



# South Australian Film Corporation

empowering the south australian film production industry to achieve success

## General Guidelines & Terms of Trade

Effective 7 December 2016

# Introduction

The South Australian Film Corporation's ("SAFC") **General Guidelines and Terms of Trade** provide the basic framework for all of the SAFC's funding programs and initiatives.

They provide definitions of standard terms included throughout the SAFC's program specific guidelines, outline the general conditions that apply across the SAFC's programs and initiatives, detail the SAFC's terms of trade and describe the standard procedures for making an application for funding.

They are a central reference point that aims to inform and provide guidance to potential screen industry practitioners, and should be read in conjunction with relevant program guidelines and applications forms. While providing practitioners with information as to how the SAFC runs its business the SAFC needs to work in a proactive and flexible way and in the best possible interests of the South Australian screen industry as a whole.

The SAFC may therefore vary its Guidelines and Terms of Trade as required for specific projects . Prospective applicants and other interested parties should speak with a member of the SAFC team for further information.

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The General Guidelines and Terms of Trade are not exhaustive, are subject to change, and should be read in conjunction with the relevant SAFC program guideline and application form.

**This version issued 7 December 2016  
(see page 21 for Change Log).**

All guidelines and application forms, along with the contact details of the SAFC, can be found at [www.safilm.com.au](http://www.safilm.com.au)

# 01 Overview

## About the South Australian Film Corporation

The SAFC is a statutory body established under the *South Australian Film Corporation Act 1972 (SA)* for the specific purpose of supporting the growth and development of the screen industry in South Australia.

Operating under the auspices of the South Australian Strategic Plan, the SAFC takes an active role in providing leadership, assistance and advice to people, projects and businesses, as well as ensuring South Australia remains an attractive destination for filmmaking.

Uniquely the SAFC also provides production and post-production facilities, a locations service and other assistance to productions working in South Australia.

## Strategic Direction

### Mission

**Our mission is to enable the growth and success of the South Australian independent screen production industry and by doing so contribute to the economic and cultural development of the state**

By success the SAFC means creative, critical, cultural and commercial achievement in the production of narrative driven, long-form drama and documentary projects, that are stand-alone or series, and are intended for release via theatrical, broadcast, or digital platforms.

We will achieve this commitment by partnering with the local industry and by fostering an environment that encourages creativity and is open to doing things differently. We will make ourselves distinct by understanding our strengths and playing to them. And we will focus our resources on delivering innovative programs, services and development opportunities to our key stakeholders.

South Australia has a well-deserved reputation as Australia's home of independent filmmaking and the SAFC is committed to maintaining this reputation, primarily for the benefit of the South Australian screen production sector, but also for the benefit this brings to the South Australian economy and community.

### Vision

**To be a dynamic industry leader and the preferred (Government) partner for Australian and international screen production companies**

To the SAFC, *dynamic* means: engaged, leading, energetic, active and entrepreneurial in developing and changing the screen production landscape.

We understand that to be recognised as dynamic, we need to 'live it' in our behaviours, values, systems, communications and operations.

Furthermore, we acknowledge the prior achievements of the Corporation and focus on building on the past to move to the future.

### Values

**We value creativity, integrity, flexibility, professionalism and collaboration.**

## Strategic Objectives

The South Australian Film Corporation's Strategic Plan 2014-2017 defines four strategic objectives on which the organisation is focussed:

- / Foster the growth and sustainability of the SA production industry
- / Strengthen the brand of the South Australian screen production industry by telling its story to the world
- / Operate as a leading best practice screen production agency
- / Develop partnerships that can drive industry development and enhance the business of the SAFC.

## Production, Development & Studios Funding Programs

### Overview

The State Government, through Arts SA, provides funding for all SAFC programs.

The Production Development & Studios ("PDS") department is responsible for managing and delivering the industry funding programs.

The PDS department is the key point of contact for industry practitioners seeking development and production assistance for drama, documentary and screen culture projects.

Applicants are expected to first discuss their project with the appropriate PDS representative before making a formal application.

### Division of Programs

In line with its strategic plan, and in order to provide clarity regarding the outcomes that it expects from each program, the SAFC has divided its industry support programs into three key areas as follows:

1. Production Support
2. Development Support
3. Company Support

These programs form the backbone of the SAFC's support for the production sector, complemented by the SAFC's purpose-built production facilities at Adelaide Studios.

It is important to note that these programs will also be enhanced by other development and production initiatives the SAFC may instigate from time to time, depending on the needs of the industry, and the opportunities the SAFC creates to foster the local sector.

The complete list of current SAFC Industry Funding Programs is as follows:

#### **1. Production Support**

- 1.01 Screen Production Investment
- 1.02 Post Production Support
- 1.03 Revolving Film Fund (RFF)

- 1.04 Producer Equity Scheme (PES)
- 1.05 Short Film Production Grant
- 1.06 Payroll Tax Exemption
- 1.07 Aboriginal Short Film Initiative
- 1.08 Recce Assistance

## **2. Development Support**

- 2.01 Market Attached Development Grant
- 2.02 South Australian Writers Development Grant
- 2.03 Aboriginal Project Development Grant
- 2.04 Attachment Scheme
- 2.05 Career Accelerator
- 2.06 Targeted Travel Grant

## **3. Company Support**

- 3.01 Screen Culture Grant
- 3.02 Seed Company Development
  - 3.02.1 Seed Development Investment
  - 3.02.2 Grant 1: Talent Grant
  - 3.02.3 Grant 2: New Project Grant

## 02 Definitions and Terms of Reference

The following definitions and terms of reference apply to all SAFC program guidelines.

<b>broadcast television or broadcaster</b>	A commercial free-to-air or subscription television network, public broadcasters such as the ABC or SBS or international equivalents. Broadcast television excludes networks which hold a CTV license, such as local community or public access television.
<b>chain of title</b>	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.
<b>control of copyright</b>	To be eligible for funding, the applicant / must either be the copyright owner, or / be able to deal in all rights relevant to the project prior to making a formal application.
<b>copyright</b>	Copyright is the exclusive right to copy, broadcast, perform, exhibit and otherwise commercially deal with and exploit eligible works. It 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.  For further information about copyright in Australia, please refer to the <i>Copyright Act 1968 (Cth)</i> .  Please refer below for a definition of moral rights which exist in certain copyright works.
<b>co-production</b>	A co-production is any production undertaken involving more than one producer/production company, 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.
<b>co-production (genuine)</b>	A genuine co-production is one where a South Australian production company/producer and a non-South Australian production company/producer share: / creative control; / copyright and profit entitlements; / credit entitlements.  In order to be certified as a genuine co-production, the project must comply with Screen Australia's official International Co-Production Guidelines.
<b>credited</b>	The term "credited" refers to writers, directors and producers who have a track record in screen production as follows: / one (1) theatrically released feature film writing, directing or producing credits; and/or / two (2) hours of broadcast television writing, directing and producing credits (not including community television).
<b>documentary</b>	Documentaries are projects which involve actual events and real people.  The SAFC uses the established Australian Communications and Media Authority definition, as outlined in the Broadcasting Services (Australian Content) Standard 2016 which can be found at: <a href="https://www.legislation.gov.au/Details/F2016L00392">https://www.legislation.gov.au/Details/F2016L00392</a>
<b>drama</b>	A screen-based work driven by a storyline and based on the imagination and not necessarily on fact.
<b>factual</b>	A genre of non-fiction television programming that documents actual events and people. Excluding reality television and any other format/genre included at item 04.05 below.
<b>feature film (drama &amp; documentary)</b>	A film of no less than 75 minutes aimed at theatrical release.
<b>indigenous</b>	Indigenous cultural and intellectual property (ICIP) rights refer to Indigenous people's

<b>cultural &amp; intellectual property (ICIP) rights</b>	<p>rights with respect to their cultural heritage. This is a living heritage, which comprises all objects, sites, stories, images and knowledge, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, and which is regarded as pertaining to a particular Indigenous group or its territory.</p> <p>Further information at  <a href="http://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols">http://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols</a></p>
<b>industry committee</b>	Some applications are assessed and considered by an SAFC coordinated industry committee. The committee members include industry experienced producers and practitioners..
<b>interstate partnerships</b>	<p>The SAFC encourages genuine co-productions/partnerships between South Australian and non-South Australian companies.</p> <p>When a genuine co-production is not possible the SAFC will look favourably on projects that have high levels of South Australian involvement, particularly in the engagement of credited South Australian key creatives.</p>
<b>key creative</b>	The SAFC defines a key creative as a principal writer, director or producer.
<b>licence fee</b>	A fee paid in exchange for the right to use a film or television production for a particular purpose, i.e. to screen a project on free-to-air, broadcast and/or other platforms.
<b>major film festivals</b>	<p>A list of major film festivals that the SAFC considers a legitimate industry guide can be found on the Screen Australia International Festival Profile:  <a href="http://www.screenaustralia.gov.au/connect-with-audiences/festival-profiles">http://www.screenaustralia.gov.au/connect-with-audiences/festival-profiles</a></p>
<b>market attachment</b>	<p>Some schemes require the applicant to include market attachments. These could include:</p> <ul style="list-style-type: none"> <li>/ license fees;</li> <li>/ pre-sales;</li> <li>/ distribution guarantees or advances provided by reputable (national or international) distribution companies;</li> <li>/ development funds from a genuine industry marketplace or broadcasters, excluding private funds.</li> </ul>
<b>market interest</b>	Market interest is defined by the SAFC as formal feedback from industry marketplace that they may be interested in pursuing the project (eg. a letter of interest).
<b>moral rights</b>	<p>Moral rights are personal rights contained in the <i>Copyright Act 1968</i> (Cth) that connect creators to their copyright-protected work.</p> <p>There are three types of moral rights:</p> <ul style="list-style-type: none"> <li>/ <b>Right of attribution:</b> this is the right of an author to be identified and named as the author of his/her work;</li> <li>/ <b>Right against false attribution:</b> this is the right of an author to stop someone else being credited as the author of their work; and</li> <li>/ <b>Right of integrity:</b> this is the right of an author to ensure that his/her work is not subjected to derogatory treatment which is any act in relation to the work that is in any manner harmful to the author's honour or reputation.</li> </ul> <p>For further information about moral rights in Australia, please refer to the <i>Copyright Act 1968</i> (Cth).</p>
<b>narrative</b>	A structured story or account of a series of events or experiences, whether documentary or fiction.
<b>producer equity scheme</b>	A scheme by which the SAFC licences its recoupment and profit share entitlements to South Australian producers who make a South Australian production (or a genuine co-production) in which the SAFC has invested. See PES guidelines for more information.
<b>rights reversion</b>	The SAFC's Rights Reversion policy assigns all of the SAFC's entitlement to gross receipts from projects in which the SAFC is an investor, together with the SAFC's copyright interest in that project, to the principal producer five (5) years after the first commercial release or broadcast of the project.



<b>Series/serial</b>	Comprises a potentially unlimited number of episodes and contains a number of interweaving and overlapping plots continuing from one episode to the next.
<b>South Australian producer</b>	A producer (individual or company) who meets all South Australian resident requirements (refer to <i>South Australian resident</i> ).
<b>South Australian production/post-production company</b>	A South Australian production company is defined by the SAFC as a registered company that meets all of the following: <ul style="list-style-type: none"> <li>/ principal place of business is in South Australia;</li> <li>/ at least 50% beneficial ownership by a South Australia resident(s);</li> <li>/ in operation for a minimum of six (6) months prior to submitting the application.</li> </ul>
<b>South Australian resident</b>	Resident South Australians are defined as individuals who meet all of the following: <ul style="list-style-type: none"> <li>/ their principal place of abode is in South Australia;</li> <li>/ they are professionally based in and carry on their business in South Australia;</li> <li>/ registered on the state electoral roll for at least six months prior to submitting their application.</li> </ul>
<b>significant Australian content certificate</b>	In general film and television projects must be qualifying Australian projects as defined by Significant Australian Content (SAC) Certification. Where there is no Provisional SAC Certification, the SAFC will refer to the SAC Guidelines to assess the likelihood of the project qualifying. Television projects must qualify as Australian Content.
<b>theatrical release</b>	The SAFC refer to Screen Australia's definition of theatrical release "screening for at least seven consecutive days in a commercial cinema".
<b>track record</b>	For most of the SAFC's programs, an applicant's credit(s) are used to determine their level of experience or 'track record' when applying for funding (please refer to <i>credit</i> ). Importantly the relevance of the credit, in respect to the type of funding the applicant is applying for, will also be reviewed when establishing eligibility for funding. The SAFC reserves the right to request proof of credits in applications for funding. For inexperienced practitioners, the SAFC will require the inclusion of an experienced and credited mentor, consultant, producer, script developer or director. Applicants will require SAFC approval for proposed consultants.
<b>qualifying South Australia spend (SAS)</b>	The term used to describe the South Australian expenditure commitments of SAFC funded Productions. For full details of SAS definitions and requirements see Qualifying South Australian Expenditure (SAS) Information available at: <a href="http://www.safilm.com.au/pdfs/production%20support/SouthAustralianSpend_AdditionalInformation.pdf">http://www.safilm.com.au/pdfs/production%20support/SouthAustralianSpend_AdditionalInformation.pdf</a> .

## 03 General Conditions

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<b>alternate sources of funding</b>	<p>As the SAFC's funding is limited, the SAFC encourages applicants to maximise alternate sources of funding for their projects.</p> <p>The SAFC recommends applicants apply to other funding sources where appropriate, or to similar funding schemes available including Screen Australia and other State agencies (ie if one of the writer, producer or director of a team is based in that state) and in the case of television projects to broadcasters.</p> <p>It is important to note that the outcome of such applications will not determine the SAFC's decision but may be a pre-condition of any funding consideration.</p>
<b>collaborations</b>	<p>Where appropriate, collaboration between credited and emerging or developing practitioners that have entered into genuine business relationships is encouraged.</p> <p>The SAFC may ask emerging practitioners to explore potential for forming relationships with credited practitioners as a precondition to consideration for funding.</p>
<b>corporate entities</b>	<p>Corporate entities cannot be applicants, but the SAFC will contract with such entities (ie. individual applicants can subsequently contract under a company name).</p> <p>For contracting purposes corporate entities must be incorporated in Australia and carry on its business in Australia, and have its central management and control in the hands of Australian citizens or residents.</p> <p>Shareholders who are citizens or residents of Australia must also control its voting power.</p> <p>Applicants and/or the subsequent contracting party must have an Australian Business Number (ABN) prior to lodging an application.</p>
<b>credits</b>	<p>The SAFC reserves the right to request proof of credits, as part of the application process.</p>
<b>disclosing funding sources</b>	<p>Applicants must disclose:</p> <ul style="list-style-type: none"><li>/ applications for funding from other sources;</li><li>/ funding already secured at the time of application;</li><li>/ any conditions that attach to either of these sources of funding.</li></ul>
<b>discussion about funding sources</b>	<p>As part of the application process, the SAFC may require consultation with the proposed marketplace and other third party financiers about their involvement in the project.</p> <p>While the SAFC will make best endeavours to notify the applicant prior to contacting other sources listed in the application finance plan, it reserves the right to contact and discuss a project with all parties associated with the financing of any project included in an application – including but not limited to the broadcasters, distributors, sales agents, crew and or funding bodies approached by the applicant.</p> <p>The content of these discussions will be held in confidence by the SAFC.</p>
<b>GST</b>	<p>Generally, Goods and Services Tax (GST) is payable on the SAFC's funding and fees. The SAFC requires the applicant to have an Australian Business Number (ABN) and to register for GST if required by law.</p> <p>Where GST is payable, the SAFC will require the applicant to issue a tax invoice as a precondition to draw down of SAFC funds.</p>

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<b>reports</b>	<p>Some programs require successful applicants to submit a report/s as outlined in their agreement with the SAFC.</p> <p>Applicants may also be required to share information and skills learnt at events facilitated by the SAFC.</p>
<b>resubmissions</b>	<p>Industry committees appointed by the SAFC may deem that a project that has not received funding cannot be resubmitted for consideration unless the project can either:</p> <ul style="list-style-type: none"> <li>/ demonstrate substantial further development;</li> <li>/ produce evidence of significant marketplace interest.</li> </ul> <p>The SAFC will only fund one phase of development without marketplace attachments.</p>
<b>SAFC statement of expectation</b>	<p>In addition to the sentiment contained in the <i>General Condition, Acting in Good Faith</i>, the SAFC expects recipients of SAFC funding to conduct their business ethically, professionally and with integrity at all times. This includes, without limitation, abiding by industry norms in relation to the payment of wages to cast and crew and the contractual conditions attached to their employment. Any deviation from this expectation must be discussed with and approved by the SAFC at the time of application, and the SAFC reserves the right to withhold or revoke funding if in its reasonable opinion these expectations are not met at a later date.</p>
<b>working with Aboriginal and Torres Strait Islander content and communities</b>	<p>Applications involving, or dealing with, Aboriginal and Torres Strait Islander material should include appropriate permission from the relevant community. An Aboriginal and Torres Strait Islander consultant may be appointed by the SAFC to provide an assessment of the application to ensure that appropriate consultation is taking place and that the use of the material is appropriate and acceptable to the relevant community and Aboriginal and Torres Strait Islander communities generally.</p> <p>The SAFC recommends that applicants refer to the guidelines developed by Screen Australia entitled "<i>A Guide to Protocols for Screen based practitioners Working with Indigenous Content and Indigenous Communities</i>" <a href="http://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols">http://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols</a></p> <p>This guide is intended to provide practical advice about the ethical and legal issues involved with the transfer of Indigenous cultural material to the screen.</p>

# 04 Eligibility

## 04.01 Key eligibility criteria

- / Applicants must be Australian citizens or permanent residents of Australia and be 18 years of age or older.
- / Applicants must be individuals (ie not corporate entities or partnerships).
- / Applicants must have an Australian Business Number (ABN).

## 04.02 Priority and preference with applications

The SAFC gives priority to applicants:

- / who are South Australian residents;
- / with track records in film and television productions and/or are supported by teams with significant and appropriate track records; and
- / projects intended for production and post-production in South Australia, principally using South Australian resident key creatives, cast and crew.

Applicants proposing to employ innovative financing and production methodologies will be required to discuss these with SAFC's Production, Development & Studios department prior to application.

## 04.03 Non South Australian production companies

Non South Australian production companies are eligible for consideration for production funding when:

- / they employ one or more South Australian resident key creative;
- / they demonstrate that they are bringing strong economic, cultural and/or creative benefits to South Australia. This will be assessed at the discretion of the SAFC by the extent to which the production:
  - substantially employs South Australian Heads of Department, crew and creative personnel;
  - generates professional development opportunities for the local production industry; and in the case of feature film, documentaries and television programs, where principal photography and post production will be undertaken primarily in South Australia.

## 04.04 Specific eligibility

Specific eligibility criteria applies to all SAFC programs and these criteria are listed in the relevant program guideline. In addition to meeting general eligibility criteria, applicants must also meet any specific program eligibility requirements to apply.

## 04.05 Ineligible applications

The following applicants are not eligible for program funding by the SAFC and will not therefore be considered:

- / any party in default of any contractual obligations to the SAFC;
- / applicants not in default but who in the opinion of SAFC management have a number of concurrent outstanding projects in development and/or in production, that may impact on the quality of and hamper the timely delivery of work;

- / applicants seeking retrospective funding;
- / applications for projects that have been previously declined funding, unless the applicant can demonstrate that the project has either undergone substantial further development or evidence of significant marketplace interest before re-submission (please refer to resubmitted projects in Section 02.);
- / applications for commercial videos, advertisements, current affairs, reality television, infotainment, infomercials, game shows, serials/soaps, P-classification children's TV, corporate sponsored, sport, educational, non-narrative games, DVD Books, training, lifestyle, magazine style, music videos, non-narrative experimental, performance, video art, or 'how to' programs;
- / applications which include purchase of equipment, capital works or publication costs of film journals, books or magazines or the purchase of hardware, software or platform developer's kits;
- / applications from full-time secondary students and tertiary undergraduates (however part-time and post-graduate students will be assessed on a case by case basis only where the film does not form part of the assessable material for the course and where the applicant holds all copyright for the project);
- / applications from practitioners employed on a full-time basis by television networks or educational or training institutions will be considered on a case by case basis;
- / applications from state or federal bodies or entities;
- / applications which include funding for the costs of options in the work, copyright or life rights.
- / any combination of the above or without limitation, any other factors or circumstances deemed relevant in the SAFC's reasonable opinion.

## 05 Application and Assessment Process

### 05.01 Working with SAFC Production, Development & Studios Department

Prior to submitting a formal application, applicants must discuss their project with a member of the SAFC's Production, Development & Studios (PDS) department.

Depending on the scheme or initiative, applicants are advised to discuss their submission well in advance of any closing date, to allow for any modifications that may be required.

The PDS department may refuse an application that does not conform to guidelines or may ask applicants to submit the project at a future round based on recommendations made by the relevant PDS staff member.

### 05.02 Submitting an application

Formal applications should be submitted to the SAFC via the online application form and marked to the attention of the relevant PDS representative.

Applications must be received no later than close of business (5pm) on the day outlined in the related program schemes guidelines..

It is imperative that the application form is fully completed and that any other additional requested items are supplied. **Incomplete or late applications will not be considered.**

Curriculum vitae's submitted should be limited to two pages and list only experience relevant to the application.

The SAFC will provide a prompt written acknowledgement that the application has been received, within two (2) working days of the closing date. Should applicants not receive acknowledgement it is recommended that they contact the PDS department directly.

Applicants should keep their own copy of the application and should not under any circumstances submit original supporting material. Once assessment is complete, the SAFC will retain one copy of the application for its records and confidentially destroy other copies as required by the *State Records Act (1997)* (SA).

The SAFC will not return any materials to applicants.

### 05.03 Request for further information

PDS may at any stage of the assessment or funding process request further information from the applicant or suggest amendments to strengthen an application. This process of consultation may extend over a period of weeks, and applicants should allow sufficient time for this process.

Failure to deliver the requested material by the date requested will result in the application being withdrawn from consideration. Withdrawn applications cannot be resubmitted without prior approval of the PDS department.

### 05.04 External analysis

Where appropriate, SAFC may commission an external analysis of an application from industry professionals. This can include a written assessment of the project to be provided to PDS department and/or funding committee for consideration.

- / External assessors will be free of any conflict of interest with an applicant or project.
- / Written reports provided by external assessors inform but do not determine the funding outcome of the project.
- / In the case that a written report is commissioned, the report can be provided to applicants upon request, for their information only.

- / The reports may not be reproduced or used (including extracts) for any purpose without the prior written consent of the SAFC.

## 05.05 Key assessment criteria

In assessing applications the SAFC considers the following:

- / the economic benefits including the qualifying South Australia spend and the employment of key crew, in particular South Australian Heads of Department;
- / the nature and level of funding requested;
- / the likelihood of the project being financed;
- / the proposed financing and recoupment structure, and the prospect of recoupment;
- / the marketability and market potential of the project, including the strength and reliability of any market attachments;
- / the cultural and creative benefits of the project to South Australia;
- / the track record of the applicant(s) and principal(s);
- / viability and direction for the next stage as outlined in the writers, producers and director notes;
- / the quality, originality and creative ambition of the project;
- / the career development benefits to the principals and the South Australian industry development benefits of the project;
- / the quality and rigor of any supporting materials;
- / the overall diversity of projects funded by the SAFC; and
- / the availability of SAFC funds.

Some programs are assessed on additional criteria as relates to a specific program. Any additional criteria used is listed in the relevant program guideline and application form.

## 05.06 Interviews

Prior to a decision being made the relevant Industry Committee may request an interview or meeting with the creative team applying.

## 05.07 Funding approvals and conditions

The SAFC is committed to communicating funding decisions to all applicants in the most timely manner.

Depending on the program applied for, it may take up to eight (8) weeks for a decision to be made.

**Please note** that SAFC staff are not able to provide feedback about funding decisions until all necessary paperwork, including the Decision Minutes have been ratified by the SAFC Board or Committee.

## 05.08 Advice regarding application outcome

PDS staff will notify applicants by telephone or email of the outcome of their application, both successful and unsuccessful; verbal feedback can be requested at that time.

Where external written assessments have been commissioned, the relevant documents can be forwarded to the applicant upon request.

# 06 Standard Terms of Trade

## 06.01 Overview

The SAFC's Standard Terms of Trade provide guidance on how the SAFC conducts its business. They supplement the individual guidelines which apply to particular SAFC funding programs and also underpin the terms set out in the SAFC's funding agreements.

The SAFC reserves the right, at its sole discretion, to vary any of its Standard Terms of Trade without prior notice. Such amendments will be effective from the date specified by the SAFC, which will not be retrospective.

### 6.1.1 SAFC program guidelines and assessment process

SAFC program guidelines inform the SAFC's business practice and are intended for guidance only. There may be occasions when, in the SAFC's reasonable opinion, a particular application for funding does not fit in with the letter of a particular set of program guidelines but there remain overriding benefits or other considerations for the South Australian industry, which makes funding desirable.

Accordingly the final interpretation of all program guidelines and any decision to approve applications rests solely with the SAFC. If appropriate, unsuccessful applicants may discuss any legitimate concerns with the Head, Production, Development & Studios department. However, the SAFC's decision in respect to any funding application is final and is not subject to appeal.

Under no circumstances will the SAFC make public its reasons for or against a funding application, except to the applicant concerned, unless required to do so by law.

Approval of funding does not imply an obligation of subsequent funding by the SAFC. For example, approval of development funding in a project does not automatically guarantee approval of production investment.

While providing practitioners with information as to how the SAFC runs its business the SAFC needs to work in a proactive and flexible way and in the best possible interests of the South Australian screen industry as a whole. The SAFC may therefore vary its Guidelines and Terms of Trade from time to time. Prospective applicants and other interested parties should speak with a member of the SAFC team if they need further information.

## 06.02 Minimum requirements

### 6.2.1 Chain of title and service agreements

The successful applicant must be able to demonstrate a clear chain of title in their project. This will usually involve providing a series of documents which establish that the applicant owns or controls all necessary rights in order to fully develop, produce and market their project.

Where the applicant is not the originator of the underlying work (ie when the project is based on a novel or play), the applicant must be able to demonstrate an option on the underlying work giving the applicant the right to deal in the work for a minimum of two years, renewable for a further extended two year period by the applicant on terms approved by the SAFC. Other examples may include agreements for the services of writers, script editors, producers and/or directors (as applicable, depending on the stage of development and/or production of the project in question). Each service agreement must contain a provision which assigns the proceeds of the services rendered to the producer of the project.

All relevant chain of title documents and service agreements should be provided to the SAFC for approval at the time a funding application is made. Generally SAFC funding will be contingent on such approval. SAFC does not fund options, rights payment or legal fees under its development programs.



## 6.2.2 Completion guarantee and insurance

In general, applicants must have all the necessary insurances in place, including but not limited to, workers compensation, public liability and negative risks and error and omissions insurance (where relevant).

The SAFC requires the appointment of a reputable completion guarantor for production investment projects. Where Screen Australia is also contributing financially to a production and waives the requirement for a completion guarantor, the SAFC may also waive the requirement as long as the applicant can guarantee delivery.

The SAFC retains the right to require a completion guarantor.

## 06.03 Contracting

### 6.3.1 SAFC contracting process

All funding decisions are subject to fully executed contract(s) based on the SAFC's Terms of Trade. Once an application has been approved for funding by the SAFC, under certain programs successful applicants will receive a Letter of Offer ("LOO") detailing the level of the SAFC's proposed funding, the timeframe for contracting and any applicable special conditions. The applicant will be required to acknowledge these terms by signing and returning a copy of the LOO to the SAFC within a specified timeframe.

Once conditions of the LOO have been met, the formal contracting process can begin. It can be expected to take anywhere up to six (6) weeks from the SAFC's receipt of the countersigned LOO depending on the complexity of any given project and/or the overall workload at that time. It should be noted that while comments on any SAFC document are always welcome, prolonged negotiation may delay the contracting process and extensive amendments to SAFC templates will generally be resisted.

### 6.3.2 Legal costs and advice

It is expected that applicants will be responsible for their own legal and other costs associated with the contracting process, including preparing the required chain of title documentation (which should ideally be in place before applying and at the very latest prior to execution of the relevant funding agreements).

Contact details for film industry lawyers can be found via the Encore Directory or alternatively assistance can be sought through the Arts Law Centre of Australia (<http://www.artslaw.com.au>). Arts Law provide very reasonably priced agreement templates and may also offer free general legal advice up to a certain level. Unfortunately the SAFC is NOT in a position to provide legal advice to applicants under any circumstances.

## 06.04 Producer Equity

### 6.4.1 Producer Equity Scheme

The SAFC believes that producers should have the opportunity to share in the first financial returns from the success of their films, rather than waiting until all other investors have recouped their costs.

To this end the SAFC has devised the Producer Equity Scheme (PES) under which successful applicants will enjoy a share of the SAFC's copyright and recoupment position. More details about PES can be found in the PES Guidelines, available for download from <http://www.safilm.com.au/funding-and-support/production-support/producer-equity-scheme-pes>.

## 6.4.2 Rights Reversion

Since 1 January 2009, producers of the projects in which the SAFC is an investor have been able to enjoy the benefit of the SAFC's Rights Reversion policy. Under this policy, the SAFC's copyright interest and entitlement to gross receipts from a project will revert (be assigned) in favour of the principal producer five (5) years after delivery and/or the first commercial release or broadcast (as applicable) of the project. All projects prior to 1 January 2009 in which the SAFC is an investor will also have their rights reverted according to the SAFC's Rights Reversion policy as of 1 January 2017.

## 06.05 Rights of the SAFC

### 6.5.1 SAFC credit

It is a material contractual condition that all SAFC funded projects must include a pre-approved credit acknowledging the support of the SAFC.

Acknowledgment should also be given in any promotional material (including advertising, editorial, websites) associated with a funded project or activity.

Credit requirements may vary depending on the nature of support provided by the SAFC and are detailed in the applicable funding agreement.

Examples of approved SAFC credits can be provided on request.

### 6.5.2 Copyright share

In consideration of its investments, the SAFC will require a 1% copyright interest in the project.

Where a project received development investment from the SAFC and does not proceed to production with SAFC funding, the producer may purchase any copyright interest held by the SAFC subject to the terms of the relevant development agreement. Usually this will be the amount of the development investment plus a 10% premium.

### 6.5.3 Recoupment

For finance provided by way of investment the SAFC requires a recoupment entitlement to participate in returns from the project commensurate with its investment *pro rata* and *pari passu* with other equity investors, subject to the SAFC's Rights Reversion policy and (if applicable) Producer Equity Scheme.

### 6.5.4 Profit share

In addition to a recoupment position, if the project moves into profit within the five (5) years prior to the SAFC's Rights Reversion policy taking effect, the SAFC will be entitled to participate in a share of profit returns from the project. Commensurate with its investment *pro rata* and *pari passu* with other equity investors, subject to the deduction of a 50% producer corridor and subject further to the Producer Equity Scheme (if applicable).

A project is deemed to go into profit once all equity investors and other relevant financiers have recouped their respective investments.

### 6.5.5 Promotional materials

The SAFC will require a non-exclusive right to use excerpts from the project and other promotional materials as delivered by the producer for its corporate, promotional and educational purposes (including online and in showreels). The SAFC may also require the right to use the whole of the project for parliamentary screenings.

## **6.5.6 SAFC right of approval**

While the SAFC recognises the importance of the producer's right to manage all aspects of the creative process without undue interference from investors, the SAFC will require certain rights of approval and/or consultation over certain aspects of the development or production of a project (as applicable), which will be outlined in the relevant funding agreement.

## **6.5.7 SAFC Sunset Clause & Failing to Acquit**

Any party that fails to provide required materials prior to a contractual due date will be in breach of its obligations under the relevant agreement, even if it later provides those materials. SAFC will in its sole discretion exercise its right to revoke any remaining funds, at any time after the stipulated due date which is not met.

# **06.06 Usual business terms**

## **6.6.1 Deliverables**

Where the SAFC has provided production investment in a project, the producer must provide the SAFC with its standard delivery items in relation to the production agreement.

Where the SAFC provides development grants, the SAFC will require certain delivery items depending on the nature of the project and the development work undertaken. These deliverables are detailed in the applicable development funding agreement.

## **6.6.2 Audit rights**

The SAFC may require funding recipients to provide an independent audit report in relation to expenditure of SAFC funds, but usually only in relation to higher levels of SAFC production investment. Where an independent audit report is not required, the SAFC may still require the funding recipient to provide a statutory declaration verifying the expenditure report(s).

In all cases (development and production), the SAFC reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contractual requirements.

## **6.6.3 Reporting requirement**

Status reports at key points during the development and/or production process and as outlined in a funding agreement may be required by the SAFC on request.

The applicant must provide all necessary material reasonably requested by the SAFC in relation to the project and commit to meetings with SAFC management as reasonably requested.

## **6.6.4 Goods & Services Tax (GST)**

GST is payable on all SAFC development and production investments and administration fees (including premiums).

SAFC loans are not subject to GST, however the administration fees applied to the loans will attract GST.

## **6.6.5 Confidentiality**

The applicant must not divulge any confidential information relating to the application process or approved funding to any third party (other than those of their respective employees or authorised agents) without prior written consent. In this context the term "confidential information" shall be given its everyday meaning, and for the avoidance of doubt, includes any information obtained from SAFC in the course of any application process, negotiations, funding

grant or performance of contracts involving SAFC as a party, and any other information which the applicant should reasonably consider to be confidential to SAFC.

### 6.6.6 Freedom of Information (FOI)

The *Freedom of Information Act 1991* (SA) provides the Australian public a legal right to seek access to documents in the State Government's possession, including the SAFC. Access is limited only by exemptions that protect essential public interests and the private and business affairs of people about whom departments and statutory authorities hold information.

Members of the public seeking access to documents that may be held by the SAFC should consult the FAQ section on the SAFC website (<http://www.safilm.com.au/about/faq/>).

### 6.6.7 Acting in good faith

SAFC acts in the public interest and must exhibit professionalism in dealing with applicants. SAFC requires applicants to act in the same way in their dealings with SAFC. Applicants must be honest and open in all dealings with SAFC. They must not mislead or deceive SAFC by act or omission.

SAFC reserves the right to not accept or process applications for funding from or communicate with any person who SAFC forms the view persistently treats our staff in a vexatious, discourteous, hurtful or intimidating fashion, nor will SAFC enter into correspondence with any such person.

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

- (a) paying at least award minimum rates or, where applicable, any minimum agreed between the relevant guilds, for all work performed by third parties on their project, including key creatives, cast and crew. This includes making payments on time.
- (b) respecting the rights of all relevant persons, whether those rights be *copyright* or other intellectual property rights, *moral rights* or *indigenous cultural and intellectual property rights*.

# 07 Change Log

**7 December 2016:**

## **Introduction**

Updated to include web reference for accessing General Guidelines and Terms of Trade as revised from time to time.

## **01 Overview**

Changed all references from Industry Development & Studios (IDP) to Production, Development & Studios (PDS).

Changed all references to General Manager, IDP to Head, Production, Development & Studios.

### **Division of Programs**

Updated the complete list of current SAFC Industry Funding Programs.

## **02 Definitions and Terms of Reference**

### **broadcast television or broadcaster**

Insert definition

### **chain of title**

Insert definition.

### **copyright**

Insert definition.

### **co-production (genuine)**

Insert requirement to comply with Screen Australia Co-Production guidelines (no change in practice).

### **credited**

Amend definition to delete reference to narrative driven interactive and cross platform projects; narrative rich released games; and /or narrative rich websites (no change in practice).

### **digital media**

Delete definition.

### **documentary**

Updated link to ABC Content Standard

### **drama**

Insert definition

### **factual**

Insert definition

### **indigenous cultural and intellectual property (ICIP) rights**

Insert definition

### **interactive**

Delete definition

### **long form**

Delete definition

### **major film festivals**

Changed Link to Screen Australia Website.

### **market attachment**

Amend definition to remove reference to digital media market examples and other non-marketplace investment including those from other film agencies such as Screen Australia, and film festival investment funds (no change in practice).

### **moral rights**

Insert definition

### **Series/serial**

Insert definition

### **South Australian post production company**

Delete definition

**South Australian producer**

Insert definition

**South Australian production company**

Amend definition to include post-production companies

**Theatrically released**

Insert definition

**qualifying South Australia Spend (SAS)**

Insert definition

**03 General Conditions**

**acting in good faith**

Definition moved to **6.6.7**

**co-productions**

Definition deleted

**working with Aboriginal and Torres Strait Islander content and communities**

Changed Link to Screen Australia Website.

**04.02 Priority and preference with applications**

Amended so that alternative financing and production must be discussed with PDS prior to application lodgement.

**04.05 Ineligible applications**

Amended to delete applications for events/activities occurring outside SA, and reference to digital media projects.

**05 Application and Assessment Process**

Changed all references from Industry Development & Studios (IDP) to Production, Development & Studios (PDS).

Changed all references to General Manager, IDP to Head, Production, Development & Studios.

**05.02 Submitting an application**

Removed requirement for Hardcopy application.  
Inserted detail regarding Online forms.

**05.04 External Analysis**

A more detailed description of external analysis (no change in practice).

**05.05 Key assessment criteria**

Updated to use defined term qualifying South Australia spend, and delete cross-platform content development criterion.

**05.07 Funding approvals and conditions**

Changed description of timeframe to simplify (no change in practice).

**05.08 Advice regarding application outcome**

Changed description to simplify (no change in practice).

**6.01 Overview**

Amendment to clarify that amendments to Standard Terms of Trade will not be retrospective in application.

**6.1.1 SAFC program guidelines and assessment process**

Changed Reference to Head, Production, Development & Studios (PDS).

**6.2.1 Chain of title and service agreements**

Amended to clarify what SAFC does not fund(no change in practice).

**6.3.1 SAFC contracting process**

Changed description to simplify (no change in practice).

**6.4.2 Rights Reversion**

Amended to cover off reversion of rights for projects prior to 1 January 2009 in which SAFC is an investor.

**6.4.3 Seed Development and Producer Business Development Investment Repayment Incentive**

Deleted.

**6.5.2 Copyright share**

Minor update to wording (no change in practice)

**6.5.7 SAFC Sunset Clause & Failing to Acquit**

New insertion.

**6.6.1 Deliverables**

Minor wording updates (no change to substance).

**6.6.5 Confidentiality**

Amended to clarify what is to be regarded as confidential information.

**6.6.6 Freedom of Information (FOI)**

Changed link to SAFC website.

**6.6.7 Acting in Good Faith**

New insertion from **03 General Conditions**

**30 May 2014:**

**6.4.3 Seed Development and Producer Business Development Investment Repayment Incentive**

A more detailed description of how the SDI and the Producer Business Development repayment incentive works, including examples (no change in practice).

**16 March 2015:**

**05.07 Funding Approvals Conditions**

Production investment applications deadlines were updated from 40 business days before a board meeting to 30 business days before a board meeting.