); • the Western Australian Resident Producer has meaningful creative consultation rights in the project; • Variations to these requirements may only be considered in exceptional circumstances and with Screenwest Board approval. <p>The terms of the co-production agreement between the Western Australian Resident Producer and the non-Western Australian Resident Producer are to be approved by Screenwest prior to any funding approval in order to ensure that above requirements are met.</p>	

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Addition & Update	<p>2. What Screenwest does not fund</p> <p>Unless individual Program Guidelines state otherwise, Screenwest does not provide funding for:</p> <ul style="list-style-type: none"> • applications that do not satisfy the applicable Program Guidelines; • projects that do not have a clear pathway to an Australian audience; • applications that are late, incomplete or for retrospective funding or without substantial change if submitted and declined previously; • applications that have twice been declined for funding; • documentaries that do not meet the definition under the Australian Communications and Media Authority (ACMA) Documentary Guidelines; • productions and games primarily intended for corporate, educational, training or promotional purposes; 	<p>3. What Screenwest does not fund</p> <p>Unless individual Guidelines state otherwise, Screenwest does not provide funding for:</p> <ul style="list-style-type: none"> • Productions that do not have a national Market Attachment; • Applications for retrospective funding; • Documentaries that do not meet the definition under the Australian Communications and Media Authority (ACMA) Documentary Guidelines; • Productions primarily intended for corporate, educational, training or promotional purposes; • Applications which include the purchase of equipment, hardware, software or platform developer’s kits, capital works, publication costs of film journals, books or magazines; • Television programming (other than drama and documentary) such as commercials, music videos, infotainment, Sketch comedy shows, reality television, game

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	<ul style="list-style-type: none"> • applications which include the purchase of equipment, hardware, software or platform developer’s kits, capital works, publication costs of film journals, books or magazines. Games applications, however, made only through a specific games fund, may use funding towards a platform developers kit; • television programming (other than drama and documentary) such as commercials, music videos, infotainment, Sketch comedy shows, reality television, game shows, quiz panels, corporate sponsored lifestyle, magazine style, sport, news or current affairs, variety and light entertainment, and general children’s programming that does not comply with the Children’s Television Standards Act 2009; • applications for, eBooks, non-narrative experimental, performance and video art. Applications for games, however, including narrative and non-narrative formats, funded specifically through a games funding program may be considered for support; 	<p>shows, quiz panels, corporate sponsored lifestyle, magazine style, sport, news or current affairs, variety and light entertainment, and general children’s programming that does not meet the ‘C’ or ‘P’ definitions under the <i>Children’s Television Standards Act 2005 (Cth)</i>;</p> <ul style="list-style-type: none"> • Applications for non-narrative games, computer games for entertainment purposes only, eBooks, non-narrative experimental, performance and video art; • Short films and Interstitials. Variations may be considered in regard to animation and non-traditional forms where a genuine market interest can be shown; • Applications that relate to the travel and marketing activities of actors; or • Projects that could attract an X18+ or RC (Refused Classification) as described in the Guidelines available through the Australian Classification website (http://www.classification.gov.au/Pages/Home.aspx).

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	<ul style="list-style-type: none"> • applications that relate to the travel and marketing activities of actors; or • projects that could attract an X18+ or RC (Refused Classification) as described in the guidelines available through the Australian Classification website. 	
Addition	<p>3.Application, Assessment, Approval and Appeal Process</p> <p>Applying</p> <p>Applications for finance made to any source in relation to the project must be disclosed in the finance plan for the project. Where other finance has been obtained, the conditions attached to that finance must also be provided.</p>	<p>4.Application, Assessment, Approval and Appeal Process</p> <p>Applying</p> <p>N/A</p>
Addition	<p>Assessment</p> <p>Screenwest will not fund projects that in its opinion contains material that will bring or is likely to bring the Western Australian Government or Screenwest into public disrepute, contempt, scandal, or ridicule, or which might tend to reflect unfavourably on Screenwest.</p>	<p>Assessment</p> <p>N/A</p>

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Addition	<p>Assessment Panel</p> <p>Where appropriate, Screenwest may commission an independent assessment panel (“Assessment Panel”) to review the applications in a particular funding round.</p> <p>Prior to a decision being made Screenwest and/or the Assessment Panel may request an interview or meeting with the creative team applying. In the case of applications for production finance, the creative team may also request an interview or meeting, prior to the application being formally assessed.</p>	N/A
Addition	<p>Approvals</p> <p>Screenwest will publish all funding approvals for all projects on the Screenwest website:</p> <ul style="list-style-type: none"> • Project name • Applicant Details: Western Australian Resident Producer Name and any Co-Production Partners • Genre of the project 	<p>Approvals</p> <p>N/A</p>

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	<ul style="list-style-type: none"> • Funding Program <p>Screenwest may also publish additional details about the project including:</p> <ul style="list-style-type: none"> • Key Creatives names • Identification of the commissioning broadcaster, distributor or platforms; and • Project synopsis. <p>Approvals – Exemptions</p> <p>As details of some projects, including the name and synopsis of some projects receiving development funding may need to remain confidential, an Applicant may request an exemption to this in writing, within seven days of the offer being sent.</p>	

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Addition & update	<p>Appeals</p> <p>Applicants can formally appeal a Screenwest decision if the Applicant believes there has been a breach in the assessment process <i>and a breach of the process can clearly be established.</i></p>	<p>Appeals</p> <p>Applicants can formally appeal a Screenwest decision, if the applicant believes there has been a breach in the assessment process.</p>
Addition & Update	<p>5. Funding, Fees & Caps</p> <p>Funding is provided as follows, depending on the funding program.</p> <p>Production Funding Grants</p> <p>Screenwest provides production funding for all projects by way of grant. Screenwest does not require any recoupment or profit share from projects receiving grant funding.</p> <p>However, where a Western Australian Resident Producer is entering into a Genuine Co-Production or an Official Treaty Co-Production, the grant funding shall be provided as part of the Western Australian Resident Producer’s contribution to the cost of production and shall be determined as the Western Australian Resident Producer’s equity.</p>	<p>6. Funding, Fees & Caps</p> <p>Applicant Equity</p> <p>Funding is provided as follows, depending on the funding program:</p> <p>Grants</p> <p>Screenwest production funding will be considered a grant.</p> <p>The grant will form part of the Producer’s equity in the project.</p> <p>Screenwest’s contribution to a project in the form of a grant does not have to be repaid (other than in case of breach of contract or where not all of the grant is expended).</p>

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	<p>Development Funding - Investment</p> <p>Screenwest Development funding for all projects is provided as an investment. Development funding must be repaid no later than the commencement of principal photography of the project. Development funding will not be 'rolled over' into production funding. Production budgets must accommodate the development funding amount to be repaid.</p> <p>A project in receipt of Screenwest development funding that proceeds to production, will repay all of the development funds plus a ten (10)% premium fee back to Screenwest, on commencement of principal photography.</p> <p>Should the Applicant not comply with the terms of the Development Investment Agreement (DIA) for the project in relation to the agreed level of production to be undertaken in Western Australia, an additional amount of one hundred percent (100%) of the Screenwest investment will be charged.</p> <p>It is a requirement that production funding applications include the above fees in the budget.</p>	<p>Applicant Equity</p> <p>For all projects that Screenwest provides production funding towards the budgeted costs, the Producer's entitlement is to be calculated taking into account the Producer's investment in the film which includes the Producer Offset.</p> <p>Screenwest prefers that the applicant have equity in the production. The nature and extent of the applicant's equity will depend on the extent of the applicant's investment.</p> <p>That portion of the Producer Offset which 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).</p> <p>Screenwest will on a case-by-case basis consider funding a project where an applicant can show they have secured the balance of the production funding without Cashflowing the Producer Offset.</p> <p>Where the applicant proposes to provide a cash investment, Screenwest requires an Accountant's Opinion as evidence of the applicant's ability to cashflow the investment. Screenwest expects the</p>

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	<p>For development funding, Screenwest will hold 1% copyright interest until the investment plus a 10% premium has been paid. Once repaid, the copyright interest will revert to the Applicant.</p> <p>Applicant Equity</p> <p>The Applicant’s equity entitlement is to be calculated taking into account the Applicant’s investment in the project, which includes the Producer Offset and Screenwest’s grant contribution.</p> <p>Where the Applicant proposes to provide a cash investment, Screenwest requires an Accountant’s Opinion as evidence of the Applicant’s ability to cashflow the investment. Screenwest expects the Applicant to drawdown on its cash investment during production in the same proportions and on the same milestones as Screenwest’s grant funding.</p>	<p>applicant to drawdown on its cash investment during production in the same proportions and on the same milestones as Screenwest.</p> <p>Fees</p> <p>Screenwest does not charge funding application fees.</p> <p>Production:</p> <p>For successful production funding applications Administration and/or Legal fees will apply to as follows:</p> <ul style="list-style-type: none"> • 2% of the total Screenwest Production Funding Amount, capped at \$5,000. <p>Development:</p> <p>Development funding for projects is provided as an investment. A project in receipt of Screenwest development funding that then proceeds to production, will repay all of the development funds plus a</p>

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		<p>10% premium fee back to Screenwest, on commencement of principal photography.</p> <p>Should the applicant not comply with the terms of the Development Investment Agreement (DIA) in relation to the agreed level of production to be undertaken in Western Australia, an additional amount of one hundred percent (100%) of the Screenwest investment will be charged.</p> <p>It is a requirement that production funding applications include the above fees in the A-Z budget.</p>
Update	<p>6. Business Terms</p> <p>complying with all applicable Working with Children laws in Western Australia relating to working with children, or in which state or country the work is taking place.</p>	<p>7. Business Terms</p> <p>complying with all applicable laws relating to working with children;</p>
Update	<p>Audit Rights and Final Cost Statement</p> <p>All successful Applicants will be required to provide proper cost reporting and acquittal on their funding.</p>	<p>Audit Rights and Final Cost Statement</p> <p>All successful applicants will be required to provide some form of reporting and acquittal. Individual funding agreements set out specific audit and reporting requirements for each funding program.</p>

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	<p>Individual funding agreements shall set out specific audit and reporting requirements for each project including any requirements of the Program Guidelines.</p> <p>In the specific case of production funding where:</p> <ul style="list-style-type: none"> • the project’s budget is of \$500,000 or more; and/or • Screenwest provides funding to a Western Australian Producer in a Genuine Co-Production or an Official Treaty Co-Production with a non- Western Australian Resident Producer; <p>a full independent audit of all production expenditure at project completion, including final Qualifying Western Australian Expenditure (QWAE) is to be undertaken and provided to Screenwest, the cost for which must be included in the project’s budget.</p> <p>In all cases, Screenwest reserves the right to audit at Screenwest’s cost any funding provided to a project or practitioner to ensure recipient’s compliance with contractual obligations, including QWAE.</p>	<p>In all cases, Screenwest reserves the right to audit any funding provided to a project or practitioner to ensure recipient compliance with contractual obligations, including QWAE requirements, at Screenwest’s cost.</p> <p>In the specific case of production funding, an independent audit is required of all production expenditure at project completion, including final QWAE for projects with a total budget of \$250,000 and over.</p>

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Update	<p>Completion Guarantee</p> <p>Where the project is a feature film and/or funding is provided by way of investment, Screenwest requires the appointment of a completion guarantor.</p> <p>Documentary projects will not require a completion guarantor to be appointed.</p> <p>Applicants may submit a request for a waiver of a Completion Guarantee for a project at Assessment stage. Requests must be made in writing to Screenwest at the time of Application and will be considered by Screenwest having regard to the nature of the project, the level of the budget, Screenwest’s assessment of the risk of completion of the project, the timing of payment of producers’ fees and the size and timing of production overheads.</p> <p>For documentary productions and in circumstances where a waiver request may be approved, Screenwest will generally require:</p> <ul style="list-style-type: none"> • an appropriate contingency of 10% below-the-line costs; 	<p>Completion Guarantee</p> <p>Generally, Screenwest requires the appointment of a completion guarantor for film and television projects that receive production funding with a budget over \$250,000.</p> <p>Applicants may submit a request for 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.</p> <p>In considering a waiver of a completion guarantee Screenwest will take into consideration:</p> <ol style="list-style-type: none"> a) the level of Screenwest 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; d) the production format and methodology

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	<ul style="list-style-type: none"> • budgeted insurances appropriate to the proposed project; • demonstrated capacity of the Applicant to cover any overages and meet delivery requirements; and/or • adequate budget provision for delivery items to all overseas entities. • agreement to provide additional cost reports if required by Screenwest. 	<p>e) the rigor of the production budget</p> <p>In circumstances where a waiver request is approved Screenwest will generally require:</p> <ul style="list-style-type: none"> f) a minimum contingency of 10% below-the-line costs; g) budgeted insurances appropriate to the proposed project; h) demonstrated capacity of the producer or production company (or nominated party) to cover any overages and meet delivery requirements; i) adequate budget provision for delivery items to all overseas entities; and j) agreement to provide additional cost reports as required by Screenwest. <p>Before making a final determination Screenwest will seek an independent assessment of a project and its need for a completion guarantor to inform its decision making.</p>

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		Irrespective of the above, Screenwest retains the right to require a Completion Guarantor if it identifies any risk it believes will be alleviated by having a Completion Guarantor.
Deletion	N/A	<p>Copyright Interest</p> <p>Screenwest requires a 1% copyright interest in all projects for which it provides development or production funding.</p> <p>Copyright Duration:</p> <p>Screenwest retains its copyright interest for 5 years after delivery of the project, after which, and subject to the Applicant complying with all the terms of their funding agreement, the copyright will revert to the Applicant.</p>
Addition	<p>Accessibility of Screen Content</p> <p>Screen Australia requires all feature films (scripted and non-scripted) that it funds to be captioned and audio described to provide access for the hearing and/or visually impaired, for cinemas. If Screenwest is also funding the project, this</p>	N/A

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	<p>requirement will be the same. Applicants will need to budget for these requirements.</p> <p>For all feature films with budgets of \$1.5million and over without Screen Australia funding, Screenwest requires they be captioned and audio described. Applicants will need to budget for these requirements.</p> <p>Applicants are also required by Screenwest 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.</p> <p>Screenwest also encourages producers of all other 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.</p>	
Addition	<p>Copyright and Underlying Rights</p> <p>The Applicant must have or be in the position to acquire on appropriate terms all Underlying Rights required to develop, make and exploit the project that is the subject of its application. Screenwest reserves the right to sight and approve the above at</p>	N/A

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	<p>any time, upon written request to the Applicant. Screenwest development funding cannot be used to purchase or renew options or rights to a project</p> <p>In relation to production funding, the Applicant is required to provide Screenwest with a satisfactory chain of title opinion letter from an appropriately qualified solicitor, plus copies of all documents referred to therein.</p> <p>This requirement may also apply in relation to film and television development funding, where the chain of title is particularly complex or Screenwest considers there to be exceptional circumstances.</p> <p>For development funding, Screenwest will hold 1% copyright interest until the investment plus a 10% premium has been paid. Once repaid, the copyright interest will revert to the Applicant.</p>	

<p>Update</p>	<p>Financing Sources</p> <p>As Screenwest’s funding is limited, Applicants are encouraged to seek additional funding sources in the financing of projects and activities. It is important to note that the outcome of such applications will not determine Screenwest’s decision but may be a pre-requisite to a funding consideration.</p> <p>If applying for Screenwest funding, the Applicant must disclose the following:</p> <ul style="list-style-type: none"> • applications for funding from any other sources; • additional funding already secured at the time of application; and • any conditions that attach to either of these sources of funding. <p>Screenwest reserves the right to contact and discuss a project with all the parties named on a funding application that are associated with the funding, broadcast, distribution sale or release of the project. This includes but is not limited to market partners, other screen agencies, private equity investors and gap lenders.</p>	<p>Financing Sources</p> <p>As Screenwest’s funding is limited, applicants are encouraged to seek additional funding sources in the financing of projects and activities. It is important to note that the outcome of such applications will not determine Screenwest’s decision but may be a pre-requisite to a funding consideration.</p> <p>If applying for Screenwest funding, applicants must disclose the following:</p> <ul style="list-style-type: none"> • applications for funding from any other sources; • additional funding already secured at the time of application; and • any conditions that attach to either of these sources of funding. <p>Screenwest reserves the right to contact and discuss a project with all parties associated with the application – including but not limited to the broadcasters, distributors, completion guarantors, offset lenders, sales agents, crew and/or funding bodies approached by the applicant.</p>
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	Prior approval of the Applicant for the disclosure of specific deal terms shall be obtained before Screenwest takes this step, if required.	
Addition	<p>Sequels, Spin-Offs and Remakes</p> <p>For production grants, Screenwest waives its entitlement to sequel, spin-off or remake fees for projects.</p>	N/A
Update	<p>Producer Offset</p> <p>Screenwest recognises that the Producer Offset is an entitlement due to the Producer. Projects eligible for the Producer Offset are required to incorporate a part of the Producer Offset in the finance plan for the project.</p> <p>Where an Applicant or a non-approved third-party lender proposes to cashflow the Producer Offset in the finance plan for the project, Screenwest reserves the right to request an Accountant's Opinion or a form of security, depending upon the particular circumstances of the project.</p>	<p>Producer Offset</p> <p>Projects eligible for the Producer Offset are required to:</p> <ul style="list-style-type: none"> incorporate the Producer Offset in their financing plans by way of producer's equity in the project, unless the applicant can demonstrate that the costs of including the Producer Offset are greater than the projected value of the Producer Offset. <p>For TV drama or documentary projects, if the Producer Offset rate increases above 20% of Qualifying Australian Production Expenditure (QAPE), or where a project does not include the Producer Offset in its financing, but the Producer Offset is subsequently applied for and received, then the applicant and Screenwest will agree in good faith</p>

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		<p>how any such additional funds should be utilised in connection with the production and exploitation of the project.</p> <p>Where an applicant proposes to Cashflow the Producer Offset, Screenwest reserves the right to request an Accountant’s Opinion or a form of security, depending upon the particular circumstances of the project.</p>
Addition	<p>Outstanding Obligations</p> <p>Screenwest reserves the right to withhold payment due to the Applicant, if the Applicant or a related party has not complied with any terms under any agreement with Screenwest.</p>	N/A
Update	<p>7. Glossary of Terms</p> <p>Accountant’s Opinion</p> <p>Where the Applicant proposes to provide an investment or is to cashflow the Producer Offset, Screenwest reserves the right to require an opinion from the Applicant’s accountant in relation to its business, verifying that the Applicant is able to meet its obligation to cashflow the relevant contribution.</p>	<p>8. Glossary of Terms</p> <p>Accountant’s Opinion</p> <p>Where an applicant proposes to provide an investment or Cashflow the Producer Offset, Screenwest reserves the right to require an opinion from an accountant, being an independent third party and not the accountant engaged by the applicant in relation to its business, verifying that the applicant is able to meet its obligation to Cashflow the relevant contribution.</p>

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Addition	<p>Applicant</p> <p>A Western Australian Resident Producer unless approved by Screenwest in its absolute discretion having regard for the type of project and the value to the Western Australian screen industry.</p>	N/A