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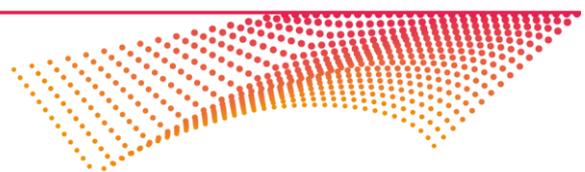
## SCREENWEST (AUSTRALIA) LTD TERMS OF TRADE

effective 15 August 2018

Screenwest is supported by



Department of  
Local Government, Sport  
and Cultural Industries



# Prologue

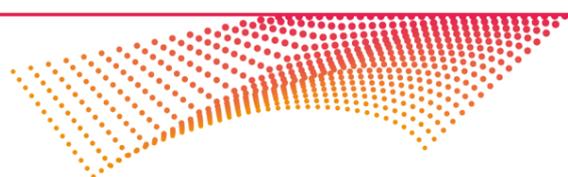
## **Terms of Trade Effective Date: 15 August 2018**

The Screenwest (Australia) Ltd (“Screenwest”) Terms of Trade apply to all Screenwest funding and support programs, including special initiatives.

Applicants should read these Terms of Trade, in conjunction with the specific program guidelines (“Guidelines”) prior to submitting an application.

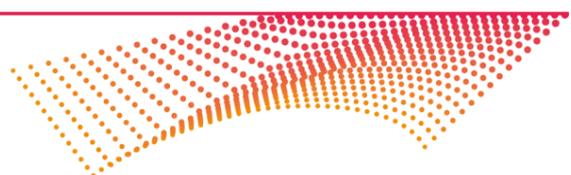
To the extent of any inconsistency between the Terms of Trade and Guidelines, the Guidelines shall prevail.

The Screenwest Board reserves the right to change or modify the terms outlined in the Guidelines and the Terms of Trade at its discretion on a case by case basis where it feels that such changes benefit or favour the Western Australian industry or Screenwest’s position.



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# TERMS OF TRADE

## 1. Overview

Screenwest (Australia) Ltd is a not for profit company limited by guarantee which provides funding and screen sector support programs and initiatives to assist in the areas of Development, Production, Indigenous, Screen Culture and Production Company and Practitioner Support.

Screenwest's Terms of Trade, as set out in this document, broadly outline the core terms on which Screenwest will transact its business. They apply to Screenwest funding support.

The individual program Guidelines set out available funding, applicant and project eligibility, required application materials and how to apply, assessment criteria and process and any other information specific to each program.

## 2. Minimum Eligibility Requirements

Unless individual Guidelines state otherwise:

Production company's eligible for funding must be:

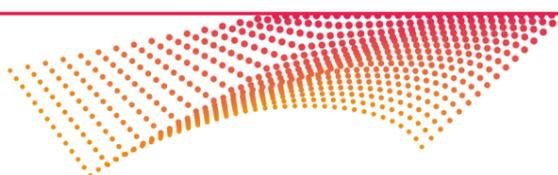
- A Western Australian Resident Company that is registered under the *Corporations Act 2001 (Cth)*; or a Western Australian Resident Business that is registered under the Business Names Registration Act 2011 (*Cth*);
- In a Genuine Co-Production or Official Treaty Co-Production Partnership with a Western Australian Resident Company (which will be the applicant);
- an independent entity i.e. not a government agency, distributor, telecommunications company or any other organisation involved with a broadcast platform.

Individuals applying for funding:

- must be a Western Australian Resident
- must not be an employee of a broadcaster or a company owned or controlled by a broadcaster.

The applicant may not:

- Be in breach of any contractual obligations relating to any prior Screenwest funding agreement, unless an alternative arrangement is agreed with Screenwest prior to application;
- Have any key personnel with overdue acquittals from previous Screenwest funding. This applies to applicants and all key principals on a project, such as Key Creatives or executive producer.
- Be a fulltime secondary student or full-time student at a tertiary educational institution. Part-time and post- graduate students are eligible only where the project does not form part of the assessable material for the course and where the applicant holds all the Copyright. To substantiate their eligibility, the student must submit the following additional documents when submitting an application:
  - A one-page synopsis on the subject of the post-graduate studies
  - A signed letter from their academic coordinator confirming the following:
    - a) that the project will not contribute to their academic work, and
    - b) that the tertiary institution will not hold any copyright interest in the project.



### 3. What Screenwest does not fund

Unless individual Guidelines state otherwise, Screenwest does not provide funding for:

- 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 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 *Children's Television Standards Act 2005 (Cth)*;
- 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>).

### 4. Application, Assessment, Approval and Appeal Process

#### Applying

Applicants considering Screenwest funding should read program Guidelines available on the Screenwest website. Special attention should be paid to application materials required. It is strongly encouraged that applicants contact the nominated Screenwest representative to discuss their project prior to submitting.

#### Assessment

Screenwest will give preference to projects that align with the Screenwest Strategic Plan: Western Australian stories and content, bringing significant cultural and economic benefit to the State.

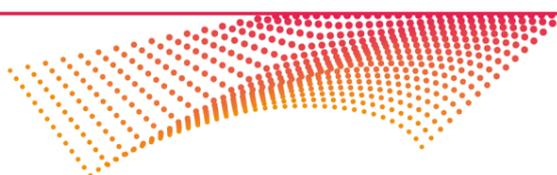
In determining its level of funding, Screenwest may require an independent assessment of the any element of the submission.

Applicants seeking funding of less than \$25,000 are assessed and approved by Screenwest Management and/or a combination of Screenwest Management and experienced external industry professionals.

Projects seeking over \$25,000 are assessed by a panel including Screenwest management and experienced external industry professionals. Funding recommendations from the panel will then be presented to the Screenwest Board for approval.

During the application, assessment and contracting process and at any other phase as appropriate, Screenwest may contact the Applicant to seek further information regarding the project.

Screenwest may be required to contact and discuss a project with all parties associated with the project, including but not limited to broadcasters, Screen Australia, other state agencies, distributors and/or sales



agents and private equity investors approached by the Applicant, and companies/organisations included in the applicant's finance plan.

### **Approvals**

Screenwest is unable to provide any feedback about funding decisions until all required approvals are in place. Unsuccessful applications will receive formal advice regarding the outcome of the application and may request feedback if desired.

Approval of funding does not imply an obligation of subsequent funding by Screenwest. For example, approval of development funding for a project does not automatically guarantee approval of production funding.

If an applicant is provided with an offer of funding, Screenwest's involvement and the level funding in the project is not to be publicised prior to Screenwest Management written approval.

Screenwest publishes all funding approvals on the website for all projects, unless requested otherwise in writing, and agreed upon by Screenwest Management.

Successful applicants will be required to enter into a formal agreement with Screenwest. The terms of the agreement will depend upon the funding program.

All Screenwest funding recipients must provide acquittal information and/or deliverables, by the delivery date/s, as specified within the funding agreement.

Failure to fulfill acquittal and/or meet deliverable requirements as specified within the funding agreement is a breach of contract. If contractual obligations are not met, Screenwest has the right to recover any funds paid out to the applicant to date and it may disqualify the recipient from being eligible for future Screenwest funding until outstanding funds are paid back and the matter has been resolved with Screenwest Management.

### **Appeals**

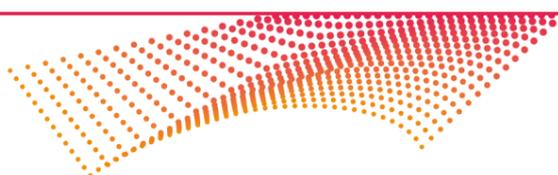
Applicants can formally appeal a Screenwest decision, if the applicant believes there has been a breach in the assessment process.

- The request for a formal review must be received in writing by the Screenwest Chief Executive within 10 business days of receiving the funding decision notification. To be eligible for review, the request must state the ground(s) on which the applicant believes the assessment process was breached and give reasons for claiming that ground.
- Funding decision reviews are carried out by the Screenwest Board. The applicant will be notified of the decision to review the process and an outcome of the appeal process as soon as appropriate.
- Screenwest reserves the right to refer an appeal to an independent assessment if the appeal could compromise Screenwest Board or key staff.

## **5. Indigenous Content**

Where there is Indigenous content or participation in any project, Screenwest requires that each applicant 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*:

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



## 6. Funding, Fees and Caps

Funding is provided as follows, depending on the funding program:

### Grants

Screenwest production funding will be considered a grant.

The grant will form part of the Producer's equity in the project.

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).

### Applicant Equity

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.

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.

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).

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.

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.

### Fees

Screenwest does not charge funding application fees.

### Production:

For successful production funding applications Administration and/or Legal fees will apply to as follows:

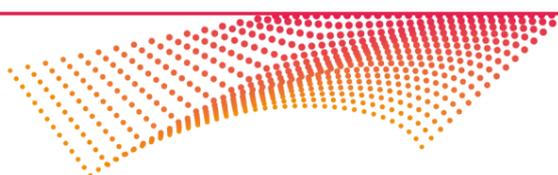
- 2% of the total Screenwest Production Funding Amount, capped at \$5,000.

### Development:

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 10% premium fee back to Screenwest, on commencement of principal photography.

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.

It is a requirement that production funding applications include the above fees in the A-Z budget.



## Caps

The funding amount Screenwest will provide depends on available funding, terms of the funding program, the number of applicants satisfying the program's requirements, and the assessment of the application against the outlined criteria and the following Production Company and Project Caps:

### Development Funding Caps

- **Production Companies** can access a maximum total of \$50,000 per financial year (with a \$25,000 cap per application) through Screenwest development programs, (including *Emergency\**, *Feature Track* and *TV and Documentary rounds*)
- **Projects** can access a maximum total of \$50,000 in perpetuity through the Screenwest Matched Development fund (with a \$25,000 cap per application). There is no Production Company cap through Matched Development Funding. In addition, an increased cap for Scripted TV Series applies, being \$75,000 per individual project in perpetuity.
- \*Individual projects can only access one tranche of *Emergency Development* funding in perpetuity.
- Special initiatives development funding (including funds attributed to West Coast Visions) do not apply towards caps outlined above.

### Production Funding Caps

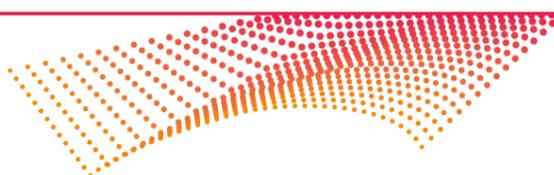
#### Producers and/or Production Companies can access:

- A maximum of \$1.2million per financial year across all Screenwest Production funding programs (including *Scripted*, *Footloose*, *Documentary* and *On Demand Content* funding).
- A maximum of \$1.2million per financial year from Screenwest *Scripted Production* funding.
- A maximum of \$1.2million per financial year from Screenwest *Footloose Production* funding.
- A maximum of \$800 000 per financial year from Screenwest *Documentary Production* funding. If you have reached this maximum cap, you are still eligible to access further funding from *Scripted*, *Footloose* and *On Demand Content* funding to total the \$1.2million financial year cap.
- Production companies can access additional production funding through the *WA Regional Film Fund (WARFF)*. Funding through this program will not apply towards caps outlined above.
- Special initiative funding does not apply towards caps outlined above (unless otherwise stated in the guidelines).

### Screenwest Discretionary Investment Funding Option

Screenwest retains a discretionary option to provide investment funding in certain projects.

Projects with a total budget of \$15 million dollars and over may be eligible for funding outside of Production Funding Caps and Screenwest will exercise its discretionary option to provide funding as an investment.



## 7. Business Terms

### Acting in Good Faith, including Payment of Cast and Crew

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

Screenwest also expects all successful applicants to act fairly and reasonably to any third parties involved in their project. Fairness and reasonableness includes but is not limited to:

- a) complying with all applicable laws relating to the production of the project including all those relevant to the employment or engagement of personnel, including 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) complying with all applicable laws relating to working with children;
- c) meeting legislative occupational health and safety requirements;
- d) all contracted insurance requirements;
- e) 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.

### Audit Rights and Final Cost Statement

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.

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.

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.

### Chain of Title

The Applicant must:

- Have the right to carry out the project that is the subject of the application (including having control of Copyright and any appropriate clearances from all significant participants). If the application is based on an underlying work (e.g. novel, stage play), Screenwest will expect, at the least, that the applicant has an appropriate option to the work.
- Have meaningful creative involvement in the project that is the subject of the application.
- Enter into all relevant Chain of Title for options, Key Creatives, script developers and editors etc.

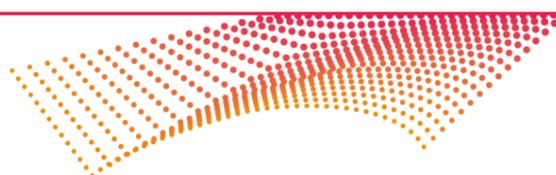
### Completion Guarantee

Generally, Screenwest requires the appointment of a completion guarantor for film and television projects that receive production funding with a budget over \$250,000.

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.

In considering a waiver of a completion guarantee Screenwest will take into consideration:

- 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
- e) the rigor of the production budget

In circumstances where a waiver request is approved Screenwest will generally require:

- 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

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.

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.

### **Copyright Interest**

Screenwest requires a 1% copyright interest in all projects for which it provides development or production funding.

#### **Copyright Duration:**

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.

### **Co-productions**

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.

### **Crediting Screenwest**

Screenwest requires acknowledgement of its support, in the form of a credit on the project and its publicity materials. **Credit requirements vary according to the nature of the support** and are reflected in the respective funding agreements.

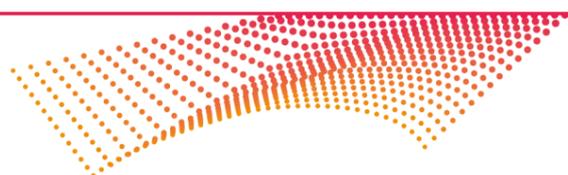
### **Delivery Materials and Completion Materials**

As a condition of Screenwest grant and/or investment funding, the applicant must forward to Screenwest the delivery materials as set out in the individual executed funding agreement on the scheduled, contracted delivery date/s.

If the project goes into production, the applicant must produce and preserve any completion materials in accordance with the conditions as set out in Individual funding agreement.

Screenwest delivery materials must be included in the project budget.

### **Discrimination, Harassment, Sexual Harassment and Bullying**



All employees and industry practitioners have the legal right not to be discriminated against, harassed, sexually harassed or bullied in the workplace. Workplaces should be non-threatening, respectful, safe and free from all forms of harassment.

Screenwest (Australia) Ltd has adopted the Australian Screen Industry Code of Practice: Discrimination, Harassment, Sexual Harassment and Bullying and strongly encourages all screen industry practitioners to do the same.

It is a voluntary industry Code of Practice. Although compliance with the Code of Practice is not mandatory for SPA members, the Code of Practice was created to assist employers to develop and implement policies and procedures which will ensure consistency across the entire Australian screen industry.

### **National Film and Sound Archive Delivery Items**

The appropriate National Film and Sound Archive (NFSA) delivery items must also be included in the production project budget. These items are for preservation purposes and are to be supplied directly to the NFSA at the best quality available and at the completed resolution. For a detailed list of NFSA requirements and for further details refer to the NFSA website at: <http://nfsa.gov.au/>

### **Financing Sources**

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.

If applying for Screenwest funding, applicants must disclose the following:

- 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.

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.

### **GST**

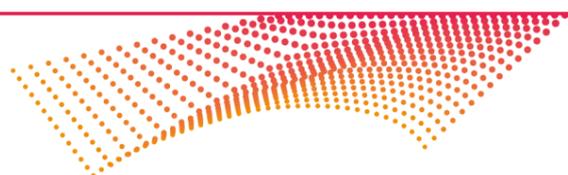
Generally, GST is payable on Screenwest's funding and fees. Screenwest requires the applicant to have an Australian Business Number (ABN) and register for GST, if required by law. Screenwest requires the applicant to issue an invoice (or tax invoice if registered for GST) as a precondition to drawdown/payment of Screenwest funds.

### **Producer Offset**

Projects eligible for the Producer Offset are required to:

- 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.

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 how any such additional funds should be utilised in connection with the production and exploitation of the project



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.

### **Promotional Material**

Screenwest requires the right to use the project and promotional materials (in whole or part) for its corporate, publicity and promotional purposes as specified in the relevant agreement. The Producer will ensure the appropriate rights clearances for such use are obtained.

## **8. Glossary of Terms**

### **Accountant's Opinion**

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.

### **Cashflow**

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

### **Chain of Title**

The set of documentation that establishes the applicant's ownership of the Underlying Rights in the script (and any underlying work such as a novel or stage play, if relevant), which entitles the applicant to produce and exploit the film or other funded project.

### **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.

### **Co-Production**

A co-production is any production undertaken involving more than one producer, from different states or different countries. Co-productions can take many forms, and involve different levels of creative and financial control between the co-producing partners.

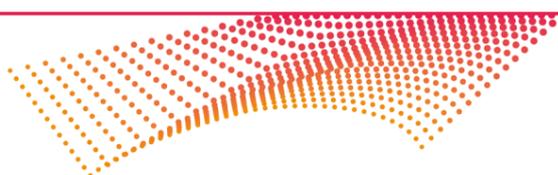
### **Copyright**

The exclusive right to copy, broadcast, perform, exhibit and otherwise commercially deal with and exploit works such as novels, stage plays, scripts, music, film and sound recordings as defined in the *Copyright Act 1968 (Cth)*. Copyright is personal property and can only be transferred in writing. Copyright assignments and licenses relating to the script form part of the Chain of Title.

### **Genuine Co-Production or Official Treaty Co-Production Partnership with a Western Australian Resident Company**

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.

### **Gross Receipts**



All revenue from sales of a project and all receipts from exploitation of ancillary and other underlying rights, any claims relating to the project and its underlying rights, statutory licenses under the *Copyright Act 1968 (Cth)* and interest on the collections account.

### **Key Creative**

Screenwest defines a key creative as a Writer, Director or Producer.

### **Market Attachment**

Some schemes require the applicant to include market attachments. These include:

- license fees
- pre-sales
- distribution guarantees or advances provided by reputable distribution companies

### **Official Treaty Co-Production**

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

### **Offset and Non-Offset Projects**

The Producer Offset is a refundable tax offset (rebate) for producers of Australian feature films, television and other projects, based on expenditure on goods and services provided in Australia. It is available to feature films at 40% of Qualifying Australian Production Expenditure (QAPE) and for non-feature films at 20% of QAPE, as set out in the *Income Tax Assessment Act 1997 (Cth)*.

**Offset Projects** refers to projects which would be eligible for the Producer Offset in terms of qualifying expenditure and format. **Non-Offset** 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 qualifying expenditure and/or format.

Please refer to the [Producer Offset](#) section of the Screen Australia website for detailed information about eligibility and qualifying expenditure.

### **Private Investment**

Describes the equity investment paid towards the cost of production by a genuine arm's length third party (not being the Producer or other production team members reinvestment, or a state or federal funding agency) whose recoupment is solely by way of Gross Receipts from the project and not from a share of Producer Offset funds.

### **Screen rights**

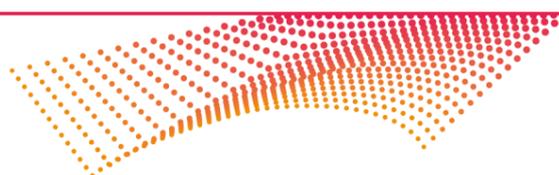
Is the Audio-Visual copyright society that administers provisions in the Australian Copyright Act that allow educational institutions to copy from television and radio, provided payment is made to the Copyright owners.

### **Underlying Rights**

The bundle of rights that must be acquired in order to be able to produce and commercially exploit the project.

### **Western Australian Resident**

A Western Australian Resident is defined as a person who is domiciled in Western Australia, and who has actually been in Western Australia during more than one half of the year immediately preceding the



application, and who is registered on the Western Australian electoral role. In extenuating circumstances where a person is a Western Australian resident but is unable to be registered on the Western Australian electoral role, proof of residency in Western Australia for more than one half of the year must be provided.

Resident Western Australians are defined as individuals who meet all of the following:

- have their principal place of abode in Western Australia;
- are professionally based in and carry on their business in Western Australia; and
- have been registered on the state electoral role for at least six months prior to submitting their application.

### **Western Australian Resident Company**

A Western Australian Resident Company must be registered under the *Corporations Act 2001 (Cth)* and have:

- a) Its principal place of business in Western Australia; and
- b) At least 50% beneficial ownership by a Western Australian resident(s).

Exemptions may apply where the company can demonstrate a strong track record and commitment to the Western Australian industry over a minimum two-year period. The Screenwest board also reserves the right to make further exemptions in cases where there are exceptional benefits for the local industry.

