
Screenwest Public Fund Grant Agreement

Screenwest (Australia) Limited (ABN 43 620 492 300)

Overview

These terms and conditions (**Terms**) apply to Screenwest (Australia) Limited (ABN 43 620 492 300) (referred to in this document as “**Screenwest**”, “**we**”, “**our**” or “**us**”) and the recipient of the Public Fund Grant (referred to in this document as “**Recipient**”, “**you**” or “**your**”). The Recipient and Screenwest may each also be referred to as a “**party**” or referred to together as the “**parties**”.

1 Provision of Public Fund Grant

- (a) We agree to provide the Public Fund Grant to you on the terms and conditions set out in this Agreement.
- (b) We will pay the approved and contracted Public Fund Grant amount (“Funds”) to you by transferring the Funds to your nominated bank account within 10 business days of receipt of a Tax Invoice from you (or such other time as agreed between the parties) and after you have:
 - (i) received written notice from us that your application is successful;
 - (ii) confirmed to us in writing that you are still ready to proceed with the proposal submitted with your application, (“Proposal”) or a varied Proposal agreed to and approved amongst the parties;
 - (iii) Met the terms and milestones of the Screenwest Grant Funding Agreement; and
 - (iv) if you haven’t already done so, agreed to these Terms.

2 Use of the Public Fund Grant

By accepting these Terms you agree to:

- (a) only use the Funds in accordance with the Proposal;
- (b) immediately notify us if you are unable to use the Funds in accordance with the Proposal;
- (c) immediately reimburse us of any portion of the Funds that is not applied in accordance with the Proposal;
- (d) take all reasonable steps to ensure the Funds are not lost, stolen or misappropriated;
- (e) ensure the Funds are held in your name in an account which you solely control;
- (f) ensure you and any other person working on fulfilling the Proposal does not engage in any conduct that will or is likely to harm us or bring us into disrepute, scandal or ridicule;

- (g) indemnify us for any loss or damage suffered by us in connection with:
 - (i) your breach of these Terms including a breach of any warranty provided under these Terms; and
 - (ii) a claim by a third party against us arising out of or in connection with your breach of these Terms including a breach of any warranty provided under these Terms;
 - (h) immediately notify us if you become bankrupt during the term of these Terms and agree that becoming bankrupt during the term of these Terms is considered a breach of these Terms;
 - (i) adhere to the reporting and acquittal conditions found in clause 3 of these Terms;
 - (j) adhere to the intellectual property conditions and conditions on acknowledgement found at clause 4 of these Terms; and
 - (k) adhere to the confidentiality and privacy conditions found at clause 6 of these Terms.
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3 Reporting and acquittal

- (a) To ensure the Funds are expended in accordance with the Proposal, you agree to:
 - (i) submit monthly reports to us until all of the Funds have been expended and reported on pursuant to this clause. Such reports must include financial statements outlining how the Funds have been used over such period with specific reference to how such expenditure is tracking against the budget submitted with your Proposal;
 - (ii) allow us to inspect how the Funds are being expended and the progress of the Proposal, including by allowing us to conduct site visits on reasonable notice to you of at least 5 business days;
 - (iii) provide us with a final report within 10 business days of the Funds being fully expended, describing how the objectives of the Proposal were achieved; and
 - (iv) submit any other materials, reports or financial documents as we may reasonably require to ensure the Funds have been expended in accordance with these Terms.
- (b) You must reimburse us the entire amount of the Public Fund Grant if you breach a term found in clause 3(a) and we provide you written notice of such breach and you do not rectify such breach within 5 business days of receiving such notice.
- (c) You acknowledge and agree that we may require all or some of the Funds to be reimbursed to us if any materials, reports, financial documents or inspections referred to in clause 3(a) reveal to us, in our sole discretion, that the Funds have not been expended in accordance with these Terms.

4 Intellectual property and acknowledgements

4.1 Ownership

Ownership of all intellectual property rights (including copyright) in works created or developed by the Recipient of the Funds in accordance with these Terms (**Works**) will vest in the Recipient on creation or development.

4.2 Screenwest Use of Works and Marketing Materials

Screenwest may use (and the Recipient shall clear the use of) the Works and the Marketing Materials, for its own corporate, publicity or promotional purposes, provided such use is in accordance with the following:

- (a) the whole Works (if applicable) may be used for screenings for members of the Board, staff and a limited number of invited guests and Parliamentary screenings;
- (b) excerpts of the Works of no more than 3 minutes in aggregate may be used for showreels and for any online use. For the avoidance of doubt, online use includes, without limitation, websites, YouTube and Facebook;
- (c) Screenwest's promotional rights, extend to the promotion of the Australian screen industry; and
- (d) Screenwest may require access to the Marketing Materials (including, without limitation, still photographs, trailers and promotional reels) before or after completion of the Works for the purposes of this clause.

4.3 Moral Rights

For the purpose of this clause 4:

- (a) to the extent permitted by law, you grant to Screenwest, its successors and assigns, an unconditional and irrevocable waiver of all **Moral Rights** (as described in Part IX of the *Copyright Act 1968* (Cth) and any analogous rights that may exist or come into existence anywhere in the world) in the Works;
- (b) in the alternative, you consent to all acts or omissions by Screenwest, its successors or assigns, whether occurring before or after the giving of this consent in relation to those parties' use of the Works, where the acts or omissions would, apart from this consent, infringe any Moral Rights subsisting in the Works. You acknowledge that this consent is separate from and independent of the waiver provided under clause 4.3(a) above, and will have effect according to its terms notwithstanding the invalidity or unenforceability of that waiver;
- (c) notwithstanding clauses 4.3(a) and (b), Screenwest may, in its absolute discretion, attribute you as the creator of the Works wherever practicable and appropriate.

4.4 Acknowledgments and Obligations

Subject to clause 4.2, you agree:

- (a) to acknowledge Screenwest and the Public Fund Grant when promoting, exhibiting or showcasing the Works; and
 - (b) not to use any of our intellectual property rights (including copyright), any Screenwest trade marks, name or branding other than as expressly permitted in clause 4.2 above without the prior written consent of Screenwest (which may be withheld at its absolute discretion). We agree, at our absolute discretion, to acknowledge you and your Works where reasonably practicable and appropriate, including by showcasing photos and/or videos of you and/or your Works on Screenwest's website and social media channels, promotional materials and in other Screenwest collateral.
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5 Warranties

You warrant:

- (a) you have full legal capacity and power to enter into these Terms;
 - (b) you have full power to execute, deliver and perform your obligations under these Terms;
 - (c) all information you provide to us is true and accurate;
 - (d) you are not currently bankrupt and that there are no facts, matters or circumstances which lead you to believe that you could become bankrupt during the term of these Terms;
 - (e) you are the sole author or developer of the Works;
 - (f) you legally and beneficially own all intellectual property rights (including copyright) in the Works or you have all valid and applicable Chain of Title documentation in place to use, develop and exploit the Works; and
 - (g) your acceptance of and performance of your obligations under these Terms will not amount to a breach of any other agreement, arrangement or understanding to which you are a party or infringe the rights, including intellectual property rights and/or copyright, of any third party.
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6 Confidentiality and privacy

- (a) Except for the information permitted to be disclosed in accordance with clause 4.4 of these Terms, you agree to maintain the confidentiality of our Confidential Information and must only use such Confidential Information to perform your obligations or exercise your rights under these Terms.
- (b) Each party agrees to comply with the Privacy Law in carrying out their obligations under these Terms, including in relation to any personal information of third parties obtained by either party in connection with the Public Fund Grant.
- (c) For the purpose of this clause 6, the following definitions apply:

Confidential Information means all information of Screenwest which is notified to the Recipient as confidential or can reasonably be inferred to be confidential from the circumstances in which it is disclosed. Confidential Information includes, but is not limited to:

- the monetary amount of the Public Fund Grant provided to the Recipient;
- the terms and conditions outlined in these Terms; and
- any private discussions (whether written, oral or otherwise) between Screenwest and the Recipient pertaining to the Public Fund Grant.

Privacy Law means:

- (d) the *Privacy Act 1988* (Cth);
- (e) any legislation (to the extent that such legislation applies to Screenwest or the Recipient, as the case may be) from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any State or Territory of Australia); or
 - (ii) non-Australian jurisdiction (to the extent that Screenwest or the Recipient as the case may be, is subject to the laws of that jurisdiction)
- (f) affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (g) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made, issued or registered under any of the legislation referred to in paragraphs (a) and (b) above, as amended from time to time.

7 Term and termination

- (a) These Terms commence on the date you agree to them and continue until the earlier of:
 - (i) the date on which the Funds are fully expended and reported on in accordance with these Terms;
 - (ii) the date on which Funds are returned to us in full due to your voluntary withdrawal; or
 - (iii) the date on which you breach these Terms and we determine, in our sole discretion, that such breach is not capable of being remedied.
- (b) If these Terms are terminated under clause 7(a)(iii):
 - (i) any part of the Funds which have not been expended must be returned to us within 5 business days;
 - (ii) any part of the Funds which have been expended in contravention of these Terms, as determined by us in our sole discretion, must be returned to us within 5 business days; and

(iii) Clause 4.4(a) ceases to apply.

8 General

- (a) These Terms contain the whole agreement between you and us in respect of the Public Fund Grant and replaces any and all previous agreements, understandings, representations and warranties.
- (b) Any consideration or amount payable under this agreement, including any non-monetary consideration, is exclusive of any GST.
- (c) Nothing in this agreement will create a joint venture, partnership, employment or agency relationship between you and us and you will not represent you are our joint venturer, partner, employee or agent.
- (d) If any part of these Terms is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of the terms and provisions included in these Terms will remain in full force and effect and will not be affected, impaired or invalidated.
- (e) You agree monetary damages may not be an adequate remedy for any breach of your obligations under these Terms and we may seek other remedies and other equitable relief for any threatened or actual breach.
- (f) You may not assign, sublicense or transfer, or purport to assign, sublicense or transfer your rights or obligations under these Terms without our prior written consent.
- (g) Except as expressly provided in these Terms, you must, at your own expense, do all things reasonably necessary to give full effect to these Terms and the matters contemplated by them.
- (h) Clauses 4.2, 4.3, 4.4, 6, 7(b) and this clause 8(h) survive termination or expiry of these Terms together with any other term which by its nature is intended to do so.
- (i) These Terms cannot be revoked and may only be varied if we agree in writing.
- (j) These Terms will be governed by and construed in accordance with the laws of the State of Western Australia.