



South Australian **Film Corporation**

SOUTH AUSTRALIAN FILM CORPORATION

TERMS OF TRADE

Effective June 2019.

INTRODUCTION

The South Australian Film Corporation's (SAFC) Terms of Trade provide the framework for how the SAFC conducts its business, funding programs and initiatives and generally align with Screen Australia's Terms of Trade.

This document provides definitions of standard terms included throughout the SAFC's program specific guidelines and outlines the conditions that apply across the SAFC's

funding programs and initiatives. This document should be read in conjunction with the SAFC Strategic Plan, relevant program guidelines and applications forms. While providing practitioners with information as to how the SAFC runs its business the SAFC also needs to work in a proactive and flexible way in the best possible interests of the South Australian screen industry. The SAFC may therefore vary its Terms of Trade as required for specific projects.

Funding Programs - Overview

The State Government, through the Department for Innovation and Skills, provides funding for all SAFC programs, through Production Development, Attraction and Studios (PDAS) or Industry Development, Partnerships and Engagement (IDPE).

Division of Programs

In line with the Strategic Plan and for clarity regarding the aims and outcomes of each program, funding is divided into six key areas:

1. Development
2. Production
3. Loans and Rebates
4. Travel
5. Industry Skills and Development
6. Audience Development

These programs may 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 opportunities to foster the local sector.

Applicants are required to discuss their project with the appropriate PDAS or IDPE representative before making a formal application. The complete list of SAFC Funding Programs and contact details is available on the SAFC website at www.safilm.com.au

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GENERAL TERMS OF TRADE

1. **GENERAL MATTERS**

This section applies to all SAFC funding programs:

1.1 General eligibility for South Australian Film Corporation funding

In the following provisions:

- (1) "broadcaster" means a company providing television broadcasting services in Australia (including subscription television services) under the *Broadcasting Services Act 1992 (Cth)*.
- (2) "related party" means:
 - (a) a director or other officer of an applicant company; or
 - (b) the holding company or a subsidiary of an applicant company; or
 - (c) any company of which an individual applicant is a director or other officer;
or
 - (d) any other company of which a director or other officer of an applicant company is a director or other officer.

1.1.1 Applicant eligibility

The following paragraphs set out eligibility provisions specific to individual applicants and company applicants, and then 'common eligibility rules' applicable to both individuals and companies (and, to the extent indicated, to related parties). It should be noted that the eligibility rules will also apply to the contracting entity or entities (if different from the original applicant), including any special purpose rights holding and/or production services companies.

For the purposes of eligibility for funding applications, **an individual applicant** must be:

- (a) an Australian citizen; or
- (b) an Australian resident, being a person who is lawfully domiciled in Australia, and who has been in Australia, continuously or intermittently, for more than one half of the year immediately preceding the application.
- (c) have an Australian Business Number (ABN)
- (d) 18 years or over.
- (e) A South Australian based applicant or Key Creative must be based in and working from South Australia and ordinarily have lived in South Australia for at least 6 months immediately prior to the date of the application.

Key creatives are the individuals writing, directing and producing the project. If your key creative team does not have any screen credits in these roles you will need to demonstrate that you have the relevant skills, market knowledge and/or relationships to develop a project likely to find production finance.

For the purposes of calculating Qualifying South Australian Expenditure, a South Australian Resident is defined as an individual who has a residential address in South Australia and meets at least one of the following three conditions:

- (a) They are professionally based in and carry on their business in South Australia; or
- (b) They are currently registered on the state electoral roll; or
- (c) They certify that they have recently relocated to South Australia;
- (d) For the purposes of calculating South Australian on crew (including above and below the line crew), the SAFC will accept the relevant expenditure as qualifying if the crew member's signed contract:
 - (i) contains a warranty from the crew member that they meet the above definition and

(ii) the crew member's address stated on the contract is a residential address in South Australia.

An individual applicant must not be:

- (a) an employee of a broadcaster or commissioning platform (e.g. an SVOD service);
- (b) enrolled full-time in a film, television or interactive digital media course at a film school or other tertiary educational institution. Applications from part-time students will be assessed on a case-by-case basis 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;
- (c) employed on a full-time basis by educational or training institutions; or
- (d) acting in the capacity of a trustee of a trust.

An applicant that is a company must be:

- (a) incorporated and carrying on business in Australia and have its central management and control in Australia;
- (b) for applicants seeking development or production finance, a company must be active in the screen business.
- (c) South Australian based company must be registered in South Australia and have its principal place of business in South Australia for at least six months immediately prior to the date of the application.

An applicant that is a company must not be

- (a) a broadcaster;
- (b) a holding company or subsidiary of a broadcaster;
- (c) owned or jointly owned by one or more companies referred to in (a) or (b); or
- (d) acting in the capacity of a trustee for a trust.

All applicants must also:

- (a) not be in breach of any obligation under any agreement they have with SAFC or any of SAFC's predecessors;
- (b) always act 'in good faith' in all their dealings with SAFC (see 1.2 below);
- (c) have the capacity and resources to carry out the project or proposal that is the subject of the application;
- (d) have the right to carry out the project or proposal that is the subject of the application (including any relevant copyright and appropriate clearances from all significant participants). If the application is based on an underlying work, SAFC will expect, at the least, an appropriate option; and
- (e) Where a related party to an applicant is in breach of an obligation under an agreement with SAFC or any of its predecessor agencies, SAFC reserves the right to regard the applicant as ineligible.

SAFC also reserves the right not to accept an application where a key principal on a project, such as a director or executive producer, is a person who would be ineligible by reason of a breach if that person had been party to an agreement with SAFC or its predecessor agencies by that person or a related party.

If you are not a South Australian resident, you must:

- provide evidence of a genuine co-production partnership with a South Australian Producer OR;
- have at least one South Australian resident Key Creative attached OR satisfy the SAFC that the project offers outstanding economic and creative benefits to South Australia.

The following applicants are not eligible for SAFC funding and will not be considered:

- any party in default of any contractual obligations to the SAFC;
- 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;
- 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, 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 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.

1.1.2 Project eligibility

In order to provide funding to any project, SAFC must be satisfied either that the project is an official co-production or that the project has significant Australian content. These tests will be applied having regard to the project's stage of development.

1.2 Acting in good faith

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

1.3 SAFC Statement of expectation

The SAFC expects recipients of SAFC funding to conduct their business ethically, professionally and with integrity at all times. The SAFC reserves the right to withhold or revoke funding if in its reasonable opinion these expectations are not met and a later date.

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) Complying with the Fair Work Act; including but not limited to the rates and classification of pay, the timing of payment, penalty rates and hours of work.

- (b) Complying with the prevailing Workers Compensation and Health legislation, industry safety standards and codes of conduct.
- (c) Payment of suppliers in a timely manner, and in particular within 30 days of service delivery or as otherwise contracted.
- (d) respecting the rights of all relevant persons, whether those rights be copyright or other intellectual property rights, moral rights or Indigenous Cultural and Intellectual Property rights.

1.4 Audit rights

SAFC may require funding recipients to provide an independent audit report in relation to expenditure of funds.

Where an independent audit report is not required, SAFC may require the funding recipient to provide a statutory declaration verifying the expenditure report(s). In all cases, SAFC reserves the right to carry out an audit of the expenditure of its funding support to ensure compliance with contract requirements.

1.5 GST

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

1.6 Reporting and information provision

For all projects and activities with funding from SAFC, the recipient will be required to provide some form of reporting/acquittal set out in the relevant funding agreement.

2. CREDITING SAFC

All SAFC funded projects must include a pre-approved credit acknowledging the support of the SAFC on the project and its promotional materials. Credit requirements are detailed in the funding agreement.

3. INDIGENOUS CONTENT

Where there is Indigenous content or participation in any production, the producer is required to comply with SAFC's protocols, including those related to treatment of 'Indigenous Cultural and Intellectual Property Rights'. The SAFC recommends Screen Australia's *Pathways & Protocols: a filmmaker's guide to working with Indigenous people, culture and concepts* <https://www.screenaustralia.gov.au/about-us/doing-business-with-us/indigenous-content/indigenous-protocols>. The Australia Council for the Arts also provides guidelines for working with Aboriginal and Torres Strait Islander practitioners in the arts and screen sector www.australiacouncil.gov.au.

This guide is intended to provide practical advice about the ethical, legal and moral rights issues involved with the transfer of Indigenous cultural material to the screen.

Indigenous cultural and intellectual property (ICIP) rights refer to Indigenous people's rights with respect to their cultural heritage. This is a living heritage, which comprises all objects, sites, language and stories, images and intellectual and cultural 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.

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 contracted by the SAFC to provide an assessment of the application to ensure that the appropriate consultation is taking place and the use of the material is appropriate and acceptable to the relevant community and Aboriginal and Torres Strait Islander communities generally.

4. TERMS OF FUNDING:

4.1 Development funding

If a project has received development funding from SAFC and proceeds to production with SAFC finance, the development funding must be recognised in the production budget (as an above-the-line cost repayable to SAFC) or will be deducted from the total production finance provided. Where the project goes into production without SAFC funding, SAFC will require the producer to repay the development funding provided by SAFC.

4.2 Production Funding

SAFC's investment is in the form of a non-recoupable grant. The SAFC considers this grant to be, by default, 'assigned equity' attributable to the SA producer for financing purposes.

Production funding is provided by way of grant (other than projects receiving funding by way of loan, such as RFF funding) which does not have to be repaid other than:

- (a) in case of breach by the funding recipient; or
- (b) where not all the grant is required.

4.3 Official co-productions

In relation to official co-productions, the above provisions apply only to the Australian producer, and only to the Australian components of budget and revenue.

5. RIGHTS FOR FUNDING

5.1 Copyright and underlying rights

SAFC requires the producer to have or be in a position to acquire on appropriate terms, an assignment of all underlying rights required to make and exploit the project and any sequels, spinoffs and remakes (including a format) as outlined below.

In relation to production funding, SAFC requires the producer to provide a satisfactory chain of title opinion letter from an appropriately qualified solicitor. This requirement may also apply in relation to film and television development funding where the chain of title is particularly complex or SAFC considers there to be exceptional circumstances.

5.2 State Library of South Australia legal deposit.

South Australian producers may have legal deposit requirements under the State Libraries Act 1982. For further information of these requirements please see: <http://guides.slsa.sa.gov.au/legaldeposit>.

These deliverables must be included in the project budget and maybe in addition to any requirements from the National Film and Sound Archive if the proposal has Screen Australia funding.

5.3 Other rights

In addition, SAFC requires:

- (a) certain non-exclusive rights to use materials for projects it has funded for promotional and other purposes as set out in the relevant agreement;
- (b) approval or consultation rights as set out in the project's funding agreement;

6. SAFC SUNSET CLAUSE AND FAILURE 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. 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 unless the SAFC agrees to new terms in writing.

7. DIVERSITY, INCLUSION AND ACCESS

The SAFC is committed to supporting increased participation in the industry of people from under-represented groups including women, Aboriginal and Torres Strait Islander peoples, practitioners from Culturally and Linguistically Diverse backgrounds, those Deaf or with disability, from LGBTQIA+ communities and from regional and remote areas.

SAFC expects all projects to consider disability access arrangements for their projects and activities (including any obligations under relevant legislation including the Disability Discrimination Act 1992 Cth)

8. SAFE WORKPLACES AND WORKING WITH CHILDREN

SAFC has zero tolerance for unsafe workplace behaviours, including discrimination, harassment and bullying. This includes all events and activities that we manage and support as well as all projects and other initiatives we fund.

SAFC is committed to actively working to eliminate sexual harassment and other unsafe workplace practices and behaviours in our industry. All reports of harassment, bullying and other unacceptable behaviour will be swiftly investigated in accordance with our policies and relevant legislation and acted upon as appropriate.

SAFC expects employers (including producers) to comply with:

- All legislation relating to providing a safe workplace including state and federal harassment and discrimination legislation;
- SPA/MEAA Australian Screen Industry Code of Practice: Discrimination, Harassment, Sexual Harassment and Bullying:
https://assets-us-01.kc-usercontent.com/89c218af-4a5a-00a2-9d83-3913048b3bc7/252a6b8a-797c-4563-8f10-8fe1d51cb174/1.%20Screen%20Industry%20Code%20of%20Practice_Full%20Document.pdf

SAFC may require applicants to demonstrate evidence of their safe workplace practices and this may be taken into consideration in assessment of applications.

From 1 July 2019, people working or volunteering with children in South Australia must, by law, have a valid child-related clearance. The working with children check is only available through the South Australian Department of Human Services Screening Unit. The SAFC expects employers, including producers to comply with this legislation and may require evidence of their valid working with children check.

Further information is available via:

<https://screening.sa.gov.au/screening-process/new-working-with-children-checks>

or by contacting the Department of Human Services Screening Unit:

<https://screening.sa.gov.au/contact-us>

9. KEY ASSESSMENT CRITERIA

The SAFC Strategic Plan outlines these elements for consideration in assessment:

- the benefits to the South Australian screen industry and its reputation for world class screen projects;
- the track record of the applicant(s) and principal(s)
- the innovation, quality, originality and creative ambition of the project;
- the quality and rigor of all support materials
- the overall diversity of projects funded by the SAFC
- the nature and level of funding requested within available funding.

All applications for programs and initiatives will have specific assessment criteria as outlined in the Guidelines. The criteria for assessment will fit within the following principles:

- 1) Creative merit;
- 2) Business, Finance, Budget, Schedules;
- 3) Audience;
- 4) Market;
- 5) Diversity and Inclusion;
- 6) Industry/Skills.